



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

Royal Borough of Kensington and Chelsea (RBKC) Housing Management

Mutual Exchange Policy

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Equality Impact Assessment	

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2. Policy Statement

2.1. Introduction

- 2.1.1. Mutual Exchanges are a mobility option available to tenants where eligible tenants can apply to exchange their home; exchanging properties through mutually assigning tenancies to each party in the exchange, or, in rare cases, signing a new tenancy under a surrender and re-grant arrangement.
- 2.1.2. The primary way that we support tenant mobility is through *HomeSwapper*; HomeSwapper.co.uk is the UK's largest service helping people to swap their homes. However, tenants may find another tenant to apply for Mutual Exchange themselves by other means.

2.2. Aims

- 2.2.1. The aim of this policy is to:
- provide tenants with information on the requirements for a mutual exchange of properties
 - ensure that the criteria for an exchange are met before an exchange can be undertaken
 - explain the reasons acceptable under current legislation for refusal.

2.3. Scope

- 2.3.1. This policy applies to eligible Mutual Exchanges under the Localism Act, wherein tenants may exchange their tenancies with:
- a tenant of this or another local authority, or ALMO acting on the local authority's behalf;
 - a tenant of a registered social housing provider (housing association);
 - a tenant of a charitable housing trust

An exchange may take place between two or more parties.

- 2.3.2. This policy applies to lifetime secure tenants and flexible secure tenants of the Council.
- 2.3.3. The following Tenants are ineligible to exchange:
- Tenants with a starter tenancy
 - Tenants in a probationary period including any extension period
 - Assured Shorthold Tenancies (AST) (periodic)
 - Tenants with a periodic AST as a result of a break notice being served on a fixed term tenancy, or where they have failed to sign a new tenancy agreement at the end of the fixed term.
 - Intermediate rent products including key worker or market rent tenants
 - Demoted tenancies

- Temporary (decant) tenancies (although tenants may have the right to exchange at their permanent address)
- Licensees
- Leaseholders
- Shared owners

3. Legal Context

This policy establishes an effective, accountable and transparent framework ensures compliance with the Localism Act 2011 and the Housing Act 1985

3.1. Assignment

- 3.1.1. Secure tenants have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985 as amended.

3.2. Surrender and Re-Grant

- 3.2.1. Section 158 of the Localism Act creates a new mechanism for mutual exchanges based on the granting of new tenancies. The section introduces a protection for assured lifetime tenants who were granted their tenancy prior to 1 April 2012.
- 3.2.2. If Tenant A (a lifetime tenant whose tenancy was granted prior to 1 April 2012) wishes to exchange with Tenant B (a fixed term tenant) then a new tenancy is issued to each Tenant and Tenant A is granted another assured tenancy.

3.3. Grounds for Refusal (also see Appendix)

- 3.3.1. Schedule 3 to The Housing Act 1985 sets out the grounds for withholding consent to assignment by way of 'like for like' Exchange.
- 3.3.2. Schedule 14 to The Localism Act 2011 sets out the grounds on which a landlord may refuse to surrender and re-grant tenancies under section 158.

A summary of these can be found in the appendix of this policy.

4. Related Documents

This procedure should be read in conjunction with the Council's Housing Management

Mutual Exchange Procedure
Repairs Recharge Policy
Tenancy Agreement, Tenants' Handbook & Tenancy Policy.

5. Equalities Statement

- 5.1. The Council is committed to promoting fair and equal access to services and equal opportunities in employment, the procurement of goods and as a community leader. The Council's policies, procedures and day to day practices have been established to promote an environment which is free from unlawful and unfair discrimination, while valuing the diversity of all people.
- 5.2. Discrimination on the grounds of race, nationality, ethnic origin, religion or belief, gender, marital status, sexuality, disability and age is not acceptable: the Council will take action to ensure no person using the council's premises or services receives less favourable treatment or is disadvantaged by requirements or conditions that cannot be justified. The Council will tackle inequality, treat all people with dignity and respect and continue to work to improve services for all service users.
- 5.3. The legal framework for the Council's approach is provided by the Equality Act 2010 and specifically by the Public Sector Equality Duty, under which a public authority must work consciously to eliminate discrimination, harassment, victimisation and to advance equality of opportunity and foster good relations between people with differing characteristics.
- 5.4. Further detail on the Duty, and the Council's approach to fulfilling its requirements, can be found at www.rbkc.gov.uk.

