

MUTUAL EXCHANGE POLICY

(for General Needs homes)

Job Title: Head of Housing and Customer Services

Ratified by forum & date: Operations Committee

Implementation date: May 2023

Review date: May 2026

Mutual Exchange Policy

1.0 Introduction

1.1 CHS Group is committed to offering opportunities to its tenants who wish to move and provide a level of choice to people about where they live. Mutual exchanges provide them with an opportunity to 'swap' their home with other CHS tenants, or with tenants from other Registered Providers and local authorities. This policy applies to tenancies in CHS's General Needs housing service only. Mutual exchanges are a contractual right for Assured tenants and a statutory right for Secure tenants.

1.2 Mutual exchange is particularly useful to those who have low priority on Choice Based Lettings Schemes. The purpose of this policy is to promote and support mobility for tenants and provide guidance on how a mutual exchange should take place.

1.3 CHS Group aims to provide excellent customer service in respect of mutual exchanges. To achieve this, we will:

- Subscribe to and promote HomeSwapper (the web-based mutual exchange matching service) so that tenants may easily find exchange partners free of charge;
- Support tenants to easily identify and apply for an exchange, including tenants who are unable to access the HomeSwapper service by providing clear information and a simple application process;
- Inspect properties for repairs that are the tenant's responsibility;
- Keep tenants and other landlords informed of progress;
- Give a decision on an exchange within 6 weeks of their written application; and
- Provide a summary of the exchange process in the Tenancy Handbook and on the CHS Group website.

2.0 Right to Exchange

2.1 The law on mutual exchange is complex and a tenant's right to exchange varies depending on the type of tenancy agreement they have. For CHS Assured Tenants the Right to Exchange is set out in the Starter Tenancy Agreement. Starter tenants who are within their starter period do not have the right to mutual exchange.

2.2 For Secure tenants (those holding a tenancy with CHS since before 1st January 1989) the right to exchange is provided by section 92 of the Housing Act 1985.

2.3 Some tenancy exchanges happen by assignment – tenancies are swapped and each tenant steps into the shoes of the other. The Localism Act 2011 introduced circumstances where each tenancy is surrendered, and new tenancies granted. This is summarised in Appendix A.

2.4 CHS will not unreasonably withhold permission to exchange. The grounds for refusal will depend on the tenancy type and are contained in:

- Schedule 14 Localism Act
- Schedule 3 Housing Act 1985

Where CHS withholds consent for a mutual exchange it will apply this equally to Secure and Assured tenants including those exchanging via assignment and surrender and regrent.

2.5 The grounds on which an exchange can be refused are set out in Schedule 14 of the Localism Act and Schedule 3 of the Housing Act 1985 and are summarised as:

- The tenant or the proposed assignee is subject to an order for possession.
- Legal proceedings have begun for possession against the tenant or the proposed assignee.
- There is a closure order or notice under the Anti-Social Behaviour, Crime and Disorder Act 2014.
- The home one of the tenants wants to move to is much larger than required.
- The home one of the tenants wants to move to is too small for their household, and would result in overcrowding.
- The occupation of the proposed new tenant would conflict with CHS's charitable objects.
- The home is adapted for a person with special needs and nobody in the new tenant's household has such needs.

2.5 Where there are rent arrears or some other breach of tenancy obligation CHS may approve the application subject to a condition requiring the tenant to pay the outstanding rent or remedy the breach of tenancy (e.g. damage / unauthorised alterations) being corrected prior to the exchange of tenancy taking place.

2.6 CHS will give a decision in writing on whether a mutual exchange may be carried out within 42 days of receiving the application. If a decision cannot be made within the 42 day timescale, including for reasons outside CHSs control, the application will be refused.

3.0 Property Size

3.1 On receiving an application to carry out a mutual exchange CHS will assess whether the size of the property is suitable for the size of the household.

3.2 CHS will consider the property to be 'substantially more extensive than is reasonably required' if the household seeking to exchange into CHS property is considered to be under-occupying the property under housing benefit rules by more than one bedroom (whether or not they are in receipt of housing benefit).

3.3 Where under-occupancy (under the housing benefit definition) by one bedroom would occur as a result of the exchange, CHS will advise the incoming tenant of potential benefit implications should they proceed with the exchange. The incoming tenant will be responsible for maintaining all rent payments.

3.4 Where another landlord is involved it may have its own policy on whether to allow any degree of under-occupation and must make its own decision on whether it will allow the exchange to proceed.

