

Mutual Exchange Policy

Scope of Policy

This policy sets out Platform Housing Group's (the Group) approach to mutual exchanges to enable eligible customers to access opportunities to exchange their home with another customer of the Group, a local authority or another registered provider.

Customers on starter tenancies, shared owners, leaseholders, freeholders, those on periodic assured shorthold tenancies, licence agreements or assured shorthold tenancies where the initial fixed term was of less than two years are **not** eligible for mutual exchange. Market rent or intermediate market rent customers are also **not** eligible for mutual exchange.

Applicability

The policy applies to all members of the Group.

1. Policy Statement

- 1.1 We will maximise the opportunities available to our customers to exchange their home, subject to them meeting the requirements outlined in this policy.
- 1.2 We may promote opportunities available to effect a mutual exchange through such media as our websites, customer newsletters, annual report to customers, the customer online portal, or through social media and other specialist websites.

2. Context

- 2.1 A mutual exchange is where two or more social housing customers swap homes with each other. Mutual exchanges can take place between customers of the same or different landlord but can only be carried out where all involved landlords give written consent to the mutual exchange. Not all customers are eligible for a mutual exchange and there are certain circumstances in which a landlord may refuse a mutual exchange.
- 2.2 Key legislative and regulatory requirements affecting this policy are Housing Act 1985 (as amended), Localism Act 2011 and the Regulator of Social Housing's Tenancy Standard.
- 2.3 Mutual exchanges are affected by either an assignment of the tenancies (a transfer of a tenancy from one person to another) or by a surrender and regrant of each tenancy in accordance with the relevant legal and regulatory provisions.
- 2.4 We will endeavour to give a decision on a mutual exchange request within 42 calendar days from the date of receipt of full and complete application forms from all parties.

3. Aims and Objectives

3.1 The policy will:

- clarify which tenancies have the right to a mutual exchange
- outline the circumstances in which a mutual exchange may be refused
- outline the responsibilities of both the Group and the customer and the standards and obligations with which they are expected to comply during the mutual exchange process

3.2 We aim to create and maximise opportunity for qualifying customers to exercise choice in accessing housing that meets their needs and aspirations.

This policy provides options for customer mobility in addition to or as an alternative to a move via a local authority housing register or an internal move for exceptional reasons (managed move).

4. Policy Outline

4.1 Who Can Exchange – Qualifying Tenants/Customers

4.1.1 Secure tenants have a statutory right to exchange their tenancy. Assured tenants may have a contractual right to exchange their tenancy if their tenancy agreement gives them a right to exchange. This may include customers on:

- an assured periodic tenancy (affordable or social)
- a secure tenancy
- an assured shorthold fixed term of two years or more (affordable or social)

4.1.2 Affordable fixed term tenancies are excluded from the Localism Act 2011 and surrender and regrant mutual exchange process, which is explained below¹. Further, there is no statutory right to mutually exchange an affordable rent fixed term assured shorthold tenancy unless each landlord gives permission². It will never be by surrender and regrant but by assignment only³.

4.1.3 Customers on the above tenancies have a statutory or contractual right to exchange with another secure or assured period tenant whose landlord is a registered provider of social housing. This includes:

- a local authority
- a registered housing association or housing trust

¹ under The Transfer of Tenancies and Rights to Acquire (Exclusion) Regulations 2012 (SI 2012/696)

² under s158 Localism Act 2011

³ see Exclusions from The Transfer of Tenancies and Rights to Acquire (Exclusion) Regulations 2012 (SI 2012/696)

4.2 Who Cannot Exchange – Non-Qualifying Tenants/Customers

4.2.1 Customers will not have their application for a mutual exchange considered if one or more parties have no statutory or contractual right to exchange. This includes customers on:

- Starter tenancy
- Intermediate or market rent tenancy
- Licence agreement
- An introductory or demoted tenancy
- Fixed term assured shorthold tenancy with an initial term of less than 2 years
- Fixed term tenancies on an affordable rent where the tenancy does not allow a mutual exchange
- Periodic assured shorthold tenancy

4.3 Grounds for Withholding Consent to a Mutual Exchange

4.3.1 Written consent must be provided by all involved landlords for a mutual exchange to take place.

4.3.2 We may refuse a mutual exchange on any reasonable ground, including any of the grounds set out in Section 158 of the Localism Act 2011. These are largely the same as those set out in the Housing Act 1985 Schedule 3, these can be found at **Appendix 1**.

4.3.3 We may agree to a mutual exchange where a customer of the Group has rent arrears but these have arisen as a result of financial hardship caused by Welfare Reform such as the underoccupancy charge and where moving would demonstrably alleviate the hardship.

4.3.4 All parties applying for a mutual exchange into a Group home (whether an existing customer or customer of another landlord) will be required to complete an affordability assessment. If the new home appears to be unaffordable, we may signpost to additional advice and defer the application until affordability can be evidenced.

