



Lodgers, Subtenants and Caretakers Policy

1.0 Purpose and scope

This policy sets out our approach to managing requests from residents to have a lodger, subtenant or caretaker live in their property. We aim to:

- Prevent illegal assignment and the creation of unintended tenancies and rights of occupation by managing these requests effectively
- Prevent the breach of lease terms by NHG or the lease terms of its leaseholders which might affect its security, hinder enforcement and adversely affect other residents
- Ensure requests are dealt with fairly and promptly

This policy applies to General Needs and Care & Support tenants, as well as shared owners and leaseholders. Temporary Housing, Key Workers and Student Lets residents are not allowed to sublet their home or to take in a lodger or caretaker.

If a tenant unlawfully sublets part or the whole of their property while failing to use the property as their main or principle home, we follow our relevant policy or procedure for dealing with tenancy fraud.

2.0 Definitions

Caretaker – a person who looks after a resident's property while they are away from it. Also known as a house sitter.

Leaseholder – a person holding a long lease of more than 21 years on either a standard leasehold or shared ownership basis. In the former case their legal status is a leaseholder but in the latter in most cases it is as both a tenant and a leaseholder.

Lodger - a person who shares all the facilities of a dwelling and does not have exclusive possession of any part of the property. Their legal status is that of a licensee.

Subtenant - a person who has exclusive rights to part of the property. Their legal status is that of a tenant.

3.0 Entitlement to take in a lodger

Whether a resident can take in a lodger or not, or requires our permission to do so, will depend on the type of tenancy agreement or lease they hold:

- Secure tenants have the right to take in a lodger and do not need our permission for this, but should inform us of the name of the lodger
- Assured tenants have the right to take in a lodger but should check their tenancy agreement to see whether they require our prior written consent, which we will not unreasonably withhold
- Assured-shorthold tenants should check their tenancy agreement to see whether they have the right to take in a lodger with our prior written consent
- Leaseholders can generally take in a lodger provided that they maintain the other covenants of their lease
- Residents that live in short-term accommodation (normally up to two years), where the service is part of an incremental recovery pathway, where it is to meet specific needs (for example Learning Disability or Mental Health) or on a licence agreement are not allowed to take in a lodger.

4.0 Entitlement to sublet part of the property

Secure and assured tenants have the right to sub-let part of their property, but must first obtain our consent, which we will not unreasonably withhold. Requests for permission to sub-let should be made in writing.

Assured shorthold tenants are usually not permitted to sub-let any part of their property. If the tenancy states otherwise requests for permission to sub-let should be made in writing.

Residents that live in short-term accommodation (normally up to two years), accommodation that is part of an incremental recovery pathway, accommodation that is let to meet specific needs (for example Learning Disability or Mental Health) or have a licence agreement are not allowed sublet the property.

Individual leases may contain clauses on sub-letting. Where there is discretion under the terms of the lease, we will not unreasonably withhold consent. Whilst we have no obligation to do so, we may in special circumstances be prepared to consider permission to sub-let, even where the lease prohibits sub-letting. We reserve the right to charge an administration fee to process the request where this is allowed under the terms of the lease.

5.0 Granting consent to have a lodger or subtenant

5.1 Tenants

Where consent is required, this may be reasonably withheld if:

- Taking in a lodger would cause overcrowding
- Major works are planned, which will affect parts of the property that would be occupied by the lodger
- The tenant is subject to a possession order
- The proposed sub-tenant or lodger is subject to action for anti-social behaviour

- It would not be appropriate for the proposed sub-tenant or lodger to live with the head tenant given the type of housing or scheme.

Each case will be considered on its own merits.

Where written consent is required for taking in a lodger or subletting part of the property we request that the resident provides a written statement of the names, sexes, ages and family composition of the proposed lodgers and/or subtenants, together with full information about the amount of rent they are to be charged and the part of the premises they are to occupy.

If we suspect tenancy fraud, we also request a copy of the lodger or tenancy agreement before granting consent.

If consent is withheld, we put this in writing explaining our reason(s) for refusal. We aim to respond to requests within 10 working days.

