

# Neighbourhood Services Policies & Procedures



## Mutual Exchange Policy & Procedure

<b>1.</b>	<b>Policy Objectives</b>
1.1	<p>This Policy sets out our approach to tenants wishing to carry out a mutual exchange of their property. Watford Community Housing (WCH) is keen to promote mutual exchange as a way of meeting tenants' housing needs and aspirations. We will do this by:</p> <ul style="list-style-type: none"> <li>• Promoting 'Homeswapper' as an online mutual exchange service to assist WCH tenants in finding suitable exchange partners; and</li> <li>• Encouraging mutual exchange in addition to Right-Sizing and Internal Transfer.</li> </ul>
1.2	<p>The aims of the Policy are to ensure that :</p>
1.2.1	<ul style="list-style-type: none"> <li>• WCH tenants are aware of their responsibilities in relation to mutual exchange;</li> <li>• We provide clear information to our tenants from the outset under a simple application process;</li> <li>• We advise our tenants of any effect on their legal rights and benefit entitlements; and</li> <li>• We provide WCH tenants with clear information on any reasons for refusal of a mutual exchange application.</li> </ul>
<b>2.</b>	<b>Legislative &amp; Regulatory Requirements</b>
2.1	<p><u>Legislative</u></p> <ul style="list-style-type: none"> <li>• Housing Acts_1985, 1988, 1996, 2004;</li> <li>• Equality Act 2010</li> <li>• Localism Act 2011</li> <li>• Immigration Act 2014</li> </ul>
2.2	<p><u>Regulator of Social Housing (RSH) Regulatory Standards:</u></p>
2.2.1	<p>Tenancy Standard (April 2012) requires that registered providers:-</p> <p>(para 1.1.2) "Shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services";</p> <p>(para 2.1.3) "Clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for mutual exchange schemes"</p> <p>(para 2.1.8a) "Subscribe to an internet-based mutual exchange service allowing a tenant to register their interest in arranging a mutual exchange without paying a fee";</p> <p>(para 2.1.9) "Ensure that the mutual exchange service provider is a signatory to an agreement such as Home Swap Direct under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services" and</p>

	(para 2.1.10) "Take reasonable steps to publicise the availability of any mutual exchange service to which it subscribes".
<b>3.</b>	<b>Scope, Definitions &amp; Responsibilities</b>
3.1	<b><u>Scope</u></b>
3.1.1	This Policy applies to all tenants ( <b>other than tenants still within a starter/probationary period</b> ) who have a WCH secure assured/fixed term tenancy wishing to carry out a mutual exchange with another WCH tenant or with another social housing (i.e. social or affordable) tenant. This Policy does <u>not</u> apply to tenants in WCH temporary accommodation, on market rent tenancies or in joint venture properties.
3.1.2	This Policy should be followed by all teams within the Operations directorate; their specific roles and responsibilities are set out below: -
3.2	<b><u>Definitions</u></b>
3.2.1	<b>Mutual exchange:</b> The ability of a UK social housing tenant to legally exchange their property with that of another <b>social housing</b> tenant, (ie another not-for-profit housing association or local authority tenant) also known as "home swap". "Mutual exchange" does not cover Internal Transfers.
3.2.2	<b>Assignment:</b> The legal transfer of a tenancy to another person who takes over the tenancy with all the associated rights and obligations of the original tenant's tenancy. A tenancy is not created.
3.2.3	<b>Surrender and Re-grant:</b> where a tenant voluntarily hands a tenancy back to the landlord as a result of which the tenancy ends and a new tenancy is granted.
3.2.4	<b>Internal Transfer:</b> a process by which existing WCH tenants bid for an alternative property through s Choice Based Lettings scheme which then allocates a property according to housing need.
3.3	<b><u>Roles and Responsibilities</u></b>
3.3.1	<b>Neighbourhood Services Team</b> (relevant Neighbourhood Officer for the patch*) will: <ul style="list-style-type: none"> <li>- Ensure that mutual exchange applications are processed in accordance with this Policy and Procedure and its stipulated timescales;</li> <li>- Ensure that all documentation in the process is scanned onto Orchard; and</li> <li>- Liaise with other landlords involved as required.</li> </ul>
3.3.1.1	The <b>Neighbourhood Services Team Leader</b> is responsible for overseeing all Mutual Exchange applications and giving an overall decision on the application. In their absence, the Neighbourhood Services Manager should take on this role.
3.3.1.2	*Where one WCH tenant is mutually exchanging with another WCH tenant, the Neighbourhood Officer responsible for the first application received shall deal with the full process for both tenants.
3.3.2	<b>Maintenance Services</b> will ensure that: <ul style="list-style-type: none"> <li>- All WCH properties are inspected prior to the tenant's departure; and</li> <li>- All health and safety compliance work (eg gas / electrical safety and the reinstatement of non-standard fixtures &amp; fittings posing health &amp; safety risks) are carried out at WCH's cost before the exchange. Their removal would be recharged to the tenant under the Tenant Recharge Policy and Procedure.</li> </ul>

