



**Executive
16 July 2012**

**Report from the Directors of Regeneration
and Major Projects and Strategy,
Partnerships and Improvement**

Tenancy Strategy

1. Summary

- 1.1 This report sets out final proposals for the Tenancy Strategy and seeks approval from members for the policies that will form the content of the strategy document.

2. Recommendations

- 2.1 Members agree the overall approach to development of the Strategy as set out in this report.
- 2.2 Members agree the policy positions set out in section 8 of this report.
- 2.3 Members agree that the final policy should be implemented with effect from 1st October 2012, allowing time for the Council to seek sign-off from the Mayor as noted in paragraph 7.3 and that the Director of Regeneration and Major Projects should be given delegated authority, in consultation with the Lead Member for Housing, to revise this date should there be any reason for delay.
- 2.4 In particular, Members elect and agree for the Council to grant introductory tenancies and flexible tenancies to new Council tenants as set out in paragraphs 8.3.10 of this report and to limit the rights to succession of Council tenancies to new Council tenants as set out in paragraph 8.3.12 of this report and grant delegated authority to the Director of Regeneration and Major Projects to implement these policy changes in liaison with Brent Housing Partnership and Hillside Housing Trust.

- 2.5 Members note that a further report will be presented to the Executive for approval regarding changes to the Council's Allocation Scheme after consultation has taken place.
- 2.6 Members note the content of the Equality Impact Assessment set out in Appendix 3 to this report.
- 2.7 Members note that the Strategy will be reviewed one year from its implementation and at three year intervals subsequently. If any need for significant alteration is identified, a report will be presented to members accordingly.

3.0 Background

- 3.1 *Local Decisions: a fairer future for social housing (Nov 2010)* set out proposals for reform. For the purposes of this report the key points are:
- The Affordable Rent regime for the funding of new social housing, which allows Registered Providers to charge rents of up to 80% of market levels with a minimum tenancy term of two years.
 - Fixed term local authority tenancies, also for a minimum two-year fixed term.
 - Changes to rules governing succession to tenancies
 - A duty on councils to publish a Tenancy Strategy.
 - More flexibility on waiting lists and allocations.
 - Ability to discharge homelessness duties in the private rented sector without the consent of the applicant.
- 3.2 Concurrent changes to the welfare system aim, among other things, to incentivise work. Housing Benefit caps have been introduced and Universal Credit will apply an overall income cap in 2013. While the welfare changes are part of a national scheme, local authorities will have freedom over many of the housing proposals - in principle at least – in line with the principles of localism.
- 3.3 Changes affecting Registered Providers (i.e. mainly housing associations and hereafter referred to as "RPs") have already been introduced as primary legislation was not required, with the current HCA funding round based on the new regime, allowing providers to develop new homes at up to 80% of market rents and let them on a proportion of relets on tenancies of a minimum of two years. Section 6 below looks at the response of RPs and other local authorities so far.

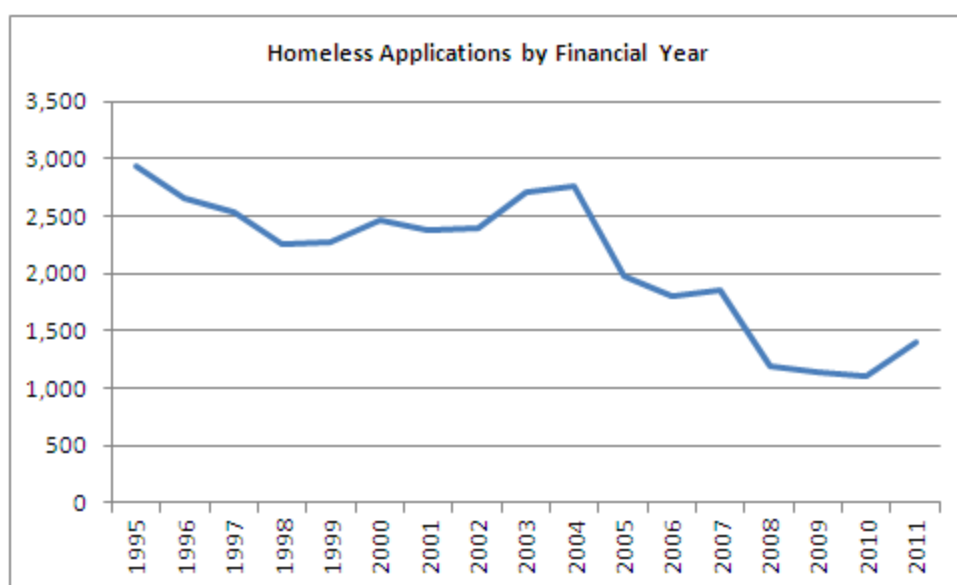
- 3.4 The Localism Act 2011 provides that a local housing authority must prepare and publish a strategy setting out the matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to—
- (a) the kinds of tenancies they grant,
 - (b) the circumstances in which they will grant a tenancy of a particular kind,
 - (c) where they grant tenancies for a term certain, the lengths of the terms, and
 - (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

The tenancy strategy must summarise those policies or explain where they may be found.

- 3.5 The legal requirements for the strategy are therefore limited and reflect the primary intention that it should provide guidance to other providers on the council's expectations around tenure: it does not need to contain any reference to rent levels, the application process, lettings or how homelessness applications will be dealt with. However, a strategy limited to tenure alone would lack context and be unhelpful either to providers who develop and manage homes in the area or in assisting housing applicants to understand the council's approach. In particular, the approach to tenure is linked to the council's policy on rents and the way in which applications for housing are prioritised. Brent's strategy will therefore cover additional areas, which will also be reflected in revisions to the overall Housing Strategy, the Homelessness Strategy and the Allocations Scheme. It is also important to stress that while Registered Providers must "have regard to" the tenancy strategy, it is not binding on them. Similarly, the council is free to set out its expectations for other providers while pursuing a different course in its own stock.
- 3.6 It is important to note that these changes do not affect existing tenants, who retain all their existing rights and will continue to pay rent at current levels. This will apply to tenants who transfer to a new social rented home, unless they explicitly choose to move to a home on an Affordable Rent or a fixed-term tenancy. The only possible exception to this rule concerns the planned introduction of an income limit beyond which tenants will be expected to pay a higher rent (discussed in more detail at paragraph 8.4.10 below).

4. Brent Context

- 4.1 The following paragraphs summarise some key issues concerning supply and demand.
- 4.2 Current projections show that the level of unmet demand in the Borough is over 11,000 households. However it should be noted that this figure excludes demand from households on the Housing Register who are in Band D (and therefore under the Council's Allocations Scheme, have no identified housing need). Including these households would give a level of unmet demand within the Borough of 18,000 households. Around 871 lettings into permanent social housing tenancies (council and housing association) are expected by the end of 2011/12 – this meets around 7% of the current total demand from Bands A to C.
- 4.3 The graph below shows how the number of homeless applications has varied since 1995/96. Applications began to decrease in 2005/06, when the Council first implemented an in-house housing advice service. The success of this team in either preventing homelessness or providing alternative accommodation (generally in the private rented sector) is demonstrated through the marked drop in statutory homeless applications received from 2005 to 2010. However this downward trend has been reversed in 2011/12, with a 35% increase in homeless applications as at the end of February compared to the same period in the previous year.



- 4.4 This increase in demand, following the downward trend of the past five years, is largely attributable to changes in Local Housing Allowance (LHA). Changes came into effect from 01/04/11 for all new tenancies agreed from that date onwards. Existing tenancies were subject to transitional protection for up to twelve months (until the anniversary of their claim). Whilst some landlords accepted a decrease in rental income as a result of the implementation of the caps, others have not done so. If households cannot meet the rental shortfall from their own funds,

landlords will then seek to evict them. As a result, some landlords have either left the market or let their property to other types of households – for example those in employment or shared accommodation. The introduction of LHA caps and the four bed cap limit has had a significant impact on the Council's ability to procure properties for direct lettings, particularly for larger sized properties. In 2010/11, the Council procured a total of 548 private sector properties for direct lettings, thereby actively preventing homelessness. However in 2011/12, from April to January, the total has dropped to 207 properties. Officers expect the total to be around 250 properties by the end of the financial year, a reduction of around 54%.

- 4.5 The changes have also resulted in an increase in homeless approaches, as landlords have taken action to evict tenants who cannot afford to meet the shortfall between the rent and the LHA cap, and other households have found themselves unable to secure private rented accommodation. Numbers in temporary accommodation have increased by 4% during 2011/12, an increase of 117 households. As at the end of February 2012, there was a total of 3,136 households in temporary accommodation
- 4.6 The table below summarises actual lettings performance to date against the projections that were originally agreed. At the time of writing, lettings figures for performance until the end of February 2012 are available.

Lettings Variance from Targets - April -February To Month = 11

		Targets 2011/12	Pro Rata Target	Actuals 2011/12	% Var
Target Group	Homeless	370	339	439	29%
	Register	274	251	256	2%
	Transfer	227	208	181	-13%
	Total	871	798	876	10%

- 4.7 A total of 968 lettings is anticipated during 2012/13. The majority of these lettings will become available through re-lets within existing social housing stock. However the Council expects a total of 283 properties to be delivered through the new build programme – 137 of these for estate based regeneration schemes (South Kilburn) and 146 through other general needs schemes. The table below summarises the distribution of these lettings across the different bedroom categories.

BRENT AND HOUSING ASSOCIATION - Projected Lettings 2012/13

	BSR	1 BED	2 BED	3BED	4 BED+	Total
Brent	20	140	175	65	15	415
RSL	20	165	260	80	28	553
Total	40	305	435	145	43	968

5. Policy Direction

- 5.1 In part, the changes are a short-term response to economic conditions: the Affordable Rent regime seeks to deliver an ambitious target for new homes while cutting public sector investment to support deficit reduction. There is no guarantee that the regime will remain in its present form beyond the current funding round and many providers and funders doubt that it is sustainable given the additional borrowing and associated risk involved, quite apart from issues of affordability. The Minister has indicated recently that a further Affordable Rent round is likely in 2014 but no detail has been given on possible subsidy levels.
- 5.2 Other changes focus on the long term and reflect an ideological questioning of assumptions about the purposes of social housing and welfare and, perhaps most importantly, the links between housing and employment and the way that the welfare system supports tenants and encourages mobility between different housing sectors. The principle that work should pay is at the heart of the housing reforms as well as the welfare changes. Thinking does not divide cleanly along party lines, as demonstrated by support from the junior coalition partner and indications from the opposition of a broadly similar approach to policy development, albeit with differences over the pace and scale of change. Fundamentally, the current policy direction raises some direct but not necessarily simple questions: what is social housing for, who should have access to it, for how long and how much should they pay?
- 5.3 Owner-occupation remains a key driver of both the economy and social policy, although low pay and high prices have excluded many from its benefits; crudely, owner-occupation is the tenure of choice while social housing carries the stigma of failure. Under-investment, loss of stock through the Right to Buy and, in London especially, high demand fuelled in part by migration from within and outside the UK, have created a severe shortage of affordable housing. In Brent, despite success in attracting investment, the proportion of social housing within the overall stock has hardly changed in the last thirty years, while the private rented sector has grown significantly, filling the supply gap but at very high rents. While Right to Buy sales have fallen in recent years, the recent implementation of a massive rise in discounts may alter this trend. Indications so far show a rush of new applications since April 2012, with numbers for that month alone equalling the annual total for 2011/12 in London, although not all of these will result in a sale. Although the new system promises to replace any stock lost, this is a national target and it is uncertain whether replacement would be on a like-for-like basis in terms of property size or location, so the impact may not be entirely neutral. Put simply, London boroughs might gain from the relatively high price of property, with a proportion of receipts to be re-invested in new provision (at Affordable

Rents) but demand may be limited for the same reason, with households unable to afford to buy or obtain a loan even with the improved discount.

