

Midland Heart Policy

Tenancy Policy

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| Staff Affected | All Midland Heart Operational staff |
| Business Owner | Gary Hardy, Director of Operations |
| Approved By | David Taylor, Executive Director Operations |
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Always refer to documents stored on the Intranet when applying policy and procedure.

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1. Purpose

We use a variety of occupation agreements when letting our residential properties. This policy sets out the circumstances in which we will grant each type of agreement.

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 Focused**
- **Inclusive**
- **Professional**

2. To Be Read In Conjunction With

2.1 External:

- Tenancy Standard (Regulator of Social Housing)

2.2 Internal:

- Allocations Policy
- Starter tenancy guidance
- Direct Lets Procedure (formerly titled Move On Procedure)
- Appeals Procedure

3. Policy Document Version Control

| Version | Date | Business Owner | Review/Health Check |
|---------|-----------|----------------|---|
| 1.0 | Feb 2014 | David Taylor | New Policy |
| 1.1 | Feb 2016 | Gary Hardy | Health Check |
| 2.0 | July 2016 | Gary Hardy | Amendment to mission and values; amended visit regimes (section 5.4); amended exceptional circumstances for serving notice at 10 months (section 5.8.2) |
| 3.0 | Nov 2020 | Gary Hardy | Full Review. Removal of Fixed Term Tenancies from the Policy. |

4. Scope of Policy

This policy sets out the range of tenancies that will typically be offered for each type of housing in general needs, supported living and retirement living rented accommodation as well as market rent and intermediate properties.

This policy does not cover the allocation of social housing.

5. POLICY STATEMENT

5.1 Introduction

The Localism Act 2011 introduced the flexibility for registered providers to offer social housing tenancies for a fixed-term period enabling best use of social housing stock. The Tenancy Standard issued by the Social Housing Regulator in 2012 requires registered providers to publish tenancy policies setting out their approach to tenancy management.

This policy provides the framework to ensure residents have the right home and/ or support at the right time and for as long as they need it, and to house customers where they wish to live and to become part of a balanced and sustainable community.

This policy sets out the circumstances under which different tenancy types will be offered and how probationary tenancies will be reviewed.

5.2 Aims

To achieve this, this policy aims to:

- Provide clarity on the circumstances in which we will grant each type of tenancy, including the length of tenancy and reasons for this
- Offer tenancies which will make the most efficient use of our housing stock and which are compatible with the purpose of the accommodation
- Clarify any circumstance in which we would grant a tenancy of less than 5 years in general needs housing following any probationary period
- Explain how a customer / prospective customer can appeal against the type of tenancy offered and where a decision has been made to extend or end a probationary tenancy

5.3 Tenancy Types

We offer a range of tenancies and licenses. Each offer of a home will clearly set out the type of tenancy, the rent charges (social rent, affordable rent, intermediate market rent and so on) and the conditions of the offer. These and the implications of the type of tenure being offered will be explained during the viewing and sign up process.

All **current** tenants will remain on their existing tenancy / license types, unless:

- The tenant has chosen to exchange their tenancy and they are not protected;
- We have been successful in achieving a Demotion Order;
- An allocation is made through move on services. This is a move from our supported living schemes into independent general needs housing.

The tenancy type to be offered to customers is set out below. Where we decide to discontinue, dispose of, or redevelop any type of housing, the appropriate notices and grounds for possession will be given to bring the tenancies to an end.

