



**MUTUAL EXCHANGE,
ASSIGNMENT &
SUBLETTING POLICY**

2022

Mutual Exchange, Assignment & Subletting Policy

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Brief Policy Summary:

To ensure that tenants are aware of their right of Assignment and subletting as set out in the Tenancy Agreement. Also, that LHP's policies for giving consent to assign tenancies are followed.

Contents

1.0	Introduction	3
2.0	Scope	3
3.0	Policy Aims	3
4.0	Definitions	4
5.0	Mutual Exchange.....	4
5.2	Grounds for Refusing a Mutual Exchange	5
5.3	Property & Tenancy Conditions	6
5.4	Localism Act 2011: Practical Implications of Tenure Reform on Mutual Exchanges	7
5.5	Exchange without Consent	9
6.0	Assignments	9
7.0	Lodgers & Subletting (including Additional Household Members)	10
8.0	Right to Rent	11
9.0	Monitoring	11
	Equality Impact Assessment Initial Screening	12

1.0 Introduction

Lincolnshire Housing Partnership is committed to providing a high-quality service to tenants and prospective tenants in relation to their rights to assign their tenancies to others (including assignments by way of exchange).

To ensure that tenants are aware of their rights of Exchange and Assignment as set out in the Tenancy Agreement.

2.0 Scope

This policy applies primarily to LHP Assured Tenancies.

Assured shorthold tenants under weekly tenancies which are not starter tenancies do not have the right to assign their tenancies or to exchange by way of assignment.

Starter tenants do not have the right to exchange or assign their tenancies during the probationary “shorthold” phase of their tenancy. However, once the tenancy has converted to an assured (non-shorthold) tenancy they gain the right to exchange or assign their tenancies with LHP’s consent.

The Policy sets out criteria for dealing with:

- Mutual Exchanges
- Assignments by the Court or with LHP’s consent e.g. Joint Tenancy to a Sole Tenancy
- Lodgers and Subletting

3.0 Policy Aims

The key aims of this policy are:

- To provide a framework to ensure that exchanges and assignments are carried out fairly in full compliance with legislation and the tenancy agreement.
- To be fair and transparent in our decision making.
- To minimise costs to LHP through a comprehensive inspection and approval process prior to and upon exchange taking place.

4.0 Legal and Regulatory Framework

The key relevant legislation is:

- Housing Act 1985
- Localism Act 2011
- Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012

The policy is aligned with the Regulatory Standards set by the Regulator of Social Housing, specifically:

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The Regulator's Tenancy Standard requires LHP as a private registered provider of social housing to "enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services." - LHP currently subscribes to Homeswapper, therefore providing a free national service to tenants.

Equality and Diversity

LHP recognises that its customers and staff come from diverse backgrounds, with varying experiences and needs. LHP is committed to promoting equality and fairness and combating discrimination. This applies to everyone, regardless of gender, racial or ethnic background, disability, religion or belief, sexual orientation gender reassignment, age, marital or parental status

4.0 Definitions

For the purpose of this policy and accompanying procedure the following definitions apply: -

- **Mutual Exchange** is the mechanism that allows tenants of social landlords to exchange their tenancies by assignment. When an exchange is carried out by assignment no new tenancy has been created; the original tenancies are still in existence but have changed hands.
- **Assignment** is when a tenant gives their interest to another living person. The tenancy of the property then continues on the same basis, and the new tenant takes on all the rights and responsibilities of the original tenancy. Assured tenants can only assign their tenancy in certain circumstances; by mutual exchange (see above) or under the terms of a court order following the ending of a relationship or with LHP's consent, i.e., joint to sole tenancy.
- **A lodger** lives in the tenant's home and shares living accommodation but does not have exclusive occupation. A lodger is an "excluded occupier" and has very limited housing rights.
- **Subletting** is where a subtenant (lodger) has exclusive use of their room, and the tenant landlord needs permission before entering the sub-tenant's room
- **Additional Household Member** is someone who lives with the tenant as part of their family who has previously not lived in the household. It is unlikely that their terms of occupation would be subject to any legal formalities.

5.0 Mutual Exchange

Right to Exchange

LHP assured (non-shorthold) tenants have a contractual right to exchange their homes and tenancies with the tenant of another Housing Association, Local Authority or with another assured (non-shorthold) tenant of LHP.

