



Mutual Exchange Policy 2025 - 2028

Version Control

Version	Changes	Approval Stage	Date
1	N/A	Internal	4/12/2024
2	None required, other than update to Action Plan.	Tenants/Public Consultation	Completed
3	N/A	Head of Service sign off	17/07/2025

MUTUAL EXCHANGE POLICY 2025

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1. Introduction

This is the Mutual Exchange Policy for the Council. It aims to help tenant mobility, by promoting, encouraging and effectively processing mutual exchange applications, where this can assist tenants to move into more suitable or preferred accommodation than they currently occupy.

2. Context

Cannock Chase Council owns around 5,000 plus tenanted homes in various locations throughout the district. The tenants of these homes are secure tenants (or introductory tenants with the intention of becoming secure tenants).

At some period during their tenancy and for assorted reasons tenants may wish to move home. While the Council may be able to help transfer tenants with housing need (for example when a property becomes overcrowded due to a growing family, underoccupied as children leave or for changing medical needs), this is not always possible and is not always the desired, best or only solution. This is particularly the case where a tenant's housing need is of low priority, or they want to move to areas where the Council has little or no suitable housing stock.

At the same time, we have a considerable number of housing applicants who are tenants of other social landlords who wish to move into or within the district but, because of the high level of demand compared to the supply of vacant homes, they are competing with other applicants to be offered a scarce resource. Waiting for a suitable home to become available may again not be the optimal solution, especially where an applicant's housing need and subsequent banding priority on the waiting list is low.

Tenants can increase their chances of moving more quickly and to the location they prefer (which sometimes may be in another part of the country, rather than within the district) by considering swapping their home and tenancy with another social housing tenant, whether of CCDC or another social housing landlord. This is called a 'mutual exchange.'

Two or more tenants of the same or different social landlords can swap homes and tenancies, subject to certain restrictions and approval of the landlord(s) involved. This offers the potential benefit for residents of finding a home of their choice at the time they prefer, while the landlord(s) does not have to deal with a void (empty) home and benefits from the properties being 'taken as seen' by the incoming tenants.

3. Regulatory Requirements

Principal Legislation:

- Housing Act 1985
- Localism Act 2011

Legislation for definitions and interpretations of terms set out in the above acts:

- Housing and Planning Act 1986
- Housing Act 1988
- Housing Act 1996
- Crime and Disorder Act 1998
- Anti-Social Behaviour Act 2003
- Housing and Regeneration Act 2008
- Housing Act 1985
- Localism Act 2011
- Housing Act 2004

Social Housing Regulation:

CCDC's housing service aims to meet the requirements of the Regulator of Social Housing and to achieve or exceed the Consumer Standards it sets out. The 'Tenancy Standard' is the principal standard relating to mutual exchanges. To achieve this, we will:

- Offer easy customer access to advertising their wish to exchange and to matching available mutual exchanges with other tenants
- Ensure the service is free of charge and no fees are payable for the matching service and processing of their application
- Publicise and promote the availability of the Mutual Exchange service, generally to all tenants and individually as part of the options offered to customers who contact us about moving home

4. Vision and Aims

The aim of this policy is to contribute to the options available to tenants wishing to move homes and therefore to meeting housing needs in Cannock Chase District.

The Council recognises that promoting mutual exchanges encourages tenant mobility and creates sustainable communities through better use of housing stock. The Council will ensure that all mutual exchanges are carried out efficiently and effectively.

The key objectives of the Mutual Exchange Policy are to:

- make easy access to the online application service (or support to make an application), along with information, advice and assistance available, for tenants who may want to consider or request a mutual exchange.
- ensure mutual exchanges are carried out by way of assignment and to comply with the law, including the statutory time frame in which a decision about an exchange must be reached.

5. Policy Details

Accessing the Service and Applying for an Exchange

All secure and assured tenants of social housing landlords have a statutory right to exchange. This includes almost all tenants of housing associations and councils (including council tenants whose tenancy is managed by an arm's length management organisation). The exceptions are for introductory or starter tenants and for all tenants of private landlords, who have no such entitlement.

