



Bristol City Council – Housing & Landlord Services

Succession and Policy Chapter

Version 1

Contents

1. Policy Statement	2
1.1 Bristol City Council Policy Context.....	2
1.1.1 Bristol Allocations Scheme	2
1.2 Complaints	2
1.3 Equalities and Diversity	2
2. Aims and Objectives	2
3. Roles and Responsibilities and Authority	3
4. Scope	3
5. The Policy	3
5.1 Statutory Succession	4
5.1.1 Tenancies that started before the 1st of April 2012 – Housing Act 1985	4
5.1.2 Tenancies that started on or after the 1st April 2012 – Localism Act 2011	4
5.1.3 Introductory Tenancies	5
5.1.4 Survivorship	5
5.1.5 Succession by a minor	5
5.1.6 Multiple Eligible Successors	6
5.2 Discretionary Tenancy Award	6
5.3 Making the Best Use of Stock.....	6
5.4 Non-Qualifying Applicants	7
5.5 Appeals	7
5.6 Debt and Account Management	7
6. Appendices	7
Appendix A – Legal and Policy Context.....	7
Appendix B – Glossary of terms	8

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.

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.

1.1.1 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.
- 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.
- 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 assessment and award of succession or a discretionary tenancy 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. 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.

5. The 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 1985¹ and amended Localism Act 2011² to pass on their tenancy following their death.

Where a person cannot succeed to a tenancy, they can apply for a discretionary tenancy award. 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.

¹ [Housing Act 1985 \(legislation.gov.uk\)](http://legislation.gov.uk)

² [Localism Act 2011 \(legislation.gov.uk\)](http://legislation.gov.uk)

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 1.1 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.

5.1 Statutory Succession

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

5.1.1 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.

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.

5.1.2 Tenancies that started on or after the 1st 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 cohabiters.

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

5.1.3 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.)

5.1.4 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.

5.1.5 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.

5.1.6 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.

5.2 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.

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 a family member, who is part of the household, 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.

5.3 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.

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.

5.4 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.

5.5 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.

5.6 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.

6. Appendices

Appendix A – Legal and Policy Context

External

- Equalities Act 2010
- Human Rights Act 1998
- Welfare Reform Act 2012
- Housing Act 1996(IT's)

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

Internal

- Tenancy Agreement
- Bristol Allocations Scheme
- Rental Income and Arrears Management Policy

Appendix B – Glossary of terms

Home Choice Bristol	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 applicants 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 our procedures and an offer may be made. The award is subject to acceptance of the offer.