

Tenure

The purpose of this document

The Tenure policy provides information on the different tenure types that we use in Stonham and the criteria used for each tenure type. There is also information on how to apply for exceptions to the policy.

Links

Supporting documents are available in a dedicated resources folder on the intranet within the Operational policy manual, section F -

[Tenure guidance and resources folder](#)

Version features

This policy has been updated, providing current job titles and processes.

There is a new section on joint tenancies, reflecting an increasing area of new business for Stonham.

The management of tenure agreements has moved to Tenure guidance in the Tenure resource folder.

The management of equitable tenancies is under some doubt at present. Stonham will continue to use equitable tenancy agreements for under 18 year olds until case law has clarified the position.

A new way of managing equitable tenancies is introduced, following NHF guidance. All clients reaching 18 should now sign the main agreement when they reach 18.

Note: If you are using this Policy in hardcopy please check the intranet to ensure you are working off the most current version

Version Box

Owner	Olivia Boutall and Margaret Thurlow	Issued	June 2011
Department	Policy and business support	Version No.	4
Approved by	Care and Support Senior Leaders Team	Ref:	PŌ' ŌŌŪ' PŪP' €JI
Intranet location	[[[Ca] ~ ċ • Ɖ [& Ɖ } ~ ! ^		

Version history

Version No.	Description of changes (Inc page numbers for partial reviews)	Date issued	Author
4	<p>New format reflecting current job titles.</p> <p>Advice on the management of equitable tenancies has changed, advising staff to ensure that clients sign the main agreement when they reach 18 rather than leave it blank differing from current practice.</p> <p>New section on joint tenancies</p> <p>Removal of the section covering the management of tenure agreements. This can now be found in Tenure guidance in the Tenure resource folder.</p>	January 2011	Olivia Boutall (HPA) and Margaret Thurlow (OPA)

Contents

Page		
1	Policy statement	5
	Standards	5
2	Roles and responsibilities	6
	Project staff	6
	Service managers	6
	Area business managers	6
	Directors of client services	6
	Agency managers	6
	Head of agency services	6
3	Using the correct form of tenure	7
	Types of tenure	7
	Tenancy or licence?	8
	Assured or assured shorthold tenancy?	9
	Equitable agreements	9
	Mixed tenure	10
	Trial periods	10
	Joint tenancies	11
	Managing agents	12
	Stonham acting as an agent	13
	Leases	14
4	Using Licences	15
	The use of licences	15
	Different types of licence agreements	16
	Respite care	17
	Supported lodging scheme	17
5	Managing tenure	18
	Staff responsibilities	18
	Clients' capacity	18
	Clients' charter	19
	Housing and care/support	19
	Rent increases	19
	Statutorily homeless	20
6	Changing tenure	21
	Changing tenure for existing services	21
	Changing tenure for existing clients	22
	Making the change	23
	Managing with more than one form of agreement	23
	Exc options	23
	Approvals and exceptions	23
	New services	24
	Existing services	24

Appendices

1	Legal and regulatory requirements	26
2	Involving clients to deliver better services	27
3	Equality impact assessment	28

Supporting documents in Tenure policy resource folder on the intranet:

Access to clients' rooms
Decision making flowchart
Ending the tenure agreement
Legal background to tenure
Legal enforcement action
Managing full assured tenancies
Managing assured shorthold tenancies
Managing equitable tenancies
Managing licences
Pets guidance
Pets rules
Pregnancy toolkit
Rights and responsibilities
Stonham's tenure agreements
Varying the agreement

Forms

Information checklist for sign up
Information for guarantors and equitable tenants
Review of an assured shorthold tenancy
Request to the Director of Client Services for approval to change tenure
Request to the Head of Agency Services for approval to change tenure

Supporting documents on the Home Group intranet:

Succession policy
Allocations & lettings policy – for information on assignment

1 Policy Statement

- 1 Our policy ensures all those who use our services and those of our Agents have agreements appropriate to their housing and the services offered to them.
- 2 Our agreements maximise contractual rights and recognise the importance of the Clients' Charter in enabling tenants and licensees to exercise these rights.
- 3 Our tenure agreements are written in accessible English.
- 4 We provide agreements in a variety of languages and formats to meet the needs of our clients.

Standards

Standard 1 We will grant the most secure form of tenure compatible with the accommodation and the type of service we are providing.

Standard 2 Stonham services use licences only in services where the four elements of a tenancy are not met, or where the specific exceptions detailed in the Tenure policy apply. We apply the same standards to the management of licences as to assured tenants.

Standard 3 Project staff will ensure that clients understand the agreements they sign.

Standard 4 Changes to tenure in existing services will be consistent with the Tenure policy, and will be formally approved using the approval and exceptions process.

2 Roles and responsibilities

Project staff (levels 3-5)

- 5 As project staff (levels 3-5) you will
- Issue the correct tenure agreement
 - Ensure clients understand their tenure agreement

Service managers

- 6 As a service manager you will
- Ensure that the correct tenure type is being used in the service
 - Ensure all schedules are attached to the tenure agreements
 - Ensure that the schedules are correct and up to date
 - Apply for exceptions to the tenure policy

Area business managers

- 7 As an area business manager you will
- Support exceptions to the tenure policy

Directors of Client Services

- 8 As a director of client services you will
- Give approval for exceptions to the tenure policy

Agency managers

- 9 As an agency manager you will
- Ensure Agents comply with the tenure policy
 - Apply for exceptions to the tenure policy on behalf of agents

Head of Agency Services

- 10 As head of agency services you will
- Give approval for exceptions to the tenure policy

3 Using the correct form of tenure

Standard 1 – We will grant the most secure form of tenure compatible with the accommodation and the type of service we are providing.

