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## **Changes of Tenancy Policy**

**SER-POL-36**

**Version 6.0**

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**Date approved: 2<sup>nd</sup> December 2025**

**Approved by: Parent Board**

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## **1. Introduction**

- 1.1 This Policy outlines Southway's approach to managing changes of tenancy applications, including tenancy assignment and succession claims, and our approach to awarding discretionary tenancies.
- 1.2 The Policy applies to tenancies for social and affordable rent.
- 1.3 The aims of this policy are to ensure that:
- All change of tenancy requests are managed in accordance with current legislation and the terms of the tenancy agreement; and
  - Homes are allocated to eligible people, preventing tenancy fraud and maintaining fairness to those already registered for re-housing and in housing need; and
  - The rights that existing and prospective tenants have in relation to tenancy changes are clearly explained.
- 1.4 When dealing with tenancy changes, Southway will do so in line with our REACH values; we will be:
- Respectful and Compassionate - providing support, advice, and assistance.
  - Equitable and Honest - providing clear and timely communication and explaining our decisions.
- 1.5 In addition to this Policy, tenants and applicants should seek independent legal advice when applying for succession and / or a discretionary tenancy.

## **2. Legal and Regulatory Requirements**

- 2.1 Through this Policy Southway will fully comply with the Regulator of Social Housing's Tenancy Standard and the following legislation:
- Housing Act 1985
  - Housing Act 1988
  - Localism Act 2011
  - Matrimonial Causes Act 1973

- Family Law Act 1996
- Administration of Estates Act 1925

### 3. Types of Tenancy Changes

#### Joint to Sole, Sole to Joint

- 3.1 Joint tenants share one tenancy agreement. When a joint tenant dies the tenancy automatically continues in the name of the surviving joint tenant(s). This is called survivorship.
- 3.2 If one joint tenant terminates their tenancy then this ends the tenancy for all joint tenants even if the remaining tenant(s) don't want the tenancy to end.
- When this happens Southway may grant the same property to the tenant remaining in occupation unless that tenant was the perpetrator of domestic abuse.
- 3.3 All other applications to change a joint tenancy to a sole tenancy will be dealt with by way of an **Assignment**.
- 3.4 Southway does not accept applications from sole tenants who wish to create a joint tenancy. In these circumstances the sole tenant may choose to terminate their tenancy and apply for a discretionary (new) tenancy in joint names. See **Section 5 - Discretionary Tenancies**.

#### Tenancy Assignment

- 3.5 Tenancies can be assigned to a **potential successor**. This is someone that would have the right to succeed if the tenant had died and as defined in the Tenancy Agreement.
- 3.6 Southway will consider applications to convert a joint tenancy to a sole tenancy through assignment to a potential successor, where this is reasonably practicable.
- In circumstances where one joint tenant cannot be contacted, the remaining tenant may choose to end the joint tenancy. In such cases, they may apply for a discretionary tenancy at the same property. See **Section 4** on Discretionary Tenancies.
- 3.7 Southway may refuse an assignment to a potential successor in the following circumstances:

- The tenant does not have capacity to assign their tenancy agreement, or
- There are reasonable grounds to suspect that the tenant is being coerced to assign their tenancy.

### Court Orders

- 3.8 Tenancies can be assigned **under a Court Order**. This is usually by way of a property adjustment order that includes the transfer of a tenancy from one party to another following separation or divorce. in connection with matrimonial proceedings.
- 3.9 Tenancies can also be assigned by way of Mutual Exchange (see Mutual Exchange Policy)
- 3.10 Assignments, other than those issued through a Court Order, may be refused if:
- The tenancy has been breached; this includes outstanding rent arrears and on-going ASB.
  - If the applicant is a perpetrator of domestic violence and abuse.
  - If the applicant is a minor and there is not a responsible adult or statutory service able to provide a rent guarantee.

## 4. Tenancy Succession

- 4.1 The table below summaries the contractual rights to succession for the different Southway tenancies:

Tenancy Agreement	Relevant Tenants	Statutory Succession Right	Has a Contractual Succession Right	Can apply for a Discretionary Tenancy
Assured Tenancy (Protected Rights) and Assured Tenancies	Tenants transferring to the Trust in November 2007 and any new tenants between December 2007 and December 2016.	Yes	Yes	Yes

All new tenancies from January 2017	Tenants new to the Trust from January 2017 onwards.	Yes	No	Yes
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4.2 All succession applications must be supported by documentation that:

- Confirms the identity of the person claiming succession.
- Demonstrates their relationship to the deceased.
- Proves their length of residence at the time of death.
- Proof of their right to rent.

