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| <b>Report to:</b>           | Scrutiny & Overview Committee                              | 7 September 2023 |
| <b>Lead Cabinet Member:</b> | Councillor John Batchelor, Lead Cabinet Member for Housing |                  |
| <b>Lead Officer:</b>        | Peter Campbell, Head of Housing                            |                  |

# Mutual Exchange Policy

## Executive Summary

1. The tenant representatives of the Housing Engagement Board (HEB) requested that the Mutual Exchange Policy be reviewed.
2. Whilst the policy was in the process of being reviewed, the Council has since received an Ombudsman determination<sup>1</sup> which requires the Council to publish a revised mutual exchange policy by the end of September 2023. The revised policy should permit under occupation in some circumstances and provide details of those circumstances.
3. In reviewing the policy, officers have looked at good practice and listened to the views of the tenant representatives of the HEB. Whilst officers have been able to accommodate many of the recommendations raised, it has not been possible to reach an overall agreement with the tenant representatives on the revised policy.
4. The role of the HEB is to scrutinise and make recommendations for improvement. The HEB does not have any decision-making powers and therefore the Scrutiny and Overview Committee is asked to comment upon the options being put forward both by officers and the tenant representatives of the HEB, prior to the policy being considered by Cabinet.
5. The main areas of difference relate to under-occupation and overcrowding of a property by way of a mutual exchange.

<sup>1</sup> Complaint relates to a tenants' dissatisfaction regarding how a mutual exchange application was handled and subsequent request for disabled adaptations. The request for a mutual exchange was during the beginning of the pandemic where services were adapting to change. The Ombudsman found that the Council was six days late in providing its decision on the mutual exchange and did not correctly inform the tenant as to which ground within the Housing Act 1985 and the Localism Act 2011 that their mutual exchange application was refused. The Ombudsman also found that the existing mutual exchange policy did not provide clear guidance as to its evidential requirements when considering "special circumstances" for an additional bedroom [note: under the Officer recommendations within the revised Mutual Exchange Policy, one additional bedroom above the tenants' assessed requirement would be permitted without the need for "special circumstances"]

## Key Decision

6. Yes. This is a key decision as it is significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

The Key Decision was first published in May 2023 Forward Plan.

## Recommendations

7. It is recommended that the Scrutiny and Overview Committee considers this report and supports (with comments where appropriate) the officer recommendations to Cabinet listed below:

|   | Issue                  | Current Policy   | Officer Recommendation  | Tenant Proposal  |
|---|------------------------|--|---|--|
| 1 | Under-occupation       | There is no under-occupation permitted from an exchange  | That under-occupation is permitted, but this is limited to one bedroom.   | Mutual Exchanges should be permitted where the under-occupancy rate is not worsened in SCDC properties overall (including like for like swaps) |
| 2 | Overcrowding           | No overcrowding is permitted.  | That overcrowding is only permitted in very specific cases linked to the lack of larger accommodation (i.e. where a tenant has a 4 bedroom requirement and wishes to swap to a 3 bedroom property where that property has an additional room that can be used as a bedroom) | Overcrowding by 1 bedroom should be permitted across all property sizes  |
| 3 | Staffing               | Mutual exchanges are dealt with by generic housing officers (note: this is practice not policy)                        | Mutual exchanges are dealt with by generic housing officers (but the situation is monitored)  | That an additional officer is appointed for mutual exchanges (full time or part time)  |
| 4 | Incentives to downsize | Incentives are offered to transfer tenants who are in receipt of housing benefit and are subject to the 'bedroom tax'. | Incentives are offered to all people who downsize through mutual exchange.<br><br>This will be linked to the number of bedrooms freed up as an incentive to downsize fully.   | Agreed with Officer Recommendation. Any incentive should also cover removal costs.   |

|   |                         |   |   |                                    |
|---|-------------------------|---|---|------------------------------------|
| 5 | Mutual Exchange Service | Applicants have access to mutual exchange service (Exchange Locata) free of charge to find suitable matches | Subscription to additional mutual exchange service (HomeSwapper) to provide improved access to greater number of potential matches free of cost to tenants. | Agreed with Officer Recommendation |
|---|-------------------------|---|---|------------------------------------|

8. It is also recommended that Scrutiny and Overview Committee notes that, should Cabinet approve the above recommendations, then Cabinet will be asked to approve the final version of the mutual exchange policy at Appendix A (subject to any amendments relating to paragraph 7 above) and that the Lead Member for Housing is given delegated authority to make minor amendments and any subsequent changes relating to the value of the financial incentive.

### Reasons for Recommendations

9. To provide direction on the mutual exchange policy. The policy will demonstrate that the Council has a robust and transparent process in place that meets legislative requirements and has taken into account tenants' views.

