

**Draft Response to CLG from EFDC on Consultation Document
“Local decisions: a fairer future for social housing”**

Dear Ms Walker

Response to CLG Consultation Document - “Local decisions: a fairer future for social housing”

I am writing to provide Epping Forest District Council’s response to the above Consultation Document, issued by the CLG in November 2010.

The Council’s response was agreed by our Housing Scrutiny Panel of members at its meeting held on the 11th January 2011. The Housing Scrutiny Panel is authorised by the Council to respond to housing consultation documents on the Council’s behalf.

In view of the impact and effect that the Government’s proposals will have on the Council’s tenants, all the members of the Epping Forest Tenants and Leaseholders Federation were also invited to attend the meeting, take part in the debate and inform the Council’s response.

To be agreed by Federation members at the end of meeting - *Either:*

[a - I can confirm that the Tenants and Leaseholders Federation agreed to fully support and endorse the Council’s response. Please note that reference to “we” and “our” within this letter refers to both the Council and the Tenants and Leaseholders Federation. Therefore, when registering this response to the consultation, we would be grateful if you could register it twice – once as the Council’s response and, separately, once as the Tenants and Leaseholders Federation’ response]

or

[b - I can confirm that the Tenants and Leaseholders Federation generally agreed to support and endorse the Council’s response, with a few exceptions - which are referred to below where they apply. Please note that, for brevity, reference to “we” and “our” within this letter refers to both the Council and the Tenants and Leaseholders Federation. Where there are any differences of view, this is specifically stated. Therefore, when registering this response to the consultation, we would be grateful if you could register it twice – once as the Council’s response and, separately, once as the Tenants and Leaseholders Federation’ response.]

or

[c - The Tenants and Leaseholders Federation will be meeting separately to consider and agree its own response to the Consultation Document, which you should receive before the closing date]

I have firstly set out below the Council’s general comments on the Government’s proposals, and then provided the Council’s responses to each of the detailed questions raised in the Consultation Paper.

General Comments

To be formulated at the meeting – Issues to consider:

- **Does the Panel support all or none of the proposals ?**
- **How strong is the support/objections ?**
- **What are the particular concerns, or issues to support ?**

Question 1: As a landlord, do you anticipate making changes in light of the new tenancy flexibilities being proposed? If so, how would you expect to use these flexibilities? What sort of outcomes would you hope to achieve?

This will be considered in detail by the Council's Cabinet, once details of the final proposals are received – if indeed they are introduced at all.

However, at this stage, it is our view that...

Response to be formulated and agreed at the meeting, including:

- **Whether this would be an issue on which the Council would consult all tenants on, before making a decision on whether or not to introduce the proposed new local authority flexible tenancy, with a minimum term of 2 years**
- **Even if tenants would be consulted, whether the Scrutiny Panel / Federation thinks the Council would/should introduce the proposed new tenancy**
- **If used, does the Panel think that flexible tenancies would apply to all new tenancies, or just some ? If just some, what types (e.g. only a proportion of vacancies or only for certain client groups, perhaps single person households) ?**
- **What, at this stage, does the Scrutiny Panel / Federation think the minimum tenancy period should be ?**
- **What outcomes would hoped to be achieved e.g:**
 - **Higher turnover of Council accommodation ?**
 - **Better use of the Council's housing stock (i.e. avoid under-occupation) ?**
 - **More applicants on the Housing Register housed ?**
 - **Tenants no longer in need of Council housing (e.g. can afford to buy/rent privately) making way for those in current need) ?**

Question 2: When, as a landlord, might you begin to introduce changes?

To be agreed at the meeting - *Either*

[a - As explained above, at this stage, it would not be the Council's intention to introduce flexible tenancies]

or

[b - In view of the perceived benefits, it is felt that the Council would wish to implement the changes as soon as reasonably possible. However, it would take some time to fully evaluate the final guidance and to formulate/approve the Council's policy on the approach to be taken. It is the Council's view that we would require at least 6 months from the date of the final guidance being issued to implementation]

or

[c – Before implementation, the Council would wish to consult all tenants on the proposed approach to be taken. It is the Council's view that we would require at least 9 months from the date of the final guidance being issued to implementation]

Question 3: As a local authority, how would you expect to develop and publish a local strategic policy on tenancies? What costs would you expect to incur?

