

**RUNNYMEDE BOROUGH COUNCIL**

**HOUSING BUSINESS CENTRE**

**Mutual Exchange Policy**

Approved: 16 March 2016

Review due: 16 March 2018

## **1. Introduction**

Runnymede Borough Council acknowledges that it has limited housing stock and, as such, can not always meet the changing housing needs of existing tenants. Current Council tenants can apply for a transfer with or without a housing need, however in order to further meet the housing aspirations of tenants the Council promotes social mobility through mutual exchange.

A mutual exchange is the process by which two social sector tenants can exchange their tenancies with each other. Although it is a statutory right for all secure and secure flexible tenants, there are certain conditions which must be considered before consent for an exchange can be granted.

This policy clarifies the conditions that must be met before the Council will approve an application for an exchange and to give guidance to staff and tenants of the Council on the obligations and responsibilities on both parties.

## **2. Aim**

We are committed to providing an effective and efficient mutual exchange service that reflects best practice, complies with legislation and protects the rights of tenants.

The aim of this policy is to set out our approach to ensuring that mutual exchanges are administered correctly. The key objectives are:

- To ensure that tenants are aware of the framework that outlines the requirements and qualifications for a successful exchange to take place.
- To ensure that tenants meet their obligations to seek the Council's permission before proceeding with an exchange.
- To clarify the responsibilities of all the parties involved in a mutual exchange.
- To consider applications for mutual exchange in a fair, consistent and equitable manner.
- To protect Council tenants from being coerced or pressurised into exchanging their home.
- To protect the Council's housing stock as well as its legal position.
- To prevent social housing fraud.

## **3. Scope**

This policy applies to the management, by the Housing Business Centre, of all residential tenancies of council-owned social housing and covers all applications for mutual exchange. This policy also applies to the applications for mutual exchanges which involve tenants of other councils or Registered Providers.

#### **4. Qualification for Mutual Exchange**

- 4.1 Runnymede Borough Council grants Secure, Introductory and Flexible fixed term tenancies for its social housing within the borough. It also grants Non-Secure tenancies for its temporary accommodation. At the start of each tenancy we explain the terms and conditions of the tenancy agreement, which forms a legal contract between the Council and the tenant.
- 4.2 Where the Council grants a flexible fixed term tenancy, this could be for 2, 5 or 10 years. Please see the Council's Tenancy Strategy as well as its Tenancy Policy separately.
- 4.3 Secure and flexible tenants have a Right to Exchange the property they are occupying with the property of another tenant of a Council or Registered Provider. The Council must consider all applications for a mutual exchange from secure tenants.
- 4.4 Introductory and Non-Secure tenants do not have the Right to Exchange. The Council will not consider any application which involves an Introductory or Non-Secure tenant.

#### **5.0 Accepting an application for a Mutual Exchange**

- 5.1 Only the named tenant or joint tenant can make an application for permission for a mutual exchange. Applications will not be accepted from household members or third parties.
- 5.2 Where an application for a mutual exchange is submitted involving a joint tenancy, both tenants must request and consent to the exchange. Where one joint tenant has left the household, for example through relationship breakdown, the Council will only accept the application once an assignment of tenancy has taken place between the tenants. There is a separate procedure which is followed before an assignment can take place. Further details can be found on our website.
- 5.3 All parties involved in the mutual exchange will be required to complete and submit a Council Mutual Exchange application form, as well as complete the requirements of any other landlord involved. This may involve completing more than one application form.
- 5.4 Where an exchange involves more than two parties, consideration will be given to the consequences of each individual proposed move involving one of the Council's properties.

