

Tenancy Policy

Title:	Tenancy Management Policy
Person Responsible:	Head of Housing
Customer consultation arrangement:	
EIA required?	Yes/No
EIA Completed (date):	
Approved by:	Board/SMT
Business Strategy Objective	1. Providing good and cost-effective management of our properties 4. Improving the running of our business
Approval Date:	
Links to other Policies:	Allocations and Lettings Policy, Income Management Policy, Estate Management Policy, Anti-Social Behaviour Policy, Special Needs and Vulnerable Persons Policies
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Document management		
Version	Date amended	Amendments
1	June 2019	Tenancy Management Policy Review
2	June 2016	Mutual Exchange - HSGPOL04
	September 2013	Starter Tenancy Policy - HSGPOL05
	December 2012	Succession and Assignment

1. Purpose

- 1.1 This document outlines South Lakes Housing's (SLH's) policy for dealing with all tenancy aspects, ensuring compliance with relevant legislation, guidance, regulation and best practice.

2. Scope

- 2.1 This policy will apply to all SLH tenants as defined within the detail of the policy set out below. The policy specifically covers the following tenancy management areas:

- Starter Tenancies
- Mutual exchanges
- Succession and assignments

3. Regulatory and Legislative Requirements

3.1 This policy complies with the Regulator of Social Housing's Tenancy Standard specifically where it states:

- That landlords "shall publish a clear and accessible...policy on granting discretionary succession rights, taking account of the needs of vulnerable household members."
- Where registered providers use probationary tenancies, these shall be for a maximum of 12-months, or a maximum of 18-months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.

3.2 Other relevant legislation includes, but is not limited to:

- Housing Act 1985 (Section 92)
- Housing Act 1988
- Housing Act 1996
- Family Law Act 1996
- Local Government and Housing Act 1989
- Disability Discrimination Act 1995 and 2005
- Localism Act 2011
- Protection from Eviction Act 1977

4. Definitions

4.1 A **Starter Tenancy** (also known as Assured Shorthold Tenancies) is a trial period at the beginning of a tenancy for a maximum of 12 months. This type of tenancy provides the tenant with fewer rights and less protection from eviction than an Assured Tenancy.

4.2 A **mutual exchange** is where two or more council or housing association tenants with either secure or assured tenancies swap tenancies and relies on each party moving permanently into their exchange partner's property. A tenant cannot exchange into an empty property. Exchanging with tenants in leased or private rented accommodation is not allowed.

4.3 A **Succession** is the process by which a tenancy is passed to another person on the death of the tenant.

4.4 An **Assignment** refers to a tenants' right to transfer (assign) their tenancy to another qualifying member of their household.

5. Our Use of Starter Tenancies

- 5.1 Starter Tenancies means that tenants do not have the same rights as a Assured Tenancy. For example, they will not be able to:
- Take in lodgers
 - Sublet part of their home
 - Carry out improvements/alterations and/or additions
 - Exchange – swap their home with another local authority or housing association tenant
 - Transfer from their home – except in exceptional circumstances
 - Acquire – buy their home
 - Assign their tenancy
- 5.2 Where there is a serious breach of tenancy SLH will use the powers made available under Section 21 and Schedule 2 of the Housing Act 1988 as follows:
- The option to apply to the courts for accelerated proceedings to bring the starter tenancy to an end
 - The option to extend the starter tenancy periods
 - The option to demote Assured (Non-shorthold) or Protected Assured (Non-shorthold) Tenancies.
- 5.3 During this 12-month period it is easier for SLH to gain possession of the tenancy if the tenant has broken one or more conditions as detailed in the Tenancy Agreement. However, if the tenant has acted responsibly throughout this 12-month period they will then be granted an Assured (Non-shorthold) Tenancy, which comes with greater rights and security.
- 5.4 Managing Starter Tenancies
- 5.4.1 SLH aim to manage and resolve breaches of tenancy agreements in terms of failing to pay rent or causing nuisance and annoyance. In the majority of tenancies, enforcement action may never be necessary and for those tenancies, the tenancy agreement will be converted into an Assured Tenancy after 12-months and once regular monitoring processes have been satisfactorily met.
- 5.4.2 A brand new tenancy will be let using a Starter Tenancy. This tenancy cannot be ended under the Starter Tenancy process within the first six months. We can take legal action for tenancy breaches by giving two months' notice. We do this by requesting a Section 21 Notice (s21) at any time from the start date of the Starter Tenancy, acting upon it after the notice period has expired but, no earlier than six months from the tenancy start date. Thereafter, we can be granted possession through an Accelerated Possession Procedure if the tenant(s) remain in the property.
- 5.4.3 Before we take legal action, we will investigate allegations of any tenancy breaches. Legal action involving the use of injunctions or Notice of Seeking

