

Mutual Exchange

Policy

1. Purpose and scope

Our vision is that disabled people are seen for who they are and our mission is to support disabled people to have equality choice and independence. The Trust recognises that a suitable home in the right location is a factor in meeting these aims. As a Registered Provider the Trust also has a key role in supporting Local Authorities with their strategic housing functions and recognises that mutual exchange is a useful way of satisfying housing needs and aspirations.

This policy outlines Papworth Trust's approach to mutual exchanges and ensures that exchanges are conducted fairly and in line with regulation and legislation, whilst ensuring that the Trust maximises appropriate occupation of its adapted properties.

This policy should be considered in conjunction with the Trust's Lettings Policy and Tenancy Policies.

2. Aims

This policy aims to:

- Promote mutual exchange through our system of periodic tenancy review
- To provide tenants with the support and information needed to complete applications for mutual exchange.
- To provide clear advice on the implications of mutual exchange.
- Encourage and support sustainable communities.
- Strike a balance between the Trusts charitable objectives and its obligations as a Registered Provider.

3. Policy Statement

For the purpose of this policy, mutual exchange is defined as the exchange of properties by a tenant(s) of Papworth Trust with a tenant(s) of the Trust, another housing association or local authority. Exchanges can only take place between social housing tenants.

Mutual exchange does not include the internal transfer of Papworth Trust residents to a vacant property. This is covered in the Transfer Policy, or in reference to a decant; The Decant Policy.

Legislation gives secure and Assured (including some fixed term) tenants the right to exchange with secure or assured tenants of another registered provider or local authority.

Starter tenants or those still within their probationary period are not eligible to carry out mutual exchange.

4. Conducting a Mutual Exchange

4.1. Registering for an exchange

Tenants wishing to swap homes are advised to register with www.houseexchange.org.uk to find someone willing to agree to a mutual exchange. Tenants may also advertise their wish to exchange via a local paper, notice board or by word of mouth.

Once they have found another tenant willing to exchange, the tenant will need to complete a **Mutual Exchange Application Form** in order to request consent.

Tenants will be made aware that any party can withdraw from a potential mutual exchange at any stage with no recourse to the other party. However, once parties have signed the assignment or the new tenancy agreement then the mutual exchange must proceed.

4.2. Types of Exchange

Mutual exchanges are carried out in one of two ways:

- assignment
- surrender and regrant

Assignment is the swapping of tenancies at the same time as homes are exchanged. The incoming tenant will take on the rights and responsibilities of the tenant they have swapped with. This is used when those exchanging homes hold tenancies with a similar security of tenure.

Surrender and regrant is where tenants surrender their current tenancy and re-sign a tenancy with a similar security of tenure for their new property. This is used when the parties exchanging hold tenancies with different security, and one of the parties has their security protected by law. Section 4.3 sets out when each kind of exchange will be used.

4.3. Exchange by assignment or surrender and regrant

Tenants who hold a lifetime (secure or assured) tenancy that was granted before 1 April 2012 have their security of tenure protected by law. Tenants who hold a secure or assured tenancy granted before this date therefore cannot swap tenancies (be assigned) with a fixed term or flexible tenant, though there are exceptions.

This legislative protection will not apply when a lifetime tenant chooses to exchange with a fixed term tenant on an Affordable Rent.

The table below sets out whether an exchange by assignment or by surrender and regrant will take place:

Tenant A	Tenant B	Mutual exchange by:	Exceptions:
Fixed term tenancy	Fixed term tenancy	Assignment	Internal exchanges: surrender and regrant 5 year fixed term
Secure/Assured tenancy	Secure/Assured tenancy	Assignment	
Secure/Assured tenancy	Fixed term tenancy	Surrender and Regrant (each tenancy gets a new tenancy with the same/similar level they currently have)	If the secure/assured tenancy commenced after April 2012: exchange by <u>assignment</u> . If the fixed-term tenancy is affordable rent exchange by <u>assignment</u> .

4.4. Conditions for Mutual Exchange

Tenants must obtain consent from the Trust before carrying out a mutual exchange, and certain conditions will need to be met in order for consent to be granted.

Where the proposed exchange will be conducted by assignment the Trust may withhold consent until a single condition has been met.

The condition will only be one of the following:

- That rent arrears, or any other debts such as court costs, are cleared
- That a breach of the tenancy agreement be remedied, for example:
 - Invalid Gas Safety Certificate
 - Invalid Electrical Certificate
 - Invalid LOLER Certificate
 - Other Invalid safety certification
 - Unauthorised alterations
 - Damage to property beyond wear and tear

4.5. Refusing Mutual Exchange

Papworth Trust may refuse an application for mutual exchange on different grounds depending on whether the exchange would happen by assignment, or by surrender and re-grant.

