



Bristol City Council Housing and Landlord Services

Tenancy Changes Policy

Version 1

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History of most recent policy changes			
Date	Page	Change	Origin of change (e.g., legislation)
		Culmination of existing policy into one.	Introduction of Policy Framework.
29/11/23	P.27	Included BCC existing approach to charging rent on principal home during decant. Limit of £50 per household per night to those staying with family and friends.	Responsive Review

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1. Policy statement

Social housing is a valuable asset, which provides security and stability to people in housing need. As a responsible social landlord, Bristol City Council’s Housing and Landlord Services has a duty to make the best use of public resources by ensuring that its housing stock is managed appropriately.

This policy will explain the details of Bristol City Council’s (BCC) approach to the various circumstances under which a tenancy may undergo a change or a decision about a tenancy is made.

This is one overarching policy designed to be referenced by chapter; each chapter addresses that specific topic but have been placed together allowing cross referencing. They are:

- [Ending a Tenancy](#)
- [Joint Tenancies](#)
- [Abandonment](#)
- [Death of a Tenant](#)

- [Temporary Absence](#)
- [Mutual Exchange](#)
- [Decants](#)
- [Landlord Agreed Transfers](#)
- [Succession and Assignment](#)
- [Use and Occupation](#)

1.1 Bristol City Council Policy Context

There are a number of key BCC policies that link to this and provide both context and escalation for action.

1.1.2 Tenancy Agreement

This policy is linked directly to the [Tenancy Agreement](#) a key document informing tenants of their rights and responsibilities regarding their tenancy. This also explains the responsibilities of BCC as the landlord.

1.1.3 Fraud

Bristol adopts a zero-tolerance approach to tenancy fraud and abuse, and will work with, and support, other agencies, and social housing providers to stop tenancy fraud and make the most of its social housing.

If tenants have a lodger, they should gain permission from BCC and keep other relevant departments informed such as Council Tax.

Examples of tenancy fraud and abuse are:

- not living in a BCC property as the main residence.
- letting the whole BCC property to someone else, or sub-letting part of it without permission.
- making false claims on an application for a social housing property.
- Taking in other occupiers without informing council tax of their presence.
- Running an unauthorised business from a residence.
- Misrepresenting one's status to claim succession.

1.1.4 Bristol Allocations Scheme

This policy is also contextualised, by BCC's Allocation Scheme. In some circumstances a person's eligibility to be able to access social housing in the future may be affected by their actions as a current tenant. This includes any form of debt owed to BCC, anti-social behaviour and or disrepair caused by the tenant.

1.2 Complaints

BCC will uphold this policy following its procedures with openness and transparency. We take quality of service delivery seriously and encourage residents, where they are not satisfied with their experience to use the varied methods of complaint, so we are able to respond and improve. ([See. Complaints Procedures](#))

1.3 Equalities and Diversity

In developing this policy resident's involvement and consultation needs have been considered.

We will act sensitively towards the diverse needs of individuals and communities, and we will take positive action to reduce discrimination and harassment.

An Equalities Impact Assessment has been carried out and agreed by the Equalities Team.

2. Aims and objectives

The overarching aims and objectives for this policy are:

- Work with tenants to understand and meet their obligations under the tenancy agreement and understand the potential consequences of a breach.
- Ensure BCC meet legal and regulatory responsibilities and requirements when managing tenancies and housing stock, including acting appropriately regarding appeals to decisions or requests for review.
- Set out BCC's approach to tenancy action, taking into consideration the person's whole circumstances as well as balancing need to take enforcement action to regain access to valuable stock and make best use of stock. To take proportionate but decisive action to enforce tenancy agreements and or our policies relating to occupation without a tenancy, that may lead to tenancy action.
- To explain the different requirements of joint tenants and how that may affect tenancy decisions or action.
- Listen to residents and consider all housing options or solutions that may be available to them.
- Take full and fair consideration of the residents' or person in occupation's circumstances before taking decisions having due regard to the Public Sector Equality Duty.
- Respond swiftly and appropriately to emergency situations where housing solutions are required.
- To make the best use of the housing stock available.
- Have residents in properties that meet their needs.
- Decisions about tenancies are made by an appropriately qualified person or panel and appropriate appeals/ right to review processes are in place.
- Residents are given up to date information, signposted and or encouraged to seek independent legal advice where necessary.
- Work internally with other BCC departments to provide a rounded service and share relevant information, as associated with managing the property, the tenancy and addressing fraud and abandoned properties or abuse.
- Proactive in identifying fraud and reporting suspected cases to the relevant departments.

3. Roles and responsibilities and authority

The Director of Housing and Landlord Services and the Head of Housing Management and Estates are responsible for the implementation of this policy.

Various staff responsible for activities relating to managing tenancies have responsibility for delivering this policy are officers across Housing and Landlord Services.

Specific roles are set out in the procedures that support this policy.

4. Ending a Tenancy Policy Chapter

4.1 Scope

- Residents with BCC Secure, Demoted, and Introductory tenancies.
- Persons in Use and Occupation of a BCC residential property.
- BCC licensees including licensees in HRA funded temporary accommodation.

4.2 Policy

Tenancies or Licenses can be ended by Tenants or Licensees, out of choice, by giving notice to the Landlord or by the Landlord, in this case BCC serving a notice and/or applying to the courts for a possession order.

Details of the circumstances of how and why BCC can end a tenancy or licence are set out in the chapters forming parts of this Policy.

In some circumstances the tenant or licensee may be able to surrender their tenancy or licence. See section [4.2.3](#).

4.2.1 Providing Notice (Tenants/Licensees)

Tenants or licensees must notify BCC of their intention to leave their tenancy/ licence by providing four weeks written Notice. The format this comes in is not standardised but should contain specific information including the tenants'/licensee's full name, address, tenancy or licence end date and signature.

4.2.2 Notice Period

BCC must receive written notice at least four weeks before the specified end date of a notice. At the end of the notice period, the tenancy will end.

The property and any associated gardens, access points must be left in a good condition as per 2.33 of the tenancy agreement. Where damage to the property that is the responsibility of the tenant exists or waste is left in gardens or areas within the curtilage of the property the tenant will be re-charged for the associated costs of any repairs and or clearance. This may also affect the ability to secure a landlord agreed transfer or move to alternative council accommodation and or offer of another tenancy.

All rent, heating (where this is provided) and other property, service and support charges will be charged, due and must be paid up to the end of the four weeks' notice to quit period.

4.2.3 Surrender

If the tenant(s)/licensee(s) wishes to end their tenancy/licence immediately, they may be able to surrender their tenancy/licence with immediate effect.

This can be done expressly by way of a deed stating that the tenancy will come to an end with immediate effect, this must be signed as a deed by both the Landlord and Tenants(s)/Licensee. All signatures must be witnessed.

In some circumstances a surrender may be implied. However, this requires an unequivocal act of surrender by the tenant and an unequivocal act of acceptance of that surrender by the landlord or their representative. There must be no ambiguities, or room for mistake, regarding the actions that have brought the tenancy to an end and the actions must be inconsistent with the continuation of the tenancy.

4.2.4 Compensation for Improvements

If we have given a tenant permission to make improvements to their home, they can claim compensation for some improvements when the tenancy ends, but any compensation will depend on the age and/or the current condition of the improvement as per our procedures. Compensation will also depend on the property being left in good condition as per 2.33 of the tenancy agreement.

4.2.5 Keys Returned

Keys must be returned on or before 12:00 midday on the day that the tenancy is due to end.

A receipt to show the keys have been returned will be provided.

Keys can be returned sooner, but rent will be charged until the date on which the tenancy ends.

If vacant possession is established, the following rent charge will be cancelled, even if it is before the end of the notice period.

We may not accept the surrender of the property early, if it is not in good condition and therefore, rent payments would still be due.

4.2.6 Property Conditions and 'Vacant Possession'

The tenant should provide 'vacant possession' of the property, meaning that nothing and no-one is left behind. Tenants are responsible for the property until the tenancy ends.

The property should be left in good condition, safe, clean, and empty of all personal possessions, furniture and appliances that belonged to the tenant.

Any vehicles, caravans or trailers should be removed and any household or domestic rubbish or waste, or other bulky items disposed of.

Everything must be the same way it was when the tenancy commenced, allowing for fair wear and tear and improvements that have been permitted by BCC.

Where BCC incurs a cost to remove waste, or any other works to bring a property back to an appropriate re-let standard the tenant will except under exceptional circumstances, be charged for these costs. (See [Response Repairs Process](#) – Rechargeable Repairs on Housing Information Resource)

4.2.7 Ending a Tenancy as a Joint Tenant

If a named tenant provides notice on a Joint Tenancy, it will end the tenancy for all joint tenants.