Applicants are expected to provide sufficient evidence to support their claim,

To prevent tenancy fraud, Southway may carry out additional checks to confirm identity and residency within the qualifying period.

#### **Inheriting a Tenancy by way of a Will or Intestacy**

- 4.3 A tenancy can be passed on via a will if the tenancy agreement explicitly allows it and if the tenant dies without leaving a Will, through Intestacy rules.
- 4.4 The beneficiary (the person named in the Will) must meet the succession criteria and have been living with the tenant as their only and principal home at the time of death.
- 4.5 To prevent tenancy fraud Southway will carry out checks to confirm the validity of the Will or require Letters of Administration if there is no will and the estate is handled under intestacy rules.

#### **Rent and Arrears**

- 4.6 While succession applications are awaiting a decision the existing tenancy will continue to run despite the tenant's death. This is because the tenancy can't end whilst a succession claim is being processed to ensure continuity of tenancy. Rent will continue to be charged.
- 4.7 If succession is granted, the person who inherits the tenancy will also inherit the rent account, including any arrears accrued during this period.

- 4.8 If a discretionary (new) tenancy is granted any outstanding rent or debt linked to the previous tenancy will transfer to the new tenancy agreement and repaying that amount, will be a part of the new tenancy conditions. This is unless the outstanding amount can be paid from the deceased tenant's estate.

### **Rightsizing**

- 4.9 Southway will provide support and advice to successor's, including when a tenancy has transferred due to survivorship, who want to rightsize, move to a smaller home, by making a direct offer in line with our Rightsizing Policy.
- 4.10 Southway will treat the new home as the succeeded home. When the successor is a family member (not a survivor), this is referred to as succeeding the tenancy and not the home.
- 4.11 Southway will seek to offer reasonable alternative homes, up to three direct offers, when:
- A family member qualifies to succeed a home that exceeds their household needs,
  - The household consist of all adults who are occupying a family home, specifically a house with a garden.
- 4.12 If these offers are refused, Southway may commence possession proceedings (see section below). In most cases Southway will not start legal action to take possession of the home until after 6 months after the tenant's death.

Where a succeeding household includes children but is under-occupying a family-sized home, Southway may exercise discretion to allow the family to remain in the that home.

### **Minors – Equitable Tenancy**

- 4.13 A person under the age of 18 can qualify to succeed to a tenancy but they cannot legally hold a tenancy. In these circumstances the tenancy is held on trust until they reach 18 by a trustee, which could be a parent or guardian. The minor will hold an equitable interest, which is the right to occupy, and signs an Equitable Tenancy.

- 4.14 A trustee is responsible for managing the tenancy, including rent payments and other tenancy obligations. It is recommended that a person wanting to be a trustee seeks their own independent legal advice, before signing an Equitable Tenancy.
- 4.15 Southway will not act as a Trustee.

#### **Notices and Possession Claims**

- 4.16 The death of a tenant does not end a tenancy. If the tenant died intestate, which means without a will, or without an executor, then the tenancy is temporarily vested in the Public Trustee.

Southway will serve a notice to the Personal Representative of the deceased, register the notice with the Public Trustee, and then apply for possession if the tenancy has not been voluntarily surrendered.

- 4.17 Southway will apply to the County Court for possession of a property in the following circumstances:
- Where individuals remaining in occupation do not qualify as successors and are not offered a discretionary tenancy.
  - Where a family member has succeeded the tenancy, but the property exceeds their household needs, and reasonable offers of alternative accommodation have been declined.

- 4.18 In such cases, Southway will:

- Provide advice on housing options.
- Help to register for re-housing.
- Refer to the relevant local authority's homelessness service.
- Offer reasonable timeframe for vacating the property.

Applications for eviction will only be pursued where necessary and appropriate.

### **5. Discretionary Tenancies (including Special Succession)**

- 5.1 Southway will consider applications for a discretionary tenancy or special succession, meaning a new tenancy when a person has not qualified for succession following the death of a tenant if that person is eligible to apply.