#### **6.0 Considering an application for a Mutual Exchange**

## 6.1 Timescales

- 6.1.1 The Council must confirm refusal, consent or conditional consent (if applicable) of a mutual exchange in writing within a period of 42 days (6 weeks).
- 6.1.2 The 42 days starts once fully completed application forms have been submitted by all involved parties, received and accepted by the Council, subject to section 5 above.
- 6.1.3 Whilst the Council will always endeavour to consider and determine the application within the 42 day time limit, should the Council fail to respond within the 42 day time limit the tenant cannot assume consent to have been given and must not proceed with the exchange. The tenant's legal remedy is to seek an injunction or a declaration in the County Court to force a reply from the Council.
- 6.1.4 An exception to the 42 day timescale would be where the Council has notified the applicant of a problem relating to their application within the initial 42 day period. In this case, the 42 days would restart from the date of that letter.

## 6.2 Factors for consideration

### 6.2.1 General considerations

The Council must consider all applications for mutual exchange from secure and flexible tenants, subject to section of section 5 above. When considering an application for mutual exchange, the Council must be satisfied that:

- No party to the exchange is being unduly coerced or pressurised into agreeing to the exchange.
- No party to the exchange is agreeing to the exchange for financial or material gain.
- The mutual exchange system is not being used as a means to abuse the transfer scheme.
- All parties fully understand and accept all the implications and responsibilities of agreeing to the mutual exchange.

### 6.2.2 Household size

The law allows that the Council may reasonably refuse an application for mutual exchange if the property is substantially more extensive than is reasonably required or not reasonably suitable in size. The Council's policy is that we will normally only approve an exchange if the household composition of the prospective tenant meets the Bedroom Standard as detailed in our Allocations Policy. Therefore, if the exchange would result in the Council's property being overcrowded or under-occupied, then permission will not normally be granted, and the application will be refused using the relevant ground.

<b>Household</b>	<b>Bedroom Need</b>
Single Person over 18 years of age (including pregnant applicant)	Bedsit / One Bedroom
Couple ( including pregnant applicant)	One bedroom
Two children of opposite sex, both under 10 years of age	One bedroom
Two children of the same sex ,under 16 years of age	One bedroom
Any other child as part of the permanent household inc foster children by way of a formal SCC placement or agreement evidenced in writing	One bedroom
Carer who either lives in or out but provides overnight care (carer who lives in may be subject to housing benefit deduction for a bedroom and an applicant needs to check with DWP if they meet the required criteria)	One bedroom

This bedroom standard matches that of the Department for Work and Pensions (DWP). The Council reserves the right to amend the bedroom standard used in this policy at any time, without prior consultation, in order to reflect any changes made to it by the DWP.

Where an applicant claims to have a bedroom need which is greater than their entitlement, for example for medical reasons, then that applicant's bedroom need will be assessed according to the Housing Allocations Policy. This may involve referring any matters to the Independent Medical Advisor for recommendation. The Council reserves the right to refuse an application, using the specified ground, pending any new bedroom need assessment, in order to meet the statutory deadline for response.

The Council will carry out any necessary checks in order to verify the residence of all household members. This may involve carrying out standard credit checks on the applicant or a permanent member of their household. It is the responsibility of the applicant to provide any evidence as reasonably requested by the Council, in order for household members to be verified. The Council will refer any applications to the Corporate Fraud Team where there Council believes that there has been an attempt to defraud any party to the mutual exchange, or to gain consent for a mutual exchange through deception.

### 6.2.3 Pets

Permission to keep pets is not transferrable between properties. Where an application for a mutual exchange involves one or more applicants with pets, consideration will be given to whether the applicant would likely be granted

permission to keep a pet at their new property. If permission would not likely to be granted at their new property, the applicant will be advised of this. The Council will either:

- a) Grant consent conditional on the rehoming of any pets. The applicant must sign a declaration that they have done so and that they understand that permission to keep a pet will not be granted at the new property. Evidence of rehoming may also be requested and retained on file, or
- b) Refuse the exchange using the appropriate ground. This may also happen if the Council is not satisfied with the evidence that any pets have been rehomed, or
- c) Accept the applicant's withdrawal.

Action will be taken against any tenant who keeps a pet without the appropriate written permission of the Council. Please see the Council's Pets Policy for more information.

