

**WISHAW AND DISTRICT HOUSING ASSOCIATION**

**MUTUAL EXCHANGE POLICY**

## **INTRODUCTION**

Wishaw and District Housing Association acknowledges that it has limited housing stock and, as such, can not always meet the changing housing needs of existing tenants. Furthermore, as the Association's internal transfer policy is based on housing need, the housing aspirations of tenants cannot be met unless there is also a measurable need for a move.

Some tenants of the Association, therefore, seek other solutions to their housing requirements or desires. One method of moving to another property is through a mutual exchange with another household.

The Mutual Exchange Policy is intended to clarify the conditions that must be met before the Association will approve an application for an exchange and to give guidance to staff and tenants of the Association on the obligations and responsibilities on both parties.

## **2.0 AIMS AND OBJECTIVES**

The primary aim of the policy is to ensure that tenants are able to seek their own resolutions to their real or perceived housing problems or aspirations while at the same time ensure that the Association's stock is being best utilised.

Arising from this primary aim are a number of key objectives that are necessary to protect the Association from the Mutual Exchange process being abused. These key objectives include;

- Ensuring that tenants of the Association meet their obligations to seek the Association's permission before proceeding with an exchange.
- Allowing the Association to keep accurate tenancy records and details of those residing in it's stock.
- Providing a framework for both tenants and staff that outlines the requirements and qualifications for a successful exchange to take place.
- Establishing systems that ensure that all applications for a mutual exchange are considered in an equitable, consistent and fair manner.
- Clarifying the responsibilities of all the parties involved in a mutual exchange.
- Protecting the Association from its stock exchanging hands without staff's knowledge.
- Protecting tenants of the Association from being coerced or pressurised into exchanging their home.

### **3.0 THE LEGAL FRAMEWORK**

The Housing (Scotland) Act 2001 reflects the provisions made in previous legislation whereby both Assured and Secure tenants had the statutory right to apply for a mutual exchange. This provision is, therefore, a core clause in the Scottish Secure Tenancy Agreement.

Under the terms of the tenancy agreement, tenants have the right to request permission to exchange their tenancy and the Association will not unreasonably refuse to give consent.

### **4.0 QUALIFICATIONS FOR MUTUAL EXCHANGE**

#### **4.1 Acceptable Parties for Exchange**

Tenants of the Association may apply to exchange their place of residence with any other tenant of Wishaw and District Housing Association or a tenant of;

- Any other Housing Association or Co-operative
- A Local Authority
- Communities Scotland
- A Water Authority
- A Sewage Authority
- And any other Registered Social Landlord (e.g. housing companies)

#### **4.2 Family Composition**

An exchange will normally only be approved if the family composition of the prospective tenant meets the qualifying size definitions as detailed within the Association's Allocations Policy. Permission will not, therefore, normally be granted if the exchange would result in the Association's property being overcrowded or under-occupied.

However the Association may allow a property to be marginally under-occupied if the overall result of the mutual exchange was felt to be beneficial to all parties and was shown to be addressing housing need.

Overcrowding of a property belonging to the Association would only be considered in very exceptional and extreme circumstances and would only be allowed with the approval of the Housing Operations Manager.

#### **4.3 Adapted Properties**

If the Association property has been designed or adapted for people with special needs, the exchange will normally only be approved if the proposed incoming household has a family member with a special need that requires the specific adaptations.

## **5.0 APPLICATIONS FOR A MUTUAL EXCHANGE**

Only the tenant/joint tenants may make an application for permission for a mutual exchange although spouses and co-habitees will be required to confirm in writing that they agree to the proposed exchange of tenancy.

All parties involved in the proposed exchange will be required to complete and submit the appropriate Mutual Exchange application form to the Association's office and are expected to fulfil all the requirements of the other landlords. The Association would normally require Written proof of other landlords consent will be required before the exchange can proceed, however it is recognised that this is not always made available in practise and will not withhold approval in instances where written consent is not forthcoming.

A mutual exchange would normally take place between two tenants but there may be exceptional circumstances where a number of parties are involved and a chain of exchanges would be created. In such circumstances, the Association will consider the consequences of each individual proposed move into a property owned by the Association.

