

HOUSING MANAGEMENT CONSULTATIVE COMMITTEE

Agenda Item 49

Brighton & Hove City Council

Subject: When a sole council tenant requests a joint tenancy
Date of Meeting: 7 December 2009
Report of: Director of Adult Social Care and Housing
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Wards Affected: All

FOR GENERAL RELEASE.

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Council Allocations policy does not provide for the lawful creation of joint tenancies to existing sole tenants and a new partner.
- 1.2 Maintaining this position would help the council make best use of existing stock in order to meet housing need, without any significant disadvantage to tenants.

2. RECOMMENDATIONS:

- 2.1 (1) That the current policy position is confirmed and no provision is made for the creation of joint tenancies where one party is already a sole tenant of the council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 It is not possible for an existing sole council tenant to be granted a new joint tenancy with a new civil partner, spouse or partner.
- 3.2 Although not able to become a joint tenant, a new civil partner, spouse or partner may live in the property as long as they do not cause nuisance to other people.
- 3.3 If a civil partner or spouse was living with the sole tenant at the time of their death, and as long as the sole tenant is not themselves a successor, they have the right to succeed to the tenancy. This also applies to partners who are not formal civil partners or spouses if they have lived together for 12 months.
- 3.4 A resident partner counts towards occupancy numbers and their needs will be included in any housing need or adaptations assessment. If the sole tenant provides written consent, then they are able to discuss tenancy and rent account

matters with council officers.

- 3.5 The alternative is to amend the Allocations Policy in order to allow the creation of a new joint tenancy for existing sole council tenants and a new civil partner, spouse or partner. A new tenancy would create a further succession chain and delay the property being available to meet general housing need for a generation.

3.6 The Rights of Sole and Joint Tenant couples

Status	Succession [only where there has not already been succession]	Right to Buy Jointly	To be considered as part of household for adaptation requirements	To be considered as part of household for space standard calculation and transfer	To be able to discuss tenancy related issues with the council
Civil partners Sole tenant	√	√	√	√	√ With written consent of sole tenant
Civil partners Joint Tenants	√	√	√	√	√
Married Sole Tenant	√	√	√	√	√ With written consent of sole tenant
Married Joint Tenants	√	√	√	√	√
Cohabitee joint tenants	√	√	√	√	√
Cohabitees of 12+ months sole tenant who have been resident with the tenant for the 12 months before the tenant's death	√ Can be asked to transfer if occupying adapted property or underoccupying	√	√	√	√ With written consent of sole tenant
Cohabitants of fewer than 12 months sole tenant	X	X	X	X	√ With written consent of sole tenant

- 3.6.1 The formality of relationship is, for most purposes, more important than the holding of a joint or sole tenancy. Spouses and civil partners of sole tenants

enjoy the rights set out in the table above.

- 3.6.2 Where a sole tenant dies, their spouse, civil partner of any period, or cohabitant of 12 months or more, who have been resident there with the tenant for the 12 months before the tenant died, may succeed to the tenancy as long as the deceased sole tenant was not themselves a successor. The only disadvantage cohabitants of sole tenants have is that they may be asked to move to a smaller property or to one without adaptations. Spouses and civil partners of sole tenants would not be required to move.
- 3.6.3 Spouses, civil partners of any period and cohabitants who have lived with a sole tenant for a minimum of 12 months are able to be party to a joint right to buy with the sole tenant, so there is no benefit holding a joint tenancy. in respect of right to buy.
- 3.6.4 Spouses, civil partners of any period and cohabitants who have lived with a sole tenant for a minimum of 12 months are acknowledged as part of the household and are considered when calculating space standards, transfer priority or need for adaptation, they do not need to be joint tenants in order to be considered part of the household.
- 3.6.5 The principle variation is in the event of relationship breakdown. Married couples and civil partners, whether sole or joint tenants, who are unable to agree who is to remain in the property, may apply to court for the tenancy to be awarded to either party, not necessarily be the sole tenant. Cohabitants have no such recourse to court, and a sole tenant will almost always automatically retain the tenancy and their former partner have no rights.
- 3.6.6 Either party to a joint tenancy may end that tenancy at any time after giving notice. A sole tenant who becomes a joint tenant lessens their security in the event of relationship breakdown.
- 3.6.7 If the council were to adopt a policy of not granting new joint tenancies to existing sole tenants, then some cohabitants of sole tenants may be disadvantaged in that;
- They may be required to move to a smaller or non adapted property upon Succession
 - Someone cohabiting with a sole tenant will not have any right to the tenancy if the relationship breaks down – although their partner, the existing tenant, enjoys greater security than would be the case if they were joint tenants.

