



# TENANCY TRANSFER, SUCCESSION AND MUTUAL EXCHANGE POLICY

Originator:	Policy and Strategy Team
Approval date:	14 <sup>th</sup> December 2022
Review date:	December 2025

1	Introduction
1.1	Pine Court Housing Association (PCHA) aims to provide the highest standards of tenancy management. To achieve this, PCHA ensures all tenants within its properties are aware of their rights and circumstances of when they will be permitted to ‘transfer’ their tenancies.
1.2	<p>This Policy sets out the provisions PCHA has in place for managing the following forms of tenancy transfer:</p> <ul style="list-style-type: none"> <li>● Tenant initiated transfers</li> <li>● Management transfers</li> <li>● Mutual exchanges</li> <li>● Succession</li> <li>● Assignment</li> </ul>
1.3	<p>This Policy sets out the legal framework that PCHA must comply with when dealing with requests for tenancy transfer including:</p> <ul style="list-style-type: none"> <li>● Housing Act 1985</li> <li>● Housing Act 1988</li> <li>● Housing Act 1996</li> <li>● Human Rights Act 1998</li> <li>● The General Data Protection Regulations 2018</li> <li>● The Equality Act 2010</li> <li>● The Localism Act 2011</li> <li>● The Housing (Preservation of Right To Buy) Regulations 1993</li> <li>● The Housing and Planning Act 2016</li> </ul>
1.4	<p>The Policy meets the following PCHA corporate aims:</p> <ul style="list-style-type: none"> <li>● Providing quality homes and housing services</li> <li>● Promoting social, economic and cultural cohesion</li> </ul>

- Nurturing talented people, to achieve success
- Working with partners to deliver more

1.5 The application of this Policy ensures compliance with the outcomes of the Regulatory Framework for Social Housing in England, responsibility of the Regulator of Social Housing as outlined below:

- **Tenancy Standard**
- Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock
- They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation
- Registered providers must support relevant tenants living in eligible housing to mutually exchange their homes

## 1.6 Access and Communication

1.6.1 PCHA is committed to ensuring that our services are accessible to everyone. We will seek alternative methods of access and service delivery where barriers, perceived or real may exist, that may make it difficult for people to work for PCHA or use its services.

1.6.2 Working with our customers we have established a Vulnerable Persons and Reasonable Adjustments Policy to ensure we make best use of every customer interaction to meet customers' needs in our service delivery and ensure this information is kept up to date.

## 1.7 Equality, Diversity and Human Rights

1.7.1 PCHA is committed to ensuring that no person or group of persons will be treated less favourably than another person or group of persons and will carry out its duty with positive regard for the following core strands of equality; Age, Disability, Gender, Race, Gender Identity / Gender Expression, Sexual Orientation, Religion and/or Belief, Marriage and Civil Partnership, Pregnancy and Maternity.

1.7.2 PCHA also recognise that some people experience disadvantage due to their socio economic circumstances, employment status, class, appearance, responsibility for dependants, unrelated criminal activities, being HIV positive or with AIDS, or any other matter which causes a person to be treated with injustice.

1.7.3 PCHA will also ensure that all services and actions are delivered within the context of current Human Rights legislation. Staff and others with whom we work, will adhere to the central principles of the Human Rights Act (1998).

1.8 This Policy should be read in conjunction with:

- Complaints Appeals and Feedback Policy
- Repairs, Maintenance and Planned Works Policy
- Starter Tenancy Policy
- Tenancy Policy
- Housing Needs and Access to housing Policy