Possession for rent arrears can be used at any time during the Starter Tenancy period.

5.5 What Happens During the Starter Tenancy Period?

5.5.1 A review processes during the lifetime of each Starter Tenancy will help us identify breaches of the tenancy agreement and any associated issues with the tenancy. We will produce reports that immediately identify breaches of the tenancy agreement.

5.5.2 Between six and eight weeks of the tenancy starting we carry out a settling-in visit. The purpose of this visit is to make sure that the tenant(s) have moved into the property, that any benefits application has been submitted and to address any early signs of nuisance / tenancy breaches.

5.5.3 Thereafter, the review process will involve us monitoring the tenancy and contacting the starter tenants to discuss (any) breaches that may lead to a decision not to convert their tenancy to a more secure form of tenancy at the end of the term. This review process supports our aims and objectives to help tenants where necessary and provide early advice and assistance to achieve tenancy conversion. At the same time, it helps SLH identify cases that require a more robust approach and potential legal action.

5.5.4 This continuous review process will communicate clearly to the tenant(s) how their tenancy is performing and what our intentions are likely to be when consideration is given whether to convert to a more secure form of tenancy at the end of the term.

5.5.5 The earliest point we can obtain possession is at the six months stage, and throughout the review process, we will keep starter tenants informed of our intentions in terms of conversion. In cases where we have identified breaches, these tenancies will have already been regularly reviewed and correspondence sent to the starter tenants warning them of the breaches as well as the serving of two-months' notice where applicable.

5.6 What Happens at the End of the Starter Tenancy Period?

5.6.1 The Starter Tenancy will run as a periodic tenancy for up to 12-months at which point, SLH will either:

- Convert it to an Assured Tenancy
- Extend it for a further period of up to 6 months.
- End the tenancy

5.7 Automatic Conversion

5.7.1 If at the end of the 12-month period there have been no breaches of the tenancy agreement such as failure to pay rent or anti-social behaviour, then the tenancy will be converted into an Assured Tenancy.

5.8 Extending Starter Tenancies

5.8.1 A Starter Tenancy may be extended for a period of up to a further six months (i.e. 18 months from commencement of the Starter Tenancy) to enable the tenant to rectify any breaches by:

- Setting up an acceptable arrears repayment plan which the tenant keeps to for at least 3 months
- There has been low level ASB or a minor tenancy breach and SLH will give the tenant(s) the opportunity to remedy the breach and prove they can conduct the tenancy satisfactorily
- Where a tenant has appealed the serving of a notice requiring possession and the appeal is unlikely to be heard before the 12-month anniversary of the starter tenancy
- Where there has been a succession of the tenancy during the starter period

5.8.2 The tenant must be informed of the decision and provided evidence supporting the decision to extend the starter tenancy. This must be in writing and where possible in person to; outline the reasons behind the decision, advise what is expected of them during the extension period and what the consequences are of not conducting their tenancy satisfactorily.

5.8.3 An extension can only be carried out once. At the end of the extension a decision should be taken to convert to an Assured Tenancy or serve a Notice to end the tenancy.

5.9 Terminating Starter Tenancies

5.9.1 SLH will only consider seeking possession of properties as a last resort, once all other reasonable means of resolving a tenancy breach have been exhausted.

