

HOUSING MANAGEMENT ADVISORY BOARD

22ND MARCH 2023

Report of the Landlord Services Manager

PROPOSED NEW DECANT AND DISTURBANCE POLICY

1. PURPOSE OF REPORT

To present the board with a proposed new policy on the council's approach to the decanting of tenants to alternative properties in specific circumstances and the financial redress that will be paid in connection with that process.

2. ACTION REQUESTED

The board is requested to note, comment upon and recommend the proposed policy for cabinet approval, subject to any agreed amendments.

3. BACKGROUND

- 3.1 There are occasions when, through maintenance, repair and investment needs with a particular property, tenants have to leave their home in order that the property can have the required work carried out. Alternative accommodation has to be found for the tenant for the duration of the work. This process is known colloquially as 'decanting'.
- 3.2 The process of decanting has inevitable financial consequences for the tenant as well as for the council in terms of costs incurred in tenants moving out of their home but not through their own choice. We have always had internal procedures to enable us to reimburse tenants for these costs; but there has never been an actual policy on this matter.
- 3.3 The proposed new decant and disturbance policy, attached to this report as appendix A brings together existing internal procedures into an explicit policy statement.

4. CONSULTATION OVER THE PROPOSED POLICY

- 4.1 Staff have been consulted internally in the landlord service and the policy has been reviewed by CHRF, where some changes were proposed. Those that were accepted have been incorporated into the proposed policy as set out in appendix A.

5. MONITORING AND REVIEW

Other than a review required through changes in legislation and/or regulation, we propose that the policy is reviewed in four years' time.

6. RECOMMENDATION

HMAB members are requested to note, comment upon and, subject to any agreed changes, recommend this policy for cabinet approval.

Andrew Staton
Landlord Services Manager

9 March 2023



Appendix A

CHARNWOOD BOROUGH COUNCIL

LANDLORD SERVICES

DECANT AND DISTURBANCE POLICY

1. Introduction

1.1 There will be occasions when the council will require a tenant to move out of his or her home for a variety of reasons including (but not limited to):

- carrying out works, including adaptations, that cannot be done while the tenant is living in the property;
- carrying out major structural works to the property when the property is unsafe for the tenant to remain in it;
- in fulfilling the council's asset management strategy which might involve disposal or demolition of the property;
- carrying out emergency works to the property that render it uninhabitable temporarily;
- failure of physical services supplying the property resulting in the property becoming uninhabitable.

1.2 It is recognised that, a move to temporary accommodation is a stressful and disruptive event and one that will incur a financial cost.

1.3 The need to decant a tenant will fall into the following categories:

- Planned or unplanned;
- Temporary;
- Permanent (see section 3A.5)

2. Objectives of this policy

The objectives of this policy are:

- to provide a framework that aims to establish a consistent and fair approach to moving tenants to temporary alternative homes;

- to move tenants to properties that as far as possible match their needs in terms of property type, size and location;
- to support tenants in the decant process;
- to take account of the urgency of the need to move when identifying potential decant properties;
- in respect of the cost of the decant process, from moving out, moving in and moving back again, to put tenants back in the financial position they would have been in had there been no requirement to move;
- to establish a financial framework for reimbursing tenants moving temporarily to hotel or bed and breakfast accommodation if a CBC decant property is not [yet] available;
- to give discretion to offer *ex-gratia* compensation in extenuating circumstances where, for reasons beyond the control of the tenant, excessive hardship, distress, delay or inconvenience has been experienced in the moving process.

3. Scope of this policy

- 3.1 This policy applies to everyone who holds an introductory or secure tenancy of a council dwelling.
- 3.2 This policy does not apply or cover claims for compensation payments arising out of the following:
- Failure to complete repairs within timescale;
 - Failure in standards of general service delivery;
 - Complaints;
 - Ombudsman's determinations of compensation due;
 - Loss of amenity through failure of physical services that does not result in the property becoming uninhabitable.

