

Item No.	Classification: Open	Date: 1 August 2013	Decision Taker: Deputy Leader and Cabinet Member for Housing
Report title:		Periodic Review of Tenants' handbook (including conditions of tenancy) and borough wide consultation/preliminary notification	
Ward(s) or groups affected:		All	
From:		Strategic Director of Housing and Community Services	

RECOMMENDATIONS

1. That the Deputy Leader and Cabinet Member for housing notes the proposed amendments to the 'Conditions of tenancy' with a view to going out to consultation as required by the law.
2. That the Deputy Leader and Cabinet Member for housing approve the proposed amendments to the 'Conditions of tenancy' as set out in appendix 1 for consultation.
3. The proposed amendments will return after a proposed 28 day consultation period for an IDM, after comments have been received and taken into account, via the 'Preliminary Notification' process.
4. That directly following the implementation date of this decision the mechanisms are put in place for the appropriate production and distribution to enable consultation with all Southwark tenants, via the 'Preliminary Notification' process.
5. That the Deputy Leader and Cabinet Member for housing notes expenditure for the statutory consultation with all tenants is £21k.

BACKGROUND INFORMATION

6. The objectives of the periodic review of the tenants' handbook includes an initial phase to the review 'Conditions of tenancy,' in order to ensure that the conditions of tenancy granted by the Council are fully up-to-date and legally sound to reflect any relevant changes in law.
7. The proposed changes have been the subject of extensive and detailed consultation with a Tenant council nominated 'task & finish' group and the council's legal department, including consultation in chambers with a leading housing Q.C.
8. In order to assure tenants of our best intentions a Tenant Friend has been appointed and worked alongside the task & finish group to ensure a transparent and fair approach in all matters.

KEY ISSUES FOR CONSIDERATION

9. The proposed changes, the variations to the 'Conditions of tenancy', are designed to improve this key document, which sets out the most pertinent elements of the rights and responsibilities of Southwark's council tenants, by doing the following:
- Allowing for the incorporation of changes in legislation and legal obligations since the last periodic review concluded in April 2010
 - Removing or amending any conditions of tenancy clauses wrong in law
 - Ensuring the compatibility with all London Borough of Southwark policies and procedures introduced or amended since the last periodic review in April 2010
 - Producing a shorter, more succinct, user friendly tenancy agreement, which encourages the engagement of the reader, especially in the case of new tenants, to enable them to understand both their rights and obligations to the Council
 - Giving additional emphasis on rent collection, tenancy checks and fire safety, the latter in the light of the Lakanal recommendations
 - Addressing changes made through the Localism Act on Succession and reflecting the new central government guidance on domestic violence and 'controlling and coercive behaviour'
 - Including practical updates to points of contact for the public subsequent to previous housing management reorganisation
 - Further increasing awareness of noise nuisance related to the laying of laminate or wooden flooring in blocks
 - Including changes to reflect current electronic communication, including social media and online services
 - Reflecting the Council's current powers with regard to the removal of vehicles, which is now prohibited
 - Removing information to the tenants' handbook to make the 'Conditions of tenancy' document more readable and practically useful, without affecting the rights or responsibilities of the tenant or the council.

Policy implications

10. The consultation on the proposed changes is designed to allow all local views to be taken into account. The changes are designed to align the 'Conditions of tenancy' with existing policies and procedures or, where these have become outdated due to legislative changes, further review of these policies will need to be undertaken.
11. Differences have arisen since the last iteration of the document in the light of national legislative and policy change, as outlined in the bullets above, and as a result of this review will impact elsewhere, as above. This work will continue beyond this exercise.

Community impact statement

12. The proposed changes apply to all tenants equally and do not advantage or disadvantage any particular group, as described by their protected characteristics. The consultation will ensure all people and communities have the opportunity to comment on the proposed changes.

13. Included in the proposed changes is extra emphasis on the rights of all people to be protected from all forms of domestic and other abuse and a greater emphasis on health and safety in general.

Resource implications

14. Postage and package for the preliminary notification was estimated at (for 39,000 records) £7,739.00; 2nd class postage = £9,360.00, giving a total of £17,099.00, excluding production costs, to be determined in line with the final decided format.
15. This has now increased by £4,195.00 to £21,294.00 due to a change in the specification for the notification, with additional information being provided, which has increased the number of printed pages now required for the borough-wide distribution of the preliminary notification.
16. The total cost of the preliminary notification and wider consultation exercise can be met within the existing Business Improvement Unit agreed expenditure.

Financial implications

17. None necessary as the financial requirements are within agreed current expenditure.

Consultation

18. Initial consultation with the Tenant council task and finish group has now concluded.
19. Statutory consultation is now required with all tenants, including joint tenants within the same household, across the borough, via the 'Preliminary Notification' process.
20. Consultation will also continue through the council's consultative relationship with area fora and Tenant council.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

21. The Housing Act 1985 gives local housing authorities the power to vary the terms of its secure and introductory tenancies and sets out the procedure to be followed before the terms may be varied. There are two stages to the variation procedure:
 - (i) Firstly, tenants must be served with a preliminary notice that specifies the variation and its effect, and, invites comments on the proposed variation within such time, specified in the notice, as the Council considers reasonable. In addition, under paragraph 7c of the current conditions of tenancy, the Council is also required to consult on such proposed changes with Tenant council. The Council must then consider any comments made by tenants and Tenant council before proceeding with the final stage of the procedure.
 - (ii) The second stage of the variation procedure requires the service of a notice of variation specifying the variation effected by it and the date on which it takes

effect. The period between the date the notice of variation is served and the date the variation comes into effect must be at least 4 weeks.

22. 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.
23. 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. Identical provision is made in respect of introductory tenancies and demoted tenancies under sections 136 and 143M of the Housing Act 1996. The Council provides this information in the form of a tenant's handbook. The revised handbook should be prepared and published to co-ordinate with the date from which any new conditions are to take effect.
24. This report recommends approval by the Deputy Leader and Cabinet Member to proceed with the first stage of the variation procedure for changes to the Council's conditions of tenancy. As noted in the report, the housing department has worked closely with the legal services department of the Council and a Tenant council nominated task and finish group to prepare draft changes. There are no apparent legal impediments to proceeding with the proposed consultation.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
SMT Conditions of tenancy review paper	Housing and Community Services, Community Engagement, Tooley Street SE1 2QH	Robert Johnson 020 7525 2640

APPENDIX

No	Title
Appendix 1	Description of proposed changes to 'Conditions of tenancy' for preliminary notification

AUDIT TRAIL

Lead Officer	Antoinette Stasaitis, Business Information Unit Manager	
Report Author	Robert Johnson, Service Development Officer	
Version	Final	
Dated	1 August 2013	
Key Decision	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	N/A
Cabinet Member	No	No
Date final report sent to Constitutional Team	5 August 2013	