## **6.0 CONSIDERATION OF AN APPLICATION**

### **6.1 Delegated Authority**

Approval for a mutual exchange must be given by the Housing Operations Manager. Where permission is to be refused the reasons for refusal must be approved by the Housing Operations Manager.

Where an application does not meet the normal conditions for approval but to refuse permission was felt by staff to be exceedingly harsh, the application will be referred for consideration to the Housing Operations Manager.

### **6.2 Timescales**

The Association will endeavour to notify all applicants of its decision within 28 days of receipt of correctly completed application forms from all parties involved in the proposed exchange.

However, as a decision cannot be made by the Association until tenancy references have been provided for any prospective tenants, the Association may be unable to respond to applicants within the 28 day period. In these circumstances the applicants will be advised of the delays and given a target date for the provision of a written response.

### **6.3 Granting/Refusing Permission**

Wishaw and District Housing Association will consider all applications for a mutual exchange and will not unreasonably withhold permission. Reasonable grounds for

refusing permission for a mutual exchange are given in the Scottish Secure Tenancy Agreement and include;

- The Association having served a warning that it may seek eviction on certain grounds because of the conduct of the tenant or a member of the household.
- A decree has been awarded for the repossession of the property.
- The house was designed or adapted for persons with special needs and would not be utilised by the proposed incoming household.
- The property is too small for the proposed incoming family and, if the mutual exchange was approved, would result in the house being overcrowded.

This list is not exhaustive and there may be other reasons for the withholding of permission. Each application will be considered on merit and the interests of all parties in the application, the neighbourhood and the Association will be taken into consideration.

#### **6.4 Factors for Consideration**

When considering an application for a mutual exchange, the Housing Operations Manager must be satisfied that;

- No party involved in the application is being unduly coerced or pressurised into agreeing to the exchange.
- No party involved is agreeing to the exchange for financial or material gain.
- The mutual exchange mechanism is not being used as a means to abuse the Allocations system.
- All parties fully understand and accept all the implications and responsibilities of agreeing to the mutual exchange.

### **7.0 WITHHOLDING PERMISSION**

#### **7.1 Overcrowding/Under-occupancy**

Due to the high demand for housing and, in particular, larger family homes the Association will not normally allow a mutual exchange to take place that would result in a property being under-occupied. However, consideration will be given if the proposed incoming tenant is leaving a larger house and, by allowing the exchange, the level of under-occupancy is being reduced and another household's overcrowding is being resolved.

The Association will not normally allow an exchange that would result in any property belonging to the Association being overcrowded.

An exchange therefore will normally only be approved if the family composition of the prospective tenant/s meets the qualifying size definitions for the property. The requirements of the household will be assessed according to the following criteria;

- 1 DOUBLE bedroom for the applicant/applicant and partner
- 1 DOUBLE bedroom for every 2 children under the age of 10 years of age
- 1 DOUBLE bedroom for every 2 children of the same sex between 10 and 16 years of age (where the children are of different gender they will be assessed as requiring a bedroom of their own)
- 1 SINGLE (minimum) for every household member over 16 years of age

Couples will be taken to share a bedroom unless a medical certificate is submitted showing that there is a medical condition that requires each to have a separate bedroom.

Similarly, a medical certificate will be required for any child under the age of 10 years old that requires a separate bedroom due to a medical condition.

Where a member of the proposed incoming household is pregnant, the baby will be taken as part of the household from 20 weeks from the expected date of delivery. Proof of the EDD will be required.

## **7.2 Conduct of Tenancy of Existing Tenants**

### **7.2.1 *Rent Arrears***

Where a tenant of the Association has rent arrears of more than one month's rent and has no repayment arrangement or is not adhering to the arrangement, the Association will not normally give permission for that tenant to exchange their place of residence.

The tenant, however, may request that the application be reconsidered if s/he;

- Clears the debt in full OR
- Reduces the debt to the equivalent of less than one month's rent OR
- Enters into a repayment arrangement and strictly adheres to the arrangement for an agreed period. The period specified will depend on the level of arrear involved, the tenant's payments history and the level of repayments.

