

Cheshire West and Chester Council Housing Management

Mutual Exchange Policy

1 MANAGEMENT INFORMATION

Approval Date	To be advised
Next Review Date	To be advised
Responsible Service Area	Strategic Housing and Commissioning
Responsible Director	Gemma Davies, Director Economy, Housing & Policy

Aim of Policy

This policy applies to all housing management services delivered on behalf of Cheshire West and Chester (CW&C) Council.

The aim of this policy is to set out how ForHousing (on behalf of CW&C) will deal with requests for a Mutual Exchange.

ForHousing recognises that promoting Mutual Exchanges encourages tenant mobility, provides a broader range of choices and creates sustainable communities through best use of housing stock.

Policy

Introduction

A mutual exchange is a procedure which allows secure tenants of the CW&C Council or other Councils or Housing Associations to swap homes and tenancies with each other. The method by which a tenant swaps homes with another tenant is through a legal process known as assignment. In all cases permission of ForHousing is required before a mutual exchange can take place. If a tenant carries out a mutual exchange without ForHousing's permission, then they will no longer be a secure tenant and the Council may take legal action to recover the property.

The law relating to mutual exchanges is contained within the Housing Act 1985. Section 92 of this Act provides that it is a term of every secure tenancy that the tenant may, with the consent of the landlord, assign the tenancy to another secure tenant who also has the written consent of their landlord. The Local Government and Housing Act 1985 extended the right allowing secure tenants to assign the tenancy with assured tenants of housing associations.

Summary of the law

Every Secure tenant has the right to exchange with another secure tenant provided they first obtain the written permission of the landlords(s) concerned. Permission can be withheld only on certain grounds and a refusal stating the ground(s) must be served on the applicant within 42 days of the application. If a refusal notice is not served the Council forfeits its right to refuse.

The consent for a mutual exchange should not be withheld except on one or more grounds set out in Schedule 3 of the Housing Act 1985 (as amended by the Housing Act 2004). The Council may therefore refuse permission for a tenant to assign their tenancy to a mutual exchange partner for one of the following reasons:

- The tenancy is subject to a court order
- The tenancy is subject to a current notice of seeking possession
- Legal action has been taken against the tenant because of anti-social behaviour or the matter is waiting to be heard before the Courts
- The property the tenant wishes to move to is too large for their needs (one spare bedroom is normally considered reasonable)
- The property the tenant wants to move to is too small for their needs
- The property was let because of employment and forms part of, or is in the grounds of, a non-housing building
- The property has features which make it particularly suitable for people with disabilities, or the property is one of a group let to people with special needs with specific facilities nearby and the exchange would result in no one with the relevant needs being in occupation
- The property is a sheltered property and the exchange would result in no one with the relevant needs being in occupation

Approval may be given subject to certain conditions e.g. clearing of rent account arrears or remedying of any other breach of tenancy conditions.

Notifying the applicant

ForHousing has a maximum 42 days from receipt of the mutual exchange application to provide the tenant with a written answer. ForHousing may not rely on any of the above grounds set out in Schedule 3 unless we have, within 42 days of the tenant's application for the consent, served on the tenant a Notice specifying the ground and giving particulars of it. Should the tenant not be informed of these grounds within 42 days then they may proceed with the exchange.

However, ForHousing can also attach reasonable conditions. These have to be met before the exchange can take place.

Attaching Conditions

Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, approval and consent may be given subject to a condition requiring the tenant to remedy a breach of the terms of the tenancy or perform an obligation of the tenancy. Therefore, permission may be given for an exchange, but the tenant cannot move until for example they pay any outstanding rent, carry out certain repairs or pay any outstanding rechargeable repairs.

Introductory Tenancies

ForHousing will not consider an application to assign a tenancy by way of an exchange from a tenant holding a non-secure tenancy. However, ForHousing may grant a non-secure tenant seeking an exchange a secure tenancy provided all the terms of the tenancy have been adhered to. The tenant can then seek permission to carry out the exchange.

Rent Levels

The rent charged to the incoming tenant will be the rent charged to the current tenant.

