

Tenancy Policy

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1.1 Introduction and policy summary

- 1.2 This policy sets out our approach to issuing, renewing and terminating tenancies for all rented properties. Reference is also made to the limited circumstances in which a new tenancy may be granted where residents exercise their right to exchange.
- 1.3 The policy does not apply to agency managed properties, or to shared owners, leaseholders and freeholders.
- 1.4 The rights and responsibilities of each tenancy type are set out in full within each tenancy agreement, nothing in this policy alters the terms of the individual tenancy agreements.

2.0 Customer influence

A draft version of the policy was considered by our Residents Strategy and Policy Review Group between 12 May and 18 June 2021. Nine responses were received including widespread support for Town & Country Housing's (TCH's) policy decision to issue lifetime tenancies after a 12-month starter period. Resident feedback also led to the inclusion of more detail regarding the management of the starter tenancy period and circumstances under which a new tenancy may be issued when tenants mutually exchange.

4.0 Equalities Statement

- 4.1 Demand for affordable accommodation exceeds supply across all of TCH's areas of operation. This policy sets out how we will make best use of our stock to increase the number of people we are able to house. All applicants and residents will be treated fairly, and tenancies will be granted and managed consistently and transparently
- 3.2 An equalities impact screening assessment has been undertaken to determine any potential negative impacts on the nine protected characteristics. No negative impacts have been identified.

4.0 Aims

- 4.1 The aims of this policy are that:
 - Clear guidance is provided and the appropriate tenancy is issued
 - Tenancies are issued and managed consistently, fairly and transparently
 - Local authority partners tenancy strategy objectives are supported
 - Customers are able to sustain their tenancies for as long as they need them
 - There is flexibility to respond to demand and identified priority needs.
 - Best use is made of our stock so that more people are able to be housed.

5.0 Objectives

- 5.1 The policy objectives are:
 - To provide clarity on the circumstances in which each tenancy type will be issued and when and how tenancies will be reviewed, extended, renewed or terminated
 - To offer tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of the housing stock.

- To set out how current or prospective tenants may appeal against the type or length of tenancy offered, and against any decision not to issue another tenancy at the end of a fixed term tenancy.
- To specify the advice and assistance that will be offered where a tenancy is not granted or a fixed term tenancy is not to be renewed.
- To set out TCH policy on discretionary succession rights
- For all relevant legal and regulatory obligations to be met

6.0 Legal and Regulatory Framework

- 6.1. The Housing Act 1988 describes assured and assured shorthold tenancies and the circumstances in which landlords may take possession of a property for each of these.
- 6.2 The Localism Act 2011 and changes to the Regulatory Framework for Social Housing allowed registered providers of social housing to grant tenancies for a fixed term of years. The Act also offers some protection from losing their security of tenure for those who were social tenants before 1 April 2012.
- 6.3 The Regulator of Social Housing's Tenancy Standard sets out the type of tenancies TCH can offer and the required security of those tenancies. The Standard also describes how starter tenancies may operate.
- 6.4 The Immigration Act 2014 requires landlords to establish that the applicant and all adults in the household have the right to rent property in the UK. TCH will comply with the governments Code of Practice which requires landlords to conduct initial right to rent checks before letting a property; conduct follow-up checks at the appropriate date if initial checks indicate that an occupier has a time-limited right to rent and make a report to the Home Office if follow-up checks indicate that an occupier no longer has the right to rent.

7.0 Responsibilities

The Operations Director is the owner of the policy. The Head of Integration through the Housing Options Team and the Assistant Director of Operations through the Neighbourhood Housing Team have responsibility for its application.

8.0 Policy

8.1 Eligibility

- 8.1.1 To be eligible for a TCH tenancy, non-uk nationals must either have leave to remain in the UK, have recourse to public funds and not be exempt from holding a tenancy by their immigration status, or be a European Economic Area (EEA) national exercising their treaty rights.
- 8.1.2 Eligible applicants who have been granted limited leave to remain in the UK, or who can provide evidence they have applied for an extension of their leave to remain, if it has expired will be offered an assured shorthold tenancy.

