

Mutual Exchange Policy

1. Summary

- 1.1. SHAL wishes to support Tenants who need to move and to provide a level of choice about where they live. This Policy sets out SHAL's position in respect to allowing our tenants to Assign their tenancy by Deed of Assignment with another social housing tenant.
- 1.2. All Registered Providers and Local Authority tenants have a right to apply to Assignment by Deed of the tenancy agreement with another Council or Housing Association tenant anywhere in the UK as set out in the Housing Act 1985 or as set out as a contractual right in the tenancy agreement.
- 1.3. This policy applies to all general needs assured tenants with social or affordable rent properties. It does not apply to starter tenants, assured shorthold tenants, license holders, service tenancies or leaseholders.

2. Objectives

- 2.1. Provide tenants and staff with clear information on the requirements for an Assignment by Deed of the tenancy agreement.
- 2.2. Set out the circumstances for assigning or surrendering a tenancy
- 2.3. Set out the grounds for refusing a mutual exchange
- 2.4. Provide a clear appeals process

3. Details

- 3.1. Tenants who are eligible to exchange can do so with either another eligible SHAL tenant, a tenant of another registered social housing provider or a local authority tenant.
- 3.2. It is the tenant's responsibility to find somebody that they want to exchange with. It is the tenant's responsibility to view the property they wish to exchange in to prior to making their decision to exchange.

3.3. Tenants right to Exchange

Current version	Date agreed/reviewed	Review due	Owner	Pages
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SHAL is registered in England and Wales as a Community Benefit Society and an exempt charity (number 27772R).

- 3.3.1. Secure tenants have the right to assign their tenancy by way of mutual exchange under section 92 of the Housing Act 1985 as amended.
- 3.3.2. Assured (non-shorthold) tenants have no statutory right to assign their tenancy by way of mutual exchange but usually have the right to assign by way of exchange as a contractual right in the tenancy agreement.
- 3.3.3. The following tenants do not have any right to exchange:
 - a Tenants with a starter tenancy
 - b Assured shorthold tenancies (periodic)
 - c Demoted tenancies
 - d Temporary (decant) tenancies (although tenants may have the right to exchange at their permanent address)
 - e Licensees
 - f Leaseholders
 - g Shared owners

3.4. Localism Act Exchanges

- 3.4.1. Mutual exchange is usually by way of each tenant assigning their tenancy to the other so that each effectively takes over their tenancy, including its status as Assured or Secure and its rent level.
- 3.4.2. However, Section 158 of the Localism Act 2011 provides protection for 'lifetime' tenants, i.e. Assured and Secure tenants that held their tenancy on or before 1 April 2012, who want to exchange with a tenant who holds a flexible tenancy. It does this by each tenant surrendering their tenancy and the landlord granting a new tenancy. This is so the existing 'lifetime' tenant will still have a 'lifetime' tenancy following the exchange.
- 3.4.3. If a tenant who holds a flexible tenancy wishes to exchange with a SHAL assured tenant, they will be offered an assured tenancy following the exchange. The SHAL tenant may lose their security of tenure if their assured (non-shorthold) tenancy began after 1 April 2012. If their

tenancy started prior to this date, they will keep their assured or secure tenancy following the exchange. Any further mutual exchange after this would then result in the security of tenure being lost as essentially, the current tenancy will have started after 1 April 2012.

3.4.4. SHAL do not offer flexible tenancies, only 'lifetime' assured (non-shorthold) tenancies, after an initial 12-month starter tenancy which acts as a probationary period.

3.5. Grounds for refusal

3.5.1. SHAL will not unreasonably withhold permission to exchange. There are three sets of grounds for refusing an application for a mutual exchange. Which set applies depends on the tenancy type and whether the potential exchange is Localism Act exchange.

3.5.2. The grounds for refusal of a mutual exchange will be one of:

- a Schedule 3 of the 1985 Housing Act (Appendix 1)
- b Schedule 14 of the Localism Act 2011 (Appendix 2)
- c SHAL Policy Grounds (specified grounds) (Appendix 3)

3.5.3. SHAL's assured tenancy agreement does not reference Schedule 3 of the Housing Act 1985. It reads:

- a The Tenant has the right to exchange this Tenancy by assignment with that of another assured periodic or secure tenant of a registered housing association or a local authority subject to the prior written consent of the Landlord, which may be subject to conditions and which shall only be withheld on specified grounds.

