

 <b>January 2015 Executive</b>		<b>Agenda Item No.</b>  <b>3</b>
<b>Title</b>	Housing Appeals and Review Panel	
<b>For further information about this report please contact</b>	Jacky Oughton Sustaining Tenancies Manager Housing and Property Services 01926 456433 Jacky.oughton@warwickdc.gov.uk	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Housing Appeals and Review Panel Amendment of Powers – Exec 23.06.10	
<b>Background Papers</b>	Guidance Notes – Appendix A	

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes
<b>Equality Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive		Bill Hunt
Head of Service	18.12.2014	Andy Thompson
CMT		
Section 151 Officer	29.9.2014	Mike Snow
Monitoring Officer		
Legal	29.9.2014	Max Howarth
Finance	29.9.2014	Mark Smith
Portfolio Holder(s)		Norman Vincett
<b>Consultation &amp; Community Engagement</b>		
<b>Final Decision?</b>		Yes
<b>Suggested next steps (if not final decision please set out below)</b>		

## **1. Summary**

- 1.1 This report concerns the amending powers of the Housing and Appeals Review Panel (HARP) and the Guidance Notes issued for members of the Panel.
- 1.2 The report has been prompted by the introduction of new legislation to address criminal behaviour and the roll-out of new ways of working for the Council, which are intended to streamline the way the Council operates.
- 1.3 The changes to the Guidance Notes are designed to enhance the clarity of purpose for HARP by helping Members better understand its remit, scope and the applicability of Special Responsibility Allowances for those Members who sit on HARP.

## **2. Recommendation**

- 2.1 The Executive is recommended to approve:
- 2.2 That the powers of HARP be amended to hear appeals against the service of a Notice of Seeking Possession under the Anti-Social Behaviour, Crime and Policing Act 2014.
- 2.3 That the powers of HARP be amended so that it no longer hears appeals made in connection with the following:
  - Second Stage Homelessness Decisions (for example appeals against a decision of 'intentionality')
  - Unsuitability of properties offered in discharge of homelessness duties (including cases where it is alleged that the offer was unreasonable)
  - Exclusions from the Council's Housing Register.
  - Service of Notice of Seeking Possession in respect of breaches of Tenancy Conditions (for example nuisance caused by the tenant)
- 2.4 A recommendation to the Council that an amendment is made to Section H of Part 3 of the Council's Constitution (Local Choice Functions, Council Functions and Executive Functions) to delete the powers noted above in 2.3 and to include the addition power noted above in 2.2.
- 2.5 A recommendation to HARP to adopt and adhere to the amended Guidance Notes for the Housing Appeals and Review Panel (HARP) (see Appendix A)

## **3. Reasons for the Recommendation**

- 3.1 The current HARP powers and scope of its activity were approved by the Executive at its meeting on 2<sup>nd</sup> December 2009 with further amendments being agreed on 23<sup>rd</sup> June 2010. Since then, there have been changes in national legislation to which the Council needs to respond to maintain compliance with the law.
- 3.2 Under the Anti-Social Behaviour, Crime and Policing Act 2014 the Council can apply to the County Court for absolute possession of a secure tenancy. The court must grant possession (subject to any available human rights defence raised by the tenant, including proportionality) provided the landlord has followed the correct procedure and at least one of the following five conditions is met:

- the tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence;
- the tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breached a civil injunction;
- the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a criminal behaviour order (CBO);
- the tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour; or
- the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a noise abatement notice or order.

As part of the possession process, the Council first has to serve the tenant with a Notice of Seeking Possession (NSP). There is a statutory requirement that the Council must offer any tenant served with a NSP an opportunity to appeal against the service of the notice.

- 3.3 The most appropriate forum for such an appeal to be heard is HARP. This is because the HARP is independent of the officers who have made the original decision to serve the NSP. The HARP panel members are experience in hearing appeals against other notices, such as Notice to Seek Possession under the Introductory Tenancy regime.
- 3.4 There is however a number of other appeals currently dealt with by HARP that could be more effectively and rapidly dealt with by other means. This will help improve the service to our clients by speeding up the time between them submitting an appeal or challenge and that appeal or challenge being considered and a decision made and notified to the client.
- 3.5 The appeals that can be dealt with outside of HARP are:
- Second Stage Homelessness Decisions (for example appeals against a decision of 'intentionality')
  - Unsuitability of properties offered in discharge of homelessness duties (including cases where it is alleged that the offer was unreasonable)
  - Exclusions from the Council's Housing Register
  - Service of Notice of Seeking Possession in respect of breaches of Tenancy Conditions (for example nuisance caused by the tenant)
- 3.6 The way in which appeals against these decisions can be dealt with in the future are detailed below.

