

ABANDONMENT & LONG TERM ABSENCE POLICY & PROCEDURE

Glossary of Terms

'Tenants' means secure tenants, introductory tenants or fixed-term tenants

1 STATEMENT ON POLICY

- 1.1 The Council requires tenants to live in their home as their main or principal home, in accordance with the Tenancy Agreement.
- 1.2 Cambridge City Council will act within its statutory powers to prevent the misuse and abandonment of its housing stock. The Council will also comply with the Protection from Eviction Act 1977 by thoroughly investigating suspected cases of abandonment.
- 1.3 Cambridge City Council tenants may have a genuine reason to be absent from a property for more than 28 days. They may be in prison, in hospital, working away, on a long holiday or visiting relatives overseas.
- 1.4 Tenants are required to inform the Council if they intend to be absent from the property for more than 28 days, as laid out in the Tenancy Agreement. When the necessary evidence to support why the property has been left unoccupied for a prolonged period cannot be sourced, the case will be investigated by the Housing Officer and passed to the Housing Services Manager who will consider whether the service of a Notice to Quit is appropriate. The Fraud Prevention Team will be consulted to support the investigation.
- 1.5 A tenant must continue to pay the rent whilst away from the property.
- 1.6 Where there is a joint tenancy, the Council will liaise directly with the remaining joint tenant, but ensure that the interests of the absent joint tenant are maintained.

- 1.7 The current rules for temporary absence and Housing Benefit are attached at Appendix A.

2 KEY ISSUES FOR POLICY IMPLEMENTATION - ABANDONMENT

- 2.1 The Council recognises the impact that empty properties can have on the community. By actively investigating reports of abandonment, the Council aims to prevent rent arrears and disrepair caused by unoccupied properties and to ensure that its stock is fully utilised, in accordance with the Council's Allocations Policy.
- 2.2 Where a tenant appears to have given up occupation of a property and removes most of their belongings, leaving the property practically empty and without paying further rent, the property may have been abandoned. The Council needs to consider whether the tenant has demonstrated actions that can without doubt be treated as an "implied surrender". An "Abandoned property investigation form" (Attached at Appendix B) will be completed, following a visit to the property.
- 2.3 The Council will actively seek to support vulnerable people that may have difficulties sustaining a tenancy and, where the tenant is known to be vulnerable, will liaise with the Tenancy Sustainment Service. A referral may be considered to the multi-agency '*Tenants At Risk*' Group.
- 2.4 Each case will be investigated and considered by the relevant Housing Services Manager. When the necessary evidence to support why the property has been left unoccupied for a prolonged period cannot be sourced, the Housing Services Manager will consider whether the service of a Notice to Quit is appropriate. The Fraud Prevention Team will be consulted to support the investigation.
- 2.5 Once security of tenure has been lost it cannot be regained by moving back into the property.
- 2.6 The Council must ensure that it does not prevent a lawful occupant from residing in their property. Officers must ensure that their actions are

justified and that the non-occupation of the property and whether the tenants have an intention to return has been fully investigated. Failure to do so may render the Council, its agents, contractors or employees liable to criminal prosecution or civil claims under the Protection from Eviction Act 1977.

2.7 Dependent upon the outcome of investigations, the Council will make a decision whether to:

- change the locks and take possession of the property,
- serve a notice to quit, and then terminate the tenancy and take possession upon expiry of the notice to quit, or
- serve a notice to quit and obtain a court order for possession.

2.8 Please refer to the Tenancy Agreement for further information.

3 KEY ISSUES FOR POLICY IMPLEMENTATION - PRISON

3.1 A long-term prison sentence does not mean that a tenant has lost their security of tenure, as the property is still their principal home and they have an intention to return.

3.2 When information has been obtained that a tenant has been sentenced to any period of time in prison, the Council will take steps to gather all relevant information and liaise with other agencies to achieve the best outcome for the Council and the tenant.

3.3 Contact will be made with Probation Services or the Prisoner Location Service to identify the prisoner's length of sentence, location and prisoner number.

3.4 Housing Benefit / Universal Credit will be stopped for prison sentences over 26 weeks but will usually continue for sentences of less than 26 weeks on an assumption that the prisoner will only serve 13 weeks. However if prison stay for whatever reason exceeds the 13 weeks mark, then Housing benefit will be cancelled from the date it becomes clear

that the stay will now exceed 13 weeks. Tenants can claim Housing Benefit/Universal Credit for up to 52 weeks whilst on remand if they are likely to return home within a year.

