

# WEST GRANTON HOUSING CO-OPERATIVE LIMITED

## POLICY DOCUMENT

### TENANCY MANAGEMENT

This policy was approved by the Committee of Management on 11<sup>th</sup> October 2017.

It should be reviewed again no later than 2020.

#### REVISIONS

In accordance with the WGHC Governance Policy 2016 the main body of a policy may be amended by the CEO to correct typographical errors or to update references. Appendices to policies may be amended by the CEO to incorporate changes in best practice, the law or the working environment. Any changes will accord with the principles set out in the main body of the policy.

WGHC aims to comply with all relevant legislation. The following legislative requirements have been considered in relation to this policy:

*Housing (Scotland) Acts 1987, 2001, 2010 and 2014;*

*Scottish Statutory Instrument 313 of the Abandoned Property Order 2002;*

*The Bankruptcy and Diligence etc. (Scotland) Act 2007;*

*Adults with Incapacity (Scotland) Act 2000; The Adult Support and Protection (Scotland) Act 2007;*

*The Mental Health (Care and Treatment) Scotland) Act 2003; The Mental Health (Scotland) Act 2015;*

*Family Law (Scotland) Act 2006; Data Protection Act 1998;*

*Scotland Act 1998 : Crown's Property Right in Ownerless Goods*

WGHC aims to comply with all relevant best practice. The following have been considered in relation to this policy:

*The Scottish Social Housing Charter*

*Chartered Institute of Housing good practice and performance briefings*

*The Scottish Federation of Housing Associations' guidance, model frameworks and briefing notes*

WGHC has a suite of policies and procedures covering all aspects of our operations. The policies most closely linked with this policy are:

*WGHC's Scottish Secure Tenancy Agreement*

*WGHC's Allocations Policy*

*WGHC's Debt Management Policy*

*WGHC's Emergency and Disaster Procedures*

*WGHC's Financial Regulations*

*WGHC's Governance Policy*

*WGHC's Information Policy*

*WGHC's Maintenance Policy*

All policies and procedures are on the WGHC internal website.

All policies are on the WGHC external website: [www.westgrantonhousing.coop](http://www.westgrantonhousing.coop)

1.	INTRODUCTION AND GENERAL PROVISIONS .....	5
1.1.	Principles .....	5
1.2.	Policy Aims & Objectives .....	5
1.3.	The Scottish Secure Tenancy Agreement.....	5
1.4.	Right to Buy Entitlement .....	5
1.5.	Power of Attorney and Tenant Mandates .....	5
2.	START OF TENANCY.....	6
2.1.	Information to Tenant .....	6
2.2.	Rent Payments.....	6
2.3.	Post Allocation Visits .....	6
2.4.	Decoration Vouchers .....	6
3.	TENANCY SUSTAINMENT .....	7
3.1.	Principles .....	7
3.2.	Failed Tenancies .....	7
3.3.	Risk Factors.....	7
3.4.	Scope of Support Provision .....	8
3.5.	Tenants who are defined as “Adult at risk” or “Adult in need of support and protection” .....	8
4.	TENANCY ISSUES .....	9
4.1.	Principles .....	9
4.2.	Occupation of the house.....	9
4.3.	Property Inspections .....	9
4.4.	Estate Management – Definition and Scope .....	10
4.5.	Permission to run a business from the tenancy.....	10
4.6.	Parking.....	10
4.7.	Pets .....	11
4.8.	Other Breaches of Tenancy.....	11
5.	RESPECT FOR OTHERS.....	12
5.1.	Principles .....	12
5.2.	Neighbour Disputes.....	12
5.3.	Title Deeds.....	12
5.4.	Anti social Behaviour.....	12
5.4.1.	Definition .....	12
5.4.2.	Responding to reports of anti social behaviour.....	13
5.4.3.	The Role of the Complainant .....	14
5.4.4.	The Role of the Investigating Officer .....	14
5.4.5.	Responding to Verbal Reports.....	14
5.4.6.	Responding to Anonymous Reports .....	14

5.5	Information Sharing .....	15
5.6	Locally Agreed Resolution targets .....	15
5.7	Providing Support .....	15
5.8	Referrals to External Agencies.....	15
5.9	Personal Legal Action .....	16
5.10	Disputes between Owner Occupiers and WGHC Tenants .....	16
6	MEASURES TO TACKLE ANTI SOCIAL BEHAVIOUR .....	16
7	CHANGES TO THE TENANCY .....	18
7.1	Principles .....	18
7.2	Timetable & Procedures .....	18
7.3	Mutual exchange applications .....	18
7.4	Request to take in a lodger or sublet.....	19
7.5	Assignment of Tenancy.....	19
7.6	From sole to joint .....	19
7.7	From joint to sole .....	19
7.8	Decants.....	19
7.8.1	Emergency .....	19
7.8.2	Planned Maintenance .....	20
7.8.3	Decants and the Secure Tenancy.....	21
8	ENDING THE TENANCY .....	21
8.1	Principles .....	21
8.2	By Notice.....	21
8.2.1	The Notice Period.....	21
8.2.2	Request to keep two WGHC tenancies running simultaneously.....	21
8.2.3	Cancellation of Termination Notice .....	22
8.3	When A Property Becomes Permanently Uninhabitable .....	22
8.4	By Death .....	22
8.5.1	Sole Tenancy.....	22
8.5.2	Joint Tenancy .....	23
8.5.3	Abandoned Belongings.....	23
8.6	By Court Order .....	24
8.6.1	Decree Eviction Order .....	24
8.6.2	Order to Transfer a WGHC Tenancy .....	24
8.7	Ending a tenancy and imprisonment.....	24
8.8	By conversion to a Short Scottish Secure Tenancy .....	24

9	SUCCESSION .....	25
9.1	Principles .....	25
9.2	Conditions of Succession .....	25
9.3	Specially Adapted Properties .....	26
9.4	Succession: Additional Information.....	26
10	HOUSING OPTIONS ADVICE .....	26
11	AUTHORITY.....	27
11.1	Principles .....	27
11.2	Schedule of Authority .....	27
12	APPEALS .....	29
12.1	Appeals: principles .....	29
12.2	Appealing a decision .....	29
13	COMPLAINTS.....	30
14	MONITORING.....	30

## **1. INTRODUCTION AND GENERAL PROVISIONS**

### **1.1. Principles**

WGHC is committed to ensuring that all tenants adhere to the conditions of their Scottish Secure Tenancy Agreement. This includes their responsibilities in respect of their neighbours, the property and environment.

WGHC will endeavour at all times to respect its obligations and the rights of each tenant as defined in the tenancy agreement.

In accordance with the Scottish Social Housing Charter WGHC will try to perform all aspects of our housing services so that every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

WGHC will promote equality of opportunity for all and seek to eliminate unlawful direct and indirect discrimination in all areas of our work, oppose discrimination against or harassment of any tenant or applicant on the grounds of age, gender, marital status, family circumstances, race, colour, ethnic origin, nationality, religion, sexual orientation, illness or disability.

### **1.2. Policy Aims & Objectives**

This policy covers tenancy management by which is meant those aspects of housing management relating most closely to the terms of the tenancy agreement between WGHC and our tenants. The aims of this policy are:

- to promote and provide tenants with a safe, decent, secure and good quality environment in which to live;
- to provide appropriate housing support and advice to our tenants and other customers;
- to encourage our tenants to be involved in the developing, maintaining and improving of our services;
- to ensure WGHC follows legal requirements, good practice guidelines and best practice.

To help achieve the aims of this policy WGHC, where appropriate, will also work in partnership with external agencies such as other housing providers, social work services, health officials, the City of Edinburgh Council and **Police Scotland**.

### **1.3. The Scottish Secure Tenancy Agreement**

WGHC provides Scottish Secure Tenancies and where appropriate, Short Scottish Secure Tenancies. The Agreements are legally binding contracts and set out the terms and conditions of the tenancy. We use these terms to effectively manage our tenancies.

