



# Wythenshawe Community Housing Group (WCHG) Tenancy Management Policy

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<b>Approved by:</b>	Board
<b>Drafted by:</b>	Simon Melloy , Senior Housing Manager
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## 1. Introduction

- 1.1 The following policy establishes the framework for managing and monitoring tenancies at Wythenshawe Community Housing Group (WCHG). It will set out the legal obligations that influence how we will respond to and deal with tenancy management issues.
- 1.2 This policy relates to the following types of Tenancy Agreement:

### **Assured Shorthold** (Starter Tenancies)

This will be used for the vast majority of new customers. The Starter Tenancy will run for the first 12 months, providing there have been no serious breaches of the agreement, it will expire on the anniversary date, and will automatically convert to an Assured Non-Shorthold Tenancy Agreement. During the Starter Tenancy period, customers will not have the same rights as Assured Non-Shorthold Tenants.

### **Assured Non-Shorthold**

This tenancy agreement will be used for new tenants to WCHG who have completed their 12-month Starter Tenancy period; this tenancy agreement allows the customer the Right to Acquire and the Right to Exchange.

### **Assured Non-Shorthold** (Preserved Rights)

This is used for WCHG tenants who were tenants prior to the stock transfer, or for tenants transferring into WCHG properties who have the Right to Buy under their existing tenancy agreement. It grants them very similar rights to the Secure Tenancy with the council, and preserves their Right to Buy.

## 2. Scope

- 2.1 This policy will apply to all WCHG tenants granted the above tenancy agreements and will cover starter tenancies, successions, abandoned tenancies, unauthorised occupiers, subletting, access arrangements, property condition, mutual exchanges, decants, tenancy fraud and ending a tenancy.

## 3. Policy Statement

- 3.1 WCHG Group has a number of statutory and regulatory obligations that it must carry out as a registered provider of social housing.
- 3.2 WCHG also has a responsibility to its tenants and the wider community to recognise that whilst the vast majority of residents are committed to the area in which they live. A disproportionately small number of people fail to maintain their tenancy to an acceptable standard that can detract from our objective to provide sustainable communities where

customers want to live and work.

3.3 WCHG will follow the law as set out in the Statutory and Legislative Framework in Section 10, and will adhere to the grounds and conditions set within the tenancy agreement(s) as varied from time to time.

3.4 The key objectives of the Tenancy Management Policy are:

- To set out how tenancies will be managed across WCHG
- To ensure that tenancies are managed legally and without prejudice to tenants, to offer advice and support to customers and guidance to officers when making decisions
- To outline WCHGs statutory and regulatory responsibility in dealing with tenancy management
- To support and complement WCHG's overall approach to the reduction of anti-social behaviour in our communities
- To support tenancy sustainability through regular support during the early stages of a tenancy
- To achieve sustainable communities and be part of a balanced approach to increasing community confidence
- To work with the local authority and other partners to meet customer priorities across our communities
- To work with Manchester City Council and other partners in tackling tenancy fraud

3.5 WCHG is committed to monitoring and evaluating the effectiveness of the use of a Tenancy Management Policy and will continually review and adopt best practice where appropriate.

## **4. Policy**

4.1 The Tenancy Management Policy covers the following areas

- Starter tenancies
- Successions
- Abandoned properties
- Unauthorised occupiers
- No access
- Property condition
- Mutual exchanges
- Sub-Letting
- Decants
- Tenancy fraud
- Ending a tenancy

## **5. Starter Tenancies**

5.1 All new tenants to WCHG, excluding those transferring or completing a mutual exchange will be signed to a Starter Tenancy, which will be granted for a twelve month period during which the tenancy will be monitored at the two and nine month stage (or before this point if

appropriate). A decision will only be made as to whether the tenancy will convert to a full Assured Tenancy or will remain a Starter Tenancy after the 9-month review has been completed. The Starter Tenancy will normally convert to an Assured Tenancy if no action has been taken during the twelve-month period to terminate the tenancy.

### **Conditions of the tenancy agreement**

The Assured Shorthold (Starter) Tenancy Agreement clearly sets out the rights and obligations of the Starter Tenant and details the grounds on which we can end the tenancy and gain possession.

