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REPORT SIGNED OFF BY?	Date:
1) Service Manager	YES/NO/TBC – dd/mm/yyyy
2) Legal	YES/NO/TBC – dd/mm/yyyy
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4) Head of Function/SLT	YES/NO/TBC – dd/mm/yyyy
5) Governance Team	YES/NO/TBC – dd/mm/yyyy

Somerset West and Taunton

Tenants' Strategic Group – 16th March 2020

Mutual Exchange Policy

This matter is the responsibility of Executive Member Councillor Francesca Smith

Report Author: (Stephen Boland – Housing Specialist)

1 Executive Summary

To present to the Tenants' Strategic Group a draft Mutual Exchange Policy.

Recommendations

Members of the Tenants' Strategic group are invited to consider and make recommendation/s on the draft policy to the Council's Executive Member for Housing.

2 Risk Assessment

There are no specific risk management issues.

3 Background and full details of the report

A mutual exchange allows social housing tenants to 'swap' their properties with each other.

Each tenant must have the written consent of his/her landlord.

The consent of the landlord must not be withheld except on grounds set out in the relevant legislation.

Somerset West and Taunton approve approximately 50 plus exchanges each year, and this aids mobility both within the council's housing stock and between Somerset West and Taunton and other local authorities and housing associations. Whilst most exchange applications are approved, a small number are refused and some refusals become controversial because the applicants are naturally disappointed, and because some decisions, whilst consistent with current lettings policy, appear harsh to the tenants and their representatives.

4 Links to Corporate Strategy

There are no specific links to corporate aims.

5 Finance / resource implications

There are no financial comments in relation to this report.

6 Legal implications

The statutory duties are set out within the report and require no further comment.

7 Climate and sustainability implications

There are no specific climate or sustainability implications.

8 Safeguarding and/or community safety implications

There are no specific safeguarding and or community safety implications.

9 Equality and diversity implications

None for the purposes of this report.

10 Social value implications

None for the purposes of this report.

11 Partnership implications

There are no specific partnership implications.

12 Health and wellbeing implications

None for the purposes of this report.

13 Asset management implications

None for the purposes of this report.

14 Data protection implications

None for the purposes of this report.

15 Consultation implications

None for the purposes of this report.

17 Scrutiny comments / recommendation(s)

None for the purposes of this report.

Democratic path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting frequency: **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

List of appendices (delete if not applicable)

Appendix One	Mutual Exchange Policy
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Somerset West and Taunton Council

Mutual Exchange Policy (DRAFT)

March 2020

Policy Number	1
Policy Title:	Mutual Exchange Policy
Author	Stephen Boland – Housing Specialist
Responsible Officer	Stephen Boland
Date Equality Impact Assessment completed:	
Date Agreed by Board:	
Date agreed by Housing Portfolio Holder	
Next Review Date:	March 2025
Version	Draft: 01

Somerset West and Taunton Council

Mutual Exchange Policy

1. Policy objectives

This policy sets out Somerset West and Taunton Council's (SWT) approach to dealing with tenants who wish to carry out a mutual exchange.

SWT will help facilitate mutual exchange as a way of encouraging and promoting tenant mobility. We will do this by:

- Informing tenants of their right to exchange in the tenancy agreement, and tenants handbook;
- Provide an opportunity for tenants to move anywhere in the country without needing to go through the choice based lettings (CBL) system, especially where they do/would not have a high priority for a move;
- Promote mutual exchanges as a method to enable tenants to choose a home in the area they wish to live in;
- Provide advice and assistance for those carrying out an exchange; and
- Facilitating access to an online mutual exchange register.

2. Policy aims

The key aims of this policy are to:

- Provide a framework to ensure that mutual exchanges are carried out efficiently and fairly in full compliance with legislation and the tenancy agreement;
- To comply with and support the Government's nationwide social home swap programme to give council and registered social landlord tenants a wider choice in where they want to live;
- Minimise costs to SWT through a comprehensive inspection and approval process prior to and upon an exchange taking place;
- Encourage the use of mutual exchanges so SWT will achieve the best utilisation of its stock while minimising the risks of inappropriate moves; and
- Establish/maintain a good relationship with all our partners including the local authorities and other registered social housing providers.

