

Mutual Exchange Policy

1. Introduction

1.1 Mutual exchange refers to the legal right of secure and assured tenants to swap their tenancies. The purpose of our Mutual Exchange Policy is to promote choice and mobility for tenants and make the best use of our stock in meeting housing need.

1.2 This policy sets out:

- Our approach to mutual exchange
- Which tenancies have the right to a mutual exchange
- The type of tenancies we will grant to tenants following an exchange
- How we will manage applications
- The circumstances under which we will give or withhold consent to an exchange.

It outlines the responsibilities of both Peabody Group (Peabody and its subsidiaries – excluding Peabody Central Housing Trust) and the tenant, and the standards and obligations they both need to comply with during the mutual exchange process.

1.3 This policy has links to some of our other policies, and we've thought about these links when reviewing the policy. This policy should be read in conjunction with the following:

- Lettings policies
- Repairs Policy
- Tenancy Policy
- Lodgers, Subletting and Unauthorised Occupants Policy
- Rehousing Policy

2. Scope

2.1 This policy sets out our approach to mutual exchanges for all social housing tenants and licensees. It applies to Peabody Group (Peabody) and all subsidiaries, excluding Peabody Central Housing Trust.

2.2 Tenants of the Regency Estates at Millbank, Lee Green, Victoria Park and Cumberland Market, market or intermediate market rent tenants, tenants on starter tenancies, shared owners, leaseholders or freeholders are not eligible for mutual exchange.

2.3 Tenants or licensees are also not eligible if they are on demoted tenancies, licence agreements, periodic assured shorthold tenancies, or assured shorthold tenancies where the initial fixed term was less than two years.

3. Key terms and definitions

3.1 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.

3.2 **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

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the new tenant. If a tenancy is assigned during a mutual exchange, the tenants take on each other's tenancies.

- 3.3 **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.

4. Our approach

- 4.1 We will consider applications for mutual exchange between our tenants or with tenants of another social housing provider. Exchanges can be two way or may involve multiple swaps in a chain. There are no limits to the number of times a tenant may exchange and tenants can apply to exchange again at any time after swapping homes.
- 4.2 We advise our tenants they must not give or receive money or any other incentive as part of an exchange and that we can take possession action if they do so.
- 4.3 We do not pay an incentive for downsizing for those exchanging to a smaller home or provide a removal expenses allowance.

Who can exchange – qualifying tenants

- 4.4 Peabody (and subsidiary) tenants qualify for mutual exchanges if their tenancy gives them a statutory or contractual right to exchange. The right to assign a tenancy is given to secure tenants by statute and to assured tenants by contract, but only for the purposes of an exchange. This includes tenants on an:
- Assured tenancy
 - Secure tenancy
 - Assured shorthold fixed term tenancy of two years or more (social or affordable rent)
- 4.5 Tenants on the above tenancies have a statutory or contractual right to exchange with another secure or assured tenant whose landlord is:
- A local authority
 - A registered housing association or housing trust
 - A New Town

Who cannot exchange – non-qualifying tenants

- 4.6 Tenants will not qualify for a mutual exchange if they do not have a statutory or contractual right to exchange. This includes tenants on a:
- Starter tenancy
 - Intermediate market rent tenancy
 - Periodic assured shorthold tenancy
 - Fixed term assured shorthold tenancy where the initial fixed term was less than two years
 - Tenancy within a demoted tenancy period
 - Licence agreement

Grounds for withholding our consent to an exchange

- 4.7 Written consent must be provided by both landlords for an exchange to be completed.
- 4.8 We may rely on any of the statutory grounds stated in schedule 3 of the Housing Act 1985 to refuse an exchange for tenants that hold a periodic secure tenancy. Where our tenant holds a

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secure tenancy, we will usually make it a condition of granting permission for the exchange that any arrears are paid before the exchange takes place. Under certain circumstances, such as where there may be domestic abuse, we may agree that arrears can be repaid after the exchange has taken place. This will be considered on a case-by-case basis with the decision being jointly made by the Head of Neighbourhoods, or the Head of Service for Care and Support, and the Head of Collections, or subsidiary equivalents.

- 4.9 We may rely on any of the statutory grounds stated in schedule 14 of the Localism Act 2011 to refuse an exchange in cases where either tenant holds an assured tenancy or an assured shorthold fixed term tenancy of two years or more (social or affordable rent).
- 4.10 We will withhold consent where the home requires major adaptations to meet the needs of the proposed incoming tenant or their household.
- 4.11 We will refuse any exchange that would result in our property becoming under-occupied or over-occupied by more than one bedroom. We will not allow any overcrowding in one bedroom properties. We will make it clear to tenants who move into a property smaller than that required by our Lettings Policy standards that they must be sure that the property is suitable for their family's long-term needs and that they should not expect to be able to transfer into a larger home in the foreseeable future, subject to any changes in circumstances.
- 4.12 We will refuse an exchange where we have reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange.
- 4.13 We may refuse an exchange where the accommodation has been provided as supported housing or with funding through the Rough Sleepers Initiative and the accommodation currently occupied by the prospective tenant has not been so provided.
- 4.14 We will refuse an exchange where there are significant safeguarding concerns or members of the public are put at risk.
- 4.15 We may rely on any other reasonable grounds to withhold our consent where allowing the exchange would put us in breach of any covenant, restriction or planning obligation. This would apply in cases where the exchange would conflict with any relevant planning restrictions or the purpose for which the tenancy was initially granted. Examples are where:
- A local connection is required
 - The incoming tenant must meet the necessary criteria by completion of a risk and needs assessment for age designated schemes
 - Tenants must have specific support needs in order to meet the intended purpose of the housing.