Starter Tenants will not have the same rights in law as an Assured Tenant until the first twelve months of the tenancy have been successfully completed. Once the Starter Tenancy converts, the terms and conditions of tenancy are the same as the Assured Tenancy agreement.

The rights and responsibilities of Starter Tenants are detailed in the Assured Shorthold (Starter) Tenancy Agreements for Willow Park tenants and Parkway Green tenants. The notable exceptions from the Assured Tenancy Agreements are:

- There is no right to improve, exchange or acquire for Starter Tenants
- The Starter Tenancy can be terminated by serving a Section 21 Notice in cases where a tenant has breached their tenancy

### **Options after Twelve Months**

The Starter Tenancy does not automatically convert to an Assured Tenancy after twelve months if any of the following apply before that date:

- Proceedings for possession have commenced against the tenant
- The Trust has served Notice that require possession under Section 21(4) of the Housing Act 1988
- The Trust has served a Notice under Section 8 of the Housing Act 1988
- The tenant has outstanding rent arrears or is in breach of the Starter Tenancy agreement

The Starter Tenancy can be extended for a period up to 6 months and the tenant must be informed of this in writing and advised that regular reviews of the tenancy will be completed.

The tenant will be offered support to maintain their tenancy to an acceptable standard.

A Senior Manager will be required to approve a recommendation to terminate a Starter Tenancy. The decision as to whether a Notice Requiring Possession (Section 21 Notice) will be served will be made

considering all available evidence.

Under Article 8 of the Human Rights Convention, as applied to public sector landlords by the Human Rights Act 1998, everyone has a right to respect for their home. This is not an absolute right and therefore WCHG are entitled to seek possession or extend the Starter Tenancy period where we believe the action being taken is proportionate to the behaviour we are considering action against.

WCHG will ensure that the correct legal procedures are followed to ensure the Human Rights legislation is not breached.

### **Starter Tenancy Appeals**

WCHG provides access to an appeals process for Starter Tenants wishing to appeal the decision to terminate their tenancy. Information on the appeals process will be provided at the initial sign up to the Starter Tenant and when the Section 21 Notice is served. Starter Tenants will have 14 days within which to appeal in writing following service of the Notice and where an appeal fails, possession action will be continued.

If the Starter Tenant does not leave the property on or before the expiry of the 56-day notice period, WCHG will apply to the County Court for possession of the property. No grounds for possession need to be proved as the end of a Starter (Assured Shorthold) tenancy is a mandatory ground in itself. Where the tenant does not abide by the terms of the Notice or court order for possession, WCHG will apply to court for a warrant to gain possession.

## **6 Succession**

- 6.1 Succession describes the situation when a tenant dies and another person applies to take over the tenancy of the property. The succession policy will ensure that the legal and regulatory conditions are applied regarding succession to a tenancy and that the conditions of the tenancy agreement are taken in to account.

The statutory right for succession for Assured Tenants is limited to one right of succession to a partner or spouse of the tenant or a qualifying member of their family. Under both the Housing Act 1985 and the Housing Act 1988, where a joint tenant becomes a sole tenant following the death of the other joint tenant, he or she is treated as a successor and no further statutory succession is possible. This is also known as survivorship.

As WCHG uses Assured and Assured Shorthold (Starter) Tenancy agreements, the rule of one succession per tenancy will apply.

### **Succession Definitions and the Law**

A succession is where a qualifying person takes over the tenancy on the

death of an existing tenant including their tenancy agreement and terms and obligations of tenancy.

**Only one succession is permitted per tenancy by law.**

The tenancy agreement sets out those eligible to succeed a tenancy who have lived at the address with the tenant for a minimum of six months prior to their death and this includes.

- A spouse or cohabiting partner, including same sex partners
- Parents or grandparents
- Child or grandchild
- Brother or sister
- Uncle, aunt, nephew or niece

Step-relations, half-relations and in-laws are also included but not foster children, cousins or friends.

If there is more than one member of the tenant's family and/or partner qualified to succeed under the above terms they should agree which of them shall claim the benefit. If more than one claim is received and the family cannot reach an agreement, WCHG will decide who the tenancy should pass to.