### **1.4. Right to Buy Entitlement**

WGHC is a fully mutual co-operative and in accordance with Rule 6 of the WGHC Membership Rules tenants do not have any right to buy the property they live in.

### **1.5. Power of Attorney and Tenant Mandates**

When a tenant is diagnosed as having incapacity or lacks legal capacity to make decisions concerning their tenancy, WGHC will seek guidance from the Adults with Incapacity (Scotland) Act 2000, the Office of the Public Guardian (Scotland) and take legal advice as required. In such cases it is likely we will only act on an instruction from a power of attorney or person who has a guardianship or intervention order.

In the absence of a confirmed diagnosis or if a tenant's capacity is variable WGHC will, where possible, give regard to the tenant's wishes together with the opinions of any involved external agencies to try to ensure that all tenancy decisions made are in the best interests of the tenant.

Where a tenant simply wishes to authorise a third party to act on their behalf or represent them with regards to their WGHC tenancy, we will require signed authorisation from the tenant giving us permission to discuss their tenancy with the nominated third party. This includes rent account enquiries from persons who make payment on a tenant's behalf.

## **2. START OF TENANCY**

### **2.1. Information to Tenant**

A draft copy of the relevant Tenancy Agreement will be given to all prospective tenants to read over prior to them signing the agreement.

At the sign up appointment we will give out a Tenant Handbook which provides the following information:

- how to make a complaint
- the rights and responsibilities of both WGHC and the tenant including how we use personal information
- advice on how to opt out of receiving promotional material, including our newsletter
- practical information and advice about the terms and conditions of the tenancy and property type.

### **2.2. Rent Payments**

At both the viewing appointment and the sign up, all tenants will be advised of the amount of rent they need to pay and their responsibility to ensure that their rent is paid in advance.

For those tenants in receipt of benefit payments for rent costs direct payment to WGHC will be encouraged.

### **2.3. Post Allocation Visits**

Where practicable, we will carry out a settling in visit to each new tenant within 6 weeks of their tenancy starting. Where it is not possible to arrange a visit within the first 6 weeks of the tenancy starting (e.g. because the tenant works) a telephone interview will be attempted and efforts will be made to arrange a home visit for a later date.

### **2.4. Decoration Vouchers**

Where a void property does not require extensive redecoration work WGHC will generally offer a decoration allowance to an incoming tenant. This will be considered on a case by case basis. The health and vulnerability of the incoming tenant will also be factored into the decision. It will be at the discretion of the Housing Manager, who will give regards to the views of the Maintenance Manager. Thereafter recommendations for authorisation will be made to the CEO by the Housing Manager.

Any allowance will be paid in the form of a retail voucher, the choice of retailer will be agreed between the staff member and the incoming tenant.

Internal decoration is the responsibility of the tenant and vouchers are not intended to meet the full costs involved of redecoration but to simply assist the tenant financially. The amount of allowance awarded will depend on the size/number of rooms and additional factors such as the presence of wallpaper, various wall art features, condition of walls and woodwork, etc.

Prospective tenants will be advised of any decoration allowance prior to them signing their tenancy agreement. In the case of an internal transfer, no allowance will be considered where a tenant has caused damage or has neglected the interior decoration of their current WGHC tenancy. A decoration allowance will not be considered for a new tenancy which has resulted from a mutual exchange.

### **3. TENANCY SUSTAINMENT**

#### **3.1. Principles**

By Tenancy Sustainment we mean the prevention of a 'failed tenancy'.

In accordance with the Scottish Social Housing Charter we will try to ensure that tenants get the information they need on how to obtain support to remain in their home. Where possible and practicable, we will try to assist the tenant in accessing suitable support, including direct assistance through a Tenancy Sustainment Fund and services provided directly by WGHC or by signposting and making referrals to external agencies.

#### **3.2. Failed Tenancies**

WGHC considers a tenancy to have 'failed' if it ends by:

- eviction;
- abandonment; **or**
- early termination, where a tenancy lasts under 12 months (however we recognise that people may terminate their tenancy early for positive reasons such as finding a new job or moving in with their partner).

#### **3.3. Risk Factors**

WGHC recognise the following risk factors in relation to early tenancy failure (this list is not exhaustive):

- Debt problems
- Mental Health Issues
- Physical Health Problems
- Learning difficulties
- Drug and alcohol addiction problems
- Disabilities
- Domestic violence
- Extreme youth or immaturity
- Young parents
- Older people with support needs
- Families with support needs
- No established local networks
- Allocations in unwanted areas

With the co-operation of the tenant, WGHC will try to identify any such risk factors as early as possible (i.e. at the allocation assessment stage. We will also try to identify changes in a tenant's personal circumstances over the course of their tenancy which may put their tenancy at risk.

### **3.4. Scope of Support Provision**

WGHC does not have the specific expertise to carry out a detailed assessment of support needs. Where possible and practicable, we will be proactive in signposting and referring tenants to agencies which provide the relevant tenancy sustainment support. This includes debt advice and welfare rights agencies and referrals to occupational therapists through the Social Care Direct system.

Where a referral is unsuccessful or not possible due to lack of external agency funding or resources or the tenant does not fit the remit of any available agency, WGHC will try to assist and support the tenant as much as its own resources will allow.

Where a referral is successful and if appropriate, we will adopt a joint working approach with the external agency.

Tenants should be willing to engage and receive support. When support to maintain the tenancy is no longer required or if the tenant stops engaging, WGHC will review any direct assistance it is providing and as a result may decide to withdraw the support.

If WGHC has taken reasonable steps to support the tenant and the tenant is unwilling or unable to engage and their behaviour continues to breach their tenancy agreement, legal action against the tenant may then be considered.

### **3.5. Tenants who are defined as “Adult at risk” or “Adult in need of support and protection”**

It is recognised that a tenant who is considered at risk or in need of support or protection may find it difficult to manage their tenancy and for this reason all such cases should be reported to the Housing Manager for further action.

If a WGHC tenant falls into one of the following categories and is not receiving the appropriate care or support we will make every effort to obtain permission from the tenant to make a referral to Social Care Direct :

The Adult Support and Protection (Scotland) Act 2007 replaced the term “vulnerable” with “Adult at Risk” or “Adult in need of Support and Protection”. Section 3 of the Act specifically defines adults at risk as individuals, aged 16 years and over who:

- a) are unable to safeguard themselves, their property or rights;
- b) are at risk of harm; and
- c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than others who are not so affected.

The Mental Health (Care & Treatment) (Scotland) Act 2003 defines a mental disorder as one of the following:

- a) A mental illness;
- b) A learning disability;
- c) A personality disorder.

The law allows WGHC to share information with third parties without the tenant’s consent in the following circumstances:

- If a tenant displays behaviour which constitutes a serious risk or harm to themselves or others, including children to whom they may have access

Reference should be made to WGHC’s Information Policy for further details about information sharing.



## **4. TENANCY ISSUES**

### **4.1. Principles**

Section 2 of the Tenancy Agreement sets out conditions relating to who may live in the house and details the tenant's rights and responsibilities in relation to the use of the house and any common parts. WGHC will seek to ensure that tenants meet their responsibilities in relation to the use of the house.

In accordance with the Scottish Social Housing Charter, WGHC will try to help to ensure that tenants live in well-maintained neighbourhoods where they feel safe. Where relevant and possible we will do this in association with other agencies.

### **4.2. Occupation of the house**

The tenant has a duty to furnish the house and occupy it as their principal home. They should inform us within 4 weeks if there is a change to the persons living in the tenancy. WGHC will periodically invite tenants to provide written details of all the members who reside in their household. With regards to occupation of the house we will be sympathetic and supportive in relation to short term circumstances. However in the case of clear breaches of the tenancy agreement we will take reasonable and appropriate action.

