



**Mansfield**  
District Council

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# **Mutual Exchange Policy**

## **March 2024**

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## **1. Introduction**

- 1.1 The process by which social housing tenants can swap their homes is called Mutual Exchange. More than two households can be involved in a chain of swaps. The exchange can only take place with the written permission from their respective landlords.
- 1.2 Exchange partners transfer tenancies and move into each other's properties 'as seen' and take on all the rights and responsibilities set out in the tenancy agreement for the property they move into.
- 1.3 Mansfield District Council (MDC) recognises that Mutual Exchange provides a host of benefits for tenants and the Council alike. The process helps tenants to meet their housing needs, move closer to work, family members and / or specific services. For many tenants, Mutual Exchange provides the only realistic opportunity for them to move from their current home. It also provides a quicker way of finding alternative accommodation especially for housing applicants who are on low priority or in need of accommodation for which there is high demand.
- 1.4 This policy outlines MDC's approach to Mutual Exchange and applies to:
  - MDC tenants applying for Mutual Exchange;
  - External social housing tenants seeking to exchange with MDC tenants;
  - Transfer Applicants on the MDC Housing Register;

## **2. Purpose and scope**

- 2.1 The aim of this Policy is to deliver the Council's Mutual Exchange scheme in line with government legislations and the relevant guidelines, and to apply the conditions for Mutual Exchange fairly and consistently across the board. The MDC Mutual Exchange Policy has the following objectives:
  - To inform MDC staff, customers and partners on how the scheme will operate, the eligibility criteria and grounds for refusal;
  - To promote Mutual Exchange as an effective housing option for meeting housing needs;
  - To improve mobility for social housing tenants in the district and
  - To ensure effective use of the Council's housing stock by enabling tenants to move to accommodation suitable for their needs.
- 2.2 This will help:
  - Address over-crowding and under-occupation in the Council's existing stock;

- Address needs for adaptations and help release adapted homes;
- Relieve pressure on the Council's Housing Register;

### **3. Legal Framework**

3.1 The Housing Act 1985 and Localism Act 2011 outline the framework within which Mutual Exchange schemes must operate.

3.2 Section 92 of the Housing Act 1985 (as amended by the Local Government and Housing Act 1989, s163):

- I. Grants tenants with lifetime (secure and assured) tenancies the right to exchange their social homes with another secure and assured tenants. In order to carry out an exchange, tenants must transfer their tenancies by Assignment.
- II. Sets out the grounds (Schedule 3 of the Housing Act 1985) on which landlords can rely to refuse applications for Mutual Exchange;
- III. Requires Landlords to provide a written decision within 42 days of receiving the tenant's application for the consent, otherwise they cannot rely on any grounds set out in Schedule 3 to refuse the application; and
- IV. Allows landlords to give consent to a Mutual Exchange to go ahead subject to certain conditions being met such as, payment of rent arrears.

3.3 Sections 158 and 159 of the Localism Act 2011 sets out additional provisions including:

- I. Protection of security of tenure for lifetime tenancies that predate 1 April 2012. This allows tenants to keep similar security of tenure when exchanging with tenants who are on flexible or fixed term tenancies. Tenancies can be transferred by way of Surrender and Re-grant;
- II. Grounds (Schedule 14 of the Localism Act 2011) on which landlords may refuse an application for Mutual Exchange where Section 158 applies;
- III. Tenants' right to enforce decisions via County Court injunction if landlords fail to provide written decisions within 42 days of receiving applications for Mutual Exchange; and
- IV. Landlords may not use the grounds for refusal of a Mutual Exchange application if they fail to provide a written decision within 42 days of receiving such an application.

