

# Tenancy Changes Policy

## 2020 – 2023

### Document Control

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<b>Author</b>	Head of Neighbourhoods
<b>Responsible Executive Director</b>	Executive Director – Customer Insight
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1	July 2020	Head of Neighbourhoods	New Policy – Separated out from Tenancy Management Policy. Written in consultation with Anthony Collins Solicitors

Approved: Executive Director – Customer Insight, August 2020

Responsible Officer: Executive Director – Customer Insight

Review date: July 2023

## **1. Purpose and scope**

- 1.1 Many tenancy agreements only give a right to assignment for the purposes of mutual exchange or succession. However, we recognise that changes in tenants' circumstances such as marriage, civil partnerships, cohabitation, separation or divorce may consequently require a change to a tenancy.
- 1.2 The purpose of this Policy is to clarify when we will allow changes to a tenancy due to a change in the tenants' circumstances. It does not apply to:
  - 1.2.1 Mutual exchanges, where our Mutual Exchange Policy applies; or
  - 1.2.2 Changes because of the death of a tenant. In that scenario our Succession Policy applies.
- 1.3 As with all policies and procedures, we shall ensure compliance with our Equality and Diversity Policy in operating this Policy.

## **2. Risks**

- 2.1 This Policy aims to:
  - ensure that tenants are entitled to assign their tenancy where legislation or their tenancy agreement permits them to do so; and
  - provide guidance as to when we may allow an assignment of tenancy where the tenant does not have a legislative or contractual right to do so.

## **3. Legal framework**

- 3.1 The key relevant legislation is the Housing Act 1988.

## **4. Types of tenancy change**

- 4.1 There are four ways in which a tenancy may change under this Policy:
  - 4.1.1 Joint to sole tenancy – where one joint tenant wants to leave the tenancy, but the other tenant wants to remain in the same property under the current tenancy;
  - 4.1.2 Sole to joint tenancy – where an existing sole tenant wants to add another person as a joint tenant;
  - 4.1.3 Assignment to another person – where an existing sole tenant or both joint tenants want to transfer the tenancy to another person. Where a tenancy agreement includes this as a contractual right, the requirement in the tenancy agreement is that the other person must be a potential qualifying successor to the tenancy (i.e. if the tenant had died, they would qualify to succeed to the tenancy agreement); and
  - 4.1.4 A change of name.

## **5. Court orders**

- 5.1 An individual may make an application to Court for assignment of the tenancy. This is usually part of marital or children proceedings on family breakdowns. We are not party to those proceedings.
- 5.2 There are different proceedings that may apply. Those proceedings will determine the type of order and the mechanism by which a tenancy change takes place. These details are set out in our Tenancy Changes Procedure.
- 5.3 If we are given the opportunity to make representations in the proceedings, we will take into account the factors set out in Section **Error! Reference source not found.** below.

## **6. Requests for a chance in tenancy (excluding change of name)**

- 6.1 Any request for a change in the tenancy under this Policy will be actioned in accordance with our Tenancy Changes Procedure.
- 6.2 The general factors we will take into account where we are considering a request from the tenant to change the tenancy are as follows:
  - 6.2.1 There is no right of an existing tenant to have a tenancy transferred from joint to sole or sole to joint. So we are not obliged to grant such requests. (Transfers through Court Orders can be an exception here.)
  - 6.2.2 Whether a tenant has a contractual right to transfer their tenancy to a potential qualifying successor, depends on the particular tenancy agreement terms. The tenant's tenancy agreement should be checked to determine the position in this regard.
  - 6.2.3 We will not unreasonably withhold permission for changes to tenancies from or between a spouse, civil partner or co-habiting partner as long as the conditions of this Policy are met.
  - 6.2.4 We will not normally allow changes of tenancy involving other relatives, for example between a parent and adult child, or between siblings unless the tenancy agreement sets out a right to assign to a potential successor and the relative meets the conditions for succession.
  - 6.2.5 We will not normally allow:
    - (a) anyone under the age of 18 to become a tenant unless there is both a trustee and a guarantor;
    - (b) changes to tenancy if there are rent arrears, a history of anti-social behaviour or breaches of tenancy agreement;
    - (c) a change if the existing tenant is a successor to the tenancy;

