

PROCESS GUIDANCE

LOCAL AUTHORITY HOUSING MANAGEMENT

March 2014

Mutual Exchanges

www.portsmouth.gov.uk

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1. INTRODUCTION

- 1.1 This document sets out the Local Authority Housing Management (LAHM¹) procedural guidance on mutual exchanges and explains the legal rights of secure tenants to assign their tenancy by way of mutual exchange of tenancies.
- 1.2 In brief a mutual exchange is where 2 or more tenants 'swap' their tenancies with each other.
- 1.3 The basis of this document is the Housing Act 1985, extracts of which are contained in the appendices

2. LIST OF KEY WORDS

2.1 For clarity the following key words which are used in this document are defined:-

- **Secure tenancy** i.e.-
 - Was granted by the local authority to the named tenant(s)
 - Is occupied by those tenants(s) as their principle home
 - The tenant is not in breach of a court possession order
- **Assignor** – person assigning a tenancy to someone else
- **Assignee** – person to whom a tenancy is assigned
- **Principal Home** – main home in which someone is living
- **Under-Occupation** – too many bedrooms for the number of occupants as per allocations policy
- **Housing Benefit size-criteria restrictions** – reduction in Housing Benefit payments for working age tenants based on under-occupation
- **Successor** – someone who succeeds to a tenancy (see 'Succession and Assignment' document for further details)
- **Homeswapper** – Web-based national exchange website free for Portsmouth City Council tenants
- **PLAN** – Acronym to be used in decision making to ensure decisions are Proportionate, Legal, Accountable and Necessary

3. ASSIGNMENT

- 3.1 The basis of an assignment is that it passes over goods, property or legal status with the 'benefits and burdens' to be accepted by the person to whom it is passed over or 'assigned'.
- 3.2 A tenancy is a legal right to property which can therefore be assigned – but there are certain conditions to this assignment.
- 3.3 As far as tenancies are concerned, these benefits and burdens basically mean that the person accepts the tenancy as it is without further claim on the person who assigns it to them.

¹ The term 'housing service' will be used in place of LAH and LAHM for the purposes of this document

3.4 As far as the Housing Service is concerned, an assignment means that the tenants take over each other's tenancies, with the same rights and obligations as the previous tenant had. In practice this means that things such as damage caused by the previous tenant will become the responsibility of the new.

3.5 Where the property is in disrepair the exchange can be conditional on the existing tenant improving the property and/or having repairs completed before the assignment takes place. Tenants can make an agreement for the incoming tenant to pick up some of the work but the property should be safe before agreement is given. Any costs falling on the tenants to do work should be factored in to assessments of affordability.

4. ELIGIBILITY TO AFFECT A MUTUAL EXCHANGE

4.1 Only secure tenants (and assured tenants in Housing Association stock) have the right in law to assign their tenancy by way of mutual exchange. If tenants have lost their security of tenure, for example through not occupying their property as their sole or principal home, they no longer have the right to exchange.

- Where non-secure tenancies exist, through for instance failed succession, or Family Intervention Project Tenancies, by virtue of 4.1 above they do not have the right to exchange.

4.2 The right to assign tenancies by mutual exchange is qualified by the following conditions:

- The landlord has to give written consent
- The landlord's consent can only be withheld in certain circumstances (see appendix 1)
- The landlord must specify any decision to refuse assignment within 42 days of the tenant's application

4.3 The Housing Service can give consent to an exchange subject to certain conditions such as paying off any outstanding rent arrears, remedying a breach of tenancy such as reinstating any unsafe alterations, or performing another obligation of the tenancy such as paying for an outstanding repair charge or removal costs.

4.4 No premium should be paid by tenants to encourage/secure exchanges and possession action can be taken against cases where this is found to have occurred.

5. FINDING A MUTUAL EXCHANGE

5.1 Whilst tenants may use a variety of methods to find an exchange, the Housing Service promotes the use of 'Homeswapper' a web-based forum aimed at helping social housing tenants to find potential exchanges. The service is free to use for all PCC tenants and provides the opportunity to find an exchange on a national scale.

5.2 Housing staff should offer assistance to those tenants that require help with registering for this service

5.2.1 Thought should be given to how tenants may continue to access this service once registered and this should be discussed with the tenant at the point of registration. The minimum requirement is that tenants have a mobile telephone number so that details of potential matches can be sent via text message.

