

**1. Policy statement**

- 1.1. At Rooftop Housing Group (Rooftop) we are committed to delivering a high quality tenure management service that ensures we are fair and transparent in our offer to our customers. Our aim is to offer security and enhance the quality of life for our customers by promoting active engagement with them, working with relevant stakeholders and by being a responsive landlord to contribute to the overall well-being of individuals and families.
- 1.2. This Policy outlines our approach to the tenure management of our properties, ensuring that we meet the relevant regulatory standards, our service represents value for money and that it meets the service standards agreed in consultation with stakeholders.
- 1.3. Due to the nature of our organisation being stock transfer from a local authority there are contractual variations that our outlined within the tenancy agreement itself.

**2. Statutory and Regulatory context**

- 2.1. This document has been reviewed in line with the Regulator of Social Housing's (RSH) Tenancy Standard (April 2024) which states:
  - 2.1.1. **Tenure** – “Registered providers shall 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”.

“They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation”.
  - 2.1.2. **Mutual Exchange** – “Registered providers must support relevant tenants living in eligible housing to mutually exchange their homes”.
- 2.2. This Policy has been developed to take into account a range of relevant UK legislation and regulation including:
  - Protection from Eviction Act 1977.
  - Housing Acts 1985, 1988 and 1996.
  - Human Rights Act 1998.
  - Mental Capacity Act 2005.
  - Housing & Regeneration Act 2008.
  - Equality Acts 2006 & 2010.
  - Localism Act 2011.
  - Modern Slavery Act, 2015.
  - Welfare Reform and Work Act 2016.
  - Immigration Act 2016.
  - Homelessness Reduction Act 2017.

- Data Protection Act 2018 and the UK General Data Protection Regulation 2021.
- Domestic Abuse Act 2021.
- The 2024 Regulator's Regulatory Framework and in particular the Tenancy Standard.

2.3. This Policy should be read alongside our other related policies including our Allocations and Lettings Policy which gives details on how we allocate and let our homes and our Rent and Service Charge Setting and Management Policy which gives details on the types of rents and service charges associated with our homes.

### **3. Policy outline**

3.1. The purpose of this Policy is to ensure that all our customers receive a formal occupancy agreement (tenancy or licence) and that we meet all applicable legal and regulatory requirements in relation to the form and use of and the management of our occupancy agreements.

3.2. It outlines our approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions and tackling tenancy fraud (set out in our Tenancy Fraud Policy).

3.3. We will, in accordance with the Tenure "specific expectations" set out by the RSH in its Tenancy Standard (April 2024):

3.3.1. "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.

3.3.2. In addition, "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".

- 3.3.3. “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”.
- 3.3.4. “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”.
- 3.3.5. “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)”.
- 3.3.6. “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”.
- 3.4. This Tenure Policy also sets out how we will, in specific circumstances:
- a) Manage our tenancies and licences.
  - b) Seek to end tenancies or licences.

#### **4. Equality, Diversity and Inclusion: Principles**

- 4.1. At Rooftop we are committed to creating and sustaining a diverse and inclusive environment achieving positive outcomes for potential and existing customers, our colleagues and the wider community. Our commitments to our customers, colleagues and communities are detailed in our Equality, Diversity and Inclusion (EDI) Strategy. We are an organisation that values diversity, champions equality and inclusion. We demonstrate this through the activities and the services we provide. This means living by, working to and acting on our Values.

#### **5. Vulnerability: Reasonable Adjustments**

- 5.1. There are occasionally circumstances where we need to consider working outside of the parameters of this Policy. This may be where there are several complexities present, or where customers have vulnerabilities that may lead us to make reasonable adjustments to the way we apply this Policy. In such cases, a referral should be made to the Complex Cases Review Group via the Head of Housing, where any approach outside of this Policy (and potentially other policies) will be considered and recorded, if agreed. This will always be considered in the context of the Assessing and Supporting Vulnerability Policy.

#### **6. Data Protection: Principles**

- 6.1. Rooftop recognises the importance of protecting the personal data of our customers, colleagues, contractors and other stakeholders and our commitment to compliance with data protection laws and managing personal data responsibly. As an organisation, we are committed to ensuring everything we do with personal data follows the principles of lawfulness, transparency, fairness and accuracy whilst minimising the amount of data we collect and only using it for specific, explicit and legitimate purposes until we no longer need it.

#### **7. Objective**

- 7.1. The objective of this Policy is to ensure that all residents of Rooftop hold the appropriate agreement for the classification of property that they are in, related to the correct tenure type.
- 7.2. That customers have clear guidelines issued to them within their agreement for them to comply with the conditions therein and maintain successful tenancies/licences.
- 7.3. That tenancies and licences are issued, maintained and ended in the correct ways as set out in the Housing Act supplemented by the RSH.

## **8. Summary of the types of tenancies and licences that we offer**

- 8.1. We aim to give customers as much security of tenure as appropriate, taking account of the purpose of the accommodation the needs of individual households, the sustainability of the community and the efficient use of our stock.
- 8.2. We have the following tenancy and licence agreements available for use:

### **Tenancies**

- Starter Tenancy on social or affordable rent terms (“Starter Tenancy”).
- Assured periodic (lifetime) tenancy on social or affordable rent terms (“Assured Tenancy”).
- Assured periodic (lifetime) tenancy for customers who transferred from a Council to us during a stock transfer (“Assured Protected Tenancy”).
- Assured Shorthold Periodic Tenancy on social, affordable and market rent terms (“Periodic AST”).
- Equitable Assured Shorthold Periodic Tenancy (“Equitable Tenancy”).
- Secure periodic (lifetime) tenancy for our existing customers already on this form of tenure (“Secure Tenancy”).
- Contractual Tenancy granted in accordance with section 209 of the Housing Act 1996 (“Homeless Tenancy”).

### **Licences**

- Licence for Key workers (“Key Worker Licence”).
- Protected Licence Agreement (“Protected Licence”).
- Excluded Licence Agreement (“Excluded Licence”).
- Licence for Homeless Customers owed an interim duty to accommodate by the local authority (“Homeless Licence”).
- Licence for Customer Decants (“Decant License”).

### **Plot agreements**

- Gypsy Roma Traveller.

