

CITY OF LINCOLN COUNCIL

DIRECTORATE OF HOUSING AND COMMUNITY SERVICES

Mutual exchange policy

1. Objectives of this policy

The objectives of this policy are:

- to ensure that all enquiries and applications for a mutual exchange are dealt with according to legal requirements as stated in the Housing Act 1985 (as amended);
- to apply the policy fairly and consistently in respect of our legal requirements as above;
- to set out those circumstances where discretion may be exercised to make the best use of our stock, protecting our income stream and help encourage tenants who wish to move to more appropriate accommodation for their needs to do so;
- to provide a framework that will support clear operational procedures for the application of this policy so that staff and tenants are clear about the rules and processes that must be followed when considering an application for a mutual exchange.

2. Scope of this policy

This policy applies to all our secure tenants. Introductory tenants do not have the right to carry out a mutual exchange. It also applies to all tenants of other providers who carry out a mutual exchange with our tenants at the point when they become the legal tenant of our property through the assignment of that tenancy.

3. Legal framework

The process of applying for and carrying out a mutual exchange is governed by the Housing Act 1985 (as amended), property law and the common law. In brief, the law states the following:

- Mutual exchanges can only be carried out between secure or flexible tenants of local authorities and ALMOs and assured tenants of housing associations;
- Mutual exchanges are carried out by assignment of existing tenancies, not by the creation of new tenancies. The exception to this is if one of the exchanging tenants is a flexible tenant (as defined under the Localism Act 2011). In those cases the exchange will be carried out by granting new tenancies to each party and preserving their original tenancy status;
- In accordance with the law of property in respect of positive and restrictive obligations under the tenancy agreement, obligations that require the tenant *to do* something, for example, paying the rent, remain with the person whereas restrictive obligations such as not damaging the property, remain with the property. Therefore an exchanging tenant does not acquire any rent arrears that the previous tenant had but does assume responsibility for any damage that the previous tenant caused to the property;

- Introductory tenants of local authorities/ALMOs and starter tenants of housing associations do not have the right to carry out a mutual exchange;
- Mutual exchanges, although carried out by assignment, do not count as successions;
- If, however, the exchanging tenant is a successor themselves, their status as a successor still stands and a further succession cannot, therefore, take place;
- As landlord we are required to confirm or not someone's request to carry out a mutual exchange within 42 days of the application being submitted;
- There are grounds on which we can legally refuse to allow a mutual exchange. The most common grounds are:
 - that there is a court order in force;
 - that a notice of seeking possession has been served and is still in force;
 - the property is substantially larger than are the needs of the incoming tenant;
 - the property is not reasonably suitable for the needs of the incoming tenant;
 - the property has features that are substantially¹ different from those of ordinary properties, e.g. adaptations for disabled people and the incoming tenant has no need of such adaptations;
 - the property is one let to people with special needs or a special facility is provided close to the group of properties in order to help those people. This would include purpose-built sheltered housing.

4. Policy statement

- 4.1 We will at all times comply with our legal requirements as set out above and in law.
- 4.2 We will exercise our right to take possession action for breach of tenancy against a tenant who asks for or offers money in connection with a mutual exchange.
- 4.3 We will make it a condition of a mutual exchange taking place (as opposed to our refusing outright the mutual exchange as in section 3 above) that our tenant's/tenants' rent account(s) is/are clear at the point at which the assignment takes place.
- 4.4 We will also make it a condition of a mutual exchange taking place that other tenancy breaches are rectified before the exchange takes place, for example unauthorised, illegal, faulty or dangerous alterations or improvements to the property.
- 4.5 We will use our discretion in respect of paragraph 4.3 above if the arrears on the rent account have arisen solely because of a deduction to the tenant's housing benefit through the imposition of the spare room subsidy (or 'bedroom tax'); *and*
- the property to which they wish to move would result in the removal of this deduction;

¹ The law does not define 'substantial' but will normally include adaptations such as specially adapted kitchens, through-floor lifts; specially adapted bathrooms (but not necessarily level-access showers) and the like. Minor adaptations such as ramps or grab rails will not be classed as 'substantial'.

- they have made strenuous efforts to pay the deduction themselves;
 - they have made efforts to obtain discretionary housing payments.
- 4.6 We will exercise our discretion in allowing an exchange to take place where there are rent arrears not accumulated because of paragraph 4.3 above but who have been making regular payments to clear their debt for a minimum of six months prior to the exchange taking place and whose arrears do not exceed more than four weeks' rent at the time of exchange.
- 4.7 We will exercise our discretion in allowing a mutual exchange to take place where there are rent arrears or other unrectified breaches of tenancy but where the mutual exchange would enable the tenant to flee domestic abuse and where their situation is supported by the police and other relevant agencies.
- 4.8 We will carry out any routine repairs for which we are responsible under the tenancy agreement that are identified before or after the exchange but will be limited to what we would have carried out had the exchange not taken place.

5. Our role as landlord

- 5.1 As landlord we acknowledge our role in creating conditions where tenants wishing to do a mutual exchange can do as easily as possible and at minimum cost. To that end we will:
- continue to be members of 'Homeswapper' or its successors and provide facilities at our offices where tenants can seek potential exchanging tenants and properties and get advice from us on all aspects of their desired exchange;
 - actively promote the benefits of tenants carrying out a mutual exchange, especially where the financial consequences of exchanging (such as avoiding the housing benefit spare room deduction') will be of benefit to the tenant and to the council in terms of its income management;
 - enable tenants to apply for an exchange online at our offices or from their home;
 - provide comprehensive and accurate information and publicity in print or online;
 - be clear with exchanging tenants on the mutual exchange process and their obligations and offer all practicable support in helping them achieve their desired exchange;
- 5.2 We will visit all our tenants wishing to carry out a mutual exchange, carry out as comprehensive property inspection as possible and explain to them what they must do before the mutual exchange takes place. We will make it clear to the tenant in what ways a mutual exchange differs from a transfer, for example, their taking on the condition of the property 'as seen' (not including, of course, repairs for which we as landlord would be responsible for carrying out). We will ensure that these visits take place within 15 days of receiving a mutual exchange application.
- 5.3 If we approve the exchange and set a date for it to take place, both parties must sign a deed of assignment; and we must give our permission for the exchange to take place in writing, too.
- 5.4 We may begin an action for possession of the property if an exchange is agreed as a result of a tenant giving false information or if any payment has been made to persuade someone to exchange or if tenants move before our written consent is

given. This will involve serving a notice of seeking possession and will therefore provide a ground for refusing the exchange.

6. Training

We will provide suitable training to all staff involved in the mutual exchange process so that we can fulfil both our legal obligations in respect of mutual exchanges and those set out in this policy.

7. Equality and diversity

We aim to ensure that our policies and procedures are fair and transparent; and we work towards achieving balanced and sustainable communities in accordance with our equality and diversity policy and strategy.

8. Responsibility

The director of housing and community services or equivalent is ultimately responsible for the effective implementation of this policy

9. Monitoring and review

This policy will be reviewed every three years unless required earlier through legislative or regulatory changes.

10. Other external and internal influences on this policy

10.1 This policy has been created and should be implemented in conjunction with the following internal documents:

- Allocations policy;
- Equality and diversity strategy;
- Tenancy agreement;
- Domestic violence and anti-social behaviour policies.

10.2 Similarly, this policy has been created and should be implemented in conjunction with the following external documents:

- Housing Act 1985 (as amended);
- Housing Act 1996;
- Equality Act 2010;
- Localism Act 2011.