

DECISION TAKER: CLLR LEARNEY – CABINET MEMBER FOR HOUSING AND ASSET MANAGEMENT

REPORT TITLE: MUTUAL EXCHANGE POLICY REVIEW

3 FEBRUARY 2020

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WARD(S): ALL

PURPOSE:

This report considers the current policy for Mutual Exchanges, which are available to secure and assured tenants and are an important means for many to find a more suitable home. The current policy allows tenants to move to a property which has one bedroom more than their assessed bedroom need. The report highlights the implications of the current policy and makes recommendations for change to bring the policy in line with the Council's Allocations Framework.

RECOMMENDATIONS:

1. That the Mutual Exchange policy be amended, removing consent for all tenants to move to a property which has one bedroom more than their assessed bedroom need.
2. That consent for exchanges where the accommodation is more extensive than is reasonably required by the tenant be refused unless exceptional circumstances apply that may include one or more of the following:
  - i. The tenant is downsizing;
  - ii. The tenant is exchanging to older persons accommodation;
  - iii. The tenant has a Council confirmed medical or welfare need for a property which is larger than their assessed bedroom need;
  - iv. There are other exceptional circumstances as determined by the Council.
3. That the Strategic Director - Services be authorised to amend the Council's Housing Mutual Exchange policy to reflect the above including arrangements for appropriate assessments.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 The report supports the “homes for all” priority in the Council Plan in that the Council wishes to make best use of its housing stock and to reduce the risk of a tenant losing their home by being subject to the Social Sector Size Criteria (SSSC).

### 2 FINANCIAL IMPLICATIONS

- 2.1 The principle of restricting under occupancy is an effective tool to help prevent tenants who are in receipt of Housing Benefit and/or Universal Credit from accruing rents arrears and align directly with the SSSC rules. No other financial implications are directly related to this report.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 As stated in the body of this report the Council has statutory duties under various legislation which includes the Housing Act 1985 and Homelessness Reduction Act 2017 to provide housing to those who are eligible. The proposed arrangements should, and is, such as to enable the Council to discharge the duty. Any offer of accommodation by the Council must be suitable in terms of government guidance and the amendments requested in this report assist the Council towards meeting this requirement.
- 3.2 As the Council is discharging a statutory duty it is important to monitor the practical implications of the requested amendments in this report to ensure that the Council continuously complies with the legal requirements under the Housing Act 1985 and Guidance Code.

### 4 CONSULTATION AND COMMUNICATION

- 4.1 This report was considered by the Business and Housing Policy Committee on 18 June 2019. At that meeting the changes to the Mutual Exchange policy as outlined in the recommendations of this report were noted and supported. One Member did register a strong objection to the proposed recommendations. Further detail regarding this can be found in 8.16 of the report.
- 4.2 Council tenants have been asked for their views on the proposed changes through an on-line survey which took place from 1 November 2018 to 4 December 2018. In addition, a focus group involving four tenants took place in May 2019 to further discuss the proposed change and seek the views of those involved. The report provides a summary of the tenant consultation.

## 5 ENVIRONMENTAL CONSIDERATIONS

- 5.1 The recommended changes outlined in the report are in keeping with the Council's commitment to make best use of its stock which supports the carbon neutrality action plan.

## 6 RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Community Support</i>	Engagement opportunities have been provided for tenants to comment on the proposed change in policy	The views of tenants who responded to the on-line survey and focus groups have been taken into consideration
<i>Timescales</i>	The change could take effect immediately if approved	
<i>Financial / VfM –</i>	The proposed amendment will prevent under occupancy which is shown to lead to cases of rent arrears	Reduce the potential for tenants to accrue rent arrears
<i>Legal – not applicable</i>	The proposed amendment will enable stronger meeting of the Council's statutory duty in respect of rehousing and should be monitored	Enable stronger engagement with at risk groups in society and the meeting of the Councils statutory duty towards these groups
<i>Innovation – not applicable</i>		
<i>Reputation</i>	The change to the policy is seen to strengthen the Council's reputation	
<i>Other - none</i>		

## 7 OTHER KEY ISSUES

- 7.1 All key issues have been considered and are detailed in the report.

## 8 SUPPORTING INFORMATION:

### Background

- 8.1 The ability to exchange tenancies is recognised by Winchester City Council as an important means for many tenants to be able to find a home more suitable for their needs. Procedures are in place to support tenants in their search for suitable exchange partners and to facilitate a speedy and smooth exchange of properties where authorised.