5.2 Shared owners

We consider granting consent for a shared owner to sublet all (but not part) of their property, where they are unable to occupy the property for any of the following reasons:

- Where it is necessary to temporarily relocate for a caring responsibility
- Where it is necessary to temporarily relocate in order to seek employment elsewhere
- Where a request is made by a serving member of the Armed Forces whose tour of duty requires them to serve away from the area in which they live (a distance of at least 50 miles or 90 minutes travelling time) for a fixed period.

We will require the shared owner to provide evidence to support their stated reason for subletting and we will determine the validity of the evidence provided.

We may grant permission by License to Underlet subject to the following conditions:

- The property will be let for a fixed period of up to 12 months only
- The property will not be let for more than one consecutive period, i.e. it will not be possible to let the property again after the initial 12 months.
- At the end of the license period the leaseholder must return to reside in the property in compliance with the terms of the lease
- Any alternative address for the shared owner will need to be provided to us
- Any other conditions as specified in the license.

5.3 Leaseholders

Depending on the lease specifications, leaseholders might need to request consent to sublet all or part of their property.

Where the lease allows subletting or is silent, consent is not required.

Where the lease requires NHG to give consent, we may do so unless it is reasonable not to do so. In granting consent for a leaseholder to sublet all or part of their property, we advise leaseholders that:

- The tenant(s) must have a formal tenancy agreement which reflects the covenants of their lease. If the tenant breaks the terms of the lease, we will take action against the leaseholder
- The leaseholder will remain our main point of contact, not the sub-tenant
- Any alternative address for the leaseholder will need to be provided to us

- The subtenant must respect the terms of the lease.

6.0 Holiday lets

Where a resident seeks to let either part or all of their property as a holiday let (e.g. via Airbnb, companies that offer the same service or as a holiday exchange), we consider this as running a business from home, for which all residents must first seek permission. We refuse residents permission to run this type of business from their home.

7.0 Caretaker / house sitter

Residents do not have the right to have a caretaker/house sitter look after their property, but we do not unreasonably refuse written requests where we are satisfied with the reason for absence, the arrangements for paying the rent and the duration of absence. Acceptable reasons for absence include caring for someone while they convalesce, taking up a short employment or training opportunity, or serving a short prison sentence.

Permitting a caretaker may not be appropriate in all cases and is dependent on the type of occupancy agreement held or the qualifying conditions of the estate or scheme.

Where a request is granted, we may ask for the name, age and gender of the caretaker to enable staff to identify them during visits to the property.

8.0 Where consent has not been sought

8.1 Tenants

Where we discover that a resident has taken in a lodger or subtenant without first seeking permission as stipulated in their tenancy agreement, we consider granting consent retrospectively. If permission is refused but the lodger or subtenant continues to occupy the property, we consider taking action for a breach of tenancy agreement and seek possession of the property.

8.2 Shared owners

Where we discover that a shared ownership leaseholder sublets their property without permission or following the end of a license period, we will deem them to be in breach of their lease and we will take enforcement measures or legal action as appropriate.

8.3 Leaseholders

Where we discover that a property is sublet without our consent and against the terms of the lease, we will reserve the right to take legal action at our discretion.

Where a breach has occurred but subletting is permitted and consent has not been obtained, we will consider granting consent retrospectively.

9.0 Our approach

In writing this policy we have carried out assessments to ensure that we are considering equality, diversity and inclusion. If you'd like a copy of the assessment, please email your request to policy@nhg.org.uk.

10.0 Reference

- Section 93 and 94 of the Housing Act 1985

Document control

| | |
|----------------------|---|
| Author | Iona McHugh, Policy Officer |
| Approval date | 02/07/2019 |
| Effective date | 31/07/2019 |
| Approved by | Policy Group |
| Policy owner | Head of Regions Head of Leasehold Services |
| Accountable Director | Director of Housing Director of Leasehold |

Version Control

| Date | Amendment | Version |
|------|----------------|---------|
| | New NHG policy | 1.0 |