

Appendix A



**FAREHAM
HOUSING**

Housing Strategy and Systems

Mutual Exchange Policy

**June 2024
Draft Version**



1 Introduction

- 1.1 The Housing Act¹ provides all eligible tenants with the right to exchange their home with another eligible tenant in a process known as 'mutual exchange'. This exchange can involve more than two parties but can only take place with the written permission of all landlords, and subject to a number of provisions outlined further in this policy.
- 1.2 The benefits of increasing housing mobility to social housing tenants and providers alike, as well as the wider public sector, have long been recognised² and Fareham Housing is keen to support these aims. Mutual exchanges also have an important contribution to make toward achieving our wider strategic priorities and help us to achieve our aim of providing the 'right home in the right place'.
- 1.3 The Consumer Standards³, set by the Regulator of Social Housing (RSH), have also added further requirements around how tenants are treated in all our dealings with them, and the information that they can expect from us.
- 1.4 This policy outlines Fareham Housing's approach to Mutual Exchanges and details the process for all parties.

2 Scope

- 2.1 This policy applies to all eligible tenants, as defined under the 1985 Housing Act⁴ (as amended). This means all Fareham Housing's secure and flexible tenants, unless that tenant falls under one of the fourteen exemptions allowed⁵, would be included.

3 Policy Aims and Objectives

- 3.1 The aim of this policy is to enable the delivery of Fareham Housing's Mutual Exchange scheme in line with all relevant legislation and guidance, and to allow for the fair and consistent application of the process.
- 3.2 This policy also aims to advise Officers, residents and partners how the scheme will operate, the eligibility criteria and grounds for refusal. It will further seek to:
- 3.3 Promote mutual exchange as an effective option to meet housing needs.
- 3.4 Improve housing mobility for social housing tenants within the Borough, and to those needing to move to the area for work or personal reasons.

¹ The Housing Act 1985, Part IV, s.92 (as amended by The Localism Act 2011 s.158)

² See, for example, CLG (2014) '*Promoting mobility through mutual exchange*'.

³ See [Regulatory standards for landlords - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

⁴ The Housing Act 1985, Part IV, s.92 (as amended by The Localism Act 2011 s.158)

⁵ Schedule 14, The Localism Act 2011

- 3.5 Promote more effective use of the Council's existing housing stock by enabling tenants to move to accommodation more suitable for their needs. This will further enhance efforts to:
- Address under-occupancy and/or overcrowding pressures.
 - Assist in releasing suitably adapted homes for those that need them.
 - Help to relieve pressure on the Council's Housing Register and Housing Options services.

4 Legal Framework

- 4.1 This policy complies with the legal framework governing Mutual Exchange schemes as set out under the Housing Act 1985, and as amended by the Localism Act 2011. It has paid due regard to the regulations set out by the Regulator of Social Housing (RSH) in relation to the Consumer Standards and all other statutory guidance, including our powers and obligations under the Equality Act 2010 and the Human Rights Act 1998.
- 4.2 This policy also complies, and is consistent with, the provisions in Fareham Housing's Allocations policy, secure and flexible tenancy agreements and Transfer Incentive scheme, and has had regard to all relevant internal policies and strategies.
- 4.3 All tenants with lifetime or flexible tenancies have the right to exchange their homes with another qualifying tenant. Both tenants need the written consent of the landlord, but this will not be withheld except on one or more of the grounds specified (Appendix A).
- 4.4 Further protection is afforded to those who held lifetime tenancies prior to April 2012 who exchange with tenants on fixed term of flexible tenancies.
- 4.5 Landlords must provide a written decision to the tenant within 42 days of receiving an application for mutual exchange, and tenants have the right to enforce decisions via the County Court should landlords fail to do so.
- 4.6 Landlords can also not rely on any of the grounds for refusal if they do not provide a written decision within the time limit.
- 4.7 As part of the RSH's Tenancy Standard, all registered providers are required to provide a service for Mutual Exchange to all eligible tenants free of charge⁶.

5 Right to Exchange

- 5.1 All Fareham Housing tenants who have a secure or flexible tenancy are eligible for Mutual Exchange.
- 5.2 Tenants can exchange with tenants of any private registered provider of social housing anywhere in the country, including:

⁶ See [Tenancy Standard - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

- Other Local Authorities
- Arms Length Management Organisations (ALMOs)
- Housing Associations, and
- A Housing Trust that is a charity.

