



Pride. Quality. Integrity. Innovation.



Mutual Exchange Policy

Telephone: 01452 424344
Email: customer.services@gch.co.uk
Website: www.gch.co.uk

Documentation Master Sheet

Amendments to this Document are Detailed Below

Version Number	Date Amended	Comments	Date Approved	Author	Approved By
01	05/12/2006		05/12/06	RSH	RSH
02	29/01/2010		29/01/10	RSH	RSH
03	13/06/2012		21/12/2012 27/03/2013	IH	Customer Forum Resources Committee
04	23/09/2013	Reviewed and updated	23/09/2013	RSH	
05	16/04/2015	Reviewed and updated			
06	23/06/2015	Reviewed and updated		IH	
07	Oct 2017	Reviewed and re-written. Policy to relate to mutual exchanges only, assignments to be dealt with in Tenancy Changes Policy	21/03/18	JK	Tenant Panel
08	Oct 2018	Rent on time & financial check	08/11/18	JH	Tenant Panel
09					
10					

OVERALL AIM

A mutual exchange enables tenants to swap their tenancy with another tenant of a Housing Association or Local Authority.

GCH recognises and encourages mutual exchanges in order to increase the mobility of their tenants, and to support sustainable communities through best use of housing stock.

OUR MISSION, VALUES, VISION AND ETHOS

Our Mission: Building homes and communities where people can thrive.

Our Values:

Pride Taking pride in everything we do.
Quality Continually improving by challenging, listening and learning.
Integrity Being fair, objective and accountable.
Innovation Creating opportunities to change and grow

Our Vision: Creating opportunities to make a difference.

Our Ethos: Supporting Successful Communities

SCOPE OF POLICY

This policy applies to GCH tenants with an Assured Tenancy or Enhanced Assured Tenancy. Those tenants with an assured Shorthold Tenancy (Starter Tenancy) do not have the right to exchange until their tenancy has been converted to an Assured Tenancy on its anniversary wherein they gain the right to exchange.

Subject to securing permission from GCH, a GCH Assured (or Enhanced Assured) Tenant has the right to exchange with someone who has a tenancy with a Registered Provider (Social Landlord), which includes:

- Any Local Authority within the UK
- Any registered Housing Association
- A charitable housing trust.

All applications will be processed by GCH within 42 days of receiving the applications from all parties to the mutual exchange in accordance with Section 92 of the Housing Act 1985.

DEFINITIONS

MUTUAL EXCHANGE The mechanism whereby tenants with a tenancy with GCH can exchange their property by way of a Deed of

Assignment with another tenant of GCH, or Housing Association or Local Authority. There is no new tenancy created, and the original tenancies remain in existence, but have changed hands. The Deed of Assignment provides for this.

ASSIGNMENT

Through completing a Deed of Assignment, a tenant is giving their interest in the property and tenancy to another person, who takes on the rights and responsibilities of the original tenancy. This policy will only deal with Assignments for mutual exchange. For information regarding assignments of tenancy in other circumstances, please refer to the Tenancy Changes Policy.

ASSURED TENANCY

A secure tenancy granted by a Housing Association or Registered Provider that can only be brought to an end by the tenant giving notice to terminate, or the landlord recovering possession following breach of tenancy obligation by the tenant. Assured tenants legally have the right to exchange their tenancies with another assured tenant, secure tenant, and following the Localism Act 2011, with a tenant on a fixed term tenancy.

STARTER TENANCY

An assured shorthold tenancy. Tenants who have an assured shorthold tenancy cannot apply for a mutual exchange until their tenancy has been converted to an assured tenancy after a satisfactory 12 or 18 month probationary period.

ENHANCED ASSURED TENANCY – Those tenants who were previously tenants of Gloucester City Council who have preserved rights under the terms of the transfer. Same right to exchange as Assured Tenants above.

