

TRAFALGAR HOUSING ASSOCIATION: DECANT, HOME LOSS AND DISTURBANCE POLICY

REVISED APRIL 2019

1. INTRODUCTION

The aim of this document is to outline the Association's policy and approach when tenants require to be moved on a temporary basis, (decanted) as a result of either the development programme; major repairs/modernisation or in an emergency for health and safety reasons, arising out of fire, flooding or other unplanned significant events.

Where any move requires to be on a permanent basis, for example, if the Association is seeking to demolish and remodel properties then the move will be a permanent one, with the tenant, provided they have occupied the property for at least 12 months, prior to decanting, and meet the criteria set down in law, as explained in this policy, entitled to Home Loss payments.

When a tenant requires to be decanted, they remain the tenant of their original tenancy, with both the tenant and the Association responsible for ensuring they maintain their respective obligations under that tenancy. Once decant accommodation has been verbally agreed, an occupancy agreement, as set out in Appendix 1 will require to be signed by both the tenant and the Association's representative prior to any move.

2. AIMS AND OBJECTIVES

The Association aims to provide timely information and clarity on our approach to decanting of tenants; setting out what the arrangements will be when tenants require to be decanted and how the process will be managed in order to minimise the duration, disturbance and associated costs We will do this by:

- carrying out any decant programme in an efficient and co-ordinated manner
- offering, where possible, equivalent decant accommodation
- ensuring disturbance to tenants is kept to a minimum
- ensuring there is clear and timely communication throughout the process including information on the applicability of any home loss and disturbance payments.

3. EQUALITIES

3.1 As part of our commitment to equal opportunities, this policy can be made available in large print or audio tape or translated into another language if required. We are also committed to meeting Outcome 1 of the Scottish Social Housing Charter which states that Social landlords perform all aspects of their housing services so that: - every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services

4. LEGISLATION

4.1 This Policy takes account of the Housing (Scotland) Acts 1987 (as amended) 2001, 2014 and the Land Compensation (Scotland) Act 1973 as amended by the Planning and Compensation Act 1991.

5. SCOTTISH SOCIAL HOUSING CHARTER

5.1 Our approach to decanting is informed by the following Scottish Social Housing Charter, April 2017, outcomes and standards:

Outcome 2 – Communication, Social landlords manage their businesses so that *tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, and how and why it makes decisions and the services it provides;*

Outcome 4 – Quality of Housing – *tenants' homes, as a minimum meet the Scottish Housing Quality Standard (SHQS) when they are allocated; are always clean, tidy and in a good state of repair; and also meet the Energy Efficiency Standard for Social Housing (ESSH) by December 2020.*

6. OUR APPROACH

6.1 At least four weeks prior to the earliest date that a removal is likely as part of a planned programme of work, a Housing Officer will visit each household to ascertain their requirements.

Particular care will be taken at this stage to note any special requirements (particularly of a medical nature) to ensure that tenants are, as far as possible, offered accommodation that meets their needs as closely as possible.

Decants will be carried out in a co-ordinated manner to ensure that:

- there is reasonable time to allow necessary works to be carried out

- tenants have adequate time to prepare for removal and return to their original tenancy
- there is no risk of a close being left under-occupied placing tenants in a vulnerable position
- for the duration of the decant period, the tenant will require to pay rent on their original tenancy and has no tenancy rights in relation to the 'decant' accommodation. (Under Section 11 (4) of the Housing (Scotland) Act 2001, a tenancy is not a Scottish Secure Tenancy where the tenant is temporarily decanted to alternative accommodation owned by the Association or the local authority and it is agreed that the tenant is entitled to return to their original property.)

6.2 **Standard of Temporary – Decant Accommodation**

The Association, where possible, will attempt to offer temporary accommodation which is similar to the original tenancy in terms of room sizes, storage provision etc. However, given the small size of the Association's housing stock, the variations within it and the shortage of particular stock types, the Association cannot guarantee that temporary accommodation will always reach this standard.

The Association will endeavour to ensure that any temporary- decant – accommodation offered:

- a) is suitable for the size of household to which it is offered bearing in mind the limitations of the Association housing stock
- b) is suitable for the overall needs of the household to which it is offered
- c) is clean with adequate provision of kitchen and bedroom storage facilities and is in generally good decorative order
- d) where an individual has particular needs and their existing home has been specially adapted, we will attempt, with the assistance of Occupational Therapists, to ensure that the alternative accommodation is provided with similar adaptation.

