

Tenancy Policy

December 2020

1 Policy statement

- 1.1 Rooftop develops and manages properties to improve quality of life for customers. It will work with local authorities to meet housing need within communities.
- 1.2 This policy details the tenancies that Rooftop will offer when letting properties, why the different types of tenancies are offered, and the rights and responsibilities associated with each type of tenancy. The policy is guided by the statutory and regulatory context, good practice guidance and local strategies.

2 Statutory and Regulatory context

- 2.1 This policy has been developed in the context of the following legislation and regulatory framework:
 - Localism Act 2011
 - Modern Slavery Act, 2015
 - Welfare Reform and Work Act 2016
 - Immigration Act 2016
 - Homelessness Reduction Act 2017
 - Domestic Abuse Bill 2020
 - Social Housing White Paper 2020
 - The Regulatory Standards for Social Housing in England. The Tenancy Standard on Tenure is attached at Appendix 3

3 Policy intention

- 3.1 The policy will ensure that tenancies are managed in accordance with the letter and spirit of relevant legislation, the Tenancy Standard (Appendix 3), Rooftop's values, policies and strategies and any subsequent amendments.
- 3.2 The Tenancy Standard requires Registered Providers, such as Rooftop, to 'offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.'
- 3.3 The policy aims to ensure that:
 - 3.3.1 This also sets out our approach to the types of tenancy granted and circumstances when they apply and security of tenure.
 - 3.3.2 We provide a flexible and responsible tenancy management service.
 - 3.3.3 Customers are aware of their rights and responsibilities in accordance with their tenancy conditions, legislation and regulatory guidance.
 - 3.3.4 Customers will be supported to sustain their tenancies, but if tenancy obligations are not maintained, action can be taken quickly, particularly at the beginning of the tenancy.
 - 3.3.5 Make the best use of the available social housing stock, including reducing overcrowding, tackling under-occupation, and adapted housing for those with a disability.

3.3.6 Customers will be supported to consider whether their current accommodation is suitable to meet their needs and will be encouraged and supported to access additional support or encouraged to move to a more suitable home.

3.3.7 Tenancy fraud, cuckooing and other types of abuse are identified and resolved.

4 The types of tenancies that we offer

Tenancy type	Duration	Individual	Accommodation Type
Starter tenancy	<ul style="list-style-type: none"> 12 months 	<ul style="list-style-type: none"> All new applicants who have not held a previous social housing tenancy Young customers in specialist self-contained accommodation 	<ul style="list-style-type: none"> All general needs properties Some Housing for Older People properties in exceptional circumstances Self-contained properties used for specialised housing for the Young People's Service
Assured tenancy	<ul style="list-style-type: none"> Unspecified 	<ul style="list-style-type: none"> Customers successfully completing their starter tenancy and applicants that have previously held an assured tenancy 	<ul style="list-style-type: none"> All general needs properties
Assured Shorthold	<ul style="list-style-type: none"> Minimum 6 months 	<ul style="list-style-type: none"> Any 	<ul style="list-style-type: none"> Market rent properties Keyworker (hospital accommodation for families)
Licence	<ul style="list-style-type: none"> Unspecified 	<ul style="list-style-type: none"> Young Persons in specialist YPS hostels 	<ul style="list-style-type: none"> Supported housing without exclusive use of communal areas
	<ul style="list-style-type: none"> 6 months 	<ul style="list-style-type: none"> Homeless individuals referred by the local authority for temporary accommodation 	<ul style="list-style-type: none"> Temporary homeless accommodation
	<ul style="list-style-type: none"> Maximum 1 month 	<ul style="list-style-type: none"> Individuals employed by the relevant hospital Trust 	<ul style="list-style-type: none"> Keyworker (hospital on call accommodation)
	<ul style="list-style-type: none"> Minimum 1 month 	<ul style="list-style-type: none"> Individuals employed by the relevant hospital Trust 	<ul style="list-style-type: none"> Keyworker (hospital study room accommodation)
	<ul style="list-style-type: none"> Unspecified 	<ul style="list-style-type: none"> Customers required to be decanted into alternative accommodation on a temporary basis 	<ul style="list-style-type: none"> Unspecified

