

# Mutual Exchange Policy

**December 2022**

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<u>Version No.</u>	<u>Purpose/Changes</u>	<u>Approval Date</u>	<u>Approved By</u>	<u>Suggested Review Date</u>
<b>1.0</b>	<b>New Policy</b>	<b>12/12/2022</b>	<b>Community Voice</b>	<b>December 2025</b>

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## **1. Our policy...**

- 1.1 Legislation gives secure tenants the right to exchange with secure or assured tenants of another housing association or local authority. Ongo Homes (OH) extends this right to assured tenants in their tenancy agreements.
- 1.2 Our policy sets out our approach to tenants who wish to carry out a mutual exchange and promotes mutual exchange as a way of satisfying tenants' housing needs and aspirations as an alternative to an internal transfer.
- 1.3 OH will provide an effective mutual exchange service that is compliant with the Regulator of Social Housing (RSH) Tenancy Standard, which expects us as a registered provider of social housing to:
  - Clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for mutual exchange schemes (paragraph 2.1.3 of the Standard)
  - Subscribe to an internet based mutual exchange service (or paying the subscriptions for individual tenants who wish to exchange), allowing:
    - a) A tenant to register their interest in arranging a mutual exchange through the mutual exchange service without paying a fee
    - b) The tenant to enter their current property details and the tenant's requirements for the mutual exchange property they hope to obtain
    - c) The tenant to be provided with the property details of those properties where a match occurs (paragraph 2.1.8 of the Standard)
  - Ensure that the internet mutual exchange service to which they subscribe is a signatory to an agreement, such as HomeSwap Direct, under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services (paragraph 2.1.9 of the Standard)
  - Take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to its tenants (paragraph 2.1.10 of the Standard)
  - Provide reasonable support in using the service to tenants who do not have access to the internet (paragraph 2.1.11 of the Standard)
- 1.4 Our policy provides a clear statement of the level of service and standards to which we will work and it is supported by operational guidance to ensure practices are applied consistently.

## **2. It applies to...**

- 2.1 This policy applies to any tenant(s) of a registered provider of social housing who hold a secure or assured non-shorthold tenancy agreement.
- 2.2 This policy **does not** apply to tenants with a starter, assured shorthold rent to buy, demoted or intermediate / market rent tenancy, leaseholders, tenants in specialist housing schemes, licence holders or shared owners.

### **3. Because we want to...**

- 3.1 The aims of this policy are to ensure that:
- Tenants have clear information that is easy to understand in respect of mutual exchanges
  - Clear information is provided on when a tenant can exchange and when they can not
  - Our obligations under relevant legislation and regulation is clear and easy to understand
  - It is clear when we will not allow a mutual exchange to take place
  - We make clear when a tenant can appeal a decision made by us in respect of mutual exchange

### **4. We will...**

- 4.1 OH is subscribed to Home Swapper, which is an internet based mutual exchange services allowing:
- Tenants to register their interest in arranging mutual exchange through the mutual exchange service which is free of charge
  - Tenants to enter their current property details and requirements for the mutual exchange property they hope to obtain
  - Tenants to be provided with the property details of those properties where a match occurs
- 4.1.1 Tenants are also able to arrange exchanges themselves with other tenants outside of the online service.
- 4.2 OH will comply with our statutory duty to respond to all written requests for mutual exchange within 42 days. If we do not respond within this timescale, the tenant can assume we have given permission, and this cannot be challenged by us.
- 4.3 The law on mutual exchange is complex and a tenant's right to exchange varies depending on the type of tenancy agreement they have.
- 4.4 Some mutual exchanges will operate under the rights set out sections 158 and 159 of the Localism Act 2011. This is referred to in this Policy as the 'Localism Act Regime'. In practice this will only apply where our tenant:
- Has an assured tenancy that was granted before 1<sup>st</sup> April 2012; **and**
  - Is seeking to exchange with either:
    - (a) a flexible tenant of a local authority; or
    - (b) a tenant of another private registered provider of social housing who has a fixed term assured shorthold tenancy of more than two years

paying a social rent. It is the length of the tenancy granted that is the determining factor here, not the remaining period of the fixed term tenancy

- 4.5 All other mutual exchanges will operate under a contractual right to exchange as set out in the tenancy agreement. This is referred to in this Policy as the 'Contractual Regime'. In practice this will apply to most exchanges requested by our tenants.
- 4.6 The following tenants do not have any right to exchange:
- Tenants in a probationary period, including any extension period, they can exchange once the probationary period has been successfully completed
  - Assured Shorthold tenants
  - Temporary (decant) tenancies
  - Licencees
  - Leaseholders
  - Shared owners
  - Rent to Buy
- 4.7 **When would we refuse a mutual exchange?**
- 4.7.1 Reasons for refusal of a mutual exchange by OH depend on the type of tenancy held and the relevant legislation. In each case, the tenancy agreement will need to be checked.
- 4.7.2 If the exchange is covered by the Localism Act Regime, then we can only refuse the request to exchange on one of the grounds set out in Schedule 14 of the Localism Act 2011. These are set out in **Appendix 1**.
- 4.7.3 If the exchange is under the Contractual Regime and the tenancy agreement refers to only refusing on the grounds set out in Schedule 3 of the Housing Act 1985, only those grounds shall be considered. These are set out in **Appendix 2**.
- 4.7.4 If the exchange is under the contractual regime and the tenancy agreement is silent on the specific grounds which can be relied or refers to the grounds set out in our policy from time to time, then the grounds set out in **Appendix 3** shall be considered.
- 4.7.5 Where the grounds refer to the property being 'substantially more extensive' than required by the household, this means there would be more than one spare bedroom for the household as determined by our Lettings Policy. We will comply with our Lettings Policy when deciding whether to refuse an application based on this ground.
- 4.7.6 Generally, where more than one of the applicable grounds for refusing the exchange exists, the exchange will be refused.
- 4.7.7 Alternatively, where the exchange is under the Contractual Regime, conditions may be imposed upon permission to exchange (e.g., payment of arrears within 28