<b>2</b>	<b>Statement of intent</b>
2.1	PCHA will comply with all legal requirements in regard to the transfer, assignment, mutual exchange and succession of tenancies and the contractual obligations contained within the tenancy agreements.
2.2	In meeting its legal requirements PCHA will co-operate fully with other housing providers, in the provision of information and documentation associated with mutual exchanges, whilst maintaining General Data Protection Regulation requirements.
2.3	PCHA will inform all new tenants of their rights in regard to, transfer, mutual exchange, succession and assignment when they sign-up for properties. PCHA will also provide information on its website on transfers, mutual exchange, succession and assignment and will provide individual guidance on request.
2.4	In the case of transfer, mutual exchange and assignments PCHA will work closely with applicants to make best use of its housing stock by, wherever possible, matching property type / size to the applicants' family size / needs and may refuse consent if it will lead to overcrowding, under occupation or adaptations being unused.
2.5	PCHA will maximise rental and service charge income through the careful management of mutual exchanges, succession and assignments including withholding permission for mutual exchanges or assignments to go ahead until arrears or other debts are cleared.
2.6	PCHA will deal with all requests / applications for transfer, mutual exchange, succession and assignment fairly, efficiently and transparently keeping all parties involved informed of decisions taken and the reasons behind them.
2.7	PCHA reserves the right to use management transfers as a means of dealing effectively and expediently with housing management issues and may move people who would not normally qualify for a move (with their consent) e.g. in domestic abuse cases.
2.8	PCHA will comply with and act expediently to facilitate any orders of the courts in relation to transfer, mutual exchange, succession or assignment.
<b>3</b>	<b>Policy</b>
3.1	<b><u>Transfers</u></b>
3.1.1	Transfer of tenancy is when a PCHA tenant(s) moves from one PCHA property to another or to a social rented property from another housing provider (and is not swapping with another person). These types of transfer can only take place with PCHA's express permission.
3.1.2	Tenants wanting to initiate their own transfers should apply through the sub-regional Choice Based Lettings Scheme (i.e. Property Pool Plus) or similar scheme depending on the area. PCHA will assess a tenant(s) eligibility for transfer prior to a conditional offer being made. If a tenant(s) appears eligible for transfer, PCHA will conduct a prior to leaving inspection and may refuse the transfer if any breaches of tenancy agreement are discovered.
3.1.3	PCHA will consider each request for transfer on its merits and will endeavour to meet tenant's needs and preferences where possible. PCHA does, however, reserve the right to make the

best use of its housing stock and allocate properties in a fair and equitable manner and may refuse 'tenant initiated' requests for transfer if any or a combination of the following circumstances apply:

- The tenant has rent arrears or owes other debts to PCHA
- There has been a breach of tenancy conditions or a tenancy obligation has not been met
- A possession order has been granted
- A notice seeking possession has been served
- Possession proceedings have commenced
- An injunction, Undertaking or Criminal Behaviour Order has been served or is pending for tenant(s) or any other members of the household that is residing at the property
- The property the tenant is proposing to move to is substantially larger than is reasonably required
- The property the tenant is proposing to move to is inadequate to meet their needs and this will lead to overcrowding
- The property is tied accommodation (let as a condition of the tenants employment)
- The proposed letting would conflict in any way with PCHA's objectives as a housing provider with charitable status
- The property has been adapted and the incoming tenant(s) or household members would not require the adaptations
- The proposed transfer property is of a specialist nature and is designed for those with additional housing needs (and the transferring tenant does not have these needs)
- The tenant is intentionally under-occupying their property

3.1.4 PCHA will also not permit any tenant initiated transfers to take place where a tenant has:

- An assured short-hold tenancy (also known as starter or probationary tenancies)
- A periodic assured short-hold tenancy
- An assured short-hold tenancy where the rent payable is;
  - Mortgage Rescue rent: or
  - Shared ownership rent

3.1.5 PCHA does, however, reserve the right to allow 'management transfers' as a means of dealing effectively and expediently with housing management issues and may on occasion facilitate transfers without a tenant needing to complete an application form and outside of the reasonable preference categories outlined in the choice based lettings allocation schemes.

3.1.6 Examples of where PCHA may permit this type of transfer include but are not exclusive of:

- To alleviate overcrowding / under-occupation
- Where tenants are fleeing domestic abuse, serious anti-social behaviour, harassment or hate crime situations and there is a threat to life (substantiated by a supporting Police or multiagency risk assessment)
- To make the best use of adapted properties
- Where a tenant has an identified medical condition (which is supported by medical evidence) that requires them to move
- As outlined in the PCHA Allocations Policy or sub-regional choice based lettings Policy of the area

## 3.2 **Mutual Exchanges**

3.2.1 For the purposes of this Policy 'mutual exchange' is defined as an exchange of accommodation between two or more tenants. Mutual exchanges can take place between local authority and Registered Provider tenants (Housing Associations) providing:

- They have the right to mutual exchange
- Both parties wish to exchange
- They have the written permission of their existing landlord to exchange and no grounds for refusal apply (as set out in 3.1.3 above)

3.2.1.1 A mutual exchange can also happen between tenants of the same organisation (for example, a PCHA tenant exchanging with another PCHA tenant) or between a PCHA tenant and one from a different Registered Provider, anywhere in the United Kingdom.