SECURE TENANCY

A secure tenancy granted by a Local Authority that can only be brought to an end by the tenant giving notice to terminate, or the landlord recovering possession following breach of tenancy obligation by the tenant. Secure tenants have the right to carry out a mutual exchange by s92 Housing Act 1985, subject to receiving written consent from their landlord.

FIXED TERM TENANCY A tenancy that has been offered for a specified period of time (these are usually granted for a minimum of 5 years in line with the revised tenancy standard). At present GCH do not offer fixed term tenancies, however other

organisations do, and therefore situations may arise where an exchange is requested which involves one tenant having a fixed term tenancy. Following the Localism Act 2011, tenants with a secure or assured tenancy which commenced prior to April 2012, are entitled to exchange their tenancies with someone on a fixed term tenancy (who has been for more than 2 years), and will not lose their security of tenure. The exchange will be carried out by a surrender and re-grant of tenancy rather than by assignment.

AFFORDABLE RENT

An assured tenancy, granted by a Local Authority or Housing Provider to households who are eligible for social housing. The only difference is that Affordable Rent Assured Tenancies are subject to rent controls that require rent to be capped at 80 per cent of the local market rent (including service charges, where applicable). GCH Tenants with an affordable rent assured tenancy have a contractual right to mutually exchange, the same as an Assured Tenant, via a deed of assignment.

RENT TO BUY TENANCY

An assured shorthold tenancy, with rent levels set at 80 per cent of the local market rent (including service charges, where appropriate). The tenancy is set for a fixed term, with the aim that at the expiration of this period, the tenant will be given the opportunity to purchase the property, whether in full/with a mortgage or in increments. There is no right to exchange.

TYPES OF EXCHANGE:

Parties Involved	Implications of Mutual Exchange:
Both parties are Enhanced Assured Tenants of GCH	<p>Both parties take over each others' tenancy agreement (including the rights and obligations contained in them). The types of tenancy will be identical. The only difference will be the level of rent charged for each property.</p> <p>Exchange is completed by Deed of Assignment.</p> <p>Each party retains their own years of tenancy in respect of their Right to Buy Entitlement and these are not assigned.</p>

<p>An Enhanced Assured Tenant of GCH and an Assured Tenant of GCH</p>	<p>The Assured Tenant takes over the Enhanced Assured Tenancy However they will <u>not</u> inherit the preserved right to buy mentioned within the Enhanced Tenancy Agreement as they are not a 'qualifying person' as defined in section 171b of the Housing Act 1985.</p> <p>The Enhanced Assured Tenant takes over the Assured Tenancy However they <u>will</u> retain their 'Preserved Right to Buy'. BUT – they will lose certain contractual Rights to Buy – including the right to buy to be given to a family member successor, but will keep their years of tenancy in respect of the Right to Buy.</p> <p>Exchange is completed by Deed of Assignment.</p>
<p>Two Assured Tenants of GCH</p>	<p>Each tenant will take over the other's tenancy agreement. These agreements will be identical, except for the level of rent charged, and therefore no complications should arise.</p> <p>Exchange is completed by Deed of Assignment.</p>
<p>Enhanced Assured Tenant of GCH and a Secure Tenant from a Local Authority or Non-Charitable RSL</p>	<p>Incoming tenant takes over the Enhanced Assured Tenancy However they will <u>not</u> inherit the preserved right to buy mentioned within the Enhanced Tenancy Agreement as they are not a 'qualifying person' as defined in section 171b of the Housing Act 1985.</p> <p>The Enhanced Assured Tenant will take over the Secure Tenancy including the Right to Buy, and will retain their own years of tenancy in respect of the right to buy.</p> <p>Exchange is completed by Deed of Assignment.</p>