Assured (non-shorthold) tenants have the right to assign the tenancy by way of exchange providing that:

- prior consent of LHP is obtained
- or more of the grounds for refusal do not apply
- any reasonable conditions attached to the consent are complied with
- LHP and any other landlord who may be involved in a proposed mutual exchange must first give their consent to the tenants exchanging before any move takes place.

LHP will not unreasonably withhold consent unless it considers it proper and lawful to do so.

A decision on an application for a mutual exchange will be made within 42 days of receiving the complete applications from all involved parties.

Grounds for Refusing a Mutual Exchange

Whether or not consent can be withheld will depend on the terms of the tenancy agreement(s) in question. In many cases, the tenancy agreement may provide that consent can only be withheld if one or more of the grounds for “Withholding consent to Assignment By way of Exchange”, as set out in Schedule 3 of the Housing Act 1985 (as amended) is / are applicable. The grounds for refusal are not exhaustive but include:

- Where possession proceedings have started, a notice seeking possession has been served, or a possession order is in force (including suspended or postponed orders)
- Where the exchange would result in under or over-occupation
- Where the accommodation is reserved for people with special needs, such as housing for the elderly or an adapted property designed for a physically disabled person. and the tenant does not have these needs

Reasons for withholding consent will be given in writing, within 42 days of the application: -

If the tenant has broken any term of the tenancy, including, but not limited to, non-payment of rent or other housing related debt, unsatisfactory property condition or alterations carried out to the property without consent, then LHP may, at its absolute discretion, grant consent on condition that the tenant pays the outstanding debt and/or remedies any other breaches of the tenancy obligations.

In exceptional circumstances, consent may be granted to allow a tenant to exchange with rent

arrears or another housing related debt. Examples may include, but are not limited to: -

- The tenant needs to downsize in order avoid the debt increasing
- The tenant's wellbeing will be a risk and detrimental to their health if they do not move to more suitable accommodation.
- The tenant has been the victim of or threatened with abuse or violence(including domestic violence) and the move shall assist in protecting the tenant from future violence or abuse.

Property & Tenancy Conditions

There are implications involved with mutual exchanges because, in most cases, each tenant takes on the terms and conditions of the other parties' tenancy. In particular, the exchange may result in a change of tenancy type, for example from secure to assured and vice versa. This can consequently alter the tenants' rights, in particular the Right to Buy and the Right to Acquire.

The incoming tenant accepts and takes responsibility for the property in its existing condition, including cleanliness, internal decoration, improvements and alterations and any repairs that are the tenant's responsibility. The outgoing tenant is not eligible for any compensation for qualifying improvements they have made to the property as the tenancy is not actually ending, which is a requirement of the Compensation Policy.

Although the incoming tenant legally takes on responsibility for the condition of the property and tenancy conditions, after the property has been inspected prior to the exchange taking place LHP will generally adopt the following procedure to reduce the risk of litigated disputes: -

1. Order any repairs that are LHP's responsibility as Landlord.
2. Require the outgoing tenant to remedy defects or repairs identified as their responsibility.
3. Advise the incoming tenant of any such works required and warn them that they will become responsible for them following the exchange if the works have not been carried out.
4. Carry out gas and electrical checks on the property.
5. The tenant will take on the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and carrying out any repairs or reinstatements identified as the tenant's responsibility to carry out, which were not carried out by the outgoing tenant prior to the exchange taking place.
6. Upon assignment, require the incoming tenant to sign to the effect that they accept the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and carrying out any repairs or reinstatements identified as the tenant's responsibility to carry out and not carried out by the outgoing tenant prior to the exchange taking place.
7. Advise the incoming tenant as to any material changes to their rights and obligations under their incoming tenancy compared to their outgoing tenancy e.g. an incoming tenant does not necessarily obtain the preserved right to buy by simply taking an

assignment of a “preserved rights” tenancy as the right is personal to the tenant and not the property; also a tenant incoming from another organisation where they had right to buy or preserved right to buy will lose it if they leave their current landlord.