- 5.2 For tenants who entered into a tenancy agreement pre-2017 a family member may be eligible for a Special Succession. Whether or not they remain at the property is at Southway's discretion and they will be required to sign a new tenancy agreement.
- 5.3 For tenants who entered into a tenancy agreement after 2017 there is no provision for family members to succeed upon the death of a tenant other than through statutory succession. People who are left in occupation can apply for a discretionary tenancy, provided they:
- Make an application in writing within 3 months of the tenant's death.
  - Prove that they are a family member of the deceased tenant, or
  - Prove that they were the deceased tenant's their long-term carer.
  - Prove that they lived at the property at the time of death and for the 12 months before.
- 5.4 When considering an application for a discretionary tenancy Southway will take the applicants individual circumstances into account, including but not limited to:
- Length of residency
  - Pregnancy or dependant children
  - Survivors of domestic abuse
  - Age
  - Disabilities
  - Health and Mental Health, specifically long-term conditions over 12 months that impact on normal day to day activities
  - Support networks
- 5.5 A Discretionary Tenancy will not usually be offered if:
- Any member of the household has an outstanding debt to the Trust.
  - A member of the household is currently on the Manchester City Council Rehousing Review List.
  - The person requesting to succeed is a perpetrator of ASB or Domestic Abuse



- 5.6 For both Special Succession and Discretionary Tenancies the person succeeding does not have a legal right to remain at the existing property and the Trust may usually seek to offer alternative accommodation if:
- The property has been adapted, and these adaptations are not required by the person or a member of their family.
  - The successor and their household will be under occupying the property by one or more bedrooms (only household members living at the premises at the time of the tenant's death will be considered)
  - The property is age restricted, and the household members do not meet this age restriction.
  - The applicant is unable to afford to pay the rent or any shortfall in rent caused by an under-occupation charge.
  - It is not in the Trust's best interests to allow the applicant to remain in the existing property.
- 5.7 When a move to a more suitable property is necessary, Southway will make two offers of alternative accommodation within nine months of the tenant's death.

Applicants will also be encouraged to register for rehousing to enhance their opportunities for securing a new home. If both offers are declined, Southway may proceed with legal action as described in **section 4.15**.

## **6. Appeals and Complaints**

- 6.1 Decisions that are made in line with the Tenancy Agreement and relevant legislation will be made by the Housing Manager / Head of Housing Management and Support. We will usually decide and communicate this within 20 working days of receiving all the required information.
- 6.2 Customers may challenge decisions via the appeals process. We will only uphold appeals where it's found we haven't acted in line with this policy or legal requirements. The Head of Housing Management and Support or the

Assistant Director Customers and Communities will determine appeals. Appeals will be considered and responded to within 20 working days.

- 6.3 Discretionary Tenancy decisions will be made by the Executive Director Homes and Communities and are final.
- 6.4 Complaints about how we have applied this policy will be managed in line with our Complaint Handling Policy.

## **7. Equality**

- 7.1 An Equality Impact Assessment has been completed to ensure that all appropriate actions are put in place to support tenants who have protected characteristics.
- 7.2 A range of mitigating actions can be considered during case management:
- Ensure staff are trained to handle issues sensitively, respectfully and confidentially for example when dealing with gender identity issues.
  - Make reasonable adjustments during the application and decision making process.
  - Accept a range of documentation to verify identity and relationship, including updated legal documents and statutory declarations. Be flexible on timescales respecting religious or cultural practices around mourning and death in particular.
  - Provide clear guidance and support for applicants who may face barriers for example Domestic Abuse survivors, due to gender reassignment, due to young age.
  - Monitor discretionary tenancy decisions to ensure no disproportionate refusals or delays affecting trans individuals.

## **8. Monitoring**

- 8.1 The Head of Housing Management and Support is responsible for the implementation of the Policy and will carry out regular checks of compliance.

- 8.2 The Policy is supported by a detailed procedural guide and regular training will take place to ensure that staff are both aware of and comply with the legislation and the Policy.
- 8.3 Information regarding the number of successions and discretionary tenancies that occur each year will be included in an annual Allocations and Lettings Report presented to Board/ People and Places Committee.

## 9. Related Documents

- Tenancy Agreement
- Succession Procedure
- Allocation Scheme
- Assignment Policy and Procedure
- Mutual Exchange Policy and Procedure
- Tenancy Policy
- Safeguarding Policy
- Domestic Abuse Policy

## Glossary of Terms

**Tenancy assignment** is the legal process by which a tenant transfers their tenancy to another person, often due to a change in their circumstances. This means the existing tenancy agreement continues, but the tenant changes—the new person (the assignee) takes over all the rights and responsibilities under the original tenancy.

**Survivorship** is the legal principle whereby, upon the death of one joint tenant, the tenancy automatically continues in the name of the surviving joint tenant(s). This is known as the right of survivorship, and it applies under common law rules. This applies to joint tenancies only, where the tenant continues the tenancy.