6.3 **Decant Options**

Given the Association owns and manages limited numbers of properties, the availability and choice of decant accommodation is naturally limited.

The possible types of temporary decant accommodation are therefore drawn from the following:

- Association's own stock
- local authority temporary accommodation or emergency accommodation
- staying with relatives or friends
- B and B or hotel
- other temporary accommodation sourced by the Association, eg holiday let, etc

Depending on the arrangements agreed upon, and whether the move is temporary or permanent, different responsibilities will apply and these are set out in Appendix 2. It is acknowledged that some tenants may prefer to find their own temporary decant solution by staying with relatives or friends. In this situation, we will secure or store household contents at a wind and watertight location, credit the rent account and pay the Council Tax for the period that the tenant is not living in their own home.

6.4 Decant Required as a Result of Tenant's Actions

Where a tenant and their household is required to decant as a result of action or inaction by the tenant, this may be a breach of the tenancy conditions and action may be taken by the Association to recover the tenancy. This may apply in situations where there has been deliberate fire-raising, or negligence has led to a fire starting; deliberate flooding or negligence has led to flooding; or where alterations (whether authorised or unauthorised) result in damage to the property.

These examples are illustrative and not exhaustive. In these instances, it may be possible to recover some of the costs through the tenant's contents insurance if this is in place.

6.5 Process

- Once a suitable decant property, has been identified, viewing arrangements agreed, and the tenant agrees to the decant arrangements, an Occupancy agreement as set out in Appendix 1 must be signed prior to the move to the decant accommodation.
- A programme of works, setting out what work will be happening, and when, at the original tenancy, will be provided to the tenant who will be kept informed of progress.

- When the work is completed the decant property will be returned to the Association at the end of the decant period in a reasonable standard and the tenant will return to their tenancy. Association staff will inspect the accommodation prior to a return to the tenancy.
- Rechargeable repairs or other tenancy related debt will generally be either deducted from disturbance payment or if the tenant is unable to make payment in full, an arrangement for payment by instalments will be agreed that is reasonable and affordable.
- Removal arrangements will be made for a date/s acceptable to both the Association and the tenant; with the cost of the removal/s being borne by the Association.

7.0 REFUSAL OF DECANT ACCOMMODATION

7.1 If temporary accommodation is refused, the tenant must give their reasons for refusal in writing, being assisted to do so if required. The Association will consider the nature of the reasons given and, if considered valid and where alternative accommodation is available, an alternative offer may be made. In the event of a second offer being refused without a valid reason the Association will seek to pursue legal action. Normally this will be a Repossession action under Part 1, Schedule 2 of the Housing (Scotland) Act 2001 (It is intended within a reasonable period of time to demolish, or carry out substantial work on, the building or a part of the building which comprises or includes the house, and such demolition or work cannot reasonably take place without the landlord obtaining possession of the house.)

8.0 COSTS AND ARRANGEMENTS

8.1 The Association will pay for the costs which are set out in Appendix 2, which sets out the arrangements, depending on whether the move is temporary or permanent. In addition to these costs, the Association will normally make an ex gratia payment of £20 per day per household, up to a limit of £400, in recognition of the disturbance which may be caused by decant or substantial works within the home.

9.0 HOME LOSS PAYMENTS

9.1 A Home Loss Payment is intended to compensate a tenant who has to leave their home permanently because of redevelopment work or work of

a substantive nature. It is a payment in recognition of the upheaval and upset of losing their home.

The law relating to Home Loss payments is contained in the Land Compensation (Scotland) Act 1973, as amended by the Planning and Compensation Act 1991. **To qualify for a statutory Home Loss Payment, a tenant must meet specific criteria which are detailed in Appendix 3.**

A tenant who qualifies for a statutory Home Loss payment will receive a flat rate payment of £1500. If two or more persons are entitled to a Home Loss payment in respect of the same property, then the payment will be divided equally between them.

Where a tenant does not qualify for a statutory Home Loss payment, the Association with the agreement of the Management Committee may decide to make a discretionary Home Loss payment. The circumstances under which discretionary payments may be made will vary but, as a general rule, payments may be made for one or more of the following reasons:

- where the qualifying events do not apply, but the Association has made the decision to decant the tenant permanently from their home;
- where a tenant does not qualify for a statutory Home Loss payment because of their tenancy tenure or the length of time they have occupied the property; or
- In order to prevent delay or significant difficulty in taking schemes or plans forward.

Each individual case will be considered on its own merits. The Housing Manager will be responsible for identifying the need for a discretionary Home Loss payment for approval by the Management Committee.

