



Mutual Exchange Policy

1. Introduction

- 1.1 This policy outlines how Medway Council (the Council) Landlord Services will manage the process of applications for mutual exchange involving its own stock. A mutual exchange is when two or more tenants 'swap' properties with each other and in doing so pass on their legal interest in the tenancy.

2. Purpose

- 2.1 This policy has been created to ensure that all enquiries and applications for a mutual exchange are dealt with fairly and consistently, and that both employees and tenants are clear about the legal processes the Council must follow when considering an application for a mutual exchange.

3. Scope

- 3.1 This policy applies to all Medway Council tenants and tenants from other Registered Social Housing providers who have the right to undertake a mutual exchange with a Medway Council tenant.
- 3.2 This policy applies to all Medway Council staff involved in Landlord Services.

4. Legislation and Guidance

4.1 External

- Housing Act 1985 S.92 and S.3
- Welfare Reform Act 2012
- Localism Act 2011

4.2 Internal

- Allocations Policy
- Relevant Tenancy Agreements
- Tenancy Management Policy
- Tenant Incentive Scheme
- Tenancy Handbook
- Repairs Policy
- Compensation for Improvements Policy

5. The Policy

- 5.1 Medway Council Landlord Services will apply the legal right of any secure council tenant to mutually exchange homes with another council or registered social landlord tenant anywhere in the UK, subject to certain conditions set out in the Housing Act 1985.
- 5.2 Landlord Services will apply Section 92 of the Housing Act 1985 outlining the rights of secure tenants to mutually exchange, subject to approval.
- 5.3 The type of tenancy may place restrictions on certain entitlements, such as the right to buy. Therefore Landlord Services advises all tenants to check these details prior to exchange.

5.4 Application stage

- 5.5 Landlord Services will promote and signpost access to Kent Homechoice for tenants to seek a mutual exchange in addition to national schemes such as Homeswapper. Officers will assist tenants that are unable to access online services when identified.
- 5.6 In order to begin the process, all applicants involved in a potential mutual exchange must submit a signed application form.
- 5.7 Upon the receipt of a signed application Landlord Services will notify the tenants and landlords involved of their decision within 42 calendar days after having:
 - 5.7.1 Undertaken an inspection of the condition of the Council property, and carried out gas and electrical safety checks.
 - 5.7.2 Provided a reference of the Councils tenants to their potential landlord
 - 5.7.3 Received a reference for the incoming tenant
- 5.8 If a Medway Council tenant withdraws their mutual exchange application after a gas and/or electrical check has been carried out, they will be charged for this work. A charge will not be applied if the mutual exchange is refused by Medway Council, or if the mutual exchange application is withdrawn by the other party.

5.9 Grounds for refusal of exchange

- 5.10 The Council will apply the grounds for refusing an exchange as set out within [Schedule 3 of the Housing Act 1985](#).
- 5.11 Landlord Services will allow tenants to exchange where they have complied fully with their tenancy conditions, do not have any outstanding rent arrears

and the property is in a good state of repair. Where a tenant is moving from an under occupied property and arrears are caused solely by the housing benefit size criteria changes, the Head of Housing Management will use their discretion to permit the exchange to proceed. Any payments made for removal expenses under the tenant incentive scheme will be off set against any arrears.

5.12 Landlord Services may also refuse the application if the intended assignee has breached the conditions of their tenancy in any way.

5.13 Applicants for the scheme are entitled to move to a property that meets the households' bedroom need. Bedroom need is defined in appendix 1, in Table A as per the Councils Allocations Policy. Landlord Services will however permit one-bedroom leeway – either larger or smaller than the the household is entitled to- other than in the situations set out below

- the applicant would be subject to spare room subsidy immediately on moving in
- the extent of the accommodation would not be reasonably suitable, for example a couple with a child requesting to exchange into a studio flat.

5.14 Landlord Services will use its discretion to refuse an application to proceed based on the size of the property and the household's bedroom need. Examples of this include where the applicant is not of working age but are still downsizing or any considerations under the Equality Act 2010. There is no right of appeal against a decision to refuse a mutual exchange, but applicants may use the Council's Complaints Procedure if they consider they have been treated unfairly or not in accordance with this policy.

5.15 Landlord Services will refuse or accept an application for a mutual exchange in writing within 42 calendar days of receiving the application. Only the household that has caused the refusal will be given the reasons behind the refusal.

5.16 Landlord Services will inform the tenant if their application can be considered at a future date, and provide details of anything that the tenant, or the other person applying to swap, need to do to in order for the application to be reconsidered.

