

Mutual Exchange Policy

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| Reviewed By | Head of Housing | Approval By | Exec |
| Equality Impact Assessment | Completed | Responsible Officer | Jay Gill |
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1. Policy Statement

This policy sets out our approach to mutual exchange for our customers. We recognise that our customers' needs can change which will result in a need to move home. The option of exchanging homes is often the easiest and quickest way to move, and this policy outlines the process. BCHG will actively encourage mutual exchanges as an effective way of increasing tenant mobility and will be subscribed to the Homeswapper national scheme to facilitate the exchanges.

2. Scope

This policy covers all tenancies where a mutual exchange is allowed in the tenancy agreement terms for our tenants, and tenants of social landlords, who want to swap to become a tenant of BCHG.

3. Definition

The term used to describe the ability of two or more tenants in social housing sector to legally exchange their property with that of another social housing tenant. Exchanges can only take place between social housing tenants.

4. Responsibilities

The Head of Housing is responsible for the implementation of this policy and for staff training. The Area Customer Relation Managers are responsible for the operation of this policy.

5. Related Policies & Procedures

- ✓ Lettings Policy
- ✓ Repairs Policy
- ✓ Mutual Exchange Procedure
- ✓ Complaints Policy
- ✓ Equality & Diversity Strategy

5. Legal & Regulatory Framework

- Housing Act 1985 (applicable by reference to it in the transferring tenant's tenancy agreement);
- Localism Act 2011; and
- Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012.

The Regulator's Tenancy Standard (April 2012) requires us as a private registered provider of social housing to "enable their tenants to gain access to opportunities to exchange their tenancy with that of another

tenant, by way of internet-based mutual exchange services.”

6. Who Can Exchange

Residents with a fixed term, assured, or secure tenancy with a registered social landlord or local authority, can apply to exchange in the UK. Starter Tenancy residents cannot exchange until their tenancy converts into an assured or fixed term tenancy. Assured shorthold residents cannot exchange.

7. How Can Residents Exchange

Residents can find out about exchanges and residents who want to exchange in the following ways:

- Contacting us
- Using Homeswapper – available online at <http://www.homeswapper.co.uk>
- Advertising locally
- Social Media Platforms
- Word of mouth

8. Which Mutual Exchange Regime Applies

Some mutual exchanges will operate under the right set out in Sections 158 and 159 of the Localism Act 2011. This will only apply where our resident has an assured tenancy that was granted before 1st April 2012; and is seeking to exchange with either:

1. A flexible tenant of a local authority
2. A fixed term assured shorthold tenancy of more than two years paying a social rent. The length of tenancy granted would be the determining factor, not the remaining period of the fixed term tenancy

All other mutual exchanges, and in most cases, they will be considered under a contractual right to exchange as set out in tenancy agreement.

The tenancy table at **Appendix One** shows the type of tenancy that a resident will get when they exchange and the type of exchange we must use.

9. Key Considerations

An exchange must never take place without our written permission. The rights of each tenant will be affected, and legal action may be taken as a last resort in some cases to obtain permission. No money should change hands between exchanging tenants

A decision whether to grant consent to the exchange must be made within 42 calendar days and begins on receipt of the relevant tenant’s request. In the case of joint tenancies, the request must come from both parties.

10. Reasons for Refusing Consent to Mutual Exchange

The Circumstances where we will refuse an exchange are dependent upon the type of tenancy held and the relevant legislation. In each case, the tenancy agreement will need to be checked

If the exchange is covered by the Localism Act, then we can only refuse the request to exchange on grounds set out in Schedule 14 of the Localism Act 2011 attached as **Appendix 2**

If the exchange is contractual and the tenancy agreement refers to only refusing on the grounds set out in Schedule 3 of the Housing Act 1985, only those grounds can be considered and are illustrated in **Appendix 3**

In the absence of any specific clause in a resident's tenancy agreement relating to the refusal of mutual exchange, or where the Localism Act does not apply, we may refuse on the grounds set out in **Appendix 4**

If one or one of the applicable grounds for refusing the exchange exists, it will be refused or:

- Where the exchange is contractual, conditions may be imposed upon permission to exchange, such as payment of rent arrears, putting right a breach of the tenancy. Permission may be given where the exchange would facilitate best use of stock and must be authorised by Head of Housing.

Under the Localism Act it is not possible to give consent subject to conditions, such as rent arrears. In these circumstances consent will be refused.

If the exchange is refused, we will write to the tenant informing them of the reasons.

11. Repairs & Maintenance

Prior to an exchange being carried out, we will ensure that the property complies with health and safety requirements including gas and electrical certification and any alterations that will compromise health & safety.

Once the exchange has taken place, normal day to day repairs will be carried out but BCHG will not be responsible for any previous alterations or improvements by the previous tenant. BCHG have the right to refuse any works relating to the condition of the property at the point of exchange.

Any major works will be carried out in accordance with the planned maintenance programme.