4.1 Starter Tenancies

- 4.1.1 A 12-month assured shorthold tenancy known as a 'starter' tenancy. This type of tenancy can only be extended if there is a breach of tenancy and only up to a maximum of eighteen months. Providing there are no tenancy breaches at the end of the period, an assured tenancy will be granted.
- 4.1.2 In exceptional circumstances, Rooftop reserves the right to grant a fixed term period of no less than two years if the sustainability of the tenancy is uncertain, such as EEA nationals who have a limited right to remain in the UK (subject to any future changes as a result of Brexit, in which case this policy will be reviewed); those who may be adversely affected by upcoming welfare changes or those with significant levels of debt and who have a poor record of engaging with support services.
- 4.1.3 Customers with starter tenancies do not have the same rights as an assured customer, for instance they cannot apply for right to buy or carry out a mutual exchange with other customers.
- 4.1.4 Young customers in specialised self-contained accommodation providing intensive housing management will be offered starter tenancies with the expectation that at the end of the starter tenancy period they will be supported to move to permanent housing.
- 4.1.5 On the first anniversary of the commencement of the tenancy, unless a notice requiring possession has been served the tenancy automatically converts to full assured status, so senior staff will review and monitor a report of all tenancies older than 48 weeks to determine if further action, or investigations are required in advance of the tenancy defaulting to a full assured tenancy or fixed term tenancy after 12 months.
- 4.1.6 Where an assured shorthold tenancy is converted to assured periodic status, QL must be updated to ensure that the tenancies automatically receive a Section 13 notice of rent or other charge increase annually.
- 4.1.7 Where a starter tenancy is to be terminated without progressing to an assured tenancy, or its term extended, staff will follow the starter tenancy procedure, and the customer will have the right to appeal to the Starter Tenancy Appeals Review Panel.

4.2 Assured Tenancies

- 4.2.1 Following the successful completion of a starter tenancy, the customer will be granted an assured tenancy to remain in their current home if s/he adheres to the terms of the tenancy agreement.
- 4.2.2 This does not apply to young customers in specialised self-contained accommodation providing intensive housing management.

4.2.3 Under 18-year olds and vulnerable adults

- 4.2.3.1 Applicants aged 16/17 will be accepted subject to the local authority having a legal duty to rehouse them. In all cases, a guarantor is required, and the appropriate written agreement signed by all parties. An alert will be entered onto the housing management system to indicate that a guarantor is in place. We will undertake an additional assessment to ensure that there is a good prospect of the tenancy being sustained. This could include ensuring that there is appropriate financial and personal support in place either via statutory, or third-party agencies. We reserve the right to refuse an applicant if there is inadequate support in place to ensure the tenancy is likely to be sustained, or where a guarantor is not available to countersign the tenancy agreement where an applicant does not have legal or

cognitive capacity to enter into a legal agreement. The definition of vulnerability may include the following examples: those with additional support needs such as survivors of domestic abuse, a history of or current issues with drug and alcohol misuse, history of homelessness.

- 4.2.3.2 Where the vulnerability of the applicant arises from cognitive or mental capacity, we will seek a mental capacity assessment from a referral or partner agency to ensure that the applicant has the legal capacity to enter into a tenancy agreement.
- 4.2.3.3 In circumstances where the customer does not have legal capacity to sign this agreement at the start of the tenancy, a trustee will be appointed to enter into this agreement on the customer's behalf. A Deed of Trust is accordingly entered into and is attached at Appendix 2 to the policy.
- 4.2.3.4 In such circumstances, the customer has the benefit of the occupation of the premises and rights under the tenancy and (notwithstanding that it is a 'contract of necessities' and accordingly is enforceable in any event) the Trustee named agrees to the tenancy terms on their behalf, has authority to sign this Deed and holds the tenancy on trust for the customer.
- 4.2.3.5 The Deed of Trust will be signed in accordance with the Scheme of Delegations.

4.3 Easy Read Tenancy Agreements

- 4.3.1 A customer may have cognitive or mental impairment but where a mental capacity assessment indicates that a Deed of Trust is not required, s/he will be offered an Easy Read Tenancy Agreement and given appropriate advice and support to understand its terms before signing the agreement.

4.4 Assured (Affordable) Rent Tenancies

- 4.4.1 We are committed to providing clear information about housing options available to customers. Where a property is to be let at an affordable rent, we will ensure that this is clearly specified as part of the advertisement. The type of tenancy to be issued will be discussed at the point of offer. We will also ensure that customers are given appropriate advice and assistance around affordable rents, and the importance of checking affordability of such properties.
- 4.4.2 In accordance with the Rent and Service Charge Setting and Management policy, affordable rents will be set up to the maximum of 80% of the calculated market rent or formula rent, which will be the floor. Valuations to determine the 1999 values used in formula rent calculations will be the higher of the existing use value assuming vacant possession and continued residential use or the depreciated replacement cost. Where this has not been the case, consent will be requested from local authority Housing Benefit departments to apply to new tenancies.
- 4.4.3 In recognition of the positive impact of pets on customers' mental health, occupancy agreements will approve the keeping of pets if they are adequately cared for and they do not adversely affect neighbours.

