

Blackburn with Darwen Policy

Management of supported living tenancies in Blackburn with Darwen(Draft)

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1. POLICY STATEMENT

Supported Living is generally shared living with up to 4 people being supported to live ordinary lives in a shared house. Payment of the household bills and the rent for the property is shared out (apportioned) between all the people occupying the property, so the number of residents in the house directly affects the cost to each tenant of living in that house. In 2018 Blackburn with Darwen Borough Council (“the Council”) had Supported Living placements for 95 people with Learning Disabilities living in approximately 30 properties. Care support for these people is provided, in the main, by 5 local Care Support organisations.

Changes are inevitable with this model of support; for example, the number of vacancies in traditional supported living tenancies looks set to rise as some tenancies are not meeting the needs of an aging population; tenants will pass away as they age, creating vacancies where identifying a new ‘compatible’ tenant for the existing tenants can become difficult. Sometimes Tenants choose to move to alternative accommodation, leaving their former co-tenants with a vacancy. Relationship dynamics and compatibility change every time a tenant leaves a property, whatever the reason.

The number and length of time vacancies occur is not consistent. Vacant tenancies put a financial strain on the resources of the Council, on the remaining tenants and sometimes on the housing and support provider.

Historically, it has been perceived that the tenant could not be asked/required to move and therefore no real focus has been made to support tenants in this position to 'move on' or to look at reasonable alternatives to the situation.

Local Authorities have a duty to meet the assessed needs of those eligible to receive care and support from them. In order to do this appropriately, they may need to offer suitable alternative accommodation to any tenant who is living in a supported living tenancy which is not financially viable or no longer meets their needs.

The purpose of this policy is to set out the Council's approach to managing the existing supported living tenancies, including dealing with vacancies and reaching decisions about non-viable tenancies.

In exercising this policy and procedure, the Council will fulfil its duties under the Care Act 2014, and will work with its statutory, voluntary and independent sector partners, to ensure that care and support is relevant, coherent, timely and sufficient.

The geography and population of Blackburn with Darwen is diverse and our Adult Social Care policies and practice will aim to deliver support and services that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers, or those we come into contact with, wish to challenge or raise concerns in regard to our decisions, regarding eligibility, the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

Definition of terms

Traditional supported living tenancy/or scheme: Rented accommodation in which a vulnerable adult lives either alone or with other adults, and where care support is provided as a condition of the tenancy. Supported housing is often defined as "any scheme where housing, support and sometimes care services are provided with the purpose of enabling the person receiving the support to live as independently as possible in the community "*Making it Real for Supported Housing, Think Local Act Personal*.

- **Right of tenure:** The vulnerable adult's rights of occupancy under a tenancy agreement, which can vary according to the type of tenancy agreement in place.
- **Non – viable tenancies:** Tenancies/schemes which are no longer suitable to meet the needs of the existing tenants. This may be due to any one of a number of factors (e.g. changes in individual service user's needs,

unsuitable physical environment, tenancy no longer meets the tenant(s)' needs, compatibility issues, cost/funding issues which make the scheme financially unviable).

- **Housing Management Agreement (HMA):** An agreement between the Housing Provider and the Council or Care Provider, which sets out the legal and financial frameworks relating to the management of the property
- **Service Level Agreement (SLA):** An agreement between the Housing Provider, the Council, and Care Provider which identifies the roles and responsibilities of each party
- **Early Sales Clause (ESC):** Contained within a HMA, the ESC sets out financial liability for the respective parties in relation to the disposal of a property that is no longer required
- **Rent void:** The financial value of the rent due on the vacant tenancy
- **Care Provider:** the body/company which provides care to the tenants in the shared house
- **Housing Provider:** the company which owns the shared house – the landlord of the tenants.
- **Support void:** The financial value of the background support costs which arise as the result of a vacant tenancy
- **Reconfiguration:** The change to the agreed number of tenancies within an individual property.

What will influence the decision about whether a tenancy is non-viable?