Types of tenure

- 11 The Good Practice Note on Tenure, published by the Housing Corporation in November 2007, requires that we should offer clients “the most secure form of tenure compatible with the purpose of the housing...” This means that we must ensure that where a tenancy could exist one is granted, and where housing is long term or permanent that tenancy will not be shorthold.
- 12 For Stonham clients, including those in Agency managed schemes, a range of tenure types exists. These are listed below.

Tenancy	Circumstances
Assured	<ul style="list-style-type: none"> • Long term or permanent housing
Assured shorthold	<ul style="list-style-type: none"> • Short-stay (6-24 months) • Short-leased housing • Decanting within 1 year • Statutorily homeless • Trial periods in long-term or permanent housing
Equitable	<ul style="list-style-type: none"> • 16-17 year olds where a tenancy is the norm
Licences	NOT for self contained accommodation
Standard (excluded licences)	<ul style="list-style-type: none"> • Very short-stay (3 months or less) • Refuges (not self-contained) • Specific alcohol/drug (rehabilitation) services • Very high support services
Non-excluded / contractual licence	<ul style="list-style-type: none"> • Self-contained accommodation which would otherwise attract a licence agreement
Other	<ul style="list-style-type: none"> • Registered Care Homes • Respite care • Supported lodgings

Tenancy or licence?

- 13 The basic decision about whether housing can be let on a tenancy or a licence rests on legal definitions built up through a body of case law. One key influential legal decision was the Street - Mountford (1985) case, in which the court decided that a tenancy exists if the elements of a tenancy exist, whatever the landlord calls the signed agreements. This case introduced the concept of the sham agreement.
- 14 The elements of a tenancy are:
- there must be **identifiable parties** - there must be a landlord and a tenant
 - there must be **identifiable premises** - a defined space
 - the arrangement must relate to a particular **period of time** - tenancies generally will refer to a fixed term (a 'fixed term' tenancy) or to a particular period (a 'periodic' tenancy) for example 'weekly' or 'monthly'
 - the occupier must have **exclusive occupation** of the premises.
- 15 Payment of rent is not an essential element, but the Law Lords in Street v Mountford ruled that payment of rent could lead to the presumption that a tenancy had been created.
- 16 If all four elements are present then a tenancy, with few exceptions, exists. The main exceptions relate to provisions of services and length of stay. If we grant a licence in circumstances where a tenancy exists, the licence can be considered a "sham". In these circumstances, the occupant actually has a statutory periodic tenancy, which is essentially the same as an assured shorthold tenancy.
- 17 The form of tenure used in a service must reflect both the nature of the accommodation, and the characteristics of the service that is being delivered. When deciding on the form of tenure, it is essential to be clear on a number of matters:
- Does Stonham own the freehold of the property?
 - If not, do we have a lease or management agreement with another landlord?
 - Is the property permanent accommodation - is it the occupant's sole choice as to when or if they move on?
 - If not permanent, what is the intended length of stay?
- 18 Area Business Managers should clarify these matters before deciding on tenure.
- **Go to Decision making flowchart in the [Tenure resource folder](#)**
- 19 The Area Business Manager must obtain approval for the form of tenure in the service, whether it is a new service or a change to an existing service. Where the choice of tenure is consistent with our tenure policy, approval can be obtained at regional level from the Area Business Manager. Where you wish to use a form of tenure, which does not conform with our policy, you must have the support of your Area Business Manager and then obtain approval from your Director of Client Services.
- **Go to Approvals and exceptions processes below**

- 20 Whilst thinking about tenure, it is essential to have in mind the circumstances which exist at the service, including property matters, and the nature of the service. Area Business Managers should be familiar with the most recent service definition. Under Supporting People it is important that the service definition is consistent with the intended length of stay. For example services currently funded by Block Gross contracts will be for short-term stay with assured shorthold tenancies or licence agreements. Those funded by Block Subsidy contracts are for long term services where assured tenancies are more likely to be used. Services that are commissioned by other agencies should also be mindful of the anticipated length of stay.
- 21 You should follow the Decision making flowchart below to help you make the decision. The flowchart is also used as part of the approval process.
- *Go to Decision making flowchart in the [Tenure resource folder](#)*

Assured or assured shorthold tenancy?

- 22 An assured shorthold tenancy can only exist in any of the following circumstances. They are:
- The service offers short stay accommodation (6 – 24 months)
 - Leased properties where Stonham does not own the property, and the lease requires vacant possession at the end of the term
- *Go to Leases below*
- We are planning to decant from the property within a year
 - The applicant has been referred to us as statutorily homeless to a service where a full assured tenancy agreement would normally be issued
 - We are offering a trial period in long-term or permanent housing.
- *Go to Trial periods below*
- 23 If a service is offering permanent housing, the resident should normally be offered an assured tenancy. The exception is where there is a trial period during which an assured shorthold may be issued, subject to the guidance on trial periods in this policy.