3.2.1.2 PCHA supports tenants' rights to mutual exchange and promotes opportunities for exchange via a subscription to the 'HomeSwapper' service. This service allows PCHA tenants to access, free of charge, a national register of tenants looking to mutually exchange and will find potential matches in a tenants' area of choice.

### 3.2.2 **Tenure Changes as per Localism Act 2011**

3.2.2.1 Mutual exchanges between PCHA tenants and other social landlords will take place either by way of assignment or by surrender and re-grant.

3.2.2.2 Where effected by deed of assignment, tenants step into each other's shoes and take over the tenancy type and terms of the existing tenancies.

3.2.2.3 Following the introduction of section 158 of the Localism Act 2011, a surrender and re-grant will be necessary in the following situations :

- At least one of the exchanging tenants has a 'Lifetime' secure or assured (non-shorthold) tenancy which was granted before 1<sup>st</sup> April 2012
- At least one of the tenants who wishes to transfer has a 'flexible' secure tenancy (i.e. fixed-term secure tenancy (of more than two years) granted by a local authority or an assured shorthold tenancy granted by a registered provider

3.2.2.4 This is to preserve the security of tenants with pre 1 April 2012 tenancies exchanging with those granted after and which offer a lesser form of security. The existing tenants will be granted a tenancy with no lesser form of security than they had.

3.2.2.5 In compliance with the Localism Act, PCHA will grant tenants with a pre-1st April 2012 secure or assured (non-short-hold) tenancy a similar security of tenancy i.e. an assured (non-short hold) tenancy.

3.2.2.6 Section 158 of Localism Act 2011 provisions for protecting security of tenancy do not apply where a pre-01/04/2012 secure or assured tenant chooses to exchange with:

- Someone with a fixed term tenancy of less than two years (issued by a local authority)
- Someone with a tenancy where rent payable is affordable rent, intermediate rent or shared ownership rent

3.2.2.7 In such cases, the tenant with pre-01/04/2012 Secure or Protected Assured Tenancy will take on the Fixed-Term Tenancy including the level of rent. Therefore, if the existing tenant with secure or assured tenancy chooses to exchange with a tenant who pays affordable rent, they will take over the remainder of the Affordable Rent Tenancy.

### 3.2.3 **Mutual Exchanges and Right-to-Buy and Right-to-Acquire changes**

3.2.3.1 Where an application for a mutual exchange is made, PCHA will ensure that all the parties involved are aware of the impacts the exchange will have on their tenancy rights in regard to preserved Right-to-Buy, Right-to-Acquire, succession, the rent payable and the type of tenancy agreement that PCHA will issue.

3.2.3.2 PCHA tenants with a Preserved Right-to-Buy who exchange with other PCHA tenants will retain the Preserved Right-to-Buy in their new property (unless restrictions apply). If they exchange into another landlord's property, this right may be lost and an exchanging assured tenant will not gain a preserved Right-to-Buy if they were not previously entitled to it.

3.2.3.3 In any mutual exchange between a PCHA tenant and another landlord's tenant where a Preserved Right-to-Buy existed, this right will be lost in the mutual exchange, although they may still have the Right-to-Acquire (where PCHA issues assured tenancies).

### 3.2.4 **Information Exchange and Gathering**

3.2.4.1 Where an application for mutual exchange is received that involves another landlord, PCHA will co-operate fully in any information exchanges required to facilitate the moves. In all cases, PCHA will ensure all relevant UK data protection requirements are met and necessary consents are obtained from the exchanging parties.

3.2.4.2 PCHA will gather profile information on all new incoming tenants to ensure the continued delivery of excellent, tailored services. An assessment will also be made to provide direct or signposting services for any household members that may be classed as vulnerable and have additional needs.