The Council will aim to provide tenants and other parties with clear information about mutual exchanges as an option, online, in reception, in newsletters or other promotions from time to time and in individual contact with housing applicants or existing tenants.

We will explain how the process works and what support we can provide to ensure tenants can exercise their right to apply. Housing and Transfer applicants will be encouraged to consider mutual exchanges as a potential route to finding the new home they want.

Tenants wishing to exchange can apply to do so via the national mobility 'HomeSwapper' website (www.homeswapper.co.uk) - or through the support of a family member, friend, support worker or a member of the Tenancy Services team - to create an online application. We will support applicants to apply where they otherwise would not be able to do so.

'HomeSwapper' is a free service to tenants and no other forms of payment to secure or agree an exchange can ever be accepted between any of the parties involved.

Authority from all joint tenants will be required for an application to proceed, since both parties to a joint tenancy are required to agree to the exchange for it to legally proceed.

Processing Applications

The Council will efficiently process applications. Tenants may be required to provide further information and will be required to allow the Council reasonable access to their homes to carry out an inspection of it before their application is considered complete.

The Council will arrange an inspection of properties within a reasonable timeframe or provide an alternative means of assessing property condition and advising the customer of the outcome, as soon as reasonably practical.

We will also contact the other landlord(s) if any, quickly, so as to enable a decision to be reached within the statutory timescale.

Where an application is incomplete, it can not be fully assessed, such as where the applicant fails to provide information or take other action that is reasonably requested in order that the application can be completed and processed.

The Council will process applications and decide on whether approval for the exchange can be given within the statutory time limit, which is currently 42 calendar days.

We will provide clear information to mutual exchange applicants on progress and approval, rejection of their application, or why their application can not be progressed, including any reasons for decisions made and their right to request a review of the decision, within correspondence sent.

Mutual Exchange Application Decisions

A formal decision can only be made where a mutual exchange application is complete. Once it is, there are only three possible formal decisions that can be reached in relation to a mutual exchange application:

1. The application is approved, and consent is given for the exchange to go ahead (on a date agreed between the parties)
2. The application is approved subject to certain requirements or conditions being met. ("Conditional Consent"). In this case, the exchange cannot go ahead until a date agreed between the parties once the stated conditions have been satisfied, but the exchange has been approved in principle
3. The application is rejected, and consent is withheld. The exchange cannot proceed.

Refusal

The Council cannot unreasonably withhold consent (from eligible tenants) when two or more tenants request to exchange their properties. It may only refuse consent outright on the grounds set out in Schedule 3 of the Housing Act 1985 (and in some limited cases, Schedule 14 of the Localism Act 2011). These are set out in full in Appendix Two, but in short form those which relate to the Council are:

- A Possession Order (or demotion of tenancy) having been granted by a court or the landlord having begun or intending to begin such legal proceedings
- The property being substantially larger than the incoming tenant's household needs
- The property not being reasonably suitable for the incoming tenant's household
- The property is tied to the outgoing tenant's employment
- The property is designed around the needs of a disabled person, which does not match the needs of the incoming tenant

Conditional Consent - Rent Arrears or Other Breaches of Tenancy

A mutual exchange application cannot be rejected outright for rent arrears or other breaches of tenancy¹, where possession proceedings have not already been taken, started or are not intended.

However, conditional consent may be given for the mutual exchange whereby the tenant must remedy any breach of tenancy condition or must perform an obligation

¹ Except in the limited circumstances where section 158, Localism Act 2011 applies - see Appendix Two

before any exchange takes place. This could include payment of arrears or rectifying any other breach of tenancy. It includes putting right* any adverse condition of property identified when inspected as part of a mutual exchange application.

***Note - property condition:** *Consent could be conditional on either remedying damage /repairs or cleared payment in lieu of that work being undertaken, so long as the amount charged is the same as that which would be charged to any other tenant. This is to ensure there is no fee chargeable for the exchange itself to proceed.*

Legal Exchange Process - Assignment and Surrender and Re-Grant

Mutual Exchanges only take legal effect when (and are unlawful before) consent is given by the landlords involved and legal paperwork completed which states the date, property details and tenancy type which is being transferred to the incoming tenant.

