

# Tenancy Management Policy

Service Area		Housing & Communities	
Policy Owner		Tenancy Services Manager	
Introduced	2023	Last Reviewed	n/a
Version	One	Review Date	2025

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## Introduction

The purpose of this policy is to outline the circumstances in which changes to a tenancy may happen and any possession action which could be taken, why this could happen and the tenancy support which will be offered. The Council and tenants' responsibilities in the management of tenancies (which includes the management of anti-social behaviour and rent arrears) are set out in the Tenancy Agreement.

### 1. Scope of the Policy

- 1.1 This policy sets out the circumstances in which changes to a tenancy may happen (for example, assignments, mutual exchanges or successions) and the circumstances in which any tenancy agreement, provided by the Council, will end due to possession action (including evictions). An eviction is defined as the recovery of accommodation, owned or managed by the Council, and happens by using the legal processes that are available.
- 1.2 This policy sets out the support offered to tenants and the processes that will be undertaken before an eviction is carried out, to ensure that all possible alternative remedies are explored.
- 1.3 The Council will ensure the implementation of this policy does not discriminate between tenants on any grounds. The Council will enhance the promotion of equal opportunities by publishing standard information and documentation in different languages and other formats, as required.

### 2. Objectives and Principles of the Policy

- 2.1 The overall aim of this Policy is to ensure that legal action (including evictions) is carried out only after:
  - other options have been exhausted and tenancy management remedies proved ineffective
  - that proper authorisation is obtained
  - that an up-to-date risk assessment is carried out prior to the eviction
  - that any eviction is carried out lawfully
- 2.2 The specific objectives of the Policy are:
  - a) to prevent homelessness occurring by exhausting all other tenancy management remedies, where appropriate;
  - b) to provide early intervention in an attempt to prevent eviction occurring;
  - c) to define the authorisation process for an eviction enforcement;
  - d) to deal with evictions in a consistent way;

- e) to protect the wellbeing and interests of occupiers and other residents in the community; and
- f) where necessary, to take appropriate action to protect the assets and income of the Council.

2.3 The principles underpinning the Policy are:

- a) the housing service and Income Recovery Team will clearly explain to tenants specific actions they must take to avoid legal action at each stage;
- b) the housing service and Income Recovery Team will actively promote joint working with other Council departments and external agencies;
- c) that procedures and agreed practices will be implemented consistently across the service;
- d) that training will be provided to ensure all staff are fully equipped to carry out the roles expected of them; and
- e) that all communication will be in plain language and will make clear who the appropriate officers are to provide advice and assistance.

### 3. Legal framework

- 3.1 The Council will ensure that the Policy meets all legislative, regulatory and good practice requirements and minimises evictions being carried out. This will include, but is not restricted to, the Housing Acts 1985 and 1996 (and subsequent legislation), the Localism Act 2011, the Pre Court Protocol, ASB Crime and Policing Act 2014, the requirements of the Regulator of Social Housing, and any Chartered Institute of Housing's good practice.
- 3.2 The Council will ensure that no tenant's human rights are breached by the implementation of this policy, in accordance with the Human Rights Act 1998. Consideration is also given to the responsibility of the Council in promoting and assisting in the building of sustainable and balanced communities.
- 3.3 In addition, the Council will ensure that no personal data relating to legal action is passed to a third party in breach of the Data Protection Act 2018 and General Data Protection Regulation 2018 without the explicit consent of the tenant(s) or in compliance with other legislation. This will include information given to other occupiers of the property and elected Members.
- 3.4 The decision to grant a possession order and then a warrant of execution (eviction) can only be made by the County Court, not the Council. The grounds for possession are contained within the relevant Housing Acts. For secure tenants, possession will only be granted when the court is satisfied that it is reasonable to do so and that the Council has adhered to the prescribed legal process. The Court will decide whether to grant a possession order in line with the relevant legislation for all other tenure.

## 4. Tenant's responsibilities

- 4.1 The term 'tenant' refers to sole and any joint tenants.
- 4.2 If two or more people have signed a tenancy agreement they are jointly and severally liable for ensuring that the tenancy conditions are adhered to. The conditions of a tenancy are set out in the Tenancy Agreement.
- 4.3 Tenants have an obligation under the terms and conditions of their tenancy agreement to ensure:
  - the actions of those living in, or visiting, their property is acceptable.
  - pay rent due every week on or before the first day of each rental period.
- 4.4 Tenants have a responsibility to ensure they actively manage their tenancy to prevent the need for possession proceedings being raised. Failure to do this may lead, after other tenancy management options have been exhausted, to possession action being taken by the Council.
- 4.5 Tenancy Support will be offered to help someone to meet their tenancy conditions. Please see section 6 on how the Tenancy Support service can help.