Safety checks will include:

- Electrical Check – An Electrical Installation Condition Report (EICR) will be undertaken prior to the exchange
- Gas Safety – This will be carried out on the day of the exchange

All incoming tenants will be provided with a copy of the following certificates: -

- Gas Safety
- Electrical Safety

- Asbestos Report (if applicable)
- Energy Performance Certificate (EPC)

A resident will take on the responsibilities of the person that was exchanged with. This includes changes, improvements, or alterations they made to the home. For example, if the resident replaced a bath with a shower, we would not replace it with a bath. We will also disclaim any responsibility for showers over a bath installed by the outgoing tenant.

12. Mutual Exchanges without Consent

If an exchange takes place without consent, we will either consider giving consent retrospectively or take action to bring the tenancy to an end if parties refuse to move back to their respective home

13. Equality & Diversity

BCHG recognises that different people and communities may have specific needs which may require flexible approaches. We also appreciate that some groups or individuals may experience discrimination and disadvantage. This may be due to their protected characteristics under the Equality Act 2010. We believe that everyone should be treated with dignity, respect, and fairness, regardless of their characteristics.

An Equality Impact Assessment has been carried out on this policy which will be updated in line with policy reviews to ensure there is no discrimination and opportunities to improve equality and access are maximised.

14. Customer Consultation

BCHG has committed to consult customer facing policies, we work on a 'no voice no approval' basis and we aim to consult customers at stages where they can influence change. Customers Consultation was undertaken to review this policy.

15. Monitoring

We will monitor the number of mutual exchanges through the monthly lettings log and report to the Executive Board twice a year.

16. Review

This policy will be reviewed every three years or earlier to address legislative, regulatory, best practice or operational issues.

Appendix One – Tenancy Table

| EXCHANGE BETWEEN: | Full secure (pre 1/4/12) | Full secure (post 1/4/12) | Secure flexible (of Local authority) | Full assured (pre 1/4/12 tenancies) | Full assured (post 1/4/12 tenancies) | Fixed assured post 1 4 12 on social rent |
|---|--|---------------------------------------|---|---|---|--|
| Full secure (pre 1/4/12 tenancies) | Deed of assignment Swap (same) tenure | Deed of assignment Swap (same) tenure | Surrender & re-grant Full: retains full tenure Flex: choice which tenure to offer e.g. our current standard tenancy | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Surrender & re-grant Full: retains full tenure Fixed term T: choice which tenure to offer e.g. our current standard tenancy* |
| Full secure (post 1/4/12 tenancies) | Deed of assignment Swap (same) tenure | Deed of assignment Swap (same) tenure | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Deed of assignment Swap tenures |
| Secure flexible (of local authority) | Surrender & re-grant Full: retains full tenure Flex: choice which tenure to offer e.g. our current standard tenancy | Deed of assignment Swap tenures | N/A | Surrender & re-grant Full: retains full tenure Flex: choice which tenure to offer e.g. our current standard tenancy | Deed of assignment Swap tenures | Deed of assignment Swap tenures |
| Full assured (pre 1/4/12) | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Surrender & re-grant Full: retains full tenure Flex: choice which tenure to offer e.g. our current standard tenancy | Deed of assignment Swap (same) tenure | Deed of assignment Swap (same) tenure | Surrender & re-grant Full: retains full tenure Fixed term T: choice which tenure to offer e.g. our current standard tenancy |
| Full assured (post 1/4/12) | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Deed of assignment Swap (same) tenure | Deed of assignment Swap (same) tenure | Deed of assignment Swap tenures |
| Fixed assured post 1 4 2012 on social rent | Surrender & re-grant Full: retains full tenure Fixed term: choice which tenure to offer e.g. our current standard tenancy* | Deed of assignment Swap tenures | Deed of assignment Swap tenures | Surrender & re-grant Full: retains full tenure Fixed term T: choice which tenure to offer e.g. our current standard tenancy | Deed of assignment Swap tenures | Deed of assignment Swap (same) tenure |

* If the exchange is entirely within the same landlord, the “old style” tenant after the exchange will remain secure. If the exchange is between a fixed term tenant and a pre-1 4 2012 secure tenant of another landlord (i.e. the tenure guarantee tenant is incoming) then the tenancy offered must be full assured.

Appendix 2

SCHEDULE 14 – LOCALISM ACT – GROUNDS ON WHICH LANDLORD MAY REFUSE TO SURRENDER AND GRANT TENANCIES UNDER SECTION 158

Ground 1 This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2 This ground is that an obligation under one of the existing tenancies has been broken or not performed.

Ground 3 This ground is that any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

Ground 4 This ground is that either of the following conditions is met.

The first condition is that: -

- a. proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and
- b. possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).

The second condition is that: -

- a. a notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and
- b. the notice specifies one or more of those grounds and is still in force.

Ground 5 This ground is that either of the following conditions is met.

- (1) The first condition is that: -
 - a. proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
 - b. possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)
- (2) The second condition is that: -
 - a. a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
 - b. the notice specifies one or more of those grounds and is still in force.

Ground 6 This ground is that either of the following conditions is met.

- (1) The first condition is that a relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant.
- (2) The second condition is that an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.
- (3) In this paragraph: -
 - a "relevant order" means—
 - (a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behavior),
 - (b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behavior),
 - (c) an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
 - (d) an anti-social behavior order under section 1 of the Crime and Disorder Act 1998, or
 - (e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003.
 - a "demotion order" means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988.
 - a "Ground 2 or 14 possession order" means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

Ground 7 This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted

Ground 8 This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of: -

- a. the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- b. the family of that tenant or those tenants.