Permission for a mutual exchange will not be given where the Association has served notices warning that action to repossess the property may be instigated on the grounds of rent arrears.

### **7.2.2 *Monies owed to the Association***

Where an applicant for a mutual exchange owes any other monies to the Association such as rechargeable repairs, the application will be considered on it's individual merits taking into account;

- The level of the debt (must be equivalent or greater than one month's rent)

- The length of time the monies have been owed
- The tenant's previous co-operation in clearing the debt
- If a repayment arrangement is in place and being adhered to

Where monies are owed to the Association by the applicant the application will be considered in line with the criteria laid out in Section 3 4, Clause 5.1.1 of the Allocations Policy. The application will be assessed on its individual merits and no decision taken on one application will be taken as setting precedent as it is accepted that no two set of circumstances are identical and each must be viewed separately.

Applicants that have their application refused on the grounds of monies owed to the Association will be given the opportunity to clear the debt or to make a repayment arrangement and to then have the application reconsidered. Where the applicant enters into a repayment arrangement the application will only be reconsidered when the tenant has demonstrated a clear commitment to adhering to the arrangement and clearing the debt.

### **7.2.3 Condition of the Property**

The Association will not normally approve a mutual exchange application where the Association's property is found to be in an unacceptable condition due to tenant damage or neglect. The tenant will however be given the opportunity to make good any damage at their own expense and to then request that their application be reconsidered.

## **7.3 Tenancy Reports for External Applicants**

A full, written tenancy report will be requested from the current landlord of all prospective tenants. Permission for a mutual exchange will not normally be given by the Association where the prospective tenant has a history of failing to observe and adhere to the conditions of their tenancy.

### **7.3.1 Outstanding Rent Arrears and other Tenancy Related Debts**

In considering refusing an application on the grounds of outstanding debt the Association will take into account a number of factors;

- **How old the debt is** – The debt will only be considered if it is currently owed. Any debt older than five years will, in line with guidance from the Scottish Executive, generally be disregarded.
- **How much the debt is** – Only arrears that are equivalent or greater than one month's rent and service charge will be taken into consideration. Where the debt is rent arrears and the applicant is on part housing benefit, the entire rent

and service charge will be used as the basis for determining if the arrears is applicable.

- **How the debt arose** - Rent arrears that have arisen during a period where housing benefit should have been available towards the rent costs the Association will be disregarded where;
  - The non-payment of housing benefit was not as a result of the applicant's failure to return the necessary forms and documentation unless there was clearly a good reason for the non-return.
  - There is a backdated housing benefit payment due

An arrear may also be disregarded where it is a result of an overpayment in housing benefit but only where the Association is satisfied that the overpayment was made as a result of either an administrative error or due to a genuine mistake made by the applicant.

- **Any arrangement the applicant has in place for clearing the debt** - An application will not be suspended on the grounds of outstanding debt where the applicant has made an arrangement to pay off the debt and has adhered to that arrangement for three months or more.

The Association will also consider cases where the applicant has made regular payments towards clearing the debt even if these payments have not been for the full, agreed amount. Each case will be considered on their own merit, taking into account the amount of the payments and how realistic these are when compared to the applicant's income.

- **Who is liable for the debt** – In accordance with legislation, an application will only be suspended on the grounds of outstanding debt where the applicant is liable for the debt as the tenant or joint tenant.
- **What the debt is for** – Only debts directly related to a current or former tenancy held by the applicant will be taken into account by the Association when considering suspending an application on the grounds of outstanding debt.

Tenancy related debts will include arrears of rent, service charges, rechargeable repairs, property management charges and costs for clearing and/or cleaning abandoned properties and for storing furniture.

The Housing Operations Manager will approve the refusal of an application on the grounds of an external applicant's outstanding debt.

Where an application is refused on the grounds of outstanding debt, the applicant will be given the opportunity to;

- Clear the debt
- Reduce the debt to less than the applicable amount (e.g. the equivalent of one months rent)
- Make a suitable repayment arrangement and adhere to that arrangement for at least three months

The Mutual Exchange application will be reconsidered by the Association on receipt of confirmation that the debt has been cleared or has reduced to less than the applicable amount or that the applicant has adhered to a repayment arrangement for at least three months.

