



Tenancy policies should be published by every registered provider (including local authority landlords) in April 2012¹. You can't use the new tenure flexibilities until it is published.

- Do you understand the new forms of tenure and where these could help deliver your business objectives?
- Do you know what local authorities' tenancy strategies might expect of you?
- Have you thought through how you'll meet the requirements expected in the new regulatory standard?

GLHS is working with registered providers and local authorities across the country to answer these questions, developing policies that are right for customers and for business, with the minimum of fuss and bother. We are also working to develop tenancy strategies that all partners feel able to sign up to. This note draws on this experience to help others shape their approach. For more information about what we do and who we work with please visit www.gilleng.co.uk and look out for our notes on tenancy strategies and equalities analysis.

Tenancy Policy basics

Your tenancies must be compatible with the:

- Purpose of the accommodation
- Needs of individual households
- Sustainability of the community
- Efficient use of housing stock

Your policy must 'have regard' to the tenancy strategies of the local authority areas in which you work². That means you must show you have seriously considered the strategy, and if you do something different you must be able to explain why. It must also:

- Be clear and understandable by you and by your customers and potential customers
- Say what tenancies you'll use - when you'll offer fixed term tenancies of 5 years or more, lifetime tenancies and probationary tenancies, and the 'exceptional' circumstances where you'll offer tenancy terms of between 2 and 5 years
- State where you will (or where you won't) offer a subsequent tenancy after the first expires
- Say how you will support tenancy sustainment, prevent unnecessary eviction and tackle tenancy fraud and where you will grant any additional succession rights
- Say how you will deal with tenancy reviews and in particular help and advise people whose tenancies are coming to an end to find somewhere to live
- State how customers can complain or appeal and how you'll deal with these
- Comply with the Equality Act 2010, and other legislative requirements

You should also state how people can access your homes, including whether you intend to have a separate transfer list. If you are using affordable rents these will be included in your rent policy, but it's sensible to include within your tenancy policy where and when they will be used, and how you will ensure rents remain affordable.

Getting the right overall approach

This can be simple or complex (we've seen one or two that seem to be attempting social engineering!) but most are somewhere in between. Simpler is better because:

- This is an agreement – a compact – between you and your customers. You both need to understand it.

¹ Anticipated - based on timetable for amendments to regulatory standard

² These aren't required until 12 months after the Localism Bill is enacted ie, much later than Tenancy Policies!



- Being fair and transparent is difficult if you need multiple pages to explain your policy.
- You need to ensure that you have the capacity to deal with appeals and tenancy reviews. Lots of these mean lots of time spent managing them.
- There can be serious consequences if you get it wrong eg, if you miss notice deadlines fixed term tenancies will default to periodic tenancies, with more restrictive grounds for termination (assured and secure tenancies are periodic) - and you won't be able to rebase your rents.
- If you have lots of discretionary decisions to make (eg, when you might not reissue a tenancy) you will find it hard to achieve consistency and will lay yourself open to challenge and complaint (including through the courts), which take up lots of resources.
- Complex policies are likely to have more unintended consequences – better to start simple and adjust later when you understand what the impacts might be.

Correcting some common misunderstandings

- Even if you have no intention of using fixed term tenancies or indeed changing anything you do now, you must still have a tenancy policy from April 2012 that includes the content required by the regulator. Essentially, requirements are known now, even if the actual wording isn't expected to be confirmed until April 2012.
- You can currently only use fixed term tenancies if you have an agreed contract for development with the HCA but once the relevant sections of the Localism Act are 'switched on' (1st April 2012), every RP (including LAs) will be able to offer fixed tenancies, if it wishes to do so.
- Having a property at an affordable rent does not mean it must be on a fixed term tenancy, but you should make sure you have opportunities to rebase the rent at reasonable intervals to ensure they remain affordable in relation to the market.
- Re-basing rents means they may go down as well as up – you may not end up with the income your long-term business plan anticipates.
- Fixed term tenancies are not an appropriate way to manage misbehaving tenants. You have other mechanisms to do this: failing to take action in anticipation that the tenancy will end is likely to lead to legal challenge, eg, if you don't reissue a tenancy solely on the basis of tenancy breaches.
- If you decide to use fixed term tenancies, you don't have to have exceptions, even for people who are older or more vulnerable, but you must show how the needs of more vulnerable people will be catered for in terms of tenancy sustainment.
- Any exceptions don't have to be by client group eg, offering lifetime tenancies on sheltered housing relieves you of a large burden of reviews and offers stability to this customer group.
- Defining people to whom you will offer lifetime tenancies as 'older people' or 'disabled people' may be difficult to apply and will leave you open to challenge. For example, what happens if someone will attain the 'older' age within a week of signing their tenancy? What about the increasing pension age and extended working years – are people in work really vulnerable?
- Your policy can state that all fixed term tenancies will be renewed unless...(exceptions might include where you need to dispose of the property, or where someone is under-occupying etc.) provided you intend to abide by your policy (see the point above about tenancy breaches)
- It is not OK to leave decisions about reissuing tenancies to the discretion of staff. Your policy approach must be laid out and applied consistently!
- You don't need to wait for your local authority tenancy strategy. You can't 'have regard' to something that doesn't exist (we're doing our best to persuade authorities to publish soon).

It's getting tight to meet the deadline – remember you'll need to discuss the implications with your customers and consult properly on what you propose - so if you haven't started yet, you really must!

Lesley Healey, GLHS, November 2011