

Item No;	Classification; OPEN	Date: 13 th January 2004	Meeting Name Executive
Report Title:		Review of the Secure Tenancy Agreement	
Ward (s) or groups affected		All	
From:		Strategic Director of Housing	

RECOMMENDATIONS

1. That the Executive notes the progress made to date in the drafting of amendments to the existing tenancy agreement for secure tenants.
2. That the Executive notes the motion that was passed at Tenants Council at its meeting on Monday 15th December 2003 and agrees to receive an update report of the Tenants Council meeting which is taking place on Monday 12th January 2004.
3. That dependent on the report back from Tenants Council the Executive consider and agree the changes proposed to the conditions of tenancy.
4. That the Tenants Handbook is prepared to complement the new tenancy agreement.
5. That the changes are to take place from the 5th April 2004.

BACKGROUND INFORMATION

6. Tenants Council nominated representatives to form a working party supported by officers to review the existing secure tenancy agreement and to develop proposals to amend and update the agreement.
7. The Working Party presented its proposals to Tenants Council at its meeting on the 14th April 2003. The primary objective of the Working Party was to modernise the agreement. This included.
 - An attempt to simplify the contents
 - Focus on issues of particular concern to tenants and the Council. This included issues such as anti-social behaviour and parking.
 - To, where practical, reduce the contents of the tenancy agreement and concentrate issues of policy and statutory entitlement to a new edition of the Tenants Handbook. This handbook is to be timed for publication with the changes to the Agreement.
8. Tenants Council requested that the proposals were considered at each Neighbourhood Forum. A further report was subsequently presented back to Tenants

Council with a summary and analysis of the views expressed by each Neighbourhood Forum. This report was presented on the 27th October 2003. A clause by clause review was undertaken and clauses were either agreed or amendments requested. In those instances where amendments were requested these were duly agreed and changes made.

9. The next stage of the consultation process involved the circulation of the draft proposals to each secure tenant. These draft proposals included all the changes requested by Tenants Council at its meeting. This was undertaken in November and early December 2003. Each tenant was invited to consider the proposals and make comments. These comments were carefully considered in advance of submitting a final report to Tenants Council at its meeting on the 15th December 2003.

10. At the meeting on the 15th December 2003 a report was presented that:

- Confirmed the incorporation of the changes in the draft that was circulated to individual tenants.
- Provided a feedback of the main views expressed by individual tenants.
- Provided an update on clauses that had been the focus of specific attention on the earlier meeting.

A copy of the report to Tenants Council is available as a background document to this item. The summary of the individual consultation process is also available as a background document to this item. Appendix 1 contains the final draft of the proposals. This draft mirrors the document circulated to tenants but has been updated to correct any formatting or typing errors. This document has been circulated to Executive Members only for background information.

11. There was some debate on the feedback from tenants and some delegates raised issues that has already been the subject of consideration at previous meetings of the Tenants Council on this matter. This specifically focused on:

- Individual clauses.
- Whether tenants should be provided by the Council with independent legal advice on the proposals.
- Whether certain clauses should be deleted and placed into the proposed Tenants Handbook.

12. As a result of time constraints a motion was proposed which was agreed by 13 votes, none against and no abstentions.

“ Tenants Council requires certain clarification on the draft proposals for the variations to the terms of your tenancy agreement/conditions of tenancy. Further Housing legal advice, which must be independent, needs to be sought with reference to Tenants Council delegates concerns raised at the meeting. The Executive needs to do the same and support the recommendation of Tenants Council before we move forward together”.

13. A subsequent meeting with the Chair and Vice-Chair of the Tenants Council has taken place. It was agreed that Tenants Council has already made and voted on various elements of the conditions of tenancy and these views had been accepted by the Council and incorporated into the draft proposals circulated to individual tenants. The further debate on those clauses and the subsequent motion did not take account of the process that had already been completed. It was therefore decided by the

Chair and Vice-Chair that the matter be reconsidered at Tenants Council at its next meeting on Monday 12th January 2004.

14. A verbal report will be provided to the Executive on the outcome of the above meeting.

KEY ISSUES FOR CONSIDERATION

Policy Implications

15. The proposed changes will require a review of all those individual policies and procedures currently in place that directly or indirectly relate to the existing tenancy agreement. A new Tenants Handbook will be prepared which will clearly explain the meaning and purpose of each clause and the respective obligations and responsibilities of both the secure tenant and Southwark Council as a landlord. It is intended that tenants will join officers to prepare the Tenants Handbook between January and April 2004.

