# AGENDA MANAGEMENT SHEET

<table>
<thead>
<tr>
<th><strong>Name of Meeting</strong></th>
<th>Customer and Partnerships Committee</th>
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<tbody>
<tr>
<td><strong>Date of Meeting</strong></td>
<td>3 April 2014</td>
</tr>
<tr>
<td><strong>Report Title</strong></td>
<td>Fixed Term Tenancies Task Group – Review Report</td>
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<tr>
<td><strong>Ward Relevance</strong></td>
<td>All</td>
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<tr>
<td><strong>Contact Officer</strong></td>
<td>Debbie Dawson, Tel: (01788) 533592</td>
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**Summary**

The Committee included in its work programme for 2013/14 a review exploring the possibility of the council implementing new provisions in the Localism Act 2011 to offer fixed-term tenancies to new tenants.

The review is now completed and the report presents the findings and recommendations of the task group for consideration by the Committee and submission to Cabinet in June 2014.

**Financial Implications**

Financial costs to the council are a key driver behind the task group’s recommendation not to introduce fixed term tenancies at this time and to review the evidence again at a future date. These considerations are detailed in the review report.

**Risk Management Implications**

There are no risk management implications arising from this report.

**Environmental Implications**

There are no environmental implications arising from this report.

**Legal Implications**

The task group considered confidential legal advice provided to the council regarding flexible tenancy policy and this has informed the task group’s recommendations.

**Equality and Diversity**

The recommendations of the report have no equalities impact as the task group is recommending no immediate change to the current Tenancy Policy.
Summary
The Committee included in its work programme for 2013/14 a review exploring the possibility of the council implementing new provisions in the Localism Act 2011 to offer fixed-term tenancies to new tenants.

The review is now complete and the report presents the findings and recommendations of the task group for consideration by the Committee and submission to Cabinet in June 2014.

1. BACKGROUND

The Overview and Scrutiny Management Board placed a review of fixed term tenancies in the 2013/14 overview and scrutiny work programme, on the recommendation of the work programme workshop. The review topic had been suggested by the Leadership and Operations Team.

The Localism Act introduced new flexibilities for housing providers to offer new tenants a tenancy for a fixed term and the council needs to take a view as to whether it wishes to take advantage of this new flexibility. The review aimed to explore the benefits and risks of introducing fixed-term tenancies for council homes, drawing on the experience of other councils and housing providers who have already introduced fixed-term tenancies.

A draft one page strategy for the review was agreed by Customer and Partnerships Committee on 20 June 2013. A task group was appointed and began work on 2 October 2013.

2. REPORTING PROCESS

The task group has completed its work and the appendix to this paper details its findings. The chairman of the task group, Councillor Belinda Garcia, will attend the Committee meeting to present the report.

The review recommendations form section 1 of the report. It is proposed that the report will be considered by Cabinet on 9 June 2014, subject to the approval and comments of the Committee. As the task group is not recommending the introduction of fixed term tenancies at this time, a review action plan is not required.
Name of Meeting: Customer and Partnerships Committee
Date of Meeting: 3 April 2014
Subject Matter: Fixed Term Tenancies Task Group – Review Report

LIST OF BACKGROUND PAPERS

<table>
<thead>
<tr>
<th>Document No.</th>
<th>Date</th>
<th>Description of Document</th>
<th>Officer’s Reference</th>
<th>File Reference</th>
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<tbody>
<tr>
<td>1.</td>
<td>October 2013 – March 2014</td>
<td>The agendas, reports and minutes relating to this review can be found online at <a href="http://www.rugby.gov.uk">www.rugby.gov.uk</a>, following the links to the Committee Papers system and then clicking on Fixed Term Tenancies Task Group</td>
<td></td>
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FIXED-TERM TENANCIES TASK GROUP

Review Report: March 2014
# CONTENTS

Chairman’s Foreword 4

1 Recommendations 5

2 Objectives 6

3 Methodology 9

4 Findings 10

4.1 National and local policy context 10
4.2 Housing stock and housing need data 12
4.3 Costs of administering fixed-term tenancies 14
4.4 Response of other local authorities and housing providers 15
4.5 Alternative approaches 20

5 Conclusions 22
TASK GROUP MEMBERSHIP

The Task Group consisted of the following members:

Councillor Mrs Belinda Garcia (Chairman)
Councillor Andy Coles
Councillor Robin Hazelton
Councillor Tom Mahoney
Councillor Mrs Lisa Parker
Councillor Ms Carolyn Robbins
Councillor Helen Walton
Ms Tracey Nuttall (co-opted member from the Tenant Representative Panel)

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ACKNOWLEDGEMENTS

The Group would like to thank everyone who contributed to the review, and in particular Ian Young, High Peak Borough Council and Liz Dunlop, Steve Shanahan, Emma Haile, Emma Holland and Jenny Varnish, Rugby Borough Council.
CHAIRMAN’S FOREWORD

As a task group we were charged with exploring the benefits and risks of introducing fixed-term tenancies for our council homes and to come to an informed and evidence-based view as to whether they should be offered in Rugby.