3.4 MDC will also rely on the following legislations for definitions and interpretations of terms set out in the Acts mentioned above:

- Housing and Planning Act 1986

- Housing Act 1988
- Housing Act 1996
- Crime and Disorder Act 1998
- Anti-Social Behaviour Act 2003
- Housing and Regeneration Act 2008

### **Tenancy Standard, Regulator of Social Housing**

3.5 MDC will endeavour to meet the standards set out in the Tenancy Standard by:

- I. Offering a Mutual Exchange service which allows tenants to easily access details of all (or the greatest practicable number of) available matches without payment of a fee,
- II. Taking steps to publicise the availability of the Mutual Exchange service(s) the Council offers to tenants, and
- III. Providing support for accessing Mutual Exchange service(s) to tenants who may otherwise be unable to use them.

## **4. Right to Exchange**

4.1 MDC tenants who are on Secure Tenancies are eligible for Mutual Exchange.

4.2 External tenants seeking to exchange with MDC tenants must be on lifetime tenancy (secure or assured) or Fixed Term / Flexible Tenancy.

4.3 Applicants cannot exchange with tenants of any private registered providers of social housing anywhere in the country, including:

- Other Local Authorities;
- Arm's Length Management Organisations (ALMO);
- Housing Associations; and
- Housing Trust which is a charity.

### **NB: Applicants cannot exchange with customers in the private sector**

4.4 Tenants on Introductory Tenancies will not be considered for Mutual Exchange until such time that they have successfully completed the probation period.

## **5. Types of Exchange**

5.1 Tenants can only exchange properties with written consents from their landlords. The exchange can be carried out by transferring tenancies using either of the two methods described below.

## **Assignment**

- 5.2 This applies when exchange partners hold tenancies with similar security of tenure. They will be asked to sign a 'Deed of Assignment' which will allow the incoming tenant to take on the rights and responsibilities of the outgoing tenant, with whom they have exchanged their property. In effect, exchange partners step into each other's tenancies.

## **Surrender and Re-grant**

- 5.3 Surrender and re-grant is where tenants surrender their current tenancy and are issued a new tenancy with similar level of security of tenure as their current tenancy. This is applicable when tenants on lifetime / secure tenancies that predate 1 April 2012, who have their security of tenure protected by law, seek to exchange with tenants on flexible or fixed-term tenancies

- 5.4 For the protection to apply, the following criteria must be met:
- I. One must be a lifetime / secure tenancy that predates 1 April 2012 and the other must be a flexible or assured shorthold tenancy with a fixed term of at least two years;
  - II. Rent payable under the fixed term tenancy must be at social rent; and
  - III. The exchange does not fall within the list of grounds in Schedule 14 of the Localism Act 2011 on which a landlord may refuse an application for Mutual Exchange.

## **Flexible Tenancies**

- 5.5 MDC does not issue Flexible Fixed Term Tenancies for Council housing tenants.

## **6. Information, Guidance and Support**

- 6.1 This policy provides detailed information about the procedures and processes for assessing applications for Mutual Exchange. Information about the scheme will also be made available via appropriate MDC communication channels including MDC's website. Tenants may also contact their Housing Management Officers / Housing Options Officers for more information and guidance.

## **Support for most vulnerable tenants**

- 6.2 Mutual Exchange schemes are tenant-led. Those seeking to exchange are responsible for finding their potential exchange partners, carry out checks to the property they would like to move to and make the arrangements for the actual move. MDC will however provide reasonable support to tenants who do not have access to the internet.

6.3 MDC will also provide additional and reasonable support to tenants who are unable to manage independently with using the Mutual Exchange service the Council provides. Support will be based on individual need and on a case-by-case basis. This may include but not limited to:

- Access to a computer
- Explaining how the mutual exchange service works
- Assistance to navigate the online mutual exchange service
- Registering and searching for matches on behalf of a tenant

## **7. How to find a Mutual Exchange Partner**

7.1 MDC subscribes to a nationwide mutual exchange service (Homeswapper) which Council tenants may use free of charge. Tenants will be required to register on the website to advertise their property and to find potential mutual exchange partners, both locally and nationally.

7.2 Tenants may also use other avenues to find Mutual Exchange partners, such as advertise in local shops, newspapers and on social media. They may also use other Mutual Exchange websites which may require a fee.

## **8. How to Apply**

8.1 Although Mutual Exchanges usually involve 2-way swaps, MDC will accept applications for multiple swaps involving 3 or more parties.