| Tenancy Type | Who this will be offered to | Review/ Termination by Landlord |
|--|---|--|
| <p>Licence Agreement (Protected & Excluded)</p> <p>A Protected Licence Agreement allows occupation without exclusive possession of the Property and the Property may be self-contained (licensee has use of their own bathroom and/or cooking facilities)</p> <p>Excluded Licence is where the Property is located in a hostel and, usually, the licensee shares facilities e.g. in a hostel, or for nonresidential properties</p> <p>Length of licences offered are discussed at pre-allocation stage. Normally these are on a short-term bases of six months to a year but the length of time can vary.</p> | <ul style="list-style-type: none"> ○ Customers that have an existing tenancy that they have been temporarily decanted from ○ Supported Living Schemes/Services ○ Customers using garages or parking spaces ○ Service Occupiers in Tied Accommodation who have service occupancy agreements | <p>Protected Licences can be brought to an end by serving a Notice to Quit (prescribed form) giving 28 days' notice to the licensee. If a licensee does not vacate the accommodation when the notice expires, a valid Possession Order must be obtained in court and a warrant of possession executed.</p> <p>For Excluded Licences, a Notice to Quit is not a legal requirement and the licensee can be excluded from the property without a court order. The notice period must be reasonable. In most cases, 28 days' notice will be given unless the circumstances of the situation requires less there is a risk of violence and security and with relevant Head of Service authorisation.</p> |
| <p>Assured Shorthold Tenancy (Periodic)</p> <p>Known as AST's, these are weekly or monthly tenancies that are 'periodic' i.e. they run from week to week or month to month until they are brought to an end.</p> | <ul style="list-style-type: none"> ○ Customers living in a property where Midland Heart is the leaseholder ○ Customers living in intermediate rented properties ○ Customers living in Rent to Homebuy properties who have not purchased all or part of the property ○ Customers living in market rented properties ○ Customers in some supported housing schemes ○ Customers with limited leave to remain in the UK ○ Customers living in a property that we have identified for redevelopment or disposal | <p>This can be brought to an end only after the initial 6 months of the Tenancy has passed by:</p> <ol style="list-style-type: none"> 1. serving a valid Notice Requiring Possession (s.21 HA 1988) after the 1st 4 months of the tenancy has passed and giving two months' notice of intention to terminate, or 2. at any point from the start of the tenancy if there are breaches of tenancy by serving a Notice of Seeking Possession HA 1988 (amended) using the Grounds for Possession under Schedule 2 of Housing Act 1988 and obtaining a Possession Order in court. |

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| <p>Assured Shorthold Tenancy (Fixed Term Period)</p> | <ul style="list-style-type: none"> ○ Some specialist supported schemes where the tenancy length is discussed at pre – allocation stage. ○ Mortgage rescue tenants (3 years) | <p>Notice of Seeking Possession HA 1988 (amended) Sch.2 Grounds for Possession (except for Grounds 6 & 9) at any time during the tenancy</p> <p>‘Minded to’ Notice served at six months prior to end of the fixed term and Notice Requiring Possession (s.21) at two months before the end of the fixed term</p> |
| <p>Starter Tenancy (Assured Shorthold Tenancy – leading to Assured (Non Shorthold) Tenancy)</p> <p>These tenancies have a probationary period for all new customers of up to 18 months before converting to a ‘lifetime’ assured tenancy, unless the tenancy is ended before conversion due to tenancy breaches</p> | <ul style="list-style-type: none"> ○ New customers to Midland Heart moving into a general needs and retirement living homes | <p>Review at 9 months into the probationary period.</p> <p>Starter tenancies may be ended by serving a Notice Requiring Possession (s.21 HA 1988) with two months’ notice of intention to terminate. This is mandatory possession and not at the discretion of the court.</p> <p>Or, Notice of Seeking Possession (Sch 2 1988 HA, amended) Grounds for Possession. If the tenancy is not ended by serving the relevant notice towards the end of the probationary period the tenancy will convert to an Assured (Non Shorthold) Tenancy</p> |
| <p>Assured (Non Shorthold) Tenancy</p> <p>Known as Assured tenancies, these are weekly or monthly and have no fixed term and so are often referred to as ‘lifetime’ tenancies</p> | <ul style="list-style-type: none"> ○ Existing Midland Heart customers with an Assured Non-Shorthold Tenancy that are transferring to another Midland Heart owned property ○ Retirement and/or Supported Living schemes where support is attached to the tenancy with no fixed timescale | <p>The tenancy can only be brought to an end on the Grounds for possession specified in Sch.2 of the Housing Act 1988 (amended) after serving a valid Notice of Seeking Possession and securing a valid outright Possession Order in court.</p> <p>We may use the mandatory grounds for possession for rent arrears and certain criminal anti-social behaviour</p> |