4.3 Exit Interviews

Exit interviews can be an opportunity to:

- assess if damage has occurred to a property and where necessary take action to prevent an internal transfer. This could avoid costly relets and long void times.
- gain information about the tenant's experience at the property which can improve our matching services in the future.
- ensure that other members of the household understand their responsibilities to vacate the property once the tenancy has ended. Signposting where necessary to services for support.
- discuss the condition of the property and if there are any charges for unsanctioned alterations or damage.
- discuss arrears that may be on the account that need to be paid in full before the tenancy ends.

A pre-exit inspection will be carried out prior to hand over of the tenancy as part of best practice and ensuring the property is fit for letting.

4.4 Tenancy Action (Possession)

Housing possession action is a civil action that gives the local authority power to evict a tenant/ licensee from their home providing they can persuade the court that it is reasonable and proportionate to do so.

Wherever possible preventative and supportive action should be taken before considering eviction proceedings.

The statutory grounds for possession of a secure tenancy are contained within Schedule 2 of the Housing Act 1985¹ as amended to include the absolute grounds.

The most common grounds BCC will use are:

- Ground 1 - rent arrears and other breaches
- Ground 2 - antisocial behaviour
- Ground 3 - acts of waste damage to property.

When pursuing possession, a legal notice must usually be served, stating which of the statutory grounds for possession applies.

It is important to identify where breaches on multiple grounds apply (e.g., rent arrears and ASB) and will require communication between departments when completing a notice.

Notices are prescribed forms as the precise content and wording is specified in secondary legislation.

4.4.1 Notice of Seeking Possession (NOSP)

The ground/s that the landlord intends to rely upon must be stated in the NOSP and the NOSP must explain why those grounds are being relied upon.

¹ [Schedule 2, Housing Act 1985](#)

The Notice will specify the date after which possession proceedings can be commenced.

Where Ground 2 (antisocial behaviour) is relied upon, the Notice is to state that proceedings for possession may be begun immediately, and it must also specify a date after four weeks on which the tenant is to give up possession.

In cases which do not involve Ground 2, the Notice must simply specify a date after which the proceedings may be begun and that date should usually be a Sunday or a Monday, at least four weeks after service of the Notice.

NOSPs which rely on Ground 2 are valid for a period of 12 months from the date specified for the giving up of possession.

NOSPs on other grounds are valid for 12 months from the date specified as the date after which proceedings may be begun.

4.4.2 NOSP (Mandatory Grounds)

This ground is available for seeking possession of secure tenancies where antisocial behaviour or certain criminal offences has already been proved in another court.

In the legislation the ground is referred to as [the 'absolute ground for possession for anti-social behaviour'](#)².

The court must award possession if:

1. Any one of five specified conditions below have been met.
2. The landlord has served a notice of seeking possession (NOSP).
3. The landlord has complied with its obligations in respect of the tenant's right of review.

The conditions for mandatory grounds are:

Condition 1: Conviction of serious offence in the locality of the property or against a person with a right to occupy housing accommodation in the locality of the property, or against the landlord or person carrying out landlord's duties.

Condition 2: Breach of an Anti-social Behaviour Injunction in the locality of the property or against a person with a right to occupy housing accommodation in the locality of the property.

Or breach of a provision intended to protect a person with a right to occupy housing accommodation in the locality of the property, or against the landlord or person carrying out landlord's duties.

Condition 3: Breach of a Criminal Behaviour Order.

Condition 4: Closure Order granted by the Magistrates Courts.

² [Housing Act 1985 \(legislation.gov.uk\) 'absolute ground for possession for anti-social behaviour'](#)

Condition 5: Noise Nuisance where action is taken under the ³Environmental Protection Act 1990.

The tenant has the right to ask for a review.

A review must be sought within 7 days of the notice of seeking possession being served.

4.4.3 Introductory Tenancies

Introductory Tenancies granted under the Housing Act 1996.

An introductory tenancy is a probationary or trial tenancy granted to a new tenant that allows the local authority landlord to decide if they are a suitable tenant.

The trial period can be extended by six months provided the landlord has served a notice at least eight weeks before the expiry date of the trial period, and the tenant has not requested a review or, if they have requested a review, the decision on review was to confirm the landlord's decision to extend the trial period.

Any notice of extension must state:

- the reason(s) for the extension.
- that the tenant has the right to ask for a review.
- that a review must be sought within 14 days of the notice of extension being served.

4.4.4 Notice of Possession Proceedings (NOPP)

NOPPs are used when a tenancy is not secure e.g., for introductory tenants. It must set out the reasons for the decision to seek possession.

Proceedings cannot be commenced until 28 days after service of the notice.

The tenant has the right to ask for a review.

A review must be sought within 14 days of the notice of the NOPP being served.

4.4.5 Other Tenancies / Licences

A license to occupy a property and a common law tenancy is normally ended by service of a Notice to Quit.

4.4.6 Demotion Order

Introduced in the [ASB Act 2003](#)⁴ and can be used when a tenant has breached tenancy conditions for ASB.

This allows BCC to apply for a demotion order to end a secure tenancy. A demoted tenancy lasts for 12 months and removes the tenant's right to buy and security of tenure for this time.

BCC can apply for a demotion order if a tenant has not addressed their behaviour within 28 days.

³ [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

⁴ [Anti-social Behaviour Act 2003 \(legislation.gov.uk\)](#) 'Demoted assured shorthold tenancies'

4.4.7 Declaration from the Courts

In cases where it is suspected that the property has been abandoned a thorough investigation must take place. There are different methods to regain possession of the property depending on the outcome of that investigation ([Abandonment policy](#)).

As an alternative to seeking a possession order we may be able to apply to the court for a Declaration, that upon an analysis of all the evidence, the tenancy has been surrendered by operation of law. This still requires all evidence to be set out in the abandonment investigation checklist. It will only be appropriate to pursue this approach where the checklist and a review of the housing, social care, and other BCC records, reveals no significant information, such as mental health issues or lifestyle considerations.

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5. Joint Tenancies Policy Chapter

5.1 Scope

This policy chapter applies to joint tenancies and applications for joint tenancies by existing sole tenants.

5.2 Policy

Each joint tenant has the same security of tenure.

A secure tenancy remains, providing at least one of the tenants occupies the property as their only or principal home.

Joint tenants are jointly and severally responsible for complying with the tenancy conditions.

When creating a new joint tenancy, the new tenancy will have the same security of tenure previously enjoyed by the former sole tenant.

Where at least one joint tenant remains alive the tenancy continues as before.

BCC will grant joint tenancies in the following circumstances:

- The proposed joint tenants are 18 years old or over and eligible for housing as defined by the Bristol Home Choice Policy.
- The proposed joint tenants are married or civil partners.
- The proposed joint tenants are cohabittees living together as if married or in a civil partnership and have cohabited for 12 months or more. Evidence is required.
- BCC will grant joint tenancies to no more than two joint tenants except in exceptional circumstances in accordance with our procedures.
- If there are any arrears at the property; either rent arrears or recoverable debt such as rechargeable repairs, then consent may be given conditionally on the provision that the debt be cleared by the day the new tenancy agreement is signed.

- A proposed joint tenant will not be precluded from applying if they have a historic debt to BCC, on the proviso that the debt be cleared by the day the new tenancy agreement is signed by both parties. If debts are not cleared the offer will be withdrawn without notice.

BCC will **not** grant a joint tenancy:

- With their adult child, carer, or any other adult member of their household other than exceptions listed above. These parties can only be included on the tenancy agreement as members of the tenant's household, except in exceptional circumstances in accordance with our procedures.
- Where a proposed joint tenant is still legally the tenant of another property.
- BCC is considering or there is a current Notice of Seeking Possession, Notice of Possession Proceedings for an Introductory Tenancy, Notice of Extension of an Introductory Tenancy, Notice of Demotion or Notice to Quit.
- There has been damage to the property and environs that has not been repaired by the occupier.
- There is a current Suspended Possession order against the tenancy.
- There are problems at the property such as breach of tenancy or anti-social behaviour and we have commenced informal or formal actions.
- Referral to ASB Case Conference within last 12 months.
- The creation of a joint tenancy would lead to statutory over-crowding or a breach of the permitted number of occupants.
- The proposed joint tenant is not eligible for a tenancy at the property due to age restrictions.
- The property is due to be demolished.

5.3 Ending a Joint Tenancy

5.3.1 Death

When one of two joint tenants dies, the tenancy will continue as a sole tenancy in the survivors' name. This will count as a succession and there can be no further statutory successions.

In cases where there are more than two joint tenants, if one tenant dies, the others each continue as joint tenants and secure by way of survivorship. This is still the case even if one of the two is not living in the property at the time.