The issue is undeniably politically-charged and we recognised at the outset that there were some points on which there would be no objective answer. Fundamentally, questions about the purpose of council housing and who it is for are matters of personal opinion, and there were a range of views represented around the table.

Nevertheless, we tried to adopt a thorough, evidence-based approach and considered a wide range of data about the local housing context as well as detailed research evidence about tenancy policies in other areas. We were disappointed not to be able to hear first-hand from an authority that had decided to introduce fixed-term tenancies, but were still able to glean some valuable insights from web-based research.

What was particularly apparent was that, at this stage, there is no robust evidence about the actual costs of the policy, or indeed the potential benefits. It was even difficult to establish how many of our tenants might be in a position to move on to alternative housing options, as data about tenants’ income and employment status is simply not collected. Faced with this lack of hard evidence, alongside concerns about the potential costs to the council, the group felt unable to recommend the introduction of fixed-term tenancies at this time. We are not closing the door entirely, however, and suggest that the question is revisited at the end of 2015.

I would like to thank the officers involved and all of the task group members for their input. It was particularly valuable to have the contribution of Tracey Nuttall, as a co-opted member from the Tenant Representative Panel, who brought an important insight to our discussions.

Councillor Belinda Garcia
Chairman
1. RECOMMENDATIONS

Having reviewed the available evidence, the task group recommends to Cabinet that:

1. Fixed-term tenancies should not be introduced by the council at this time
2. The council’s tenancy policy should be reviewed again at the end of 2015
3. Housing officers are trained to work more proactively with tenants to discuss alternative housing options with them
4. Further work is undertaken to explore the potential introduction of tenant incentive schemes
5. Councillors are briefed on the national ‘Pay to Stay’ policy when the details are confirmed.

When reviewing the tenancy policy in 2015, it is recommended that members should consider the following:

- evidence about the impact of fixed-term tenancies where they have been introduced by other authorities (i.e. costs of tenancy reviews, proportion of fixed-term tenancies that have ended and what additional housing capacity has been delivered);
- the profile of the private rented sector in Rugby (including numbers of ‘buy to let’ properties) and evidence of the likely impact of any increase in interest rates and the consequent level of housing need;
- figures relating to the loss of council housing stock under ‘Right to Buy’ as well as numbers of any new-builds within the housing stock;
- details of the impact of officers more proactively encouraging tenants to consider alternative housing options and incentives; and
- details of any emerging case law relating to fixed-term tenancies.
2. OBJECTIVES

2.1 Background

On the recommendation of the work programme workshop held in March 2013, the Overview and Scrutiny Management Board placed a review in the overview and scrutiny work programme looking into the council’s potential use of new provisions to offer new tenants ‘flexible tenancies’. The review topic had been suggested by Leadership and Operations Team.

The Localism Act 2011 introduced new flexibilities for councils to offer new tenants ‘flexible tenancies’. Flexible tenancies are for a fixed term and offer similar rights to secure tenancies during that fixed term. The purpose of the review was to investigate the merits and implications of Rugby Borough Council introducing fixed-term tenancies for its council homes and to make a recommendation to Cabinet as to whether or not the council should take advantage of these new powers. The Council is party to a Joint Tenancy Strategy which has been agreed on a county-wide basis. This allows all social housing providers to continue to offer qualifying tenants ‘secure tenancies’ or to introduce flexible tenancies if they wish.

A draft one-page strategy for the review was agreed by Customer and Partnerships Committee on 20 June 2013 and was adopted by the task group unamended. The first meeting of the task group was held on 2 October 2013.

2.2 The One-Page Strategy

The one-page strategy is the name given to the scoping document for the review. It defines the task and the improvements being aimed for and how these are going to be achieved. The review’s one-page strategy is as follows:

<table>
<thead>
<tr>
<th>What is the broad topic area?</th>
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<tr>
<td>The Council’s tenancy policy</td>
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<table>
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<tr>
<th>What is the specific topic area?</th>
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<tr>
<td>The Localism Act introduced new flexibilities for housing providers to offer new tenants a tenancy for a fixed term. The council needs to take a view as to whether it wishes to take advantage of this new flexibility.</td>
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The review will explore the benefits and risks of introducing fixed-term tenancies for council homes and, if appropriate, consider the detail of how this would be implemented. It will include consideration of the potential impact of fixed-term tenancies on community sustainability.

<table>
<thead>
<tr>
<th>What is the ambition of the review?</th>
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<tr>
<td>The council’s tenancy policy supports best use of its housing stock to meet local housing needs and ensures sustainable local communities.</td>
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<tr>
<th>How well do we perform at the moment?</th>
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<tr>
<td>The Council is party to a Joint Tenancy Strategy agreed on a county-wide basis. This is scheduled to be reviewed in January 2014. The strategy allows the council to</td>
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continue to offer qualifying tenants ‘secure tenancies’. The Council currently offers introductory tenancies for the first 12 months to new tenants, and then tenants normally transfer to secure tenancy after that period.

Key considerations for the task group include how well the council currently satisfies demand for social housing and the availability of alternative housing options for those whose tenancy might not be renewed. The task group will draw on the evidence collated for the previous review of housing stock and housing need, and the ensuing actions taken to redesignate properties to better meet local need.

