

## Mutual Exchange Policy

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| Policy Owner                                    | Tenancy and Neighbourhood Housing Manager |
| Version   | V1  |
| Frequency of Review                             | Every 3 years                             |
| Date Document Last Reviewed                     | July 2025                                 |
| Date of Next Review                             | July 2028                                 |
| Equality Impact Assessment Required / Completed | Yes, completed 16.07.25                   |
| Data Impact Assessment Required / Completed     | Yes, completed 16.07.25                   |
| Reviewed By                                     | Housing Team Leaders                      |
| Approved By                                     | Deputy Chief Executive - 24/07/25         |

### 1. Policy Statement

- 1.1 Mutual exchange provides social housing customers with a solution to finding their ideal home. Local authorities often have strict criteria to join the housing register and customers can face lengthy waiting times. Mutual exchange offers the flexibility for customers to broaden their options to where they can live and the accommodation type available to them.
- 1.2 We therefore want to encourage our customers to consider this option to move and will provide the necessary information, support and advice to ensure that they can do this easily and successfully.
- 1.3 This policy outlines the criteria, procedure and responsibilities for Cottsway tenants wishing to undertake a mutual exchange of properties. The aim is to provide flexibility for tenants while ensuring that exchanges are fair, transparent, and legally compliant.
- 1.4 This policy does not include leaseholders or shared owners.

### 2. Definitions

|                 |   |
|-----------------|---|
| Mutual exchange | Refers to the process by which social housing tenants are permitted to swap tenancies and homes |
| Homeswapper     | A national platform designed to facilitate home exchanges for social housing tenants            |
| Swaptracker     | An online case management system which manages the mutual exchange process                      |

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|------------|--|
| Assignment | Refers to the process whereby a tenancy is legally signed over to another tenant |
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### **3. Policy Scope and Objectives**

This policy applies to all tenants with secure or assured tenancies who are eligible to participate in a mutual exchange within Cottsway's housing stock or with other registered social landlords.

### **4. Regulatory and Legal Considerations**

4.1 This policy is underpinned by the following legislation:

- Housing Act 1985 (Sections 92–94): Provides secure tenants with a statutory right to exchange homes with another secure tenant, subject to landlord consent.
- Housing Act 2004: Covers property standards, including the Housing Health and Safety Rating System (HHSRS), which landlords must consider during inspections.
- Localism Act 2011 (Section 158): Introduced changes to mutual exchange rights, particularly for tenants on fixed-term flexible tenancies.
- Landlord and Tenant Act 1985: Sets out the repairing obligations of landlords before and after exchanges.
- Data Protection Act 2018 / UK GDPR: Governs the processing and handling of personal data involved in mutual exchange applications.

4.2 Cottsway will also follow guidance and regulatory standards set out by the Regulator of Social Housing and any applicable local authority.

4.3 A Data Impact assessment (DPIA) has been carried out and is attached to this document.

4.4 An Equality Impact Assessment (EIA) has been carried out and is attached to this document

### **5. Stakeholder Consultation**

This policy is not suitable for external stakeholder review but has been reviewed internally by Customer Services, Income, Data Protection, Communities and Assets.

### **6. Policy Details**

Finding an Exchange - Tenants may find an exchange partner using HomeSwapper, a national mutual exchange service supported by Cottsway.

All mutual exchange applications should be submitted through SwapTracker, the official platform for managing the application and approval process which Cottsway subscribe to.

However, reasonable adjustments can be made for those applicants who are unable to use this service.

**6.1 Eligibility Criteria** - To be eligible for a mutual exchange, tenants must:

- Hold a secure or assured tenancy (or a fixed-term tenancy where permitted under the Localism Act 2011).
- Have no significant rent arrears (unless they need to downsize and are on and complying with an approved repayment plan.)
- Have maintained their current property to a satisfactory standard.
- Not be subject to legal action for breach of tenancy.
- Obtain written permission from both landlords involved (if applicable).

**6.2 Right to Exchange** - The law on mutual exchange is complex and a customers' right to exchange varies depending on the type of tenancy agreement they have.

