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Occupancy Agreements Policy	

1. Purpose or Aim

- 1.1. This Policy explains the occupancy agreements available for saha to use and sets out the framework which governs their use.
- 1.2. The Policy considers the requirements of the Regulator of Social Housing's 'Tenancy Standard' concerning the issue of occupancy agreements and how this should be applied for the various housing disciplines at saha.
- 1.3. This policy provides guidance to both employees and residents on how the Association will effectively manage its Occupancy Agreements.

2. The following documentation can be relied on to supplement this policy:

Key Legislation:

- 2.1. Landlord and Tenant Act 1954 and subsequent amendments including Housing Act 1985 Part IV, 1988 & 1996
- 2.2. Housing Act 1988 and subsequently amended including Housing Act 1997
- 2.3. Localism Act 2011
- 2.4. Protection from Eviction Act 1977
- 2.5. Housing Act 1985 (Section 622)
- 2.6. Matrimonial Causes Act 1973
- 2.7. Equality Act 2010
- 2.8. Consumer Rights Act 2015

Other Requirements:

2.9. Regulator of Social Housing's 'Tenancy Standard'

2.10. National Statement of Expectations for Supported Housing - 2020

3. Introduction

3.1. saha's purpose is to provide affordable quality housing for people in need. To achieve this the Association needs to ensure that it offers legally appropriate and enforceable occupancy agreements to its prospective residents

4. Scope

4.1. The scope of this policy is applicable to all Services owned and managed by the Association. This policy applies to:

- Board members
- All saha employees and volunteers
- saha's managing agents
- saha's residents

5. Objectives

- 5.1. To ensure that saha has appropriate and up to date occupancy agreements in place.
- 5.2. To offer the highest level of security of tenure to its residents that is appropriate to the accommodation, in accordance with the requirements of the Regulator of Social Housing (RSH).
- 5.3. To ensure that occupancy agreements are consistently enforced in accordance with legislation and regulation but with compassion and fairness.
- 5.4. To ensure that saha and our residents fully understand and abide by our respective responsibilities, as set out in our occupancy agreements.

6. Definitions

- 6.1. **Tenancy** - A legal arrangement in which someone has the right to live in, or use a building or land owned by someone else in exchange for paying rent to its owner. For the period of a tenancy the tenant has a legal stake in the building or land.
- 6.2. **Licence** - An official document which gives you permission to do or use something. For the period of the licence the licensee has permission to stay without a legal stake in the building or land.
- 6.3. **Periodic** - Happening repeatedly with regularity and no defined end.

6.4. **Fixed Term** - An agreed and defined period of time.

6.5. **Occupancy Agreement** - Written document detailing the terms under which saha is granting a tenancy or licence.

7. Policy Statement:

7.1. As a national provider of social housing to a diverse range of service users, we want to ensure that we address local needs, and recognise that local needs sometimes require local solutions that are arrived at through engagement with stakeholders. The implementation of our policies may, therefore, be varied at a local level and, where this is the case, we will clearly set out any local variations that apply.

7.2. Regulations under The Tenancy Standard require Registered Providers to 'grant tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock'. We will offer security of tenure that ensures saha are compliant with this requirement and that is relevant and appropriate to the type of accommodation we offer; utilising tenancies and licences as appropriate.

7.3. We recognise that occupancy agreements are key to providing quality housing management and ensure that residents are able to live harmoniously. We will ensure through the agreement that we and our residents are both clear about our respective rights and responsibilities, incorporating clauses to tackle problem behaviour and anti-social issues.

7.4. In developing the terms of our agreements, we will utilise guidance from the Competition and Markets Authority to ensure that our terms meet the requirements for fairness as defined in the consumer contract regulations. We will ensure our agreements are laid out and written in plain language and will refer to the model agreements suggested by the National Housing Federation to ensure that all mandatory information is included. We will offer agreements in different formats such as large print, Braille and audio tape based on the identified needs of our residents, and will also offer translated versions, whilst bearing in mind that the original and signed document must be in written English. Our staff will also explain all agreements at sign up to further ensure understanding.

7.5. If an applicant or resident is dissatisfied with the type or length of tenancy that we propose for a particular property, the matter can be raised for review via the Organisation's Complaints and Customer Feedback Policy and Procedure.