8.3. Listed below is a brief summary of each of the different occupancy agreements:

<b>Tenancy/Licence Type</b>	<b>Duration</b>	<b>Individual</b>	<b>Accommodation Type</b>
<b>Starter Tenancy</b> (An Assured Shorthold Tenancy until the end of the probationary period and then it needs converting to an Assured Tenancy). These can be offered on social or affordable rent terms.	<ul style="list-style-type: none"> <li>• Periodic but please note its probation period is 12 months. (extendable to 18 months if there is a breach of tenancy).</li> </ul>	<ul style="list-style-type: none"> <li>• All new customers who have not held a previous social housing tenancy.</li> </ul>	<ul style="list-style-type: none"> <li>• All general needs properties.</li> <li>• All Retirement Living and Housing with Care.</li> </ul>
<b>Assured Tenancy</b> (These can be offered on social rents or affordable rent terms).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Customers successfully completing their starter tenancy and customers that have previously held an assured or a secure tenancy.</li> </ul>	<ul style="list-style-type: none"> <li>• All general needs properties.</li> <li>• All Retirement Living and Housing with Care.</li> </ul>
<b>Assured Protected Tenancy</b>	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Customers who have transferred to Rooftop following a successful stock transfer from a local authority.</li> </ul>	<ul style="list-style-type: none"> <li>• All general needs properties.</li> <li>• All Retirement Living and Housing with Care.</li> </ul>
<b>Periodic Assured Shorthold Tenancy</b> (these can be offered on social, affordable or market rent terms).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• A range of individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• Market rent properties.</li> <li>• Self-contained accommodation for Keyworkers (hospital accommodation for families).</li> <li>• Self-contained accommodation for young people.</li> <li>• Other self-contained non-general needs accommodation.</li> </ul>
<b>Equitable Tenancy</b> (these can be offered on social or affordable rent terms).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Young people aged 16 and 17 who would be granted a Periodic Assured Shorthold Tenancy if they were an adult.</li> </ul>	<ul style="list-style-type: none"> <li>• Self-contained accommodation for young people aged 16 and 17.</li> </ul>

<b>Tenancy/Licence Type</b>	<b>Duration</b>	<b>Individual</b>	<b>Accommodation Type</b>
<b>Secure Tenancy</b> (let at a registered fair rent).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Customers who were previously granted these tenancies prior to the introduction of Section 35 of the Housing Act 1988.</li> </ul>	<ul style="list-style-type: none"> <li>• All general needs properties.</li> <li>• All Retirement Living and Housing with Care properties.</li> </ul>
<b>Homeless Tenancy</b> (granted in accordance with Section 209 of the Housing Act 1996).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Homeless individuals referred by the local authority for temporary accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>• Self-contained temporary homeless accommodation granted whilst the local authority is deciding whether it has a homeless duty to help rehouse.</li> </ul>
<b>Protected Licence</b> (protected under the Protection from Eviction Act 1977)	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Young Persons in specialist Young People Service shared accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>• Supported housing without exclusive use of communal areas.</li> <li>• Room only accommodation with shared use of communal areas.</li> <li>• But <u>not</u> a hostel (within the meaning of Section 622 of the Housing Act 1985).</li> </ul>
<b>Excluded Licence</b> (excluded from protection under the Protection from Eviction Act 1977).	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• A range of individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• Accommodation in a hostel within the meaning of Section 622 of the Housing Act 1985.</li> </ul>
<b>Homeless Licence</b> (a combination of Excluded and Protected – excluded during the interim duty / investigation of homelessness phase, protected after a full duty to help rehouse is agreed by the local authority).	<ul style="list-style-type: none"> <li>• Periodic.</li> </ul>	<ul style="list-style-type: none"> <li>• Homeless individuals referred by the local authority for temporary accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>• Room only accommodation with shared use of communal areas for temporarily homeless households.</li> <li>• But <u>not</u> a hostel (within the meaning of Section 622 of the Housing Act 1985).</li> </ul>

<b>Tenancy/Licence Type</b>	<b>Duration</b>	<b>Individual</b>	<b>Accommodation Type</b>
<b>Key worker Licence</b>	<ul style="list-style-type: none"> <li>• Maximum one month.</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals employed by the relevant hospital trust.</li> </ul>	<ul style="list-style-type: none"> <li>• Keyworker (hospital on call accommodation).</li> </ul>
	<ul style="list-style-type: none"> <li>• Minimum one month.</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals employed by the relevant hospital trust.</li> </ul>	<ul style="list-style-type: none"> <li>• Keyworker (hospital study room accommodation).</li> </ul>
<b>Gypsy Roma Traveller Agreement</b>	<ul style="list-style-type: none"> <li>• Minimum four weeks.</li> </ul>	<ul style="list-style-type: none"> <li>• Members of Gypsy Roma Traveller Community.</li> </ul>	<ul style="list-style-type: none"> <li>• Pods and plots.</li> </ul>
<b>Decant License</b>	<ul style="list-style-type: none"> <li>• Periodic for example, month to month.</li> </ul>	<ul style="list-style-type: none"> <li>• Offered to existing customers who are required to move out of their main home into temporary self-contained accommodation whilst works are carried out to their main home.</li> </ul>	<ul style="list-style-type: none"> <li>• Self-contained accommodation. In such cases the customer is not required to pay rent for the temporary tenancy but does have a continuing obligation to pay rent in respect of their main home.</li> </ul>

#### 8.4. Starter Tenancy

- 8.4.1. A Starter Tenancy is a Periodic Assured Shorthold Tenancy (AST) which will be converted to an Assured Tenancy after 12 to 18 months (the “Starter Period”) on successful completion of the Starter Period by the customer.
- 8.4.2. A Starter Tenancy is a trial tenancy which enables us to decide whether the customer is able to maintain a tenancy with us in the long term.
- 8.4.3. The Starter Tenancy is a less secure form of tenure than an Assured Tenancy and can be ended during the Starter Period by us getting an order for possession.
- 8.4.4. By serving two months’ notice on the customer in accordance with Section 21 of the Housing Act 1988 for any reason.
- 8.4.5. On one or more of the grounds listed in Schedule 2 to the Housing Act 1988.
- 8.4.6. In addition, customers on a Starter Tenancy have reduced rights compared to customers on an Assured Tenancy (for example there is no right to exchange their tenancy with someone else, take in lodgers or sublet part of their home; assign the tenancy unless by court order; make improvements or acquire their home).
- 8.4.7. The Starter Period will generally be 12 months but we are able to extend the Starter Period by a period of six months if the customer does not conduct the tenancy to our satisfaction during the initial 12 month Starter Period.
- 8.4.8. If we do extend the initial 12 month Starter Period, we will inform the customer of the reason for extending the Starter Period and give the customer a right to review the decision to extend the Starter Period by appealing to the Starter Tenancy Appeals Review Panel.

8.4.9. If the customer conducts the Starter Tenancy to our satisfaction, we will convert the Starter Tenancy of the current home to an Assured Tenancy to take effect at the end of the 12 or 18-month Starter Period by serving a notice on the customer in accordance with Schedule 2A paragraph 2 to the Housing Act 1988.

8.4.10. If the customer does not conduct the Starter Tenancy to our satisfaction, we may seek to bring the Starter Tenancy to an end and recover possession of the customer's property. If we do this, we will give the customer a right to review the decision to end the Starter Tenancy by appealing to the Starter Tenancy Appeals Review Panel.

## 8.5. **Assured Tenancy**

8.5.1. An Assured Tenancy is a tenancy granted for life and provides the most security of tenure to customers.

8.5.2. An Assured Tenancy only be ended by us getting a Court Order for possession on one or more of the grounds listed in Schedule 2 of the Housing Act 1988.

8.5.3. Customers on an Assured Tenancy have a wide range of rights set out in their tenancy agreement (such as the right to exchange their tenancy with someone else) and will have additional rights compared to customers on a Periodic AST.