- 5.4 One result of shortage is that access has been increasingly restricted and disproportionate numbers of lettings have gone to the most vulnerable and to homeless households. It has been argued that shortage coupled with allocation through a hierarchy of need has led to “residualisation” of social housing, making it part of the welfare safety net for the poorest and most vulnerable rather than one option among a range tailored to a household’s needs at any given time. In part, the current reforms reinforce this trend, for example in the approach to higher earners, but they are also, perhaps contradictorily, predicated on an assumption that the current system is unbalanced and unfair and should look back to a time when working households on low wages could reasonably expect to get access to social housing. This requires a reshaping of definitions of need and the direction of some households away from social housing. The fundamental barrier is supply.
- 5.5 The previous government increased expenditure on new social housing after a long period of stagnation and the current government has committed to delivering similar numbers of new homes, albeit at much higher rents. In terms of simple numbers, even the current relatively ambitious targets will only, at best, keep pace with growing demand and prevent the gap getting any worse. New supply on its own will not meet need, especially in London where demand is highest and the supply of land is limited and expensive. This has led all parties as well as those with a professional interest in housing to ask how the existing stock might be used more effectively to supplement new building and, as an added factor, how social housing can be used to promote wealth, independence and social mobility.
- 5.6 Tenure and its relationship with employment and labour market mobility has been a concern of previous policy responses, with little obvious success beyond the introduction of new forms of intermediate tenure such as shared ownership, usually centred on so-called key workers, but it is central to the current changes. In the same way that welfare reform is intended to incentivise work, access to housing and, crucially, the ability to pay for it will be linked strongly with employment status. Encouraging employment and labour mobility in current conditions will be challenging but all parties recognise a need to support employment and employability among existing and future tenants. In Brent, it is arguable that levels of deprivation, concentrated on clusters of social housing and unchanged over many years despite significant intervention, have been perpetuated by allocations policy, both in terms of who gets access and the tendency for established tenants not to move on, or in many cases not to be able to move on because of restricted access to transfer opportunities. It is also worth noting that these households

are often major consumers of other council and public services, increasing pressure on school places, SEN, personal social services and so on. This underlies the growing emphasis among all parties on the link between housing and employment, whether in terms of supporting existing tenants into jobs or building in incentives for those with a job or prospects of employment who may want access to social housing. Social housing is seen as a type of welfare provision, time-limited in the way that benefit support is, with an expectation that tenants will move between tenures as their circumstances change.

- 5.7 The Affordable Rent regime is now a reality and new homes in Brent are being delivered at higher rents – although well below the 80% maximum in many cases – and usually let on fixed terms. While social housing will still need to meet need, it is also an asset that can be managed and used to take forward broader aims around regeneration, employment and community sustainability.
- 5.8 Adopting fixed-term tenancies alongside permanent options provides the opportunity to use stock more flexibly and meet need in a more targeted way; for example, fixed-terms might assist in tackling under-occupation by enabling a move to a smaller home at an appropriate point, also freeing up larger homes to tackle overcrowding. More widely, if fixed terms achieve increased churn within the stock, options to house more households in need and people not currently given priority may open up.
- 5.9 Brent's position in relation to its neighbours and other London boroughs may be a factor impacting on future supply and demand and the use of the social housing stock. Emerging approaches are covered in more detail in section 6 but other key points to note include:
- Housing Benefit changes are making much of inner London unaffordable. Brent has a large and growing private rented sector and movement out of inner London may increase demand, not just for housing but for other services such as schools. Demand management is therefore not only concerned with housing.
 - Similar affordability issues arise in parts of Brent and there is already evidence of increased homelessness as a result. A policy approach that sets Brent significantly out of line with other London boroughs may impact on demand and consequently on costs associated with homelessness and other services.
 - Brent has been successful in securing funding for new homes in the past. An approach to Affordable Rent that limits ability to deliver could impact on supply while neighbouring boroughs use the new regime more effectively.

- 5.10 The private rented sector is central to the reform agenda and while there are risks, the evidence is mixed and there are opportunities to be exploited. In London, rents have been rising while benefits are capped and there is evidence that some landlords are inclined either to withdraw from the HB market or shift into renting to single people in houses in multiple occupation or even to adopt more extreme and illegal options as evidenced by the “beds in sheds” phenomenon . This may impact on the supply of private housing for use as temporary accommodation and to support discharge of permanent homelessness duties, both of which have resource implications. Most London authorities will opt to discharge homelessness duties through the private sector, but supply is uncertain. Councils are already placing households outside their boundaries and pressure to do this will increase. On the other hand, there are indications that developers struggling to sell new homes in a stagnant market may be willing to consider renting, at least in the short term, and build-to-let may provide a boost to supply and improve quality in the sector. Similarly, it may be that buy-to-let will become more attractive in a market driven by high demand, although this market has so far been dominated by smaller properties.
- 5.11 In the short term, there is a risk that temporary accommodation usage will increase and add to budgetary pressures and the strategy needs to take account of the need to mitigate the impact of welfare reform in particular. Officers are already working directly with affected households and landlords, seeking rent reductions or alternative accommodation to prevent homelessness. More widely, a range of other options might be used, including using s106 agreements to purchase fixed-term nomination rights, re-introduction of incentive payments to landlords, and use of supply (either private or public sector) outside the borough. Opportunities to boost supply will be a central concern of a revised housing strategy, to be developed in 2012.
- 5.12 The reforms offer the opportunity for a new approach to allocations and demand management. Although restricting eligibility for the Needs Register by excluding those with no realistic hope of an offer has no real impact on demand, it could produce administrative savings and, less tangibly, assist in managing expectations. Coupled with the potential to reduce allocations to homeless households and increase turnover from use of fixed-term tenancies, this could enable a new approach to identifying priorities. Emerging responses have focused on the needs of lower income working households and those needing to move for work purposes, those living in inadequate or overcrowded housing but not threatened with homelessness, existing social tenants who are under-occupying or overcrowded and those with a long-term local connection. In addition, discussion has identified the opportunity to re-balance the household mix on existing estates, for example by introducing

more working households. In essence, the aim is to develop a genuinely local approach that meets identified priorities, rather than following objectives set at the national level.

- 5.13 It is also worth noting that the increased risks attached to the new funding regime may harden attitudes among partners in terms of the perceived risk of housing a high proportion of the most vulnerable households. This may put pressure on existing local authority nomination arrangements and encourage housing associations to insist on lettings plans for new developments that aim to ensure a sustainable household mix.
- 5.14 As noted above, welfare reform is integral to the policy debate around housing. Most importantly, working households will avoid most of the impact of welfare changes, providing a further incentive for the council and partners to focus on employment opportunities for those living in or seeking housing in Brent across all tenures. Work is currently underway to develop Brent's employment offer and proposals for change in that area will support the policies set out in this report. While employment opportunities are constrained and it is important to be realistic about what can be achieved, it is essential to recognise that obtaining work will be the most effective way to mitigate the impact of housing and welfare reform.
- 5.15 It should be stressed that the current "reasonable preference" criteria, which set out the categories of people who must be given some priority in the allocation of social housing, are retained. This means that, for example, statutorily homeless households and people with a serious illness or disability, among other groups, will continue to be treated as having reasonable priority. At the same time, the numbers of households taking up fixed term tenancies or homes in the private rented sector will be a small, although growing, proportion of the whole spectrum of demand. This means that there will not be a sudden and large-scale growth in the opportunities available to other groups and expectations about the immediate impact of change should be proportionate. Over the longer term, a two-tier system will operate for many years, with the proportion of homes let on fixed terms at Affordable Rents growing each year.
- 5.16 A final point in setting the context is the expectation from government that local authorities and other providers will implement a comprehensive system of advice and support, covering housing options for those with no priority as well as for those whose tenancies are, or might be, brought to an end following a fixed term. Employment support will be an essential part of any package designed to support tenants or prospective tenants at all stages. At no point during consultation or at any other time has the government explicitly recognised the resource implications of this. Many providers have indicated that they have given little thought to the issue, although recent guidance from the regulator may mean that they have to do so now.

5.17 Given the local context and the national policy direction, as well as the emerging response of other London boroughs and providers, the council needs to formulate an approach that will maximise opportunities to reshape the way in which social housing is used, to manage demand effectively, to achieve financial savings and to meet local needs in a way that takes forward wider priorities. The strategy should aim to provide a framework that:

- Continues to meet existing need through provision of appropriate housing.
- Makes best use of the existing social stock across all providers.
- Makes best use of the private rented sector, intermediate and sub-market renting and shared ownership.
- Promotes economic and social regeneration and social mobility, particularly through employment.
- Supports new housing development in all sectors.
- Encourages providers to pay full regard to the affordability issues in Brent and to bring forward solutions, both within and outside the scope of the current programme, that mitigate the impact of higher rents as far as possible.
- Seeks to meet need that is currently unmet through a revised approach to prioritisation and letting.
- Is transparent, fair and easy to understand.
- Promotes a consistent approach to the letting and management of social housing in the borough.

5.18 The strategy will govern the council's approach to the use of its own stock, managed by Brent Housing Partnership, while RPs are required to "have regard to" the strategy in formulating their own approaches. While the strategy is not binding on partner organisations, it should be clear about the direction in which the council wants to go and our expectation that partners will work in a way that is consistent with our objectives. At the same time, it will be necessary to recognise that the majority of the fifty-plus providers in Brent also work in other boroughs and other regions and will be trying to tailor their activity to the varying priorities of numerous authorities. Absolute conformity is not realistic, but broad consistency should be.

