



## **NCHP123**

# **CHANGES TO TENANCIES POLICY**

<b>Document title</b>	Changes to Tenancies Policy
<b>Issue date</b>	March 2020
<b>Version/Issue number</b>	3
<b>Document status</b>	Final
<b>Effective from date</b>	March 2020
<b>Date to be reviewed</b>	March 2021
<b>Scope of document</b>	NCH Policy on changes to tenancies

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## 1.0 Introduction

1.1 This Policy sets out the way in which we can make changes to Nottingham City Homes (NCH) tenancies. NCH is an Arms Length Management Organisation (ALMO). The policy covers housing stock owned by Nottingham City Council (NCC) and managed by NCH.

### 1.2 Policy Aims and Remit

- To provide clear information to tenants on the circumstances in which NCH may permit changes to a tenancy and circumstances where changes may not be permitted, including in cases of relationship breakdown
- To provide information to tenants on their statutory rights of assignment
- To set out the procedure tenants must follow to request any changes to their tenancy

### 1.3 Associated policies

This policy must be read in conjunction with the following NCH Policies and procedures:

- NCH Tenancy Policy
- Mutual exchange Policy
- Succession Policy
- Tenancy Fraud Policy
- Nottingham City Council's Housing Allocations Policy

Copies of policies can be found on the NCH website at <https://nottinghamcityhomes.org.uk/about-us/corporate-documents/>

### 1.4 Changes to Tenancies – General Policy

A tenants' right to make changes to their tenancies is limited to what is set out in law and in their tenancy agreement. We will consider requests for changes to be made to a tenancy in accordance with the law, our tenancy terms and conditions and this policy. We will act reasonably when considering requests.

Failure to seek permission for any changes to a tenancy will constitute a breach of a tenant's terms and conditions of tenancy. If permission has not been sought before a tenancy change is made, action may be taken against a tenant for breaching their tenancy.

Any requests to make changes to a tenancy, must be made in accordance with this Policy.

#### 1.4.2 Important points to note if you are considering requesting a tenancy change:

Where there has already been a previous assignment or succession either at the existing property or a previous property (including succession by a surviving joint tenant) we will generally not allow another change unless there is a Court Order directing us to do so.

Other reasons for refusing a request include, but are not limited to:

- Where there are outstanding rent arrears or other debts owed to us, or there are other tenancy breaches;
- Where legal proceedings of any kind have been initiated against the current tenant or the proposed new tenant has been subject to legal proceedings;
- Where a person who is applying to join the tenancy is not eligible for housing;
- Where a person applying to become a joint tenant or the person applying to have the tenancy in their own name would not qualify to join the housing register, for example, if they already hold a tenancy, own a property elsewhere, or they do not meet the financial or any other qualifying or non-qualifying criteria in accordance with NCH's Allocations Policy;
- Where a joint tenancy is being requested, the person applying to be joined as a tenant is not the current tenant's spouse or partner, or a person that would be capable of succeeding to the tenancy i.e. they are not a qualifying person as defined in Housing Act 1985 ;
- Where there is a valid Court Order for possession of the existing tenant's home;
- Where there is reason to believe that one of the parties is being pressured into changing the names on the tenancy;
- Where the property is not suitable for the proposed tenant(s).

Detailed information about each type of tenancy change, can be found below.

## 2.0 Sole to Joint Tenancies

2.1 In certain circumstances as set out below, NCH will agree to an existing sole tenant, requesting a joint tenancy with persons they are connected to, known as 'qualifying persons'. This means they would share their tenancy with that person, jointly. In law, this is only possible by a **new tenancy** being created and therefore if such a request is approved, there is a formal route that must be followed.

2.2 To be eligible for such a change, a request must meet the following criteria:

2.2.1 The request must be to add a '**qualifying person**' to their tenancy. This is a person who would be legally capable of "succeeding" (i.e. would inherit) the tenancy if the existing tenant passed away. This person is a spouse or civil partner if the tenancy commenced after 1 April 2012 or spouse/civil partner/qualifying family member if the tenancy started before 1 April 2012.

2.2.2 There must have been no previous succession of the original tenancy, so for example the current tenant cannot have succeeded to that tenancy from a

previous spouse or family member. For full details on who can statutorily succeed to a tenancy and who classes as a “Qualifying Person”, you should read our Succession Policy which can be found here: <https://nottinghamcityhomes.org.uk/about-us/corporate-documents/>

In summary, the person being considered for a joint tenancy must be a person that would be eligible for a statutory succession and either be:

- a spouse or civil partner;
- a person living with the tenant as husband or wife, or
- if the existing tenancy commenced before April 2012, a family member who has lived at the property for at least 12 months could also qualify.

