# Mutal Exchange and Assignment Policy

**Date of approval:** June 2022

**Policy Author:** Housing Services Manager

**Policy lead:** Customer Services Director

**Date of next review:** June 2025

*You are advised that a printed version may not be the latest available version. The latest version, which supersedes all previous versions, is available on the Brighter Places drive. Those to whom this policy applies, are responsible for familiarising themselves with the latest version and for complying with the policy requirements at all times.*

*Should colleagues require any reasonable adjustment to allow for engagement with this document please contact the policy lead.*

# Assignment and Mutual Exchange Policy

## 1.0 Purpose

This policy outlines how Brighter Places will support our residents to exchange or swap their home with another social housing resident where the tenancy agreements allow. As part of our services, we provide free access to the national mutual exchange service, Home Swapper, to enable this.

## 2.0 Brighter Places Commitment

We will:

- Provide clear information on the requirements for a mutual exchange
- Outline which tenancy agreements have the right to exchange
- Set out clear guidance on the legal requirements
- Set out the grounds for refusing an exchange

## 3.0 Definition

"Assignment" refers to when a tenant 'gifts' their tenancy to a qualifying person (stated in the tenancy agreement).

An assignment can only take place if there has been no previous succession or assignment.
After an assignment has taken place, all the rights and responsibilities of the tenancy are passed from the original tenant (the 'assignor') to the new tenant (the 'assignee'). The original tenant no longer has any rights or responsibilities whatsoever in relation to the property.

All the terms of the original tenancy agreement apply to both the new tenant and the landlord, including the amount of rent payable.

Whether assignment is possible will depend on:

- the type of tenancy
- what the tenancy agreement says
- whether the landlord agrees

There are some technicalities in tenancy assignment law, and this means further advice may be needed.

## 4.0 Rights to Assign

Under section 1(1) of the Law of Property Act 1925 all tenants, including those with a long lease, have a legal estate (an interest) in land. With this comes a general right to assign that estate to another person.

For many types of tenancy this general right is modified by statutory provisions that limit when and to whom the tenancy can be assigned. This will override the general right to assign.

Joint tenancies can be assigned but are still subject to the statutory rules for that type of tenancy.

A tenancy agreement can also limit when and how a tenancy can be assigned. For example, by requiring the landlord's consent.

## 5.0 How does an Assignment work?

Assignment is the legal right of the `gifting' of a tenancy from a tenant to another person. It transfers a tenancy but does not create a new tenancy although it does count as a succession (except in the case of Mutual Exchange.)

Certain types of assignment are dependent upon the rules about succession. Whilst succession to a tenancy can only occur upon the death of a tenant, assignment is the passing on of a tenancy whilst the tenant is still alive.

Request to assign a tenancy may be the result of a family dispute or breakdown of some kind and should be handled sensitively.

Any refusal or granting of consent should be given to the tenant in writing.

A license to assign is a document signed by the landlord giving the tenant (assignor) permission to assign.

A 'deed of assignment' is a written legal document that has been signed 'as a deed' and witnessed. The deed must give the name(s) and addresses of the original tenant(s), the new tenant(s) and the landlord. An independent person must witness the signatures of the original tenant(s) and the new tenant(s).

The new tenant should keep the original deed of assignment; in case they ever need to prove that the assignment has taken place. The original tenant and the landlord should also be given a copy.

Assignment may be a good option if the tenant wants to move out, but one or more members of their family wants to continue living in the home. Alternatively, the tenant may want to ensure that a particular family member is able to keep the tenancy after they die, and that person may not have taken on the tenancy under the normal rules of succession.

## 6.0 Requirements for legal assignment :

- The original tenant must have the right to assign her/his tenancy, *and*
- (in most cases) the landlord's permission is required, *and*
- the tenancy must be assigned using a 'deed of assignment' *and*
- a license to assign must be completed.

There are legal grounds for withholding consent to an assignment in the case of mutual exchange (Housing Act 1985), however it does not specify similar grounds for ordinary assignment.