3.3.3	<p><b>WCH Tenants:</b> (in facilitating the mutual exchange process) is responsible for:</p> <ul style="list-style-type: none"> <li>- Finding a suitable mutual exchange partner eg via personal advertisement or word of mouth;</li> <li>- Providing all necessary documentation to WCH;</li> <li>- Arranging for the incoming tenant to view the property pre-exchange;</li> <li>- Being responsive and available to WCH contact and inspections;</li> <li>- Maintaining appropriate communication with the incoming tenant eg in relation to any property matters required to be addressed by the outgoing tenant prior to the exchange;</li> <li>- Carrying out any non-health and safety repairs pre-exchange; and</li> <li>- Ensuring their current property is at a reasonable standard, acceptable to the incoming tenant – see section 3.3.1 below.</li> </ul>
3.3.3.1	<p>This includes but is not limited to ensuring that:</p> <ul style="list-style-type: none"> <li>- Any loft/garden/storage areas/outside space are clear of personal belongings;</li> <li>- Kitchen and bathroom doors are in place and meet relevant safety standards;</li> <li>- All other internal doors, cupboards and fitments are in place as at the time of original letting; and</li> <li>- Other matters identified during the property inspection are attended to.</li> </ul>
<b>4</b>	<b>The Right to Exchange</b>
4.1	The right of mutual exchange varies according to the type of tenancy the tenant holds and its start date. The grounds for refusing a mutual exchange also vary according to the type of tenancy held by the incoming and outgoing tenants and their start dates. The relevant circumstances are set out at Table 1 below.
4.2	<b>Secure tenants</b> have a <u>statutory right</u> to exchange their tenancy with another social housing tenant under s92 Housing Act 1985 (as amended). This means that the Tenancy Agreement cannot limit this right and refusal to a mutual exchange has to be on specified grounds. See column F of Table 1.
4.3	<b>Assured/Fixed-Term</b> tenants are granted a <u>contractual right</u> to exchange their property under their WCH Tenancy Agreement. This is not a statutory right and means that the landlord can set its own refusal grounds.
4.4	<b>Secure tenants</b> exchanging with an <b>assured tenant</b> are advised to seek independent legal advice about the effect upon their statutory rights as a result of the exchange.
4.5	Both sets of tenants must have the clear written consent of their respective landlords.

**Table 1 : Right to Exchange Summary**

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Category	Status Before Exchange		Status After Exchange		Method of exchange (E)	Refusal grounds (F)
	Household 1 (A)	Household 2 (B)	Household 1 (C)	Household 2 (D)		
1. See section 4.6	Secure/assured tenancy	Secure/assured tenancy	Secure/assured tenancy	Secure/assured tenancy	Assignment	Schedule 3 Housing Act 1985 – see Appendix 2

