

Mutual Exchange Guide for Tenants

The information contained in this guide answers some of the general questions about Mutual Exchanges. It also includes details of the process and rules that Wigan Council will follow when dealing with your application.

Who can exchange?

All Secure tenants have a statutory (legal) right to exchange set out by the Housing Act 1985, as long as the landlord gives permission. Assured tenants do not have a statutory right to exchange. However, some Landlords give assured tenants the same rights as secure tenants and they may have a contractual right to a mutual exchange with written consent.

Introductory and Demoted tenants do not have the right to exchange as long as the demoted or introductory tenancy lasts.

If you have a suspended possession order against you and you have broken the order by not keeping to its terms (usually this means by not paying the rent) you are a tolerated trespasser. Even if you no longer owe rent, you will need to have your tenancy restored before you can exchange.

If you owe rent, approval may be given subject to a condition requiring you to pay the outstanding rent before the exchange takes place. In some circumstances we may apply discretion and approve a mutual exchange where you have rent arrears but these have arisen as a result of financial hardship caused by Welfare Reform, such as under occupancy charge and where moving would demonstrably alleviate the hardship.

What will we do when we get your application to exchange?

When we receive your application we will carry out checks to make sure that you have the right to exchange and there are no reasons to refuse your application. We will check:

- your rent account to ensure you have no arrears
- what type of tenancy you hold, who the named tenants are, and that you (or both of you) have signed the application- to-exchange form.

- there are no legally valid notices, court orders or proceedings for anti-social behaviour or other breaches of tenancy.
- there are the right number of people for the Wigan Council property in the household of your exchange partner.

If we find any problems when we carry out these checks we will let you know as they could delay or stop the exchange.

Can Wigan Council refuse my application to exchange?

The law states 11 'grounds' (reasons) on which we can withhold or refuse consent to a mutual exchange. (Schedule 3 Housing Act 1985 and Housing Act 2004). Here is a plain English description of them:

- Ground 1 – There is a Possession Order on you or the new tenant.
- Ground 2 – A Notice of Seeking Possession has been served on you or the new tenant.
- Ground 2a – You or any member of your household has behaved in an anti-social way, and we are taking or seeking legal action against you, including possession proceedings, injunctions, anti-social behaviour orders or demotion orders.
- Ground 3 – The property is much bigger than the new tenant needs.
- Ground 4 – The property is not large enough for the needs of the new tenant.
- Ground 5 – The property is tied accommodation, provided as part of a person's job.
- Ground 6 – The landlord is a charity and the new tenant would conflict with the charity's aims or purposes.
- Ground 7 – The property has special features that make it suitable for a physically disabled person to live in, and if the exchange took place there would no longer be such a person living there.
- Ground 8 – The landlord is a housing association or housing trust that lets properties to particularly vulnerable people, and if the exchange took place there would no longer be such a person living there.
- Ground 9 – The property is supported housing for people with special needs, and if the exchange took place there would no longer be such a person living there.
- Ground 10 – The property is dealt with through a management agreement where the manager is a housing association, and the new tenant is unwilling to accept specific arrangements that apply.

If we refuse your application we will write you and tell you on what ground we have refused the application.

What will happen if you approve my application?

If we approve your application it will be on the condition that your rent account is clear, that any tenancy breaches are corrected and that the references from your exchange partners landlord are satisfactory if they are not Wigan Council tenants.

We will advise you within 42 days of you application whether you application is approved.

We will then:

- Write to the other landlord (if the person you are exchanging with is not a Wigan Council Tenant) with your details and ask them to fill in our reference form.
- Arrange for an electrical check and for the Property Inspector to check your property and garden. If there are any repairs or alterations found at the inspection you will need to agree with the Property Inspector to either put them right or agree to be recharged for the work. A copy of the inspection report will be sent to the person you are exchanging with.

All the checks are completed what happens now?

We will get in touch with you to say that the exchange is agreed and ask that you and your exchange partner decide a date to move. When a date is agreed, we will make an appointment for you and your exchange partner to sign a Deed of Assignment, which transfers all the interests and rights in the property from you, the outgoing tenant(s), to the incoming tenant(s).

If you change your mind about the exchange, or they do, you must pull out of the exchange before the Deed of Assignment is signed. Once the Deed is signed, you are legally bound to move into each other's properties.

The outgoing and incoming tenants (you and your exchange partner) can only move once both landlords have given permission and the Deed of Assignment has been signed for both properties.

You will need to give us at least 3 days notice of the date that you are moving as we will need to make arrangements for a gas safety check to be carried out on the day that you move.