It would be the Council's intention to develop the proposed required local strategic policy on tenancies in close liaison with both the Council's five Preferred Housing Association Partners (that, together with the Council, form the Epping Forest Strategic Housing Partnership), other housing associations with housing stock in the District and the Tenants and Leaseholders Federation.

The draft policy would be considered in detail by the Council's Housing Scrutiny Panel, prior to final adoption by the Cabinet, and possibly the full Council.

It would be published in hard copy, and distributed to relevant partners, as well as being published on the Council's website.

A summary would be provided to all tenants in an issue of *Housing News*, the Council's Housing Newsletter sent to all Council tenants. It is also likely that a new leaflet would be produced and sent to all housing applicants, explaining the (new) options available.

The cost of this exercise is estimated to be around £6,000, including £3,000 of officer time.

Question 4: Which other persons or bodies should local authorities consult in drawing up their strategic tenancy policy?

The response to Question 3 sets out the organisations that this Council would intend to consult. In more general terms, we would suggest that the following types of organisations should be consulted:

- Housing associations with housing stock over 100 properties in the District; and
- Recognised District-wide organisations that represent tenants and leaseholders

- **Are there any other organisations that the Scrutiny Panel and/or Federation considers that local authorities should consult ?**

Question 5: Do you agree that the Tenancy Standard should focus on key principles? If so, what should these be?

We feel that the revised Tenancy Standard should **only** focus on key principles and that these should include the need to ensure:

- transparency of the landlord's approach;
- consistency of approach by the landlord; and
- fairness amongst housing applicants and tenants

The Tenancy Standard should ensure that landlords are able to set a local approach that takes account of local housing need and the local authorities' strategic housing objectives.

Question 6: Do you have any concerns that these proposals could restrict current flexibilities enjoyed by landlords? If so, how can we best mitigate that risk?

We do not feel that current flexibilities would be restricted. However, if there are any unintended negative consequences from these proposals, it is our view that the Government should mitigate against them.

Question 7: Should we seek to prescribe more closely the content of landlord policies on tenancies? If so, in what respects?

Generally - no. Since the Government has committed to a localist agenda and to devolve power to local communities, we believe that it should be the role of the landlord to prescribe how tenancy policies should operate locally, not the Government.

However, we feel that policies should be consistent with national legislation, codes of guidance and the principles of fairness and equity.

Question 8: What opportunities as a tenant would you expect to have to influence the landlord's policy?

This question is clearly aimed at tenants and not landlords. However, this question has been considered by the members of the Tenants and Leaseholders Federation, and their response is that:

Views to be agreed by Federation members at the meeting.

This may include:

- **An expectation that, where the housing stock has been retained by the Council (like the Federation), District-wide tenant representative bodies will be formally consulted on the their landlord's policy prior to adoption**

Question 9: Is two years an appropriate minimum fixed term for a general needs social tenancy, or should the minimum fixed term be longer? If so, how long should it be? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be? Should the minimum fixed term include any probationary period?

To be agreed at the meeting - Either

[a – Yes, we feel that two years is an appropriate minimum fixed term. We also feel that any fixed term should include any “probationary period” of introductory or starter tenancies operated by the landlord and that there should be no distinction between social and affordable rents]

or

[b – No, we feel that the minimum fixed term should be [X] years (**ARCH recommends 5 years**). This is on the basis that:

[Scrutiny Panel to agree the reasons why longer than 2 years - which may include:

- **A need to provide some stability for tenants for a longer period than 2 years;**
- **To give them time to save for alternative accommodation – perhaps to purchase a property;**
- **To reduce the officer time and additional associated costs involved with administering tenancy reviews every 2 years. For example, such “savings” in additional costs could be used to help ensure that landlords (continue to) meet the Decent Homes Standard;**

• Short term fixed tenancies of less than (X) years would go against the Government's stated objective of not penalising citizens who improve their circumstances (e.g. improve their financial situation);

• [Any other reasons ?]