Ground 9 This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

The first condition is that the dwelling-house: -

- a. forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord: -
 - i. is held mainly for purposes other than housing purposes, and
 - ii. consists mainly of accommodation other than housing accommodation, or
 - b. is situated in a cemetery.

The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of: -

- a. the landlord under the tenancy,
- b. a local authority,
- c. a development corporation,
- d. a housing action trust,
- e. an urban development corporation, or
- f. the governors of an aided school.

Ground 10 This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11 This ground is that both of the following conditions are met.

- (1) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that: -
 - a. is substantially different from those of ordinary dwelling-houses, and
 - b. is designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (2) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12 This ground is that both of the following conditions are met.

The first condition is that the landlord is a housing association or housing trust which lets dwelling houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.

The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13 This ground is that all of the following conditions are met.

The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.

The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.

The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14 This ground is that all of the following conditions are met.

The first condition is that: -

- a. the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
 - b. at least half the members of the association are tenants of dwelling-houses subject to the agreement.
- The second condition is that at least half the tenants of the dwelling-houses are members of the association.

The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.

References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A (6) of the Housing and Regeneration Act 2008.

Appendix 3

Grounds for Refusal of Mutual Exchange in Housing Act 1985 s91 (Schedule 3)¹

Ground 1

The tenant or the proposed assignee is obliged to give up possession of the dwelling house of which he is the secure tenant in pursuance of an order of the court or will be so obliged at a date specified in such an order.

Ground 2

Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83ZA (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.

Ground 2A

Either–

(a) a relevant order¹, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force, or

(b) an application is pending before any court for a relevant order, a demotion order, an anti-social behaviour possession order or a riot-related possession order to be made, in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means–

an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour).

an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour).

an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords).

an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998.

an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003 [or section 27 of the Police and Justice Act 2006] 11 [;] 12

[an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014.

an order under section 22 of that Act.] 12

An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

A “demotion order” means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to this Act or Ground 14ZA in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Ground 2B

The dwelling-house is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 3

The accommodation afforded by the dwelling house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4

The extent of the accommodation afforded by the dwelling house is not reasonably suitable to the needs of the proposed assignee and his family.

¹ All references to ‘secure’ tenancy should be read as ‘assured’ tenancy.

Ground 5

The dwelling house

- a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and
- b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being the employment of the landlord, a local authority, a new town corporation, the Development Board for Rural Wales, an urban development corporation, or the governors of an aided school

Ground 6

The landlord is a charity and the proposed assignee's occupation of the dwelling house would conflict with the objects of the charity.

Ground 7

The dwelling house has features which are substantially different from those of ordinary dwelling houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling house and if the assignment were made there would no longer be such a person residing in the dwelling house.

Ground 8

The landlord is a housing association or housing trust which lets dwelling houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling house.

Ground 9

The dwelling house is one of a group of dwelling houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling house.

Ground 10

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

Reference to a management agreement includes a section 247 or 249 arrangement, as defined by section 250A(6) of the Housing and Regeneration Act 2008.

Conditional consent may only be given where

- rent lawfully due from the tenant has not been paid or
- an obligation of the tenancy has been broken or not performed,

The consent required may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.

Appendix 4

Refusal Grounds, In the absence of any specific clause in a resident's tenancy agreement relating to the refusal of mutual exchange, or where the Localism Act does not apply,

- a. The incoming tenant does not meet our allocations criteria at the time of the application
- b. The exchange would place us in breach of any relevant planning agreements or local connection restrictions.
- c. If it means that a perpetrator of domestic abuse, threatening or criminal behaviour is requesting a move into an area near to their victim. The time elapsed since the offence will be considered, however the decision will be based on the likelihood of further harm, whether mental or physical to the victim. In these circumstances, the Housing Officer's decision may override that of the Victim even if the Victim does not object to the exchange. This is to protect against potential undue influence from the perpetrator.
- d. We believe that money has been passed between the parties to enable the exchange.
- e. The property would be overcrowded; or under occupied by more than one bedroom*.

In circumstances where a property has more bedrooms than permitted by under the bedroom tax, or we consider it to be substantially more extensive than is reasonably required, we will use the criteria outlined by the Government in their "bedroom tax" calculations to decide if the property is too big.

* Where the outgoing and/or incoming tenant is on housing benefit and they are moving to another property where there will be a shortfall of housing benefit e.g., due to the spare room subsidy ("bedroom tax"), we may refuse the exchange. We may allow the exchange if evidence is produced that the prospective tenant can afford to pay the shortfall without assistance. The granting of such consent will not affect our ability to recover possession of the property based upon arrears of rent or other occupancy charges which accrue because of any such welfare reform occupancy penalty.

- f. The property is let as accommodation for persons satisfying specific age criteria and if the exchange took place no such person would be living in the property.
- g. We have not received a satisfactory reference or property condition report from the other landlord within the timescales required.