Under-occupation

Mutual exchanges will not be considered where under occupation will occur. Under occupation will occur when there will be more than one spare bedroom, e.g. a single person or couple can occupy a property up to two bedrooms (except in the case of houses); a single person or couple with one child can occupy up to three bedrooms; a single person or couple with two children can occupy four bedrooms. ForHousing will not give consent for an exchange which will allow a single person to move to a 2 bedroom house. Such a house together with a garden area would be substantially more extensive than is reasonably required by a single person. An exchange to a 2 bedroom flat will not normally be considered as substantially more extensive than reasonable required for a single person.

Overcrowding

ForHousing will also refuse an exchange where overcrowding would occur. Overcrowding will occur where the number of persons exceeds the standards laid down in the Housing Act 1985. The overcrowding standard in the Act are generous, because it assumes living rooms and dining rooms can be used as bedrooms and ForHousing will need to carefully consider such applications.

If the exchange will result in the permitted number of persons allowed being exceeded, but the property is not overcrowded according to the standard laid down in the Housing Act 1985, the property will not be legally overcrowded. If the officer has concerns as to whether the property will in practice be large enough for the tenant, these will be discussed with the Housing Manager. The officer will then speak to the tenant to advise that the property appears to be too small for the tenant's needs and explain that if they wish to apply to the housing register after carrying out the exchange, but due to the shortage of properties, they would almost certainly have a very long wait for a more suitable property.

Adapted properties

Tenants with disabilities whose property has been adapted may wish to exchange to a property without adaptations. Provided that ForHousing is satisfied that the adapted property will be occupied by a person in need of such accommodation and the accommodation to be occupied by the disabled person is reasonably suitable to the needs of the proposed assignee and his family, then the exchange may be approved subject to all other matters being satisfactory. However, the outgoing tenant should be advised that the property they intend to move to will not be suitable for their needs and they may face a long wait for adaptations. The officer should discuss such requests with the Housing Manager.

Appeal

If you are refused a mutual exchange, you can appeal by contacting ForHousing. Your appeal will be dealt with according to your landlords official complaints procedure.

How the Policy will be delivered

The delivery of this policy and associated procedures will be the responsibility of ForHousing. This Policy will be available to all employees through the intranet and regular training will be provided to relevant employees on all policies and procedures.

If staff become aware that there are problems with effective operation of the policy or the associated procedures, they should report this to the policy owner. This feedback will be incorporated into the policy / procedural review process.

Related Documents

- Mutual Exchange Procedure

Equality Analysis

Date of approved EA	To be advised
Results of EA / Actions taken forward to mitigate any potential negative impacts	To be advised

Data Protection Impact Assessment

Data Protection Impact Assessment (DPIA)

Under the UK GDPR and the Data Protection Act 2018, you are required to carry out a DPIA when developing a new Policy or Procedure that will have a widespread or serious impact on data held on individuals. Careful consideration should be given as to whether the policy or process will have an impact on any processing of personal information that is large scale, involves profiling or monitoring, decides on access to services or opportunities, or involves sensitive data or vulnerable individuals. Information and support regarding this can be obtained from the Data Protection Officer (DPO).

Has a DPIA been completed?	To be advised
If a DPIA has been completed, was the DPO consulted?	To be advised
If a DPIA has been completed, were any risks identified?	To be advised

Consultation & Business Intelligence

To be advised.

Monitoring Arrangements

Delivery of mutual exchange services will be measured using existing methods including continued monitoring of:

- Satisfaction with services
- Redress levels and satisfaction with resolution
- Performance and Service Standard levels

If staff become aware that there are problems with effective operation of the Policy or the associated procedures, they should report this to the Policy Owner. This feedback will be incorporated into the policy / procedural review process.

Control Data & Approval History

Policy owner:	CWaC: Alison Amesbury, Strategic Housing & Commissioning Senior Manager
Next review date:	27 July 2024

Issue	Approved by	Date
Approval V1	Cabinet Member for Housing	28 July 2022
Approval		

Document Revision History

Date amended	Version number	Key changes
	1.1	Original version
24/8/21	1.2	Revised version following tenant feedback <ul style="list-style-type: none">• Appeal information added