We will investigate reports of:

- tenants ceasing to occupy the tenancy as their principal home
- person(s) who are not legally entitled to live in our housing
- tenancy fraud

Whilst carrying out these investigations WGHC may speak directly with the tenant involved and/or approach other tenants for information or evidence. In addition, we may share personal data and seek corroboration with external agencies as legally permitted. With permission from the CEO, WGHC may employ the services of a professional investigations agency. In cases with substantive evidence WGHC may seek legal advice and authorisation from the Committee of Management to raise legal action.

The tenant must not allow the house to become overcrowded. For the purpose of this policy the definition of overcrowding is taken from Sections 135 to 137 of the Housing (Scotland) Act 1987.

### **4.3. Property Inspections**

Section 2.2 of the Scottish Secure Tenancy Agreement states that reasonable care must be taken to prevent damage to:

- the house
  - the decoration
  - our furniture
  - the fixtures and fittings
  - the common parts
- other people's property.

Over the course of a tenancy WGHC may carry out routine periodic inspections. Where there are concerns about the condition of a property, WGHC will carry out an initial inspection. WGHC will give the tenant at least 24 hours written notice of their intention to enter the property. WGHC will work with tenants, where possible and practicable, to assist with any breaches of tenancy relating to Section 2.2. of the SSTA. This is likely to include agreeing responsibility for repairs and follow up inspections.

#### **4.4. Estate Management – Definition and Scope**

The term “estate management” used by WGHC covers the following:

1. the monitoring and enforcement of tenant responsibilities relating to the use of the house and common parts.
2. issues relating to WGHC owned land and the wider environment around our housing stock.
3. estate management issues solely not within our control and in such cases we may have to refer matters to the City of Edinburgh Council or Police Scotland.

WGHC will:

- carry out regular inspections of gardens, open spaces, common areas and the stairs within flatted developments.
- manage the environment around our properties and any common areas effectively to ensure that the neighbourhood is an attractive, well maintained and safe place to live.
- take reasonable and appropriate action against tenants who are not maintaining their gardens / property in a neat and tidy condition. Staff may invite tenants to apply for the WGHC Grass Cutting Service if they are experiencing difficulty in maintaining their gardens and the tenant satisfies the qualifying criteria for the service.
- deal with dumped rubbish by either arranging removal through the Council’s Environmental Services or a WGHC contractor.
- remove graffiti as soon as practically possible.
- deal with abandoned cars in accordance with the DVLA approved procedure.

#### **4.5. Permission to run a business from the tenancy**

All requests should be made in writing to the Housing Manager. The HM will make a recommendation to the CEO who will then consider each case individually. Decisions will be based on the nature of the business, if it is likely to cause any nuisance to neighbours, if it is considered unethical, immoral or illegal and if any internal or external property alterations are required. Permission will not be given for any business signage to be displayed from or on the property (including any garden or communal area). WGHC’s consent will not alleviate the need for tenants to obtain permission for any other relevant consent, e.g. approval from the Care Inspectorate for Childminding.

We will reply within one month of receipt of the written application. In that reply we will advise if we agree to the request and if so, whether we attach any conditions. If we do not reply within one month, we are taken to have agreed to the request. Further reference should be made to Section 2 and 10 of the Scottish Secure Tenancy Agreement.

#### **4.6. Parking**

WGHC has provided some of its properties with a designated car parking space or driveway. Where properties have been allocated such a facility, this will be detailed in the tenancy agreement and tenants can therefore accept this as having been given written permission to use this land for car parking.

Unauthorised and inconsiderate parking and the use of parking areas to carry out vehicle repairs by WGHC tenants will be treated as breaches of tenancy. Unauthorised parking is defined as where permission has not been given to park on any land owned by WGHC which has not been set aside for this purpose. For example, this would include any monoblock areas owned by WGHC.

WGHC will report illegally parked or untaxed or abandoned vehicles on our land to the appropriate authorities. Where WGHC are required to trace the registered keeper of an abandoned vehicle they will

contact the DVLA. In unresolved cases we will report abandoned vehicles to the local authority who will arrange for their disposal. Where appropriate WGHC will use their DVLA approved procedures.

Any costs incurred by WGHC for taking any remedial action may be recharged to the tenant.

#### **4.7. Pets**

The rights of the tenant to keep a pet will be balanced against the rights of neighbours to be undisturbed by animals and WGHC's need to maintain its property and surroundings in a clean and hygienic state.

All requests to keep a pet should be made in writing and all tenants must have been given our written consent. All requests will be considered by the Housing Management Team. We will reply within one month of receipt of the written application. In that reply we will advise if we agree to the request and if so, whether we attach any conditions. If we do not reply within one month, we are taken to have agreed to the request.

Section 2.5 of each tenancy agreement sets out what animals may and may not be kept by tenants. WGHC will not consider requests to keep animals which are forbidden by the tenancy agreement. These include pigeons, ducks, poultry, bees and other livestock. No dogs or cats should be kept in any communal areas, such as landings, hallways, storage cupboards or communal garden areas.

Tenants living in a house, bungalow or ground floor flat that have direct access to a garden will not be unreasonably refused permission to keep a dog or cat. Where requests are received to keep more than one dog and/or cat, we will judge each case on its individual merits. To do this we will consider such issues as the type of property and the size of the garden as well as the breed, size and number of pets already kept.

In all other WGHC flats dogs are expressly forbidden (except guide or assistance dogs). Tenants living in these property types asking for permission to keep a dog will be informed that it is prohibited by the tenancy agreement and in the case of Forthquarter properties, will also be informed the condition is stated in the title deeds.

This policy also applies where a tenant wishes to look after an animal for a limited period, for example, whilst a relative is in hospital.

In addition, WGHC may take the following factors into account when considering granting a tenant permission to keep a pet:

- the ability of the tenant to look after the animal
- the size and type of accommodation
- the number of other pets in the household
- possible disturbances which may be caused to surrounding neighbours

Permission will not be granted to keep any dog described as dangerous under the Dangerous Dog Act 1991.

WGHC will investigate reports of tenants keeping pets without permission. Where relevant the tenant will be asked to apply for retrospective permission.

Where this is not relevant or permission is refused the tenant will be informed that they are in breach of their tenancy agreement and have 14 days to remove the animal(s). If the tenant persists with the breach we will take reasonable and appropriate action.

#### **4.8. Other Breaches of Tenancy**

WGHC will investigate all other breaches of tenancy. In the first instance we will try and resolve these breaches informally but will consider using written warnings, enforcement or legal action if any informal action taken has failed to resolve the breach. We will record the outcome of any action taken.

## **5. RESPECT FOR OTHERS**

### **5.1. Principles**

Section 3 of the Tenancy Agreement covers the rights and responsibilities of the tenant and WGHC in relation to respect for others including harassment and anti social behaviour.

In accordance with the Scottish Social Housing Charter we will work in partnership with other agencies to help ensure that tenants and other customers live in well-maintained neighbourhoods where they feel safe.

### **5.2. Neighbour Disputes**

Generally, WGHC defines a neighbour dispute as two or more people who disagree with each other over a matter related to a personal issue or the property/area in which they live.

WGHC is committed to encouraging good tenant relations. We will encourage neighbours to resolve disputes informally between themselves or where appropriate, through mediation.

In some situations, WGHC will not be able to take any action, for example, where a tenant's behaviour is not particularly unreasonable or is not in breach of the tenancy agreement. Furthermore it is recognised the outcome of such disputes is very much dependant on the willingness and relationships of the persons involved.

WGHC will record the outcome of all neighbour dispute cases in which we have had involvement. Neighbour disputes will not be categorised as incidents of anti social behaviour unless they are of a serious nature.

### **5.3. Title Deeds**

Where certain burdens exist in WGHC title deeds, these will be included in the Scottish Secure Tenancy Agreement. This will mean that failure to abide or adhere to the above will constitute a breach of tenancy and will be treated as such.

