



Tenure Policy

Version 1

Approved by: Board
Approved date: 12 December 2018

1.0 Introduction

1.1 This Policy relates to our rented homes, with the exception of Keyworker Accommodation, Student Accommodation, and Care Homes. The Policy includes:

- The types of occupation or tenancy agreement we use
- Sustaining tenancies, supporting vulnerable tenants and preventing unnecessary eviction
- Assignment, succession, joint tenancy, mutual exchange
- Tenancy fraud.

1.2 When we use 'you' or 'your' we mean tenant(s). The terms 'we', 'our' and 'us' mean Optivo.

2.0 Types of agreement

2.1 We offer tenancies or terms of occupation which are compatible with the:

- Purpose of the accommodation
- Needs of individual households
- Sustainability of the community
- Efficient use of our homes
- Strategic housing functions of our partner local authority.

2.2 We use a range of occupancy agreements including, but not limited to:

- Assured tenancies (lifetime tenancies)
- Assured shorthold tenancies (Fixed Term Tenancies)
- Weekly assured shorthold tenancies (used for starter tenancies and some supported / specialist housing)
- Licences and excluded licences.

2.3 All rights and responsibilities are set out in these occupancy agreements. The terms of the agreements vary according to when the agreement was granted. You must abide by the terms and conditions of your occupancy agreement otherwise you face losing your home.

2.4 This Policy does not cover home ownership (including freehold, leasehold, and shared ownership).

- 2.5 We grant those who were social housing tenants on or before 1 April 2012, and have remained social housing tenants since that date, a tenancy with no less security where they choose to move to an Optivo social rented home. This is the case whether they move from one of our homes or from a home owned by another association or local authority landlord. It does not apply where tenants choose to move to accommodation let on Affordable Rent terms.
- 2.6 We 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.
- 2.7 We offer occupation agreements in line with specific lettings plans, agreements, or scheme requirements where these are in place.
- 2.8 If tenants or prospective tenants aren't happy with the length of tenancy or the type of tenancy offered, we'll follow our [Complaints Resolution Policy](#). We must make sure we let homes quickly and efficiently. Therefore, we will not hold an offer of accommodation during the complaint. We can offer advice and assistance in this circumstance.

3.0 Sustaining tenancies, supporting vulnerable tenants and preventing unnecessary eviction

- 3.1 We want tenants to maintain their tenancies successfully and prevent unnecessary evictions. We offer appropriate advice and support to help tenants meet the conditions of their occupancy agreements and remain in their homes. We offer financial inclusion support and may provide tenancy sustainment services directly or through referral to another specialist agency.
- 3.2 In deciding on appropriate forms of tenure and offers of housing, we take into account the needs of households who are vulnerable. We refer and signpost vulnerable tenants in general needs housing to external support services to get the help they need. We offer specialist sheltered housing, as well as adapted homes and homes designed for people with disabilities.
- 3.3 We will work with partners to safeguard children and vulnerable people.
- 3.4 We evict tenants as a last resort, only when we have exhausted all options to tackle breaches of the tenancy unless the breach is so significant that other options are not viable. We'll work with our tenants to help them find solutions and avoid eviction.
- 3.5 We'll inform the local authority housing advice service when we grant approval for eviction. A Head of Region or Head of Service will approve all evictions.
- 3.6 We alert Social Services and other agencies as early as possible, and in line with our [Data Protection Policy](#), in the eviction process where we identify a household member is vulnerable.

3.7 Before we carry out an eviction we'll:

- Provide information and advice about housing options
- Refer tenants to the Financial Inclusion Officer where needed
- Refer tenants to other agencies such as Citizens Advice, housing advice services and the homeless persons unit at the local authority.

4.0 Starter Tenancy

4.1 We'll offer new households (not existing tenants) moving into our general needs and sheltered homes (excluding extra care) a Starter Tenancy. A Starter Tenancy is a weekly periodic Assured Shorthold Tenancy for an initial period of 12 months. During the period of the Starter Tenancy there is no right to assign the tenancy or transfer.

4.2 The rights and responsibilities are set out in the tenancy agreement. If you manage your starter tenancy successfully, it will automatically become an assured (lifetime) tenancy at the end of the 12 month starter period.

4.3 We'll consider ending your Starter Tenancy if you breach it. If the breach is minor we may extend the Starter Tenancy for six months at any time. We'll outline the reasons for extending or ending the Starter Tenancy. If you wish to appeal our decision we must receive this within 10 working days of our decision to end or extend your tenancy.