3. Who the policy covers

This policy covers SWT social housing tenants living in general needs and supported housing stock. This policy does not cover SWT tenants with introductory tenancies, demoted tenancies, non-secure tenancies or 'use and occupation' arrangements the council may have agreed to.

4. Relevant legal and regulatory information

Section 158 of the Localism Act 2011 sets out the grounds under which a mutual exchange can be refused, these are broadly the same as those set out in Schedule 3 of the Housing Act 1985. The table below shows what grounds apply under both of these acts.

Schedule 3 Of the Housing Act	Schedule 14 Of the Localism Act	Grounds for Refusing a Mutual Exchange
	Ground 1	When rent lawfully due from a tenant under one of the existing tenancies has not be paid.
	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	A court order for possession or a suspended possession order has been made for either property.
Ground 2	Grounds 4 and 5	The landlord has served Notice Of Seeking Possession and the notice is still in force or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than in reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the assignee and their household.

Ground 5	Ground 9	The property is part of a building that is held for non-housing purposes or it is situated in a cemetery and was let in connection with employment with the landlord or local authority or a new town corporation, housing action trust, urban development corporation or the governors of a grant aided school.
Ground 6	Ground 10	The local landlord is a charity and the proposed assignee's occupation of the property would conflict with the object of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person and if the assignment went ahead a physically disabled person wouldn't be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil this criteria
Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with these special needs and if the assignment was to go ahead no person with those special needs would be living there.
Ground 10	Ground 14	The dwelling is subject of a management agreement where the management is a

		housing association of which least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association and also that the proposed assignee is not such a member and is not willing to become one.
Additional ground (Housing Act 2004)	Ground 6	An injunction order under Section 153 of Housing Act 1996 or an Anti-Social Behaviour Order or a Demotion Order or a possession order under Ground 2 for Secure tenancies or Ground 14 for Assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.

5. Types of exchange and tenancies

Mutual exchanges are carried out in one of two ways:

- Through assignment; and
- Through surrender and re-grant of tenancies.

Assignment is the swapping of tenancies at the same time as homes are exchanged. The incoming tenant will take on the rights and responsibilities of the tenant they have swapped with. This is used when those exchanging homes hold tenancies with a similar security of tenure.

Surrender and re-grant is where tenants surrender their current tenancy and re-sign a tenancy with a similar security of tenure for their new property. This is used when the parties exchanging hold tenancies with different security, and one of the parties has their security protected by law.

Tenants who hold a lifetime (secure or assured) tenancy that was granted before April 1st 2012 have their security of tenure protected by law. Tenants who hold a secure or assured

tenancy granted before this date therefore cannot swap tenancies (be assigned) with a fixed term or flexible tenant, though there are exceptions.

This legislative protection will not apply when a lifetime tenant chooses to exchange with a fixed term tenant on an affordable rent.

The table below sets out whether an exchange by assignment or by surrender and re-grant will take place:

Tenant 1	Tenant 2	Mutual exchange by:	Exceptions:
Secure/ Assured	Secure/Assured	Assignment (swapping tenancies)	
Secure/ Assured	Flexible/Fixed	Surrender and re-grant (each tenant gets a new tenancy with the same/similar level of security as they currently have).	If the secure/assured commenced after April 2012: exchange by <u>assignment</u> . If the fixed-term has an affordable rent: exchange by <u>assignment</u> .

6. Landlords consent to exchange

All those involved in the exchange must complete a mutual exchange application form.

SWT will acknowledge the exchange and notify all the proposed exchange partners of the decision within 42 days.

When determining bedroom need SWT will follow Homefinder Somerset's Choice Based Lettings allocations procedure.

