



Welfare Rights Conference 2024

Can't Pay, Won't Pay – rent, liability and universal credit

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Issues with liability

- 'Untidy' tenancies
- 'Irregular' tenants
- Couples
- 'Treated as' liable

Eligibility for housing costs element

Section 11 Welfare Reform Act 2012, reg 25 UC Regs 2013

- **Payment condition.** Paying rent (Schedule 1, para 2) or service charges (Schedule 1, para 7)
- **Liability condition.** You, or partner (if joint claimants):
 - Liable for payments on commercial basis, or
 - Treated as liable (Part 1, Schedule 2), and
 - Not treat as not liable (Part 2, Schedule 2)
- **Occupation condition.** Occupying accommodation as your home unless treated as not (Parts 1 and 2, Sch 3)

Untidy tenancies

- “An untidy tenancy is where the claimant is a joint tenant with someone who no longer lives in the property.” Also called an ‘absent joint tenant’
- The other tenant’s share of rent (usually 50%) can be paid under UC Regs, Schedule 2, para 2 as ‘treated as liable’
- Also applies to absent sole tenants, leaving a person/s still resident
- Problematic as arrears can accrue, especially when alternative payment arrangement/managed payment to landlord in place

How to report

- Existing claim – supersession, 'Record a change in joint tenancy costs'
- New claim – must still verify claim as joint tenancy
 'The claim must be verified as a joint tenancy even though there is an absent joint tenant... Case managers must accept the claimant's declaration' (Spotlight: June 2020)
- Leave journal note explaining tenant has left as form doesn't ask

How to revise

New claim

- within 13 months – revise to include full HCE (usually 100% of rent)
- after 13 months – revise for official error as DWP failed to ask relevant questions on claim form

Existing claim

- within 13 months – supersession. Can revise refusal
- after 13 months/extension refused – supersession takes effect from assessment period in which change notified

'Irregular' tenants – liable?

- 'Irregular' = people without a current formal written tenancy agreement
- Can be legally liable for rent payment without a written agreement ([R v Poole BC ex parte Ross \(1995\)](#), [R v Warrington BC ex parte Williams \(1997\)](#))
- Liability condition in legislation does not require any specific document to be provided – just factual

'Irregular' tenants – proof of liability

- *'Supporting evidence for new claims and changes of address Claimants must provide evidence of ... the following to confirm they are legally responsible for making payments of rent. This can be established from the tenancy agreement, rent book, rent receipt, invoice or a letter from the landlord or agent... '* ([Private rented sector \(v.23\)](#) UC operational guidance, House of Commons library)
- **Provide whatever proof available** that liable for and paying the rent ([ADM A1: Principles of Decision Making and Evidence](#))

Couples

- Both partners in a joint claim are liable even if tenancy in one name, unless...
- Treated as not liable eg, if paying close relative living in same property, liability is contrived
- DWP may erroneously request proof of joint tenancy/refuse HCE/pay only 50%
- If partner leaves, claimant can be treated as liable for their share – usually 50% for joint tenant or 100% for sole tenant

Always 'treated as' liable

- Joint claim and partner is liable (reg 25(3)(a)(i) UC Regs)
- **Always** treated as liable (Schedule 2, para 1 UC Regs) if:
 - **Liable person is child/qualifying young person** for whom you or joint claim partner are responsible, or
 - You are **part of a couple**, partner is liable, but you are **claiming as a single person** (ie under reg 3(3) – unless because part of polygamous marriage)
- Unless Part 2, Schedule 2 treats as not liable

Can be 'treated as' liable

- You can be treated as liable (Schedule 2, para 2 UC Regs) if:
 - liable person isn't paying rent, and
 - need to pay to continue to occupy, and
 - unreasonable to expect you to make 'other arrangements', and
 - in all other circumstances it is reasonable
- Examples
 - Caring for relative who is the tenant, and they die
 - Liable person becomes a student who can't get UC
- Unless Part 2, Schedule 2 treats as not liable

Help for advisers in Scotland



Advice by telephone:
0141 552 0552

Monday to Thursday, 10am - 4pm,
Friday 10am - 12 noon

Advice by email:
advice@cpagscotland.org.uk

Free, independent, expert, up-to-date advice and information to frontline advisers and support staff on all aspects of the benefits and tax credits system.

More resources for advisers can be found at cpag.org.uk/welfare-rights