



PEAKS & PLAINS
Housing Trust



The Trust

Mutual Exchange,
Assignment and
Succession Policy

Version number: 4

Effective Date:
23rd August 2024

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1. INTRODUCTION

- 1.1. The aim of the policy is to outline the circumstances under which tenants may assign their tenancy to someone else. It aims to ensure that assignments take place in accordance with the relevant legislation and that the contractual rights and obligations of the tenancy agreement are adhered to.
- 1.2. An assignment is a way that a tenant can transfer their tenancy to another person. On assignment, the assignor's (outgoing tenant) legal interest in a property is passed to the assignee (incoming tenant), who takes over that interest in the property and becomes the tenant.

2. SCOPE

- 2.1. This policy sets out Peaks & Plains (the Trust) position in respect to allowing our customers to exchange homes. Typically, a mutual exchange involves two households swapping properties, but we also deal with exchanges where multiple households take part in a multi-way swap.
 - 2.1.1. Market or intermediate rent tenants, tenants on starter tenancies, shared owners, or leaseholders are not eligible for mutual exchange.
- 2.2. This Policy also explains how we approach succession to a tenancy. Succession is when a family member takes over a tenancy when a tenant dies. They may take over the rights and responsibilities of the tenancy.

3. LEGAL & REGULATORY REQUIREMENTS

- 3.1. The key relevant legislation is:
 - Housing Act 1985
 - Housing Act 1988
 - Housing Act 1996
 - Human Rights Act 1998
 - The General Data Protection Regulations 2018
 - Data Protection Act 2018
 - The Equality Act 2010
 - The Localism Act 2011
 - The Housing (Preservation of Right To Buy) Regulations 1993
 - The Housing and Planning Act 2016
- 3.1.1. The Regulator's Tenancy Standard within the Consumer Standards requires under 1.4. Mutual Exchange, 1.4.1 that "registered providers must support relevant tenants living in eligible housing to mutually exchange their homes".

- 3.1.2. The specific expectations of this outcome are that we must:
- 2.4.1. Offer a mutual exchange service which allows relevant tenants potentially eligible for mutual exchange, whether pursuant to a statutory right or a policy of the registered provider, to easily access details of all (or the greatest practicable number of) available matches without payment of a fee.
 - 2.4.2 Publicise the availability of any mutual exchange service(s) it offers to its relevant tenants.
 - 2.4.3 Provide support for accessing mutual exchange services to relevant tenants who might otherwise be unable to use them.
 - 2.4.4 Offer tenants seeking to mutually exchange information about the implications for tenure, rent and service charges.
- 3.2. The Trust will comply with all legal requirements in regard to the assignment, mutual exchange and succession of tenancies and the contractual obligations contained within the tenancy agreements.

4. DEFINITIONS

- 4.1. An assignment is a transfer of the tenancy during the lifetime of the tenant.
- 4.1.1 An assignment involves a tenant requesting permission to sign over their tenancy rights to another person. The assignment does not create a new tenancy but results in the transfer of the current tenancy agreement to the new tenant or tenants.
- 4.1.2 If a tenancy is assigned during a mutual exchange, the tenants take on each other's tenancies.
- 4.2. Mutual exchange is when tenants in social housing obtain written consent from their landlord to swap homes with other social housing residents. Mutual exchanges can take place between two or more properties and can be between the same or different landlords.
- 4.3. Mutual exchanges are carried out either by assignment or surrender and re-grant of tenancies. This is determined by the tenancy that each of the exchange partners have.
- 4.4. A succession is where the tenancy is transferred upon the death of the tenant.

5. OUR POLICY

- 5.1. Tenants are not allowed to assign or pass on the tenancy except in the following circumstances:
- by way of mutual exchange with a tenant of another Social Housing Landlord; or
 - if ordered to do so by the court in matrimonial proceedings or in accordance with Schedule 1 of the Children Act 1989; or
 - to a person who would be qualified to succeed to the tenancy (such qualification being determined by the provisions of the Tenancy Agreement in the event of the tenant's death).