4.5 Assured Shorthold Tenancies

- 4.5.1 Assured shorthold tenancies will be granted for private rented dwellings, and where we will require possession of the property later (for example, those specified for redevelopment).

4.6 Licences

- 4.6.1 In partnership with partner Local Authorities, Rooftop provides several units to be occupied as temporary accommodation for homeless households. These units are managed in partnership with the Local Authority who will determine the clients in discharging their homelessness duties, including initiatives such as 'Housing First', temporary accommodation for recovery addicts and other temporary accommodation as agreed with the relevant Local Authority. These properties will be let using licence agreements.
- 4.6.2 Young people referred to specialist YPS accommodation which does not offer exclusive use of living space other than a bedroom will be granted a licence agreement.
- 4.6.3 Keyworker properties in hospitals offering on call accommodation will be granted a licence agreement.
- 4.6.4 Customers who are required to move temporarily into a different property will be granted a decant licence, with a Home Loss and/or Disturbance Payment. When the customer returns to his/her original property s/he will return on equivalent security of tenure to that originally granted.

5 Ensuring that tenancies are sustainable

5.1 Joint to Sole Tenancy

- 5.1.1 A joint tenancy can play an important role in the effective use and equitable allocation of housing. Once a tenancy has been granted in joint names the parties cannot simply agree to 'take people off the tenancy'. Nor can Rooftop unilaterally terminate a joint tenancy or part of a joint tenancy. Where one joint customer wishes to leave another joint customer in occupation, or where a joint customer has already left without giving the Association notice, the remaining joint customer may be left in occupation.
- 5.1.2 Any debts connected with the tenancy, such as rent arrears, will become former tenant debts, as the surrender brings the contractual tenancy to an end. The Association may choose to recover possession of the property, even where the remaining joint tenant may wish to remain in the home.
- 5.1.3 If married joint customer cannot agree who will remain in the property, the courts may determine who may be granted a sole tenancy. This can be done by the customer applying to the court for a property adjustment order under the Matrimonial Causes Act 1973. In this instance the customer will be advised to seek independent legal advice. If the joint customer are not married, they will be advised to seek independent legal advice with a view to obtaining an Occupation Order (Family Law Act 1996) and again must be advised to seek legal advice.
- 5.1.4 Upon receiving an order from the court to transfer the tenancy to one of the joint customers, where there is no evidence of domestic abuse, Rooftop will issue the remaining joint customer with a new starter tenancy agreement. The tenancy start date will be the first Monday after the court order is made.

5.2 Joint to Single Tenancies in the case of Domestic Abuse

- 5.2.1 In response to the Domestic Abuse Bill, Rooftop occupancy agreements will be reviewed to:
- Include the power to terminate a tenancy and evict the perpetrator where the victim has fled the house as a result of domestic abuse, and where serious criminal offences have been committed.

- Enable the association to grant a new tenancy to the victim in his/her home. The provisions in the Bill will ensure that where the victim had a joint lifetime tenancy with the perpetrator, the new sole tenancy will also be on a lifetime basis.

5.3 Mutual Exchange

- 5.3.1 Registered Provider customers have a legal right to exchange their home with other tenants either within their own landlords' area or in another area.
- 5.3.2 Three-way exchanges are also permitted, so long as the landlord of each customer gives written consent.
- 5.3.3 If a customer seeks permission to exchange, the landlord must give a decision in writing within 42 days. If after 42 days, a decision has not been granted in writing, the customer can apply to court for an injunction to force Rooftop to issue a decision.
- 5.3.4 The grounds for refusal of permission to exchange are set out in the Housing Act 1985, schedule 3. Permission may be refused on the following grounds:
- The customer or proposed assignee is already under a court order to surrender possession.
 - Possession proceedings have commenced, or a NOSP has been served, on any of the grounds for possession which require only that it is reasonable to make the order.
 - The accommodation would be too large for the proposed assignee or is otherwise unsuitable.
 - The dwelling was let because of employment and forms part of, or is in the grounds of, a non-housing building or cemetery.
 - The dwelling is adapted or has been built to suit the needs of the physically disabled and if the exchange took place, there would be no such person in occupation.
 - The accommodation is designated as specialist accommodation and there is nobody with the relevant needs in the proposed assignee household.