A joint tenant who has ceased to reside at the property will still succeed to the tenancy as a sole tenant by survivorship. However, because the remaining joint tenant does not reside at the property as their only and principal home, they will have lost their security of tenure therefore, BCC can serve a Notice to Quit in order to recover the property. Should the remaining joint tenant return to live in the property before the notice has expired, they will regain security of tenure and any possession action will be ended.

5.3.2 By Court

Interest in a joint tenancy may be assigned to one of the joint tenants by a court order as part of divorce proceedings, dissolution of a civil partnership, or order under the Children Act 1989.

5.3.3 Notice to Quit

One party to a joint tenancy may give BCC Notice to Quit. This will end the tenancy for both/all tenants.

The remaining occupant(s) is not a tenant therefore will be asked to make payments for mesne profits as 'charges for use and occupation' instead of rent. (See [Use and Occupation](#))

5.3.4 Domestic Abuse

Where a relationship breakdown between joint tenants (married or cohabiting as a couple) has involved domestic abuse or threats of abuse leading to one party leaving the premises (due to threats/violence made against them or a family member living with them by the other joint tenant), BCC may seek to evict the remaining joint tenant where the partner who has left is unlikely to return but has not signed a notice to quit, by serving a NOSP under Ground 2A of the Housing Act 1985 or NOPP.

5.4 Appeals

The decision to grant a joint tenancy will be made by the Housing Officer and signed off by the Team Leader.

Applicants can appeal the decision via BCC's Complaints, Comments and Compliments policies and procedures.

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6. Abandonment Policy Chapter

6.1 Scope

This policy applies to BCC owned social housing stock (council housing). Suspected empty properties which are not council housing stock should be reported instead to BCC's [Private Housing Team](#).

6.2 Policy

6.2.1 Defining Abandonment

There is no legal definition of the term 'abandonment'. Abandonment is a term used to describe when a tenant leaves a property without giving prior notice to the landlord or formally ending the tenancy. An implied surrender of tenancy is a surrender by operation of law.

BCC may serve Notice to end the tenancy and seek possession of a property on the grounds that the property has been abandoned only after:

1. A Housing Officer has completed an Abandonment Investigation Checklist.
2. The evidence gathered in the investigation concludes that:
 - The tenant has permanently left the property, and
 - BCC cannot find any evidence to suggest their intention to return.
3. An Estate Management Team Leader has considered the evidence gathered in the investigation and agrees that:
 - Every stage of the investigation has been carried out and documented to a high standard.

- The conclusion is reasonable.

If there is uncertainty or inconsistent evidence as to the tenants' whereabouts and intention towards their tenancy, we will continue to investigate and refer the case to BCC's Legal Services for advice according to our procedures.

6.2.2 Temporary Absence

BCC recognises that there may be a range of circumstances under which a tenant may be temporarily absent from their home for extended periods but has every intention to return. Long absences do not necessarily mean that a tenant has lost their security of tenure, so the property is legitimately their only or principal home.

Examples of temporary absence include tenants that: -

- have received a custodial prison sentence.
- expect to remain in hospital or a nursing home for an extended period.
- are working, studying, or travelling.
- are temporarily living elsewhere to care for a relative.
- are not occupying the property due to problems with neighbours, harassment, domestic abuse, or health issues including mental health.

6.2.3 Notification of Temporary Absence

Section 2.8 of Bristol City Council's existing tenancy agreement states:

You must occupy the property as your only or main home, and you must only use the property as a place of residence. If you are going to be away from the property for more than one month you must notify us and provide us with contact details for either you or someone that can act on your behalf. You must not sublet the whole of the property, but you can ask us for permission to sublet part of the property.

The tenancy agreement therefore makes it clear that tenants must inform BCC if they intend to be away from their home for a period of more than one month to mitigate the risk that the property could appear abandoned, and the abandonment procedure being followed.

6.2.4 Implied Surrender of Tenancy

For implied surrender to take place two things must happen:-

1. there must be an unequivocal (unmistakable/ undisputable) act of surrender by the tenant **and**
2. an unequivocal act of acceptance of that surrender by the landlord.

The conduct of both parties and the circumstances must mean that it would be unjust for the tenant or the landlord to dispute that the tenancy has ended.

There must be no ambiguities, or room for mistake, regarding the actions that have brought the tenancy to an end and the actions must be inconsistent with the continuation of the tenancy.

Whether the actions and circumstances have effectively ended the tenancy will depend on the particular facts of each case.

There are many situations where a tenant may be absent from a property. If a tenant is absent for a long period, the rent is not being paid, and the council has not been informed of these absences

then legal advice should be sought as to the reasonableness and proportionality of seeking possession in these circumstances and action taken accordingly.

6.2.5 Investigation

To comply with the Protection from Eviction Act 1977 (PfE Act) all cases of suspected abandonment will be thoroughly investigated, and BCC's Housing and Landlord Services will be sensitive to the individual circumstances of tenants. BCC will not intentionally illegally evict a tenant under the terms of the PfE Act.

The PfE Act makes it an offence for a landlord to: -

- commit acts likely to interfere with the peace or comfort of a tenant or anyone living with them.
- make a tenant leave their home or stop using it without a court order.
- do anything that stops a tenant doing the things that they could normally expect to do.
- take someone's home away from them without a court order.

Prior to taking steps to recover possession of the property BCC will carry out all necessary investigations (either directly or in liaison with colleagues in other BCC teams or departments) to establish whether a tenant's absence is temporary or permanent and if the tenant intends to return to the property. All the evidence collated during such investigations will be recorded on an Estate Management Abandonment Investigation Checklist.

6.2.6 Recovering Possession

Following investigation, there are three means by which possession will be recovered.

Where there is found to be an unequivocal implied surrender: -

- BCC will take possession by entering the property, without court proceedings, according to our procedures.

Or,

- Apply to the court for a declaration, that upon an analysis of all the evidence (as compiled in the Estate Management Abandonment Investigation Checklist), the tenancy has been surrendered by operation of law. This approach will be pursued only in circumstances where the Checklist and a review of the housing, social care, and other BCC records, reveals no significant additional information, such as mental health issues or lifestyle considerations.

Where there is **no** unequivocal implied surrender: -

- Serve a notice to quit and take legal action to recover possession by obtaining a possession order.

Or,

- Apply to the court for a declaration, as above.

BCC will only take legal action to repossess a property when we are confident that it has been abandoned.

Any items that are left in the property following repossession will be logged on an inventory and photographed. Should BCC decide to dispose of goods left behind at a property they will act in accordance with the requirements of the Torts (Interference with Goods) Act 1977 and follow our procedures.

In the event of someone other than the tenant being found to be residing in the property, who is not authorised to be there by the landlord, we will take the appropriate action to seek possession of the property and evict the unauthorised occupiers(See [Use and Occupation](#) Policy)

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7. Death of a Tenant Policy Chapter

7.1 Scope

The following describes BCC's responsibilities to manage cases of death of a tenant that results in the return of the property.

7.2 Policy

When a tenant dies BCC will adopt a sensitive approach to the needs of the next of kin or representative managing the late tenants' affairs and provide signposting to support services where necessary.

7.2.1 Notification

BCC may receive notice of a death or the suspicion of a death from different sources which may include neighbours , the police, friends, or other agencies. Where there is a concern for a tenant's welfare, BCC will contact the police.

If a death has occurred, the police may lead the investigation and may contact the local Mortuary and the next of kin.

When investigations are complete the police should return the keys to the Landlord.

7.2.2 Suspicious or Unexplained Death of a tenant in the Property

When a tenant has died in their property and it is considered suspicious or unexplained, the police will take control of the property to ensure that all evidence is gathered, and all the required examinations take place.

7.2.3 Administrative duties

It is important to establish who is managing the late tenant's estate and make arrangements for return of the property according to our procedures.

- An executor or administrator is legally responsible for all the deceased affairs.
- An Executor is someone named in a Will as the person who will manage the deceased's possessions.
- An Administrator is someone who has applied to the Probate Registry and obtained Letters of Administration sometimes called the Grant of Probate.
- Next of Kin is a person's closest living relative or relatives.

In cases where a tenant dies intestate, and no one has come forward the tenancy still forms part of their estate and therefore it vests in the Public Trustee until the grant of administration or representation.

The vesting of the estate in the Public Trustee does not confer on the Public Trustee any beneficial interest in or impose on BCC any duty or obligation or liability in respect of outstanding rent. The Public Trustee merely receives and records information.

7.2.4 Ending a Tenancy after a Death

A tenancy does not automatically end on the death of a tenant. The tenancy becomes part of the deceased estate.

A Next of Kin who is not the executor or administrator cannot end the tenancy.

An executor or administrator can end the tenancy by giving notice or returning the keys to the property to the council. Rental income payments are due during any notice period before the keys are returned.