Equitable agreements

- 24 Equitable tenancies are special tenancies for people under 18 years of age. They exist because a 'minor' cannot hold a legal interest in land, and an assured or assured tenancies confer such a legal interest. Stonham uses equitable tenancies to grant 'minors' rights equivalent to adults in services where we offer assured or assured tenancies as the normal tenure type.
- 25 More information on how to manage equitable agreements is provided in the tenure guidance found in the tenure resource folder.
- *Go to [Tenure resource folder](#), managing equitable tenancies*

Mixed tenure in a service

- 26** In the most services and in the overwhelming majority of properties we will offer a single tenure to all clients. However there are some services where we more offer more than one form of tenure.
- 27** Mixed tenure schemes will exist where different services are being offered within one scheme. An example would be where a service for young people using assured shorthold tenancies has a defined space that is specifically for short term emergency accommodation. Due to the length of stay that bedspace would use a licence agreement.

Trial periods

- 28** Some services offering permanent or long-term housing may require an initial period of assessment. An assessment period should be used to establish whether the service is likely to meet the client's needs.
- 29** An open decision making process must exist so that clients know the criteria that are being used when the tenancy is being reviewed.
- 30** Stonham approves the use of assured shorthold tenancies during trial periods subject to these conditions: -
- the tenancy is converted to an assured tenancy after the trial period;
 - the trial period is clearly specified and made clear to the applicant prior to their acceptance of the accommodation;
 - the trial tenancy is formally reviewed in line with the review process specified in this policy;
 - if the tenancy didn't succeed, the use of Section 21 to end an assured shorthold tenancy means that the tenant will not be classed as intentionally homeless by the local authority.
- ***Go to Statutorily homeless below***
- ***Go to [Reviewing periodic assured shorthold tenancies in Tenure guidance in the Tenure resource folder](#)***

Please note: Trial periods are not suitable for services using assured shorthold tenancies as it is not possible to reduce the level of security further. It is not permitted to issue a licence agreement during a trial period as this would not be the correct tenure type for the service.

Managing trial periods

- 31 A trial period should not normally last for more than six months.
- 32 The first review of the tenancy should take place at the latest at three months. If a decision to make the tenancy permanent can be made earlier then this should be done. Increasing the security of the resident does not require any notice period, nor is it necessary to formally end the previous tenancy. The more secure tenancy type will automatically become the current tenancy.
- 33 In exceptional circumstances, and where there is a clear purpose the trial period can be extended. However, under no circumstances should a trial period be extended for more than 12 months, as we should be able to make a decision by the end of this period and the tenant should not be placed under such uncertainty for any longer period. Decisions must be clearly recorded on the review form.

Joint tenancies

- 2 Stonham increasingly provides housing with support for families with two responsible adults (usually parents). We provide a standard joint self-contained assured shorthold tenancy agreement. This can be found in SWIMS with the other agreements.
- 3 There are a number of issues for service to consider when offering a joint tenancy :
 - Do both partners require support? If no, it may not be appropriate to offer a joint tenancy. It may be more suitable for the single supported client to be the sole tenant, as we may need to seek possession when that client no longer requires support – if there is a joint tenancy the partner has a claim to the tenancy as well.
 - A joint tenancy means both parties are jointly responsible for all parts of the tenure agreement, including rent payment.
 - Joint tenancies are open to all adult partnerships regardless of marital status or sexuality. All applicants for a joint tenancy will be treated on an equal basis.
 - If the relationship breaks down it is essentially up to the couple which party moves out. If both clients require support then it is likely that staff will get involved in resolving who moves out of the property. In extreme cases and in the case of married clients, or those in a civil partnership, the tenancy of the property can be decided as part of divorce proceedings.
 - One joint tenant can end the agreement by serving a Notice to Quit on the landlord without informing their partner. This is quite common in cases of relationship break-down, domestic abuse, or where one party has abandoned.
 - If one client were to die, the other client will succeed to the tenancy.
 - A single client can assign their tenancy to their partner if they have been living at the property for a certain period of time, usually at least 6 months. Assignment is the transfer of a tenant's rights and responsibilities from one tenant to another. It can only occur in certain circumstances and to certain family members, including unmarried partners.

4 Guidance that accompanies this area are:

- [succession rights](#)
- [assignment rights](#)

These can be found on the intranet as part of Home Group policies

Managing agents

- 1 Other organisations manage a significant proportion of Home Group property under management agreements or leases. These organisations are known as Managing Agents. As landlord Home Group, through Stonham's Agency Services Team, is responsible for ensuring service delivery to clients in agency managed properties
- 2 Where Agents manage properties (owned by Home Group) on behalf of Home Group (usually through a management agreement), they cannot assume Landlord status. This means that their clients are tenants or licensees of Home Group, and are bound by Stonham Tenure Policy.
- 3 Managing agents, where they are registered social landlords, may lease a property from Home Group. A lease will give the agent RSL a legal interest in the property so that they will be able to let the property as landlord, issuing tenancy or licence agreements in their name. In some cases the agency may wish to use their own form of tenure rather than Home Group agreements. We expect however, that through a negotiated process, the arrangements for Agents with a lease will be as close to Stonham's Tenure Policy as possible.

