

Tenancy Management Policy – Mutual Exchange Policy

Service Area		Housing & Projects	
Policy Owner		Tenancy Services Manager	
Introduced	2023	Last Reviewed	n/a
Version	One	Review Date	2025

MUTUAL EXCHANGES

1. PURPOSE

- 1.1 South Kesteven District Council recognises that because our customers' needs change throughout their lives and tenancies, this may result in a need to move homes. Exchanging homes is often the easiest and quickest way to move.
- 1.2 This policy sets out the approach to be taken by South Kesteven District Council in enabling tenants to exchange their tenancy with another tenant. This could be with either: another South Kesteven District Council tenant, another Local Authority tenant or a tenant of another registered provider.

2. POLICY STATEMENT

- 2.1 South Kesteven District Council will maximise the opportunities for mutual exchange. We will meet our obligations under legislation and those set out in tenancy agreements on mutual exchange.
- 2.2 We will participate in national and local mobility/exchange schemes (details are on our website). We will provide tenants with access to these mobility/exchange schemes, where there is value for money for tenants and South Kesteven District Council, to do so.
- 2.3 Tenants can mutually exchange to any part of the UK. However, tenants may be restricted from moving to a property or overcrowding may be withheld.
- 2.4 We will carry out an electric and gas safety check on all our properties. The electric check will take place prior to a move and we will carry out the gas safety check within 24 hours post the mutual exchange taking place.

3. CONTEXT

- 3.1 South Kesteven District Council's tenants on secure and fixed term tenancies have a legal right to exchange their home (statutorily and through rights given in the tenancy agreement). Introductory tenants have no right in law to mutual exchange.
- 3.2 Tenants are not being offered a new tenancy but 'swapping' (assigning by way of exchange) an existing tenancy, regardless of whether it is a secure, assured or fixed term tenancy, except where s.158 of the Localism Act, 2011 applies. Tenants take over the terms and conditions of each other's tenancy and could, for example, be swapping a secure tenancy for a fixed term tenancy.

4. POLICY OUTLINE

4.1 Landlord's Consent

- 4.1.1 South Kesteven District Council will require you and your exchange partner(s) to complete a mutual exchange application form. We have 42 days (6 weeks) to provisionally approve or reject an application from the date of when we have received application forms from all parties involved.
- 4.1.2 If consent is to be withheld, a notice must be served within 42 days of the tenant's application to exchange. The notice must specify the ground for withholding consent and give reasons for it.
- 4.1.3 If the other landlord of a mutual exchange refuses consent and there is reason to believe that the refusal was not reasonable, it is the responsibility of the other tenant, and not South Kesteven District Council or South Kesteven District Council's tenant, to pursue this. This right can be legally enforced only by the tenant against the landlord.

4.2 Tenant's Responsibilities

- 4.2.1 It is the tenant's responsibility to pursue potential exchanges.
- 4.2.2 A tenant needs to discuss the condition they are willing to accept the property in, with the person they are exchanging

with, before a move takes place. If tenants are not happy to accept the property in the condition it is in, then the tenants should not agree to move.

- 4.2.3 South Kesteven District Council may potentially refuse to rectify repair works which are accepted by the incoming tenant.

4.3 Implications of assignments of Mutual Exchange

- 4.3.1 Each tenant takes on the terms and conditions of the other party's tenancy.

- 4.3.2 The exchange may result in a change of tenancy type eg. from secure to assured. Consequently tenancy rights will alter, e.g. loss of Right to Buy and a fair rent. We will fully explain the implications prior to any exchange.

- 4.3.3 The incoming tenant cannot be held responsible for liabilities under the tenancy prior to the date of exchange, e.g. rent arrears.

- 4.3.4 The incoming tenant accepts the property in the condition, as per the signed disclaimer.

- 4.3.5 Other than repairs which South Kesteven District Council will carry out (and recharge the outgoing tenant), South Kesteven District Council will not undertake any other work to the property including internal redecoration or cleaning.

- 4.3.6 Tenants moving by mutual exchange will not qualify to receive decoration vouchers offered by South Kesteven District Council and will be expected to cover their own removal costs.

4.4 Handling Mutual Exchange Applications

- 4.4.1 We will determine an application to exchange within 42 days (6 weeks) of receipt of the fully completed original application.

4.4.2 Written permission must be obtained from all landlords involved in the mutual exchange before any exchange takes place.

4.4.3 We will not unreasonably refuse consent. Grounds by which a request to exchange is refused or granted conditional consent, are detailed in Appendix 2 and 3. Applicants need to be eligible to go on our housing register.

4.4.4 If South Kesteven District Council tenants are not happy with the way in which their mutual exchange application has been dealt with (rather than the decision, as this is made in accordance with the grounds in appendix 2 and 3) they have the right to make a complaint. Any feedback can be addressed to: complaints@southkesteven.gov.uk or feedback@southkesteven.gov.uk

4.5 Mutual Exchanges without permission

4.5.1 If tenants exchange without permission from all landlords concerned, the exchange is not legal. The options available to the landlords involved are:

- to confirm the exchange and ask the tenants to complete the paperwork (this option will only be in exceptional circumstances);
- to take action and the tenants return to their original property (if the original property is still available)

4.5.2 Failure to ask for permission to exchange can result in legal action and charges incurred.

4.6 Conditional Consent

4.6.1 Providing the tenant is notified within the statutory 42 days, South Kesteven District Council can attach a condition to any consent. We will notify the tenant of the condition in writing and the timescales for completion.

