



## More freedom, more flexibility, more fairness? Tenancy strategies and policies, and equality

***Under the Localism Bill, local authorities will be required to have a tenancy strategy by January 2013. Registered providers should have a tenancy policy from April 2012 has 'regard to' local authorities' tenancy strategies.***

- Will strategies and policies comply with the duties you have under the equality legislation?
- Will the way in which you implement policy decisions be fair and equitable?

GLHS is working with local authorities and registered providers to develop tenancy strategies and policies that are fair as well as flexible, meeting local and organisation objectives and obligations. We can also work with you on developing mechanisms for evaluating and monitoring registered providers' responses to ensure that they too are acting fairly and fostering good relations amongst all your residents and customers. For more information about what we do and who we work with please visit [www.gilleng.co.uk](http://www.gilleng.co.uk) and look out for our notes on tenancy policies and tenancy strategies. We work closely with Joanna Jeffery and Richard Seager who focus primarily on equality and diversity [www.joannaiefferyandrichardseager.com](http://www.joannaiefferyandrichardseager.com) and who have provided this note.

### What you must do – the Law

The Equality Act 2010 places a duty on local authorities, and other organisations carrying out public functions, to promote equality. Public functions are likely to include registered providers involved in allocating, letting, managing and terminating social housing. Complying with the duty means that they should be able to demonstrate that they have paid '**due regard**' to the need to:

- Eliminate unlawful discrimination;
- Advance equality of opportunity between people who share a protected characteristic<sup>1</sup> and people who do not share it;
- Foster good relations between people who share a protected characteristic and people who do not share it.

Having '**due regard**' means incorporating the three aims of the Equality Duty in decision-making processes. Consideration of equality must influence all the decisions reached by public bodies – including what local authorities include in their tenancy strategy, how they intend to ensure their guidance is considered by registered providers and how registered providers respond through their tenancy policy.

The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people. Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services. This might mean treating disabled people better than non-disabled people in order to meet their needs.

In addition, the Human Rights Act 1998 covers local authorities and other public bodies when they are carrying out public functions<sup>2</sup>. Organisations that want to avoid appearing in court or being subject to judicial review will need to make sure that their tenancy strategies and policies are fair, advance equality of opportunity, foster good relations between different sections of the community and do not infringe people's human rights.

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<sup>1</sup> The protected characteristics covered by the Equality Act 2010 are age; disability; gender reassignment; pregnancy and maternity; race including ethnic origins, colour or nationality; religion or belief – including lack of belief; sex; sexual orientation

<sup>2</sup> For more details see the National Housing Federation's website: [www.housing.org.uk](http://www.housing.org.uk)  
[http://www.housing.org.uk/publications/find\\_a\\_publication/legislation/weaver\\_v\\_london\\_quadrant\\_hou.aspx](http://www.housing.org.uk/publications/find_a_publication/legislation/weaver_v_london_quadrant_hou.aspx)



## **Why you should do it – local needs and local priorities**

Even without the robust legal framework, there are compelling reasons for making sure your tenancy strategy or policy is fair, can be seen to be fair and is based on a sound knowledge of local needs and priorities. Basing the tenancy strategy on a shared, clear understanding of these needs and priorities will encourage registered providers and local authorities to work together as tenancy policies are shaped, and help to ensure that these are also equitable.

At the local level, political leaders and members of the community will be reassured that decisions about who gets what and for how long will not be made on an arbitrary basis but will be transparent and can be accounted for. Knowledge of local needs together with a fair system of matching need with available housing and letting homes will help achieve a better use of social and affordable housing. Ensuring that there is the right support for applicants and tenants will make sure that people aren't disadvantaged because of their characteristics.

Your tenancy strategy or tenancy policy can also be a key part of promoting sustainable and cohesive communities, by recognising and addressing the potential tensions that might arise, for example when tenants are on differing rents in similar properties or have different tenancy terms.

Some of the ways in which you can demonstrate you have paid 'due regard' to your duties under the Equality Act and the Human Rights Act include:

- Using tenancy profiling information to assess local needs and demands
- Carrying out an equality impact assessment or equality analysis of the draft tenancy strategy or policy
- Seeking the views of community-based organisations, current and potential tenants
- Including equality related considerations in your procurement process and in any agreements between local authorities and local registered providers

## **Key questions**

There are several key questions that you need to ask yourself when developing your tenancy strategy or policy to make sure that it meets the legal requirements and is a positive force in promoting cohesion and equality.

These questions are:

- Is it based on sound knowledge of the housing requirements of current and potential users of social housing, recognising the protected characteristics of the Equality Act?
- Have we carried out an equality analysis of the strategy or policy?
- Does it promote equality of opportunity and foster good relations between people who share a protected characteristic and those who don't?
- Are the needs of disabled people recognised?
- Have we recognised how will we ensure that all partners are acting in accordance with our legal duties?

**Joanna Jeffery and Richard Seager, November 2011**