8.5.4. Customers who have already held an Assured Tenancy from a social landlord or a secure tenancy from a local authority will normally be granted an Assured Tenancy without having to complete a starter tenancy.

## 8.6. **Assured Protected Tenancy**

8.6.1. An Assured Protected Tenancy is a form of Assured Tenancy that contains additional rights designed to protect the rights that customers previously had under a local authority Secure Tenancy under the Housing Act 1985.

8.6.2. These include customers who were previously customers of a local authority for example Wychavon District Council, whose homes were stock transferred to Rooftop.

## 8.7. **Periodic Assured Shorthold Tenancy**

8.7.1. A Periodic AST is a less secure form of tenure than an Assured Tenancy and can be ended by Rooftop getting an order for possession:

- a) By serving two months' notice on the customer in accordance with section 21 of the Housing Act 1988 for any reason; or
- b) On one or more of the grounds listed in Schedule 2 to the Housing Act 1988.

8.7.2. In addition, customers on a Periodic AST have reduced rights compared to customers on an Assured Tenancy (for example there is no right to exchange their tenancy with someone else).

8.7.3. Assured Shorthold Tenancies will be granted for self-contained private rented dwellings; self-contained key worker accommodation; self-contained young peoples' accommodation; and other self-contained non-general needs accommodation.

## 8.8. **Equitable Tenancy**

8.8.1. An Equitable Tenancy is an equitable version of a Periodic AST to be used when the customer is a minor.

8.8.2. As persons under the age of 18 ("minors") cannot hold a legal interest in land, we use equitable tenancies for all tenancies granted to minors aged 16 or 17. As the tenancy will be held in trust for the minor, there must be a "trustee" to the tenancy agreement. The trustee will hold the benefit of the tenancy on trust for the customer

until they reach the age of 18. The trustee must be a third party such as the Director of Social Services or a relative of the minor. Their details should be entered as a party to the agreement and they will need to sign it.

- 8.8.3. We will not enter into an equitable tenancy without a third-party trustee. This is because otherwise, Rooftop (by default) would be the trustee, which would prevent it regaining possession of the property (as it would be a breach of trust).
- 8.8.4. The trustee must be served with any notices that are served on the equitable customer.
- 8.8.5. A third party will also be asked to enter into a Guarantor Agreement to guarantee the obligations in the tenancy agreement, particularly payment of rent (this may be a different person to the trustee).
- 8.8.6. Equitable tenancies can be terminated in the same way as their respective non-equitable tenancies. In any court proceedings, the first defendant should be listed as the trustee and the second defendant as the minor. The minor cannot however represent themselves in court and the trustee should arrange for the appointment of a litigation friend.
- 8.8.7. Where a minor is going to be a customer, the tenancy should be an equitable version of whatever form of tenancy Rooftop would grant to an adult in the same circumstances.
- 8.8.8. When the customer reaches 18, Rooftop will grant the customer a new "legal" tenancy in accordance with this Policy.

#### 8.9. **Secure Tenancy**

- 8.9.1. A Secure Tenancy is a tenancy granted for life and can only be ended by Rooftop by getting a Court Order for possession on one or more of the grounds listed in Schedule 2 to the Housing Act 1985.
- 8.9.2. Secure Tenancy is generally only granted by local authorities and can only be granted by Rooftop in limited circumstances. Some of Rooftop customers transferred from other housing associations on such secure tenancies and as such will continue on these tenancies even if they move to alternative accommodation. These specifically relate to pre 15 January 1989.
- 8.9.3. Customers on a Secure Tenancy will have additional statutory rights set out in the Housing Act 1985.

#### 8.10. **Homeless Tenancy**

- 8.10.1. A Homeless Tenancy is a tenancy given to customers where a local authority has determined that those customers are homeless and has made arrangements with Rooftop to accommodate the customers on a temporary basis to assist the local authority meet its interim housing duties under Sections 188, 190, 200 or 204(4) of the Housing Act 1996.
- 8.10.2. A Section 209 Tenancy is a contractual tenancy without security of tenure and can be brought to an end by Rooftop serving a notice to quit in accordance with the provisions of the tenancy for any reason.
- 8.10.3. Because of the nature of a Section 209 Tenancy, customers on a Section 209 will have fewer rights than customers with an Assured Tenancy, Periodic AST, Secure Tenancy or a Fixed Term Tenancy.

#### 8.11. **Protected Licence**

- 8.11.1. A Protected Licence is a legal contract which gives a customer permission to live in accommodation where the customer does not have exclusive occupation of the

accommodation and where the customer has protection from the Protection from Eviction Act 1977.

8.11.2. This means that Rooftop can end the licence by serving notice to quit in the prescribed form and obtaining a Court Order to regain possession if the customer does not leave voluntarily. Because of the nature of a Protected Licence, customers on a Protected Licence will not have any specific rights in respect of the accommodation.

8.11.3. We only use this licence when we are letting room only accommodation with shared use of communal areas, that is not a hostel within the meaning of Section 622 of the Housing Act 1985 and where the occupier does not have exclusive occupation of the accommodation.

#### 8.12. **Excluded Licence**

8.12.1. An Excluded Licence is a legal contract which gives a customer permission to live in accommodation where the customer does not have exclusive occupation of the accommodation and where the customer is excluded from the protection of the Protection from Eviction Act 1977.

8.12.2. This means that Rooftop can end the licence by serving a notice in accordance with the provisions of the licence and that a Court Order should not be required to regain possession of the accommodation if the customer does not leave voluntarily. However, if the customer does not leave voluntarily and the Police decline to help, Rooftop will issue trespasser possession proceedings to get a Court Order.

8.12.3. Because of the nature of an Excluded Licence, customers on an Excluded Licence will not have any specific rights in respect of the accommodation.

#### 8.13. **Homeless Licence**

8.13.1. A Homeless Licence is a legal contract which gives a customer permission to live in accommodation where the customer does not have exclusive occupation of the accommodation and is at the time the licence is granted, owed an interim duty to accommodate by a local authority under the Housing Act 1996.

8.13.2. How the agreement may be ended by Rooftop will generally depend on the particular duty owed to the customer by the local authority under the Housing Act 1996 at the time that possession of the accommodation is required by Rooftop.

8.13.3. Because of the nature of a Homeless Licence, customers on a Homeless Licence will not have any specific rights in respect of the accommodation.

#### 8.14. **Key Worker Licence**

8.14.1. A Key Worker Licence is a legal contract which gives a keyworker employed by a hospital trust permission to use accommodation whilst “on call” or as a “study room” where the customer does not have exclusive occupation of the accommodation and where the customer is excluded from the Protection from Eviction Act 1977.

8.14.2. This means that Rooftop can end the licence by serving a notice in accordance with the provisions of the licence and that a Court Order should not be required to regain possession of the accommodation if the customer does not leave voluntarily. However, if the customer does not leave voluntarily and the Police decline to help, Rooftop will issue trespasser possession proceedings to get a Court Order.

8.14.3. Because of the nature of an Excluded Licence, customers on an Excluded Licence will not have any specific rights in respect of the accommodation.

