

Bromford.

MUTUAL EXCHANGE POLICY

Policy Statement & Purpose

This policy sets out our approach to mutual exchanges so that we use exchanges to match the right home to the right customer whilst ensuring that we meet our legal and regulatory obligations. It sets out how we determine who is eligible for an exchange, how exchanges take place and the grounds we use for refusing an exchange.

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Scope

This Procedure applies to customers of:

- Bromford Housing Association Ltd.
- Merlin Housing Society.

It also covers homes Bromford manages on behalf of others.

Reference Materials

List of Referenced Documents
<u>Mutual Exchange Procedure</u>
<u>Tenure Policy</u>
<u>Lettings Policy</u>
<u>Data Protection Policy</u>
Customer Home Improvements & Alterations Policy
<u>Complaints Policy</u>
Disclaimer

Responsibilities

The Director of Income and Lettings has overall responsibility for this policy including responsibility for the preparation of this policy, oversight of its implementation, and maintenance of supporting risk management and internal control systems and processes.

Head of Lettings and Lettings Team Leaders are responsible for the day-to-day operation of the policy and ensuring it is adhered to.

All colleagues are responsible for acting in line with the principles of this policy and associated methodology, tools, and systems.

Legislative or Regulatory Requirements

By following this summary guidelines, it ensures that Bromford complies with:

- Housing Act 1985 Section 92
 - Housing Act 1985 Schedule 3
 - Localism Act 2011 Section 158
 - Localism Act 2011 Schedule 14
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1. What is a Mutual Exchange?

Mutual exchange is the mechanism by which two or more customers can swap properties with one another. A Mutual Exchange may take place in one of two ways:

- a. **Assignment:** This is the legal term to describe the process of passing on (assigning) of a tenancy from one person(s) to another. A Deed of Assignment is signed rather than a new tenancy agreement. This means the customers will also 'step into each other's shoes' resulting in each party to the exchange taking on the same tenancy type and terms and conditions as the customer with whom they are exchanging.
- b. **Surrender and Regrant:** is the process of the existing tenancy being surrendered (ended) and a new tenancy agreement of either the same or different terms and conditions being granted. This is effectively a new letting.

The method by which the exchange take place is determined by the existing agreements that the parties to the exchange already have - see section below.

2. Mutual Exchange Overarching Principles

- Customers wishing to exchange must obtain Bromford's written consent before any mutual exchange can take place.
 - Bromford will not unreasonably withhold consent and will rely on the grounds in the Housing Act 1985 and Localism Act 2011 to reach a decision to consent or not.
 - It is the responsibility of the customer to identify their own mutual exchange, Bromford will provide assistance by subscribing to Homeswapper.
 - Each party to the exchange should make an application to their landlord for the exchange to take place.
 - A request will be considered to have been received by Bromford, once a fully completed set of applications from all parties to the exchange has been received.
 - An inspection of the Bromford properties involved in an exchange will take place,
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where any Customer responsibility repair items will be highlighted.

- Parties to the exchange may choose to gift items such as carpets or furniture to one another as part of the exchange and will be required to sign a Gifted Items Disclaimer.
- Where an assessment of under occupation is completed, this will be done in accordance with Bromford's Lettings Policy.

3. Who is eligible to request a Mutual Exchange

A tenant's right to exchange is dependent on the type of tenancy agreement they hold.

Secure tenants

Secure tenants have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985.

Assured (non-shorthold) tenants

Assured tenants do not have the statutory right to exchange, however they do usually have the right to assign by way of exchange as a contractual right in their tenancy agreement. The terms of the tenancy agreement will usually require both tenants to have the written consent of their respective landlords and the tenants to be either secure or assured tenants whose landlords are either a local authority or housing association.

Fixed term assured shorthold tenants with an initial fixed term of more than 2 years

For fixed term tenants, including those in affordable rent properties, where the fixed term granted was for 2 years or more, it will depend on whether their tenancy agreement gives them the right to mutual exchange.

