

## LHC Mutual Exchange Policy



<b>Reference:</b>	Version 1	<b>Author:</b>	Sue Needham
<b>Scope:</b>	Loddon Homes Berry Brook Homes	<b>Approved by:</b>	H Messenger
<b>Legislation:</b>	Localism Act 2011 Housing Act 1985 & amended 2004 Housing Act 1988	<b>Date of approval:</b>	November 2019
<b>Regulatory/ Governance:</b>	The Social Housing Regulator's Tenancy Standard	<b>Date of next review:</b>	August 2021
<b>Related Policies:</b>	Succession Assignment Policy Tenancy Policy Tenancy Fraud policy		

### 1. Policy Statement

- 1.1. This policy applies to Loddon Homes and Berry Brook Homes which collectively will be referred to Local Housing Companies (the LHC).
- 1.2. The LHC delegates responsibility for the delivery of this policy to Wokingham Borough Council (WBC) Tenancy Services.
- 1.3. Although WBC has been delegated responsibility, the LHC will be consulted and to sign off the following proposed actions in delivering this policy:
  - Any proposed mutual exchange and the affordability of the incoming tenant to pay the affordable/social rent
  - Deed of assignment or surrender and re-grant to effect the mutual exchange
  - Proposed mutual exchange is being refused.
- 1.4. This policy sets out approach to assisting residents who wish to carry out a mutual exchange. The LHC are keen to promote mutual exchange as a way of encouraging and promoting resident mobility and is seen as an important means for many residents to be able to find a home more suitable for their needs.
- 1.5. The LHC supports residents in their search for suitable exchange partners and to facilitate a speedy and smooth exchange of properties where authorised.
- 1.6. The aims of this policy are to ensure that:

- residents are aware of their responsibilities in finding and inspecting a mutual exchange property.
- residents are aware of the LHC's responsibility to provide assistance and support to residents who are seeking a mutual exchange.
- mutual exchanges are only carried out with the written consent of the landlord(s) and in accordance with legislation (see section 4.0 of this policy).

## **2. Scope**

- 2.1 This policy applies to the social housing residents of Loddon Homes, including affordable rent, supported, extra care and sheltered housing tenants depending upon the terms of their tenancies. This policy does not cover any freeholders, leaseholders shared owners, or market rent residents of any social landlord.
- 2.2 This policy also applies to all residents who are tenants of Berry Brook Homes which is an unregistered social housing provider. Any tenant of Berry Brook Homes does not therefore have the right to a mutual exchange. Any proposed mutual exchange will be at the discretion of the LHC and considered on a case by case basis.

## **3. Definitions**

- 3.1 Mutual exchange is the term used when two (or more) parties decide to exchange tenancies. Both/all exchange partners must have the written consent of their landlord to exchange. Another term used for this is home swap.
- 3.2 Assignment: the swapping of tenancies at the time the homes are exchanged. This is effected by way of deed of assignment. Each tenant will take on the rights and responsibilities of the tenant that they have swapped with. This is therefore used when those exchanging homes hold tenancies with similar security of tenure.
- 3.3 Surrender and re-grant: tenants surrender their current tenancy and 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 (Localism Act 2011 see 4.1).

## **4. Legislation**

- 4.1 Provision in the Localism Act 2011 covers circumstances in which at least one of the tenants wishing to transfer has a secure or assured tenancy and at least one of the parties has a flexible tenancy or a fixed-term assured short-hold tenancy.
- 4.2 From April 2012 the new regulatory framework requires registered providers to produce transparent documents which clearly state how they let their homes. These documents must demonstrate a commitment to corporate and local authority partners, strategic housing functions and sustainable communities. The Tenancy Standard requires registered providers to enable their tenants to gain access to opportunities to mutually-exchange by way of internet-based mutual exchange services.
- 4.3 Mutual exchanges between tenants of social landlords usually take place via a deed of

assignment but in certain circumstances the old tenancies must be terminated and new ones granted. (surrender and re-grant).