8.2 All mutual exchange partners must complete and submit MDC Mutual Exchange Application forms separately and provide all the necessary information and documents requested on the form and by the Housing Management Officer to help assess their application.

8.3 All named tenants on a joint tenancy must sign the Mutual Exchange application form. If for any reason, this is not possible, tenants must contact their Housing Management Officer for advice.

## **9. Assessment**

9.1 Applications for Mutual Exchange will not be assessed unless all parties involved have submitted fully completed application forms separately. The date for receipt of application will be counted from the day the latest fully completed application for Mutual Exchange has been received.

9.2 The assessment process will be based on the following:

- Property inspections;
- Breaches of tenancy, if any;
- Landlord references if an external tenant is involved; and
- Rent arrears; if any.

### **Property Inspections**

- 9.3 All mutual exchanges will be subject to property inspections by a Housing Management Officer (HMO) to ensure that the property is in a good condition for exchange. During the visit officers will:
- notify the tenant of any items including repairs that need to be addressed before the exchange can take place,
  - make a note of the decorative state of the property,
  - make a list of items being gifted by the outgoing tenant to the incoming tenant,
  - take photographs of any (outstanding) repairs, damage and unauthorised improvements, and
  - note any other breaches of tenancy present at the time of the inspection.
- 9.4 Both exchange partners will be provided with copies of the property inspection report including any lists of gifted items and works (including photos) that are of the tenants' responsibility.
- 9.5 Repairs that are the responsibility of MDC must be reported in the usual way. Repairs will be carried out within the MDC standard timescales. Repairs that are the responsibility of the tenant, will need to be carried out prior to the date of exchange.
- 9.6 In the following circumstances applications will not be considered and tenants may reapply once essential and / or remedial work have been completed:
- Items have been identified and deemed as 'major repairs' and / or as health and safety hazards caused by tenant's misuse or neglect,
  - Unauthorised improvements made to the property by the tenant which is unsafe and / or the improvements would not have been permitted by MDC.
- 9.7 Subject to the nature of unauthorised improvements and / or any health and safety risks, MDC may:
- require tenant(s) to make safe and / or reinstate the property to its original form; and / or
  - undertake the work and recharge the tenant; and / or

- consider serving a Notice of Seeking Possession (NoSP) for a breach of tenancy for unauthorised alterations.
- 9.8 As part of the assessment process, the HMO will also check to see if there have been any other breaches of tenancy conditions including any notices that have been served on the tenant or any court order pending.

### **References**

- 9.9 Where the exchange is between an MDC tenant and a non-MDC tenant, all landlords involved will provide and request references on outgoing and incoming tenants respectively. In providing the reference, MDC will share any breaches in tenancy by the outgoing tenant including:
- any tenancy management issues;
  - all complaints of ASB and tenancy breaches;
  - all known criminal activity related to the property or neighbourhood;
  - any known child protection issues; and
  - If any succession has already taken place.

## **10. Decision**

- 10.1 MDC is required by law to provide a written decision within 42-days of receiving completed applications for Mutual Exchange.
- 10.2 Tenants have the right to enforce a decision by applying for an injunction in the County Court, should MDC fail to provide a decision within the statutory 42-days. In this situation, the Council will no longer be able to refuse an application based on the grounds for refusals set out in law. However, any failure to meet the statutory target by MDC must not be treated as consent to exchange.
- 10.3 MDC will not unreasonably withhold consent for a Mutual Exchange and will rely on grounds for refusals set out in Schedule 3 of the Housing Act 1985. Where Section 158 applies MDC will rely on grounds set out in Schedule 14 of Localism Act 2011, which is closely based on those set out in the Housing Act 1985, in addition to the following:
- the tenant is in rent arrears, and
  - the tenant is otherwise in breach of a term of the tenancy agreement.
- 10.4 MDC will also refuse applications if any grounds in the Housing Act 2004 (chapter 6, part 1) apply. List of grounds for refusal can be found in Appendix

1: Grounds for refusal. Written decisions from MDC will state any of the following outcomes based on the HMO's assessment:

- Approval;
- Approval with condition(s); or
- Refusal.

