

# Midland Heart Policy

## Tenancy Policy

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Staff Affected	<i>All Midland Heart Operational Staff</i>
Business Owner	<i>Gary Hardy</i>
Approved By	<i>David Taylor</i>
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**Always refer to documents stored on the Intranet when applying policy and procedure.**

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## 1. Purpose

This document will set out in broad terms how different licences and tenancies across the organisation will be offered, managed, reviewed and terminated.

In accordance with the Localism Act, Midland Heart has introduced the use of Fixed Term Tenancies as well as the requirement to publish a copy of our Tenancy Policy.

The actions we will take are driven by our **Vision** "to be a leading housing and care business, helping people to live independently!" and our **Values**:

- **People Focussed**
- **Inclusive**
- **Professional**

## 2. To Be Read In Conjunction With

### 2.1 External:

- Equality Act 2010
- Localism Act 2011
- Data Protection Act 1998
- Housing Act 1988
- Housing Act 1985
- HCA Regulatory Framework – Tenancy Standard
- Laying Foundations – A Housing Strategy for England

### 2.2 Internal:

- Fixed Term and Starter Tenancy Guidance
- Fixed Term and Starter Tenancy Process Map
- Empty Homes Procedure
- Allocations Policy
- Succession & Assignments Policy
- Mutual Exchange Policy
- Fair Access / Fair Exit Guidance
- Move On Policy

## 3. Policy Document Version Control

Version	Issue Date	Business Owner	Review/Health Check
1.0	Feb 2014	David Taylor	New Policy
1.2	Feb 2016	Gary Hardy	Health Check only as current content still fit for purpose. However a shorter review date has been placed on this Policy as forthcoming changes related to the Housing Bill will impact our Tenancy Policy and so we will require a full review in Summer 2016. Reference to Fixed Term Tenancy Procedure removed as this is not a current document (only a process map and guidance notes exist).

2.0	July 2016	Gary Hardy	<p>New mission and values added;</p> <p>Section 5.4 Visit regime has been amended and now covers 4 separate customer circumstances that will indicate the level of visits required;</p> <p>Section 5.8.2 Amended to include exceptional circumstances for serving notice after 10 months. Also now includes paragraph to confirm reason for extending.</p> <p>No other fundamental changes have been made to the policy.</p>
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#### 4. Scope of Policy

This policy affects all new customers moving into a Midland Heart tenancy either in General Needs or Care and Support accommodation.

## 5. POLICY STATEMENT

### 5.1 Introduction

Midland Heart has a long history of providing customers access to housing when they most need it and supporting local communities by investing in and regenerating local neighborhoods. The flexibilities offered by the Localism Act will be used to support this on-going work at a time when good quality, affordable housing is in as much demand as ever.

The overriding aim of the Midland Heart Tenancy Policy is to ensure customers have the right home and/or support at the right time and for as long as they need it.

This Policy specifically covers:

- The kinds of tenancies and licenses Midland Heart grants
- The circumstances in which Midland Heart will grant a particular tenancy or license
- The length of tenancies and licenses we will grant and Midland Heart's reasons for granting those particular terms
- The circumstances in which Midland Heart will grant a further tenancy (or not) on the coming to end of an existing tenancy
- Paying due regard to the tenancy strategies of the local authorities we work in
- Ensuring the housing circumstances do not become a barrier to achieving broader life aspirations
- Ensuring that customers are given appropriate advice to ensure that they have the right home at the right time

### 5.2 Tenancy Types

Midland Heart offers a range of tenancies and licenses. All **current** tenants will remain on their existing tenancy / license types, unless: Midland Heart has been successful in achieving a Demotion Order; the customer transfers to a property size of three or more bedrooms (from a smaller sized property); where the tenant has chosen to exchange their tenancy and they are not protected (e.g. have been awarded a Housing Association tenancy after April 2012); or through move on services.