- (d) changes to tenancy if it results in under occupation as determined by our Allocations Policy or relevant lettings policy, subject to provisions under the tenancy agreement that allow otherwise. In the cases of joint to sole requests, if the spouse/partner would otherwise qualify for housing under our Allocations Policy we will make one offer of suitable alternative housing. If the offer is refused we may seek possession of the property;
- (e) changes to tenancy if it results in overcrowding as determined by our Allocations Policy or relevant lettings policy;
- (f) the tenancy agreement was granted less than 12 months previously;
- (g) the proposed new tenant has been evicted from one of our properties or another social housing tenancy for any reason;
- (h) there are any existing notices or Court proceedings in relation to the tenant, the proposed tenant and/or the property; or
- (i) the proposed tenant has a legal interest in another property.

6.2.6 Affordability for the remaining sole tenant or new tenant.

6.2.7 We will only take account of adults and children that are already living in the property as their only or principal home at the time of the request in determining the level of occupation.

6.2.8 Any proposed tenant and adult occupier must have a right to rent in the UK.

6.2.9 Continued suitability of the property where the tenant was granted the tenancy of the property because of particular requirements and the property having the features to meet those requirements, for example, specialist adaptations.

6.3 In addition to the factors set out in paragraph 6.2 above, when assessing a request to change a joint tenancy to a sole tenancy, We will also consider if both existing tenants agree to the change. If they do not, then the only option for one of the joint tenants under a periodic tenancy is to end their liability in respect of the tenancy is to end the tenancy by serving a valid Notice to Quit (or to consider a court application under the matrimonial or children proceedings).

6.4 In addition to the factors set out in paragraph 6.2 above, when assessing a request from:

6.4.1 a sole tenant to add another person as a joint tenant; or

6.4.2 a tenant to assign the tenancy to a potentially qualifying successor,

We will also consider the length of time the other person has been living in the property as their only or main home. 12 months occupation is a minimum requirement.

- 6.5 Where a request is made by a sole tenant to add another person as a joint tenant:
- 6.5.1 We will ensure the existing sole tenant is made aware of the implications of being a joint tenant, particularly that another joint tenant would have the right to end a periodic tenancy agreement by serving notice without the consent of the existing sole tenant.
  - 6.5.2 Only one additional joint tenant can be requested. We will not create a joint tenancy of 3 or more tenants.
  - 6.5.3 We will normally only allow a spouse, civil partner or co-habiting partner to be added as a joint tenant.
- 6.6 Our recent tenancy agreements set out limited contractual rights of succession. In considering whether a person is a potential qualifying successor, an officer will also consider the discretionary succession option under our Succession Policy.
- 6.7 Whenever a change of tenancy is requested, it is up to the tenant to provide the required documents and evidence before any changes can be made.

## **7. Change of name requests**

- 7.1 If a tenant has changed their name and wants to have their new name on their tenancy (as opposed to changing the tenancy itself), the Housing Officer can advise the tenant to send a written request to such affect along with the original or certified copy of:
- 7.1.1 Change of Name Deed or Statutory Declaration for general name changes;
  - 7.1.2 Marriage certificate for changes due to marriage; or
  - 7.1.3 Decree Nisi and birth or marriage certificate to confirm name where changing back to the maiden name.
- 7.2 Once received the Housing Officer will scan the document onto Documotive and make the relevant changes on the Orchard system.
- 7.3 The Housing Officer will write to the tenant to confirm the change and return any original document.

## **8. Relevant documents**

- Tenancy Changes Procedure
- Allocations Policy
- Succession Policy

## **9. Responsibilities**

- 9.1 The Head of Neighbourhoods is responsible for ensuring effective monitoring and review of this Policy.

Approved: Executive Director – Customer Insight, August 2020

Responsible Officer: Executive Director – Customer Insight

Review date: July 2023

## **10. Review**

10.1 The next planned review of this Policy will be July 2023. However, it will be reviewed sooner if there is any change in the relevant legal and regulatory framework.