

*Creating affordable
homes and empowering
communities*

Mutual Exchange, Assignment & Subletting Policy

CONTROLLING AUTHORITY: Head of Customer Services

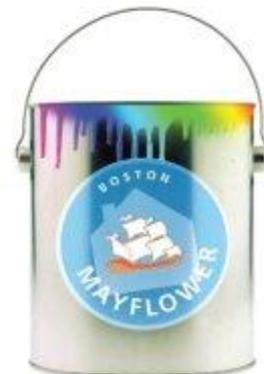
ISSUE NO: 2

STATUS: Live

DATE: September 2016

AMENDED: Review and legislative changes

REVIEW DATE: September 2018



making a splash
in the areas we serve

1.0 Introduction

- 1.1 Boston Mayflower is committed to providing a high quality service to tenants and prospective tenants in relation to their rights to assign their tenancies to others (including assignments by way of exchange).
- 1.2 To ensure as far as possible that requests to exchange / assign are dealt with efficiently, in an understanding, fair, compassionate and equitable manner.
- 1.3 To ensure that tenants are aware of their rights of Exchange / Assignment as set out in the Tenancy Agreement. Also that Boston Mayflower's policies for giving consent to exchange / assign tenancies are followed.
- 1.4 To comply with legislation, regulations and guidance defined by the Housing Acts and Social Housing regulator.

2.0 Scope

- 2.1 This policy applies primarily to Boston Mayflower Assured Tenancies.
- 2.2 Assured shorthold tenants under weekly tenancies which are not starter tenancies do not have the right to assign their tenancies or to exchange by way of assignment.
- 2.3 Starter tenants do not have the right to exchange or assign their tenancies during the probationary "shorthold" phase of their tenancy. However, once the tenancy has converted to an assured (non-shorthold) tenancy they gain the right to exchange or assign their tenancies with Boston Mayflower's consent.
- 2.4 The Policy sets out criteria for dealing with:
 - Mutual Exchanges
 - Assignments by the Court or with Boston Mayflower's consent e.g. Joint Tenancy to a Sole Tenancy
 - Lodgers and Subletting

3.0 Policy Aims

- 3.1 The key aims of this policy are to:-
 - To ensure that we comply with legislation, regulations and guidance as defined by the Housing Acts and social housing regulator, including the 'Right to Rent'.
 - To provide a framework to ensure that exchanges and assignments are carried out efficiently and fairly in full compliance with legislation and the tenancy agreement.
 - To be fair and transparent in our decision making.

- To minimise costs to Boston Mayflower through a comprehensive inspection and approval process prior to and upon exchange taking place.

4.0 Definitions

4.1 For the purpose of this policy and accompanying procedure the following definitions apply:-

- **Mutual Exchange** is the mechanism that allows tenants of social landlords to exchange their tenancies by assignment. When an exchange is carried out by assignment no new tenancy has been created; the original tenancies are still in existence but have changed hands.
- **Assignment** is when a tenant gives their interest to another living person. The tenancy of the property then continues on the same basis and the new tenant takes on all the rights and responsibilities of the original tenancy. Assured tenants can only assign their tenancy in certain circumstances; by mutual exchange (see above) or under the terms of a court order following the ending of a relationship or with Boston Mayflower's consent, i.e. joint to sole tenancy.
- **A lodger** lives in the tenant's home and shares living accommodation but does not have exclusive occupation. A lodger is an "excluded occupier" and has very limited housing rights.
- **Subletting** is where a subtenant (lodger) has exclusive use of their room and the tenant landlord needs permission before entering the subtenant's room.
- **Additional Household Member** is someone who lives with the tenant as part of their family who has previously not lived in the household. It is unlikely that their terms of occupation would be subject to any legal formalities.

5.0 Mutual Exchange

5.1 Right to Exchange

5.1.1 Boston Mayflower assured (non-shorthold) tenants have a contractual right to exchange their homes and tenancies with the tenant of another Housing Association, Local Authority or with another assured (non-shorthold) tenant of Boston Mayflower.

5.1.2 Assured (non-shorthold) tenants have the right to assign the tenancy by way of exchange providing that:

- prior consent of Boston Mayflower is obtained

- one or more of the grounds for refusal do not apply
- any reasonable conditions attached to the consent are complied with

5.1.3 Boston Mayflower and any other landlord who may be involved in a proposed mutual exchange must first give their consent to the tenants exchanging before any move takes place.