- 3.5 If a property is empty and rent arrears are accruing the Council will discuss the possibility that the tenant should terminate their tenancy. In discussions with the tenant or advocate, at no time will an officer give or imply an undertaking to house a tenant upon their release from prison in return for a Notice to Quit.
- 3.6 If the arrears continue and the tenant does not end their tenancy then the rent arrears procedure will be followed and copies of correspondence sent to the prison.
- 3.7 In certain cases it may not be suitable for the perpetrator of a serious crime to return to their current property. A tenant guilty of a crime that breaches tenancy conditions will have eviction proceedings taken against them.
- 3.8 Where eviction proceedings are being considered referral will be made to the *Tenants At Risk* panel.
- 3.9 In correspondence we will advise the tenant to seek independent legal, housing and welfare advice from their prison welfare officer or probation officer and refer them to organisations such as NACRO and Resettlement Plus Helpline (0800 0181 259).

4 KEY ISSUES FOR POLICY IMPLEMENTATION – HOSPITAL/ RESIDENTIAL CARE

- 4.1 A long-term stay in hospital does not mean that the tenant has lost their security of tenure, as the property is still their principal home and they have an intention to return.
- 4.2 Tenants may spend a trial period in residential care before a final decision is made on whether to move in permanently.

- 4.3 The Housing Officer will contact the tenant in hospital or residential care to offer advice and assistance or, with the tenant's permission, contact a relative or friend.
- 4.4 Housing Benefit is payable for up to 52 Weeks in cases of long term hospital stay and respite in care homes.

5 FIXED TERM TENANCIES

- 5.1 A fixed term tenancy grants the tenant the right to occupy the property for a term of years. A Notice to Quit by the landlord during the fixed term period will have no effect in ending the tenancy. This is the case even if the tenant has lost security of tenure because they have been granted the right to occupy for the whole fixed term.
- 5.2 If a fixed term tenancy appears to be abandoned then a different approach needs to be taken, and there are three possible solutions:
- To forfeit the lease by serving a Notice under Section 146 of the Law of Property Act 1925. If the tenant fails to rectify the breach, then forfeiture of the fixed term tenancy is sought in court.
 - To treat it as an "implied surrender" and to take the property back. Without a court order this has the risk that as the tenancy has never been ended the landlord could face prosecution under the Protection from Eviction Act 1977.
 - Issue a Notice on Ground 1 of the Housing Act 1985 on the basis of a breach of the Tenancy Agreement as the tenant is not in occupation as his or her only or principal home.
- 5.3 It is advisable to serve both a Section 146 Notice and a Notice Seeking Possession without prejudice to one another.
- 5.4 The tenant may serve a Notice to Quit on the council during the fixed term, only if the Tenancy Agreement contains the necessary clause.

6 PROCEDURE

- 6.1 If a report of a suspected abandonment is received then the investigating officer will visit the property, attempt to contact the tenant in person, by telephone or email, allowing 28 days for a response.
- 6.2 The officer will consult with Cambridge City Council's Fraud Team as well as make enquiries with other appropriate agencies and complete an abandoned property investigation form.
- 6.3 A seven day warning letter (Appendix C) will be left at the property advising the tenant to contact the Council within seven days otherwise the property may be treated as abandoned.
- 6.4 If, after seven days, there is still no response, then the Investigating Officer will discuss the case with the Housing Officer and the relevant Housing Service Manager.
- 6.5 If there is sufficient evidence that the property has been abandoned then it may be appropriate to consider the action of the tenant as amounting to an implied "surrender" and it may be possible to repossess the property.
- 6.7 This policy should be read in conjunction with the "Disposal of Possessions Policy".

Policy written: October 2018

To be reviewed by: September 2020

APPENDIX A – Housing Benefit/Universal Credit Temporary Absence Rules

The changes came into force on 28 July 2016.

In brief:

- The “13 Week Rule” is reduced to 4 weeks if the temporary absence is outside of Great Britain (which includes where the absence is due to a visit to Northern Ireland, Isle of Man or the Channel Islands as these are all outside Great Britain). However, a further 4 week period can be awarded at the discretion of the local authority if it decides that it is “unreasonable” to expect the claimant to return within the first four weeks – due to the death of a partner or the death of a child or close relative only . So in effect a new 8 weeks rule has been introduced.
- The “52 Week Rule” is reduced to 26 weeks in specified circumstances.

Pensionable Age

The new rules apply to those persons who have attained the qualifying age for state pension credit, as well as those of working age.

Other Family Members

The new temporary absence rules also apply to a claimant’s family and others who live with them in the determination of whether they occupy the home for such purposes as, for example, under-occupancy for spare room subsidy or the appropriate rate of local housing allowance.