5.3 Tenants from other organisations or local authorities must be on a lifetime or fixed term / flexible tenancy.

5.4 Tenants on Introductory tenancies will not be considered for a Mutual Exchange until such time as they have successfully completed their probationary period.

6 Types of Exchange

6.1 In order to exchange properties, tenants first need the written consent of their landlords. If agreed, the transfer of tenancies can only be carried out through one of two methods.

6.2 An assignment applies when both tenants hold tenancies with a similar security of tenure. They will be asked to sign a 'Deed of Assignment' which will allow the incoming tenant to take on the responsibilities of the outgoing tenant. In effect, each tenant takes on the other's tenancy.

6.3 'Surrender and re-grant' is where tenants surrender their current tenancy and are then granted a new tenancy at the new property with similar levels of security as their current tenancy. This is applicable in those cases where one of the tenants had a lifetime tenancy that predates 1 April 2012, and which is protected in law. In these cases, tenants effectively take their tenancy with them when they exchange.

6.4 For the purposes of Mutual Exchange, tenants with flexible tenancies would be treated in the same way as in paragraphs 6.2 or 6.3 above.

7 HomeSwapper®

7.1 Fareham Housing no longer holds a separate mutual exchange register and has subscribed to a national exchange scheme⁷ called 'HomeSwapper'®. This makes the scheme free to all Fareham Housing tenants.

7.2 Tenants will be required to register on the website in order to advertise their property and to find potential exchanges locally and nationally.

7.3 Fareham Brough Council is only able to make this freely available to tenants of Fareham Housing.

8 Alternative ways to exchange

⁷ See www.homeswapper.co.uk

- 8.1 Tenants may also use a number of other means to find a Mutual Exchange partner. These may include local shop windows, newspapers and, increasingly, social media providers. There are also a number of other exchange websites that may charge a fee.
- 8.2 It is illegal for tenants to offer incentive payments to each other in order to secure a transfer, or to encourage someone to transfer. Any attempt to do so will lead to the automatic refusal of an exchange and may lead to eviction proceedings if a property is secured in this way.

9 Mutual Exchange process

- 9.1 The Mutual Exchange process is tenant-led. This means that it is tenants themselves that are responsible for finding a prospective exchange partner.
- 9.2 Tenants are also responsible for ensuring that any checks required regarding the condition of the property are made, and for confirming any outstanding repairs or damage that will become their responsibility, particularly for any non-standard alterations that the previous tenant may have made.
- 9.3 Once a Fareham Housing tenant has found another tenant to exchange with, and they are satisfied as to both the condition of the property and any issues that they may become responsible for, both parties must complete a mutual exchange application form and return it to the Tenancy Services team.
- 9.4 Following this, the Neighbourhood Officer will visit with a maintenance surveyor to inspect the property and let the tenant know if there are any works to be undertaken before the exchange can proceed. They will also provide any further advice needed regarding the exchange process.
- 9.5 Both tenants seeking to exchange will be provided with a copy of the inspection report, including any items that have been gifted by the previous tenant and any works (including photos) that are the tenant's responsibility.
- 9.6 Repairs that are the responsibility of the tenant will need to be carried out prior to the exchange taking place, or the incoming tenant will need to sign a waiver agreeing to take the property 'as seen'.
- 9.7 The exchanging tenant will be issued with a final written decision within 42 days of receiving your application. This will also detail any reasons for refusal and outline their right to appeal the decision should they think it is wrong.
- 9.8 The Council cannot refuse an application on any of the grounds specified if we do not provide this written confirmation within 42 days.
- 9.9 The Council retain the right to use our discretion⁸ to allow mutual exchanges to go ahead even if one of the 14 conditions for refusal has been breached, so

⁸ 1985 Housing Act, s.92

long as certain conditions are met, such as the repayment of any outstanding rent arrears.

