



# **Mutual Exchange Policy Council Housing**

# Mutual Exchange Policy

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## **1. Introduction**

1.1 This policy explains the right of Enfield Council tenants to participate in mutual exchange. A mutual exchange is a procedure which allows secure tenants of Enfield Council, other Councils or Housing Associations to swap homes and tenancies with each other.<sup>1</sup> The method by which a tenant swaps homes with another tenant is through a legal process known as assignment. In all cases, permission of the Council is required before a mutual exchange can take place. If a tenant carries out a mutual exchange without the Council's permission, then they will no longer be a secure tenant and the Council may take legal action to recover the property.

1.2 Supporting both under occupying and over occupying households to engage in mutual exchange benefits the tenant, improves stock management, and reduces risk to the rental income stream.

## **2. Policy Statement**

2.1 This policy has been created to ensure that all enquiries and applications for a mutual exchange are dealt with fairly and consistently, and that both employees and tenants are clear about the legal rules and processes the Council must follow when considering an application for a mutual exchange.

2.2 It sets out the reasons why a mutual exchange application might be refused, and the service standards applicants can expect.

## **3. Legislative Framework**

3.1 Mutual exchange is set within the legislative framework provided by:

- The Housing Act 1985
- The Equality Act 2010
- The Localism Act 2011
- The Landlord and Tenant Act 1985
- The Social Housing (Regulation) Act 2023
- Consumer standards Code of Practice – April 2024 issued by the Regulator of Social Housing under section 195(1) of the Housing and Regeneration Act 2008 (as amended)

3.2 The law relating to mutual exchanges is contained within the Housing Act 1985. The Housing Act 1985 outlines that every secure tenancy allows the tenant, with the consent of the landlord, can assign the tenancy to another secure or assured tenant who also has the written consent of their landlord.

3.3 If a person receives a tenancy by succession, whether that be by the death of a tenant or assignment, and later moves under mutual exchange, their status as a successor still

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<sup>1</sup> Secure tenancies are referred to as Lifetime tenancies in Enfield Council Tenancy Policy.

stands. Therefore, the tenancy cannot be passed on to another successor as the law allows only one succession.

3.4 The consent for a mutual exchange should not be withheld except on one or more grounds set out in Schedule 3 of the Housing Act 1985. The Council may therefore refuse permission for a tenant to assign their tenancy to a mutual exchange partner for one of the following reasons:

- The tenancy is subject to a court order.
- The tenancy is subject to a current notice of seeking possession.
- Legal action has been taken against the tenant because of anti-social behaviour or the matter is waiting to be heard before the Courts.
- The property the tenant wishes to move to is too large for their needs. The suitable size for a tenant's need is outlined in the Enfield Housing Allocation Scheme.
- The property the tenant wishes to move to is too small for their needs.
- The property was let because of employment and forms part of, or is in the grounds of a non-housing building.
- The property has features which make it particularly suitable for people with disabilities, or the property is one of a group let to people with disabilities with specific facilities nearby and the exchange would result in no one with the relevant needs being in occupation.
- The property is a sheltered property, and the exchange would result in no one with the relevant needs being in occupation.

3.5 The Council has a maximum 42 days from receipt of the mutual exchange application to provide the tenant with a written answer. The Council may not rely on any of the above grounds set out in Schedule 3 unless we have, within 42 days of the tenant's application for the consent, served on the tenant a Notice specifying the ground and giving the details of it. If the tenant is not informed of these grounds within 42 days, then they may proceed with the exchange. However, the Council can also attach reasonable conditions which need to be met before the exchange can take place, such as paying outstanding rent or agreeing a payment plan.

#### **4. Promoting Mutual Exchange**

4.1 The Council publicises the mutual exchange platform, Homeswapper, on the council website, with advice on how tenants can register with and use this platform.

4.2 An explanation of the service, key criteria for mutual exchange and application forms for participating can also be found on the council website. Applications filled out on the website are sent to the service.

4.3 The Mutual Exchange Officer can assist those who are digitally excluded from or otherwise unable to use Homeswapper or navigate the application process.

4.4 Translation services are available on request for application forms.

4.5 The service will conduct over occupier and under occupier mappings to identify opportunities for in borough mutual exchange.