2.2.3 The tenant and prospective tenant must provide the information requested in this policy and sign any documentation required, before a request can be considered.

2.2.4 Those that are not eligible, may still make a request for a tenancy change in accordance with this policy but they must demonstrate that there are **exceptional circumstances** that mean that change should be allowed despite them not meeting the criteria above. They must provide evidence of those exceptional circumstances.

2.3 Once a request for a new tenancy in joint names has been submitted, the procedure below must be followed:

1. The existing tenant and prospective joint tenant must provide documentation and evidence to support their request. This includes:
  - a. Identification for each household member
  - b. Proof of 12 months residence of any new household members, including the prospective joint tenant.
  - c. Any information they wish to put forward for NCH to consider which supports the points a) to g) set out in section 2.4 below. These are the points NCH will take in to account in making a decision.
  - d. In cases of tenants that don't meet the qualifying criteria set out in 2.2 above, they must demonstrate that there are **exceptional circumstances** that mean that change should be allowed despite them not meeting the criteria. They must provide detailed reasons as to why they wish the request to be considered, evidence of exceptional circumstances for example medical evidence, letters of support and other evidence supporting the need for such a change to be made.

Both the existing and prospective tenant should provide all information they wish to be considered.

2. The sole tenancy must be ended by the existing tenant and a new joint tenancy would have to be created. Therefore, the existing tenant must serve Notice to Quit to end their tenancy before any request can be considered. This is because any joint tenancy created would be a new tenancy. Tenants will be expected to seek their own independent legal advice in relation to this. Should a request to change a tenancy from sole to joint be refused by NCH, a tenant will be permitted to withdraw

their Notice to Quit and retain the existing sole tenancy though, so tenants should be reassured that they will not risk their tenancy as a result of making a request, even if the request is refused.

2.4 Once the requirements above are complied with and the documents are received from an applicant, an officer at Area Housing manager level or above will make a decision. They will consider each request and exercise their discretion (judgment) on a case by case basis, taking in to account the factors a- g below. They will also consider any representations made outlining exceptional circumstances where a person is not eligible under a, b and c set out in 2.3 above.

AHM's will consider the following factors:

- a. Whether there has been any previous assignment of the tenancy or any previous succession or if either prospective joint tenant has benefitted from previous assignments or successions. Generally, save in exceptional circumstances, sole to joint tenancies will only be permitted if there have been no previous such changes and will only be permitted once per tenancy
- b. The best use of housing stock
- c. The conduct of the existing and prospective joint tenant including their compliance with previous NCH or other tenancy terms and conditions, maintenance of rent payments - if the sole tenant is in breach of any of the conditions of their current tenancy, the application will be refused.
- d. Any rent arrears that exist, whether current or former, of either the existing or prospective tenant – if there are arrears on the current rent account, the request will be denied unless arrears are cleared in full or a payment plan has been agreed and maintained
- e. The suitability of the property for any joint tenants including the size, type and any specific features or adaptations to the property
- f. The evidence provided by the existing and prospective tenants for example but not limited to, proof of residence, proof of eligibility for an allocation, proof of immigration status
- g. Any other relevant factors in the circumstances of the case that are relevant to their suitability and need to be a joint tenant, including that they must qualify for an Allocation of Housing in accordance with the Housing Allocations Policy [link]. This includes but is not limited to, consideration of their financial circumstances, whether they own or have a financial interest in a property and their immigration status.

2.5. If the allocation of a new tenancy is approved by AHM, NCH will complete a formal sign up interview and the joint tenants will sign a new tenancy agreement. This will create a new joint tenancy. The start date of that tenancy should be the date it is signed.

If the allocation of a new tenancy is refused, the existing tenant will be permitted to withdraw the Notice to Quit and their existing tenancy will continue as a sole tenancy.

### 3.0 Joint to Sole Tenancies

#### 3.1 Relationship Breakdown

- i. We understand that relationship breakdowns can be difficult and complicated. This section explains some of the options available for tenants in those situations.
- ii. Couples who are permanently separating must seek independent legal advice in relation to tenancy issues. NCH do not have the legal right to end a joint tenancy, only one of the joint tenants themselves can do that or arrange a change to the tenancy through the courts.
- iii. If tenants are having difficulty coming to an agreement they may be able to apply to Court for a decision. The Citizens' Advice or a Solicitor should be able to provide more information about this.
- iv. In the case of married couples, any matrimonial occupation rights would apply whether or not the tenancy was in both spouses' names.
- v. The Family Court has the power to exclude a joint tenant from the home under the Family Law Act 1996. The Court may also transfer a tenancy to one spouse. In such cases, NCH should be served with the notice of application to the Court and would have the opportunity to make representations. NCH will act on any court orders made to transfer a tenancy.