### 3.2.5 **Conditions Attached to Mutual Exchange Requests**

3.2.5.1 PCHA may refuse an application for mutual exchange on any of the grounds listed in section 3.1.3. If PCHA intends to refuse a request for a mutual exchange, it will inform all parties involved in the proposed exchange within 42 days of the application being received.

3.2.5.2 PCHA would not be able to refuse a mutual exchange on the above grounds if notification is given outside the 42 day period (where conditional acceptance of a mutual exchange is granted the 42 day rule will not apply).

3.2.5.3 PCHA reserves the right to make a mutual exchange request conditional if there is a breach of the tenancy agreement. This includes:

- Making good of any damage caused by the tenant/occupants or visitors to the property during the period of the tenancy

- 3.2.5.4 Where remedial works are required to the property PCHA will offer the tenant(s) the opportunity for the works to be completed by Sovini Property Services at competitive commercial rates.
- 3.2.5.5 If a tenant(s) choose to carry out the works themselves or employ their own reputable contactors, PCHA will need to carry out inspections to ensure the work is completed to the required standards (see PCHA Repairs, Maintenance and Planned Works Policy for details).
- 3.2.6 **Appeals**
- 3.2.6.1 If PCHA refuse permission for a mutual exchange the transferring, PCHA tenant(s) may appeal the decision via the PCHA appeals process outlined in the Complaints, Appeals and Feedback Policy. Non-PCHA tenants would need to approach their own landlord for any right of appeal if a mutual exchange requests is refused.
- 3.2.6.2 Tenants may also apply to the court for a declaration that they are entitled to go ahead with the mutual exchange.
- 3.2.6.3 The option to approach the courts for a judgement can only be made by tenant(s) of the organisation refusing the permission and cannot be made by either the tenant(s) of another landlord or the landlord itself. The tenant should obtain independent legal advice in relation to this, if required.
- 3.2.7 **Mutual Exchange without Permission**
- 3.2.7.1 Where a mutual exchange is found to have taken place without PCHA's consent, PCHA will view the matter very seriously. At its discretion, PCHA may give consent to an exchange if there are no issues of tenancy breach, under or over occupation and provided that any other landlord involved agrees.
- 3.2.7.2 Alternatively, PCHA reserves the right to serve a Notice to Quit on the original tenancy or request the tenants return to their original homes. Each case will be reviewed on its merits and a final decision will be taken by the Operations Director, as appropriate.
- 3.2.8 **Mutual Exchanges and Succession**
- 3.2.8.1 The right to succession is personal to the individual tenant(s) and this right transfers with the tenant(s) when they move in a mutual exchange. If the incoming tenant has previously succeeded to a tenancy no further successions would be permitted even though it is a different property.
- 3.3 **Succession**
- 3.3.1 For the purpose of this Policy, 'succession' is defined as the process where a tenancy can be taken over by another person on the death of the tenant.
- 3.3.1.1 On the death of a sole tenant, their spouse, civil partner or person who lived with the deceased as their spouse or civil partner has a statutory right to succeed to the tenancy provided they lived in the property as their only principle home immediately before the death of the tenant.