2.	Secure/assured tenancy beginning pre- 1 April 2012	Fixed term social rent tenancy (more than 2 years)	Secure/assured tenancy	Fixed term social rent tenancy	Surrender and Re-grant	Schedule 14 Localism Act 2011 – see Appendix 3
3.	Secure/assured tenancy	Fixed term affordable rent tenancy	Fixed term affordable rent	Secure/assured tenancy	Assignment	Tenancy Agreement or WCH Policy Grounds
4.	Fixed term social rent tenancy	Fixed term social rent tenancy	Fixed term social tenancy with Household 2's remaining length	Fixed term social rent tenancy with Household 1's remaining length	Assignment	Tenancy Agreement or WCH Policy Grounds
5.	Fixed term social rent tenancy	Fixed term affordable rent tenancy	Fixed term affordable rent tenancy with Household 2's remaining length	Fixed term social tenancy with Household 1's remaining length	Assignment	Tenancy Agreement or WCH Policy Grounds
6.	Fixed term affordable rent tenancy	Fixed term affordable rent tenancy	Fixed term affordable rent tenancy with re Household 2's remaining length	Fixed term affordable rent tenancy with Household 1/s remaining length	Assignment	Tenancy Agreement or WCH Policy Grounds
4.6	Where a tenant has less than two years remaining on their fixed term tenancy at the date of their application they will be re-granted a two year fixed term tenancy. This is the minimum length fixed term tenancy we offer.					
<b>5.</b>	<b>WCH Policy Grounds for Refusal</b>					
5.1	<p>For those categories of mutual exchange at Table 1 which provide that an application may be refused for reasons set out in the Tenancy Agreement or on WCH Policy Grounds, the WCH Policy Grounds are as follows:-</p> <ol style="list-style-type: none"> <li>1. Any ground set out at <b>Appendices 2 or 3</b>, these being the statutory refusal grounds;</li> <li>2. The applicant does not meet our allocations eligibility criteria at the time of the application – see the Access to Housing Policy &amp; Procedure and Fifty Plus &amp; Flexicare Allocations Policy &amp; Procedure for guidance;</li> <li>3. The exchange would place us in breach of any planning agreements or local connection restrictions;</li> <li>4. The exchange would result in a perpetrator of domestic abuse breaching an existing court order e.g. a restraining order, non-molestation order or injunction being unacceptably close to the victim – relevant factors would include the time elapsed since the incident(s) and the likelihood of recurrence;</li> <li>5. We reasonably believe the incoming tenant/a member of their household to have been involved in anti-social behaviour, unlawful activity or other significant breach</li> </ol>					

	<p>of tenancy conditions but where no Court order or NOSP has been issued on the person(s) concerned;</p> <ol style="list-style-type: none"> <li>6. We have previously had to evict or take legal action against the incoming tenant or a member of their household.</li> <li>7. We believe that a financial incentive is involved in the exchange;</li> <li>8. The property would be over or under-occupied by more than one bedroom – see section 8 below;</li> <li>9. The outgoing and/or incoming tenant is in rent arrears or unable to afford the property rent – see sections 6 and 7 below;</li> <li>10. We have not received a satisfactory reference from the incoming tenant’s landlord within the timescales required;</li> <li>11. The property has been adapted for a person with particular needs which the incoming tenant(s) does not have; or</li> <li>12. The property has been altered without WCH consent.</li> </ol>
5.2	If the exchange is refused, we will write to the tenant informing them of the reasons for refusal, in accordance with section 13 of the Procedure.
<b>6.</b>	<b>Rent Arrears</b>
6.1	Rent arrears which <b>are not</b> subject to court action <b>can</b> be a ground for refusal of a mutual exchange application in category 1 of Table 1. However, where we are relying on this ground, WCH cannot outright reject the application; we can withhold consent but impose conditions on the tenant to make good the arrears (see section 6.3). If and when they do so, WCH would need to grant consent to the mutual exchange. This decision must be taken by the Neighbourhood Team Leader, or in their absence Neighbourhood Services Manager.
6.2	Rent arrears which <b>are</b> subject to court action, <b>can</b> be a ground for refusal of a mutual exchange application in category 1 of Table 1 and we can outright reject the application on this basis.
6.3	In categories 2 to 6 of Table 1, rent arrears <b>can also</b> be a ground for refusal of a mutual exchange application and WCH can withhold consent unconditionally. We may however choose to impose the same/similar conditions as at section 6.1 if the tenant is moving to another WCH property and take the same approach to managing the rent arrears before and after the mutual exchange.
6.4	Where there are rent arrears in existence the <b>Neighbourhood Team Leader</b> will agree with the <b>Income Manager</b> any conditions to be met by the tenant before the exchange can take place. Where there are conditions, conditional consent will be granted and withdrawn if the conditions are not met.
<b>7.</b>	<b>Affordability</b>
7.1	Lack of affordability <b>cannot</b> be a ground for refusal of a mutual exchange application in all categories of Table 1. However, we will take steps to assess the tenant’s ability to pay rent on the new property.
7.2	All applicants will be referred to the Tenancy Support Team to carry out an affordability assessment. We will <b>strongly discourage</b> an exchange where either tenant will not be able to afford the property’s rent and associated costs. We will emphasise to the tenant the risk they face of losing their tenancy by exchanging into an unaffordable property in these circumstances
<b>8.</b>	<b>Rightsizing</b>