6. Partner Responses

6.1 Registered Providers have been working with the Affordable Rent regime since April 2011. To agree contracts under the 2011-15 New Homes Programme with the HCA and in anticipation of a revised Tenancy Standard,

providers have already developed interim policy positions on the use of fixed term tenancies and affordable rents. The table below provides some examples, which reflect approaches across the sector, of the position taken by providers operating in Brent.

- 6.2 Under the Act, the remit of the social housing regulator is narrowed and its functions have transferred from the Tenant Services Authority to the Regulation Committee of the Homes and Communities Agency. The Regulator has now issued a revised Tenancy Standard. This allows providers to use fixed-term tenancies with a minimum term of two years (although five years is the expected minimum in practice and use of shorter terms will need to be justified) in place of Assured Tenancies if they wish, and to charge Affordable Rents. The Tenancy Standard requires providers to publish Rent and Tenancy policies that are consistent with it, covering the same ground as local authority Tenancy Strategies as required by the Act. Providers are required to have regard to a Local Authority's Tenancy Strategy when developing these policies.

Provider	Introductory Tenancies	Fixed-Term Tenancies	Affordable Rent
Catalyst	12 month for all	5 year for all, except supported housing	1 and 2 beds – lowest of 80% market, LHA Cap or £250 / week 3 beds – Social rent Social rent for sheltered and supported
Genesis	No. However 1 year break clause can be triggered by e.g. ASB, non-payment of rent	5 years for 1 and 2 beds, 10 years for 3 bed+	North of Brent: 80% 1 beds 70% 2 beds South of Brent: 70% 1 beds 60% 2 beds 3 bed + target rent +5-10% to cover service charges
L&Q	12 month for all	5 year fixed term	Average of c.60% of market rents 40-80% depending on location and values
Notting Hill	12 to 18 months for all	5 year fixed term	Up to 80% of market rents for 1 and 2 beds For new-build will take account of Tenancy Strategy 3 beds at Social Rents

Network	Not known	5 year fixed term but apparently only for AR	1 and 2 beds – lower of 80% of market rent and LHA rate 3 beds – Social rents
Paradigm	Yes	5 year fixed term for all	All bed-sizes – the lower of 80% of market rents and LHA rates; account will be taken of the UC cap at a future point

- 6.3 The majority of providers have adopted the opportunities available, inevitably with regard to Affordable Rent given the structure of the new funding regime, while their enthusiasm for the introduction of fixed-term tenancies was less predictable. As in the examples above, most providers have recognised the need to keep rents as low as possible for larger homes, with the impact of higher rents seen most starkly in one and two bedroom properties. This is broadly in line with the direction that the Tenancy Strategy will encourage them to take, although see below for further discussion on affordability, from which it is clear that, even with maximum effort to keep rents down, some households will find it difficult or impossible to afford them. Most providers are adopting five year fixed terms, usually preceded by an introductory tenancy, as the default position, with an assumption that the majority of these tenancies will be renewed at the end of the term. Consultation indicated that few providers had considered how the review system would work in practice, despite the fact that they are already issuing fixed-term tenancies. While it cannot be assumed that this is the position in all RPs, it is a cause for concern, although publication of the revised Tenancy Standard should result in a clearer picture, while the Tenancy Strategy itself will stress the need for a considered approach.
- 6.4 Local authorities are obliged to publish their tenancy strategies within 12 months of the passing of the Act, that is by November 2012. So far, very few authorities have published a final strategy although a number have set out their intentions in consultation documents, through the adoption of specific policies or release of policy statements. Many others have remained largely silent so far.
- 6.5 The Localism Act is permissive, giving considerable freedom as to whether or not to adopt the flexibilities on offer. So, for example, a provider or local authority can continue to offer Assured or Secure Tenancies in the way they always have. In theory, it is also possible to continue to develop new housing that is not subject to the Affordable Rent regime, although in practice the options are extremely limited since they would require development without any input of grant from the HCA. A small number of local authorities (including Southwark and Islington) have indicated that they will not support Affordable Rent provision in their areas but will use free or low-cost local authority land, S106 receipts and other capital as an alternative to subsidy. This is not a realistic option in Brent for the scale of new provision needed and it is questionable whether even those authorities who have alternatives would

be able to sustain them in the long term. Similarly, some local authorities have indicated that they will not make use of fixed-term tenancies in their own stock and, by implication, will discourage their partners from doing so. Other authorities have indicated that short-term tenure will be their default option – much in line with the provider approach summarised above – and that they will offer full support to development of Affordable Rent options and use of tenure flexibility by their partners.

- 6.6 As with the national policy position, approaches to Affordable Rent and tenure options do not divide on simple party political lines and, in most cases, responses so far reflect a pragmatic approach that looks at local priorities and what is deliverable in practice. The greatest publicity has been generated around areas that are, as noted above, not strictly within the ambit of the Tenancy Strategy but without consideration of which a strategy would lack meaningful context. The main focus for recent debate has been use of the private sector to discharge homelessness duties, in particular where that means using out of borough property, and the ways in which local authorities aim to re-balance allocations policies.
- 6.7 All London boroughs currently use the private rented sector as a source of temporary accommodation and, where the household consents, as a permanent means to discharge homelessness duties. So far, no borough has indicated that they will not consider using the private sector to discharge duty compulsorily. Controversy has arisen not so much because of this change in itself, but over the location of private sector offers, with a number of boroughs seeking solutions out of London. It should be stressed that this is driven by the cost of renting in London and inability to secure accommodation that will not fall foul of benefit caps rather than by any policy decision to remove homeless households from the capital. One consequence of the benefit changes is that certain households will effectively be forced to move to cheaper areas while indications are that those needing very large accommodation will face difficulty finding affordable accommodation anywhere once the Universal Credit Cap comes into effect. The government has now published a draft order covering the suitability of offers to homeless households and has proposed that the question of location will be covered in new secondary legislation that will strengthen existing guidance. Although it is too early to make a final judgement, initial reaction to the proposals has been that they will make little real difference to the factors local authorities must already take into account when considering an offer outside their boundaries. It must be expected that the matter will be tested in the courts but the crucial factor influencing an authority's decision will be whether any affordable accommodation is available in the area.
- 6.8 Among those boroughs that have stated their position, the majority have indicated that they will be reviewing the basis on which they operate their waiting lists and allocate accommodation. In most cases, this means that access to waiting lists will no longer be open and that additional priority will be given based on a range of factors, differing from authority to authority but usually including consideration of length of residence, employment (including in the armed services), income status and other factors that might be seen as

giving an applicant some additional merit, such as involvement in community service.

- 6.9 Indications in West London are that most boroughs are considering five- year tenancies followed by a review, usually with some exemptions, particularly around under-occupying tenants where a move can facilitate best use of the stock and mitigate the impact of the so-called bedroom tax, under which Housing Benefit will be restricted for those with extra bedrooms. In such cases, offering a fixed term in exchange for a permanent tenancy could be a significant barrier. Some boroughs are excluding sheltered and extra care sheltered accommodation from fixed term tenancies. Although Brent does not own any such accommodation, it is recommended that the strategy should urge partners to exclude such tenancies. All boroughs are reviewing residency criteria with qualifying periods varying from two to ten years with five years as the most common option.
- 6.10 All boroughs are looking to incentivise employment, with most doing this through moving applicants to a higher band on the Locata choice-based lettings system, although some are looking at particular elements of their waiting lists and particular target groups. Most boroughs are proposing an overall income bar to accommodation, currently based on the government's earlier proposal of £60,000, although the recent consultation paper proposes a wider set of options. At present, it appears that the cap will not be imposed nationally as had first been expected but that local authorities will be able to choose whether or not to apply it, although if they do it will apply to existing as well as new tenants. Anyone in social housing earning over the cap would be obliged to pay a higher rent, with the consultation paper suggesting that this might be equivalent to the Affordable Rent limit of 80% of local market rents.
- 6.11 Of those local authorities that have published proposals, the neighbouring boroughs of Ealing and Hammersmith and Fulham offer a good example of the contrasting stances being taken. Ealing's draft strategy stresses the council's preference for lifetime tenancies, while recognising that providers will be offering fixed terms and suggesting some exceptions. On succession, providers are simply encouraged to set out their own approaches clearly while the document is silent on the council's approach in its own stock. Guidance is provided on desired rent levels, in a similar way to that suggested in this report although with rather less detail and providers are simply asked to set their own rules on conversion of existing social rent homes to Affordable Rent on re-let, although conversion is discouraged in larger homes.
- 6.12 Hammersmith and Fulham have taken a bolder approach. The council faces similar issues around affordability and is proposing an approach to rent levels broadly in line with both Ealing and Brent, encouraging providers to keep rents for larger properties affordable. On tenure and allocations their approach differs significantly. Only applicants within the reasonable preference criteria will be eligible, while additional preference will be given to those making a "community contribution", including working households and ex-military personnel as well as those engaged in volunteering, among others. Five-year and, in some cases, two-year tenancies will be the norm. A local

connection requirement of five years residence will be applied and those failing to meet it will not be eligible for the first three of the four proposed priority bands. Only one statutory succession will be permitted, although with discretion to extend this in certain circumstances. The council will move from choice-based lettings to “assisted choice”, through which a maximum of two offers will normally be made, with discretion to extend to three offers. Finally, the council will encourage applicants to seek market options – private renting, purchase or shared ownership – and will therefore, in most circumstances, exclude households with an income over £40,200 from its register.

7. Consultation

- 7.1 The Act requires only that local authorities consult with Registered Providers in preparing their strategies. Officers were clear from the start that consultation on potentially far-reaching change should be wider than this and take in other partner organisations as well as tenants and residents. A full report of the outcomes from consultation is in production and will be published alongside the final strategy.
- 7.2 The most significant aspect of consultation has been the consistency of responses across different interest groups. On the one hand, these reflect serious concern about affordability and, on the other, a desire to take full advantage (with some reservations) of the flexibilities available on tenure and in other areas while recognising that existing needs cannot be ignored. In many cases respondents called on the council to go much further than is proposed in this report. While this response might have been expected from Registered Providers, who have been obliged to adopt a position at an early stage, it is interesting that their views have been endorsed by other groups in most respects. A summary of key points raised in consultation is provided in Appendix 1.
- 7.3 Members are asked to note that the Council’s Tenancy Strategy must demonstrate conformity with the Mayor’s Housing Strategy. The GLA has indicated that this process will take around eight weeks. Once the Council’s Tenancy Strategy is approved by the Executive, it will be submitted to the GLA for consideration. At the same time it will be posted on the council’s website and sent to those who took part in the consultation exercise to allow an opportunity for further comment
- 7.4 Once finalised, it will be important that the changes are communicated effectively. Officers are developing a communications strategy to ensure that those affected by the changes and partner organisations who may work with those affected are fully aware of the new approach.

