

► POLICY: MUTUAL EXCHANGE

1.0 Introduction

- 1.1 The ability to exchange tenancies is recognised by Thames Valley Housing (TVH) as an important means for many tenants to be able to find a home more suitable for their needs.
- 1.2 We participate fully in local opportunities facilitated by choice based lettings schemes and procedures are in place to support tenants in their search for suitable exchange partners and to facilitate a speedy and smooth exchange of properties where authorised.

2.0 Background Legislation

- 2.1 This policy complies with the Housing Act 1985 Schedule 3.

3.0 Definitions

- 3.1 The term mutual exchange describes the ability of two tenants in the social housing sector in the UK to move house by swapping their homes. Another term used is "home swap".

4.0 Secure Tenants and Assured Tenants

- 4.1 Secure tenants have the statutory right to exchange tenancies with tenants of other housing associations and local authorities (under the Housing Act 1985).
- 4.2 Some full assured tenants are granted a similar contractual right to exchange although the following conditions must still be met:
 - ▲ Both tenants have the written consent of their respective landlords; and
 - ▲ The tenants have either secure or assured periodic tenancies.

5.0 Secure Tenancies

- 5.1 For secure tenancies an application to exchange can only be refused on one of the grounds in the Housing Act 1985 Schedule 3, the most relevant of which are summarised below:
 - 5.1.1 Either of the tenants has an outstanding possession order against them, or a notice of seeking possession is in force on one of the following grounds:
 - ▲ Breach of tenancy conditions or rent arrears;
 - ▲ Nuisance or annoyance to neighbours;
 - ▲ Damage to property or any furniture provided;
 - ▲ False information provided with application for housing.

- 5.1.2 If there is an anti-social behaviour injunction or ASBO in place or pending against the tenants or a member of their household;
 - 5.1.3 The incoming tenant would over-occupy the property;
 - 5.1.4 The incoming tenant would substantially under-occupy the property (one additional bed space is permitted, providing this doesn't result in a spare bedroom);
 - 5.1.5 The extent of the accommodation is not reasonably suited to the incoming tenant;
 - 5.1.6 The accommodation is designed for tenants with special needs or who are physically disabled, and the incoming tenant would not require these features.
- 5.2 If we refuse an application by one of our secure tenants we must give the secure tenant notice of the refusal with the reason (grounds and particulars) within 42 days (6 weeks) of the date that we receive the application from our secure tenant. If this is not done, then consent is deemed to have been given.

6.0 Probationary and Assured Shorthold Tenants

- 6.1 The Association's probationary tenants are not granted any contractual right to exchange whilst they are within their probationary period.
- 6.2 Where a tenant holds a probationary tenancy, and there are exceptional circumstances resulting in the tenant being unable to remain in the property, we will consider a conversion to an Assured Tenancy, or may offer an Assured Shorthold Fixed Term Tenancy, to facilitate a mutual exchange. To qualify for consideration, they must have been resident in the property for six months. The conversion or issuing of a Fixed Term Tenancy takes place at the point of moving to a suitable sized property.
- 6.3 Other assured and assured shorthold tenancies (including Fixed Term) will state in the tenancy agreement whether the tenant has a right to exchange (assign) their tenancy.

7.0 Assured Tenancies

- 7.1 Unlike secure tenancies there is no statutory list of grounds for refusal in assured tenancy mutual exchanges. The Association will not unreasonably withhold its consent and will apply similar grounds to Schedule 3 Housing Act (1985) (a summary of the most relevant grounds is set out above) for refusing an exchange in an assured tenancy case but there may be additional reasons why we may want or need to refuse an assured exchange. These include but are not limited to:
- ▲ The incoming tenant(s) being unable to demonstrate they can afford the property (e.g. due to the 'Bedroom Tax');
 - ▲ The property has been identified for disposal after the current tenancy has ended (e.g. if the tenancy was acquired under a scheme such as mortgage rescue or downward staircasing);
 - ▲ The property is designated for a specific client group (e.g. keyworkers, vulnerable adults etc.);