SWT will request a reference for the assignee from their landlord and consent will not be given until the reference is received.

7. Safety checks

SWT will carry out a number of property inspection to ensure that the property is in a good state of repair. These inspections will include the following:

- Inspection from a property surveyor who will check the structure, fixtures and fittings in the property. If the surveyor finds any changes, damage or fittings that are the tenant's responsibility and are not up to SWT standards these will have to be rectified before the exchange can proceed, with another visit being arranged for the agreed works to be signed off;
- Any problems found by this inspection that are SWT responsibility will be put right before the exchange proceeds;
- Electrical inspection will be carried out;

- An inspection by the housing team will be carried out, at this inspection the officer will look at the cleanliness of the property and garden and discuss items that are being left by the outgoing tenant for the assignee;
- A gas check will be carried out on the day of the move with the gas being capped when the outgoing tenant moves out and re-instated and checked when the incoming tenant moves in;
- Safety certificates will be provided to new tenants for their own information and a copy held on the Council's asset management system;
- SWT will require tenants to sign to accept liability for any non-standard alterations or installations and any items which tenants have agreed with each other to leave in the property; and
- Incoming tenants will be entitled to day to day repairs and to be included in any identified SWT upgrade works programmes.

8. Exchanges without consent

If a tenant does not obtain SWT's written consent or the application to exchange is withheld or rejected, the exchange will be unlawful. Both tenants will be in the position of:

- Having no legal interest in the tenancy at the property at which they are living; and
- Being liable for the rent and other obligations of their original respective tenancies; and having lost their security of tenure because they are no longer occupying their original home as their only or main home.

In these instances the available options to SWT are to:

- Consider making the exchange legal by completing the new tenancy agreements or Deed of Assignment forms retrospectively; or
- Demand that both tenants return to their original homes; or terminate the tenancies by serving a Notice To Quit (NTQ) and without prejudice serve a Notice of Seeking Possession (NOSP) on the original homes to seek possession.

9. Rent arrears

SWT cannot withhold consent to a mutual exchange because a tenant has rent arrears unless:

- The tenant or proposed exchange partner has a possession order outstanding against them, whether or not it has already come into force.
- The tenant or proposed exchange partner has outstanding possession proceedings against them or a NOSP is still in force.

SWT will however make it a condition of granting permission that any rent arrears need to be cleared before the exchange can proceed.

10. Succession

The right to succession is personal to the individual tenant and this right transfers with the tenant when they move in a mutual exchange. No new succession rights are created as a result of a mutual exchange and if the incoming tenant has previously succeeded to a tenancy no further successions would be permitted under the tenancy accepted with SWT.

Assignment by way of mutual exchange does not count as a statutory succession.

11. Permission for exchange

SWT will only give permission for an exchange to take place when the consent of all other landlords involved has been obtained and all the following requirements have been met:

- A satisfactory report has been received from landlords of other tenants involved in the exchange concerning tenancy conduct including rent payments, anti-social behaviour and property condition;
- The report should also address any support needs the incoming tenant has; and
- Agreement has been reached between landlords that the exchange may go ahead.

Once the agreement has been reached a letter of confirmation will be sent to all parties involved with the time and date for the completion of paperwork taking place.

The assignee will also receive the following information including:

- Tenancy Agreement with confirmation of the tenancy they will be taking on;
- Tenant's handbook;
- Copy of the property surveyors report;
- Copy of the electrical and gas reports; and
- Disclaimer form for items being left in the property by the outgoing tenant.

12. Section 106 agreements

Section 106 Agreements are made under the town and country planning legislation, and make planning permission subject to certain conditions. In the context of lettings and exchanges these may seek to restrict lettings to people with local connections.

SWT will have regard of Section 106 Agreements where relevant, and will refuse applications where the Section 106 Agreement principles would be broken.

13. Appeals

Any applicant who has had a request for mutual exchange refused may request that the decision be reviewed through the formal complaints process.

14. Review date

To be reviewed September 2025