8. Tenancy Strategy

- 8.1 This section considers the available options and their implications and recommends the preferred policy position to be reflected in the final strategy.

8.2 Affordable Rents

- 8.2.1 In the current programme, grant funding for new supply is only available for Affordable Rent properties, which with the reduced capital subsidy requirements, will enable a larger number of affordable homes to be built. Although alternative funding methods are being explored and there may be some opportunities to deliver additional new homes, no practical alternative has been identified that could work successfully in Brent to deliver the number of new homes required, principally because the council does not have significant landholdings or capital at its disposal.
- 8.2.2 The current system also relies on the ability of Registered Providers to re-let a proportion of existing social rented properties at Affordable Rents to provide cross-funding. The additional revenue generated is pooled for the provider's programme and is not ring-fenced for development within the borough. If (for whatever reasons) development activity is restricted in Brent there could be an imbalance between the resources raised through conversion and their expenditure on new affordable rent homes in the borough.
- 8.2.3 The delivery of the contracts agreed by providers with the HCA (which will now be overseen by the GLA) cannot be assumed. Contracts include only a limited number of named schemes with further schemes to be identified. Where contracted delivery targets are not met the GLA may choose to renegotiate arrangements or reallocate funding to another provider. A higher or lower proportion of contracted development could take place in the borough, depending on site availability, viability and rent levels.
- 8.2.4 Providers have made a number of assumptions about rent levels in agreeing their delivery contracts. Guidance on rents has now been issued by the HCA as part of the Regulatory Framework, which provides a little further detail but essentially confirms the original proposals: rents may not exceed 80% of market levels and regard should be had to Local Housing Allowance (LHA) rates. The GLA estimates that rents across London will average around 65% of market rents, largely due to efforts to keep levels down for larger homes. If rents are held down beyond this in Brent, higher rents may be required elsewhere with more conversions, or development activity will be limited in the borough. If in practice rents are significantly lower generally then a higher proportion of conversions (or disposals) will be required to fund the programme. If rents are set too high these properties will not effectively be available to many of those in housing need in the borough, and may become unaffordable where there is a change of circumstances (e.g. loss of employment). Some affordability considerations are considered in more detail below, while a full analysis (which forms part of the Evidence Base for the Strategy) is attached at Appendix 2.
- 8.2.5 The LHA limits do not apply to Affordable Rent properties, although this may change in the future. These rates are the maximum private sector rents that will be supported by Housing Benefit. If Affordable Rent levels are higher than LHA rates they would be less affordable than the most affordable properties in the private rented sector available to those on benefits.

8.2.6 The total weekly household benefit a workless household may receive is expected to be capped at £500 from 2013 (£350 for a single person). The cap is a national one and will have a disproportionate impact in London where private sector rents are higher than in the country as a whole. After taking account of living cost benefits it will directly limit the housing costs that can be afforded. For families and in particular larger families the position is most acute as their living cost benefit needs are higher so they have less scope to meet housing costs while their accommodation needs and costs are typically greater. Allowing for inflation to 2013, a workless two adult household with one dependant would have living cost benefits of a maximum of £254 per week in benefits to spend on their housing. A two adult, two child household would have living cost benefits of only £187 to meet their housing costs.

8.2.7 Private sector rents in Brent are high and particularly so in the south of the borough. The table below gives median private sector rents and LHA Rates for a two-bed property in the north and south of the borough, with corresponding Affordable rent levels at 80% and 65% of the LHA rate.

	100%	80%	65%
Median Rents (GLA)			
Wembley	231.00	184.80	147.84
South Kilburn	370.00	296.00	240.50
LHA Rates			
NWL	219.00	175.38	131.74
INL	290.00	232.00	174.00

8.2.8 A median rent property in South Kilburn let at 80% of market rents would be unaffordable to either household described, and would be unaffordable at 65% of market rents to the two-adult two-child household. A property in Wembley at 80% of market rents would be barely affordable for such a household.

8.2.9 Earned incomes are relatively low in Brent with median incomes around £26,000. While housing benefit support is available, rents at a high proportion of earned incomes may undermine work incentives. A rent threshold of 35%-40% of earned income is a widely accepted benchmark for affordability.

8.2.10 Several providers are proposing to set relatively high Affordable Rent levels for 1 and 2 bed properties to enable rents for 3 bed and larger homes to be set at a level closer to social rents, reflecting the potential impact of the Universal Credit cap. This may create perceived unfairness with 3 bed rents being lower than for 1 and 2 bed properties. The analysis above also

suggests that for some two-bed households rents set at or above 65% of market levels may be unaffordable in some areas of the borough.

- 8.2.11 Setting or adjusting rents in relation to individual household's initial and changing circumstances could be a way of assuring affordability in practice. Where there is a change in circumstance (e.g. loss of employment) it may be possible to adjust rents to maintain affordability but there are legal, administrative and business plan implications that need to be considered, and there may be a risk of creating perverse incentives and perceived inequity between different households paying different rents. Although a small number of providers have indicated an intention to explore this option, it is unlikely that the majority will. Different providers are currently contemplating a range of approaches in relation to affordability and to rent-setting. This will mean that similar AR properties in the same area of the borough could have markedly different rents
- 8.2.12 Although annual increases in Affordable Rents will be calculated on the same basis as for existing target rents (with a limit of RPI plus 0.5%) during the term of a tenancy, where a property is relet, *including* to an existing tenant on a fixed term, rents will be re-based against then prevailing market rents. If market rents have risen over the period this may undermine affordability for an existing household when the intention would be to renew the tenancy. One express intention of the Housing Benefit changes is to drive down private sector rents. So far, there is no evidence for this and rents have continued to rise. If the longer-term response is a fall in rents, tenants may benefit from periodic re-basing of rents; conversely, provider business plans may be affected adversely.
- 8.2.13 The council is obliged to have regard to the Mayor's Housing Strategy. The GLA do not favour councils specifying rent levels that providers must comply with. If the council nevertheless did so it would need to be satisfied that there is no risk of legal challenge, and consider what consequences might arise from the GLA's difference of view in terms of future support to the borough. Although there is no clarity about the potential impact of failure to achieve general conformity with the Mayor's strategy, there is a risk that it could impact on support and funding for development, since this is entirely within the Mayor's control and is likely to be his most obvious lever in any dispute.
- 8.2.14 If rents are set too high they may be unaffordable and unavailable to many of those in the higher priority groups under the Allocations Scheme. They are also likely to be unattractive to such households when viewed as an alternative to social rented housing. This may mean that lower priority households on the waiting list gain a greater share of access, at the expense of higher priority groups. If a provider sets rents higher than others the effect may be to disproportionately channel those in lower priority and need to their lets. AR could be viewed instead as a positive alternative to the private rented

sector and be deliberately targeted at those in low-paid employment to increase work incentives. Councils may create AR properties in the future, but only with the agreement of the HCA/GLA. Brent has not applied to do so at this time.

8.2.15 On the other hand, with many lets by other social landlords at higher rents, council lets may disproportionately be to those in the greatest need. Providers may find it difficult to let AR properties efficiently where rents are high through Locata and may wish to market such properties through shared ownership zone agents, or through direct advertising, although this is likely to conflict with existing nominations protocols and the Tenancy Strategy will discourage such approaches except in limited circumstances. There is already some evidence that AR properties are being rejected by applicants on cost grounds and further research is being undertaken to clarify this. This may not be surprising at this early stage and it is possible that attitudes will change as Affordable Rent becomes more common, but the fact remains that Affordable Rent levels will always be high compared to existing rents.

8.2.16 In this context, a considered approach to Affordable Rent is essential. First, it must encourage and support new development to meet need. Second, within the constraints discussed above, this development must be affordable to households with priority on the council's needs register, defined in line with the various measures of affordability set out in Appendix 1 and summarised below. While the council cannot control rent levels, the strategy should give clear direction, recognising that the council has some leverage and should be prepared to use whatever influence it has to ensure compliance. For example, the council can influence rents for new properties through giving (or withholding) support to bids, or through the planning system. More widely, the council might offer additional partnership and joint working opportunities to those providers who demonstrate consistency with rents guidance. For existing units being converted to AR there may be less control, except where existing nomination agreements provide for it. Having said this, the evidence (detailed in Appendix 2) clearly suggests that the strategy should discourage conversions of larger homes to AR and any disproportionate level of conversions for property of any size. Across the country, it is expected that between one in four and one in two of all relets will be converted.

8.2.17 In the longer term, the introduction of Affordable Rent prompts other questions, some of which are considered elsewhere in this report but are worth noting here. It is a new product that, in terms of cost, is positioned closer to intermediate or sub-market options than it is to traditional social housing. This is partly driven by the costs of development with restricted subsidy, but the obvious question is who it is for if it is not affordable to large numbers of those with high priority in the current system? This may mean that the target groups for this type of housing may be different, for example working households. It may also mean that letting this type of property becomes difficult within an entirely choice-based system such as Locata and that lettings may need to be more targeted.

- 8.2.18 Consideration also needs to be given to local approaches to lettings where it is necessary to let Affordable Rent properties within an area where lower rents predominate or where a new development consists wholly or mainly of Affordable Rent homes. Lettings plans have already been used to support an appropriate mix of households within developments – for example in terms of age, employment status and household size. The introduction of Affordable Rent adds a dimension to this question. Targeting Affordable Rent homes at working households is one way to achieve a more balanced mix of incomes in neighbourhoods and it may be that some new schemes will need to be let with affordability as a factor in addition to need.
- 8.2.19 The strategy will also need to provide some definition of what is meant by low-paid employment. There are several possible ways to approach this and it is an issue that will be considered as part of the work currently underway to develop the council's employment offer, but at this point it is proposed that median incomes in the borough should provide the benchmark. The following paragraphs summarise the proposed approach to Affordable Rent.
- 8.2.20 The Council will require that affordable rented housing in the borough can meet the needs of households eligible for social housing, including availability at a cost low enough for them to afford. Unless affordable rented housing is actually affordable for people living in Brent rent levels will be unsustainable and fail to either meet local housing needs or to secure a steady rental stream that can support new development. The Council's position on housing affordability is informed by research on the relationship between local rents and incomes across the borough a summary of which is attached as Appendix 2.
- 8.2.21 Affordable rents should not exceed 40% of net incomes in Brent if they are to be affordable. For non-working households, the overall benefits cap limits claims to a maximum of £26,000 per annum or £18,200 for single person households. For non-working households rents should thus not exceed £200 per week or £140 per week for single person households if they are to be affordable. For working households, CACI data for the borough shows that average gross household income for the borough in 2011 was £30,352 per annum. Assuming a household with two equal earners, average net household income for the borough is estimated at £28,340.
- 8.2.22 Beyond the basic principle of income affordability, when setting affordable rents in Brent consideration should be given to a number of factors including the geographical variance in rent levels across the borough, Local Housing Allowance rates, the make up of different households including the impact of dependents on household income, and the context of welfare reform with the introduction of the overall benefits cap and the universal credit.

