



# Mutual Exchange Procedure 2023

## 1 Introduction

- 1.1 This procedure has been produced to detail how Mid Devon Housing (MDH) will support the provision of mutual exchange in its social housing stock.
- 1.2 One way to increase choice and flexibility for social housing tenants is through mutual exchange. This is where social housing tenants agree to swap their tenancies through a deed of assignment. Agreement to the move is subject to criteria detailed within this procedure.
- 1.3 MDH will ensure that tenants who wish to mutually exchange are aware of any implications to their tenancy, such as:
  - Any rent changes
  - Any changes between security i.e. secure or assured status
  - Any implications on the Right to Buy
- 1.4 This procedure should be read in conjunction with the [MDH Tenancy Management Policy](#)

## 2 Aims and Objectives

### Aim

- 2.1 The aim of the procedure is to explain how MDH will manage mutual exchanges and grounds for refusal.

### Objective

- 2.2 The objective is to support tenants who wish to undertake a mutual exchange and to provide a clear framework for tenants and staff.

## 3 What is a Mutual Exchange and who is eligible?

- 3.1 A tenancy exchange is when tenants swap their home legally with another council or housing association tenant. It is often called a mutual exchange.
- 3.2 MDH tenants can request a mutual exchange to any social housing or housing association property.
- 3.3 Tenants need to:
  - find someone to swap homes with
  - get written permission from MDH
  - complete the legal paperwork
- 3.4 Tenants can normally exchange their home with MDH's permission if they have:
  - A secure council tenancy
  - A flexible (fixed term) tenancy

3.5 Tenants do not have the right to exchange if:

- They have an introductory tenancy
- They have a demoted tenancy
- Tenants who are temporarily decanted may not apply for a mutual exchange at the temporary address but may have the right to exchange at their permanent address.
- They are leaseholders or shared owners
- They are currently in a review period of their flexible tenancy

## 4 Refusals

4.1 MDH and all social landlords administering mutual exchanges need to operate within the Housing law. Section 92 of the Housing Act 1985 permits secure tenants to assign their tenancy by way of mutual exchange. Under Section 92, the social landlord can only refuse the exchange on one the grounds within Schedule 3, these are:

- A court order has been made giving possession of the tenant dwelling to the Landlord.
- A notice of seeking possession has been served on either tenant or the person whom the tenant proposes to exchange and the notice is still in force.
- Either property is to be under occupied or over occupied as a result of the exchange
- The property has been let to a tenant who is an employee of the Landlord, and the property is within the boundaries of an operational building.
- The landlord is a registered charity and the where the incoming tenants residency would conflict with the purposes of that of the charity.
- The landlord is a housing association or housing trust which caters for people with special needs and the exchange would result in the property being occupied by someone without those needs.
- The dwelling is in a group of dwellings let to people with special needs, e.g. elderly, and the exchange would result in the dwelling being occupied by someone without these needs.

4.2 In addition to the grounds under Section 92 Schedule 3 there are additional grounds for refusal listed in Schedule 14 of the Localism Act 2011. These are:

- When any rent lawfully due from a tenant under one of the existing tenancies has not been paid
- When an obligation under one of the existing tenancies has been broken or not performed

4.3 The full list of grounds for refusal can be found in Appendix 1

## 5 Types of Exchange

5.1 Mutual exchanges are carried out in one of two ways;

- Through assignment. This is where tenancies are swapped at the same time homes are exchanged. The incoming tenant takes on the rights and responsibilities of the outgoing tenant and both will have tenancies with a similar security of tenure. No new tenancy is created. Each tenant will sign a 'Deed of Assignment'.
- Through surrender and re-grant. This is used in circumstances where a mutual exchange application involves one social housing tenant with a tenancy that was granted before 1st April 2012 and one whose tenancy was granted on or after 1st April 2012 and the security of tenure is different. The tenancies are surrendered and re-granted to offer a similar security of tenure at the new property.

5.2 In circumstances where a tenant has inherited their tenancy by succession or it has been legally transferred to them by way of assignment from a family member, the succession rights follow the tenant and do not remain with the tenancy i.e. a tenant who is a successor under the original tenancy will remain a successor in their 'new' tenancy following mutual exchange, whichever method of exchange is used.