3.5 CHS will not agree the exchange if either tenant's home will become overcrowded as a result, using the number of recorded bedspaces as the guide.

4.0 Property Condition

4.1 The standard of the property required on completion of the exchange is the same as that set out in the CHS Re-let Standard. A property inspection will be undertaken and the exchangee moving out of CHS property will be informed in writing of any works that are required to meet the Re-let Standard before the exchange can proceed.

4.2 If the incoming customer wishes to take on responsibility for some minor items that do not meet the standard they must sign a disclaimer and agree to accept responsibility for the items prior to assignment of the tenancy. CHS will make it clear in writing that by accepting responsibility the customer will be required to meet the Re-let Standard if they terminate the tenancy at a later date.

The incoming customer cannot take responsibility for the following:

- significant damage;
- sub-standard alterations;
- unauthorised structural work;
- electrical work (unless a certificate of electrical compliance has been provided by the outgoing customer, in which case the incoming customer will take responsibility for future maintenance);
- anything that is potentially a safety risk.

In these circumstances the outgoing customer will be required to fully resolve these issues before the exchange is authorised by CHS, subject to a follow up property inspection.

4.3 Where there are unauthorised alterations which are deemed safe and suitable, retrospective permission may be granted by CHS provided that the incoming customer accepts responsibility for these alterations, including on-going maintenance. CHS may require as a condition of the exchange that these alterations are removed and the property reinstated to its required standard at some time in the future.

5.0 Gas electrical and asbestos safety

5.1 CHS will undertake a gas safety check when a mutual exchange takes place. The gas will be capped when the outgoing tenant moves out and be reinstated when the new customer moves in.

5.2 CHS will carry out an electrical safety check to ensure all electrical installations are safe.

5.3 Where applicable, CHS will advise customers of the results of any asbestos survey undertaken at their new home.

5.4 Customers are required to provide access to their home for all inspections to take place. If access is not provided the exchange will not proceed.

6.0 Section 106 Planning Agreements

6.1 Section 106 Agreements are made under Town and Country planning legislation and make planning permission subject to certain conditions. These may place restrictions on any potential exchange, usually regarding local connection. These will be considered on a case by case basis.

CHS will expect that a mutual exchange applicant wishing to exchange from a property subject to a s106 to make reasonable efforts to find a mutual exchange partner who meets the criteria. If an exchange partner cannot be found then the s106 cascade principles can be applied to broaden the potential pool of exchange partners available.

7.0 Legal Requirements

7.1 The legal requirements for completing a mutual exchange vary according to the nature of the tenancies being exchanged. Following the Localism Act 2011 these

variations are greater and it is important that customers are informed of the implications of the exchange in relation to rent levels, tenancy length and security, rights of succession, right to acquire etc.

7.2 Section 158 of the Localism Act 2011 provides that pre-1st April 2012 secure and assured tenants will usually keep their security regardless of exchange. Where both are pre-1st April 2012 secure and assured tenants, the exchange will be undertaken by assignment. However, where a fully secure or fully assured tenant wishes to exchange with a fixed term tenant at a social rent, the exchange will be carried out by surrender and re-grant of the tenancy.

7.3 The protection provided to Pre-1st April 2012 tenants does not apply where secure or assured tenants choose to exchange with a fixed term tenant who does not occupy at a social rent. Such tenants lose their existing security of tenure (and social rent status) if they exchange with a non-social rent flexible or fixed term assured shorthold tenant. The exchange will take place by deed of assignment.

7.4 The protection offered by section 158 to Pre-1st April 2012 who exchange via surrender and regrant ends after they exchange as the new tenancy will commence after 2012. Existing assured or secure tenants whose exchange is achieved by assignment will not enjoy the protection offered by section 158 if the tenancy they have been assigned commenced after 1st April 2012 and they choose to exchange again.

7.5 Where the original party to a joint tenancy is no longer resident and the remaining joint tenant wishes to exchange, CHS will advise them to resolve the issue by completing a 'Joint to Sole' assignment of the tenancy before proceeding with the exchange. If the former occupier cannot be contacted to complete the assignment, CHS will allow the remaining tenant to serve a valid Notice to Quit to formally end the joint tenancy, in which case a new tenancy would be granted to the incoming exchangee.

7.6 With the exception of payment of any outstanding rent arrears, a tenant must not pay or accept any money to enter a mutual exchange, whether by way of assignment or surrender and re-grant.