7.6. **Occupancy Agreement Types & Use**

7.6.1. We will use the following types of occupancy agreement:

- **Secure Tenancy (Periodic)** - As defined in the Landlord and Tenant Act 1954 and subsequent amendments including Housing Act 1985 Part IV, 1988 & 1996

- **Assured Shorthold Tenancy (AST) (Fixed term minimum 6 months then periodic)** - As defined in the Housing Act 1988 and subsequently amended including Housing Act 1997
- **Assured Non Shorthold Tenancy (AT) (Periodic)** - As defined in the Housing Act 1988 and subsequently amended including Housing Act 1997
- **Fixed Term Tenancy (FTT) (Fixed term minimum 2 years, but generally 5 years except in exceptional circumstances which will be set out in this policy)** - As defined in the Localism Act 2011 (sometimes referred to as 'flexible tenancies' and essentially a variation of the Assured Shorthold Tenancy)
- **Protected Licences-** A Licence agreement which is afforded protection under the terms of the Protection from Eviction Act 1977.
- **Excluded Licences** – A Licence agreement which is excluded from the terms of the Protection from Eviction Act 1977.

7.7. **Secure Tenancies** - New secure tenancies can no longer be issued by the organisation. The Housing Act 1988 defined that from January 1989 'independent social sector' landlords, should generally use an Assured Non-Shorthold Tenancy for its lettings. We have a small number of Secure Tenancies where residents have been tenants since before January 1989. The rights of Secure Tenancies are established in law, whereas the rights of other residential tenants are generally defined in the Regulator of Social Housing's regulations.

7.8. **Assured Non-Shorthold Tenancies** - AT's are our default tenancy type for lettings of general needs properties at social rent levels. These give tenants the greatest security and have no fixed expiry. Generally, AT's can only be moved from their home for significant breaches of the terms of the tenancy agreement. There are very minor exceptions to this, for example, if a property requires demolition and qualifies for Home Loss as defined in the Decant Policy.

7.9. **Assured Shorthold Tenancies** - AST's are used as 'Starter Tenancies' with new tenants. Starter tenancies must not exceed eighteen months and are subject to satisfactory conduct of the tenancy. On conclusion the tenant will be issued with either an AT or FTT as agreed at the point of allocation.

7.9.1. We may also use AST's for:

- Short term self-contained supported and temporary accommodation addressing the needs of vulnerable client groups.
- Where we have limited ownership of the property itself, for example, if the building is owned on a short lease or this type of tenancy is a lease requirement.
- If we have identified a property for disposal or redevelopment and the letting is intended on a short-term temporary basis until this is actioned.

7.9.2. In the circumstances outlined in 7.10.1, the use of an AST is not on the same basis as a 'starter tenancy' and therefore will not be converted to an AT.

7.9.3. AST's will be either a periodic type from the outset or for a fixed term and reissued upon each expiry. Where a periodic AST is used, as a matter of good practice, we will notify residents of the anticipated length of the tenancy.

7.10. Fixed Term Tenancies (Flexible Tenancies)

7.10.1. With the introduction of the Localism Act 2011, saha is able to offer a further tenancy type that essentially sits between AST's and AT's. These aim to give greater flexibility to social housing and are therefore often termed 'flexible tenancies'. They are similar to an AST's but are for a defined period and offer some additional security of tenure for the fixed term period.

7.10.2. Following consultation with residents and emerging practice from elsewhere in the sector, saha's general policy is a standard fixed term of five years. However, this can be extended up to ten years at the discretion of the Allocations Panel for families with children where it is clearly demonstrated by the applicant that a longer tenancy will provide stability of schooling, for example, if a child has a 'special needs statement'. The criteria used to make these decisions are explained in the Fixed Term Tenancy Procedure.

7.10.3. It is saha policy **not** to use FTT's for:

- Sheltered housing
- General needs properties being let to people over the age of 65
- General needs properties being let to ex-armed forces personnel who have been either medically or honorably discharged following active service.
- General needs properties being let to an applicant who is terminally ill.
- Properties that are specially designed, allocated or adapted to meet the physical disability needs of the individual.
- Allocations to individuals with mental health conditions where the requirement to potentially move at the end of the fixed term will cause deterioration in mental health.

