

STATEMENT OF INTENT

The purpose of the Saffron Group's (referred to hereafter as Saffron) Mutual Exchange Policy is to set out the circumstances where a tenant exchanges their home with another social housing tenant. What tenants can expect during the process and the reason why a Mutual Exchange may be refused and provide a clear appeals process.

1. POLICY

Saffron recognises that the option to exchange tenancies can benefit the mobility of its tenants and this policy will set out Saffron's position and approach to the Mutual Exchange of tenancies, in line with Legislation as detailed in the Housing Act 1985 and the Localism Act 2011.

2. DEFINITION

- 2.1 Mutual Exchanges "home swaps" can take place between two or more Saffron tenants or with tenants from other Registered Providers, Housing Associations and Local Authorities, provided that written permission is obtained from all landlords, and the exchange ensures Saffron is making best use of its stock.
- 2.2 Saffron uses the House Exchange Scheme (a national tenants' mutual exchange scheme) to actively promote such moves.
- 2.3 It is the tenant's responsibility to find a suitable person(s) to exchange their home with, but we will assist tenants to do this by ensuring that information about the exchange process for seeking exchange partners and applying for the consent to exchange will be available on its website.
- 2.4 Saffron will process Mutual Exchanges and either approve or decline applications within 42 days of receipt of all associated, fully completed, application forms.

3. TENANTS RIGHT TO EXCHANGE

The legal requirements for completing a mutual exchange are complex and a tenant's rights to exchange vary according to the type of tenancies being exchanged.

3.1

a) Assured tenants (AT)

Secure tenants have a right to assign their tenancy by way of mutual exchange under section 92 of the Housing Act 1985 as amended.

b) Protected Assured tenants (PAT)

Protected Assured tenants have the right to assign their tenancy by way of exchange as outlined in their Tenancy Agreement and the Transfer Agreement.

3.2 Localism Act Exchanges – protection for “lifetime” tenants

Section 158 of the Localism Act creates a new mechanism for mutual exchanges based on the granting of new tenancies. The section introduces a protection for assured lifetime tenants who were granted their tenancy prior to 1 April 2012. If Tenant A (a lifetime tenant whose tenancy was granted prior to 1 April 2012) wishes to exchange with Tenant B (a fixed term tenant) then a new tenancy is issued to each, and Tenant A is granted another assured tenancy.

The fixed term tenant (B) is granted a new tenancy but there is no particular provision regarding its status which suggests that it will be a matter for the landlord to decide what type of tenancy to offer Tenant B. If the concept of mutual exchange is that each tenant effectively steps into the shoes of the other, there is an argument that Tenant B should be entitled to an assured tenancy which is what Tenant A would have ‘left behind’ had the mutual exchange taken place under the old legislation.

3.3 The protection covered by Section 158 relates to the “lifetime” status only. It does not extend to the other aspects of the tenancy, such as rent or the Right to Buy.

3.4 Tenants with no right to exchange:

- Tenants with a starter tenancy and any extension period
- Assured Shorthold Tenancies (periodic)
- Tenants with a use and Occupation account as a result of a break notice being served.
- Intermediate Assured Shorthold Tenancies (IAST)
- Temporary (decant) tenancies (although tenants may have the right to exchange at their permanent address)
- Licensees
- Leaseholders
- Shared owners

4 GROUNDS FOR REFUSAL

Saffron will not unreasonably withhold permission to exchange. There are three set of grounds for refusing a mutual exchange. These are set out in

- Schedule 3 of the Housing Act 1985, Appendix 1
- Schedule 14 of the Localism Act 2011, Appendix 2
- Saffron’s Policy Grounds, Appendix 3.

4.1 Landlords are not able to refuse MEX applications due to rent arrears unless:

- They have served the appropriate legal notice – Notice seeking Possession (NSP)
- They have obtained a relevant court order.

But we can make it a condition of the approval that arrears are cleared by a specified date before the exchange date.

5. UNAUTHORISED MUTUAL EXCHANGES

5.1 If a tenant does not obtain our written consent, or the application to exchange is refused, the exchange will be unlawful. Both tenants will be in the position of: -

- Having no legal interest in the tenancy at the property at which they are living.
- Being liable for the rent and other obligations of their original respective tenancies
- Having lost their security of tenure because they are no longer occupying their original homes as their only main principal home.