**Succession Conditions that must be met**

Any person applying to succeed to a tenancy must be able to demonstrate all of the following:

- They occupied the property as their only or principal home
- They lived with the tenant for the period of time stipulated in the tenancy agreement (this will be 6 months on original tenancy agreements and 12 months on agreements after November 2015).
- They notify WCHG in writing of their claim to succeed within six months of the death of the tenant

WCHG will investigate all claims and applications for succession and ask the applicant to provide evidence to support their claim.

**Succession Decisions**

All succession applications will be considered by a Housing Manager, who will reach one of the following decisions:

- To grant the succession to the applicant at that property
- That the applicant does not have the right to succeed
- That the property is suitable for the needs of the applicant with a legal right to succeed

If WCHG is satisfied that the applicant has the legal right to succeed then arrangements will be made to transfer the tenancy to the successor. This will involve assigning the tenancy to the successor and making arrangements for the payment of the rent and any debt.

Decisions may vary depending on the conditions of the tenancy agreement.

If WCHG is not satisfied that there is a right of succession they may end the tenancy using Ground 7, Schedule 2 of the Housing Act 1988 (as amended by the Housing Act 1996).

### **Special Succession Rights**

If the Group is satisfied that the applicant would have a right of succession but there has already been one succession, then it may make the decision to award special succession rights.

The original tenancy will be ended and WCHG will enter into a new tenancy with such person either of the property, or at WCHG's discretion, of another property that WCHG considers to be more suitable.

The successor to the tenancy will be liable for rent as from the date of the death of the tenant. In practice, this will be from the first Monday following the death of the tenant.

Any decision about a special succession application will be made by a Senior Manager. Priority will be awarded on a case by case basis and we may in some circumstances offer a direct let, in accordance with the Allocations Policy.

### **Inheriting a tenancy**

An assured tenancy can be inherited on the death of the tenant, either through the rules of intestacy or under a will. The inheritor must occupy the property as their only or principal home and it will remain an assured tenancy.

If the person who has inherited the tenancy does not have a right to succeed to the tenancy we may take legal action to repossess the property using the mandatory Ground 7 for possession as set out in schedule 2 of the Housing Act 1988.

## **7. Abandoned Tenancies**

- 7.1 WCHG will ensure that abandoned properties across our neighbourhoods and communities will be identified and dealt with promptly and efficiently and within the guidelines of relevant legislation to minimise the number of empty properties and rent loss across the housing stock.

- 7.2 The objective is to regain possession of any property suspected of being abandoned as soon as possible, to ensure a property is not left vulnerable to unauthorised occupiers or damaged because of abandonment. We will also work with partners and the relevant local authorities to inform them of suspected abandoned properties that are not WCHG properties.
- 7.3 WCHG will investigate all reports or all suspected cases of abandonment. Each case will be considered on its own merits and legal action to repossess the property may commence after a full investigation has been carried out. An investigation report will be completed by the Tenancy Management Coordinator.
- 7.4 WCHG is aware that tenants may be absent from their homes for a variety of reasons including hospitalisation, imprisonment, holidays or work and will consider these reasons while investigating. All attempts will be made to make contact with the tenant or family members and last known or 'care of' addresses will be approached. Where appropriate, WCHG will accept an implied surrender of tenancy if the property has clearly been abandoned with no signs of occupation at all.
- 7.5 If WCHG is satisfied that the tenant has left the property permanently and has therefore surrendered their tenancy by default, WCHG can end the tenancy giving four weeks (28 days) notice, by serving a Notice to Quit and at the same time a Notice of Seeking Possession on the grounds of non-occupation (Ground 12). Each Notice should be served without prejudice to the other and read as follows:
- “Without prejudice to the Notice of Seeking Possession dated.....and served .....”; and without prejudice to the Notice to Quit dated....and served....”
- 7.6 These cases will be authorised by a Housing Manager, who will consider the Investigation Report and checklist completed by the Tenancy Management Co-ordinator.
- 7.7 In some cases, particularly where the property is deemed to be insecure or in a vulnerable area and it is evident that the tenant has no intention to return, it may not be appropriate to wait for the Notice to Quit to expire before taking action. The circumstances of each case must be carefully considered and approval obtained from a Housing Manager before the decision is made to change the locks and secure the property.
- 7.8 In normal circumstances, provided that no one is occupying the property when the Notice to Quit expires and there has been no contact from the tenant, WCHG can repossess the property without a Court Order (Section 81 Housing Act 1985, Section 1 (1)(b) Housing Act 1988, Section 124 Housing Act 1996).