## 8.15. **Decant License**

- 8.15.1. A Decant License is a temporary tenancy given to customers who are required to move out of their main home while works are carried out to their main home which cannot be carried out whilst the customer remains living in their main home.
- 8.15.2. A Decant License is a contractual tenancy without security of tenure and can be brought to an end by Rooftop by serving a notice to quit in accordance with the provisions of the tenancy for any reason.
- 8.15.3. Because of the nature of a Decant Tenancy, customers on an Decant Tenancy will have fewer rights than customers with an Assured Tenancy, Periodic AST, Secure Tenancy or a Fixed Term Tenancy.

## 8.16. **Fixed Term Assured Shorthold Tenancy**

- 8.16.1. The Localism Act 2011 introduced more flexible tenure arrangements for people entering social housing. Following on from this, the Regulator's Tenancy Standard was amended, allowing Rooftop the ability to grant general needs customers 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. Consequently, for most general needs' customers joining Rooftop since approximately January 2013, Rooftop has previously issued Fixed Term Assured Shorthold tenancies as its usual general need's tenure type.
- 8.16.2. However, since December 2018, Rooftop has changed its approach to tenure and is no longer using Fixed Term Assured Shorthold tenancies. This is because this approach may undermine the stability and sustainability of our communities.
- 8.16.3. Consequently, any existing Fixed Term Assured Shorthold Tenancies that have been managed satisfactorily may be converted to Assured Fixed Term Tenancies by way of notice under the Schedule 2A, paragraph 2 of the Housing Act 1988.
- 8.16.4. They will be monitored and at the end of the Fixed Term Assured Shorthold Tenancies if the customer has:
  - Managed their tenancy satisfactorily, they will be issued with a new Assured Tenancy.
  - Not managed their tenancy satisfactorily, their Fixed Term Assured Shorthold Tenancies will be brought to an end.
- 8.16.5. If we seek to bring any existing Fixed Term Assured Shorthold Tenancy to an end at the end of the fixed term, we are required to give at least six months' notice (a "minded to notice") under Section 21 1A of the Housing Act 1988 to our customers of our intention not to renew a Fixed Term Assured Shorthold Tenancy at the end of the fixed term. The notice must state:
  - That Rooftop does not propose to grant another tenancy on the expiry of the Fixed Term Assured Shorthold Tenancy.
  - Inform the customer of how to obtain help or advice about the notice and of any obligation of Rooftop to provide help or advice.
- 8.16.6. In addition, before any Fixed Term Tenancy ends Rooftop is required to serve a notice on customers stating either that:
  - It proposes to grant another tenancy to the customer on the expiry of the Fixed Term Tenancy.
  - That Rooftop proposes to end the Fixed Term Tenancy.

- 8.16.7. Customers have a right to appeal against or complain about a decision not to grant them another tenancy at the end of the Fixed Term Tenancy. If a customer does lodge such an appeal or a complaint, they must state the grounds under which they are appealing and make a formal request to Rooftop.
- 8.16.8. We will ensure our appeals process enables customers to make an informed decision as to whether to submit an appeal including how to seek independent advice and where required, representation.
- 8.16.9. Where a Fixed Term Tenancy is going to be brought to an end, we will provide or signpost customers to advice, information and assistance to enable them to access alternative accommodation.

## **9. Protecting tenure status**

- 9.1. We will protect the tenure status of existing and new customers in the following way:
- Existing Rooftop customers with a Secure Tenancy will be granted a new Secure Tenancy if the new tenancy is granted immediately after the old Secure Tenancy ended in accordance with section 35(4) of the Housing Act 1988.
  - Customers who have consecutively held an Assured Tenancy with Rooftop or an Assured Tenancy or Secure Tenancy with another registered provider of social housing since or prior 1 April 2012 will be given an Assured Tenancy unless the customer chooses to move to accommodation let on affordable rent terms.
  - Existing customers who have been moved into alternative accommodation during any redevelopment or other works will be granted a tenancy agreement with no less security of tenure on their return to settled accommodation.

## **10. Ensuring that tenancies are sustainable**

- 10.1. We will help customers sustain their occupancy agreements to prevent unnecessary evictions in the ways set out in our Allocations and Lettings Policy which should be referred to for details.
- 10.2. In particular we will:
- Provide clear and full information about the occupancy agreement to customers before they sign the agreement to ensure that customers understand their rights and obligations in their respective occupancy agreements. We will ensure that information is available on request in a variety of forms of communication to help customers with differing needs for example, easy read, alternative languages, large print and braille.
  - Provide ongoing occupancy agreement support to monitor how well customers are coping with sustaining their occupancy agreement and offer help and advice as appropriate. Where a customer has been identified as vulnerable by reason of age, disability or illness, we will tailor the level of advice and support offered as appropriate, which may include ensuring that there is appropriate financial and personal support in place, either via statutory or third parties agencies.
- 10.3. We will also help customers to sustain their tenancies throughout changes in circumstances in the following ways:
- 10.4. **Assignment of tenancies**
- 10.4.1. An assignment is where a tenancy is legally transferred to another person by deed. The incoming customer (assignee) occupies the property on the same terms, taking on the rights and responsibilities of the outgoing customer (the

assignor). A tenancy can transfer from an existing customer to a new customer, be a transfer from a joint to sole tenancy or from a sole to a joint tenancy. No new tenancy is created when an assignment takes place (except in certain circumstances where there is a mutual exchange (see below).

10.4.2. Our customers will have different assignment rights depending on what type of tenancy they hold. Our tenancy agreements terms and conditions do however set out what assignment rights our customers have and in what circumstances so that our customers are aware of their individual rights. Customers on licences cannot normally assign their licences.

10.4.3. Our tenancy agreements normally give an absolute prohibition on the assignment of the tenancy apart from in three circumstances:

- Where Rooftop are instructed to assign the tenancy by a Court Order as part of matrimonial or children court proceedings.
- With the written consent of Rooftop when a customer is exercising any right to mutually exchange their home with another customer (see mutual exchange below).
- Where a customer is assigning the tenancy to a person who would have been eligible to succeed to the tenancy if the customer had died immediately before the assignment.

10.4.4. We will however consider the following requests to assign an existing tenancy to assist customers to sustain their tenancies at our discretion:

#### 10.4.5. **Joint to sole tenancy**

10.4.5.1. Once a tenancy has been granted in joint names the parties cannot simply agree to 'take people off the tenancy' just because one of the joint customers has left the property and/or the remaining joint customer requests it.

10.4.5.2. Where one joint customer wishes to leave another joint customer in occupation, or where a joint customer has already left and is willing to allow the remaining customer to become the sole customer, we will consider agreeing to an assignment of the tenancy from a joint tenancy to a sole tenancy. A joint customer will only be removed with the written consent of both customers.

10.4.5.3. We do however, in certain circumstances, reserve the right to seek possession of the property, even where the remaining joint customer may wish to remain in the home, for example, if the home is no longer suitable for their needs and they have refused a reasonable offer of suitable alternative accommodation.

