



**Mutual Exchange Policy
(Social and Affordable Tenancies)**

SER-POL-07

Version 4

Date approved: 20th May 2024

Approved by: Chief Executive

1. Introduction

- 1.1 A Mutual Exchange is an agreement made between two or more sets of tenants to swap their homes.
- 1.2 Southway will actively promote Mutual Exchange for those tenants who have the right, to promote tenant choice, make best use of our homes and better meet housing demand.
- 1.2 Most applications for mutual exchanges are approved although there are some circumstances that lead to them being refused. These are covered in detail in the final section of this policy.
- 1.3 Southway has guidance in place for those tenants considering a Mutual Exchange. These are available via our website and are provided to all tenants applying for a mutual exchange.
- 1.4 Southway subscribes to and promotes the web-based House Exchange system as the principal way to facilitate exchanges. As we also recognise that not all tenants have access to digital routes, we can offer a range of support on request including home visits and support to get online.

2. Legal Right to Exchange

- 2.1 Tenants with a Secure Tenancy Agreement have a statutory right to exchange, contained within Section 92 of the Housing Act 1985.
- 2.2 Tenants with an Assured Tenancy Agreement are granted the right to exchange in the terms of the tenancy agreement.
- 2.3 Tenants with an Assured Shorthold Tenancy Agreement, including new tenants, on a Starter Tenancy for their first 12 months or extended, do not have the right to exchange.
- 2.4 When an exchange takes place, each tenant takes on the terms and conditions of the other party's tenancy. The exchange may result in a change of tenancy type from secure to assured or assured to secure, and consequently tenancy rights may alter, for example, loss of the Right to Buy.
- 2.5 The Localism Act 2011 states that an assured or secure tenant whose tenancy began before the Act came into force has a right to request that a landlord will accept surrender and grant them a new assured or secure tenancy when they wish to swap with a flexible or fixed term tenant.

- 2.3 The incoming tenant cannot be held responsible for liabilities under the tenancy prior to the date of exchange, for example, if there are any rent arrears.
- 2.4 Southway will ensure that tenants considering a mutual exchange are made aware of any changes to their contractual and / or statutory rights as set out in their tenancy agreements prior to any exchange taking place.
- 2.5 Most Southway exchanges will be completed by all tenants signing a Deed of Assignment. This means that the tenants agree to swap each other's tenancies. In circumstances where all parties are existing Southway tenants and there are rent arrears, a Deed of Assignment may not be appropriate. In those cases, the Trust will grant either an Assured or Assured with Protected Rights tenancy agreement to the parties swapping their homes. This is to ensure that the incoming tenant does not inherit the arrears on the previous tenant's account, and that the outgoing tenant will still have the responsibility to pay their arrears.

3. Mutual Exchange Decisions

- 3.1 Southway will administer mutual exchanges as quickly and efficiently as possible. We will endeavour to decide on whether a mutual exchange can go ahead within a maximum number of 42 days from when the application forms are received. This is in line with the statutory standard for Local Authorities and best practice. In cases where we cannot meet this deadline, we will explain this to all parties involved in the mutual exchange setting out the reasons why and offer a new deadline.
- 3.2 Final consent will be granted where there are either no conditions, or all conditions have been met by the tenant (s).

Refusing a Mutual Exchange

- 3.3 If an application for exchange is refused, the reasons will be explained clearly in writing.
- 3.4 Permission can be refused where any of the grounds listed in Schedule 3 of the Housing Act 1985 apply. This is included as an Appendix to this policy along with the Trust's definition of Grounds 3, 4 and 7.
- 3.5 The Trust can apply additional discretion and refuse for other reasons such as:–
- Where the rent will be unaffordable for the incoming tenant

- Where a local lettings policy applies and in the incoming tenant does not meet the criteria i.e., an age restriction.
- Where the incoming tenant has pets, and they are not allowed in the property identified for exchange.
- Where the landlord believes there is good reason to refuse the exchange

This is not an exhaustive list. A discretionary refusal decision can only be made by a member of the Senior Management Team and a full written explanation will be provided.

Conditional Consent

- 3.6 Conditional consent is generally granted where repairs are required to the property that are the responsibility of the out-going tenant, or rent arrears, or both. The Trust will not allow any exchange to take place where any unauthorised improvements present a health and safety concern, regardless of the incoming tenant's preparedness to accept this risk. Examples of this include glass doors and any unapproved gas or electrical improvements.

