

Mutual Exchange Policy

Scope

1.1 A mutual exchange is a process which allows Oxford City Council tenants to swap their tenancies with tenants of other social housing landlords. This process can occur with more than two households in a chain of swaps. The exchange can only take place with the written permission from each respective landlord.

1.2 Mutual Exchange partners assign tenancies and move into each other's properties 'as seen' and take on all the rights and responsibilities set out in the tenancy agreement for the property they move into.

1.3 The Council recognises the benefits a Mutual Exchange can have for both the tenant and the Council. The process helps:

- tenants to meet their housing needs.
- move closer to work.
- Tenants to be closer to family members and / or support networks

1.4 For many tenants who are adequately housed; not in a high priority band for a transfer; or where there is a high demand for the accommodation that they need, a Mutual Exchange provides the only realistic opportunity for them to move from their current home into one which better meets their needs.

1.5 This policy outlines the Council's approach to Mutual Exchanges and applies to:

- Council tenants applying for Mutual Exchange.
- External social housing tenants seeking to exchange with Council tenants.

Roles, responsibilities, and authority

2.1 The Director of Housing and the Landlord Services Lead are responsible for the implementation of this policy. Housing Managers and Housing Officers deliver key operational activities relating to Mutual Exchanges.

Aims of policy

3.1 This policy sets out the Council's commitment to providing tenants with a good customer experience by giving good advice, managing, and supporting the Mutual Exchange process.

3.2 The aim of this Policy is to deliver the Council's Mutual Exchange scheme in line with legislation and the relevant guidelines, and to apply the conditions for Mutual Exchanges fairly, consistently and within the statutory timeframe.

Scope

4.1 To inform Council staff, tenants, and partners on how the scheme will operate, the eligibility criteria and grounds for refusal:

4.2 To promote Mutual Exchange as an effective option for meeting housing need:

- To encourage mobility for social housing tenants in the city.
- To contribute to the Council's Housing, Homelessness & Rough Sleeping Strategy

4.3 In addition, to ensure the effective use of the Council's housing stock by enabling tenants to move to accommodation suitable for their needs the following objectives would be achieved:

- Reducing over-crowding and under-occupation in the Council's existing stock.
- Giving tenants a variety of choices for moving.
- Addressing needs for adaptations and help release adapted homes.
- Reducing pressure on the Council's Housing Register.
- Reducing pressure on health and care services.

Legal context

5.1 Mutual exchanges need to be carried out within the statutory guidelines as set out in Section 92 of the Housing Act 1985 and in alignment with Section 91 of the Housing Act 1985 which generally prohibits the assignment of secure council tenancies, with limited exceptions.

5.2 Assignments are only permitted via mutual exchange (s92), court orders for relationship breakdown, or to someone qualified to succeed to the tenancy, usually requiring a deed of assignment.

5.3 Consequently, mutual exchanges should be carried out according to statute:

- Tenants with lifetime (secure and assured) tenancies have the right to exchange their social homes with other tenants. In order to carry out an exchange, tenants must transfer their tenancies by way of Assignment.
- Landlords must provide a written decision within 42-days of receiving completed applications from all exchange partners.

- Schedule 3 of the Housing Act 1985 sets out the grounds on which landlords can refuse applications for Mutual Exchange.
- Council may provide conditional consent to a Mutual Exchange to proceed, for example subject to certain conditions being met such as, payment of rent arrears.

Localism Act 2011:

5.4 This Act provides additional benefits for tenants which are:

- Protection of security of tenure for lifetime tenancies after April 2012. This allows tenants to keep similar security of tenure when exchanging with tenants who are on flexible or fixed term tenancies. Tenancies can be transferred by way of Surrender and Re-grant.
- Grounds on which landlords may refuse an application for Mutual Exchange where Section 158 applies.
- Tenants' right to take legal action via County Court injunction if landlords fail to provide written decisions within 42-days of receiving applications for Mutual Exchange (S.159).
- Allows a flexible tenancy or an assured shorthold tenancy to be treated as a 'transfer of tenancy' not an exchange. A deed of surrender is to be completed and a new tenancy created.
- Notice of reason for refusal must be given within 42 days of receipt of request, giving each of the tenant's involved a notice specifying the grounds.

Implementing the Mutual Exchange Policy

6.1 The Council must support relevant tenants living in eligible housing to mutually exchange their home. The Council offers a mutual exchange service which allows relevant tenants potentially eligible for mutual exchange, whether pursuant to a statutory right or a policy of the registered provider, to easily access details of all (or the greatest practicable number of) available matches without payment of a fee.

6.2 The Council will publicise the availability of any mutual exchange service(s) it offers to its relevant tenants.

6.3 The Council will provide support for accessing mutual exchange services to relevant tenants who might otherwise be unable to use them.