Where WGHC property has been sold on to a third party and WGHC continues to have an interest in that property or surrounding land/development we will look to work with the owners to help ensure the burdens are recognised and complied with.

### **5.4. Anti social Behaviour**

#### **5.4.1. Definition**

For the purposes of this policy the definition of the term "anti social behaviour" will reflect Section 143 of the Anti social Behaviour etc (Scotland) Act 2004.

The legislation says that a person is involved in anti social behaviour if they:

- Act in a manner that causes or is likely to cause alarm or distress; or
- Pursue a course of conduct that causes or is likely to cause alarm or distress, to at least one person not of the same household; "Conduct" includes speech; and a course of conduct must involve conduct on at least two occasions.

Behaving in an anti social manner covers a wide range of behaviours. For this reason, this policy lists the following as examples of what we would consider anti social but it is by no means exhaustive:

- Persistent abusive behaviour towards neighbours causing them fear or distress
- Persistent nuisance of threatening behaviour as a result of alcohol or substance abuse
- Persistent troubling behaviour by small groups of individuals within a local area or community
- Noise nuisance (but not general day to day living noise)
- Vandalism or damage
- Use of the tenancy for immoral purposes
- Harassment or assault of any person in the house, or neighbourhood, for whatever reason. This includes that person's race, colour or ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief, or other status
- Behaving in an abusive or violent manner towards any of our employees, agents or contractors
- The use or carry knives, machetes or other offensive weapons;
- The use or sell unlawful drugs or sell alcohol
- Leaving rubbish in unauthorised places
- Burning household or garden rubbish

We will generally **not** investigate the following behaviours or regard them as anti social:

- Noise from young children when they're playing
- Family disputes providing they do not cause an unacceptable disturbance
- Babies crying
- Smells from cooking
- Sounds of normal day to day living that we can hear such as opening and closing of doors, going up and down stairs
- One-off parties such as BBQs, birthday or New Year parties providing they do not cause an unacceptable disturbance
- Minor personal differences such as dirty looks or fall outs between children

#### **5.4.2. Responding to reports of anti social behaviour**

WGHC is committed to responding to all reports of anti social behaviour and we will prioritise our response to each case depending on its severity.

We recognise the need to adopt different approaches, depending on the specific circumstances of individual cases. In determining this we will give regard to the nature, frequency, duration of the incidents, the effect on the community and the likelihood of the offending behaviour continuing. This will help us decide how to allocate our resources and action a proportionate response e.g. telephone contact or face to face contact, a letter, meeting in the office, a home visit or a joint visit with an external agency.

Complainants will be advised of how the case will be progressed. This could involve gathering further evidence through the completion of incident diary sheets, seeking the names of witnesses or simply talking to the other party involved.

Where appropriate, we will encourage the reporting of incidents to Police Scotland and any other relevant agencies.

### **5.4.3. The Role of the Complainant**

Normally, we will expect complainants to play a role in helping us resolve incidents of anti social behaviour. Where appropriate, this may involve taking initial steps themselves, liaising with other agencies such as Police Scotland and the Local Authority, and helping to collate evidence such as completing diary sheets and demonstrate a willingness to take part in mediation.

Where legal action has been raised against a perpetrator, WGHC will generally require the complainer and other witnesses to provide affidavit statements and give evidence in court.

Generally where there is non-engagement or difficulties engaging with the complainer WGHC will withdraw their involvement. This decision will be made by the Housing Manager on a case by case basis.

In instances where a complainer continues to report similar incidents of anti social behaviour which have already been investigated by WGHC and there continues to be no corroboration or new evidence then WGHC may take the decision not to re-investigate. Again, this decision will be made by the Housing Manager on a case by case basis.

### **5.4.4 The Role of the Investigating Officer**

In investigating incidents of anti social behaviour the investigating officer's role is to establish the facts, offer appropriate support and advice and where possible, achieve resolution.

### **5.4.5 Responding to Verbal Reports**

Where reports are made verbally and the incident is of a serious nature WGHC will encourage the report to be made in writing to assist with the recording of dates, times, witnesses, police incident numbers, etc. Depending on an individual tenant's circumstances, staff may write a statement on a tenant's behalf. Where useful, tenants will be provided with diary incident sheets and given contact telephone numbers for Police Scotland and local authority services including the Noise Team and Anti social Behaviour Team. WGHC will record the outcomes of all investigations undertaken.

### **5.4.6 Responding to Anonymous Reports**

All anonymous complaints received will be recorded. Anonymous complaints will only be investigated with the approval of the Housing Manager and in exceptional circumstances, usually where the nature of the complaint indicates serious or criminal behaviour. Where the anonymous report is ambiguous, non-specific or malicious in nature towards a neighbouring tenant then WGHC reserves the right to take no further action.

## **5.5 Information Sharing**

Before any action is taken against a tenant for alleged anti social behaviour, the investigating officer will seek to substantiate the allegations and collate corroborating evidence to support the complaint.

Any information provided to us will be treated in confidence and will not be discussed with any other tenant, household member or resident unless we have received explicit consent to do so. However, information may be shared with relevant external agencies where it is felt necessary in order to gather evidence, agree action or move the case forward.

This includes, but is not exclusive to:

- Police Scotland  
WGHC have in place a formal protocol for information sharing with Police Scotland
- CEC's Community Safety Team
- CEC's Environmental Wardens
- CEC's Neighbourhood Support Team
- Social Work Staff
- Support Agencies
- Other Landlords

## **5.6 Locally Agreed Resolution targets**

In accordance with Indicator 19 of the Scottish Housing Charter, WGHC has consulted with tenants and set a target of 20 working days within which to resolve reported incidents of anti social behaviour.

This means WGHC will aim to resolve all reported incidents of anti social behaviour within this time period. If we are unable to achieve this we will provide an explanation as to why this has not been possible.

## **5.7 Providing Support**

Where possible and practicable, WGHC will

- seek practical support for victims of harassment
- seek practical support for the perpetrators.

WGHC recognise the outcome of any such support or referrals is dependent on the resources available and the willingness of the tenant to engage.

## **5.8 Referrals to External Agencies**

In cases where corroboration is proving difficult or unlikely WGHC may choose to refer the complainant to a specialised service, e.g. the Council's Noise Team, Anti social Behaviour Team or Mediation. It is recognised that in such cases it is the Agency's criteria which will determine the acceptance and outcome of the case.

## **5.9 Personal Legal Action**

A tenant may take their own legal action by obtaining an interdict or use of another legal remedy against a third party.

Advice of this nature may be given where the matter is outwith the terms of the tenancy agreement or where WGHC deems there are insufficient grounds on which to issue a notice of proceedings or seek an eviction order.

## **5.10 Disputes between Owner Occupiers and WGHC Tenants**

Where we are required to investigate disputes between owner occupiers and WGHC tenants we may refer to both the terms and conditions of the Scottish Secure Tenancy Agreement and the Deeds of Conditions. We will take action accordingly or alternatively refer the matter to a Mediation Service if appropriate.

## **6 MEASURES TO TACKLE ANTI SOCIAL BEHAVIOUR**

### **6.1 Non Legal Remedies**

- Advice and information
- Informal discussion reminding tenants of their responsibilities under the Scottish Secure Tenancy Agreement
- Interviews and Home Visits (including a programme of regular home visits over a specified period)
- Withdrawal of permission (e.g. Permission to keep a pet);
- Written warning followed by a 3 month monitoring period;
- Management Transfer
- Referrals to external agencies (e.g. Mediation Bureaux, Community Police, Public or Environmental Health, etc) .

### **6.2 Legal Remedies**

Taking legal action is a last resort for WGHC and will only be considered when all other avenues have been exhausted. Before any legal action for incidents of anti social behaviour is raised WGHC will seek legal advice to determine if we have sufficient grounds to do so. This is especially important when eviction action is being considered.