## 6.1 Permission for Assignments

Under Section 15(1) (a) of the Housing Act 1988 ("the Act"), it is an implied term of every assignment that the tenant will not assign the tenancy without the consent of the landlord. It is therefore down to Brighter Places to decide whether or not permission can be granted for an assignment. There is no specific statutory right of assignment for an assured tenant, although we would not withhold this permission for an assignment unreasonably.

### 6.2 Reasons for Refusal of Assignments

There are some specific reason why tenancies cannot be assigned which are set out below. If the tenant is unable to assign the Housing Officer must write to the tenant and advise them within 6 weeks of their application setting out in full the reasons why. There is no right to appeal attached to these reasons, but should current rent arrears be cleared from a rent account, the tenant can re-apply and be reconsidered for assignment.

- Current rent arrears.
- The new tenant is not able to financially sustain a tenancy.
- Brighter Places has started eviction proceedings against the tenant (includes serving NoSP or 6A / S21.)
- There are any breaches of an obligation of the tenancy (a NoSP will have needed to be served that sets out the tenancy breach. )
- The property has been adapted for a person with disabilities and there would no longer be a person with those disabilities who would be able to utilise the adaptations (if they were to move into the property. )

*Please note if the correct steps are not followed, any attempts to assign the tenancy illegally by the tenant will not be effective and Brighter Places may be able to start possession proceedings Ground 12 of HA 1988. This would be if there has been an express breach of the terms of the tenancy agreement.*

*By moving without permission Brighter Places can look to serve Notice to Quit as they become unauthorised occupiers. At no pint, if a tenant has moved in advance of an agreed exchange, should the tenancy be recognised by either taking or collection of rent, or setting up a tenancy on Orchard MRI.*

*Any cases such as these will require discussion with the relevant Housing Manager*

### 7.0 Who can a Tenancy be assigned to?

Brighter Places will only allow an assignment where the tenant is assigning to someone who would have been able to succeed to that tenancy immediately after the tenant's death.

Remember to check the tenancy agreement to be certain of who this would, be, and to ensure that a previous succession has not been actioned on this tenancy with this household.

### 8.0 Assignment from a Sole Tenancy to a Joint Tenancy

Brighter Places would not normally give permission for a sole tenant to assign the tenancy into joint names.

It is important for tenants to be advised if they make this request that succession rights would still apply to any qualifying occupants in the property should the tenant pass away. (But to ensure that no previous succession has been agreed with this tenancy, or there is n right to succeed = the tenancy can only be succeeded once in any family. )

### 8.1 Assignment from a Joint Tenancy to a Sole Tenancy

Brighter Places will normally grant consent for a tenancy to be assigned from a joint tenancy to a sole tenancy for both Assured and Assured Shorthold tenants where there has been an irretrievable breakdown in the relationship between joint tenants as long as:

a. There are no rent arrears in place *and*
b. there are no other outstanding breaches of tenancy *and*
c. the resulting tenancy does not result in the under occupation of the property to enable us to make best use of our stock.

An exception from Housing Manager may be granted in cases involving domestic abuse or other exceptional situations where it would not be appropriate to impose the above conditions.

In the case of an Assured Shorthold Tenancy Brighter Places will also consider surrender and re-grant of the tenancy as the security of tenure is minimal.

### 8.2 What happens if a Joint Tenant cannot be traced?

Where a joint tenant has left the property and cannot be traced, the resident should apply to the courts for a property adjustment order.

### 9.0 Assignment by way of a Court Order

There are a number of different orders the court could make that would also have the effect of assigning the tenancy:

a. section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings)

b. section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce)

c. paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents)

d. Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc.)

Please note that this is not an exhaustive list and future legislation may also require us to assign a tenancy. If Brighter Places receives a copy of such an order, then the assignment is effective in law and we have no option but to comply with the order of the court.

### 10.0 Equality and Diversity

Brighter Places strive to meet the needs of all customers and we are committed to reducing inequality, eliminating discrimination and promoting good relations between people of different groups. We will be sensitive to the specific needs of all and customers and will actively seek to identify those needs and ensure that those needs are met.

Brighter Places will aim for no-one to be disadvantaged on the basis of race, colour, ethnic or national origin, nationality, gender, disability, religious, sexual orientation, marital status, age or any unjustifiable criteria.