5.2.2 Area Housing staff can log-in to 'homeswapper' as administrators to provide assistance with registration (remotely) and to assist in finding an exchange for tenants where necessary.

5.3 In cases where tenants are looking to exchange to alleviate an under/over occupying situation, Housing Options may be able to provide additional information to Housing Officers of those registered on the Housing Waiting list and meeting their needs. However, these details should not be passed directly to tenants without the express consent of the individuals involved.

6. SERVING NOTICE OF INTENTION TO AFFECT A MUTUAL EXCHANGE - (Receive Application)

6.1 The process starts when the tenant serves notice on the city council that s/he wishes to assign their tenancy by way of exchange.

6.2 The current mutual exchange application form is this notice and as such must specify the tenant(s) with whom the person wishes to exchange. An exchange form filled in by one tenant(s) only and not specifying the tenant(s) with whom they wish to exchange is not a valid notice

6.3 Mutual exchange forms handed in over the counter or direct to an Officer must be date stamped when received. This will count as the date from which notice was served by the tenant – and the Housing Service then has 42 calendar days in which to give its decision to allow the mutual exchange or not.

- Inspection appointments should be made at this point if the situation allows and an understanding sought of when the tenant wishes to move.
- If forms are received via the post these should be date stamped on arrival and this date will form the start of the 42 day period.

7. AFFECTING A MUTUAL EXCHANGE - (Understanding and assessing individual situations)

7.1 On receipt of the tenant's notice the Housing Officer should first check the tenancy type (secure/non-secure) to ensure eligibility to exchange.

7.2 The Housing Officer should then check the tenancy to ascertain whether any aspects of the conduct of the tenancy or details of the proposed exchange fall outside of Schedule 3 of the 1985 Housing Act (Appendix 1). For example

- Is the tenant in arrears and unlikely to be able to clear these? This would include any sundry debts attached to the tenancy (removals, repairs etc.)
- Is the accommodation larger/smaller than required by the proposed assignee?
- Is the accommodation reasonably suited to the needs of the proposed assignee?
- Is the accommodation designed specifically for a physically disabled person (and the proposed assignee is not physically disabled)?
- Is there an active Notice of Seeking Possession (NOSP) for a breach of tenancy that has not been resolved?
- Is action being taken against one of the tenancies because of Anti-social Behaviour?
- Are there any pets to be housed? What are they?
- What are the property and family sizes and what would the allocations policy permit? (consideration should be given to actual bedroom sizes if necessary)

7.3 Housing Officers should use PLAN in conjunction with Section 92 and schedule 3 of the 1985 Housing Act to aid their decision making process as to whether an exchange should be refused or allowed to proceed, and each case should be judged on its individual merits. Area Housing Managers should have the final decision in approving exchanges where there is any doubt, and Housing Officers should raise potential issues to their line manager. Decisions to refuse exchanges or allow them outside of the normal restrictions should be clearly recorded and kept on file.

Arrears and other charges

The general rule is ; Rent arrears, other charges that form conditions of tenancy (Former Tenancy Debts, Removal Charges) or charges that form obligations of tenancy (Repair) should be cleared prior to exchange. Although exchange applications can be agreed on condition that this occurs.

However, in light of the Housing benefit size-criteria restrictions, for those affected and wishing to downsize this may not be achievable and failure to move could increase arrears and cause homelessness. Where both under-occupation and arrears are present, these cases can be agreed if the move is within PCC stock, but should be discussed with estate and area managers prior to a decision being reached.

Where there are rent arrears, the exchange will only be agreed if (a) there is a sustainable repayment plan, evidenced and agreed and (b) that it is a condition of the new tenancy that the arrears be paid.

Please see (appendix 3) for further information and guidance.

Under-Occupation

Housing Officers should carefully consider the housing need of exchange applicants (as per allocations policy) and whether larger properties would subject tenants to Housing Benefit size-restriction rules. Normally, under-occupation based on these two factors should not be created. However, factors which may influence decision to allow under-occupation include:

- Are the tenant's currently under-occupying and proposing to maintain this under-occupation or lessen it? How are they managing their current tenancy?

- Are there any medical conditions or other factors that necessitate a larger property? What evidence do we have and is further information required? - In certain cases children with disabilities override the under-occupancy Housing Benefit regulations.
- Length of time tenants would be under-occupying, are children close to cut-off points (2 years)?
- Affordability - Tenancies must be financially viable, are tenants for example in long-term sustainable employment?

Again these cases should be discussed with management prior to a decision being made.