Appeal	Forum	Notes
Second Stage Homelessness Decisions	The homeless review decision will be undertaken by a senior officer	The requirement in the homeless legislation requires the review decision to be carried out by a more senior officer than the original decision officer.
Unsuitability of properties offered in discharge of homelessness duties	The homeless discharge review decision will be undertaken by a senior officer	The requirement in the homeless legislation requires the review decision to be carried out by a more senior officer than the original decision officer.

Exclusions from the Council's Housing Register	The exclusion from the council housing register review will be undertaken by a senior officer.	The requirement in the Housing Act 1996 requires the council to carry out a review by an impartial officer to the original decision.
Service of Notice of Seeking Possession in respect of breaches of Tenancy Conditions	The decision to serve the Notice is taken by the Rental Income and Financial Inclusion Manager.	The Council must prove to the Court that it has followed the Ministry of Justice pre-court protocol, show that the application to the Court is appropriate and proportional, and demonstrate that assistance and support have been offered to the tenant

3.7 The appeals that would continue to be heard by HARP are detailed below.

Appeals against intention to request warrants (rent arrears)
Appeals against refusal of permissions under Conditions of Tenancy, e.g. running a business, erecting structures
Appeals against refusals to carry out disabled adaptations to a Council property
Appeals against the Service of Notice of Possession proceedings under the Introductory Tenancy regime.
Appeals against the service of a Notice to extend an Introductory Tenancy
Appeals against the service of Notice to Seek Possession of a Demoted Tenancy
Appeals against a decision not to award the Resettlement Service and appeals against a decision not to award a payment under the Tenants Incentive Grant Scheme.

#### **4. Policy Framework**

- 4.1 HARP has authority delegated to it under the Council's Constitution to hear appeals against decision of the Council relating to specified housing matters. The remit of HARP can only be amended by a resolution of the Council.
- 4.2 Revised HARP procedures were adopted by the Executive at its meeting on 2<sup>nd</sup> December 2009 and amended in June 2010.
- 4.3 The changes proposed in this report, which are operational, will not impact on the Council's overall Housing Strategy or the Sustainable Community Strategy

#### **5. Fit for the Future**

- 5.1 The proposed new power for HARP fulfils a statutory requirement. By reducing the links in the decision making chain, the reduction in appeals and challenges to be heard by HARP will streamline the way the Council delivers its services. This represents a positive contribution to the ethos of Fit for the Future which includes simplifying the way the Council works in the interests of focusing resources where they are most effective.

## **6. Impact Assessments**

- 6.1 The amendments proposed to the powers of HARP will not impact adversely on the Council's approach to and discharge of its duties in respect of equalities and fairness.

## **7. Budgetary Framework**

- 5.1 There are no direct budget implications arising from the recommendation

## **8. Risk Assessment**

- 8.1 The Council's legal advisors have been consulted on the recommended changes and have advised that there is a minimal risk to the Council of challenge over the implementation of the recommendations.
- 8.2 There is a risk that by not adopting the recommendation, those tenants who have been served with a NSP under the Anti-Social Behaviour, Crime and Policing Bill 2014 will have not been given the right of appeal against the notice. This means that any subsequent application for possession would be dismissed by the Court.
- 8.3 Any risk from removing appeals from the HARP terms of reference have been addressed through the use of more suitable procedures, as detailed in this report.

## **9. Alternative Option(s) considered**

- 9.1 The terms of reference for HARP could remain unchanged. This would mean that tenants would be denied the right of appeal under the Anti-Social Behaviour, Crime and Policing Act 2014. This in turn would mean that an application to the County Court for Possession would be dismissed by the Court, harming the Council's reputation as a competent and responsible litigant and reducing the effectiveness of the Council's approach to working alongside other agencies, such as the Police, to reduce criminal behaviour. Not amending HARP to address the requirements of the Anti-Social Behaviour, Crime and Policing Act 2014 is not therefore a viable option.
- 9.2 Leaving the current range of appeals of challenges with HARP would not improve the speed and efficiency of dealing with such matters, compromising the Council's desire to streamline its working practices in pursuit of Fit for the Future.

## **10. Background**

- 10.1 Homelessness Appeals including
- Second Stage Homelessness Decisions (for example appeals against a decision of 'intentionality')
  - Unsuitability of properties offered in discharge of homelessness duties (including cases where it is alleged that the offer was unreasonable)
  - Exclusions from the Council's Housing Register
- 10.1.1 Section 202 of the Housing Act 1996 as amended by the Homelessness Act 2002 states that in the cases detailed above, the client or applicant has a right to a review of any such decisions. The law requires that any such review should be carried out by someone more senior than the person who made the decision

and the person should not have been involved in making the original decision. These two criteria are in place to make sure that there is a degree of independence. The person conducting the review must also have sufficient understanding and experience of the relevant legislation.