#### 6.2.4 Adapted properties

When an application for a mutual exchange involves a property where the Council has carried out adaptations for people with specific needs, an exchange will normally only be approved if the proposed incoming household has a household member with a need that requires the specific adaptations. The Council will require evidence sufficient enough to show any need (and/or lack thereof), which will be the responsibility of the applicant to provide. Supporting evidence will need to come from health professionals, and the Council will not pay for any reports. The Council reserves the right to refuse an application, using the specified ground, pending any new assessment of need, in order to meet the statutory deadlines.

#### 6.3 Property inspections

- 6.3.1 The Council will arrange for an inspection of the electricity and gas supply (as applicable) as well as a general inspection of the condition of the property. This will involve documenting the condition of the property, evidenced with photographs. The Council will expect the outgoing tenant to allow access for these inspections within 7 working days, in order to allow the Council to consider the application within the statutory time limits. Should the tenant not allow access for inspection within 7 working days, then consideration will be given to the service of a Notice of Seeking Possession (NoSP) on the outgoing tenant for a breach of tenancy (for failure to allow reasonable access). If this happens, then the application for mutual exchange will be refused using the relevant ground.
- 6.3.2 Where a tenant has carried out unauthorised alterations to the property which, upon the Council's inspection, have been certified unsafe or are of a nature that the Council would not have granted permission for in the first instance, then consideration will be given to the service of a NoSP on the outgoing tenant for a

breach of tenancy (for unauthorised alterations). If this happens, then the application for mutual exchange will be refused using the relevant ground. Depending on the nature of the alteration, the Council may insist that the tenant who has made the unauthorised alterations be required to either reinstate the property to its original form, or to make safe the alterations and apply for retrospective permission from the Council. Depending on the nature or the work required, and any health and safety risk that the alterations may pose to anyone, the Council may carry this work out and recharge the tenant. A new application for mutual exchange will only be considered once the breach has been remedied.

- 6.3.3 Once all pre-exchange notified repair issues have been noted and / or resolved, the property is 'taken as seen'. The incoming tenant will be responsible for all fixtures and fittings of their new home. The Council will not undertake any remedial repairs or replacements that were noted prior to the exchange, other than those which pose a risk to the health and / or safety of the tenant or a member of their permanent household, for one year after the exchange.
- 6.3.4 Once all property inspections have been completed, they will be 'valid' for up to three months from the date that they were carried out. Should the exchange not complete within three months, for health and safety reasons the checks will need to be carried out again. The Council reserves the right to recharge the outgoing tenant as necessary in order to recover their costs for the new checks. The Council will not seek to recharge where the Council considers that the delay is out of the control of the outgoing tenant.

#### 6.4 Succession

- 6.4.1 Succession rights stay with the person rather than the tenancy. Where a succession has already taken place on a secure tenancy, the outgoing tenant (who has already succeeded to their tenancy) will take that status with them. No new succession rights are created through mutual exchange.
- 6.4.2 Where another landlord is involved in the exchange, the Council will inform that landlord whether or not a succession has already taken place, so that they can take this into account when processing the exchange.
- 6.4.3 In the case of Runnymede Borough Council tenancies, only one succession is allowed. Where an incoming tenant has succeeded to their tenancy, no further succession is allowed. Where an incoming tenant has not succeeded to their tenancy, they keep their succession rights, even if they came to the Council from another landlord.

#### 6.5 Granting / refusing consent of a mutual exchange involving a Secure tenancy

6.5.1 Once the Council has accepted an application for a mutual exchange, subject to the conditions of section 5 above, the Council will consider the application for a mutual exchange.

6.5.2 Applications for a mutual exchange for secure tenants may only be reasonably refused on specified grounds contained within Schedule 3 of the Housing Act 1985. The Schedule is included in this policy for reference in Annex 1.

6.5.3 The Council may grant consent for a mutual exchange with conditions. Such conditions may only include clearing any rent arrears, or remedying any unauthorised home improvements.

#### 6.6 Granting / refusing consent of a mutual exchange involving a Secure Flexible tenancy

6.6.1 Applications for a mutual exchange where one party has a fixed term flexible tenancy of two years or more may only be reasonably refused on the specified grounds contained in Schedule 14 of the Localism Act 2011. The schedule is included in this policy for reference in Annex 2.