In almost all cases, this will be by a deed of assignment, which is signed by all parties - incoming and outgoing tenants and the relevant landlords. This allows the incoming tenant to take on the tenancy and thereby the rights and responsibilities of the outgoing tenant. One deed of assignment would be completed for each property involved in the exchange.

In the exceptional case of a CCDC secure tenant wishing to exchange with a tenant who is on a flexible or fixed term tenancy, the tenants will be advised to seek legal advice before agreeing to proceed, as the other landlord would offer an exchange by surrender and re-grant of the tenancy, rather than by assignment.

6. Risk Management

Processing of Applications and Decisions

Applications will be subject to checks to ensure they provide full and accurate information. This will include ensuring both parties in a joint tenancy agree to the exchange (an application without such joint authority will not be considered complete).

CCDC tenants will be subject to an inspection of their current property and will be responsible for remedying any damage, unauthorised or dangerous improvements they have undertaken, providing for missing items (such as doors that have been removed) or, alternatively making payment to the Council in lieu of doing so. Where there are no grounds for refusal, only conditional consent can be given in these cases.

Landlord checks will be undertaken in line with the requirements of a housing application, including landlord references, where one or more applicant is a tenant of another landlord. The Council will provide a reference about CCDC tenants to the other landlord(s) involved on request.

The Allocations Team Leader will undertake sample checks of application processing to ensure it is progressing effectively, in a timely manner, along with regular discussion on

all cases at one-to-one meetings. This will help ensure the statutory timescale is met and decisions are made taking account of the right information, in line with legislation.

All tenants who wish to do a mutual exchange are responsible for:

- Finding a suitable mutual exchange partner (though the Council will offer support and information to assist them with this)
- Providing any information the Council reasonably requires to process their application and to make an informed decision about the exchange request
- Seeking independent advice on the implications of an exchange, especially if their tenure is changing or they are changing landlord
- Awaiting completion of the assignment before moving. Tenants must not move until they have received written confirmation from each landlord and the Deed of Assignment has been signed, which will give the date on which the assignment takes effect. If tenants move without landlord consent and without signing the required legal documents, CCDC and the other landlord(s) will treat the occupants as unauthorised occupiers and may seek possession of the property

Outgoing CCDC Tenants are responsible for:

- Providing reasonable access to the property to inspect it, quickly and comprehensively
- Arranging for the incoming tenant to view the property pre-exchange
- Maintaining appropriate communication with the incoming tenant, such as in relation to any property matters required to be addressed by the outgoing tenant prior to the exchange
- Carrying out any agreed repairs, making safe or re-instating the property to its original form, as identified at the property inspection or making advance payment prior to the exchange for any rechargeable items identified²
- Ensuring their current property is at a reasonable standard, acceptable to the incoming tenant, agreed between them and the incoming tenant
- Informing the new tenant of any nuisance or harassment or neighbourhood problems

All Incoming Tenants are responsible for:

- Seeking their landlord's consent for them to exchange, if they are a tenant of another social landlord (although in practice this will often be sought and sent directly by/to the Council)
- Inspecting the property they wish to move to and providing written acceptance of the condition of the exchange property prior to the exchange taking place. Any assignment is explicitly subject to the incoming tenant accepting the property on the basis of its condition and any features it comes with as viewed and accepted with the tenant with whom they exchange.
- Accepting the condition of the Council property they are exchanging to. They are responsible for carrying out their own inspection of the property prior to the

² It should be noted any such items and the associated charge must be the same as what would be chargeable to any other tenant, such as the charges made to transfer applicants or on termination of tenancy.

exchange, and for making any agreements or arrangements regarding the condition of the property with the outgoing tenant.