- ▲ The property is unsuitable for the proposed incoming tenant(s) for reasons other than those already covered by grounds in Schedule 3 Housing Act (1985);
- ▲ Where applicants, or a member of their household, have misrepresented personal or household circumstances or staff become aware before the exchange is completed that information pertinent to their housing application has been withheld or is false;
- ▲ Where applicants, or a member of their household, have displayed behaviour that causes significant concern about their ability to sustain a tenancy, and/or maintain a reasonable landlord/tenant relationship;
- ▲ Where we have information about the incoming tenant or a member of their household causing anti social behaviour or being involved in unlawful activity or other significant breach of tenancy but where no Court order or Notice of Seek Possession has been issued on that tenant/member of the household;
- ▲ We have previously had to evict or obtain an injunction or ASBO against the proposed incoming tenant or a member of their household;
- ▲ Where required, the tenant and/or adult household members have not allowed a legal Right to Rent check to be completed;
- ▲ Where we have reason to believe that one of the exchange parties does not intend to reside permanently in the exchange property;
- ▲ Where the incoming tenant or a member of his/her household owns or holds a tenancy of a property other than the property they are exchanging from; and
- ▲ Where the tenant has already transferred or exchanged property within the last 6 months (unless the tenant pays reasonable costs to include the required electrical and gas checks for the subsequent move).

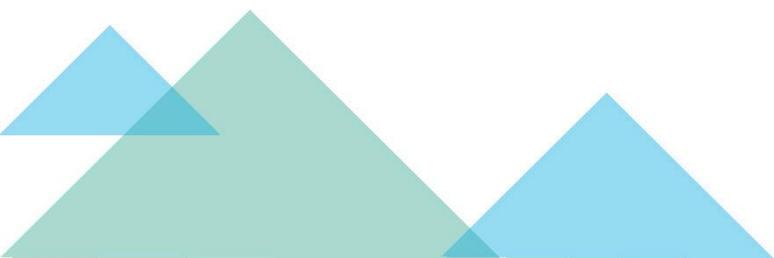
7.2 Where our property has been adapted, the incoming assured resident will be required to provide a report from an Occupational Therapist to confirm they require the adaptations.

7.3 Where the incoming assured tenant has pets, permission must be sought prior to the exchange going ahead. Permission will not be given if the property is a flat.

8.0 Eligible Household Members

8.1 Save in exceptional circumstances, we will only consider household members who have been assessed as eligible by the local authority. These include:

- ▲ The tenant(s);
- ▲ A sole tenant's partner, if they are living permanently at the property;
- ▲ Any dependent children, including children for whom the applicant has long term legal guardianship, and children that are adopted or fostered (the tenant will be required to evidence guardianship);
- ▲ A carer (where the tenant can sufficiently evidence that a live in carer is required).



- 8.2 If the applicant is applying to move to a larger property, extended family and adult children over the age of 21 will be discounted when assessing bedspaces required unless there are exceptional circumstances. Exceptional circumstances may include, but are not limited to:
- ▲ Where an additional bedroom is required on medical grounds (the resident will be required to provide a report from an Occupational Therapist to confirm this).

9.0 Bedroom Standard

- 9.1 The bedroom standard used by different local authorities and registered providers vary. We use the following bedroom standard to allocate homes:

Studio or shared flat	1 person household
1 bedroom 2 person property	1 or 2 person household (single person or couple)
2 bedroom 3 person property	1 or 2 parent families * with 1 child
2 bedroom 4 person property	1 or 2 parent families * with 1 or 2 children **
3 bedroom 4 person property	1 or 2 parent families * with 2 children
3 bedroom 5 person property	1 or 2 parent families * with 2 or 3 children **
3 bedroom 6 person property	1 or 2 parent families * with 3 or 4 children **
4 bedroom 6 person property	1 or 2 parent families * with 3 or 4 children **
4 bedroom 7 person property	1 or 2 parent families * with 4 or 5 children **
4 bedroom 8 person property	1 or 2 parent families * with 5 or 6 children **
5 bedroom 7 person property	1 or 2 parent families * with 4 or 5 children **
5 bedroom 8 person property	1 or 2 parent families * with 5 or 6 children **
5 bedroom 9 person property	1 or 2 parent families * with 6 or 7 children **
5 bedroom 10 person property	1 or 2 parent families * with 7 or 8 children **

* A single adult tenant (holding a sole tenancy) is counted as 2 persons unless the accommodation is a bed sit for 1 person only.

** The number of children permitted is dependent upon their age and gender.

- 9.2 We consider other criteria and factors when determining the correct property size for a household. These are:

- ▲ The tenant or joint tenants are allocated 1 double bedroom;
- ▲ Same-sex couples are equivalent to opposite-sex couples;
- ▲ 2 children under 10 years old and either sex are eligible for 1 double bedroom;
- ▲ 2 children of the same sex are eligible for 1 double bedroom;
- ▲ A family with two children of the same sex with a 10 year age gap would be eligible for an extra bedroom, provided the children are below the age of 21;
- ▲ Families with three or more children are expected to share bedrooms regardless of gender or age;

- ▲ An unborn child of the legal tenant or their resident partner is considered as one person providing that the legal tenant or their resident partner will be the child's legal guardian. A MATB1 Certificate must be provided.

