



Housing Services
<http://www.kingston.gov.uk>

MUTUAL EXCHANGE POLICY

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1. Introduction

- 1.1. Tenants who wish to exchange their property with another tenant, either of another authority or of a Housing Association anywhere in the UK, can seek out another tenant who wishes to exchange. The exchanged properties **must** be suitable to the needs of both of the tenants before the exchange will be agreed.
- 1.2. The Mutual Exchange Policy is intended to clarify the conditions that must be met before the Council will approve an application for an exchange and to give guidance to staff and tenants on the obligations and responsibilities on both parties.

Note: Refer to appendices for detailed procedure information

2. Aims and Objective

- 2.1. The main aim of the policy is to ensure that tenants are able to seek their own resolutions to their housing problems or aspirations while at the same time ensure that the Council's stock is being best utilised.
- 2.2. There are a number of key objectives that are necessary to protect the Council from the Mutual Exchange process being abused.

These key objectives include;

- To maximise the effective use of the Council's housing stock
- To promote choice for tenants
- To achieve high standards of customer care and satisfaction
- To encourage and support our tenants in their request to move home by making sure good advice and assistance is available
- To ensure mutual exchanges are carried out by way of assignment
- To comply with current legislation
- To clarify when discretion can be considered and what the circumstances will be for that discretion to be exercised
- To ensure tenants comply with the terms set out in the Conditions of Tenancy as far as they affect mutual exchanges

3. Legal background

- 3.1 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 1989 extended the right allowing secure tenants to assign the tenancy with assured tenants of a housing association or housing trust.
- 3.2 Within 42 days of receipt of an application for mutual exchange the landlord has to give the tenant a decision notice either granting consent, granting conditional

consent or refusing the application altogether. Consent may only be refused on one or more of 10 Grounds set out in Schedule 3 of the Act. (Refer to Section 4 below which sets out "Schedule 3" of The Act).If the consent is withheld on any ground **other** than those set out in Schedule 3, then the consent is treated as given. The landlord must give fully detailed particulars for the refusal.

3.3 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 only be given with a condition requiring the tenant to remedy any breach of the terms of the tenancy or to perform an obligation of the tenancy.

If the landlord, e.g. the Council fails to give its written decision within the 42 days, the tenant should seek either an injunction or declaration in the County Court under Section 110 of the Act to make the landlord issue its decision. Section 110 allows the tenant to seek a Declaration from the Court that the consent has been withheld unlawfully or unreasonably and they can also seek an injunction to make the authority either reconsider in the light of the judgement of the court on the Declaration, or alternatively effect the exchange. An injunction can be applied for on its own.

3.4 The mutual exchange is carried out by way of an assignment. Each exchanging tenant takes over the new tenancy and all the terms and conditions detailed in the tenancy agreement of the other exchanging tenant.

3.5 Mutual exchange does not affect succession rights. Therefore, if an exchanging tenant was already a successor she/he remains a successor in the new property. **No new succession rights are created by the exchange. A Notice of Assignment to a secure tenancy must be signed by the parties to the exchange.**

3.6 The Council does not extend the right to exchange to demoted tenants. However, a demoted tenancy may still be assigned if a judge makes a Property Adjustment Order during matrimonial proceedings or in cases involving access to children. (For more details around Anti-Social Behaviour, please refer to the following link: http://www.kingston.gov.uk/browse/housing/tenants_and_leaseholders/neighbourhood_issues/tackling_anti_social_behaviour/anti_social_behaviour_-_information_for_tenants.htm)

3.7 Mutual exchanges will not be considered where under occupation will occur (i.e. where the property will be too large for the tenant and their household's needs). Under occupation will occur when there will be more than one spare bedroom. A single person or couple can occupy a property up to two bedrooms. A single person or couple with one child can occupy up to three bedrooms.

3.8 The Council will also refuse an exchange where illegal overcrowding would occur. Illegal overcrowding will occur where the number of people living in the property is more than standards laid down in the Housing Act 1985. The overcrowding standards in the Act are strict. It assumes living rooms and dining rooms can be used as bedrooms.

The Council will need to carefully consider the applications where an exchange results in the permitted number of people allowed exceeding the criteria under the

Allocations Policy, but the property is not overcrowded according to the standards in the Housing Act 1985.

3.10 Tenants with a disability or a member of their household with a disability and whose property has been substantially adapted for that disability, may wish to exchange to a property without adaptations. Provided that the Council is satisfied that the adapted property will be occupied by a person in need of such accommodation, and the accommodation is going to be occupied by the disabled person is reasonably suitable to the needs of the proposed exchange partner and her family, then the exchange may be approved subject to all other matters being satisfactory.