**11.0 Linked Documents**

- Succession Policy
- Housing Management Policy

Complete the info below and enter the next review date from the policy index list

| | |
|---|---|
| **Name: Zoe White** | **Date Reviewed: June 2022** |
| **Job Title: Housing Team Manager** | **Next Review Due: June 2025** |

**1. Procedure for Mutual Exchange**

**1.0 Introduction**

Brighter Places will support residents to exchange their home with another social housing residents where the tenancy agreement allows. The Mutual Exchange Procedure sets out how we achieve this and work within legal time frames for exchanges.

**2.0 Overview of process**

Brighter Places will work within the legal framework to ensure we are providing a fair and transparent exchange process for our home:

*"Registered Providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:*

- *Make the best use of available housing*
- *Are compatible with the purpose of the housing*

*Contribute to local authorities' strategic housing function and sustainable communities*

**3.0 Flow chart of process**

Mapped Process to be added

**4.0 Procedure**

**Application**

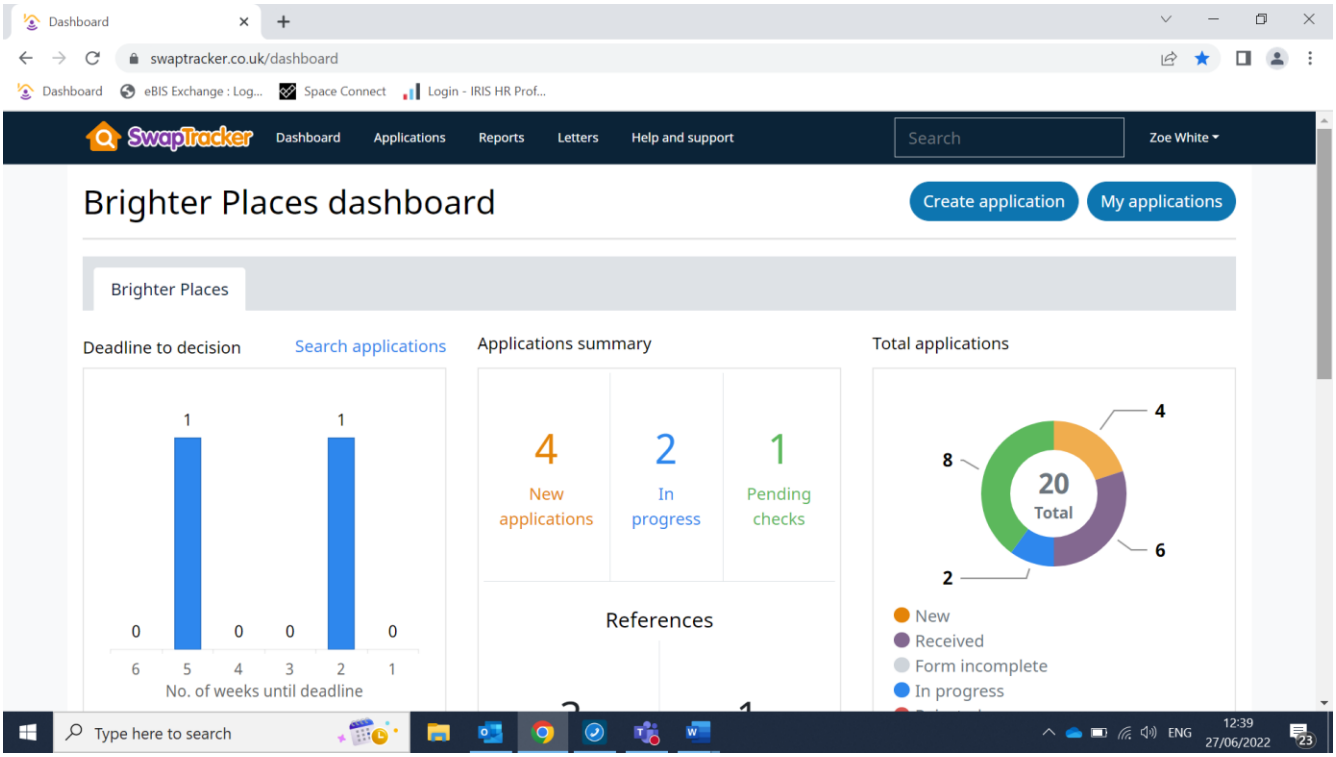
A Mutual Exchange request is made by the tenant or tenants and entered into Swap Tracker. The relevant Housing Manager (HM) is made aware via email. (If paper copy is received the Housing Officer (HO) must upload this onto Swap Tracker)

The HM will assign the new Mutual Exchange application to the relevant HO. The HO will receive an email from Swap Tracker, letting them know of the new Exchange application.