6.4 The Council will offer tenants seeking to mutually exchange information about the implications for tenure, rent and service charges.

Right to Exchange:

7.1 Council tenants who are on Secure or Fixed Term Flexible Tenancy are eligible for a Mutual Exchange. External tenants seeking to exchange with Council tenants must be on lifetime tenancy (secure or assured) or Fixed Term / Flexible Tenancy.

7.2 Council tenants can exchange with tenants of any private registered providers of social housing anywhere in the country, including:

- Other Local Authorities.
- Arm's Length Management Organisations (ALMO).
- Housing Associations.
- Housing Trust which is a charity.

7.3 Tenants on Introductory Tenancies will not be considered for Mutual Exchange until such time that they have successfully completed the 12-month or 18 month period of probation period.

Types of Exchange

8.1 Tenants can only exchange properties with written consents from their landlords. The exchange can be carried out by transferring tenancies using either of the two methods described below.

Assignment

8.2 This applies when exchange partners hold tenancies with secure tenure. They will be asked to sign a 'Deed of Assignment' which will allow the incoming tenant to take on the rights and responsibilities of the outgoing tenant, with whom they have exchanged their property.

Surrender and Re-grant

8.3 Surrender and re-grant is where tenants surrender their current tenancy and are issued a new tenancy with similar level of security of tenure as their current tenancy. This is applicable when tenants on lifetime / secure tenancies that predate 1 April 2012, who have their security of tenure protected by law, seeking to exchange with tenants on flexible or fixed term tenancies.

Support for most vulnerable tenants

8.4 Mutual Exchange schemes are tenant-led. Those seeking to exchange are responsible for finding their potential exchange partners, carry out checks to the property they would like to move to and make the arrangements for the actual move. The Council will provide reasonable support to tenants who do not have access to the internet.

8.5 The Council will also provide additional and reasonable support to tenants who are unable to manage independently with using any Mutual Exchange service the Council provides. Support will be based on individual need and on a case-by-case basis. This may include:

- Access to a computer

- Explaining how the mutual exchange service works
- Assistance to navigate the online mutual exchange service.
- Registering and searching for matches on behalf of a tenant.

Support with downsizing

8.6 To incentivise tenants to downsize through Mutual Exchange, the Council may well help with the cost of moving or organise the move to be decided on a case by case basis.

Financial Assessments

9.1 Tenants who are seeking to exchange into properties that will lead to under-occupation will be offered a financial assessment. This is to help them establish if the potential move is affordable and if there are any financial implications such as reductions in their housing benefit entitlement or the housing element of their Universal Credit and / or access to Discretionary Housing Payment (DHP). Tenants will also be informed regarding the implications of not keeping a clear rent account.

9.2 Mutual Exchange Applicants will also be required to sign a disclaimer stating that they fully understand any financial implications of exchanging into a property that will result in under-occupation.

Grounds for Refusing a Mutual Exchange

10.1 The Council can, under Schedule 3 of the Housing Act 1985, withhold consent to an assignment on one or more of the following grounds:

Ground 1: The tenant or proposed assignee is subject to a possession order in relation to the dwelling of which they are a secure tenant.

Ground 2: Proceedings have commenced for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more grounds 1 to 6 in Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation) to the Housing Act 1985, or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) or section 83ZA of the Housing Act 1985 specifying one or more of those grounds and that notice is still in force.

Ground 2ZA: Possession proceedings have commenced against the tenant or proposed assignee under section 84A of the Housing Act 1985 (absolute ground for possession for anti-social behaviour), or a notice of seeking possession has been served under section 83ZA of the Housing Act 1985 and that notice is still in force.

Ground 2A: Either:

- A relevant order, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force.
- 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.

10.2 A "relevant order" means:

- A [demotion order](#) made under either [section 82A](#) of the HA 1985 or [section 6A](#) of the Housing Act 1988.
- A riot-related possession order made under either ground 2ZA in [Schedule 2](#) to the Housing Act 1985 or ground 14ZA in [Schedule 2](#) to the Housing Act 1988.
- An injunction under [section 152](#) of the Housing Act 1996.
- An injunction to which a power of arrest is attached under [section 153](#) of the Housing Act 1996.
- An injunction under section 153A, 153B or 153D of the Housing Act 1996.
- 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 under [section 91](#) of the Anti-social Behaviour Act 2003.
- An injunction under [section 1](#) of the Anti-social Behaviour, Crime and Policing Act 2014.
- A [criminal behaviour order](#) under [section 22](#) of the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 2B: The tenant's dwelling is subject to a closure notice or closure order under 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.

Ground 5: (part) The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or a cemetery.