4. Schedule 3 of The Act - Grounds for refusing a secure tenant to exchange

1. The tenant or the proposed assignee (exchange partner) is subject to a possession order or a suspended possession order.
2. A notice of seeking possession is in force against the tenant or the proposed Assignee or possession proceeding have begun against either party.
- 2a. A suspended possession order is in force on the grounds of anti-social behaviour, or where an application has been made for an ASB injunction, anti-social behaviour order (ASBO) or demotion order in respect of the tenant or the proposed assignee, or any person residing with a party to the exchange; or an ASB injunction or ASBO is in force against such persons.
3. The accommodation is substantially larger than is reasonably required by the proposed assignee.
4. The size of the accommodation is not reasonably suitable for the needs of the assignee and his family
5. The dwelling forms part of, or is within the boundary of a building which is held mainly for non-housing purposes or is situated in a cemetery and was let to the tenant or his predecessor in connection with their employment with the landlord, or with a local authority, a new town corporation, housing action trust, Development Board for Rural Wales or the governors of a grant-aided school. That is, if they have been provided with the accommodation for the betterment of their duties as an employee e.g. caretakers
6. The landlord is a charity and the proposed assignee's occupation would conflict with the objects of the charity.
7. The dwelling is substantially designed to make it suitable for a physically disabled person and if the exchange took place, no such person would be living in the dwelling.
8. The landlord is a housing association or housing trust, which provides accommodation only for persons whose circumstances (other than merely financial

circumstances) make it difficult for them to satisfy their housing needs and if the exchange took place there would be no such person living in the dwelling.

9. The dwelling is one of a group, which is normally let to persons with special needs, and a social service or special facility is provided close by in order to assist the tenants, and if the exchange took place there would be no person with special needs living in the dwelling. e.g. sheltered accommodation for the elderly
10. When the incoming tenant is not prepared to become a member of the Association where there is a resident determine management agreement in place with a Housing Association. i.e. where 50 % or more of the tenants are party to the management agreement, the incoming tenant must agree to and become a member of the Association, if they do not consent can be refused.

Note: All decisions must be reasonable; this is duty upon all local authorities. Each case must be considered on its own merits.

5. Payment of "Money to Induce an Exchange"

- 5.1 It is illegal for one tenant to pay another or do anything that may amount to the payment of money to encourage them to exchange. e.g. to clear outstanding rent arrears.
- 5.2 If the Council can prove that this illegal activity has occurred, then they can apply to the County Court for an Order for Possession under Schedule 2 of the Housing Act 1985. If the court thinks it is reasonable it will make the order and the Council will take possession of the property.

6. Fraudulently obtaining an exchange

- 6.1 Occasionally a tenant exchanges on paper without any intention of taking up residence. *For example, if they had intended to vacate anyway.*
- 6.2 If the Council can prove that this illegal activity has occurred, then they can apply to the County Court for an Order for Possession under Schedule 2 of the Housing Act 1985. If the court thinks it is reasonable it will make the order and the Council will take possession of the property.

7. Unauthorised Exchange

- 7.1 Occasionally tenants carry out an exchange without obtaining the necessary consent of their landlord.
- 7.2 Possession proceedings may be started against both parties for failing to use their property (that is the property they were originally given a tenancy of) as their main home.
- 7.3 Despite the existence of this policy and the information that is made available to tenants through leaflets, our website and our staff, the Council accepts that some tenants may not fully understand the legal process for a mutual exchange. If after

investigation, the Council is fully satisfied that there was no intent to carry out illegal activity, then they may consider whether to exercise their discretion and allow an authorised mutual exchange to take place, as long as all the other conditions are satisfied.

8. Subsequent change of mind by the Tenants

8.1 Generally, if up to the time of signing the deed, either party changes their mind, the exchange can be cancelled by them, but there may be some legal liability on the refusing tenant to the other party if the exchange has altered their position on the strength of the agreement to exchange, and both parties should be advised to seek independent legal advice.

8.2 The Assignment is a formal contract which can be enforced in law by either tenant. If both parties wish to cancel then there is no problem, but if one still wishes to exchange and the other doesn't, they must be advised to seek independent legal advice. They will have to go to court to have the matter finally resolved.

8.3 Until the matter is resolved the Council should observe the situation at the given time

9. Monitoring

9.1 A monthly report on mutual exchanges will be provided to the Allocations Manager and Head of Estate Services, to ensure that decisions are reached within the statutory 42-day timescale.

9.2 All tenants applying for a mutual exchange will be asked for equality monitoring information with their application. This information will be analysed annually to assess whether there is equal access to the mutual exchange process and where necessary, action will be taken to improve customer access.






10. Review

10.1 The Mutual Exchange Policy and accompanying procedures will generally be reviewed every three years. The review will ensure that a comprehensive service is being offered that meets residents' expectations. The policy and procedures will also be reviewed in accordance with any future legislative changes as and when they occur.

11. Revision History and Equality Impact Assessment (EQIA)

Revision History and EQIA				
Version	Description of change	Author	Effective Date	EQIA Relevance Test
1	First version	P.R.Santharam	21/06/2010	Completed 08/06/10

12. Approval and Authorisation

Approver Name	Title	Signature	Date
Authored by: Priya Rajan Santharam	Business Analyst		28-06-10
Technically approved by: Anna Barrett	Business Analyst (Technical Approver)		28-06-10
Authorised by: Paula Tribe	Policy & Business Improvement Manager		28-06-10
Approved by: Simon Oelman	Head of Housing Management		29/6/10
Approved by: Jacky Guddoy	Allocations Manager		2/7/10

13. Appendices

1. Application for Mutual Exchange is held under the following location:

http://www.kingston.gov.uk/mutual_exchange_application_form.pdf

2. Detailed procedure document is held under the following location:

http://inside.kingston.gov.uk/directorates/community_services/housing/housing_policies/Pages/default.aspx#me

3. Mutual Exchange Service Standards is held under the following location:

http://www.kingston.gov.uk/mutual_exchange_service_standards_2010.pdf

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