

<b>City of York Council ~ Procedure Guide Direct Exchanges</b>
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**Last Revision Date**

**March 2013April 2011**

## **Scope**

1. City of York Council recognise that assignment and direct exchange policies can contribute to fulfilling customer expectations and promoting sustainable communities, particularly with the increasing numbers of people who are looking to transfer to more suitable accommodation. It is therefore essential that prompt, fair and effective procedures are in place. All secure tenants have the right to assign and exchange, and can exchange with another secure or assured tenant of any Local Authority or Registered Social Landlord throughout the country, providing consent is granted.

## **Legislation**

2. This procedure is informed by, but not limited to the following legislation:
  - 1985 Housing Act
  - 1988 Housing Act
  - 1996 Housing Act

## **Reference Documents**

3. This procedure is linked to, and should be read in conjunction with policies and procedures covering :
  - Anti-social behaviour procedure
  - Tenants Charter & Handbook
  - Customer care
  - Homelessness policy

- Recharge policy
- Rent Arrears policy
- North Yorkshire Home Choice policy

## General Principles

1. A tenancy granted by the City of York is personal and cannot be sold, left by will or given to a third party. There are, however, exceptions to this rule:
  - Assignments by way of direct exchange;
  - Assignments by virtue of the Matrimonial Causes Act 1973 (where a court orders a tenancy to be assigned as a result of matrimonial proceedings);
  - Assignments to a person who could succeed to the tenancy
  - Succession
2. The term *assignment* means a legal transfer and, when it takes place, the tenancy passes to the new tenant. Do not sign a new tenancy agreement for either party, as in legal terms a new tenancy will have been created. Do not give anyone a blank tenancy agreement. Complete the Deed of Assignment form.
3. All **secure** tenants have the right to exchange their property, by way of direct exchange, with another secure or assured tenant, with the written consent of the landlord.
4. All applicants need to register with Homeswapper, they should be encouraged to apply independently but some may require assistance.
5. All parties must be notified in writing within 42 days of receipt of the application whether or not permission for the exchange is granted. If a ground for refusing the exchange

is identified, written notification **must** be given within 42 days, or we will lose the right to refuse the assignment.

6. If we fail to respond within the time limit the tenant cannot assume consent has been and must not proceed with the exchange. The tenant must seek a legal remedy i.e injunction or Judicial Review
7. Once full or conditional permission has been given the exchange must take place within 13 weeks or it will be deemed that permission has expired and a new application must be made and processed.
8. Consent can only be refused for reasons stated within the legislation. If refused for any other reason, then consent is treated as having been given.
9. For Health and Safety reasons, it is essential that all properties in a DX have a current Gas Safety Certificate and that a Gas Safety Check takes place before the exchange is completed.
10. Where an exchange has taken place without permission being obtained, the estate manager should insist that the tenants return to their original homes, within a given timescale or legal action may be taken.

If this instruction to return is not complied with, there are two options : -

- a. Allow the exchange and regulate the position by conducting DX checks, giving permission and completing procedures retrospectively
- b. Terminate both tenancies by serving a Notice to Quit on each tenant at their original homes and the home being occupied and referring the matter to legal for repossession

EMs should discuss which course of action to take with HTLs.

11. If a tenant receives payment or any other inducement to exchange their tenancy this is a ground for possession. This includes clearance of rent arrears by the other party.

