

**Housing Division**

**Draft Policy for Discharging Statutory Homelessness duty  
into the private rented sector**

**Consultation Document May 2013**

## 1. Background

The introduction of the Localism Act 2011 has made significant changes to the way in which local authorities can deal with applications for social housing and homelessness applications under Parts 6 and 7 of the Housing Act 1996.

Under the previous legislation, local authorities were able to discharge their main homelessness duty to applicants who were homeless, eligible for assistance, in priority need and not intentionally homeless by

- Securing suitable social housing accommodation under part 6 (unless a referral to another local authority can be made under the local connection provisions).
- Offering privately rented accommodation only with the applicant's explicit agreement.

The Localism Act 2011 has amended the Housing Act 1996 and now allows local authorities to fully discharge the full housing duty by a 'private rented sector offer' (s193(7AA)-(7AC) Housing Act 1996 as amended by s.148(5)-(7) Localism Act 2011). This must be an offer of an **assured shorthold tenancy** with a minimum fixed term of one year.

These changes apply only to new applicants approaching local authorities as homeless or threatened with homelessness after the commencement date of the 9<sup>th</sup> November 2012.

A person provided with accommodation in the private rented sector as a final discharge of a homelessness duty will no longer have a 'reasonable preference' for an allocation of permanent housing by reason of homelessness.

Existing guidance on suitability contained in the Homelessness Code of Guidance 2002 continues to apply but The Government has introduced new guidance for local authorities covering Homelessness and Suitability of Accommodation for private rented sector offers. Officers are required to have regard to this guidance when seeking to discharge the full homelessness duty into the private rented sector.

The Homelessness (Suitability of Accommodation) (England) Order 2012 deals with suitability of location of private rented sector offers and sets out circumstances in which accommodation offered under section 193(7F) is not to be regarded as suitable for a person for the purposes of a private rented sector offer. The Order requires that a property must fulfil certain criteria, this is attached as Appendix A to this policy however these are grouped into three broad categories of :-

- Suitability and property location and subjective circumstances of the applicants of the property

- Suitability and ensuring the property is affordable for the individuals.
- Suitability and property standards and Management

## **2. Policy Statement**

Wirral Council sets out its vision for responding to Homelessness in the Borough in the authorities Homelessness Strategy and Action Plan 2013-2018. The Strategy contains the vision that 'no one needs to be homeless and partners will work together to make this a reality'. This will be achieved through four strategic priorities themes:-

- Preventing homelessness through early intervention and better partnership working;
- Improving partnership working to ensure housing and support needs of more challenging clients are met,
- Evaluating and realigning homelessness and prevention services;
- Increasing access to the Private Rented Sector

The ability to discharge the Council's Homelessness duty into the private rented sector will help fulfil the above objectives in particular with increasing access to the private rented sector as a sustainable and affordable solution for those who are homeless or threatened with homelessness.

## **3 Policy overview**

This document relates to the policy and procedural arrangements for discharging statutory homeless duties. The document will be referred to as "the policy".

The policy provides a framework which works alongside the local authority's published Allocation Policy and Tenancy Strategy. Any amendments to the authorities allocation or tenancy policies will be reviewed alongside this policy.

The policy will comply with:

- The Housing Act 1996, as amended by the Homelessness Act 2002
- The Localism Act 2011
- Equality Act 2010
- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012
- Suitability of Accommodation Order 2012
- Homelessness Code of Guidance 2006

## **4 Policy aims and objectives**

The policy will ensure a comprehensive and consistent needs assessment is carried out for each statutory homeless household. This approach will ensure applicants' needs are appropriately met.

This policy and the needs assessment procedure will ensure there is no discrimination on the grounds of age, disability, gender reassignment,

marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

Each case will be assessed on an individual basis, to avoid blanket policies.

## **5 Assessment Procedure**

A private sector tenancy will be considered for all statutory accepted households, and a thorough assessment process will be undertaken to ensure that the accommodation is suitable. The assessment process will be in two parts.

### **5.1 Part 1 – Individual Applicant’s Circumstances**

Where a household approaches the Council claiming to be homeless or at risk of homelessness they will receive a housing options interview. Enquiries will be made into the following areas of the household’s needs, and may include but not be limited to:

- Housing need
- Bedroom eligibility under Local Housing Allowance
- Physical Mobility / Health needs
- Mental / Emotional Health needs
- Practical Support / Advice needs
- Cultural/ Faith needs
- Risks to personal and community safety
- Risk to self (e.g. substance misuse/self-harming)
- Five year housing history
- Offending background
- Ability to manage finances/maintain home
- Ability to manage personal health and hygiene
- Relevant issues raised by the applicant
- Areas of preference.
- Financial circumstances and affordability, Location of places of work or education of members of the household schools
- Caring responsibilities
- Need to access medical facilities

They will be given appropriate advice on how to prevent their potential homelessness their housing options and housing prospects.