Any decision not to allow an exchange due to age related or support requirements will be made by the appropriate Head of Service in Care and Support.

- 4.16 Before deciding on whether to give or withhold consent, we will inspect the tenant's property to check for any damage or breach of tenancy which could give grounds to refuse the application. We may grant consent on condition that any rent arrears are cleared or any breach of tenancy is rectified. We will write to the tenant setting out the conditions.

Our responsibilities and requirements

- 4.17 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.

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- 4.18 We will give notice of our decision to approve or decline an application to exchange within 42 calendar days of receiving a completed application. Reasons for not giving consent are set out in legislation, as is the 42 day requirement. Our decision will be given in writing and will state the reasons for withholding consent where an application is declined.
- 4.19 We will ensure our property has valid gas and electrical certificates before approving the exchange and will arrange for the necessary checks to obtain them. We won't allow the mutual exchange to proceed until any required works have been completed and the valid gas and electrical certificates are obtained.
- 4.20 We will inspect the condition of the property to identify any repairs that may be needed and any damage or alterations that have been made. We notify both the outgoing and incoming tenant of any repairs that they will be responsible for or that need to be carried out after the move takes place.
- 4.21 We will maintain responsibility for any landlord repair obligations, and will complete any repairs that are our responsibility when they are reported to us, before the exchange takes place, unless the surveyor advises in their report that the repairs can be carried out once the new tenant has moved in.
- 4.22 We will require the outgoing tenant to repair any damage, neglect or alterations that they, their household or their visitors have made to the property and to complete any repairs that we consider to be their responsibility. These should be completed before the exchange.
- 4.23 We may carry out repairs that are not our 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.
- 4.24 Following a mutual exchange, we will continue to meet all of our repair and maintenance obligations for the property in line with the law and the tenancy agreement.

Tenants' responsibilities

- 4.25 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.
- 4.26 Incoming tenants agree to accept the condition of the property they are exchanging to. 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.
- 4.27 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 we consider to be the tenant's responsibility that were not completed by the outgoing tenant. This includes internal decoration or minor repairs needed, cleaning and refuse disposal. A full list of tenant repair obligations is available on the Peabody or Town and Country Housing websites.
- 4.28 Tenants must not move until they have received written confirmation 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 occupiers in line with our Lodgers, Subletting and Unauthorised Occupants Policy and may seek possession of our property.
- 4.29 Once an exchange has been approved, both tenants must give us seven days' notice of the preferred exchange date to allow time to prepare the necessary documents.

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Method of exchange and tenancies granted during an exchange

- 4.30 Mutual exchanges are carried out either by assignment or surrender and re-grant of tenancies. This is determined by the tenancy that each of the exchange partners have. We will always advise our tenants of the type of tenancy they will receive in the exchange when we approve their application.
- 4.31 We will grant tenants that have held an assured or secure tenancy (also known as a protected lifetime tenancy) since 12 April 2012, a tenancy with no less security when they move to a Peabody home. This will not apply if they choose to move to a property that is let at an affordable rent. In these cases, we will grant them an assured tenancy set at an affordable rent.
- 4.32 We will offer tenants who, before the exchange, held a fixed term social or affordable rent assured shorthold tenancy and who are exchanging with a Peabody assured or secure tenant, a full assured tenancy.
- 4.33 Where an exchange takes place between two assured shorthold fixed term tenants, tenants moving into our property will be granted a new assured shorthold tenancy.
- 4.34 Where an exchange takes place between an assured shorthold fixed term tenant and an assured periodic or secure tenant, 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.
- 4.35 If one tenancy is not assigned, the other cannot be assigned.
- 4.36 The right to exchange by assignment can be enforced against the landlord by the tenant. One landlord cannot enforce the right against another landlord. If the other landlord refuses to assign the tenancy without good reason, Peabody has no direct recourse.

5. Legislation and Regulation

5.1 Key legislation and regulation relevant to this policy is:

- Housing Act 1985
- Housing Act 2004
- Localism Act 2011
- Regulatory Framework for Social Housing in England (Tenancy Standard).

6. Responsibilities

- 6.1 The Managing Directors and Care and Support Directors have overall responsibility for the delivery of, and compliance with, this policy and all other associated policies.
- 6.2 For Town and Country Housing the Operations Director has overall responsibility for this policy.
- 6.3 The Assistant Directors of Customer Service are responsible for training and monitoring that this policy is followed.
- 6.4 For Town and Country Housing the Head of Housing and Community Safety is responsible for training and monitoring that this policy is being followed.

Approval

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Policy owner	Managing Director North Counties