➤ *Go to Leases below*

Agency compliance with tenure policy

- 4 The Agency Services Team is responsible for briefing Agents on the Tenure policy and its implications for them, and for ensuring that they comply with the policy.
- 5 Where proposed tenure arrangements are consistent with the Tenure policy, they can be formally approved alongside the approval mechanisms for negotiating a management agreement. Agency Managers should complete the Tenure Approval form, and the Head of Agency Services should sign it off.
- 6 Where proposed tenure arrangements differ from our policy, those arrangements need the approval of the Head of Agency Services. You should complete the tenure approval form and send it to the Operational Policy Team for checking legal and good practice issues, together with a covering note providing any relevant details. The Operational Policy Team will forward it on to the Head of Agency Services for final approval. You may not use an exceptional form of tenure until you have approval from the Head of Agency Services.
➤ *Go to [Tenure resource folder](#) - for a tenure approval form*
➤ *Go to Approvals and exceptions processes above*
- 7 Some Agents working with a number of RSLs may wish to use their own standard forms of tenure. The Agency Services team should try to persuade the Agent to use Stonham's standard forms wherever possible. However, where an Agent is able to

demonstrate the following four points then The Agency Services team may agree to the use of the Agency's standard form. The Agent must:

- demonstrate a positive benefit to the tenant of using a form of tenure which is consistent across the service
- confirm that other RSLs have agreed to use a standard form of tenure
- use a standard form which contains the same tenants rights
- use a standard form in accessible English.

8 If the four conditions above are met, the approval process can be used to authorise the form of tenure. However, if the conditions are not met, you should use the exceptions route.

Stonham acting as an agent

9 Stonham also manages some accommodation as an Agency under management agreements with other landlords.

10 A number of our services are based in property that we do not own. The property might be owned by another RSL, a local authority or a private landlord. Where we do not own the property and manage on behalf of another landlord, we cannot assume Landlord status. In terms of tenure policy, this means that clients are tenants or licensees of the owning Landlord, and will be offered tenancies or licences carrying the Landlord's name and we must be identified as the Agent.

11 Area Business Managers should always request that Stonham's standard forms of tenure are used in services where we act as agent. Standard forms of tenure are available which enable ABMs to identify the correct Landlord and identify Stonham as Agent.

12 Where an owning Landlord insists that its own forms of tenure be used, we have no alternative but to agree to this. Provided that the proposed form of tenure falls within the terms of this policy, the approval process can be used to authorise the form of tenure. However, if the owning RSL wishes to use a form of tenure that does not conform with the policy, the exception process should be used. For example, a service providing permanent shared housing for people with learning difficulties – the RSL wishes to use an Assured Shorthold, but the terms of this policy determine that an Assured tenancy is appropriate – the exceptions process applies.

13 It may be possible for us to lease the property and the Area Business Manager can explore this option.

➤ *Go to Leases below*

14 Where we have a lease, it is essential to be aware of the lease terms. A lease grants interest in a property, but we cannot grant more interest to the client in terms of tenure than we have. If the lease requires vacant possession at the end of the term, we should issue assured shorthold tenancies, no matter what the length of the lease. Because a lease gives us an interest in property, we can use our standard agreement, identifying Stonham as Landlord.

➤ *Go to Leases below*

Leases

Where Stonham owns the property

- 15 Where Stonham owns a property and leases it to another RSL, the other RSL can be identified as the Landlord on tenancies or licences. This is because having a lease gives them an interest in the property.
- 16 It is not possible for the other RSL to give more security of tenure than the lease affords, unless the lease contains specific provision. We will take on the obligation for housing clients at the end of the lease term.
- 17 If the lease is a short lease (under 21 years), then it will not be appropriate for the other RSL to issue a full assured tenancy.
- 18 If the lease is a long lease, it is possible to include provision that we will take on responsibility for rehousing clients at the end of the term. Under these circumstances, the leasing RSL can offer assured tenancies. The Agency Services Team, in proposing to lease a property will therefore need to consider the aims and objectives of entering into a lease, and the form of tenure that would be most appropriate under the circumstances.
- 19 If the lease is a short lease (under 21 years), then it will not be appropriate to issue assured tenancies.
- 20 However, if the lease is a long lease, we can offer greater security if the owner will agree to take on responsibility for rehousing clients at the end of the term. Under these circumstances, we can offer assured tenancies.
- 21 An Area Business Manager proposing to lease a property therefore need to consider the aims and objectives of entering into a lease, and the form of tenure which would be most appropriate under the circumstances. If an assured tenancy would be offered, you should negotiate a suitable lease term with the owning Landlord wherever possible.
- 22 **If the accommodation is in short-leased housing;** a Section 21 Notice should be served in plenty of time for possession proceedings to take place if necessary.

4 Using Licences

Standard 2 – Stonham services use licences only in services where the four elements of a tenancy are not met, or where the specific exceptions detailed in the Tenure policy apply. We apply the same standards to the management of licences as to assured tenants.