## **5. Role**

- 5.1. The LHC will provide assistance, advice and support to tenants wishing to participate in a mutual exchange. However, the tenant will always be responsible for finding the exchange partner and viewing the property to which they wish to move.
- 5.2. Both exchange partners agree to accept the condition of the property as seen when they carry out a mutual exchange. The LHC retain responsible for all landlord obligations but tenant responsibilities, such as internal decoration, must be accepted by the incoming exchange partner.
- 5.3. Before a LHC resident can exchange properties a surveyor or Housing Officer will visit their home to carry out an inspection. If there are repairs or removals of works, the resident will be responsible for arranging these to be satisfactorily completed before the exchange can go ahead.
- 5.4. Residents are encouraged to consider participation in a mutual exchange carefully as they will be accepting the property to which they wish to move 'as seen'. The LHC will not carry out additional works to bring the property up to its usual lettable standard if the new property falls short of this. Outgoing residents may be subject to recharges in the event that the exchange goes ahead
- 5.5. Both exchange partners must have the written consent of their respective landlord(s) to carry out an exchange. Where consent is given the mutual exchange will take place through assignment or in certain circumstances by both tenants surrendering their existing tenancies followed by the granting of new tenancies (see appendix B for the situations when this will occur).
- 5.6. The LHC and Tenancy Services will facilitate a mutual exchange by:
  - informing tenants of their right to exchange;
  - encouraging mutual exchange in addition to or as an alternative to a transfer;
  - facilitating access for residents to an online mutual exchange register;
  - outlining support to those residents who cannot access the internet.

## **6.0 Grounds for refusal to exchange**

- 6.1 Section 158 & Schedule 14 of the Localism Act 2011 set out the grounds on which a mutual exchange can be refused if one of the tenants is a secure or assured non-shorthold tenant whose tenancy started before 1 April, 2012 and that tenant wishes to exchange with a tenant on a flexible tenancy or fixed term assured short-hold tenancy of 2+ years.
- 6.2 These grounds are broadly the same as those set out in Schedule 3 of the Housing Act 1985 which applies to exchanges involving secure tenants. Appendix A of this policy shows what grounds apply within both of these Acts.

- 6.3 Where both (or all) of the tenants involved in an exchange are on assured non-short-hold periodic tenancies, or if all tenants are on fixed term ASTs, then neither section 158/Schedule 14 of the Localism Act nor Schedule 3 of the Housing Act 1985 applies.
- 6.4 In these cases the circumstances in which the landlord can refuse an exchange will be governed by what the tenancy agreement says about assignment and what the landlord's policies and procedures say about refusal.
- 6.5 Although there is no statutory list of grounds for refusal in assured tenancy mutual exchanges, the LHC will not reasonably withhold consent and will apply very similar grounds to schedule 43 of the Housing Act 1985 for refusing an exchange. However there may be additional reasons why the LHC would want or need to refuse an assured exchange. Grounds for refusal include but are not limited to the following:
- the incoming resident is unable to afford the property (for example, following a financial assessment);
  - the property has been identified for disposal after the current tenancy has ended;
  - the property is unsuitable for the proposed incoming resident for a reason other than those covered in Schedule 3 of the Housing Act 1985;
  - the LHC has information, based on evidence, about the incoming resident or a member of their household causing anti-social behaviour or being involved in unlawful activity or other significant breach of tenancy but where no court order or notice of seeking possession has been issued;
  - the LHC has previously had to evict or obtain an injunction or anti-social behaviour order against the proposed incoming resident or a member of their household;
  - the incoming resident will over occupy the property by one bedroom or more
  - the incoming resident would under occupy the property by one or more bedroom (also known as 'plus one').
- 6.5.1 Where the property has been adapted, the LHC will require the incoming resident to provide a report from an occupational therapist to confirm that they require the adaptations.
- 6.5.2 Where the incoming resident has pets, permission must be sought prior to the exchange going ahead.
- 6.6 The incoming tenant will be asked to declare whether they own or have any interest in another property (besides the property from which they are swapping). This declaration must be in writing and signed.
- 6.7 In situations covered by Section 158 of the Localism Act ( assured and fixed term tenancies), the LHC must notify the proposed exchange partners of their decision on a proposed exchange within 42 days of taking receipt of the request. If the decision is to reject an application for an exchange, the LHC must state the reason for withholding consent. If the LHC fails to respond within 42 days consent cannot be withheld or refused.

