

MUTUAL EXCHANGE POLICY

Responsible Officer

Director of Customer Services

Policy Statement

All Registered Providers and Local Authority tenants have a legal right to mutually exchange homes with another Council or Housing Association anywhere in the UK as set out in the Housing Act 1985.

We are committed to promoting choice and mobility to tenants and will use mutual exchanges to promote this.

Aim of the Policy

This policy aims to:

- Provide a consistent and efficient mutual exchange service for our tenants.
- Provide information on the requirements for a mutual exchange of properties.
- Ensure that the conditions for an exchange are met prior to the signing of assignments or tenancies and that any refused applications are done so on legitimate grounds.
- Increase choice and mobility options to all social housing residents.

Policy Scope

- This policy applies to all general needs assured tenants. It does not apply to probationary tenants, assured shorthold tenants, licence holders, service tenancies or lessees.
- Eligible tenants include those of Local Authorities and Registered Providers.

The Policy

Exchange Partners

Eligible tenants can apply in writing to exchange their home with:

- another Phoenix tenant.
- a tenant of a registered social housing provider.
- a tenant of a local authority.

Different Types of Exchange

Like for like Exchange

If an assured tenant is exchanging with another assured tenant or a life time secure tenant of a local authority then the exchange takes place by assignment of the tenancies to each other. This is called a “like for like exchange”. This type of exchange will also be used for assured tenants whose tenancy began after 1st April 2012 who is exchanging with a secure fixed term tenant or fixed term assured tenant of a registered social housing provider.

Surrender and re grant of a new tenancy exchange

If an assured tenant whose tenancy began before 1st April 2012 is exchanging with a secure fixed term tenant or a fixed term assured tenant of a registered social housing provider, then the exchange takes place by surrender of existing tenancies and the grant of new tenancies.

Applying for permission

In cases of “like for like exchange”, we can only refuse consent to an exchange on the grounds set out in Schedule 3 to the Housing Act 1985, summarised in section 8 – Grounds for Refusal.

In other cases, which are not “like for like”, we can only refuse consent to an exchange on the grounds set out in Schedule 14 to the Localism Act 2011, summarised in section 8 – Grounds for Refusal.

Joint tenants must both consent to exchange and both sign the Mutual Exchange Application Form, the assignment or surrender and the new tenancy agreement as appropriate and all other paperwork including confirmation that they accept the property as seen.

Grounds for Refusal

The Grounds are summarised below and set out in more detail in Appendix 1 at the end of the policy.

Ground	Refusal Reason
Ground 1	Rent arrears.
Ground 2	The tenancy agreement of one of the tenants exchanging has been broken. In like for like assignments, the above are not grounds for refusal, but consent to exchange can be granted subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.
Ground 3	Possession order outstanding on any relevant tenancy
Grounds 4 & 5	Possession proceeding are outstanding or a Notice Seeking Possession is in force.
Ground 6	An order is in force or proceedings are pending in respect of anti-social behaviour in respect of the tenant or proposed tenant or a person who is residing with either of them.
Ground 7	Under occupation.
Ground 8	Unsuitability.
Ground 9	Non-housing accommodation let in consequence of employment.
Ground 10	Relates to landlords which are charities.
Ground 11	Accommodation designed for the disabled.
Ground 12	Relates to housing associations which let properties to people whose circumstances make it difficult for them to meet their need for housing.
Ground 13	Accommodation designated for special needs.
Ground 14	Management agreement.

We must grant or refuse the exchange within 42 days of receiving the applications from all parties to the mutual exchange. We will provide a written decision.

Additional Conditions for Approval

Outgoing Phoenix tenants must have an up to date rent account at the time of the Mutual Exchange.

Suitable references must have been received from the current landlord.

Repairs identified during the pre-Mutual Exchange Inspection as our responsibility should be logged by the Technical Inspector following inspection and carried out in the usual way. We will not carry out any additional redecoration or improvements.

Repairs identified during the inspection as the outgoing resident's responsibility must be either:

- Carried out by the outgoing tenant to our satisfaction prior to the exchange being approved.
- Or, carried out by us and payment made by the outgoing tenant to cover all costs prior to the exchange being approved (see Recharge Policy).

The incoming tenant must accept the property in its current condition at the time of the exchange.

