

## MUTUAL EXCHANGE POLICY

## 1. Purpose

- 1.1 This policy sets out our approach to supporting and encouraging the process of mutual exchange – which is the process of tenants in social housing swapping their homes.
- 1.2 The purpose of this policy is to provide clarity for staff and tenants on the circumstances in which a mutual exchange may take place. It sets out who is eligible to exchange, our approach to managing applications, including considerations we may make in assessing an application, the requirements and timescales set out in the legislation and the circumstances in which a mutual exchange may be refused, including how to appeal a decision to refuse.
- 1.3 This policy has been drafted in line with our vision and values, relevant legislation and best practice.
- 1.4 The Regulator of Social Housing sets out its expectations of Registered Providers (RPs) in its Regulatory Code. The standards relate to providers being viable, properly governed and properly managed. The Tenancy Standard sets out specific expectations for RPs in the management of tenure and allocations and makes specific reference to Mutual Exchange. The Transparency, Influence and Accountability Standard sets out expectations around information, advice and opportunities for tenants to engage in more meaningful ways on decisions that affect them.

## 2. Definitions

- 2.1 **A mutual exchange** is where two or more eligible social housing tenants swap homes by exchanging tenancies with each other. Tenants take on the full rights and obligations of their 'new' tenancy, including the rent. 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.
- 2.2 **Multi way exchanges** are exchanges that involve more than 2 parties and/or more than 2 landlords.
- 2.3 **Assignment** is the transfer of a tenancy from one person to another during the lifetime of the tenants. When a tenancy is assigned, the rights and responsibilities of the tenancy are transferred from the original tenant to the new tenant. The majority of mutual exchanges are done in this way/ If a tenancy is assigned during a mutual exchange, the tenants take on each other's tenancies.
- 2.4 **Right to Buy (RTB)** is a government scheme in **England** that allows **eligible council and housing association tenants** to purchase their homes at a **discounted price**.
- 2.5 **Right to Acquire (RTA)** is a government scheme in **England** that allows **eligible housing association tenants** to buy their homes at a **discounted price**. It is similar to the **Right to Buy (RTB)** scheme but is specifically for tenants of **housing associations** rather than council tenants.

- 2.6 **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. 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 home.

For example, the incoming tenant has a secure council tenancy which started before 1st April 2012 and the outgoing has a fixed term tenancy. The outgoing tenant would surrender their tenancy on leaving and the incoming would be issued an assured non short hold tenancy. This keeps the same level of tenure for both parties and doesn't incentivise exchange as a way of achieving improved security of tenure or additional rights.

- 2.7 **Antisocial Behaviour (ASB)** - conduct that has caused, or is likely to cause harassment, alarm or distress to any person; or conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or conduct capable of causing housing-related nuisance or annoyance to any person.

### 3. Responsibilities

- 3.1 The Head of Community is responsible for ensuring adherence and reviewing this policy.
- 3.2 The Tenancy Specialist Manager is responsible for ensuring this policy is implemented and monitoring its effectiveness.

### 4. Policy Statement

- 4.1 Red Kite are committed to
- making best use of our stock, and this means supporting where we can moves that enable this to happen.
  - managing tenancies in a fair, transparent and efficient manner, meeting legislative requirements and following guidance laid out in the Regulatory Code.
  - providing transparent and helpful information to tenants to ensure they understand their responsibilities and our responsibilities when engaging in mutual exchange.
  - ensuring that our homes are managed effectively and that our tenants are able to meet their responsibilities and reach their potential.
  - meeting our responsibilities as a social landlord fairly and consistently and with due regard to making best use of social homes for the benefit of the communities we serve.

- supporting tenants in ways that accommodate their needs and any vulnerabilities in order that they may participate in and engage with our services e.g. advice, information or practical assistance.
- processing all applications in a timely manner, with good communication to tenants throughout.

4.2 With demand for social housing high and local authority waiting lists increasingly strict criteria, tenants can face long wait times if they wish to move but do not qualify for the highest banding in the local authority choice-based lettings scheme they are registered on. In some cases, they may not be able to register on the housing register.

4.3 Mutual exchange provides an alternative solution for tenants looking for their ideal home, offering flexibility for tenants to broaden their options on where they can live and the accommodation type available to them. We therefore want to encourage our tenants to consider this option to move and will provide the necessary information, support and advice to ensure that they can do this easily and successfully.

4.4 This policy aims to:

- provide clear information on the requirements for a mutual exchange
- outline which tenancy agreements give the right to exchange
- ensure tenants understand the process, requirements and the consequences of moving
- set out clear guidance on the legal requirements
- set out the grounds for refusing an exchange
- provide clear understanding on what grounds an appeal can be made, and how to do it.