## **5. Staff Duties and Responsibilities**

5.1 All relevant staff will be kept up to date with changes in the law and any resulting policy or procedural changes.

5.2 The Director of Housing and Regeneration is ultimately responsible for the implementation of this policy.

5.3 The Mutual Exchange & Under-Occupation Officer and Income Team have primary responsibility for implementing this policy and will receive specialist training to fulfil their duties.

5.4 Both the Lettings Manager and Principal Housing Manager (Income) are also responsible for translating this policy into practice.

5.5 A Mutual Exchange Officer delivers the service in response to applications.

## **6. Performance Monitoring**

6.1 We will monitor implementation of this policy quarterly and benchmark performance information and good practice with other landlords and registered providers to improve services. This monitoring will include:

- The number of households making a mutual exchange application.
- The number of households where mutual exchanges are approved or refused.
- The percentage of application decisions reached and communicated in writing to applicants within the statutory timescales of 42 calendar days.

## **7. Equality, Diversity, and Inclusion**

7.1 Equality, diversity, and inclusion are central to the decisions we make on how to deliver the best possible outcomes for our residents. We will make sure that everyone receives fair, sensitive, and equal treatment and are treated with dignity and respect when accessing our housing services.

7.2 The Council will monitor cases by protected characteristics to understand the profile of people approved or refused a mutual exchange and tailor services to meet needs accordingly.

## **8. Eligibility**

8.1 Only secure tenants can participate in a mutual exchange. Tenants in a probationary period, with demoted, flexible, or introductory tenancies are not eligible, and this policy does not apply to them.

8.2 Enfield Council secure tenants are free to exchange with assured tenants of Housing Associations .

8.3 Eligible partners to exchange with include social housing tenants renting from Enfield Council, other Local Authorities or Housing Associations.

## 9. Mutual Exchange Service

9.1 The service standards that apply to mutual exchanges are as follows:

- Free access for Council tenants to register for an exchange on Homeswapper will be provided.
- A letter acknowledging receipt of an application to exchange will be sent within 10 working days.
- A decision will be reached and communicated within statutory timescales of 42 days.
- The number of exchanges applied for, approved, and refused will be kept.
- Electrical safety tests and Gas safety tests for CP12 certificates of the applicants' property 3 months from expiry will be undertaken after the mutual exchange has taken place.

9.2 The Council advises that all those taking part in a mutual exchange should visit the property they are applying for **before** agreeing to the exchange. Tenants who exchange must accept the property in its present state. Any damage caused by the outgoing tenant will

become the responsibility of the incoming tenant and will need to be repaired at their own expense. The Council will only carry out normal repairs for which it is responsible. These repairs are specified in the Council's Housing Repairs, Maintenance and Planned Works policy, which can be requested from a Customer Services officer or found on the Council's housing policies webpage.

9.3 The Mutual Exchange Officer will arrange an inspection of the outgoing tenant's property to check that there are no unapproved alterations or damage that requires repair prior to agreeing an exchange.

9.4 When an exchange has been agreed between the parties involved, they must contact their landlords in writing for permission to carry out the exchange. Council tenants are required to fill out and return a mutual exchange application form. If either of the parties have a joint tenancy, both parties need to sign the form. Forms are available on the Enfield Council Website.

9.5 The incoming tenant must sign a disclaimer for any unapproved alterations and non-standard fixtures or fittings which will remain in the property.

9.6 Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, approval and consent may be given subject to the tenant remedying a breach of the terms of the tenancy or perform an obligation of the tenancy. Therefore, permission may be given for an exchange but the tenant cannot move until, for example, they pay any outstanding rent, agree to a repayment plan, repay any outstanding rechargeable repairs.