The use of licences

- 23** The use of licences in for housing is reasonably well defined in housing law. The key tests for Stonham to demonstrate that the housing should not be a tenancy relate to the nature of service provision, exclusivity of occupation and length of tenure.
- **Providing very intensive levels of care or support** could lead to the creation of a licence, especially where it means we cannot give 'exclusive occupation'. Services might include providing personal services in a client's room (such as meals, changing bed-linen, assisting clients to wash and dress etc.) as a normal part of the service.
 - The **exclusive occupation test** needs to show that the client does not have exclusive occupation of the accommodation described in the agreement. Where clients genuinely need to be moved around from room to room this could be enough to confer a licence, but it needs to actually happen as part of the normal management of the service, not just exceptionally or theoretically.
 - **The length of tenure test** is not defined in law, but Stonham considers that accommodation of three months or less duration is not considered to be a person's home and that a tenancy could not apply in this circumstance.
- 24** We use licences in a variety of different settings including residential care homes, respite care, very short-stay hostels, drug and alcohol services, lodging schemes and refuges. There is also a licence available for temporary decanting of clients for essential works. The purpose of this agreement is to ensure you do not create a new tenancy when temporarily decanting a person to do work on their normal home. All these circumstances fall generally within the scope of the legal definitions.
- 25** Circumstances where a licence may exist:
- Services where we do not create a Landlord/Tenant relationship. For example, very short-stay projects such as night shelters, or where we offer respite care and the occupant has their own home
 - Services providing very intensive levels of care or support where we cannot offer exclusive occupation, for example, Registered Care Homes where of necessity we provide care and support in the client's room/home
 - Where one of the four elements of a tenancy is absent. For example, if an occupant shares a room, then a tenancy cannot exist.
- 26** There are some types of service provision, which we consider exceptional within the terms of this policy. To use licences in these circumstances the accommodation must be hostel accommodation and not self-contained properties. They are:

- **Drug and alcohol services**

The purpose of drug and alcohol services is to offer a supportive environment for clients working to be free of substance dependency. In these circumstances, we require unrestricted access to clients' rooms to provide a service, which is genuinely needed by clients. Therefore, the circumstances of a tenancy do not exist, as the client does not have exclusive possession. .

- **Women's refuges**

We need to frequently move families within a refuge, to enable family groups to stay together and to make best use of flexible resources to respond to urgent needs. Clients do not have exclusive occupation as we determine where and when they must move to meet our obligations and needs.

- **Very high support services**

In some services the level of support needed means that it will be necessary and normal to move clients around the service from time to time. We allow the use of licences in these services.

Different types of licence agreements

- 27 A licence agreement gives the resident permission to occupy the property whilst some other service is provided. There are two main different legal types of licence.

Excluded licence

- 28 Excluded licences are available for specific types of accommodation. The term 'excluded' means that they are excluded from the provisions of the Protection from Eviction Act 1997. **They cannot be used in self-contained accommodation.** This is the main type of licence agreement that we use, as defined by Section 3A(9) of the Protection from Eviction Act 1997. The provisions for use are given in the 1988 Housing Act. The two types of accommodation that are relevant to Stonham services are:

- **supported lodging schemes**

- **hostel accommodation**, defined as:

- ◆ residential accommodation that is not separate or self-contained
- ◆ either board or facilities for the preparation of food are provided.

- 29 The licences are excluded from the requirements of the Protection from Eviction Act 1997 in several areas:

- the Notice (to terminate the licence) does not need to be in a prescribed form
- there is no requirement to give specified time-periods on Notices (although the Office of Fair Trading does require us to be 'fair' in giving reasonable notice
- there is no legal requirement to obtain a court order prior to eviction, unless the landlord would otherwise have to forcibly evict the resident. However you **must** follow Stonham policy on managing licence agreements and use the correct notice period on the Notice. If the client does not move out of the property at the end of the notice period you will need to apply to court for possession and an eviction warrant.

- 30 It is important that where we use excluded licences on the basis that the client will not have exclusive occupation, we can demonstrate this. If it is because we need the freedom to move clients to different rooms within the service, then you must be able to demonstrate that for good management reasons you have had to move clients regularly and for the correct reason. Our licence agreements allow for this and therefore a new agreement does not need to be signed each time a resident is moved within a property.

Non-excluded licence

- 31 Licences in self-contained accommodation are 'non-excluded' licences. This means that they are not excluded from the Protection of Eviction Act 1997 and therefore are subject to four weeks termination notice by the landlord and possession through the courts.
- 32 If we use an excluded licence incorrectly (for example, in self contained premises) we are open to challenge by the client and the courts. A challenge is most likely to arise when we are seeking to evict the client. The client may be able to argue that the correct form of tenure should either be an assured shorthold tenancy or a non-excluded licence. If the client succeeds we would have to start possession proceedings from the beginning using the correct process. Therefore it is very important that where excluded licences are given, they are used in the correct services.

Respite care

- 33 Respite Care is accommodation with a high level of support for those who need alternative accommodation for a short period. The length of stay ranges from a few days to a few weeks.
- 34 The accommodation is typically funded by the individual or Social Services
- 35 We provide a specific form of licence agreement for respite care accommodation. Due to the temporary nature of the accommodation it is unlikely we will need to carry out possession action, but where needed, the normal licence processes apply.

Supported lodging schemes

- 36 We manage a number of supported lodging schemes around the country. The client lives in a private property as a lodger, with their own room. The landlord will normally provide linen and cleaning services, as well as meals. The specific structure for each service may differ, but as a general rule we will support the lodger, as well as offering advice and assistance to the landlord where needed.
- 37 We use a specific form of licence agreement for supported lodgings. The agreement will be between the landlord and the client. Stonham is not party to the agreement, although the support service we provide is mentioned in the agreement. The detail of the support service is given in a separate agreement, which will be signed by Stonham and the client.

5 Managing tenure

Standard 3 – Project staff will ensure that clients understand the agreements they sign.