There are a number of determining factors when considering the future viability of a supported living tenancy. Some are set out below (but this list is not exhaustive):

- Does the property meet the current assessed needs of its tenants or can it be adapted to meet future need?
- Can the tenants afford to meet the household expenses now that there are fewer people contributing to the cost?
- What is the realistic probability of finding a suitable new tenant for the tenancy?
- Are there additional costs incurred in relation to the support or accommodation void?
- How long has the vacancy existed and what attempts have been made to fill it?
- Could the tenancy be reconfigured so that it can remain financially viable?
- Are the combined support costs of the remaining tenants affordable to the Council and/or Care Provider?
- What would be the mental, emotional/psychological and physical effect on the tenant/s if the tenancy were to close?
- Is there a Housing Management Agreement (HMA) in place and what are the terms in relation to void rent and Early Sale Clause (ESC)?
- Is there scope to renegotiate rental costs of the scheme with the Landlord?
- Is appropriate accommodation available to meet the needs of all the potentially displaced tenants?

Because of the number of variables listed above there is no prescriptive formula that can be applied to decisions regarding accommodation. Instead it is recommended that

the following procedures are adopted to ensure that consistent and fair decision making is applied when considering the viability of a supported living tenancy.

Principles

The Council has a duty to meet the eligible assessed needs of relevant service users (including accommodation needs), but has the right to take relevant matters into consideration in deciding how those needs will be met, such as legal requirements, health and safety matters, the costs of different methods of meeting eligible needs, and its duty to ensure that public funds are spent fairly and effectively. Service users are entitled to make their own choices between the actual viable options which the council/service provider can offer. Where any decision is being made for a service user who lacks capacity on that specific issue, that decision must be made in the best interests of the incapacitated adult.

The decision by the Council that a scheme (house) is 'non-viable' would only be made having considered all circumstances, working closely with the Housing Provider and Care Provider.

Each tenancy will be considered on its merits and the Council would seek legal advice about how to proceed on a case by case basis where there are any disputes.

3. PROCESS OVERVIEW

Supported Living tenancy evaluation

A supported living tenancy evaluation is not the same as a social care review, although individual social care reviews will form part of the process. A supported living tenancy evaluation should be undertaken every time the council has reason to believe that a supported living tenancy/scheme may no longer be viable or is at risk of becoming non-viable. A supported living tenancy evaluation may also be requested at any time by any of the partners involved in the accommodation decisions process for example: The Learning Disabilities Team manager, Head of Strategic Commissioning, a Support Provider, Housing Provider or tenant / representative.

In order to assist in maintaining viability, any vacancy within a supported living tenancy/scheme must be immediately reported by the Care Provider to the Housing Provider and the Council so that they are aware of it. It should be regularly reviewed by all key partners with a view to appropriately filling the vacancy. Once the Council is aware that a vacancy exists, it will be considered in the monthly Accommodation meeting, held by the Learning Disability Team Manager, alongside a Strategic Commissioning Team ("SCT") representative.

If the vacancy is still unfilled after 6 months or there is any other reason to believe that a tenancy may be at risk of becoming non-viable, the care provider should notify the SCT, so that the SCT can arrange a Supported Living tenancy evaluation with relevant partners and determine the viability of maintaining the accommodation. Decisions and any actions should be recorded.

A representative from the SCT will ensure that a core group of stakeholders for consultation is identified.

The needs of all individual service users currently residing in that tenancy will be reviewed by social care staff to provide an up to date needs assessment for each tenant, which will be relevant to consideration of viability.

The evaluation will consider all the information, consult with the core group, and make a recommendation to the Head of Strategic Commissioning as to whether or not the tenancy is still viable.

Any tenancy evaluation will adopt the check list below. The Head of Strategic Commissioning will consider all assessments and information gathered to confirm or decline the outcome decision from the tenancy evaluation. Where any service user residing in the property lacks capacity in relation to decisions about his/her care, accommodation and/or finances, the appropriate best interests process must be followed. Where agreement as to best interests cannot be reached, an application to the Court of Protection will be required.