4.7 Mutual Exchange Withheld

4.7.1 The grounds by which a request to exchange is withheld are detailed in Appendix 2 and 3.

4.8 Waive the right to refuse a Mutual Exchange

4.8.1 South Kesteven District Council will endeavour to work with tenants affected by any extenuating circumstances (considered on a case by case basis) including, but not limited to, welfare reform, including applicants who are under-occupying.

4.8.2 This means that South Kesteven District Council may choose to approve an exchange, even if they have grounds by which they could refuse it, if the exchange is into a South Kesteven District Council property and would:

- improve the tenant's financial situation
- resolve under-occupation
- result in a repayment of arrears outstanding to South Kesteven District Council

4.8.3 If South Kesteven District Council exercises a waiver, this would happen prior to completion of the mutual exchange with approval from the Tenancy Services Manager. If there are rent arrears, there will also be a requirement to repay these through a repayment plan.

4.8.4 Prior to any mutual exchange being finalised, the tenant will need to sign a declaration to demonstrate to South Kesteven District Council that s/he has been formally informed and they understand the requirement to pay the debt. Also, the tenant has been notified that failure to adhere to the terms of repayment of this debt may result in further actions being taken against them.

4.9 Safeguarding

4.9.1 Where an exchange involves a tenant who is considered to be vulnerable, particular care and consideration will be given to ensure there is no coercion, exploitation or safeguarding concerns.

5. ELIGIBILITY

5.1 Secure Tenancies

5.1.1 The Housing Act 1985, s.92 (as amended by the Local Government and Housing Act 1989, s.163) states that every secure tenant may, with the consent of their landlord, assign their tenancy to another secure or assured tenant, who also has the written consent of their landlord and satisfies the conditions under the aforementioned legislation.

5.2 Assured Tenancies

5.2.1 The Local Government and Housing Act 1989, s.163 allowed assured tenants to exchange with secure tenants.

5.2.2 Schedule 3 of the Housing Act, 1985 (refer to Appendix 2) lists the grounds by which a mutual exchange request can be refused in cases where one tenant is a secure or assured tenant.

5.3 Fixed Term Tenancies of 2+ years

5.3.1 The Localism Act 2011 allowed social landlords to grant tenancies for a fixed length of time. Section 158 and section 159 of the Act relate to the transfer of tenancies.

5.3.2 Section 158 of the 2011 Act does not apply in relation to—

- ☐ (a) an assured shorthold tenancy for a fixed term of less than two years,
- ☐ (b) a periodic assured shorthold tenancy,
- ☐ (c) an assured shorthold tenancy where the rent payable under the tenancy is—
 - (i) Affordable Rent;
 - (ii) Intermediate Rent;
 - (iii) Mortgage Rescue rent; or
 - (iv) Shared ownership rent

(and accordingly, the transfer of tenancy provisions in that section do not apply in relation to assured shorthold tenancies of those kinds).

5.3.3 Example of exchange with fixed term tenant: if Tenant A (a secure or assured lifetime tenant, whose tenancy was granted prior to 1 April 2012) and Tenant B (a fixed term tenant) wish to exchange, and consent is given, then Tenant A must be granted another tenancy, which is the same as their original tenancy (secure or assured). This only works once and so will not be possible on subsequent mutual exchanges.

5.3.4 Tenant B is not protected; it is up to the landlord to decide what type of tenancy to offer Tenant B. South Kesteven District Council's position is set out in the Tenancy Policy.

5.3.5 Schedule 14 of the Localism Act 2011 (refer to Appendix 3) lists the grounds by which a mutual exchange request can be refused in cases where one tenant is a fixed term tenant.

5.4 Introductory tenancies

5.4.1 South Kesteven District Council introductory tenants can only exchange in exceptional circumstances. Each tenant's circumstances will be considered on their own merit. The Tenancy Services Manager will determine cases that are considered exceptional. In order to enable a mutual exchange to take place, both tenants must gain landlord's consent to formally exchange.

5.5 Exchanging with tenants of different tenure

5.5.1 The Localism Act 2011, s.158 introduced a protection for secure and assured lifetime tenants, who were granted their tenancy prior to 1 April 2012. This means that if they exchange with another tenant, they keep the same tenure, regardless of the tenure of the other tenant they are exchanging with.

5.5.2 Mutual exchanges will take effect by either an assignment

of tenancies or by surrender and re-grant of each tenancy, in accordance with the relevant legal and regulatory provision. The appropriate mechanism of exchange is based on tenure types. This is explained in a table (Appendix 4).

6. IMPLEMENTATION OF THE POLICY

- 6.1 The effective implementation of this policy and the procedures includes responsibility for ensuring all requests are regularly maintained; relevant aspects of the Council's website in relation to mutual exchange are kept up to date; and all options for a customer to consider are made available to them.
- 6.2 Once a mutual exchange application is made, we will keep in regular contact with applicants and adhere to the customer service standards in the handling of the mutual exchange within the legal timescales (42 days).
- 6.3 We will monitor the effectiveness of the Mutual Exchange Policy and Procedures through annual review.