### **Approval**

- 10.5 An application for Mutual Exchange will be approved where, the applicants are compliant of all grounds for refusal and / or there are no conditions to be met.

### **Approval with conditions**

- 10.6 Approval is subject to condition(s) that tenants must meet prior to the exchange taking place. This is applied when the tenant is in rent arrears and / or in breach of tenancy. Examples of conditions include –

- Clearing any rent arrears;
- Completing repairs that are tenants' responsibility;
- Remediating any unauthorised home improvements;
- Reinstating the property back to a reasonable standard;
- Performing an obligation of the tenancy agreement example, removal and disposal of rubbish from the garden; and
- Making payments for any rechargeable repairs.

### **Refusal**

- 10.7 MDC may refuse applications for Mutual Exchange on grounds set out in Schedule 3 of Housing Act 1985, Schedule 14 of Localism Act 2011 and Housing Act 2004 (chapter 6, part 1) The grounds focus on court proceedings, the accommodation, landlord, rent arrears and breach of tenancy agreement.

### **Discretions**

- 10.8 There may be reasonable grounds for MDC to refuse a Mutual Exchange application however, the Council may choose to exercise discretion in certain circumstances.
- 10.9 MDC cannot legally refuse a Mutual Exchange for rent arrears unless Schedule 14 grounds apply. Rent arrears will usually be made a condition for approval.
- 10.10 This may apply, if a tenant is in rent arrears and / or are affected by changes to housing benefit / universal credit and the Mutual Exchange may help the tenant to reduce rental outgoings (example if they are downsizing). This will help prevent further debt and enable the tenant to begin reducing their rent

arrears. HMOs should always discuss with their line manager for advice and approval to grant discretion (where applicable).

- 10.11 The Tenancy Services Manager may approve a Mutual Exchange where the household does not meet the criteria set out in the mutual exchange policy. This will only be considered where there are extenuating circumstances and it is considered that the exchange would benefit the health and wellbeing of the tenant or a member of their household.
- 10.12 To consider such requests, the HMO must provide a written report covering the reasons for referral to the Tenancy Service Manager. Any request must include supporting evidence: this evidence can be provided by the applicant, by the HMO or sourced from a third party. A record will be kept on the number of referrals and decisions taken for audit purposes. There is no further right to appeal. However, if the applicant remain unsatisfied with the decision, they will need to follow the Council's complaints process.

## **11. Right to review and the appeals procedures**

- 11.1 If a Mutual Exchange application is not approved, the tenant(s) will be advised of the decision and the grounds for refusal in writing. Tenants can request a review of a decision if they find the reasons for refusal unsatisfactory. To request a review, they must write to the Tenancy Service Manager within 14 days of receiving their decision letter. Tenants will be advised of the outcome of the review in writing within 28 days.
- 11.2 If the refusal is upheld following the review and the tenant remains dissatisfied with the decision and its reasoning, they can write to the Head of Housing for an appeal within 14 days of receiving their decision letter. Tenants will be advised of the outcome of the appeal in writing within 28 days. The outcome of the appeal will be the final decision on the application. If the tenant still feels that their application has not followed due process, they will need to follow the Council's complaints process.
- 11.3 Where an external landlord is involved and rejects the application for an exchange, it is the responsibility of their tenant to appeal the decision.

## **12. Gas and Electrical Safety Checks**

### **Gas Safety**

- 12.1 MDC will ensure that all Council properties involved in an exchange have valid gas certificates, known as Landlord Gas Safety Record (LGSR). The HMO will arrange for the Gas Servicing team to attend the property prior to the exchange taking place (no earlier than 1 week before)

12.2 It is the responsibility of the incoming tenant to instruct and pay for a Gas Safe

Registered engineer to connect, test and certify any gas for both new or used cooker installation (including any necessary pipework alterations). Or make arrangements to have a qualified electrician to connect an electric cooking appliance.