In terms of current council housing provision:
- The council owns just over 3,900 properties, 37% of which is sheltered housing
- Over the last three years we have let on average 315 properties per year and roughly 20% of these were let to existing RBC tenants. Around 44% of lettings were of sheltered housing.
- As at 1 April 2013 there were 2,068 applicants on the housing register of which 425 (21%) had a high or medium level of need. This was a significant increase on the previous year when there were 1,655 applicants including 282 (17%) in high or medium need.

The task group will also need to understand the housing market in Rugby now and likely future trends (eg. average house prices and market rents, and availability of affordable housing) as well as the profile of income levels of council tenants and borough residents.

Who shall we consult about the current service and about how we can improve it?
- Tenant Representative Panel (to be co-opted to the task group)
- Current housing applicants (survey through Housing Options Team?)
- Rugby Homelessness Forum

The group is also able to draw on existing findings of RSL and housing staff consultation carried out by the housing team (autumn 2012). If introduction of fixed-term tenancies is proposed, fuller consultation with tenants and residents may be required.

What other help do we need?
- The task group could learn from the experiences of other housing providers and local authorities who have decided to introduce fixed-term tenancies, about their reasons for choosing this approach and the potential benefits eg. Midland Heart, Waterloo, Solihull Community Housing (introducing FTTs from 2013/14), St Edmundsbury Borough Council (introduced them in 2012).
- The task group may also want to hear from Warwickshire Rural Housing Association about their rationale for not adopting this approach
- Officer support from Housing Service and Legal Services Team
- Briefings, research and guidance produced by external organisations such as HQN and CIH

How long should it take?
Maximum of 6 months, aiming to report to Customer and Partnerships Committee on 30 January 2014.

What will be the outcome?
An informed and evidence-based view about whether to offer fixed-term tenancies in Rugby. If the review supports the introduction of fixed-term tenancies, there should also be robust recommendations to inform the revised tenancy policy.
2.3 Alignment with the Corporate Strategy

The review relates to the following corporate priority:

Facilitate the provision and upkeep of good quality housing to meet local needs and to cater for the growth of Rugby.
3. METHODOLOGY

3.1 Fact-finding

The task group met three times, in October 2013, December 2013 and March 2014. The evidence received was largely from secondary sources and included:

- Details of the national and local policy context
- Statistics on the council’s housing stock, local housing needs and tenant profile
- Information about the current housing market in Rugby and likely future trends
- Information on the operational management of council housing in Rugby and related costs
- Research evidence from other local authorities about their response to the provisions in the Localism Act 2011
- Feedback from other local housing providers (gathered through a small-scale consultation exercise by the council in autumn 2012 on the provisions in the Localism Act)
- Cost estimations provided by housing officers
- National research evidence regarding flexible tenancies
- Briefing on the proposed ‘Pay to Stay’ policy
- Legal advice on the status of a fixed-term tenancy in law.

Direct evidence was sought from two other similar local authorities that had reviewed their tenancy policy, one of which had decided not to introduce fixed-term tenancies and the other which had introduced them. Verbal evidence was received from High Peak Borough Council but the other authority approached did not provide any evidence.

A member of the Tenant Representative Panel was co-opted to the task group. It was decided that direct consultation with residents on the housing register was not appropriate before an in-principle decision had been taken in support of the introduction of fixed-term tenancies.

All of the task group review papers are all available online at www.rugby.gov.uk in the section ‘agendas, reports and minutes’.
4. FINDINGS

4.1 National and local policy context

The Localism Act 2011 enabled councils and other social housing providers to offer ‘flexible tenancies’ to new tenants, for all types of new let, from April 2012. This does not affect existing secure tenants.

The Localism Act also required local authorities, working with other providers such as housing associations, to develop a tenancy strategy for their area.

4.1.1 What is a Flexible Tenancy?

A flexible tenancy is a fixed-term tenancy which would normally last for a minimum term of 5 years\(^1\), although in some exceptional circumstances (for example, young people seeking work and likely to move on) they may last for a minimum term of no less than two years, in addition to any probationary tenancy. There is no limit on the maximum length of a fixed-term tenancy.

Tenants are made aware from the outset that the tenancy will expire after a stated period and may not necessarily be renewed. Six months before the end of the flexible tenancy the landlord assesses the household’s circumstances and decides whether to:

- issue a new flexible tenancy at the same address;
- issue a new flexible tenancy at a different address (for example if the property is now too big for the household’s needs); or
- issue no new tenancy, if the landlord considers that the tenant no longer needs affordable housing.

Where registered providers choose to let homes on fixed-term tenancies, they are required to offer reasonable advice and assistance to tenants whose tenancy ends.

Housing providers have considerable discretion in setting the criteria and framework for their own tenancy agreements.

4.1.2 Why has the Government introduced these new powers?

The Government set out its overarching policy aim as being “to ensure that social landlords grant tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of their housing stock”.\(^2\)

According to the CIH (Chartered Institute of Housing) the Government has three main aims in its housing reforms:

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\(^1\) The regulatory framework for social housing in England from April 2012, Homes and Communities Agency, March 2012

\(^2\) Local decisions: next steps towards a fairer future for social housing – Summary of responses to consultation, DCLG, February 2011
• Power will be devolved to social landlords so they can make decisions on the basis of local need and circumstances
• The system will be better focused on need: social housing should provide protection and support for those who need it most for the period they are in need
• There will be a change in the public perception of social housing; it should be seen as a springboard into work and self-sufficiency.