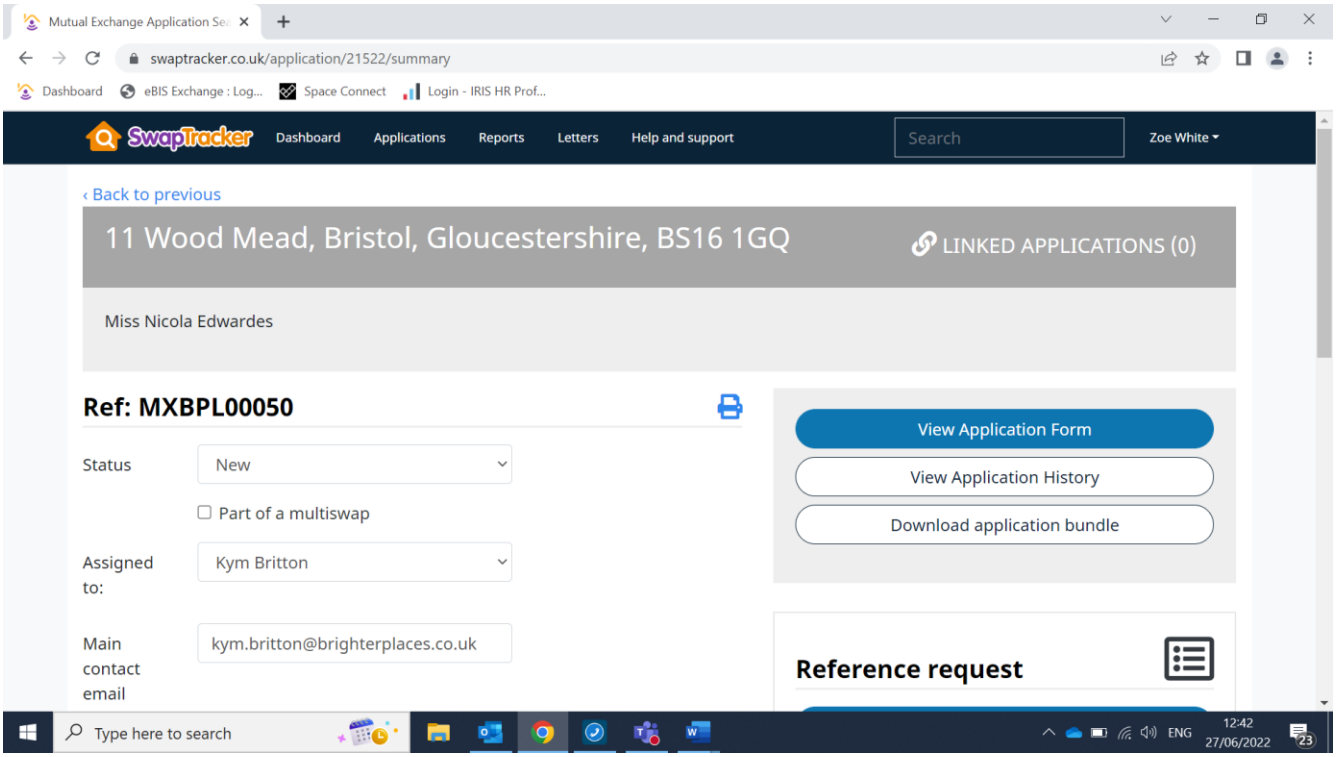
**4.1 Application Received**

HO to log into Swap Tracker:
**https://www.housinghub.co.uk/Account/Login** (Login to be request through Housing manager)

The Housing Officer to move status to 'received'.