6.6.2 The Localism Act does not allow for any conditions to be imposed to consent. Rent arrears, damage to property or anti-social behaviour/breach of tenancy, are instead grounds for refusal. If rent arrears exist, the request for a mutual exchange can simply be refused on the basis of the ground in Schedule 14 of the Localism Act 2011. This ground for refusal may be used if a Debt Relief Order is in place as no conditions relating to the clearance of the debt are imposed and the Order is not breached.

#### 6.7 General notes on refusing an application

6.7.1 If the Council refuses an application, then it will notify all parties to the mutual exchange of this, but only the applicant that has caused the refusal will be given the reasons behind the refusal.

6.7.2 The Council, where possible, will advise applicants if there is anything that they can do to remedy the situation before they submit another application at a future date. This could include paying off any arrears, reinstating the property back to a reasonable standard, or ensuring that any home improvements made by the tenant(s) are in good repair. The Council may also ask the tenant to remove any home improvements that are beyond repair.

### **7. Completing the Mutual Exchange**

7.1 Exchange involving all parties having a Secure or Assured tenancy or all parties having a Secure Flexible tenancy



- 7.1.1 Following consent being granted for a mutual exchange, the Council will offer a License to Assign in writing to each Runnymede Borough Council tenant party to the exchange. This will formalise the consent. The License to Assign will confirm arrangements for completing the mutual exchange.
- 7.1.2 The Council will prepare a Deed of Assignment which will legally assign the tenancy to the exchange partner. No party to the mutual exchange should move until a Deed of Assignment has been completed.
- 7.1.3 Where both tenants are Flexible Secure tenants, each will be assigned the balance of the fixed term of the property to which they are moving to. Tenants affected by this may wish to seek advice from the Council's Housing Options team, or independent legal advice, so that they can make an informed decision on whether to proceed with the exchange or not.
- 7.2 Exchange involving at least one Flexible tenancy and one Secure or Assured tenant issued prior to 01 April 2012
- 7.2.1 Following consent being granted for a mutual exchange, the mutual exchange must be completed through surrender and re-granting of new tenancies. The Council will write to each Runnymede Borough Council tenant involved in the exchange. The letter will confirm arrangements for completing the mutual exchange.
- 7.2.2 The Council will accept a written surrender of tenancy from the outgoing tenant without the required notice period, and re-grant a tenancy to the incoming tenant, under the same conditions as the outgoing tenant had, to start immediately except when 7.2.3 applies. No party to the mutual exchange should move until this surrender and re-granting of tenancies has been completed.
- 7.2.3 When re-granting a tenancy, the Council will offer a tenancy with no less security of tenure than the incoming tenant currently has. This may mean the Council will grant a new lifetime Secure tenancy to an incoming tenant who currently has an Assured tenancy with a Registered Provider, or that the Council will grant a new Flexible tenancy to an incoming tenant who currently has a Fixed Term tenancy with a Registered Provider.
- 7.2.4 Where a secure tenant exchanges with an Assured fixed term tenant on an affordable rent, then the secure tenant will lose their security of tenure and social rent status, even if their secure tenancy began prior to 01 April 2012. It is for the outgoing tenant to be satisfied with the tenancy being granted by the other landlord. The secure tenant may wish to seek advice from the Council's Housing Options team, or independent legal advice, so that they can make an informed decision on whether to proceed with the exchange or not.

### 7.3 Exchange involving at least one Flexible tenancy and one Secure or Assured tenant issued on or after 01 April 2012

7.3.1 Following consent being granted for a mutual exchange, the Council will offer a License to Assign in writing to each Runnymede Borough Council tenant to the exchange. This will formalise the consent. The License to Assign will confirm arrangements for completing the mutual exchange.

7.3.2 The Council will prepare a Deed of Assignment which will legally assign the tenancy to the exchange partner. No party to the mutual exchange should move until a Deed of Assignment has been completed.