We feel that any fixed term should include any "probationary period" of introductory or starter tenancies operated by the landlord and that there should be no distinction between social and affordable rents]

Question 10: Should we require a longer minimum fixed term for some groups? If so, who should those groups be and what minimum fixed terms would be appropriate? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be?

It is our view that this issue should be left to the discretion of landlords, in consultation with the local authorities where their stock is situated.

Question 11: Do you think that older people and those with a long term illness or disability should continue to be provided with a guarantee of a social home for life through the Tenancy Standard?

To be agreed at the meeting - *Either*

[a – No. We feel that this should be left to the discretion of landlords, in consultation with the local authorities where their stock is situated.]

or

[b – No. We feel that older people and those with a long term illness or disability should **not** continue to be provided with a guarantee of a social home for life through the Tenancy Standard because [**Scrutiny Panel to agree the reasons why not**]

or

[c – Yes. We feel that older people and those with a long term illness or disability should continue to be provided with a guarantee of a social home for life through the Tenancy Standard. This is because these are two groups who, generally, have a limited ability to ever move on from affordable housing, and their wellbeing should be safeguarded]

Question 12: Are there other types of household where we should always require landlords to guarantee a social home for life?

- Are there any other types of household that the Scrutiny Panel feel should be guaranteed a social home for life (irrespective of the landlord's view) ?

Question 13: Do you agree that we should require landlords to offer existing secure and assured tenants who move to another social rent property a lifetime tenancy in their new home?

Yes. Otherwise it would deter existing tenants from transferring to alternative social housing to meet their needs. In any event, such transfers eventually result in vacancies that could be let on fixed term tenancies.

Question 14: Do you agree that landlords should have the freedom to decide whether new secure and assured tenants should continue to receive a lifetime tenancy when they move?

Yes – For the same reasons given in response to Question 13.

Question 15: Do you agree that we should require social landlords to provide advice and assistance to tenants prior to the expiry of the fixed term of a tenancy?

Yes. The provision of advice and assistance is essential to ensure that such tenants are aware of all the housing options open to them. Advice and assistance should also help to evaluate whether any future housing option is suitable for their need, in order to reduce the risk of them facing future housing hardship and re-presenting to the housing authority as homeless.

However, we do not feel that the form, type or extent of the advice should be prescribed by the Government, although it should be a requirement that landlords set this out within the Tenancy Policy.

Question 16: As a landlord, what are the factors you would take into account in deciding whether to reissue a tenancy at the end of the fixed term? How often would you expect a tenancy to be reissued?

This would be a matter that the Council would need to consider carefully once the final guidance has been issued and as part of the Council's formal decision on whether or not to use fixed term tenancies. No consideration has been given to this important issue at this stage.

Question 17: As a local authority, how would you expect to use the new flexibilities to decide who should qualify to go on the waiting list? What sort of outcomes would you hope to achieve?

We support the proposal to give local authorities the power to determine who should, and who should not, be allowed to register on local authority housing registers.

Admittance to the Housing Register should be clearly set out in the Local Authority's Housing Allocations Scheme.

This is an issue on which we would need to give careful consideration, once the final guidance is received. However, at this stage, and based on criteria that the Council previously adopted before housing registration criteria was determined by the Secretary of State, we feel that the Council would probably consider excluding the following categories of people:

- Applicants with significant previous, unpaid, rent arrears;
- Applicants who have exhibited significant anti-social behaviour in the past;
- Applicants who have lived permanently within the District for less than one year;

- Applicants who the Council determines to have sufficient assets and income to enable them to purchase their own property.

We anticipate that this would achieve the following key outcomes:

- Applicants, whose past behaviour suggests that they would not make good Council tenants, would not be able to secure the scarce resource of a Council tenancy;
- The opportunities for local residents to receive Council tenancies would increase;
- It would reduce the amount of “multiple housing applications” being made by applicants to more than one local authority;
- Applicants who are unable afford to purchase their own property, would not lost out to applicants who are able to afford their own property; and
- Council determines to have sufficient assets and income to enable them to purchase their own property.