5.1.4 Boston Mayflower will not unreasonably withhold consent unless it considers it proper and lawful to do so.

5.1.5 A decision on an application for a mutual exchange will be made within 42 days of receiving the application.

5.1.6 The regulatory framework contains a standard on allocations and mutual exchange. There is an expectation from the Regulator that Housing Associations should enable tenants who are interested in a mutual exchange by:

- taking reasonable steps to publicise the availability of mutual exchange services to which it subscribes
- subscribing to an internet based mutual exchange service or pay subscriptions of individual tenants who wish to exchange

Boston Mayflower currently subscribes to Homeswapper, therefore providing a free national service to tenants.

5.2 **Grounds for Refusing a Mutual Exchange**

5.2.1 Whether or not consent can be withheld will depend on the terms of the tenancy agreement(s) in question. In many cases, the tenancy agreement may provide that consent can only be withheld if one or more of the grounds for “Withholding consent to Assignment By way of Exchange”, as set out in Schedule 3 of the Housing Act 1985 (as amended) is / are applicable. The grounds for refusal include:

- Where possession proceedings have started, a notice seeking possession has been served, or a possession order is in force (including suspended or postponed orders)
- Where the exchange would result in under or over-occupation
- Where the accommodation is reserved for people with special needs, such as housing for the elderly or an adapted property designed for a physically disabled person. and the tenant does not have these needs

5.2.2 Reasons for withholding consent will be given in writing, within 42 days of the application. If the tenant has broken any term of the tenancy, including, but not limited to, non-payment of rent or other housing related debt, unsatisfactory property condition or alterations carried out to the property without consent, then Boston Mayflower may, at its absolute discretion, grant

consent on condition that the tenant pays the outstanding debt and/or remedies any other breaches of the tenancy obligations.

5.2.3 In exceptional circumstances, consent may be granted to allow a tenant to exchange with rent arrears or another housing related debt. Examples of such circumstances may include, but are not limited to:-

- The tenant needs to downsize in order avoid the debt increasing
- The tenant's wellbeing will be a risk and detrimental to their health if they don't move to more suitable accommodation.
- The tenant has been the victim of or threatened with abuse or violence (including domestic violence) and the move shall assist in protecting the tenant from future violence or abuse.

5.3 **Property & Tenancy Conditions**

5.3.1 There are implications involved with mutual exchanges because, in most cases, each tenant takes on the terms and conditions of the other parties' tenancy. In particular, the exchange may result in a change of tenancy type, for example from secure to assured and vice versa. This can consequently alter the tenants' rights, in particular the Right to Buy and the Right to Acquire. Section 5.4 explains the implications of the Localism Act on transfers between tenants with secure or assured tenancies and tenants who have flexible or fixed term assured shorthold tenancies.

5.3.2 The incoming tenant accepts and takes responsibility for the property in its existing condition, including cleanliness, internal decoration, improvements and alterations and any repairs that are the tenant's responsibility. The outgoing tenant is not eligible for any compensation for qualifying improvements they have made to the property as the tenancy is not actually ending, which is a requirement of the Compensation Policy.

5.3.3 Although the incoming tenant legally takes on responsibility for the condition of the property and tenancy conditions, to reduce the risk of litigated disputes then after the property has been inspected prior to the exchange taking place Boston Mayflower will generally adopt the following procedure:-

- I. Order any repairs that are Boston Mayflower's responsibility as Landlord;
- II. Require the outgoing tenant to remedy defects or repairs identified as their responsibility;
- III. Advise the incoming tenant of any such works required and warn them that they will become responsible for them following the exchange if the works have not been carried out;
- IV. Carry out gas and electrical checks on the property;
- V. Before assignment advise the incoming tenant that they will take on the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and

carrying out any repairs or reinstatements identified as the tenants responsibility to carry out, which were not carried out by the outgoing tenant prior to the exchange taking place;

- VI. Upon assignment, require the incoming tenant to sign to the effect that they accept the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and carrying out any repairs or reinstatements identified as the tenants responsibility to carry out and not carried out by the outgoing tenant prior to the exchange taking place;
- VII. Advise the incoming tenant as to any material changes to their rights and obligations under their incoming tenancy compared to their outgoing tenancy e.g. an incoming tenant does not necessarily obtain the preserved right to buy by simply taking an assignment of a “preserved rights” tenancy as the right is personal to the tenant and not the property; also a tenant incoming from another organisation where they had right to buy or preserved right to buy will lose it if they leave their current landlord.