HO to click on My Applications, (top right)
Click on the blue MX Reference number that is shown next to the address of the new MEX




Using the drop down arrow next to New in the status box, select Received

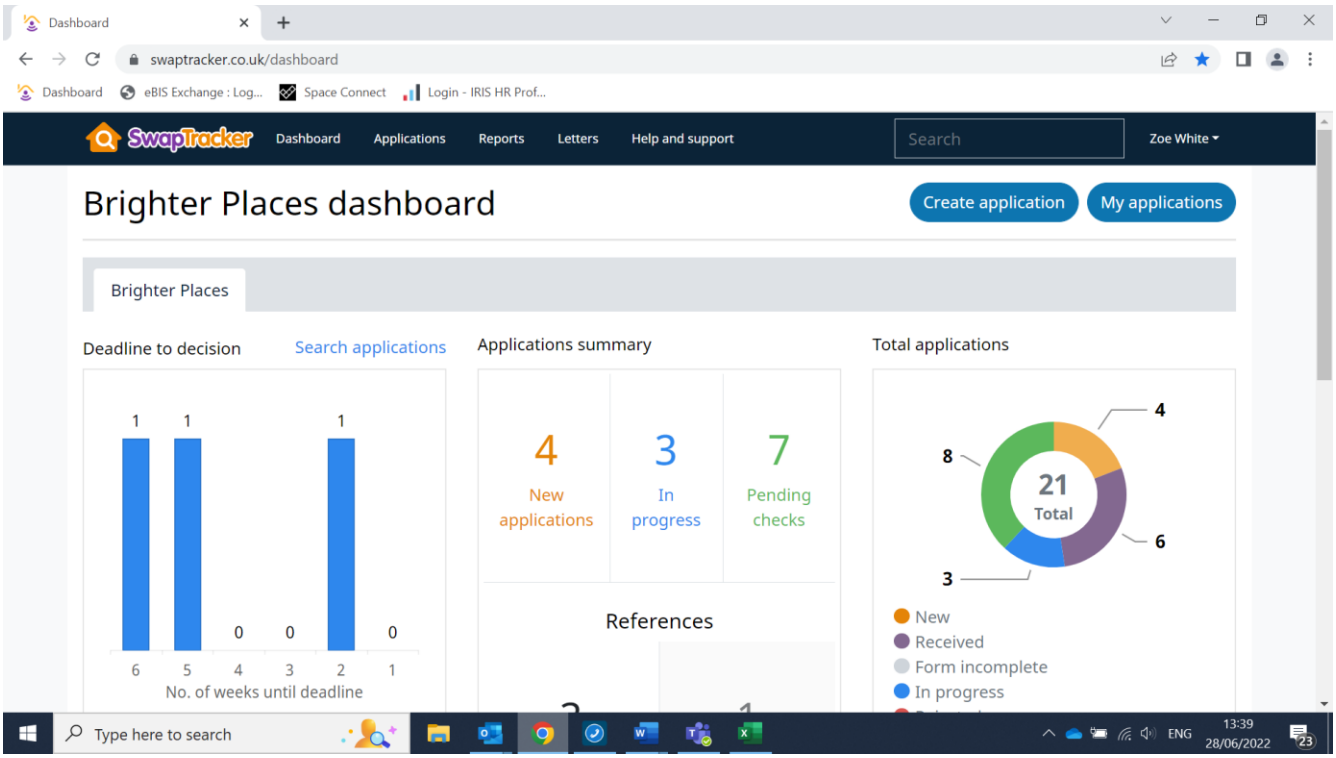
The HO can then view the application form submitted via Swap Tracker, and then should cross reference information held on Orchard to ensure that it is correct.

If the information does not correlate, the HO will contact the tenant(s) to discuss the inconsistent information. Following that conversation, if the HO does not feel that the questions raised have been answered satisfactorily, they may choose to raise the issues with the HM or may need to refuse the application and write to the tenant to advise them of why they are refused. Note: refusals have specific grounds and are set out in the policy document, a HO cannot refuse a request for Mutual Exchange unless they use one of these grounds.

