Mutual Exchange Policy

Department: Housing Services

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Date Issued: 2016 To be reviewed: 2019

Version 1

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1 INTRODUCTION
As a Social Landlord One Housing [OH] recognises that mutual exchange is a useful way of satisfying housing needs and aspirations. It is important that exchanges are conducted fairly and in line with regulation and legislation. This policy should be considered in conjunction with the OH Tenancy Policy.

1.1 Definition
For the purpose of this policy, mutual exchange is defined as the exchange of properties by a tenant or tenants of OH with a tenant or tenants of OH, another housing association or local authority. Exchanges can only take place between social housing tenants.

Mutual exchange does not include the internal transfer of OH residents to a vacant property. This is covered in the Transfer Policy.

2 AIMS & OBJECTIVES
- To promote mutual exchange through a system of regular tenancy review.
- To provide tenants with the support and information needed to complete applications for mutual exchange.
- To provide clear advice on the implications of mutual exchange.

3 POLICY STATEMENT
Legislation gives secure tenants the right to exchange with secure or assured tenants of another housing association, local authority or trust. OH extends this right to assured tenants and fixed term tenants in their tenancy agreements, under the same terms as secure tenants. Starter tenants are not eligible to carry out mutual exchange.

Tenants must seek consent from OH before an exchange can take place. OH may withhold consent until a condition is satisfied (see Section 4.1), or may refuse the exchange where permitted by law (see Section 4.2.).

OH expects tenants to take on the responsibilities of the tenant they are exchanging with which includes the condition of the property at the time of the exchange taking place. OH will advise tenants of their repairs responsibilities and liabilities when an exchange is proposed.

There will be no cost to OH due to any exchange.

4 CONDUCTING A MUTUAL EXCHANGE

4.1 Registering for an exchange
Tenants wishing to swap homes are advised to register with www.homeswapper.co.uk or www.houseexchange.org.uk to find someone willing to agree to a mutual exchange. Tenants may also advertise their wish to exchange via a local paper, notice board or by word of mouth.

Once they have found another tenant willing to exchange, the tenant will need to complete a Mutual Exchange Application Form in order to request consent.
Tenants will be made aware that any party can withdraw from a potential mutual exchange at any stage with no recourse to the other party. However, once parties have signed the assignment or the new tenancy agreement then the mutual exchange must proceed.

4.2 Types of exchange
Mutual exchanges are carried out in one of two ways:
- Through assignment
- Through surrender and regrant of tenancies.

**Assignment** is the swapping of tenancies at the same time as homes are exchanged. The incoming tenant will take on the rights and responsibilities of the tenant they have swapped with. This is used when those exchanging homes hold tenancies with a similar security of tenure.

**Surrender and regrant** is where tenants surrender their current tenancy and re-sign a tenancy with a similar security of tenure for their new property. This is used when the parties exchanging hold tenancies with different security, and one of the parties has their security protected by law. **Section 4.3** sets out when each kind of exchange will be used.

4.3 Exchange by assignment or surrender and regrant
Tenants who hold a lifetime (secure or assured) tenancy that was granted before April 1st 2012 have their security of tenure protected by law. Tenants who hold a secure or assured tenancy granted before this date therefore cannot swap tenancies (be assigned) with a fixed term or flexible tenant, though there are exceptions.

This legislative protection will not apply when a lifetime tenant chooses to exchange with a fixed term tenant on an affordable rent.

The table below sets out whether an exchange by assignment or by surrender and regrant will take place.

<table>
<thead>
<tr>
<th>Tenant 1</th>
<th>Tenant 2</th>
<th>Mutual exchange by:</th>
<th>Exceptions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flexible/Fixed</td>
<td>Flexible/Fixed</td>
<td>Assignment (swapping tenancies)</td>
<td>Internal exchanges between OH tenants: surrender &amp; grant 5 year tenancies</td>
</tr>
<tr>
<td>Secure/Assured</td>
<td>Secure/Assured</td>
<td>Assignment (swapping tenancies)</td>
<td></td>
</tr>
<tr>
<td>Secure/Assured</td>
<td>Flexible/Fixed</td>
<td>Surrender &amp; Regrant (each tenant gets a new tenancy with the same/similar level of security as they currently have)</td>
<td>If the secure/assured commenced after April 2012: exchange by assignment. If the fixed-term has an affordable rent: exchange by assignment.</td>
</tr>
</tbody>
</table>

4.4 Conditions for Mutual Exchange
Tenants must obtain consent from OH before carrying out a mutual exchange, and certain conditions will need to be met in order for consent to be granted.
Where the proposed exchange will be conducted by assignment OH may withhold consent until a single condition has been met.

The condition will only be one of the following:

- That rent arrears, or any other debts such as court costs, are cleared
- That a breach of the tenancy agreement be remedied, for example:
  - Invalid Gas Safety Certificate
  - Unauthorised alterations
  - Damage to property beyond wear and tear

If a tenant has an invalid gas safety certificate consent will be withheld until a check has been carried out.

Consent will not be withheld for rent arrears if the tenant is exchanging with another OH tenant and wishes to downsize due to the bedroom tax or benefit cap.

### 4.5 Refusing Mutual Exchange

OH may refuse an application for mutual exchange on different grounds depending on whether the exchange would happen by assignment, or by surrender and re-grant.