10.4.5.4. If joint customers cannot agree who will remain in the property, the courts, as part of matrimonial or children court proceedings may determine who will be assigned the sole tenancy.

10.4.5.5. 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, we will convert the joint tenancy into a sole tenancy, in accordance with the court order. The assignment date will be the first Monday after the court order is made.

#### 10.4.6. **Joint to sole tenancy in the case of domestic abuse**

10.4.6.1. Where a domestic abuse victim remains in the home and the perpetrator has fled the house having committed a serious criminal offence, and an assignment of the tenancy is not possible. We will consider inviting the customer to give us at least four weeks' notice to end the tenancy and then grant the victim a new tenancy where this complies with Rooftop's Allocations and Lettings Policy.

10.4.6.2. Where a serious criminal offence has been committed and where the victim has fled the house as a result of domestic abuse, we may apply to the courts to terminate the tenancy and evict the perpetrator.

10.4.6.3. When we grant a new tenancy to the victim of their original home or of another property, the form of tenancy offered will be in accordance with this Policy.

#### 10.4.7. **Sole to joint tenancy**

10.4.7.1. This is where a sole customer may ask to add their spouse, civil partner or co-habitee to their tenancy. The position depends on whether there is an Assured or Secure Tenancy. This is because a sole Secure Tenancy cannot be assigned to become a joint tenancy (because otherwise the secure status is lost) so in this case the tenancy would need to be brought to an end and a new tenancy granted if Rooftop and the customer is willing to agree to this.

10.4.7.2. Rooftop will only agree to an assignment of an Assured Tenancy into the joint names of the customer and another person, if they are their partner according to the following criteria:

- Following marriage or civil partnership on production of the relevant original certificate.
- If co-habiting, on production of 12 months proof of residency as a couple.
- In either case, that the rent account is clear and the tenancy is not subject to legal action by Rooftop.

#### 10.4.8. **Reasons for refusing an assignment**

10.4.8.1. In all cases, where we have to consent to the assignment, the request may be refused if:

- The customer assigning is not planning on leaving the property permanently (although exceptional circumstances will be taken into account for example, relative caring for a customer).
- There are arrears on the rent account or other breaches of tenancy each case will be considered on individual circumstances.
- The tenancy is subject to legal action by Rooftop.
- The assignment would result in under occupation or overcrowding.
- The property has been adapted and adaptations are not required by the assignee or their family.
- If the assignment does not otherwise represent the best use of our stock.
- The remaining joint customer is a perpetrator of domestic abuse.
- We have doubts about the proposed assignee's ability to sustain the tenancy.

#### 10.4.9. **Mutual exchange**

10.4.9.1. Customers with a Fixed Term Assured Shorthold Tenancy, Assured Tenancy or Secure Tenancy with a registered provider of social housing ("RP") can apply to exchange in the UK. Starter Tenancy customers cannot exchange until their tenancies convert into an Assured. However, customers on a Periodic AST or other form of tenancy are not eligible to exchange.

10.4.9.2. Many of our customers have a right in accordance with their tenancy to exchange their home with other customers of RP's either within their own landlords' area or in another area.

- 10.4.9.3. The exchange is known as a “mutual exchange”, whereby two or more parties ‘swap’ homes. When an exchange takes place customers take responsibility for the property they have swapped into. Exchanges of more than two households are also permitted, so long as the landlord of each customer gives written consent. In addition, where there is a joint tenancy, there must be agreement of both joint customers to exchange. If this is not possible, for example if the relationship has broken down, assignment of tenancy may be considered.
- 10.4.9.4. We support mobility by way of mutual exchange to give our customers the ability to move within our stock and to stock of other RP’s (including local authorities) offering choice of accommodation and location especially where the needs of the family are not met by their current accommodation.
- 10.4.9.5. We will encourage the promotion and use of mutual exchange as a housing option for all customers. In particular, we encourage our customers to carry out mutual exchanges to smaller properties with lower rents where travel costs will be lower, where they are experiencing financial hardship.
- 10.4.9.6. Where a mutual exchange takes place, unless the Localism Act 2011 applies or the particular tenancy agreement provides otherwise, the mutual exchange is carried out by a deed of assignment which means that a customer takes over the rights and responsibilities and rent level of the other customer they swap with.
- 10.4.9.7. The Localism Act 2011 introduced a new mechanism for mutual exchanges which only applies when there is a certain combination of customers. In summary this is when there is a mutual exchange between a customer on an “old style tenancy” and a customer on a “new style tenancy”.
- 10.4.9.8. The Localism 2011 Act applies to mutual exchanges between customers on:
- A fixed term social rent tenancy of two years or more (“new style”).
  - A lifetime assured or secure tenancy if the tenancy began before 1 April 2012 (“old style”).
- 10.4.9.9. When the Localism Act 2011 applies the parties do not sign a deed of assignment but follow a process called “surrender and grant” in accordance with Section 158 of the 2011 Act. This means that both customers must surrender their respective tenancy agreements with their current landlords. The new landlord must then grant each customer a new tenancy.
- 10.4.9.10. The Localism Act 2011 does not however apply where a customer on an “old style tenancy” exchanges with a customer on a “new style tenancy” whose property is let on an affordable, intermediate or mortgage rescue rent.
- 10.4.9.11. We are able to choose what tenancy to offer to any incoming customer previously on a “new style tenancy” (this will be our current standard form of tenancy) but we must offer the customer on an “old style tenancy”, an Assured Tenancy (or a Secure Tenancy if the customer is already our secure customer). For example, we cannot offer them a Starter Tenancy. We will then calculate the rent for the incoming customer in accordance with our current Rent and Service Charge Setting and Management Policy.
- 10.4.9.12. We will always check the tenancy agreement type of each customer applying for a mutual exchange to establish whether the Localism Act 2011 applies.
- 10.4.9.13. We will also check our existing customer’s agreement carefully to see whether they do have a right to a mutual exchange and if so whether the individual tenancy agreement sets out a particular mechanism for how the mutual exchange will be affected.