5.2. **Mutual Exchange**

- 5.2.1. For the purposes of this Policy 'mutual exchange' is defined as an exchange of accommodation between two or more tenants. Mutual exchanges can take place between local authority and Registered Provider tenants (Housing Associations) providing:
- They have the right to mutual exchange;
 - Both parties wish to exchange;
 - They have the written permission of their existing landlord to exchange and no grounds for refusal apply.
- 5.2.2. The Trust supports tenants' rights to mutual exchange and promotes opportunities for exchange via a subscription to the 'HomeSwapper' service. This service allows Trust tenants to access, free of charge, a national register of tenants looking to mutually exchange and will find potential matches in a tenants' area of choice. The Trust's Neighbourhood Team can help to support customers with applications.
- 5.2.3. Tenants are responsible for finding their own mutual exchange partner and for making an application to the Trust once they have found an exchange partner. We will provide guidance and support to customers where this is required.
- 5.2.4. Exchanges can be two way or may involve multiple swaps in a chain. There are no limits to the number of times a tenant may exchange and tenants can apply to exchange again at any time after swapping homes.
- 5.2.5. We advise our tenants they must not give or receive money or any other incentive as part of an exchange and that we can take possession action if they do so.
- 5.2.6. We must receive applications for permission to exchange from all parties to start the assessment. We cannot start to process applications until all have been received by the Trust. Permission must be given in writing before an exchange can take place.
- 5.2.7. Tenants who request a mutual exchange will be advised of any changes in their rights and terms of tenancy relating to an exchange with a tenant of the Trust or with another landlord, as far as is practicable.
- 5.2.8. Incoming tenants must make truthful applications and must agree to accept the condition of the property they are exchanging to. They are responsible for ensuring they have inspected the property and will be required to give us written acceptance of the property condition and its suitability for their household's needs.
- 5.2.9. Where an application for mutual exchange is received that involves another landlord, the Trust will co-operate fully in any information exchanges required to facilitate the moves. In all cases, the Trust will ensure all relevant data protection requirements are met and necessary consents are obtained from the exchanging parties as per the Data Protection Policy.

- 5.2.10. Properties in our ownership or management, which are party to a proposed exchange, will be inspected prior to the move to review the condition of the property and whether the tenancy conditions have been complied with. The Trust may withhold consent to exchange until a condition is satisfied or may refuse the exchange where applicable (for example in accordance with our policies, tenancy terms and/or all legislation).
- 5.2.11. We will give a written decision on a mutual exchange request within 42 calendar days from the date of receipt of full and complete application forms from all parties. Reasons for not giving consent are set out in legislation, as is the 42 day requirement. Our decision will be given in writing and will state the reasons for withholding consent where an application is declined.
- 5.2.12. We will require the outgoing tenant to repair any damage, neglect or alterations that they, their household or their visitors have made to the property including any outbuildings and the garden. We will also ask them to complete any repairs that are their responsibility prior to consenting to the mutual exchange. In some circumstances we may agree to the mutual exchange if the incoming tenant accepts to take on responsibility for making good damage, neglect or alterations and carrying out customer responsibility repairs. We will make this clear in all communications and require written acceptance from the incoming customer. If there is a risk to health and safety, however, we will not consent to the mutual exchange.
- 5.2.13. The Trust shall have no responsibility for any contents left in the property by the outgoing tenant. The outgoing tenant is responsible for clearing all areas of the property before leaving, this includes loft spaces, gardens and the interior of the property. They must also dispose of all rubbish and not leave it behind.
- 5.2.14. We will gather profile information on all new incoming tenants to ensure the continued delivery of tailored services. An assessment will also be made to provide direct support or signposting services for any household members that may be classed as vulnerable and have additional needs and to confirm affordability of the property. We may offer signposting or support referrals.
- 5.2.15. A tenant has the right to withdraw their application at any point up to signing the deed of assignment.
- 5.2.16. We will discuss rent and service charges with any incoming tenants and make clear the requirement to pay rent in advance on the day of the mutual exchange. We may defer a mutual exchange if rent is not paid at this time.
- 5.2.17. We will make clear the costs associated with exchanging homes, including any charges payable directly to the Trust for gas/electric/oil safety checks. These safety checks must be paid for before an exchange date is agreed with the other landlord and/or incoming customer.
- 5.2.18. Prior to the assignment being signed, the officer will explain the terms of the tenancy and assignment and the implications and expectations of signing the document. This is to ensure all parties understand what they are doing and the impact of doing so.