If there is no executor or administrator by law BCC must serve a Notice to Quit on the personal representatives of the estate and send a copy to the Public Trustee, within the prescribed timescale.

If no person qualifies to succeed, the tenancy will end four weeks after the notice is served following notification of death.

If the property is not returned BCC may take legal action to recover the property. BCC will make every effort to engage with the deceased representatives before resorting to legal action.

If there is a statutory succession following the death of a tenant, the [Succession and Assignment](#) policy will apply.

If no statutory succession has taken place, anyone still occupying the property will be informed that they did not meet the qualifying criteria. The occupant may be put into Use and Occupation while BCC considers their eligibility for a discretionary tenancy.

Properties should be cleared of all furniture and personal effects within fourteen days of the date of death and the keys should be returned to BCC. This period may be extended by agreement between the late tenant's representative and BCC provided the late tenant's estate will cover the rent costs or where relatives will meet the costs in advance.

Where personal belongings have been left or rechargeable repairs / replacements are required then the necessary works will be carried out and the costs recharged to the estate.

BCC has a legal duty to safeguard the personal belongings of the deceased when there is no executor/administrator by following the storage of goods procedure and will hold non-perishable goods in storage for 6 months. BCC will engage with a personal representative to take control of and distribute the property in accordance with the deceased wishes.

If there is no one to take responsibility for the goods, legal services will advise on the next steps.

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8. Temporary Absence Policy Chapter

8.1 Scope

- Residents with BCC Secure, Demoted, and Introductory tenancies.
- Persons in Use and Occupation of a BCC residential property.
- BCC licensees including licensees in HRA funded temporary accommodation.

8.2 Policy

BCC recognises that there may be a range of circumstances under which a tenant may be temporarily absent from their home for extended periods but has every intention to return. Long absences do not necessarily mean that a tenant has lost their security of tenure, if the property is their only or principal home.

Examples of temporary absence include tenants that: -

- have received a custodial prison sentence.
- expect to remain in hospital, nursing or care home for an extended period, but are able to return home after that period.
- are working, studying, or travelling.
- are temporarily living elsewhere to care for a relative.
- are not occupying the property due to problems with neighbours, harassment, domestic abuse, or health issues including mental health.

8.2.1 Notification of Temporary Absence

Section 2.8 of BCC's tenancy agreement makes it clear that tenants must inform BCC if they intend to be away from their home for a period of more than one month.

A property can remain empty during the absence, if a tenant does so, BCC cannot seek possession of the property for breach of that term of their tenancy conditions. If a Tenant fails to inform BCC if they intend to be away from their home for a period of more than one month there is a risk that this may lead to BCC determining that the property has been abandoned or that it is no longer the tenants only or principal home. Therefore, it is important to notify BCC of an absence to ensure that abandonment procedures are not followed.

If a tenant does not give up their tenancy while they are absent, they will maintain the status of tenant.

8.2.2 Responsibilities during an absence

BCC will contact the tenant in writing to notify them of their responsibilities to maintain their tenancy during their absence and inform them that BCC will take legal action where necessary if these responsibilities are not fulfilled, although BCC could take action for other reasons.

Tenants will be given information on their rights and responsibilities whilst they are absent but should seek independent legal advice.

It remains the tenant's responsibility to ensure that:

- rental income and other property charges are paid.

- the property is looked after.
- only authorised occupier(s) reside there.

Tenants who fall into rent arrears whilst absent from the property may be served with a Notice seeking possession of, or to end, their tenancy. This Notice would be in the required format for the type of tenancy/occupancy agreement held by the tenant/licensee

If the tenant has already been served with a Notice seeking possession of, or to end, their tenancy, for breach of tenancy or anti-social behaviour, before their absence, then possession proceedings will continue whilst the tenant is absent.

As well as losing their existing tenancy, any accrual of rent arrears can impact upon the tenant's future eligibility for social housing.

They may lose security of tenure if they do not intend to return to occupy the property as their only or principal home.

The tenant is entitled to give up their tenancy and should be suggested that they get legal advice. It may mean that they are considered intentionally homeless should they need to access social housing in the future.

8.2.3 Grounds for possession

8.2.4 Subletting

If a tenant, makes a formal arrangement for someone to occupy the whole of the property and pay the rent on the property then the tenant may be deemed to have sublet the property.

In line with the [Housing Act 1985](#) subletting the whole of the property automatically and permanently removes their security of tenure (even if they return to the property) and BCC can serve a Notice to Quit to end the tenancy.

8.2.5 Other household members

BCC will consider the needs of any remaining household members before considering legal proceedings to end a tenancy.

If the property is occupied by persons who are not already listed as part of the tenant's household, BCC will engage with the occupiers to establish who they are and their relationship to the tenant.

If possession action against the tenant is taken, occupiers will be informed that they do not have permission by the Landlord to be in the property and could be evicted. Occupants could raise an Article 8 defense and apply to join the proceedings.

8.2.6 Providing Notice Voluntarily

Tenants who are absent can choose to voluntarily end their tenancy. In accordance with BCC's Allocation Scheme tenants who gave up their tenancy while in prison, may receive a priority banding on their release from prison.

8.2.7 Joint Tenancies

If the tenant who is absent is a joint tenant, then the tenancy will continue with one party still living at the property. They will be jointly and severally liable for all rent payments and other property

charges. Any potential legal proceedings to gain possession of the property will be taken against both joint tenants.

8.2.8 Introductory, Unsecure and Demoted tenancies

For the purposes of this policy tenants who are absent who hold an Introductory, Demoted or Unsecure tenancy will follow the same process as secure tenants until such a time that it is concluded that possession proceedings shall be commenced.

At this point they should be served with a Notice appropriate to their tenancy type.

8.2.9 Benefits

A housing benefit claim can continue for up to 52 weeks before the tenant is sentenced. (This includes those on remand, and those awaiting sentencing)

Some tenants who are in prison can continue claiming benefits to pay rent. The tenant must intend to return home when they are released.

After receiving a sentence, a housing benefit claim can continue for 13 weeks (but within the maximum of 52 weeks) if the tenant is expected to return within that time.

In these circumstances the tenant should notify BCC of their intention to return to the property.

The same rules apply to tenants in receipt of Universal Credit (UC) where the tenant:

- is in receipt of UC as a single person before they were taken into custody.
- the UC includes the Housing Benefit element.

A fresh period of temporary absence for which housing benefit is payable can start following a return to the property (this could be for as little as 24 hours). This does not apply to a prisoner on temporary release who returns home

Tenants can claim housing benefit while absent, outside of Great Britain (GB is England, Scotland or Wales and does not include Northern Ireland, the Channel Isles or the Isle of Man) and after this time will be considered that they no longer occupy the property. In some circumstances this can be up to 13 or 26 weeks.

8.3 Tenants in prison

The tenant should notify BCC of their sentence, however, reports of actual or potential sentencing can come from a variety of sources; BCC must verify reports of imprisonment of a tenant.

8.3.1 Additional Grounds for Possession – tenants in prison

Under housing law, BCC may take possession of the property because the tenant has gone to prison where the offence relates to their occupation of a BCC property or as a BCC tenant.

8.3.2 Mandatory grounds

A conviction for certain offences may provide the landlord with a mandatory ground for possession within the Housing Act 1985, meaning the court must grant possession. (See Mandatory Grounds above)

Mandatory grounds apply to secure tenants.

A mandatory ground is not met if an appeal against the conviction or order is pending or successful.

8.4 Tenants who move to Residential Care

In some circumstances, a tenant may move to residential care, as a temporary absence.

If at any time the tenant decides that they no longer intend to return home, they should notify BCC and give Notice to Quit the property.

Even if the tenant maintains that they intend to return to the property, but their condition is such that it is unlikely that they will be able to, they may lose their security of tenure if their property is no longer their only and principal home. BCC may take action to recover the property if other tenancy conditions such as, maintaining the property and paying rental income are not met.

BCC will work with the tenant and their representatives to request that the property is returned, before taking possession action as a last resort.

8.4.1 Housing Benefit when in Residential Care

Housing Benefit can be paid for up to 13 weeks.

In cases where residential care is necessary because their carer is absent then this can be extended up to a maximum 52 weeks.

8.4.2 Mental Capacity

When a tenant lacks Capacity, according to the Mental Capacity Act 2005⁵ BCC will engage any appointed representative to sign a Notice to Quit on their behalf. This can only be done with the authorisation of the Court of Protection or where they have the power to do so using Enduring/Lasting Power of Attorney ('LPA') or as a court appointed Deputy.

This can only be done after an issue specific capacity assessment has been carried out to assess if the tenant has capacity to end their own tenancy. If the outcome is no, then BCC will request their representative signs on their behalf.