5.0 Assured Tenancy (also known as a lifetime tenancy)

5.1 We offer a periodic assured non-shorthold tenancy (Assured Tenancy):

- To new residents, after the successful completion of their Starter Tenancy
- Where an existing Optivo assured (lifetime) tenant moves to another of our social rented homes
- An assured or secure tenant of another registered provider or local authority moves to one of our social rented homes (where their tenancy started on or before 1 April 2012)
- For sheltered (housing for older people) unless there is a specific scheme exemption
- For sheltered extra care schemes unless there is a specific scheme exemption.

6.0 Fixed Term Tenancy

6.1 Prior to December 2018, Optivo issued Fixed Term Tenancies for new residents following a Starter Tenancy (except where the household met specific criteria for a different tenure type).

6.2 After December 2018, we no longer issue Fixed Term Tenancies but still have tenants on Fixed Term Tenancies.

- 6.3 When these existing Fixed Term Tenancies are coming to an end we either:
- Offer an Assured Tenancy at the same or another home
 - Offer a two year Fixed Term Tenancy in very exceptional circumstances
 - End the tenancy and require you to move out.

We will inform you of this decision at least six months before the fixed term is due to end in a 'minded to' notice. You have the right to appeal our decision within 20 working days of the service of the 'minded to' notice.

- 6.4 We'll offer an Assured Tenancy where you are eligible for one of our homes under our [Housing Options & Lettings Policy](#), or under the homelessness legislation and:

1. Have kept to the tenancy conditions
2. Have arrears of less than £200
3. Have kept the home in good condition.

- 6.4.1 In exceptional circumstances where you don't meet one or more of the criteria (1-3) above, or there's any form of minor tenancy breach, we will usually offer a two year Fixed Term Tenancy. For example, if:

- You have arrears between £200 and eight weeks rent – you must clear the arrears and debt before the end of the two year fixed term
- You (tenant and partner) earn annually over £70,000 in London, and £60,000 outside London, and have sufficient financial resources and savings to meet your housing need but need time to find an alternative home.

- 6.5 We will not offer you another tenancy for the following reasons (this list is not exhaustive):

1. Serious and/or persistent breach of tenancy conditions
2. Serious rent and service charge arrears (at least eight weeks arrears), or persistent failure to pay rent on time
3. Serious and/or persistent anti-social behaviour, including perpetrators of domestic abuse and harassment
4. Using the home for illegal purposes
5. Allowing the home to fall into disrepair through neglect, waste or default
6. Illegal occupation or subletting the home
7. Tenancy fraud
8. Abandonment of the home
9. Not occupying the home as the only principal home and/or you have another home you could occupy
10. You are not eligible for social housing as defined by our Housing Options Policy and government/local authority criteria
11. Not in priority need as defined by the local authority or legislation
12. The household has annual earnings (before tax) over £70,000 (tenant and partner) in London, and £60,000 (tenant and partner) outside London. If household income is over these amounts we'll consider if they have sufficient financial resources and savings to meet their housing need, before deciding whether to offer a home or renew a Fixed Term Tenancy. We'll take into account

if a Local Authority would have a duty to the household under homelessness legislation and the other eligibility criteria outlined in this Policy.

We will obtain a Court order to evict you if you don't leave your home.

6.6 In cases where we're not offering another tenancy we'll provide advice and signposting. This can include:

- Advice on housing options
- Referral to the Financial Inclusion Team or similar
- Referrals to agencies - such as Citizens Advice, housing advice services, and the local authority Homeless Persons Unit.

7.0 Assured Shorthold Tenancies - non fixed term

7.1 We'll offer assured shorthold tenancies for some housing, as long as there is no regulatory requirement to offer a more secure tenancy. This may include, but is not limited to:

- Supported / specialist housing - for schemes we manage directly and those managed by agencies
- Temporary housing
- Intermediate rent housing
- Market rent housing
- London Living Rent housing - as part of the London Living Rent scheme from the Mayor of London, we offer homes to middle income earners on assured shorthold tenancies of a minimum of three years. Tenants will be supported to save and given the option to buy their home on a shared ownership basis during their tenancy. They will also be given extra priority for other shared ownership homes across London.

8.0 Licences and excluded licences

8.1 In some accommodation we can only offer a licence. This tends to be for shared accommodation. The type of licence will depend on the purpose of the accommodation. We outline all rights and responsibilities in the licence agreement.

8.2 Licences are a different form of occupation agreement and offer fewer rights to occupiers. We use licences in a variety of settings for instance (but not limited to) in some hostels and refuges.

8.3 We use both non-excluded and excluded licences. Non-excluded licences are covered by the [Protection from Eviction Act 1977](#) and the occupant can only be evicted by court order. Excluded licences are excluded from the [Protection from Eviction Act 1977](#) and do not require a court order for the occupant to be evicted.