4. Policy statement

4A Decants in general

- 4A.1 When it has been agreed that the tenant needs to vacate the property, various options for temporary re-housing will exist, including:
- the tenant making his or her own arrangements, for example, moving to a relative's home or some other private arrangement; this might be furnished or unfurnished accommodation;
 - the tenant moving into bed and breakfast or hotel accommodation arranged by the council;
 - Use of a guest room at a sheltered scheme arranged by the council if the tenant(s) meet the age criteria pending a property being identified;
 - the tenant moving into another council property (internal decant, referred to in this policy as 'decant');
 - the tenant moving into another registered provider property.

- 4A.2 If the tenant is unable to make his or her own private arrangements or makes temporary private arrangements in advance of the council identifying and offering a decant into its own stock or that of another registered provider, the landlord service will work closely with the lettings team to identify a suitable decant property and arrange the move accordingly.
- 4A.3 Although the decant process falls outside the council's allocations policy, such properties will generally be identified in accordance with the same criteria that would be applied if the tenant were bidding for properties through the housing register, viz, the property will match needs as determined by the allocations policy. This will be in pursuit of the need to make best use of our housing stock. Exceptions, however, will be made according to the individual circumstances surrounding the decant, for example, an emergency situation requiring immediate vacation of the property or a decant that might last for more than a year.
- 4A.4 Tenants will be encouraged to be as flexible as possible in respect of the temporary accommodation offered, taking into account the urgency of the need to move and the likely time away from the home.
- 4A.5 Where the decant is to be permanent (for example, where we are planning to dispose or demolish the property), offers of permanent alternative accommodation will be made in accordance with our allocations policy.
- 4A.6 The actual process of decanting is governed by our decant procedure, which is included as appendix 1 to the policy but support to the tenant will be given by the tenancy & estate management and housing options teams.

4B Disturbance payments

- 4B.1 As stated in section 2 of this policy, disturbance payments are designed to make the tenant neither any worse off financially as a result of the need to move nor any better off.
- 4B.2 Disturbance payments will be payable only if actually incurred by the tenant and will be payable for each move that is part of the decant process.
- 4B.3 Other than a temporary move into bed and breakfast or hotel accommodation, unless stated to the contrary in 3B.4 below, disturbance payments will be payable in all circumstances, temporary and permanent.
- 4B.4 Generally speaking, the council will pay for the following:
- The cost of moving household possessions if tenants cannot or prefer not to carry out the removals themselves
 - If tenants prefer to carry out their own removals, the cost of moving household possessions that the tenant cannot reasonably be expected to move personally. House removals will normally be carried out by a council contractor though, in exceptional circumstances, commercial removal companies may be used, engagement of those services being in accordance with the council's procurement rules. Additional costs such as packing services will be payable where the tenant is, for example, frail or disabled;

- The cost of storing the tenant's household possessions if it is considered to be unreasonable to expect the tenant to move the contents of their home into the decant property, for example, moving into a private furnished property.;
- The cost of removing and relaying carpets and other removable floor coverings. If floor coverings cannot be removed or reasonably be re-laid and if the temporary decent is likely to last for more than two months, the council may cover the cost of re-carpeting living rooms and bedrooms through one of its approved suppliers;
- The cost of removing and re-fitting curtains, blinds and tracks in living room and bedrooms. If curtains and blinds cannot reasonably be re-fitted and if the temporary decent is likely to last for more than two months, the council may cover the cost of curtains and blinds in living rooms and bedrooms through one of its approved suppliers;
- The cost of disconnecting and reconnecting household appliances such as cookers and washing machines;
- The cost of a reasonable replacement cooking appliance if the tenant's existing cooker cannot reasonably be expected to be used in the decant property;
- The cost of disconnection and reconnection of water, gas and electricity services.
- If the tenant is making private arrangements for the removals, all reasonable costs in line with the above bullet points provided that:
 - the council is given details of the proposed costs prior to the work being ordered; and
 - the costs are in line with what the council would have paid had it made the arrangements itself;
 - the contractor has the relevant insurances in place, in particular public liability insurance
 - gas or electrical works are carried out by accredited contractors (e.g. Gas Safe-registered)
- The cost of transferring fixed landline telephones and internet services;
- The cost of erecting a television aerial if there is not one existing in the decant property;
- The cost of re-directing post;
- The reasonable cost of kennelling dogs or cats if the decant property is unsuitable for pets. This provision does not apply to permanent decants;
- The reasonable cost of the tenant incurring additional travelling expenses for work or education (only) as a direct result of being relocated away from the permanent accommodation for a period of up to twelve months and at an approved mileage rate as determined by HMRC. The council will be able to exercise discretion in agreeing to meet other reasonable expenses based on individual circumstances. This provision does not apply to permanent decants.