WGHC recognise that Sheriffs may be reluctant to grant an eviction order, especially when it involves vulnerable persons or a young family. If there are vulnerabilities and support is being provided by an external professional agency (e.g. Social Work) it can make it even more difficult for WGHC to convince a Sheriff that it is reasonable to evict.

If support is not being provided the Sheriff may decide to put proceedings on hold whilst intervention or support for the perpetrator is put in place. Additional time (normally months) will then be allowed for monitoring and assessing the impact the support has had on the behaviour and ultimately help the Sheriff determine if it is reasonable to evict. In addition, every tenant has the right to defend any legal action we raise against them. WGHC therefore must carefully manage victims' or witnesses' expectations concerning the likelihood of any legal action being raised and be realistic about the possible outcomes of any such action.



If legal action is raised (eviction or otherwise) WGHC will arrange, where possible, for affidavit statements to be taken from the complainants. If our action is defended then all parties involved should expect to appear in court to give evidence. Hearsay evidence is not admissible in court and witnesses are almost always required. Corroboration will therefore be required to support any action, legal or otherwise, taken by WGHC.

If it comes to our attention that a tenant or household member has been found guilty by a court of an anti social behaviour or criminal act, WGHC may raise legal action to recover the tenancy without seeking further corroboration.

The final outcome of any legal action we raise is at the discretion of the Sheriff.

Legal action can include:

- Interdict;
- Enforcement action such as Specific Implement;
- Remedial action;
- Anti social Behaviour Order;
- Notice of Proceedings for Recovery of Possession;
- Eviction;
- Small Claims Action;
- Conversion of an existing Scottish Secure tenancy to a Short Scottish Secure Tenancy;

## 7 CHANGES TO THE TENANCY

### 7.1 Principles

Section 4 of the tenancy agreement sets out the conditions which apply to requests to change the tenancy including requests to sublet, assign or exchange. WGHC will try to respond to all requests in a timely and reasonable manner.

### 7.2 Timetable & Procedures

We will reply to any request to change the tenancy within one month to avoid giving assumed consent.

If we do not reply to such requests within one month, we are taken to have agreed to the request.

All requests received will be logged on their receipt.

In the first instance some requests may be refused because we may require further information from the tenant in order to fully consider their request. To help us process requests, all tenants will be expected to complete and return the relevant WGHC application forms. We may also need to carry out a home visit to verify details. We will automatically reconsider all requests once we have received all the information required and will not unreasonably refuse permission.

Each completed application received will be treated as a new request and we will respond to it within one month.

As with all these requests, a formal offer of housing can only be made to persons approved for membership of WGHC.

### 7.3 Mutual exchange applications

**The Housing (Scotland) Act 2001 (Section 33) provides every Scottish secure tenant with the right to exchange their home with another Scottish secure tenant (whether or not the landlord is the same), with the landlord(s) written consent.**

**WGHC may refuse a request if there are reasonable grounds for the refusal.**

**For example:**

- If there has been a history of anti social behaviour
- **if a Notice for Recovery of Possession has been served on either applicant**
- **if the WGHC house has been designed or adapted for occupation by a person with special needs and if the exchange took place there would no longer be a person with such special needs occupying the house**
- **if the WGHC house is substantially larger than required by the applicant**
- **if the house is not suitable to the needs of the applicant and their family**
- **if the exchange would lead to overcrowding both in terms of WGHC's Allocation Policy and Section 139 of the 1987 Act**
- **if application for Membership of the Co-operative is refused**

**Both the WGHC tenant and the** applicants will be required to complete the relevant WGHC Mutual Exchange Forms. The Housing (Scotland) Act 2001 states that if a tenant makes a written application to exchange their tenancy, the landlord must intimate its consent or refusal within one month of receipt of the application. As it may take longer than one month for applications to be assessed, further information to be requested and received, home visits to be carried out, membership applications to be received and considered, WGHC will refuse all requests to exchange in the first instance. WGHC will, however, reconsider all written requests to exchange once we have completed the processing of the applications (both mutual exchange and membership). All exchanges are further subject to receipt of a satisfactory tenancy reference and the WGHC tenant fulfilling their end of tenancy obligations.

#### **7.4 Request to take in a lodger or sublet**

Section 32 (4) of the Housing (Scotland) Act 2001 states that where the landlord is a co-operative housing association, any consent to allow a lodger or subtenant is subject to the condition that the person is also a member of that co-operative.

WGHC Membership Rule 7.2 states that if a person is applying for membership they must also be actively seeking to become a tenant. Rule 7.4 states that only one share will be issued (per property) on the date the person becomes a tenant.

We therefore cannot approve requests from tenants to take in a lodger or sublet the tenancy because the Act (2001) states that a lodger or sublettee must become a member of the Co-operative, but WGHC Membership rules do not allow this.

#### **7.5 Assignment of Tenancy**

If a tenant would like to assign their tenancy, the house must have been the only or principal home of the person to whom they want to assign their tenancy for at least 6 months before the date of their written request. Where appropriate former tenancy references will be requested. The assignee must become a member of the Co-operative before the change takes effect. If an assignation is approved the WGHC tenant will terminate their tenancy and a new tenancy agreement will be issued to the assignee. Section 4 of the Scottish Secure Tenancy Agreement and our WGHC Allocations Policy sets out the conditions relating to assignation.

#### **7.6 From sole to joint**

The tenant and prospective tenant must both complete joint tenancy application forms. Proof of identity must be provided with proof that the WGHC property is *or* is intended to be the prospective new tenant's only or principal home. Where appropriate former tenancy references will be requested. All requests are subject to approval of membership with WGHC. An addendum to the existing tenancy agreement will be signed by both tenants and a copy of both documents handed to the new tenant.

#### **7.7 From joint to sole**

If a tenant wishes to terminate their joint tenancy they must give written notice to WGHC. Amending a tenancy from joint to sole is in effect ending the interests of one party in the tenancy. Subsequently the tenancy rights for the remaining joint tenant continue. On the death of one of the joint tenant's a copy of the death certificate should be attached to the original tenancy agreement.

#### **7.8 Decants**

In some circumstances it may be necessary for the tenant to move temporarily out of the tenancy.

##### **7.8.1 Emergency**

If a property is temporarily uninhabitable WGHC will assist the tenant to find alternative accommodation. In all cases the tenant will remain liable for rent payments on the permanent home.

The CEO will determine whether the property is uninhabitable. Any special needs of the tenant or members of their households will be considered.

- a) Where we can provide temporary or permanent suitable alternative accommodation from our own stock we will do so.

Where the tenant is moved to another WGHC property, we will continue to charge rent for the permanent home and the Council will continue to levy Council Tax at the tenancy address. In this situation WGHC will not charge rent for the decant property and will help the tenant to apply for a Council Tax exemption.

Where we move the tenant to a property smaller than their permanent home we will charge a lower rent. Where we move the tenant to a property larger than their permanent home we will charge the same rent as is normally charged for the permanent home.

- b) Given our small stock numbers it is likely we would have to seek alternative accommodation for the tenant from:
- the Council's Emergency Housing Teams; this may include private sector leasing properties.
  - Other Housing Associations (including their mid-market rent properties)
  - B&B's, or hotels .

Where the tenant is decanted to a property owned by another housing association, the Council, private landlord, hotel or B&B, WGHC will pay the other landlord for the rental of the decant property. The cost to WGHC is less than the rent for the permanent property, a compensatory payment will be made to the tenant.

During this period of vacant possession WGHC will continue to charge rent on the permanent property and the tenant will remain liable for this rent. During this period, Housing Benefit can be paid to those who are entitled, under the Temporary Absence rules. A Council Tax exemption can either be applied for the permanent home or the decant property.

- c) If a tenant is able to secure accommodation with family or friends WGHC will not charge the tenant rent for the period they are unable to live in their tenancy. A Council Tax exemption will be applied for. Depending on the circumstances, WGHC may make a payment of compensation to the tenant; compensation payments are covered in the WGHC Maintenance Policy.