#### 3.2 Joint to Sole tenancy requests

- vi. Where it is not possible to deal with a relationship breakdown through the Family Law Act 1996 or any other family law legislation, a tenant may choose to voluntarily end their joint tenancy. This can be done in one of 2 ways:
  1. By one joint tenant serving a Notice to Quit (NTQ). This ends the tenancy for **both** tenants at the expiry of the notice (see 3.2.4 below); or
  2. Where both tenants agree, a transfer of the property by Deed of Assignment to one of the joint tenants can be requested.
- vii. If both tenants are in agreement, then joint tenants must make a request to NCH for a joint to sole tenancy assignment to be completed. NCH will consider such requests in line with this policy. If approved, a Deed of Assignment can be completed - the deed must be signed by both tenants, assigning the tenancy to one of them. This scenario does not create a new tenancy and will continue the existing tenancy.

- viii. Any such decisions as to whether to allow an assignment in 3.2.2 above, to one of the joint tenants, requires permission to be sought from NCH in line with the tenancy terms and conditions, which state that permission must be sought for any assignment. The permission request will be considered by an Area Housing Manager (AHM). An AHM will make a decision, taking into account the points a-g below.
- ix. If there is **no agreement between the joint tenants**, one of the tenants may voluntarily choose to end the tenancy by serving Notice to Quit (NTQ). Tenants will be expected to obtain their own legal advice in relation to this to ensure that they understand the effect of this. If an NTQ is received from one of the tenants, then it is not possible to complete a deed of assignment. However, the NTQ will have the effect of ending the tenancy for **both tenants** even if only one of them serves NTQ.
- x. In circumstances where we receive an NTQ from only one of the joint tenants, we will:

As required by law, take reasonable steps to inform the other joint tenant that NTQ has been served and the effects of this on their tenancy. This may include writing to the last known address and asking them to make any representations they wish to be taken in to account about their personal circumstances, before the tenancy ends. This step will be taken unless there are exceptional circumstances such as a MARAC recommendation or serious domestic abuse situation, meaning that notifying one party would put the other party at risk.

If NTQ has been served, and one of the tenants wishes to request a sole tenancy after service of an NTQ, then a decision on this can be made by an AHM or by the Allocations Panel, after and taking into account a number of factors (a-g below).

Any decision to grant a tenancy to a remaining tenant would have to result in the creation of a new, sole tenancy. This will only be possible once consideration has been given, taking in to account the following factors:

- a. Whether there has been any previous assignment of the tenancy or any previous succession or if the prospective sole tenant has benefitted from previous assignments or successions. Generally, save in exceptional circumstances, new sole tenancies will only be permitted if there have been no previous such changes and will only be permitted once per tenancy
- b. The best use of housing stock – for example here, should a direct offer of a different property be made to better suit the tenant's needs? If this is the case, the decisions should be made by Allocations Panel and referred to them.
- c. The conduct of the existing and any prospective joint tenant including their compliance with previous NCH or other tenancy terms and conditions, maintenance of rent payments - if the prospective sole tenant is in breach of any of the conditions of their current tenancy, the application will be refused.
- d. Any rent arrears that exist, whether current or former, of either the existing or prospective tenant – if there are arrears on the current rent account, the request

- will be denied unless arrears are cleared in full or a payment plan has been agreed and maintained
- e. The suitability of the property for any joint tenants including the size, type and any specific features or adaptations to the property
  - f. The evidence provided by the prospective sole tenant for example but not limited to, proof of residence, proof of eligibility for an allocation, proof of immigration status
  - g. Any other relevant factors in the circumstances of the case that are relevant to their suitability and need to be a joint tenant, including that they must qualify for an Allocation of Housing in accordance with the Housing Allocations Policy [link]. This includes but is not limited to, consideration of their financial circumstances, whether they own or have a financial interest in a property and their immigration status.

Decisions should be made by the AHM or by the Allocations Panel where a direct offer would need to be made of a different property because the existing property is not suitable.

Such a request can only be processed:

1. After the representations of the other joint tenant have been received and considered (if any are received) unless there are exceptional circumstances such as a MARAC recommendation or serious domestic abuse situation, so that notifying one party would put the other party at risk; and
2. After the remaining tenant provides documentation and information as requested by NCH including proof of their circumstances and residence and that of any household members ;and
3. If the decision to allocate a new tenancy is in line with its Allocations Policy and other relevant NCH policies. If an applicant would not qualify for a tenancy under the Allocations Policy then they would not be permitted to have a sole tenancy.