**Tenancy succession** is the legal process by which a person inherits a sole tenancy after the original tenant dies. It allows a qualifying individual to take over the tenancy and continue living in the property under the same terms.

**Statutory succession** is the legal right of a qualifying person to inherit a sole tenancy when the tenant dies, as defined by housing legislation—primarily the

Housing Act 1985 and Housing Act 1988. Only one statutory succession is allowed per tenancy. The successor is typically:

A spouse or civil partner (for tenancies created after 1 April 2012).

A family member (for tenancies created before 1 April 2012), such as a child, sibling, or parent, subject to eligibility criteria.

**Contractual succession** is an additional succession right included in a tenancy agreement when a tenant has died. A specific contractual term will allow someone to inherit the tenancy outside of statutory succession rights. This means the right to succeed is granted by the contract itself, not by housing legislation. Not all Southway tenancy agreements include this term, and contractual succession only applies when:

The tenancy agreement includes an express term stating who may succeed upon a tenant's death.

There has not been a previous succession (included tenancy transfer by way of survivorship).

**Special Succession** is a contractual succession right contained in some Southway tenancy agreements to persons left in occupation following the tenant's death. Whether or not the successor remains at the property is at Southway's discretion and they will be required to sign a new tenancy agreement.

### **Left in Occupation (no death / failed successors)**

When a tenant has left their home and has no intention to return, leaving other persons in occupation, this is not a succession. The person's left in occupation have no legal right to be in the home and are unauthorised occupants. Southway will assess the individual circumstances of the persons left in occupation but there is no requirement for Southway to provide them with a home.

This term also applies to person's who fail to meet the succession criteria when a sole tenant has died, who for example have moved in after the tenant's death or not within the qualifying period or cannot prove their relationship with the tenant.

**Discretionary Tenancy** is a tenancy granted by a landlord outside of statutory rights, usually in exceptional or compassionate circumstances. It is not automatically granted by law but is instead offered at the landlord's discretion.

Decisions are made on a case-by-case basis and usually apply to a person who does not have a legal or contractual right to succeed or be assigned the tenancy but whom Southway chooses to offer a tenancy to due to their individual circumstances.

A person who has lived in the home with the tenant but does not qualify for a statutory or contractual succession.

A person who has lived in the home and is a non-qualifying family member or carer.

Discretionary tenancies may also be awarded in the following circumstances when:

A sole tenant requests to add a joint tenant.

A joint tenant asks for someone to be removed from the tenancy, but not by way of an assignment.

In both cases above a discretionary tenancy decision will be made which may result in new tenancy agreement.

**Notice to Quit (NTQ)** is a legal form used to terminate a tenancy, typically when the tenant has died and no one has succeeded the tenancy. It's served to the Public Trustee if there's no known Will or executor.

**Notice of Seeking Possession (NOSP)** is used when the landlord intends to apply to court for possession, often due to breaches like ASB or rent arrears. It's part of the legal route to regain possession.

**Public Trustee** is a statutory office holder appointed by the Lord Chancellor, primarily responsible for managing estates and trusts in specific circumstances. The Public Trustee can act as executor or administrator for a deceased person's estate when there is no will or no executor is named or able to act.

**Equitable Tenancy** refers to a tenancy that typically arises when a tenancy agreement does not meet all the legal requirements to be a formal legal tenancy, but the tenant still has rights due to fairness and justice. Equitable tenants may not have the full statutory protections of legal tenants (e.g. under the Housing Act 1988), but they can still have enforceable rights.

POLICY REVIEW HISTORY
<i>To be completed during each review</i>

**Previous versions**

(version number – approved by – approval date – title if different)

1.0 Succession and Discretionary Tenancy Policy - 22 November 2016

2.0 November 2019

3.0 September 2021

4.0 March 2023

5.0 November 2023

6.0 December 2025

**Summary of main changes:**

- Policy Title Change: Renamed to Changes of Tenancy Policy to better reflect scope.
- Expanded Definitions: Glossary added for clarity on legal and tenancy terms.
- Discretionary Tenancy Criteria: More robust framework for assessing applications.
- Rightsizing Offers: Clearer process for successors in under-occupied homes.
- Appeals Process: Defined escalation routes for decisions and complaints

<b>Date of last EIA:</b>	December 2025
<b>Review lead by:</b>	Claire Davies – Head of Housing Management and Support
<b>Next review due:</b>	<b>November 2028</b>
<b>Approval level:</b>	<b>Parent Board</b>