10.1.2 It is proposed that either the Housing Advice Manager or the Senior Housing Advice Officer will conduct Homelessness Appeals, as detailed above in 10.1. This will make sure that the person undertaking the review has not been involved in the original decision and that they are suitably experienced in the appropriate legislation. If either the Housing Advice Manager or the Senior Housing Advice Officer cannot conduct the review, for example because they have both been involved in the original decision, then the Housing Strategy and Development Manager would conduct the review.

10.2 Appeals against service of a Notice of Seeking Possession (NSP).

10.2.1 There is already an adequate safeguard in the reasonableness of a decision to serve a NSP in the form of the Court hearing that will take place should such a NSP progress to the a full possession hearing. Any NSP Notice must state the ground or grounds on which the Court will be asked to make the order for possession and give particulars of that ground in sufficient detail for the tenant to know the case against them. When making a claim for possession the Council must

- Prove to the Court that it has followed the Ministry of Justice's pre-court protocol
- Show that application to Court is appropriate and proportional
- Demonstrate that assistance and support has been offered to the tenant

10.2.3 Failure to adhere to the above, which are designed to offer safeguards to the defendant, may mean that the application will fail and the Council is likely to be criticised by the Court.

10.2.4 NSPs are authorised by the Rental Income and Financial Inclusion Officer

10.2.5 Taken together, the need for a NSP to be authorised by Rental Income and Financial Inclusion Officer, to be sufficiently robust to withstand challenge in Court and the legal provisions to safeguard the interests of the defendant provides sufficient incentive for the Council to only serve NSPs when absolutely necessary and in the correct way, obviating the need for a review by HARP.

10.3 Appeals against service of a Notice of Seeking Possession (Anti-social Behaviour, Crime and Policing Act 2014).

10.3.1 Under the Anti-Social Behaviour, Crime and Policing Act 2014 the Council can apply to the County Court for absolute possession of a secure tenancy. The Council has to serve the tenant a NSP. There is a statutory requirement that the Council must give to the tenant an opportunity against the service of the notice. The Appeal has to be lodged within seven days from the date of service of the notice. The appeal must be heard before the NSP becomes live which has to be a date not less than 28 days from the date of service. The Council has adopted a period 35 days to. There is no first stage appraisal of the Appeal by Officers because of the tightness of the timescale. If the NSP is upheld, or there is no appeal, the Court must then grant possession on demand.

10.4 Guidance Notes for Members of HARP

10.4.1 The Guidance Notes for Members of HARP have been amended to include the changes to the terms of reference.

10.4.2 As part of the work to include the changes in the scope of HARP, a number of improvements were identified that would reduce any risk of ambiguity in the overall terms of reference for HARP. The Guidance Notes have therefore been amended to give members of HARP clarity as to the role of the HARP, the correct processes and procedures that are required and to make sure that all members of the HARP are provided with sufficient training and support to help them deliver the best outcomes for tenants and for the Council.

## 11. Payment of Special Responsibility Allowance

11.1 Members have asked for clarification about payment for allowances when sitting on HARP. These payments are made under the Members' Allowances Scheme as a Special Responsibility Allowance. The Members' Allowances Scheme notes:

- a) For each year a special responsibility allowance shall be paid to those Councillors who hold the special responsibilities in relation to the authority that are specified in Schedule 1 to the scheme.
- b) Subject to paragraph 5, the amount of each such allowance shall be the amount specified against that special responsibility in that scheme.
- c) Only one special responsibility allowance will be payable and this will normally be the largest for which the Councillor is eligible.

This current payment is £135 per day or £67.50 per half day.

11.2 Under the terms of the current Members' Allowances Scheme those Councillors who receive a Special Responsibility Allowance in respect of any of the roles listed below would not be entitled to receive the allowance for attending a HARP:

- Leader of the Executive
- Portfolio Holders on Executive
- Non-Portfolio Holders on Executive
- Chairmen of Overview and Scrutiny Committees
- Chairman of Planning Committee
- Chairman of Standards Committee
- Chairman of the Licensing & Regulatory Committee
- Chairman of the Warwick District Towns
- Conservation Area Advisory Forum
- Chairman of Employment Committee
- Vice-Chairman of Planning Committee
- Leader of an Opposition Group (minimum of four members)

11.3 The above arrangement has been in place since the introduction of the Members' Allowances Scheme and was last approved by Council on 14 ay 2014. It is noted that previously Members may well have received payments for two special responsibility allowances, through no fault of their own and no action will be taken to recover these payments. Members should be assured that a more robust system is now in place to ensure that correct payments are made.