Question 18: In making use of the new waiting list flexibilities, what savings or other benefits would you expect to achieve?

Although greater waiting list flexibilities should result in less housing applications needing to be registered, it is our view that any savings in officer time would be offset by the need for Housing staff to provide significant amounts of time providing tenants whose fixed term tenancies are due to expire with housing options advice.

Question 19: What opportunities as a tenant or resident would you expect to have to influence the local authority’s qualification criteria?

This question is clearly aimed at tenants and not landlords. However, this question has been considered by the members of the Tenants and Leaseholders Federation, and their response is that:

Views to be agreed by Federation members at the meeting.

This may include:

- **An expectation that, where the housing stock has been retained by the Council (like the Federation), District-wide tenant representative bodies will be formally consulted on the Council’s local authority qualification criteria;**
- **As required by the latest Government guidance on housing allocations, an expectation that all existing housing applicants should be consulted on the local authority’s proposed local authority qualification criteria.**

Question 20: Do you agree that current statutory reasonable preference categories should remain unchanged? Or do you consider that there is scope to clarify the current categories?

For the information of the Housing Scrutiny Panel and Federation, the Housing Act 1996 states that:

*“ As regards priorities, the scheme shall be framed so as to secure that **reasonable preference** is given to —*

(a) Statutorily homeless people;

(b) Statutorily homeless people who are owed a duty by a local housing authority to provide temporary accommodation (but not permanent accommodation) e.g. people who are intentionally homeless or who are waiting to be referred to another local authority;

(c) People “occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions”;

(d) People “who need to move on medical or welfare grounds”; and

(e) People “who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others)” ”

In line with the Government’s localism agenda, and the proposals to give local authorities greater flexibility over the management of local authority housing registers, the we feel strongly that there should be no prescription from Government or Parliament about who should be given “reasonable preference” with regard to the allocation of social housing, and that this should be for local authorities to determine.

Clearly it is likely that, as a starting point, local authorities would consider the existing “reasonable preference” criteria when determining the prioritisation of housing applicants – not least since existing Housing Allocations Schemes must be based on, and guided by, the existing criteria. Local authorities should be trusted to ensure that those considered to be in the most housing need are given priority.

Question 21: Do you think that the existing reasonable preference categories should be expanded to include other categories of people in housing need? If so, what additional categories would you include and what is the rationale for doing so?

As explained in response to Question 21, the Council feels that there should be no prescription from Government or Parliament about who should be given “reasonable preference” with regard to the allocation of social housing, and that this should be for local authorities to determine.

However, if “reasonable preference” categories continue to be prescribed centrally, for the reason given above, it is felt that the categories should not be expanded.

Question 22: As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking a transfer who are not in housing need out of the allocation framework? What sort of outcomes would you hope to achieve?

This proposal is generally welcomed, since it would appear to take existing tenants wishing to transfer out of the allocation system, which would avoid them competing with “new applicants” on the Housing Register. In particular, it would enable tenants who are not in a defined housing need, but want to move to another property (of similar size), possibly in another location, to transfer – which would assist them in their desire to move to alternative accommodation, whilst still releasing a vacancy that could then be offered to an applicant registered on the Housing Register.

The main outcome would be that existing tenants would have the opportunity for increased mobility, without any detrimental effect on those non-tenants in housing need on the Housing Register.

Question 23: What are the reasons why a landlord may currently choose not to subscribe to a mutual exchange service?

We welcome the Government's proposal to require national mutual exchange services to share data, since this will enable a tenant registered with one service to access the pools of potential exchangers registered with other services.

The Council is already a member of the Homeswapper Service, which is one of the two main national web-based mutual exchange services, and pays a subscription to enable the Council's tenants to use the service free of charge.

It is our view that any reasonable landlord should subscribe to one of the national services.

Question 24: As a tenant, this national scheme will increase the number of possible matches you might find through your web-based provider but what other services might you find helpful in arranging your mutual exchange as well as IT-based access?