If NCH decide that a new sole tenancy can be granted, the remaining tenant will have to complete the relevant paperwork and NCH will sign them up to a new tenancy.

#### **4.0 Tenancy Assignment – assigning whole tenancy (Sole to Sole)**

In certain circumstances, tenants may have the right to assign their **whole tenancy** to another person who would be entitled to succeed on a tenant's death, full details can be found in NCH's Successions Policy, but normally the assignee must be:

- the existing tenant's spouse or civil partner;
- a person living with the tenant as husband or wife, or
- a family member of the tenant who has lived at the property for at least 12 months (if the tenancy commenced before April 2012).

Only one assignment can be made per tenancy, and tenants are required to obtain the permission of NCH before an assignment. In making any decision, the AHM or Allocations Panel will take in to account the following factors:

- a. Whether there has been any previous assignment of the tenancy or any previous succession or if the prospective sole tenant has benefitted from previous assignments or successions. Generally, save in exceptional circumstances, new sole tenancies will only be permitted if there have been no previous such changes and will only be permitted once per tenancy
- b. The best use of housing stock
- c. The conduct of the existing and prospective joint tenant including their compliance with previous NCH or other tenancy terms and conditions, maintenance of rent payments - if the prospective sole tenant is in breach of any of the conditions of their current tenancy, the application will be refused.
- d. Any rent arrears that exist, whether current or former, of either the existing or prospective tenant – if there are arrears on the current rent account, the request will be denied unless arrears are cleared in full or a payment plan has been agreed and maintained
- e. The suitability of the property for any joint tenants including the size, type and any specific features or adaptations to the property
- f. The evidence provided by the prospective sole tenant for example but not limited to, proof of residence, proof of eligibility for an allocation, proof of immigration status
- g. Any other relevant factors in the circumstances of the case that are relevant to their suitability and need to be a joint tenant, including that they must qualify for an Allocation of Housing in accordance with the Housing Allocations Policy [link]. This includes but is not limited to, consideration of their financial circumstances, whether they own or have a financial interest in a property and their immigration status.

A request for permission to assign will only be considered:

1. After the representations of the tenant and assignee (person they wish to assign to) have been received and considered.
2. After the assignee provides documentation and information as requested by NCH including proof of their circumstances and residence and that of any household members, including a signed Sole to Sole form; and
3. Provided that such a decision is in line with NCH's Allocations Policy and other relevant NCH policies. If an assignee would not qualify for a tenancy under the Allocations Policy then the assignment will not be permitted.

If permission is granted, and the tenant and assignee agree, then a deed of assignment should be completed and signed by both, assigning the tenancy to the assignee. This does not create a new tenancy and the existing tenancy will continue in the name of the assignee.

## 5.0 Glossary

Allocations Policy	<a href="#">Link</a>
Assignee	A person who becomes a tenant by an assignment.
Assignment	The transfer of a tenancy from one person to another by mutual agreement.
Deed of Assignment	Written agreement to assign a tenancy from one tenant (or group of tenants) to another. This must only be completed AFTER permission has been given for the assignment.
Eligibility	Whether a person is legally able to be listed on the housing register. This is a matter of immigration status. For more details see Nottingham City Council's Housing Allocation Policy.
Family Court	Established in 2013, merging the family law jurisdictions of the County Court and Magistrates' Courts. Mostly dealing with matters under the Children Act 1989 and Family Law Act 1996.
Family member	A parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. Note that no distinction is made between blood relations, step relations and relations by marriage. For more information see the NCH Succession Policy.
Joint tenancy	A tenancy with more than two or more tenants.
Judicial Review	The review of a decision made by a public body by a senior judge. The judge will consider whether the correct process was followed in making the decision, but will not normally decide whether the decision was correct or not.
Living with as husband or wife	Co-habiting for at least 12 months in a committed, long-term relationship.
Mutual exchange policy	<a href="#">Link</a>
NCH Tenancy Policy	<a href="#">Link</a>
Notice to Quit (NTQ)	A notice by either NCH or a tenant that ends the tenancy. A notice to quit must have specific information to be legally valid, so it is important to follow the templates provided.

Nottingham City  
Council's Housing  
Allocations Policy

[Link](#)

Qualifying person

A person who is able to legally succeed to a tenancy on the death of the tenant.

Sole tenancy

A tenancy with only one tenant.

Succession

The transfer of a tenancy to a qualifying family member following the death of a tenant; An 'inherited' tenancy.

Succession Policy

[Link](#)