- 8.2 Mutual exchanges for secure tenants operate within a regulatory framework laid down by the Housing Act 1985 and more recently the Localism Act 2011. A secure tenant has the statutory right to swap homes with another tenant, provided the other tenant is the tenant of a social landlord and they both have the written consent of their landlords.
- 8.3 The process is tenant led, in contrast to the landlord led transfer process, and does not have the associated higher administration costs and rental loss during void periods which happens with the transfer process. A mutual exchange can also hold benefits for tenants, providing people who would struggle to secure a transfer with a means of moving to what might be more suitable or affordable accommodation, including tenants that might wish to move due to welfare reform changes.
- 8.4 For landlords it can help with efforts to maximise efficient use of stock to best meet housing need and minimise problems such as rent arrears. A mutual exchange can also provide major benefits for other services, for example, helping a tenant to move to be closer to family and friends can reduce demand on health and social care services and result in cost savings.
- 8.5 The Council currently permits properties to be let via mutual exchange where there is one bedroom more than the tenant's assessed bedroom need. In more recent years with welfare reform changes, in particular the introduction of the SSSC, tenants moving to properties which are larger than their housing need have been subject to the 'bedroom tax' and some have fallen into rent arrears as a result.
- 8.6 The current policy is also contrary to the Council's Allocations Framework within Hampshire Home Choice and is at a time when social housing is in high demand whereby housing providers are being asked to make best use of this scarce resource.

#### Completed Mutual Exchanges

- 8.7 The Council approves on average 47 mutual exchanges per year. Of those approved, 48% are to tenants who will be under occupying their new accommodation.
- 8.8 The table below provides details on the number of exchanges and those that were under occupied for the last four years.

<b>Financial Year</b>	<b>Number of Mutual Exchanges</b>	<b>Number Under Occupying</b>
2015/16	48	28
2016/17	48	19
2017/18	46	21
2018/19	46	22

- 8.9 Since the introduction of the SSSC in April 2013, working age claimants for Housing Benefit or Universal Credit who are under occupying their home face a reduction in their eligible rent for benefit purposes of 14% for one additional (spare) bedroom. As part of the mutual exchange process, all tenants are made aware of the benefit restrictions related to under occupancy, regardless of whether they are currently in receipt of Housing Benefit or Universal Credit.
- 8.10 Of the 22 tenants who carried out a mutual exchange in 2018/19 and were under occupying their property, 14 were in rent arrears when this report was prepared for the Business and Housing Policy Committee in June 2019. Also, 7 of the 14 subsequently had a change of circumstances since moving, so although at the time of exchanging they may have been working and gave the assurance of meeting the weekly rental charge through their income, they since found themselves out of work and Housing Benefit/Universal Credit not covering the full rental charge.
- 8.11 Financial assessments for mutually exchanging tenants have been taking place since May 2019 as is standard practice with all new tenancies from the Council's Housing Register. However, the Council is not able to refuse an exchange should it feel the tenant cannot afford the property as this is not a listed ground for refusal as set out in Schedule 3 of the Housing Act 1985.

### Consultation

- 8.12 From the 1<sup>st</sup> November 2018 until the 4<sup>th</sup> December 2018 we asked current Winchester City Council tenants to complete an on-line survey to seek their view on the policy and their mutual exchange experience. 357 completed responses were received, a 13% response rate, representing a wide selection of all tenants.
- 8.13 Although overall, the process was a positive one, the response regarding allowing an extra bedroom was quite evenly split, 52% saying allowing the extra bedroom for mutual exchanging tenants was not fair (when applicants on the Housing Register are not allowed move to a property larger than their assessed bedroom need) whilst 47% thought this was acceptable. 39% either agreed or strongly agreed to the proposed policy exchange of not allowing tenants to exchange to a property with more bedrooms than are needed, whereas 40% either disagreed or strongly disagreed (20% neither agreed nor disagreed).
- 8.14 There were a further 142 free text responses on this issue and again, these responses were very mixed. Many of the comments said that allowing an extra bedroom should depend on individual circumstances, for example family

taking on caring responsibilities for other family members, someone with a disability needing the extra room for equipment, medical supplies or a carer to stay, or a family planning to have more children. The opposing view made it clear that the shortage of social housing should be a factor and that there are families who need that extra bedroom immediately.