- All Cottsway tenants (apart from Starter Assured Shorthold tenants) have a contractual right to exchange their tenancies with tenants of other Local Authorities or Registered Providers of Social Housing.
- Any preserved tenancy (i.e. pre-March 2001) and any assured tenancy (since March 2001) will have the right to exchange as described in their tenancy agreement.
- Tenants have the right to assign their tenancy agreement to another tenant by way of an exchange with that other tenant (a direct exchange) or by exchanges involving more than one other tenant (an indirect exchange)
- Tenants with preserved rights (Preserved Right to Buy PRTB) moving to a different landlord lose their PRTB, and the incoming tenant does not gain it. The new tenancy is treated as a new tenancy with a new tenancy history.
- Tenants with PRTB moving to another property owned by the same landlord retain their preserved rights.
- Tenants should always check the terms of a mutual exchange with both their current and prospective landlords before agreeing to the exchange. This includes understanding any potential impacts on their right to buy

**6.3** The following customers do not have any right to exchange:

- Customers in a probationary period including any extension period – they can exchange once the probationary period has been successfully completed
- Customers who hold an Assured Shorthold tenancy
- Temporary (decant) tenancies
- Licensees

**6.4** Incoming tenants with Fixed term tenancies - Where a Cottsway household intends to exchange with a tenant of another landlord with a fixed term (or 'flexible') tenancy, the exchange will be carried out by way

of (1) surrender of their existing tenancy and (2) the re-grant of a tenancy of equal status by Cottsway.

- 6.5 **Local Connection** – Properties are sometimes built with a local connection planning requirement. This means that that the incoming customer must qualify within the definition stipulated.

The main local connection requirements will relate to employment, current or past residence, family members' current or past residence within the defined parish/s). In case of any discrepancy, we will consult the local authority, the parish authority and our own solicitors. However, it is noted that we must comply with planning requirements as set out in section 106 agreements.

- 6.6 **Property Inspection** - We will inspect in person, all our properties that are subject to a mutual exchange and we may ask certain repairs to be done by the existing customer before we give permission for the exchange to go ahead.
- 6.7 In such cases we will give reasonable time for this to be done and carry out a further inspection once works are completed.
- 6.8 Where home improvements have been carried out, we will check landlord's permission (LLP) has been granted for them. If they have, then these will be 'gifted' to the incoming household. Gifted items will not be adopted by Cottsway for repair purposes.
- 6.9 If permission has not been granted then retrospective LLP may be given, however sometimes we may refuse the exchange.
- 6.10 Any standard Cottsway items which have been replaced by the outgoing tenant(s), will become the responsibility of the incoming tenant(s) and they will be required to sign a disclaimer for them. However, any future replacement will be with Cottsway's standard fittings and fixtures, not like for like.
- 6.11 Sometimes we might not be aware of modifications or alterations until after the exchange has taken place. In cases where these are in breach of any regulations or compromise health and safety, Cottsway will re-charge the out-going customer to put them right, retrospectively.
- 6.12 We will carry out full gas and electric inspections on the day of exchange or as close as possible to achieve compliance.
- 6.13 **Affordability** – we may carry out a financial health check for applicants who may be subject to an under-occupancy charge or moving to an affordable rent property. We may signpost to additional advice and defer the application until affordability can be evidenced.
- 6.14 **Rent in Advance (RIA)** – we will always request a month's RIA payment prior to the exchange taking place. This will be confirmed in writing. Refusal or inability to make this payment, in line with our Lettings and Income policy could mean an exchange is refused.

- 6.15 **Decision** - a decision will be issued within 42 calendar days of receiving a complete application, in accordance with Section 92 of the Housing Act 1985.
- 6.16 **Approvals or refusals** - will be issued in writing. If refused, reasons will be clearly stated.
- 6.17 **Grounds for Refusal** - In the case of a mutual exchange by way of assignment, the grounds for refusal of consent are those laid down in the Housing Act 1985, Schedule 3, and adopted by Cottsway for all its relevant tenancies. These grounds are set out in **Appendix 1**.