9.0 Assignment

- 9.1 Assignment is the legal transfer of a tenancy. You can assign your tenancy if:
- The law says you can - a statutory or legal right
 - Your tenancy agreement says you can - a contractual right.
- 9.2 An assignor is the tenant who passes on their tenancy. The assignee is the person taking over the tenancy.
- 9.3 The assignee must be eligible under our [Housing Options & Lettings Policy](#) and will take on the rights, responsibilities and terms (including tenancy length) of the assignor unless there are legal reasons.
- 9.4 We will not normally give permission to assign if the assignee does not need the size and type of home, or where there is an existing breach of tenancy.

10.0 Succession

- 10.1 Succession is when you pass away and your husband, wife, civil partner or a person living with you as though you were married (including same sex couples) takes over your tenancy if they were living with you at the date of your death. If you succeeded to the tenancy yourself (which includes if it was assigned to you), then a further succession is not possible.
- 10.2 Successors will take over the rights, responsibilities and terms (including tenancy length) of the tenancy. These rights vary according to the type of tenancy/occupancy agreement.
- 10.3 If a person entitled to succeed is older than 16 but under 18, then the tenancy will be held on trust until they reach 18.
- 10.4 Statutory successors and successors of tenancies granted between 1 April 2012 and 22 May 2017 will take over the existing tenancy.
- 10.5 We'll grant a new tenancy agreement for contractual successors of tenancy agreements granted before 1 April 2012. We'll grant a starter tenancy for the first year. The type of tenancy we offer after the first year will be in line with this policy, and not necessarily the same as the previous tenancy.

10.6 We'll consider using our discretion to offer a new tenancy if the person wanting to keep the tenancy:

- Qualifies as a successor, but succession rights have already been used.
- and**
- Is in housing need, eligible for a home with us in line with our Housing Options Policy, and would be entitled to homelessness assistance from the relevant local authority if we didn't offer a home.

A discretionary offer must be approved by the Head of Region.

11.0 Joint tenancies

11.1 A joint tenancy is where two or more people (legally up to four) have signed the tenancy agreement. With joint tenants:

- Each tenant has the right to occupy the property
- Neither tenant can exclude the other tenant, unless they get an Occupation Order under the [Family Law Act 1996](#)
- Each tenant is jointly and severally (individually) liable for the tenancy and the rent - this means both are responsible for the whole tenancy
- Either tenant can end the tenancy (except if the tenancy is for a fixed term, or an assured shorthold tenancy).

11.2 In cases of domestic abuse where one tenant ends the tenancy we may offer the tenancy to the remaining tenant provided they are eligible for our homes. They must require this size and type of accommodation. We will only do this where the household would be considered statutorily homeless and is in priority need (as defined in the [Housing Act 1996](#) and under the [Homelessness Act 2002](#)) if presenting to the local authority.

12.0 Mutual exchange

12.1 Mutual exchange is when two or more tenants 'swap' homes. When tenants exchange, they take on the responsibilities of the tenant they exchange with. This includes any damage caused by the tenant.

12.2 Joint tenants must have the agreement of the other tenant to exchange.

12.3 Fixed term tenants exchanging with fixed term tenants will assign their tenancies to each other for the rest of the existing fixed term.

12.4 Fixed term tenants exchanging with assured tenants must give up their tenancies. We'll issue a new tenancy. We call this surrender and re-grant. We'll offer both tenants a new Assured Tenancy.

- 12.5 You must leave your property in good order and clean and clear of belongings if you move. We may charge costs to you for any repairs needed or for removing any contents you leave.
- 12.6 We normally refuse an exchange for one or more of the following reasons (grounds) as set out in Schedule 3 of the [Housing Act 1985](#). The list below is a summary only:
- **Ground 1** – if you or the other person applying to exchange, are obliged to give up possession of the home under a court order
 - **Ground 2** – if you or the other person applying to exchange has outstanding possession proceedings against them, or there is a Notice of Seeking Possession (NOSP) in place for either tenant (whether they are assured, secure or fixed term tenants)
 - **Ground 2a** – if anyone exchanging has an injunction or other order against them associated with anti-social behaviour or legal action is being taken for such an injunction/order
 - **Ground 3** - if the home is too big for the tenant you are exchanging with. We will not allow our homes to become under-occupied
 - **Ground 4** – if the home is too small for the tenant you are exchanging with. We will not allow our home to become statutorily overcrowded
 - **Ground 5** – if the home was let to you because of your employment
 - **Ground 6** – if the exchange would conflict with our status as a charity
 - **Grounds 7, 8, and 9** – if the home is unsuitable for the person you want to exchange with because it is adapted for a support need the other person does not have
 - **Ground 10** – if the tenant you are exchanging with refuses to become a member of a tenants association, who manage the property.

