

Mutual Exchange Policy

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Authorities covered:	Joint
Applies to:	<p>This document applies to all staff working for Eastbourne Borough Council and, Lewes District Council.</p> <p>It applies to all tenants living in general needs and retirement accommodation managed by Homes First on behalf of Eastbourne Borough Council and Lewes District Council</p>
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Consultation:	<p>Tenants and residents of both Eastbourne Borough Council and Lewes District Council have been involved in the formulation of this policy through face-to-face consultation.</p> <p>Consultation has involved Eastbourne Borough Council and Lewes District Council's, Neighbourhood Housing Team.</p>
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1.0 Policy Statement

Homes First recognises that mutual exchanges encourage tenant mobility and supports sustainable communities through best use of housing stock.

Mutual Exchange provides a broader range of choices regarding size, type and location of homes. It gives the tenant the opportunity to find a home which is suitable for their family's needs and it provides an opportunity to move to other parts of the country.

2.0 Scope

This policy sets out the Homes First's approach to mutual exchanges for all social housing tenants of Eastbourne Borough Council or Lewes District Council. Tenants on market or intermediate market rents, shared owners, leaseholders or freeholders are not eligible to mutual exchange.

Tenants are also not eligible if they are on demoted tenancies, non-secure tenancies, or introductory (starter) tenancies.

The policy outlines the responsibilities of both Homes First and the tenant, and the standards and obligations with which they are expected to comply during the mutual exchange process.

We aim to create and maximise opportunities for qualifying tenants to exercise their choice in accessing housing that meets their needs and aspirations. This policy also provides options for tenant mobility in addition to or as an alternative to internal transfers.

3.0 Legal and Regulatory Framework

This policy clarifies which tenancies have the right to a mutual exchange, the type of tenancies Eastbourne Borough Council or Lewes District Council will grant to tenants following the exchange and the method by which tenancies will be exchanged.

Key legislative and regulatory requirements affecting this policy:

- Housing Act 1985
- Housing Act 2004
- Localism Act 2011 (this Act changed the law on mutual exchange and was implemented on 1st April 2012)

4.0 Key Terms and Definitions

A "Mutual Exchange" is where two or more social housing tenants swap homes by exchanging tenancies with each other. Mutual exchanges can take place between tenants of the same or different landlords but can only be carried out where both landlords give written consent to the exchange. Tenants take on the full rights and obligations of their 'new' tenancy, including the rent. Not all tenants are eligible for mutual exchange and there are certain circumstances in which a landlord may refuse an exchange.

"Assignment" is the transfer of a tenancy from one person to another. When a tenancy is assigned, the rights and responsibilities of the tenancy are transferred from the original tenant to the new tenant. Mutual Exchange is a form of assignment whereby the tenants take on each other's tenancies and terms

"Surrender and re-grant" is another method of exchanging tenancies, where both tenants surrender their current tenancies and are awarded new tenancies, not necessarily on the same conditions.

5.0 Who are qualifying tenants for an Exchange?

Eastbourne Borough Council and Lewes District Council tenants qualify for mutual exchanges if their tenancy gives them a statutory or contractual right to exchange by way of assignment. Joint tenants must apply together for an exchange and both parties must be party to the exchange process.

The right to assign a tenancy is given to secure tenants by statute and to assured tenants by statute and contract:-

This includes tenants who have the following tenancies:

- Assured tenancy
- Secure tenancy
- Flexible tenancy
- Assured shorthold fixed term tenancy of 2 years or more (social rent)
- Assured shorthold fixed term tenancy of 2 years or more (affordable rent) (Exchange via the section 158 of the Localism Act 2011 cannot take place in affordable rent tenancies)

Tenants on the above tenancies have a statutory or contractual right to exchange with another tenant whose landlord is:

- A local authority
- A registered housing association or housing trust
- A New Town
- The Housing Corporation or Housing for Wales

Tenants will not qualify for a mutual exchange if they do not have a statutory or contractual right to exchange. This includes tenants with the following tenancies:

- Starter tenancy or Introductory tenancy
- Intermediate market rent tenancy
- Periodic assured shorthold tenancy
- Fixed term assured shorthold tenancy where the initial fixed term was less than 2 years
- Demoted tenancy
- Non-Secure tenancy

Any occupant who holds a licence will not be permitted to exchange.

6.0 Withholding Consent to an Exchange

Written consent must be provided by both landlords for an exchange to be completed.

Eastbourne Borough Council and Lewes District Council may rely on any of the statutory grounds stated in schedule 3 of the Housing Act 1985 or schedule 14 of the Localism Act 2011 to refuse a request for a mutual exchange. Refer to Appendix 1 of this policy for a full list of these grounds. Mutual exchanges can only be refused in accordance these statutes. Refusal for any other reason amounts to consent

If an Eastbourne Borough Council or Lewes District Council tenant is in rent arrears or in breach of a tenancy term, it will be a condition of granting permission for the exchange that any arrears are paid and/or any breach remedied prior to the exchange taking place.