<b>Tenancy Type</b>	<b>Who this will be offered to:</b>
Licence Agreement (Excluded and Protected)	<ul style="list-style-type: none"><li>• Customers who do not have exclusive occupation of the property. This usually includes:</li><li>• Customers using garages or parking spaces</li><li>• Service Occupiers in Tied Accommodation who have service occupancy agreements</li><li>• Customers that have an existing tenancy that they have been temporarily decanted from</li></ul>

	<ul style="list-style-type: none"> <li>• Care and Support Schemes/Services where the customer has shared access either with other customers or where support workers will be required to have access to the property</li> </ul>
Assured Shorthold Tenancy Periodic	<ul style="list-style-type: none"> <li>• Customers living in a property where Midland Heart is the leaseholder</li> <li>• Customers living in intermediate rented properties</li> <li>• Customers living in rent to homebuy properties who have not purchased all or part of the property</li> <li>• Customers living in market rented properties</li> <li>• Customers in some supported housing schemes</li> <li>• Customers with limited leave to remain in the UK</li> <li>• Customers living in a property that has been identified for sale in our Asset Management Strategy.</li> </ul>
Assured Shorthold Tenancy (of another Fixed Term Period other than 6 years)	<ul style="list-style-type: none"> <li>• Some specialist Care and Support Schemes where the tenancy length is discussed at pre – allocation stage.</li> <li>• Mortgage rescue tenants (3 years)</li> </ul>
Starter Tenancy (Assured Shorthold Tenancy – leading to Assured Non Shorthold)	<ul style="list-style-type: none"> <li>• New customers to Midland Heart moving into a general needs home with 3 bedrooms or less.</li> </ul>
6 Year Fixed Term Tenancy	<ul style="list-style-type: none"> <li>• General needs customers that have successfully completed a 6 year fixed term tenancy living in a home with 4 bedrooms or more and they still need this accommodation.</li> <li>• New customers to Midland Heart moving into a general needs home with 4 bedrooms or more and their tenancy status is not protected in law.</li> <li>• Any existing assured tenant transferring to a property with 4 bedrooms or more and their</li> </ul>

	tenancy status is not protected in law.
Mixed Use Business Tenancy	<ul style="list-style-type: none"> <li>• Customers in designated live/work accommodation</li> </ul>
Assured Non Shorthold Tenancy	<ul style="list-style-type: none"> <li>• Existing Midland Heart customers with an Assured Non-Shorthold Tenancy that are transferring to another Midland Heart owned property with 3 bedrooms or less.</li> <li>• Any existing Midland Heart assured non-shorthold tenant choosing to transfer to a property with 4 bedrooms or more and their tenancy status is protected in law</li> <li>• • Care and support schemes where care/support is attached to the tenancy with no fixed timescale</li> </ul>
Leaseholder	<ul style="list-style-type: none"> <li>• Customers who own a share in their property</li> <li>• Customers who own their home and Midland Heart owns the freehold of the land</li> </ul>
Secure Tenancy	<ul style="list-style-type: none"> <li>• Existing Midland Heart Secure Tenants who transfer through assignment to another Midland Heart owned property</li> </ul>

### 5.3 Tenancy/License Length

Midland Heart seeks to offer customers a period that allows a degree of stability to enable the customer to invest in their home and community and where relevant under the support terms as set out by Local Authority, Supporting People or Commissioners.

In all cases, the tenancy / license may be ended earlier if there is a breach of tenancy.

The tenancy / license lengths are as follows:

- Midland Heart's **Assured (Non Shorthold Tenancies)** or transferred **Secure Tenants** are offered on a long term basis.
- **Assured Shorthold (Periodic Tenancies)** are offered on either a 6 or 12 month period and this will continue to roll over unless Midland Heart stops the tenancy by way of serving Notice.
- **Assured Shorthold (6 Year Fixed Term Tenancies)** are offered on a 6 year basis. Included within this and at the start of the tenancy is a break clause at 12 months.
- **Excluded / Protected Licenses** can be ended at any time where Midland Heart has cause.
- **Assured Shorthold (Fixed Terms of Other Lengths)** are offered within some specialist Care and Support Schemes. The periods are discussed with customers at the pre allocation stage.

## 5.4 Visit Regimes for new Customers (Starter Tenancies)

Customers will be assessed at point of Allocation and will be categorised under one of four visit regimes, depending on the individual support needs:

**Visit regime A** – Customers not affected by LHA/Benefit changes but who are classed as vulnerable. For example, customers who have no furniture or the basics needed when moving into independent accommodation, customers with a history of mental health problem (that has impacted independent living), drug and alcohol misuse, customers with disabilities. This list is not exhaustive. Customers on visit Regime A will receive visits at 3 weeks, 6 months, 9 months and, for Fixed Term tenancies, visits within Year 3 and Year 5.

**Visit regime B** – Customers who are not classed as vulnerable and who are not affected by the LHA/Benefit changes. Regime B customers will receive a visit at 3 weeks and, for Fixed Term tenancies, at Year 3 and Year 5.