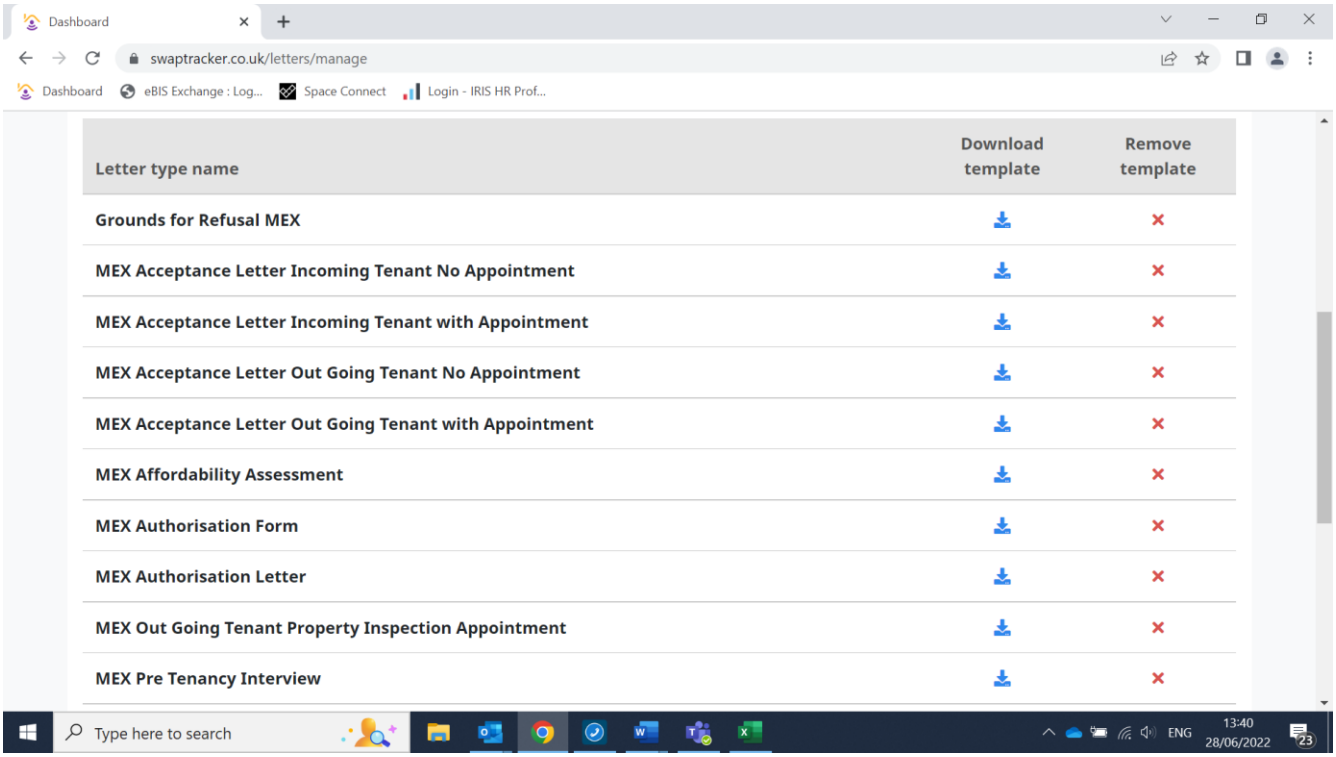
The HO has 42 days to make the decision and inform the tenant of the outcome. Failure to confirm or refuse within this timescale will offer the tenant the right to move regardless of circumstances.

**4.3 Application In Progress**

- The HO then requests a Landlord reference through Swap Tracker
- The HO then contacts our outgoing tenant and books a property inspection in conjunction with a property surveyor, letter to be sent via Swap Tracker – **MEX Out Going Property Inspection Appointment** . Letter to be uploaded on to Swap Tracker for audit trail and also onto the tenants file on Orchard.
- All letter can be found on Swap Tracker using the following guidance: (using the login process set out above)




- Once logged into your Swap Tracker account, click letters at the top of your page
- Scroll down and the Brighter Places MEX Letters will appear




- Click download template and the letter will download on a word document for you to amend