3.3.1.2	Where there is a joint tenancy and one of the tenants' dies the remaining tenant will succeed to the tenancy by the rights of survivorship (as opposed to a statutory succession).
3.3.1.3	In these circumstances there is no need for the remaining tenant to make an application to take on the tenancy or prove residence at the property for any length of time, it is an automatic statutory right. PCHA will, however, write to the remaining tenant advising them that they are now the sole tenant within 10 working days of the notification of death being received.
3.3.2	<b>Contractual Successions</b>
3.3.2.1	<p>PCHA uses its powers to grant additional contractual succession rights to other family members of the deceased tenant that are not defined in the associated Regulations and where this is the case, it will be expressly stated in its tenancy agreements, provided:</p> <ul style="list-style-type: none"> <li>• They are a member of the deceased's household</li> <li>• They have lived with them for the 12 months preceding the death</li> <li>• They have used the deceased tenant's home as their only and principal dwelling, and</li> <li>• Agree in writing to abide by the terms of the tenancy</li> </ul>
3.3.2.2	In these circumstances family members could be a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew, niece or step child.
3.3.2.3	In all contractual successions, PCHA will take a view on the successor's suitability' in line with its Allocation Policy and associated procedures. Decisions on 'contractual succession' will be made by the Operations Director as appropriate.
3.3.3	<b>General Provisions</b>
3.3.3.1	Where a person is succeeding to an assured short-hold tenant (also known as starter tenancy), PCHA will automatically extend the starter period by 6 months if they succeed in the final three months of the tenancy, otherwise they will take over the remainder of the starter period.
3.3.3.2	If a succession is related to a fixed-term tenancy (i.e. Affordable Rent Tenancy), the successor will inherit the remainder of the tenancy up to the end of the tenancy period.
3.3.3.3	If the tenant died without a will (intestate) the person applying to succeed would need to make an application to the courts and be able to produce, within 6 months, 'Letters of Administration' (a letter to prove that they have the legal right to deal with the affairs of the person who has died).
3.3.3.4	In the above circumstances, PCHA will still assess the suitability of the person for the tenancy and or the property and may either allow the succession to go ahead or offer alternative accommodation.
3.3.3.5	There is no minimum age for someone to succeed to a tenancy, however, those under the age of 18 are not permitted to hold a legal interest in land and therefore cannot take control of an assured short-hold or assured tenancy agreement. In these circumstances PCHA would grant an 'Equitable Tenancy' until they turn 18 which is held in trust (by a nominated trustee – who has no liability for rent or service charges).



3.3.3.6	Where a succession takes place and the property is not suitable for those taking on the tenancy, for example it is larger than their family needs or there are adaptations that are no longer required, PCHA will make reasonable offers of alternative accommodation more suited to their needs and on the same terms and conditions.
3.3.3.7	PCHA reserves the right to apply to court for possession if a successor refuses to move where an alternative accommodation has been offered or will be made available when the possession order takes effect.
3.3.3.8	<p>If a tenant dies owing rent arrears, these will not become the responsibility of the person succeeding to the tenancy unless:</p> <ul style="list-style-type: none"> <li>• They are also the beneficiary of an estate (arrears will then be payable from the estate)</li> <li>• A suspended or postponed possession order was in place at the time of the tenants death and a condition of the order is arrears are paid by instalments (the successor will then be responsible for paying these instalments and clearing of the arrears)</li> <li>• They were joint tenants at the time of death</li> </ul>
3.3.3.9	The method of succession i.e. by deed of assignment or by surrender and re-grant of tenancy will be determined by the length and type of tenancy held by the deceased tenant. PCHA will advise those succeeding to tenancies of the method to be used on a case by case basis.
3.3.4	<b>Exemptions to the Right of Succession</b>
3.3.4.1	<p>There is no right of succession if the tenant who died:-</p> <ul style="list-style-type: none"> <li>• Was a successor himself/herself</li> <li>• If the deceased was a joint tenant who obtained the tenancy as a surviving tenant</li> <li>• Had the tenancy assigned to them through a mutual exchange and had been a successor in the previous tenancy</li> </ul>
3.4	<b><u>Assignment</u></b>
3.4.1	For the purposes of this Policy, 'assignment' is the transfer of a tenancy from an existing tenant(s) to a new tenant(s). Under assignment, no new tenancy is created and the terms and conditions of the tenancy remain the same.
3.4.1.1	PCHA would accept the assignment of a tenancy if it is the result of a court order. This could occur as a result of a property adjustment order from matrimonial proceedings (where a tenancy is granted to one of the partners in a marriage following a divorce or separation), where a court orders the transfer of a tenancy for the benefit of a child or children or where a joint tenant has been barred from residing at the property due to threatening or inappropriate behaviour.
3.4.2.1	In the circumstances outlined above if an assignment is proposed to a potential successor (see Section 3.3 for details) this would be counted as a succession and no further successions would be allowed on this tenancy.
3.4.2.2	PCHA reserves the right to refuse a request for assignment if there is a breach of tenancy or there is good reason to believe the proposed assignee(s) would not be suitable for the property or the tenancy according to its housing management Policies and allocation criteria.