Anti-social behaviour

Whilst consent to exchange can be withheld in certain ASB cases depending on the actions undertaken, Housing Officers should liaise with the Anti-Social Behaviour Unit, and local managers regarding whether an exchange can proceed. External exchanges to other local authorities/housing associations may not be viable options in these cases, and the need to share information should be discussed with the tenant.

Disabled Adaptations

This will be a question of degree. Some properties have minor adaptations or adaptations that are no longer in use. This would need to be balanced against those properties that have had extensive adaptations or were specifically designed from new.

- 7.4 If the decision to refuse an exchange is reached, both parties should be notified in writing within the 42 day period. Particulars should only be provided to the tenant who is affected by them. E.g. do not advise both parties that the exchange is being cancelled because of rent arrears – only make this explicit to the person in arrears. The specific ground for refusal should be quoted (appendix 1)

8. VISTS TO TENANTS

- 8.1 Once the initial checks have been made and Officers are provisionally happy the exchange can proceed, properties should be visited to undertake a thorough inspection. The purpose of the visit is to:

- Check and record the decorative condition of the property
- Check and record any alterations made to the property
- Check and record any damage to the property
- Verify the household details supplied on the application form
- Discuss and record any items the tenant may be leaving
- Further understand the tenants situation and discuss any tenancy matters (such as rent arrears/repair charges etc.) that might prevent our agreement to the exchange.
- Advise the tenant that they are entering into a legal commitment to assign their tenancy and they should be signposted to independant legal advice if needed.

Thought should be given as to:

- Who is the best resource to undertake the inspection

- The benefit and practicality of having all exchange parties present at inspection for openness and speed.

8.2 Provided no issues arise as a result of the inspection/s incoming tenants to properties should be provided with a written records to sign and accept conditions of property, decorative state and any damage.

8.3 If the inspection/s reveals properties where there are major (unauthorised) alterations or significant damage, or other breaches of tenancy are evident, two obvious courses of action present:

- The exchange can no longer proceed and should therefore be refused as per 7.4 above. Further tenancy action may be proportionate and necessary as well as immediate intervention by the Housing Service in cases where Health and Safety is compromised.
- The exchange can only be approved on condition that the alteration/damage/breach is remedied to the satisfaction of the Housing Service.

In the latter example, further inspection is likely to be required prior to the completion of the exchange. Again, as per 8.2, incoming tenants to properties should sign records to accept conditions of property, decorative state and any damage.

8.4 Where tenants are exchanging with another local authority or registered provider a reference should be provided for the Portsmouth City Council tenant and in return a reference received for the incoming tenant. This should be cross referenced against section 7 and appendix 1 of this document to ensure eligibility to exchange.

9. COMPLETING THE EXCHANGE - Make a decision

9.1 Once the conditions in sections 7 and 8 have been fulfilled and the application has management approval, the exchange can be finalised. Where conditions in section 7 and 8 have not been fulfilled the exchange should be refused (in writing) or given conditional agreement - for example you can exchange if rent account is clear on day of assignment. Again when refusing exchanges the specific ground in appendix 1 should be quoted.

9.2 The Housing Officer should contact the tenants and agree a suitable time and area office to conclude the exchange.

- Tenants should have reached agreement as to an appropriate time to swap tenancies
- In certain cases (E.g. ASB incidents) thought should be given to who needs to be present – ASB officer, both incoming/outgoing Housing Officer, Estate Manager etc.

9.3 The following should occur at the exchange appointment:

- Conditions of exchange should be checked to ensure completion (particularly clearance of any outstanding balances up to date of exchange)

- Deeds of assignment should be completed for both parties relinquishing and accepting new and old tenancies
- Gas and electric safety inspection appointments should be agreed
- Rental income value work should be undertaken which should include:
 - Where applicable HB change of address/new claim forms including council tax (note exchanges to Leigh Park from other PCC areas require the completion of a Havant application form for Council Tax)
 - Issuing of new pay reference numbers and rent cards. Do Direct Debit/Standing Order details need to be changed?
 - Do we have the necessary income and expenditure details?
 - Is the tenant aware of what, when and how to pay?
 - Is more in-depth support required?
 - Does the incoming person understand their responsibilities as a tenant?
 - Detailed notes should be recorded on Northgate
- Tenants should be made aware that it is their responsibility to ensure all keys are exchanged between parties.