5.9.2 In line with the provisions of the Housing Act 1988, SLH may commence possession proceedings within the first six months of a starter tenancy. However, the date for gaining possession by the court will not be until the tenancy is at least six months old.

5.9.3 If it is necessary to bring a Starter Tenancy to an end during the first six months, SLH may use the discretionary grounds for possession outlined in the Housing Act 1988.

5.9.4 In severe cases of nuisance or ASB, SLH will also use other legal remedies to prevent harm being caused to persons or damage to properties, including the use of injunctions.

5.9.5 In the case of tenancy enforcement action for rent arrears, SLH may use the discretionary grounds at any point during the term of the tenancy.

5.9.6 If SLH seek to terminate a starter tenancy for nuisance or ASB a Section 21 Notice requiring possession will be served. The Section 21 Notice will give a minimum of two months notice before court action can commence. SLH's

starter tenancies are weekly periodic tenancies (running from Monday to Sunday) and the expiry date will always be a Sunday.

5.9.7 The Section 21 Notice will be accompanied by a letter that explains:

- Why the Notice is being served (outlining specific breaches of the tenancy)
- How the tenant may take up the option to appeal the decision (including the option to make representation at an appeals panel) and the deadline for appeal.

5.9.8 If we decide to end the tenancy, when the notice expires, we will apply to the court for possession of the property. In these cases, possession is mandatory so long as our policy and procedure have been followed.

5.10 Appeal Process

5.10.1 If a tenant wants to appeal a decision, they must inform SLH by writing to the Head of Housing to request an appeal hearing within 14 days from the date the notice was served on them, or the original decision will stand.

5.10.2 The appeal hearing will be heard by an Appeals Panel made of three senior officers none of whom will have previously been involved with the case or the original decision.

5.10.3 The Panel will review the case within 21 days and the tenant(s) will be informed of their decision within seven days of the hearing

5.10.4 Tenants may make representation by way of written submission or choose to attend the Appeals Panel hearing in person, where they may be accompanied by a person of their choice (including legal representation).

5.10.5 The Appeals Panel will assess:

- Any information provided by the tenant
- That the evidence to support the original decision is adequate
- That the starter tenancy/probationary period review procedure has been correctly followed
- That the decision is proportionate and reasonable, accounting for the needs of the individual, the needs of the community and any perceived risk to SHL

6. Approach to Mutual Exchanges

6.1 The right to a mutual exchange is contained within the Tenancy Agreement and applies to customers who have a:

- Protected Assured Tenancy
- Assured Tenancy

6.3 Applying for a Mutual Exchange

6.3.1 All tenants must apply for and obtain permission from their respective landlord(s) before going ahead with an exchange. SLH tenants are required to make an application online via SLH's website:

<https://www.southlakeshousing.co.uk/services/mutual-exchange/>

6.3.4 The national HomeSwap website will also be available on request at all SLH receptions.

<https://www.homeswapper.co.uk/>

6.3.5 SLH will acknowledge receipt of the application within 7 days and will advise applicants whether or not approval has been granted within three weeks where all parties involved are SLH tenants or four weeks where other landlords are involved. (The legal requirement is 42 days).

6.3.6 All parties to the exchange must apply directly to each landlord for consent to exchange, which must be given before the exchange can proceed.

6.3.7 SLH will carry out tenancy checks and property inspections in all cases, including gas safety checks. SLH will also ascertain whether or not there are any breaches of tenancy conditions or repairs that are the tenants' responsibility.

6.3.8 If appropriate, a reference should be requested. Tenants should be advised of any changes in their rights and any amendments to the terms of tenancy resulting from an exchange with a tenant of another landlord.

6.3.9 Before the exchange will be allowed to take place the tenant will be asked to pay SLH a £100.00 bond.

6.3.10 The reason we are asking the tenant to pay a bond is to ensure that the post move gas and electric checks are carried out on the date and at the time agreed. If the tenant keeps their first appointment for gas and electric checks then the £100.00 will be refunded. If a second appointment is required that for each appointment missed there will be a charge of £25 per appointment up to a maximum of £100.