Whilst the incoming tenant takes on responsibility for maintaining any improvements and alterations made to the property with LHP’s consent, LHP still has a legal responsibility to maintain and repair any installations that supply heating, water heating, gas, water, and electricity including: -

- Basins, sinks, baths, toilets, flushing system and waste pipes.
- The electric wiring, gas, and water pipes; and
- Water heaters, fireplaces, and central heating.

Localism Act 2011: Practical Implications of Tenure Reform on Mutual Exchanges

The revised regulatory standards came into effect on 1st April 2012 and the main tenure reform provisions of the Localism Act came into force. The effect of these changes is to allow housing associations and local authority landlords to begin offering fixed term tenancies on social rent as well as affordable rent properties.

Mutual exchanges between tenants of social landlords usually take place by deed of assignment where each tenant takes over the other tenant’s tenancy type and terms. New tenancies are not signed. However, there are different provisions in section 158 of the Localism Act 2011 and cover those circumstances where: -

- At least one of the tenants who wishes to transfer has a secure or assured (non-shorthold) tenancy, which began before 1st April 2012, and
- At least one of the tenants has a “flexible” secure tenancy (i.e., a fixed term secure tenancy granted by a local authority) or an assured shorthold tenancy which does not fall under the exceptions listed below.

Under the Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012; the following tenancies are excluded from the right to transfer described above -

- (a) An assured shorthold tenancy for a fixed term of less than two years,
- (b) A periodic (e.g., weekly / monthly) assured shorthold tenancy (including starter tenancy),
- (c) An assured shorthold tenancy where the rent payable under the tenancy is-
 - (i) Affordable Rent
 - (ii) Intermediate Rent
 - (iii) Mortgage Rescue rent; or
 - (iv) Shared ownership rent

Where the right under section 158 Localism Act 2011 applies, such exchanges must be done by surrender and then re-granting of new tenancies. The new landlord must grant the tenant(s) whose previous secure or assured tenancy pre-dated 1st April 2012 either: -

- A secure (periodic e.g., weekly, or monthly) tenancy if they are a local authority, or
- A periodic (e.g., weekly, or monthly) assured (non-shorthold) tenancy if they are a housing association

Existing tenants will therefore retain similar security of tenure to that of their original tenancy. However, this protection will only apply to existing tenants' tenure, not the level of rent they pay. Therefore, if an existing tenant who pays social rent chooses to exchange with a tenant who currently pays an affordable rent, they will take on the higher level of rent.

The rules relating to existing tenants retaining similar security of tenure do not apply where an existing secure or assured (non-shorthold) tenant is exchanging with:-

- Someone with a fixed term tenancy of less than two years
- Someone with a tenancy at affordable rent, intermediate rent, mortgage rescue properties and shared ownership leases.

In summary this means that:

- Someone with a pre-April 2012 secure or assured tenancy can exchange with any other social housing tenant and be sure of keeping their existing security of tenure
- If such a tenant wanted to exchange with a tenant who pays affordable rent, there would be no legal guarantee of security of tenure with the new tenancy. The landlord may choose to offer a secure or assured tenancy but that is at the landlord's discretion.
- Tenants of affordable rent properties have the same right to exchange as other tenants. Providing they are exchanging with another tenant who is not a pre-April 2012 tenant, then the exchange would happen in the normal way, i.e., by deed of assignment.

A landlord can refuse an exchange of this nature on any of the grounds set out in Schedule 14 of the Localism Bill (along the same lines as existing grounds for refusing mutual exchanges) and they have 42 days to make that decision.

Exchange without Consent

In the event that a tenant exchanges property with another tenant without first gaining the consent of both landlords then we will: -

- Insist that the tenants return to their original houses; or
- Terminate the tenancies by serving Notice and seeking repossession.

6.0 Assignments

Assured (non-shorthold) tenants of LHP are given a contractual right, under the terms of their

tenancy agreement to request to assign their tenancy to another person in specific circumstances.

Assured (non-shorthold) tenants have the right to assign the tenancy in the following circumstances:

- By order of the Court
- Following relationship breakdown (joint to sole tenancy)

Although we reserve the right to object on housing management grounds (e.g.ASB, rent arrears, under-occupation, not suitable for housing need etc.) LHP will normally accept the assignment of tenancy if it is a result of a court order and there are no breaches of tenancy. This could occur as a result of:

- a Property Adjustment Order from matrimonial or other family proceedings (where a tenancy is granted to one of the partners in a marriage or civil partnership following a divorce, dissolution, or separation), or
- where a court orders the transfer of a tenancy for the benefit of a child or children, or
- where a joint tenant has been barred from residing at a property due to threatening or inappropriate behaviour.