<p>Enhanced Assured Tenant of GCH and a Secure Tenant of a Registered Social Landlord</p>	<p>Incoming tenant takes over the Enhanced Assured Tenancy However they will <u>not</u> inherit the preserved right to by mentioned within the Enhanced Tenancy Agreement as they are not a 'qualifying person' as defined in section 171b of the Housing Act 1985.</p> <p>The outgoing Enhanced Assured Tenant will take over a tenancy with similar rights to the GCH Enhanced Assured Tenancy but will lose the Right to Buy</p> <p>Exchange is completed by Deed of Assignment.</p>
<p>Enhanced Assured Tenant of GCH and Assured Tenant of another Registered Social Landlord</p>	<p>The incoming RSL tenant will take over the Enhanced Assured Tenancy but will <u>not</u> have the Right to Buy.</p> <p>The outgoing Enhanced Assured Tenant will take over the RSL's assured Tenancy and will lose the Right to Buy</p> <p>Exchange is completed by Deed of Assignment.</p>
<p>Assured Tenant of GCH and Assured Tenant of another Registered Social Landlord</p>	<p>Both types of Tenancy Agreement will be broadly similar except for the level of rent charged, and therefore, no complications should arise.</p> <p>Exchange is completed by Deed of Assignment.</p>
<p>Assured Tenant of GCH or Enhanced Assured Tenancy and Fixed Term Tenant of another social landlord</p>	<p>Following the Localism Act 2011 and the introduction of fixed term tenancies, Assured Tenants who have held their tenancy since before April 2012 can exchange with a tenant on a fixed term tenancy. Each party will retain the security of tenure that they enjoyed before the exchange.</p> <p>The exchange will be completed by surrender and re-grant of tenancy.</p> <p>Secure or assured tenancies granted after April 2012 are not protected by section 158 of the Localism Act and therefore the exchange will be completed by deed of assignment and they will lose their security of tenure if they exchanged with a fixed term tenant.</p> <p>At present GCH do not offer fixed term tenancy other than rent to buy which does not involved mutual exchange. Therefore should a Fixed Term Tenant with a tenancy which commenced prior to April 2012 exchange with a GCH Assured/Enhanced Assured Tenancy we would grant them an Assured Tenancy.</p>

In the cases where the incoming tenant does not apply for the preserved rights, a letter must accompany the Deed of Assignment, confirming that they do not qualify for the preserved rights of the Enhanced Assured tenancy agreed at transfer on 16/03/2015 as they are not a qualifying person. The Tenure Type will be clear on the rent account that it will be an Enhanced Assured Tenancy but without the Right to Buy.

LEGAL AND REGULATORY EXPECTATIONS

Section 92 of the Housing Act 1985 – “Assignments by way of an exchange”

- Secure Tenants are able to complete a mutual exchange by way of assignment subject to written permission from the landlord to a secure or assured tenant. GCH grants the same rights to its assured non-shorthold tenants where possible, and in line with the tenancy agreement.
- Permission will not be withheld with the exception of grounds set out in Schedule 3
- Decision to be made within 42 days as to whether the exchange will be authorised. If a decision has not been made within 42 days, the exchange will be deemed to have been approved

Section 15 of the Housing Act 1988 – assured tenancies can only be assigned with consent of the landlord. GCH’s Assured and Enhanced Assured Tenancy Agreements allow this as a contractual right.

Section 171 b Housing Act 1985 – Preserved Right to Buy

Schedule 14 of the Localism Act, Section 158 – 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.

The Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012 (SI 2012/696), excludes fixed term tenancies at an affordable rent.

RIGHT TO BUY ENTITLEMENT

For the purpose of Right to Buy, exchange applicants will not inherit the years of tenancy from the person they are exchanging with, however they will retain the years

they have already spent as a public sector tenant themselves, where Right to Buy is applicable.