Eastbourne Borough Council and Lewes District Council will refuse any exchange that would result in a property becoming under occupied by more than one bedroom.

Eastbourne Borough Council and Lewes District Council will not permit any overcrowding in one-bedroom properties or any exchange that would create overcrowding or increases existing overcrowding.

It is unlawful for one party to offer a financial reward to another for an exchange and therefore Eastbourne Borough Council and Lewes District Council will refuse an exchange where it has reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange. Eastbourne Borough Council or Lewes District Council could also seek possession of your tenancy under Schedule 2 of the Housing Act 1985.

7.0 Landlord Responsibilities

On behalf of Eastbourne Borough Council and Lewes District Council we will subscribe to an internet based mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties. We will publicise the availability of this service on our website and through resident publications.

We will ensure each Eastbourne Borough Council and Lewes District Council property has a valid gas and electrical certificate prior to the exchange taking place.

We may conduct an inspection to assess the condition of the property, to identify any repairs that may be required and any damage or alterations that have been made. We may notify both the outgoing and incoming tenant of any repairs that they will be responsible for or to be carried out after the move takes place.

Eastbourne Borough Council and Lewes District Council will maintain responsibility for any landlord repair obligations and will complete any repairs that are the landlord's responsibility when they are reported in line with the councils repairs priorities, this may not happen prior to the exchange taking place.

Eastbourne Borough Council and Lewes District Council may carry out repairs that are not a landlord's responsibility in exceptional circumstances – for example, where there is a health and safety risk – and will recharge the outgoing tenant for all costs of the work carried out.

We will grant tenants that have held an assured or secure tenancy (also known as a protected lifetime tenancy) since before 1 April 2012, a tenancy with no less security when they move to a Eastbourne Borough Council or Lewes District Council home, unless they choose to move to a property that is let within a dedicated scheme or an individual property where Homes First award fixed term tenancies; in these cases, we will grant them an flexible tenancy with a fixed term of 5 years set at an affordable rent.

Where an exchange takes place between an assured shorthold or flexible tenant with a fixed term of at least 2 years on social rent and a secure or assured tenant whose tenancy began before 1 April 2012, the exchange will be by way of surrender and re-grant. This means that each tenant will surrender their existing tenancy and be granted the new appropriate tenancy.

In all other cases, the exchange will take place by way of assignment. See Appendix 2 for the full list of tenancy types offered by registered providers and local authorities and the method by which tenancies will be exchanged. If one tenancy is not assigned, the other cannot be assigned.

8.0 Tenant Responsibilities

Tenants are responsible for finding an exchange partner, and for making an application to us when they have found someone they want to exchange with.

Outgoing tenants must repair any damage, neglect or alterations that they, their household or their visitors have made to the property and to complete any repairs that are considered to be their responsibility, prior to the exchange. Any alterations and non-standard items that both parties have agreed to leave in place will become the responsibility of the incoming tenant. A full list of tenant repair obligations is available on the Homes First website and in our published lettable standard.

Incoming tenants agree to accept the condition of the property they are exchanging to, subject to paragraph 7 above. They are responsible for carrying out their own inspection of the property prior to the exchange, and for making any agreements or arrangements regarding the condition of the property with the outgoing tenant.

Following the exchange, incoming tenants will assume responsibility for any damage or alterations made to the property by the outgoing tenant and for all repairs that were not completed by the outgoing tenant. A full list of tenant repair obligations is available on the Homes First website and in our published lettable standard.

9.0 Timescales

We will give notice of Eastbourne Borough Council and Lewes District Council decision to approve or decline an application to exchange within 42 calendar days of receiving a completed application from all parties in the exchange link. The decision will be given in writing and will state the reasons for withholding consent where an application is declined. The 42-day period applies to providing a decision and not the timescale for the exchange to take place. This could include a conditional approval subject to certain conditions being met, such as remedying a breach of tenancy or paying arrears

Tenants must not move until they have received written approval, from each landlord and signed the necessary paperwork to complete the exchange. If tenants move without our consent and without signing the required legal documents, we will treat the occupants as unauthorised occupants and may seek possession of the property.

Once an exchange has been approved, both tenants must give us at least 7 days' notice of the preferred exchange date to allow time to prepare the necessary documents, method of exchange and/or tenancies granted during an exchange.

Any party can withdraw from a potential mutual exchange at any stage with no recourse to the other party. However, once parties have signed the deed of assignment or the new tenancy agreement then they are bound, and mutual exchange must proceed.

10.0 Related Policies and Procedures

- Allocations Policy
- Repairs Policy
- Tenancy Policy
- Tenants Incentive Scheme

11.0 Monitoring

The Homes First Management Team will oversee the consistent and fair implementation of this policy and will consult with colleagues to ensure timely and accurate updates of the policy are given.