## **5. Eligibility - Right to Exchange**

5.1 A tenant's right to exchange varies depending on the type of tenancy agreement they have:

- Secure tenancies: the right to assign the tenancy by way of exchange under Section 92 of the Housing Act 1985.
- Assured (non-shorthold) tenancies: no statutory right to exchange but usually have the right to assign by way of exchange as a contractual right set out in the tenancy agreement
- Protected Assured tenancies - the right to assign their tenancy by way of exchange as outlined in the tenancy agreement and the transfer agreement.
- Fixed term tenancies - the right to exchange as long as any starter period has been successfully completed and there are 2 or more years remaining. This may be by assignment or by surrender and regrant depending on the type of tenancy. In some cases, we may renew a tenancy before its anniversary to achieve this.

5.2 The following tenants do not have any right to exchange:

- In a starter tenancy, including any extension period - an exchange can be applied for once this is complete.
- Assured Shorthold Tenancies (periodic)
- Non assured/contractual tenancies
- Temporary (decant) tenancies and anyone in temporary accommodation provided under the homelessness legislation
- Licensees
- Leaseholders
- Shared owners

5.3 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.

5.4 Existing tenants will only be able to retain their current level of tenancy security once (not necessarily for subsequent exchanges) as any further tenancy would have commenced after 1/4/2012 and would not be bound by the same requirements under the Localism Act 2011.

## 6. Applying for a mutual exchange

6.1 Red Kite tenants wanting to carry out a mutual exchange must find a suitable exchange partner and complete an application. Tenants 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 incentive be offered or take place between exchange parties.

## 7. Assessing applications

7.1 We will undertake a number of checks to assess the mutual exchange application to ensure we make the right decision:

- A home condition inspection
- A tenancy history check
- Rent and ASB checks
- Legal and policy assessment of the home and of the incoming tenant household composition / circumstances
- References from the landlord of any incoming tenant not already with Red Kite
- Occupational health assessments (where relevant)
- Right to rent checks and proof of Child Benefit in payment

- 7.2 All these checks must be carried out before we make a decision. It is the tenant's responsibility to provide us with information where requested, or to discuss any delays with their landlord.

## **8. Landlord references and information sharing**

- 8.1 Where the exchange is with a tenant from another landlord, we will only give approval once a suitable reference has been received from the other landlord.
- 8.2 In providing a reference to other landlords we have a duty to disclose information that we could reasonably and legally be expected to share, unless in doing so we compromise the safety of a tenant or any injunction in place that supersedes us doing so. We will disclose:

- All known criminal activity related to the home
- Any known child protection issues
- All complaints of ASB and tenancy breaches that have occurred in the last five years or such longer period as the other landlord requires, for both tenants, household members and visitors
- Any rent arrears or any other debts

Consent to share the information is included within our application form.

## **9. Approval of Application**

- 9.1 The law gives us up to 42 days in which to write to a tenant with the decision to either approve or refuse an application. After this time, we cannot rely on the statutory grounds for refusal however, tenants can still not exchange without our written consent. The 42 days will start when all applications for the exchange are received – we will then use the 42 days to gather the relevant information and carry out checks, always aiming to be well within this end date.
- 9.2 The decisions we can make are:
1. refuse the exchange
  2. approve the exchange, or
  3. approve the exchange with conditions
- 9.3 Examples of conditions we attach to an exchange could be to complete repairs or pay outstanding rent arrears owed over an agreed period where the exchange is within our own homes. This will only be in exceptional circumstances and will require approval from the Head of Community or in their absence the Head of Relationships.
- 9.4 For an exchange to be approved our tenant must have allowed access for any necessary safety inspections including electrical and gas safety checks and Energy Performance Certificate assessments.

- 9.5 The actual exchange date when tenants can move home will need to be agreed by all parties and we will normally require a minimum of 10 working days from the exchange being approved to the agreed exchange date.
- 9.6 Incoming tenants will be asked to pay a week rent in advance when the mutual exchange takes place in line with our tenant agreement.
- 9.7 When undertaking a mutual exchange, tenants must be aware that they will not retain their original tenancy type. Instead, they will assume the tenancy type of the home they move into, including any associated rights and responsibilities. This means tenants effectively 'swap' tenancies, which may impact key rights such as the Right to Buy or Preserved Right to Buy. If a tenant with Preserved Right to Buy moves to a property without this right, they will lose it. Similarly, a tenant moving into a secure council tenancy or a council stock transfer housing association (*like Red Kite*) may gain or retain the Right to Buy, depending on their eligibility. Tenants are strongly advised to seek legal advice, check how their tenancy rights will be affected before proceeding with an exchange. Please see 'Appendix A'.