- 10.4.9.14. The tenancy table attached at Appendix 2 shows the type of tenancy that a customer will get when they exchange and the type of exchange we must use.
- 10.4.9.15. An exchange must never take place without our written permission. The rights of each customer will be affected and legal action may be taken as a last resort in some cases to obtain possession. No money should pass between the customers to enable the exchange to take place.
- 10.4.9.16. If a customer seeks permission to exchange, we must give a decision in writing within 42 days. The 42 days begins on receipt of the relevant customers' request. This means the request from both customers. If after 42 days, a decision has not been granted in writing, the customer can apply to court for an injunction to force us to issue a decision.
- 10.4.9.17. We will not unreasonably refuse a request for a customer to complete a mutual exchange. A decision will be based on whether a right to exchange exists in the particular tenancy agreement and also by referring to current governing legislation.
- 10.4.9.18. Where the Localism Act 2011 applies to the exchange, we can only refuse an exchange on the grounds set out in [Schedule 14 of the 2011 Act](#).
- 10.4.9.19. Where the tenancy agreement refers to [Schedule 3 of the Housing Act 1985](#), then we can only refuse an exchange or grant permission on the Grounds in Schedule 3 (subject to one of the two permitted conditions). For the avoidance of doubt, some grounds such as breach of tenancy conditions including the obligation to pay rent are not a reason for refusal, we must instead give consent but make it conditional on clearing the arrears or dealing with the breach of tenancy before the mutual exchange takes place. This includes disrepair and damage to the property. If the corrective action is not taken, the exchange will not proceed.
- 10.4.9.20. Where neither [Schedule 14 of the 2011 Act](#) or [Schedule 3 of the Housing Act 1985](#) applies, and in the absence of any specific clause in a customer's tenancy agreement then we can refuse consent on the grounds set out below.
- Any of the grounds within Schedule 14 of the 2011 Act apply.
  - The incoming customer does not meet our allocations criteria at the time of the application.
  - The exchange would place us in breach of any relevant planning agreements or local connection restrictions.
  - If it means that a perpetrator of domestic abuse, threatening or criminal behaviour is requesting a move into our area near to their victim, the time elapsed since the offence will be considered. However, the decision will be based on the likelihood of further harm, whether mental or physical to the victim. In these circumstances, the Neighbourhood Housing Officer's decision may override that of the victim even if the victim does not object to the exchange. This is to protect against potential undue influence from the perpetrator.
  - We believe that money has been passed between the parties to enable the exchange.
  - The property would be overcrowded; or under occupied by more than one bedroom.
  - The property is let as accommodation for persons satisfying specific age criteria and if the exchange took place no such person would be living at the property.

- We have not received a satisfactory reference or property condition report from the other landlord within the timescales required.

10.4.9.21. When mutual exchanges take place, we will explain to customers what will happen to their security of tenure if they choose to mutually exchange their home.

## 10.5. **Succession to a tenancy**

10.5.1. Succession occurs when a tenancy passes by law to a surviving joint customer or to an eligible person on the death of the customer in accordance with the Housing Act 1985 or the Housing Act 1988 or where an eligible person has the right to be granted a new tenancy of the property or of another property.

10.5.2. This Policy applies to customers on Assured Tenancies, Assured Protected Tenancies, Fixed Term Assured Shorthold Tenancies and Secure Tenancies for at least two years. Customers on licences or other forms of tenancy covered by this Policy do not have succession rights.

10.5.3. Customers will have different succession rights depending on what type of tenancy they hold. Our tenancy agreements terms and conditions do however set out what succession rights customers have and in what circumstances, so that customers are aware of their individual rights.

10.5.4. There are five different rights of succession:

### **Surviving joint tenant**

If the tenancy agreement is in joint names and one joint customer dies, the tenancy will continue with the surviving joint customer as the sole customer. This is called the right of survivorship and happens automatically on the date of death.

### **Statutory succession**

If a tenancy agreement is in the name of a sole customer and they die, then an eligible person (usually a spouse, partner or civil partner) who meet the eligibility criteria can succeed to the tenancy.

### **Statutory contractual succession**

A statutory contractual succession is where additional succession rights have been included in the tenancy agreement for other eligible persons to succeed to the tenancy where there is no one qualified to succeed by way of statutory succession for example a Starter Tenancy.

These are usually only granted to a family member (other than a spouse, partner or civil partner) who has lived with the customer for 12 months prior to their death. Such an eligible person who meets the eligibility criteria can succeed to the tenancy.

When statutory succession/statutory contractual succession occurs the tenancy vests automatically by law in the qualifying successor and a new tenancy is not entered into. In law there can only be one statutory/statutory contractual succession of a tenancy, including a survivorship of the tenancy, which counts as a statutory succession.

### **Contractual succession**

A contractual succession is where additional succession rights have been included in the tenancy agreement for someone, other than the customer's spouse, partner or civil partner, to be granted a new tenancy of the property or another property for example, in an Assured Tenancy or Assured Protected Tenancy.

These are usually only granted to a family member (other than a spouse, partner or civil partner) who has lived with the customer for 12 months prior to their death. Such an eligible person who meets the eligibility criteria has the right to be granted a new tenancy of the property or another property, depending on the wording of the particular tenancy agreement.

In some cases, a contractual succession cannot take place if a statutory succession (including a survivorship right) has been used up. We will therefore read the individual tenancy agreement carefully to check if contractual succession rights exist and what the criteria are.

### **Discretionary succession**

A discretionary succession is where there is a person requesting to succeed to the tenancy was left in the property on the death of the customer but has no statutory or contractual right to succeed. They are asking us to exercise our discretion to let them stay by the discretionary granting of a new tenancy.

10.5.5. If a spouse, partner or civil partner cannot succeed to the tenancy because there has been a previous succession for example to a former spouse, then a discretionary tenancy may be considered as long as:

- The successor had lived in the property with the customer in the 12 months prior to their death as their only home.
- The property is not too large or too small for the remaining occupants in accordance with our Allocations and Lettings Policy at the time of the request.
- The applicant has sufficient income to pay the rent.
- The deceased customer had no rent arrears at the time of their death, no Anti-Social Behaviour (ASB) complaints against them (or any member of their household) no 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 customers' death.

10.5.6. For other remaining family members who do not qualify to succeed the tenancy, a discretionary tenancy can be considered as long as all of the following conditions are met:

- The deceased customer was a parent or legal guardian of the successor.
- The successor has always resided in the property with the customer as their only or main home since the tenancy start date.
- The property is not too large (unless it would be detrimental to their health if they were moved) or too small for the remaining occupants in accordance with our Allocations and Lettings Policy at the time of the request.
- The applicant has sufficient income to pay the rent.
- The deceased customer had managed the tenancy well, had no rent arrears at the time of their death, no ASB complaints against them (or any member of their household) or other breaches of tenancy, and had kept the property in a clean and well-maintained condition.
- The applicant agrees to pay all arrears that have accrued since the customers' death.

10.5.7. For discretionary offers of tenancy, the tenancy agreement currently in use will be offered.

- 10.5.8. Where all the conditions are met other than that the property is too large for the current occupier(s), we will make an offer only of suitable alternative (smaller) accommodation, taking into account the specific needs of the customers.
- 10.5.9. If there is more than one claimant seeking to a right of succession and they cannot decide amongst themselves who will succeed to the tenancy, then we will make the decision for them. This decision will be based on the pre-tenancy / licence checks we normally carry out to determine the suitability of a housing applicant for one of our homes.
- 10.6. **Death of the Tenant**
- 10.6.1. Once we become aware that a customer has died, we will:
- Request a copy of the death certificate from whoever contacts us to report the death of the customer. If there is nobody to provide a death certificate we can request one from the General Register Office (for which a fee is payable, of £40.00).
  - Ask for a copy of any Will. If required, a copy of a Will after probate has been granted can be obtained by searching probate records for documents and wills on gov.uk. (for which a fee is payable currently £1.50).
  - Read the tenancy agreement to see what succession terms apply.
  - Check our housing management system and documentation and any other information on the customer's file in particular to see if there has been any previous succession on that property.
  - Check if anyone was living in the property with the deceased customer at the time of death.
- 10.6.2. If someone is still occupying the home they may succeed to the tenancy and be entitled to either take over the existing tenancy or be granted a new tenancy in the way set out above at paragraph 8.5.
- 10.6.3. In the case of a sole customer, where they are living alone, 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 is a next of kin.
- 10.6.4. When a customer dies and there is no one eligible to succeed to the tenancy, the tenancy does not automatically come to an end. A valid legal notice needs to be served either by us or by the deceased customer's personal representatives to end the tenancy. We may agree to reduce the normal four-week notice period where the property has been cleared and keys returned to us.
- 10.6.5. If a person remains in occupation of the property who is not eligible to succeed to the tenancy in the way set out at paragraph 8.5.4 then possession action will need to be taken if they do not leave voluntarily once the tenancy has ended. In this case, we will set up a use and occupation account (once the existing tenancy has ended), seek to repossess the property and offer advice to the occupier(s) on finding suitable rehousing.
- 10.6.6. If the unauthorised occupier offers rent it will only be accepted as mesne profits. We 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'.