8.1	Under-occupation <b>can</b> be a ground for refusal of a mutual exchange application <b>all</b> categories of Table 1 above. This will apply where the new property is substantially bigger than the household requires. The term 'substantially' is not defined legally and will need to be assessed on a case by case basis.
8.2	Mutual exchange tenants may qualify for financial incentives under the Right Sizing Policy.
8.3	Mutual Exchange may be rejected if the dwelling would be too large for the prospective tenant or otherwise not reasonably suitable for their needs. The table in section 6.4 of the appended Procedure explains WCH's approach to what is deemed appropriate sized housing.
<b>9.</b>	<b>Adapted Properties</b>
9.1	The adaptation or general unsuitability of one of the properties <b>can</b> be a ground for refusal of a mutual exchange application in categories 1 and 2 above.
9.2	In categories 3 to 6 of Table 1 the adaptation of the property will be considered on a case by case basis if the property has been adapted for a person with particular needs which the incoming tenant(s) does not have. This will need to be assessed on a case by case basis.
<b>10.</b>	<b>Repairs and Maintenance</b>
10.1	<b>Initial Inspection</b>
10.1.1	A property inspection <b>must</b> be carried out before a mutual exchange takes place to record the current state of the dwelling being considered for mutual exchange. All non-standard alterations and fittings to the property <b>must</b> be recorded on a Property Inspection Record.
10.1.2	The inspection will identify the following: <ul style="list-style-type: none"> <li>(i) standard Fixtures and Fittings which are WCH's responsibility;</li> <li>(ii) non-Standard Fixtures and Fittings which are/will be the tenant's responsibility;</li> <li>(iii) outstanding repairs which are WCH's responsibility;</li> <li>(iv) outstanding repairs which are the tenant's responsibility; and</li> <li>(v) anything which poses a health and safety concern following alterations by the tenant.</li> </ul>
10.1.3	Both tenants within the mutual exchange should be invited to the initial inspection to view the WCH property. The outgoing tenant must sign the Property Inspection Record noting actions to be taken prior to the exchange within an agreed timescale. A copy is sent to the incoming tenant for information. This includes anything which may be obscured from view at the time of the inspection.
10.1.4	WCH will not maintain any non-standard any alterations and fittings made by the existing tenant.
10.2	<b>Other Non-Standard Fixtures and Fittings</b>
10.2.1	These are to managed according to whether the fixture(s) or fitting(s) relates to: - <ul style="list-style-type: none"> <li>• an item which is the responsibility of WCH to maintain going forward – see section 10.3 below; or</li> <li>• an item which is the responsibility of the tenant to maintain going forward – see section 10.4 below.</li> </ul>
10.3	<b>WCH Responsibilities</b>