8.2 Tenancy Sustainment

- 8.2.1 All non TCH tenants will be subject to an affordability assessment before receiving any tenancy offer. This is to check whether the tenancy is likely to be sustainable and will be by reference to a standard assessment tool which has been consulted on with local authority partners.
- 8.2.2 A tenancy will only be offered if the applicant's income is more than their estimated expenditure, or where any shortfall can reasonably be made up.
- 8.2.3 Applicants that do not pass the affordability assessment will be offered relevant information and advice and are able to be considered for future vacancies if their circumstances change.
- 8.2.4 TCH will also offer support where tenancies are found to be vulnerable to ending prematurely. This may include referral or signposting to services offered by TCH or outside agencies providing, for example, employment and training support; community safety advice; family support; budgeting and welfare benefits advice.
- 8.2.5 We define **vulnerability** as being any condition or circumstance that puts an individual or household at risk of losing their home, or any situation which, without support or intervention, places them at risk of abuse, neglect or causes detriment to their overall wellbeing.

8.3 Affordable Rents

- 8.3.1 TCH has taken a strategic decision to let a number of newly built and re-let homes at whichever is the lower of:
- 80% of the independently assessed market rent, or
 - The applicable Local Housing Allowance.
- 8.3.2 Affordable rents are inclusive of service charge, further information can be found in TCH's Rent Policy

8.4 The Tenancies Town & Country Housing will Issue

- 8.4.1 TCH will offer tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of its housing stock.
- 8.4.2 Most new tenants who have not held a tenancy with a social landlord immediately before moving into the vacant home will be offered a **Starter Tenancy**. These are assured shorthold tenancies granted for an initial period of 12 months to enable new tenants to fully understand their responsibilities and to assist them in building a sustainable tenancy.
- 8.4.3 Starter tenants do not have the right to:
- exchange or transfer the property but there is a right of succession to a spouse or partner
 - take in lodgers or sublet the property
 - make improvements
 - assign the tenancy except by a court order
 - purchase the property through the Right to Acquire scheme
- 8.4.4 Starter tenancies will usually convert automatically into an assured (non-shorthold) tenancy on successful completion of the starter period.

- 8.4.5 'Lifetime' Assured (non-shorthold) periodic tenancies** give an indefinite right to remain in the property subject to compliance with the tenancy conditions and limitations and relevant law. These tenancies will usually be offered to:
- Current TCH tenants who are moving permanently to another TCH home.
 - Applicants moving into Sheltered Housing for older people
 - Transferring 'lifetime' secure or assured tenants of a local authority or other registered provider; or
 - Where local housing conditions mean it is in the interests of community sustainability to offer lifetime tenancies.
- 8.4.6 'Lifetime' tenancies will only be granted outside of the above circumstances where required by legislation, regulation or obligation such as restrictive covenants or planning consent requirements.
- 8.4.7 Most new TCH tenants between April 2014 and June 2020 were issued **Assured shorthold tenancies** for a fixed period of six years that incorporated a 12 month probationary period. These will become 'lifetime' assured non-shorthold periodic tenancies at the end of the fixed term unless TCH wishes to bring the tenancy to an end – see sections 10 & 11.
- 8.4.8 In exceptional circumstances TCH may issue an **Assured shorthold tenancy** for a fixed term of up to five and no less than two years (incorporating a probationary period and break clause at 12 months). This is subject to **Director level approval** and could include:
- To meet a short term-need to assist with move on from supported housing and transition to independent accommodation.
 - Where TCH have plans to re-develop or dispose of properties in the near future and a short-term letting programmed has been introduced.
 - Where the tenant has not managed a previous tenancy well or has a history of anti-social behaviour or non-payment of rent.
 - Where someone is subject to immigration control and does not have indefinite leave to remain.
 - Where the household make up and/or circumstances are likely to change such that it would be reasonable for them to move to alternative accommodation
- 8.4.9 Tenants must be at least 18 years old but 16 or 17 year olds can occupy under a **Periodic Assured Shorthold Tenancy** held in Trust by a third party, until they reach 18.
- 8.4.10 Periodic Assured Shorthold Tenancies or Excluded Licences may be granted for certain specialist supported housing schemes.
- 8.4.11 **Contractual Tenancies** will be granted where a TCH tenant has to move temporarily from their home, for example it needs major repair works. A contractual tenancy may also be created where security is lost, for example on death of a sole tenant.