	<p>PCHA may also make the assignment conditional if there has been a breach of tenancy in any way, this could include remedying the breach, for example clearing any rent arrears owed before the assignment can go ahead or assigning the rent arrears to the incoming tenant.</p>
3.4.2.3	<p>Each case will be reviewed on its merits and a decision will be taken by the Operations Director to grant or refuse consent for the assignment. In exceptional circumstances the Operations Director may waive the above conditions, for example in the case of domestic violence.</p>
3.4.2.4	<p>Where an assignment is requested on an assured short-hold tenancy, the incoming tenant would take on the tenancy for the remainder of the starter tenancy. As with all tenants on starter tenancies PCHA would reserve the right to extend the starter period if there are any issues in regard to the conduct of the tenancy.</p>
3.4.2.5	<p>Where an assignment of a tenancy is granted, PCHA will request all new tenants to complete a 'deed of assignment'. A copy of the deed of assignment and a copy of the amended tenancy agreement will be supplied to the new tenant(s) within 10 working days of the assignment taking place.</p>
3.4.2.6	<p>If an assignment is found to have taken place without PCHA's consent PCHA will view this matter very seriously and PCHA reserve the right to seek possession of the property for a breach of tenancy.</p>
3.4.2.7	<p>If a tenant is not content with PCHA's decision to refuse an assignment, they may appeal the decision via the PCHA appeals process (see 3.2.6 above).</p>
<b>4</b>	<b>Implementation</b>
4.1	<p>All PCHA staff have responsibility to be aware of the Tenancy Transfer and Mutual Exchange Policy to be able to signpost any customer queries that may arise.</p>
4.2	<p>PCHA Housing Officers (as appropriate) will have specific responsibility for processing applications for transfer, mutual exchange, succession and assignment, in conjunction with the Legal Team.</p>
4.3	<p>Any discretionary decisions in the area of, transfer, mutual exchange, succession and assignment will be made by the Operations Director.</p>
4.4	<p>It is the responsibility of the Operational Director and Senior Housing Officer to ensure this Policy, and the supporting procedures are effectively implemented.</p>
<b>5</b>	<b>Performance</b>
5.1	<p>There are no additional performance requirements as a result of the implementation of this Policy.</p>
<b>6</b>	<b>Consultation</b>
6.1	<p>The Customer Empowerment Panel were consulted in the review of this Policy. All PCHA staff have been consulted in the review of this Policy.</p>

6.2	The Policy has also been subject of external legal review.	
<b>7</b>	<b>Review</b>	
7.1	This Policy will be reviewed every three years (from the date it is approved) by the Operations Director to ensure its continuing suitability, adequacy and effectiveness. The Policy may also be reviewed as required by the introduction of new legislation or regulation that impacts on the obligations of PCHA in regard to transfer, mutual exchange, succession, assignment, or changes to PCHA business practices or in the light of management system audits.	
<b>8</b>	<b>Equality Impact Assessment</b>	
8.1	Was a full Equality Impact Assessment (EIA) required?	No
8.2	When was EIA conducted and by who?	An EIA Relevance Test was conducted by the Operations Director and the Policy and Strategy Manager on 09-05-14 and is still relevant for this version of the Policy.
8.3	Results of EIA	The EIA Relevance Test did not identify any adverse impacts for any group with protected characteristics as a result of this Policy. It was noted that there are potential differential impacts for tenants receiving Independent Living services as they are precluded from certain forms of tenancy transfer. PCHA mitigates any potential negative effects for these groups using the flexibility of 'management transfers' as and when required based on assessment of individual circumstances.
<b>9</b>	<b>Scheme of delegation</b>	
9.1	Responsible committee for approving and monitoring implementation of the Policy and any amendments to it	DMT
9.2	Responsible officer for formulating Policy and reporting to committee on its effective implementation	Operations Director-PCHA
9.3	Responsible officer for formulating, reviewing and monitoring implementation of procedures	Operations Director-PCHA

Date of revision:	Reason for revision:	Consultation record:	Record of amendments:
17 <sup>th</sup> August 2020	In line with the review schedule	See section 6	There are no significant changes to the Policy in this review.
20 <sup>th</sup> September 2021	In line with the review schedule	See section 6	There are no significant changes to the Policy in this review.
14 <sup>th</sup> December 2022	In line with the review schedule	See section 6	There are no significant changes to the Policy in this review.