5.3.4 Whilst the incoming tenant takes on responsibility for maintaining any improvements and alterations made to the property with Boston Mayflower’s consent, Boston Mayflower still has a legal responsibility to maintain and repair any installations that supply heating, water heating, gas, water and electricity including:-

- Basins, sinks, baths, toilets, flushing system and waste pipes;
- The electric wiring, gas and water pipes; and
- Water heaters, fireplaces and central heating.

5.4 **Localism Act 2011: Practical Implications of Tenure Reform on Mutual Exchanges**

5.4.1 The revised regulatory standards came into effect on 1st April 2012 and the main tenure reform provisions of the Localism Act came into force. The effect of these changes is to allow housing associations and local authority landlords to begin offering fixed term tenancies on social rent as well as affordable rent properties.

5.4.2 Mutual exchanges between tenants of social landlords usually take place by deed of assignment where each tenant steps into each other’s shoes and takes over the other tenant’s tenancy type and terms. New tenancies are not signed. However, there are different provisions in section 158 of the Localism Act 2011 and cover those circumstances where:-

- At least one of the tenants who wishes to transfer has a secure or assured (non-shorthold) tenancy, which began before 1st April 2012, and
- At least one of the tenants has a “flexible” secure tenancy (i.e. a fixed term secure tenancy granted by a local authority) or an assured shorthold tenancy which does not fall under the exceptions listed below.

Under the Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012, the following tenancies are excluded from the right to transfer described above:-

- (a) An assured shorthold tenancy for a fixed term of less than two years,
- (b) A periodic (e.g. weekly / monthly) assured shorthold tenancy (including starter tenancy),
- (c) An assured shorthold tenancy where the rent payable under the tenancy is–
 - (i) Affordable Rent;
 - (ii) Intermediate Rent;
 - (iii) Mortgage Rescue rent; or
 - (iv) Shared ownership rent

Where the right under section 158 Localism Act 2011 applies, such exchanges must be done by surrender and then re-granting of new tenancies. The new landlord must grant the tenant(s) whose previous secure or assured tenancy pre-dated 1st April 2012 either:-

- A secure (periodic e.g. weekly or monthly) tenancy if they are a local authority, or
- A periodic (e.g. weekly or monthly) assured (non-shorthold) tenancy if they are a housing association

5.4.3 Existing tenants will therefore retain similar security of tenure to that of their original tenancy. However this protection will only apply to existing tenants' tenure, not the level of rent they pay. Therefore if an existing tenant who pays a social rent chooses to exchange with a tenant who currently pays an affordable rent, they will take on the higher level of rent.

5.4.4 The rules relating to existing tenants retaining similar security of tenure do not apply where an existing secure or assured (non-shorthold) tenant is exchanging with:-

- Someone with a fixed term tenancy of less than two years
- Someone with a tenancy at affordable rent, intermediate rent, mortgage rescue properties and shared ownership leases.

5.4.5 In summary this means that:

- Someone with a pre-April 2012 secure or assured tenancy can exchange with any other social housing tenant and be sure of keeping their existing security of tenure
- If such a tenant wanted to exchange with a tenant who pays affordable rent, there would be no legal guarantee of security of tenure with the new tenancy. The landlord may choose to offer a secure or assured tenancy but that is at the landlord's discretion.

- Tenants of affordable rent properties have the same right to exchange as other tenants. Providing they are exchanging with another tenant who is not a pre-April 2012 tenant, then the exchange would happen in the normal way, i.e. by deed of assignment.

A landlord can refuse an exchange of this nature on any of the grounds set out in Schedule 14 of the Localism Bill (along the same lines as existing grounds for refusing mutual exchanges) and they have 42 days to make that decision.

5.5 Exchange without Consent

5.5.1 In the event that a tenant exchanges properties with another tenant without first gaining the consent of both landlords then we will:-

- Insist that the tenants return to their original houses; or
- Terminate the tenancies by serving Notice and seeking repossession.

6.0 Assignments

6.1 Assured (non-shorthold) tenants of Boston Mayflower are given a contractual right, under the terms of their tenancy agreement to request to assign their tenancy to another person in specific circumstances.