Grounds for refusing exchange by **Assignment** are as follows:

- Ground 1 The tenant or other person applying for the exchange is under a court order to give up possession
- Ground 2 Possession proceedings have started, or a Notice of Seeking Possession has been served on any grounds for possession
- 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 too large for the prospective tenant, or otherwise not reasonably suitable to their needs
- Ground 4 The property is not large enough for the prospective tenant
- Ground 5 The premises were let in consequence of employment, and form part of, or in the grounds of, a non-housing building
- 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 is designed for a physically disabled person, and if the proposed tenant moved in, there would be no such person in occupation
- Ground 8 The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
- Ground 9 The accommodation is supported housing for people with disabilities 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

Grounds for refusing exchange by **Surrender and Regrant**:

- Ground 1 Any rent lawfully due from a tenant under one of the existing tenancies has not been paid
- Ground 2 An obligation under one of the existing tenancies has been broken or not preformed
- Ground 3 Any of the relevant tenants is subject to an order of the court for possession
- Ground 4 Proceedings for possession have started, or a Notice of Seeking Possession has been served on any grounds for possession 1 to 6 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation)
- Ground 5 Where a court order is in force against a tenant of one the existing tenancies which is based on anti-social behaviour, e.g. a suspended possession order, an antisocial behaviour order, an injunction or a demotion order

- Ground 7 The accommodation proposed to be let on the new tenancy would be too large for the existing tenant or tenants to whom the tenancy is proposed to be granted
- Ground 8 The accommodation proposed to be let on the new tenancy is not reasonably suitable to the needs of the existing tenant or tenants to whom the tenancy is proposed to be granted, or their family
- Ground 9 The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or cemetery
- Ground 10 The property is designed for a physically disabled person and if the proposed tenant moved in there would be no such person in occupation
- Ground 11 The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
- Ground 12 The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation.

If Papworth Trust refuses a mutual exchange, the tenant will be sent a refusal letter which will quote the ground or grounds for refusal.

4.6. Rent Arrears

If a tenant wishing to conduct an exchange has arrears, consent will be refused unless the tenant is trying to downsize due to the benefit cap or bedroom tax and is exchanging with another Trust tenant. An **Arrears Repayment Agreement** must be completed and signed before the exchange can take place.

4.7. Refusal on grounds of under occupation or overcrowding

An exchange will be refused if it will result in under occupation or overcrowding. This will be calculated by the standard number of bedrooms required as follows:

- 2 or more people over 10 years of age and of different sex must not share a bedroom unless they are living as partners
- Every couple to share a double bedroom
- Every single adult must have their own single bedroom, except that a single parent is to have a double bedroom
- Two children of the same sex may share a double bedroom
- Two children of different sex, both under 10 years of age, may share a double bedroom
- An additional room for the purposes of a non-resident carer, where care is provided overnight

As follows:

Household	Bedrooms	Bed Spaces
1 or 2 Adults	Bedsit or 1 bedroom	1 or 2
With one child	2	3 or 4
With 2 same sex children both under 10 years of age	2	4
With 2 opposite sex children, either child 10 + years of age	3	4 or 5
With 3 children	3	5 or 6
With 4 children	3 or 4	5 or 6
With 4 children – 3 same sex, 1 opposite sex	4	6 or 7
With 5 children	4	7 or 8
With 6 children	4 or 5	8 or 9
With 7 +	5	9 or 10

In determining whether the property will be overcrowded, Papworth Trust will take into consideration any expected children i.e. where there is an expectant mother moving into the property.

The Trust will ensure that the size of the property matches the size of the household as far as reasonably possible.

5. Review

Any applicant who has had a request for mutual exchange refused may request that the decision be reviewed through the Papworth Trust reviews process.

6. Legislation, Regulation and Guidance

Government legislation has an impact on how OH can implement its Mutual Exchange policy. Listed below are the key Acts that have been acknowledged.

- Housing Act 1985
- Housing Act 1988
- Housing Act 2004
- Equality & Diversity Act 2010
- Localism Act 2011

7. Service Standards

The following service standards apply to lettings:

- Compliance with the 42 day decision rule on Mutual Exchanges
- a comprehensive assignment/surrender and regrant of tenancy process
- A settling in visit

8. Review

The Trust is committed to operating in a way that is transparent and fair. We will review any allocation / letting decision that an applicant or tenant believes is unreasonable or unfair.

Any such review will be written and undertaken by a staff member of greater seniority than the person who made the original decision and will be undertaken within 10 working days.

It is Trust policy not to hold any property vacant pending the outcome of an appeal

9. Document control

Author	Business Manager – Housing Management
Date	March 2020
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10. Version tracker

Version number	Date	Comments/Reason for issue
1.0	10.03.2020	New Policy