- Assuming responsibility, on assignment, for any aesthetic damage or alterations made to the property by the outgoing tenant and for all repairs that the Council consider to be tenant repair obligations that were not completed by the outgoing tenant prior to the exchange.
- Reading and understanding the tenancy agreement

Where two (or more) CCDC tenants are exchanging with each other, they will each have the relevant responsibilities of both an incoming and outgoing tenant listed above.

7. Measuring the Impact and What Does Success Look Like

The mutual exchange service aims to provide an accessible and efficient customer service whereby customers are well informed and the right decisions are made in a timely manner.

Key Performance information recorded and monitored

- Number of mutual exchanges
- Percentage of exchange decisions made in 42 days

8. Related Policies and Procedures

- Allocations Policy
- Housing Revenue Policy
- Tenancy Management Policy
- Rechargeable Repairs Policy

9. Consultation and Equality & Diversity

The Council will ensure its policies and practices are non-discriminatory and will promote equal opportunity by preventing and eliminating discrimination on the grounds of race, disability, gender, sexual orientation, religion, belief or age. The scheme will be accessible, responsive and sensitive to the diverse needs of individuals.

The policy will be subject to a 6 week consultation exercise with tenants and any comments duly considered for amendment to the policy as deemed appropriate.

10. Review

The Council will review this policy every three years (or sooner if there are legislative or regulatory changes).

Individual decisions will be subject to the monitoring set out above and a right of review and reconsideration by a manager more senior than officers already involved in the case in question. Customers will be advised of this right of review in any decisions where consent is either not given or given conditionally.

11. Contact

To find out more about mutual exchanges, please contact:

Allocations Team, Tenancy Services,
Cannock Chase Council, Civic Centre, Beecroft Road, Cannock, Staffs, WS11 1BG

Telephone: 01543 462621

E-Mail: allocations@cannockchasedc.gov.uk

Appendix One - Legal Framework for Mutual Exchanges

Principal Legislation

The principal legislation for mutual exchanges is the Housing Act 1985 and Localism Act 2011

Section 92 of the Housing Act 1985 (as amended by the Local Government and Housing Act 1989, s163):

- Grants tenants with lifetime (secure and assured) tenancies the right to exchange their social homes with another secure and assured tenants. In order to carry out an exchange, tenants must transfer their tenancies by Assignment.
- Sets out the grounds (Schedule 3 of the Housing Act 1985) on which landlords can rely to refuse applications for Mutual Exchange (see appendix two)
- Requires Landlords to provide a written decision within 42 days of receiving the tenant's application for the consent, otherwise they cannot rely on any grounds set out in Schedule 3 to refuse the application
- Allows landlords to give consent to a Mutual Exchange to go ahead subject to certain conditions being met such as, payment of rent arrears

Sections 158 and 159 of the Localism Act 2011 set out additional provisions:

- Protection of security of tenure for lifetime tenancies that predate 1 April 2012. This allows tenants to keep similar security of tenure when exchanging with tenants who are on flexible or fixed term tenancies. Tenancies can be transferred by way of Surrender and Re-grant
- Grounds (Schedule 14 of the Localism Act 2011) on which landlords may refuse an application for Mutual Exchange where Section 158 applies
- Tenants' right to enforce decisions via County Court injunction if landlords fail to provide written decisions within 42 days of receiving applications for Mutual Exchange
- Landlords may not use the grounds for refusal of a Mutual Exchange application if they fail to provide a written decision within 42 days of receiving such an application.

Other legislation provides definitions and interpretation of terms set out in those Acts:

- Housing and Planning Act 1986
- Housing Act 1988
- Housing Act 1996
- Crime and Disorder Act 1998
- Anti-Social Behaviour Act 2003
- Housing Act 2004
- Housing and Regeneration Act 2008

Surrender and Regrant - Protections for Secure Tenants Exchanging with Tenants who have a Fixed / Flexible Tenancy

Surrender and re-grant is where tenants surrender their current tenancy and are issued a new tenancy with similar level of security of tenure as their current tenancy. This is applicable when tenants on lifetime / secure tenancies that predate 1 April 2012, who have their security of tenure protected by law, seek to exchange with tenants on flexible or fixed-term tenancies.