12.3 If there is no live gas cooker point or connection present, it is the responsibility of the incoming tenant to appoint a Gas Safe Registered engineer to supply and fit any necessary pipework and appropriate fittings to facilitate the safe cooker installation and provide certificate upon completion. The tenant will be responsible for paying the costs.

12.4 Where a tenant has a gas appliance connected, they must provide the Council with a copy of an Installation certificate generated by a Gas Safe Registered engineer.

### **Electrical Testing**

12.5 The property must have a full electrical safety inspection carried out by MDC's repairs service before the exchange takes place. Any Category 1 or Category 2 defects found during the inspection must also be corrected prior to the exchange.

12.6 Any items that are the responsibility of the council and require attention must be attended to by the repairs contractor prior to the exchange taking place and should be completed as soon as practically possible.

## **13. Responsibilities of MDC**

13.1 MDC will subscribe to an internet based Mutual Exchange service to help tenants find suitable properties for exchange.

13.2 MDC will provide written decisions within 42-days of receiving completed applications from all exchange partners.

13.3 MDC will ensure that the Council properties have valid gas safety certificates

13.4 MDC will carry out full electrical safety inspection of Council properties.

13.5 MDC will carry out inspections of Council properties and list any repairs, damage and / or alterations that are the responsibility of the tenant to make good.

## **14. Responsibilities of Mutual Exchange Applicants**

### **Application process**

- 14.1 Applicants should read the Mutual Exchange Policies and processes published by all landlords involved.
- 14.2 Ensure all exchange partners have submitted completed application forms and have signed relevant declarations.
- 14.3 Provide any additional information and clarifications requested by HMOs including the verification of any person/s moving aged over 16 years of age.
- 14.4 Allow access to MDC officers to undertake necessary property inspections and safety checks.

### **Property Condition and Repairs**

- 14.5 Tenants will be agreeing to move into properties 'as seen'. It is important that all exchange partners do the necessary inspections and checks. It is recommended that exchange partners visit each other's' properties at least twice.
- 14.6 Agree with their exchange partner regarding the condition they will be leaving the property in and who will be responsible for any outstanding repairs or rubbish removal.
- 14.7 Any repairs identified as the Council's responsibility should be reported in the usual way before the move. The Repairs service will carry out the repairs in line with standard timescales for completing repairs.
- 14.8 If the current tenant has installed their own bathroom, kitchen, conservatory or other fixture or fitting, this must be discussed with the incoming tenant to ensure they are happy to take over responsibility for the maintenance of the item(s). If any guarantees exist for new installations, these will need to be assigned to the incoming tenant.
- 14.9 It is the responsibility of the outgoing tenant to ensure that the property has basic electrical fittings as was provided when the property was let to them, should they wish to remove any electrical items installed by them such as decorative light fittings, Chrome or otherwise switches and sockets and outside lights. Replacement of any electrical fittings must meet MDC approved specifications for electrical work. Tenants should contact their HMOs for information.
- 14.10 It is the responsibility of the outgoing tenant to reinstate property into its former state if the tenant has made unauthorised alterations.

### **Gas and Electrical Safety**

- 14.11 Tenants must privately commission a Gas Safe engineer and / or a qualified electrician registered under the Competent Person Scheme for (dis)connections and reconnections of gas and electrical appliances, and provide HMOs with copies of certificates upon completion.

### **Moving Home**

- 14.12 Agree and inform the HMO of the dates for Sign-up and move-in giving them at least 7 working day notice to make necessary arrangements for Sign-up.
- 14.13 Agree a list of items that will be gifted and / or removed from the property.
- 14.14 Tenants must leave their property in good condition. All rubbish and belongings from the property, garden and outbuildings must be removed prior to the exchange.
- 14.15 Tenants to handover the keys to incoming tenants. MDC will not provide any spare keys for the property.
- 14.16 Tenants to take pictures of meter readings on leaving and arriving at exchanged properties and contact the utility suppliers with current meter readings as soon as possible after moving.