9.4 Tenants paper files should be sorted and changed accordingly:

- Where the exchange is happening solely within PCC stock the paper file should be filed accordingly and it is a good opportunity to remove any unnecessary paperwork. This should be forwarded to the appropriate area office where necessary.
- Where the tenant is leaving PCC stock their file should be treated as a former tenancy file.

In both cases the original tenancy agreement for the property should be kept with the address it relates to and not forwarded with the tenant.

10. Customer challenges a decision

10.1 If a customer is unhappy with a decision that has been made, they can ask for this to be reviewed, by putting their reasons in writing. Initially this will be reviewed by an area manager that has not been involved in the original decision.

10.2 The reviewing Area Manager will make their decision known to both parties within one month of the customers review request.

10.3 The customer will have the right of appeal to the Housing Manager or Head of Housing and Property Services or their nominated deputy. The appeal should be made within 10 days of the review decision. The appeal will be dealt with within one month. There would be no further right of appeal after this decision is made.

Appendix 1

Housing Act 1985 Part IV Section 92 - Assignments by way of exchange

- (1) It is a term of every secure tenancy that the tenant may, with the written consent of the landlord, assign the tenancy to another secure tenant who satisfies the condition in subsection (2).
- (2) The condition is that the other secure tenant has the written consent of his landlord to an assignment of his tenancy either to the first-mentioned tenant or to another secure tenant who satisfies the condition in this subsection.
- (3) The consent required by virtue of this section shall not be withheld except on one or more of the grounds set out in Schedule 3 (1985 Act), and if withheld otherwise than on one of those grounds shall be treated as given.
- (4) The landlord may not rely on any of the grounds set out in Schedule 3 unless he has, within 42 days of the tenant's application for the consent, served on the tenant a notice specifying the ground and giving particulars of it.
- (5) Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, the consent required by virtue of this section may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.
- (6) Except as provided by subsection (5), a consent required by virtue of this section cannot be given subject to a condition, and a condition imposed otherwise than as so provided shall be disregarded.

Schedule 3 Grounds for withholding consent to assignment by way of exchange

Ground 1

The tenant or the proposed assignee is obliged to give up possession of the dwelling-house of which he is the secure tenant in pursuance of an order of the court, or will be so obliged at a date specified in such an order

Ground 2

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2A (*Added by Section 191 of the Housing Act 2004*)

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

a person residing with a party to the exchange; or an ASB injunction or ASBO is in force against such persons.

Ground 3

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family

Ground 5

The dwelling house:

- (a) forms part of or is within the curtilage 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 tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of:
 - the landlord,
 - a local authority,
 - a new town corporation,
 - the Development Board for Rural Wales,
 - an urban development corporation, or
 - the governors of an aided school.

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

Appendix 2

Mutual Exchange Application Form

This form should only be completed if you are a Portsmouth City Council tenant and have found another tenant with which to exchange.



About your household

Name_____

Joint tenant's name_____

Address_____

Daytime telephone number_____

Who will be leaving with you? Please give details of your household:

Full Name	Date of Birth	Relationship to you (e.g. Son/daughter/partner)
		Tenant

If any of the above are expecting a baby please give due date:_____

Do you have any pets? (type and number)_____

Your current property type? (Flat/House)_____ Number of Bedrooms_____

Why do you wish to move?

Please tell us why you wish to move, for example is your current property too large or small, are you moving closer to a place of work, or are you having problems with your neighbours?

Who do you wish to exchange with?

Name_____

Address_____

Landlords name and address_____

Who will be living in their household?

Full Name	Date of Birth	Relationship to you (e.g. Son/daughter/partner)

What kind of home do they have?

Property type (Flat/House etc.) _____ No of bedrooms _____

Do they have any pets? (type and number) _____

If agreed when would you like to move? _____

Please sign below and return this form to your Area Housing Office

Your signature _____ Date _____

Joint Tenant _____ Date _____

Office use only	
Date forms received _____	42 Day deadline _____
Property inspection date/time _____	Inspection undertaken (✓) _____
Dilap forms sent to customer _____	Received back from customer _____
Reference sent _____	Reference Received _____
Application Refused (✓) _____	Reason/Ground _____
Conditional Consent Given (✓) _____	Subject to _____
Management Approval _____	Approved By _____
Date of Exchange _____	
Comments:	

Appendix 3

Under-occupation - "Exchanges" and Arrears

Issue: The Welfare Reform Act introduced deductions to Housing Benefit claimants based on household size and number of bedrooms from April 2013. PCC Housing has a large number of households that are affected by these deductions of which a large number have an arrears balance of varying degrees. A number of the affected households have expressed a desire to move to smaller properties and whilst the new allocations policy awards additional priority to under-occupying households, the exchange route should also be utilised. Previous practice and implementation of the 1985 Housing Act prevented those in arrears moving without first clearing any outstanding debt. Also introduced in April 2013, were reductions in council tax benefits, which will also affect those under-occupying, further compounding financial issues of tenants and reducing their disposable income.