- 8.5 Existing TCH tenants who have been moved into alternative accommodation as a result of redevelopment or other works will be granted a tenancy with no less security of tenure on their return to settled accommodation.
- 8.6 All new tenants will be provided with information at, or prior to sign up to ensure they fully understand their tenancy rights and obligations.
- 8.7 Some TCH properties are leased to local authorities for use as temporary accommodation to assist them in meeting their duties to homeless households. Where this applies the local authority will let the property on a Non-Secure Tenancy as provided for by Schedule 1 of the Housing Act, 1985 and section 193 of the Housing Act, 1996.

9. Managing a Starter Tenancy

- 9.1 TCH will monitor tenancies during the starter period and usually carry out a home visit at 6 weeks, unless it is identified this needs to be carried out sooner. Further reviews after 6 months and again at 9 months will be used to decide whether the starter period is to be ended or extended or if it can become a **'Lifetime' Assured (non-shorthold) periodic tenancy**.
- 9.2 Starter tenants that do not meet their tenancy responsibilities will be issued with a warning and asked to modify their behaviour, or the behaviour of others, if appropriate. The case will be reviewed at the end of the warning period. Two warnings will usually be given and if these are not complied with then the tenancy can be terminated. If the tenancy breach is very serious, the tenancy may be ended without a warning being issued.
- 9.3 The starter period can be extended by up to six months (rather than being terminated) if there is a realistic prospect of tenancy sustainment. This would typically apply where:
- The tenant has engaged or will engage and is able to address their anti-social behaviour within the extended period
 - The tenant has engaged or will engage and is able to address their rent arrears within the extended period
 - The tenant has engaged or will engage and is able to address their tenancy breaches within the extended period
 - There has been a breach of tenancy but this is not serious enough to warrant possession action, or evidence is still being gathered.
 - The tenant is required, as a result of the tenancy review, to move to another property which is more appropriate to their housing need and additional time is required to facilitate this.
- 9.4 Where the starter period is extended TCH will carry out a further review at 15 months to decide whether to continue or end the tenancy.
- 9.5 Tenants will be notified of any decision to extend the starter period or end the tenancy and the reasons for the decision in writing.

10.0 Renewing a Fixed Term Tenancy

- 10.1 In most instances tenants that were previously issued a six year fixed term tenancy will become lifetime assured periodic tenants on similar terms and conditions at the end of the fixed term.

- 10.2 In cases where a lifetime tenancy is not to be issued but the criteria of the final review for the fixed term tenancy have been met, another fixed term tenancy with no probationary period may be granted. The same conditions for monitoring, reviewing and ending these tenancies will apply.

11.0 Ending a Tenancy

- 11.1 TCH will only take action to terminate a tenancy where the terms and conditions of tenancy have been breached and after all other alternatives have been explored.
- 11.2 TCH will follow its relevant policies and procedures such as those relating to rent arrears, unauthorised occupancy and anti-social behaviour. Where this has failed to address the breach of the tenancy, TCH will serve written notice complying with the Housing Act 1988 (as amended) giving the grounds on which possession is required.
- 11.3 Starter, 'lifetime' and fixed term tenancies can all be ended by TCH obtaining a Court Order for possession of the property on one or more of the grounds listed in Schedule 2 to the Housing Act 1988 (as amended by subsequent legislation).