### **7.3.2 Anti Social Behaviour**

Consideration will be given to refusing an application where there is evidence that the applicant and/or a member of the household to be housed with the applicant, has been guilty of anti-social behaviour. Anti-social behaviour will be taken to include;

- Conducting criminal activities from the current or previous tenancy
- Harassment, threatening behaviour or violence to neighbours
- Threatening or violent behaviour towards staff of the Association
- Severe damage to the landlord's property during the period of a current or previous tenancy
- Continuous and serious misconduct that affects residents in the neighbourhood

This list is not exhaustive and other extreme forms of anti-social behaviour may also be deemed as grounds for considering refusing an application.

The refusal of an application on the grounds of anti-social behaviour will only be considered where there is clear evidence such as;

- An eviction from a previous tenancy for anti-social behaviour
- An eviction decree against the applicant for anti-social behaviour
- An Anti Social Behaviour Order against the applicant
- A criminal conviction for activities conduct from a tenancy
- Reports from other agencies such as the Police, Social Work etc
- A Notice of Proceedings served on the applicant but only where there is supporting evidence of anti-social activities
- Substantiated reports from staff of the Association

However, it is recognised that an assessment of anti-social behaviour can be very subjective and the Association will therefore also consider the reasonableness of refusing an application where there is evidence of anti-social behaviour. In considering whether it would be reasonable to refuse an application a number of factors will be taken into account including;

- **The nature of the behaviour** – The anti-social activities must be deemed to be severe and to have had a serious detrimental effect on other people and/or have caused substantial damage to the property of either the landlord or other residents.
- **The frequency and duration of the behaviour** – Isolated incidences of anti-social behaviour will not be considered as grounds for refusing an application unless they have continued over a prolonged period of time.
- **The perpetrator of the behaviour** – Where the anti-social behaviour was conducted by a member of the applicant's household and that person is not being housed with the applicant, the exchange application will not normally be refused. Account will also be taken of the extent to which the conduct is the consequence of acts or omissions of people other than members of the applicant's household (e.g. visitors to the property).
- **When the incidents of anti-social behaviour occurred** – An eviction, an Anti Social Behaviour Order or criminal conviction granted more than two years earlier will not be taken into account when considering the refusal of an application on the proviso that there has been no further incidents of anti social behaviour.

The Housing Operation Manager will approve the refusal of a mutual exchange application on the grounds of anti-social behaviour.

The Mutual Exchange application will be reconsidered by the Association where the external applicant can provide evidence that there has been a change in the circumstances and/or behaviour of the perpetrator. Evidence of changes in circumstances and/or behaviour will include;

- **The passage of time** – Where there has been no incidents of anti-social behaviour for at least six months, the application will be reconsidered. Where the application was refused because of a previous eviction or granting of an Anti Social Behaviour Order, the Association will reconsider the external applicant for a mutual exchange once a two year period has elapsed since the granting of the decree or ASBO on the proviso that there has no further incidents of anti-social behaviour.

- **Evidence from a third party** – The Association will consider evidence submitted by a third party who has direct professional dealings with the external applicant and/or the applicant's household, for example the police, a probation officer, social worker, registered social landlord, support worker etc. The Association will not normally consider representations from such agencies without supporting evidence.

The Housing Operations Manager will reconsider the application where evidence of a change in circumstances and/or behaviour is presented from a third party.

- **Submission from the applicant** – The Association will consider submissions from the applicant that can demonstrate that there has been a change in either circumstances and/or behaviour that render the decision to refuse the application invalid. A submission from the applicant will only be considered where the applicant can provide supporting evidence.

The Housing Operations Manager will reconsider the mutual exchange application where evidence of a change in circumstances and/or behaviour is submitted by the applicant.

### **7.3.3 Condition of the Property**

In very extreme circumstances consideration may be given to refusing an external applicant where the applicant's current accommodation is severely damaged, vandalised or neglected as a result of the actions of the applicant or a member of his/her household. An application will not be refused where the property is simply to a low standard of cleanliness and/or decoration.

The Housing Operation Manager will approve the refusal of an application on the basis of the condition of the property.

