

Housing Systems Briefing

No.1 / 2021:

UC and Absent Joint Tenants

What's the problem?

Key facts:

- Absent joint tenants (untidy tenancies) have been an issue in the UC system from the start.
- Despite improvements to the UC service we continue to see claimants and advisers confused by the advice given by the DWP which can seem contradictory and is often inaccurate.
- The Landlord Portal verification process for these cases appears to be a 'bolt-on' that doesn't provide the service required. And despite DWP staff having been issued official guidance on the process it is clear there is a lack of training and understanding as many are not following this.
- These on-going problems have been compounded by the rent increase in April 2021. It appears that when UC claimants have reported the change to the rent this has caused a re-set – so those who were getting 100% housing costs covered have reverted back to getting just 50% .

Impact:

- Universal Credit claimants are left confused and uncertain about how their rent will be supported.
- Arrears start accruing on the UC claimant's rent account causing distress and worry.
- Landlords are having to step in and help claimants find ways of making the system work – taking time and causing frustration.
- Even once sorted, claimants can miss out on their full Housing Cost entitlement leaving them paying off arrears that have arisen through no fault of their own.

We have written this Briefing to highlight the issues and provide what guidance we can. It appears that claimants and landlords are already doing all they can to try and resolve these problems and further intervention by the DWP is required.

Untidy Tenancies / Absent Joint Tenants

Introduction

A joint tenancy is where two or more tenants have all signed a single tenancy agreement for a property and so are jointly and severally liable for paying the rent.

Where you have a joint tenancy – and this is not between a couple - and one of them claims UC, then the DWP will want to know the total rent for the property and the number of joint tenants. They will then work out the UC claimant's share of the rent and base their Housing Costs Element (HCE) on this. Generally, the total eligible rent is split evenly between the joint tenants.

In social housing we tend not to see too many non-couple joint tenants, although there can sometimes be joint tenancies between siblings, or dad/mum and daughter/son, or even friends. A more common scenario is where you have a couple who were given a joint tenancy and then their relationship ends.

Having a joint tenancy doesn't generally cause any problems in UC until one of the joint tenants leaves the property permanently.

For a long time the DWP worked on the assumption that it would be easy for the landlord to convert that joint tenancy into a sole tenancy and they could then award the HCE on the full rent to the UC claimant remaining in the property. Even now, despite recent guidance, claimants are sometimes told by the DWP that they need to ask their landlord to do this before they can amend the HCE.

If this were possible, it would certainly be the easiest option all round.

But it's not that easy: if there are rent arrears on the account, or the absent joint tenant does not relinquish their side of the tenancy, then there are legal implications to consider. In these cases most social landlords will allow the joint tenancy to run- after all, the remaining tenant is liable for the full 100% rent.

The issue for the DWP is that they have to fit this situation into the UC Regulations, using the current computer system, and be sure they are awarding the correct amount of UC. To do this they will want to be assured that, on the balance of probabilities, the absent joint tenant has left the property on a permanent basis.

What the Regulations say

Fitting it into the UC Regs is the easy bit – Para 35(5) of Schedule 4 of the UC Regulations allows the DWP to apportion a rent differently to splitting it evenly between the joint tenants....

(5) If the Secretary of State is satisfied that it would be unreasonable to determine amount S in accordance with sub-paragraph (4), amount S is to be determined in such manner as the Secretary of State considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

So – in basic terms - they can apportion the rent 100% to the remaining joint tenant if reasonable to do so.

Is there an absent joint tenant?

The easiest way for the DWP to check this is contact the landlord: if the landlord confirms that there is an absent joint tenant who has permanently left the property, then this is all the evidence that is required.

But what if the landlord wasn't aware that the absent joint tenant was indeed absent, or not being 100% certain that it is a permanent move?

If the landlord does not know that the claimant has an untidy tenancy / absent joint tenant, or suspects this but has no evidence or corroboration from the tenant, then they should verify the rent as normal. The UC system will then apply the normal joint tenancy rule ie splitting the eligible rent evenly between the joint tenants, and the claimant's Housing Costs Element will be based on their share of the eligible rent.

In this situation it is up to the UC claimant left living in the property to provide the DWP with enough information for them to make the decision that, on the balance of probabilities, the absent joint tenant is absent and is not going to return.

