

REPORT TO: Cabinet

MEETING DATE: 12 June 2012

BY: Executive Director (Services for Communities)

SUBJECT: Serious Tenancy Breaches Policy (Houses and Gardens)

1 PURPOSE

- 1.1 To advise Cabinet of a proposed new Policy dealing with breaches of tenancy (STB) in Council-owned houses and gardens.
- 1.2 To seek approval for the provisions of the policy and the sanctions it proposes for dealing with breaches, up to and including eviction.

2 RECOMMENDATIONS

- 2.1 Approve the procedures outlined for resolving tenancy breaches.
- 2.2 Approve the legal sanctions proposed if tenants refuse to cooperate.

3 BACKGROUND

Outline of the Serious Tenancy Breaches Policy

- 3.1 This Policy provides a consistent approach to dealing with these tenancy breaches, across all Council housing area offices, and replaces current ad hoc arrangements.
- 3.2 This Policy deals with the condition of gardens and houses, where these are in a seriously unacceptable condition and/or unsightly.
- 3.3 The Policy seeks the cooperation of the tenant in the first instance, to address problems. It requires Council Officers to consider whether the tenant may be vulnerable or in need of support to manage their house and/or garden. Tenants will be given support if required, from Tenancy Support Officers and under schemes such as Garden Aid.

- 3.4 If no vulnerabilities or support needs are identified the tenant(s) will be given clear timescales to tackle specific problems identified with their homes and/or gardens.
- 3.5 If they do not address the issues we have identified, within the timescales we have set, then the Council will apply a range of sanctions, up to and including eviction.
- 3.6 The proposed sanctions are noted below.
- 3.7 **Actions of specific implement** - will be considered when the tenancy breach is one specific instance of unacceptable behaviour. Examples include dangerous garden sheds or rusty car bodies in gardens.
- 3.8 **Environmental health legislation** - will be used in cases when the tenant's action or inaction puts public health at risk. For example, rat-infested bin bags left on a driveway.
- 3.9 **A compulsory (management) move** - will take place when, for instance, a tenant has persistently failed to keep his/her garden in order. The tenant would be moved to a gardenless flat.
- 3.10 **Notice of Proceedings and Eviction** - will only be used as a last resort. Tenants will be referred for homelessness advice and information, before any eviction takes place.
- 3.11 The Council will ensure that tenants' rights are respected under all relevant legislation, when dealing with serious tenancy breaches.
- 3.12 An extensive consultation exercise was undertaken. All Council tenants were sent a questionnaire. The issue was raised with tenants and residents groups and a presentation was made at the ELTRP AGM. A focus group of young people was held at Bridges Project.
- 3.13 97.9% of 1800 questionnaire respondents agreed that the Council "should be trying to reduce the incidents of STB". 95.6% agreed that our staged approach was correct and 91.9% that the proposed sanctions will be effective. 87% believed the Policy offers sufficient protection to vulnerable tenants. A full report on the consultation, and the consultation register, are available in the Members' Library.

4 POLICY IMPLICATIONS

- 4.1 Implementation of this Policy will improve visual and environmental amenity for other Council tenants and private owners and renters.
- 4.2 It will identify problems and deal with them, faster than the existing arrangements for managing Serious Tenancy Breaches.
- 4.3 It connects with other Policies that concern tenancy breaches, such as Antisocial Behaviour, Rent Arrears and Garden Aid.

5 EQUALITIES IMPACT ASSESSMENT

5.1 An Equalities Impact Assessment has been completed and negative impacts have been found. These impacts are noted overleaf. The full Assessment can be found at:

http://www.eastlothian.gov.uk/downloads/download/1128/equality_impact_assessment-community_services_department

5.2 Disabled tenants may find it harder to keep houses clean and gardens tidy.

5.3 Mental Health issues may be difficult to identify and, where appropriate, advice may be sought from Social Workers and health professionals.

5.4 Some elderly tenants may not qualify for GA but will still have to improve their gardens. There may be health/capability issues within houses.

5.5 Mitigating action against these negative impacts will be taken by identifying those with support needs. The operational procedures developed to implement the Policy will highlight this requirement.