The application may be reconsidered by the Housing Operations Manager where the applicant can demonstrate that the damage, vandalism or neglect to the property has been repaired. Where the damage, vandalism or neglect is being rectified as a rechargeable repair, consideration of the application will be covered by the provisions on outstanding debt contained within this policy.

## **7.4 Discretionary Decisions**

The Association recognises that there may be exceptional circumstances when an application for a mutual exchange does not meet the normal conditions for approval yet to refuse permission would be exceedingly harsh. In such cases the Housing Operations Manager, will have discretion to depart from the policy and make the decision felt to be in

the best interests of all parties. Discretionary decisions will be recorded and reported to the Board of Directors for information.

#### **7.5 Notification of Refusal**

Where approval for a mutual exchange is not granted all parties will be advised in writing of the Association's decision. The reasons for refusal will also be given providing that by doing so the Association does not breach any person's right to confidentiality. Applicants will also be informed in writing that they have the right to appeal against the decision made.

## **8.0 GRANTING PERMISSION FOR A MUTUAL EXCHANGE**

### **8.1 Implications of a Mutual Exchange**

All parties involved in the application for a mutual exchange will be advised of all the implications of exchanging their place of residence. In particular tenants will be advised of any changes in their right to buy the property and the effect the exchange will have on their discount entitlement. New tenants to the Association will also be fully advised of the responsibilities and obligations they take on as a tenant of the Association and the standards of conduct that are expected.

Where appropriate, applicants will be advised to seek further advice from external agencies such as the Citizens Advice Bureau, a solicitor etc.

### **8.2 Tenancy Agreement**

Where an application to exchange is approved the existing tenant(s) of the Association will be required to sign an end of tenancy notification. However, tenants will not be required to give 4 weeks notice as stated in the tenancy agreement as there will be no void period and therefore no rental loss to the Association.

Tenants moving into a property belonging to the Association will be required to sign a new tenancy agreement with the Association and will not automatically inherit any tenancy rights (e.g. right to buy, succession etc) of the outgoing tenant.

### **8.3 Date for Mutual Exchange**

The Association will agree to the first date for the exchange of properties that is suitable and convenient to all parties involved. This will be the start date contained in the new tenancy agreement for the incoming tenant(s). All parties will be strongly advised not to physically move into the new property until the official tenancy start date as they will have no legal right to live in the property until that date.

From the start date of the tenancy, incoming tenants to the Association's properties will be entitled to the same level and standard of service provided to all other tenants of the Association. This shall include access to the repairs and maintenance service and housing management services.

### **8.4 Schedule 7 Consent**

In accordance with the requirements of Schedule 7 of the Housing (Scotland) Act 2001, all parties applying for a Mutual Exchange will be required to declare any personal connection with the Association namely;

- Current or previous membership of the Board of Management
- Current or previous employment with the Association
- Any current or former member of staff and/or committee member that is related to the applicant and/or any member of the applicant's household

Where a connection is declared, permission for the exchange will only be granted with the Board's approval. Approval will only be given where the delegated Board Members are satisfied that the application has been considered and processed in strict accordance with the Mutual Exchange Policy.

Where consent is given under Schedule 7 of the Act, the details will be recorded in the Association's Benefits Register. The Association is required to make this register available to members of the public upon request.

## **9.0 WITHDRAWAL OF APPROVAL**

Approval will not be given or if already given will be immediately withdrawn, if any party is found to have deliberately given false or misleading information or to have withheld information which had a direct bearing on the application and influence on the Association's decision.

Where permission has been given on the basis of false or misleading information and the exchange has taken place, the Association may take legal action to recover the properties.

## **10.0 PROVISION OF INFORMATION**

It is the responsibility of every individual applicant to provide all the information necessary to allow the Association to consider their application and, where applicable, to provide any supporting evidence required. Any costs incurred in obtaining this evidence will be the applicant's responsibility.

Where the applicant cannot or will not provide corroborating evidence, the Association has the right to refuse the application or to disregard the information in making its decision. Where the application is refused, it will be reconsidered on provision of the required corroborating evidence by the applicant(s).