## **8. Unauthorised Occupiers**

- 8.1 If we suspect that a property is subject to unauthorised occupation we

must first ensure that we follow the procedure for the tenancy breach. Before we take proceedings we have to prove that the original tenancy has come to an end. This could be done by the original tenant surrendering the tenancy, by a possession order from the court or by serving a Notice to Quit on the tenant if they are no longer living at the property.

8.2 WCHG will have the need to ascertain whether the occupier who remains in the property has a legal right to the tenancy. This can only be by way of succession rights on the death of the tenant or to a family member who would have had the right to succeed had the tenant died.

8.3 Whilst we investigate the status of the occupier, the tenancy will be legally ended and no rent payments will be taken. The occupier will sign a Use and Occupation agreement and a charge of Mesne Profits will be made during the period whilst the outcome is being determined.

## **9. Property condition**

9.1 WCHG expects that tenants will maintain their properties in a reasonable condition at all times in accordance with their tenancy agreement and this includes:

- Keeping the interior of the home clean and in a good state of decoration
- Keeping and maintain gardens, trees, lawn and hedges in a neat and tidy condition
- Making good any damage caused to fixtures and fittings or structure of the property by a member of the household or a visitor to the home.
- Reporting to WCHG promptly, any disrepair or defect for which WCHG is responsible.

9.2 Where cases are highlighted through a routine visit, tenancy audit or referral from partner/external agencies, we will investigate to establish possible support needs.

9.3 If no support needs are identified, the tenant will be advised what action may result if requests to tidy up the property are not followed. Ultimately, we may consider taking enforcement action if the tenant continues to allow the property to deteriorate.

## **10. Access to WCHG properties**

10.1 WCHG's tenancy conditions require a tenant to give WCHG access if appropriate written notice of this request has been given. Access will normally be requested for carrying out gas safety checks, electrical checks, routine property inspections, cyclical works and tenancy audits

10.2 WCHG will normally give at least 24-hour notice when it requires access unless it believes entry is necessary because of emergency or health and

safety issues such as a water or gas leaks or where access has not been given to allow for access to service gas appliances.

- 10.3 If written notice has been given and WCHG are still unable to access to the property we will take appropriate action, which may include applying to the County Court for access.

## **11. Mutual Exchange**

- 11.1 A Mutual Exchange is an exchange of tenancies and therefore properties between tenants of a social landlord. WCHG recognises that the right to exchange for many tenants is an important means to them finding more suitable accommodation for their changing needs. WCHG also promotes the use of mutual exchanges to encourage tenant mobility, address under occupation or overcrowding and to create sustainable communities. This applies to all Assured Tenants of the Group
- 11.2 The Group will seek to encourage and promote mutual exchanges as an option for tenants who are under occupying their current property and/or are affected by welfare reform and the under occupation charge
- 11.3 WCHG is a member of Homeswapper, a website for social housing tenants who are looking for a mutual exchange. WCHG subscribes to Homeswapper and allows all tenants to access this service free of charge and enable them to find suitable matches.

### **Legal framework**

The Housing Act 1985 stipulates that the consent of all landlords involved must be obtained before any exchange takes place.

The right to exchange for secure tenants is governed by Section 92 of the Housing Act 1985 and Housing Act 1989.

All applications must be dealt with within 42 days, starting from the receipt of the mutual exchange application form. WCHG loses the legal right to withhold consent if the application is not dealt with in that timeframe.

### **Grounds for refusal**

WCHG can only refuse a mutual exchange under the following circumstances (which is set out in Housing Law)

- One or both of the parties applying for the mutual exchange do not have a clear rent account and Notice has been served
- The tenants moving in would be under occupying or overcrowding the property. Where under occupation arises, each case will be individually assessed and the level of under occupancy reviewed in

line with a financial assessment.