In the case of a mutual exchange by way of surrender and re-grant (as described in section 6.4), the grounds for refusal of consent are those laid down in the Localism Act 2011, Schedule 14. These grounds are set out in **Appendix 2**.

- 6.18 **Landlord references** – we will always seek a landlord reference from the incoming tenants. If this is not satisfactory, in line with our Lettings Policy we may refuse the exchange.
- 6.19 **Responsibilities of Tenants** – Incoming tenants are responsible for viewing and accepting the condition of the property they wish to move into.
- 6.20 Exchanges are completed on a “sold as seen” basis, unless agreed otherwise.
- 6.21 Tenants must not move until formal approval is granted and legal documents (e.g., deed of assignment) are signed.
- 6.22 **Assignment of tenancy** - Each tenant becomes fully responsible for their new property and tenancy agreement.
- 6.23 All mutual exchanges must be affected by a Deed of Assignment. The Deed is an agreement between the existing tenant and the proposed tenant. The Deed is signed by the existing tenant(s) and the assignee(s). The signatures must be witnessed, usually by the NHO affecting the exchange.
- 6.24 Repairs and maintenance should be reported in the usual manner after moving.
- 6.25 **Succession tenancies** - Where a tenant has already succeeded to a tenancy, following the death of a tenant, and subsequently carries out a mutual exchange, they remain a successor with the consequence that there can be no further succession.

## **7. Cottsway Staff**

Tenants who are employed by Cottsway have the right to exchange providing they meet the criteria outlined in this policy, in this circumstance, the Probity Policy will be referred to.

## **8. Appeals**

- 8.1 The decision to refuse an exchange will always be communicated to the customer in writing specifying the reason(s) and always within the time referred to in paragraph 6.15.
- 8.2 The customer then has a right to appeal the decision within five working days from the date of the decision being communicated to them.
- 8.3 The Tenancy and Neighbourhood Housing Manager will consider the appeal within 10 working days from the date of the appeal being made and provide a written letter of decision. This appeal decision is final.

## **9. Monitoring and Reporting**

The amount of applications, refusals, cases in progress and completed mutual exchanges are recorded by way of monthly team Performance indicators.

## **10. Equality, Diversity and Inclusion**

- 10.1 An Equality Impact assessment has taken place and is attached to this document.
- 10.2 We will ensure that practical and appropriate support and services will be available for any vulnerable tenant (as defined by our Vulnerability Policy) wishing to move by means of a mutual exchange.

## **11 Review**

- 11.1 The Head of Housing is responsible for the effective implementation of this policy. Cottsway will regularly monitor and review this policy every three years to ensure that it continues to meet legislative obligations and the company's corporate objectives. This review can happen sooner if there are significant changes to legislation that affect it.

## **12 Associated Documents Policies and Procedures**

- Lettings policy and procedure
- Equality diversity and Inclusion policy
- Mutual exchange procedure
- Aids and Adaptations policy
- Income Recovery policy
- Probity Policy
- Vulnerable Tenants Policy

### **List of changes**

| Date      | Change  |
|-----------|---|
| July 2022 | Implementation of new policy template             |
| July 2025 | Section 6 - Addition of Swaptracker to the policy |
|           |   |

## **Appendix 1: Housing Act 1985 Schedule 3**

### **Grounds for withholding consent to mutual exchange by way of assignment**

***[Italicised text does not form part of the legislation but is inserted by Cottsway to offer guidance]***

#### **Ground 1**

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

#### **Ground 2**

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

#### **Ground 2A**

Either—

(a) A relevant order or suspended Ground 2 or 14 possession order is in force, or  
(b) an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made,  
in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means—

An injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);

An injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);

An injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);

An anti-social behaviour order under section 1 of the Crime and Disorder Act 1998; or

An injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003.

A “demotion order” means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A “Ground 2 or 14 possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

### **Ground 3**

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

*Whilst the law does not quantify over and under occupation, Cottsway will make the decision based on reasonableness of the individual case.*

*Typically, there will be flexibility of one bedroom allowed either way. So, for example, a one child couple may be permitted to exchange into a three-bedroom house or a two-child family into a two-bedroom house.*

*However, there will be other factors also impacting on the individual decision, such as the age and the sex of the children. We will strongly discourage children of opposite sexes moving into a property where they must share a bedroom as this is not likely to sustain a tenancy. However, we will have due regard to the Government's Welfare Reforms and the room subsidy removal.*

### **Ground 4**

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

### **Ground 5**

The dwelling-house:

- a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery and;
- b) was let to the tenant or predecessor in title or his/her in consequence of the tenant or predecessor being in the employment of the landlord or

- a local authority,
- a development corporation,
- a housing action trust
- a Mayoral development corporation,
- an urban development corporation, or
- The governors of an aided school.

### **Ground 6**

The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objectives of the charity.

### **Ground 7**

The dwelling- house had features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.

*Typical examples of such adaptations are through and stair-lifts, level access showers, wet rooms, hoists, wheelchair accessible kitchen units and doorways. In some circumstances Cottsway may authorise a mutual exchange but with the proviso that the incoming tenant takes on the adaptation and does not request reversion to the original fixtures and fittings, such as a bathtub. Equally if it is an internal exchange then Cottsway would not consider funding repeat adaptations at the disabled tenant's new accommodation such as those enjoyed at their current property unless other circumstances are overriding such as overcrowding, but subject always to Cottsway's duties under the Equality Act 2010.*

### **Ground 8**

The landlord is a Housing Association or Housing Trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling house.

### **Ground 9**

The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

### **Ground 10**

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association. [Reference to a management agreement includes a section 247 or 249 arrangement, as defined by section 250A (6) of the Housing and Regeneration Act 2008.]

## **Appendix 2: Localism Act 2011 Schedule 14**

### **Grounds for withholding consent to mutual exchange by way of surrender and re-grant**

#### **Ground 1**

This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

#### **Ground 2**

This ground is that an obligation under one of the existing tenancies has been broken or not performed.

#### **Ground 3**

This ground is that any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

#### **Ground 4**

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
  - (a) Proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and
  - (b) possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).
- (3) The second condition is that—
  - (a) A notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and
  - (b) The notice specifies one or more of those grounds and is still in force.

#### **Ground 5**

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
  - (a) Proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
  - (b) Possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)
- (3) The second condition is that—
  - (a) A notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
  - (b) The notice specifies one or more of those grounds and is still in force.

#### **Ground 6**

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that a relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant.
- (3) The second condition is that an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.
- (4) In this paragraph—

A "relevant order" means—

- (a) An injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
- (b) An injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
- (c) An injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
- (d) An anti-social behaviour order under section 1 of the Crime and Disorder Act 1998, or
- (e) An injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;

a "demotion order" means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988;

a "Ground 2 or 14 possession order" means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

### **Ground 7**

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

### **Ground 8**

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of—

- (a) The existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (b) The family of that tenant or those tenants.

### **Ground 9**

(1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

(2) The first condition is that the dwelling-house—

- (a) Forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord—
  - (i) Is held mainly for purposes other than housing purposes, and
  - (ii) Consists mainly of accommodation other than housing accommodation, or
- (b) Is situated in a cemetery.

(3) The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of—

- (a) The landlord under the tenancy,

- (b) A local authority,
- (c) A development corporation,
- (d) A housing action trust,
- (e) An urban development corporation, or
- (f) The governors of an aided school.

**Ground 10**

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

**Ground 11**

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that—
  - (a) Are substantially different from those of ordinary dwelling-houses, and
  - (b) Are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

**Ground 12**

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.
- (3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

**Ground 13**

- (1) This ground is that all the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.
- (3) The second condition is that a social service or special facility is provided near the group of dwelling-houses to assist persons with those special needs.
- (4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

**Ground 14**

- (1) This ground is that all the following conditions are met.
- (2) The first condition is that—
  - (a) The dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
  - (b) At least half the members of the association are tenants of dwelling-houses subject to the agreement.

- (3) The second condition is that at least half the tenants of the dwelling-houses are members of the association.
- (4) The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.
- (5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A (6) of the Housing and Regeneration Act 2008.