### Details

#### Mutual Exchange

10. The Housing Act 1985 and Localism Act 2011 allow social housing tenants on qualifying tenancies to exchange homes. Mutual Exchange is a tenant-led process. It provides a range of benefits including social mobility, improved wellbeing and the opportunity to move closer to work, services and family. It also provides a quicker route for transfer tenants on the housing register to find alternative accommodation to solve their own housing pressures. In addition, moves through Mutual Exchange help make financial savings on void costs and reduce pressure on the Housing Register.

#### Mutual Exchange Policy Review

11. As part of the review officers looked at the top performing councils, as well as sending out questionnaires to housing associations and tenants who had completed a mutual exchange since January 2020.
12. The tenant representatives of HEB have been actively involved in helping to shape and influence the revised policy.

### Options

12. Whilst officers and the tenant representatives of the HEB are broadly in agreement with the proposed policy changes recommended in the review, the key differences of opinion are focussed on the following:

- (a) the level of **under-occupancy** that should be permitted under Mutual Exchange, and
- (b) the level of **overcrowding** that should be permitted under Mutual Exchange
- (c) staffing resources to implement the revised policy.

### **Under-Occupancy**

13. Grounds for refusal of a mutual exchange are set out in legislation. In terms of size of property, landlords can withhold consent if:

*The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.* (Ground 3 of Schedule 3 Housing Act 1985 and Ground 7 of Schedule 14 Localism Act 2012)

14. There is no statutory guidance on what constitutes *substantially more extensive than is reasonably required*. It is up to the landlord as to how this is interpreted. The Council's current policy does not allow any mutual exchange if it means that a tenant would be under-occupying a property they are swapping to.
15. Under revised proposals, officers are recommending that tenants can mutually exchange to a property with one more bedroom than their bedroom entitlement. This is felt to fit in with reasonableness whilst having regard to overall housing pressures and the need for the Council to make best use of its stock. This recommendation is in line with the review findings which identified that the majority of landlords permit under-occupation through mutual exchange by one bedroom.
16. The tenant representatives have asked that the policy be more flexible in this respect and have asked that tenants should be able to swap 'like for like' regardless of how many bedrooms were under-occupied, so long as there was no overall increase in under-occupation. They felt that as nobody gains and nobody loses that this should be considered reasonable and that the proposal put forward by officers was too restrictive.
17. Through officer research, one local authority was identified as having such a flexible policy on under-occupation. Tenant representatives have asked that the Council be '*leaders of the way, rather than followers of other councils*'.

### **Overcrowding**

18. The Council's current policy is not to allow any overcrowding through mutual exchange.
19. Officers have a responsibility to avoid overcrowding where possible and should not be seen to actively encourage this. However, officers have conceded that in the following circumstances a mutual exchange should be permitted.

20. Where a tenant wishes to mutual exchange and has a four-bedroom requirement, they will be able to swap to a three bedroom property where that property has an additional room (such as an old style parlour house) that can be used as a bedroom. Given the availability of four-bedroom properties in the District (which make up only 2% of the Council's stock), officers felt this was a reasonable compromise.
21. The tenant representatives felt that this recommendation did not go far enough and wanted the flexibility to allow tenants mutually exchanging to over-occupy by one bedroom across all property sizes.

### **Staffing resources to implement the revised policy**

22. The tenant representatives requested that an additional officer should be appointed to oversee the mutual exchange process and suggested that a full-time post could be considered to also support the work of the housing officers. Unfortunately officers were unable to agree to this request due to budget constraints and other pressures that would take priority. However, it was agreed to monitor the situation.

### **Implications**

23. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered:-

#### **Financial**

24. The mutual exchange policy can be administered within existing budgets.
25. It is anticipated that the revised mutual exchange policy will attract more tenants to mutually exchange rather than waiting for a transfer. One of the benefits for the Council is that there are no void works undertaken for a mutual exchange.
26. Whilst there are some financial implications to the subscription to a national online service and financial incentives to downsize through mutual exchange, these can be off-set by any financial savings made through reduced void costs.

#### **Equality and Diversity**

24. An Equality Impact Assessment has been carried out. Any issues with access to online Mutual Exchange Services provided by the Council and/or applicants unable to manage the mutual exchange process independently will be provided with reasonable support.

## **Consultation responses**

25. The tenant representatives of the HEB were consulted on their views to improving the policy and have been involved in the review process. Tenants who completed a mutual exchange since January 2020 were also invited to complete a questionnaire regarding their experiences.
26. Attached at Appendix B are the minutes of the Housing Engagement Board Special Meeting to discuss the mutual exchange policy held on 2<sup>nd</sup> May 2023.

## **Alignment with Council Priority Areas**

### **Housing that is truly affordable for everyone to live in**

27. Mutual Exchange enables mobility and help tenants move closer to work, family, services and amenities. This also improves health and well-being.

## **Appendices**

Appendix A: Draft Mutual Exchange Policy

Appendix B: Minutes of the Housing Engagement Board Special Meeting – 2<sup>nd</sup> May 2023

## **Report Author:**

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