4. CONSULTATION

- 4.1 Council tenant representatives were invited to a consultation event. The general view was that the council should not create joint tenancies if this creates a further succession chain.

4.2 The Lesbian, Gay, Bisexual and Transgender Housing and Support Working Group discussed these recommendations. Some concerns were raised about the lack of rights for a cohabitant of a sole tenant and how this may encourage them to stay in an abusive relationship. It is hoped that the widespread publicity around Domestic Services will ensure people in this situation know where they can go for help, and to publicise relevant services at local offices and in publications. Multi agency training around LGBT specific Domestic Violence is planned for 2010/11. Concerns were raised about people who are not joint tenants with no succession rights when their partner dies – the council is supportive in these circumstances, and if the surviving partner is unable to remain in the property, advice and assistance is available to help find a new home, and a reasonable period allowed before action is taken to repossess the property. Members of this group agreed that a joint tenancy appears to give greater equality within the relationship, but also that joint tenants have less security in that either party may end the tenancy at any time. The group appreciated the shortage of homes within the city and that it was generally undesirable to offer further succession in creating a new tenancy. Members of this group noted that these proposals have the same impact for LGBT partners as for heterosexual couples. Civil partners and Married couples are treated equally, as are cohabiting couple of any gender and sexual orientation.

4.3 This report is presented to Housing Management Consultative Committee.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no direct financial implications from the recommendations in this report.

Finance Officer Consulted: Susie Allen *Date:* 20 November 2009

Legal Implications:

5.2 “By section 167 Housing Act 1996 a local housing authority must have an allocation scheme. It cannot allocate accommodation except in accordance with that scheme. A local housing authority allocates accommodation when it selects a person to be a secure or introductory tenant for housing accommodation held by it. By granting a new joint tenancy to an existing sole tenant and a new partner, it appears that the Council would be allocating accommodation otherwise than in accordance with its Allocation scheme. (The new partner having been selected to be a secure tenant.) The tenancy would not be an introductory tenancy, unless the existing sole tenant was an introductory tenant. “

Lawyer Consulted: Liz Woodley

Date: 20 November 2009

Equalities Implications:

- 5.3.1 This proposal does not significantly benefit or disadvantage married couples or civil partners, who would be treated equally.
- 5.3.2 Cohabitants may in some circumstances may be disadvantaged in that they may be required to move to a smaller or non adapted property when the succeed to the tenancy. Cohabitants of sole tenants are unlikely to have rights to the tenancy when the relationship breaks down. However, sole tenants who cohabit enjoy greater security than would be the case if they joint tenants.

Sustainability Implications:

- 5.4 There are none

Crime & Disorder Implications:

- 5.5 There are none

Risk and Opportunity Management Implications:

- 5.6 If this policy is not confirmed and the creation of joint tenancies for existing sole tenants permitted, then a new succession chain would be created and the property would not become available for general letting for a further generation. This may prevent the council making best use of housing stock in order to meet housing need.

Corporate / Citywide Implications:

- 5.7 There are none

SUPPORTING DOCUMENTATION

Appendices:

None

Documents In Members' Rooms

None.

Background Documents

None