6.2 Assured (non-shorthold) tenants have the right to assign the tenancy in the following circumstances:

- By order of the Court
- Following relationship breakdown (joint to sole tenancy)

6.3 Although we reserve the right to object on housing management grounds (e.g. ASB, rent arrears, under-occupation, not suitable for housing need etc.) Boston Mayflower will normally accept the assignment of tenancy if it is a result of a court order and there are no breaches of tenancy. This could occur as a result of:

- a Property Adjustment Order from matrimonial or other family proceedings (where a tenancy is granted to one of the partners in a marriage or civil partnership following a divorce, dissolution or separation), or
- 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 a property due to threatening or inappropriate behaviour.

In most cases a Deed of Assignment must be executed to assign the tenancy into the other party's name – the existence of a court order alone is normally insufficient. The only exception to this is a tenancy transfer order under the Family Law Act 1996 – if this is correctly worded then it will automatically

transfer the tenancy in accordance with the order. NB that this is not the same as an “occupation order” or an order granting “home rights”. If there is any doubt or if one of the parties to the relationship breakdown will not co-operate, then the parties should be told to obtain their own independent legal advice. Boston Mayflower should also obtain specialist legal advice.

- 6.4 Boston Mayflower will also consider a request to assign the tenancy where there has been an irretrievable breakdown in the relationship and relinquishment has been agreed by both parties. It is a necessary criterion that the person to whom the tenancy is to be assigned is either one of the two existing joint tenants or otherwise would have been statutorily qualified to succeed upon the death of the tenant. A Deed of Assignment must be executed to assign the tenancy into the sole tenant’s name.
- 6.5 Boston Mayflower may refuse consent or 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.
- 6.6 Where a joint tenant has left the property and cannot be traced, Boston Mayflower may accept a termination of the tenancy from the remaining joint tenant and issue a new sole tenancy to the remaining tenant. This action will not be completed if the tenancy has any rent arrears or outstanding breaches. In order for one of two joint tenants to validly terminate the tenancy, the tenant must fill out and validly complete a tenancy termination form giving at least 4 weeks’ notice. Boston Mayflower has no discretion to accept a lesser notice period and any notice should be carefully checked for errors. This is to be considered as a last resort where contact cannot be made with a joint tenant who has left the property. Approval must be sought from the Head of Customer Services and the tenant should be reminded of their right to seek independent legal advice.
- 6.7 Where a request for a sole tenancy is received from a joint tenant who is the victim of domestic abuse, Boston Mayflower will make every effort to investigate their case and obtain evidence. It may be necessary to end the joint tenancy and issue a sole tenancy to the tenant subjected to domestic violence. In these circumstances approval must be sought from the Head of Customer Services. Decisions will be made on a case by case basis.
- 6.8 All requests for assignments should be made in writing. A decision on an assignment will be made within 28 days of receipt of the request and the tenant will be written to explaining the decision.

7.0 Lodgers & Subletting (including Additional Household Members)

- 7.1 Assured (non-shorthold) tenants of Boston Mayflower are generally given a contractual right, under the terms of their tenancy agreement to take in lodgers or sub-tenants of part of their property.

7.2 Tenants shall not be permitted to sublet the **whole** of their home. Tenants may only give away possession or control of it to anyone else in one of the ways described in 5.0 and 6.0 of this policy i.e. Exchange or Assignment.

7.3 Tenants may, however, take in an additional household member, a lodger or sublet part of their home provided that they comply with the terms of the tenancy agreement and:

- Write to Boston Mayflower giving full details of the additional household member, the lodger or sub-tenant and the part of the home they will occupy.
- Do not create an assured tenancy (whether shorthold or non-shorthold) tenancy in favour of an additional household member, a lodger or sub-tenant of any part of their home.
- Ensure that the prospective additional household member, lodger/sub tenant have the Right to Rent.
- Obtain Boston Mayflower's written permission, which will not be unreasonably withheld, before any sub-letting or lodging takes place.
- Provided the home does not become overcrowded.
- Ensure all members of the household and visitors keep to the tenancy conditions.

7.4 Additional household members are classed as:

- Partner
- Carer
- Friend
- Other relative

7.5 All requests for additional household members, lodgers and subletting should be made in writing. A decision will be made within 28 days of receipt of the request and the tenant will be written to explaining the decision.