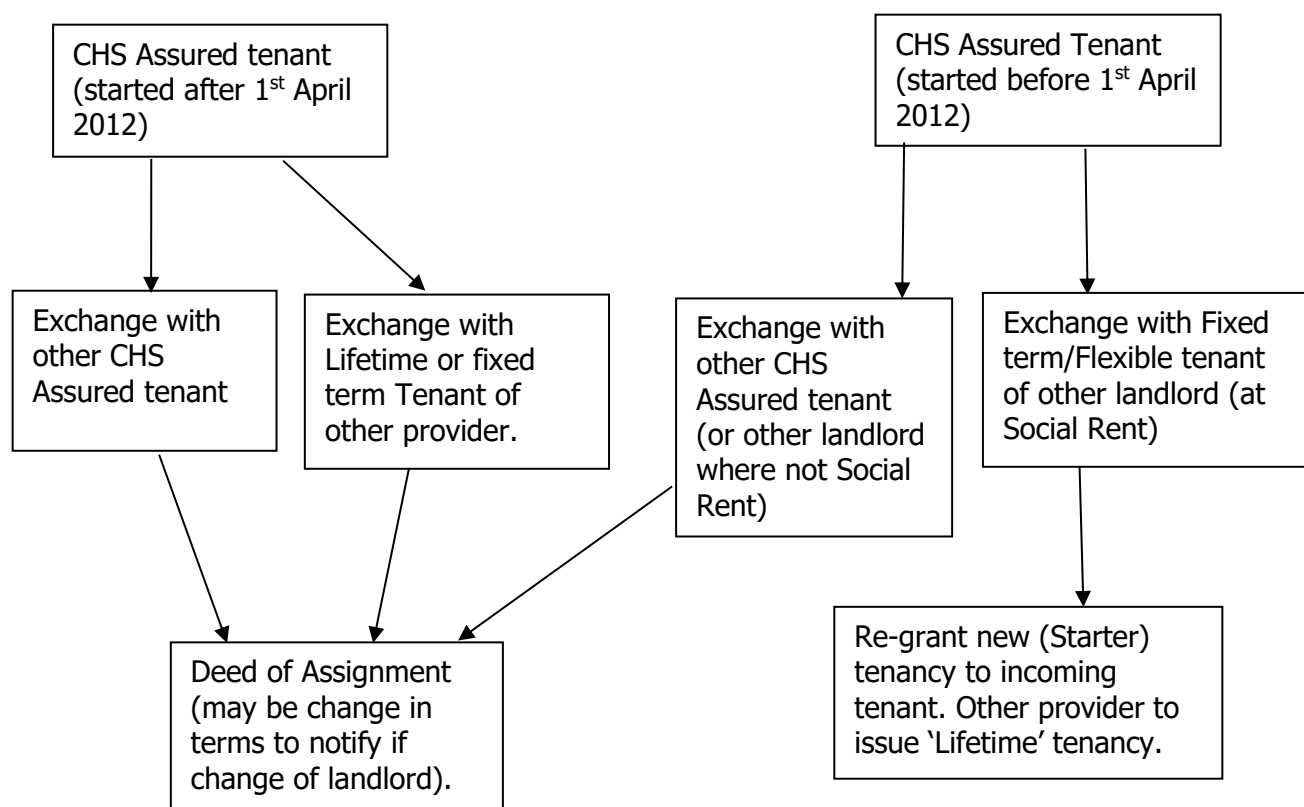
7.7 The flowchart in Appendix A below sets out the main circumstances that lead to either an assignment or a surrender and re-grant of a tenancy on mutual exchange.

8.0 Right of Appeal

8.1 If a tenant is eligible to exchange i.e. there is a statutory or contractual right to exchange, and is unhappy with any decision made by CHS Group under this policy they have the right to ask for it to be reviewed. They can do this by contacting CHS in writing with their reasons for requesting a review within 10 working days of being informed of the decision. The Head of Housing Management will review the decision and reply to the tenant within 15 working days.

MUTUAL EXCHANGE TENURE FLOWCHART

Appendix A



Information to provide:

- New landlord may charge 'Affordable' rent, landlord to confirm amount and annual review mechanism.
- Fixed term tenancy – confirm rent review mechanism as set out in tenancy agreement.
- Any change in Right to Acquire, Succession rights.
- Any future exchanges will not retain s.158 protection even where original tenancy commenced pre-2012.

Secure tenancies :

A Secure tenant exchanging within CHS – completed by Assignment and the Secure tenant acquires the other tenant's tenure.

A Secure tenant of CHS exchanging to another landlord to have implications explained (loss of rent registration, will acquire the other tenant's tenure).