6. Application for Exchange

6.1. Initiation

- 6.1.1. Landlord(s) must grant or refuse the exchange within 42 days of receiving the applications from all parties to the Mutual Exchange.
- 6.1.2. Only once RBKC Housing Management has received a dated application form will the 42-day period begin, and this will be addressed in writing to the incoming tenant.
- 6.1.3. The decision made at the end of the 42-day period shall also be addressed in writing.

6.2. Permission to Exchange

- 6.2.1. Granting permission to exchange is subject to RBKC Housing Management obtaining references from your Neighbourhood Services Coordinator (NSC). If you are not a Council tenant, we will contact your landlord to obtain references.

- 6.2.2. As stated above, we ask that the other tenant obtains a suitable tenant reference and written consent from their landlord before you ask us to grant consent for the exchange. An Exchange cannot proceed without consent from both landlords.
- 6.2.3. Joint secure tenants must both consent to exchange and both sign the Mutual Exchange Application Form, the assignment or surrender and the new tenancy agreement as appropriate and all other paperwork. As a secure tenancy can only be assigned by deed it will be necessary for you to enter into a deed of assignment
- 6.2.4. If the outgoing RBKC Housing Management tenants have already succeeded to the tenancy, the incoming tenant will remain a successor under the assigned tenancy and no further successions or assignments to a potential successor may take place.
- 6.2.5. Where a flexible tenant is exchanging with a secure tenant, the tenants have a right to request that their landlords agree to the surrender of their tenancies and grant new tenancies to each of them with the equivalent level of security. This is likely to only affect outgoing RBKC Housing Management tenants, and they should seek independent legal advice on doing so.

6.3. Grounds for Refusal

- 6.3.1. In cases of a “like for like exchange”, RBKC Housing Management may only refuse consent to an exchange on the grounds set out in Schedule 3 to the Housing Act 1985.
- 6.3.2. Equally, in like for like assignments, breach of tenancy and rent arrears *alone* are not grounds for refusal, as consent to exchange can be granted subject to a condition requiring the tenant to pay the outstanding rent or remedy the breach.
- 6.3.3. In other cases, (“which are not like for like”) RBKC Housing Management may only refuse consent to an exchange on the grounds set out in Schedule 14 to the Localism Act 2011.
- 6.3.4. Appeals must be submitted in writing to the Head of Neighbourhood Management within 15 working days of receipt of the refusal letter.

7. Timescales

42 Days Statutory Response Time following an Application.

15 Working Days for the tenant to respond to a refusal with a request to appeal.

8. The General Data Protection Regulation (GDPR) and the UK Data Protection Act 2018

As a directorate of RBKC, Housing Management shares the commitment to ensure that all data is:

- Processed lawfully, fairly and in a transparent manner
- Collected for a specific and legitimate purpose and not used for anything other than this stated purpose, or as provided for in our privacy and fair processing notices
- Relevant and limited to whatever the requirements are for which the data is processed
- Accurate, and where necessary, kept up to date. Any identified inaccuracies will be amended or removed without undue delay
- Stored for as long as required, as specified within RBKC's Records Retention policy
- Secured with appropriate solutions, which protect the data against unauthorised or unlawful processing and accidental loss, destruction or damage.

For further information about the Council's commitment to GDPR, please see the Council's website at www.rbkc.gov.uk.

9. Monitoring and Review

This procedure will be reviewed in conjunction with the policy every three years, or when legislative or regulatory changes take place that could affect it. The next review will take place by:

January 2025

10. Appendix

Grounds on which the Local Authority or Housing Association can withhold or refuse consent to a mutual exchange:

Ground 1: There is a Possession Order on the property.

Ground 2: A Notice of Seeking Possession has been served.

Ground 2a: The tenant or any member of his household has behaved in an anti-social way and action including possession proceedings, injunctions, anti-social behaviour orders or a demotion order against them are in place or are being sought.

Ground 3: The property is bigger than is needed by the family wishing to move into it.

Ground 4: The property is not big enough for the family wishing to move into it.

Ground 5: The property is tied accommodation.

Ground 6: The landlord is a charity and the proposed new tenants moving into the property would conflict with the objects of the charity.

Ground 7: The property has special features that make it suitable for occupation by a physically disabled person who needs it and if the exchange took place there would no longer be such a person living in the property.

Ground 8: The landlord is a Housing Association or Housing Trust that lets properties to particularly vulnerable people and if the exchange took place there would no longer be such a person living in the property.

Ground 9: The property is supported housing for people with special needs and if the exchange took place there would no longer be such a person living in the property.

Ground 10: The property is the subject of a management agreement where the manager is a Housing Association and there are specific arrangements in place that the proposed new tenant is not willing to participate in.