## **Procedures**

### **Registration**

1. All applicants should register with the Homeswapper scheme at [www.HomeSwapper.co.uk](http://www.HomeSwapper.co.uk). The scheme is free to CYC and Tees Valley Tenants, however for purposes of registration, CYC will be viewed as the landlord for all 3 of these organisations. The form is easy to complete. Paper copies are available but this would involve the details being input by an officer so this is not encouraged.
2. When completing an application the way that a customer is contacted to say that they have matches is via email or Txt message. It is therefore important to try and encourage each applicant to put a mobile or email address on their form. They could use a relatives or support workers details and in some cases the Estate Manager may find it appropriate for the customer to use their details. These details can be hidden from the view of other applicants.
3. The Applicant can chose up to 9 areas of where they want to live within a 29 mile radius, they may find it necessary to register more than once e.g someone wanting to live 1 mile from the sea in 15 different seaside towns.
4. Once an applicant has applied, HomeSwapper will email City of York Council to inform them. The CSA will check the email box once a day. In order for the application to be made live, City of York Council have to accept the applicant.
5. The CSACSA will check that the details on the form match those on the tenancy and they should inform the Estate Manager of any discrepancies.
6. The CSA will cut and paste any contact details onto the Person Details on SX3.

7. The CSA should then check to see if the Tenancy Enforcement Team are involved with the applicant, if they are the team should be contacted and a decision should be made by the Tenancy Enforcement Manager or the Tenancy Team Leader within 48 hours as to whether the application should be accepted.
8. The CSA should check the rent account and if there are true arrears (ie not arrears caused by the direct debit cycle) the CSA should make contact with the applicant. They should inform them that they are not normally able to complete an exchange with arrears and they should contact their Income Estate Manager. The CSA/HA should then update SX3.
9. The CSA should check the application and see if it is fully completed with photos, if not they should try and make contact with the customer and advise them that they are more likely to find an exchange if they provide full details and photographs. If the customer finds it hard to upload photos, ask them to find someone who can do this for them. If they have nobody arrange for the HEM to pop and direct them. If they do not have any equipment arrange for the HEM to visit them at a convenient time and take pictures (need to check if we can upload these – ipads have camera and can upload when we have these).
10. Once all these checks are complete the CSA should then accept the applicant. HomeSwapper will contact the tenant to confirm this.
11. HomeSwapper will also check that Photos and Text is appropriate but cannot check accuracy of either in relation to the property.
12. The HomeSwapper then looks every hour for matches and contacts the customer if it finds any.
13. HomeSwapper will contact City of York Council to inform them of all applicants who have been on the database for 6 months and CSA's are asked to do the checks again and accept or reject where appropriate.

14. If an applicant has forgotten their password, we can provide them with this but we should email/TXT them to those contact details on their form.
15. Once an exchange has been completed the HA should create a DMS memo asking the CSA team to delete the applicant from the database and inform Homeswapper of the match..
16. HomeSwapper have a online helpline for staff only, landlord@homeSwapper.uk.

## **Direct Exchange**

The following checks must be made to ascertain the accuracy of the application. Breach of tenancy agreement may be a ground for refusal or for only giving conditional permission.

1. A request to exchange application should be acknowledged in writing within 10 working days using standard letter DX1 and enclosing DX leaflet
2. Complete the Desktop checklist
  - a) Check all HomeSwapper application details and computer records to establish who the tenants are. Is it a joint tenancy, if so both parties must sign the application to exchange.  
  
Only tenants on the tenancy agreement can take part in the exchange
  - b) Check all members of the household and confirm their dates of birth. Compare who is on the tenancy records and who is in the current household who are moving. Use the iworld proforma to pass updated profiling details to the HAs.
  - c) Check that the rent account is clear. Has a Notice of Intention to Seek Possession been served and is it valid. Has a court order been applied for?

If either of these has occurred, the exchange cannot usually be approved. This is a statutory ground for refusal but please refer to guidance below on when discretion can be exercised.

- d) Check for any breach of tenancy such as;
- nuisance behaviour,
  - former tenant arrears/recharges/court costs
  - current gas safety certificate

Former tenant arrears are a breach of tenancy agreement so permission may be withheld until the breach is resolved i.e. the account is cleared. Please refer to guidance below on when discretion can be exercised.

- e) Re-charges. If the customer owes money other than for rent, check with customer accounts in Finance. The debt should be linked to a breach of tenancy. *Only landlord related debt can be taken into account* Please refer to guidance below on when discretion can be exercised.

3. Where conditional consent is given at this stage, write to the customer explaining what they need to do to remedy the breach, stating clearly the terms and conditions including a timescale.