There are limitations within the Act regarding signing legal documents and the only people who can sign a Notice to Quit on behalf of a tenant, are:

1. An Attorney under a registered Lasting Power of Attorney or Enduring Power of Attorney; or
2. A deputy appointed by the Court of Protection; or
3. Someone else authorised to sign by the Court of Protection.

If none of the above are in place, BCC may apply to the Court of Protection for an order to end the tenancy.

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⁵ [Mental Capacity Act 2005 \(legislation.gov.uk\)](#)

9. Mutual Exchange Policy Chapter

9.1 Scope

This policy applies to secure, assured, and in some circumstances an assured shorthold tenancy with either a Local Authority or other Social Landlord.

The policy does not apply to tenants who are introductory tenants (new tenants).

9.2 Policy

Tenants who have either a secure, assured, and in some circumstances an assured shorthold tenancy with either a Local Authority or other Social Landlord have the legal right to exchange.

A mutual exchange is when two or more Social Landlord tenants exchange properties.

The tenants of both properties require consent from their landlords to exchange. Without consent the exchange becomes void, and tenants are likely to be required to return to their original homes.

Following a valid exchange, each tenant must move into their exchange partner's property and take on responsibility for that tenancy.

The tenant may wish to exchange to a larger or smaller property or move to a different location.

The size of the property that both parties are willing to exchange, must meet the needs of both households.

No money or gifts can be paid/given to encourage the success of the application. This would render the exchange void and would, if the exchange has been completed, be grounds for possession.

BCC is not able to influence other Social Landlord's policy on Mutual Exchange.

9.2.1 Consent

Currently consent is based on "Applied" and "Conditional" consent with grounds of how these can be withheld.

Decisions will be made within the 42-day period (see below). The exchange does not have to take place in that time.

Applied consent

The exchange will be automatically granted consent if BCC fails to act in writing on receipt of the application within 42 calendar days of receiving it.

Conditional consent

The following outlines conditions set by BCC that are the responsibility of the existing tenant:

- That planning consent has been previously obtained from BCC for any structural alterations or additions. If planning and building regulations consent has not been granted, the current

tenant will be responsible for returning the property to a standard acceptable by BCC and in line with planning building standards regulations.

- The incoming tenant must be accepting of the current internal/external condition of the property.
- No outstanding rent is owed and no court order to repossess the property is outstanding.
- Both exchange partners must have the written consent of their landlord to carry out an exchange.
- The property is in a state of disrepair caused by the tenants' neglect or damage it will be returned to good condition as per the tenancy agreement.

Breaches of the tenancy conditions

Conditional consent may be given if there are rent arrears or other breaches of the tenancy conditions, and these are remedied within a given time specified by BCC which is currently 30 calendar days:

BCC will agree an exchange where a debt is owed if moving the tenant(s) would alleviate the level of arrears/debt or:

- the tenant has rent arrears or sundry debts owed to BCC (rent or sub account – current or former) and these are cleared within the given period prior to exchange.
- the tenant is affected by the Housing Benefit under occupation charge and allowing the exchange to go ahead would alleviate this.
- there is a strategic interest to be met.

Where the property has not been maintained to a reasonable standard by the tenant to the degree that the property now presents a Health and Safety risk to the tenant and occupants. In this instance conditional consent may be given once any health and safety breaches have been remedied by the existing tenant or BCC.

This is not an exhaustive list, and other cases will be considered on their own merits if there is a strategic interest to BCC in allowing the exchange.

9.2.2 Grounds for withholding consent

BCC may withhold consent to exchange in prescribed circumstances.

The grounds for withholding consent are set out in in Schedule 3 of the Housing Act 1985⁶.

There are additional grounds for withholding consent where:

1. a secure or assured tenant is exchanging with tenant who has a secure tenancy that is a flexible tenancy, or an assured shorthold tenancy under which the landlord is the Regulator of Social Housing, a private registered provider of social housing or a housing trust which is a charity **and**
2. The tenancy for the secure or assured tenant was granted before 1st April 2012.

⁶ [Housing Act 1985 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

These are contained within Schedule 14 of the Localism Act 2011⁷.

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10. Decants Policy Chapter

10.1 Scope

Decant is the term used to describe the process of moving a tenant and their household from their principal home where they hold a tenancy to alternative accommodation whilst their home is undergoing, major repairs, structural alterations, or re-development.

This policy specifically refers to the need to decant our tenants and their household.

This policy covers temporary emergency & unplanned decants, as well as planned temporary short term and long term decants, and permanent decants.

Temporary Decant:

- Planned or unplanned, and the expectation is that the residents will return to their principal home following works.
- Emergency or short term which means they are not expected to last more than three weeks and where possible residents will be placed in temporary accommodation, hotels or B&Bs. If this overruns to a longer term, then the suitability of the accommodation will be assessed. The tenant may be offered alternative accommodation for the remaining duration of the repairs, depending on their individual circumstances.
- Long term decants are expected to last longer than three weeks. BCC can make use their Landlord Agreed Transfer Policy to offer suitable alternative accommodation.

Permanent Decant:

- A temporary decant can escalate to a permanent decant if it is no longer appropriate for the residents to return to the principal property.

BCC can use their Landlord Agreed Transfer Process to offer suitable alternative accommodation.

This policy covers permanent decants and explains when a tenant is eligible for home loss payments.

This policy sets out guidance for when we will award disturbance allowances or home loss payments.

This policy provides BCC's approach to collecting rental income during a temporary decant.

10.2 Policy

10.2.1 Budget Responsibilities

The decant is a shared responsibility across Capital and Revenue budgets to cover repairs to the asset and costs associated with decanting the residents.

⁷ [Localism Act 2011 \(legislation.gov.uk\)](#)

10.2.2 Moving Tenants

It is our statutory and contractual obligation as a landlord to repair a tenanted property and keep it in repair where any damage is the landlord's responsibility. Wherever possible, we will carry out improvement works and major repairs whilst the tenant remains in their home.

There is no legal requirement to carry out improvement works or to supply temporary or alternative accommodation, (unless we are seeking possession under Ground 10 or 10A of the Housing Act 1985), but there are times when it would be unreasonable to expect tenants to remain in occupation and/or where works could be completed more safely and effectively without the tenant present.

There are also unforeseen situations where we, as a responsible social landlord, would wish to provide alternative accommodation.

Where we are required to move a tenant to alternative accommodation, either on a temporary or permanent basis, we will ensure a customer focussed service that meets our legal requirements as a landlord.

We will consider moving tenants and their households from their home on a temporary or permanent basis in the following situations:

- The property needs major repair work and will be uninhabitable.
- The property needs to be substantially refurbished or modernised.
- The property is to be demolished, either for safety reasons or re-development.
- The property will be unsafe for an extended period, for example, structural collapse.
- Major works where the contract could be completed more efficiently if the tenant was not present.
- When the tenant or a member of the household is disabled and reasonable adjustments to allow works to take place could not be achieved without a move to alternative/temporary accommodation.
- Where there are exceptional circumstances approved by a senior manager (3rd Tier.)

10.2.3 Staying with family or friends

Where appropriate we will always encourage the tenant to stay with family or friends. Payments may be made to the tenant who has moved in with friends or family to contribute to costs.

BCC will assess each case depending on their circumstances and pay up to a maximum of £50 per household per night Payments can be made for the following:

- £35 a night for the head of the household
- £12 a night for each additional adult
- £10 a night for each child over one year old
- £10 a night for kennel or cattery

Total payment per household will be capped at £50 per household per night.

10.2.4 Rental Income

Where a tenant is temporarily decanted, they will still legally be a secure tenant of their principal home. The existing tenancy will be retained on our Housing Management System, with the rent account continuing.

The rent will be paid for the principal home by the tenants and no charge will be made for the decant property for rent.

10.2.5 Alternative Accommodation Types of Decant

Emergency / Unplanned Decant

In an emergency situation, where the tenant has no option of staying with family or friends, they may be referred through the homeless pathway for emergency accommodation.

For an out of hours (OOH) emergency, a referral may be made to the emergency duty team. (EDT)

Where accommodation cannot be found through our homeless pathway, Bed & Breakfast or Hotel accommodation will be sought.

Other steps may be taken by senior housing management to facilitate moving occupiers in an emergency.

Once the emergency has been addressed and the family have somewhere to stay, the Surveyor and Housing Officer are responsible for working collaboratively to identify the next steps, whether it's appropriate for the tenant to return immediately or if the decant will continue to a short, long term, temporary or permanent situation.

Where a long term decant has arisen from an emergency or unplanned decant, BCC can use our [Landlord Agreed Transfer](#) (LAT) process to identify accommodation. Properties won't be offered on a like for like basis, particularly if the tenant and household are being decanted from a property that they are under-occupying.

Short-Term Planned Decant

The Surveyor has identified works that are required that cannot be completed whilst the tenant and household are in occupation, and that the work is not expected to last more than 3 weeks.