## **7.0 Requirements before an exchange**

- 7.1 The LHC can impose the following conditions before giving consent requiring the resident to:
- comply with any outstanding obligation of the tenancy and,
  - pay any outstanding rent, rents repairs charges and/or service charge.
- 7.2 These conditions have to be met before an exchange may proceed but they do not constitute grounds for refusing consent.
- 7.3 Residents will be advised at an early stage in the process to seek independent legal advice so they are aware of any loss of rights or other implications resulting from a potential change in their tenancy status if they are proposing to exchange with a tenant with differing security to tenure.
- 7.5 The LHC will carry out a gas safety check and an electrical safety check before the exchange completes to ensure that the property is in a good state of repair. Safety certificates will be provided to new residents for their own information and a copy held on the in-house asset management system. If works are required, the mutual exchange will be delayed until the works have been completed and the gas safety and electrical safety certificates have been issued. If the outgoing tenant does not give access for such inspections, as they are required to do under their tenancy agreement, the exchange will be delayed until the tenant complies.
- 7.6 Exchanges without consent
- 7.6.1 If a tenant does not obtain the LHC's written consent or if the application to exchange has been withheld or rejected but the tenants still sign a Deed of Assignment and move properties then the exchange will be a breach of tenancy for which the landlord can seek possession. If no deed of assignment has been signed then no transfer of tenancies has taken place even if the tenants physically swap properties.
- 7.6.2 In these instances the available options to the LHC will depend on the individual circumstances but may include:
- considering making the exchange 'legal' by completing new tenancy agreements or deeds of assignments retrospectively;
  - demanding that both tenants return to their original homes; or
  - serving a NOSP or NTQ (depending on whether a deed of assignment has been signed or not) and seek possession.
- 7.8 Tenancy types
- 7.8.1 Tenants who hold assured tenancies that **pre-date 1 April 2012** will retain similar security of tenure to that of their original tenancy and the exchange will take place by the surrender of the old tenancies and grant of new ones. (S158 of the Localism act 2011) These provisions do not apply however where an existing secure or assured tenant chooses to exchange with:
- someone with a fixed-term tenancy with less than 2 years remaining;
  - someone with a tenancy at an affordable rent.

Appendix B of this policy details the tenancy type before and after the mutual exchange.

- 7.8.2 Assured tenancies granted **after 1 April 2012** will not retain security of tenure (not protected by s158) if they exchange and therefore the mutual exchange will take place by deed of

assignment which means, if a secure of assured tenant wants to exchange with a fixed term tenant, they lose their security of tenure.

7.8.3 In all other cases when a mutual exchange takes place the exchange partners 'swap' their tenancies by deed of assignment. This means that the type of tenancy the original tenants had may change.

7.8.3 For assured shorthold tenants of Berry Brook Homes (BBH) who wish to mutually exchange, as BBH is an unregistered housing association the Housing Act 1988 and Localism Act 2011 do not apply. Refer to 2.2 above.

7.8.3.1 Any mutual exchange is at the LHC's discretion on a case by case basis as there is no right to exchange for BBH tenants.

7.8.3.2 In addition, the potential oncoming tenant must be advised of the consequences of becoming a BBH tenant as the swapped tenancy will be a fixed term assured shorthold with limited security of tenure.

7.8.4 In circumstances where the incoming tenant will lose their assured/secure lifetime tenancy, they should be advised to seek independent legal advice regarding security of tenure and the implications of mutually exchange in these circumstances.

7.8.4 In options 2 and 3 in the Tenancy Status table (Appendix B) the LHC can offer the incoming tenant a five-year fixed-term tenancy.

## 8.0 **Other Information**

### 8.1 **Appeals process**

8.1.1 Applicants may make an appeal should their application for a mutual exchange be denied. Additional information should be provided in support of their appeal and this will then be considered by Tenancy Services.

8.1.2 Appeals should be received in writing within ten working days of the original decision being communicated to the resident. The Senior Specialist Housing Manager will investigate the reasons of the refusal and will advise the applicant in writing of their decision. This process will be concluded within ten working days.

8.1.3 If the resident disputes the decision there is a second right of appeal to the Assistant Director Housing, Income and Assessments. This must be made within ten working days of the outcome of the initial appeal being communicated to the resident and will outline the reason for this further appeal. The Assistant Director Housing, Income and Assessments will give a written response based on a review of the initial decision within ten working days. The decision of the Managing Director will be final.

8.1.4 This appeal process does not prevent an individual's from making a complaint through the LHC's complaints policy and ultimately to the Housing Ombudsman.

### 8.2 **Mutual exchange and succession**

The right to succession is personal to the individual tenant and this right transfers with the tenant when they move in a mutual exchange. No new succession rights are created as a

result of a mutual exchange and if the incoming tenant has previously succeeded to a tenancy no further successions would be permitted under the tenancy accepted with the LHC.