Moving out due to essential repairs

Tenants who have to move while essential repairs are being carried out on their home (e.g. following flooding) may be eligible for housing benefit on temporary accommodation if they rent it. However they will not be entitled to payments on more than one home.

If they remain liable to pay rent on their normal home as well, it will be for the local authority to decide which home is to be treated as their main home. Homeowners who have to move out while essential repairs are being carried out could be eligible for housing benefit on temporary accommodation if they are paying rent there.

Residential care on trial or temporary basis

If a claimant moves into a residential care home on a trial basis, for example to see if it is suitable for her/his needs, with the intention on the day of entry to return to her/his home if the trial proves unsuccessful, s/he can receive housing benefit on her/his old home for up to 13 weeks. This entitlement is not affected if, during that time, s/he decides to stay in residential accommodation permanently.

Where a claimant enters residential care on a temporary basis, for example while her/his carer is temporarily unavailable, with the intention to return to her/his original home, s/he is entitled to housing benefit to pay for the original home for up to 52 weeks.

With effect from 28 July 2016, housing benefit will only be paid for an absence of up to four weeks when the residential accommodation is outside GB.

5 When housing benefit will be paid if the claimant is temporarily absent from home – Great Britain

A housing benefit claimant (or household member) may be treated as occupying the home, and therefore eligible for housing benefit, even if they are absent from it. Housing benefit is payable during periods of temporary absence if:

- a claimant intends to return to live in her/his home
- has not sublet it

- the period of absence is unlikely to exceed the time allowed - this can be four, eight, 13, 26 or 52 weeks, as appropriate depending on the circumstances of the absence (see below).

In calculating the period of absence the first day of absence is included and the day of return is excluded.

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.

Absence up to 13 weeks

The standard rule is that a period of absence from home must not be (or must not be expected to be) more than 13 weeks. There are different time limits for periods of absence outside Great Britain.

If it transpires that a period of absence is or will be longer than 13 weeks, the claimant is entitled to housing benefit up to the time at which s/he is no longer expected to return home within 13 weeks.

Absence up to 52 weeks

A claimant can remain entitled to housing benefit for an absence within Great Britain that is (or is expected to be) no more than 52 weeks if s/he is:

- a prisoner who has not been sentenced (i.e. is on remand awaiting trial or has been convicted but is awaiting sentence)
- living in a bail or probation hostel, or bailed to live away from her/his home
- a hospital patient or living in accommodation other than residential accommodation for the purpose of receiving medically approved treatment or care
- providing medically approved care to someone else, or caring for a child under 16 years old whose parent or guardian is away from home because s/he is receiving 'medically approved' care

- fleeing because of violence or a fear of violence in her/his home
- on a government approved training course
- a student who is eligible for housing benefit (eg if they have to study abroad as part of their course)
- receiving care in residential accommodation, but not staying in the home on a trial basis.

If it transpires that a period of absence is or will be longer than 52 weeks, the claimant is entitled to housing benefit up to the time at which s/he no longer expects to return home within 52 weeks.

In some exceptional circumstances (such as a relapse or other unanticipated event), the period of absence can exceed 52 weeks, as long as it is unlikely to substantially exceed this period. Payments will, however, still only cover the 52-week period.

Although the '52 week rule' may indirectly discriminate against hospital patients suffering from severe mental illness due to the increased likelihood of such claimants being detained in hospital for longer than 52 weeks, the Court of Appeal held that the rule was not manifestly without reasonable foundation, and for entitlement to housing benefit to cease in those circumstances

6 When housing benefit will be paid if the claimant is temporarily absent from home –Outside Great Britain

From 28 July 2016 rules govern the period of temporary absence for which housing benefit is payable when the claimant (or household member) is absent outside of Great Britain (GB).

GB comprises England, Wales and Scotland. It does not include Northern Ireland, the Channel Isles or the Isle of Man.

Absence up to four weeks

A claimant (or household member) will not be treated as occupying the home if they are temporarily absent from GB for a period exceeding four weeks.

In specified circumstances a person can be treated as occupying the home for a longer period of absence from GB.

Absence up to eight weeks due to bereavement

Where a claimant is absent from GB in connection with the death of a close relative and the local authority considers it unreasonable for the person to return within the first four weeks, housing benefit can be paid for up to eight weeks.

A 'close relative' is defined as a mother, father, sister, brother, daughter or son, including in-laws, step-parent/child, half-brother/sister and the partners of any of these.

Absence up to 26 weeks

In specified situations, a claimant may remain entitled to housing benefit for a 26-week period of absence from GB. This applies where the claimant is:

- a member of the armed forces on operations overseas
- absent because of fear of violence in the home or domestic abuse
- receiving medical treatment in hospital
- undergoing (or her/his partner or dependent child is undergoing) medical treatment or medically approved convalescent care in accommodation other than residential accommodation
- a mariner or continental shelf worker.