The CIH states that it is the government’s explicit belief that “social housing is welfare and should be a step on to other types of housing”\(^3\).

Following reports of a poor take-up of the new powers by local authorities, the housing minister urged councils to use the new flexibilities “to ensure homes go to those in greatest need in their area, better meet the needs of current and future tenants and cut waiting lists”\(^4\).

4.1.3 Rugby Borough Council Tenancy Policy

Rugby Borough Council is party to a Joint Tenancy Strategy which has been agreed on a county-wide basis. All registered providers of affordable housing in the area (including the council itself) must have regard to this tenancy strategy when formulating their policies relating to:

• type and length of tenancies that they grant;
• circumstances in which they will grant a tenancy of a particular type; and
• circumstances in which they will grant a further tenancy at the end of an existing tenancy.

The Warwickshire Joint Tenancy Strategy provides flexibility for social housing providers in Warwickshire to continue to offer qualifying tenants ‘secure tenancies’ or to introduce flexible tenancies. The Strategy sets out the aims that registered providers are expected to support through the use of social housing tenancies. These are to:

• help local households to meet their current and future housing needs
• make the best use of social housing stock by promoting social mobility, financial inclusion issues and reducing under occupation and overcrowding
• invest in Warwickshire and provide affordable housing, as well as the associated economic benefits
• create, encourage and maintain sustainable communities and protect vulnerable households
• ensure appropriate use of tenancies and tenancy options
• support and incentivise employment and training opportunities for existing and prospective tenants.

Currently, most new tenants of Rugby Borough Council are awarded an introductory tenancy for the first year. As long as the introductory tenancy is conducted in a satisfactory way, it automatically becomes a secure tenancy, with additional rights

\(^3\) Managing the impact of housing reforms in your area, CIH, June 2011
\(^4\) (Citing Mark Prisk MP) Minister urges councils to set fixed-term tenancies, Inside Housing, 11 January 2013
(such as the right to buy and the right to exchange) at the end of the first year. This is confirmed by letter and no tenancy review is undertaken.

4.2 Housing stock and housing need data

4.2.1 Rugby Borough Council Housing Stock

The Council has 3885 properties, including twelve pitches at Woodside. 1427 of these properties are designated sheltered housing and 2458 general needs. Approximately 200 sheltered properties are set to be redesignated as general needs accommodation, and when officers reported to the task group in October, seventeen properties had been redesignated to date.

The housing stock profile as reported to the task group in December 2013 was as follows:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Stock Number</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>1 bedroom Bungalow</td>
<td>135</td>
<td>3.5</td>
</tr>
<tr>
<td>1 bedroom Flat</td>
<td>1222</td>
<td>31.4</td>
</tr>
<tr>
<td>1 bedroom House</td>
<td>35</td>
<td>0.9</td>
</tr>
<tr>
<td>2 bedroom Bungalow</td>
<td>319</td>
<td>8.2</td>
</tr>
<tr>
<td>2 bedroom Flat</td>
<td>396</td>
<td>10.2</td>
</tr>
<tr>
<td>2 bedroom House</td>
<td>502</td>
<td>12.9</td>
</tr>
<tr>
<td>2 bedroom Maisonette</td>
<td>12</td>
<td>0.3</td>
</tr>
<tr>
<td>3 bedroom Flat</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td>3 bedroom House</td>
<td>1196</td>
<td>30.7</td>
</tr>
<tr>
<td>4 bedroom House</td>
<td>47</td>
<td>1.2</td>
</tr>
<tr>
<td>5 bedroom House</td>
<td>6</td>
<td>0.2</td>
</tr>
<tr>
<td>Bedsit</td>
<td>11</td>
<td>0.3</td>
</tr>
<tr>
<td>Gypsy and Traveller Plot</td>
<td>13</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3896</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

In 2011/12 there was a turnover of 360 council properties. 38.9% of these related to sheltered housing and 61.1% general needs. In 2013, 12 tenants were evicted from council properties.

4.2.2 Housing need in the borough

Following a review of the allocations policy in 2013 the housing list was cut by around 700. Applicants for general needs properties (aged under 60) are no longer accepted on the waiting list if they are home owners or have funds to solve their own housing needs. Applicants with no recognised housing need cannot now access the housing list.

In October 2013 it was reported that there were currently 628 on the housing list. 64.6% of those on the housing waiting list required one bedroom, while only 13% required 3 or more bedrooms.
According to data contained in the draft 2013 Strategic Housing Market Assessment, an estimated 43% of households in the borough are unable to afford market housing without subsidy. The number of households in housing need is projected to increase considerably.

It was suggested that mortgage interest rates were likely to rise in the medium-term and that this would have an impact on the private rented sector. There are apparently a large number of ‘buy to let’ properties in the new developments in the borough and an increase in interest rates may impact on local availability of affordable housing in the private rented sector. The task group suggested that further evidence on the private sector housing profile should be collected to inform consideration of the tenancy profile.