## 5. Council's responsibilities

- 5.1 At the start of a tenancy, the Council will make every effort to ensure that tenants understand and are fully informed of all the responsibilities and activities associated with maintaining a tenancy. Tenants will be encouraged to take appropriate action to prevent placing their tenancy at risk.
- 5.2 The Council has a duty to all its tenants and the wider community on its estates, to ensure they are able to live in an environment that is well maintained, safe and secure. This includes taking appropriate action against those living in, or visiting, Council tenancies when the behaviour of the person threatens to disrupt the community and put the safety and security of other tenants and residents at risk.
- 5.3 The Council has a duty to protect its housing stock and rental income. Enforcing the terms of the Tenancy Agreement assists with this.
- 5.4 Tenants will be advised of the consequences of failing to adhere to the Tenancy Agreement. This will include any action that may be taken by the Council to remedy a situation.
- 5.5 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is maintained successfully. This will be via a Housing Officer and/or a Tenancy Support Officer, along with the Income Recovery Officer. They can advise

on action to take to comply with tenancy conditions. For example, supporting a tenant with their rent obligations and how to be a good neighbour.

## 6. Tenancy Support

6.1 How the Tenancy Support service can help. This will include (but not limited to):

- Help in maintaining tenancies
- Budgeting advice;
- Money maximisation (eg. making sure a tenant is receiving all welfare benefits and tax credits, where eligible);
- Help with putting a repayment plan into place for any rent arrears
- Developing tenants' domestic/ life skills and behaviour
- Accessing other local community organisations/ support
- Liaising with external agencies
- Support and advice

6.2 How the Income Recovery Team can help. This will include (but not limited to):

- Proactive engagement with tenants to offer early intervention and build a positive relationship;
- Developing tenants' awareness of their payment obligations to identify or remedy actual or potential breaches of tenancy due to non-payment; and
- Liaising with internal teams to ensure relevant support can be identified (eg Housing Benefit, Council Tax Support and Discretionary Housing Payments)

6.3 How the service works and how a tenant can access it

When a tenant needs support, we will, with permission:

- Complete an initial assessment form and establish the tenant's needs
- Contact the tenant with the outcome of the assessment, the name of their allocated support worker and offering a first appointment
- Be honest when we are unable to help or where a tenant's needs would be better met by an alternative agency and signpost or refer them on where needed.
- Gradually reduce support when a tenant's needs have been met as far as possible and be available after support ends to answer any questions, depending on the tenant's needs.

Requests for support can be made via a Council employee or an external support agency.

## 7. Repossession preventative action

- 7.1 The Council will ensure that all reasonable steps will be taken to remove the need for court action to enforce the terms of the tenancy. This will include early, regular and sustained intervention to avoid the escalation of a situation.
- 7.2 The Council will follow an escalation policy based on preventative measures that are proportionate to the level of the situation.
- 7.3 In all situations where the Council feels that it is reasonable to recover possession of a property, the Council will ensure that reasonable preventative measures have been taken to avoid eviction. This will include the use of voluntary and alternative processes. For example, referring to the Tenancy Support Team for tenancy support. The Council's Housing Options Service will be notified whenever a Notice is served.
- 7.4 Where there is a risk of abuse, violence and/or danger to neighbours, colleagues or the person who is being evicted, the Council will act quickly and appropriately to ensure the risk is minimised.

## 8. Assessment, Support and Liaison with other agencies

- 8.1 The Council will undertake a risk assessment for all tenants when it is identified that their tenancy is at risk.
- 8.2 During the assessment, the tenant's needs will be identified. Existing and future sources of support will also be identified. Tenants will be encouraged to obtain advice from a solicitor or housing advice centre.
- 8.3 Where an external agency or Council service is providing support, full co-operation will be given by Tenancy Services to try to resolve a situation without the need for legal action to recover possession of a property. However, the Tenancy Services team retains the right to proceed with possession action where there are overwhelming housing management issues e.g. chronic anti-social behaviour with a high likelihood of re-offending.
- 8.4 The Council's Housing Options Service will be formally notified of all eviction dates.
- 8.5 In all cases, where the tenant's household includes dependent children, the eviction will be notified to the Lincolnshire County Council's Children's Service.

## 9. Authorisation for possession action and subsequent eviction

- 9.1 Where enforcement action is taken, this will be proportionate to the breach of tenancy conditions. The Council will clearly state what action the tenant must take

to resolve the issue and use an escalation process to advance action where the issues continue.

- 9.2 It is impossible to consider all possible circumstances where legal action becomes appropriate. Equally, it is appropriate for there to be internal checks and balances on the Council resorting to legal action in respect of a tenancy. Accordingly, officers will use their judgement within a framework.
- 9.3 Generally, possession action will be considered in the following circumstances and where there is no alternative action:
- a) where there are excessive rent arrears and no effective agreement;
  - b) where there are rent arrears and a history of broken agreements to repay;
  - c) where there is a significant breach of tenancy and appropriate time and advice/support has been given for it to be rectified;
  - d) where there are a number of less significant breaches of tenancy and appropriate time and advice/support has been given for them to be rectified;
  - e) where there is evidence of significant neighbour nuisance and appropriate time and advice/support has been given for this to be rectified;
  - f) where there is a criminal conviction related to the use of the property (e.g. possession of illegal drugs found at the property) or in its locality; and
  - g) evidence of serious anti-social behaviour (ASB) in the locality of the property.
- 9.4 The Council will ensure it follows the correct legal procedure involved when taking possession action. This will include serving tenants and qualifying occupiers with a Notice of Possession Proceedings, Notice of Seeking Possession or a Notice To Quit. The Council will keep accurate file notes, which could be used as evidence in Court.
- 9.5 The Council will normally contact tenants prior to serving them with a Notice to advise them of the process involved and the legal requirement placed on the Council to serve the appropriate Notice. In exceptional circumstances, possession proceedings can begin immediately i.e. as soon as the Notice is served. This will be confirmed to the tenant, in writing, and the reason for the immediate possession action will also be notified.
- 9.6 The tenant's personal circumstances, including vulnerability and communication difficulties, will be considered in all cases. The Council considers the service of the Notice as an opportunity for the tenant to understand the consequences of continuing tenancy breaches, and a clear opportunity to rectify those breaches.
- 9.7 In deciding to make an application to Court, the following is considered in all cases:
- a) that all relevant regulatory guidance has been taken into account;
  - b) that South Kesteven District Council's own policies and procedures have been followed;
  - c) that the pre-action protocol for possession claims has been followed;
  - d) that alternative solutions and interventions have been considered and/or exhausted;