## **11. Rights to sub-let or take in lodgers**

- 11.1. To help our customers to avoid under occupation and to help supplement their income, our tenancy agreements, with the exception of a starter tenancy, convey an implied right to sub-let part of the accommodation where our consent has been obtained in writing. Where a written request to sub-let has been made, we will reply within four weeks and permission will not be unreasonably refused. However, assured sub-tenancies are not allowed.
- 11.2. In addition, our tenancy agreements, with the exception of a starter tenancy, allow customers to take in lodgers, some with and some without our prior consent. Where consent is not required, we do require customers taking in lodgers to inform us when they do so and when they move out.

## **12. Rights to consultation and information**

- 12.1. We will consult our customers before making changes in matters of housing management and maintenance that are likely to have a substantial effect on them.
- 12.2. We will also inform our customers about the terms of their tenancy and about our repairing obligations; policies on customer consultation, housing allocation and transfers; and our performance as a landlord.

## **13. Right to alter/improve your home**

- 13.1. To help customers sustain their tenancies through different stages of their life, many of our tenancies (excluding temporary accommodation) allow them to alter or improve their home with our written consent.
- 13.2. We will carry out our own repairs, maintenance and improvements in accordance with our Repairs, Maintenance and Improvement Policy.
- 13.3. We will also carry out aids and adaptations to our properties to enable our disabled customers to remain living at home in their communities in accordance with our Aids and Adaptation Policy.

## **14. Pets**

- 14.1. In recognition of the positive impact of pets on customers' mental health, tenancy agreements will allow the keeping of pets if they are adequately cared for and they do not adversely affect neighbours, subject, in some tenancy agreements, to customers seeking our permission and complying with reasonable conditions. Please refer to our tenancy and license agreements and our Pets procedure for more information.

## **15. Customer Rights**

- 15.1. Our occupancy agreement terms and conditions set out any specific rights enjoyed by our customers.
- 15.2. We will not seek to deprive customers of any rights given or enjoyed as set out in their respective occupancy agreements.

## **16. Tenancy Fraud**

- 16.1. We are committed to tackling Tenancy Fraud in the way set out in our Tenancy Fraud Policy, which should be referred to for details.

Examples of tenancy fraud include:

- Not using the property as the principal homes.
- Unlawfully sub-letting the property.
- Obtaining a tenancy by deception.

- Benefit fraud.
- Wrongly claiming succession.

## 17. Ending our tenancies or licences

- 17.1. Our tenancies and licence agreements set out how they may be ended by us and our customers.
- 17.2. Customers can end their tenancy or licence in the way set out in their agreement, which is usually by giving us four weeks' notice in writing. The agreement will also usually set out what customers must do when moving out of the property.
- 17.3. We can end a customer's tenancy or licence in the way set out in the customer's agreement, usually if there has been a breach of the agreement.
- 17.4. When ending customers' tenancy or licence, we will comply with all relevant law including the Housing Act 1985, the Housing Act 1988 and the Protection from Eviction Act 1977 and our separate procedures on ending occupancy agreements. In these instances, and before the tenancy ends, we will offer future housing advice and work closely with the local authority who may be able to provide assistance in finding alternative accommodation.

## 18. Data protection

- 18.1. As the 'controllers' of any 'personal data' we hold about applicants and customers we are committed to data protection and upholding applicant's rights over their data by complying with all relevant data protection laws including the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR) 2021.

## 19. Variations to the Policy

- 19.1. 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).

## 20. Review

- 20.1. This Policy will be reviewed every three years unless there are major changes in legislation or good practice.

## 21. Consultation

- |                                 |            |
|---------------------------------|------------|
| 21.1. Leadership Team Sub-Group | N/A        |
| 21.2. Executive Team            | April 2024 |
| 21.3. Other (e.g., customers)   | N/A        |

## 22. Responsibilities

### Responsible body

- |   |                 |
|---|-----------------|
| 22.1. Formulation, amendment and approval of policy | Executive Team  |
| Monitoring of policy                                | Leadership Team |
| Operational management of policy/policy author      | Head of Housing |
| 22.2. <b>Date of formulation of policy</b>          | November 2020   |

**22.3. Dates of policy reviews**

April 2025

April 2024

May 2022

**22.4. Date of next review**

April 2028

### Associated documents

#### Internal – Rooftop policies and procedures

- Equality, Diversity and Inclusion Policy
- Probity Policy
- Rent and Service Charge Setting and Management Policy
- Customer Complaints Policy
- Compensation Policy
- Void Works Management Policy
- Allocations and Lettings Policy
- Tenancy Fraud Policy
- Anti-Slavery and Human Trafficking Statement
- Equality Impact Assessment
- Capacity Policy
- Succession Procedure
- Death of a Tenant Procedure
- Assignment and Mutual Exchange Procedure
- Pet Procedure
- Lodger Procedure

#### External

- Regulator of Social Housing Tenancy Standard (April 2024)
- As detailed at Section 2.2 of this Policy

## Table Showing Examples Of What Type Of Mutual Exchange Process Applies When

(Note however that some of Rooftop's Assured and Protected Tenancies provide that the mutual exchange will take effect from Rooftop's perspective if the assignment to the incoming customer is subject to the grant to and acceptance of a new tenancy in the form of Rooftop's current form of assured tenancy, where the exchange is not between existing Rooftop customers on the same terms of tenancy. The terms of the particular tenancy should therefore be checked in all cases to confirm what procedure will apply.)