4.3.5 We will not usually agree to a mutual exchange that would result in overcrowding based on the DWP Bedroom Standard unless there are exceptional reasons for doing so.

We will always refuse a mutual exchange if the move would result in statutory overcrowding as set out in the Housing Act 1985 Part X. We may also refuse if the property would not be suitable for the incoming tenant and their household's needs.

4.3.6 We will refuse any mutual exchange where we have reason to believe that any applicant/customer has offered or sought a financial incentive as a condition of the mutual exchange.

- 4.3.7 We may refuse an exchange where there are significant safeguarding concerns or members of the public would be at risk.
- 4.3.8 We may rely on any other reasonable grounds to withhold consent where permitting the mutual exchange would put us in breach of any covenant, restriction or planning obligation. This would include but is not limited to instances where:
- a local connection is required
 - the incoming customer/tenant must meet necessary criteria such as age criteria
- 4.3.9 The grounds for refusal are not exhaustive and each application will be assessed on its own merit but we will not unreasonably withhold consent for a mutual exchange.

4.4 Unauthorised Mutual Exchanges

- 4.4.1 If a mutual exchange takes place without our written consent or after the mutual exchange was refused, the exchange of tenancies will be unlawful and both exchange partners will lose security of tenure. We will not allow the mutual exchange to take place in these circumstances, and we will take legal action to evict.

5. Roles and Responsibilities

5.1 Platform Housing Group Responsibilities

- 5.1.1 The Group will subscribe to an online national mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties. Details of this service will be published on the Group's website and in customer annual reports.
- 5.1.2 We will endeavour to give written notification of approval or refusal of an application for mutual exchange within 42 calendar days of receiving a completed application. A completed application means that all required parts of the application have been completed in full by all tenants/customers.
- 5.1.3 We will endeavour to carry out a number of eligibility checks prior to consenting to the mutual exchange within the 42-day period.
- 5.1.4 We will discuss rent and service charges with any incoming customers and make clear the requirement to pay a month's rent in advance on, or shortly before, the day of the mutual exchange. We may defer a mutual exchange if a month's rent is not paid at this time.
- 5.1.5 We will make clear the costs associated with exchanging homes, including the charges payable directly to the Group for gas/electric/oil safety checks. These safety checks must be paid for before an exchange date is agreed with the other landlord and/or incoming customer.

- 5.1.6 We will maintain responsibility for any landlord repair obligations and will complete any repairs that are our responsibility if already reported or discovered during the property inspection.

If we find a property in a poor state of repair because the customer has failed to report repairs to us, this may result in a refused application to do a mutual exchange as it is a breach of tenancy conditions.

- 5.1.7 We will require the outgoing customer to repair any damage, neglect or alterations that they, their household or their visitors have made to the property including any outbuildings and the garden. We will also ask them to complete any repairs that are their responsibility prior to consenting to the mutual exchange.

In some circumstances we may agree to the mutual exchange if the incoming customer accepts to take on responsibility for making good damage, neglect or alterations and carrying out customer responsibility repairs. We will make this clear in all communications and require written acceptance from the incoming customer. If there is a risk to health and safety, however, we will not consent to the mutual exchange.

5.2 **Customers' Responsibilities**

- 5.2.1 Customers are responsible for finding their own mutual exchange partner and for making an application to us once they have found someone they want to do a mutual exchange with. We will provide guidance and support to customers where this is required.
- 5.2.2 If there are multiple parties involved, for example 3 or more tenancies involved in a chain, we must receive applications from all parties. We cannot start to process applications until all have been received by us.
- 5.2.3 Incoming customers must make truthful applications and must agree to accept the condition of the property they are exchanging to. They are responsible for ensuring they have inspected the property and will be required to give us written acceptance of the property condition and its suitability for their household's needs.
- 5.2.4 Following the mutual exchange, the incoming customer will assume responsibility for any damage or alterations made to the property by the outgoing customer and for all repairs that we consider to be customer repair obligations that were not completed by the outgoing customer.
- 5.2.5 Incoming customers will be required to pay a month's rent on the day the mutual exchange takes place or before and agree to set up a direct debit for future rent payments, in accordance with the tenancy agreement, if rent will not be paid directly by another means.

5.2.6 Customers are responsible for making and paying for their own removal/exchange arrangements but must be available to sign all necessary documents as required by the landlords.

5.3 **After a Mutual Exchange has been Approved but before the Mutual Exchange can take place**

5.3.1 All Group customers will be required to pay for necessary safety checks and any electrical safety and oil safety checks will be carried out prior to the mutual exchange date being approved. The gas safety check will be carried out on the date of the mutual exchange where possible. A schedule of current charges is available on the website and in the information given at the point the application is made.