6.3.11 SLH will ensure that all parties to a mutual exchange complete and sign a properly witnessed Deeds of Assignment prior to the exchange taking place. SLH will make available a standard Deed of Assignment.

6.4 Reasons for Refusing a Mutual Exchange

6.4.1 Permission to mutual exchange will not normally be withheld, however, it can be refused for the following reasons:

- A tenant has a possession order, or a suspended possession order or possession proceedings have started
- If the accommodation is 1 bedroom or more too big or too small for the reasonable needs of the person and their household.
- The accommodation has been designed or adapted to make it suitable for a person with disabilities to live in and the proposed exchange is not with a person with disabilities

- The accommodation is part of a development which is specifically designed or located for people with special needs, such as the elderly, and the proposed exchange is not with a person who has special needs
- The dwelling has been let to a tenant who was an employee of SLH, and the dwelling is within the boundaries of an operational building or within a cemetery
- Where a S106 is in place

6.5 Conditional Consent

6.5.1 Conditional consent must be granted where there are arrears of rent, but no notice or possession order is in force. A favourable view will be taken where the tenants has:

- Rent arrears with a positive payment trend who want to downsize through mutual exchange will be allowed to move, but will not be allowed to under occupy
- Rent arrears with a positive payment trend and for whom the exchange will address urgent housing need, will be allowed to exchange

6.5.2 SLH will also consider the following circumstances:

- The exchange will improve the customer's financial situation, so that their future tenancy is affordable and sustainable
- Those who are not in rent arrears and can evidence affordability will be allowed to under occupy by one bedroom
- An exchange will not lead to worse housing conditions

6.5.3 There is a continuing breach of the tenancy conditions, for which no notice or possession order is in force. For example, repair work may be necessary to restore the property to a condition acceptable to SLH.

6.6 Mutual Exchange without Consent

6.6.1 If an exchange takes place without consent, on a case by case basis we will:

- Consider giving consent retrospectively, or
- Take action to bring the tenancy to an end if parties to the exchange refuse to move back to their respective home.

7. Our Approach to Successions

7.1 SLH will grant succession rights in accordance with section 17 of the Housing Act 1988 and the terms of its tenancy agreements.

7.2 It is normally the case that succession only happens when a tenant dies (this also applies to joint tenancies) although a succession of tenancy can be carried under the Family Law Act 1996 when the County Court orders an existing tenancy to be transferred.

7.3 **Qualifying Persons.** A person is qualified to succeed the tenant under an assured tenancy if they occupy the dwelling-house as their only or principal home at the time of the tenant's death and they are either

- 7.4 The tenant's spouse or civil partner (as defined in the Civil Partnership Act 2004) or partner; or another member of the tenant's family who has lived with the tenant during the twelve months prior to the tenant's death
- 7.5 Where there is more than one qualifying successor the spouse, civil partner or partner takes precedence over other relatives. If there is no spouse, civil partner or partner the eligible relatives decide who should have the tenancy, and if they cannot agree, SLH will decide.
- 7.6 Definitions of family member:
- A spouse or civil partner (as defined in the Civil Partnership Act 2004) or a person with whom the tenant lived as husband or wife or civil partner
 - The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece
 - A relationship by marriage or civil partnership is treated as a relationship by blood
 - A relationship of the half blood is treated as a relationship of the whole blood
 - The stepchild of a person is treated as his or her child
 - An illegitimate child is treated as the legitimate child of his mother and reputed father
- 7.7 There is no right of succession if the deceased tenant was him/herself a successor. This includes if:
- They were a joint tenant and have become the sole tenant
 - They gained the tenancy as a result of an exchange of tenancies and they were a successor under the original tenancy
 - They gained the tenancy as a result of a court order relating to matrimonial proceedings and their spouse was a successor
 - They gained the tenancy by a right to succession following the death of the previous tenant or under the will of intestacy of the previous tenant
- 7.8 However, where tenants had succeeded to their tenancies prior to the stock transfer from the Council to SLH on 5 March 2012, these successions should be disregarded. This was a promise made to tenants in the Offer Document issued to them prior to the tenant-wide transfer ballot.
- 7.9 A surviving joint tenant of a Starter Tenancy is entitled to take over the tenancy as a sole Starter Tenant, providing that they occupied the property as their only or principal home at the time of the tenant's death. A spouse, civil partner or partner would likewise be entitled to succeed. Other family members are unlikely to succeed (as they will not generally have lived at the property long enough).
- 7.10 SLH will attempt to balance the needs and circumstances of households with or without statutory succession rights with the size of the property and the demands of the Cumbria Choice Scheme.

