

## MUTUAL EXCHANGE POLICY

### 1.0 Introduction and Aim

- 1.1 This policy is designed to provide a set of principles and a framework for the management of the Weaver Vale Housing Trust (the Trust)'s mutual exchange service.
- 1.2 The primary aims of this policy are
- to ensure that staff and customers can understand the circumstances in which the Trust will allow a proposed mutual exchange to proceed,
  - to provide consistency and fairness in decision-making, and
  - to comply with relevant legislation and the Tenancy Standard of the Homes & Communities Agency's 'Regulatory Framework for Social Housing in England'.

### 2.0 Scope

- 2.1 This policy applies to instances where a tenant of the Trust and at least one other social housing tenant wish to assign their respective tenancies to each other simultaneously. This may involve more than two tenants (e.g. a 3-way or 4-way exchange).
- 2.2 **Inclusions** – The following groups may be eligible for a mutual exchange:
- Assured tenants of Weaver Vale Housing Trust
  - Assured tenants of any other Private Registered Provider of social housing
  - Secure tenants of any Local Authority in England and Wales.
- 2.3 **Exclusions** – The following persons will not be eligible for a mutual exchange:
- Assured Shorthold Tenants, Starter Tenants, Introductory Tenants, Demoted Tenants
  - Flexible tenants, whose requests will be dealt with in accordance with Sections 158 and 159 of the Localism Act 2011.
  - Leaseholders and persons subject to part-ownership or 'rent-to-buy' arrangements
  - Persons holding a tenancy, lease or licence relating to a garage, garage plot, shop premises, temporary accommodation, hostel or land.
- 2.4 The policy complies with all relevant statutory and regulatory provisions and will be updated to take into account any future relevant legislation.

### 3.0 Principles

- 3.1 **Accessibility** – The Trust will subscribe to and publicise an internet-based mutual exchange service under which Trust tenants can access matches across a high number of internet-based mutual exchange services. This service will allow tenants to register an interest in exchanging, enter their current property details and their housing requirements, and be provided with details of those properties where a match occurs. The service will be free of charge to Trust tenants. The staff of the Trust will offer advice and guidance and wherever possible offer help with the process.

- 3.2 **Best use of stock** – The Trust will seek to use this policy as a means of reducing under-occupation and overcrowding in its homes, and of ensuring that properties which have been designed or adapted to meet the needs of a physically disabled person are occupied by such a person.
- 3.3 **Sustainability** – The Trust will seek to use this policy as a means of encouraging tenants to rectify any breaches of the terms of their tenancy agreement ensuring sustainable tenancies, and building sustainable communities with minimal anti-social behaviour.
- 3.4 **Affordability** – The Trust will require proof of income and outgoings from all exchange applicants and will carry out an affordability check using the information provided when the Trust decides this is necessary. This check will always be necessary when the proposed assignee has come from out of the area or is currently tenant with another social landlord/local authority. This ensures that the exchange is affordable and tenancies sustainable for all parties.
- 3.5 **Property condition and safety** – The Trust will inspect any Trust property which is affected by a proposed mutual exchange to identify any rechargeable damage, unauthorised alterations, untidy gardens or other tenancy breaches. The Trust will require outgoing tenants to resolve any tenancy breaches before granting permission for the exchange to go ahead unless refusal or conditional permission is not allowed under the terms of their Tenancy Agreement.

The Trust will not be responsible for removing any personal items left behind by the outgoing tenant. Gas and electrical safety checks will be carried out to all Trust properties following the completion of a mutual exchange.

- 3.6 **Gardens** – prior to the proposed assignment the Trust will do a final property check including the gardens to the property. The Trust will recharge the outgoing tenant for any rubbish or personnel items which are left in the garden during the moving process.
- 3.7 **References** – The Trust will require a satisfactory landlord's reference for any proposed assignee who is not a Tenant of the Trust.
- 3.8 **Declaration** – The Trust will ask all parties both incoming and outgoing to sign a declaration to discuss the details of the proposed exchange with other involved parties. This will enable information to be shared which is relevant to the proposed exchange where permission is withheld, or granted subject to a condition.
- 3.9 **Permission** – The Trust's tenancy agreements prohibit tenants from carrying out a mutual exchange without the Trust's written permission. Tenants will be expected to supply information and evidence of their circumstances to demonstrate their eligibility for a proposed mutual exchange; this could include proof of residence for family members, or proof of a medical need for an adaptation.

The Trust will seek to make decisions to grant or refuse permission promptly. Where the tenure type is an AV or AW tenancy this decision will be made within 42 calendar days of receiving a qualifying application.

Where the tenure type is not an AV or AW the Trust will aim to stay within the same 42 day timeframe but this is not a legal requirement. The Trust will apply a fair and consistent approach when considering all applications.