5.17 **Surrender and Re-grant**

5.18 Mutual exchanges are completed via a deed of assignment, or by surrender and re-grant of a new tenancy, depending on the types of tenancy and in accordance with the Localism Act 2011 (see 5.20 below). If either of the tenancies is a joint tenancy both joint tenants will be required to sign the

mutual exchange documentation.

- 5.19 Tenants must not move home without the written permission of all landlords involved or before the Deed of Assignment has been signed. Failure to comply may result in possession proceedings being taken against the tenants as illegal occupants.
- 5.20 The Localism Act 2011 protects the security of tenure of social housing tenants with secure or assured tenancies that started before 1 April 2012, when they are exchanging with some fixed term tenants.
- 5.21 Existing (pre 2012) tenants' security of tenure will not be downgraded by an exchange as a result. However this protection will only apply to existing tenants' tenure, not the level of rent they pay. Therefore if an existing tenant who pays a social rent chooses to exchange with a tenant who pays an affordable rent, they will take on the higher level of rent. A landlord can refuse an exchange of this nature on any of the grounds set out in Schedule 14 of the Localism Act.

5.22 Rent

- 5.23 Where an exchange is taking place between a minimum of two Medway council tenants, and one is charged 'fairer rent', this level of rent will be applied according to the household circumstances in accordance with the Rent Setting Policy and Tenancy Management Policy.

5.24 Succession

- 5.25 If a person receives a tenancy by succession, whether that be by the death of a tenant or assignment, and later moves under mutual exchange, their status as a successor still stands and the tenancy cannot be passed on to another successor, since succession rights can only take place once.

5.26 Tenants Incentive Scheme

- 5.27 Tenants moving by mutual exchange must pay their own removal costs and incidental expenses.
- 5.28 Landlord Services will however use its discretion in meeting the costs of removals and any other moving expenses, up to a maximum allowance of £500 per household, where a tenant is downsizing (moving from a property they are under occupying by bedroom size) and they are affected by the under occupation size criteria charge (spare room subsidy) as a result of Welfare Reform changes.

5.29 Tenants who are subject to under occupation size criteria charge (spare room subsidy) will also be entitled to a downsizing incentive payment. The rates are the same as apply to downsizing transfer applicants (see the Tenant Incentive Scheme Policy). To be eligible for this incentive, the exchange must be to a property where no size criteria charge applies at the time of the move.

5.30 Compensation for/and improvements

5.31 Medway Council's secure tenants are eligible for compensation for improvements at the time of exchange. Fixed Term tenants are not entitled to this compensation.

5.32 Repairs

5.33 Tenants who exchange must accept the property in its present state and any damage caused by the outgoing tenant will become the responsibility of the incoming tenant and will need to be repaired at his/her own expense. Landlord Services will only carry out normal repairs for which it is responsible.

5.34 Prior to completion, tenants must inspect each property and agree in what condition the property will be left in prior to the exchange completing.

5.35 Landlord Services will advise all incoming tenants that they are responsible for putting right any future defects as a result of any **major works** completed by the previous tenant.

5.36 Prior to completion, Landlord Services will inform the potential incoming tenant of any **outstanding repairs** that are the tenant's responsibility.

6. Role, Responsibilities and Authority

6.1 The Assistant Director of Physical and Cultural Regeneration retains the overall responsibility for the implementation of this policy.

6.2 The Head of Housing Management is responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.

7. Monitoring, Review and Evaluation

7.1 The Tenancy Service Manager will monitor applications made for mutual exchange from the stage when the application is received through to the completion or refusal.

7.2 This policy will be reviewed every two years or in line with legislative or

regulatory changes.

Policy Version Control Sheet

Policy Title: Mutual Exchange

Policy Author(s): Housing Manager

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Cross References: Tenancy Management Policy, Repairs Policy, Compensation for improvement Policy, Tenant incentive Scheme Policy

Amendments Made: July 2018 Policy amended to include point 5.13 and 5.19. November 2018 Policy amended to clarify text in points 5.17, 5.18, 5.19 and 5.20. October 2019 Policy amended at 5.13 and 5.14

Appendix one:

Table of Bedroom Need

Table A	
Family size	Size of property
Single person	Bedsit/1 bedroom
Couple without children	1 bedroom
A couple expecting a child or with one child	2 bedrooms
A couple with two children of the same sex	2 bedrooms
A couple with two children of opposite sex one of whom is over ten	3 bedrooms
A couple with three children	3 bedrooms
A couple with four children (all of the same sex or two of each sex)	3 bedrooms
A Couple with two children one under the age of 16 and the other over the age of 16	3 Bedrooms
A couple with four children (three of one sex and one of the opposite sex)	4 bedrooms
A couple with more than four children	4 bedrooms
A couple with three children and one dependent adult	4 bedrooms