7.3.3 The tenant taking on the flexible tenancy should be aware of the remaining balance of the fixed term of the property to which they are moving to. tenant may wish to seek advice from the Council's Housing Options team, or independent legal advice, so that they can make an informed decision on whether to proceed with the exchange or not.

### 7.4 General notes on surrender and granting

7.4.1 Where an applicant who is being re-granted a tenancy has former tenant arrears, the Council will make paying these former arrears a condition of the new tenancy. Failure to make satisfactory repayment of these arrears will be enforced under the Rent Arrears Recovery Procedure.

7.4.2 When re-granting a tenancy, consideration will be given to any succession rights that the tenant may have, in accordance with 6.4 above.

### 7.5 General notes on completing an exchange

7.5.1 The Council expects that all exchanges will complete, either by assignment or surrender and re-grant, on a date mutually convenient for all parties, as soon as possible following consent by all landlords being granted. Any Runnymede Borough Council property inspections must be up to date on the date of completion, further to 6.4.4 above.

7.5.2 Save for exceptional circumstances, all parties to the exchange will need to attend a joint appointment at the same time to complete their exchange. All parties must provide proof of their National Insurance Number, photographic identification (such as a passport or driving licence), as well as the first week or months' rent at the appointment.

## **8. Review rights**

8.1 An applicant who has had an application for a Mutual Exchange refused may request that the decision be reviewed. This review must be requested in writing

within 14 days of the decision to refuse and will be considered by the line manager of the officer who made the decision to refuse. It is the responsibility of the applicant requesting the review to provide all necessary documents / evidence that they wish the reviewer to consider. The applicant will be informed of the outcome of the review in writing within 28 days. The decision of the reviewer will be the Council's final decision on the application.

- 8.2 If an applicant remains dissatisfied with the decision of the reviewer, they can refer the matter to County Court.
- 8.3 The Council operates a formal complaints procedure, where an applicant or another person receiving a service can complain about any aspect of the service with which they are unhappy, for example:
- If an applicant feels that they have been unfairly discriminated against, or
  - If an applicant does not received information that they have been asked for.

## **9. Unauthorised mutual exchanges and illegal payments**

- 9.1 Where the Council is made aware of a mutual exchange that has taken place without consent, the Council will in the first instance request that the two parties return to their homes Should all parties fail to do so, then the Council will seek to terminate the tenancies by serving a Notice to Quit on the original homes and seeking repossession.
- 9.2 Where the Council is made aware of a mutual exchange where a secure tenant received a payment or other premium as an inducement to assign their tenancy then this is a ground for possession. The Council will serve a Notice of Seeking Possession and seek possession of the property. Where the Council believes an offence has been committed, it may also seek a prosecution where appropriate.

## **10. Consultation**

All tenants (as of Sunday 13 December 2015) were written to regarding the proposed change to policy in December 2015, inviting them to feedback on the proposals by 13 January 2016.

Housing staff, Legal Services staff and the Runnymede Council Residents' Association (RCRA) were consulted in the preparation of this policy between November 2015 and January 2016.

The policy was also open to public consultation on the Council's website as well as RBC Living & Homes between December 2015 and January 2016.

## **11. Equalities Implications**

An Equality Impact screening assessment on this policy has been carried out and notes that as most secure and flexible tenants have a statutory right to carry out a mutual exchange, subject to certain conditions, and as this Policy simplifies and clarifies the circumstances in which an exchange will or will not be approved, a full Equality Impact Assessment is not considered necessary.

Managers are responsible for ensuring that this policy is applied fairly, with due regard to any additional action that may be appropriate for vulnerable customers.

## **12. Monitoring and Performance Management**

This policy was approved by Housing Committee on 16 March 2016.

General adherence to this policy will be monitored by managers.

We consult staff and residents about the operation of our policy and procedures. We aim to review this policy every 2 years to ensure that it reflects current legislation and the latest examples of best practice.

Annex 1 – Schedule 3 Housing Act 1985  
Annex 2 – Schedule 14 Localism Act 2011