If the tenant(s) and household are unable to stay with family or friends – B&B or Hotel accommodation will be sought. Where there are no facilities to prepare meals, breakfast will be paid for, but not full subsistence. In securing this type of accommodation we will consider the tenants' requirements in terms of accessibility needs and location.

Long Term Planned Decant

Where there is no option to stay with family or friends for a longer period, BCC can use their LAT policy to identify alternative accommodation.

Permanent Decant

A permanent decant will be required where a property has been identified as requiring works that are beyond economic value to be completed and the property will be demolished.

The property will have significant alterations that change the property so that it will no longer meet the households' needs.

10.2.6 Home Loss Compensation

Home loss compensation is strictly only made to compensate tenants where there is no alternative but for them to move out of their home permanently due to demolition or redevelopment.

For tenants to be entitled to Home Loss compensation they must be permanently displaced and have occupied the accommodation as their only or principal home for a minimum of one year. An application for Home Loss compensation must be made to us by the tenant within six years of them being displaced from the property. Only one payment will be made, even in the case of joint tenants.

The Home Loss compensation payments are set out in legislation⁸ and are reviewed annually. As at October 2023 the minimum rate is set at £8,100⁹. Before making payment, the rate should be checked against The Home Loss Payments (Prescribed Amounts) (England) Regulations.

10.2.7 Enforcement

Whether the tenant's household is required to be decanted either temporarily or permanently and refuses to move, as a last resort, we will consider possession proceedings under Ground 10 or 10a of Schedule 2 of the Housing Act 1985¹⁰. This will be considered only once other alternatives have been explored and the tenant has rejected a suitable offer of rehousing. We will ensure that suitable alternative accommodation is available if an application for possession is made.

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11. Landlord Agreed Transfer Policy Chapter

11.1 Scope

A Landlord Agreed Transfer (LAT) is used to allow BCC to make an offer of a tenancy in order to facilitate a move for an existing tenant(s), also known as 'own lets'. This is subject to the criteria set out below.

BCC's Allocation Scheme sets out the provision for own lets.

It is important to be able to use this function to ensure that we are making the best use of the housing stock available and have tenants in properties that meet their needs as far as is reasonably practicable.

⁸ [Land Compensation Act 1973 \(legislation.gov.uk\)](#)

⁹ [The Home Loss Payments \(Prescribed Amounts\) \(England\) Regulations 2023](#)

¹⁰ [Housing Act 1985 \(legislation.gov.uk\)](#)

11.2 Policy

11.2.1 Criteria for a Landlord Agreed Transfer

A LAT will be considered under any of the following:

- The tenant is under occupying a property in areas of strategic interest such as high demand for large homes in an area of the city.
- The tenant(s) is affected by the Housing Benefit Under Occupation charge and moving the tenant would alleviate this.
- The tenant requires significant adaptation works to be carried out in their current property, a LAT can be agreed to move the tenant to an already suitably adapted property or a property that requires significantly less work to adapt.
- An occupant has succession rights, but the property is too large or not suitable for their needs(e.g., age restricted or has adaptations they do not need).
- An emergency situation causing the property to be uninhabitable (e.g., fire, filthy and verminous) and the tenant is required to move away.
- If a tenant has been temporarily decanted and has compelling grounds to not wish to return to the substantive property once made available to them, they could be assessed via the LAT procedure for a move.
- Intractable disputes, where moving one party will resolve the situation. In these cases, all other avenues of resolution must have been exhausted and moving a tenant is the last resort to resolving the situation.

This is not an exhaustive list, and other cases will be considered on their own merits if there is a strategic interest for BCC.

There may be circumstances where, on investigation BCC decide that an offer will not be made. In this instance, the tenant will be informed of the decision and given a detailed explanation why the transfer didn't meet the criteria.

11.2.2 When a Landlord Agreed Transfer will not be considered

Tenants cannot request a LAT and should join the register and access social housing in the normal way.

A LAT should not be considered under the following circumstances, unless it is in the strategic interests of BCC:

- They should not be used as a way of managing Anti-Social Behaviour (ASB). However, in cases of ASB, where it is likely a move would resolve the situation and could also be a reasonable adjustment, a transfer may be considered. This should follow our ASB procedures.
- Formal action has been taken against the tenant for ASB, except in circumstances above.
- If the tenant(s) or occupant(s) of the property have caused significant damage to the current property.
- If the tenant(s) has rental income arrears.
- If a tenant is excluded from the normal route of bidding for properties through Home Choice Bristol a LAT cannot be granted as a way of circumventing this process.

Cases for LATs will be decided by team leaders or service managers. In some cases, it may be appropriate to escalate a decision to the Occupation Decision Panel.

11.2.3 Refusal of offers

It is a priority to avoid the need for taking legal action to recover properties.

We will work with tenant(s) to ensure that we offer a suitable property to transfer to.

One offer will be made and in exceptional circumstances a second offer could be made.

If offers of suitable properties are rejected, this may result in legal action being taken to recover the property (current tenancy).

In this instance, BCC will commit to making the next suitable property available to the person where required by law.

The tenant will be provided with information regarding the offer and what the consequences are for their circumstances, should they refuse.

11.2.4 Appeals

Tenants may request a review of the decision within 14 days of being notified. New evidence or representations must be presented with the request for review.

Reviews will not be carried out in the absence of new material evidence.

Any person may make a complaint following BCC [Complaints, Comment and Compliment Policy](#) and Procedures.

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12. Succession and Assignment Policy Chapter

12.1 Scope

This Policy applies to, residents with BCC Secure, Demoted, and Introductory tenancies.

This policy does not apply to, BCC licensees in temporary accommodation, Leaseholders or Garages.

12.2 Policy

Succession is the process by which a tenancy is passed to another person following the death of a tenant.

This document outlines BCC approach to managing requests for succession and clarifies the circumstances under which a person may succeed to a tenancy.

BCC will exercise the statutory right given to secure tenants under the Housing Act 1985¹¹ and amended Localism Act 2011¹² to pass on their tenancy following their death.

Where a person cannot succeed to a tenancy, they can apply for a discretionary tenancy award. (See [12.2.2](#)) BCC will consider all requests fairly in accordance with their procedures.

It is the potential successor's responsibility to apply to succeed a tenancy or to request consideration for a discretionary tenancy award. As a responsible social landlord, we will signpost people to support and facilitate applications as far as is reasonably practicable.

Applicants must provide evidence and information to demonstrate that they qualify and should seek independent legal advice.

If a person does not qualify for succession, nor are they granted a new tenancy, BCC may take legal action to recover the property.

BCC may request a succeeding tenant move to a different property, either to downsize or to a property suited to the tenant re: adaptations. (Other than those exceptions set out in [12.2.1](#) below)

Garages and parking spaces cannot be succeeded to. BCC will terminate the licence agreement and allocate in accordance with our garages and parking spaces allocations.

Assignment is the process by which a tenancy is 'gifted' from a tenant to another person. Whilst succession can only occur upon the death of a tenant, assignment is the passing on of a tenancy whilst the tenant is still alive, and in this circumstance, counts as a succession.

An assignment where it is instructed by a court order or occurs through a mutual exchange does not count as a succession.

12.2.1 Statutory Succession

A Housing Officer will receive and manage the application to succeed a tenancy against the legal criteria set out below.

Tenancies that started before the 1st of April 2012 – Housing Act 1985

There can only be one statutory succession. Therefore, if the deceased tenant was a successor, or the surviving party of a joint tenancy, or if there has been a previous assignment of the tenancy then there can be no further right of succession.

A person is qualified to succeed a secure tenancy if they occupy the property as their only or principal home at the time of the tenant's death and:

- they are the tenant's spouse or civil partner; or
- they are a family member according to the definition (Sec 113 Housing Act 1985) which includes long term co-habiting partners and have resided with the tenant for twelve months before the tenant died.
- Unless, in either case, the tenant was a successor.

¹¹ [Housing Act 1985 \(legislation.gov.uk\)](#)

¹² [Localism Act 2011 \(legislation.gov.uk\)](#)

There is no residency requirement for a successor who is a spouse or civil partner, but they must have lived at the property as their only or principal home with the deceased at the time of their death.

A temporary absence from the property by the potential successor or exclusion under a court order, does not preclude the 'only or principal home' condition being filled.

Tenancies that started on or after the 1 April 2012 – Localism Act 2011

From the 1st April 2012 statutory succession to a secure or flexible tenancy only applies to the spouse or civil partner of the deceased tenant who was living in the property as their only or principal home at the time of the tenant's death.

The definition of spouse or civil partner is enlarged to include those who occupy the home and were living with the late tenant "as" the tenant's spouse or "as if" they were the tenant's civil partner (s86A(5)) thus widening primary succession rights to include cohabitants.