- The HO will then move the status of the exchange on Swap Tracker to 'In Progress' (using guidance from above)
- The HO will complete the property inspection, using Pronto forms – **Property Inspection Form**. Form to be saved to Swap Tracker and in Orchard
- Any repairs agreed after inspection that are the responsibility of Brighter Places to be raised by a surveyor.
- Any repairs that are required to be completed by the outgoing tenant before any move is actioned, should be included in the **Property Inspection Outcome** Letter ad sent to the outgoing tenant. Letter to be saved to Swap Tracker and Orchard.
- The HO must then arrange a **Pre Tenancy Interview** with the prospective incoming tenant and complete the following: (This is to take place in person)
  - Affordability Check
  - Right to Rent checks - The HO must check that the incoming tenant and all house hold member over 18 have the legal right to rent, that they are commonwealth citizens or have the appropriate documentation to allow them to rent.
  - Credit Check
  - ID for all house hold members over 18
  - ASB Issues
  - Criminal Record

The HO will take copies of all documents at the Pre Tenancy Interview and upload to Swap Tracker and Orchard under Documents Received.

The HO will discuss affordability of property with incoming tenant at Pre tenancy meeting

**4.3 References**
The HO will receive any incoming reference via Swap Tracker. The HO must chase any outstanding refences with other landlords if not received within 10 days of request.

The HO will review the references when they are received and will refuse if any of the following is apparent: -

- Current rent arrears
- Action has been commenced by the Landlord due to ASB, or breach of tenancy – by service of a NoSP or 6A/Section 21 notice.
- The property has been adapted for tenant with specific needs and the incoming tenant does not have those needs.
- The property is substantially larger than reasonably needed (more than one spare bedroom.)
- The tenancy agreement does not allow the exchange.

If the incoming tenant's reference does not allow an Exchange the HO will write to our tenant advising them of what has happened – they should not include any specific information to ensure that no data protection is breached. The **Refusal Letter** is found on Swap Tracker letters and should be uploaded to Swap Tracker and Orchard. The HO will then change the status in Swap Tracker to 'Rejected'

**4.4 Approval**
The HO will gain consent from a Housing Manager using **Authorisation Form** on Swap Tracker.
If the Authorisation Form is approved, the HO will change Swap Tracker status to 'Approved' and the **Authorisation Letter** sent to the tenant, and then saved in Swap Tracker and Orchard.

The HO will agree an exchange date with both incoming and outgoing tenants as well as confirm this is acceptable to the incoming tenants landlord, and send **Acceptance Letters, with Appointment** dates to both incoming and outgoing tenants and save to documents on Swap Tracker and Orchard.

The gas and electricity supplies to the property must be serviced on the day of the exchange.

The gas will be serviced and capped during a morning appointment with the outgoing tenant. The gas will then be uncapped during an afternoon appointment with the incoming tenant present. Once a date has been agreed to exchange the HO has responsibility for booking both the gas and electric checks. A minimum of 2 weeks' notice is required by our contractors and this must be factored in when agreeing moving dates.

The HO's will book all checks through HRS brighterplaces@alliancehomes.org.uk

**4.5 Assignment**
The HO will collate the Assignment pack:

- Deeds of Assignment (3 copies must be signed by 2 members of the Executive Team prior to the exchange date)
- BP privacy notice to be signed by incoming tenants and saved on orchard after sign up.
- A copy of the up to date and most recent EPC – to be provided in sign up pack, this can be found at: https://www.gov.uk/find-energy-certificate
- Copy of the Tenancy agreement

- Prior Deeds of Assignment linked to tenancy agreement (must be anomalies)
- Any new tenancy information
- Portal information and sign in details

On signing the Deeds of Assignment the HO will take 4 weeks payment in advance. Prior agreement must be made if incoming tenant is unable to pay the requested upfront rent payment.
The HO will then email **finance** Finance@brighterplaces.co.uk with reference **NRR** and the first line of the address, cc'ing in the Empty Home Team. lettings@brighterplaces.co.uk

The HO will then add the new tenant on Orchard. This should be undertaken as soon as possible to ensure our records remain up to date. Guide to adding a new tenant can be found **here**

HO must then upload the new tenant information into HRS Drop Box to make them aware of the new change of tenure, access guide here

The HO will update Swap Tracker of the completed exchange

**END**