Agree a review date with the customer & record this on the Desktop Checklist. It must be made clear to the tenant that the exchange cannot take place until full consent has been given.

4. When the Desktop Checklist has been satisfactorily completed arrange to visit the property to carry out an inspection and ensure that there are no other breaches of tenancy.
- Before inspecting the property, check the file for any requests or correspondence about alterations/improvements.

- Where tenant improvements have been authorised , completed to an acceptable standard and are to be left in the property, they will be maintained by CYC, however, should they require repair at any future stage they will be repaired or replaced to CYC standard.
- Where an improvement has not been authorised but has been carried out to an acceptable standard this will remain in the property, and be dealt with as above. Where it has not been carried out to an acceptable standard then it will need to be removed.
- Wherever possible arrange to visit each property with the tenant wishing to exchange to it. This will enable agreement to be made regarding the condition of the property and any improvements carried out that will be assigned with the tenancy. Conduct a full property inspection to check for any other breach of tenancy i.e.
  - a. Property damage
  - b. Unauthorised home improvements
  - c. Poor garden condition

Discuss any outstanding issues with the current tenant & take photographs of any issues which need to be remedied before permission can be given to exchange. This includes gardens & fences, rubbish, property damage, sheds and storage areas.

6. Where conditional permission is to be given discuss with the current tenant and agree timescale for the breach to be remedied. This should be confirmed to the customer using the appropriate letter which includes an appointment for a further review visit to confirm that matters have been satisfactorily resolved.
7. If the exchange is with another landlord, a reference should be provided on the CYC customer & reference request should be made for the other party, using the DX reference request letter. Where the exchange is within the City of York, liaise with the Estate Manager for that area. An exchange may normally be refused if an unsatisfactory



reference is received, which state that there has been a breach of tenancy, including outstanding arrears. Please refer to guidance below on when discretion can be exercised.

8. If desktop checklist , property inspection and reference are satisfactory or discretion agreed by an appropriate manager, consent can be given for the exchange to the CYC customer using the appropriate letter . A copy should be sent to the other landlord.
9. Both tenants should agree the date for their assignment of tenancy with each other in consultation with each landlord. All CYC tenancies begin on Monday dates. Deeds of Assignment must be signed either on the day of the move ( Monday ) or during the week prior to it.
10. CYC is willing to complete paperwork on behalf of other landlords but requires both parties to attend CYC offices ( at separate times if necessary ) to sign the Deeds of Assignment. CYC does not accept faxed or postal signings.

Paperwork to be completed is: -

<b>Both parties CYC</b>	<b>One Party CYC</b>
Deeds of Assignment x 2	Deeds of Assignment x 2
SX3 DX proforma	SX3 DX proforma
Smoke alarm form	Smoke alarm form
Current gas safety certificate x 2	Current gas safety certificate x 1
Area leaflet x 2	Area leaflet x 1
Tenancy terms & conditions x 2	Tenancy terms & conditions x 1

11. In some instances, one party to an exchange will withdraw their request. In this case, send the appropriate letter to the other party informing them of the withdrawal

For Health and Safety it is essential that all properties taking part in a DX has a current Gas Safety Certificate and that a Gas Safety Check takes place before the exchange is completed. All parties

should be made aware that permission to exchange is conditional on these checks taking place.

Where ever possible tenants should be encouraged to exchange properties during the week, as the gas supply will be capped-off as they leave one property and un-capped at the new property. If they choose to move at a weekend they are likely to be without a supply until Monday.

This should be made clear to all parties involved.

### Grounds for refusing or withholding permission

The council can only legally refuse permission on specific grounds, the full list is attached in Appendix A. Permission may still be granted in certain circumstances. Please refer to guidance below on when discretion can be exercised and discuss with the team leader or other appropriate manager.