7.10.4. The above policy statements in respect of all tenures are subject to agreement with relevant local authorities. Where there is an agreed policy approach in a local area across all registered providers, this will take precedence over the saha approach outlined above subject to approval by the Executive Director of Operations. This is to fulfil our commitment to local partnerships whilst also including a check that any localised approaches remain in line with the aims and objectives of the Organisation.

7.10.5. At the end of the FTT, a process of review will take place to ascertain if the tenancy will be renewed and, if so, what length of renewal will be appropriate. saha has an appropriate methodology in place within the Fixed term Tenancy Procedure that encompasses the following assessments:

- If the household is in a suitable position to move to the private sector
- If the property remains suitable to the household composition
- If the property has unused disability adaptations
- If the tenancy has been conducted appropriately
- If a move would present serious detriment to any social, employment or economic factors
- Any equality issues

7.10.6. All tenancies let at 'Affordable Rent' levels (as defined in P1090, Rent Setting Policy) must be FTT's. This is so that rent levels can be 'rebased' to the current market as part of the tenancy renewal.

7.11. Protected Licences (Life Houses/hostel accommodation in Supported Housing Services only)

7.11.1. A person will be granted a protected licence (protected under the Protection from Eviction Act 1977 (PEA 1977)) where they do not have exclusive possession of the accommodation but that accommodation is self-contained accommodation (i.e. toilet, bathroom, cooking facilities within the accommodation).

7.11.2. If a person has a protected licence agreement then a landlord will need to serve a notice to quit (in the prescribed form) to end the agreement upon 28 days' notice to the licensee. If a licensee does not vacate the accommodation in accordance with the notice to quit then the landlord is required to obtain a possession order through the County Court.

7.12. Excluded Licences (Life Houses/accommodation in Supported Housing Services only) Registered Providers may grant excluded licences where a licensee occupies a room within a scheme. Supported services have a specific definition (Housing Act 1985 Section 622) and the licensee must share facilities (such as bathroom, toilet, cooking facilities). If the licensee has an excluded licence they do not have the protection of the PEA 1977 and can be excluded without a court order.

7.13. Occupancy Agreement Administration

7.13.1. All tenancies and licences will be created using a written agreement that is approved by our solicitors and reviewed at least every two years or earlier if needed. We will consult residents regarding key changes or when there is a legislative requirement to do so.

7.13.2. Individuals named on the agreements will be in accordance with the application/nomination. Joint applicants will be provided with a joint occupancy agreement.

7.13.3. saha has predominantly weekly agreements with a small number of long-standing tenancies being let on a monthly basis. It is the Organisation's intention to move towards standardising all agreements as weekly. Therefore, all new lettings will be made on a weekly basis. saha agreements are chargeable over 52 weeks or 12 months per annum as appropriate.

7.14. Tenancy Use

7.14.1. saha tenancies are residential and are intended to be the occupant's principal home. Generally saha does not allow business activities from its residential properties. However, to help facilitate employment opportunities, upon application, saha will permit 'home working' where it is demonstrated by the resident that this will not have an undue impact on the property, neighbours, the residential nature of the scheme, cause overcrowding for the occupants or contravene planning restrictions.

7.15. Tenancies and 16/17 Year Olds

7.15.1. The RSH guidance on tenure makes specific reference to the implications of granting tenancies to 16 and 17 year olds – effectively, the Landlord becomes a default guarantor for the tenant, a situation that is not desirable.

7.15.2. When signing up a person under 18 for a property that would normally attract a tenancy, we will follow the specific process set out in saha's Allocations and Referrals Procedure.

7.15.3. 16 and 17 year olds can be granted a licence agreement.

7.16. Demotion of Assured Tenancies

7.16.1. We will consider the demotion of an AT to an AST in dealing with Anti-social behaviour by a resident or their family or visitors, but only after all other reasonable interventions have been exhausted. Demotions will require the approval of the Executive Director of Operations along with the relevant Local Authority, and will only occur after the correct legal processes have been followed to acquire a demotion court order.

7.17. Tenancy Assignment & Succession

7.17.1. A Secure Tenancy cannot be assigned (passed on) to another person unless one of the following applies:

- the assignment is by way of a mutual exchange; or
- the assignment is made by a court under the Matrimonial Causes Act 1973; or

- the assignment is by way of succession to a person qualified to succeed to the tenancy.