#### Grounds for refusing exchange by Assignment are as follows:

- The tenant or other person applying for the exchange is under a court order to give up possession
- Possession proceedings have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
- Where a court order is in force against a tenant or proposed tenant which is based on antisocial behaviour, e.g. a suspended possession order, an antisocial behaviour order
- The accommodation would be too large for the prospective tenant, or otherwise not reasonably suitable to their needs
- The premises were let in consequence of employment, and form part of, or in the grounds of, a non-housing building or a cemetery
- The landlord is a charity and the proposed tenant’s occupation will conflict with its objectives
- The property is designed for a physically disabled person, and if the proposed tenant moved in, there would be no such person in occupation
- The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
- The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation.
- It comes to the attention of OH that money incentives were paid to any party

#### Grounds for refusing exchange by Surrender and Regrant:

- Any rent lawfully due from a tenant under one of the existing tenancies has not been paid
- An obligation under one of the existing tenancies has been broken or not performed
- Any of the relevant tenants is subject to an order of the court for possession
- Proceedings for possession have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
- Where a court order is in force against a tenant of one the existing tenancies which is based on anti-social behaviour, e.g. a suspended possession order, an antisocial behaviour order, an injunction or a demotion order
• The accommodation proposed to be let on the new tenancy would be too large for the existing tenant or tenants to whom the tenancy is proposed to be granted
• The accommodation proposed to be let on the new tenancy is not reasonably suitable to the needs of the existing tenant or tenants to whom the tenancy is proposed to be granted, or their family
• The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or cemetery
• The property is designed for a physically disabled person and if the proposed tenant moved in there would be no such person in occupation
• The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
• The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation.
• It comes to the attention of OH that money incentives were paid to any party

If a tenant wishing to conduct an exchange by way of surrender and regrant has arrears, consent will be refused unless the tenant is trying to downsize due to the benefit cap or bedroom tax and is exchanging with another OH tenant. An **Arrears Repayment Agreement** must be completed and signed before the exchange can take place.

If **OH** refuses a mutual exchange, the tenant will be sent a refusal letter which will quote the exact ground or grounds for refusal.

### 4.6 Refusal on grounds of under occupation or overcrowding

An exchange will be refused if it will result in under occupation or overcrowding. This will be calculated by the standard number of bedrooms required as follows:

- 2 or more people over 10 years of age and of different sex must not share a bedroom unless they are living as partners
- Every couple to share a double bedroom
- Every single adult must have their own single bedroom, except that a single parent is to have a double bedroom
- Two children of the same sex may share a double bedroom
- Two children of different sex, both under 10 years of age, may share a double bedroom

As follows:

<table>
<thead>
<tr>
<th>Household</th>
<th>Bedrooms</th>
<th>Bed Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 or 2 Adults</td>
<td>Bedsit or 1 bedroom</td>
<td>1 or 2</td>
</tr>
<tr>
<td>With one child</td>
<td>2</td>
<td>3 or 4</td>
</tr>
<tr>
<td>With 2 same sex children both under 10 years of age</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>With 2 opposite sex children, either child 10 + years of age</td>
<td>3</td>
<td>4 or 5</td>
</tr>
<tr>
<td>With 3 children</td>
<td>3</td>
<td>5 or 6</td>
</tr>
<tr>
<td>With 4 children</td>
<td>3 or 4</td>
<td>5 or 6</td>
</tr>
<tr>
<td>With 4 children – 3 same sex, 1 opposite sex</td>
<td>4</td>
<td>6 or 7</td>
</tr>
<tr>
<td>With 5 children</td>
<td>4</td>
<td>7 or 8</td>
</tr>
<tr>
<td>With 6 children</td>
<td>4 or 5</td>
<td>8 or 9</td>
</tr>
<tr>
<td>With 7 +</td>
<td>5</td>
<td>9 or 10</td>
</tr>
</tbody>
</table>

In determining whether the property will be overcrowded, **OH** will take into consideration any expected children i.e. where there is an expectant mother moving into the property.

**OH** will ensure that the size of the property matches the size of the household as far as possible.
5 APPEAL
Any applicant who has had a request for mutual exchange refused may request that the decision be reviewed through the formal complaints process.

6 LEGISLATION, REGULATION & GUIDANCE
Government legislation has an impact on how OH can implement its Mutual Exchange policy. Listed below are the key Acts that have been acknowledged.

- Housing Act 1985
- Housing Act 1988
- Housing Act 2004
- Equality & Diversity Act 2010
- Localism Act 2011

The above documents are available on a website delivered by the National Archives: www.legislation.gov.uk

7 CONFIDENTIALITY
Under the Data Protection Act 1998 and the Human Rights Act 1998, all personal information, however received, is treated as confidential. This includes:
- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or committee member

Officers will ensure that they only involve other agencies and share information with the consent of the resident concerned, unless:
- OH is required to by law
- the information is necessary for the protection of children

8 EQUALITY AND DIVERSITY
OHG recognises the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. OH works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. OH will record, analyse and monitor information on ethnicity, vulnerability and disability.

9 MONITORING AND EVALUATION
OH will record data on mutual exchanges within its comprehensive Performance Management Framework. All of OH’s key performance indicators can be resourced within in this document.

10 HEALTH & SAFETY
This policy will be carried out in compliance with the relevant statutory health and safety requirements and regulations.