days). Conditions must only relate to payment of outstanding rent, putting right a breach of tenancy, or keeping an obligation of the tenancy agreement.

- 4.7.8 Permission may be given where the exchange would facilitate tenancy sustainability and best use of stock.
- 4.7.9 Note, under the Localism Act Regime, it is not possible to give permission subject to conditions, for example, payment of arrears. In these cases, consent should be refused or, if the tenant is under-occupying the property and rent arrears are accruing because the tenant is unable to claim full Housing Benefit or Universal Credit, permission will be given, subject to Lettings & Homeless Service Manager approval.
- 4.7.10 Where the decision not to approve a request for mutual exchange has been made, tenants can appeal this decision following the Lettings Appeals Procedure.
- 4.8 OH will provide excellent customer service and provide advice and support as appropriate to tenants wanting to carry out a mutual exchange. However, it is the tenant's responsibility to find the exchange partner and arranging to view the property they wish to move to.
- 4.9 All exchange partners agree to accept the condition of the property as seen when they carry out the mutual exchange. OH will remain responsible for all landlord obligations but are not responsible for anything detailed as 'tenant's responsibility' in the tenancy agreement or for cosmetic alterations to the property or garden for example (*not an exhaustive list*):
- altering kitchen space beyond the standard cooker, washer, fridge space to accommodate additional or non-standard white-goods
  - switching or adding additional fuel sources or electric sockets
  - decoration
  - garden landscaping
  - clearing previous tenants' belongings
- 4.10 This does not affect tenants' Right to Repair and where any health, safety or security risks are identified, we will follow our standard repairs processes.
- 4.11 The tenant responsibilities as identified above and in the tenancy agreement, must be seen, accepted and agreed by all exchange partners.
- 4.12 Where consent is given, the mutual exchange will take place through assignment or by both tenants surrendering their existing tenancies followed by the granting of new tenancies. Refer to **Appendix 4**, which sets out when each kind of exchange will be used.
- 4.13 We will make sure our tenants are advised any effect an exchange may have on their legal rights or any implications of the move upon any welfare benefit entitlement.

- 4.14 Except for the payment of any outstanding arrears, a tenant must not pay or accept any money to enter a mutual exchange, whether by way of assignment or surrender and re-grant.

## 5. Making sure we do what we say...

- 5.1 The Lettings & Homeless Service Manager is responsible for the communication, implementation and monitoring of this policy, ensuring compliance with the detail within.
- 5.2 Compliance with statutory obligations in respect of Mutual Exchange is the responsibility of the Lettings & Homeless Service Manager.

## 6. Other things to bear in mind...

- 6.1 This policy also links to our:
- Lettings Policy
  - Mutual Exchange Operational Guidance
  - Lettings Appeals Procedure
  - Tenancy Management Policy
  - Income Policy
  - Anti-social Behaviour Policy
  - Tenancy Agreement
  - Tenure Policy
- 6.2 The main pieces of legislation and regulation relevant to this policy are:
- Housing Act 1985 (applicable by reference to it in the transferring tenant's tenancy agreement)
  - Localism Act 2011
  - Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012
  - The RSH Tenancy Standard (April 2012)

## 7. We'll look at this again...

- 7.1 This policy will be reviewed every three years. We will review earlier if any regulatory or legislative changes occur that impact on this policy.

## 8. What we mean...

Reference	Definition
Mutual Exchange	The term used to describe the ability of two or more tenants in the social housing sector to legally exchange their property with that of another social housing tenant. Another term used for this is "home swap". Exchanges can only take place between social housing tenants.
Assignment	Assignment is one method (and the most common) by which a mutual exchange can take place. It is where there is a legal transfer of tenancy to another person who becomes the tenant and acquires the benefits and obligations of the original tenant.
Surrender & Regrant	Surrender and re-grant is another way by which a mutual exchange can take place. It is where both tenants surrender their current tenancies and sign a tenancy for their new property.

Reference	Definition
Demoted Tenancy	A form of tenancy that reduces a tenant's security of tenure (normally from <b>Assured Tenancy</b> to <b>Assured Shorthold Tenancy</b> ) and rights for a specified period of time. We may only issue a Demoted Tenancy following the granting of a <b>demotion order</b> by a court.