3.5.4. SHAL does not offer flexible tenancies, therefore we would generally not refuse a mutual exchange under Schedule 14 of the Localism Act 2011.

3.5.5. SHAL may refuse a mutual exchange for a reason within the specified grounds in appendix 3. These specified grounds mirror both Schedule 3 of the Housing Act 1985 and Schedule 14 of the Localism Act 2011 and include SHAL's Policy Grounds.

- 3.6. Refusals due to rent arrears
 - 3.6.1. Landlords aren't able to refuse a mutual exchange application due to rent arrears, unless schedule 14 grounds apply, or they have served the appropriate legal notice or obtained a relevant court order. SHAL will make it a condition of the approval that any arrears are cleared by a specified date before the exchange date.
- 3.7. Refusals due to under-occupation
 - 3.7.1. SHAL will not provide consent to a mutual exchange if the property is larger than reasonably required. For example, a family with a 2-bedroom need requesting a mutual exchange in to a 3-bedroom property.
- 3.8. Refusals due to property adaptations
 - 3.8.1. We will only refuse a mutual exchange involving a property that has adaptations for a disabled tenant or a member of their household if the incoming household does not require such a property and the adaptations are significant e.g. the property has been purpose built for a disabled person or has had structural changes or significant adaptations to fixtures and fittings e.g. it has level access or significant external ramping, it has wider doors or hallways for turning a wheelchair, or it has an adapted kitchen suitable for a wheelchair user or a level access shower/ wet room.
 - 3.8.2. We will not generally refuse a mutual exchange where a tenant will need the property adapted but we may ask that approval and funding for the adaption are obtained prior to the exchange taking place.
- 3.9. Approval of application
 - 3.9.1. The tenant must be advised in writing of a decision within 42 days of requesting a mutual exchange, otherwise statutory grounds cannot be relied upon for refusal. The decision can be to:

- a Refuse the exchange

- b Approve the exchange, or
 - c Approve the exchange with conditions as set out below
- 3.9.2. Conditions can only be applied where a) schedule 3 grounds apply, and they must relate to a tenancy term or condition that needs to be met or b) Appendix 3 applies and it is one of the stated policy conditions. The exchange cannot proceed until the conditions are met.
- 3.9.3. If SHAL fails to provide the tenant with written consent within 42 days of receiving the application, the tenant cannot assume consent has been given and must not proceed with the exchange but should log a formal complaint about our failure to make a decision (see SHAL’s complaints policy).
- 3.9.4. Where the exchange is with a tenant from another landlord, we will only give approval once we have received a satisfactory tenancy reference and completed satisfactory verification checks, including a property inspection of their current home.
- 3.9.5. We must meet with all members of the household who are included within the application and who will be moving into the property, including children. We must also verify their identity and check ID documentation where this is possible i.e., adult children.
- 3.9.6. We will require consent from an applicant to complete a credit check as part of the verification process. This check will support our process and will confirm that the information provided to us during the verification is accurate, including outstanding debts and address history. Failure to provide consent for a credit check will result in the application failing the verification and the mutual exchange request will be cancelled.
- 3.9.7. Exchanges involving a joint tenancy cannot be approved unless both tenants have given consent by signing the mutual exchange application form.

- 3.9.8. If SHAL's property is located within a sensitive let area or is a property subject to sensitive let requirements, any prospective tenant wishing to move into that property must also evidence that they meet the sensitive let criteria. Such criteria will be communicated during the verification process.
 - 3.9.9. If SHAL's property is subject to a S106 Local Connection criteria, any prospective tenant wishing to move in to the property must be able to evidence a local connection during the verification process.
 - 3.9.10. We will request that both the outgoing SHAL tenant and the incoming tenant are both present for the property inspection. This will ensure that each party is aware of both their and SHAL's obligations. All parties must sign the inspection report and ensure that it is read and understood.
 - 3.9.11. Durin the verification process, SHAL will thoroughly check all information provided both on the application form and in the tenancy reference. SHAL will also seek information from partner agencies where necessary in order to be able to make a decision in the best interests of both the applicant and the community.
- 3.10. Affordability
- 3.10.1. Some single people ages between 18-21 may be impacted by reductions in benefit levels that help with housing costs. We recognise that tenancy agreements where Schedule 3 of the Housing Act 1985 or Schedule 14 of the Localism Act 2011 apply we are only able to refuse a mutual exchange on set grounds and affordability is not one of those grounds.
 - 3.10.2. If our tenancy reference request and verification checks highlight that the incoming tenant cannot afford the property, we may refuse the mutual exchange under our Policy Grounds.