## **9.0 Equality & Diversity**

9.1 The LHC 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. The LHC work closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. The LHC will record, analyse and monitor information on ethnicity, vulnerability and disability.

## **10.0 Confidentiality**

10.1 Under the Data Protection Act 2018 and the Human Rights Act 1998, all personal and sensitive organisational 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 board member
- sensitive organisational information.

10.2 The LHC employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

## **11.0 Review**

11.1 This policy will be reviewed on a three-yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant LHC's policies.

## **12.0 Performance**

11.2 Performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms associated boards.

## **12.0 Appendices**

Appendix A: Grounds for Refusal to Exchange

Appendix B: Tenancy Status for deed of assignment/surrender and re-grant

## Appendix A – Grounds for Refusal to Exchange

Section 158 of the Localism Act 2011 sets out the grounds under which a mutual exchange can be refused. These are broadly the same as those set out in Schedule 3 of the Housing Act 1985. This appendix to the Mutual Exchange Policy shows what grounds apply under both of these Acts.

Schedule 3 of the Housing Act 1985 Secure	Schedule 14 of the Localism Act 2011 Assured/ Fixed term	Grounds for refusing consent to the exchange
-	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	A court order for possession or a suspended possession order has been made for either property.
Ground 2	Grounds 4 and 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable for the needs of the proposed assignee and their household.
Ground 5	Ground 9	The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation or the governors of a grant-
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person and, if the assignment was approved a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil this criteria.



Schedule 3 of the Housing Act 1985 Secure	Schedule 14 of the Localism Act 2011 Assured/ Fixed term	Grounds for refusing consent to the exchange
Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special needs and, if the assignment was approved no person with those special needs would be living there.
Ground 10	Ground 14	The dwelling is the subject of a management agreement whereby the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association and where the proposed assignee is not such a member nor is willing to become one.
Additional ground (Housing Act 1985)	Ground 6	One of the following in junction orders (under section 153 of the Housing Act) is in force either against the tenant and/or the proposed person who resides with them: <ul style="list-style-type: none"> <li>• anti-social behaviour order</li> <li>• a demotion order</li> <li>• an order under ground 2 for secure tenancies</li> <li>• an order under ground 14 for assured tenancies</li> </ul>

## APPENDIX B

### Deed of assignment or surrender and re-grant

1. Tenants who hold secure or assured tenancies that **pre-date April 2012** will retain similar security of tenure to that of their original tenancy unless they chose to exchange with
  - someone with a fixed-term tenancy with less than 2 years remaining, or
  - someone with a tenancy at an affordable rent
  
2. These provisions do not apply where an existing secure or assured tenant that **post -dates April 2012** chooses to exchange with:-
  - Someone with a fixed term tenancy, or
  - Someone with a tenancy at an affordable rent.
  
3. When a mutual exchange takes places the exchange partners 'swap' (assign) their tenancies or this is effected by surrender and re-grant as detailed in the table below.

Status before exchange			Status after exchange		
Option	Household 1	Household 2	Household 1	Household 2	Method of exchange
1	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Assignment
2	Protected lifetime tenancy (pre 1/04/12 only)	Fixed term social tenancy	Protected lifetime tenancy	Fixed term (not protected)	Surrender and re-grant new tenancy
3	Protected lifetime tenancy (post 1/04/12)	Fixed term social tenancy	Fixed term social tenancy with remaining tenancy length of household 2.	Protected lifetime tenancy	Assignment
4	Protected lifetime tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy.	Fixed term or lifetime tenancy (not protected) at landlord	Surrender and re-grant new tenancy

				discretion. Social rent.	
5	Fixed term social tenancy	Fixed term social tenancy	Fixed social tenancy with remaining tenancy length of household 2.	Fixed term social tenancy with remaining tenancy length of household 1.	Assignment
6	Fixed term social tenancy	Fixed term affordable tenancy	Fixed term affordable rent tenancy with remaining tenancy length from household 2.	Fixed term social tenancy with remaining tenancy length from household 1.	Assignment
7	Fixed term affordable tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy with remaining tenancy length from household 2.	Fixed term affordable tenancy with remaining tenancy length from 1.	Assignment

In options 2 and 4 in the table above, the LHC can offer the incoming tenant a 5-year fixed term tenancy.