- e) that the Council has had due regard to the Equalities Act (2010)
  - f) that the requirements of the Disability Discrimination Act (1995) and the Equality Impact Assessment have been met; and
  - g) that adequate support has been provided for vulnerable tenants.
- 9.8 The Council will apply for a possession order having considered all facts of the case. In serious circumstances, the Council may seek outright possession from the outset. Outright possession will always be sought for Introductory and Non Secure tenants.
- 9.9 Where the Court has issued an outright possession order, a date will be specified for the tenancy to end. The Council has the right to recover the tenancy on or after the date specified on the order.
- 9.10 The Council will evict the tenant(s) as soon as possible after the date specified on an outright possession order. However, if an outright order is granted for rent arrears, and full payment of the rent arrears and Court costs is made prior to the eviction, the eviction may be withdrawn. This is at the discretion of the Head of Service (Revenues, Benefits, Customer and Community) and Deputy Chief Executive, , considering previous conduct, any vulnerability and any other relevant tenancy concerns. Tenants will be fully advised of this.
- 9.11 Breaches of a suspended order, or, where an outright order is obtained, where the tenant does not return the property to the Council, means a further application must be made to the Court, for a Warrant of Execution (eviction).  
In deciding to apply for an eviction, the following is taken into account:
- a) where an outright order has been obtained;
  - b) where there is clear evidence of continued tenancy breaches, significant either in frequency or impact;
  - c) where opportunity has been given to remedy the breach(es), but they have not been resolved;
  - d) where the tenant is in significant rent arrears (as assessed by the Council) since the Court order was issued and has been given opportunity to catch up, or where the tenant is repeatedly failing to make payments as ordered by the Court;
  - e) where there is clear evidence of risk to the community, or to Council Officers or contractors.
- 9.12 Where there is clear evidence that the tenant has abandoned the property, the Council can consider taking possession of the property. For example, the property may have been abandoned, left unsecured, and at risk of vandalism.
- 9.13 Tenants and any occupiers who are due to be evicted will be fully advised of any homelessness responsibilities the Council has towards them. This will be provided by the Council's Housing Options section and will include advice and assistance on temporary accommodation, if the tenant is eligible for this.

9.14 **Possession action will only be used as a last resort and only after all other tenancy management remedies prove ineffective.**

## 10. Carrying out an eviction

10.1 An eviction cannot be carried out unless the County Court has granted an order for possession and a Warrant of Execution has been granted.

10.2 The County Court will advise tenants of their date of eviction. A home visit or office interview will be undertaken to give advice, including the role of the Court and how to make an application to suspend a Warrant. Where there are other occupiers of the property (e.g. a lodger), officers will be careful not to breach Data Protection requirements. However, general advice will be given, including the option of an interview with the Council's Housing Options team.

10.3 The County Court Bailiff carries out the eviction, not Council employees. However, the Housing Officer will be present, together with the Council's Income Recovery Officer and the Council's Contractor (to obtain access). All evictions will require a specific risk assessment; if necessary, and on a risk management basis, other staff and/or partner agencies will attend.

10.4 Evictions will be carried out following legal guidelines and in accordance with good practice.

10.5 Locks will be changed after each eviction and a detailed void inspection of the property, garden and any outbuildings made. This will be in accordance with the Council's Voids Policy.

10.6 All tenants evicted will be recharged for the expenses incurred by the Council during and after the eviction. This will include legal expenses and the cost of any rechargeable repairs. A robust, risk-based approach will be taken where belongings are left behind by the tenant. This may involve storage of items of value for a reasonable period before disposal.

10.7 Tenants who have been evicted will be liable for all debts they have with the Council after their eviction takes place.

## 11. Related Policies, Procedures and Guidelines

11.1 This policy should be read in conjunction with the:

- Tenancy Agreement
- Tenants Handbook

- Tenant Involvement Strategy
- Estate Management Policy
- Domestic Abuse Policy
- Repairs Policy
- Recharge Policy

## 12. Equality and Diversity

12.1 South Kesteven District Council is committed to delivering quality services to all, responding positively to the needs and expectations of all users to the service. We are dedicated to providing an accessible service for all applicants regardless of factors such as:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexuality

12.2 Equal Opportunities information will be requested from all applicants. This information will be monitored to ensure assignments are accessible to all client groups, that we promote equal opportunities, value diversity and tackle social exclusion.