8.0 Right to Rent

8.1 Immigration checks on new lettings are required by the Immigration Act 2014, which came into force on 1st February 2016. Many lettings will be exempt if they are made through an agreed nominations agreement with the Local Authority which carries out its own checks, but many lettings are covered, including all new tenancy signups to anyone not already checked by the Local Authority, and agreements with sub-tenants and lodgers.

8.3 Lodgers and sub-tenants in social housing have to be checked by the tenants who offer them accommodation. Even though this is a tenant's responsibility to carry out the checks, Boston Mayflower will undertake the checks as part of the request to take in a lodger or sub-tenant, prior to giving or refusing approval.

8.2 Boston Mayflower will also implement the 'Right to Rent' checks for Mutual Exchanges and Assignments to ensure that the proposed Assignees are eligible to hold a tenancy in line with the Law.

9.0 Monitoring

9.1 As with all Boston Mayflower activity it is expected that this service will be provided in a way, which conforms to all Policies and Standing Orders of the Company particularly with regard to Equal Opportunities.

9.2 The Head of Customer Services will be responsible for monitoring the following:

- The number of mutual exchanges, assignment and lodger requests within the year
- The number dealt with within the target times
- The number of refusals, withdrawals and appeals

10.0 Policy Links

- Equality & Diversity Policy
- Tenancy Policy
- Succession Policy
- Domestic Abuse Policy
- Income Management Policy
- Repairs & Maintenance Policy
- Rechargeable Repairs Policy



Equality Impact Assessment Initial Screening

Name of policy / strategy / project (the" initiative"):

Mutual Exchange, Assignment and Subletting Policy

Provide a brief summary of the aims and main activities of the initiative: (bullet points)

To ensure that tenants are aware of their rights of Assignment and subletting as set out in the Tenancy Agreement. Also that Boston Mayflower's policies for giving consent to assign tenancies are followed.

Completed by: Deborah Tempest

Date: 2nd September 2016

STAGE 1: SCREENING

This stage establishes whether a proposed initiative will have an impact from an equality perspective on any particular group of people or community – i.e. on the grounds of race, religion/faith/belief, gender (including transgender), sexual orientation, age, disability, or whether it is "equality neutral" (i.e. have no effect either positive or negative).

Q 1. Who will benefit from this initiative? Is there likely to be a positive impact on specific groups/communities (whether or not they are the intended beneficiaries), and if so, how? Or is it clear at this stage that it will be equality 'neutral' i.e. will have no particular effect on any group? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

The policy is not designed to benefit any particular group and that there will be positives and negatives for a few groupings. The availability of assignments, exchanges and lodgers/sub-lettings could assist certain groups e.g. disabled/elderly to move to more suitable accommodation; for women fleeing domestic violence to move or to remove violent partners from the tenancy.

Q 2. Is there likely to be an adverse impact on one or more minority/under-represented or community group as a result of this initiative? If so, who may be affected and why: Or is it clear at this stage that it will be equality 'neutral'? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

Yes on migrant communities. We are expected to undertake checks to ascertain if a potential tenant/lodger is permitted to be in the UK as required by the Immigration Act 2014. Therefore any adverse impact is an inevitable result of a strict legal requirement. Although the policy is not designed to disadvantage any particular group, there will be positives and negatives for a few groupings. The restrictions on assignments, exchanges and lodgers/sub-lettings could have greater impact on certain groups e.g. women whose partners have left them may also be left in arrears.

Q 3. Is there sufficient data on the target beneficiary groups/communities? Are any of these groups under or over represented? Do they have access to the same resources? What are your sources of data and are there any gaps? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

Information on tenants and applicants families from tenancy profiling and the data held on database.

Q 4. Outsourced services – if the initiative is partly or wholly provided by external organisations / agencies, please list any arrangements you plan to ensure that they promote equality and diversity. *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

This is an internal policy and we are responsible for its implementation.

Q 5. Is the impact of the initiative (whether positive or negative) significant enough to warrant a full impact assessment – see guidance? If not, will there be monitoring and review to assess the level of impact over a period of time? *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

We do not perceive any negative impact that would warrant a full EIA. Should any negative impact be highlighted through implementation, the policy and EIA will be reviewed.

Q 6. To be completed at six monthly review Detail actions taken to assess the level of impact over a period of time, or to address any gaps in data. *Please consider all aspects of Diversity including as a minimum: Age, Disability, Gender/Transgender, Race/Ethnicity, Religion/Faith/Belief, Sexuality*

At Policy reviews.