- 8.15 To explore this issue further a Focus Group was established, with 4 council tenants being involved over two sessions during May 2019. The consensus from the Focus Group was that all tenants should not automatically be allowed to move to a property which has more bedrooms than they need. However, each exchange case requesting an extra bedroom should be assessed on its merits and take account of the applicant's individual circumstances. This is similar to the Allocations Framework which takes health and welfare circumstances into consideration when determining household size and accommodation eligibility. The group also felt that tenants downsizing to smaller accommodation or older people moving to older persons accommodation should continue to be allowed to under occupy a property.
- 8.16 This paper was presented to the Business and Housing Policy Committee on 18 June 2019. A member of the Committee registered a strong objection to the recommendations on the grounds that the policy could take away a bedroom from tenants in greater housing need for such a bedroom and there should be the option to refuse applications on the grounds of financial circumstances. In addition, the definition of exceptional circumstances was unsatisfactory.
- 8.17 It is not possible to refuse a mutual exchange because of concerns that the tenant may not be able to afford the property. This is not a listed ground for refusal as set out in Schedule 3 of the Housing Act 1985. Also, the Mutual Exchange Policy and Procedure will include further detail on what would constitute as exceptional circumstances, examples will include, but are not limited to, family taking on caring responsibilities for other family members, someone with a disability needing extra room for equipment, medical supplies or a carer to stay.

### Conclusion

- 8.18 Mutual exchanges are a valued means for tenants to secure a new home. The current policy allows tenants to move to a property larger than their housing need and whilst this gives tenants greater flexibility for their housing choices, it is not in keeping with the Council's Allocations Framework or pledge to make best use of our housing stock which is in high demand. Also more recently with the changes to the benefits system, we are seeing tenants

who are under occupying their homes fall into arrears and potentially put their housing at risk as they are unable to meet rent which is not eligible for benefit assistance.

8.19 The Localism Act 2011 introduced ground 7 as a valid reason for a landlord to refuse a mutual exchange whereby ‘the accommodation is substantially more extensive than is reasonably required by the tenant to whom the tenancy is proposed to be granted’. It is suggested that this ground be applied and the current policy be amended so that there is no longer an automatic right to exchange to a property larger than the tenant’s housing need. Instead, requests to exchange to a home which has an additional bedroom will be refused, except in the following circumstances:

- i) The tenant is downsizing;
- ii) The tenant is exchanging to older persons accommodation;
- iii) The tenant has a Council confirmed medical or welfare need for a property which is larger than their assessed bedroom need;
- iv) There are other exceptional circumstances as determined by the Council.

8.20 This is in keeping with the Allocations Framework and will ensure consistency across our housing policies and will help to ensure the housing stock is fully utilised.

## 9 OTHER OPTIONS CONSIDERED AND REJECTED

9.1 The option of retaining the ability to exchange to a property larger than a tenants assessed bedroom need has been considered. However, it is considered that the evidence set out in this paper illustrates that this would continue to result in tenants falling into arrears and putting their tenancies at risk. This option also contradicts the Allocations Framework and does not assist the priority to make best use of housing stock.

9.2 The change recommended would bring the Council in line with the majority of Hampshire housing providers.

9.3 As previously detailed in this paper, the policy compliments the Council’s Allocations Framework in that tenants secure housing which meets their housing need. There is no ground which allows the Council to refuse an exchange based on their financial circumstances although a thorough financial assessment is completed with each tenant and advice given regarding affordability. Examples of exceptional circumstances include, but are not limited to, family taking on caring responsibilities for other family members, someone with a disability needing the extra room for equipment, medical supplies or a carer to stay. This detail will be included in the Mutual Exchange Policy and Procedure.

BACKGROUND DOCUMENTS:-

Previous Cabinet/Committee Reports or Cabinet Member Decisions:-

BHP005 Mutual Exchange Policy 18 June 2019

Other Background Documents:-

Mutual Exchange Policy Review – We Asked, You Said, We Did

<https://winchester.citizenspace.com/housing/mutual-exchange-policy-review/>

Hampshire Home Choice Allocations Framework

<http://www.hampshirehomechoice.org.uk/Data/Pub/PublicWebsite/ImageLibrary/Version%2015%20-%20HHC%20Allocation%20Framework%20master%20May%202019%20CURRENT.pdf>

Mutual Exchange Policy and Procedure (Tenant Guide)

<https://www.winchester.gov.uk/assets/attach/2772/mutual-exchange-p-p.docx>

APPENDICES:

None.