



Cloch Housing Association

Sub-Letting Policy

Policy Name	Sub-Letting Policy
Policy Category	HM
Policy Number	033
Approved by	Housing & Property Services Sub Committee
Responsibility of	Housing Services
Date Adopted	01/03/1998
Last Review	06/08/2022
This Review	06/08/2024
Next Review	06/08/2027
Equalities Impact Assessment Required	Yes
Link to other policies	Allocation Policy
Consultation	Internal
Need for Procedure	Yes

A) SUB-TENANTS

1. 1.0 Equalities Commitment

1.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

1.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

2.0 Policy Availability

2.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

Introduction

1.1 The Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) and the Scottish Secure Tenancy Agreement makes provision for tenants to sub-let their home to another person with the Association's permission. The Association recognises that there may be periods when tenants need to leave home for a period (e.g. for employment reasons) but intend to return at a future date and may wish to sub-let their home during this period.

1.2 This Policy is intended to clarify what constitutes a sub-letting arrangement and the conditions that are required to be met by the tenant in applying to sub-let, the sub-tenant in entering into the sub-letting arrangement and the Association in permitting a tenant to sub-let.

2. AIMS AND OBJECTIVES

2.1 The primary aim of this Policy is to put a structure in place that ensures that people do not move in and out of the Association's properties in an illegal or uncontrolled way.

2.2 The key objectives include:

- Ensuring that the Association complies with the law and operates in accordance with good practice.
- Ensuring that tenants meet all their statutory obligations relating to sub-letting.
- Recognising and protecting the rights of the tenant and the sub-tenant
- Ensuring that all applications to sub-let are treated in a fair and equitable manner.
- Ensuring that the procedures for sub-letting are not used as a means of circumventing the Association's allocations procedures.
- Protecting the sub-tenant from being treated in an unfair manner in terms of the rent charged and conditions of their sub-letting agreement.
- Ensuring that the sub-tenant is fully aware of the expectations of the Association in terms of their conduct and the tenant is aware of their responsibilities should the lodger or sub-tenant fail to conduct themselves in an acceptable manner.
- Allowing the Association to keep accurate records of who is residing in its properties.
- Ensuring that a tenancy with the Association is not used as a commercial venture.

3. Definitions

3.1 A sub-tenant generally has exclusive use of all or part of the property they occupy.

4. Tenants Right to Sublet Their Accommodation

4.1 Under the terms of the Scottish Secure Tenancy Agreement a tenant has the right to request permission to sublet their property. The Association will only consider an application from a tenant to sublet their property in line with Part 2 of Schedule 5 of the Housing Scotland (2001) Act and where grounds set out in Subsection (3) of Part 2 of Schedule 5 do not apply.

A tenant who wishes to sublet their property on a temporary basis, for a maximum of one year, must:

- (i) Ensure the permitted number of persons for the property is not being exceeded.
- (ii) Inform the Association, of the sub-let applicants name, age and sex and confirm the accommodation they will occupy.
- (iii) Obtain the Association's written consent.
- iv) Provide details of any payments (such as rent to be charged, deposits, use of furniture etc.) to the Association.
- v) Provide details of any terms and conditions of the sub-letting agreement to the Association.
- vi) Provide a copy of the proposed agreement.
- vii) Provide the start date of the sub-let, the tenants intended date of return to the property and a forwarding address and contact number for the tenant.
- viii) The applicant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sub-let their home (From 1 November 2019, previously there was no qualifying period).
- ix) If the applicant was not the tenant throughout the whole of that period, the house must have been their only or principal home during those 12 months; and the tenant must have advised the association that you were living there prior to the start of those 12 months (From 1 November 2019).

5. Applying for Consent to sub-let

- 5.1 The application must be made in writing by the tenant using the relevant application form, and in the case of a joint tenancy, agreed by all tenants in the property. Where applicable, the spouse or co-habitee will be required to confirm in writing that they are agreeable to the house being temporarily sub-let. Where the spouse is no longer residing in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner stating that they do not want to invoke their occupancy rights to stay in the property.
- 5.2 The person who intends to sub-let must also complete the relevant application form.

6. Conditions for Granting Permission to Sub-Let

- 6.1 Under the terms of the Housing (Scotland) Act 2001, permission to sub-let is at the discretion of the landlord. However, the Act also states that permission cannot be unreasonably withheld.
- 6.2 In considering an application to sub-let, the association must be satisfied that:
- The proposed charges to the sub-tenant and, if applicable, the deposit, is reasonable.
 - The terms and conditions of the sub-letting agreement are acceptable.
 - The proposed sub-tenant has no history of anti-social behaviour within the neighbourhood or with the Association.
 - The proposed sub-tenant has no outstanding debt with the Association.
 - The house will not be overcrowded.
 - In the case of a joint tenancy, that all tenants are agreeable to the application to sub-let.
 - All parties are fully aware of their obligations and responsibilities.
 - That the tenant intends to return to the property within a stated period and to resume using the house as their only or principal home.
 - The sub-let period is permitted for a maximum of 12 months only from the date the sub-let commenced. Only in exceptional circumstances will an extension beyond the 12 months be considered and for a maximum amount of a further 12 month period. No further extension will be considered nor approved. If the tenant fails to return to the property after

this time, the Association will seek to recover the property.