In most cases a Deed of Assignment must be executed to assign the tenancy into the other party's name – the existence of a court order alone is normally insufficient. The only exception to this is a tenancy transfer order under the Family Law Act 1996 – if this is correctly worded then it will automatically transfer the tenancy in accordance with the order. NB that this is not the same as an "occupation order" or an order granting "home rights". If there is any doubt or if one of the parties to the relationship breakdown will not co- operate, then the parties should be told to obtain their own independent legal advice. LHP should also obtain specialist legal advice.

LHP will also consider a request to assign the tenancy where there has been an irretrievable breakdown in the relationship and relinquishment has been agreed by both parties. It is a necessary criterion that the person to whom the tenancy is to be assigned is either one of the two existing joint tenants or otherwise would have been statutorily qualified to succeed upon the death of the tenant. A Deed of Assignment must be executed to assign the tenancy into the sole tenant's name.

LHP may refuse consent or make the assignment conditional if there has been a breach of tenancy in any way, this could include remedying the breach, for example clearing any rent arrears owed before the assignment can go ahead or assigning the rent arrears to the incoming tenant.

Where a joint tenant has left the property and cannot be traced, LHP may accept a termination of the tenancy from the remaining joint tenant and issue a new sole tenancy to the remaining tenant. This action will not be completed if the tenancy has any rent arrears or outstanding breaches. In order for one of two joint tenants to validly terminate the tenancy, the tenant must fill out and validly complete a tenancy termination form giving at least 4 weeks' notice. LHP has

no discretion to accept a lesser notice period and any notice should be carefully checked for errors. This is to be considered as a last resort where contact cannot be made with a joint tenant who has left the property. Approval must be sought from the Corporate Head of Housing and the tenant should be reminded of their right to seek independent legal advice.

Where a request for a sole tenancy is received from a joint tenant who is the victim of domestic abuse, LHP will make every effort to investigate their case and obtain evidence. It may be necessary to end the joint tenancy and issue a sole tenancy to the tenant subjected to domestic violence. In these circumstances' approval must be sought from the Corporate Head of Housing. Decisions will be made on a case-by-case basis.

All requests for assignments should be made in writing. A decision on an assignment will be made within 28 days of receipt of the request.

7.0 Lodgers & Subletting (including Additional Household Members)

Assured (non-shorthold) tenants of LHP are generally given a contractual right, under the terms of their tenancy agreement to take in lodgers or sub-tenants of part of their property. There is no right nor provision for the sub-letting of any property in its entirety.

Tenants may, however, take in an additional household member, a lodger or sublet part of their home provided that they comply with the terms of the tenancy agreement and they:

- Write to LHP giving full details of the additional household member, lodger or sub-tenant and the part of the home they will occupy.
- Do not create an assured tenancy (whether shorthold or non-shorthold) tenancy in favour of an additional household member, a lodger or sub-tenant of any part of their home.
- Ensure that the prospective additional household member, lodger/sub-tenant has the Right to Rent.
- Obtain LHP's written permission, which will not be unreasonably withheld, before any sub-letting or lodging takes place.
- Make sure that the home does not become overcrowded.
- Ensure all members of the household and visitors keep to the tenancy conditions.

Additional household members are classed as:

- Partner
- Carer
- Friend
- Other relative

All requests for lodgers and subletting should be made in writing. A decision will be made within 28 days of receipt of the request and the tenant will be written to explaining the decision.

8.0 Right to Rent

Immigration checks on new lettings are required by the Immigration Act 2014, which came into force on 1st February 2016. Many lettings will be exempt if they are made through an agreed nominations agreement with the Local Authority which carries out its own checks, but many lettings are covered, including all new tenancy signups to anyone not already checked by the Local Authority, and agreements with sub-tenants and lodgers.

LHP will implement the 'Right to Rent' checks for Mutual Exchanges and Assignments to ensure that the proposed Assignees are eligible to hold a tenancy in line with the law.