- 9.7 If there is doubt as to whether a condition is unreasonable, then the Mutual Exchange Officer will consult the Voids and Lettings Manager. The Council may agree not to impose conditions in circumstances where a tenant is moving to smaller accommodation, is fleeing domestic abuse, or has been the victim of serious anti-social behaviour or harassment.
- 9.8 The Council will not consider a mutual exchange application from a non-secure tenant.
- 9.9 Mutual exchanges will not generally be approved where under occupation will occur as a result of the tenant moving. The Voids and Lettings manager has discretion to consider applications where the tenant is downsizing but where one spare bedroom remains. In such cases, advice regarding the impact of the Under Occupancy Charge (Bedroom Tax) must be provided in writing.<sup>2</sup>
- 9.10 The Council will also refuse an exchange where statutory overcrowding would occur. Overcrowding will occur where the number of persons exceeds the standards laid down in the Housing Act 1985. The overcrowding standard in the Act is generous because it assumes living rooms and dining rooms can be used as bedrooms and the Council will need to carefully consider such applications. If the exchange will result in the permitted number of persons allowed being exceeded, but the property is not overcrowded according to the standard laid down in the Housing Act 1985, the property will not be legally overcrowded. If the Mutual Exchange Officer has concerns as to whether the property will in practice be large enough for the tenant, these will be discussed with the Voids and Lettings Manager.
- 9.11 Tenants with disabilities whose property has been adapted may wish to exchange to a property without adaptations. Provided that the Council is satisfied that the adapted property will be occupied by a person in need of such accommodation and that Occupational Health confirm the outgoing tenant does not face any significant implications from the move, then the exchange may be approved subject to all other matters being satisfactory. However, the Mutual Exchange Officer should discuss such requests with the Voids and Lettings Manager.
- 9.12 Tenants with disabilities whose property has been adapted may not be granted permission to exchange to a non-adapted one if they require the Council to implement major adaptations on the new property.
- 9.13 The Council will send a written notification to the tenants to confirm whether the exchange can take place. All parties involved in the exchange must receive written permission from their landlord before the exchange can progress. Tenants must not move home without the written permission of all landlords involved or before the Deed of Assignment has been signed. Failure to comply may result in parties losing their homes, and the Council will have no duty to re-house tenants.

## **10. Mutual Exchange with arrears**

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<sup>2</sup> The Bedroom Tax reduces Universal Credit or Housing Benefit if the social housing property the tenant is renting has one or more empty bedrooms.

10.1 To help manage arrears, tenants should be referred to the Council's Welfare Advice service and Debt Support team and helped, where applicable, to apply for Discretionary Housing Payments to help maximise incomes.

10.2 Any barrier/delay to progressing an exchange which helps a tenant to avoid the under occupation charge implemented through welfare reform will potentially increase rent arrears.

10.3 Whilst rent arrears do not prevent a tenant's registration for an exchange, landlord approval to undertake the exchange is required. Normally landlords refuse permission where:

- The tenant wishing to exchange owes rent over £500.
- Either tenant is under a current order for possession of the property, or a Notice of Seeking Possession has been served.

10.4 Allowing tenants to exchange with rent arrears will increase the bad debt provision as new tenancies will be created following exchange, leaving arrears on the old tenancy.

10.5 In all cases where discretion is provided to allow an exchange with rent arrears a repayment agreement must be arranged and signed by tenants.

10.6 Discretion will be applied for applicants with less than 8 weeks gross rent arrears who are:

- Seeking an exchange to a smaller property where the exchange will remove the under-occupation charge.
- Fleeing domestic abuse or other forms of anti-social behaviour where the Anti-social Behaviour Team or agencies such as the Police support the application.

10.7 Agreement to exchange with arrears will be refused where:

- A Possession Order exists.
- Tenancy conditions other than arrears are breached.
- More than 8 weeks gross rent is owed.
- The tenant was under occupying and the exchange is to a similar size property and therefore does not remove the impact of the Under Occupancy Charge (Bedroom Tax).

## **11. Appealing a decision**

11.1 If a tenant wishes to contest the Mutual Exchange Officer's decision to reject their application, they can request a review of the case from the Voids and Lettings Manager.

11.2 If a tenant is dissatisfied with the outcome of the review, they will be directed to make a complaint via the Council's Complaints process.



## **12. Relevant Enfield Strategies and Policies**

- The London Borough of Enfield Secure Tenancy Agreement
- Enfield Tenancy Policy
- Enfield Housing Allocations Scheme
- Enfield Housing Repairs, Maintenance and Planned Works Policy
- Enfield Council Corporate Complaints Policy
- Enfield Council Plan
- Enfield Housing and Good Growth Strategy