4.2.3 Tenant profile

The table below shows the composition of households living in the council’s properties, and as a percentage of the total number of tenancies, as reported in December 2013. (The total number of tenancies included in the table is 2564, with other properties being void or the household type not yet recorded.) This shows that around 20% of the council’s properties are let to tenants with children.

<table>
<thead>
<tr>
<th>Household Type</th>
<th>Number of tenancies</th>
<th>Percentage of tenancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Adult aged 16-59</td>
<td>457</td>
<td>17.8</td>
</tr>
<tr>
<td>Single Adult aged 60 or over</td>
<td>851</td>
<td>33.2</td>
</tr>
<tr>
<td>2 Adults, aged 16-59</td>
<td>176</td>
<td>6.9</td>
</tr>
<tr>
<td>2 Adults, at least 1 over 60</td>
<td>396</td>
<td>15.4</td>
</tr>
<tr>
<td>3 or more adults, 16 or over</td>
<td>110</td>
<td>4.3</td>
</tr>
<tr>
<td>1 parent family, 1 or more children under 16</td>
<td>253</td>
<td>9.9</td>
</tr>
<tr>
<td>2 parent family, 1 or more children under 16</td>
<td>252</td>
<td>9.8</td>
</tr>
<tr>
<td>Other</td>
<td>69</td>
<td>2.7</td>
</tr>
</tbody>
</table>

Table 2 – Household composition (Northgate)

According to calculations by the council’s housing team, the position regarding under-occupation and overcrowding in the council’s stock is as follows:

- Overcrowded: 6.6% or 257 households
- At standard: 53.7% or 2092 households
- 1 above standard: 29.4% or 1145 households
- Under-occupied: 10.2% or 397 households
Census 2011 data indicated that around 260 council properties in the borough with three or more bedrooms were occupied by one person.

60-70 per cent of the council’s tenants are in receipt of benefits. Almost 600 households living in three, four, and five bedroom general needs properties in the borough are not in receipt of housing benefit. This represents almost half of these properties.

The council does not collect housing income data from tenants who are not in receipt of housing benefit, and there is no legal requirement for tenants to disclose this information. There is also no current understanding of the numbers of tenants in receipt of benefits moving into work and their level of income. Anecdotally, most would move into lower paid work and potentially insecure and part-time employment.

4.3 Costs of administering fixed-term tenancies

It was emphasised to the task group that indicative costs of administering fixed-term tenancies could not be definitive and were simply a best estimation of the potential costs involved. There were many variables over which the council would have discretion, for example the tenancy term to be offered and to which tenants the policy would apply. The expectation was that the policy would only apply to general needs stock (around 2,500 properties).

Officers estimated that administration costs relating to fixed-term tenancies would amount to approximately £17,900 for the first year of tenancy reviews. This equated to £89,500 over a 5 year period. This figure was based on an average of 235 general needs voids per year, with each requiring a tenancy review prior to the end of the tenancy. The suggested costs reflect estimated officer and management time relating to these tenancy reviews, as detailed below:

- Average number of general needs voids per year – 235
- All require visits 9 months prior to end of tenancy – likely to be on average 3 hours per case
- Therefore an extra 705 staff hours required per year
- Extra resources required to deal with reviews, complaints, chasing evidence etc – average 3 hours per week – 156 hours
- A total of 861 hours equates to half a housing officer post – £16,600 per year
- Manager oversight per year – £1,300
- Total cost for first year – £17,900

In addition, officers provided indicative costs of ending fixed-term tenancies. Research (by Shelter and Heriot Watt University) suggests that less than 1% of fixed-term tenancies end after five years, and in Rugby this would mean 3 tenancies per year ending.

The average cost to the council of a void (including rent loss and repairs) has been calculated to be £1411. Potential costs of ending fixed-term tenancies therefore include:
- Void costs of £4,233 per annum and £21,165 over a 5-year period (on the basis of 3 voids per year)
- If tenancies are ended due to rent arrears (not taking account of court or eviction action):
  - 10 cases per year = £14,110 (£70,550 over 5 years)
  - 20 cases per year = £28,220 (£141,100 over 5 years).

Practice guidance from the Chartered Institute of Housing states that the average cost of taking a case to court is around £2,000 and it has been estimated that every eviction costs a landlord £6,000. These costs include staff costs, legal costs, void costs, homelessness costs and the costs to the agencies.

It was also noted that if a tenancy was not renewed the tenant would be entitled to appeal against the decision, and that this process would create further costs.

A further potential cost that was identified was the loss of rent arrears when a new fixed-term tenancy was agreed. Legal advice was sought on the question of whether each fixed-term tenancy was a discrete tenancy and the implications of this for recovery of rent arrears. The legal advice can be summarised as follows:

- there is as yet no body of decided caselaw on this specific matter
- essentially each fixed-term tenancy will be a new tenancy (not a renewal or extension) and there is no presumption that a new statutory tenancy will preserve rent arrears
- however, it is open to the council to include a provision in their Tenancy Strategy that rent arrears are a basis for refusing new flexible tenancies, unless a satisfactory payment plan has been entered into; and
- there is nothing stopping the council from obtaining judgment against a tenant for past rent arrears, regardless of whether a new tenancy has been entered.