9.0 Monitoring

Performance data for mutual exchanges will be produced each month.

- The number of mutual exchanges and assignments requests within the year
- The number dealt with within the target times
- The number of approvals, refusals, withdrawals and appeals
- The number of Assignments completed



Equality Impact Assessment Initial Screening

Name of policy / strategy / project (the” initiative”):

Mutual Exchange, Assignment & Subletting Policy

Provide a brief summary of the aims and main activities of the initiative: (bullet points)

To ensure that tenants are aware of their right of Assignment and subletting as set out in the Tenancy Agreement. Also, that LHP’s policies for giving consent to assign tenancies are followed.

Completed by:

Date:

STAGE 1: SCREENING

This stage establishes whether a proposed initiative will have an impact from an equality perspective on any particular group of people or community – i.e. on the grounds of race, religion/faith/belief, gender (including transgender), sexual orientation, age, disability, or whether it is “equality neutral” (i.e. have no effect either positive or negative).

Q 1. Who will benefit from this initiative? Is there likely to be a positive impact on specific groups/communities (whether or not they are the intended beneficiaries), and if so, how? Or is it clear at this stage that it will be equality ‘neutral’ i.e. will have no particular effect on any group?
Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality

The policy is not designed to benefit any particular group and that there will be positives and negatives for a few groupings. The

availability of assignments, exchanges and lodgers/sub-lettings could assist certain groups e.g. disabled/elderly to move to more suitable accommodation; for women fleeing domestic violence to move or to remove violent partners from the tenancy.

Q 2. Is there likely to be an adverse impact on one or more minority/under-represented or community group as a result of this initiative? If so, who may be affected and why: Or is it clear at this stage that it will be equality 'neutral'? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

Yes, on migrant communities. We are expected to undertake checks to ascertain if a potential tenant/lodger is permitted to be in the UK as required by the Immigration Act 2014. Therefore, any adverse impact is an inevitable result of a strict legal requirement.

Although the policy is not designed to disadvantage any particular group, there will be positives and negatives for a few groupings. The restrictions on assignments, exchanges and lodgers/sub-lettings could have greater impact on certain groups e.g. women whose partners have left them may also be left in arrears.

Q 3. Is there sufficient data on the target beneficiary groups/communities? Are any of these groups under or over represented? Do they have access to the same resources? What are your sources of data and are there any gaps? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

Information on tenants and applicant's families from tenancy profiling and the data held on QL

Q 4. Outsourced services – if the initiative is partly or wholly provided by external organisations / agencies, please list any arrangements you plan to ensure that they promote equality and diversity. *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

This is an internal policy, and we are responsible for its implementation

Q 5. Is the impact of the initiative (whether positive or negative) significant enough to warrant a full impact assessment – see guidance? If not, will there be monitoring and review to assess the level of impact over a period of time? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

We do not perceive any negative impact that would warrant a full EIA. Should any negative impact be highlighted through implementation, the policy and EIA will be reviewed.

Q 6. To be completed at six monthly review Detail actions taken to assess the level of impact over a period of time, or to address any gaps in data. *Please consider all aspect of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

At Policy reviews

Guidelines: Things to consider

- Where a negative (i.e. adverse) impact is identified, it may be appropriate to make a full EIA (see Stage 2), or, as important, take early action to redress this – e.g. by abandoning or modifying the initiative. NB If the initiative contravenes equality legislation, it must be abandoned or modified.
- Where an initiative has a positive impact on groups/community relations, the EIA should make this explicit, to enable the outcomes to be monitored over its lifespan.
- Where there is a positive impact on particular groups, does this mean there could be an adverse impact on others, and if so can this be justified? - e.g. Are there other existing or planned initiatives which redress this?
- It may not be possible to provide detailed answers to some of these questions at the start of the initiative. The EIA may identify a lack of relevant data, and that data-gathering is a specific action required to inform the initiative as it develops, and also to form part of a continuing evaluation and review process.
- It is envisaged that it will be rare for full impact assessments to be required. Usually, where there are particular problems identified in the screening stage, it is envisaged that changing the approach at this stage, and/or setting up a monitoring/evaluation system to review a policy's impact over time will tackle the problem.