Case law (that has been around a long time) helps us here:

R(I) 2/51: A claimant's uncorroborated statement can be evidence so long as it is not inherently improbable or self-contradictory.

R(I) 4/65: The Decision Maker must decide claims and applications on the balance of probability. This is not the same as "beyond reasonable doubt", the standard test for proof in criminal trials. The balance of probability involves the DM deciding whether it is more likely than not that an event occurred, or that an assertion is truer.

And the DWP's own Guidance on Absent Joint Tenants states:

The claimant must always declare their housing costs accurately. They must declare that it's a joint tenancy and confirm the number of joint tenants declared on the tenancy agreement. The claim must be verified as a joint tenancy even though there is an absent joint tenant. Case managers can decide if the claimant is wholly liable for the rent (or the percentage split of rent) as split between the remaining joint tenants. Case managers must accept the claimant's declaration.

Making the computer system work

Whilst the UC Regulations do allow for it to be determined that a joint tenant be apportioned 100% of the total rent for the property they live in, the decision to do so is discretionary and therefore, we assume, needs a manual intervention by the Case Manager.

At the moment it appears that this can only happen if the case is a non-portal one.

The Landlord Portal (social housing)

The Universal Credit Landlord Portal allows social landlords who are registered users to verify rent and submit managed payment requests.

They can receive a 'Confirm tenancy details' to do to complete, or a 'Confirm tenant housing costs' to do. A landlord will receive a 'Confirm tenancy details' to do when one of their tenants makes a claim for UC or an existing UC claimant reports a change to their housing costs themselves - including an early annual rent increase. The 'Confirm tenant housing costs' to do is sent following the claimant completing a 'Confirm your Housing Costs to-do' requested to capture the April annual rent increase.

In both cases, where the landlord is aware that there is an absent joint tenant they are advised to reject the verification request stating in the rejection that there is an absent joint tenant / untidy tenancy.

Where a social landlord is aware that there is an absent joint tenant the current Landlord Portal Guidance states:

16 April 2021

Processing 'Absent joint tenants'

If you receive to-dos via the portal - where you know there is an absent joint tenant, (previously known as an 'untidy tenancy'), take this action.

For 'Provide tenancy details' to-dos:

- reject these using the current process

For 'Confirm tenant housing costs' to-dos:

- select 'No' to the question "Is this person your tenant and liable for rent at this address?"
- add a note to say this is an absent joint tenant (untidy tenancy)

Portal landlords are instructed to reject the verification request and enter 'This is an absent joint tenant /untidy tenancy claim' into their response. This updates the 'SRS verification' to-do with the landlord's response. This response removes the auto-rent verification process. The case manager then follows the 'Not a portal case' process.

So where a landlord *knows* that a rent verification is for a tenant with an untidy tenancy / absent joint tenant, then they should reject the verification and make sure they state in the dialogue box that there is an absent joint tenant (otherwise they could be seen as making a false declaration).

The screenshot shows the 'Confirm tenancy details' form in the Universal Credit portal. At the top, it says 'Universal Credit' with links for 'Help', 'Tenants', 'Info and', and 'Properties'. The title is 'Confirm tenancy details' with a link 'Guidance for landlords about Universal Credit'. Below this, it shows tenant details: 'Tom Jones (1 January 1980)', '7 ROMAN WAY, London', 'SE15 2JZ', and a note 'Complete all rental details below as they were on 14 February 2018'. The main question is 'Is this person your tenant and liable for rent at this address?' with 'Yes' and 'No' buttons. The 'No' button is selected. Below this is a text box labeled 'Why have you said no?' with the text 'Untidy tenancy' entered. At the bottom, it asks 'Are you accepting other charges (use and occupation)?' with 'Yes' and 'No' buttons. The 'No' button is selected. At the very bottom are 'Next' and 'Back' buttons.

The theory is that as the landlord is a Trusted Partner, the DWP should accept this statement - ie that there is an absent joint tenant, and make the necessary adjustments to the claimant's UC claim to base their Housing Costs Element on 100% of the eligible rent.

What happens next

Change in joint tenancy costs to-do

When the DWP have accepted that there is an absent joint tenant then the Case Manager should create and complete a 'change in joint tenancy costs' to-do to ensure the correct housing costs are paid in every Assessment Period. A claimant could ask on their journal whether this has been done.