WGHC is not responsible for replacing or compensating for damage to or loss of household contents. Tenants will continue to be liable and pay for their fuel costs in the decanted property unless the cost of fuel is included in the cost of the temporary accommodation. Where the tenant has a direct debit or standing order arrangement to pay for electricity and gas at their main home, it will be up to the tenant either to decide with their utilities provider(s) whether or not to continue these payments during the decant period.

WGHC may give financial and/or practical assistance to the tenant. This will be at the discretion of the CEO. Such assistance may include help with removing and/or storing furniture or a contribution towards reasonable costs directly related to the temporary move.

In determining whether and what assistance may be given the reason for the emergency, in particular any negligence by the tenant, will be taken into account.

The Housing Management Team will be responsible for liaising with the tenants for all aspect of co-ordinating the decant. The link person will normally be a member of the Housing Management Team.

Following discussion with the Council's Revenues and Benefits staff a procedure has been agreed covering all decants by all registered social landlords in the city, to ensure a consistent approach in RSLs charging rent and by CEC with regard to charging Council Tax and paying Housing and Council Tax benefit. This procedure is detailed in the table in *Appendix 1 - RSL Decant Guidance*.

### **7.8.2 Planned Maintenance**

If vacant possession is required for planned maintenance we will always give the tenant at least 28 days notice. Compensation relating to planned maintenance decants are in WGHC's Maintenance Policy.

### **7.8.3 Decants and the Secure Tenancy**

Tenants moved on a temporary basis from their usual house to another WGHC property will continue to have the full rights of a Scottish Secure Tenancy. Tenants moved to another RSL property will be offered an agreement in accordance with that RSL's allocation policy.

Where the accommodation is for the purpose of repairs or planned maintenance the tenant will be required to sign a declaration agreeing to return to their home prior to any decant being arranged.

Once the works are finished WGHC (or the other RSL) will recover possession of the alternative house as necessary and will not be required to serve a notice of proceedings unless the tenant refuses to move from the accommodation within the timescale agreed.

WGHC will assist with locating suitable temporary accommodation for the tenant, their family and any pets (providing they have WGHC's permission to keep the pet).

## **8 ENDING THE TENANCY**

### **8.1 Principles**

The ways in which the tenancy can be ended are covered in Section 6 of the Tenancy Agreement.

This section of the policy sets out how WGHC will respond to the different ways in which a tenancy may end.

WGHC tenancies will always end on a Sunday. Rent will be due for the full notice period.

Unless otherwise agreed, keys must always be returned to the WGHC Office by 10.00 a.m. on the Monday. If keys are not handed back on time WGHC may continue to charge rent.

### **8.2 By Notice**

Tenants who wish to end their tenancy are legally required to give at least 28 days written notice.

#### **8.2.1 The Notice Period**

The required 28 days notice period need not always apply. For example in the case of internal transfers, mutual exchanges or when a tenant moving out requests a shorter notice period.

A tenant may also apply to extend their termination notice period.

In such cases, the Housing Manager has the authority to determine the length of a notice period and in doing so will take the following factors into account:

- The likely void period and loss of rent
- The tenant's personal and financial circumstances
- The best interests of the neighbours
- The best interest of the organisation

#### **8.2.2 Request to keep two WGHC tenancies running simultaneously**

A tenant moving from one WGHC property to another can request to end their previous tenancy agreement 1-2 weeks after their new tenancy agreement has started. In such cases the tenant will be charged rent on both properties until the previous tenancy is terminated. All requests will be passed to the Housing Manager for consideration.

### **8.2.3 Cancellation of Termination Notice**

It is recognised that a tenant may change their mind about moving out and wish to withdraw their termination notice. The tenant will be asked to put the cancellation in writing. In the event that WGHC does not receive a written cancellation and the tenant remains in the tenancy after the proposed termination date, WGHC will treat this as a cancellation of termination of the tenancy.

### **8.3 When A Property Becomes Permanently Uninhabitable**

When a property becomes permanently uninhabitable due to major destruction or damage we will offer equivalent permanent re-housing as soon as such a house becomes available. Until that time we will try to help the tenant get temporary accommodation.

### **8.4 By Death**

Where there is no qualified person to succeed a Scottish Secure Tenancy, both the tenancy and membership of the co-operative will end on the date of death of the tenant. WGHC will require a photocopy of the death certificate as official notification that the tenant has died. The rent account on SDM will be closed down on the date of death and in accordance with the Scottish Housing Regulator's guidance the property will be categorised as void from the following day. Any rent debt will be written off, unless there is an estate from which to make a claim.

If an application for succession has been received the rent account will remain live on SDM until this application, including any application for membership, has been fully processed. The occupant of the tenancy will be liable for an underoccupancy charge during this period.

If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months. Rent will be charged only for the actual period of occupation.

If someone does not qualify for the tenancy only because the house was designed or substantially adapted for a person with special needs and they are waiting for alternative suitable accommodation to become available, the rent account will remain live on SDM until this person has been moved to the alternative accommodation. The occupant of the tenancy will be liable for an underoccupancy charge during this period.

As a general standard, WGHC will normally grant the next of kin a 2 week grace period from the date of death to empty the property and return the keys to us. We will take a sympathetic approach to any requests made by the next of kin during this time including requests to extend the grace period and requests for our help to empty the property. All such requests will be considered by the Housing Manager. Where possible, WGHC must obtain signed permission from the next of kin or person responsible for the property or estate of the deceased tenant to remove and destroy any belongings left behind in the tenancy.

### **8.5 By Abandonment**

Any tenant or joint tenant whose tenancy has been ended on the grounds of abandonment has the right to make an application to the sheriff against the repossession. This application must be made within 6 months of the second abandonment notice being served.

#### **8.5.1 Sole Tenancy**

If Housing Management staff suspect that a property is unoccupied and that the tenant does not intend to occupy it as their home, they will carry out appropriate checks before serving an Abandonment Notice. In accordance with Section 18 of the Housing (Scotland) Act 2001, if it appears to be the case that the tenant has abandoned the property, then an Abandonment Notice will be hand delivered by two

staff members and witnessed. Failure by the tenant to respond to this notice within 28 days will result in the second notice being served which will bring the tenancy to an end.

If staff believe that the property is still occupied by other household members then an Abandonment Notice should not be served. In such an instance, the case should be referred to the Housing Manager (HM) to determine if it is more appropriate to issue a Notice of Proceedings for the Recovery of Possession for the tenant failing to occupy the tenancy as their principal home.

### **8.5.2 Joint Tenancy**

If WGHC has reasonable grounds to believe that both joint tenants are not occupying the tenancy and do not intend to occupy it as their home we can bring the joint tenancy to an end. In such cases, the procedures for dealing with the abandonment of a sole tenancy will apply.

If WGHC has reasonable grounds to believe that an individual joint tenant is not occupying the joint tenancy and does not intend to occupy it as their home we can bring the joint tenancy to an end. In accordance with Section 20 of the Housing (Scotland) Act 2001, a 28 day Abandonment Notice will be served on the joint tenant.

A second notice will be served at the end of the 28 day period stating that the joint tenant's interest in the tenancy will be terminated 8 weeks after the date of service of the second notice. This second notice will not terminate the tenancy but will continue in the name of the remaining sole occupier. Both notices will be served by two staff members and witnessed. WGHC will serve a copy of the notices on each of the other joint tenants.

### **8.5.3 Abandoned Belongings**

WGHC will serve an Abandoned Property Notice conjoined with the Abandonment Notice for a sole or joint abandonment of tenancy, but not in the case where just an individual joint tenant is believed to have abandoned the tenancy.