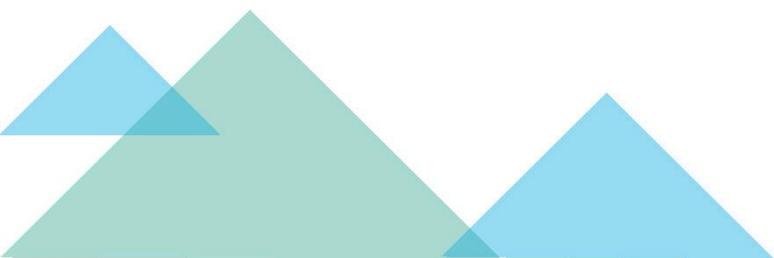
10.0 Under and Over Occupying

- 10.1 We do not permit over-crowding a property, and consider the space required by single parents to be the same as that required by a couple.
- 10.2 One additional bed space is permitted, providing this doesn't result in a bedroom in excess of our bedroom standard.
- 10.3 Save in exceptional cases we consider the household to be substantially under-occupying the property if there would be two or more additional bed spaces than required. Exceptional circumstances may include, but are not limited to:
 - ▲ Where an additional bedroom is required on medical grounds (the resident will be required to provide a report from an Occupational Therapist to confirm this);
 - ▲ Where the ages of the children in the household would result in the need for an additional bedroom within 12 months; *
 - ▲ Where the resident is downsizing. *

* A tenant in receipt of benefits will need to demonstrate that a shortfall in benefit will be affordable in the intervening period.

11.0 Requirements Before an Exchange

- 11.1 The following conditions must be met before an exchange may proceed:
 - ▲ Rent must be fully paid by the date of the proposed exchange;
 - ▲ Any other obligation under the tenancy that has not been met, or a breach of the tenancy, must be remedied by the date of the proposed exchange.
- 11.2 Except in limited circumstances involving some Local Authority/Flexible Tenancies and/or Social Landlord Fixed Term tenancies, no new tenancies are granted in a mutual exchange. The exchange is completed by a deed of assignment signed by the incoming and outgoing tenant, and the Association formally gives its consent in a licence to assign. The incoming tenant takes over the tenancy agreement of the outgoing tenant. Hence, an assured tenant exchanging with a secure tenant by assignment will become a secure tenant, and the secure tenant will become an assured tenant.
- 11.3 Tenants should, at an early stage in the process, seek their own legal advice so they are aware of any loss of rights or other implications resulting from a change in the status of their tenancies.
- 11.4 Incoming tenants are responsible for making their own checks for any local issues or incidents of anti-social behaviour. If an incoming tenant asks the Association about



particular issues regarding the area that they intend to move to, we must not misrepresent the position.

12.0 Information Sharing

- 12.1 All applications and tenants are subject to Data Protection Act 2018. At the point of interview applicants are asked to sign a S171 declaration within the terms of the 1996 Housing Act. This declaration warns that it is an offence to knowingly withhold or provide false information. In addition, applicants are made aware that information can be shared with other housing providers or relevant agencies. This can include information sharing protocols with public bodies.
- 12.2 Where specific permissions are required to make enquiries with individual support workers, the applicants are required to sign a declaration giving their permission. Identification markers on our computer databases are also used to denote risks, vulnerability or for regard to be given to special requirements.

13.0 Appeals Procedure

- 13.1 Applicants may make an appeal with regard to their mutual exchange. The appeal should be in writing or dictated over the phone to a member of staff within five working days (weekdays not including public holidays) from the date of refusal, and additional information should be provided in support of the appeal. The Housing Services Manager will investigate the reasonableness of the refusal and will advise the applicant in writing of the decision. This process will be concluded in ten working days unless a mutually agreed alternative timescale is agreed.
- 13.2 If the applicant disputes this decision there is a second right of appeal to the Director of Residential Services. This must be made within five working days of the initial appeal outcome and will include the reasons for the appeal. The Director of Residential Services will give a written response based on a review of the initial appeal decision within ten working days. The decision of the Director of Residential Services will be final.
- 13.3 This appeal procedure does not interfere with an individual's right to make a complaint to the Independent Housing Ombudsman or to request an agency or organisation to make the appeal on their behalf.

14.0 Policy Information

Policy owner: Housing Services Manager

Approved by: Director of Residential Services

Last review date: May 2016

Next review date: May 2019