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| <p>Secure Tenancy</p> <p>These are older lifetime tenancies used before the introduction of Assured Tenancies on 15th January 1989</p> | <ul style="list-style-type: none"> ○ Existing Midland Heart secure tenants who transfer to a new home with Midland Heart | <p>The tenancy can only be brought to an end on the grounds specified in Sch.2 of the Housing Act 1985 (amended) after serving a valid Notice of Seeking Possession and securing a valid outright Possession Order in court. The mandatory Ground 8 cannot be used on Secure tenancies</p> |
| <p>Leaseholder</p> | <ul style="list-style-type: none"> ○ Customers who own a share in their property ○ Customers who own their home and where we own the freehold of the land | <p>The lease can only be brought to an end if we bring a forfeiture or repossession claim through the courts for breach of lease and we secure an outright possession order.</p> |
| <p>Mixed Use Business Tenancy</p> | <ul style="list-style-type: none"> ○ Customers in designated live/work accommodation | <p>Business tenancies will be ended in accordance with the notice provisions contained in the tenancy and/or by forfeiture proceedings in the county court.</p> |

5.4 Request for a review of tenancy type

The Tenancy Standard requires us to have an appeals process covering the type of tenancy offered. If a Customer believes that they have not been offered or granted the correct type or length of tenancy as outlined in this Tenancy Policy, they can request for the decision to be reviewed.

Where a tenancy has started, any request to review the type of tenancy awarded should be made within 3 months of the tenancy start date.

The request must be in writing and will be considered by the Lettings Operations Manager (unless involved in the original decision when it will be reviewed by the Director of Operations) who will respond within 14 days. The review will consider the customer's representations, the application documentation, any applicable nomination agreement and a written submission from the relevant team detailing why that type of tenancy was offered or granted. This is the final stage of the appeal process.

5.5 Request for a review of decision to extend the probationary period, or to end the tenancy during the probationary period

Our starter tenancies normally run for the first twelve months of a tenancy, but can be continued for up to 18 months. If a customer believes that they have not breached their tenancy terms and conditions and where a decision has been made for the starter tenancy to be extended they have the right to ask for the decision to be reviewed.

Equally, if a Section 21 notice is served for a breach of tenancy, the customer can ask for the decision to end the tenancy to be reviewed.

Customers must make the request within 14 days of being informed of the decision / Section 21 notice being served on them, providing appropriate evidence in writing, verbally, or a combination of both. Appeals can be received on behalf of customers with consents for disclosure provided in line with data protection laws

A manager, independent and more senior than the original decision maker, will review the appeal in line with our Appeals Procedure.

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 ends
- Appeals outcomes and learning

7. Legal Framework

| Legislation | Main powers & relevance |
|--------------------------------------|---|
| Housing Acts 1985, 1988, 1998 & 2004 | Grounds for landlords to seek possession for secure and assured tenancies |
| Localism Act 2011 | Introduction of flexible tenures |

8. Definitions

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| Intermediate Rent | A subsidised rent offered by Registered Providers to allow customers to save for a deposit to enable them to purchase a home |
| Leasehold | Leasehold means that you own a property, but the land upon which the property is built is owned by a freeholder. This gives you a right to occupy for as long as the lease is valid |
| Market Rent | The amount of rent that can be expected for the use of a property in comparison with similar properties in the same area |
| Notice Requiring Possession | Official title in court for a Notice served by a landlord seeking possession of a fixed term tenancy, more commonly known as a Section 21 notice |
| Notice of Seeking Possession | A Notice served by a landlord where a tenant has breached their contract giving the landlord grounds for possession |
| Supported Living | Individual tenancies in a support setting offered to customers with a range of different needs and which promotes independent living |
| Tenancy | A legal interest in land for a period of time, for example the temporary occupancy of a house that belongs to someone else |
| Tied accommodation | Accommodation provided by Midland Heart to a service occupier. A service occupier is where housing is provided and it is essential for an employee to reside in the accommodation to do their job or the employment contract states the employee must do so |