This Notice advises that all belongings/personal possessions found in a property which has been abandoned must be kept for a minimum of 28 days. After the 28 days, if the property is not collected, WGHC will dispose of it unless its value is greater than the cost of storage along with any rent arrears, in which case it will be kept for a total period of 6 months.

A senior staff member will approve the decision whether items are to be disposed of or stored. If the belongings are not claimed for at the end of the 6 month period, WGHC will arrange for their disposal.

In accordance with Scottish Statutory Instrument 313 of the Abandoned Property Order 2002 any property stored or disposed of will be recorded on a register by WGHC and this information will be kept for a period of 5 years.

## **8.6 By Court Order**

WGHC can end a tenancy without the tenant's consent by way of a court order. There are two circumstances in which this might happen:

### **8.6.1 Decree Eviction Order**

By granting a Decree eviction order the court is giving WGHC permission to remove the tenant and all their belongings from the property and repossess the house.

If WGHC choose to enforce the Decree and proceed with an eviction we will arrange for Sheriff Officers to serve a Charge (legal notice) upon the tenant in accordance with the Bankruptcy and Diligence (Scotland) Act 2007.

The Charge will provide the tenant with a period of at least 14 days in which to remove themselves and their belongings from the property prior to the eviction being carried out. All evictions will be carried out by a Sheriff Officer, who will only be able to carry out an eviction upon expiry of the 14 day period. Outlays incurred by WGHC in serving the charge prior to carrying out the eviction are not recoverable.

In the event of court action being raised WGHC will comply with the requirements of Section 11 of the Homelessness (Scotland) Act 2003.

### **8.6.2 Order to Transfer a WGHC Tenancy**

An order may be granted by the court to transfer the tenancy of a matrimonial home from one spouse to the other. Subject to the approval of WGHC and the spouse being granted membership of the Co-operative, WGHC will end the existing tenancy and create a new tenancy.

## **8.7 Ending a tenancy and imprisonment**

Where a sole tenant receives a term of imprisonment longer than the period which Housing Benefit or Universal Credit Housing Costs would normally continue to be paid, we will advise the tenant of their options. If a tenant in this situation is unwilling to make adequate provisions we may raise legal action to recover the tenancy.

Where the reason for imprisonment is connected to the tenant's conduct of their tenancy it is likely that WGHC will raise legal action to recover the tenancy. Where other persons remain in a property following the imprisonment of a tenant, WGHC will consider such cases according to individual circumstances.

## **8.8 By conversion to a Short Scottish Secure Tenancy**

If an anti social behaviour order has been made against a WGHC tenant, or anyone living with the tenant we may serve a notice converting the tenancy to a Short Scottish Secure Tenancy (SSST). In every case, WGHC will offer support to the tenant to help them maintain their tenancy and convert it back to a full Scottish Secure Tenancy.

When seeking to bring an SSST to an end WGHC will serve the tenant with a notice to quit which will expire on the termination date of the Short Scottish Secure Agreement. The notice to quit will be served at least 40 days before the termination date. The notice has the effect of ending the SSST and prevents the tenancy under the Short Scottish Agreement from automatically renewing. If the tenant does not vacate the property by the termination date WGHC will seek a court order for repossession.

Where WGHC believes there has been a breach of the Short Scottish Secure Tenancy Agreement we may apply for a court order to repossess the property under Section 14 of the Housing (Scotland) Act 2001. This application must first be approved by the Committee of Management or a delegated Sub-Committee. Repossession action can only be raised on one or more of the grounds detailed in Schedule 2 of the Act and summarised in the Short Scottish Secure Tenancy Agreement. Before WGHC raises the action written notice will be given to the tenant, the joint tenant and any other member of the household over 16 years of age.



## **9 SUCCESSION**

### **9.1 Principles**

Succession to a Scottish Secure tenancy is covered by Section 7 of the Scottish Secure Tenancy Agreement). Succession means a person, who is a qualifying person may inherit the tenancy on the death of the tenant.

The prospective successor must complete a WGHC Succession Application Form.

A Scottish Secure Tenancy can only be succeeded to twice. If a tenancy has been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue. The Housing (Scotland) Act 2001 does not give the right to appeal to the sheriff court if we refuse an application for succession. The applicant, however, may use WGHC's own internal appeals system.

A person who would have succeeded the tenancy, but cannot because the second round of succession has passed, can remain in the house for six months after the last death. In this instance the tenancy will not be a Scottish Secure Tenancy and the occupier will remain responsible for all rent and service charge payments during the period of occupation.

Where an applicant does not qualify to succeed the tenancy, WGHC will advise the applicant in writing and give the reasons for refusal and request vacant possession of the property. WGHC will take a sympathetic approach in such instances, however, a persistent refusal to vacate the property may result in WGHC raising legal action for removal.

### **9.2 Conditions of Succession**

WGHC will grant a succession providing the following conditions are met:

- The tenant has died
- The successor must be a qualifying person as stated in the Section 22 and Schedule 3 of the Housing (Scotland) Act 2001
- There has not already been two successions to the same tenancy. If a tenancy has been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue.
- The successor has been approved membership of WGHC

Where the above conditions have been met, WGHC will not issue a new Scottish Secure Tenancy Agreement but provide a copy of the succeeded agreement together with a Confirmation of Succession of Tenancy Form.

### **9.3 Specially Adapted Properties**

If a house or flat has been designed or adapted for someone with special needs, it can only be passed on to a husband, wife, civil partner, joint tenant or partner. It cannot be passed to members of their family or carers unless they have special needs. If they do not have special needs, they have the right to be offered another suitable home.

If WGHC does not have another suitable property and it is unlikely one will become available in the foreseeable future, we will offer practical assistance to the household member in finding another home with a different landlord; including helping the household member complete an Edindex application form and requesting a silver or gold priority be awarded to the applicant through the Edindex Officer Panel.

If WGHC are able to secure an alternative suitable home for the household member and they unreasonably refuse an offer of housing, WGHC may withdraw assistance and consider raising legal action for removal. Suitability of alternative accommodation is determined by reference to Part 2 of schedule 2 of the Housing (Scotland) Act 2001 which states that regard is to be had to:

- proximity to the place of work (including attendance at an educational institution)
- extent of the accommodation required by the tenant
- character of the accommodation offered compare to the tenant's existing home
- the terms on which the accommodation is offered compared with the terms of the tenant's existing tenancy
- if any furniture was provided by the landlord for use under the existing tenancy and whether comparable furniture is to be provided for use under the new tenancy
- any special needs of the tenant or tenant's family

### **9.4 Succession: Additional Information**

A Scottish Secure Tenancy cannot be willed.

- By law, if more than one person qualifies for the tenancy, they have four weeks from the date of death (or the date we tell them they may qualify, if this is later) to decide between themselves who will take over. If they do not reach a decision within this timescale, we will decide for them. Our decision will be final.
- If someone living in the tenancy qualifies to take over the tenancy but chooses not to, they must give us four weeks' notice in writing and leave the home within three months. They will be liable for all rent and service charge payments during the period of occupation.

## **10 HOUSING OPTIONS ADVICE**

In accordance with Outcomes 7, 8 and 9 of the Scottish Social Housing Charter, we will:

- provide quality information and advice on how to apply for housing with both WGHC and our (Common Housing Register) partner landlords. Booklets will be made available in our Reception area and information published on our website.
- signpost and refer individuals to external agencies to enable them to make informed choices about their housing; this includes the local authority Housing Options Team.
- Inform WGHC tenants of the housing options available to them, including internal transfers and mutual exchanges. This information will be published regularly in our tenant newsletters.
- ensure that people at risk of losing their homes get advice on preventing homelessness.

## 11 AUTHORITY

### 11.1 Principles

WGHC has a clear delegation of responsibility and authority to ensure effectiveness, consistency and fairness in managing our tenancies. The day to day management of the housing management service is delegated to the Housing Manager.