13.0 Squatters and Illegal Occupiers

- 13.1 A squatter is a trespasser, someone who has entered or remained on the property without the consent of the person entitled to possession, the Tenant or Landlord. An illegal Occupier is a person who entered the property with the consent of the tenant and remains there following termination of the tenancy. This will include for example:
- Unlawful subletting
 - A person remaining in the property following the death of tenant who has no entitlement to succeed
 - A person who was an Assured joint tenant but the other party gave us Notice to Quit to end the tenancy.

We will always act to evict illegal occupants from our property. Squatting is a criminal offence and those people risk being arrested if they do not leave the property.

14.0 Tackling tenancy fraud

- 14.1 We must ensure our homes are occupied by people with genuine housing need. With the shortage of social housing it's important we manage the risk of tenancy fraud effectively.

We treat tenancy fraud seriously and have a zero tolerance approach. We're committed to ensuring our homes are occupied by the people they were lawfully let to and protected for use by people with genuine housing need.

- 14.2 We will request the assistance of the local authority and/or the Police to bring criminal charges against those who commit tenancy fraud and any related frauds.

We consider tenancy fraud to include (but may not be limited to):

- Subletting the whole of a property (whether for profit or not)
- Moving out of the property and allowing members of your family to live in it
- Not residing in the property as your only or principal home
- Abandonment of a property
- Misrepresentation by a resident (or a person on their behalf even if the resident doesn't know) which results in the offer and acceptance of a property
- Selling the keys to a property
- Assignment to a person who is not entitled
- False applications to succeed to a tenancy following the death of the resident.
- False applications to acquire or buy the property or to become a shared owner
- Applications for a person to become a joint tenant which contain false information
- Making an application for Right to Acquire or Right to Buy with false and or misleading information.

- 14.3 If we have evidence of tenancy fraud we'll take the most appropriate action considering the type and extent of fraud including:

- Evicting you by obtaining a possession order, unless you have abandoned the property in which case we might just take back possession without going to court
- Recovering any profits you have made from sub-letting the home
- Supporting the relevant local authority to prosecute those who sub-let our homes or misrepresented facts.

- 14.4 The [Prevention of Social Housing Fraud Act 2013](#) makes sub-letting a social housing property illegal. If you're sub-letting you may be prosecuted. If convicted you may be:

- Required to pay any profits made from the fraud
- Fined up to £50,000
- Sentenced to up to two years in prison.

15.0 Conclusion

- 15.1 This Policy sets out our approach to tenure. You should consult your tenancy agreement for further information on your rights and responsibilities, ask our advice, or seek independent help.

16.0 Review

- 16.1 We will review this Policy to address legislative, regulatory, best practice or operational issues.

Appendix One

Glossary of Key Terms

Key Terms	Description
Tenancy agreement / Occupancy agreement	This is a legal agreement which sets out the rights and obligations of the tenant and landlord including rental arrangements. You must abide by the terms and conditions or you face losing your home.
Starter Tenancy agreement	We issue starter tenancies to general needs tenants for the first year. It is an assured shorthold tenancy which usually runs for 12 months but can be extended by up to six months. If the tenant manages their tenancy well, it will convert to an Assured Tenancy at the end of the starter period.
Assured Tenancy agreement	An assured (non-shorthold) tenancy gives a higher degree of security than an assured shorthold tenancy. It is sometimes referred to as a lifetime tenancy. We (The landlord) must give a specific reason for seeking possession ('ground for possession') whilst the tenancy remains assured. You must abide by the terms and conditions or you face losing your tenancy and home.
Fixed Term Tenancy	An assured shorthold tenancy for a fixed period of time, usually 5 years. At the end of the tenancy the landlord can get possession by serving a section 21 notice (see below) or offer another tenancy.
Section 21 notice	A 'Section 21 Notice Requiring Possession' operates under section 21 of the Housing Act 1988 . This notice entitles the landlord to end an assured shorthold tenancy without having to prove a reason for seeking possession.
Open market rent	The open market rent is dependent on non-social housing rents for similar properties in the area. It is the rent which an individual renting on the private market would normally pay.
Affordable rent	This is a term for rent charges set at up to 80% of the market rent.
Minded to notice	This is the notice to inform tenants of what we intend to do at the end of the fixed term.
Safeguarding	Safeguarding is the action that is taken to promote the welfare of children and vulnerable people and protect them from harm.