## 13. Review and Complaints Process

13.1 A review process exists for tenants who are not satisfied with the way the Council has dealt with their tenancy. They should, in the first instance, ask for an explanation from the Housing Officer. If the tenant is not satisfied, he/she can contact the Tenancy Services Manager, who will review the case.

13.2 If the tenant remains dissatisfied, the tenant will be advised of the Council's Complaints procedures.

13.3 The Council operates a Housing Customer Feedback Policy. This can be obtained via the Council's website at: [www.southkesteven.gov.uk](http://www.southkesteven.gov.uk)

Requested by letter addressed to:

### 13. Performance Monitoring

14.1 The Council will monitor performance on evictions using the following performance indicators:

- the total number of notices served for introductory and secure tenancies; and
- the number of evictions.

14.2 The above performance indicators will be reported to tenant representatives and Elected Members as required.

14.3 The Council will review this Policy two years after adoption unless legislative or regulatory changes mean an earlier review is necessary.

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## Appendix 1 – ASSIGNMENTS

### 1. INTRODUCTION

- 1.1 An assignment is where a tenancy is legally transferred to another person during his/her lifetime. The incoming tenant (the 'assignee') occupies the property under the same terms as the previous tenant (the 'assignor') and becomes the tenant, with the same rights and responsibilities of the assignor. It can transfer from an existing Council tenant to a new tenant or between existing Council tenants.

### 2. FORMS OF ASSIGNMENT

- 2.1 The following types of assignment will be considered:

- General Assignment, which is usually assignment to a potential successor (further details in the Succession Policy).
- An assignment by way of a mutual exchange with another South Kesteven District Council tenant or another Local Authority tenant or other Registered Provider tenant (further details in the Mutual Exchange Policy).
- By a court order following a relationship or matrimonial breakdown or orders relating to children. For example, a County Court Property Adjustment Order where an instruction is given by the courts to assign the tenancy from one parent to the other.

- 2.2 South Kesteven District Council may not consent to the assignment of a secure tenancy in the following circumstances:

- Where an introductory tenancy is in place;
- The assignor is not intending to live in the property permanently or as his/her main principal home;
- There are arrears of rent of at least 8 weeks or other breaches of tenancy and legal action has been taken to avoid the breach continuing, this can include

letters before Court action;

- The assignee has former tenancy arrears;
- The tenancy is subject to Court action being taken by South Kesteven District Council and/or there is an Injunction Order or Possession Order in force.
- If the property is not suitable for the needs of the assignor (including, but not limited to, the size of the property if it caused overcrowding or under-occupation, or their disability needs, as recommended by an Occupational Therapist) ; or
- The property is specially adapted and the adaptations are not required by the proposed new tenant or a member of their household.

2.3 Reference will be made to the tenancy agreement in all cases where a request for an assignment is received. Different agreements give tenants different rights with regard to assignments.

2.4 The Tenancy Services Manager will consider any discretionary succession cases for determination.

## 4 MARRIAGE AND CIVIL PARTNERSHIPS

4.1 If a tenant changes his or her name, there is no assignment. The tenant will simply be required to provide evidence of this name change with the original marriage/civil partnership certificate or a certified copy of such. The tenant's name will be changed on the rent account and a note will be made and attached to the tenancy agreement of the change of name and the date on which it came into effect.

4.2 There is no statutory provision for the assignment of a sole to joint-tenancy assignment. However, South Kesteven District Council will recognise the desire of an existing tenant to make such a request and will not reasonably refuse it, if we are satisfied that:

- The existing tenant, free from coercion or duress, agrees to the request, and
- The existing tenant and his/her spouse or civil partner have lived together at the property for not less than 12 consecutive months prior to the date

of the request, and the existing tenancy is not subject to an order for possession of the property, or no other steps have been taken against the existing tenant with regard to an alleged breach of tenancy and

- The potential assignee can fully satisfy the requirements under Part VI of the Housing Act 1996.

## 5 RELATIONSHIP BREAKDOWN

5.1 South Kesteven District Council acknowledges there will be times when relationships breakdown and we will offer appropriate housing advice to tenants and/or spouse/partners. This policy applies equally to circumstances with married and cohabiting couples; households with and without children; and all joint tenancies with varying circumstances such as family relationships.

5.2 In any joint tenancy, if an agreement is reached over housing arrangements following a relationship breakdown, the tenancy may be transferred to a sole tenancy but this can only happen following a South Kesteven District Council management decision given in writing (see 6.1 of this policy).

5.3 If the property is suitable for the needs of the family household, South Kesteven District Council will always aim to ensure the tenancy is assigned to the sole tenancy of the parent / guardian who will have main care and responsibility of any children, or other dependents or where the Court directs by way of a Court Order. Under these circumstances, South Kesteven District Council will provide suitable advice to the departing tenant.

5.4 In the event of a relationship breakdown and the tenancy is in a sole name, South Kesteven District Council recognises the right of the named tenant to remain at the property. Advice will be given to the departing person to find alternative accommodation.