Legal action will only be considered as a last resort. If discussions or support actions with a tenant fail to resolve a breach of tenancy or address their standards or behaviour then legal action will be considered. If a breach of tenancy seriously affects the safety and wellbeing of other tenants WGHC may consider raising immediate legal action.

The schedule of authority below sets out who may take actions relating to this policy. Where authority lies with staff the lowest level having authority is shown i.e. more senior staff also have authority. In the absence of the CEO the Housing Manager has acting authority. Once the decision has been made, the HM may ask another HM Team member to send through the instruction to WGHC's Solicitors.

Where a decision is to be made by Committee or delegated subcommittee, any committee member who is aware of the identity of the tenant involved will absent themselves when the case is discussed and will take no part in the decision. If the committee or subcommittee would thereby be rendered inquorate the decision may be taken by the CEO.

### 11.2 Schedule of Authority

Action	Authority	Notes
Informal action	Assistant Housing Officer	to resolve minor incidents of anti social behaviour.
Referrals to external agencies	Assistant Housing Officer	to resolve minor incidents of anti social behaviour.
Pre Action Requirement Form	Assistant Housing Officer	
Written warnings	Housing Officer	
Withdrawal of permission	Housing Manager	
Warning Letters from Solicitors	Housing Manager	Prior to initiating legal proceedings WGHC may choose to first instruct our solicitors to issue warning letters to tenants who are in breach of their tenancy agreement. WGHC will examine both the nature and/or frequency of the breach to determine if this pre-action step is appropriate.
Notice of Proceedings for Recovery of Possession	Housing Manager	The Housing Officer may complete the NOP Authorisation Form. The grounds on which legal action can be raised are stated in Section 16 and Schedule 2, Part 1 of the Housing (Scotland) Act 2001 and are summarised in the WGHC Scottish Secure Tenancy Agreement. It is standard practice for WGHC to use Sheriff Officers to serve a Notice of Proceedings.
Anti Social Behaviour Order	CEO	

Action	Authority	Notes
Small claims action for recovery of debt	CEO	
seek an interdict or specific implement	CEO	
Raising Legal Action for Rent Arrears	HM The HM will discuss action with the CEO before raising the instruction.	Once the decision has been made, the HM may ask another HM Team member to send through the instruction to WGHC's Solicitors.
Instruction to sist, continue or dismiss rent arrears court actions	The HM will discuss action with the CEO before raising the instruction.	Once the decision has been made, the HM may ask another HM Team member to send through the instruction to WGHC's Solicitors.
Recover legal costs in arrears cases	CEO	WGHC will not normally ask for costs but may opt to do so if the tenant clearly has funds and had wilfully withheld rent payment for no justifiable reason.
Enforce an eviction order	CEO	
Instruction to sist, continue or discontinue for all non-rent arrears cases	CEO	
Grant a new tenancy by accepting rent after possession has been recovered	CEO	Only where any arrears or the former tenant makes an agreement to pay any arrears within a week of the eviction date, <b>and</b> WGHC is satisfied that the former tenant will abide by the agreement; and WGHC is satisfied that the tenant will try to avoid falling into arrears again.
Eviction Action on the grounds of Anti Social Behaviour or other Grounds (other than rent arrears)	Committee of Management or delegated subcommittee	There is a higher risk of these types of cases going to proof and the legal costs involved can be unpredictable and significant. Committee will therefore be presented with the following details of the breaches: the nature, duration, frequency, the likelihood the breach will continue, the effect it has on neighbouring tenants/the wider community, estimate of legal costs and any other relevant information which may affect the outcome of the case. The anonymity of all involved parties will be protected.
Conversion to a Short Scottish Secure Tenancy	Committee of Management or delegated subcommittee	Where an anti social behaviour order has been granted against a WGHC tenant or anyone living with the tenant an existing Scottish Secure Tenancy can be converted to a Short Scottish Secure Tenancy.
Other Legal Actions	Committee of Management or delegated subcommittee	

## **12 APPEALS**

### **12.1 Appeals: principles**

If a tenant disagrees with a decision we have made in accordance with this policy, they have the right to appeal that decision. We will advise tenants at the time of our decision of their right to make an appeal.

All appeals should be made in writing.

The outcome of an appeal will be given in writing.

### **12.2 Appealing a decision**

The Committee of Management or Sub-Committee with delegated authority will consider appeals against decisions made by staff .

The Committee of Management will consider appeals against decisions made by a delegated subcommittee.

Written appeals will be considered concerning the following:

- allocations (including mutual exchanges);
- pets;
- parking;
- succession;
- changes to the tenancy;
- requests to keep two WGHC tenancies running simultaneously during the period of an internal transfer;
- running a business from the tenancy;
- internal transfer application assessments;
- any proposed enforcement or remedial action;
- recharges;
- warnings for breach of tenancy;
- the outcome of a neighbour dispute or anti social behaviour case (e.g. WGHC deciding not to take any action);
- Notice of Proceedings for Recovery of the Tenancy;
- Any other decision taken in accordance with this policy, except where the decision is to raise legal action. In such cases, the tenant has the right to defend any legal action raised against them as part of the judicial process.

### **13 COMPLAINTS**

If anyone wishes to complain about how they were treated or that this policy has not been adhered to they should refer to WGHC Complaints Policy. Copies are available from the office.

### **14 MONITORING**

WGHC will monitor and report the following to the appropriate committee on a quarterly basis:

- the number of abandonments;
- the average time to re-let;
- the level of arrears ;
- the type and number of reports received concerning neighbour disputes and anti social behaviour incidents ;
- the number of cases where court action to recover a tenancy was taken;
- the number of tenancies given or converted to Short Scottish Secure Tenancies.

## **Appendix 1 (Tenancy Management Policy)**

### **RSL Decant Guidance**

On occasions HAs decant tenants for periods where essential repairs are carried out to the tenancy address. This guidance is designed to encourage a consistent approach by HAs in terms of charging rent and by CEC in terms of charging Council Tax and paying HB/CTR.

Generally, in a decant situation, the tenant will be moved to another property with the same HA. In this situation the HA should continue to charge rent and CEC will continue to levy CT at the tenancy address. Whilst Regulation 7(4) of the HB Regs 2006 indicates that CT should be levied at the occupied property, CEC's local guidance allows for an exemption to be applied to the decant property to keep the rent/HB and CT/CTR at the tenancy address, to simplify administration. In this situation the HA should not charge rent for the decant property, and apply for a CT exemption.

Where the tenant is decanted to a property owned by another HA, CEC or a private landlord/hotel/B&B the same guidance (as above) applies. The HA will pay the other landlord for the rental of the decant property and if appropriate a CT exemption will be applied to one of the properties.

If the tenant is able to secure accommodation with family or friends the HA could cease charging rent for the tenancy address and CEC will withdraw HB. Similarly a CT exemption should be applied for. However, as decant procedures are applied to all tenants, including non-HB claimants, the HA is entitled to continue charging rent and HB can be paid under temporary absence rules. In this situation the HA may compensate the tenant for the property being unavailable. This does not affect HB as the rent liability remains and a CT exemption can be applied for.

When a decant situation arises, whether planned or in an emergency, the HA should complete the pro-forma overleaf and send to CEC. HAs must also notify CEC when a decant ends.

## Notification of Decant

From: (Landlord) Date: Contact name: Contact number: Contact e-mail:	
Tenant Name: Tenant Address:  HB reference: Reason for decant:	
Decant address:  Decant rent (if different from tenancy rent) Start date of decant: Decant Landlord:	
<p>Rent and Council Tax will be charged, and HB and CTB paid, in accordance with the guidelines included in the Edinburgh CEC RSL manual, chapter 17.</p> <p>This form should be e-mailed to <a href="mailto:incomeandbenefits@edinburgh.gov.uk">incomeandbenefits@edinburgh.gov.uk</a> .</p> <p>The HA is reminded that they must notify CEC as soon as the decant ends.</p>	
Additional Information:	