8.2.23 The affordable rent levels below are expressed as a percentage of market rents, inclusive of service charges

	LB Brent North ¹	LB Brent South ²
1 bedroom 1 person	up to 80%	up to 80%
1 bedroom 2 person	up to 80%	up to 80%
2 bedroom 3 person	up to 80%	up to 80%
2 bedroom 4 person	up to 70%	up to 70%
3 bedroom or more	Target rent +5 to +10%	Target rent +5 to +10%

¹covers the North West London Broad Rental Market Area within LB Brent

²covers the Inner North London and Inner West London Broad Rental Market Areas within LB Brent

8.2.24 Affordable Rents set at these levels currently meet housing affordability criteria in Brent in most cases; however some moderation will be required in higher value areas, and in particular the Brondesbury Park, Kilburn and Queens Park wards, or where a property has a high market rent valuation. Affordability for larger family sized properties of 3 bedrooms or more is known to be severely constrained, particularly for non-working households, and the council sees little scope for affordable rents to exceed target rents for such larger family sized properties.

8.2.25 A reasonable RPI-linked formula for annual rent increases should be proposed at the time that affordable rented homes are made available for letting. The council has already committed to maintaining current target rent levels in regeneration areas and there is no intention to revisit this decision.

8.2.26 The council supports Registered Providers re-letting of up to 50% of smaller 1 and 2 bedroom properties at affordable rents to help deliver new affordable supply, whilst at the same time maintaining a stock of social rented housing. The council is not in favour of re-letting larger family sized properties of 3 bedrooms or more at affordable rents.

8.2.27 The council will review guidance on Affordable Rent annually

8.2.28 Policy Options

Preferred options are in **bold**

Affordable Rent

- To oppose AR development in the borough through the Tenancy Strategy, bid support and potentially through the planning system, and to seek to restrict conversion of existing properties to AR.
- To allow AR development in the borough with the aim being to maintain a reasonable level of new supply, but to minimise the conversion of existing units because of the acute need for social rented accommodation.
- **To allow AR development in the borough to maintain a reasonable level of new supply and to promote a proportionate level of conversion of existing units to provide cross-funding of the development programme in Brent.**
- To maximise AR development in the borough, through a high level of conversions, high rents and where possible the contribution of local authority land.

Rent Levels

- To provide guidance on the principles that should be observed in setting AR rents.
- **To specify the affordability thresholds to be complied with by providers when setting rents, with exceptions subject to agreement in line with the proposals set out above.**
- To specify maximum rent amounts in the borough, or parts of the borough, that may be charged, with provision for exceptions on a scheme basis.

And

- Providers to take reasonable account of relevant factors including LHA rates and local incomes in setting rents, or
- **Providers to ensure that the rent for any AR property is at maximum the lower of some or all of the following thresholds, with exceptions being granted by the council in limited circumstances on a scheme-by-scheme basis.**

- LHA rates, or 80% of LHA rates
- Strict affordability under the UC Cap, after taking account of living cost benefits
- 35% of median earned income
- 80% of the market rent for the property; or
- Providers to operate AR rents within a range (which is capped by the above thresholds), with the property-specific rent being set after taking account of the circumstances of the prospective tenant.

And

- **AR Rent will normally remain fixed for the duration of the fixed-term, but with an agreed protocol for review where a change in circumstances risks loss of the accommodation.**
- AR Rents will be automatically adjusted (for example six-monthly or annually) where there is a change of circumstances that worsens affordability, e.g. a loss of employment, or a substantial increase in salary.
- **Rents will be re-based at the end of a fixed-term against market rents but in line with the affordability thresholds outlined above.**

Target Groups

- For access to be exclusively through the Locata choice-based lettings system, except where otherwise agreed with the council.
- **In limited circumstances, providers to have the option to market AR properties more widely, initially or after a fixed period on Locata, by agreement and in accordance with an agreed protocol.**
- To seek to let AR properties to the same priority groups as currently access social rented properties.

- **To generally let AR properties to the same priority groups as now but to target through area lettings plans or other mechanisms wider groups and in particular those in low-paid employment.**
- To deliberately target AR properties generally to wider groups and in particular those in low-paid employment.

Mobility

- **To agree provisions between the council and providers that enable existing social rent tenants to transfer to AR properties at social rents (and with security of tenure) with a corresponding conversion of their existing property to AR or a compensatory conversion of a void social rented unit.**

Development Support

- **In order to reinforce the council's Tenancy Strategy, to enter into partnership agreements with providers by which they commit to comply and in exchange enjoy a preferred status, e.g. in relation to bid support, access to council development land opportunities, etc**
- To encourage providers to have regard to the Tenancy Strategy informally through regular liaison, bid support (or not)

8.3 Fixed-term and Flexible Tenancies and Succession

8.3.1 As noted above, providers have adopted fixed-term tenancies with enthusiasm, with the majority indicating that the default option will be a five-year tenancy, preceded by a one-year Introductory Tenancy. This approach has been broadly welcomed judging by responses to consultation. Attitudes among local authorities, or at least the relatively small number that have stated their intentions clearly, are more mixed and range from extensive use of five-year or, in some cases, shorter terms to retention of Secure Tenancies in all cases within their own stock and discouraging use of fixed terms by their partners. The Tenancy Strategy will need to adopt a position that steers the use of the council's own stock and, as far as possible, encourages a consistent approach by partners.

8.3.2 Adopting shorter-term tenancies alongside permanent options provides the opportunity to use stock more flexibly and meet need in a more targeted way, providing social housing when and for the period it is needed rather than in perpetuity. This would allow the council to make maximum use of the stock to

meet need and to support wider economic regeneration priorities. Fixed term tenancies will increase the availability of properties to the extent that such tenancies are not renewed, potentially assisting in addressing under-occupation and overcrowding, both of which are significant issues in the social housing stock, although as noted earlier the extent to which this will open up access to social housing should not be exaggerated.

- 8.3.3 On the other hand, it is arguable that use of fixed-term tenancies reduces tenants' security and may impact on their commitment to their neighbourhood and community, and to the upkeep of their homes and that a high level of non-renewal may impact adversely on community stability and cohesion. While the perception of reduced security should not be under-estimated, it should be stressed that the majority of providers have indicated that, while their default position when letting to a new tenant may be to offer a fixed term, the expectation is that the majority of these would be renewed and that the reality is that most tenants could expect to remain in their homes as long as they need to.
- 8.3.4 It might also be argued that existing security of tenure means that tenants are able to enforce their rights and require landlords to meet obligations under the tenancy agreement without the fear that it may jeopardise their tenancy. Although it might be countered that responsible social landlords would not take punitive action against a tenant who complains, the fear of such action should not be overlooked, especially when the Localism Act has additionally restricted the access of tenants to the Housing Ombudsman and the Regulator's focus has shifted towards financial issues.. Landlords may need to develop variant housing management approaches for these tenants that take account of their limited security of tenure, including their structures and arrangements for resident engagement, and specifically the representation of such tenants.
- 8.3.5 Landlords will be able to set policies that provide for a fixed-term tenancy to not be renewed where there are substantive breaches of the tenancy agreement and this will provide (periodically) an alternative and simpler remedy to such breaches than the use of possession proceedings. It will, however, be important that such a test is objective and an important consideration is whether the threshold should be lower than that which would otherwise trigger possession proceedings, as otherwise tenants with different security of tenure could find themselves being treated unequally for the same breach.
- 8.3.6 Landlords will need to set out clear policies and procedures that will govern decisions on whether to renew these tenancies or not, and will need to ensure compliance with them or risk legal challenge. Landlords will need to develop procedures and allocate resources to determine no less than 6 months before the end of the fixed term whether the tenancy is to be renewed. Depending on the criteria for renewal this could have significant resource implications. Appeal arrangements should also be considered as should whether to include

the involvement of, or reference to an external party (which could include the council for registered provider tenants).

- 8.3.7 Where a tenancy is not being renewed the landlord will want to ensure that appropriate advice and assistance is available so that the tenant can find suitable accommodation. The council has expertise in this area but Registered Providers generally will have limited experience. The council may need to expand its service, or assist social landlords in developing a complementary service. Given the cost implications, consideration would need to be given to how such a service might be funded, although it should be stressed that, since most tenancies will be granted for at least five years, this is not an immediate issue.
- 8.3.8 Where tenancies are not renewed the council may find itself owing a homelessness duty to the household, which could put further pressure on resources and on available private rented accommodation within which to discharge the duty. If homeless households continue to enjoy a reasonable preference under the Allocations Policy this may mean that such households are offered a further secure or assured tenancy, and may also mean that such households are over time effectively transferred from the responsibility of other social landlords to the council as landlord.
- 8.3.9 If fixed-term tenancies are widely used by Registered Providers but are not used or are used much less widely by the council there is a risk that those with greater needs (and higher priority under the CBL system) will become concentrated in the council's stock.
- 8.3.10 Bearing in mind the caveats noted above with regard to renewal, it is recommended that the council should adopt a five-year fixed term as the norm, preceded by an Introductory Tenancy. This would ensure consistency with other providers, at least in terms of tenure, and would maximise opportunities to use the stock flexibly and efficiently. There should be a presumption that the tenancy will be renewed subject to identified exceptions. In particular, it provides the opportunity to link shorter terms with employment and willingness to engage with employment support and support to secure alternative housing such as shared ownership, allowing housing and priority for rehousing to be used as part of a spectrum of incentives. Key priorities for the council should include improvement in income, improvement in quality of life and supporting moves towards self-support and fixed term tenancies could contribute substantially to these goals.
- 8.3.11 During consultation, a number of respondents, mainly from voluntary sector organisations, argued for the use of two-year terms in certain circumstances. In particular, it was argued that they could be a valuable stepping-stone for young people who are being supported by statutory or voluntary agencies (for example those working with young offenders or care leavers), enabling them to have a secure home while undergoing education or training and looking to move into work. Although officers consider a five-year term to be appropriate in most cases, it is accepted that a shorter tenancy, linked to a specific

support programme, could be a valuable option and that provision should be made within the strategy to allow this type of tenancy.