10.3.1	Non-standard fixtures and fittings which are WCH's responsibility to maintain under the Responsive Repairs Policy must be reinstated to their original (standard) state by the outgoing tenant before the mutual exchange can take place.
10.4	<b>Tenant Responsibilities</b>
10.4.1	Non-standard fixtures and fittings which are the tenant's responsibility to maintain under the Responsive Repairs Policy can remain in situ, provided that the incoming tenant is prepared to take the property subject to them AND is prepared to accept responsibility for maintaining them going forward.
10.4.2	In either case we may choose to grant conditional consent to the mutual exchange subject to the non-standard fixture(s) or fitting(s) being addressed as required.
10.5	<b>Planned Works</b>
10.5.1	Major planned works will not be bought forward in relation to a mutual exchange application; this works will continue as planned. For further information see the Planned Works in Transfers and Mutual Exchanges Policy for further guidance.
10.6	<b>Repairs and Maintenance after Exchange</b>
10.6.1	After the mutual exchange has been completed, WCH will maintain the property in compliance with our standard Responsive Repairs Policy. Unless the incoming tenant has agreed to maintain any non-standard alterations and fittings within the disclaimer referred too at section 10.4.1 above.
10.7	<b>Gas and Electric Checks</b>
10.7.1	Gas and electric checks will be carried out by the GRT post-exchange, in line with our Electrical Safety Policy and Gas Safety Policy. Gas checks will continue on an annual basis after this date.
<b>11.</b>	<b>Mutual Exchanges Without Consent</b>
11.1	If tenant(s) exchange properties <b>without obtaining our written consent</b> or the application to exchange was withheld or rejected by either landlord, the exchange will be unlawful. WCH would take legal advice if this situation arose. <b>Both</b> affected tenants will be in the position of: <ul style="list-style-type: none"> <li>• Being in breach of their original tenancy agreement; and</li> <li>• Being liable for the rent and other obligations of their original tenancies.</li> </ul>
<b>12.</b>	<b>Affordable Rent Reviews</b>
12.1	Where a mutual exchange takes place by way of surrender and re-grant in an affordable rent tenancy, we should review the incoming tenant's current rent with a view to increasing it in line with the current WCH Rent Setting Policy.
<b>13.</b>	<b>Succession</b>
13.1	Assignment by way of mutual exchange does <b>not</b> count as a statutory succession.
13.2	No new succession rights are created as a result of a mutual exchange by assignment and if the incoming tenant has previously succeeded to a tenancy no further successions would later be permitted. The exception to this is when the new tenancy is being created by surrender and re-grant. The Succession Policy contains further guidance on this.

<b>14.</b>	<b>Preserved Right to Buy (PRtB)</b>
14.1	Original stock transfer tenants have the PRtB. When they exchange, whether by assignment or by surrender and re-grant, to another WCH property, they retain their PRtB status in that property also.
<b>15.</b>	<b>Supporting Vulnerable Tenants</b>
15.1	We will provide additional general support to Vulnerable Tenants who may be at a disadvantage in understanding or following the process eg assistance with completing documentation and/or signposting to external support agencies for further support. Please see also the Vulnerable Tenants Policy & Procedure.
<b>16.</b>	<b>Data Protection, Information Sharing &amp; Confidentiality</b>
16.1	We will <b>not</b> disclose any information about, or which is provided by, a tenant without their clear consent or where we have clear legal grounds. In the case of mutual exchanges, the applicable legal grounds would be the need to comply with either a legal or contractual obligation. However, in all cases we should ensure that we do not share personal information with another party such as the other landlord which is <b>not relevant</b> to the mutual exchange.
16.2	Further advice should be sought where necessary from a WCH Data Champion or the Company Secretary, Governance & Regulation Manager.
<b>17.</b>	<b>Appeals &amp; Complaints</b>
17.1	In the event of a WCH tenant expressing dissatisfaction about any aspect of our mutual exchange service or process which cannot be informally resolved, the Customer Feedback Policy and Procedure will be applied and followed.
<b>18.</b>	<b>Monitoring &amp; reporting</b>
18.1	The Neighbourhood Services Manager reviews the progress and completion of all mutual exchange applications within the 42 day overall timescale.
<b>19.</b>	<b>Related documents</b>
	Access to Housing Policy and Procedure Fifty Plus & Flexicare Allocations Policy & Procedure Succession Policy Vulnerable Tenants Policy Customer Feedback Policy and Procedure Tenant Recharge Policy and Procedure Planned Works in Transfers and Mutual Exchange Policy and Procedure Right Sizing Policy Tenant Alterations Policy and Procedure Electrical Safety Policy Gas Safety Policy
<b>20.</b>	<b>Appendices</b>
	Appendix 1 - Mutual Exchange Procedure Appendix 2 - Grounds for Refusal Schedule 3 Housing Act 1985 Appendix 3 - Grounds for Refusal Schedule 14 Localism Act 2011
<b>21.</b>	<b>Approval</b>
	Approved by : EMT
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	Policy 'owner' : Neighbourhood Services Manager