## 6 Tenant Responsibilities

6.1 Tenants are responsible for finding a suitable person/persons to mutual exchange with. MDH uses the [HouseExchange](#) website to allow tenants to advertise their property

6.2 The applicants of a mutual exchange must be applying under their own free will, having found a suitable property match. They must not have been coerced or forced into making such an application and neither should any money or other form of recompense be offered or take place.

6.3 Tenants must ensure that the property they wish to mutual exchange with will not under or over occupied because of the move. This means:

- Tenants currently in a 3 bedroom home that only have a 1 bedroom need will not be permitted to mutually exchange to a property which has 2 or more bedrooms
- Tenants currently in a 1 bedroom home that have a 3 bedroom need will not be permitted to mutually exchange to a property with less than 3 bedrooms

6.4 The applicants must accept the property in its present condition and must carefully inspect the property ahead of agreeing to make the move because they could be responsible for remedying any defects that are discovered after the exchange is completed.

6.5 The incoming tenants will be required to accept:

- responsibility for previous tenant's improvements or alteration to the home, be they authorised improvements or not;
  - tenant neglect or abuse;
  - any defects hidden at the time of inspection;
  - rubbish and household items left by the previous tenant.
- 6.6 MDH will not accept any responsibility for, or costs associated with, remedying any points from the above list.
- 6.7 Applicants should consider if the new home will be suitable for their needs and that includes pets and animals. Some social housing properties do not allow pets or animals and tenants would need to consider this if they are expecting to take their pets or animals with them.

## 7 The Mutual Exchange

- 7.1 Once an accurately completed mutual exchange application is received, MDH has 42 days (six weeks) in which to make a decision failing which we will be unable to rely on the statutory grounds for refusal.
- 7.2 The decision can be either to:
- Refuse the exchange (with reasons)
  - Approve the exchange, or
  - Approve the exchange with a condition
- 7.3 Providing there are no obvious grounds for refusal on receipt of the application, the property will be inspected by an MDH Officer, using inspection guidelines. Any unauthorised alterations or non-standard/additional fittings will be recorded and all problematic alterations will need to be removed or rectified by the tenant prior to the mutual exchange taking place.
- 7.4 This is not a comprehensive inspection, and there may be hidden hazards, alterations or damage not identified during this inspection, however the incoming tenant will still be responsible to rectify issues subsequently discovered.
- 7.5 The applicant who wishes to exchange into the property will be encouraged to attend the property inspection, so that any alterations can be highlighted and to ensure that a thorough inspection takes place. A letter will need to be signed confirming acceptance of the new property and its current condition.
- 7.6 Provided there are no grounds for refusal, consent shall be notified to all parties. Should grounds for refusal apply or conditional consent be given, this decision will also be notified in writing to both parties and any other landlords.

- 7.7 As part of the mutual exchange process, MDH will complete necessary (good practice) gas and electric safety checks, to ensure that a home is safe for the incoming tenant, or exchange partner. These checks are usually organised to be completed as near to the exchange date as possible.

## 8 Appeals

- 8.1 If an applicant feels that a refusal or an inappropriate conditional consent has been applied then they have the right to appeal to the Operations Manager for Housing Management Services or a Neighbourhood Team Leader in their absence.
- 8.2 The appeal is outside of the formal complaints process.

## 9 Review and version control

- 9.1 MDH will review this procedure every 10 years and as required to address legislative, regulatory, best practice or operational issues.
- 9.2 This procedure was produced in 2023 and is version 1.00

## Appendix 1

### Grounds to Refuse a Mutual Exchange

<b>Mutual Exchange – Grounds for Refusal</b>		
<b>Schedule 3 of the Housing Act 1985</b>	<b>Schedule 14 of the Localism Act 2011</b>	<b>Grounds for refusing consent to the exchange</b>
–	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies 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	A court order for possession or a suspended possession order has been made for either property.
Ground 2	Grounds 4 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 5	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 assignee's occupation of the property would conflict with the objects of the charity.
Additional Ground (Housing Act 2004)	Ground 6	An injunction order under section 153 of the Housing Act 1996 or an anti-social behaviour order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the assignment 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 assignee would not fulfil these criteria.
Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special

		needs, and if the assignment was to go ahead no person with those special needs would be living there.
Ground 10	Ground 14	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 of 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.