10.0 RENT ARREARS OR OTHER TENANCY RELATED DEBT

10.1 Where a Home Loss payment is to be made, and the tenant receiving the payment has rent arrears or outstanding rechargeable repair debts or other tenancy related debt then the Housing Officer will make an arrangement with the tenant for some or all of the arrears to be repaid from the Home Loss payment. Similarly, disturbance payments may be

credited to any rent arrears or outstanding rechargeable repair debts or other tenancy related debt that the tenant has.

11.0 PERFORMANCE MONITORING

11.1 As part of our information provided in the Annual Return on the Charter, we will report on the use of decant accommodation, as it requires to be excluded from our reporting on voids, ie empty homes.

11.2 Any unplanned use of decant accommodation, for instance as a result of emergencies, will be reported to the Management Committee along with anonymised information on the circumstances giving rise to the need for decant accommodation.

12.0 ROLES AND RESPONSIBILITIES

12.1 The Housing Manager is responsible for implementing this Policy and the Director for ensuring appropriate budget provision is made and the Management Committee is responsible for overseeing the implementation and reporting on the Policy and for considering any reports with regard to home loss payments and disturbance payments.

13. COMPLAINTS

13.1 Should any tenant be dissatisfied with the implementation of this policy they should approach one of the Association's staff to try to have the matter resolved.

13.2 If the matter is not resolved they should write, stating the facts to the Director who will give a written reply.

13.3 If, after exhausting the Association's complaints procedure (full details of which are available on our website, from staff or located in our reception) a tenant is still unhappy, they should contact the Scottish Public Services Ombudsman (SPSO):

- Scottish Public Services Ombudsman
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS

Telephone 0800 377 7330 – free phone or 0131 225 5300

Fax	0800 377 7331
Text	0790 049 4372

E-mail

ask@spsso.org.uk

SPSO

Freepost

14. REVIEW OF POLICY

14.1 This Policy will be subject to review every three years, or earlier if required by changes in legislation, guidance or informed by practice.

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APPENDIX 1

OCCUPANCY AGREEMENT - DECANT

OCCUPANCY AGREEMENT

FOR

[insert address of decant property] ("the Property")

BETWEEN

Trafalgar Housing Association 430a Dumbarton Road Dalmuir, Clydebank G81 4DX (hereinafter referred to as "the Association")

and

[insert name of tenant(s)] (hereinafter referred to as "the Tenant(s)),
residing at [insert tenancy address] (hereinafter referred to as "the
Tenancy")

WHEREAS the Association has let to the Tenant(s) the subjects forming the Tenancy under and in terms of a Scottish Secure Tenancy Agreement ("the Tenancy Agreement") dated [date tenancy agreement signed] whereas due to [insert reason for decant, i.e. repair works/maintenance works etc] which required to be undertaken at the Tenancy the Association and the Tenant(s) have agreed that the Tenant(s) and those residing with them at the Tenancy will occupy the property in terms of this License to Occupancy on the following terms and conditions:

1. This Agreement is not a Scottish Secure Tenancy or a Short Scottish Secure Tenancy as defined by the Housing (Scotland) Act 2001. The Association and Tenant(s), in entering in to this Agreement, acknowledge that nothing contained in the Agreement is to be

construed as conferring on the tenant(s) the rights of a tenant in relation to the Property.

2. This Agreement allows the Tenant(s), and those residing with them at the Tenancy to live temporarily in the Property from [insert date of entry to the Property].
3. The Property is provided only for such a period as the Tenant(s) requires alternative accommodation whilst works are being carried out to the Tenancy which is let to the tenant(s) in terms of the Tenancy Agreement, a copy of which is annexed hereto.
4. The tenant(s) shall remain the Tenant(s) of the Tenancy whilst in occupation of the Property and their obligation, responsibilities and duties in terms of the Tenancy, including but not limited to payment of rent under the Tenancy Agreement, remain during the period of occupation of the Property by the Tenant(s).
5. The Agreement shall be ended either by:-
 - (a) the Association giving the Tenant(s) notice in writing that the repairs to the Tenancy are complete. The Tenant(s) shall be given three days notice to vacate the property and return to the Tenancy, leaving the Property in a condition no worse than the condition it was in when they took up occupation on [insert date of entry to decant property]; or
 - (b) the termination of the aforesaid Tenancy Agreement between the Association and the tenant(s).
6. The Parties to the Agreement consent to the registration hereof for preservation and execution. IN WITNESS WHEREOF

Signed for and on behalf of the Association:

.....