**Visit Regime C** – Customers who are affected by LHA/Benefit changes and are considered to be vulnerable as set out in Regime A. These customers will receive visits at 3 weeks, 6 months, 9 months and visit within Year 3 and Year 5.

**Visit Regime D** – Customers who are not currently claiming benefits but who would be affected by the LHA/Benefit changes if their current circumstances changed. These customers would not be classed as vulnerable. Customers on Regime D would receive a visit at 3 weeks. At 6 months the NHO will conduct a desk top assessment where they will ascertain if the customer's circumstances have changed and if further advice/info is needed.

A visit will also be conducted at month 9, and, for Fixed Term tenancies within Year 3 and Year 5.

**It is important to note that customers can switch between the four visit regimes throughout the period of their tenancy should we have concerns about how they are managing their tenancy.**

## 5.5 Fixed Term Tenancies (6 Years)

### 5.5.1 Why Fixed Term Tenancies?

Midland Heart seeks to offer customers a period that allows a degree of stability to enable the customer to invest in their home and community. To achieve this balance, a Fixed Term Tenancy is offered on a six year basis.

Should the tenant choose to end their tenancy prior to the fixed term end date – they may do so by surrendering their tenancy, giving at least 4 weeks' notice. Midland Heart can attach conditions to any surrender request and where the tenant fails to comply with these conditions, we have the right to refuse their request to end.

At the end of the 6 year period, Midland Heart will decide which action to take, this could include:

- To issue a new 6 Year Fixed Term Tenancy
- For the tenant to remain in the property but on new terms; or

- To assist the tenant to find alternative (and more suitable) accommodation; or
- Not offer any other form of tenancy

### 5.5.2 Breaching a Fixed Term Tenancy

Where persistent breaches have been evidenced and behaviour has not been improved to an acceptable standard, we will take appropriate steps to extend or terminate.

Where a breach of the tenancy agreement is severe Midland Heart will take the appropriate steps to terminate the tenancy without formal warning letters or other interventions or remedies. Examples of a severe breach include but are not limited to:

- A physical attack on another person within the home or the immediate vicinity of their home
- Any actions that place other people's health and safety at risk

#### **Within the first 12 month period of 6 year tenancy:**

Midland Heart has the right to either extend the 12 month period by a further 6 months or we can end the tenancy, giving the customer 2 months' notice.

#### **After the initial 12 months (or 18 months if we extend):**

In relation to breaches of tenancy, Midland Heart will seek possession of the tenancy in accordance to existing Midland Heart Policies and Procedures.

### 5.5.3 The End of the Fixed Term

Midland Heart will normally reoffer a Fixed Term Tenancy, **unless**:

- The property is adapted and no-one residing at the property requires those adaptations
- The property is under-occupied
- The property is over-crowded
- The financial circumstances of the tenant and their partner have changed so that other housing options are available such as home ownership or other tenures – in accordance with our Affordability Criteria
- The customer can no longer demonstrate the property is affordable to them.
- Any breaches of tenancy or tenancy fraud are identified during the Fixed Term Tenancy review process
- The customer and/or their advocate do not engage in the Fixed Term Tenancy review process
- The customer does not accept the terms and conditions of the new Fixed Term Tenancy
- If the customer comes into legal ownership of another home or property
- Midland Heart reasonably requires possession of the home to enable it to effectively manage its property stock and portfolio, for example, it is looking to sell the property, carry out major works or to be consistent with local lettings policies or neighbourhood plans

## 5.6 Licence Agreements

### 5.6.1 Terms of a Licence

The terms of the license are specified within the individual agreement and will usually be a periodic agreement that will continue to roll over until the agreement is ended either by the customer or by Midland Heart.

### **5.6.2 Ending a Licence Agreement**

Midland Heart can end the tenancy in accordance to existing Midland Heart Policies and Procedures and in line with contract specifications. Where the tenant has an Excluded License, Midland Heart has the right to provide the customer with reasonable notice to leave the property.

Where the tenant has an Protected License, Midland Heart will serve the customer with a 28 day Notice to Quit.

## **5.7 Assured Shorthold Tenancies (ASTs)**

### **5.7.1 When Are Assured Shorthold Tenancies Issued?**

Midland Heart offers ASTs on either a probationary period (starter) that converts to an Assured (Non Shorthold) Tenancy or on a 6 or 12 month basis that will keep rolling over until Midland Heart or the tenant ends the tenancy. Some AST Fixed Terms of lengths other than 6 years are offered within some specialist care and support schemes.