Pinned Note

Recent DWP Guidance states that a pinned note should be added to the claimant's UC account stating that it is an absent joint tenancy case. A claimant could ask on their journal whether this has been done.

Current Problems

There are a number of problems with the current system, including:

- When a landlord rejects the portal rent verification because they know there is an absent joint tenant this then triggers an automatic message to the claimant saying that their landlord has said that they are not one of their tenants and asking them to complete a change in circumstances! This is confusing and upsetting for the claimant.
- Rejecting the portal verification (with an explanation as to why it is rejected) should then trigger a SRS manual verification request via email – but we have heard reports of only a very small number of SRS verifications being received (10% of those rejected) – meaning that the claimant can receive the wrong amount of Housing Costs Element for several months, leaving their landlord chasing the verification request.
- In some cases pressure is put on the landlord: to investigate whether there is an absent joint tenant and confirm that this is a permanent situation, to change the tenancy agreement to the remaining tenant's sole name and/or requesting that they make a statement to confirm that there is an absent joint tenant when they do not feel comfortable saying for certain that there is.
- We've also heard that Case Managers are questioning why portal verifications have been rejected and suggesting alternative methods to deal with an absent joint tenant, leaving the landlord uncertain of the best procedure to take to ensure the claimant receives the help with their housing costs that they are entitled to.
- Notification by the claimant of a change to their housing costs – even just a rent increase – sometimes re-sets the system and the verification process with all its problems has to be repeated.
- Where the landlord does not know that there is an absent tenant and so confirms the rent verification, then the claimant's HCE is based on 50% of their eligible rent, even though they may be entitled to the full 100%. Claimants often fail to spot this and may not realise anything is wrong,
- Problems can also occur once the DWP have agreed to base the claimant's Housing Costs Element on 100% of the rent because the DWP do not always back date the increase to the date of claim / date claimant first notified of an absent joint tenant.

So where do we go from here?

If the landlord is *happy to confirm* an absent joint tenant

Where a landlord is happy that there is an absent joint tenant (ie that their records show this / the claimant confirms this in writing when asked) then Guidance asks them to reject the rent verification on the Portal stating that it is an untidy tenancy because there is an absent joint tenant.

This then raises the issue with the claimant's Case Manager who should send through a manual verification via email to the landlord.

This should then mean that the claimant doesn't have to put anything on their journal – although there would be no harm in doing so. They could use wording such as:

Whilst I have a joint tenancy, the other joint tenant is an absent joint tenant. They moved out on a permanent basis on xx/xx/xxxx. I would therefore like to request you apportion 100% of the rent to me – in line with Para 35(5) of Schedule 4 of the UC Regs – as it is reasonable to do so because they are not paying anything towards the rent. My landlord is unable to remove them from the tenancy for legal reasons. This is a formal declaration of my situation that you should accept without the need to confirm this with my landlord.

If you require any further information, please let me know as soon as possible as I am currently falling behind with my rent which is causing me a lot of distress and worry as failure to pay the whole rent will result in my landlord taking action to evict me.

Then as long as an off-portal verification comes through to the landlord and is then verified, the claimant should receive a Housing Costs Element based on 100% of their eligible rent without any further action by them.

Due to the failings in the system, and more importantly to the fact that claimants will be sent a message saying that their landlord has stated they are not their tenant (!), it would be good practice to notify the tenant what's about to happen and request they put a note on their journal. The landlord should then watch out for the non-portal verification.

If the landlord *cannot* confirm that there is an absent joint tenant

Where the landlord cannot confirm that there is an absent joint tenant, then Guidance states: 'Case Managers must accept the claimant's declaration' – so a landlord should not feel pressure to declare otherwise. Nor should they necessarily need to do any investigative work before completing the rent verification.

The landlord should confirm the fact that the claimant is their tenant, tick to say there's someone else on the tenancy and how many other joint tenants there are in total and the fact that there is a joint tenancy. The claimant's Case Manager will not be alerted to the case and the system will go ahead and split the rent. This means that the claimant will only get their share (normally 50%) of the eligible rent included as a Housing Costs Element in their UC unless the claimant notifies UC that there is an absent joint tenant.

