

Hexagon

# Mutual Exchange Policy

POLICY DOCUMENT

# 1. Scope and aims

- 1.1 This policy covers Hexagon's approach to mutual exchanges both within Hexagon's properties and with external parties.
- 1.2 A mutual exchange consists of two or more tenants exchanging their homes and taking on the terms of each other's tenancy.
- 1.3 This policy applies to Hexagon residents with a Secure or Assured Tenancy
- 1.4 This policy aims to:
  - Promote mutual exchange as an effective way of increasing tenant mobility and to enable residents affected by the 'Bedroom Tax' and 'Benefit Cap' to downsize or reduce their rent cap.
  - Support residents with mutual exchanges
  - Provide residents and staff with clear information on their rights and the requirements for a mutual exchange of properties
  - Set out the mechanism for exchange – i.e. assignment or surrender and re-grant.
  - Set out the grounds for refusing an exchange. Our criteria for accepting or rejecting candidates for mutual exchange will be consistent, fair and lawful.

# 2. Equality and Diversity

- 2.1 An equality and diversity assessment has been carried out.
- 2.2 The policy complies strictly with our legal obligations and if applied fairly will have no negative impact on those with protected characteristics.

# 3. Consultation

- 3.1 This policy was presented to the Resident Advisory Group on 6 July 2021 and their comments were incorporated where possible.

# 4. Policy Statement

- 4.1 Mutual exchanges are an essential alternative to internal and local authority waiting lists for those looking to move.

4.2 Given the scarcity of available housing, particularly to those seeking non-urgent moves, it is important Hexagon make the option of seeking a mutual exchange available to any eligible residents.

4.3 Mutual exchanges are governed by specific legislation. Hexagon has obligations both in terms of how we consider applications to exchange and the process to follow in approving or rejecting them.

#### 4.4 Right to Exchange

4.4.1 The law on mutual exchange is complex and a resident's right to exchange varies depending on the type of tenancy agreement they have. Hexagon residents with the following tenure types have the right to exchange homes:

- Secure tenants (have a statutory right to exchange through the 1985 Housing Act),
- Assured tenants (have no statutory right but have a contractual right to exchange in their tenancy agreement).

4.4.2 Hexagon residents (and residents from other landlords wanting to exchange) with the following tenure types do not have the right to exchange:

- Starter tenants,
- Assured Shorthold Tenants or Licences,
- Intermediate market rent tenants,
- Shared owners.
- People with demoted tenancies (where a Court has reduced the rights of an Assured or Secure tenancy)
- Temporary or decanted tenancies (where somebody is living elsewhere while works are being done)
- Leaseholders

4.4.3 Hexagon residents may exchange with tenants of a local authority, housing association or social landlord registered with the Regulator of Social Landlords or the Welsh Government. Neither assured nor secure tenants can assign to a private sector tenant or with an empty home.

## **4.5 Exchange (Assignment)**

- 4.5.1 Mutual Exchanges are effected by Deed of Assignment (unless they are a pre-1 April 2012 lifetime assured tenant exchanging with a flexible or fixed term tenant – see 4.5.3 below).
- 4.5.2 Both parties thus continue in their exchange partner's tenancy with the same conditions (see 4.9).
- 4.5.3 Post-1 April 2012 secure and assured tenants will lose their security of tenure if they exchange with flexible or fixed term tenants. Any exchange would take place via surrendering up their existing tenancy and being granted a new tenancy as a flexible or fixed term tenancy.
- 4.5.4 Hexagon will offer advice to any outgoing resident exchanging with a flexible or fixed term tenant to ensure they understand they will no longer hold a lifetime tenancy and the effect of this on their rights.

## **4.6 Exchange (by creating a new tenancy)**

- 4.6.1 Through the Localism Act 2011, a different mechanism exists for mutual exchanges based on the surrendering up of their existing tenancy and the granting of new tenancies.
- 4.6.2 For any outgoing assured tenant, whose tenancies had commenced prior to 1 April 2012, if they are looking to exchange with a flexible or fixed term tenancy may be required to give up their assured tenancy and may be granted a flexible or fixed term tenancy depending on the landlord's mutual exchange policy.
- 4.6.3 Incoming flexible or fixed term tenants exchanging in this way have no specific legal provision in terms of the new tenancy that should be offered. However as Hexagon does not offer fixed term tenancies, Hexagon will offer an Assured tenancy to those incoming tenants.

## **4.7 Landlord's Consent**

- 4.7.1 The written consent of all landlords involved with an exchange is required before the exchange takes place.
- 4.7.2 Hexagon requires that consent is given by means of a Licence to Assign.

## 4.8 Grounds for Withholding Consent to Mutual Exchange

4.8.1 Consent to an exchange can be withheld on grounds set out below:

<p>Grounds for refusal of mutual exchange for all <b>Secure tenants</b> and <b>Assured tenants</b></p>	<p>A court order for possession or a suspended possession order has been made either property,</p>
	<p>The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced,</p>
	<p>As the above bullet but when using the absolute ground for possession for antisocial behaviour.</p>
	<p>The property is subject to an antisocial behaviour closure notice or closure order.</p>
	<p>The property is substantially larger than is reasonably needed by the incoming tenant and their household.</p>
	<p>The property is not reasonably suitable to the needs of the incoming tenant and their household.</p>
	<p>The property is part of, or near, a building that is held for non-housing purposes ,or is let in connection with outgoing tenant's employment.</p>
	<p>The landlord is a charity and the incoming tenant's occupation of the property would conflict with objects of the charity.</p>
	<p>The property has been substantially adapted for occupation by a physically disabled person, and if the exchange were to proceed such a person would not be living there.</p>
	<p>The landlord lets properties to people in difficult circumstances (other than financial circumstances) and the incoming tenant does not meet this criteria.</p>
<p>The property is let to people with special needs where there is a special service or facility nearby to assist people with those needs, and if the exchange were to proceed, no person with such needs would living there.</p>	