5.4 Assignment of Tenancy

- 5.4.1 Assignment is the transfer of an 'interest in land' (a tenancy in this case) by the customer to another person by deed. For the assignment and deed to be valid there are several legal requirements which must be met.
- 5.4.2 The tenancy agreement gives an absolute prohibition on the assignment of the tenancy apart from in two conditions:
- By court on settlement of divorce nullity or judicial separation (depending on the legislation the settlement is made under).
 - Where the assignment is to a person who would have succeeded if the customer had died immediately before the assignment.

5.5 Tenancy Fraud

- 5.5.1 Rooftop has a limited number of properties available to let and lettings are prioritised according to housing needs. As a responsible housing provider, we have a duty to make best use of public resources and ensure our homes are properly managed and are occupied by people legally entitled to live there.

5.5.2 Rooftop is committed to tackling tenancy fraud where it exists within our housing stock. We recognise the importance of tackling all types of tenancy fraud and misuse and we understand the detrimental effects it has on our communities and our resources.

5.5.3 Examples of tenancy fraud include:

- Not using the property as the principal homes
- Illegally sub-letting the property
- Obtaining a tenancy by deception
- Benefit fraud
- Wrongly claiming succession

5.5.4 Rooftop will undertake Home MOTs to inspect properties and to ensure that the original customer is still in situ.

5.5.5 Rooftop will undertake a robust investigation into alleged tenancy fraud, either singly or in cooperation with the Local Authority Fraud Investigation Team and will take decisive action to end the tenancy.

5.6 **Right to sub-let**

5.6.1 Some tenancy agreements convey an implied right to sub-let part of the accommodation where Rooftop's consent has been obtained in writing. Where a written request to sub-let has been made, the Association will reply within four weeks and will not be unreasonably refused, or unnecessary conditions attached.

5.6.2 Where consent is granted, the sub-tenant is listed on the tenancy as an "occupier". The tenant has no right to enter the sub-tenant's room without obtaining consent first.

5.7 **Definition of a sub-tenant**

5.7.1 Generally, a sub-tenant will have exclusive possession of part of the customer's accommodation and may perhaps have a lock on their bedroom/bed sit door. If they have a separate kitchen/living room this may indicate a sub-letting arrangement.

5.7.2 Sub-tenants may also have letting arrangements and will generally have clear 'arm's length' living arrangements rather than being 'part of the family'. Should the sub-tenant leave the property the customer must inform Rooftop.

5.8 **Death of a Tenant**

5.8.1 In the case of a sole tenant, there will be no right to succession and the objective will be to ensure that the dwelling is cleared and re-let as quickly as possible. Responsibility for dealing with the affairs and effects of the deceased customer will vary according to the circumstances of the death and whether or not there are next of kin

5.8.2 In most cases the Association will be informed of a customer's death by the next of kin, Social Services, or the hospital. The next of kin or executor of the estate will generally arrange clearing and terminating the property.

5.8.3 In the case of the death of a customer, the normal four-week notice period may be reduced where the property has been cleared, keys returned, void works completed, and the property is relet within the notice period.

5.9 **Death of a Joint Tenant**

5.9.1 Where a joint tenant dies, the surviving customer may be eligible to succeed to the tenancy.

- 5.9.2 Succession rights will be granted where the spouse/partner/civil partner is eligible to succeed the tenancy.
- 5.9.3 Rooftop may allow discretionary succession rights where other members of the family, may succeed to the tenancy considering their level of vulnerability and subject to certain eligibility criteria. Assignment may be via mutual exchange, in furtherance of a Court Order made under the Matrimonial Causes Act, 1973 or to a person who would be qualified to succeed the tenant subject to certain provisions.

5.10 **Death of a Tenant leaving an unauthorised occupant**

- 5.10.1 An unauthorised occupant is an individual left in occupation of a property but without the right to succeed to the tenancy.
- 5.10.2 If the unauthorised occupier offers rent it will only be accepted as mesne profits. Rooftop will not make a demand for money, but if it is offered, a receipt will be issued with the wording: '£<amount> accepted on account of Mesne Profits only, not rent. The acceptance of money on account of Mesne Profits does not create nor is it intended to create any form of tenancy'.

6 **Equality and diversity**

- 6.1 We will ensure that this policy is applied fairly and consistently to all our customers.
- 6.2 We will not directly or indirectly discriminate against any person or group of people because of their race, religion/faith, gender, disability, age, sexual orientation or any other grounds set out in our Equality and Diversity policy or legally protected characteristic.
- 6.3 Our aim is to ensure that policies and supporting procedures do not knowingly create an unfair disadvantage for anyone, directly or indirectly.