11.4 Ending a Starter Tenancy

- 11.4.1 A starter tenancy may be terminated after four months and at any time during the remainder of the starter period (including any extension) by TCH serving the tenant with at least two months written notice under Section 21 of the Housing Act 1988 (as amended) before applying to court for a possession order.
- 10.4.2 TCH will usually only terminate a tenancy during the starter period due to a significant tenancy breach such as very serious and ongoing anti-social behaviour, damage to the property or wilful non-payment of rent.
- 10.4.3 The tenancy will remain an assured shorthold tenancy during the starter period (including any extension) or whilst any notice served upon the starter tenant remains valid or until the conclusion of any possession claim.
- 10.4.4 Starter tenants that are served with a notice will be told why and will be entitled to appeal the decision. If an appeal is successful, the tenant will be allowed to remain as a **'Lifetime' Assured (non-shorthold) periodic tenant**. If the appeal is unsuccessful, TCH will expect the tenant to leave at the end of the notice period and if they do not, will apply to the court for a possession order and later for eviction.

11.5 Ending a Fixed Term Tenancy

- 11.5.1 TCH may terminate or refuse to re-grant or continue a fixed term tenancy where the tenants circumstances have changed so significantly that they are no longer consistent with the appropriate use of the property, or they have a poor tenancy record. Examples could include:
- The tenant household is under-occupying by two or more bedrooms; the property is overcrowded, or it has been adapted and there are no household members who require the adaptations. Suitable alternative accommodation may be offered but where this is not possible to do so before the end of the fixed term, the tenancy will convert to a periodic assured shorthold tenancy. The tenant can remain in occupation until an offer of suitable alternative accommodation has been made.

- There has been a breach of the tenancy agreement - Relevant TCH policy and procedure will be followed (such as those relating to rent arrears, unauthorised occupancy and anti-social behaviour) but where this has failed to address the breach, the tenancy will be ended. In these circumstances the tenant will not be allowed to remain in occupation following expiry of the fixed term.
- Where for any other reason TCH no longer consider the tenant to be in need of social housing. This could include a significant change in the tenants financial circumstances.

11.5.2 At least 6 months' notice in writing, together with reasons for the decision will be given by TCH where a fixed term tenancy is to be terminated or not renewed. In these circumstances the tenant will be offered information and advice regarding alternative accommodation.

12. Tenants Wishing to end a Tenancy.

12.1 Tenants must give TCH at least four weeks' written notice, expiring on a Sunday, if they intend to permanently leave their home. Tenants are responsible for paying rent until their notice expires and for clearing any arrears or tenant ledger debt.

13. Succession

13.1 There is only one legal right to succeed to an assured tenancy, unless the tenancy agreement states otherwise, and only one individual can succeed i.e. there cannot be joint successions.

13.2 If the tenant dies and they are not a joint tenant the tenancy will pass to their husband, wife, civil partner (or an individual who lived with them as husband, wife, or civil partner as long as the property was their only or main home and they were living with that person immediately before their death. Where a joint tenant dies the tenancy automatically becomes the sole tenancy of the remaining joint tenant.

13.3 If the property is not considered suitable for the successors needs an offer of suitable alternative accommodation will be made. This could be the case if:

- the person with the right to succeed would under-occupy or overcrowd the property;
- the person with the right to succeed would under-occupy by more than 1 bedroom, in cases where aids or adaptations have been put into the property for the remaining tenant;
- the property has major adaptations and the person with the right to succeed does not need the aids or adaptations;
- the person with the right to succeed would remain in a property which has been designated for a specific client group, for example, sheltered housing and they are not in that client group;

13.4 Failure to accept an offer and/or move after being made an offer of suitable alternative accommodation will result in possession proceedings being issued.

13.5 Where the potential successor fails to provide evidence that they meet the criteria for a statutory succession, TCH will reject their application and seek possession of the property. This will generally require a Notice to Quit

addressed to the personal representatives of the deceased tenant and also served on the Public Trustee office with the appropriate form and fee.