## 6 PROPERTY ADJUSTMENT ORDERS (COURT ORDERED ASSIGNMENT)

6.1 The Matrimonial and Family Proceedings Act 1984 (as amended); and the Matrimonial Causes Act 1973 (as amended) both state that a Property Adjustment Order can be made when the Court:

- Makes a decree nullifying a marriage
- Makes a decree of judicial separation

- Makes a decree of divorce
- 6.2 The Courts can also make Orders for cohabiting couples and civil partners.
- 6.3 The Courts can order an actual transfer of the property under the Family Law Act 1996 (as amended) / Childrens and Families Act 2014, which can also allow for the transfer of any liabilities such as rent arrears, etc. In addition, under the Children Act 1989, the Court can make Orders in favour of children under 18, and allows a property to be assigned from one parent to another.
- 6.4 In a joint tenancy, South Kesteven District Council is not able to arbitrate between two partners who are unable to reach an agreement in a relationship breakdown. In these circumstances, both partners will be informed to seek separate independent legal advice from a family and/or housing solicitor or specialist advisor with a view to seeking to make such an Order. South Kesteven District Council will abide by any Property Adjustment Order made by the Court.

## 7 CHANGING A JOINT TENANCY TO A SOLE TENANCY

- 7.1 As assignment from a joint tenancy to a sole tenancy cannot be made in law. Instead, South Kesteven District Council can make a discretionary decision for a transfer to take place from one type of tenancy to the other. This decision would be made by the Tenancy Services Manager. These management decisions are usually made where, for example, relationships have broken down or a joint tenant has left the remaining joint tenant in the property. South Kesteven District Council will consider written requests.
- 7.2 If a tenant is in breach of the secure tenancy, South Kesteven District Council may reasonably refuse or withhold its permission to the request until the breach is resolved. In some circumstances, South Kesteven District Council may allow the transfer of tenancy under the following circumstances:
- The tenancy is not subject to a possession / money judgment/debt relief order, and/or;
- 7.3 South Kesteven District Council will not transfer any outstanding arrears or debt to the tenant remaining in the tenancy. Any agreement reached between the joint tenants to address the breach/arrears is an informal agreement between themselves, which is not recognised by South Kesteven

District Council, for the purposes of reaching a decision on the request to transfer the tenancy. Any outstanding rent will remain the liability of the joint tenants.

7.4 The only exception to this is if it is evident that the breach is deemed to be the sole responsibility of one party and it would not be reasonable to penalise the other party for the breach.

7.5 If this breach includes a possession order and/or a money adjustment order, it will remain the responsibility of both joint tenants to satisfactorily resolve this matter by addressing the breach and seeking to have any Orders discharged in the County Court.

## 8 CHANGING A SOLE TENANCY TO A JOINT TENANCY

8.1 South Kesteven District Council will consider an application requesting a change of tenancy from a sole tenancy to a joint tenancy for tenants and their spouse/civil partner. A decision will be made by a manager and the tenant will be notified formally in writing.

8.2 South Kesteven District Council will use discretion on deciding if consent will be given to a generational or intergenerational assignment of sole to joint tenancy.

- Generational (assignment between tenant & brother; sister; cousin or non- relation).
- Intergenerational (assignment between tenant with daughter; son; niece; nephew or grandchildren)

## 9 ASSIGNING A SOLE TENANCY TO A SOLE TENANCY

9.1 South Kesteven District Council will consider a request for assignment from one sole tenancy to another sole tenancy for tenants and their spouse/civil partner.

9.2 South Kesteven District Council will use our discretion on deciding if consent

will be given to a generational or intergenerational assignment of sole to sole tenancy.

- Generational (assignment between tenant & brother; sister; cousin or non- relation).
- Intergenerational (assignment between tenant with daughter; son; niece; nephew or grandchildren)

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## Appendix 2 – MUTUAL EXCHANGES

### 1. PURPOSE

- 1.1 South Kesteven District Council recognises that because our customers' needs change throughout their lives and tenancies, this may result in a need to move homes. Exchanging homes is often the easiest and quickest way to move.
- 1.2 This policy sets out the approach to be taken by South Kesteven District Council in enabling tenants to exchange their tenancy with another tenant. This could be with either: another South Kesteven District Council tenant, another Local Authority tenant or a tenant of another registered provider.

### 2. POLICY STATEMENT

- 2.1 South Kesteven District Council will maximise the opportunities for mutual exchange. We will meet our obligations under legislation and those set out in tenancy agreements on mutual exchange.
- 2.2 We will participate in national and local mobility/exchange schemes (details are on our website). We will provide tenants with access to these mobility/exchange schemes, where there is value for money for tenants and South Kesteven District Council, to do so.
- 2.3 Tenants can mutually exchange to any part of the UK. However, tenants may be restricted from moving to a property or overcrowding may be withheld.
- 2.4 We will carry out an electric and gas safety check on all our properties. The electric check will take place prior to a move and we will carry out the gas safety check within 24 hours post the mutual exchange taking place.