Checklist of considerations

1. What are the assessed needs of the current tenants (mental, physical and emotional)? In particular: -

(a) Does the tenancy meet the physical/environmental needs of the tenants or can it be adapted to meet those needs?

If physical/environmental issues are making the tenancy non-viable, then every effort should be made to adapt the property to meet the needs of the current or nominated tenants, either via a Disabled Facilities Grant (DFG) or by the Landlord agreeing to underwrite the cost of adaptation. If this cannot be achieved, then consideration must be given to finding suitable alternative accommodation in order to meet the service user's assessed needs.

(b) Does the current support meet the care/support needs of the tenants or can it be adapted to meet their needs?

If a tenancy or the support available within it does not meet the needs of the tenants, then consideration must be given about how to resolve that issue. The terms of each HMA will be subject to review and where possible an HMA will be renegotiated with the Housing Provider to ensure that it is fit for purpose and enables the needs of the tenants to be met appropriately.

(c) What would be the physical and emotional effects of the current tenant(s) moving to alternative accommodation?

The potential impact of a move to alternative accommodation will need to be assessed on an individual basis, looking at all the circumstances surrounding the move, such as the tenant's assessed needs, their attachment to the property, the length of time this property has been their home, their relationship with co-tenants and staff and how this may be impacted by any move as these are all significant Human Rights considerations. The views of their family, friends, carers, representatives and advocates should also be sought. However, it should not be assumed that it is always best for a service user to remain in their current tenancy, as an under occupied tenancy can leave the remaining tenant(s) over supported, more restricted, more isolated, and with an increased burden of household bills; thus reducing disposable income and

access to activities. Therefore, the impact on the individual's health and well-being of remaining in a tenancy/scheme with vacancies will also need to be assessed.

Service users' wishes and feelings are extremely important, but the council is not obliged to satisfy service users' preferences irrespective of issues such as funding costs. However, assessed needs must be met where this is legally and practically possible.

2. Is there a realistic chance of new tenants being nominated?

Sufficient time should be given to identify potential new tenants. There is no definitive time limit, as the circumstances in each tenancy will be unique to that property.

The Council, Housing Provider and Care Provider should agree a timescale to identify potential nominees to fill the vacancy, through the Accommodation and review discussions.

As a guiding principle, experience shows that if a tenancy has had a vacancy for 12 months then it is unlikely that a suitable nominee will be found and alternative options (including alternative accommodation) should be considered for the remaining tenant(s). This timescale may be varied, based on the individual circumstances of a tenancy and its tenant(s).

3. Where the issue is the cost of unfilled vacancies, and existing tenants do not have an assessed need to remain in the property, but would prefer to do so, can those tenant(s) meet the increased housing related costs of living in an under-occupied tenancy? (NB – this point must be considered in conjunction with points 4 and 5 below).

The rent and household bills for the property are shared between the tenants in a shared house. Therefore, any vacant tenancy increases the amounts that must be paid by the current/remaining tenants for household bills and rent (although the Council can attempt to negotiate with the Housing provider over the rent for the vacancy, but this will be dependent on the HMA and the decision of the Housing Provider).

Sometimes the remaining tenants are in a financial position to afford these increased costs and want/choose to cover the long term additional cost of bills and rent occurring from a vacancy in order to remain in a property that remains physically suitable for them. If tenants have capacity on these issues, they may have the option to make such a decision. If a tenant in this situation lacks capacity, then any decisions must be made via the best interests process. Where necessary/appropriate, the case will be referred to the Court of Protection for a decision.

If the remaining tenant/s cannot afford to meet the increased costs that they would be responsible for, then a timescale should be established in which to identify a new tenant/s and if this cannot be achieved within the timescale, then plans should be put

in place to find suitable alternative accommodation (subject to an up to date review of all current residents' assessed needs).

4. Can the Council or Care Provider afford the support related costs? (NB – this point must be considered in conjunction with points 3 and 5).

