

Housing Services Creation of a Joint Tenancy Policy

Department	Housing Services
Responsible Person	Director of Housing
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1. Introduction

- 1.1 If a tenancy is in a sole person's name, the tenant can request that the tenancy be put into joint names.
- 1.2 A joint tenancy can only be granted to a couple who are living together either
- as a married couple,
 - in a civil partnership,
 - or in a common-law relationship
- 1.3 If a couple are married or in a civil partnership, they will need to meet the following requirements before the tenancy can be put into joint names:
- the rent account needs to be clear for six months
 - and there should be no other management issues linked to the address.
- 1.4 If a couple are in a common-law relationship, they will need to meet the following requirements before the tenancy can be put into joint names:
- have lived together at the tenant's address for a minimum of twelve months,
 - if the tenant **is not** in receipt of Housing Benefit/Universal Credit they must not have had any rent arrears for a minimum of six months,
 - if the tenant **is** in receipt of Housing Benefit/Universal Credit and there are rent arrears on the account, the tenant needs to evidence consistent rent payments that are leading to a reduction in rent arrears periodically, for a minimum of six months
 - have had no other current tenancy management issues at the address.

2. Purpose

- 2.1 This policy sets out the Council's approach to joint tenancies and more specifically changing a sole tenancy into a joint tenancy.
- 2.2 The aim of this policy is to ensure that:
- Requests for a creation of joint tenancy are dealt with in a swift and consistent manner.
 - Joint tenancies are created legally.

3. Definitions

CJT	Creation of a Joint Tenancy
Sole Tenancy	A sole tenancy refers to a tenancy agreement signed by one person.
Joint Tenancy	A joint tenancy is where two people have signed the tenancy agreement and therefore have equal responsibility for maintaining the tenancy.

NTQ

A Notice to Quit (NTQ) is a legal document used to end a tenancy. This can be served by either the tenant(s) to the Landlord, or the Landlord to the tenant(s) by way of terminating the tenancy.

In the case of joint tenancies, it only takes one tenant to serve an NTQ to formally end the tenancy for both parties. Similarly, the Landlord only has to serve a NTQ on one of the joint tenants to formally end the tenancy.

4. Legislative Framework

Housing Act 1985, Part IV

The Enrolment of Deeds (Change of Name) Regulations 1994

Matrimonial Causes Act 1973

Civil Partnership Act 2004

The Marriage (Same Sex Couples) Act 2013

5. The Policy

Important Advice

- 5.1 Before formally requesting a creation of a joint tenancy, the Council would advise that the sole tenant seek their own independent legal advice.
- 5.2 The applicant/proposed tenant (unless married/civil partners) would need to be able to prove residence at the address for a minimum of twelve months to be considered as a joint tenant. The Council may conduct its own checks, including a credit check on the applicant/proposed tenant.
- 5.3 If the tenant **is not** in receipt of Housing Benefit/Universal Credit, the rent account needs to be clear for a minimum of six months for a creation of joint tenancy to be considered, irrespective of the relationship status between the tenant and applicant/proposed tenant.
- 5.4 If the tenant **is** in receipt of Housing Benefit/Universal Credit and there are rent arrears on the account, the tenant needs to evidence consistent rent minimum of six months.
- 5.5 Joint tenants are jointly and individually liable to comply with all tenancy conditions, including payment of rent. Therefore, for example, if one tenant breaches a condition, they will both be held responsible.

- 5.6 If one tenant were to leave the address, the tenant left in occupation would still be liable for complying with all conditions of tenancy, including full payment of rent and any other property associated costs.
- 5.7 If a tenant is in receipt of benefit, they must notify the relevant benefit service and/or Department of Work & Pensions (DWP) of their change in circumstances, as a joint tenancy may affect their benefit entitlement.
- 5.8 If the relationship breaks down, the Council as the Landlord will not be able to remove one joint tenant from the tenancy by way of assignment, as there is no right to assign a joint tenancy from one tenant to another. However, the joint tenants can collectively assign to another household member that meets the eligibility criteria for assignment under Section 91(3)(c) of the Housing Act 1985.
- 5.9 If the relationship breaks down, it may be in the tenants' best interest to apply to the courts for a Property Adjustment order. Alternatively, they can sign a Notice to Quit (NTQ) to end the tenancy, leaving it to the discretion of the Landlord to grant a new sole tenancy for the remaining tenant. However, it should be noted that if the tenancy is ended by way of NTQ and a new sole tenancy is granted, the remaining tenant may be asked to move to a more suitable council property if they are under-occupying the current address, of if the current property is adapted and adaptations are not required by anyone left in residence at the address.
- 5.10 Both joint tenants have equal rights to the tenancy. It only takes one tenant to serve an NTQ, which would end the tenancy for both.
- 5.11 Successors to a tenancy are not eligible for the creation of a joint tenancy (CJT), as this would create a further succession right. Upon receipt of a CJT application, checks will be conducted to ensure that there has been no prior succession to the tenancy.
- 5.12 If a joint tenancy is granted and one tenant dies, the other will become the sole tenant by way of survivorship. There will be no further right of succession.
- 5.13 There is no right to assign a joint tenancy to a potential successor, unless the 'joint to sole' tenancy has been court ordered.
- 5.14 The tenant can formally request a creation of joint tenancy by completing a form on the Council's website. The tenant will be required to complete all fields on the online form and upload all necessary documentation/evidence to support their application.

- 5.15 The evidence required to support an application for a joint tenancy is:
- a marriage certificate or civil partnership document
 - or if the couple is in a common law relationship, proof that they have resided at the address with the tenant for at least 12 months.
- 5.16 Alternatively, the tenant can make a joint tenancy request by calling the contact centre on 020 8215 3000 and a request will be logged with the appropriate Housing Officer.
- 5.17 A joint tenancy request will only be considered if the request has come directly from the tenant.
- 5.18 A property inspection will be conducted at the address as part of the creation of joint tenancy application process.

Exclusions

- 5.19 There may be some circumstances when the joint tenancy will be denied. These are as follows:
- if the proposed joint tenant has children and if they moved into the property, it would make them statutory overcrowded. If this is the case, the Council would advise the tenant that it could not stop the partner and children from moving into the property, but it would not grant a joint tenancy.
 - if the proposed tenant does not have indefinite leave or extended leave to remain in the country or does not meet the eligibility criteria set out in the Housing Act 1996 (as amended). If this is the case, or if further clarification is required, the application will be referred to the Allocations Team who will advise whether to grant the joint tenancy.
 - if the current sole tenancy started by way of a succession or assignment, following the death of the previous tenant.
 - if the Landlord has or intends to initiate possession proceedings against the tenancy for rent arrears, antisocial behaviour, or any other breach of tenancy conditions.
 - in the case for tenancies linked to properties with additional terms and conditions (i.e. age restricted sites, or sites that provide extra care/ supported living), a joint tenancy may not be granted or may only be granted if additional criteria are met.
 - if the applicant/proposed tenant has a legal interest in other property the Council may not grant a joint tenancy.
 - if there is any damage caused to the property and/or any other issues identified with the address during inspection of the property, the creation of a joint tenancy may be withheld until the tenant puts it right.

- if the visiting officer detects safeguarding concerns the creation of a joint tenancy may be withheld.

6. Equality Impact

- 6.1 Applying this policy consistently and sensitively will ensure that all tenants and their household members in Council owned homes who have protected characteristics and/or are deemed vulnerable for other reasons receive services that are based on a recognition of their vulnerability. The Council will make all appropriate adjustments to the services they receive in order to mitigate any potential negative impacts on them and to ensure they receive fair and equal treatment from the Council as their landlord.