GROUNDS FOR REFUSING A MUTUAL EXCHANGE:

GCH will generally be withheld by GCH where:

- The tenancy is still in its starter period, including any extension of tenancy; or
- The tenancy has been demoted
- On specific grounds set out in the relevant legal and regulatory framework as detailed below:

Schedule 3 of the Housing Act 1985:	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the exchange:
-	Ground 1	Any rent lawfully due from a tenant under one of the existing tenancies has not been paid
-	Ground 2	Any obligation under one of the existing tenancies has been broken or not performed
Ground 1	Ground 3	A possession order (whether outright or suspended) has been made in relation to one of the existing tenancies
Ground 1	Ground 3	A possession order (whether outright or suspended) has been made in relation to one of the existing tenancies.
Ground 2	Grounds 4 and 5	The landlord has served a Notice of Seeking Possession and the notice is still in force, or possession proceedings have commenced.

Ground 2A	Ground 6	A relevant order (a possession order made on ground 2 of schedule 2 of the Housing Act 1985 or ground 14 of Schedule 2 the Housing Act 1988, a demotion order pursuant to section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988, a riot related possession order pursuant to ground 2ZA of Schedule 2 of the Housing Act 1985 or 14ZA of Schedule 2 to the Housing Act 1988 or an injunction pursuant to sections 152 or 153 of the Housing Act 1996, or an Anti Social Behaviour Order pursuant to section 1 of the Crime and Disorder Act 1988 or an injunction section 91 Anti-Social Behaviour Act 2003) is in force against a relevant tenant or a person residing with a relevant tenant or an application is pending for a relevant order against a relevant tenant or a person residing with the tenant.
Ground 3	Ground 7	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 4	Ground 8	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 the existing tenant or tenants to whom the tenancy is proposed to be granted; and the family members of that tenant or those tenants.
Ground 5	Ground 9	The dwelling-house proposed to be let on the new tenancy form part of or is within the curtilage of a building that, or so much of it, is held by the landlord mainly for purposes other than housing purposes, and consists mainly of accommodation other housing accommodation or is situated on a cemetery and was let in connection with being in the employment of the landlord or with a local authority, a development corporation, housing action trust, an urban development corporation or the governors of an aided school.
Ground 6	Ground 10	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 7	Ground 11	The dwelling-house proposed to be let on the new tenancy has features that are substantially different from those of an ordinary dwelling-house, and 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 tenancy was granted there would no longer be such a person residing in the dwelling-house.
Ground 8	Ground 12	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 difficult for them to meet their need for housing and if a 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 9	Ground 13	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 and in close proximity to these dwellings are services provided by social services or a special facility to assist the people within those dwellings; and if a new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.
Ground 10	Ground 14	That 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 at least half of the members of the association are tenants of dwelling houses subject to that agreement and at least half of the members of the association are tenants of dwelling-houses are members of the association, and no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association

PROCESS

Tenants wishing to exchange their tenancies are advised to register with www.homeswapper.co.uk to find someone willing to agree to a mutual exchange.

Tenants may also advertise their wish to exchange via a local paper, notice board, word of mouth or on social media.

Once they have found another tenant willing to exchange, they will need to complete a Mutual Exchange Form.

Once an application for a mutual exchange has been received, we will work through the Mutual Exchange Checklist. We will carry out various checks to ensure that the applicants are eligible for a mutual exchange, which will involve looking at household records, rent accounts etc.

If the applicant is eligible, we will then arrange for a property inspection to be carried out. This will involve a check to ensure that the property is being maintained to a satisfactory standard under the terms of the tenancy agreement and also to determine if there are any 'non-standard' items that the incoming tenant would become responsible for. We will invite the incoming tenant to this visit to ensure they are aware that they will be taking responsibility for the property in its current condition. The Officer will complete the Home Visit Form to capture information during this visit.

If there are any breaches of tenancy identified during the inspection, the Housing Officer will make a determination as to whether the mutual exchange will be refused, and serve a Notice of Seeking Possession, or whether to temporarily put the exchange on hold to give the tenant opportunity to put it right.