Staff responsibilities

- 38 Our tenure agreements are the key contractual document between our clients and us. The agreements cover clients' rights and responsibilities alongside our obligations as landlord. Agreeing to the conditions of the agreement is the basis for clients to stay in our services.
- 39 Staff must ensure that each client understands their tenure agreement before they sign it. If there are language difficulties you will need to consider using an interpreter or translating the briefer plain English guide in the Welcome Pack. It is not appropriate to allow a client to sign a fully translated tenure agreement as we would not be able to present this document in court if possession proceedings had to be instigated at a later date.
- 40 A client's capacity to understand the agreement is an important issue and is addressed in more detail below. If necessary an advocate should be present to help the client understand the issues in the tenure agreement.
- *See Clients' capacity below for more detail*

Clients' capacity

- 41 'Capacity' refers to the idea that someone entering into a contract must be capable of doing so, or the contract is void. The Mental Capacity Act 2005 became law in 2007 and essentially means that now all people aged 16 years and over will be presumed to be capable of making decisions unless it is clearly demonstrated otherwise. Clients must be supported to make decisions and those who support them will be expected to respect those decisions.
- 42 Anyone who lacks the capacity to enter into a contract must either have a guardian or appointee to act on their behalf. Unless the client has appointed a person with Lasting Power of Attorney or Enduring Power of Attorney who can sign the agreement on their behalf, a deputy will be appointed by the Court of Protection.
- *See more information on the [Mental Capacity Act on the Hub](#)*
- 43 We make special provisions for minors by issuing equitable tenancy agreements. Otherwise, we take the view that we will enter into tenancies or licences with those people who need and want our services. We will use our best endeavours to ensure that they understand the nature of the agreement they are entering into, and the rights and obligations this gives them.

Clients' charter

- 44 The Clients' charter titled "A charter for housing association applicants and clients" is a leaflet published by the Housing Corporation, which spells out rights for clients of Registered Social Landlords and the responsibilities of Registered Social Landlords in delivering services to clients.
- 45 It is a requirement of this policy and the Tenant Services Authority that new clients at any service are given a Charter when they are signed up. The Charter must be an original leaflet, not a photocopy.
 - Go to [Lettings in the Operational Policy Manual](#)
- 46 The Charter is available from your area office. New copies can be ordered through your Regional Administrator from Tasker & Stone, code HOMEBR-006. There is a cost for ordering them.

Housing and care / support

- 47 Whilst the boundary between housing and support may be blurred when looking at project staff's work, it is clear when considering housing law.
- 48 A tenancy gives the tenant rights and obligations in relation to the property they occupy. There is an obligation to accept support contained within our tenancy agreements but this has yet to be tested in court and therefore it is uncertain whether it is enforceable. This policy does allow the limited use of the Section 21 process for assured shorthold tenancies, to deal with such issues.
- 49 A licence simply grants permission to occupy a property whilst a care/ support service is provided. Therefore, if a resident does not wish to receive the support service, we are able to terminate their licence agreement.
- 50 There is a difference in providing care and support. Care is defined, by the Department of Health, as the provision of personal care to someone, for example in Registered Care Homes. Support is providing practical and emotional support to clients and helping them to develop life skills, for example on how to manage their daily affairs. Both exist within our services at different levels depending on the needs of the clients and the aims of the service.

Rent increases

- 51 Each year, Stonham increases its charges to clients. To meet our statutory obligations, we write to each resident informing them of the increase. This may be by letter or in a Notice. This is sufficient to increase the rent, and you should not issue a new tenancy or licence to a resident.
- 52 Please note that service charges are included in the definition for 'the charge' or 'the rent' and therefore it can also **only** be increased on an annual basis on the first Monday in April.

Statutorily homeless

- 53** Special provisions apply where we provide housing to assist a local authority with its duties to house people who are statutorily homeless, under section 193, 194 or 195 of the Housing Act 1996.
- 54** The Homelessness Act 2002 amended the 1996 Housing Act, abolishing the two-year limit on temporary housing. The local authority is now required to provide temporary housing until the applicant has been provided with settled accommodation.
- 55** The homelessness duty will now end when the tenant accepts an assured or assured shorthold tenancy, not merely when offered the tenancy, as was the previous case.
- 56** Any assured tenancy we offer under these circumstances will automatically be an assured shorthold tenancy, and you should issue an assured shorthold tenancy accordingly. If a licence agreement is being used in the service, then issue a licence agreement.
- 57** When the Local Authority has made a decision about the status of the person, which may be to offer them permanent housing, a Section 21 Notice should be served to end the tenancy.
- 58** An assured shorthold tenancy issued to a person in these circumstances can be converted to an assured tenancy where the local authority nominates the resident for a permanent tenancy under Part VI of the Housing Act 1996.

6 Changing tenure

Standard 4 – Changes to tenure in existing services will be consistent with the Tenure policy, and will be formally approved using the approval and exceptions process.