- 4B.5 Through separate documents, such as the decant procedure, the council may impose limits on the amount it will pay for, for example, carpets, curtains and kennelling costs.
- 4B.6 The council may require proof of expenditure under this policy in order to reimburse the tenant.

4C Rent payments during the decant period (temporary decants only)

- 4C.1 The tenant will continue to hold the tenancy of the permanent property throughout the decant period and for paying the rent and service charges due.
- 4C.2 The decant property will be let on the basis of a licence to the tenant and no tenancy will be created. The council will fulfil its repairing obligations as if the decanted tenant held a tenancy in the decant property.
- 4C.3 The decanted tenant will have no rights to the decanted property.
- 4C.4 No fee will be charged for occupying the decanted property.
- 4C.5 The decanted tenant will be responsible for all outgoings in the decanted property, including (but not limited to) gas, electricity, water and council tax.
- 4C.6 Support will be given in claiming appropriate benefits and in liaison with other council departments in respect of the occupation of the decanted property.

4D Compensation for permanent loss of the home

- 4D.1 Applying only to planned, permanent decants, the tenant may be paid a home loss payment, entitlement to which is governed by part 3 of the Land Compensation Act 1973.
- 4D.2 The amount of home loss payment is determined by central government and not the council.
- 4D.3 Home loss payments will not be payable if the tenant has been in occupation of the property for less than one year (s.29(2)(a)).
- 4D.4 Home loss payments will not be payable if we have obtained a possession order on the property served through a notice of seeking possession under ground 10 of schedule 2 of the Housing Act 1985 (S.29(1)(e)).
- 4D.5 A home loss payment is not payable if a tenant transfers to an alternative property voluntarily through the normal housing register process.

4E Offsetting disturbance payments against arrears

- 4E.1 We may offset the payment of disturbance payments against outstanding debts such as:
- current rent arrears;
 - former rent arrears;

- court costs;
- re-charges.

4E.2 All disturbance payments are eligible for debt offset apart from disturbance costs incurred directly by the council, such as:

- removals and re-fits;
- disconnection and reconnection of services and appliances;
- storage costs.

4E.3 Debts may also be offset against home loss payments.

4E.4 If it is clear that the requirement for the tenant to be decanted is through their own damage or neglect, any disturbance payments made to the tenant under this policy will be offset against any recharges raised in connection with the decant.

4F *Ex-gratia* compensation

4F.1 We recognise that there may be occasions when the circumstances of a permanent or temporary move under this policy are not covered adequately by the disturbance provisions set out in section 3B of this policy. These circumstances may involve:

- excessive delay in the council arranging and carrying out the temporary move, resulting in the tenant having to endure what might be agreed to be an overly-long process which may be manifested in, for example, a long stay in bed and breakfast or hotel accommodation. This would not apply where suitable alternative accommodation has been identified by the council but has been refused by the tenant;
- significant distress or inconvenience beyond what would be considered normal in what [a decant generally] is accepted to be a stressful event anyway. When considering *ex-gratia* compensation for this reason, we may request evidence of this through doctor's or similar professionals' testimonies.

4F.2 Compensation under this section will only be considered if we accept that our own actions or lack of actions have contributed towards the grounds for the tenant requesting *ex-gratia* compensation.

4F.3 Any *ex-gratia* compensation offered will be in alignment with compensation offered habitually by the Housing Ombudsman in its determination of similar cases.

4G Disturbance payments for temporary hotel or bed and breakfast accommodation

4G.1 There will be occasions when the urgency to move a tenant out of the property exceeds the availability of a suitable decant property. In such cases the tenant and his or her family may be required to go into hotel or bed and breakfast accommodation until a suitable decant property becomes available. In such an event the council will reimburse the tenant for the following costs incurred **up to** amounts that will be reviewed on an annual basis from the first Monday in April every year and amended in line with the

annual CPI increase recorded in the preceding February. These rates will be published as a separate document to this policy.