- 7.11 Decisions on succession of tenancy to SLH managed property in special cases which fall outside this policy will be determined by the Director of Customers and communities or the CEO.
- 7.12 Should the property to which a family member qualifies to succeed be designed for those with special needs, and the individual has no such needs, SLH will provide alternative accommodation.
- 7.13 Should the property to which a family member qualifies to succeed be then under occupied, SLH may provide alternative accommodation.

8. Our Approach to Assignment

8.1 SLH will grant assignments in accordance with section 15 of the Housing Act 1988. This sets out that SLH tenants, have the right to transfer (assign) their tenancy in the following circumstances:

- By way of a mutual exchange
- Under instruction of a court order
- To a potential successor

8.2 The rules relating to assignment of a potential successor are as follows:

- The existing tenant must be prepared to give up all the rights to the property and rights to rehousing by SLH
- The person to whom the tenancy will be transferred (the assignee) must be a qualifying person in accordance with this succession policy
- The assigning of the tenancy must not result in either under-occupation or overcrowding of the property;
- The assignee must be prepared to pay the rent and other charges due and keep to all the terms and conditions of the tenancy agreement;
- Tenants must seek written approval from SLH before they assign but consent will not unreasonably be refused

8.3 Providing the proposed assignment satisfies the above criteria it can be carried out. Otherwise, the assignment is not permitted.

8.4 Consent will not be given in the following circumstances:

- A succession has already taken place (other than those successions which occurred prior to the housing stock transfer from the Council on 5 March 2012)
- If the tenant has a demoted tenancy
- If the tenant has caused anti-social behaviour or harassment
- If the tenant is in the process of buying or moving to another SLH property, or if they are in the process of doing a mutual exchange with another tenant.

8.5 If permission is not sought from SLH, the assignment will be invalid and not binding. SLH would then be entitled to commence proceedings to recover

possession of the property against the “true tenant” in order to end the tenancy and then take proceedings against the assignee.

- 8.6 If SLH’s consent to assign was obtained by the tenant’s fraud, the assignment will still be valid. However, SLH could still issue proceedings on the basis that there has been breach of the terms of the tenancy agreement. The assignment is without consent because that consent has been invalidated by fraud.

9. Service Standards

9.1 SLH’s Service Standards in relation to tenancy management state under the Tenancy Standard are:

- Where SLH uses starter tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review
- SLH will respond to applications for mutual exchanges within 7 working days.
- SLH will provide tenants with a tenancy agreement at the start of the tenancy
- SLH will respond to requests for a ‘succession’ (where a family member wishes to succeed to the tenancy of the deceased tenant) or ‘assignment’ (where a tenant wishes to assign their tenancy to another person in the family) within 30 days.

10. Performance Management

10.1 Our performance is reported to SLH’s Tenants’ Committee on a regular basis to assess progress against SLH’s service standards.

10.2 SLH will monitor performance using a range of performance indicators agreed as part of SLH’s performance management framework

11. Monitoring and Review

11.1 Our performance is reported to SLH’s Tenants’ Committee on a regular basis against SLH’s service standards, and through regular performance reports to the management teams.

11.2 This policy will be reviewed by the Board every three years, or where there has been significant changes to regulation or legislation to warrant a further policy review. The policy may also be reviewed sooner where there is a need to address operational issues or where best practice has evolved and there is a need to incorporate this.