5.3.2 The mutual exchange date must be agreed by all landlords before customers make arrangements to move, for example booking removal services. Any costs incurred by customers who have made arrangements prior to agreement by landlords will be liable to be lost.

6. **Method of Mutual Exchange and tenancies granted during a Mutual Exchange**

6.1 The exchange mechanism is dependent on when tenancies were granted and what type of tenancy is held by each party.

6.2 If a mutual exchange is between customers who both have either a periodic assured tenancy or a secure tenancy, whenever so granted, then the mutual exchange will take place via a Deed of Assignment. The incoming customer takes on the same tenancy as the outgoing customer and no new tenancy agreement is signed.

6.3 If one or more of the exchanging customers has a fixed term assured shorthold tenancy at a social rent and wants to exchange with a secure or assured tenancy whose tenancy was granted before 1st April 2012, then the mutual exchange will take place via a surrender of existing tenancies and a regrant of new tenancies. Otherwise, most mutual exchanges between an assured/secure granted after 1st April 2012 and a fixed term tenancy will take effect by assignment. See **Appendix 2**.

7. **Equality and Diversity**

7.1 We are committed to fairness and equality for all regardless of their age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, sex, sexual orientation, race, and religion/belief, family circumstances or offending history, as referred to in our relevant Group policies. Our aim is to ensure that our policies and procedures do not create an unlawful unfair disadvantage for anyone, either directly or indirectly.

- 7.2 A data protection impact assessment has been undertaken in respect of this policy and which identified no negative impacts on any person/group with a protected characteristic as a result of this policy.

8. Appeals and Complaints

- 8.1 There is no appeal process if a mutual exchange is refused. Customers should consider the reasons given for the refusal and remedy any circumstances that led to the refusal if possible. Customers may reapply for a mutual exchange.
- 8.2 The Group aims to meet the needs of its customers by providing an excellent service. However, it is acknowledged that occasionally things go wrong and customers may wish to complain. Should the need arise to make a complaint, please refer to the Group's Complaints, Comments and Compliments Policy.

9. Monitoring and Review

- 9.1 We will monitor the effectiveness of this policy through relevant performance information which will be reported through the relevant Group Executive Team.
- 9.2 This policy will be reviewed every three years or on the introduction of new legislation or best practice guidelines, whichever is sooner.
- 9.3 Approved documents are valid for use after their approval date and remain in force beyond any expiry of their review date until a new version is available.

10. Associated Documents/Policies

- 10.1 List of documents/associated policies/publications:

- Localism Act 2011
- Housing Act 1985
- Regulatory Framework for Social Housing in England and Wales
- Equality, Diversity and Inclusion Strategy
- Complaints, Comments and Compliments Policy
- Rent Setting Policy
- Tenancy Management Policy

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Appendix 1

Grounds for Withholding Consent in Statute

Section 115 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. The table below shows what grounds under both of these Acts.

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the Mutual Exchange
N/A	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
N/A	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	Ground 4 and 5	The landlord has served a notice of proceedings for 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 to 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-aided school.

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 went ahead 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 these conditions.
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 to go ahead no person with those special needs would be living there.
Ground 10	Ground 14	The dwelling is the subject of a management agreement where 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 also that the proposed assignee is not such a member nor is willing to become one.
Additional Ground HA 2004	Ground 6	An injunction order under Section 153 of the Housing Act 1996 or an anti-social behaviour order or a demotion order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.

Appendix 2

Mutual Exchange Chart

Tenant A Platform	Tenant B Different Landlord	Rules of Exchange	Paperwork
Platform Protected / Assured	Other Landlord Assured Affordable or social rent	New Platform tenant takes assured status but no Right to Buy Rent regime also taken over. Platform tenant will take type of rent of other	Deed of Assignment
Platform Protected / Assured pre-1 st April 2012	Other Landlord Fixed Term social rent	Platform tenant will lose any protected rights New Platform tenant will take assured status of the person they swap with – but not Right to Buy	Surrender and Regrant
Platform Assured on, or after, 1 st April 2012	Other Landlord Fixed Term social or affordable rent	Tenant swap tenancies Rent regime also taken over No right to Mutual Exchange affordable rent unless both landlords agree	Deed of Assignment
Platform Fixed Term Social rent	Other Landlord Assured pre-1 st April 2012 social rent	Tenancies ended and new tenancies granted. New Platform tenant will be offered new Assured periodic	Surrender and Regrant

Platform Fixed Term Any rent	Other Landlord Assured post 1 st April 2012	Usually tenants swap tenancies but have discretion surrender and grant incoming tenant a new assured periodic 2020 tenancy	Deed of Assignment
Platform Fixed Term Social rent	Other Landlord Fixed Term social rent	Usually tenants swap tenancies but have discretion to then surrender and grant incoming tenant a new assured periodic tenancy	Deed of Assignment