At (location) on
(date)

In the presence of this Witness:
(sign)

.....
(name)

Signed by the Tenant(s):

At (location) on
(date)

In the presence of this Witness:
(sign)

(name)

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APPENDIX 2

COSTS AND ARRANGEMENTS ASSOCIATED WITH DECANT

COST	TEMPORARY MOVE	PERMANENT MOVE
Removal service	Association to arrange move, in conjunction with tenant and with an approved contractor. Packing materials to be delivered in advance if required. Packing service to be provided for tenants who are not capable of doing this and who do not have anyone who can assist.	As for temporary move
Storage of household goods	Where it is not possible for these to go with the tenant, either because the tenant is moving to smaller accommodation or is moving to B and B or with family or friends, the Association will meet reasonable storage costs	Does not apply
Disconnecting and reconnecting of existing goods, washing machine, tumble drier, dishwasher, cooker,	Association to arrange and directly pay an approved contractor. If the tenant has a gas cooker, but there is no gas supply in the temporary decant property, then the cooker will be stored, and an electric cooker provided for the duration of the decant.	The Association will arrange and directly pay the approved contractor. If the tenant has a gas cooker, but there is no gas supply in the new accommodation, then the Association will make arrangements to have a gas supply installed (if at all possible and there is

		already a gas supply into the development) or to contribute to the cost of a replacement electric cooker.
Telephone/broadband	If the decant is for more than one week the Association will pay for the cost of disconnection and reconnection. Tenant to arrange the switch and Association to reimburse the cost within 7 days of receiving receipts.	Tenant to arrange the switch and Association to reimburse the cost within days of receiving receipts.
Other electrical appliances	Association to arrange and pay for electrical and other fitments (eg light fittings, shower) installed by the tenant to either be removed and stored, or to be made safe and left in place for the duration of the decant period. This may depend on whether the tenant needed and obtained permission from the Association to have the fitment installed in their current home.	The Association to arrange for electrical and other fitments (eg light fittings) installed by the tenant to be moved to their new home. This may depend on whether the tenant needed and obtained permission from the Association to have the fitment installed in their current home.
Adaptations	The Association will arrange and pay for the cost of any physical adaptations needed to the decant accommodation in order to enable the tenant to sustain their tenancy. This may include moving existing adaptations from their	As for temporary move.

	<p>current home. The advice of an Occupational Therapist will be obtained, where possible, before an adaptation is installed. The Association will arrange for any community alarm service to be reconnected in the decant accommodation</p>	
Curtains and blinds	<p>The Association will provide curtains/blinds and necessary curtain rails etc in the temporary accommodation with tenants able to choose from a small range.</p> <p>The expectation is that tenants will take down existing curtains/blinds and store in their temporary accommodation. Where reasonable, storage of these items may be arranged by the Association on a case by case basis for the duration of the decant.</p>	<p>If existing curtains/blinds do not fit the new accommodation, the Association will provide curtains/blinds in the new accommodation with tenants able to choose from a range matching as closely as possible the quality of their existing curtains/blinds.</p>
Floor coverings	<p>The Association will provide floor coverings in the temporary accommodation with tenants able to choose from a small range. Tenants' existing floor coverings will be left in place and protected or taken up and stored for</p>	<p>The Association will provide floor coverings in the permanent accommodation with tenants able to choose from a range. The Association will take account of the quality of carpets in the current property and provide as close to the</p>

	the period of the decant.	same quality as possible in the new home
Redirection of mail	The Association will provide mail redirection forms and reimburse the cost of redirection of mail for the period of the decant for each person in the tenant household who has a different surname.	The Association will provide mail redirection forms and reimburse the cost of redirection of mail for six months from the new tenancy start date for each person in the tenant household who has a different surname.
Insurance	Tenants are expected to advise their home content insurers of their move. The Association will pay the cost of any increase in premium payment that results from the move to the decant property for the period of the decant.	Tenants are expected to advise their home content insurers of their move. The Association will pay the cost of any increase in premium payment that results from the move to the new home for a period of a six months from the new tenancy start date.
Time off work	Where a tenant has lost earnings as they have needed to take time off work on the removal day, then they will be compensated for this loss on production of a letter certified by their employer. This will be limited to one adult per household. Where decant is required as a result of tenant's negligence then this payment may be withheld	As for temporary move.
Electricity and gas suppliers	The Association will arrange for meters to	The Association will arrange for meters to be read at both