In these cases the landlord could contact the claimant to explain what is about to happen- ie that they will only get a percentage of the rent covered by UC and that the other joint tenant/s should be paying the remaining share. And that if there is an absent joint tenant, then they need to inform the DWP who can then amend the amount of the Housing Costs Element; they should ask the tenant to let them know too if this is the situation and offer help.

The landlord may wish to provide the claimant with a statement - similar to the one shown above - that the claimant can put on their journal. If the claimant does this, then that statement should be

accepted and the HCE should be amended from the MAP in which the claimant first notified they had an untidy tenancy/absent joint tenant – which could be the start of the UC claim.

Obviously, this relies on the claimant understanding the issues. A real concern is that a claimant may be unable to deal with the issue by themselves, for instance because they have complex needs.

However we are aware that despite the Guidance, the DWP are not accepting the claimant's statement and are asking for them to provide evidence that their once joint tenant has left the property on a permanent basis. Often this is impossible to provide or the request the DWP are making is unreasonable (we have heard of one claimant whose partner left several years before and had since died who was being asked by the DWP to provide his death certificate). Such requests should be challenged: whilst the DWP can request evidence, the UC Regs state that they must consider this to be appropriate. So where a claimant is unable to provide such evidence they should explain this and suggest that the DWP insisting that they provide evidence they are unable to provide is being unreasonable and not 'appropriate' and ask the DWP to accept alternative evidence if possible.

Any further requests from the DWP to the landlord ie to confirm an absent joint tenant, should be rejected stating that they are not in a position to confirm this and that, as a large landlord, it is not unreasonable for them not to know exactly who is living in each of their properties at any one time. They can go on to explain that there is nothing requiring them to make these enquires on the DWP's behalf, reminding the DWP that should accept the statement the claimant has made about their situation as true.

Process not working?

The process outlined above often does not work and landlords (and DWP staff) are finding work arounds as there is real concern that some claimants may be left receiving a Housing Costs Element based on 50% of their rent when they are, in fact, entitled to 100%. This is unacceptable.

If a landlord is aware of an absent joint tenant and this process does not seem to be working for an individual claimant then the landlord should raise this with their contacts at the DWP such as their Partnership Manager. They could also lodge a complaint via the Landlord Portal if they have the claimant's NI number.

So what needs to happen?

Several actions could be taken that would make dealing with absent joint tenants easier for everyone. Some are easier to implement than others.

Improvements to the UC claim form

When someone makes a claim for UC the claim form asks if there is anyone else on the tenancy agreement, and how many tenants there are in total - but does not also ask if they are living in the property or not.

Improvements to the 'Confirm your housing costs' to do

The current 'Confirm your housing costs' to do asks claimants to confirm their rent and service charge amounts but does not ask them to confirm whether there has been any change (or not) to the number of tenants living at the property. Where the system has been set to award a Housing Costs Element on 100% of the rent in a case of a joint tenant, it would make sense that this is also checked at this time. If the claimant confirms that there has been no change to the number of

tenants living in the property then the system could be set to continue apportioning the new rent amount in the same way. This should not require confirmation from the landlord.

Whenever the claimant declares a change in housing costs

Similar to above, where there is an absent joint tenant recorded on the system and the tenant declares a change in their housing costs, they should be asked if there is any change in this status and, if not, the record of there being an absent joint tenant should continue. This should not require confirmation from the landlord.

DWP staff training

DWP staff should be trained on the issues around absent joint tenants and housing law, so that they understand them and know how to deal with them following their own Guidance.

Improvements to the Landlord Portal

The Landlord Portal should be improved so that it can deal with and record absent joint tenant cases. The landlord should be able to verify the rent on Portal – with an extra question about whether there is an absent joint tenant that the system picks up and triggers a notification to the case manager - rather than await a manual verification request that may never come.

Claimant's UC award breakdown

Where their Housing Costs Element is being split between joint tenants, this should be made clearer so a claimant can spot an error more easily.

Hidden agenda?

Could there be a hidden agenda here?

Where a social housing UC claimant is under-occupying their property then normally a Bedroom Tax reduction would be taken, but according to the Regulations where there is a non-couple joint tenancy, then the claimant is excluded from the Bedroom Tax.

So it may be that - for those claimants who have an absent joint tenant – the DWP are hoping that the landlord will transfer the tenancy into a sole tenancy so making it easier to process but also meaning a Bedroom Tax reduction will be taken.