## 10. Reasons we will refuse a mutual exchange

- 10.1 When we receive an application, if we can see an immediate ground for refusal we will issue a decision straight away, we won't wait until the 42 days expires.
- 10.2 We will not unreasonably withhold permission to exchange. **Schedule 3 of the Housing Act 1985** (for secure tenants), **Schedule 2 of the Housing Act 1988** (for assured tenants) and **Schedule 14 of the Localism Act 2011** (for fixed-terms) sets out the reasons/grounds we can refuse a mutual exchange – please see 'Appendix B':
  - Red Kite is in the process of applying for or has received a court order for possession against either party, on either discretionary grounds 1-6 or mandatory ground for ASB
  - There is a relevant order (e.g. ASB orders, injunctions or demotions) or suspended action possession orders in force or pending for either party or anyone who lives with them
  - The home is subject to a closure order
  - The home is larger than is required by the incoming tenant (under-occupation) or smaller than needed (overcrowding) (we use the current statutory guidance on bedroom need criteria to make this decision)
  - The home is not reasonably suitable for the needs of the incoming tenant or their family
  - The home is adapted for a person with disabilities and the exchange would result in such a person no longer living there
  - The home has been provided specifically with an employment contract
  - The landlord is a charity and the applicants' occupation of the home would conflict with the objectives or rules of governance of the charity

- The home is one of a group let to people with specific needs, unique facilities are available nearby and the exchange would result in the people with the specific needs no longer living there
- The home is subject to a management agreement where the manager is a housing association and at least half the homes they manage are covered by the agreement, and at least half the tenants are members, and the assignee refuses to become a member.

10.3 In addition, we will refuse a mutual exchange for the following reasons:

- The incoming tenant would require significant structural adaptations that the home is not suitable for or would be financially unviable to provide
- The outgoing or incoming tenant (s) are in rent arrears.
- The property being identified for disposal after the current tenancy has ended
- Red Kite or another participating landlord have previously evicted or obtained an injunction or other legal action against the incoming tenant
- Where we have reason to believe that one of the exchange parties (or their household members) does not intend to reside permanently in the exchange home
- Where the incoming tenant or a member of his/her household owns or holds a tenancy of a home other than the home they are exchanging from
- There are 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.
- Where we are unable to access the home to carry out gas and electrical safety tests or EPC certificate assessment
- We do not receive the evidence we have asked for within the timeframe set out
- We believe money or other incentives have been suggested by either party or that the exchange is fraudulent or an attempt to gain a tenancy by deception or to circumvent a previous refusal

## **11. Unauthorised Mutual Exchange**

11.1 An unauthorised mutual exchange is considered to have taken place where:

- An application is made but we have not yet given written consent (either within or outside of the 42-day target time)
- An application has been approved but the parties move before the exchange date
- Parties move without applying for an exchange and without our knowledge
- Parties continue with an exchange after we have refused consent

11.2 In these circumstances we will treat the occupants as unauthorised occupiers and will advise them to return to their own home within 7 days to avoid a Notice to Quit being served. If they return within the 7 days, their mutual exchange application can continue to be considered. If this is not complied with, we will seek to take legal action to recover the home.

## **12. Repairs**

- 12.1 Incoming tenants have the same right to repair for works that are the landlords' responsibility.
- 12.2 When we inspect the home, if we identify any repairs that are our responsibility we will complete them in line with our repair obligations.
- 12.3 If when we inspect the home, we identify any repairs are required that are the tenant's responsibility due to damage, neglect or alterations they have made, we will ask that these are completed before an exchange. Where it is a significant alteration, the incoming tenant may accept responsibility for the alteration. In this situation the responsibilities relating to the alteration will remain with the incoming tenant. In exceptional circumstances we may carry out repairs such as due to a health and safety risk, and we will recharge the outgoing tenant.
- 12.4 Subject to the above, the incoming tenants accept the new home in the standard of repair and decoration it is seen in.
- 12.5 Tenants will be advised to view the home so they are aware what they will be taking responsibility for and to form an agreement with their exchange partner as to what items will be left and what the expectations are. Tenants will be expected to sign a disclaimer confirming the condition of the home they are taking on.
- 12.6 During our compliance inspections we will assess any health and safety concerns and if there any issues identified further inspections will be undertaken and actions agreed with the outgoing tenant.