4G.2 In order to qualify for reimbursement for costs incurred under this section, receipts must be submitted that clearly show the nature of the expense incurred and the date incurred.

4G.3 Eligible costs will be:

- Bed and breakfast, half-board or full-board nightly rates at establishments identified and agreed by the council;
- The reasonable cost of a two-course evening meal unless half-board rates are available at the establishment;
- The reasonable cost of a one-course lunch unless full-board rates are available at the establishment;
- The reasonable cost of purchasing baby food if such is not available as part of the hotel/B & B rates;
- The reasonable cost of kennelling dogs or cats for the duration of the stay if the hotel/B & B establishment will not accept pets;
- The reasonable cost of the tenant incurring additional travelling expenses for work or education (only) as a direct result of being relocated away from the permanent accommodation for the duration of the hotel/B & B stay.
- The reasonable costs of laundering clothes after one week's stay in the hotel / B & B establishment;
- A contribution to the purchase of essential clothing if there was no reasonable opportunity for the tenant to take or retrieve clothing from the property;
- Reimbursement for other expenses not listed above that are considered reasonable to reimburse given the individual circumstances of the case in question;

4G.4 We will not reimburse the following costs:

- Alcoholic or soft drinks;
- Beverages such as tea and coffee if not included in the hotel/B & B rate;
- Casual food purchases, including snacks and confectionary;
- Costs that exceed our annually-published maximum rates;
- Incidental motoring expenses such as servicing and maintenance or any expenses incurred in pursuit of leisure activities;
- Costs of medication or prescription drugs;
- Costs of childcare;

- Costs of baby products such as nappies.
- Cleaning products as the room would be cleaned by the hotel/B & B establishment;
- We may refuse to pay kennelling costs if the tenant has not sought or been given permission to keep the pet.

5 Complaints and appeals

If a tenant is dissatisfied with the level of disturbance payments offered (including home loss payment) he or she will be entitled to make a complaint through our normal complaints process. In addition to that a right of appeal under the Land Compensation Act 1973 might exist and such appeals should be made to the Upper Tribunal at 45 Bedford Square, London WC1B 3DN.

6. Equalities

- 6.1 All affected tenants' differing needs and preferences will be taken into account when the need to decant arises. Our decant procedure will include carrying out a needs assessment at the beginning of the process, which allows the council to identify those who may need more support.
- 6.2 This policy aims to make sure that no-one is out of pocket or disadvantaged as a result of being required to move out of their home. Tenants can choose to take advantage of the council making the arrangements and paying directly to the contractor or, if they wish, organise the move themselves.

7. Monitoring and review

This policy will be reviewed every four years unless required earlier through legislative or regulatory changes.

8. Budgetary considerations

There is an existing budget (tenancy and estate management) for costs incurred through decanting tenants and which will be used to fund the commitments made under this policy. While the budget is currently underspent it is possible that with more rigour attached to the process, as intended under this policy, costs will rise and these will be monitored closely.

9. Training

- 9.1 Suitable training on this policy will be given to members of staff whose job either directly or indirectly is affected by this policy.
- 9.2 Refresher training on this policy at appropriate intervals will also be given or if the policy is changed materially.

10. Responsibility

The relevant strategic director is responsible for the effective implementation of this policy and may delegate amendments to it arising out of changes in legislation or regulation to service managers.

Officers are to raise any day to day issues with the administration of the policy to their line manager. Day-to-day matters relating to the implementation and administration of the policy will be undertaken by managers. Where managers are unable to resolve an issue relating to the implementation and administration of the policy the matter is to be escalated to the relevant director.

11. Other external and internal influences on this policy

11.1 This policy has been created and should be implemented in conjunction with the following internal documents:

- Decant procedure;
- Allocations policy;
- Equality and diversity policy and strategy;
- Complaints policy;
- Asset management strategy and other repairs and investment-related policies and procedures.

11.2 Similarly, this policy has been created and should be implemented in conjunction with the external documents and publications, including but not limited to:

- Land Compensation Act 1973;
- Housing Act 1985;
- Housing Act 1996;
- Equality Act 2010.