



REPORT TO: COMMUNITIES COMMITTEE ON 3 MARCH 2020

SUBJECT: NO ACCESS POLICY

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 This report asks the Communities Committee to consider and approve a No Access Policy for Council tenants. The policy aims to reduce barriers faced by the Council in accessing tenants' homes to carry out statutory landlord duties in relation to the improvement, repair and servicing of its housing stock.
- 1.2 This report is submitted to Committee in terms of Section III (G) (2) and (3) of the Council's Scheme of Administration relating to exercising all the functions of the Council as a Housing Authority and the management and maintenance of the Council's housing stock.

2. RECOMMENDATION

2.1 It is recommended that the Communities Committee:

- (i) notes the Council's new legal duty to install satisfactory smoke and carbon monoxide alarms of a required specification in all Council housing stock by February 2021;**
- (ii) consider and approve the draft No Access Policy as set out in Section 7 and APPENDIX I to assist in achieving this;**
- (iii) approve a period of consultation with tenants and stakeholders; and**
- (iv) considers the consultation feedback at the meeting in April 2020.**

3. BACKGROUND

- 3.1 Moray Council, as a social landlord, has a duty under the Housing (Scotland) Act 1987, as amended by the Housing (Scotland) Acts 2001 and 2006 to ensure all council housing stock meets the legally prescribed 'Tolerable Standard' in terms of property condition and safety. The legislation also provides that landlords, or any authorised persons, can access the property to carry out inspections and any identified remedial works, provided 24 hours' notice has been given in writing. Where entry is refused by a tenant, forcible

entry can be made provided the tenant has been given every opportunity to give access voluntarily.

- 3.2 The rights and responsibilities of both the tenant and the Council in relation to access to property are set out in the secure Scottish tenancy agreement which is signed by every tenant at the start of each tenancy.
- 3.3 Where tenants do not engage or provide access, Moray Council has an escalation and forced entry process in place as part of its Gas Safety Management Procedures to allow legal duties in relation to gas safety to be met. This process is based on the Council's legal right to access under the legislation. The current Gas Safety Management Policy was approved by this Committee on 17 October 2017 (paragraph 11 of the minute refers) and agreed that the full cost of forcing entry should be passed onto those tenants who fail to give the Council access.

4. NEW TOLERABLE STANDARD LEGISLATION

- 4.1 In response to the tragic Grenfell Tower disaster, the Scottish Government have amended the tolerable standard through the introduction of the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019. This further extends the already high standard of protection regarding fire and carbon monoxide in social housing and brings it in line with the high standards already in place in the private rented sector. This places a new duty on the Council to ensure all housing stock have:
 - 'satisfactory equipment for detecting fire and giving warning in the event of fire or suspected fire'; and
 - 'satisfactory equipment for giving warning if carbon monoxide is present in a concentration that is hazardous to health'.
- 4.2 The Scottish Government 'Tolerable Standard Guidance: Satisfactory Fire Detection and Satisfactory Carbon Monoxide Detection' can be found at <http://spman.moray.gov.uk/MANComRepDraftSite/HandPLib/Communities%20Committee/2020-03-03%20Communities/No%20Access%20-%20APP%20II%20-%20Fire%20Detection%20BSI%20Standards%205839%20part%206.pdf> and provides further details on specifications. The upgrade work required includes mandatory interlinked alarms, specified locations of alarms and risk assessments to meet the required standard.
- 4.3 The new tolerable standard comes into force in February 2021. The Scottish Housing Quality Standards (SHQS) will be amended to reflect this change and the Scottish Housing Regulator will monitor the Council's compliance from this date through the Annual Return on the Charter (ARC).
- 4.4 The necessary upgrade work to meet this new requirement is already being carried out in all void properties. An improvement programme has been developed for the remaining tenanted properties. This includes the procurement of suitable electrical contractor(s). When contractor(s) are in place, all tenants will receive a letter explaining the new legislation, the work required and what they will need to do to ensure the work can take place, i.e. give access to the contractor. The main risk the Council faces in completing

this programme presents where tenants' fail to engage or give access to carry out the required upgrade.

- 4.5 On 12 February 2020, the Council approved the Housing Revenue Account budget for 2020/21 (paragraph 12 of the draft Minute refers). The budget allocates £2.2m for smoke and carbon monoxide alarm upgrades.

5. NO ACCESS ISSUES

- 5.1 The Council recently offered heating upgrades to 418 tenants. The works will assist the Council to comply with another statutory requirement i.e. the Scottish Government's Energy Efficiency Standards for Social Housing (EESH). Of the 418 tenants, 202 tenants (48%) accepted the upgrade. However 15 tenants (4%) have refused while the remaining 201 tenants (48%) have not replied. That is a combined total of 52% of tenancies that will require extra communication, negotiation, further assistance or where forced entry could be considered necessary. Similar levels of no access for planned works have been evident in previous years and it can be assumed that the smoke and carbon monoxide alarm upgrade programme will face similar constraints. This is comparable to Falkirk Council who had an initial 60% no access rate for their smoke and carbon monoxide alarm improvement programme.
- 5.2 The Council recognise that having work carried out in the property can be disruptive and daunting for some tenants and that valid refusal reasons are often associated with age, frailty or physical /mental health issues. Other common refusal reasons include affordability, pet issues or not wanting the disruption in their home.
- 5.3 Such no access issues can prevent the Council carrying out its statutory duties as a landlord and can cause major disruption to essential maintenance, improvement and servicing programmes. Given the level of no access cases that the Council has been experiencing over a number of years, there is clearly a need for a comprehensive and robust escalation process which allows staff within the Housing Service to resolve these barriers to access in a structured way.