Family members no longer have the right to succeed, unless this is permitted under their tenancy conditions.

Introductory Tenancies

It is possible to succeed to an introductory tenancy and the rights are the same as for tenancies that started before 1st April 2012.

A successor will succeed to the same terms as the previous tenant. For example if the previous tenant had been an introductory tenant for 3 months, then the successor will be an introductory tenant for the remaining 9 months until the tenancy becomes secure, unless it is extended, or they are served with a Notice of Seeking Possession Proceedings (NOPP). (Conditions within the Housing Act 1985 that protect successors from possession proceedings do not apply to Introductory Tenancies.)

Survivorship

Where there is a joint tenancy, held by two persons, and one of the joint tenants dies, the tenancy passes automatically to the remaining joint tenant known as survivorship. The tenant cannot 'succeed' to the tenancy, as they are already a tenant.

For the same reasons, there is no right to assign a joint tenancy to a potential successor.

However, where only one right of succession is allowed, survivorship will count as such, and therefore, no further rights of succession exist.

Any issues regarding the preserved 'right to buy' or rent arrears accrued by the original tenant will be passed to the surviving joint tenant.

The Supreme Court has found that according to common law (survivorship) and the Housing Act 1985 that where at least one joint tenant remains alive then the tenancy continues in existence as before. For the purposes of section 89(1), "a secure tenant" dies only when a sole tenant died.

Surviving joint tenants have the same security of tenure as before and where that is a secure tenancy, joint tenant who is a family member cannot be asked to move from the property under Grounds 13, 15 & 15a, even if the property is under-occupied, is unsuitable or has adaptations that they do not require.

A joint tenant who has ceased to reside at the property will still succeed to the tenancy as a sole tenant through 'survivorship'. However, they will have lost their security of tenure at the property by ceasing to live there as their only or principal home and BCC may commence possession proceedings by serving a Notice to Quit. If they return to the property before the notice expires and reside in it as their only or principal home, then their security of tenure could be restored.

Succession by a minor

A 'minor' (person under the age of 18) is not capable of entering into a legal contract such as a tenancy agreement, and therefore will be held in trust by BCC until the successor reaches the age of eighteen. This will only apply to cases where the original tenancy commenced prior to 1st April 2012 unless permitted under the tenancy conditions.

Multiple Eligible Successors

In cases where there is more than one eligible successor who has a statutory right to succeed, and an agreement cannot be reached between the parties as to which household member should succeed to the tenancy then BCC will select a successor to the tenancy.

The factors that will be considered are length of occupation, capacity to sustain a tenancy and relationship to the original tenant. (This is not an exhaustive list)

There can be no joint succession.

12.2.2 Discretionary Tenancy Award

In cases where there is no statutory right to succeed, those remaining are unauthorised occupants and will be classed as being in 'use and occupation'.

Occupants in use and occupation can apply for a discretionary tenancy award. Criteria for an application for a discretionary tenancy award, are set out within the [Discretionary Tenancy Award and Occupation Policy](#) Chapter of this document.

Applicants may be offered a tenancy at the current property or a different property, depending on the outcome of their assessment.

BCC may agree to rehouse the remaining occupant(s) or grant a new tenancy at the current property. If granted, this would not be classed as a succession as a new tenancy would be given.

Only requests from those within the household (as set out in BCC's Allocation Scheme) at the time of the deceased tenant's death will be considered. Those who move into the property after the date of the tenant's death will not be eligible.

If the surviving occupant is not offered a new tenancy BCC will pursue legal action to take possession of the property.

Surviving occupants will be signposted to access support to find alternative accommodation.

12.2.3 Making the Best Use of Stock

Where a successor to a secure tenancy is in accommodation that is considered unsuitable then BCC may seek to move the new tenant.

Long term cohabiting partners are defined as family members by the Housing Act 1985 and therefore can be required to move.

Accommodation would be considered unsuitable:

- where there is one or more bedrooms over the housing need or underoccupied. (As per the BCC's Allocation Scheme)
- the property is designed for a specific client group, e.g., sheltered housing and the new tenant doesn't meet the criteria.
- there are adaptations that they do not require.

Where the accommodation is unsuitable, failure to accept an offer and/or move after being made a suitable offer will result in possession proceedings being issued. (See [LAT](#))

The notice of possession will be served no sooner than six months after the death of the previous tenant and not later than 12 months after the death.

12.2.4 Non-Qualifying Applicants

Where the potential successor doesn't qualify for statutory succession, and they are not offered a new tenancy, BCC will seek possession of the property.

This may require a Notice to Quit to be served on the personal representatives of the deceased tenant and copy sent to the Public Trustee office within appropriate timescale.

Pre-action protocol letters must also be sent to any occupants.

12.2.5 Appeals

Where BCC considers that no succession has taken place, an occupant can request a review of that decision within 14 days of being notified that they have not succeeded to the tenancy. New evidence or representations must be presented with the request for review.

Reviews will not be carried out in the absence of new material evidence.

Any person may make a complaint following BCC [Complaints, Comment and Compliment Policy](#) and Procedures.

12.2.6 Debt and Account Management

Any rent credits or arrears on a tenancy that has been succeeded to by way of statutory succession (not including survivorship) become a debt owed by/to the deceased tenant's estate and cannot be claimed from/by the successor.

Any outstanding possession order will expect to proceed.

Where a new tenancy is granted to an occupant that did not qualify to succeed, neither the arrears nor any credit pass to the new tenant.

If the successor is a remaining joint tenant, they remain responsible for any outstanding debt.

12.3 Assignment Policy

12.3.1 The Housing Act 1985 – Secure Tenants

The Housing Act 1985 outlines the only three ways in which a secure tenancy can be assigned:

1. An assignment by way of Mutual Exchange.
2. An assignment as a result of a court order in relation to matrimonial and civil partnership proceedings.
3. An assignment to a person who would be qualified to succeed to the tenancy if the tenant were to die immediately before the assignment. Exception:- a Joint secure tenancy cannot be assigned to a potential successor.

This policy does not address assignment by way of exchange. (See [Mutual Exchange](#) Policy Chapter).

12.3.2 Assignments by Court Order

Where a court makes an order that a sole or joint tenancy be transferred to one party in matrimonial proceedings, it will be necessary to assign the tenancy to give effect to the order.

BCC will comply with any assignment by way of a court order.

The courts also have powers to transfer tenancies under the Family Law Act 1996¹³. This transfer does not take effect by way of assignment and so is not included in the list of specified circumstances in which assignment is permitted. This does not count as a statutory succession.

It is the tenant's responsibility to apply to assign their tenancy.

12.3.3 Grounds for withholding consent to assign a tenancy

The Housing Act 1985 is very specific about grounds for withholding consent for mutual exchanges; however it does not specify similar grounds for ordinary assignments.

Bristol City Council will not agree to an assignment request in the following instances –

- The person requesting to assign their tenancy has previously succeeded to the tenancy.
- It is a joint tenancy. Joint tenants succeed to a tenancy by way of survivorship, not by way of a statutory succession. Therefore under section 91 of the Housing Act 1985 there is no right to assign a joint tenancy to a potential successor.
- There had previously been an assignment of the tenancy.

¹³ [Family Law Act 1996 \(legislation.gov.uk\)](#)

- There has previously been an assignment of the tenancy or property adjustment order under the Matrimonial Causes Act 1973¹⁴, Matrimonial and Family Proceedings Act 1984¹⁵, Children Act 1989¹⁶, or Civil Partnership Act 2004¹⁷ and the original tenant was a successor.
- The potential assignee does not currently reside with the tenant as their 'only or principal' home
- The person requesting to assign their tenancy has ceased to reside at the property as their 'only or principal' home.
- The potential assignee is unable to prove their relationship to the current tenant, or their residence at the address (where relevant) throughout the 12 months prior to the assignment request.
- The tenancy commenced on or after 1st April 2012 and the applicant is not the current tenants spouse, civil partner or a long term cohabiting partner living together as spouse or civil partners.
- The current tenant does not have capacity.

Legally there is a right to assign but Bristol City Council will not give their consent to an assignment due to the conduct of the tenancy or having given consideration to best use of stock:

- There is a current Notice of Seeking Possession, Notice of Possession Proceedings for an Introductory Tenancy, Notice of Extension of an Introductory Tenancy, Notice of Demotion or Notice to Quit.
- Where there are rent arrears or other recoverable housing debt owed to Bristol City Council
- The proposed assignee is not eligible for council housing
- The proposed assignee is under the age of 18 years old.
- The property is currently over-crowded and in breach of the permitted number of occupants.
- The size of the property is too large for the proposed assignee's housing need
- The property has disabled adaptations that the proposed assignee does not require
- The proposed assignee not eligible for a tenancy at the property due to age restrictions (e.g. 50+ blocks)
- The property is due to be demolished
- The proposed assignee has previously been evicted from a BHP property for Rent Arrears or
- A record of ASB within the past 3 years.