- 5.2.19. Following the mutual exchange, the incoming tenants will assume responsibility for any damage or alterations made to the property by the outgoing customer and for all repairs that we consider to be customer repair obligations that were not completed by the outgoing customer.
- 5.2.20. Tenants are responsible for making and paying for their own removal/exchange arrangements and must be available to sign all necessary documents as required by the landlords.
- 5.3. **Reasons for refusal** - we may refuse a mutual exchange on any reasonable ground, including any of the grounds set out in Schedule 3 of the 1985 Housing Act and the Localism Act 2011 and in, for example, the following circumstances:
- the tenant or proposed exchange partner has a possession order outstanding against them or a notice of seeking possession still in force;
 - the incoming tenant would substantially under-occupy the property;
 - the property is not suitable to the needs of the incoming tenant, including overcrowding;
 - the accommodation is provided for disabled people or people with special needs and the incoming tenant does not meet the established criteria.
- 5.3.1. If we refuse permission for a mutual exchange, Trust tenants may appeal the decision in writing detailing the reason for the appeal. A response will be provided in writing in 14 days and will be conducted by either the Neighbourhood Manager or the Head of Neighbourhoods. Non-Trust tenants would need to approach their own landlord for any right of appeal if a mutual exchange request is refused.
- 5.4. **Unauthorised Mutual Exchanges** - If a mutual exchange takes place without our written consent or after the mutual exchange was refused, the exchange of tenancies will be unlawful and both exchange partners will lose security of tenure. We will not allow the mutual exchange to take place in these circumstances, and we will take legal action to evict.
- 5.5. **Succession**
- 5.5.1. We recognise that claims for succession are made at a time of bereavement and we will deal with cases sensitively. We will make reasonable enquiries and assess applications made, however the person claiming the right to succeed must provide the necessary evidence to establish their right. We will only consider applications when we are in receipt of the tenants death certificate.
- 5.5.2. There is one statutory right of succession for a secure or assured tenancy. In addition to the statutory succession rights set out in legislation, some of our tenancy agreements include additional contractual succession rights. We may also consider granting a new 'discretionary tenancy' where there is neither a statutory nor contractual right to succession.

- 5.5.3. The Localism Act 2011 changed the law on succession. This means the statutory (legal) right of succession is different, depending on whether a tenancy started before or after 1 April 2012.
- 5.5.4. In the case of a joint tenancy, when one tenant dies the tenancy automatically passes to the surviving joint tenant(s). The legal term for this is survivorship. The remaining tenant becomes a sole tenant.
- 5.5.5. If the remaining tenant does not live in the property, as their only or principal home, we may take action to end the tenancy.
- 5.5.6. Statutory succession is a right outlined in legislation. It gives certain people (statutory successors) the legal right to inherit a tenancy on the death of a tenant. In this event, the tenancy does not end following the death of a tenant and continues in the name of the successor.
- 5.5.7. Contractual succession is where the tenancy agreement provides qualifying family members succession rights.
- 5.5.8. A discretionary succession is where there are no rights to succeed, but we decide to offer a new tenancy in exceptional circumstances. As this is not legally a succession, in these cases we'll offer a new tenancy rather than transferring the existing tenancy. The new tenancy offered may be at a different property if we consider another property more suitable.
- 5.5.9. We may consider the award of a discretionary tenancy under certain circumstances. For example:
- Where the tenant has died, and there is no right to succession, or;
 - Where the tenant has gone into residential care on a permanent basis, and there is no option or right to assign, or;
 - In rare cases, where we may consider other special circumstances, for example but not necessarily limited to:
 - Where domestic abuse is a factor in a case where a perpetrating tenant has ended the tenancy and/or vacated the property with no intention to return, and there are no assignment rights for the victim and any remaining household members.
 - Where a property has adaptations for a member of the remaining household.
 - Where a case poses a risk (i.e., legal, regulatory or reputational) to the organisation, or other relevant sensitivities, vulnerabilities and grounds that should be reasonably considered.

Internally, this will be recorded as an exceptional let and follow the appropriate sign off process.