6.3 In considering the reasonableness of the proposed charge to the sub-tenant, the Association will take into consideration:

- The size of the property and the current rent being charged by the Association.
- The use of furnishings and facilities such as, white goods, audio and visual equipment etc. that are being made available for the sub-tenant's use.
- Arrangements for the payment of utilities such as gas, electricity, phone etc.
- Arrangements for the payment of council tax.

6.4 The Housing Manager must approve the assessment of the reasonableness of the proposed charges and consent or refuse the application taking this into account.

6.5 Where the Association approves a sub-let, the legal relationship between the tenant and the Association does not alter. The tenancy will remain in the name of the tenant who remains responsible for the property and the payment of rent.

7. Grounds for Refusing Consent

7.1 Qualifying Residency Period

From 1 November 2019, the tenant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home (previously there was no qualifying period).

If the applicant was not the tenant throughout the whole of that period, the house must have been their only or principal home during those 12 months; and the tenant must have told the association that you were living there prior to the start of those 12 months.

7.2 Household size

Consent for a tenant to sub-let will not be given where it would result in the property being overcrowded and would not normally be given if the house is going to be under-occupied. However, in the case of under-occupation each

case will be considered on its own merit, considering the best approach for the tenant, the Association and the security of the property.

The size definition defined in the Association's Allocation Policy will apply when assessing the issue of overcrowding and under occupancy.

7.3 Property Condition

Permission to sub-let will not be granted where the property is found to be in an unacceptable condition due to tenant damage or neglect. The tenant will, however, be given the opportunity to make good any damage at their own expense and have their application reconsidered.

7.4 Legal Action

Where the Association has served a Notice of Recovery of Possession against the tenant permission to sub-let will not be given. Permission will not be given where a court order for the recovery of possession has been made against the tenant.

7.5 Proposed Works to the Property

Permission to sub-let may be withheld where the Association plans to carry out works to the property, other than of a minor nature.

7.6 General

The grounds for withholding permission given above are not exhaustive and may be changed to reflect guidance from the Scottish Government.

The Association may also refuse to give permission where it believes it has reasonable grounds to do so.

8. Notification of Decision

- 8.1 The association must notify the tenant of its decision regarding the sub-let application within one month of the completed application form and all relevant supporting information being received at the office. Where written notification has not been provided within one month it will be taken that consent to the application has been given; subject to there being no outstanding information due in support of the application.

- 8.2 Where permission for the sub-let is not being given the Association must give the grounds for refusal in writing to the tenant within one month of the completed application form being submitted.

9. Conditions of Consent

- 9.1 Where the Association gives its permission to the tenant to sub-let their home, consent is given on the following conditions:
- The Association's approval is sought for any changes to the charges made to the sub-tenant or to the terms and conditions of the sub-letting agreement.
 - Permission is only given for the sub-tenant/s and members of their family named on the application form.
 - That all terms of the tenants' tenancy agreement are adhered to, including the payment of rent.
 - That any breach of the tenancy agreement will be deemed as breaking a condition of consent and permission for the sub-let will be withdrawn.
 - Permission for the sub-let is given for a *period* of 6 months. Application to renew the consent may be made by the tenant no later than 1 month before the end of the six-month period.
 - Permission to sub-let will not normally be extended beyond 12 months. An extension beyond twelve months will only be allowed in exceptional circumstances and for a maximum amount of an additional 12 months. No further extension will be considered, nor permitted.
 - The tenant will be held responsible for the conduct of the sub-tenant and any legal action arising from the unacceptable behaviour of the sub-tenant will be taken against the tenant.
 - The sub-tenant has no right of succession upon the tenant's death.
 - That the tenant returns to live in the house at the end of the sub-let period.
 - That the tenant and the sub-tenant are responsible for notifying all necessary agencies and statutory bodies e.g. Council Tax, Department of Work and Pensions etc.
 - That the tenant remains the tenant of the Association as a Scottish Secure tenant. If the tenant terminates their tenancy, permission for the sub-let will automatically be withdrawn.

10. Other Issues

- 10.1 A tenant's entitlement to housing benefit may be affected by the income received from a sub-tenant. The tenant should seek advice from an appropriate agency on the above.
- 10.2 Action on breaches of tenancy by the tenant's sub-tenant must be taken against the Association's tenant. Similarly, sub-tenants cannot hold the

Association liable for disrepair; they must take action against their landlord (the Association's tenant).

11 Appeals and Complaints

11.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure.

11.2 Every service user has final recourse to the Scottish Public Services Ombudsman, please refer to the separate Complaints Handling Procedure.

12 Applications from Employees, Governing body members etc.

12.1 The Association may receive applications from tenants who are employees, board members, former employees, former board members or close relations of the above in line with the eligibility criteria within this policy. In the event of such an application being approved, the decision made regarding this must comply with the guidelines laid down in the Association's Entitlements, Payments and Benefits Policy.

13 Data Protection & Confidentiality

13.1 All information supplied to the Association by applicants will be treated as strictly confidential and will be handled in line with current Data Protection Act legislation. Information will not be revealed to any other party without the prior consent of the applicant or in line with data protection principles. Applicants have the right to inspect any records held on their housing application. For more information please refer to the Association's Privacy Policy.

13.2 The Association may have to make enquiries to confirm information provided in the application. Express consent is granted by the applicant by accepting the declaration on the application form for data to be revealed to allow exchange of information with other agencies where appropriate and for their application to form part of their tenancy record.

14 Equalities Commitment

14.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

14.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

15 Policy Availability

- 15.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

16 Monitoring and Review

- 16.1 This policy will be reviewed every three years or as legislative changes deem appropriate.