## **13. Tenant's responsibilities**

- 13.1 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.
- 13.2 Incoming tenants agree to accept the condition of the home they are exchanging into. They are responsible for carrying out their own inspection of the home prior to the exchange.
- 13.3 Incoming tenants will assume responsibility for any damage or alterations made to the home by the outgoing tenant and for all repairs that we consider to be tenant's responsibility that were not completed by the outgoing tenant.
- 13.4 Tenants must not move until they have received written confirmation from each landlord and signed the necessary paperwork to complete the exchange.
- 13.5 Tenants must not enter into an agreement for money or other benefit to exchange (other than the support that we provide), and to be participating in a genuine exchange with the intention to use the home as their main and principal home.

## **14 Support we will provide**

- 14.1 Tenant incentive scheme:** For tenants who are affected by the bedroom tax, or simply need fewer bedrooms, we can offer a cash incentive of £1,000 if they downsize by mutually exchanging with someone who has the right sized home for them and who also lives in a Red Kite home. There must be no rent arrears – if there are, the £1,000 incentive will be paid towards them so that the exchange can happen. This incentive scheme is open to any Red Kite tenant exchanging with another Red Kite tenant – whether they are affected by the bedroom tax or not, downsizing can help reduce rent payments and energy bills, along with many other benefits. If our tenant has already swapped into their current home with this incentive, they need to have been living there for a minimum of six months before they can apply for another exchange, and again, it must be to downsize.
- 14.2 Home Swapper** we'll pay for tenants' registration on Home Swapper where they are not on a starter tenancy, in rent arrears or subject to court action for repossession. It would be unlikely that we'd agree to an exchange in these circumstances, even if the tenant pays their own registration.

## **15 Right to Appeal**

- 15.1** When writing with a decision to refuse the application for a mutual exchange we will advise of the reason for our decision and of the right to appeal.
- 15.2** You can appeal our decision for the following reasons
- The applicant believes we have made a mistake when deciding they are ineligible or non-qualifying
  - There is information that the applicant thinks we have not taken into account, either about their status as a non-qualifying person or in relation to any disability, medical condition or vulnerability
- 15.3** We cannot accept an appeal for any other reason – we know tenants and applicants may not be happy with a decision but unless the appeal is for one of the reasons here, we will be unable to consider it.
- 15.4** To appeal our decision, you should contact us and tell us which reason you are using to appeal and provide us with any supporting information. There is a deadline for this - you will need to contact us within 15 working days of our decision.
- 15.5** We accept an appeal in all of the following ways:
- Emailing [relationship.co-ordinator@redkitehousing.org.uk](mailto:relationship.co-ordinator@redkitehousing.org.uk) with the title – Request to Appeal Decision; or

- Telephoning us on 01494 476100 advising us you are appealing a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.
- In person – you can advise any member of staff that you wish to appeal a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.
- By post to Red Kite Community Housing, Kingsmead Business Park, Frederick Place, London Road, High Wycombe HP11 1JU – please title your letter Request to Appeal Decision.

- 15.6 The appeal will be heard by a senior member of staff not involved in the original decision and our response to your appeal will be sent within 15 working days. In exceptional cases it may take us a little longer to consider the appeal. If this is the case, we will let you know and agree a date when you will have a decision.
- 15.7 As part of dealing with the appeal, we may contact you to ask questions to ensure we have all of the right information.
- 15.8 Once the appeal decision has been made there will be no further appeal.
- 15.9 If you are unhappy with how we have managed your case, you can make a complaint via our Feedback Policy which is available on our website or on request. However, this will not form an appeal of the decision made.

## Appendix A – Tenancy Matrix

Tenant A	Tenant B	Status after Exchange
Secure	Secure	Both remain secure
Assured	Assured	Both remain assured
Secure	Assured	Secure tenant takes on the Assured Tenancy Assured tenant takes on Secure Tenancy
Secure	Flexible Fixed Term Social	Surrender and re-grant
Assured	Flexible Fixed Term Social	Surrender and re-grant

## Appendix B - [Grounds for Mutual Exchange Refusal.pdf](#)

Document Controls			
<b>Version</b>	1	<b>Effective date</b>	March 2025
<b>Subject matter expert drafter</b>	Head of Relationships	<b>Process owner</b>	Head of Community
<b>Related Pod</b>	Community Pod Relationship Pod Property Pod	<b>Related Policy</b>	Tenancy Changes Policy Tenancy Policy Allocation Policy Repairs Policy Tenancy Fraud Policy Recharges Policy
<b>Review period</b>	3 Years	<b>Next review due by</b>	March 2028
Delegated approvals			
<b>Approved by ELT</b>	Director of Customer Services	<b>Approved Date</b>	03 April 2025