- The property is specifically designed accommodation for example, older persons, disabled adapted and extra care
- There is a current possession order in place or WCHG has commenced proceedings to end the tenancy by service of a Notice Seeking Possession

## **12. Sub-Letting**

- 12.1 Assured tenants have the legal right to take in a lodger or sub-let part of their home with written consent from WCHG. They cannot sub-let the whole home or pass it on to someone else. In accordance with section 5.1 of the Assured Tenancy agreement, WCHG will review the details of the request but permission will not be unreasonably withheld.
- 12.2 Those on an Assured Shorthold (Starter) Tenancy do not have the right to take in a lodger or sub-let part of their home.
- 12.3 If there is information that a tenant has sub-let part or the entire home without permission, WCHG will investigate and decide whether to allow retrospective permission where it is part sub-let or take further action if it is the whole property which may include possession proceedings

## **13. Tenancy Fraud**

- 13.1 WCHG is committed to tackling tenancy fraud, and will work closely with Manchester City Council's, Compliance Team, in the detection and prevention of fraud.
- 13.2 Tenancy Fraud can take various forms including:
- Attempting to obtain a tenancy by deception.
  - Unlawfully sub-letting a property
  - Housing Benefit fraud
  - Right to Buy fraud
- 13.3 WCHG will carry out tenancy audits to verify household details to confirm that the right people are occupying our properties and relevant staff will receive training in the detection and prevention of fraud.
- 13.4 Where appropriate, WCHG will make use of the Prevention of Social Housing Fraud Act 2013 to instigate criminal proceedings via Manchester City Council.

## **14. Decants**

- 14.1 From time to time, it may be necessary to decant (move) tenants from their current property on a temporary basis. Properties may require decanting for a number of reasons. WCHG will decant properties if necessary in situations where:

- A building is unsafe or hazardous
- Work is required to a building that may be harmful to occupants e.g. chemical work or large scale removal of asbestos
- Gas/ electricity/ or water will not be available for a prolonged period of time
- The building is due for large-scale improvements or major repairs.

#### 14.2 WCHG will aim to:

- Decant residents only where it is necessary
- Minimise disruption to residents through support, effective communication, and minimising the length of any temporary decant.
- Support tenants who are to be decanted by assisting with their move e.g. removal of possessions; disconnection of white goods e.g. cooker, washing machine and removal/refit of carpets if this is necessary.

### **15. Ending a Tenancy**

15.1 The details of how a tenant can surrender their tenancy are set out in the Tenancy Agreement.

15.2 Generally, 4 weeks' written notice from the tenant is required, although WCHG may waive or reduce this requirement at its discretion, provided all other conditions relating to the termination have been met

15.3 Joint tenancies can be ended by either tenant. Where one tenant wishes to end a joint tenancy, WCHG will check the circumstances and ensure as far as possible that the other tenant is aware of and in agreement.

### **14. Appeals**

14.1 Tenants and customers can appeal decisions in respect of tenancy decisions and applications for succession, mutual exchanges, the serving of a Notice Requiring Possession (Section 21 Notice) and the extending of a Starter Tenancy by writing to the Senior Housing Manager.

14.2 Where a tenant or customer is dissatisfied with the way in which a case has been investigated or about WCHGs administrative processes they will have the right to complain through WCHG's Complaints, Comments and Compliments policy.

### **15. Statutory & Legislative Framework**

- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Human Rights Act 1998
- Protection from Eviction Act 1977
- Torts (Interference of Goods Act) 1977

- Prevention of Social Housing Fraud Act 2013
- The Civil Partnership Act 2004
- Equalities Act 2010
- Data Protection Act 2018

## **15. Responsibility**

- 15.1 The Executive Director of Housing will be responsible for the implementation, application and review of this policy and will ensure all staff involved are trained in the implementation and any associated procedures.

## **16. Consultation, monitoring and review**

- 16.1 The Tenancy Management Policy will be reviewed every three years by Board and consultation carried out with the Customer Panels and Tenant Committee.

## **17. Equality and Diversity**

17. WCHG will ensure that the Tenancy Management Policy is accessible to its diverse customers and will take into account the different needs of customers when explaining the options available to them and in tailoring the service around the customer need.

## **18. Associated policies and procedures strategies**

- Anti-Social Behavior Policy and Procedure
- Equality & Diversity Policy & Framework
- Repairs Policy and Procedure
- Rechargeable Repairs Policy and Procedure
- Safeguarding Policy and Procedure
- Allocations Policy and Procedure
- Tenancy Audit Procedures
- Mutual Exchange Procedure
- Tenancy Change Procedure
- Starter Tenancy Procedure
- Hoarding Policy
- Data Protection Policy