- 13.6 Where there is more than one potential successor, TCH will ask them to decide who will apply and take on the tenancy (if we agree to grant one).
- 13.7 A succession to a Fixed Term Tenancy is only for the remainder of the current fixed term period, after which the tenancy may be ended, regranted or converted to a **Lifetime' Assured (non-shorthold) periodic tenancy**.
- 13.8 Any rent credit or arrears on a tenancy that has been succeeded to by way of statutory succession (not including survivorship) become a debt owed by/to the deceased tenant's estate and cannot be claimed from/by the successor. Any outstanding possession order will however generally still take effect.
- 13.9 If the successor is a remaining joint tenant, they are legally responsible for any outstanding debt.

14.0 Discretionary Succession

- 14.1 TCH is under no obligation to offer a spouse, partner or family member a tenancy of the deceased's property, or any other TCH property, if they have no statutory or contractual right to succeed. TCH will however, entirely at its discretion, consider offering a new tenancy to an applicant that does not have the right to succeed if they meet the minimum criteria set out below.
- 14.2 These minimum criteria are designed to provide consistency and transparency to our decision making, for our customers and our staff who may otherwise find themselves placed in a difficult position to make an offer of tenancy to somebody who has recently been bereaved.
- 14.3 Where a spouse or partner who has no right to succeed is left in the property, the offer of a discretionary tenancy would normally be considered either at the deceased's property or another TCH property where:
- the applicant had lived in the property with the tenant for the 12 months prior to their death as their only home.
 - the property is not considered too large nor too small for the applicant and his/her household in accordance with TCH's Lettings Policy at the time of the request. A tenancy of suitable alternative accommodation may be offered if the remaining criteria are met.
 - the applicant has sufficient income to pay the rent.
 - the deceased tenant had no rent arrears at the time of their death, no ASB complaints against them (or their visitors or anyone living at the property) or other breaches of tenancy and had kept the property in a clean and well-maintained condition.
 - the applicant agrees to pay any arrears that have accrued since the tenant's death.
- 14.4 For other remaining family or household members who do not qualify to succeed the tenancy, we will normally expect the following criteria to be met before agreeing to grant a tenancy on a discretionary basis either for the deceased's property or another TCH property:
- there has been no previous succession (e.g. an adult son or daughter who has no statutory or contractual right of succession who was living with a parent who had been the sole tenant of the property)

- the deceased tenant was a parent or legal guardian of the applicant
- the applicant has always resided in the property with the tenant as their only or main home since the tenancy start date or their date of birth whichever is more recent.
- the applicant is 18 years of age or older, but 16 & 17 year olds may be considered in accordance with TCH's Lettings Policy.
- the property is not considered too large nor too small for the applicant in accordance with TCH's Lettings Policy at the time of the request. An offer of suitable alternative accommodation may be considered if the remaining criteria are met.
- the applicant has sufficient income to pay the rent.
- the deceased tenant had managed the tenancy well, had no rent arrears at the time of their death, no ASB complaints against them (or their visitors or anyone living at the property) or other breaches of tenancy, and had kept the property in a clean and well-maintained condition.
- the applicant agrees to pay any arrears that have accrued since the tenants' death.

14.5 For discretionary offers of a tenancy, the tenancy type offered will be in accordance with this Tenancy Policy. There will be no contractual rights of succession.

14.6 Where these conditions are not met, we will set up a use and occupation account (once the existing tenancy has ended) and seek to repossess the property. The occupier(s) will be offered advice on finding suitable rehousing.

14.7 Where the property is too large for the current occupier(s) and we consider offering a tenancy at another property which we consider suitable alternative accommodation, we will only make one offer.

15.0 Vulnerable Household Members and Use of Discretion

15.1 Where the spouse / partner / household member being considered for a discretionary offer of tenancy is particularly vulnerable, special consideration will be given to the case and the individual's vulnerability so that reasonable steps can be taken to manage their circumstances.