Solution: Applying discretion to those tenants who are under-occupying, in arrears and not in a position to remedy their situation, to swap properties using the normal process to find a suitable swap (Homeswapper)

Rationale:

- Meeting purpose of several systems - 'Pay rent and receive help when needed' and 'Provide suitable homes when needed'
- Preventing homelessness and debt by forcing tenants to remain in properties where they will not be able to cover rental costs, arrears repayments and the wider issue of council tax.
- Preventing the use of high-interest money lenders and other borrowing to clear any outstanding debt to enable moves to take place by clearing arrears
- Maximising the chances of recovering arrears and therefore protecting the interests of the Housing Service, whilst attempting to reduce the need for costly and timely court action.

Practice:

Whilst the final decision to allow a move to take place will rest with Area Housing Managers, Housing Officers should be able to demonstrate and record the use of PLAN (Proportionate, Lawful, Accountable and Necessary) in informing that decision. For example:

- Can the tenant realistically be expected to clear any outstanding debt prior to a move being agreed? (£100 versus £1000)
- Is the tenant maintaining their tenancy in a satisfactory manner? (Is a sustainable arrangement already in place and being maintained for example?)
- Would a move significantly alter the tenant's situation? (Would they still be under-occupying but at the lower rate of deduction?)
- Will the swap still create an under-occupying situation for one of the tenants?
- Is the move within PCC stock? (Ongoing management of debt and unable to undertake if not)

Where the decision to allow a move to occur is made, the process will differ from the normal exchange route. Deeds of Assignment do not allow for conditions of tenancy to be attached and therefore minimise the ability to recover any outstanding debt. In situations where we allow moves because of under-occupation despite arrears, ending tenancy forms should be used and the respective tenants should sign new tenancy agreements, with the appropriate condition of tenancy attached relating to the recovery of the arrears. (below)

Arrangements for recovery of any outstanding debt should be made at the time of the paperwork being completed using the value steps of the rent process and ensuring that the tenant is aware of the consequences of non-payment. It will be important that any former tenancy accounts created as part of this process are managed effectively so that timely action can be taken if necessary. It will be important to include as reasonableness in witness statements for any subsequent court action, the discretion applied in allowing a move to increase affordability.

If it is decided that applying discretion is not the correct decision, again demonstrated and recorded using PLAN, if an exchange application has been submitted, a written decision can be supplied to the tenant using schedule 3 of the 1985 Housing Act. This may take the form of outright cancellation or conditional agreement.

Copy of additional condition of tenancy

ADDITIONAL CONDITON OF TENANCY – TO BE USED FOR TRANSFERS TO PROPERTIES WITH FEWER BEDROOMS WHERE THERE ARE EXISTING ARREARS

FORMER TENANCY DEBT FROM PREVIOUS TENANCY

Former tenancy property:.....bedroom property at.....

New tenancy property:.....bedroom property at.....

In consideration of Portsmouth City Council, the owners of the new tenancy property, agreeing to allow me to transfer to a bedroom property at that address whilst there are former tenancy arrears due, I agree to the following as an additional condition of my tenancy of the said new tenancy property :-

The former tenancy debt owed in respect of my former tenancy property (detailed above) at the date of granting this new tenancy property (detailed above) to me, namely £....., will form part of the future rent / charges of the new tenancy property and will be paid by me at the rate of £..... per in addition to such sums as are payable as rent / charges of the new tenancy property. In the event of my failing to pay the additional former tenancy debt or part thereof each I agree that the whole sum of £..... still outstanding will be treated as being due and that the Council will be entitled to serve on me a Notice of Seeking Possession of the whole amount owing together with any other sums that have fallen due as rent and that the council will be entitled to proceed for possession of the new tenancy property once the Notice has become effective.

Signed:.....

Signed:.....

Date:.....

Breakdown of Debt:

Arrears of rent	£
Other.....	£
.....	
Total:	£