Additional Grounds for <b>Assured tenants</b> (in addition to the ones above)	Another landlord involved in the exchange has refused consent.
	The property or tenancy is subject to a section 106 Town and Country Planning Act (1990) restriction, planning restriction or other binding restriction which conflicts with the exchange.
	The tenancy is a fixed-term tenancy, and is either currently in the end-of-term review or notice has been given that the tenancy will not be renewed on a like-for-like basis, and for this reason it is not appropriate to allow exchange.
	The tenant has, beyond reasonable doubt, offered, made or received payment in respect of the exchange.
	The tenant has refused to allow access to Hexagon to inspect the property to carry out a review of its condition and address any works or for any other reason upon receipt of any request to exchange.
	Any other exceptional circumstances which would mean the exchange was not acceptable to Hexagon – such decision to confirmed by the Housing Services Director.
Two additional grounds when new tenancies are granted under the 2011 Localism Act	Any rent due from a tenant under one of the existing tenancies has not been paid.
	An obligation under one of the existing tenancies has been broken or not performed.

4.8.2 Hexagon will apply these grounds when appropriate and notify residents in writing of its decision within the 42 day timescale.

#### 4.9 Conditional Consent

4.9.1 Rent arrears and other tenancy breaches: If the resident has broken a condition of tenancy or owes rent then Hexagon may grant consent on the conditions that the resident pays the outstanding rent and remedies any other breach of the tenancy – we are not permitted to impose any other form of condition.

4.9.2 Rent arrears due to 'Bedroom Tax' or 'Benefit Cap': We want to encourage residents affected by the 'Bedroom Tax' or 'Benefit Cap' to downsize – If the rent arrears are linked to either of these issues the exchange may be approved subject to the following:

- If the arrears are less than £800 and the resident has been paying a minimum of £5 per week, the Neighbourhood Services Manager or Rents and Revenue Manager may approve the mutual exchange;
- If the arrears are greater than £800 and/or the resident has not been making any contributions the exchange may still be considered but the approval of the Housing Services Director must be obtained;
- The resident must sign an undertaking to make payments of a minimum of £5 per week after the exchange has taken effect.

#### **4.10 Effect on the Tenancy Following Assignment**

4.10.1 When an exchange is carried out by Deed of Assignment, each tenant steps into the shoes of their exchange partner and takes on the tenancy of the outgoing tenant. No new tenancy has been created; the original tenancies are still in existence but have changed hands. However, outstanding rent/service charge arrears or non-continuous breaches of tenancy conditions committed before the exchange do not become the responsibility of the incoming tenant.

4.10.2 The only exception to 4.9.1 is succession status, as this is attributed to the tenant, not the tenancy. A successor will retain that status even after being assigned a tenancy on which there has been no succession and vice versa.

4.10.3 No exchange should mix assignment (4.3) and granting of new tenancies (4.4). If one landlord, instead of permitting the assignment, grants a new tenancy, the other landlord must do likewise. If a Hexagon Assured or Secure tenant wishes to exchange with an incoming fixed term or flexible tenant (as per 4.6 above), the other landlord will offer a new tenancy in accordance with its policy and we will sign up the incoming tenant on an assured tenancy agreement on the latest re-let rent.

4.10.4 For incoming secure tenants from a Local Authority, unless they are exchanging with an existing Hexagon secure tenant, they will become an assured tenant as they will step into the shoes of Hexagon's outgoing tenant.

4.10.5 Unless the exchange is happening by way of Surrender and Re-grant as it is an exchange with a flexible or fixed term tenancy, all exchanges will be effected by Deed of Assignment.

4.10.6 Paying or receiving a premium in connection with a mutual exchange is not permitted and is a ground for possession for secure tenants.

#### **4.11 Condition of Property**

4.11.1 When undergoing a mutual exchange, each party accepts the property in the condition it is received. No work to alter or improve the property will be undertaken by the landlord, nor will any planned improvements be brought forward.

4.11.2 Hexagon will continue to carry out all statutory obligations, that is, responsive and other repairs, and, where possible, we will seek to survey properties before an exchange takes place.

#### **4.12 Unauthorised Mutual Exchange**

4.12.1 In the event of a mutual exchange taking place without our knowledge or written consent, we will treat the occupants as unauthorised occupiers and will advise them to return to their own property within 7 days to avoid a Notice to Quit being served on them both. If they return within the 7 days, their mutual exchange application can continue to be considered.

#### **4.13 Appeals**

4.13.1 Although Mutual Exchanges are shaped by legislation, residents can appeal any decision to refuse the exchange to the Neighbourhood Services Manager.

## **5. Legal Framework**

- Housing Act 1985
- Housing Act 1988
- Localism Act 2011

## **6. Related Hexagon Policies and Procedures**

- Mutual Exchange Procedure

Prepared by: Policy Officer

Approved by: Directors' Group

Approved date: May 2022

Date of last review: July 2015

Document Owner: Housing Services Director

Date of Next Review: July 2024

Hexagon