6 RESOURCE IMPLICATIONS

6.1 Financial – None.

6.2 Personnel – None.

6.3 Other – None.

7 BACKGROUND PAPERS

7.1 Serious Tenancy Breaches (houses and gardens) Policy Document. Members should note that Policy section 4 cannot be completed until the Policy is approved. It contains operational guidance.

7.2 Consultation Members' Library Report.

7.3 Consultation Register.

7.4 Consultation written responses summary.

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DATE	8 May 2012



**East Lothian Council
Serious Tenancy Breaches Policy
Gardens and Houses**

March 2012 (final)

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Introduction

The East Lothian Scottish Secure Tenancy agreement places certain obligations on tenants. Not fulfilling such obligations is a breach of the tenancy agreement. Where the breaches are considered serious, they can lead to sanctions against the tenant up to and including eviction. For certain types of serious breach, the action(s) that the council will take and the circumstances in which it will take those actions have been set out in other policy documents; for example the Antisocial Behaviour and Garden Aid policies. This policy document specifies the actions that the Council will take if there are breaches of tenancy and/or breaches of Council policy, concerning gardens and houses.

The Council will ensure that this Policy does not discriminate between tenants on any grounds. Standard information and documentation will be made available in different languages and other formats as required, to enhance the promotion of equal opportunities for all tenants.

Purpose of Document: This section describes the circumstances in which these kinds of Serious Tenancy Breaches (STBs) occur, and states how the Council will respond to such breaches when it is made aware of them. As well, it sets out the standards that both landlord and tenant should meet, to comply with their legal obligations.

Section 1 Identification: Shows how properties, which appear to breach tenancy rules, will be identified.

Section 2 Assessment: Outlines the steps which will be taken to communicate with the tenant and assess any vulnerability due for example to age or disability. If such a vulnerability is identified we will work with the tenant to offer alternatives including support, before any STB action is initiated. It outlines the assessment process, and defines the criteria by which the extent of the problem will be judged.

Section 3 Sanctions: Describes the attempts that will be made to ensure the tenant cooperates and explains how STB's can be resolved without recourse to sanctions. It considers the legal powers that may be used against the tenant and describes the circumstances in which those powers will be used.

Section 4 Appendices: Contains the warning letters to tenants, extracts from the relevant legislation and NIMBUS process maps.

Purpose of policy document

Policy – This policy document clarifies and systematises existing arrangements followed by East Lothian Council's Community Housing and Property Maintenance section. It provides a framework for a robust and consistent approach towards Serious Tenancy Breaches within the Community Housing Service.

At the start of a tenancy, the Council will make every effort to ensure that tenants are informed of all the responsibilities and activities associated with maintaining it. Tenants will be encouraged to act appropriately to prevent placing their tenancy at risk. Tenants will be advised of the consequences of failing to adhere to their tenancy agreement. The methods by which the Council may seek to remedy a situation will be explained. Tenants judged vulnerable because of age, disability or for any other reason will be offered support and assistance to ensure their tenancy is maintained successfully. Where enforcement action is taken, this will be proportionate to the breach of tenancy conditions and clearly state what action the tenant must take to resolve the issue. We will make sure that tenants understand that the Council may seek to escalate enforcement actions or sanctions, if the issue(s) persist.

Law – The Council has a duty to protect its interests. As well, the Council has a duty to all its tenants and the wider community, to ensure that they are able to live in an environment that is attractive, well maintained and safe and secure. This includes taking appropriate action against those living in Council tenancies when they breach their tenancy agreements. Under the terms of the Housing (Scotland) Act 2001, most tenants are given Scottish Secure Tenancies (SSTs). SST tenants have a right to a written tenancy agreement. The East Lothian SST requires tenants to maintain their gardens and look after their houses. Enforcing the terms of the Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any other tenancy agreement provided by the Council will assist with this.

In addition to the legislation noted above, the laws regarding Environmental Health and Antisocial Behaviour may be used to tackle instances of STB.