### 3. CONTEXT

- 3.1 South Kesteven District Council's tenants on secure and fixed term tenancies have a legal right to exchange their home (statutorily and through rights given in the tenancy agreement). Introductory tenants have no right in law to mutual exchange.
- 3.2 Tenants are not being offered a new tenancy but 'swapping' (assigning by way of exchange) an existing tenancy, regardless of whether it is a secure, assured or fixed term tenancy, except where s.158 of the Localism Act, 2011 applies. Tenants take over the terms and conditions of each other's tenancy and could, for example, be swapping a secure tenancy for a fixed term tenancy.

### 4. POLICY OUTLINE

#### 4.1 Landlord's Consent

- 4.1.1 South Kesteven District Council will require you and your exchange partner(s) to complete a mutual exchange application form. We have 42 days (6 weeks) to provisionally approve or reject an application from the date of when we have received application forms from all parties involved.
- 4.1.2 If consent is to be withheld, a notice must be served within 42 days of the tenant's application to exchange. The notice must specify the ground for withholding consent and give reasons for it.
- 4.1.3 If the other landlord of a mutual exchange refuses consent and there is reason to believe that the refusal was not reasonable, it is the responsibility of the other tenant, and not South Kesteven District Council or South Kesteven District Council's tenant, to pursue this. This right can be legally enforced only by the tenant against the landlord.

#### 4.2 Tenant's Responsibilities

- 4.2.1 It is the tenant's responsibility to pursue potential exchanges.

4.2.2 A tenant needs to discuss the condition they are willing to accept the property in, with the person they are exchanging with, before a move takes place. If tenants are not happy to accept the property in the condition it is in, then the tenants should not agree to move.

4.2.3 South Kesteven District Council may potentially refuse to rectify repair works which are accepted by the incoming tenant.

### 4.3 Implications of assignments of Mutual Exchange

4.3.1 Each tenant takes on the terms and conditions of the other party's tenancy.

4.3.2 The exchange may result in a change of tenancy type eg. from secure to assured. Consequently tenancy rights will alter, e.g. loss of Right to Buy and a fair rent. We will fully explain the implications prior to any exchange.

4.3.3 The incoming tenant cannot be held responsible for liabilities under the tenancy prior to the date of exchange, e.g. rent arrears.

4.3.4 The incoming tenant accepts the property in the condition, as per the signed disclaimer.

4.3.5 Other than repairs which South Kesteven District Council will carry out (and recharge the outgoing tenant), South Kesteven District Council will not undertake any other work to the property including internal redecoration or cleaning.

4.3.6 Tenants moving by mutual exchange will not qualify to receive decoration vouchers offered by South Kesteven District Council and will be expected to cover their own removal costs.

### 4.4 Handling Mutual Exchange Applications

4.4.1 We will determine an application to exchange within 42 days (6

weeks) of receipt of the fully completed original application.

4.4.2 Written permission must be obtained from all landlords involved in the mutual exchange before any exchange takes place.

4.4.3 We will not unreasonably refuse consent. Grounds by which a request to exchange is refused or granted conditional consent, are detailed in Appendix 2 and 3. Applicants need to be eligible to go on our housing register.

4.4.4 If South Kesteven District Council tenants are not happy with the way in which their mutual exchange application has been dealt with (rather than the decision, as this is made in accordance with [Complaints@southkesteven.gov.uk](mailto:Complaints@southkesteven.gov.uk) or [feedback@southkesteven.gov.uk](mailto:feedback@southkesteven.gov.uk)) they have the right to make a complaint. Any feedback can be addressed to:

## 4.5 Mutual Exchanges without permission

4.5.1 If tenants exchange without permission from all landlords concerned, the exchange is not legal. The options available to the landlords involved are:

- to confirm the exchange and ask the tenants to complete the paperwork (this option will only be in exceptional circumstances);
- to take action and the tenants return to their original property (if the original property is still available)

4.5.2 Failure to ask for permission to exchange can result in legal action and charges incurred.

## 4.6 Conditional Consent

4.6.1 Providing the tenant is notified within the statutory 42 days, South Kesteven District Council can attach a condition to any consent. We will notify the tenant of the condition in writing and the timescales for completion.

## 4.7 Mutual Exchange Withheld

4.7.1 The grounds by which a request to exchange is withheld are detailed in Appendix 2 and 3.

## 4.8 Waive the right to refuse a Mutual Exchange

4.8.1 South Kesteven District Council will endeavour to work with tenants affected by any extenuating circumstances (considered on a case by case basis) including, but not limited to, welfare reform, including applicants who are under-occupying.

4.8.2 This means that South Kesteven District Council may choose to approve an exchange, even if they have grounds by which they could refuse it, if the exchange is into a South Kesteven District Council property and would:

- improve the tenant's financial situation
- resolve under-occupation
- result in a repayment of arrears outstanding to South Kesteven District Council

4.8.3 If South Kesteven District Council exercises a waiver, this would happen prior to completion of the mutual exchange with approval from the Tenancy Services Manager. If there are rent arrears, there will also be a requirement to repay these through a repayment plan.

4.8.4 Prior to any mutual exchange being finalised, the tenant will need to sign a declaration to demonstrate to South Kesteven District Council that s/he has been formally informed and they understand the requirement to pay the debt. Also, the tenant has been notified that failure to adhere to the terms of repayment of this debt may result in further actions being taken against them.