Officers advised the task group that, based on current experience, the likelihood of recovering payments in such circumstances would be slim. Tenants would always be advised to prioritise their current bills over arrears payments to avoid eviction. Small arrears were dealt with by the council on a daily basis and currently around 30% of tenants were in arrears.

### 4.4 Response of other local authorities and housing providers

It was not possible to find any authoritative national data on the number of local authorities or social housing providers that had introduced fixed-term tenancies since the new flexibilities had become available.

In Warwickshire, all of those local authorities with housing stock were continuing to offer secure tenancies and, like Rugby, to offer 12-month introductory tenancies to new tenants. However, in the wider area, both Northampton Borough Council and Solihull Metropolitan Borough Council (whose housing service is run by arms-length management organisation Solihull Community Housing) had decided to introduce fixed-term tenancies.
Rugby Borough Council’s housing team had carried out a small consultation exercise with other registered social landlords with stock in the borough on the Localism Act provisions in summer 2012. This found that:
- Midland Heart were using 5-year fixed-term tenancies, preceded by a 1-year starter tenancy
- Waterloo Housing had introduced fixed-term tenancies on Affordable Rents homes
- Warwickshire Rural Housing Association did not use fixed-term tenancies and had no plans to do so.

An article published by *Inside Housing* magazine in January 2013 reported the outcomes of a survey which found that 29 out of 50 English councils who responded were rejecting the use of flexible tenancies.

Similarly, a report by the Housing Quality Network published in May 2012 stated that “to date, there is no evidence that social landlords are rushing head first into using FTTs” but that “many associations and councils are still discussing whether to use them”\(^5\).

Desk-top research was undertaken to give an indication of how similar authorities were responding to the new provisions in the Localism Act for local authorities and social housing providers to offer fixed-term tenancies. The CIPFA nearest neighbours group was used, as this provides the best comparator group of statistically similar local authorities.

The table below summarises the findings from the research, indicating the housing arrangements and, where relevant, the tenancy policy for each of the local authorities in Rugby BC’s ‘nearest neighbours’ group.

<table>
<thead>
<tr>
<th>Local authority</th>
<th>Housing arrangements</th>
<th>Tenancies offered</th>
<th>Size of stock</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kettering</td>
<td>Manage own stock</td>
<td>Introductory and fixed-term tenancies</td>
<td>3,808</td>
</tr>
<tr>
<td>High Peak</td>
<td>Manages own stock (recently returned in-house, having been managed by ALMO since 2004)</td>
<td>Introductory and secure - do not support FTT</td>
<td>4,100</td>
</tr>
<tr>
<td>North West Leicestershire</td>
<td>Manage own stock</td>
<td>Secure tenancies</td>
<td>4,500</td>
</tr>
<tr>
<td>South Kesteven</td>
<td>Manage own stock</td>
<td>Introductory and secure tenancies</td>
<td>6,200</td>
</tr>
<tr>
<td>Ashford</td>
<td>Manage own stock</td>
<td>Fixed-term</td>
<td>4,702</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stock</th>
<th>Tenancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Lancashire</td>
<td>Manage own stock</td>
</tr>
<tr>
<td>Rugby</td>
<td>Manage own stock</td>
</tr>
<tr>
<td>East Staffordshire</td>
<td>No housing stock</td>
</tr>
<tr>
<td>East Northamptonshire</td>
<td>No housing stock</td>
</tr>
<tr>
<td>Lichfield</td>
<td>No housing stock</td>
</tr>
<tr>
<td>St Edmundsbury</td>
<td>No housing stock</td>
</tr>
<tr>
<td>Braintree</td>
<td>No housing stock</td>
</tr>
<tr>
<td>Mendip</td>
<td>No housing stock</td>
</tr>
<tr>
<td>Chorley</td>
<td>No housing stock</td>
</tr>
<tr>
<td>Newark and Sherwood</td>
<td>Housing stock managed by arms-length organisation</td>
</tr>
</tbody>
</table>

In summary, seven of these authorities manage their own stock, seven no longer have housing stock and one has stock managed by an arms-length organisation (ALMO). Of the seven that manage their own stock, three have introduced fixed-term tenancies: Kettering, Ashford and West Lancashire. High Peak District Council provides an example of a council that has considered the question carefully and concluded that they do not support fixed-term tenancies. Case studies of each of these councils were considered by the task group, and the two most influential to the task group are included below.

### 4.4.1 Case studies

**Kettering**

Kettering Borough Council approved their Tenancy Policy in September 2012, and members of the Tenants Forum were consulted on the draft policy prior to this.

The policy for new tenancies created after 1 April 2013 is outlined in the table below (taken from the Tenancy Policy):

<table>
<thead>
<tr>
<th>Household Type</th>
<th>Tenancy Type</th>
<th>Proposed length of new tenancy</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Families (including single parent households) – including those who require intervention to reduce the risk of eviction due to antisocial behaviour</td>
<td>Flexible Family Intervention Tenancy (with support)</td>
<td>5 years (renewed until children reach 18)</td>
<td>Security and stability during a child’s education is critical. Families also rely on nearby friends and relatives to provide care for their children. These factors will be considered by us in</td>
</tr>
</tbody>
</table>
reaching a decision about the use of fixed-term tenancies for this household group.