Combining periods of absence within and outside GB

The 13 (or 52) week period continues to run during any period of absence from GB. However, as soon as the absence from GB exceeds the allowed period (four, eight or 26 weeks depending on the circumstances), entitlement to housing benefit ceases until such time as the claimant returns home. In other words, exceeding the temporary absence period allowed outside GB ends HB entitlement from the point the period is exceeded. This is the case even if the total period away from home is less than 13 (or 52) weeks.

For example, where the 13-week period applies, a claimant may be absent from home within GB for five weeks, then absent abroad for four weeks, and then for a further four weeks within GB before housing benefit entitlement ceases.

It is arguable that a 13 (or 52) week absence within GB could be followed immediately by up to four (or eight or 26) weeks absence outside of GB with no return to the home in between, without ending eligibility for housing benefit.

Housing Benefit Circular A7/2016 gives examples where a period of absence outside GB follows absence within GB.

APPENDIX B – ABANDONED PROPERTY INVESTIGATION FORM

ABANDONED PROPERTY INVESTIGATION FORM

ADDRESS: Click here to enter text.
NAME OF TENANT(S): Click here to enter text.
WHEN DID CITY HOMES BECOME AWARE? Click here to enter text.
HOW DID CITY HOMES BECOME AWARE? Click here to enter text.
ARE THERE ANY ARREARS? YES / NO Click here to enter text.
IF YES, HOW MUCH: Click here to enter text.
DOES ANY OFFICER KNOW ANYTHING ABOUT THE ABANDONMENT? YES / NO Click here to enter text.
IF YES, GIVE DETAILS: Click here to enter text.
WHEN WERE THE TENANT(S) LAST SEEN BY NEIGHBOURS? Click here to enter text.
DO NEIGHBOURS KNOW WHERE THE TENANTS HAVE GONE? YES / NO Click here to enter text.
IF YES WHERE? Click here to enter text.
DO ELECTRONIC RECORDS GIVE ANY INDICATION AS TO WHERE A RELATIVE MIGHT LIVE, EG: PARENT, BROTHERS OR SISTERS? Click here to enter text.
DOES BT, GAS, ELECTRIC OR WATER HAVE A FORWARDING ADDRESS? YES / NO Click here to enter text.
IF YES GIVE DETAILS: Click here to enter text.

ABANDONMENT & LONG TERM ABSENCE POLICY

CAN ACCESS BE GAINED TO PROPERTY WITHOUT USING FORCE? YES / NO Click here to enter text.	14
HAS FURNITURE OR ANY PERSONAL EFFECTS BEEN LEFT IN THE PROPERTY? YES/NO Click here to enter text.	
SIGNATURE OF INVESTIGATING OFFICER	
SIGNATURE OF AUTHORISING OFFICER	
DATE 7 DAY LETTER SENT: Click here to enter text.	
DATE OF ORDER TO CHANGE LOCKS: Click here to enter text.	
AUTHORISED BY HOUSING SERVICE MANAGER: Click here to enter text.	
DATE AND OFFICER ATTENDING LOCK CHANGE: Click here to enter text.	
ADDRESS WHERE POSSESSIONS ARE BEING STORED: Click here to enter text.	
INVENTORY TAKEN? Yes/No – Date: Click here to enter text.	
DATE VOIDS AND LETTINGS TEAM INFORMED: Click here to enter text.	
PHOTOS TAKEN? YES/NO AND DATE: Click here to enter text. <i>(please ensure these are on electronic filing system and clearly labelled):</i>	
ANY FURTHER INFORMATION REQUIRED FOR INSURANCE PURPOSES:	

APPENDIX C – ABANDONED PROPERTY 7-DAY LETTER

Customer First

29 Road St

Cambridge

CB1 111

Date

Dear Customers Name

Abandoned Property – Address

From enquiries that we have made and from the visual appearance of the premises, it appears that you are not occupying your property as your main and principle home, it appears to us that you have no intention to return to ADDRESS

We therefore presume that this is a permanent abandonment rather than a temporary abandonment and that it amounts to an implied offer by you to surrender the tenancy.

Cambridge City Council, as landlords of the premises accepts that offer of surrender with effect from seven days from the date of this letter. Unless within that time we receive contact and written notice that you do not wish to surrender the tenancy

If we do not receive such notice from you by [Click here to enter text.](#) we will make immediate arrangements to re-let the premises.

Yours sincerely

Name of person writing the letter

Job title of person writing the letter

Cambridge City Council Housing Management Service