

# Mutual Exchange Policy

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## 1.0 SCOPE

### Purpose

- 1.1. The purpose of our Mutual Exchange Policy is to:
  - Explain how we will carry out mutual exchanges in compliance with legislation and the tenancy agreement
  - Explain who has the right to exchange
  - How to register and how to apply for an exchange
  
- 1.2. We will:
  - Give a reason for refusal or consent within 42 days
  - Explain the type of tenancy where a mutual exchange applies
  - Provide advice to customers of the impact on tenancy rights, when exchanging
  - Explain what principles will be considered to enhance the chances of consent being granted
  
- 1.3. We aim to:
  - Promote mutual exchanges as a housing option
  - Support sustainable communities through best use of housing stock
  - Support customers to access online services
  - Increase rental income by reducing the number of empty homes
  - Sustain tenancies through offering mutual exchanges as a housing option

### Applies to

- 1.4.  the Group i.e. whg and all subsidiaries  
 Walsall Housing Group Limited only       whg Properties Limited       a whg Joint Venture Company
  
- 1.5. The right to a mutual exchange is contained within the tenancy agreement and applies to customers who have a:
  - protected assured tenancy
  - assured tenancy
  - 5 year fixed term general needs tenancy
  - 5 year affordable fixed term tenancy

- 1.6. This policy does not apply to customers with the following tenancies:
- starter tenancy
  - 1 year fixed term tenancy
  - 1 year affordable fixed term tenancies
  - Mortgage rescue
  - Market Rent tenancy
  - Rent to Buy tenancy
- 1.7. Grounds for refusal are dependant on the tenancy type and when the tenancy was granted. Grounds for refusal are noted in Appendix 1 for non localism exchanges and Appendix 2 for localism exchanges.
- 1.8. In all cases where a customer with a fixed term tenancy requests an exchange, a review will take place to ensure that they still fulfil the criteria and would have been granted a further term had they completed the full term of their tenancy.

### **Legal and regulatory framework**

- 1.9. This Policy complies with HCA Regulatory Framework Tenancy Standard where we are required to provide an online mutual exchange service. whg's free mutual exchange service is accessible online [www.homeswapper.co.uk](http://www.homeswapper.co.uk)
- 1.10. Grounds for refusal will be assessed in accordance with the Housing Act 1985 and the Localism Act 2011. Specific details are contained in the 'Right to Exchange' sections of our tenancy agreements.
- 1.11. We will ensure prospective mutual exchange applicants are made aware of the significance of any changes to their tenancy rights prior to exchange completion. This will be explained to customers and provided in writing.

## **2.0 HOW TO REGISTER FOR A MUTUAL EXCHANGE**

- 2.1. All customers are required to register with an email address to access services on line.
- 2.2. whg will support customers to access their online mutual exchange advert and to ensure contact details are kept up to date.

### **How to apply for a mutual exchange**

- 2.3. Customers who have found an exchange through the website or by other means must complete a mutual exchange application.
- 2.4. A form must be completed by all parties to the proposed exchange. whg will acknowledge receipt of the application within 5 working days.
- 2.5. Mutual exchange application forms are available on-line, by post, at all whg

offices and by contacting whg on 0300 555 6666.

- 2.6. All parties to the exchange must apply directly to each landlord for consent to exchange, which must be given before the exchange can proceed.
- 2.7. whg will carry out tenancy checks and property inspections in all cases.

## **3.0 POLICY PRINCIPLES**

### **Types of mutual exchange**

- 3.1. This section deals with the types of exchange whg will do and what principles will be considered when an application is received between:
  - whg customers and customers from another social landlord
  - whg customers

### **Mutual exchanges between whg customers and customers of another landlord**

- 3.2. We will consider all applications ensuring that we:
  - issue the correct tenancy type
  - confirm consent or refusal in writing stating the ground for refusal that applies
  - do not allow an exchange to contribute to worse housing conditions
  - work in partnership with other Registered Providers to offer exchanges as a housing option