In cases where the assignment request has been refused a letter should be sent to the tenant within 42 working days of receipt of a completed application form and all relevant documentation, outlining the reasons for declining the application and providing details of the appeals procedure.

¹⁴ [Matrimonial Causes Act 1973 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1973/18)

¹⁵ [Matrimonial and Family Proceedings Act 1984 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1984/29)

¹⁶ [Children Act 1989 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1989/20)

¹⁷ [Civil Partnership Act 2004 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2004/16)

13. Discretionary Tenancies and Use and Occupation Policy Chapter

13.1 Scope

This policy applies to unauthorised occupiers, those that are living in a BCC property without a tenancy or a legal right to one under Succession and the opportunity to apply for a discretionary tenancy award.

An unauthorised occupier is defined as someone who is occupying a BCC home and does not hold a tenancy agreement:

- Someone who has been allowed into the home with the consent of the tenant and remains in the home after the tenant has given notice and left.
- An assignment or mutual exchange carried out without our consent.
- Someone who does not leave the home of a deceased tenant after it is established that they do not have a statutory succession.
- A former tenant who remains in a property after a joint tenant has given Notice to Quit on a tenancy.
- Someone who was subletting a property from a tenant and who is left in occupation after the tenancy ends.

A squatter for the purposes of this policy will be defined as:

- Anyone who has broken into a property or let themselves in through an open door or window.

13.2 The Law

13.2.1 Unauthorised Occupiers

The Protection from Eviction Act 1977¹⁸ prevents anyone from being evicted from a residential property without there being a court order in place, subject to limited exceptions.

This does not apply to squatters who may be removed from the property without a court order by the police.

13.2.2 Use and Occupation

Use & Occupation is a generic term that applies to occupation without any agreement. BCC will assess the circumstances of the person(s) in occupation and decide if a new tenancy will be granted to them to either stay at the property or at a suitable alternative property. Legal proceedings to take possession of the property will not be started until this decision is made and in the interim, the occupation will be tolerated.

For the whole of the period a person(s) remains in occupation they will be liable for the 'use and occupation' charge also known as 'mesne profits'.

¹⁸ [Protection from Eviction Act 1977 \(legislation.gov.uk\)](#)

BCC will seek to recover from the occupier any costs incurred as a result of any repairs due to damage to the property.

13.2.3 Squatters

If a person remains in a property after breaking in and refuses to leave, then they will be deemed to be squatting. Squatting is a criminal offence. The police will be called to remove them. In some circumstances BCC may need to seek further legal advice to remove them.

Squatters should be advised to access BCC's homelessness prevention services.

13.3 Discretionary Tenancy Award

13.3.1 Award Criteria

An unauthorised occupant may apply to BCC for a 'discretionary tenancy award'. If successful, applicants may be offered a tenancy at that property or a property elsewhere.

Squatters would not qualify under this policy to apply for a discretionary tenancy award.

The applicant must first apply to Home Choice Bristol and complete registration. This must be in place before any other application for a discretionary tenancy award can be made.

To apply an occupant must have been residing at the property as a member of the household:

- at the time the tenant died (or the tenant ended the tenancy leaving others in occupation)
- as their only or principal home.
- have lived there for at least 12 months prior to the death of the tenant (or the tenancy ending)

If an occupant meets all of the criteria above, they would qualify for a discretionary tenancy subject to conditions set out below.

13.3.2 Conditions

- Applicants cannot be offered a tenancy without being on the housing register.
- Applicants must make payments of charges and ensure that they access the benefits that may be available to them. Arrears may impact the decision to make a discretionary tenancy award and may lead to possession action.
- Where the existing property does not meet the needs of the applicant, (for example due to under occupation), a discretionary tenancy of an alternative property, which better suits their needs, will be made. Only one such offer will be made. Should this be refused, no further offers will be made.
- When considering whether to offer a discretionary tenancy award BCC will take into account all circumstances including, but not limited to, any arrears of mesne profits or charges, ASB, tenancy fraud, disrepair caused by the occupier, etc., and will, except in exceptional circumstances, directly affect any decision to make or refuse an offer.

BCC may pursue possession of the property where BCC decides not to offer a discretionary tenancy award.

13.3.3 Discretion

BCC will use discretion to offer a tenancy in circumstances where an applicant may not meet all of the criteria, but it is considered proportionate to award a discretionary tenancy in exceptional circumstances. In these situations, the Occupational Decision Panel (ODP) will be asked to consider the case.

13.4 Tenancy Fraud

Types of tenancy fraud and abuse relevant to this policy:

- Application Fraud - making a false declaration or submitting fraudulent documents to obtain a council tenancy.
- Unlawful Subletting - subletting the whole of a property.
- Non-Occupation – a tenant not occupying a council property as their only or principal home.
- Succession Fraud - unlawful tenancy succession - wrongful succession to a person who does not qualify and submitted false information to gain a tenancy.

These are criminal offences. BCC may prosecute any individual found to have given false information to obtain a BCC Tenancy under the Prevention of Social Housing Fraud Act 2013.

13.5 Policy

BCC will ensure our homes are let to applicants in need of a home through fair and transparent processes in accordance with the Bristol Allocation Scheme.

On discovery of an unauthorised occupant, we will inform them in writing as to why we consider they have no legal right to occupancy of the property and explain their housing options.

The unauthorised occupier will be charged a use and occupation charge ('mesne profits') whilst occupying the property if they remain after the tenancy has ended. An unauthorised occupier can apply to BCC for a discretionary tenancy award.

All applications will be considered in accordance with criteria set out above, our procedures and meet our legal requirements.

BCC will seek to recover properties from unauthorised occupants who do not wish to apply for or do not qualify for a tenancy.

Any person outside of the unauthorised occupier's household (as defined in [Housing Act 2004](#)) cannot be included in the considerations for granting a tenancy and will not be included in any offer.

In cases where the occupier has not qualified for a succession, consideration will only be given to those members of the deceased tenants' household who were living at the property at the time of death and meet the criteria for a discretionary tenancy award.

If an unauthorised occupier has mutually exchanged without consent of BCC, then they will be required to move back to their original property to avoid possession action. (See [Mutual Exchange Policy](#))

13.6 Appeals

Applicants for a new tenancy may request a review of the decision within 14 days of being notified. New evidence or representations must be presented with the request for review.

Reviews will not be carried out in the absence of new material evidence.

Any person may make a complaint following BCC [Complaints, Comment and Compliment Policy](#) and Procedures.

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14. Appendices

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- Bristol Allocations Scheme
- Rental Income and Arrears Management Policy

Ending a Tenancy

- Housing Act 1985
- Housing Act 1996
- Environmental protection Act 1990
- Anti-Social Behaviour Act 2003

Joint Tenancies

- Children Act 1989/ 2004

Decants

- Housing Act 1985

Tenants in Prison

- Family law Act 1996
- Housing Act 1985/ 1989
- Anti-Social Crime and Policing Act 2014

Abandonment

- Equalities Act 2010
- Human Rights Act 1998
- Welfare Reform Act 2012
- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Protection from Eviction Act 1977

- The Torts (Interference with Goods) Act 1977

Succession and Assignment

Court Orders that effect assignment:

- Section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings)
- Section 17 (1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce)
- Paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents)
- Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004

Mutual exchange

- Schedule 3 Part IV of the Housing Act 1985
- Localism Act 2011 (Section 158 & Schedule 14)

Use and Occupation

- Prevention of Social Housing Fraud Act 2013.

Appendix B – Glossary of terms

- **Assignment:** An act of making a legal transfer of tenancy ‘signed over’ from one person to another.
- **Conditional Consent:** Whereby a tenant has breached areas of their tenancy agreement and Housing Delivery has instructed the tenant to rectify the breach as a condition of the exchange.
- **Housing Benefit under-occupation charge:** Restrictions to Housing Benefit for working age claimants living in the social rented sector who are occupying a larger property than their household size requires.
- **Housing Delivery:** Bristol City Council Housing services (formerly Landlord Services).
- **Home Choice Bristol:** The housing register for Bristol.
- **Strategic interest:** Contributing to the vision and priorities for the city and the council, meeting the aims and objectives set out in the Corporate Plan.
- **Suitable property:** Property that meets the applicant’s needs in accordance with BCC’s Allocations Scheme.
- **Social Landlord:** Regulator of Social Housing, a Local Authority, a private registered provider of social housing or a housing trust which is a charity.
- **Discretionary Tenancy Award:** Occupants may apply for a discretionary tenancy award. This will be assessed according to BCC procedures and an offer may be made. The award is subject to acceptance of the offer.