8.3.12 The Localism Act changes the rules on succession in social housing tenancies following the death of the tenant. Where a tenancy was created before 1 April 2012, existing rights to succession remain. A spouse or registered civil partner, a co-habiting partner or other family members who have lived at the property for at least twelve months will be able to take over the tenancy, although in some cases, for example where there would be under-occupation, the council can offer suitable alternative accommodation. Where a joint tenant dies, the other joint tenant becomes the sole tenant. Where a tenancy was created on or after 1 April 2012, only a spouse, civil partner or a person who lives with the tenant as if they were a spouse or civil partner will have a statutory right to succession and such a succession can happen only once. Providers and local authorities are free to continue to operate their current succession policies or to implement the Act for tenancies created after 1st April 2012.

8.3.13 Policy Options

Fixed-term tenancies

- To oppose the use of fixed-term tenancies except to the required extent in Affordable Rent properties, (or to limit their use to larger properties to address under-occupation).
- To allow their use, but with some or all the following either excluded or subject to conditions:
 - Supported and sheltered housing
 - Those with disabilities or long-term illnesses
 - The elderly, but possibly limited to smaller homes because of under-occupation concerns.
 - For families with children (possibly with some age restrictions)
- **To support their general introduction (with limited exceptions) and to allow providers to determine their own policies in respect of specific groups and circumstances, provided that these are broadly consistent with the council's priorities.**

Flexible Tenancies (Local Authority)

- To not use Flexible Tenancies within the council's stock.
- **To use Flexible Tenancies on the same basis as is proposed for other social landlords.**

Tenancy Term

- Two years normally, with a longer-period for specified groups / circumstances
- **Five years normally, but with shorter and/or longer periods for specified groups / circumstances.**
- A longer standard-term, for example 10 years, with shorter and/or longer periods for specified groups / circumstances.
- **That introductory or starter tenancies of 12 months be used for all new tenants, and in concert with fixed-term tenancies as relevant. This should also apply in the council's own stock.**

Renewal

The following should be included:

- To reinforce the requirements of the Tenancy Standard that there are clear criteria and procedures governing the assessment and decisions on renewal.
- To require that there is a right of appeal, which may include the council's involvement or consideration of the council's views.
- For all providers to commit to a standard protocol for liaison with the council where a tenancy is not being renewed, and a required standard of advice and assistance that will be provided by the landlord. The protocol may include provision for the council to be consulted in advance of a notice being served, either generally or in respect of specific vulnerable groups.

Additional requirements could include:

- **Commitment to a standard set of criteria for decisions on renewal, developed jointly by the council and providers.**
- That the basis for non-renewal for reasons of tenancy breach be broadly equivalent to that which applies to the bringing of possession proceedings.
- **That where the changed circumstances of a household would warrant a secure or assured tenancy at first let that the new tenancy be permanent.**

Criteria for renewal

- For renewal to be limited to those who would enjoy high priority for social housing under the Allocation Policy then in force.
- **For renewal to be the presumption, and non-renewal the exception. Non-renewal would be limited to some or all of the following:**
 - Under-occupation, but with the offer of alternative social housing
 - Serious tenancy breach
 - High household income
 - The absence of any priority under the Allocations Policy

Succession

- To retain existing succession rights to ensure equality between tenants regardless of the date the tenancy started
- To allow only one succession in tenancies commencing after 1st April 2012
- **To allow only one succession but with discretion to grant a further succession in certain circumstances**

Further provisions:

- **Mobility – For existing tenants to be able to retain their security of tenure where they bid successfully through CBL for a new property.**

- Tenure Protection – That where a tenant loses their security for a time because of the breach of a suspended possession order (e.g. not meeting rent arrears repayment terms) that on remedying the breach the tenancy is re-established as a fully secure or assured tenancy.
- For providers to make use of the council's housing options and advice service to assure a high standard of advice and assistance to tenants to ensure that other housing options are explored where relevant, and that those facing non-renewal are able reasonably to secure suitable alternative accommodation. (Providers may need to subscribe and pay for use of this service)

8.4. Homelessness and Allocations

8.4.1 The success of the council's homelessness prevention strategy and services has significantly reduced the number of homeless acceptances in recent years. Welfare reforms, and in particular the introduction of the Universal Credit Cap, could give rise to a significant increase in homelessness. The welfare reforms may significantly increase demand for social rented housing as, under the Universal Credit Cap, a significant proportion of existing private rented accommodation may become unaffordable for workless households.

8.4.2 Homeless applicants currently enjoy reasonable preference under the Allocations Scheme and will continue to do so. Over half of social rented lettings in 2009/10 were to homeless households, and only a quarter to other groups on the waiting list, although this figure has fallen, mainly due to the preventative work noted above, and is predicted to be at around 40% for 2012/13. Debate on reform has been emotive and frequently based on inaccurate preconceptions. Most obviously, there is a perception that homeless households are able to "jump the queue" and, by inference, that a proportion of applications are at best dubious and at worst fraudulent.

8.4.3 Such arguments are not helpful and tend to divide applicants into deserving or undeserving categories but there remains a question as to whether an episode of homelessness should override separate assessment of housing need on an equal basis for all waiting list applicants. While the law is clear in giving homeless households a statutory right to assistance, it is legitimate to ask whether this should always mean a permanent offer of social housing, where there are other groups with housing needs who do not currently have this opportunity, including a larger number of existing tenants who would like to transfer to larger homes but get few opportunities in the current system..

8.4.4 The council has, following case law developments, been discharging its main housing duty to homeless applicants in the private sector, and thereby reducing its temporary accommodation needs for some years, provided the household consents. The Localism Act now permits

discharge into the private sector without consent. If Brent were to do this much more extensively it would provide a larger proportion of affordable lettings to waiting list and transfer applicants. Consultation indicated strong support for this option across all interests.

8.4.5 Whether private rented accommodation, with market rents, limited security of tenure and variable quality of management is adequate to meet the needs of some vulnerable homeless households, who may require the support and security of a social tenancy, is questionable but it is clearly a suitable option in many cases and may often be preferable in terms of the type of accommodation available, such as houses with gardens. However, welfare reform and other factors are limiting the availability of private rented accommodation in which to place households. If private sector discharge becomes the norm the council may need to place households outside of the borough or outside of London. The key consideration for Brent and other local authorities is likely to be supply and how to secure it and how far outside borough boundaries might be reasonable, although each case would need to be treated on its merits and any offer would need to comply with guidance on reasonableness which, as noted earlier, has now been published in draft form by CLG and does not appear to add significantly to existing practice. Despite practical difficulties there are strong arguments in favour of more extensive use of the private sector to discharge duty and clear support from a range of partners and interest groups.

8.4.6 More widely, there are 18,000 households on the waiting list currently and a large number have no realistic prospect of obtaining a social rented property; the latest Supply and Demand report indicates that effective unmet demand stands at 11,000 households. Current arrangements do not create realistic expectations and are inefficient in providing a basis for the allocation of the limited supply available. The reforms offer an opportunity to review the way applications are prioritised and to identify factors that might result in additional priority, in line with the council's housing and wider policies as well as factors that might mean that a household is excluded from the waiting list or granted no priority. The current reasonable preference categories are retained, so the primary issue is to identify whether additional priority groups can be identified.

8.4.7 As noted above, emergent policies are varied and have identified a range of factors. These include:

- Excluding households not resident within borough boundaries or with some other strong local connection.
- Excluding households that, following assessment, are adjudged to have no or very low priority – for example those in Band D on the Locata scheme.
- Additional priority based on length of residence.
- Additional priority, sometimes for specific schemes or areas, on the basis of employment status.

- Excluding households with earnings or other resources such as savings above a certain level.
- Additional priority based on “merit” – for example those considered to be contributing to their communities through volunteering or contributing to meeting other council objectives such as fostering or adoption or taking on caring responsibilities.
- Additional priority for those leaving the armed forces.

Whatever their initial attractions, some of these options may be difficult to administer or evidence and care should be taken to avoid factors that are potentially subjective. The following paragraphs outline the issues.

- 8.4.8 The council could exclude those not resident in the borough, but it may be appropriate to provide access to those working or with carer responsibilities or other connections in the borough, although if Brent sets a policy that is significantly more generous than other boroughs it may experience a higher level of demand. The council could give some priority in relation to a household’s length of residence in the borough and consultation indicated support for this idea, particularly where it would enable inter-generational support, for example assisting those with caring responsibilities for a parent or relative. It could, however, be to the disadvantage of new migrants to the area. The equalities implications would need to be carefully considered and assessed.
- 8.4.9 Applicants in Band D of the Locata system have no realistic chance of securing social housing and have no identified housing need. For this reason, it is recommended that applicants who would fall into Band D should be excluded from the list. For practical purposes it may be simplest to apply this criterion to new or renewed applications rather than existing ones, so that the numbers in Band D decline over time.
- 8.4.10 Employment status should be taken into account, both in terms of achieving additional priority and in terms of renewal of any fixed term tenancy, alongside the established criteria for assessing housing need. As noted earlier, this may be a particular factor when considering specific neighbourhoods or schemes and the allocation of Affordable Rent stock within them. Some authorities have, as noted earlier, adopted an income limit. It is not proposed that Brent should do so at this stage; rather, income should be a factor taken into consideration when providing advice and support on future housing options either to housing applicants or existing tenants. Policy in this area will be guided by the current consultation on the government’s proposed income limit and will be the subject of a report later in the year.
- 8.4.11 It is not proposed that additional priority should be granted for community service or other “merit-based” criteria, although housing need arising from caring responsibilities or fostering and adoption responsibilities should be recognised within the Allocations Scheme. Similarly, evidence shows that

Brent has very low numbers of applications from ex-military personnel and it is not proposed that any additional priority should be granted over and above the provisions already introduced by government to ensure that such households have the right to register for housing.

8.4.12 Finally, reference has already been made to the impact of changes in rents and tenure on the operation of choice-based lettings. The government has been explicit in stating that tenants should continue to have choice and that where schemes are in operation they should continue. Brent remains committed to its membership of Locata but it is legitimate to ask whether choice should remain unlimited in present circumstances. This is partly a question of ensuring that homes are let quickly to people who genuinely want them, which would also ensure that those who do want to bid for a property are not prevented or delayed from doing so by someone who is likely to refuse the offer. This would also assist in minimising void periods and the number of refusals on any given property. It is proposed that households should be able to bid as many times as they wish but that they should only be able to refuse an offer following a successful bid up to three times, after which in the case of homeless households any duty would be considered to be discharged and, in the case of other applicants, further bids would be blocked for a specified period.