6. FORCED ENTRY AND COSTS

- 6.1 Forced entry will always be considered a last resort. The Council's forced entry rates for dealing with gas servicing over the past three reporting years have decreased significantly. Cases of forced entry appointments have decreased 52% since 2016/17 with the number of actual forced entries decreasing 36%. This has been attributed to:
- escalation process that was implemented through internal procedures;
 - raising the profile of the importance of access with tenants; and
 - increasing the re-charging rates for forced entry in line with rising costs which may have acted as a deterrent.
- 6.2 2018/19 figures show that, of the Council's 4,796 gas properties, 30 cases (0.6%) progressed to a forced entry appointment. Of these, 21 tenants (0.4%) gave access to the property at the appointment. Only 9 cases (0.19%)

required a forced entry. Officers aim to mirror these low forced entry rates through the proposed escalation process.

- 6.3 Current forced entry rates for gas servicing vary between £89.17 and £169.80. These are based on the Schedule of Rates held by the Direct Labour Organisation (DLO) which includes the costs of trades' time and any materials required to repair the damage caused by forcing entry such as locks. The forced entry rates for the No Access Policy will be calculated in the same way and will depend on which trades' are used for the specific work required.

7. PROPOSED NO ACCESS POLICY

- 7.1 A draft No Access Policy (**APPENDIX I**) has been developed to ensure access to Council properties where necessary. The draft policy adopts the same escalation and forced entry process as is currently in place for gas servicing. The draft policy includes a focus on customer contact to make mutually convenient appointments wherever possible in an attempt to minimise the number of no access cases. Staff will communicate with tenants who do not respond or refuse works, identify the reasons and individual circumstances and whether the tenant needs support or assistance to allow the works to take place. Despite this assistance, some tenants may still refuse to engage or co-operate without a valid reason. In these circumstances, the Council would be required to exercise its legal right to gain access. Officers aim to keep forced entries to a minimum in line with gas forced entries.

- 7.2 This broadened No Access Policy will primarily assist the Council to deliver its smoke and carbon monoxide alarm upgrade programme. Implementation of the policy will also ease service delivery in other scenarios where the Council, as a social landlord, is required to meet any further legislation, regulation or contractual obligations. These include:

- servicing of all heating types, smoke alarms and carbon monoxide alarms;
- improvement programmes required to meet any new safety or energy efficiency legislation;
- to address any new build Council house defects within the first year of occupation; and
- property condition surveys and inspections, including surveys for energy performance certificates (EPCs) and asbestos surveys.

- 7.3 The draft policy has been developed with this in mind and is intended to be applicable to various scenarios where the Council, as a social landlord, requires access to any of its housing stock.

8. CONSULTATION

- 8.1 It is proposed that a consultation on the draft No Access Policy will be open from 3 March 2020 to 24 March 2020, to allow tenants and other relevant stakeholders the opportunity to respond. The consultation will include:
- the publication of the draft No Access Policy on the Council's website along with an online survey which will be shared across the Council's social media platforms; and
 - feedback from relevant stakeholders with a vested interest as follows:
 - Moray Council tenants;

- the Register of Interested Tenants;
- Moray Tenant's Forum;
- Community Councils and Area Forums.

9. FUTURE ACTION

- 9.1 A further progress report with the outcome of the consultation process, along with a final No Access Policy, will be presented to this Committee in April 2020.
- 9.2 Subject to the consultation feedback, and Committee's approval in April, supporting operational procedures will be developed and implemented to support the policy and staff.
- 9.3 Officers will continue to highlight the Council's legal right of access for essential work in an attempt to raise tenants' awareness around the implications of no access cases to the tenant and the Council, as well as promoting the provision of support and assistance for tenants who need it. This information will be incorporated at sign-up interviews as well as articles in the Tenant's Voice newsletter and Council social media pages to encourage higher access rates.

10. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The No Access Policy supports Priority 1 of the LOIP 'Growing, diverse and sustainable economy' and Priority 4 of the Local Housing Strategy to improve the condition and energy efficiency of social housing stock.

(b) Policy and Legal

This policy has been developed in line with the legal provisions set out within the Housing (Scotland) Act 1987, as amended by the Housing (Scotland) Acts 2001 and 2006 and the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019.

(c) Financial implications

There are no financial implications arising from this report.

(d) Risk Implications

Non-compliance by the Council in respect of their statutory duties under the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 in relation to satisfactory smoke and carbon monoxide alarms presents a number of significant risks. It can lead to serious injury to life for those living in a non-compliant property. This risk also extends to neighbouring properties. The Council need to safeguard their tenants and minimise the risk to the Council of any potential prosecution or intervention from the Scottish Housing Regulator.

(e) Staffing Implications

Due to the scale of the improvement programme, external contractors are required and have been appointed through the necessary procurement process.

(f) Property

There are no property implications arising from this report.

(g) Equalities/Socio Economic Impact

Article 1 and 8 of the Human Rights Act 1998 provides basic rights to property and privacy. The policy content would provide objective justification to impede these rights due to the Council using proportionate means to adhere to legal duties in relation to tenant safety.

(h) Consultations

Consultation on this report has taken place with the Acting Head of Housing and Property Services, Housing Services Manager, Building Services Manager, Property Services Manager, Acting Housing Strategy and Development Manager and Officers within the Housing Service, Legal Services Manager, Deborah O'Shea (Principal Accountant), the Equal Opportunities Officer and Caroline Howie (Committee Services Officer). Any comments have been incorporated into the report.

11. CONCLUSION

11.1 This report provides the Communities Committee with an update on new legislative provisions amending the tolerable standard in relation to smoke alarms and carbon monoxide detectors, as well as a draft No Access Policy for consultation to assist the Council with compliance of the new standard.

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