## **11.0 CONFIRMATION OF INFORMATION AND CHECKS MADE**

The Association will endeavour to verify the information provided in the application form and, where applicable, checks will be made with other statutory bodies such as Housing Benefit, the Local Authority etc.

Before a decision is made on an application for a mutual exchange a staff member from the Association will carry out an inspection of the Association's properties involved and, where

practical (taking into account factors such as distance, safety etc), a home visit to all external parties involved in the application. A reference will also be requested from external applicants' current or previous landlord regarding, in particular, the conduct of the tenancy and the rent account.

In very exceptional circumstances where serious anti-social or criminal activity by the applicant or a member of the household is made known to the Association, police reports may also be requested and taken into consideration.

## **12.0 CONFIDENTIALITY**

The Association will treat all information provided in the application form in the strictest of confidence and will only disclose personal details to other statutory agencies with the express permission of the applicant. Permission will be deemed to have been given on receipt of a signed mandate from the applicant.

Information that the Association becomes privy to as part of its investigations will be treated in confidence and will not be disclosed to other parties involved in the application, even where that information results in permission for the mutual exchange being withheld.

Any cases referred to the Board of Directors will be made anonymously with no information being given that could identify the applicants. However, if an applicant wishes to appeal a decision made by staff and wishes to present their case to the Board of Directors they may choose to forgo their right to anonymity and confidentiality.

## **13.0 INFORMATION AND ADVICE**

Information on the Association's Mutual Exchange Policy and Procedures will be made available to advise and assist applicants with their application.

A copy of the complete policy will be made available on request and, where necessary, will be made available on tape or in Braille or will be translated into other languages as required.

## **14.0 EQUAL OPPORTUNITIES**

Wishaw and District Housing Association is committed to the principals of Equal Opportunities and will endeavour to ensure that all functions within the mutual exchange process are carried out in an equal and undiscriminating manner in line with both the Mutual exchange Policy and the Equal Opportunities Policy.

In particular the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status or social background and medical conditions (including those applicants with AIDS or who are HIV positive).

## **15.0 ACCESS TO PERSONAL FILES**

In line with the Data Protection and Access to Information legislation, the Association will respond to written requests by applicants for access to any records stored pertaining to their application. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities Policy, no charge will be made in respect of charges incurred by the Association in providing information in alternative formats, such as large print, Braille, or languages other than English.

## **16.0 RIGHT TO APPEAL**

All parties involved in an application for a mutual exchange have the right to appeal against any decision made by the Association regarding their application and will be advised of this right in writing where applicable. Applicants may also make a complaint if they feel aggrieved at the treatment they have received from staff during the mutual exchange process.

Appeals and complaints will be dealt with in accordance with the Association's Complaints Procedures. In line with these procedures, applicants have the right to have their appeal or complaints referred to the Association's Board of Directors.

A copy of the Association's Complaints Procedures is available from the office on request.

## **17.0 DELEGATION OF RESPONSIBILITY**

The practical implementation of the policy and the day-to-day operation of the mutual exchange procedures will be undertaken by members of the Association's Tenancy Services Department. Normally the assessment and processing will be the responsibility of a delegated member of staff but in his/her absence, other members of the team may carry out the function.

Any special cases or need to deviate from the policy will be referred to the Housing Services Manager for approval.

## **18.0 CONSULTATION**

The association will seek to carry out a consultation exercise on any proposed review and/or amendment to the Association's Mutual Exchange Policy and, as appropriate, will seek comments and views of interested and affected parties. All comments and views formally expressed and

notified to the association as part of the consultation exercise will be reported to the Association's Board of Directors for consideration.

## **19.0 REVIEW OF POLICY**

The full Mutual Exchange Policy will be reviewed by the Association's Board of Directors at least once every three years. However the Board may consider elements of the Policy for review within that timescale.

### **Document History**

First Adopted by Management Committee	-	5 September 1991
First Revision by Management Committee	-	9 March 1995
Second Revision by Management Committee	-	16 December 1997
Third Revision by Board of Management	-	5 February 2002
Fourth Revision by Board of Directors	-	26 April 2005
Fifth Revision by Board of Directors	-	11 March 2008

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Written by EL