### **Mutual Exchanges between whg customers**

- 3.3. Mutual exchanges between whg customers will operate under broad principles around affordability and eligibility, with the intention of addressing housing need to assist customers to sustain their tenancy.
- 3.4. The Policy will follow the principles below:
  - whg customers in rent arrears with a positive payment trend who want to downsize through mutual exchange will be allowed to move, but will not be allowed to under occupy.
  - whg customer in rent arrears with a positive payment trend and for whom the exchange will address urgent housing need, will be allowed to exchange – refer to the Allocations Policy
  - the exchange will improve the customer's financial situation, so that their future tenancy is affordable and sustainable
  - those who are not in rent arrears and can evidence affordability will be allowed to under occupy by one bedroom
  - an exchange will not lead to worse housing conditions
  - in all other circumstances grounds for refusal will be followed, noted in

## Appendix 1 & 2

### **General considerations**

- 3.5. Where there are vulnerabilities, we will provide support to on a case by case basis to whg customers wanting to carry out a mutual exchange. All customers must view the property they wish to move to.
- 3.6. The incoming customer must meet the criteria for the property or those included in a local lettings plan, where this applies.

### **Mutual Exchanges without consent**

- 3.7. If an exchange takes place without consent, we will:
  - consider giving consent retrospectively, or
  - take action to bring the tenancy to an end if parties to the exchange refuse to move back to their respective home.
- 3.8. Decisions will be made on a case by case basis.

## **4.0 PROMOTION AND MARKETING**

- 4.1. whg will actively promote the mutual exchange service as a housing option for current and prospective customers.
- 4.2. All customers who move through a mutual exchange will be asked to sign up to My Home My World.

## **5.0 MONITOR AND REVIEW**

- 5.1. We will keep a central record of all applications and outcomes, all of which will be audited prior to approval.
- 5.2. We will monitor our Policy and accompanying procedures on an annual basis and take into account customer feedback. The Policy will be reviewed formally every three years.

## **6.0 ASSOCIATED DOCUMENTS, POLICIES AND PROCEDURES**

6.1. Documents, policies and procedures associated with this policy are:

- Localism Act 2011
- Housing Act 1985
- Allocations Policy
- Housing Debt Recovery Policy
- Relevant Tenancy Agreements

## APPENDIX 1

### **Grounds for refusal in accordance to Housing Act 1985 (secure & assured tenancies)**

**Applies where a localism exchange does not – see Appendix 2.**

#### **Ground 1**

The customer or the proposed assignee is the subject to an order of the court for the possession of the dwelling house of which they are the customer.

#### **Ground 2**

Either the incoming or outgoing customer is the subject of a current notice of seeking possession, or possession proceedings have started, on one or more of the following grounds;

- Non payment of rent or non compliance with a tenancy condition
- The customer or a person resident in or visiting the dwelling house is causing nuisance or annoyance to neighbours or is using the property for immoral or illegal purposes or has been convicted of an indictable offence in or in the locality of the dwelling house
- The dwelling house was occupied by a married couple, a couple who are civil partners or a couple living together as husband and wife or civil partners – and one partner has left because of violence or threats of violence by the other towards that partner or a member of the family of that partner who was residing with that partner immediately before the partner left and the court is satisfied that the partner who has left is unlikely to return
- Neglect or “waste” of the property or common parts
- Ill treatment of the landlords furniture
- Obtaining a tenancy by false statement
- Participating in an exchange that has involved a payment of a premium
- The dwelling house is held mainly for purposes other than housing purposes and let to customers in the employment of the Landlord and the customer is guilty of conduct such that it would not be right for the customer to remain in occupation
- The dwelling house was only made available for occupation by the customer while works were carried out on the dwelling house the customer previously occupied as his only principle home and those works have now been completed

#### **Ground 2(A)**

Either of the properties have a possession or demotion order in place or pending. Or if the customer, proposed assignees or a household member has a relevant order such as an injunction or anti social behaviour order against them.

#### **Ground 3**

The home of the outgoing customer is substantially more extensive than is reasonably required by the incoming customer.

#### **Ground 4**

The “extent” of the accommodation afforded by the outgoing customer’s house is not reasonably suitable to the needs of the incoming customer.

#### **Ground 5**

The property –

a) forms part 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 resident or a predecessor in title of his in consequence of the resident or predecessor being in the employment the landlord.