- 9.10 Overcrowding will only be permitted in very specific circumstances, due to the lack of larger properties in the Borough. One example may be where a tenant has been assessed as having a four-bedroom need and wishes to swap to a property that has an additional room, such as a separate dining room, which has potential to be used as another bedroom.
- 9.11 Where the proposed exchange is between a Fareham Housing tenant and the tenant of another qualifying organisation, all landlords involved will provide and request references on the outgoing and ingoing tenants respectively.
- 9.12 Once an exchange has been approved, both tenants will be asked to come into the Civic offices and sign a 'Deed of Assignment' before an exchange can proceed.
- 9.13 If the tenancy is a joint tenancy, both tenants will be required to attend an appointment at the Council offices to sign the Deed of Assignment. The exchange cannot be completed without sufficient identification provided at the appointment.
- 9.14 Only once the deed has been signed and all other relevant paperwork is in place can the exchange complete. If a tenant moves without this, then they will be putting the tenancy in jeopardy and could lose their home as a result. Any further duty by the Council to rehouse them is likely to be limited.

10 Gas and Electrical Safety

- 10.1 Fareham Housing has a statutory duty⁹ to ensure that any Fareham Borough Council owned gas appliances are safe to use before the incoming tenant takes up occupancy, and that any tenant owned appliances that were removed do not cause unsafe conditions.
- 10.2 Arrangements will be made at the time of the property inspection for the appropriate gas and electrical safety checks to be carried out, and tenants will be expected to allow reasonable access for this to take place, as set out in their tenancy agreement¹⁰.
- 10.3 Arrangements will also be made for an Energy Assessor to complete and issue an Energy Performance Certificate (EPC).
- 10.3 Mutual Exchanges will not be permitted to go ahead until these checks and any remedial works needed have been satisfactorily carried out.
- 10.4 It is the responsibility of the incoming tenant to ensure the safe and legal installation of any household appliance.¹¹ They must ensure that they instruct,

⁹ 1998 Gas Safety (Installation and Use) Regulations, s.36

¹⁰ Fareham Housing [Secure Tenancy Agreement \(fareham.gov.uk\)](https://www.fareham.gov.uk) s.7.11

¹¹ *ibid.* s.7.7

and pay for, a Gas Safe Engineer to connect, test and certify any new or used gas cooker installation or other appliance, or make arrangements for a qualified electrician to connect an electrical cooking appliance.

- 10.5 Where the incoming tenant has had a gas appliance connected, they must provide the Council with a copy of the installation certificate which has been generated by a Gas Safety engineer.

11 Information, Guidance and Support

- 11.1 The RSH has implemented several standards that must be met across all Council services.¹² These include action to deliver a fair and equitable outcome for tenants from their dealings with the Council, publicising services and standards, and providing a clear and accessible complaints service.

- 11.2 Mutual Exchanges are, primarily, governed by the Tenancy Standard¹³, which demands that the service is:

- Available without payment of a fee. Fareham Housing achieves this with its provision of an exchange service through Homeswapper®
- Any mutual exchange service(s) must also be publicised, and details can be found on our website¹⁴.
- Support must be offered to relevant tenants to access services who might otherwise not be able to access them, and
- Information regarding any implications for tenure, rent and service charges must be offered to any tenant wishing to mutually exchange. How this requirement is met is detailed below, from 12.4.

- 11.3 This policy provides detailed information regarding the various procedures used when assessing applications for a Mutual Exchange. Information regarding the scheme, including this policy, will be made available on the Council's website¹⁵

- 11.4 Tenants will be given the opportunity to discuss any questions regarding the process as part of the inspections process, but tenants may also contact their Neighbourhood Officer outside of this if they require further information or support.

- 11.5 The Neighbourhood Officer will also check for, and inform, the tenant of any potential implications of the proposed move, such as any changes in their current terms and conditions, service charges or any one-off costs that they may be liable for¹⁶ (Appendix B).

- 11.6 Tenants that are considering exchanging into a property that will lead to under occupation will be offered a financial assessment in order to help them establish if the potential property is affordable for them. The assessment will also focus

¹² See [Regulatory standards for landlords - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹³ See [Tenancy Standard - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹⁴ See [Mutual exchange guidance \(fareham.gov.uk\)](http://fareham.gov.uk)

¹⁵ See www.fareham.gov.uk

¹⁶ See [Tenancy Standard - GOV.UK \(www.gov.uk\)](http://www.gov.uk) s.2.4.4

on whether there are any financial implications arising from the move, such as a reduction in their Housing benefit / Universal Credit entitlement.