Once satisfied that the tenancy is being maintained satisfactorily, we will request a tenancy reference from the incoming tenants' landlord, and provide them with a tenancy reference for our tenant. Should the reference for the incoming tenant raise concerns over the financial health of the tenant, we will refer them for a financial health check with our Tenancy Sustainment Team seeking assurances that they would be housing ready and able to sustain a tenancy, with or without support. Depending on the level of risk identified at the landlord reference stage the referral and assessment by a GCH Tenancy Sustainment Advisor will seek to incorporate a full understanding of an applicant's income and expenditure. We will also consider affordability risk, money management, benefit optimisation, debt advice and verification.

In completing a pre-assignment affordability and financial assessment, this will enable GCH to;

- Confirm a tenant is who they say they are, by verifying name, date of birth and address.
- Understand more about the financial situation of an incoming tenant or a tenant that wishes to move property by mutual exchange.
- Identify if support programmes should be put in place and what the most effective support may be.
- Understand any risk, such as the risk of non-payment of rent and service charges.

Should the references and pre-assignment assessment and checks be satisfactory we will seek authorisation for the exchange from the Tenancy Services & ASB Manager or Tenancy Services Team Leader.

Both parties will be invited into the office to complete a Deed of Assignment to legally exchange tenancies. Advice will be given in respect of any change in secure or assured tenancy status, any change in rent level between social and affordable rent, and any gain or loss of the Right to Buy, Preserved Right to Buy, or Right to Acquire.

The incoming tenant will be expected to pay rent on time either at this appointment or prior. There will be an expectation that applicants eligible for Housing Benefit will provide evidence that they have submitted a claim prior to the assignment appointment. GCH will also provide information on rent payment, and emphasising the preference for new tenants to pay their rent by direct debit.

Please note that for customers seeking to assign to a GCH tenancy they will be expected to pay 'rent on time' with a payment in advance to reflect the customers preferred payment frequency (ie weekly, fortnightly, four weekly or monthly). For example for customers paying weekly this will equate to 1 weeks rent in full prior to the mutual exchange by tenancy assignment. Rent, support and service charges will be recoverable over a 52 week period.

GCH will arrange for a Gas and Electric check to be completed within 4 days of the Assignment and will carry out a post mutual exchange visit, 4 weeks after the exchange to ensure that the new tenant has settled in, carry out a property inspection and make any referrals for support as required.

TENANCY SUSTAINMENT, SUPPORT & PARTNERSHIP

GCH is committed to promoting tenancy sustainment and to supporting sustainable communities.

Tenancy sustainment refers to a customer's ability to successfully manage a tenancy independently or with tailored support. In terms of tenancy compliance an applicant would need to demonstrate a clear understanding of their responsibilities under the tenancy agreement.

Where we identify that a customer is in need of support, we will incorporate an action plan and support package identifying the specific support needs and make referrals to the relevant organisation/provider and ensure that we have review mechanisms in place for the support plan in partnership with this organisation/provider.

TENANCY ENFORCEMENT

Should GCH identify any breaches of tenancy during the mutual exchange process, we will seek to resolve these issues, and take reasonable and proportionate measures to enforce the obligations contained within the Tenancy Agreement. This could include serving a Notice of Seeking Possession, where one is not currently in place, and where necessary, pursue this with the County Court and seek possession of the property.

It is important to note that where an applicant is subject to a Notice of Seeking Possession or court order, we will not allow the mutual exchange to proceed.

RESPONSIBILITY

The Assistant Director of Housing is responsible for the effective implementation of this policy.

CONSULTATION

GCH will consult and review the Mutual Exchange Policy with Tenant Panel and link in with other relevant agencies in order to continually develop good practice in this policy area. We will attend any forums existing now or in the future to encourage joined up working with Local Authorities or any other agency either voluntary or statutory.

COMPLAINTS

Any customer who is not satisfied with our approach in assessing and managing their mutual exchange application can lodge a complaint in writing.

If the customer is dissatisfied with actions and decisions made under this policy it will be dealt with under our Customer Complaints Policy.

REVIEW

This policy will normally be reviewed every three years to ensure that it remains fit for purpose, reflects associated legislative changes and incorporates best practice.