Good Practice – Early intervention and working with the tenant to resolve problems are considered good practice, both by the Chartered Institute of Housing and the Scottish Housing Regulator. Likewise, guidance for tenants about 'acceptable' and 'unacceptable' behaviour must be provided. We will offer this guidance through explanatory leaflets and Internet downloads.

Targets - We will set specific targets for action by tenants and we will make clear the standard to which we expect those actions to be performed. Tenants will be given a fair period of time to remedy tenancy problems, and the timescales are defined in this policy. Community Housing Officers will also adhere to timescales, when responding to the complaints concerning the STB's that are outlined here.

Section 1. Identification of the need to take action

East Lothian Council has the right to inspect tenants' homes. This right is set out in the East Lothian Scottish Secure Tenancy (section 5.12)¹ and will be exercised as described in our STB procedural documentation and process maps.

There can be many triggers for inspection, and these include reports from Housing or Repairs officers, Social Workers, Police or Tenancy Support officers that the tenancy is not in an acceptable condition.

The Community Housing officer (CHO) will attempt to verify any complaints before any action is taken. S/he will talk to the complainer and visit the garden or house in order to assess the condition of the garden/house and decide whether action is required.

¹ As established by the Housing (Scotland) Act 2001

Section 2 – Assessment

The assessment of the condition of the house/garden will be conducted according to criteria that will be made clear to the tenant, in advance of the inspection. The tenant will be given specific, detailed and attainable goals, for remedying STBs.

2.1 Dealing with gardens that breach the tenancy terms

The CHO will assess whether the condition of the garden is acceptable or unacceptable. S/he will specify the actions the tenant must take, in order to correct the tenancy breach. S/he may take photographs of the garden, to capture detailed evidence of that breach.

S/he will write to the tenant, giving him/her a list of actions that must be taken to remedy specific problem(s) within a set time-scale. The letter will be sent first-class within one week of the assessment, except where complaints need to be investigated. One working day will be allowed for delivery, after which the tenant will be given a week (five working days) to remedy the issues found. This time period will be amended only if there are exceptional circumstances. Before sending the letter, the CHO will identify whether there is any evidence of a vulnerability, including age or disability that requires support. Examples of support needs are given below. S/he will consider as well, whether the tenant is likely to qualify for assistance under the ELC Garden Aid scheme.

If there is no response from the tenant, or the work has not been completed by the specified deadline, the CHO will contact the tenant to discover why this is. S/he will decide what further action to take, depending on whether there are mitigating circumstances. This will be decided on a case-by-case basis and may include:

- The tenant is/has been away on holiday
- The task is too big to be completed within the timescale
- A Tenancy Support need is identified due to vulnerability

If no mitigating circumstances are evident, the tenant will be written to, warning that s/he has only a further week to complete the work. If s/he fails to do so, then the sanctions and/or legal remedies described in Section 3 of this policy will be triggered.

If there is a legitimate reason for the tenant's delay, the deadline may be extended by up to a fortnight. Where a Tenancy Support issue is detected the problem(s) will be discussed with the Area Housing Manager, who will decide whether support is necessary. Sanctions and/or legal remedies will be suspended for no more than one month whilst Tenancy Support officers attempt to resolve the issue, by working with the tenant. An extension will be granted only at the discretion of the Area Housing Manager.

2.2 Dealing with houses that breach the tenancy terms

On receipt of a complaint, and after making checks as to the circumstances of the tenant, the CHO will arrange to visit the property and inspect it. Should the tenant be reluctant to allow a visit, s/he will be reminded that the Council has a right to inspect its properties at any time. Whilst every attempt will be made to make an arrangement for a visit at a time convenient to the tenant, if necessary the Council may force entry.

The CHO will assess the condition of each room in which it is alleged that the tenant is breaching his/her tenancy and compile a report. With the tenant's permission, s/he may also take photographs of the condition of the house. S/he will note specific items requiring action, for example the removal of pet faeces, food remains and vomit. Breaches that result from damage and/or unauthorised repairs work will also be recorded. A list of items that trigger a need for remedial action, derived from Good Practice guidelines set by the Chartered Institute of Housing and the Scottish Housing Regulator, is attached to this policy in the appendices. The tenant's support needs, if any, will be identified, as well and appropriate support will be offered after discussion with the area manager.