- 11.7 Any Mutual Exchange tenant that is considering moving to a property that will lead to under occupation will be required to sign a disclaimer stating that they fully understand the financial implications of exchanging into such a property, including the impact on any benefit entitlement and the consequences of falling into arrears on their future housing prospects.
- 11.8 Fareham Housing will provide any reasonable additional support required to tenants that may not be able to access the Mutual Exchange service without difficulty. This may range from providing some additional explanation about the process to registering and searching for matches for a tenant.
- 11.9 Fareham Housing will also provide reasonable support to tenants who do not have access to the internet.

12 Decisions

- 12.1 Fareham Housing is required by law to provide a written decision within 42 days of receiving a completed application for Mutual Exchange.
- 12.2 Should Fareham Housing fail to provide a written decision within this time frame, tenants have the right to enforce a decision by applying to the County Court. In this situation, Fareham Housing will no longer be able to rely on any of the grounds for refusal, as set out in law.
- 12.3 It is important to recognise however, that failure to meet the statutory deadlines by Fareham Housing must not be treated as having been given consent to exchange.
- 12.4 Fareham Housing will not unreasonably withhold consent to exchange properties and will only do so based on the grounds set out in schedule 14 of the Localism Act 2011 (see Appendix A below).
- 12.5 Tenants will be informed of the decision in writing, and this may fall into one of three categories; approved, approved with conditions, or refused.
- 12.6 An application for exchange will be approved when all tenants are not in breach of any tenancy conditions that may allow a refusal, and/or there are no conditions that need to be met prior to exchange.
- 12.7 Approval subject to conditions means that approval will not be granted unless certain conditions are met before the exchange takes place. This may be clearing a rent account or remedying any unauthorised home improvements.
- 12.8 An application will only be refused on the grounds set out below in Appendix A.

13 Discretion

- 13.1 There may be grounds on which Fareham Housing is able to refuse an application for exchange but may choose to exercise its' discretion in certain circumstances.
- 13.2 This may apply where a tenant is in rent arrears and/or are impacted by changes to Housing Benefit/Universal Credit and the exchange may help the tenant to reduce their outgoings (such as when they are downsizing). Discretion may also be used if there are extenuating circumstances and it is considered that the exchange would benefit the health or welfare of the tenant or a member of their household.
- 13.3 The Neighbourhood Manager (or more senior member of the Housing Management Team in their absence) may use their discretion to grant an exchange based on a report from the Neighbourhood Officer and supporting evidence. There is no further right of appeal, although tenants may follow the Council's complaints procedure (see section 19 below) if they remain unsatisfied with the decision.

14 Appeals procedures

- 14.1 If a Mutual Exchange application is refused, the tenant(s) will be informed of the decision and the grounds for refusal in writing. Tenants will need to go through the formal complaints procedure if they find the reasons for the refusal to be unsatisfactory, detailed in section 19 below.
- 14.2 Where an external landlord has refused the application, it is the responsibility of their tenant to appeal the decision directly with them.

15 Monitoring and Review

- 15.1 Regular monitoring of the Mutual Exchange scheme will be undertaken by Fareham Housing's Housing Strategy and Systems Team to ensure that the policy is effectively delivering on the aims and objectives.
- 15.2 This policy is intended to be a working document and will be reviewed and updated as and when any new legislation and / or guidance is issued. Any significant changes to the policy or the service standards as a result will require a full, formal review process and the appropriate consultation with tenants impacted.

16 General Data Protection Regulations (GDPR)

- 16.1 All personal information relating to tenants will be dealt with confidentially and in accordance with the 2018 Data Protection Act, the EU General Data Protection Regulations and the Council's Privacy policy¹⁷. Tenants also sign a privacy statement when taking on a tenancy.

¹⁷ See [Privacy Statement \(fareham.gov.uk\)](https://www.fareham.gov.uk/privacy-statement)

16.2 However, for an exchange to take place, we are required to share certain information about the applicants tenancy history with the exchanging landlord. All information held or shared will be in accordance with the above.

17 Consultation and Communication plan

17.1 Consultation and communication will take place with tenants and other effected parties through our usual consultation processes¹⁸ and in line with our emerging Tenant Engagement Strategy.

18 Complaints

18.1 Fareham Borough Council's Complaints policy can be found on our website¹⁹. Complaints may be made online, by email, or in writing.