Changing tenure for existing services

- 59 There are times when the nature of a service changes, due to changing needs or demand or remodelling. On these occasions, it may be appropriate to change the form of tenure at a service.
- 60 Where the nature of the service is to change so that the 'resident type' changes (for example, from being a general service for single homeless people to being specifically for young people), and tenure type needs to change as a result, the Area Business Manager should consider the tenure issue as part of planning for the change.
- 61 If you wish to adopt a new tenure type for an existing service consistent with the Tenure Policy, it should be included in proposals for the change of service and approved as part of the normal process of approving changes to a service.
- 62 If the change in tenure type is not consistent with the Tenure Policy (that is, it is an exceptional circumstance), you will need the approval of your Director of Client Services before you can adopt the new tenure type. Where there is a change in service provision, tenure should be considered by RAP as part of that approval.
- *Go to Approvals and exceptions processes below*
- 63 As a Registered Provider, we have an obligation to consult clients on any changes we propose in housing management that affect them. This includes changes to tenure. Therefore, you need to formally consult clients before you make changes in tenure, and you need to keep a record of how you have undertaken the consultation. You should undertake the consultation in the way that is most appropriate for the client group.
- 64 Refer to the tenure agreement used in the service to check the consultation clause requirement. The standard statutory notice period of any changes should be at least one month's notice in writing before that change can be implemented. It is important that all clients in the service are aware of the proposed changes, either by individual consultation or through specific house meetings.
- 65 You must inform clients of the reason for the proposed change of tenure; the effect of a change to their rights and responsibilities; and of their individual right to refuse to accept the new agreements.
- *The Operational Policy Manual Section A, [Supporting clients effectively](#) offers valuable advice on working with clients both individually and in groups*
- 66 Once you have obtained the correct approval and undertaken formal consultation with existing clients, you can formally introduce the new tenure for the service. This

means that any new lettings will use the new tenure. You may also need to change literature about the service as appropriate.

➤ [Go Lettings in the Operational Policy Manual](#)

Changing tenure for existing clients

67 Where a change in tenure type is needed following a review of a service, there will be circumstances where Service Managers and/or Area Business Managers wish to introduce the new tenure type for current clients. In order to decide if and how to do this you need first to consider the following question, which will have an impact on your ability to change current clients' tenure:

Will the proposed change in tenure result in increasing or decreasing the rights and security of the clients?

68 You may not, under any circumstances, impose new agreements on existing clients, even if their rights would be substantially increased as a result. Changing tenure for existing clients must be a negotiated process.

69 Inform clients of the reason for the proposed change of tenure; the effect of a change to their rights and responsibilities; and of their right to refuse to accept the new agreements. This is particularly important where the change is likely to adversely affect their rights. Our obligations and the resident's rights are set out in the standard tenure agreements at clause entitled "Altering the agreement".

Decreasing rights and security

70 A landlord cannot legally reduce a client's security of tenure. For example a client with a full assured tenancy agreement cannot be offered a move by the same landlord to a new service with an assured shorthold tenancy or licence agreement. They would have to be given another full assured agreement.

71 Clients moving to another landlord can be offered a different tenure type whatever the client's previous level of security. It is increasingly common for clients moving to general needs accommodation to be offered an introductory tenancy for a trial period before moving onto a full assured agreement.

72 In circumstances where there are compelling reasons for wanting existing clients to accept new tenure arrangements which decrease their rights and security, you may only introduce the new agreements for existing clients with the informed and freely given agreement of each individual resident. For example in cases where a client needs to move to registered care due to a change in their support needs.

Increasing rights and security

73 Where the proposed change will result in increased rights and security for tenants because, for example, you are introducing Assured Shorthold Tenancies where licences were previously used; there is no reason in principle why current clients should not be invited to sign new contracts as tenants. An exception to this would be where we are housing someone who is statutorily homeless on behalf of the local authority. In this instance the level of security offered cannot be greater than an assured shorthold tenancy agreement.

➤ [Go to Statutorily homeless above](#)

Making the change

- 74 The only condition that we place on allowing clients to sign new contracts is that the resident is not subject to any action, apart from arrears action, in connection with their current agreement. Such action may include anything from informal warnings about nuisance to more formal action such as final warnings or Notices being served on tenants. Where you intend to withhold the opportunity for a resident to sign a new agreement you must ensure the reason for this is fully documented in the resident's file.
- 75 The reason for this condition is that if you offer a new agreement while there is action outstanding, it is likely to make the action invalid. It is reasonable to withhold the new agreement until the action is resolved.
- 76 Where a resident is in arrears they may be offered a new contract on the condition that they agree to repay the old arrears off. There is a clause in all agreements allowing for an agreement for old arrears to be paid off by agreed weekly amounts.
- 77 Any existing notices that were served on the previous tenancy will be invalid when a new tenancy agreement is signed as Notices relate to the specific tenancy agreement in force at the time of service. You will need to reserve the notice under the terms of the new agreement.
- 78 Where court action has already begun, do not change the tenancy agreement, as this will make the action invalid.

Managing with more than one form of agreement

- 79 If tenure arrangements change as a result of this policy, new clients will receive different types of agreement from existing clients. They may have different rights and responsibilities and different sanctions available to us for tenancy management.
- 80 For a period of time, the service will have clients who are on different types and/or forms of agreement. Managers will need to be fully aware of the type and form of tenure for each resident in the event that any action is taken.

Note: You will need to be particularly aware of the need to ensure you do not automatically apply new sanctions to clients on old agreements. This means you will need to check which form of agreement a resident has before deciding on courses of action.

Approvals and exceptions process

Exceptions

- 81 We recognise that it will not always be possible or appropriate to provide housing with the form of tenure as described in this document. In such circumstances we will allow the use of alternative forms of tenure subject to the approval of the Director of Client Services. You must follow the approval route to change a tenure type and be aware that if you are issuing a tenure type that may not be legally correct you do face the risk of a legal challenge by the client.

- 82 Where we manage housing on behalf of another landlord (excluding HGL subsidiaries) the use of a particular form of tenure will also be subject to the approval of that landlord. We will still have a professional and moral duty to ensure that the legally correct form of tenure is being used.