Ground 7: The dwelling-house has been specifically adapted for disabled persons and the assignee is not such a person

Ground Nine: 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 nearby and the proposed assignee does not have those special needs

10.2 For tenancies created post 1 April 2012, the Council can only refuse to comply with the request on one or more of the statutory grounds contained in Schedule 14 to the Localism Act 2011. These statutory grounds are as follows:

Ground 1: Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2: An obligation under one of the existing tenancies has been broken or not performed.

Ground 3: Any of the tenants taking part is subject to a possession order in relation to their existing tenancy.

Ground 4: Possession proceedings have been commenced against a participating secure tenant under one or more of grounds 1 to 6 in [Schedule 2](#) to the Housing Act 1985 or a notice of seeking possession proceedings has been served on them under [section 83](#) of the HA 1985, relying on one or more of those grounds and the notice is still in force.

Ground 4A: Possession proceedings have been commenced against a participating secure tenant under [section 84A](#) of the Housing Act 1985 (absolute ground for possession for anti-social behaviour), or a notice of seeking possession has been served under [section 83ZA](#) of the Housing Act 1985 and that notice is still in force.

Ground 6: One of the following orders has been made against one of the participating tenants, or there is a pending application for such an order against one of them:

- A riot-related possession order made under either ground 2ZA in [Schedule 2](#) to the Housing Act 1985 or ground 14ZA in [Schedule 2](#) to the Housing Act 1988.
- An injunction under [section 152](#) of the Housing Act 1996.
- An injunction to which a power of arrest is attached under [section 153](#) of the Housing Act 1996.
- An injunction under [section 153A](#), [153B](#) or [153D](#) of the Housing Act 1996.
- 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 under [section 91](#) of the Anti-social Behaviour Act 2003.

- An injunction under [section 1](#) of the Anti-social Behaviour, Crime and Policing Act 2014.
- A criminal behaviour order under [section 22](#) of the Anti-social Behaviour, Crime and Policing Act 2014.

10.3 The ground also applies if there is an application for a demotion order against one of the participating tenants under [section 82A](#) of the Housing Act 1985 or [section 6A](#) of the Housing Act 1988.

Ground 6A: One of the tenant's dwellings is subject to a closure notice or closure order under the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 7: The accommodation offered by the dwelling is substantially more extensive than is reasonably required by the proposed new tenant.

Ground 8: The extent of the accommodation offered by the dwelling is not reasonably suitable to the needs of the proposed new tenant and their family.

Ground 9: The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or a cemetery.

Ground 11: The dwelling has been specifically adapted for disabled persons and the proposed new tenant is not such a person.

10.3 The Council must write to the affected tenant within 42 days either giving their consent or explaining their reasons if they refuse permission for the exchange.

The role of the tenant

11.1 The tenant will not assign the tenancy or exchange tenancies with any other party before receiving the written permission of the Council and will not give or receive any money or other inducement in connection with an exchange of tenancies.

11.2 The tenant will notify the Council in writing in advance of the date when the assignment or exchange will take place and to complete any exchange on the same day.

11.3 The tenant will Immediately notify the Council of any change in the plan concerning the assignment or exchange either on the part of the tenant or the other party.

11.4 Before vacating a property, tenants must ensure the property is clean and that the property is cleared of all items. If these requirements are not met, the Council will have recourse to charge tenants for the costs of cleaning a property and/or removing items.

Health and Safety

12.1 The Council will assess the properties to ensure they meet safety standards, including conducting necessary safety checks. For electrical and gas installations, certificates must be provided and cannot be older than three months before the exchange.

12.2 Incoming tenants will have the same right to repairs as outgoing tenants and in accordance with the Landlord and Tenant Act 1985.

12.3 It is the responsibility of the incoming tenants to report any issues or concerns within 14 days of signing the tenancy agreement. Where the property has been left in an unacceptable condition by the outgoing tenant, the Council will arrange for clearance to take place and recharge the outgoing tenant.

Equality and Diversity

13.1 In developing this policy resident's involvement and consultation needs have been considered.

13.2 The Council will act sensitively towards the diverse needs of individuals and communities, and we will take positive action to reduce discrimination and harassment.

13.3 An Equalities Impact Assessment has been carried out in compliance with the Council's Public Sector Equality Duty under the Equality Act 2010. There are no adverse impacts anticipated by this policy on any person with protected characteristics.

Communication

14.1 This policy will be made available to the Council's tenants and leaseholders.

Monitoring and Performance Management

15.1 The Council will review this policy in two years or if legislation changes, whichever occurs the soonest, to ensure it reflects current legislation and the latest examples of best practices.

Procedure for managing complaints

16.1 A person who is dissatisfied with the application of this policy can ultimately raise the issue under the Council's complaints procedure