- 3.10 **Refusing permission** – Some of the Trust’s tenancy agreements state that the Trust will only refuse permission for a mutual exchange on one or more of the grounds listed in Schedule 3 of the Housing Act 1985, as amended from time to time. These grounds, as currently specified, are listed in the Appendix to this policy, together with guidance as to how the Trust will interpret and apply these grounds in specific circumstances.

Where the Tenancy Agreement does not specify such limitations, the Trust will apply this Policy in determining whether or not to grant permission. The Trust will not give permission for a mutual exchange to go ahead where there is a breach of the Tenancy conditions unless allowing the exchange would cause the breach to be rectified.

- 3.11 **Conditional permission** – The Trust may grant conditional permission to exchange where there is a breach of tenancy conditions and the Trust is not able to refuse permission outright. In such cases, permission will be granted on condition that the breach is rectified prior to the assignment taking place.
- 3.12 **Complaints** – Trust Tenants who are dissatisfied with the outcome or handling of a mutual exchange application may seek review of their case through the Trust’s Complaints Policy.
- 3.13 **Rent Payments** – At the time of the proposed assignment the Trust will ask for a payment in advance on their new home in line with the terms of the Tenancy Agreement. The Trust would prefer the proposed assignees to pay rent payments by direct debit. This will be offered at the assignment appointment.
- 3.14 **Information** – Where permission is granted for Trust tenants to carry out a mutual exchange with one another, the Trust will inform each tenant of the rent charge at their prospective new home. The Trust will normally draft the relevant Deeds of Assignment for the tenants to enact the mutual exchange.

## 4.0 Responsibility

- 4.1 The Director of Neighbourhoods and Wellbeing is responsible to the Chief Executive and the Board for ensuring the effective implementation of this policy through the enterprise and leadership team managers.

## 5.0 Customer Profiles and Accessing Services data

### 5.1

Data from the following sources, regarding Customer profiling and the way in which they access the Trust's services, was utilised in implementation / review of this policy (as indicated by √ )			
Star Survey		Customer Satisfaction Surveys	
Scrutiny Panel		Tenant Partners	
Customer Involvement Group		KPI's (service performance)	√
Complaints Panel		Other (specify)	√
Community Groups			
Review of Mutual Exchange applications submitted over the preceding 12 month period. Review of complaints arising from the mutual exchange policy and procedure. Consideration of Policies and practices used by other housing providers.			

## 6.0 Customer Influence (Consultation)

### 6.1

The Trust has been influenced by the following customer groups regarding the implementation / review of this policy (as indicated by √ )			
TCC	√	Resident Involvement Group (specify which)	
CIG (Housing)	√	Community Groups	
E Voice		Other (legal & regulatory compliance and internal departments)	√
Questionnaire			

This policy will be implemented via the Housing Section procedures and guidance notes. The procedure and guidance notes should always be used in conjunction with the policy, to provide a consistent approach in the practical implementation of this area of operation.

**Appendix:** Grounds on which permission may be withheld (page 6)

Author of Policy	Date of Review	Approved by (ie EMT/Board)	Implementation Date	Review Date
Suzanne Gordon	December 2017	EMT	Immediate	February 2020

## **APPENDIX: Grounds on which permission may be withheld**

(see section 3.11 of the Policy)

### **Ground 1**

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

This includes an outright, suspended or postponed possession order. Where this ground applies, the Trust will always refuse permission except in exceptional circumstances where, in the opinion of the Trust, the proposed mutual exchange would have the effect of removing the cause of the court order. This could include a tenant who is subject to a court order for rent arrears exchanging to a smaller property where their full rent charge would be more affordable or covered by state benefits; or a tenant who is subject to a court order for keeping a pet which is not allowed in their current property exchanging to a property where such pets are allowed. Any exceptions of this nature will be made at the discretion of the Trust, and in such circumstances the Trust will not seek to enforce the previous court order against the incoming tenant.

### **Ground 2**

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Where the Trust is dealing with a mutual exchange application from an assured tenant, the Trust will apply

- the term “secure tenant” as though it refers to an assured tenant,
- the term “a notice under section 83 [of the Housing Act 1985]” as though it refers to a notice under section 8 of the Housing Act 1988, and
- the term “grounds 1 to 6 in Part 1 of Schedule 2 [of the Housing Act 1985]” as though it refers to the corresponding grounds in Schedule 2 of the Housing Act 1988, as outlined below:

Ground under Housing Act 1985	Corresponding ground(s) under Housing Act 1988
1	10 & 12
2	14
2A	14A
3	13
4	15
5	17
6	N/A

Where this ground applies, the Trust will always refuse permission except in exceptional circumstances where:

- the possession proceedings and/or notice related to the non-payment of rent, and the rent arrears have been paid; or
- the proposed mutual exchange would, in the opinion of the Trust, have the effect of removing the cause of the possession proceedings or notice (see above under Ground 1 for examples). Any exceptions of this nature will be made at the discretion of the Trust, and in such circumstances the Trust will discontinue the possession proceedings and/or will not act upon the notice.