12.0 Review

We will carry out a fundamental review of this policy every three years or sooner, subject to legal, regulatory changes, good practice developments or if internal changes necessitate.

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APPENDIX 1

Grounds for withholding consent to an exchange. We may rely on grounds set out at either Schedule 3 of the Housing Act 1985 or Schedule 14 of the Localism Act 2011 to withhold our consent to an exchange. The grounds are broadly the same across both Acts, and the table below shows these in more detail.

Schedule 3 Housing Act 1985	Schedule 14 Localism Act 2011	Ground Summary
	Ground 1	When any rent due from either tenant has not been paid.
	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	Either tenant has an outstanding possession order or suspended possession order against them.
Ground 2	Grounds 4 & 5	Either landlord has served a notice of seeking possession on their tenant and the notice is still in force, or possession proceedings have commenced. (Grounds 1-6 only in respect of sch 2 in 1985 Act) (Part 2 of Schedule 2 of the 1988 Act in respect of grounds 4 and 5)
Ground 2ZA ¹		Either landlord has served a notice of seeking possession on their tenant and the notice is still in force, or possession proceedings have commenced (absolute ground for possession - ASB)
Ground 2A ²	Ground 6	Any of the following are in force, or an application is pending, against our tenant, the proposed exchange partner of a member of either of their households: - an injunction order under section 153 of the Housing Act 1996 - an anti-social behaviour order - a Demotion Order - a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies
Ground 2B ³		The Dwelling House is subject to a closure notice or order under chapter 3 Part 4 Anti social Behaviour Crime & Policing Act 2014
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed exchange partner.
Ground 4	Ground 8	The property is not reasonably suitable to meet the needs of the proposed exchange partner and their household.
Ground 5 ⁴	Ground 9	The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, [housing action trust], an urban development corporation, or the governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity, and the proposed exchange partner's occupation of the property would conflict with the objects of the charity
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the exchange went ahead a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed exchange partner would not fulfil these criteria.
Ground 9	Ground 13	The property is designated for people with special needs and a specialist facility or social service is provided to assist people

		with those needs. The proposed exchange partner (or anyone living in their household) does not have these special needs.
Ground 10 ⁵	Ground 14	The property is the subject of a management agreement that means that at least half the people living in the homes are members of the association, and the proposed exchange partner is neither a member, nor willing to become a member, of the association.

Footnote

¹ Ground 2ZA was added by Anti-social Behaviour, Crime and Policing Act 2014 ss. 100(2), 185(1)(2)(c)(3)(b)

² Ground 2A was added by Housing Act 2004 ss191, 270(4)(5)

³ Ground 2B was added by Antisocial Behaviour, Crime and Policing Act 2014 s185(1)(2)(c)(3)(c) Sch.11 para 16

⁴ Housing Action Trust in Ground 5 was added by the Housing Act 1988 s83(6)

⁵ Ground 10 was added by the Housing and Planning Act 1986 Sch 5 para 7

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APPENDIX 2

The table below provides guidance for outgoing tenants who may be exchanging with other landlords who offer alternative tenure types. The tenancy type highlighted in red in the table below is the usual type of tenancy that Eastbourne Borough Council or Lewes District Council would issue to an incoming tenant (the only exception is if a flexible tenancy has been issued, as mentioned in 7 above).

Tenancy held before exchange		Tenancy held after exchange		Method of exchange
Household 1 (outgoing tenant)	Household 2 (incoming tenant)	Household 1 (outgoing tenant)	Household 2 (incoming tenant)	
Protected Lifetime	Protected Lifetime	Protected Lifetime	Protected Lifetime	Assignment
Protected Lifetime (pre 2012 grant)	Fixed term social rent	Protected Lifetime	Fixed term social rent	Surrender and re-grant
Protected Lifetime	Fixed term affordable rent	Fixed term affordable rent	Fixed term social rent	Assignment as affordable rent tenancies sit outside the regime in Localism Act 2011
Fixed term affordable rent	Protected Lifetime	Fixed term social rent	Fixed term affordable rent	Assignment as affordable rent tenancies sit outside the regime in Localism Act 2011
Fixed term social rent	Fixed term social rent	Fixed term social rent - remaining tenancy length from household 2	Fixed term social rent - remaining tenancy length from household 1	Assignment
Fixed term social rent	Fixed term affordable rent	Fixed term affordable rent - remaining tenancy length from household 2	Fixed term social rent - remaining tenancy length from household 1	Assignment
Fixed term affordable rent	Fixed term social rent	Fixed term social rent - remaining tenancy length from household 2	Fixed term affordable rent - remaining tenancy length from household 1	Assignment
Fixed term affordable rent	Fixed term affordable rent	Fixed term affordable rent - remaining tenancy length from household 2	Fixed term affordable rent - remaining tenancy length from household 1	Assignment

Tenants are responsible for making sure they understand the tenancy they will be granted following an exchange and we would suggest applicants seek independent legal advice if they are uncertain.