8.4.13 It is worth noting that the current Allocations Scheme already takes account of a number of factors that are in line with the proposals above. These include:

- Date of qualification (equivalent to length of residence) is taken into account when prioritising households within each demand group.
- Although there are no penalties for refusing an offer through Locata, cases where a household is making large numbers of unsuccessful bids, failing to make bids within a reasonable time or refusing offers will be reviewed and could lead to loss of priority.
- Offers made to homeless households or to meet other statutory duties can already be made outside the Locata system.
- Households with sufficient financial resources to secure their own accommodation will not be made offers, although no fixed income limit is applied.

8.4.14 For these and other cases decisions are made by an officer panel and it is proposed that this system should continue and be extended as necessary to consider exceptions to the policies outlined in this report.

8.4.15 The proposed policy changes in relation to the Council's Allocation Scheme will require further statutory consultation as required under section 166(A)(13) of the Housing Act 1996, in particular with Registered Providers with which the Council has nomination agreements. The new and amended Allocation

Scheme will be presented to the Executive for approval later in 2012 as indicated in paragraph 2.5 of this report and after the necessary statutory consultation has taken place.

8.4.16 Policy Options

Waiting List

- To maintain the current eligibility criteria for the waiting list, but providing greater clarity on the housing prospects of individuals.
- **To restrict access to those with some housing need who are resident in Brent, or working in Brent for a defined minimum period, or with other significant connections.**
- To restrict access to those resident in Brent who have significant housing needs.
- To have no (or the statutory minimum waiting list), provide guidance on priority for new lettings and to advertise affordable (and private) lets on an open public basis, with applications being assessed on the basis of the Allocations Policy.
- **To abolish Band D of the current Locata banding system**

Allocations

- To maintain the current priority groups and their relative weightings.
- **To give greater priority to those in low-waged employment, and potentially to give these households particular additional priority for Affordable Rent properties.**
- **To allow a maximum of three bids within the Locata system**

Homelessness

- **To discharge the s.193 housing duty through an offer of suitable accommodation in the private sector as standard, with exceptions**

limited to those households who are assessed as requiring a high level of support.

- As above but with some or all of the following groups excluded from private sector discharge in most cases:
 - Care-leavers
 - Those with disabilities or long-term illnesses
 - Those who have experienced domestic violence or harassment
 - The elderly
 - Families with school-age children who are unable to afford accommodation in the private rented sector under the UC Cap.
- To only use private sector discharge in limited circumstances

And

- **To remove any additional priority in the Allocations Policy from homeless households following the discharge of the duty in the private sector;** or
- To maintain a degree of priority for homeless households after discharge of the main duty.

Other

- To develop Locata to provide a broader access point to social rented, affordable rent, and private rented accommodation.

9. Equalities Implications

- 9.1 The equalities impact assessment for the strategy is attached at Appendix 3. At this stage, the assessment is predictive and it will be essential to reconsider diversity issues at the first and subsequent reviews of the strategy. Although it is impossible to be precise about the implications of policy change, it is clear that some groups will be affected disproportionately by some changes and that these impacts may be both positive and negative across and within different protected characteristics. For example, some BAME groups are over-represented among those with large families and among

homeless applicants. Although the adverse impacts in these areas are largely due to welfare reform, some proposals for local policy, such as discharge of duty into the private sector and the possibility of using property outside the borough, are likely to impact disproportionately on certain groups and mitigation measures will need to be identified. At the same time, this same group may be assisted by the opening up of additional opportunities through more effective asset management and the continuing focus on delivering larger homes and keeping the rents for these properties affordable. Similarly, impacts for some other groups with protected characteristics are likely to be positive; for example, housing opportunities for younger, older or disabled people may be expanded.

10. Financial Implications

- 10.1 At this stage, it is not possible to identify precise financial implications but expenditure will be governed by existing budgets for homelessness and temporary accommodation and, with regard to tenure and related issues, within existing HRA budgets. The main areas where budget implications arise are considered below.
- 10.2 As noted in this report and in the Supply and Demand report presented in April 2012, there has been an increase in homelessness demand across London, driven largely by the changes to Housing Benefit and additional costs are anticipated as a result. The proposals in this report are intended in part to mitigate the impact of Housing Benefit and other welfare reforms and reducing homeless applications and acceptances, both through the work already being undertaken around homelessness prevention and through the changes set out here is a key policy aim. However, it is not possible to predict with any real accuracy how far the changes proposed will reduce reliance on temporary accommodation.
- 10.3 In the longer term, this report notes that there will be increased demand for services providing advice and support to housing applicants and tenants on fixed-term tenancies. Again, it is difficult to be precise about the potential costs, or indeed whether such services would deliver savings over time. It should be stressed that existing provision will continue to meet the need for advice and support to homeless or potentially homeless applicants and those needing advice on housing options. Over time, it is expected that demand for advice and support from tenants whose fixed terms are up for review will increase. However, the numbers involved will be relatively small at first and no tenant will be affected immediately since the first fixed terms have only been available to Registered Provider tenants since last year and are not yet available to council tenants and will not reach expiry until four years from now in the vast majority of cases. Further, many of these tenancies will be renewed. Officers will also enter into discussions with providers on the ways in which advice and support services might be delivered and funded in the future.
- 10.4 For the current financial year, it is not expected that the proposals in this report will have any immediate financial impact. As noted above, the intention

is that the impact of the changes, including any financial implications, will be monitored closely with a view to an annual review of the council's approach that will be reported to the Executive.

11. Legal Implications

Tenancy Strategy

- 11.1 Under section 150(1) of the Localism Act 2011, a local housing authority (which includes Brent Council) must prepare and publish a tenancy strategy setting out matters to which the registered providers of social housing are to have regard in formulating policies relating to the following
- (i) the kinds of tenancies they grant;
 - (ii) the circumstances in which they will grant a tenancy of a particular kind;
 - (iii) where they grant tenancies for a term certain and the lengths of the terms; and
 - (iv) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.
- 11.2 A local housing authority must have regard to its tenancy strategy in housing management functions (section 150(3) of the Localism Act 2011).
- 11.3 A local housing authority must publish its tenancy strategy before the end of 12 months after 1 April 2012, which is when section 150 of the Localism Act 2011 came into force (section 150(4) of the Localism Act 2011).
- 11.4 A local housing authority must keep its tenancy strategy under review and may modify or replace it from time to time (section 150(5) of the Localism Act 2011).
- 11.5 Under section 151 of the Localism Act 2011, before adopting a tenancy strategy (and before making a modification to it reflecting a major change of policy), the local housing authority must do the following:
- (i) send a copy of the draft tenancy strategy (or proposed modification) to every private registered provider of social housing for its district and give the private registered provider a reasonable opportunity to comment on those proposals;
 - (ii) consult other such persons as the Secretary of State may proscribe by regulations (to date, no such regulations have been made);
 - (iii) for a London borough council, consult the Mayor of London.
- 11.6 When preparing or modifying its tenancy strategy, a local housing authority must have regard to the following:
- (i) its current allocation scheme under section 166A of the Housing Act 1996;
 - (ii) its current homelessness strategy under section 1 of the Homelessness Act 2002; and
 - (iii) in the case of a London borough council, the London housing strategy which is prepared by the Mayor of London.

Succession to Council tenancies

- 11.7 Section 160 of the Localism Act 2011 has inserted section 86A of the Housing Act 1985 which allows a person to succeed a secure tenancy if (s)he occupies the dwelling-house as his/her only principal home at the time of the tenant's death and is the tenant's spouse or civil partner. It allows persons who are not the tenant's spouse or civil partner (where a tenant's spouse or civil partner has not occupied the property as his/her only or principal home at the time of the tenant's death) to succeed to a secure tenancy where there is an express term in the tenancy agreement which allows for this and the succession is in accordance with such a term. Once the Council brings this clause into effect, for new tenancies that are granted by the Council, only the tenant's spouse or civil partner can succeed a secure tenancy and this will need to be stated in the tenancy agreements.

Homelessness

- 11.8 Under section 148 of the Localism Act 2011 amended section 193 of the Housing Act 1996 so that it allows local housing authorities to discharge their duty to homeless persons to provide them with temporary accommodation by offering them a private sector rented tenancy which is approved by the local authority and is for a fixed term for at least 12 months. Previously, local authorities could only discharge their homelessness duty in this manner if they obtained the written consent of the homeless applicant and following this change, such consent will no longer be necessary.
- 11.9 Section 149 of the Localism Act 2011 (which inserts section 195A of the Housing Act 1996) provides that the main homelessness duty will recur (regardless of whether the homeless applicant has a priority need of accommodation) if the applicant becomes unintentionally homeless again within two years of accepting a private sector rented tenancy and then re-applies for accommodation.
- 11.10 The Government is currently consulting on the suitability requirements of private sector properties which are used to discharge local authorities' homeless duties, including the physical condition of properties, health and safety, houses in multiple occupation, landlord behaviour and good housing management. Consultation is also taking place on the issue of location in relation to the suitability of accommodation offered under Part 7 of the Housing Act 1996. It is expected that the Government will bring the secondary legislation into effect later this year and it will be known as the Homelessness (Suitability of Accommodation)(England) Order 2012.

Allocations

- 11.11 Section 147 of the Localism Act 2011 has inserted section 166A of the Housing Act 1996. A local authority must allocate housing accommodation under Part 6 of the Housing Act 1996 in accordance with its allocation scheme. The Localism Act 2011 gives local authorities more flexibility in framing its allocation schemes but it also gives the Secretary of State the

power to make regulations to specify factors which a local housing authority must not take into account in allocating housing accommodation. Section 160ZA of the Housing Act 1996 (as inserted by section 146 of the Localism Act 2011) allows local authorities to decide what classes of persons are qualifying persons for the purposes of allocating housing though this is subject to some limitations and restrictions prescribed by the Government.

- 11.12 Before making an alteration to its allocation scheme reflecting a major change of policy, a local housing authority in England must send a copy of the draft scheme or proposed alteration to every private registered provider of social housing and registered social landlord with which they nomination arrangements and afford those persons a reasonable opportunity to comment on the proposals as set out in section 167(13) of the Housing Act 1996. The Council will carry out this consultation and the proposed changes to the Council's allocations scheme as set out in this report will be presented to Members of the Executive for approval after the statutory consultation has taken place. When modifying its allocation scheme, a local housing authority must have regard to its current homelessness strategy under section 1 of the Homelessness Act 2002, its current tenancy strategy under section 150 of the Localism Act 2011 and for a London borough council, the London housing strategy, which is prepared by the Mayor of London.
- 11.13 More detailed legal implications regarding the changes to the law on housing allocations will be set out in the report to the Executive seeking approval of the new amended allocation scheme.