## 4.9 Safeguarding

4.9.1 Where an exchange involves a tenant who is considered to be vulnerable, particular care and consideration will be given to ensure there is no coercion, exploitation or safeguarding concerns.

## 5. ELIGIBILITY

### 5.1 Secure Tenancies

5.1.1 The Housing Act 1985, s.92 (as amended by the Local Government and Housing Act 1989, s.163) states that every secure tenant may, with the consent of their landlord, assign their tenancy to another secure or assured tenant, who also has the written consent of their landlord and satisfies the conditions under the aforementioned legislation.

### 5.2 Assured Tenancies

5.2.1 The Local Government and Housing Act 1989, s.163 allowed assured tenants to exchange with secure tenants.

5.2.2 Schedule 3 of the Housing Act, 1985 (refer to Appendix 2) lists the grounds by which a mutual exchange request can be refused in cases where one tenant is a secure or assured tenant.

### 5.3 Fixed Term Tenancies of 2+ years

5.3.1 The Localism Act 2011 allowed social landlords to grant tenancies for a fixed length of time. Section 158 and section 159 of the Act relate to the transfer of tenancies.

5.3.2 Section 158 of the 2011 Act does not apply in relation to—

- (a) an assured shorthold tenancy for a fixed term of less than two years,
- (b) a periodic assured shorthold tenancy,

- (c) an assured shorthold tenancy where the rent payable under the tenancy is—
  - (i) Affordable Rent;
  - (ii) Intermediate Rent;
  - (iii) Mortgage Rescue rent; or
  - (iv) Shared ownership rent

(and accordingly, the transfer of tenancy provisions in that section do not apply in relation to assured shorthold tenancies of those kinds).

5.3.3 Example of exchange with fixed term tenant: if Tenant A (a secure or assured lifetime tenant, whose tenancy was granted prior to 1 April 2012) and Tenant B (a fixed term tenant) wish to exchange, and consent is given, then Tenant A must be granted another tenancy, which is the same as their original tenancy (secure or assured). This only works once and so will not be possible on subsequent mutual exchanges.

5.3.4 Tenant B is not protected; it is up to the landlord to decide what type of tenancy to offer Tenant B. South Kesteven District Council's position is set out in the Tenancy Policy.

5.3.5 Schedule 14 of the Localism Act 2011 (refer to Appendix 3) lists the grounds by which a mutual exchange request can be refused in cases where one tenant is a fixed term tenant.

## 5.4 Introductory tenancies

5.4.1 South Kesteven District Council introductory tenants can only exchange in exceptional circumstances. Each tenant's circumstances will be considered on their own merit. The Tenancy Services Manager will determine cases that are considered exceptional. In order to enable a mutual exchange to take place, both tenants must gain landlord's consent to formally exchange.

## 5.5 Exchanging with tenants of different tenure

5.5.1 The Localism Act 2011, s.158 introduced a protection for secure and assured lifetime tenants, who were granted their tenancy prior to 1 April 2012. This means that if they exchange with another tenant, they keep the same tenure, regardless of the tenure of the other tenant they are exchanging with.

5.5.2 Mutual exchanges will take effect by either an assignment of tenancies or by surrender and re-grant of each tenancy, in accordance with the relevant legal and regulatory provision. The appropriate mechanism of exchange is based on tenure types. This is explained in a table (Appendix 4).

## 6. IMPLEMENTATION OF THE POLICY

6.1 The effective implementation of this policy and the procedures includes responsibility for ensuring all requests are regularly maintained; relevant aspects of the Council's website in relation to mutual exchange are kept up to date; and all options for a customer to consider are made available to them.

6.2 Once a mutual exchange application is made, we will keep in regular contact with applicants and adhere to the customer service standards in the handling of the mutual exchange within the legal timescales (42 days).

6.3 We will monitor the effectiveness of the Mutual Exchange Policy and Procedures through annual review.

## Appendix 3 – SUCCESSIONS

### 1 INTRODUCTION

- 1.1 When a Council tenant dies it may be possible for a joint tenant, husband/wife/civil partner, or other family member to take over the tenancy. This is known as a succession. The rights of tenants to succeed to a secure tenancy are laid down in section 87 of the Housing Act 1985.
- 1.2 The Localism Act 2011 (s.160) limits who can succeed to a tenancy unless a landlord specifically permits succession to others as part of its tenancy agreement. The changes made by the Localism Act are not retrospective and can only take effect for new tenancies created after April 1<sup>st</sup> 2012.

### 2 THE RIGHT TO SUCCEED – ALL SECURE TENANCIES

- 2.1 There can only be one succession to a secure tenancy, so if the deceased tenant was a successor to the tenancy, there are no further succession rights in law. However, the Council does have discretion on this, as set out in the 'Discretionary Successions' section below (section 4).
- 2.2 Certain conditions must be met to allow a succession to take place. These are: the deceased tenant must have been using the property as their main and principle home before their death. The person wishing to succeed to the tenancy must be a spouse/civil partner or a member of the family.
- 2.3 A successor fulfilling the requirements set out in Section 160 of the Localism Act 2011 to succeed automatically becomes the tenant and therefore succeeds to all the responsibilities, liabilities and duties of the tenancy including the obligation to pay the ongoing rent and the service charges.
- 2.4 Where more than one family member has succession rights, it is expected that the family will decide who should succeed to the tenancy. Where they are unable to agree, the Council will make the decision based on the criteria in section 4 of this document.
- 2.5 The successor succeeds to the tenancy, not the property. A successor

who is the joint tenant, spouse or civil partner of the deceased may be requested to move to a different property if it is more suitable. Full reasons will be given in these circumstances. A suitable property will be offered instead.