If Rent Arrears need to be cleared:

- 3.7 Where the tenant does not have a clear rent account, but no legal action has been taken in respect of the arrears, conditional consent will be granted, and the tenant(s) will need to clear the arrears before final consent.
- 3.8 In exceptional circumstances, and to support tenants in achieving a sustainable tenancy, the Trust may permit an exchange to take place even when a tenant has un-discharged rent arrears. These cases will have to be approved by a member of the Senior Management Team.

Final Consent

- 3.9 Final consent will only be granted where all checks are complete, and no further action is required by the tenant.

4. Performance Monitoring

- 4.1 The Executive Director Landlord and Community services has overall responsibility for this policy, with operational delivery within the remit of the Head of Housing Management.
- 4.2 Officers will monitor mutual exchanges and report as part of the Annual Lettings report to People and Places Committee. This will include the number

of exchanges that have been completed and will identify the reasons for any discretionary refusals. The report will also update on the outcomes achieved from promotion of the policy.

5. Equality and Diversity

- 5.1 Southway will ensure that this policy is applied fairly to all customers. We will not directly or indirectly discriminate against persons because of race, religion, gender, marital status, sexual orientation, disability, or other grounds set out in our Single Equalities Scheme.
- 5.2 When applying this policy, we will act sensitively towards the diverse needs of individuals and communities.
- 5.3 This policy can be provided on request in other formats (for example, in alternative languages, Braille, audio, in large print).
- 5.4 An Equality Impact Assessment has been carried out and is available on request.

Appendix 1

Grounds for withholding consent - Schedule 3 Housing Act 1985.

Southway may refuse permission to an exchange based on any of the grounds listed in Schedule 3 of the Housing Act 1985 as summarised below.

Grounds for Withholding Consent: Secure and Assured Tenancies	Detail	Southway Definition
<i>Ground 1</i>	You or the person you want to swap with have been served with a possession order or a suspended possession order.	
<i>Ground 2</i>	A notice seeking possession (NSP) has been served on you or the person you want to swap with, or possession proceedings have begun.	
<i>Ground 2a</i>	A landlord can withhold consent to a Mutual Exchange if you are subject to a specified type of injunction, a demotion order, anti-social behaviour order or a possession order granted on the grounds of nuisance is in force, or if court action to obtain such an order is pending.	
<i>Ground 3</i>	The property of the person you wish to swap with is substantially larger than you need, or your property is substantially larger than the incoming tenant needs.	The Trust considers 'substantially' to mean 2 or more bedrooms than your household need or where the Spare Room Subsidy would be applied. This will be based on the Local Authority bedroom calculator.
<i>Ground 4</i>	The property you want to move to is not reasonably suitable for your needs, or your property is not reasonably suitable for the needs of the person of the incoming tenant.	The Trust considers 'needs' to mean number of bedrooms or where there is medical or health conditions to consider i.e. the incoming tenant required adaptations which were not present in the property

<i>Ground 5</i>	The property is part of or close to a building that is held for non-housing purposes. Or it is situated in a cemetery and was let to you or your predecessor in connection with your employment with the landlord.	
<i>Ground 6</i>	The landlord is a charity and if the exchange went ahead the occupation would conflict with the objects of the charity.	
<i>Ground 7</i>	The property is designed for a physically disabled person and if the exchange went ahead a disabled person would not be living there.	The Trust considers this to be any property where there have been major adaptations to assist a person with disabilities.
<i>Ground 8</i>	The landlord is a housing association or housing trust that lets its property to people who experience difficulty in meeting their own housing need, and if the exchange went ahead the criteria would not be met.	
<i>Ground 9</i>	The property is one of a group let to people with special needs with a social service or special needs facility close by to help the tenants and if the exchange went ahead there would be no one who required this specialist support living there.	The Trust considers this to be any service where additional care or support is offered i.e. extra care housing or homeless support properties

POLICY REVIEW HISTORY	
Previous versions	
V 1.0 - July 2009 V 2.0 - Sept 2013 V 3.0 August 2022 V 4.0 May 2024 Revisions drafted by Age Friendly Housing Manager Policy owned by Head of Housing Management and Support	
Date of last EIA:	05/07/2024
Review lead by:	Head of Housing Management and Support Age Friendly Housing Manager
Main points or amendments made and reasons	
<ul style="list-style-type: none"> • V2. Minor word amends only. No legislative or best practice amends required. • V4 - Introduced new grounds for refusal beyond those in Schedule 3 Housing Act 1985. This will allow the Trust to have greater flexibility managing mutual exchanges for newer tenants (whose rights to mutual exchange are defined in the policy); following legal advice. • V4 - Defining certain key terms in Schedule 3 will mean greater clarity and efficiency whether dealing with older or newer tenants. 	
Next review due:	Q1 – 2026/27
Approval level:	Chief Executive