## **15. After the move**

- 15.1 The HMO will visit tenants at their new MDC properties 6-weeks after the move:
- to find out how tenants are settling into their new property;
  - to discuss and answer any questions re their tenancy;
  - to discuss any problems experienced by tenants such as debt, anti-social behaviour or other housing management issues;
  - to check if the property is being kept in good condition; and
  - to check if they have set up accounts with gas and electricity supplier.
- 15.2 MDC will not adjudicate on any dispute between exchange partners. The Council will expect tenants to resolve any disputes amongst themselves.
- 15.3 The incoming tenant will maintain any improvements / alterations made by the outgoing tenant.
- 15.4 The incoming tenant will be responsible for any outstanding repairs including clearing the garden and any rubbish removal.

- 15.5 The incoming tenant will carry out any internal decorating and re-connection of appliances at their own expense.
- 15.6 There are no restrictions on the number of times tenants can apply for Mutual Exchange. New tenants can also apply to be on the MDC Housing Register and their application will be assessed in accordance with the Council's Lettings Policy. The Council's website contains information on various housing options available to residents.

## **16. Succession**

- 16.1 MDC tenancies granted after 1st April 2012 will only grant succession rights to spouses or civil partners therefore allowing only one succession. Succession rights stay with the person and not with the tenancy. Therefore, a Mutual Exchange applicant who is currently a successor, will remain a successor in their new property. No new succession rights are created through mutual exchange.
- 16.2 If an external tenant has not succeeded to their tenancy, they will retain their succession rights when they move into an MDC property through mutual exchange. Where an external landlord is involved, MDC will request and share information on whether successions have taken place.

## **17. Unauthorised Mutual Exchanges and Unlawful Inducements**

- 17.1 Both, mutual exchanges without written permission from landlords and receiving or offering any payment or other premium as an inducement to carry out an exchange are against the law. In such circumstances MDC will take necessary actions such as requiring tenants to return to their properties and serve notice to seek possession.

## **18. Monitoring and Review**

- 18.1 Regular monitoring of the Mutual Exchange scheme will be undertaken to ensure the policy and its processes are effectively delivering the policy aim and objectives.
- 18.2 This policy and its procedures will be reviewed 2 years after the effective date, and thereafter once every five years. However, any changes in operations, legislation, regulations and guidelines may require reviews ahead of schedule.

## **19. Complaints**

- 19.1 MDC Complaints Policy can be found here. Whilst we strongly encourage customers to submit their complaint online at [www.mansfield.gov.uk/council-](http://www.mansfield.gov.uk/council-)

[councillors-democracy/complaints-1](#) so that issues can be handled by the relevant service area quickly. Customers can also make a complaint:

- In writing
- By telephone – 01632 463463
- By email – [mdc@mansfield.gov.uk](mailto:mdc@mansfield.gov.uk)
- In person
- Through a representative or advocate (see section 4 of the policy)

## **20 Data Protection**

- 20.1 Personal information collected as part of Mutual Exchange application will be used and stored in line with MDC Customer Privacy Notice.

## APPENDIX 1 – REASONS FOR REFUSAL

<b>Schedule 3 of the Housing Act 1985</b>	<b>schedule 14 of the Localism Act 2011</b>	<b>Grounds for refusing consent to the exchange</b>
—	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been 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 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced
Ground 3	Ground 7	The property is substantially more extensive than is reasonably required by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 5	Ground 9	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 in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation, or the governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects 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 would not be living there.

<b>Schedule 3 of the Housing Act 1985</b>	<b>schedule 14 of the Localism Act 2011</b>	<b>Grounds for refusing consent to the exchange</b>
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 these 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 those 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 the subject of a management agreement where the manager is a housing association of which at 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 nor is willing to become one
Additional Ground (Housing Act 2004)	Ground 6	Any of the following are in force, or an application is pending either against the tenant, the proposed assignee or a person who resides with either of them: • an injunction order under section 153 of the Housing Act 1996 • an anti-social behaviour order • a Demotion Order or • a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies