

**CONTROLLED DOCUMENT**

N.B. Employees should be discouraged from printing this document. This is to avoid the risk of out of date printed versions of the document. The Intranet should be referred to for the current version of the document.

**MUTUAL EXCHANGE AND ASSIGNMENT POLICY**

<b>CATEGORY:</b>	Policy
<b>CLASSIFICATION:</b>	Housing and Property
<b>PURPOSE:</b>	To document Brunelcare's approach to requests for mutual exchange and assignment
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<b>Essential Reading for:</b> <b>Information for:</b>	Housing Team ECH Team Housing Customer Services Team

## Document Consultation and Review Process

<b>Groups/Individuals who have overseen the development of this Policy:</b>	Housing Team ECH Team Housing Customer Service Team Board Policy Group
<b>Groups/Individuals Consulted:</b>	

## Document version control:

Date	Version	Amendments made	Amendments Approved by
March 2022	V2	Combined with Lettings Policy	Board - 22 March 2022
11 March 2022	V2	Inclusion of the role of the PQ&E Committee within Board compliance reporting added within paragraph 6.6 following feedback from Trustees (DE)	Board - 22 March 2022
11 March 2022	V2	Inclusion of paragraph 5.10 to set out the Charity's approach where a request is received regarding a property due to undergo redevelopment following feedback from Trustees (DE)	Board - 22 March 2022
14 November 2022	V3	Updated roles in the policy following restructure of SLT and the Housing team	SLT
14 November 2022	V3	4.2 updated to reflect the type of qualifying tenancies that apply to mutual exchanges	SLT

## For the Use of the Corporate Governance Team only:

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## 1. POLICY STATEMENT

- 1.1 Brunelcare will apply a Mutual Exchange and Assignment policy which is fair and transparent which makes the best use of its housing stock so that it is available for those who need it.
- 1.2 The Board of Brunelcare will ensure compliance with the Tenancy standards issued by our regulator which state:

*“Registered Providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:*

- *Make the best use of available housing*
- *Are compatible with the purpose of the housing*
- *Contribute to local authorities’ strategic housing function and sustainable communities*

*There should be a clear application, decision-making and appeals process.*

*Registered providers shall 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.”*



Deborah Evans  
Chair of the Board



Oona Goldsworthy  
Chief Executive Officer

## 2. AIM OF THE POLICY AND RELATED LEGISLATION

- 2.1 The aim of this policy is to set out how Brunelcare will deal with requests to mutually exchange or assign a tenant's tenancy.

### Relevant Legislation and Guidance

[Housing Act 1988](#)

[Housing Act 1996](#)

[Localism Act 2011](#)

[Human Rights Act 1998](#)

[Equality Act 2010](#)

## 3. SCOPE OF THE POLICY

- 3.1 This policy documents Brunelcare's approach to requests to mutually exchange and assign a tenancy.
- 3.2 This policy will apply to all mutual exchange and assignment requests across Brunelcare's services and all employees and tenants involved in this process.

## 4. DEFINITIONS

- 4.1 *Mutual exchange* is the process by which a qualifying tenant can exchange their tenancy with someone else who holds a qualifying social housing tenancy.
- 4.2 *Assignment* is the process by which a qualifying tenant can assign their tenancy to another qualifying person (usually a spouse or partner).
- 4.3 A *qualifying tenant* is someone who has an assured tenancy or secure tenancy and may include Fixed Term Tenancies. However Affordable Rent Tenancies and Market Rent tenancies are excluded as a qualifying tenant.

## 5. KEY PRINCIPLES AND REQUIREMENTS

### Mutual Exchanges

- 5.1 Tenants can access the Homeswapper internet-based mutual exchange scheme, using Wi-Fi in the communal areas.
- 5.2 Tenants with rent arrears may be excluded from the Home Swapper scheme until their account is in credit (an exception may be if the tenant is exchanging due to financial hardship or affordability of their current rent) and will not be able to exchange until they have a full assured tenancy (starter tenants do not have the right to exchange).

- 5.3 Any refusal on mandatory grounds to a request for a mutual exchange from a tenant will be given within 42 days, with reasons.
- 5.4 The tenant will also be informed if permission is given, or conditional upon the tenant carrying out certain actions. This could be paying off rent arrears or a repairs recharge, tidying the garden, or repairing damage in the property to the satisfaction of Brunelcare.
- 5.5 Consent will only be withheld on specific grounds:
  - 5.5.1 A court order, including a suspended order, has been granted giving possession of the property to a landlord.
  - 5.5.2 A Notice of Seeking Possession (NOSP) or Notice of Demotion has been served on the tenant, or on a person to whom the tenant proposes assigning his/her tenancy under any of the grounds for possession, and the Notice is still in force.
  - 5.5.3 An application is pending in respect of the tenant or the proposed assignee, or a person who is residing with either of them before any court, for an injunction under s.152 of the Housing Act 1996, an Anti-Social Behaviour Order under s.1 of the Crime and Disorder Act 1998 or an injunction to which the power of arrest is attached by virtue of s.91 of the Anti-Social Behaviour Act 2003 or s.1 of the Anti-Social Behaviour, Crime and Policing Act 2014.
  - 5.5.4 Where the size of accommodation is too small, or more than one bedroom too large for the size of household.
  - 5.5.5 Where the property is designed or adapted to cater for people with disabilities or other special needs and the exchange would result in it being occupied by someone without these needs.
  - 5.5.6 Where the landlord is a registered charity, and the exchange would result in the tenant's occupation conflicting with the purposes of the charity (this includes Brunelcare's age requirements).
  - 5.5.7 Where a closure order has been made on the property.
- 5.6 Consent to a mutual exchange request may also not be able to be provided where a planning requirement (such as a Section 106 agreement) sets certain criteria for residency and the incoming tenant does not meet these requirements (e.g. a requirement for a local connection).
- 5.7 A Deed of Assignment will be provided to carry out the exchange and Brunelcare will liaise with the other landlord.

- 5.8 The assignees will be informed that in assigning a tenancy, they accept the property in its current condition and that Brunelcare is not obliged to carry out repairs to the property other than those which fall within its repairing responsibilities as set out in the Tenancy Agreement. In particular, any fixtures and fittings installed by the outgoing tenant which are not the landlord's responsibility and any defects caused by the outgoing tenant which are not the landlord's responsibility will be the incoming tenant's responsibility to repair. The tenant will sign to state that they agree with this, and any known items will be listed.
- 5.9 If an unauthorised exchange takes place, Brunelcare will serve a Notice Seeking Possession and/or Notice to Quit on the grounds that the tenant is not occupying the tenancy as his/her principal home, stating the correct tenancy address.
- 5.10 Where a mutual exchange is sought that involves a property to which the Charity is aware that redevelopment work is to take place, the tenant will be advised of this to ensure they still wish to proceed with the exchange. In certain instances, where redevelopment has been planned, mutual exchanges may be suspended to a particular site. Where this is the case it will be clearly communicated with tenants.

#### **Mutual Exchange Involving a Fixed Term Tenant**

- 5.11 Mutual exchanges can take place either by assignment or surrender and regrant, determined by the type of tenancy and when it was granted. As this can change as a result of the mutual exchange, the tenant(s) will be made aware of any change in the tenancy conditions and rent level before the exchange takes place.
- 5.12 In the case of an assignment, the incoming tenant takes on all the rights and responsibilities and the tenancy agreement of the tenant they have swapped with. The assignment takes place at the same time as the exchange, and is applied when those exchanging homes hold tenancies with a similar security of tenure (e.g. two tenants with assured tenancies swapping), or where it is a secure tenancy with the council swapping with an assured tenant.
- 5.13 Mutual exchanges will take place through a surrender and regrant where the tenants swapping have tenancies with different security, and one party has their security protected by law (e.g. secure tenancy). In this case the existing tenancy would be surrendered, and a new tenancy signed with similar security of tenure in their new property (e.g. a secure tenancy which began before April 2011 swapping with a fixed term Assured Shorthold tenancy in accordance with Brunelcare's Tenancy Policy). This may not apply if the exchange involves an Affordable Rent property.
- 5.14 Both landlords involved must use the same method for the exchange.

## Assignments

- 5.15 Where a court has decided the tenancy is to be assigned because of matrimonial/family court proceedings, the assignment will be carried out as set out in the court order.
- 5.16 Requests for assignments to a potential successor should be made by the tenant in writing. Upon receipt of the request the Housing Officer will interview the prospective successor and make a formal report to the relevant Tenancy Services Manager.
- 5.17 The spouse of the tenant, or common law partner (including same sex partner) if they were living at the property for the previous 12 months, will automatically be able to succeed to the tenancy on death, and will be granted an assignment if there has been no previous succession to the tenant.
- 5.18 A Deed of Assignment will need to be completed and the housing system updated, to show an assignment has taken place and no further right of assignment/succession applies. The tenant will be informed that if they assign the tenancy then someone else cannot then succeed as it uses up the succession right. This will be confirmed in writing to the tenant.

## 6. ROLES AND RESPONSIBILITIES

### The Board of Brunelcare (Employer and Landlord)

- 6.1 The Board has overall accountability for the activities of the organisation, which includes mutual exchange and assignment arrangements. The Board will ensure that it receives appropriate assurance that the requirements set out in this policy are being met.
- 6.2 The Board discharges its responsibilities for its mutual exchange and assignment arrangements through the Chief Executive Officer. It will report back to tenants and residents or their family representatives on how Brunelcare manages its mutual exchange and assignment arrangements.

### Chief Executive

- 6.3 The Chief Executive Officer has overall accountability for the provision of an efficient and effective mutual exchange and assignment arrangements.
- 6.4 The Chief Executive Officer discharges the day to day operational responsibility for mutual exchanges and assignments through the Operations Director/Director of Housing Services.

### Operations Director/Director of Housing Services

- 6.5 The Operations Director/Director of Housing Services is responsible for the operational delivery of this Policy and the associated procedures.



- 6.6 The Operations Director/Director of Housing Services will put clear mechanisms in place:
- to monitor and measure compliance with the policy, setting a performance framework that includes key Performance Indicators (KPIs);
  - provide regular performance reports to the Board (via the Performance, Quality and Experience Committee); and
  - ensure performance against key performance indicators is regularly reported to Brunelcare's customers.
- 6.7 The Operations Director/Director of Housing Services has ultimate responsibility for ensuring that mutual exchanges and assignments operate in accordance with our policies.

#### **Tenancy Services Manager**

- 6.8 The Tenancy Services Manager is responsible for overseeing the day-to-day operation of the mutual exchanges, assignment and succession processes.

#### **Housing Team Managers, Tenancy Officers, ECH Officer and Customer Service Officers**

- 6.9 Housing Team Managers, Tenancy Officers, ECH Officer and Customer Service Officer are responsible for all the administration involved in mutual exchanges, assignment and succession claims.

### **7. EQUALITY AND DATA PROTECTION**

#### **Equality and Diversity**

- 7.1 Brunelcare seeks to embed an environment where all clients, visitors and employees are treated as individuals, fairly and in a consistent way. We work within the spirit and the practice of the Equality Act 2010 by promoting a culture of respect and dignity and actively challenging discrimination, should it ever arise. This Policy will be applied in a way that is consistent with these principles.
- 7.2 This policy is available on request in other formats (for example in an alternative language, in Braille, on tape, in large type).

#### **Data Protection**

- 7.3 Brunelcare is committed to ensuring protection of all personal information that we hold, and to provide and protect all such data.
- 7.4 Brunelcare is dedicated to safeguarding the personal information under our control and in maintaining a system that meets our obligations under the General Data Protection Regulation (GDPR). Our Practice is set out in our Data Protection Policy.

- 7.5 It is recognised that dealing with tenancy issues, including exchange and assignment, will involve sensitive data, particularly from complainants and third-party agencies and therefore particular thought and care will be taken when processing data relating to this policy.

## **8. IMPLEMENTATION AND TRAINING**

- 8.1 The Operations Director/Director of Housing Services has delegated the day-to-day responsibility for the implementation of this policy and for its regular review to the Tenancy Services Manager and Customer Services Manager.
- 8.2 Housing staff and Customer Services staff should be referred to this policy upon induction.

## **9. MONITORING AND REVIEW**

- 9.1 Mutual exchanges and assignments will be monitored and reported annually to the Board, including against equality and diversity criteria.
- 9.2 This policy will be reviewed every three years, or following any major statutory or regulatory changes, significant changes in procedures or practices, or if the author deems it to be required.

**DEED OF ASSIGNMENT**

**THIS ASSIGNMENT** is made the ..... day of ..... 202.....

BETWEEN

(1) .....of ..... Bristol  
(the Assignor)

AND

(2) ..... of .....  
(the Assignee)

AND

(3) Brunelcare, Saffron Gardens, Prospect Place, Whitehall, Bristol, BS5 9FF  
(the Landlord)

WHEREAS

- (1) The premises described in the schedule were let by an assured tenancy agreement short particulars of which are contained in the schedule hereto ('the Tenancy') subject to the covenants and provisions described therein.
- (2) The Assignor has agreed with the Assignee to assign the Tenancy subject to the covenants and conditions described.
- (3) Brunelcare is the landlord of the Assignor.
- (4) Brunelcare has agreed to give its consent to this Assignment.

NOW THIS DEED WITNESSETH as follows:

- (1) In consideration of the covenant on the part of the Assignee hereinafter contained Brunelcare hereby consents to the assignment of the Tenancy to the Assignee upon the terms and conditions herein contained.
- (2) In consideration of the covenant on the part of the Assignee hereinafter contained the Assignor hereby assigns the Tenancy to the Assignee upon the terms and conditions herein contained.
- (3) The Assignee covenants with the Assignor and Brunelcare to:
  - i) Pay the rent and service charges at all times and in the manner specified in the Tenancy
  - ii) Observe and perform all the terms and conditions on the part of the tenant referred to in the Tenancy Agreement

- (4) Where there are two or more persons included in the expression 'the Assignee' the covenant expressed to be made by the Assignee shall have been deemed to have been made by such persons jointly and severally.

IN WITNESS whereof the Assignor and the Assignee have set their hands and the Foundation has caused its common seal to be hereunto affixed the day and year first before written

**THE SCHEDULE  
Tenancy Details**

The Premises

.....  
.....  
.....  
.....

The Date of the Tenancy

.....

The Parties to the Tenancy (1) Brunelcare

(2)

.....

<sup>1</sup>Signed as a Deed by the Assignor in the presence of:-

.....(Assignor)

Witness signature

.....(Witness)

Witness name

.....

Witness address

.....

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1

Signed as a Deed by the  
Assignee in the  
presence of:-

.....(Assignee)

Witness signature

.....(Witness)

Witness name

.....

Witness address

.....

'Signed as a deed by Brunelcare acting by the CEO, a director and/or its secretary (or  
two directors)'

..... Director

..... Director/Secretary