7.17.2. A Secure Tenancy has statutory rights to succession which will be detailed in the agreement.

7.17.3. AT and FTT's only permit assignment by way of a mutual exchange or under section 24 of the Matrimonial Causes Act 1973. For consistency we will give AT's the same rights in relation to succession as are enjoyed by Secure Tenancies; however this is not compatible with FTT's and therefore assignment rights will remain in accordance with the regulations relating to mutual exchange and the 1973 Act.

7.17.4. In relation to succession, if a tenant dies and there is another member of the household, such as an unpaid live-in carer or a partner of the same sex, who do not have the right to succeed but whom:

- a) had been living with the tenant for the year before the tenant's death, or
- b) had been looking after the tenant for the year before the tenant's death, or
- c) has accepted responsibility for the tenant's dependents

saha will grant a tenancy if requested and it is agreed that this is a priority viewed in the context of other demands on our housing and the needs of the area.

7.17.5. Our AST agreement only permits assignment in furtherance of a court order made under section 24 of the Matrimonial Causes Act 1973. The only right of succession is to a surviving spouse. No succession or assignment should occur where licence agreements are used.

7.18. Subletting

7.18.1. Secure tenants have statutory rights to sublet part of their home and we provide the same rights to AT's and FTT's. Permission must be sought in writing from the Organisation prior to the subletting commencing. We will only deny a request for subletting if there are reasonable grounds for doing so, for example, if it would result in overcrowding. Residents holding AST's and licences are not permitted to sublet.

7.19. Right to Acquire

7.19.1. For qualifying properties, all new tenancies issued after April 2012 that are either periodic or have a fixed term duration over two years will be eligible for Right to Acquire (provided the property and tenant has not been subject to the mortgage rescue scheme). Assured Shorthold Tenancies issued prior to April 2012 will not qualify. Full details of qualifying properties and tenant applicants can be found in saha's Right to Acquire Procedure. Licences are excluded from Right to Acquire.

7.20. Transfers

7.20.1. The Tenancy Standard states that tenants with an existing social tenancy on the day the main tenure reform provisions in the Localism Act 2011 come into force must be given 'a tenancy with no less security where they choose to move to another social rented home'. Therefore the security of tenure of any existing tenant who was granted their tenancy prior to April 2012 will be protected should they transfer to another social rented home.

7.20.2. However, this does not apply to tenants granted an AT after the Localism Act 2011 came into force. In this instance a tenant choosing to transfer would also be choosing to accept the tenure of the property being transferred into. The exception to this being when the transfer is not at the resident's choice, for example, if a resident is required to move for permanent decant purposes.

7.21. Mutual exchanges

7.21.1. Mutual exchanges between tenants of social landlords should take place via a deed of assignment where this takes over the other tenant's tenancy type and terms. New tenancies are not signed.

7.21.2. However where one of the tenants who wishes to transfer has a secure or assured tenancy, which began before April 2012 and the other has a FTT, the exchange must be done by surrender and then granting of new tenancies. The landlords must grant the tenants new tenancies on their new homes with the same security of tenure to that of their original property.

7.21.3. Tenancies with a fixed term of less than two years and licences do not qualify for mutual exchanges.

7.22. Licences

7.22.1. A licence agreement is personal to the resident and nothing in the agreement gives the resident any interest or right to exclusive possession of the accommodation. This is to prevent a tenancy being created. A licence is purely a permission to reside at the premises.

7.22.2. Licences will either be excluded or protected depending on the type of accommodation as set out in 7.12 and 7.13 above. Our licence agreements are conditional upon a resident engaging with the related support service. Where engagement is not possible, action will be commenced to bring the agreement to an end. The licence agreement provides no assignment or succession, resident property improvements or subletting rights.

7.23. Termination of Agreements by saha

7.23.1. All occupancy agreements will be ended using the appropriate notice period and format relevant to the reason for termination clearly outlining statutory grounds as appropriate.

7.23.2. With tenancies, a Notice to Quit will only be used where we have clear evidence that the property has been abandoned or where the property

is not being used as the main principle home and we have taken all reasonable steps to contact the resident to seek relinquishment of the agreement.

7.23.3. In all instances except Excluded Licences, evictions will only be carried out following the relevant legal process culminating in the acquisition of a possession order and eviction arrangements with the local court bailiff. All evictions of Tenants will be subject to the approval of the Executive Directors..