 <b>Tenant 1</b> Current tenure	Secure (pre 1/4/12)	Secure (post 1/4/12)	Protected <sup>(b)</sup> and/or other assured periodic tenant pre 1/4/12	Secure flexible (Local authority) (post 1/4/12)	Protected <sup>(b)</sup> and/or Assured periodic (post 1/4/12 tenancies)	Fixed term AST Social Rent 2+ years
 <b>Tenant 2</b> Current tenure						
Secure (pre 1/4/12 tenancies)	Deed of assignment Swap (sale) tenure	Deed of assignment Swap (same) tenure	Deed of assignment Swap tenures <sup>(d)</sup>	Surrender and Regrant 1. Discretionary tenure <sup>(a)</sup> 2. Retains full tenure	Deed of assignment Swap tenures <sup>(d)</sup>	Surrender & Regrant <sup>(c)</sup> 2 retains full tenure 1 discretionary tenure <sup>(a)</sup>
Secure (post 1/4/12 tenancies)	Deed of assignment Swap (same) tenure	Deed of assignment Swap (same) tenure	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenure	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenures
Secure flexible (Local Authority) (post 1/4/12)	Surrender and Regrant 1. Retains full tenure 2. discretionary tenure <sup>(a)</sup>	Deed of assignment Swap tenure	Surrender & Regrant 1 retains full tenure 2 discretionary tenure <sup>(a)</sup>	N/A	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenures
Protected <sup>(b)</sup> and/or other assured periodic (pre 1/4/12)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures <sup>(d)</sup>	Surrender & regrant 2 retains full tenure 1 discretionary tenure <sup>(a)</sup>	Deed of assignment Swap tenures <sup>(d)</sup>	Surrender & Regrant 2 retains full tenure 1 discretionary tenure <sup>(a)</sup>
Protected <sup>(b)</sup> Assured periodic (post 1/4/12)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenures	Deed of assignment Swap (same) tenure <sup>(d)</sup>	Deed of assignment Swap tenures
Fixed term AST Social Rent 2+ years	Surrender & Regrant <sup>(c)</sup> 1 retains full tenure 2 discretionary tenure <sup>(a)</sup>	Deed of assignment Swap tenures	Surrender & Regrant 1 retains full tenure 2 discretionary tenure <sup>(a)</sup>	Deed of assignment Swap tenures	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap (same) tenure
Fixed term AST on Affordable Rent	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenures	Deed of assignment Swap tenures <sup>(d)</sup>	Deed of assignment Swap tenures

### Notes

- Discretionary tenure means whatever tenure the new landlord of the customer says it will offer under its Tenure Policy.
- "Protected" means a customer who transferred to the landlord in the stock transfer, having previously held a secure tenancy with the local authority.
- If the exchange is entirely within the same landlord, the "old style" customer after the exchange will remain secure. If the exchange is between a fixed term customer and a pre-1 4 2012 secure customer of another landlord (i.e. the tenure guarantee customer is incoming) then the tenancy offered must be full assured.
- Note that Rooftop's current form of assured and assured protected rights tenancies provide that the mutual exchange will take effect from Rooftop's perspective if the assignment to the incoming customer is subject to the grant to and acceptance of a new tenancy in the form of Rooftop's current form of assured tenancy where the exchange is **not** between existing Rooftop customers on the same terms of tenancy. Where the exchange is between a Rooftop customer and another landlord or where the exchange is between 2 Rooftop customers on different forms of tenancy, the terms of all outgoing assured and protected rights tenancies will need to be checked to confirm what procedure will apply. If these terms apply, the assignment will involve the incoming customer agreeing to the new terms of **assured** tenancy as part of the assignment process.

## Mutual Exchange examples

### Example One: Localism Act 2011 Exchange

#### Rooftop assured periodic – exchange with – fixed term AST another landlord

A lives in property 1 and is an assured periodic customer of Rooftop, which began before 1 April 2012.

B has a fixed term assured shorthold tenancy for 5 years, **not** on an affordable rent which began after 1 April 2012 in property 2 with another landlord.

A and B have agreed to exchange with each other and the landlords both consent.

← EXCHANGE →

Rooftop completes a Deed of Surrender with A. Rooftop sends the Agreement to Surrender to B's landlord.

B's landlord completes the Agreement/Deed of Surrender with B and sends it to Rooftop.

Rooftop then needs to see B to sign its assured tenancy. [B is not legally entitled to demand any particular type of tenancy or rent level – what is offered depends on Rooftop's tenure policy.]

B's landlord needs to see A to sign a new tenancy. B's landlord must grant A either an assured tenancy (or secure tenancy if a local authority) and not, for example, a starter tenancy. A's tenure is protected under the 2011 Act. The rent level is however entirely a matter for [B's] landlord.

### Example Two – Protected Rights

#### Rooftop Assured Periodic – exchange with – Rooftop protected rights customer with PRTB

Customer C has an assured periodic tenancy with Rooftop. Customer D is a protected rights Rooftop customer who transferred to Rooftop during the stock transfer.

Rooftop approves both exchanges.

← EXCHANGE →

A Deed of Assignment should be completed together with a Licence to Assign for both customer C and customer D (but see note 3)

After the assignment, customer C will step into the protected rights tenancy agreement of customer D. The terms that will apply to C are the protected tenancy terms (**without** the PRTB) (but see note 3).

Customer D will step into the tenancy terms held by customer C and will therefore take over assured periodic tenancy terms (but see note 3).

(Customer D retains their PRTB however, as this is a statutory personal right that travels with them within Rooftop's stock, regardless of the terms and conditions of tenancy. No other protected rights set out in the stock transfer tenancy terms and conditions continue however) (but see note 3)

**Note:** (1) "Protected" customer refers to a customer who transferred to the landlord in the stock transfer, having previously held a secure tenancy with the local authority.

(2) PRTB = Preserved Right to Buy.

(3) Note that the assignment maybe be subject to the grant to and acceptance of a new assured tenancy to the customer taking over the protected rights tenancy if the customers are on Rooftop's current form of assured and assured protected rights tenancies. The tenancy terms should be checked to confirm what procedure will apply.

### **Example Three - Protected and Fixed Term**

#### **Rooftop Protected Customer – exchange with – 5 year fixed term AST at affordable rent of another landlord**

Customer E is an assured protected customer with Rooftop. Customer F has a five year fixed term assured shorthold tenancy at an affordable rent, with another landlord. Both landlords consent.

The 2011 provisions do not apply to affordable rent tenancies and therefore do not apply to this exchange. Deeds of Assignment should be used. Rooftop need to complete a licence to assign for customer E.

← EXCHANGE →

Both customers step into each other's shoes and take over each other's tenancy terms (but see note 4).

(Customer E therefore needs to understand that they will be taking over a fixed term assured shorthold tenancy on an affordable rent which is almost certainly likely to have lesser rights and a higher rent. Rooftop should seek to explain the consequences of the exchange to customer E and advise them to take legal advice)(but see note 4)

Customer E loses their PRTB as this is a personal statutory right that only travels with them within Rooftop's stock

Customer F does not gain the PRTB, though benefits from all the other protected terms and conditions of tenancy (but see note 4).

**Note:** (1) "Protected" customer refers to a customer who transferred the landlord in the stock transfer, having previously held a secure tenancy with the local authority.

(2) PRTB = Preserved Right to Buy.

(3) The PRTB travels with a customer who stays within their own landlord's stock (e.g. a Rooftop protected customer who transfers with another Rooftop customer).

4) Note that the assignment maybe be subject to the grant to and acceptance of a new tenancy by the incoming non-Rooftop customer if the outgoing customer is on Rooftop's current form of protected rights tenancy. In this case. The tenancy terms should be checked to confirm what procedure will apply.