15.2 Appropriate internal or external referrals will be made where there is a need for additional support to ensure the vulnerable person and their interests are safeguarded.

15.3 In exceptional cases it may be appropriate to consider the discretionary offer of tenancy at the original property or another TCH property, for example where the original property has been adapted for an adult child with a disability who would not otherwise meet the discretionary offer criteria; or where another adult has accepted responsibility for dependent children of the deceased, but would need to permanently give up their current home in order to do so because their current home is not large enough for the children to move in with them.

Consideration will be given to both the applicants and dependents circumstances and the needs and demand of other homeless households for the size and type of property being considered. As a general rule however, vulnerability will not be a passport to overriding this policy, related law, regulation or rights as set out in the tenancy.

16. Assignment

16.1 Tenants have the right to assign their tenancy where:

- an order is made by the Court
- where TCH agrees to an assignment
- where the property is assigned to a person that would have succeeded to the tenancy on death of the tenant
- under the right to exchange (as set out in section 18 of this policy) but not during the starter or probationary period.

16.2 An assignment does not count as a succession where it is instructed by a court order or occurs through a mutual exchange. The right to a succession is unchanged after a mutual exchange so if there has not been a succession previously, this right remains.

17.0 Mutual Exchange

17.1 Mutual exchanges between tenants of social landlords usually take place via a deed of assignment where each tenant 'steps into the other's shoes' and takes over the same form of tenancy i.e. secure or assured, periodic or fixed-term and social or affordable rent and the same terms and conditions.

17.2 Section 158 of the Localism Act 2011 provides that a new tenancy may be issued to exchanging tenants where:

- One tenant is a lifetime tenant and the other has a flexible or assured shorthold tenancy with a fixed term of at least two years.
- The lifetime tenancy was granted before 1 April 2012.
- The fixed term tenancy is let at a social rent (this situation does not apply if it is let at an affordable rent).
- None of the grounds on which a landlord may refuse an exchange (as set out in Schedule 14 to the Localism Act 2011) apply.

17.3 Tenants wishing to exchange will be advised of any change in security of tenure and its implications, for example loss of a preserved right to buy.

18 Tackling Tenancy Fraud

18.1 Tenancy fraud is not only a breach of tenancy conditions, it is a criminal offence under the Prevention of Social Housing Fraud Act 2013.

18.2 Examples of tenancy fraud include:

- Illegal sub-letting of the home without TCH knowledge or permission
- Mutual exchange or assignment without TCH prior knowledge and permission
- Claiming succession rights where not entitled to take over the tenancy
- Key selling – allowing someone take over the property in return for a payment.

18.3 TCH aims to deal promptly and effectively with persons illegally occupying its properties, for the benefit of residents living nearby and for those in need and waiting to be re-housed.

18.4 Action will also be taken against any person fraudulently obtaining a social housing tenancy through misrepresentation of identity and/or circumstances.

19.0 Appeals

- 19.1 Tenants or prospective tenants may appeal in writing within 21 days against TCH's decision to:
- terminate their fixed term tenancy;
 - extend their probation or starter period;
 - not to grant another tenancy on the expiry of the fixed term; or
 - regarding the length of the fixed term of their tenancy;
 - the type of tenancy offered.
- 19.2 We will respond to an appeal within 21 days of it being submitted.
- A manager not previously involved in the decision will consider the appeal.
 - The appellant will be notified of the outcome of the review in writing.
 - If the tenant or prospective tenant remains dissatisfied with the outcome of the review, a complaint may be raised under TCH's Complaints Procedure.

20 Policy Review

- 20.1 This policy will be reviewed every three years unless legislation, business or sector developments require otherwise – to ensure that it continues to meet the stated objectives and take account of good practice developments.

21.0 Appendices

Appendix 1 – Equality Impact Assessment screening document