Complaints Administration

Fareham Borough Council
Civic Offices
Civic Way
Fareham
PO16 7AZ

complaints@fareham.gov.uk

18.2 Your complaint will be acknowledged within 5 working days of the date it is received and the Council will have 10 days thereafter to issue a response. If you are unhappy with our response, you may escalate your complaint further.

19 Appendices

Appendix A

Grounds for refusal under Schedule 14 of the Localism Act 2011

Ground 1	Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
Ground 2	Any obligation under one of the existing tenancies has been broken or has not been performed.
Ground 3	A Court Order (or Suspended Order) for Possession has been made against either property.
Ground 4	Ground 4: The landlord has served a notice of seeking possession on one or more of the grounds 1 to 6 in Part 1 of Schedule 2 of the Housing Act 1985, and that notice remains in force or proceedings have begun.
Ground 5	The landlord has served a notice of seeking possession on one or more of the grounds in Part 2 of Schedule 2 of the Housing Act 1988, and that notice remains in force or proceedings have begun.

¹⁸ See [Have your say \(fareham.gov.uk\)](http://fareham.gov.uk)

¹⁹ See [Complaints \(fareham.gov.uk\)](http://fareham.gov.uk)

Ground 6	The tenant of either property, or someone they live with, has an application pending for, or is already subject of: <ul style="list-style-type: none"> • An injunction order under s.153 of the Housing Act 1996. • An Anti-Social Behaviour Order • A Demotion Order • A Possession Order under Ground 2, Schedule 2 of the Housing Act 1985 • A Possession Order under Ground 14, Schedule 2 of the Housing Act 1988
Ground 7	The property is substantially more extensive than is reasonably required by one of the proposed assignees
Ground 8	The property is not reasonably suitable for one for the proposed assignees or their household.
Ground 9	The property is part of, or close to, a building that is held for non-housing purposes, or is situated in a cemetery, and was let in connection to employment with the landlord or a local authority, new town corporation, housing action trust, urban development corporation, or the governors of a grant-aided school.
Ground 10	The landlord is a charity and the proposed assignees occupation of the property would conflict with the objects of the charity.
Ground 11	The proposed property has been substantially adapted to meet the needs of a physically disabled person and, if the assignment went ahead, there would not be a physically disabled person living there.
Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not meet these criteria.
Ground 13	The property is let to people with special needs and there is a special service or special facility nearby to the properties to assist people with those special needs, and if the assignment were to go ahead there would no longer be a person with those special needs living in the property.
Ground 14	The property is subject to a management agreement under which the manager of a housing association of which at least half the members are tenants of the properties subject to the agreement, at least half of the tenants of the properties are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

Appendix B

Items that tenants should consider before applying for a Mutual Exchange (**This list is not exhaustive and is meant as a guide only. Any specific advice should be sought from your Neighbourhood Officer and / or you should take independent advice**)

Changes to your tenancy agreement

Tenants with a secure tenancy that started on or after 01 April 2012 who want to exchange with a tenant who has a flexible tenancy could lose their lifetime tenancy.
Tenants who had their security of tenure protected by 2011 Localism Act s.158 will be issued with a new tenancy agreement and a start date after 01 April 2012. This means that if they exchange again, they could lose their secure tenancy.
If you are a secure tenant, check whether or not you retain your right to buy or gain the right to acquire if moving to a housing association property. Check the number of years left on a tenancy if you are taking on a fixed term of flexible tenancy.
If you are under occupying and on a flexible tenancy, you may be asked to move to a smaller property during the tenancy review process.
Succession rights for family members may change.
Properties in new developments may not allow parking permits, or tenancy terms regarding the keeping of pets may vary.
One-off financial costs
Connecting gas and/or electrical appliances and providing safety certificates to verify that this has been done by a Registered Gas Safe Engineer or electrician.
Replacement of fixtures and fittings left by the outgoing tenant, or costs to bring any unauthorised alterations back to a lettable standard.
Removals, mail redirection and disconnection/reconnection fees for services such as television or broadband.
Redecoration, and replacement / copy keys. School uniforms, if you have children
On-going costs
Rent and / or service charges, including the impact of the spare room subsidy if under occupying. Utilities and Council Tax
Increased travel costs, for work or school
Property condition
Responsibility for any outstanding repairs or damage that will become the responsibility of the incoming tenant
Responsibility for the maintenance of any alterations or improvements made by the outgoing tenant.

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