<table>
<thead>
<tr>
<th>Elderly (65/retirement age)</th>
<th>Secure</th>
<th>Lifetime</th>
<th>To provide older people assurance that they can live in their home as long as they want.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheltered Housing</td>
<td>Secure</td>
<td>Lifetime</td>
<td>To provide older people assurance that they can live in their home as long as they want.</td>
</tr>
<tr>
<td>Single Households/Couples</td>
<td>Flexible (with support if appropriate)</td>
<td>5 years</td>
<td>To provide accommodation (and support) while they need it.</td>
</tr>
<tr>
<td>Households with a disabled person</td>
<td>Flexible</td>
<td>5 years</td>
<td>To give households with a disabled person security within an appropriate property while they need it.</td>
</tr>
</tbody>
</table>

The following table gives some examples of the exceptional circumstances in which a fixed-term tenancy may be offered or renewed for 2 years and not 5 years.

<table>
<thead>
<tr>
<th>Exceptional circumstances</th>
<th>Length of tenancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>If an introductory tenancy has been extended due to antisocial behaviour</td>
<td>2 years</td>
</tr>
<tr>
<td>If a household is overcrowded at the time of the review, but no alternative accommodation has been secured</td>
<td>2 years</td>
</tr>
<tr>
<td>In a geographical area where shorter tenancies could help to tackle anti-social behaviour</td>
<td>2 years</td>
</tr>
<tr>
<td>Where a Notice of Seeking Possession has been issued due to rent arrears and the Court has accepted a payment agreement which the tenant has kept to</td>
<td>2 years</td>
</tr>
</tbody>
</table>

The policy states that tenancies will be reviewed between six and 12 months before the end of the tenancy term. This will aim to assess the individual circumstances of each tenant so that an informed decision can be taken as to whether to renew the tenancy. A decision is to be made no less than six months before the end of the tenancy, in order to allow adequate time to find alternative accommodation if a tenancy is not being renewed.

Tenancies are renewed as a matter of course unless there has been a major change in circumstances. Kettering Borough Council may not renew a fixed-term tenancy in certain circumstances. These include:

- The property is under-occupied. In cases of under occupation, the tenant should normally be offered an alternative home with a registered provider. (Under-occupation is defined as under-occupying by more than one bedroom.)
• The tenant’s financial circumstances have significantly improved so that other housing options are available, such as home ownership or renting at market value.
• Any breaches of tenancy or tenancy fraud have been identified during the fixed-term tenancy review process (which would result in enforcement action)
• Possession proceedings have commenced or conditions of tenancy have been breached (for example, rent payments, anti-social behaviour) and possession proceedings could be commenced due to this breach.
• The tenant and/or his or her advocate do not engage in the review of the Flexible Tenancy.
• The property has been extensively adapted for a person with a disability but the household no longer requires the adaptations. In such cases, the tenant should be normally offered an alternative home with a registered provider
• Works are planned on the property in the next five years (which would require its redevelopment or demolition)

Exceptions to this may include where:
• Care and support needs have been identified and these can only be maintained if the household continues to remain in the property (and the loss of the care and support would be detrimental to the household)
• The tenancy falls within an area operating a Local Lettings Policy (LLP) and ending the fixed-term tenancy would conflict with the objective of the LLP. An example of this would be an LLP aimed at creating a mixed income neighbourhood.

The Policy also states that any decision not to ‘renew’ a fixed-term tenancy will take full account of the likelihood of re-housing opportunities.

The guiding principle for those determining the tenancy policy was the “need to make better use of the housing stock owned by both the Council and housing associations in the Borough, due to increasing demand from applicants and lack of affordable housing supply to meet their needs”.

The council report recommending the tenancy policy for Kettering Borough Council argued that “one of the Government’s reasons for promoting fixed-term tenancies is the desperate shortage in supply of social rented homes. This is borne out in our Borough, as the Council is placing increasing numbers of homeless households into privately rented homes due to the shortage of social housing supply locally.”

The report identified medium to long-term resource implications. These included additional staff time taken in conducting reviews and appeals, increased churn within the housing stock leading to increased void and re-letting costs and increased pressure on staff resources as a result of having to provide additional advice and assistance to tenants whose tenancies are under review. It went on to recommend that the outcomes delivered by the Tenancy Policy should be “carefully monitored, to assess the impact on both the management of our own housing stock and wider housing services across the Borough”. 

19
High Peak

The council’s housing stock was managed by an arms-length management organisation when the council took decisions relating to the provisions in the Localism Act 2011. The consultation process in relation to the drafting of the Tenancy Strategy consisted of:

- High Peak Borough Council and High Peak Community Housing Board Member workshop
- Housing association questionnaire and stakeholder meeting
- Public consultation on the draft strategy
- Consultation with the Community Select Committee.

The High Peak Borough Council Tenancy Strategy states that “the council in general does not support the use of fixed-term tenancies as evidence suggests they will have a detrimental effect on communities and limit community cohesion and sustainability”. Responses to the consultation demonstrated that this was reflected in the views of the majority of consultees.