	<p>be read at both properties on the day of the move and will write to electricity and gas (if relevant) suppliers advising that the tenant is moving from their property to the decant property. The tenant will be responsible for paying the electricity and gas bills for the temporary accommodation. The Association will pay the standing charges for the tenant's home for the decant period</p>	<p>properties and will write to electricity and gas (if relevant) suppliers advising that the tenant is moving to their new home.</p>
Council tax	<p>The Association will advise the local authority that the tenant has moved to temporary accommodation and pay Council Tax due on that property for the period of the decant. The tenant will remain liable for the Council Tax payments on their own home unless this is agreed otherwise with the local authority.</p>	<p>The Association will advise the local authority that the tenant is permanently moving to a new home. The Association will reimburse the cost of any increase in Council Tax resulting from a change of Council Tax banding at the new home – this will be paid for six months</p>
Housing Benefit/Universal Credit	<p>The Association will advise the Department of Work and Pensions or the local authority that the tenant has moved to temporary accommodation but is still responsible for paying the rent on their own home. The</p>	<p>The Association will assist the tenant to make a new claim for their new home. The Association will advise the local authority or the Department of Work and Pensions of the move if payments are made direct to the Association</p>

	Association will also remind the tenant to advise the Department of Work and Pensions or the local authority when the tenant moves back to their own home.	
Meal allowance	If a tenant is decanted to a hotel the Association will make provision for meals as required.	Does not apply.
Garden sheds	If the tenant has obtained permission from the Association to put up a garden shed, then the Association will arrange and pay for the shed to either be removed and stored, or to be made safe and left in place for the duration of the decant period. If the shed is to be moved, it must be robust in structure and able to be dismantled and reconstructed.	If the tenant has obtained permission from the Association to put up a garden shed, then the Association will arrange and pay for the shed to be moved to the new home if there is the capacity to re-erect it there. If the shed is to be moved, it must be robust in structure and able to be dismantled and reconstructed. If the shed cannot be moved, then the Association will compensate the tenant for the loss of the shed.
TV and Satellite Aerials	Tenant to arrange the installation of a TV aerial if there is not one already at the temporary address (should they wish a TV aerial) and the Association will reimburse the cost of	TV aerial arrangement as temporary move. Tenant to arrange for any satellite dish to be

	<p>this.</p> <p>Where a tenant has permission to put up a satellite dish, the Association will reimburse the tenant for the cost of this, on proof of payment, for the decant period.</p>	<p>moved to the new property provided there are no restrictions such as planning limitations. The Association will reimburse the cost of this within 7 days of receiving receipts.</p>
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APPENDIX 3

HOME LOSS PAYMENTS

The law relating to Home Loss payments is contained in the Land Compensation (Scotland) Act 1973, as amended by the Planning and Compensation Act 1991.

A tenant claiming the payment ('the claimant') must meet all the following criteria in order to qualify for a statutory Home Loss Payment:

- A claimant must have occupied the property as his/her sole or main residence for a period of at least one year prior to the date of displacement.
- The displacement must be permanent.
- The claimant must have an 'interest in the dwelling house'. This means that the claimant must be a tenant, an employee in a tied property, a spouse with occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended) or have some other legitimate interest in the property.
- In addition, a claimant's removal must be in consequence of one of the following events (known as a qualifying event):
 - Compulsory acquisition of the property by a body with compulsory purchase powers; or
 - Demolition, improvement or closing order under the Housing (Scotland) Act 1987; or
 - The development of land acquired by an authority with compulsory purchase powers; or
 - Improvement or redevelopment by a Registered Social Landlord; or
 - Demolition of a dangerous building; or
 - A Court Order for recovery of possession proceedings by a Registered Social Landlord, with suitable alternative

accommodation being available to the tenant (under Paragraph 10 of Part 3 of the Housing (Scotland) Act 1987). This only applies to claimants with secure tenancies.

Statutory entitlement to a Home Loss payment starts at the point at which a decision has been taken, for example to demolish or radically alter a property, and that decision has been intimated or made known to the tenant. The knowledge of the claimant is important because the removal must have been triggered by a qualifying event and be a consequence of a decision having been taken.

Home Loss payment claims must be made within 5 years from the date of removal. If a tenant qualifies for a statutory payment, then it must be paid within the current statutory time limit (currently to be made on or before the date of displacement or within three months of the claim being made, whichever is the latest). Tenants are entitled to interest on the outstanding amount if payments are not made within the statutory time limit.