### **Ground 2ZA**

Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83ZA (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.

Where the Trust is dealing with a mutual exchange application from an assured tenant, the Trust will apply

- the term “secure tenant” as though it refers to an assured tenant,
- the term “section 84A [of the Housing Act 1985]” as though it refers to Ground 7A, Schedule 2, Housing Act 1988, and
- the term “a notice under section 83ZA [of the Housing Act 1985]” as though it refers to a notice under section 8 of the Housing Act 1988, specifying Ground 7A, Schedule 2, Housing Act 1988 (whether with or without other grounds).

Where this ground applies, the Trust will always refuse permission.

### **Ground 2A**

Either—

(a) a relevant order or suspended Ground 2 or 14 possession order is in force, or  
(b) an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made, in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means—

- an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);
- an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);
- an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);
- an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998; or
- an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003.

### **Ground 2A continued**

A “demotion order” means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A “Ground 2 or 14 possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Where this ground applies, the Trust will always refuse permission except in exceptional circumstances where, in the opinion of the Trust, the proposed mutual exchange would have the effect of removing the cause of the order, or the application for the order. This could include a tenant who is subject to an injunction application relating to harassment of a neighbour, and who is seeking to carry out a mutual exchange with a tenant out of the area. Any exceptions of this nature will be made at the discretion of the Trust, and in such circumstances the Trust will not take any action against the incoming tenant for the behaviour of the outgoing tenant.

### **Ground 3**

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

The Trust will consider this ground to apply where the property has more bedrooms than a property which the proposed assignee would be eligible to bid for in accordance with the size criteria stated in the Trust’s Allocation Policy, as amended from time to time, were they to apply under that policy.

Where this ground applies, the Trust will always refuse permission, except where:

- the under-occupation would, in the opinion of the Trust, be permitted by the Trust if the relevant property were to be allocated under the Allocations Policy (eg. because it is an area of low demand), and the Trust is satisfied that the proposed assignee is likely to be able to pay the rent; or
- the property has only one bedroom more than a property which the proposed assignee would be eligible to bid for in accordance with the size criteria stated in the Trust’s Allocations Policy, as amended from time to time, were they to apply under that policy; and the Trust is satisfied that the proposed assignee is likely to be able to pay the rent; or
- the net effect of the proposed mutual exchange would reduce the degree to which the Trust’s properties are under-occupied.

Any exceptions of this nature will be made at the discretion of the Trust.

**Ground 4**

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

The Trust will consider this ground to apply where the property has fewer bedrooms than a property which the proposed assignee would be eligible to bid for in accordance with the size criteria stated in the Trust's Allocations Policy, as amended from time to time, were they to apply under that policy.

Where this ground applies, the Trust will always refuse permission.

**Ground 5**

The dwelling-house—

(a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and  
(b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of the landlord, a local authority, a development corporation, a housing action trust, an urban development corporation, or the governors of an aided school.

At the time of publishing this Policy, the Trust does not have any dwelling-houses of this type.

**Ground 6**

The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.

In determining whether this ground applies, the Trust will apply the same criteria which it employs when determining Housing Register applications.

**Ground 7**

The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.

The Trust will consider this ground to apply where the property's features or adaptations are major in size, cost and rarity, such as ramps, stair-lifts and level-access showers; but not where there are minor in size, cost and rarity, such as grab rails, half-steps, additional banisters. The Trust does not consider this ground to apply to its bungalows, ground floor flats or age-restricted properties by virtue of their property type alone.

The proposed assignee will be required to provide medical evidence of their long term requirement for accommodation of this kind.

Where this ground applies, the Trust will always refuse permission except in exceptional circumstances where, in the opinion of the Trust, the property would be open to allocation to an applicant who does not require accommodation of this kind were it to be allocated under the Allocation Policy (eg. because of low demand for such accommodation). Any exceptions of this nature will be made at the discretion of the Trust.

This ground will not apply where a tenant who requires the substantial features or adaptations applies to move via mutual exchange into a property which does not have the substantial features or adaptations which they require. However the Trust will not be prepared to provide or fund the installation of such adaptations for the incoming tenant unless provided for in the Trust's Adaptation Policy.

**Ground 8**

The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.

**Ground 9**

The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

**Ground 10**

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.