The cost of tenancy reviews was a key consideration in the decision not to introduce fixed-term tenancies. The council could not envisage many cases where they would not renew a tenancy and therefore did not consider that the cost involved could be justified. They also felt that fixed-term tenancies could disincentivise work if people were required to move out of their property when their income reached a certain level. In addition, the relatively low turnover of social housing stock suggested that “the majority of tenants put down roots when they have been allocated a property and go on to create stable and sustainable communities”.

Officers reported, however, that bringing the housing back in-house had changed councillors’ perceptions. Scrutiny members were (in February 2014) engaged in a series of workshops around the HRA business plan, and the policy with regard to tenancies was being reviewed in this wider context.

4.5 Alternative approaches

The task group has discussed whether there may be alternative approaches that could be adopted that would achieve some of the policy aims behind flexible tenancies. For example:

- The national social housing under-occupancy charge is already encouraging better use of council housing, with more tenants now living in homes more suited to their household’s needs
- The ‘Pay to Stay’ policy (see below), if introduced, could help to address the question of fairness by ensuring that tenants who can afford to pay a higher rent do not receive (in effect) a public subsidy by living in a council home at a low rent.
- It was also suggested that housing officers could look to proactively identify the tenants most likely to be able to afford alternative housing options and train housing officers to discuss different options available to tenants. This could help
to raise the aspirations of council tenants by offering clearer pathways to other housing options. This would include discussion of ‘right to buy’, shared ownership and other forms of tenure. Officers were already researching tenant incentive schemes, which would add another dimension to this approach.

The task group learnt about another new initiative that the council was exploring called the Rental Exchange, delivered by Big Issue Invest and Experian. The Rental Exchange was a secure way to include a tenant’s payment history in their credit file and share data to enable social housing tenants to build a positive credit history and create an ‘online’ proof of identity. This would enable council tenants who pay their rent regularly to access more mainstream credit. Rental Exchange would provide the council with information about tenants’ credit status, but not their income levels. This may, however, help to inform a more targeted proactive approach to discussing alternative housing options with tenants.

‘Pay to Stay’ is a proposed national policy whereby households with high incomes living in social housing pay higher than the social rent level. In March 2014 it was reported to the task group that the policy was in a consultative stage, with the expectation that it would be implemented in April 2015. A consultation document published in June 2012 suggested that landlords would be able to charge market rents to households living in social housing with a household income of more than £60,000 per year (with a maximum of two incomes taken into account). Details of how household income data would be collected were yet to be determined, but it seemed likely that it would be the responsibility of the tenant to declare their income level.
5. CONCLUSIONS

Many of the task group members were persuaded in principle by the benefits of introducing flexible tenancies, but they were also concerned that the costs involved were prohibitive. Despite a thorough consideration of the available evidence, the group felt that information about the potential costs and likely benefits of flexible tenancies was largely conjecture at this stage and not robust enough an evidence base on which to draw a conclusion. Since the actual costs of introducing flexible tenancies will not be apparent until the first such tenancies end (predominantly from 2017 onwards), the group felt that it was not in a position to recommend the introduction of flexible tenancies at this time.

The group was also persuaded that there were a number of alternative approaches that could be pursued to help achieve the policy aims of fixed-term tenancies (see section 4.5), and some of these were only at an emergent stage. The task group supports the work that has begun to research the potential use of tenant incentive schemes and urges officers to continue to explore and test out more proactive approaches to encouraging those tenants who are able to consider alternative housing options.

In summary, the key arguments in favour of introducing fixed-term tenancies that have been articulated in discussions within the task group are:

- The council’s housing stock is a public resource that should be used for public benefit
- The purpose of council housing is to meet housing need for those unable to afford private sector housing. It is a welfare benefit and should be viewed as a springboard into work and self-sufficiency
- Fixed-term tenancies enable more efficient use of housing stock to meet the needs of households for the period during which they are in housing need. This is necessary because we are unable to meet demand from those in housing need within our existing stock
- Fixed-term tenancies help ensure that council homes go to those in greatest need and better meet the needs of tenants. They offer landlords flexibility to provide suitable housing when the circumstances of households change – which they frequently do
- It is unfair for people who can afford to relinquish their council home to remain in the property when there are many on the housing waiting list in greater need. There is a clear view from the public that social housing should be allocated fairly and that social housing tenants should pay a higher rent if they are able.

However, a number of questions and concerns were also raised about the viability of introducing fixed-term tenancies, including:
• There are indications that only a very small proportion of tenants would be able to afford to access alternative housing options and would not, therefore, have their tenancy renewed

• Over time there will be significant costs to the council in administering fixed-term tenancies and no identifiable savings to be made

• Fixed-term tenancies could have a detrimental effect on communities and undermine community cohesion and sustainability

• Fixed-term tenancies have the potential to disincentivise employment if people feel they will lose their home if their income reaches a particular level.

Fundamentally, it was felt that the costs to the council of introducing fixed-term tenancies would be higher than the likely benefits at this time, but that this position could change if increased demand for affordable housing made the availability of council housing more imperative.