This question is clearly aimed at tenants and not landlords. However, this question has been considered by the members of the Tenants and Leaseholders Federation, and their response is that:

Views to be agreed by Federation members at the meeting.

This may include:

- **The ability for tenants who do not have easy and regular access to the internet to be able to pay the web-based provider a fee to undertake regular searches of potential exchanges on their behalf, and then provide a regular (fortnightly ?) listing by post**
- **A requirement that landlords must regularly publicise the existence of the mutual exchange service and the benefits to their tenants (e.g. through newsletters).**

Question 25: As a local authority, how would you expect to use the new flexibility provided by this change to the homelessness legislation?

We welcome the proposed flexibility to bring a homelessness duty to an end with offers of accommodation in the private rented sector. Clearly, under existing legislation, it is a requirement that such a placement should be "suitable".

With increasing housing need, that is not able to be met with an adequate supply of affordable housing, we feel that it is not unreasonable to meet homeless applicants' housing requirements – albeit in the relatively short term – by securing accommodation in the private sector. This would place them in no different position to many other households already accommodated in the private sector, who would no doubt welcome permanent council or housing association accommodation themselves. In many cases, such applicants would have become homeless from privately rented accommodation in any event. This flexibility may encourage households whose private rented tenancies are coming to an end to make a greater effort to secure alternative private rented accommodation themselves, before seeking homelessness assistance and permanent accommodation from the local authority.

Question 26: As a local authority, do you think there will be private rented sector housing available in your area that could provide suitable and affordable accommodation for people owed the main homelessness duty?

Yes – The Council is already successful in securing private rented accommodation for homeless people to whom the Council does not have a duty to provide accommodation, through its Homelessness Prevention Service. Even if there are only limited opportunities, every private sector placement would result in one vacancy of a Council or housing association home being available for a non-homeless household.

Question 27: Do you consider that 12 months is the right period to provide as a minimum fixed term where the homelessness duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed term assured shorthold tenancies for that longer period to new tenants?

We feel that the minimum fixed term where the homelessness duty is ended with an offer of an assured shorthold tenancy should be **six months**. This is the usual period offered by private landlords for assured shorthold tenancies, and we feel that the majority of landlords would be unwilling to offer assured tenancies for longer than this – especially since many homeless households are in receipt of housing benefit and many landlords are unwilling to offer tenancies to such households.

In many cases, if the tenant has been a good tenant, and the landlord has no other use for the property (e.g. for themselves) the tenancy is extended in any event.

Question 28: What powers do local authorities and landlords need to address overcrowding?

We feel that it continues to be appropriate for each dwelling to have a “room standard” and a “permitted number” (the “space standard”), and that the number of people living in the property should be no more than this permitted number. If this is exceeded, we feel that there should be severe financial penalties for the owner/landlord.

However, we feel that the current calculation of the “permitted number” is outdated, inappropriate and allows too many people to be unreasonably accommodated in overcrowded conditions. In our view, the calculation always results in a permitted number that is too high. We therefore feel that there should be an appropriate review of the permitted number calculation.

Question 29: Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

Apart from the comments above in response to Question 28, we feel that it is generally still fit for purpose.

Question 30: Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?

We feel that the Housing Health and Safety Rating System (HHSR System) does provide a suitable foundation. In particular, it provides local housing authorities with flexibility to deal with overcrowding; although local housing authorities **have** to take action to deal with a Category 1 hazard, they **may** (and have the power) to take action to deal with a Category 1 hazard.

It should also be recognised that the HHSR System takes a wider approach to overcrowding, not just in relation to the sleeping arrangements. For example, it takes account of the effects of a lack of privacy and the risk of accidents, and it does not discriminate against occupants' ages.

I hope that you find this response from the Council [and the Tenants and Leaseholders Federation] helpful, and we look forward to receiving details on the outcome of the consultation exercise and the Government's response.

If you have any queries concerning anything in this letter, please do not hesitate to contact me.

Yours sincerely,

Alan Hall
DIRECTOR OF HOUSING