The Council will normally refuse permission on the following grounds:

1. A Possession Order has been obtained at court against the tenancy -( see definition A)
2. A Notice of Seeking Possession has been served on either tenant proposing to assign their tenancy;
3. The property would be too large for the needs of either party wishing to assign their tenancy – (see definition B)
4. The size of the accommodation is not reasonably suitable for the needs of the assignee or their family- (see definition C)
5. The property has been let to a tenant who is an employee of the City of York Council, for the purposes of employment, and is within the boundary of a site that is used primarily for non housing use (e.g. a school caretaker living on site)

6. Either property is adapted or particularly suitable for disabled people or those with special needs, and the exchange would result in occupation by someone without those needs. Including Hardwire Warden Call systems. For clarification discuss with HTL.
7. An injunction, ASBO or Demotion Order is in force or an application for one is pending either in relation to the tenant or a person who resides with them

## **Definition**

- A. This may be a suspended or postponed order, discuss with Housing Team Leader.
  - B. The property would be too large for the needs of either party wishing to assign their tenancy as per the amended North Yorkshire Home Choice criteria for appropriate property size. Members of the household included in the application *must* be permanently living at the property.
  - C. The property would be too small for the needs of either party wishing to assign their tenancy as per the amended North Yorkshire Home Choice policy - An exchange must not be allowed if it creates statutory overcrowding.
- (A) The following needs to be taken into account when considering overcrowding as defined in the North Yorkshire Home Choice policy:
- Children aged 9 years and above will be seen as requiring a separate bedroom if they are sharing with the opposite sex
  - Couples, married couples and Civil Partners will be expected to share a bedroom
  - A bedroom is suitable for two people if it is larger than 10 sq m. A bedroom will be suitable for a single person if it is less than 10 sq.m

- Single adults aged 21 or over will require their own bedroom.

or

(B) For the purposes of determining overcrowding account is only taken of rooms that are available as sleeping accommodation if it is of a type normally used as a bedroom or as a living room

A room intended as bedroom but used for other purposes will be classified as a bedroom.

It is worth noting that a child under the age of 1 does not count as a person and a child aged 1 to 10 years old will count as half a person.

Number of rooms	Permitted number of persons
1	2
2	3
3	5
4	7.5
5	10
*	With an additional 2 persons for each room in excess of 5

### **Conditional permission:**

In addition to the above grounds on which permission to exchange can be refused, if either tenant is in rent arrears, or a tenant is in breach of their tenancy agreement, consent can be withheld until the tenant pays the rent due or remedies the breach of tenancy. A letter should be sent to the tenant explaining this, clearly setting out what they need to do to remedy the breach.

Where the breach of tenancy is in relation to Neighbour nuisance then the breach must be remedied immediately and no further problems arise for a period of 4 weeks

Where the breach is in relation to the condition of the property or garden then conditional permission will be given until the breach is remedied.

Where the breach is in relation to rent arrears, the account must normally be clear, excluding HB or SP payments, before full consent is granted. Conditional permission will normally be given until the account has been cleared. The account must normally remain clear until the tenancy is assigned.

N.B. In all cases the rent account must be checked on the day the assignment paperwork is being signed, any outstanding rent including the current week and up until the proposed moving date, must be paid before the assignment can take place unless agreed otherwise by the Housing Team Leader

Where the rent is paid by Direct Debit the amount outstanding including the week of the move, must be paid at the office before the assignment can take place. Any monies overpaid by the Direct Debit will be credited to the new rent account unless agreed otherwise by the Housing Team Leader.

### **Only permitted variation to terms of existing tenancy agreements**

Under the terms of a direct exchange the existing tenancy agreement is assigned to the new tenant, a new tenancy is not created nor is a new tenancy agreement issued. However, the following exceptions may be made:

Cookers/garages/warden call service charge. Check to see if the existing tenant rents any of these

Garages. This tenancy is not included in the exchange. If the outgoing customer wishes to terminate their garage tenancy, they must give one weeks notice. The incoming tenant will need to make a separate application for a garage.