3.10.3. In all cases we will discuss affordability with the applicant and what will happen if they are unable to pay the rent so they can make an informed decision on whether to proceed with the exchange.

3.11. Unauthorised mutual exchange

3.11.1. In the event of a mutual exchange taking place without our knowledge or written consent, we will treat the occupants as unauthorised occupants and may take legal action to recover the property.

3.12. Right of appeal

3.12.1. If a tenant is eligible to exchange i.e. there is a statutory or contractual right to exchange, and is unhappy with the decision made under this policy they have the right to ask for it to be reviewed. They can do this by writing to SHAL (by email or post) within 10 working days of being informed of the decision. The Housing Manager will review the case and will reply to the tenant within 10 working days.

3.13. Disclosure of information

3.13.1. In providing a reference to other landlords we will disclose all complaints of anti-social behaviour and tenancy breaches, known criminal activity related to the property or neighbourhood and any known child protection concerns. The application form will include a relevant consent to disclosure statement to this effect.

3.14. Right to repairs

3.14.1. Incoming tenants have the same right to repair for repairs that are the landlord's responsibility as other SHAL tenants. Responsibility for repairs that were the responsibility of the outgoing/ former tenant will pass to the new/ incoming tenant as the property is taken 'as seen' following both the incoming tenant and SHAL viewing and inspecting the property.

3.14.2. SHAL will usually complete gas safety and electrical inspection checks the next working day after the exchange has taken place.

3.15. Safety checks

- 3.15.1. Following receipt of a mutual exchange application, SHAL will charge our current tenant for the relevant safety checks and lock change involved in exchanging the tenancy, including electric and gas, oil and solid fuel (whichever is applicable). We will also charge a non-refundable administration fee of £25.00. These costs will need to be paid at the point of application.
- 3.15.2. If the mutual exchange application is declined and consent is not given, we will refund the cost of the safety checks.
- 3.15.3. Signing the Deed of Assignment
- 3.15.4. SHAL will make arrangements for the Deed of Assignment to be physically signed by all parties at the SHAL property on the date the Assignment is taking place. It is not possible to pre-date or pre-sign this paperwork ahead of this date.
- 3.15.5. Each party will be left with a copy of this paperwork to confirm that it has been signed and that they are now the legal tenant of the property. Until such time, each tenant remains a tenant and therefore legally responsible for their current tenancy and property.

4. Outcomes

- 4.1. Ensure the mutual exchange process is fair and consistent and it fit for purpose
- 4.2. Align tenancy rights between new tenants and mutual exchange tenants.

5. Consultation

- 5.1. A draft copy of this policy will be available on our website to allow members of the public an opportunity to comment on its contents prior to being submitted for approval by SHAL's board.
- 5.2. All tenants will be contacted by text to let them know of its availability online and also a draft copy will also be made available on request.
- 5.3. SHAL's tenant scrutiny panel will also be invited to review the policy and suggest any comments and amendments prior to the policy being approved by the board.

6. Equality and Diversity

- 6.1. SHAL celebrates diversity and recognises the needs of a diverse population. This policy will be applied in a way which complies with our own Equality and Diversity Policy, which states that we will not discriminate on grounds of age, disability, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy and maternity, race, religion and belief and gender.
- 6.2. The policy will also comply with the Human Rights Act 1998, and Equalities Act 2010.
- 6.3. SHAL works closely with its partners and other agencies to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles.

7. Value for Money

- 7.1. SHAL is committed to delivering excellent services which offer value for money. This policy will achieve value for money by ensuring tenants are offered tenancies appropriate to their needs and which will help SHAL make best use of its homes.

8. Owner

8.1. Housing Manager

9. Version and Revisions

9.1. This policy will be reviewed every 3 year(s).

9.2. Revisions

New version	Date	Revision details
2.0	28/06/2022	Paragraphs 3.9.5 3.9.7
3.0	19/12/2022	Paragraph 3.9.6
4.0	28/07/2023	Paragraphs 3.9.9 3.9.10