Effect of proposed changes on those affected

16. The proposed changes will have a profound impact on all secure tenants.

Resource Implications

17. The proposed changes will have financial implications to the Housing Revenue Account. There will be increased emphasis on enforcement and management of the tenancy agreement. This is highlighted by the detailed clauses on anti-social behaviour, parking and other obligations. Housing will have the primary responsibility for the management of the tenancy agreement. There is however an increasing emphasis being placed on other Council services, for example warden patrols, as well as the metropolitan police to work in partnership with Housing to manage individual problems.

18. The Best Value Review of Housing Management is now entering the implementation stage. The decision to develop an Area based service with a recognition that a specialist style of management will emerge will take into account the needs that will be generated by the proposed tenancy changes. Whilst this report is not intended to supersede or pre-empt the finalisation of the structure it is inevitable that tenancy management and enforcement will be a significant element of the Area service. A one-off provision of £155k is included in the 2003/4 HRA budget to fund changes to the tenancy agreement.

19. Any additional on-going resource requirements which cannot be contained within existing revenue budgets will be identified as part of the 2004/5 HRA budget setting process.

Consultation

20. A detailed description above has outlined the work so far undertaken in the consultation process. This is in keeping with the Councils statutory obligations contained within Section 104 of the Housing Act 1985.

The consultation process has generated a great deal of participation. There has been a range of views expressed about the proposals. It will be noted that a number of clauses have attracted particular attention and comment. These comments have been taken into account during the drafting stages.

Comments of the Borough Solicitor and Secretary

21. Section 103 of the Housing Act 1985, gives the local authority the power to vary the terms of a secure tenancy and sets out the procedure to be followed before the terms may be varied. This includes a requirement to consult individual tenants and such consultation took place after further consideration by the Tenant's Council on the 27th October 2003. The Council has consulted on the proposed changes with both the Tenant Council and the Neighbourhood Forums.

22. Section 104 of the Housing Act 1985 requires the local authority to publish information about its secure tenancies in simple terms to explain the effect of express terms of its secure tenancies and to supply copies of such information to its secure tenants. The Council provides this information in the form of a Tenant's handbook which it proposes to amend once changes to the agreement have been finalised.

23. Tenancy agreements come within the scope of the Unfair terms in Consumer Contracts Regulations 1999. The regulations apply to contracts which have not been individually negotiated and sets out the circumstances in which a term will be considered Unfair. A term will be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer, in this case the tenant. The proposed new terms do not appear to fall foul of the regulations.

24. The proposed new clause 13 allows the tenancy to be succeeded to twice which is over and above the tenants entitlement under Housing Act.

25. The requirement to publish a copy of the rules for determining priorities which is currently set out in clause 29 of the Tenancy Agreement is now imposed by statute namely, Section 168 of the Housing Act 1996. It is therefore not necessary for it to be retained in the Agreement.

26. The Law commission has proposed a number of significant changes to the public sector tenancy regime and these may necessitate further changes to the tenancy agreement. The proposals are however not due to become law for some time.

Reasons for Lateness

27. Because of the need for re-referral to Tenant Council on 12/1/04 to complete consultation, this item could not be completed beforehand.

Reasons for Urgency

28. The tenancy agreement is targeted to be introduced in April and because of the protracted consultation a decision in January is required to try to achieve that target. There is a legal requirement to issue the new tenancy agreement 28 days before implementation, which allows 6 weeks between Executive decision and despatch to produce & print the necessary finalised documents, which is a minimum requirement.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Notes & Minutes of Working Party meetings. Copy of existing secure tenancy agreement Copy of existing policies and procedures for housing management services Copy of the report to 15 th December Tenant Council Copy of Individual Consultation with Tenants	Southwark Housing, Larcom Street Offices Walworth SE17	H.R.Marshall

Audit Trail

Lead Officer	Chris Brown, Head of Housing Management	
Report Author	Harry Marshall, Divisional Housing Manager	
Version	Draft 5	
Dated	9/1/04	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
List other Officers here:	No	No
Executive Member	Yes	No