Cooker. If there is a council cooker, then the incoming tenant can either continue to rent it or choose to have it removed. Make sure an order to remove it is

placed with the repairs staff so that it is removed to coincide with the change of tenancy.

## Appendix A

### **Grounds for refusing a DX are set out in the Housing Act, 1985 Sch.3**

Consent to exchange may only be withheld by the landlord on the grounds set out in Sch.3 of the Housing Act, 1985. The Housing Act, 2004 amended Sch.3 to provide an additional ground.

#### Ground 1

The tenant or proposed assignee is subject to a possession order or a suspended possession order.

#### Ground 2

A Notice Seeking Possession is in force or possession proceedings have begun against either party..

#### Ground 3

The accommodation is substantially larger than is reasonably required by the proposed assignee

#### Ground 4

The size of the accommodation is not reasonably suitable for the needs of the assignee.

#### Ground 5

The dwelling forms part of, or is within the curtilage of, a building which is held mainly for non-housing purposes or is situated in a cemetery and was let to the tenant or his predecessor in connection with their employment with the landlord or with a local authority, a new town corporation housing action trust, Development Board for Rural Wales, or the governors of a grant-aided school.

#### Ground 6

The landlord is a charity and the proposed assignee's occupation would conflict with the objects of the charity.

#### Ground 7

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.

#### Ground 8

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.

#### Ground 9

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.

#### Ground 10

The dwelling is the subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half the tenants of the dwellings are members of the association, and also that the proposed assignee is not such a member nor is willing to become one

### Additional ground for withholding consent to mutual exchange (Housing Act, 2004)

An injunction order under Section 153 Housing Act, 1996 or an anti-social behaviour order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.

### Guidance on discretion:

To be exercised by a postholder at Housing Team Leader level where no court order exists or more senior manager where a court order exists.

Each case to be looked at on its own merits and discretion will only be used for legitimate management reasons e.g. to ameliorate financial hardship or social deprivation including but not limited to financial, overcrowding or health issues.

Incentives may be given to facilitate an exchange e.g. use of Downsizing scheme money or writing off or disregarding of arrears or recharges, relocating or replacement of cookers for customers (see separate guidance).

Where a NOSP or court order is in place this can be disregarded as long as minimum requirements are met as set by a HTL or other manager as above.

Financial or other hardship must be proven. Customers must have engaged in a financial health check to determine available resources to meet their commitments and debts. This information should be taken into account when making decisions on whether an exchange can be granted.

Other hardships should be demonstrated by information obtained from the customer's advocates, health professionals and support workers as appropriate.

All arrears associated with the existing property will become former tenant arrears. A repayment agreement must be made with payment based on a personal finance plan if needed. Payment of former tenant arrears is a requirement of the City of York Council tenancy agreement.

Requests to exchange can be refused where a customer has not adhered to any part of the pre exchange agreement or where the customer has demonstrated and continues to demonstrate continued breaches of the tenancy agreement with little or no obvious willingness to change their behaviour on a long term basis.

Examples:



Arrears: Payments have been made in line with an agreement or order for at least 13 weeks (could be more or less than this) at the point that the exchange takes place and a signed commitment to pay former tenant arrears is made. A financial assessment must have been undertaken and a personal finance plan agreed to.

Exchanges will not normally be granted where arrears are more than £1000 and the case should be referred to the Head of Housing for a decision.

ASB: There has been no evidence of breaches of the tenancy agreement for a minimum of 3 months (again variable) in the case of any court order or NOSP being served for this reason. Customers should agree to sign a 'statement of intent' for their existing and any new address.

Where TET are involved with the case their agreement will be needed

Introductory tenants on internal moves can be allowed to exchange but will need to be made secure to facilitate this. Particular attention should be made to any breaches of the tenancy agreement in these cases.

For external moves this will be as above should the other Landlord agree.

Incoming probationary tenants should be issued with a secure or full assured tenancy as appropriate by their landlord to facilitate the exchange.

Note: All information and decisions must be recorded on DMS for audit purposes.