- 2.6 Deciding whether a successor should be asked to move will be made by the Council on a case by case basis. A decision to ask a successor to move will usually (but is not restricted to) be because:
- a property will be under occupied by the successor by more than one bedroom;
  - the property is designated for older people;
  - the property is adapted for a person with a disability.
- 2.7 The following factors will also be considered in making the decision:
- whether a suitable alternative property is available;
  - whether the successor meets the requirement for an older persons or adapted property;
  - whether the successor has a health or disability concern which would make a move to an alternative property undesirable and have an adverse impact on their health.
- 2.8 Where a succession is granted, but the successor is required to move to more suitable accommodation, the successor will be given additional priority on the Council's housing register to assist them to move quickly. Two suitable offers will be made, which if refused and it is considered to be an unreasonable refusal, this will result in a notice to commence eviction proceedings if the tenant will not move.
- 2.9 The target for a decision to be made on an application is 6 weeks from the date of the request.

### 3 THE RIGHT TO SUCCEED – WHO QUALIFIES

- 3.1 Tenancies signed up on or before 31st March 2012:
- 3.1.1 These rights apply to people who were signed up for an introductory tenancy, or whose introductory tenancy was converted to a secure tenancy before 31st March 2012.
- 3.1.2 Where a tenant dies the legal title to the tenancy can pass to a successor

in the following order of priority:

1. A joint tenant (Survivorship);
  2. The tenants spouse or civil partner, if they were living in the property at the time of the tenant's death;
  3. The tenants common law partner, parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew or niece, including step, adoptive or half- blood relations who are 18 years of age or over (or 16 and 17 year olds to be considered on a case by case basis) and have resided at the property for at least 12 months prior to the date of death and remains there at the time of death.
- 3.1.3 A tenant whose tenancy agreement began before 31st March 2012, who later transfers to another property owned by South Kesteven District Council under a secure tenancy, will keep their original succession rights as set out above.
  - 3.1.4 Mutual exchange tenants will not keep succession rights to the original tenancy.
- 3.2 Tenancies signed up on or after 1st April 2012:
    - 3.2.1 Where a tenant dies the legal title to the tenancy passes to a successor in the following order of priority:
      1. A joint tenant (Survivorship);
      2. The tenant's spouse or civil partner. In this case a cohabitee is considered to have the same status as a spouse or civil partner.

#### 4 DISCRETIONARY SUCCESSIONS

- 4.1 For tenancies which started on or after the 1<sup>st</sup> April 2012, the Council may, at its own discretion, consider a request to grant a discretionary succession to a tenancy. Discretionary succession may apply to a person who has resided at the property for at least 12 months prior to the date of death and remains there at the time of death.
- 4.2 The Tenancy Services Manager will consider any discretionary succession cases for determination. This discretionary decision would formally be made in writing by the Council.

- 4.3 The Council will consider each case on its own merit, but key factors in deciding whether to grant a discretionary succession may include, but will not be limited to, the following:
- The length of time the applicant has shared the former tenant's home.
  - The vulnerability and needs of the applicant.
  - The housing needs and housing rights to any other accommodation of the applicant and any relevant child.
  - The financial resources of the applicant.
  - The likely effect of any decision by the Council not to exercise its powers on the health, safety, or well-being of the parties and of any relevant child.
  - The nature of the applicant's relationship to the deceased.
  - The suitability of the applicants as tenants.
  - The demand for housing in the area the property is in.
  - Whether granting of a discretionary tenancy would be the best use of the Council's stock.

## 5 WHERE NO SUCCESSION IS PERMITTED

- 5.1 Where a tenant has died, and there are other people still resident in the property who are not entitled to succeed to the tenancy, the Council will:
- Investigate whether the occupant is eligible under homelessness legislation to be re-housed. If this is the case, the Council will allow a reasonable amount of time for an offer of a suitable property to be made.
  - If the offer of a suitable property is unreasonably refused, the Council may serve notice to commence eviction proceedings.
  - Give appropriate advice and assistance to the occupant to find suitable alternative accommodation. This will include, but is not restricted to, liaison with private landlords. After 28 days, the Council will serve notice to commence eviction proceedings in order that the property can return into the Council's housing stock. If there are personal representatives of the deceased tenant, a copy of the notice to quit will also be served upon the Public Trustee and/or the personal representatives.

- 5.2 Whilst a succession application is being considered and the occupant is still resident in the property, the occupant is liable for 'use and occupation' charges.

## 6 IMPLEMENTATION OF THE POLICY

- 6.1 We will ensure the implementation of this policy and the procedure is effective. We will do this by ensuring that once a succession application is made, we keep in regular contact with applicants and adhere to the customer service standards in the handling of the application.
- 6.2 We will also monitor the effectiveness of the Successions Policy and Procedures through regular review and updating of caseload activity.

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