7 **Data protection**

- 7.1 We will hold all information about applicants and customers in a secure manner, in accordance with the principles of the General Data Protection Regulation (GDPR) 2018.

8 **Variations to the policy**

- 8.1 The Head of Housing, in consultation with the Head of Finance, has the authority to authorise variations from the policy on the use of fixed term and other types of tenancy in appropriate cases (subject to the necessary lenders consent if required).
- 8.2 Exceptions will be reported to the Executive Team on an annual basis as part of quarterly monitoring.

9 **Review**

- 9.1 This policy will be reviewed every 12 months unless there are major changes in legislation or good practice.

10 **Consultation**

- | | |
|------------------------------|---------------|
| 10.1 Leadership Team | November 2020 |
| 10.2 Executive Team | December 2020 |
| 10.3 Other (e.g., customers) | TBA |

11 Responsibilities

11.1	Responsible body	Executive Team
11.2	Formulation and approval of policy	Executive Team
	Amendments to policy	Leadership Team
	Monitoring of policy	Leadership Team
	Operational management of policy/policy author	Head of Housing
11.3	Date of formulation of policy	November 2020
11.4	Dates of policy reviews	N/A
11.5	Date of next review	November 2021

Associated documents

Internal – Rooftop policies and procedures

- Equalities and Diversity policy
- Probity Policy
- Rent and Service Charge Setting and Management policy
- Complaints Policy
- Anti-Slavery and Human Trafficking Statement
- Equality Impact Assessment
- Compensation Policy including Home Loss and Disturbance Payments
- Voids Management Policy
- Allocations and Lettings Policy
- Succession Procedure
- Death of a Tenant Procedure
- Assignment and Mutual Exchange Procedure

External

- RSH Tenancy Standard 2012 (republished 2015)
- Modern Slavery Act 2015

DECLARATION OF TRUST

THIS DEED IS MADE on the day of 20.....,
by
...[Insert Trustee's name] ... of ...[Insert Trustee's address]....., ("The Trustee") in
favour of ...[Insert Tenant's name]....., ("The Beneficiary").

WHEREAS: -

1) On the day of 20....., Rooftop Housing
Association Limited of 70 High Street, Evesham, Worcestershire, WR11 4YD, as Landlord,
granted to the Beneficiary, as Tenant, an Assured Shorthold Tenancy ("the Tenancy") of
.....
.....
("the Premises").

2) At the date of the grant of the Tenancy of the Premises the Tenant is unable to hold the
legal estate in the Premises as he/she does not have mental capacity to do so and the
grant shall therefore take effect in equity with the legal estate being held on Trust by the
Trustee.

Executed as a DEED by Rooftop Housing Association Limited by [insert names] duly
authorised in accordance with its Rules to sign on its behalf.

Authorised Signature:

Authorised Signature:

In the presence of

Signature of witness

Name (in block capitals)

Address

SIGNED as a DEED by [insert full name]

Signature (Trustee)

In the presence of

Signature of witness

Name (in block capitals)

Address

Consumer Standards

Appendix 3

2.2. Tenure

- 2.2.1. Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:
- a) The type of tenancies they will grant.
 - b) Where they grant tenancies for a fixed term, the length of those terms.
 - c) The circumstances in which they will grant tenancies of a particular type.
 - d) Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
 - e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
 - f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
 - g) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
 - h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
 - i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- 2.2.2. Registered providers must grant general needs tenants a periodic secure or assured (excluding periodic assured shorthold) tenancy, or a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.
- 2.2.3. Before a fixed term tenancy ends, registered providers shall provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the existing fixed term or that they propose to end the tenancy.
- 2.2.4. 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.
- 2.2.5. Where registered providers choose to let homes on fixed term tenancies (including under Affordable Rent terms), they shall offer reasonable advice and assistance to those tenants where that tenancy ends.
- 2.2.6. Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to in accordance with the requirements of the relevant 4 tenancy agreement, for the duration of the tenancy, allowing for regulatory requirements about participation in mutual exchange schemes.

- 2.2.7. Registered providers shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- 2.2.8. Registered providers shall grant those who were social housing tenants on the day on which section 154 of the Localism Act 2011 comes into force, and have remained social housing tenants since that date, a tenancy with no less security where they choose to move to another social rented home, whether with the same or another landlord. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).
- 2.2.9. Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.