The following occupiers do **not** have the right to exchange:

- Tenants with a starter tenancy, including extension periods
- Tenants of fixed term assured shorthold tenancy where the initial fixed term was less than 2 years
- Tenants with a periodic assured shorthold tenancy as a result of a break notice being served on a fixed term tenancy or where they have failed to sign a new tenancy agreement at the end of the fixed term
- Demoted tenancies
- Intermediate market rent or market rent tenants
- Temporary (decant) tenancies (although tenants may have the right to exchange at their permanent address)
- Licensees
- Leaseholders
- Shared owners
- Freeholders

Bromford have 42 days from the date that all application forms from all parties to the exchange have been received, to provide the customers with a decision as to whether the

Mutual Exchange can proceed.

4. Deciding to exercise a Mutual Exchange by Assignment or Surrender & Regrant

Mutual exchanges can be carried out by *assignment* or by *surrender and re-grant* depending on the tenancy type and when the tenancy started.

The Localism Act 2011 states that if an assured or secure tenant whose tenancy started before 1st April 2012, mutually exchanges with a fixed term social rent tenant, the exchange will be achieved by *surrender and re-grant*. The assured or secure tenant will be granted another assured or secure tenancy.

This protection does not apply:

- When the assured or secure tenant is choosing to swap with an *affordable rent* tenant. In this circumstance, the exchange will be by *assignment* and no new tenancy will be created.
- To assured or secure tenancies granted after 1 April 2012, those tenants will lose their security of tenure if exchanging with a fixed term assured shorthold tenant. In this instance the exchange will be by *assignment*.

Protection from the Localism Act will only apply **once**, as the new tenancy granted will have commenced after 1 April 2012. This means that once an exchange has taken place, you will no longer have protection from the act, if you were to exchange again.

Where an exchange involves a fixed term tenancy with 2 years or less remaining on the tenancy, then our policy is to carry out the exchange by *surrender and re-grant* and issue a new fixed term tenancy in accordance with our Tenancy Policy to the incoming tenant.

All other types of mutual exchanges will take place by *assignment*. The incoming tenant will take on the rights and responsibilities of the tenant they have exchanged with. No new tenancy is created.

5. Making a Decision on the Mutual Exchange

Bromford must share their decision in writing within 42 days of receiving applications from all parties to the exchange. If Bromford have not given the customer a decision in writing to decline the request using one of the grounds set out below, then the request is considered to be approved.

We will not unreasonably withhold consent to an application for a mutual exchange. There are three different sets of grounds on which we may refuse an application. The set of grounds that will apply depends on the tenancy type and whether the potential exchange is protected under the Localism Act.

The applicable grounds for refusal are:

- Schedule 3 of the Housing Act 1985 (*appendix 1*)
- Schedule 14 of the Localism Act 2011(*appendix 1*)
- Our policy grounds (*appendix 2*)

Schedule 3 of the Housing Act 1985

These grounds apply to:

- Secure tenants
- Assured tenants where the tenancy agreements states that we will only refuse permission on Schedule 3 grounds.

We will apply Section 92 of the Act which allows landlords to give conditional approval when rent lawfully due has not been paid or another obligation of the tenancy agreement has been broken or not adhered to. Additionally, we may make it a condition of our approval that any arrears are cleared by a specific date before the exchange takes place.

However, we cannot refuse an applicant on the ground of rent arrears unless one of the following applies:

- we have obtained an Outright Possession Order (OPO)
- we have obtained a Suspended Possession Order (SPO)
- we have started legal proceedings
- we have served a valid Notice of Seeking Possession for rent lawfully due that has not been paid

A full list of Schedule 3 grounds on which we may refuse an application are set out in *appendix 1* of this policy.

Schedule 14 of the Localism Act 2011

These grounds only apply where the Localism Act 2011 applies to a mutual exchange (an assured or secure tenancy that started before 1 April 2012 exchanging with a fixed term social rent tenant).

Only the grounds in Schedule 14 of the Act can be used as a reason to refuse an application.

A full list of Schedule 14 grounds are detailed in *appendix 1* of this policy.

Our Policy Grounds for refusing an application

These grounds apply to:

- **Assured tenants** – where the tenancy agreement contains the right to mutual exchange but there is no specific reference to Schedule 3 of the Housing Act 1985 and only refers to ‘complying with reasonable conditions attached to our consent’.
- **Fixed term tenants** – where there is no reference in the tenancy agreement to the grounds for refusal and only to complying with reasonable conditions attached with the Group’s consent.

A full list of our policy grounds for refusing an application are detailed in [appendix 2](#) of this policy.