Staffing structure and support provision will need to be reassessed and amended where possible and appropriate. If the remaining support costs are excessive for the remaining tenants (compared to similar sized tenancies or other types of supported accommodation and the assessed needs of the tenants in that property) then the tenancy may no longer be viable. The excess support related costs will be being paid/covered by either the Council or by the Care Provider. The body meeting those costs will need to determine the time period for which this cost can be borne. If this period has elapsed without a new tenant being identified or the excess support related costs being resolved, then plans should be put in place to find suitable alternative accommodation for the remaining tenants, subject as always to their assessed needs, and utilising the Best Interests decision making process where appropriate.

5. Can the Council or Care Provider afford the rent costs? (NB – this point must be considered in conjunction with points 3 and 4 above).

In a limited number of existing tenancies, the Council or Support Provider may be liable for the rent on a vacancy. The timescale for this will be determined by the terms set out in the HMA for that particular tenancy. In some instances, the Council or Support Provider will not become immediately liable, but it should not wait until it becomes liable to consider this factor where it is or may become relevant, as the issue of support related costs for the Council/Care Provider and increased bills for the tenants will already have arisen.

In any case where this issue may arise, the full terms of the HMA need to be considered – including any liability to pay an ESC, and a timeframe in which to find a new tenant needs to be established by the Council or Care Provider. If a tenant cannot be found within this timeframe, plans should be put in place to find suitable alternative accommodation for the remaining tenant(s), subject as always to the assessed needs of the remaining tenants, and applying the best interests considerations/decision making process as appropriate.

6. Mental Capacity

Where a tenant has capacity to make a decision about his/her accommodation and support, s/he will be fully supported to consider all the alternatives and to appraise them. The Council would expect the Care Provider to work with the Council in supporting the tenant to understand their options and to understand the reasons why their current tenancy is no longer viable. (Should any issue arise with a service user refusing to take necessary steps to resolve issues with a non-viable tenancy, the Council would seek legal advice about how to proceed).

Where a tenant has been assessed as lacking capacity to make a decision about his/her accommodation and support, a best interests decision will need to be made on their behalf. The person and all other appropriate people (family / friends/ advocate) will be fully involved in the best interests process in accordance with the Mental Capacity Act 2005.

If agreement cannot be reached as to what decision is in the best interests of the incapacitated tenant, then an application would need to be made to the Court of Protection.

If an agreed Best Interests decision is made about the incapacitated tenant moving to alternative accommodation, but the tenant is subject to a deprivation of liberty (DOL) authorisation, then an application must be made to the Court of Protection for a fresh DOL authorisation in respect of the new accommodation.

It is important to note that prior to the Best Interests decision making process, the relevant bodies/persons will need to clarify (as far as possible) what options are actually available to the service user. A decision cannot be reached to agree on an option that is not realistically available to the service user. At the same time, it is important that the range of available options is not unnecessarily constrained and care must be taken not to rule out options that could be made available to an incapacitated service user.

The benefits and burdens analysis of options in the Best Interests process should consider the tenant's longer term needs as well as their current situation.

Summary

The Accommodation meeting, tenancy evaluation and the STC will consider all the above points. If, on balance of all the considerations, the Council (as commissioner and social care provider) determines that a tenancy is not viable then the Council will communicate this decision in writing, along with a proposed action plan including details of suitable alternatives, to:

- The Housing Provider
- The Care Provider
- The individual tenant(s)

This communication will set out the rationale for the decision.

If a tenant wants to challenge this decision, then he/she may do so via the Council's Complaints procedure and the Council will seek legal advice about how to proceed on a case by case basis.

The Housing Provider/Landlord and/or the Care Provider may only challenge this decision if it considers it has legal grounds to do so. Any such challenge must be notified in writing to the Council's Legal Department

4. DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	Equality Impact Assessment Easy Read Version of Policy Easy read – making decisions where people will live
LEGISLATION OR OTHER STATUTORY REGULATIONS	Mental Capacity Act 2005 Care Act 2014

APPENDIX A - EQUALITY IMPACT ASSESSMENT

The Equality Impact Assessment is attached as Appendix A