For the protection to apply, the following criteria must be met:

- One must be a lifetime / secure tenancy predating 1 April 2012 and the other a flexible or assured shorthold tenancy with a fixed term of at least two years
- Rent payable under the fixed term tenancy must be at social rent
- The exchange does not fall within the list of grounds in Schedule 14 of the Localism Act 2011 on which a landlord may refuse an application for Mutual Exchange

Appendix Two - Statutory Grounds for Refusal

Housing Act 1985, Schedule 3 (as amended):

Ground 1

The tenant or the proposed assignee is subject to a possession order or a suspended possession order.

Ground 2

A notice seeking possession is in force against the tenant or the proposed assignee under Grounds 1 - 6 of Schedule 2 of the 1985 Act or possession proceedings have begun against either party on one or more of those grounds.

Or,

Either of the properties have a possession or demotion order in place or pending.

Or

if the tenant, proposed assignee or a household member has a relevant order such as an injunction or antisocial behaviour order against them (or court action to obtain such an order is in process or pending).

Ground 3

The accommodation is substantially larger than is reasonably required by the proposed assignee.

Ground 4

The size of the accommodation is not reasonably suitable for the needs of the assignee and his family.

Ground 5

The dwelling forms

a) part of, or is within the curtilage of, a building which is held mainly for non-housing purposes or is situated in a cemetery and

b) was let to the tenant or his predecessor in connection with their employment with the landlord, or with a local authority, a new town corporation, housing action trust, Development Board for Rural Wales, or the governors of a grant-aided school.

Ground 6

The landlord is a charity and the proposed assignee's occupation would conflict with the objects of the charity.

Ground 7

The dwelling is designed to make it suitable for a physically disabled person and if the exchange took place, no such person would be living in the dwelling.

Ground 8

The landlord is a housing association or housing trust which provides accommodation only for persons whose circumstances, (other than merely financial circumstances),

make it especially difficult for them to satisfy their housing needs and if the exchange took place there would be no such person living in the dwelling.

Ground 9

The dwelling is one of a group that is let to persons with special needs, and a social service or special facility is provided close by in order to assist the tenants - if the exchange took place there would be no person with special needs living in the dwelling.

Ground 10

The dwelling is the subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement, and at least half the tenants of the dwellings are members of the association, and also that the proposed assignee is not such a member nor is willing to become one.

Localism Act 2011, Schedule 14:

This only applies where one or more of the applicants has an assured shorthold or flexible tenancy, as set out in section 158 of the Act. The Council does not have any of these tenancies.

Where Section 158 applies, the Council can rely on grounds set out in Schedule 14 of Localism Act 2011, which are closely based on those set out in the Housing Act 1985. In addition, unlike the Housing Act 1985, in these circumstances the exchange can be refused outright (rather than conditional acceptance) in the following circumstances:

Ground 1

Any rent lawfully due from a tenant under one of the existing tenancies has not been paid

Ground 2

An obligation under one of the existing tenancies has been broken or not performed (G

Appendix Three - Action Plan

<u>Action</u>	<u>Timescale</u>	<u>Resources / Responsibility</u>	<u>Contributes to Aim(s)</u>
<u>Staff Awareness Sessions</u> (including post adoption of this policy and associated process changes, including as below)	<u>Complete / Ongoing</u>	<u>'Let's Talk About' Sessions</u> <u>Online HomeSwapper Training</u>	<u>Effective Process</u>
<u>Deed of Assignment Review</u>	<u>Complete</u>	<u>PG</u>	<u>Effective Process</u>
<u>Mutual Exchange Process and Step by Step Guide</u>	<u>August 25</u>	<u>PG/RG</u>	<u>Effective Process</u>
<u>Customer Information and Guide</u>	<u>September 25</u>	<u>RG</u>	<u>Customer Service</u>
<u>Mutual exchange sign-up process</u>	<u>September 25</u>	<u>RG</u>	<u>Customer Service</u>
<u>Tenancy agreement issued to incoming tenant</u>	<u>Immediately</u>	<u>RG</u>	<u>Customer Service</u>