Under Occupation Assessment - Bromford will determine whether a customer will be under

occupying a property in accordance with our Lettings Policy criteria.

Affordability Assessment - Bromford will complete a credit check and will carry out an income and expenditure assessment to help customers decide if the property is affordable for them.

Notifying the Customer of our Decision - Once decision on the mutual exchange has been made, Bromford will notify the customer in writing, clearly setting out any conditions attached to the consent (note the limitations on condition attached to consent above). If the decision is to refuse consent, the reason for this will be clearly set out.

6. Checks

Bromford will complete the following checks prior to any exchange going ahead.

Customer Checks:

- Credit checks on incoming customer
- Income and Expenditure / Affordability checks
- Right to rent checks
- References from landlords and any relevant support agencies

Property Checks:

- Property inspection to identify any damage to property that may result in the exchange being refused under Tenancy Breach grounds
- Gas and electric checks safety checks
- Ensuring the property has a valid EPC

7. Bromford repairs & responsibilities and gifted items

During the mutual exchange process, we will carry out a property inspection for any Bromford properties involved in the exchange to identify any outstanding repairs. Where repairs are identified as a customer's responsibility these repairs will need to be completed by the customer before a date can be agreed for the exchange to proceed.

Where repairs or outstanding works are identified which are Bromford's responsibility, we will let the incoming customer know when these works will be completed and confirm the repairs are Bromford's responsibility. The incoming customer will not have to accept responsibility for any Bromford repairs.

The outgoing and incoming customer may request to gift items to each other during the exchange such as decking, sheds etc. Providing the surveyor is satisfied there are no health and safety concerns, an agreement will be made to allow for the incoming customer to sign for and accept responsibility for gifted items.

8. Alterations

If a customer has made alterations to their home, Bromford will need to check that permission was given for the alterations and the customer followed our alterations process.

If a customer has made alterations to their home and have not requested permission, the

customer will be required to request retrospective permission. If the alterations are then refused, the customer will need to carry out works to put the property back to the required standard before the exchange can proceed.

9. Unauthorised Mutual Exchanges

If a customer does not obtain Bromford's written consent, the exchange will be unlawful, and all parties risk having lost their security of tenure because they are no longer occupying their original home as their only or main principal. In such instances the Neighbourhood Coach will work with the Community Safety Team to decide on the course of action to be taken.

10. Appeal

A customer and or their exchange partner may appeal our decision to not give consent to their mutual exchange application.

An independent manager who was not involved in the original decision will review the appeal.

Appeals must be made in writing within 14 days from our non-consent decision.

Customers will be notified of our decision within 15 working days. If the customer is not satisfied with the outcome, they may refer their complaint directly to the Housing Ombudsman.

Document Details

Owner:	Director of Income and Lettings
Approved By:	Customer Forum
Date of Approval:	25 th July 2023
Next Review Due:	25 th July 2026
Policy Version:	2.0

Appendix 1

*Schedule 3 of the Housing Act 1985 grounds apply to:

- Secure tenants
- Assured tenants where the tenancy agreements states we will only refuse permission on Schedule 3 grounds.

****Schedule 14 of the Localism Act grounds apply when a secure or assured (non-shorthold) tenant whose tenancy started before 1st April 2012 exchanges with a social rent fixed term tenant.**

Schedule 3 Housing Act 1985 *	Schedule 14 Localism Act 2011 **	Grounds
-	Ground 1	When any rent 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 party.
Ground 2	Ground 4 and 5	A notice seeking possession is in force against the tenant or the proposed assignee under Grounds 1-6 of Schedule 2 of the 1985 Act (and similar or/and equivalent grounds under Schedule 2 of the Housing Act 1988) or possession proceedings have begun against either party on one or more of those grounds.
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 the needs of the proposed exchange partner 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 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 does not meet this 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 exchange were 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 exchange partner is not such a member nor is willing to become one.
Ground 2a Additional ground (Housing Act)	Ground 6	Any of the following are in force, or an application is pending, against our tenant, the proposed exchange partner or a member of either of their households: <ul style="list-style-type: none"> • an injunction order under section 153 of the Housing Act 1996 • an anti-social behaviour order

2004)		<ul style="list-style-type: none">• a demotion order• a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies
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