### **5.7.2 Ending an Assured Shorthold Tenancy**

Where the tenant has breached their tenancy and non-legal remedies have not been successful or appropriate, Midland Heart will issue a Notice Requiring Possession (NRP), giving the tenant at least two months' notice of our intention to terminate.

In the case of termination, if the tenant does not leave the property on or before expiry of the two month notice period, we will apply for a court order for possession. No grounds for possession will need to be proved, as the end of an assured shorthold tenancy is a mandatory ground in itself. Where the tenant does not abide by the court order for possession, we will apply to the court for a warrant of possession.

## **5.8 Assured Non Shorthold/ Secure Tenancies**

Assured Non Shorthold Tenancies are the most secure form of tenancy a Housing Association can offer. A secure tenancy cannot be offered to any new Midland Heart customer.

### **5.8.1 Ending Assured Non Shorthold or Secure Tenancies**

Where an Assured (Non Shorthold) or Secure Tenant has breached any part of their tenancy, Midland Heart can serve them a Notice of Seeking Possession outlining the relevant breach and enter them into court. The court will decide whether the tenancy can be terminated or not.

### **5.8.2 Ending or Extending a Starter Tenancy during the Probationary Period**

During the probationary period the tenant must continue to demonstrate that they are able to pay the rent and/or sustain the tenancy. If a tenant during this period cannot demonstrate that they have (or could properly anticipate having) the necessary income and/or ability to sustain the tenancy after the probationary

period then a Section 21 Notice to Quit will be served by month 10 of the tenancy. Any pending benefit changes will be taken into account when making this decision. Only in exceptional circumstances, a Section 21 Notice to Quit may be served after month 10 of the tenancy.

Midland Heart may extend a starter tenancy for a further 6 months. This will usually be done in exceptional circumstances where there is a high probability that any tenancy breach is likely to be permanently remedied and will not reoccur and/or that the affordability issue is highly likely to be resolved within a 2 month period and any rent arrears reduced. An extension may also be applied where more time is required to investigate a tenancy breach.

### 5.9 Right to Review / Fair Exit

Midland Heart provides access to an appeals process and panel for 6 Year Fixed Term Tenants, General Needs Housing Assured Shorthold Tenancies and Starter Tenants wishing to appeal the decision to extend or terminate their tenancy. Information on appeals will be provided to tenants at the beginning of their tenancy and at the point where action to extend or terminate is initiated.

Tenants have 14 days in which to appeal in writing following service of the notice or of the letter advising of a tenancy extension period. Where an appeal against the Notice to Extend/End fails, possession action will be continued or the tenancy extended for a further 6 months.

## 6. Measures and Monitoring

We will monitor and analyse data related to the following to ensure that we can continue improving our services and our aim of ensuring customers have the right home and/or support at the right time and for as long as they need it.

- Tenancy sustainment outcomes for Starter Tenants and reasons for tenancy end
- Fixed term tenancy review outcomes
- Appeals outcomes and learning

## 7. Legal Framework

Legislation	Main powers and relevance
Housing Act 1985	<ul style="list-style-type: none"> <li>● Contains the grounds that landlords must prove to gain possession for secure tenancies -</li> <li>● Schedule II Grounds for Possession</li> <li>● Contains Notices Seeking Possession -first stage in possession process (s.83); s82A added by the Anti-Social Behaviour Act 2003 regarding demotion orders</li> <li>● Contains the rights of secure tenants</li> </ul>
Housing Act 1988	<ul style="list-style-type: none"> <li>● Contains the grounds that landlords must prove to gain possession - Schedule II Grounds for Possession</li> </ul>

	<ul style="list-style-type: none"> <li>• Contains Notices Seeking Possession - first stage in possession process (s.8): S6A added by the Anti-Social Behaviour Act 2003 regarding demotion orders</li> <li>• Contains the rights of Assured and Assured Shorthold Tenants</li> </ul>
Localism Act 2011	<ul style="list-style-type: none"> <li>• New freedoms and tenure flexibilities</li> <li>• New rights and powers for communities and individuals</li> <li>• Reform to make the planning system more democratic and more effective</li> <li>• Reform to ensure that decisions about housing are taken locally</li> </ul>
HCA National Standards	<p>These standards are designed to help improve the services provided for some 8 million people who live in social housing in England. They are:</p> <ul style="list-style-type: none"> <li>• Tenant involvement and empowerment</li> <li>• Home</li> <li>• Tenancy</li> <li>• Neighbourhood and community</li> <li>• Value for money</li> <li>• Governance and financial viability</li> <li>• Rent Standards</li> </ul>