Whether or not the tenant signals verbal agreement, s/he will be sent a letter by the CHO within one week (five working days), which contains a copy of the tenancy condition report, reminds the tenant of the specific actions that the Council requires him/her to take, and specifies the deadline for taking those actions. If the tenant puts the problem(s) right then no further action will be taken, although the CHO may visit the property (at times arranged with the tenant), to check that its condition has not deteriorated.

The tenant will be told that s/he must deal with these issues within a set timescale. That timescale will depend on the seriousness of the breaches and the amount of work required to put them right, but will be no less than one week from receipt of the letter of notification and no more than 8 weeks, except in circumstances which, in the view of the Area Housing Manager, require extra time to be allowed.

If there is no response from the tenant or the work has not been completed by the specified deadline, the CHO will contact the tenant to establish why this is. S/he will decide what further action to take, depending on whether mitigating circumstances exist. This will be decided on a case-by-case basis and delay reasons may include:

- The tenant is/has been away on holiday
- The task is too big to be completed within the timescale
- There are undetected Tenancy Support needs

If no mitigating circumstances are evident the tenant will be written to, warning that s/he has only a further week to complete the work. If s/he fails to do so, then the sanctions and/or legal remedies described in Section 3 of this policy will be triggered. For the vulnerable, any sanctions and/or legal remedies being considered, will be suspended whilst the Tenancy Support officers attempt to resolve the issue by working with the tenant. The time allowed for the support intervention will not exceed three months. An extension will be granted only at the discretion of the Area Housing Manager.

Section 3 Sanctions and Legal Remedies

Sanctions will be used only in extreme cases. The principal legal remedies available to the Council will be those conferred under the Housing (Scotland) Acts and the the Antisocial Behaviour etc. (Scotland) Act (2004), as well as the common law. Other legislation may be invoked when appropriate, such as Environmental Health laws. These make a variety of legal actions available to Community Housing and Property Maintenance, including:

- **Actions of Specific Implement.** These will be considered when the tenancy breach is one specific instance of unacceptable behaviour. Examples include dangerous garden sheds or rusty car bodies in gardens.
- **Environmental Health legislation.** This will be used in cases where the tenant's action or inaction puts public health at risk. For example, rat-infested bin bags left on a driveway.
- **A compulsory (management) move.** This will take place when for instance, a tenant has persistently failed to keep his/her garden in order. The tenant would be moved to a gardenless flat. We may seek to evict a tenant in order to move them.
- **Notice of Proceedings and Eviction.** These are the ultimate sanctions and will be used only as a last resort. A Notice of Proceedings (NoP) will be issued prior to court action. CIH and SHR guidance emphasises that NoPs must not be used as a threat, without being followed up with a Court action, if necessary. Nevertheless, an eviction may not take place following an NoP, because the tenant has responded by dealing with the issue.

The Council will ensure that this Policy meets all legislative and good practice requirements and minimises evictions. The legislation includes, but is not restricted to, the Acts mentioned above, Equality Act 2010 and the Homelessness etc. (Scotland) Act 2003. The Council will ensure that no tenant's human rights are breached by the implementation of this policy. In particular the Council will ensure that tenants have a fair hearing and will have respect for their private and family life, their homes and correspondence, in accordance with the Human Rights Act (1998).

The Council will work with tenants identified as vulnerable to explore alternatives to eviction, wherever possible. However, the Council may need to use that sanction as a last resort. Tenants and any qualifying occupiers who are due to be evicted will be fully advised of the homelessness responsibilities the Council has towards them. This will include advice and assistance about temporary accommodation and how to secure alternative permanent accommodation. In addition, the Council will ensure that no personal data relating to eviction is passed to a third party in breach of the Data Protection Act 1998. This includes information given to qualifying occupiers and locally elected members.

The Council operates a Complaints Procedure, which is available to any applicant who is not satisfied with the way in which their case has been dealt with. Details of the Complaints Procedure can be obtained from any Council office.