Unauthorised Mutual Exchange Without Consent

Where an unauthorised mutual exchange takes place and the association would not agree to such an exchange in retrospect then legal action should be commenced against the new purported tenant following service of a Notice of Seeking Possession. The Housing Manager should be notified before action is commenced. For further detail refer to the Squatters and Unauthorised Occupants policy and procedure.

Financial Incentives

If money is given by one tenant to another in connection with a mutual exchange then the new tenant may face possession proceedings.

Appealing a Mutual Exchange Decision

If we refuse your mutual exchange application or deem it to be illegal, a Housing Officer will contact you to explain the decision.

If you are unhappy with this explanation, you have the right to appeal the decision. All appeals must be made in writing and investigations will follow our Complaints Policy and Procedure.

Monitoring and Review

Performance reports will be provided every month that detail:

- The number of mutual exchange applications made.
- The number of mutual exchange applications refused.
- The number of mutual exchange applications approved.
- Mutual exchanges from former under occupiers.
- Mutual exchanges where we have paid an incentive.

Other checks on performance will include mystery shopping, internal audits and one-to-one monitoring.

We will review this policy every three years or sooner if there are changes to legislation or best practice.

Legislation

- Housing Act 1985
- Localism Act 2011

Associated documents, policies and procedures

- Mutual Exchange Procedure and workflow
- Standard Letters
- Complaints Policy and Procedure
- Squatters and Unauthorised Occupants policy and procedure
- Rent Policy

Definitions

Term	Description
Mutual Exchange	The direct swapping of tenancies by social tenants as detailed in the Housing Act 1985 and the Localism Act 2011.
Resident	Refers to tenants.
Phoenix	Phoenix Community Housing.
Under occupation	“The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.” (Housing Act 1985 (c. 68), Schedule 3, Ground 3). As a guideline, up to one unused extra bedroom will be permitted but, applications will be considered on a case-by-case basis to establish what is “reasonably required”.
We/us/our	Refers to Phoenix Community Housing.
You/your	Refers to Phoenix tenants.

Document Type:	Policy
Title:	Mutual Exchange Policy
Author	Housing Manager
Department Owned By	Customer Services
Data Protection Impact	No
Equalities Impact Assessment:	Yes
Approval Date:	30/05/2019
Approved By:	Board
Implementation Date:	03/06/2019
Status:	Draft
Version No:	V2
Last updated:	17/01/2019
Issue Date:	03/06/2019
File Path:	S:\Policies and Procedures Manual\Department- Customer Services\Mutual Exchanges\Policy\CS Mutual Exchange Policy FINAL V3 May 2019.docx

Appendix 1 Full Grounds for Refusal

SCHEDULE 3 TO THE HOUSING ACT 1985 GROUNDS FOR WITHHOLDING CONSENT TO ASSIGNMENT BY WAY OF EXCHANGE

Part 1

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

Part 2

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Part 2A Ground 2A

Either:

- (a) a relevant order or suspended Ground 2 or 14 possession order is in force, or
 - (b) 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 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; or
- 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 this Act 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 this Act or Ground 14 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.

Part 3

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

Part 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.

Part 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 in the employment of:
the landlord, a local authority, a development corporation, a housing action trust, a Mayoral development corporation, an urban development corporation, or the governors of an aided school.

Part 6

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

Part 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.

Part 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.

Part 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.

Part 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.

SCHEDULE 14 TO THE LOCALISM ACT 2011

GROUND 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

- (1) This ground is that either of the following conditions is met.
- (2) 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).
- (3) 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

- (1) This ground is that either of the following conditions is met.
- (2) 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).
- (3) 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

- (1) This ground is that either of the following conditions is met.

- (2) 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.
- (3) 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.
- (4) In this paragraph:
 - a “relevant order” means:
 - (a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
 - (b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
 - (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 behaviour 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

- (1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.
- (2) 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.

- (3) 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

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that:
 - (a) are substantially different from those of ordinary dwelling-houses, and
 - (b) are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (3) 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

- (1) This ground is that both of the following conditions are met.
- (2) 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.
- (3) 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

- (1) This ground is that all of the following conditions are met.
- (2) 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.
- (3) 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.
- (4) 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

- (1) This ground is that all of the following conditions are met.
- (2) 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.
- (3) The second condition is that at least half the tenants of the dwelling-houses are members of the association.
- (4) 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.
- (5) 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.