- 5.5.10. When deciding to exercise this discretion, we'll consider the following things:
- The type of tenancy
 - How long the occupant has lived in the property. They must have been living with the deceased tenant for at least the 12 months prior to their death.
 - The relationship to the deceased tenant

- Housing need
- Financial situation
- Any vulnerabilities.

- 5.5.11. We will make one offer of a new tenancy. We will make this offer within 12 months of our decision to offer a discretionary tenancy. If the offer is refused, we will seek possession of the property.
- 5.5.12. Where occupiers have no right to remain in the property, we will provide advice on finding alternative accommodation and where necessary, take legal action to take possession of the property.
- 5.5.13. We may refuse a claim for succession where the property would be under occupied. We define under occupation as having at least one more bedroom than you need, as defined in the bedroom standards in our Allocations Policy.
- 5.5.14. We may refuse a claim for succession if the property has been developed for a specific group and the applicant doesn't meet the requirements. For example, the property has a minimum age limit, and the applicant is too young, or where the property has been adapted and these adaptations are not needed.
- 5.5.15. If we refuse permission for a succession, an appeal can be made within 14 working days. The appeal must tell us why you feel our decision is wrong. We'll only uphold your appeal if we find the original decision did not follow the law, or this policy. The appeal will usually be reviewed by the Neighbourhood Manager or the Head of Neighbourhoods.
- 5.5.16. To claim succession falsely or dishonestly, or to provide false or misleading information to support a claim, is fraud. Covering up the death of a tenant to benefit from their tenancy is also fraud. We will take appropriate enforcement action where we believe a fraudulent claim has been made in line with our Tenancy Fraud Policy and the relevant legislation. We may also engage with third parties such as the Police and local authorities.

6. EQUALITY, DIVERSITY & INCLUSION

- 6.1. We are committed to fairness and equality for all regardless of their age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, sex, sexual orientation, race, and religion/belief, family circumstances or offending history, as referred to in our relevant Trust policies. Our aim is to ensure that our policies and procedures do not create an unlawful unfair disadvantage for anyone, either directly or indirectly.
- 6.2. An Equality Impact Assessment has been undertaken in respect of this policy and has been reviewed by the EDI Forum.

7. RESPONSIBILITIES

- 7.1. The Trust will subscribe to an online national mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties.
- 7.2. The Executive Management Team are responsible for approving this Policy.
- 7.3. The Head of Neighbourhoods is responsible for ensuring this policy complies with legislative requirements.
- 7.4. The Neighbourhood Manager is responsible for ensuring day to day compliance of this policy and procedure.
- 7.5. The Neighbourhood Team are responsible for managing applications and updating applicants and ensuring the Housing Management System is kept up to date.
- 7.6. The Neighbourhood Team are responsible for monitoring and approving applications on Home Swapper.

8. MONITORING AND REPORTING

- 8.1. Annually an Allocations Report is presented to the Board which contains information on Mutual Exchanges and any exceptional lets.
 - 8.1.1. Performance indicators on Mutual Exchange are reported to the Performance Management Group.
- 8.2. Applications are monitored by the Neighbourhood Team, and timeframes are monitored by the Neighbourhood Manager.

9. CONSULTATION

- 9.1. Customers have been consulted on this policy. A survey was sent to digital customers and to those who participated in an exchange in 2023-24. The Policy was supported by Challenge Group.
- 9.2. All managers have been consulted on this policy.

10. REVIEW

- 10.1. This Policy will be reviewed every three years (from the date it is approved) and approved by the Executive Management Team (EMT).
- 10.2. The Policy may also be reviewed as required by the introduction of new legislation or regulation.

ASSOCIATED DOCUMENTS

- Local Lettings Policy
- Tenancy Policy
- Data Protection Policy
- Transfer Policy
- Allocations Policy
- Decant Procedure
- Complaints Policy
- Reasonable Adjustments Policy
- Vulnerable Customers Policy
- Tenancy Fraud Policy

POLICY INFORMATION

Policy Name:	Mutual Exchange, Assignment and Succession Policy
Status:	Final/Approved
Approved by:	Executive Management Team
Drafted By:	Steffanie Goalen – Head of Neighbourhoods
Date approved:	22 nd August 2024
Next Review Date:	August 2027