7.24. Termination of Fixed Term Tenancies at Fixed Term End

7.24.1. For clarification, Assured FTT's require two notices.

- A notice on intention to review, issued six months prior to the tenancy end date
- A Section 21 notice, issued at least two months prior to the tenancy end date

7.24.2. To ensure clarity for the tenant, it is saha policy that for Fixed Term Tenancies these notices be issued together six months before the tenancy end date. Immediately after the issue of these notices the review of the tenancy for potential renewal should swiftly take place, following the Fixed Term Tenancy Procedure, in order that the tenant will be aware of the outcome as soon as possible.

7.24.3. Following a review, if a new tenancy is not to be issued, saha will work with the resident, local authority and other relevant agencies to secure suitable alternative accommodation and endeavor to take any reasonable actions possible to assist with securing accommodation.

7.25. Termination of Licence Agreements

7.25.1. There are no statutory grounds for ending a licence, however, in accordance with good practice, we require that a licence is ended by giving reasonable notice as specified in the terms of the licence. Non-renewal of a licence agreement as a means of ending an agreement is discouraged.

7.26. Termination of Agreements by Residents

7.26.1. Our occupancy agreements will set out how a resident can terminate the agreement.

8. Monitoring and Reporting

8.1. saha has a programme of internal audit and the Terms of Reference for the audit of Allocations, Lettings and Voids will require it to test a sample of agreements to provide assurance that the most appropriate tenure has been used. This audit will be completed every two years.

9. Implementation

- 9.1. saha will ensure that the implementation of this policy is proactively inclusive across all activities with particular attention towards the protected characteristics as defined in the Equality Act 2010 whilst also being mindful towards the inclusivity of other vulnerable and marginalised groups that may be affected.

10. Roles and Responsibilities.

10.1. Residents' Responsibilities

- 10.2. Residents are responsible for complying with the terms of the occupancy agreement to which they become party. In the event of a breach, we or our managing agents will take appropriate and proportionate action to remedy the breach.

- 10.3. Residents are also responsible for ensuring that information provided when applying for a property is correct and full. Incorrect information could invalidate the occupancy agreement.

10.4. Employee Responsibilities

- 10.5. saha employees and our managing agents will endeavor to ensure that residents understand their occupancy agreement and will evidence action taken to achieve this. This could be through measures such as the provision of a translated agreement, going through the agreement on a one to one basis or other measures that help to ensure understanding.

- 10.6. The employee issuing the occupancy agreement on behalf of the organisation is responsible for ensuring that the correct agreement is used for that letting.

- 10.7. The employee issuing the agreement is responsible for ensuring that both he/she, and the occupant have correctly signed and dated the agreement.

11. Policy Review

- 11.1. We will review the operation of this policy in consultation with our residents, employees and relevant stakeholders (where appropriate), in light of current best practice, amending the policy where required.

Document History Log

Lead Reviewer	Date		Version	Approval	
	Created / Revised	Expiry		By	Date
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P Latham	14/06/2015	June 2018	1.1	EMT	30/06/2015
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S Haslam Chapter1	14/02/2017	June 2019	1.3	For Group Policy	

Head of Housing Projects	Feb – April 2019		1.4	EMT	
Head of Housing (General Needs and Supported)	January 2021	January 2024	1.5	SMT	

Equalities Monitoring Form			
Name of Policy: Occupancy Agreements Policy		Carried out by: S Firth	Date: December 2020
Protected characteristics	Impact <i>(Positive, Negative, Neutral)</i>	Protected characteristics	Impact <i>(Positive, Negative, Neutral)</i>
Age	Positive	Disability	Positive
Sex	Neutral	Race	Neutral
Religion or Belief	Neutral	Sexual Orientation	Neutral
Marriage / Civil Partnerships	Neutral	Pregnancy / Maternity	Neutral
Gender Reassignment	Neutral		
If Negative impact is identified, please complete The Full EMF, including mitigations of risks section, and return to Business Assurance Team			
Privacy Impact Assessment Form			
Privacy Data Impacting Policy:	Timescales for Retaining Data:	Notes:	
Current tenants' Tenancy Files (including agreement, rent payment history, details of complaints, ASB, etc)	Duration of tenancy	See above in respect of rent statements	