New services

- 83 Where Area Business Managers (ABMs) are developing new services the tenure arrangements should be agreed before the new service opens. **Remember that self-contained accommodation cannot be given excluded licence agreements.**
- 84 Where tenure arrangements are consistent with the tenure policy, they should be formally approved alongside the normal approval mechanisms for developing new services (currently through the Risk Appraisal Process - RAP). You should complete a 'Tenure approval form', and your Area Business Manager (ABM) should sign it off. You should retain a copy for audit purposes and forward a copy to the Operational policy team for the central file and for monitoring purposes.

➤ Go to [Tenure resource folder](#) - for a tenure approval form

- 85 The Risk Appraisal Form A for new services asks for information on seven areas. These are:

1. Nature of service
2. Demand for service
3. Stakeholder support for service
4. Financial viability
5. Management viability
6. Exit strategy
7. Contractual / legal issues

- 86 Where proposed tenure arrangements for new services differ from the Tenure policy, ABMs need Director of Client Services approval to use those tenure arrangements. The Services Manager should complete the Tenure approval form and the ABM should sign it off. You should then forward it to the Operational policy team for checking legal and good practice issues, together with a covering memo providing any relevant details. Policy will forward it on to your Director of Client Services. The Director of Client Services will then either agree or refuse your proposal. Please note that you may not use an exceptional form of tenure until you have the approval of the Director of Client Services. When you have received approval, please forward a copy to the Operational policy team.

Existing services

- 87 Area Business Managers (ABMs) should follow the guidance given in **Changing tenure** above.
- 88 Where tenure arrangements are consistent with the tenure policy, they should be formally approved alongside the normal approval mechanisms for changing services. You should complete a 'Tenure approval form' and your Area Business Manager

(ABMs) should sign it off. You should then send a copy to the Operational policy team, and retain a copy for audit purposes.

➤ Go to [Tenure resource folder](#) - for a tenure approval form

- 89 Where the proposed new tenure arrangements differ from the tenure policy, ABMs need the approval of the Director of Client Services. You should complete the Tenure approval form, and your ABM should sign it off. You should then forward it to the Operational policy team for checking legal and good practice issues, together with a covering memo providing any relevant details. Policy will forward it on to your Director of Client Services who will either agree or refuse your proposal. Please note that you may not use an exceptional form of tenure until you have the approval of the Director of Client Services. When you have received approval, please forward a copy to the Operational policy team and retain a copy for audit purposes.

Appendix 1 Legal and statutory requirements

Supporting People quality assessment framework (QAF)

The table below highlights the relevant QAF objectives that should be met in local processes.

C1.4 Fair access, diversity and inclusion

C1.4.1 This standard supports the service to meet outcomes in the following outcome domains: *Enjoy and achieve, Be healthy, Stay safe* and *Make a positive contribution*.

Fair access, fair exit, diversity and inclusion are embedded within the culture of the service and there is demonstrable promotion and implementation of the policies.

Performance level B
Staff support clients to understand the occupancy agreement and other documents they have signed and to know their rights and responsibilities.
Performance level A
Policy and process review show the impact of client involvement.

Appendix 2 Involving clients to deliver better services

How we engaged with clients in developing this policy

Clients were interviewed as a group in an ex-offender service, regarding any issues with their tenure agreement. All were broadly happy with the agreement, particularly with the level of security it gave. All understood the agreement and felt that although it was long, the length was needed.

A brief questionnaire was also sent out to a variety of client groups, including mental health, young people and ex-offenders. Again many said the agreements were too long and some clauses were difficult to understand.

Clients were involved in completing the Equality Impact Assessment in Appendix 3 of this document. Their comments fed directly into the assessment of the potential impacts of each diversity strand.

How our clients influenced the work

The agreements have been reviewed, with particular attention to plain English, although this can be difficult to meet when legal considerations also have to be taken into account.

Clients at the focus group questioned the clause restricting children in the service, as all had children and wanted them to visit. I explained that this is an issue for their house rules which they need to discuss with staff. I emphasised the need to attend house meetings in order to ensure that such clauses were reviewed on an individual service basis.

None liked the suggestion of reviewing the noise clause to state no noise at any time, rather than between the hours of 11pm and 7am. They felt that there shouldn't be any restrictions on music noise during the day. If there are any problems in the service regarding noise, clients tend to work it out themselves.

Appendix 3 Equality Impact Assessment

An initial assessment screening was carried out with a group of staff and clients. The impact on each diversity strand was considered. The full Equality Impact Assessment is available on the Hub.

Impact

The following changes have been made to the policy:

Standard 3 – Project staff will ensure that clients understand the agreements they sign.

It is recognised that clients with English as a second language may have difficulty in understanding their tenure agreement. A plain English guide is available in the Welcome Pack and is suitable for translating. The policy also advises staff to employ a translating service where this is more appropriate.

Clients with a low level of literacy may need help in understanding their agreement. The policy advises staff to use an advocate for the client where this is needed. In addition information regarding the Mental Capacity Act is provided in the policy document.

In the case of joint tenancies, it is stated in the policy that Stonham must ensure that there is no discrimination with same sex partnerships.

For young clients, under 18 years old, the use of equitable tenancies is addressed in the policy. Any client under the age of 18 will not be given a lower level of security simply due to their age. We will use equitable tenancies to address this issue.