#### **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.

#### **Ground 7**

The outgoing customer’s home has features which are designed to make it suitable for occupation by a physically disabled, and if the assignment were made there would no longer be such a person residing in the dwelling-house.

#### **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 out going customer’s home is one of a group provided for people 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 customers of the dwelling house subject to the agreement, at least half the customers 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.

## APPENDIX 2

### Grounds for Refusal set out in Schedule 14 Localism Act 2011

**For exchanges where one party to the exchange has an assured/secure tenancy that was issued before 1/4/2012 AND the other party has a fixed term tenancy.**

#### **Ground 1**

This ground is that any rent lawfully due from a customer under one of the existing tenancies has not been paid.

#### **Ground 2**

This ground is that an obligation under one of the existing tenancies has been broken or not performed.

#### **Ground 3**

This ground is that any of the relevant customers is subject to an order of the court for possession of the dwelling-house let on that customer's existing tenancy.

#### **Ground 4**

(Secure customers – possession grounds 1-6)

#### **Ground 5**

(1) This ground is that either of the following conditions is met.

(2) The first condition is that:

- a. proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
- b. possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)

(3) The second condition is that:-

- a. a notice has been served on a relevant customer under section 8 of that Act (notice of proceedings for possession), and
- b. the notice specifies one or more of those grounds and is still in force.

#### **Ground 6**

(1) This ground is that either of the following conditions is met.

(2) The first condition is that a relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant customer or a person residing with a relevant customer.

(3) The second condition is that 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 a relevant customer or a person residing with a relevant customer.

(4) In this paragraph:-

- a “relevant order” means—
  - a. an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
  - b. an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
  - c. an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
  - d. an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014 or an order under section 22 of that Act.
  - e. an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;
- a “demotion order” means a demotion order under section 82A of the Housing Act 1985 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 the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

### **Ground 7**

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing customer or customers to whom the tenancy is proposed to be granted.

### **Ground 8**

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of:

- (1) the existing customer or customers to whom the tenancy is proposed to be granted, and
- (2) the family of that customer or those customers.

### **Ground 9**

(1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

(2) The first condition is that the dwelling-house:-

- a. forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord:
  - i. is held mainly for purposes other than housing purposes, and
  - ii. consists mainly of accommodation other than housing accommodation, or
- b. is situated in a cemetery.

(3) The second condition is that the dwelling-house was let to any customer under the existing tenancy of that dwelling-house, or a predecessor in title of the customer, in consequence of the customer or the predecessor being in the employment of:-

- a. the landlord under the tenancy,
- b. a local authority,
- c. a development corporation,

- d. a housing action trust,
- e. an urban development corporation, or
- f. the governors of an aided school.

### **Ground 10**

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant customer or customers to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

### **Ground 11**

(1) This ground is that both of the following conditions are met.

(2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that:-

- a. are substantially different from those of ordinary dwelling-houses, and
- b. are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.

(3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

### **Ground 12**

(1) This ground is that both of the following conditions are met.

(2) The first condition is that 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 meet their need for housing.

(3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

### **Ground 13**

(1) This ground is that all of the following conditions are met.

(2) The first condition is that the dwelling-house proposed to be let on the new tenancy 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.

(3) The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.

(4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

**Ground 14**

(1) This ground is that all of the following conditions are met.

(2) The first condition is that:-

- a. the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
- b. at least half the members of the association are customers of dwelling-houses subject to the agreement.

(3) The second condition is that at least half the customers of the dwelling-houses are members of the association.

(4) The third condition is that no relevant customer to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.

(5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A(6) of the Housing and Regeneration Act 2008.

## Version control

<b>Version</b>	1
<b>Document author</b>	Jenny Calderbank, Tenancy Services Manager
<b>Document owner</b>	Gary Brookes, Director of Housing
<b>Legal advice</b>	None required
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<b>Approved by</b>	Policy Group, April 2017
<b>Review Date</b>	April 2020
<b>Corporate Plan aim</b>	<ul style="list-style-type: none"><li>• Deliver high quality homes and services for our customers</li><li>• Grow and expand our services, our reach and our range</li></ul>
<b>Equality analysis</b>	Not undertaken
<b>Key changes made</b>	New policy