Flexible Tenancies

- 11.14 Section 154 of the Localism Act 2011 has inserted sections 107A to 107E of the Housing Act 1985 and they came into force on 1 April 2011.
- 11.15 Flexible tenancies apply to secure tenancies if a landlord in England grants a fixed term certain of not less than two years and before the grant of the tenancy, the landlord under the tenancy has served a written notice on the person whom becomes the tenancy stating that the tenancy would be a flexible tenancy. This also applied to family intervention tenancies. A flexible tenancy can also be created under section 137A of the Housing Act 1996 (as amended by section 155 of the Localism Act 2011) following introductory tenancies if the landlord serves a written notice on the tenant before entering into the introductory tenancy stating the following: (a) that on ceasing to be an introductory tenancy, the tenancy would be become a secure tenancy which would be a flexible tenancy for a term certain of the length specified in the notice (b) specifying a period of at least two years as the length of the term of the flexible tenancy; and (c) setting out the other express terms of the tenancy.
- 11.16 Under section 107B of the Housing Act 1985, where the Council offers to grant a flexible tenancy or serves a notice under section 137A of the Housing Act 1996 stating that on the coming to an end of an introductory tenancy, it will become a flexible tenancy, a person receiving such an offer or notice can

request a review of the Council's decision about the length of the term of tenancy.

- 11.17 Section 107D of the Housing Act 1985, as inserted by section 154 of the Localism Act 2011, sets out the requirements in which a landlord must carry out when deciding to recover possession of a property upon the expiry of the fixed term of a flexible tenancy. The three conditions are:
- (1) the flexible tenancy has come to an end and no further secure tenancy (whether or not it is a flexible tenancy) is for the time being in existence other than a secure tenancy that is a periodic tenancy;
 - (2) the landlord has given the tenant not less than 6 months' notice in writing:
 - (a) stating that the landlord does not propose to grant another tenancy on the expiry of the flexible tenancy;
 - (b) setting out the landlord's reasons for not proposing to grant another tenancy; and
 - (c) informing the tenant of the tenant's right to request a review of the landlord's proposal and of the time within which such a request must be made;
 - (3) the landlord has given the tenant not less than 2 months' notice in writing stating that the landlord requires possession of the dwelling-house (and such a notice may be given before or on the day on which the flexible tenancy comes to an end).

- 11.18 Under section 107D of the Housing Act 1985, the court may refuse to grant an order for possession following the expiry of a flexible tenancy if: (a) the tenant has in accordance with section 107E of the Housing Act 1985 requested a review of the Council's proposal not to grant another tenancy on expiry of the flexible tenancy; and (b) the court is satisfied that the landlord has failed to carry out the review in accordance with provision made by or under that section or that the decision on the review is wrong in law.

- 11.19 Under section 107E of the Housing Act 1985, a tenant has the right to request a review of the landlord's decision to seek an order for possession of a dwelling-house let under a flexible tenancy and such a request must be made before the end of the period of 21 days beginning with the day on which the notice under section 107D(3) of the Housing Act 1985 (as described in paragraph 11.13 above, under condition (2)) is served. On receipt of such a review request, the Council must review its decision and the review must consider whether the decision is in accordance with any policy of the Council as to the circumstances in which it will grant a further tenancy on the coming to an end of an existing flexible tenancy. The landlord must notify the tenant in writing of the decision on the review. The review must be carried out and the tenant notified before the date specified in the notice of proceedings (as set out in paragraph 11.13 above, condition (3)) as the date after which the proceedings for the possession of the dwelling-house may be begun.

Introductory Tenancies

- 11.20 Under the Introductory Tenancy regime, Council tenants are "introductory" tenants for a trial period of one year before they become secure tenants. Some local authorities use this regime so that they can apply to the Court for

mandatory possession orders (where the relevant legal and procedural requirements have been complied with as set out below) where there are tenants in the first twelve months of their Council tenancy who have breached their tenancy terms and conditions, mainly in relation to anti-social behaviour and rent arrears and other serious breaches of the tenancy terms and conditions. Introductory tenants have fewer rights than secure tenants. An introductory tenancy does not include the Right to Buy, or the right to take in a lodger or sublet part of the property, or the right to carry out a mutual exchange or transfer to another property. Also, the route to obtain possession of the property is different where the County Court has less discretion in introductory tenancies about whether to make a possession order. After twelve months, an introductory tenant will become a secure tenant unless the Council or its managing agent has served a notice terminating the introductory tenancy within twelve months. Furthermore, the Council or its managing agent can extend the trial period of the introductory tenancy for a further six months if it serves a notice of extension on the tenant at least eight weeks before the original one year expiry date.

11.21 If the Council or its managing agent wants to extend the trial period from 12 months to 18 months, it must serve a notice of extension on the tenant at least 8 weeks before the 12 month expiry date pursuant to section 125A of the Housing Act 1996 ("the 1996 Act"). The notice must set out the reasons for the decision and inform the tenant of his right to request a review of the landlord's decision and of that time within which such a request must be made. The tenant has the right to request a review of the landlord's decision under section 125B of the Housing Act 1996 within 14 days of being served with the notice to extend the introductory tenancy for a further six months. The procedure for carrying out the review is set out in the Introductory Tenancies (Review of Decisions to extend a Trial Period)(England) Regulations 2006. The review has to be carried out and the tenant notified of the review decision before the end of the original 12 month expiry date of the introductory tenancy.

11.22 If the Council or its housing management agent wants to terminate the introductory tenancy before the term of the tenancy expires, it must serve a notice on the tenant under section 128 of the Housing Act 1996 stating that the court will be asked to make an order for possession of the property, stating the reasons for the landlord's decision to apply for an order for possession and specify a date (no earlier than which a the tenancy can be brought to an end by a notice to quit) after which possession proceedings can be commenced in the County Court. The notice must also inform the tenant of his right to request a review of the landlord's decision to seek an order for possession and of the time in which such a request can be made and that if the tenant needs help or advice about the notice and what to do about it, he should take it immediately to a Citizen's Advice Bureau, a housing aid centre a law centre or to a solicitor.

11.23 An introductory tenant has the right to request a review of a decision to seek a possession order of a property let under an introductory tenancy under section 129 of the Housing Act 1996 and the request must be made within 14 days of being served with the notice of proceedings. The tenant has the right to request an oral hearing and has the right to make written representations, whether or not there is an oral hearing. The procedure for carrying out the review is set out in the Introductory Tenants (Review) Regulations 1997. If the review upholds the decision, the landlord can apply to the court to terminate the demoted tenancy and seek an order for possession. The review must be undertaken by a person who was not involved in the original decision. If the original decision was made by an officer, then any review of that decision by another officer may only be carried out by an officer occupying a more senior position within the landlord's organisation than the officer who made the original decision. The landlord must give the tenant notice of the date of the review, which must not take place less than five days after the tenant's request for a hearing (unless the tenant consents otherwise) or if there is no hearing, not less than five days after the tenant receives notice of his right to make written representations. However, if the review does not turn out in the tenant's favour, it is possible for a tenant to seek a judicial review of the review decision by applying to the Administrative Court on grounds of either *Wednesbury* unreasonableness (i.e. no reasonable review officer would have made such a decision) or irrationality or procedural irregularity in the way the review was conducted or in the alternative and more likely, to rely on a public law proportionality defence in the possession proceedings similar to that set out in the Supreme Court case of *Manchester City Council v Pinnock* [2010] UKSC 45 on grounds that it is not proportionate to seek an order for possession in the circumstances. However, subject to any proportionality public law defence that may be submitted, the court cannot refuse a landlord's application for a possession order of a property which is subject to an introductory tenancy unless it takes the view that the procedure in sections 128-129 of the Housing Act 1996 (and the regulations laid by the Secretary of State pursuant to section 129 of the Housing Act 1996) have not been followed and that the Council has elected to operate an introductory tenancy regime under section 124 of the 1996 Act.

11.24 In order to adopt introductory tenancies for new Council tenants, the Council must elect to operate an introductory tenancy regime pursuant to section 124(1) of the Housing Act 1996. In practical terms, this means that the Council's Executive must approve and elect to operate an introductory tenancy regime for new Council tenants and this can be done by way of a report to a meeting of the Council's Executive to seek the Executive's approval, which is being carried out in this case. Otherwise, the introductory tenancy regime will not have any legal effect and this can be used as a defence in possession

proceedings for properties pursuant to an introductory tenancy and could be used in judicial review proceedings to seek a declaration that the Council's introductory tenancy regime is unlawful.

Equalities – Public Sector Equality Duty

- 11.25 The public sector equality duty, as set out in section 149 of the 2010 Act, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic.
- 11.26 The “protected characteristics” are: age, disability, race (including ethnic or national origins, colour or nationality), religion or belief, sex, sexual orientation, pregnancy and maternity, and gender reassignment. Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.
- 11.27 Having “due regard” to the need to “advance equality of opportunity” between those who share a protected characteristic and those who do not includes having due regard to the need to remove or minimise disadvantages suffered by them. Due regard must also be had to the need to take steps to meet the needs of such persons where those needs are different from persons who do not have that characteristic, and to encourage those who have a protected characteristic to participate in public life. The steps involved in meeting the needs of disabled persons include steps to take account of the persons' disabilities. Having due regard to “fostering good relations” involves having due regard to the need to tackle prejudice and promote understanding.
- 11.28 The Council's duty under section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions on the provision of localised council tax support for the area of Brent. Due regard to the need to eliminate discrimination, advance equality and foster good relations must form an integral part of the decision making process. When the decision comes before the Executive, Members of the Executive must consider the effect that implementing a particular policy will have in relation to equality before making a decision. An Equality Impact Assessment will assist with this.
- 11.29 There is no prescribed manner in which the equality duty must be exercised, though producing an Equality Impact Assessment is the most usual method. The Council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups and by gathering detail and statistics on who claims Council

tax benefit and who benefits from certain discounts and exemptions which may be under consideration for changing.

11.30 Where it is apparent from the analysis of the information that the policy would have an adverse effect on equality, then adjustments should be made to avoid that effect and this is known as “mitigation”.

11.31 The public sector equality duty is not to achieve the objectives or take the steps set out in section 149 of the Equality Act 2010. The duty on the Council is bring these important objectives relating to discrimination into consideration when carrying out its public functions (in this case, designing a localised scheme for Council tax support within Brent). The phrase “due regard” means the regard that is appropriate in all the particular circumstances in which the Council is carrying out its functions. There must be a proper regard for the goals set out in section 149 of the 2010 Act. At the same time, when the Members of the Executive make their decision on what scheme to adopt for localised council tax support, they must also pay regard to countervailing factors which it is proper and reasonable for them to consider. Budgetary pressures and economic and practical factors will often be important. The amount of weight to be placed on the countervailing factors in the decision making process will be for Members of the Executive to decide when it makes its final decision

Background Papers

Local Decisions: A fairer future for social housing; CLG, Nov 2010

Localism Act: Nov 2011

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