

## Family Intervention Tenancies An Update

### Overview

Family Intervention Tenancies (FITs) were introduced under the Housing & Regeneration Act (HRA) 2008 and in January 2009, the Government published guidance on how FITs should be used.

The Communities & Local Government guidance has been given in order to fill in the gaps that existed in the HRA provisions regarding the process for the tenant's right to review the termination of a FIT.

### What is a FIT?

The purpose of a FIT is to provide Registered Providers of Social Housing with the power to offer a Tenancy which is less secure than a standard Secure or Assured Tenancy.

FITs are voluntary Tenancies and Tenants (or occupants in the case of Tolerated Trespassers) cannot be forced to sign up to such a Tenancy Agreement. The sorts of person that Registered Providers may consider using such Tenancy with are:

- Tenants against whom a Possession Order has been made.
- Tenants against whom a Possession Order could be made.
- Persons against whom the Landlord feels a Possession Order could be made if they had a Tenancy.

An important point to note in the use of FITs is that the overall aim is to improve the behaviour of the Tenant and others who live with them through the provision (by the landlord and their partners) of Behaviour Support Services. A Behaviour Support Agreement is also signed between the landlord and the tenant and his / her family. Point 42 in the recent CLG

guidance details examples of the Behaviour Support Services that should be considered.

The Behaviour Support Services to be offered must be provided to the Tenant and members of their family in either residential accommodation used for the purposes of FIT or in new accommodation. This new type of Tenancy is not considered suitable for use in outreach Family Intervention Projects (FIPs).

FITs are not expected to be a quick fix and it is expected that in most cases FITs would run for between 6 months and a year or possibly even longer.

### **Granting a FIT**

All Landlords, regardless of type, must follow prescribed procedures when granting and ending a FIT. When the housing provider is considering offering a FIT to a Tenant a Notice must be served on the Tenant and should include the following details:

- Reasons for offering the FIT
- Details of the accommodation that will be provided
- The terms of the FIT (including any requirements regarding behaviour support services)
- An explanation of the loss of security of tenure associated with the FIT
- A clear explanation that the FIT is voluntary and that the Tenant is not obliged to give up their existing Tenancy.
- The steps that the housing provider will take if the Tenant does not enter into the FIT
- Sources of advice and assistance that the Tenant may wish to make use of.

## Terminating a FIT

In the case that a family has refused to accept support as defined in the Behaviour Support Agreement the housing provider may make the decision to evict the Tenant. Government guidance suggests however that where there are child protection issues the Landlord should wait until the long term future of any children has been decided prior to evicting the family.

There is one key difference in the way that Local Authorities and Registered Providers have to determine FITs; namely that the former must serve a Pre-Notice Notice (or Notice of Intent) and offer the tenant a review before serving a Notice to Quit.

Although the Nol and review relates to the termination of a FIT by a Local Housing Authority, the recent CLG guidance encourages all Registered Providers to mirror the approach taken by Local Authorities and provide an opportunity for the Tenants to request a review of the decision.

The Tenant has 14 days to request a review and on completion of this review, or in the case that the tenant does not request a review, the Local Housing Authority or Registered Provider may serve a Notice to Quit.

## The Review Process

On the 4<sup>th</sup> December 2008, a Statutory Instrument was published that gave details of how a review should be conducted. Key overarching points in the review process are the following:

- The person conducting the review should not have been involved in the decision to serve the Notice to Quit upon the Tenant and this person must be more senior than the original officer who took the decision.
- Hearings can be held both orally or via written submission

## Oral Hearings

If the Tenant requests an oral Hearing, the following steps must be taken:

- 1) The tenant must notify the housing provider that a review is requested within 14 days of receipt of the Notice and within 21 days they must send to the reviewer and to the Housing provider the following documentation:
  - a. A copy of any written evidence that they intend to rely upon.
  - b. The details of any person they intend to ask to give evidence.
- 2) Should the Housing Provider wish to respond to any information provided by the Tenant they must do so within 14 days of its receipt.
- 3) Should the Tenant have requested an oral Hearing the conduct of the Hearing is to be decided by the reviewer however the Tenant is allowed to be accompanied or represented by any other person.
- 4) The reviewer must allow both parties equal opportunity to state their case, provide evidence and to question any evidence stated. In addition any persons who are involved in providing Behaviour Support Services to the Tenant are also given the opportunity to give evidence and may be questioned by both parties.
- 5) The outcome of the oral Hearing must be notified to both parties in writing within 7 days of the Hearing.
- 6) Should the Tenant fail to attend the Hearing, the reviewer may proceed with the Hearing or give directions as to how the review will be conducted. Should the reviewer reach a decision, or decide Directions, both parties should be notified within 7 days.
- 7) The reviewer has the discretion to grant a postponement of the Hearing and reasonable notice of the date, time and place of any new Hearing should be provided to both sides.

- 8) If either party so requests or if the reviewer thinks it is necessary, any Hearing can be adjourned. Future Hearings can only be reconvened when all of the reviewers (if there are more than one) are in attendance unless both parties agree otherwise. Full details of any future Hearing should be given to both parties within a reasonable space of time.

### **Written Representations**

As an alternative to oral Hearings, written representations can also be used in the conduct of a review. The key points in this type of review are as follows:

- 1) The tenant must indicate within 14 days that a review is requested.
- 2) The Tenant should send to the reviewer and the Housing Provider any evidence to be taken into account within 21 days of the service of the Notice.
- 3) The response (if any) from the Housing Provider must be sent within 14 days of the receipt of any information.
- 4) When conducting the review, the reviewer must take into account the following:
  - i. The Notice that was served on the Tenant
  - ii. Any evidence submitted by either party
  - iii. Any representations received from persons providing Behaviour Support Services
  - iv. Any other information considered relevant by the reviewer
- 5) Notification of the decision of the reviewer should be provided to the Housing Provider and the Tenant as follows:
  - Within 28 days of the service of the Notice if the Tenant has not submitted evidence

- Within 14 days of any response provided by the housing provider
- Within 28 days of the housing provider receiving any evidence from the Tenant even if there has been no response

## **Conclusion**

Although the take up on FITs may be slow given the loss of Security that Tenants have to accept, Registered Providers and Local Authorities would be wise to incorporate into their Policy and Procedures how they would deal with FITs and also ensure that clear procedures are in place to help staff when they have to begin or terminate a FIT.

In addition, Housing Providers of all types may need to have a suite of documents ready and approved in order to deal with Family Intervention Tenancies. This could include Notices, a template Family Intervention Tenancy and other pro forma documentation that may be required for a FIT to be used.

Should you have any queries on the above or would like advice or assistance in drafting the documentation to be used in a FIT, then please do not hesitate to contact me.

**Lindsay Felstead**

**Associate (January 2009)**