5.2 In these instances, the available option is to: -

- Consider making the exchange legal by completing a deed of assignments retrospectively.
- Demand that both tenants return to their original homes.
- Terminate the tenancies by serving a Notice to Quit (NTQ) and without prejudice, Notice of Seeking Possession on the original homes to seek possession.

6. RIGHT OF APPEAL

If a tenant is eligible to exchange, i.e. there is a statutory or contractual right to exchange and is unhappy with any decision made under this policy they have the right to ask for it to be reviewed. They can do this by emailing (or posting) their reasons to Saffron within 10 working days of being informed of the decision.

The Operations Manager – Neighbourhood will review the case and reply to the tenant within 10 working days.

6.1 If the ground of appeal is due to exceptional health or medical grounds that would be alleviated by the exchange, the applicant will need to provide supporting medical evidence from a GP, hospital consultant or from a social care assessment. If the Operations Manager – Neighbourhood has previously been involved in the decision the appeal will be considered by a manager within another department.

6.2 Where the ground of appeal is because the refusal was due to a valid Notice or Court order for arrears, but the amount of arrears is low and the tenant has exceptional circumstances, the requirement to have a clear account can be reduced or waived by approval of the Operations Manager – Income.

7. SECTION 106 PLANNING AGREEMENTS

7.1 Section 106 Agreements are made under Town and Country Planning Act 1990 and make planning permission subject to certain conditions. These may restrict lettings to people with local connections to a particular village and its surrounding area. Saffron must comply with Section 106 Agreements and Nomination Agreements where relevant and will generally have to refuse applications where the local connection requirements of the Section 106 Agreement would not be met unless the local authority confirms otherwise.

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8. HEALTH AND SAFETY

- 8.1 Gas, Electric, solid fuel, oil, Air Source Heat Pump, and unvented Cylinder inspections must be undertaken on the day of the Mutual Exchange. It is the tenant(s) responsibility to allow the contractor into their home. If any Health and Safety Inspection is not completed, then the exchange cannot take place.
- 8.2 If the property is connected to a credit meter is the responsibility of the outgoing tenant(s) to ensure that there is sufficient credit to carry out the safety checks.

9. EQUALITY, DIVERSITY, AND INCLUSION

Please refer to Saffron's Reasonable Adjustments Policy

10. CONFIDENTIALLY

- 10.1 All communication with Saffron will be considered confidential between the tenant, Saffron Staff, and partner organisations.
- 10.2 Saffron will respect tenants' confidentiality wherever possible and will advise tenants in cases where this would not be possible.

11. COMPLAINTS

Should a tenant wish to make a complaint relating to a refusal decision, this will be managed through the complaints process and would only be referred to the Housing Ombudsman if the complainant remains unhappy with the response.

12. COMPLIMENTS

- 12.1 When a compliment is received this will be recorded on the register by the individual manager/team leader. If the compliment relates to a member of staff, the feedback will be shared with them and their manager.

13. DATA PROTECTION

Please refer to Saffron's Privacy Policy

14. RELATED POLICIES AND LEGISLATION

- Complaints Policy
- Equality, Diversity & Inclusion Policy
- Equality Act 2010
- Data Protection Policy
- Data Protection Act 2018
- Localism Act 2011

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- Town and Country Planning Act 1990
 - Housing Act 1985

15. POLICY REVIEW

- 15.1 Saffron will review this Policy at least every 3 years or if the government revises its policy on Mutual Exchanges.
- 15.2 Saffron recognise that there may be circumstances where it will need and/or wish to take different or alternative action to that outlined in this Policy and it reserves the right to do so.

Consulted with Tenant Scrutiny Group	
Executive Review	
Board/Committee	SLT
Date Approved	
Review Date	Feb 2027
Officer	Director of Tenant Services
Version Number	2

Appendix 1

Grounds for Refusal of Mutual Exchange by way of assignment under Schedule 3 of the Housing Act 1985:

Ground	Refusal Reason
1	Possession Order outstanding - The tenant or the proposed assignee is subject to an Outright Possession Order or a Suspended Possession Order
2	Possession proceedings outstanding or Notice of Seeking Possession in force - A Notice seeking possession is in force against the tenant or the proposed assignee under Grounds 1 - 6 of Schedule 2 of the 1985 Act (and similar or/and equivalent grounds under Schedule 2 of the Housing Act 1988) or possession proceedings have begun against either party on one or more of those grounds.
2a	In respect of the tenant or the proposed assignee or a person who is residing with either of them - If a specified type of injunction (e.g. anti-social behaviour injunction), demotion order, an anti-social behaviour order or a possession order (included suspended order) granted on the grounds of nuisance conduct is in force or if court action to obtain such an order is pending in respect of the tenant or the proposed assignee or a person residing with either of them
2b	Closure Notice or Order - If the property is subject to a closure Notice or closure order under the Anti-social Behaviour, Crime and Policing Act 2014
3	Under-occupation - The accommodation is substantially larger than is reasonably required by the proposed assignee.
4	Suitability - The size of the accommodation is not reasonably suitable for the needs of the assignee
5	The dwelling-house — 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 was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of the landlord, 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. NOT APPLICABLE TO SAFFRON HOUSING
6	Conflict with charitable aim - The landlord is a charity and the proposed assignee's occupation would conflict with the objects of the charity.
7	Accommodation designed for the disabled - The dwelling is designed to make it suitable for a physically disabled person and if the exchange took place, no such person would be living in the dwelling.

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8	Landlord is a specialist housing provider - The landlord is a housing association or housing trust which provides accommodation only for persons whose circumstances, (other than merely financial circumstances), make it especially difficult for them to satisfy their housing needs and if the exchange took place there would be no such person living in the dwelling. This would include Section 106 see section 6.
9	Accommodation in group designated for special needs, e.g. sheltered or supported housing - The dwelling is one of a group that is let to persons with special needs, and a social service or special facility is provided close by in order to assist the tenants - if the exchange took place there would be no person with special needs living in the dwelling
10	Management Agreement - 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.

Appendix 2 - Schedule 14 of the Localism Act 2011

Grounds on which landlord may refuse to surrender and grant tenancies under section 158.

Ground	Reason
1	This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
2	This ground is that an obligation under one of the existing tenancies has been broken or not performed.
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.
4	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.
4a.	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 under section 84A of the Housing Act 1985 (absolute ground for possession for anti-social behaviour). (3)The second condition is that—

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	(a) a notice has been served on a relevant tenant under section 83ZA of that Act (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour), and (b) the notice is still in force.
5	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.
5a	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 ground 7A in Part 1 of Schedule 2 to the Housing Act 1988 (absolute ground for possession for anti-social behaviour). (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 ground 7A and is still in force.
	This ground is that either of the following conditions is met. (2) The first condition is that a relevant order, a suspended anti-social behaviour possession order or a suspended riot-related 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, an anti-social behaviour possession order or a riot-related 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, (e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003(f) - an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, or (g) a criminal behaviour order within the meaning given by section 330 of the Sentencing Code; • An “anti-social behaviour 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. • a “demotion order” means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988. • A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to the Housing Act 1985 or Ground 14ZA in Schedule 2 to the Housing Act 1988.
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Appendix 3

Saffron Policy Grounds: specified grounds and conditions

- a) Where the property is too large for the incoming tenant and will result in under-occupation (in accordance with Saffron's Allocation Policy at the time of the exchange) – this limits the level of under-occupation allowed under Ground 3 of Schedule 14.
- b) Where the property is too small for the incoming tenant and will result in overcrowding (in accordance with Saffron's Allocation Policy at the time of the exchange)
- c) Where the incoming tenant would require adaptations to the property for it to be suitable for their needs, the adaptation and necessary funding needs to be approved in line with Saffron's Aids & Adaptations policy & procedure before the MEX can take place.
- d) Where the outgoing tenant has not undertaken the required works following their property inspection.
- e) Where the Incoming tenant refuses to accept the condition of the property (as seen) on the day of the sign up the Mutual Exchange will be cancelled. Saffron will only undertake any repairs which they are responsible as the landlord.
- f) Where the incoming tenant's landlord has not provided a satisfactory reference.
- g) Where the outgoing tenant does not have a clear rent account on the day of exchange, or a payment arrangement has not been agreed with the Operation Manager – Income.
- h) Where any conditions or planning agreements, covenants, head leases, Section 106 agreements that relate to the property would prohibit the incoming tenant from moving to the property, for example where the housing is only to be provided for people with a local connection.
- i) Where the incoming tenant plans to bring any pets that Saffron would not give permission for under its Pets Policy.
- j) Exceptional circumstances where it would not be reasonable to consent to the exchange (these decisions must be approved by the Director of Tenant Services) such as where there are significant safeguarding concerns or members of the public are put at risk.