Where the Council have reason to believe that the applicant is or may be homeless or threatened with homelessness within 28 days, the applicant will be given the choice of pursuing a homelessness application after it has been explained that if a full duty is accepted, that duty is likely to be ended in a PRSO. Some applicants at this point will chose not to pursue their homelessness application but this will be a clear choice of the applicant.

### **5.2 Part 2 Assessed as suitable for discharge into private sector**

Each private rented sector offer will be assessed against the Homelessness (Suitability of Accommodation) (England) Order 2012 Parts 2 and 3 and the needs of the individual household.

A suitable offer will only be made where the Council has fully considered:-

- All the statutory requirements in Part 2 of the Suitability Order 2012 which cover the suitability of the **location** of accommodation and Part 3 which sets out the circumstances in which accommodation is **not** to be regarded as suitable for a person. Appendix A details the approach the Council will take to ensure that the accommodation is suitable. This considers the suitability of the property with respect to property standards and management, affordability for the applicant and its location and other subjective matters such as fear of harassment. In brief the Council will establish:
  - That the property is suitable in relation to existing suitability requirements that relate to space and arrangement.
  - Any other subjective matters or issues which relate to the circumstances of any household member obtained by the Council in their investigation of the application.
  - That the accommodation is affordable for the applicant's household having fully considered rental costs and any other expenditure relating to the property and taking into account their other reasonable expenses specifically those needed for food and clothing, heating, plus any other expenditure that is essential to meet the ordinary necessities of life.
  - All existing legislation, statutory guidance and case-law relating to making suitable offers of accommodation.

If this proves not to be the case, a social sector tenancy will then be considered for this household in line with the Suitability Order.

## **6 Selecting Households for Properties**

Whilst a household is being considered for a private rented sector offer, they will be placed on the Choice Based Lettings register in Priority Band A and will be able to bid for suitable social rented properties. At the point when they are made a suitable offer in the private rented sector, their Band A status on Property Pool Plus will be withdrawn. An offer of private rented accommodation can be made at any time until the applicant has been given a final offer of social rented accommodation.

If a suitable private rented offer is not available for a particular household, they will continue to be in Band A on Property Pool Plus until the duty is discharged through a Part 6 offer of a social rented property according to the allocations policy.

In general, where possible, a household will be prioritised for an offer of suitable accommodation in the private rented sector where this will

- Reduce the length of time a household needs to spend in temporary accommodation
- Prevent a household from going into temporary accommodation
- Meet an applicant's subjective requirement to live in a particular area, particularly when social rented housing is in short supply or high demand in that area
- Remove financial pressure on a household because of the costs of their current accommodation

The above criteria may change subject to operational or financial circumstances and a copy for the current criteria used will be available for any applicant or member of the public who requests a copy.

Where the Council chooses to discharge its duty into the PRS it will usually do so within the Wirral area but may in exceptional circumstances seek to discharge the duty outside the Wirral area, in which case the Council will inform the relevant LA area of its action.

## **7 Offers of accommodation**

Statutory homeless households are entitled to one reasonable offer of accommodation. The private sector offer must be an assured shorthold tenancy, with a minimum fixed term of one year.

The local authority will consider its homeless duty discharged once a suitable offer (known as a "final" offer) is made, whether the offer is accepted or refused

An offer will not be made by the landlord/letting agent for a property unless they have agreed to accept the applicant as a tenant. If the landlord does not accept the applicant put forward by the local authority then the homelessness duty will not be discharged and other suitable accommodation will be sought.

Once the offer has been formally made, the applicant's homeless application will be closed. Should the applicant wish to remain on the housing register, their application will be dealt with in line with the local authority's allocations policy.

## **8 Refusal or failure to respond to an offer of suitable accommodation**

If a statutory homeless applicant refuses or fails to respond to a suitable offer of accommodation in the private or social sector, the local authority *can* end its statutory duty to provide accommodation. The local authority will explain the applicant's right to a review of the suitability of the offer of accommodation.

The local authority will also explain to the applicant that they may lose their right to temporary accommodation pending the review. For further information, please refer to sections 9 and 10 below.

An applicant, whose statutory homeless duty has ended as a result of their refusal or failure to respond, will have their housing register application dealt with in line with the local authority's allocations policy.

## **9 New approaches from applicants previously housed into the private sector**

If an applicant becomes unintentionally homeless from their private rented tenancy within two years the statutory homeless duty owed to them by the local authority who made the private rented sector offer will automatically revive. This is called the re-application duty. However, this duty will only revive once; there will be no duty owed by a local authority in continuation of the original duty if the applicant again becomes homeless. If an applicant becomes homeless for a second time within two years of accepting a private rented sector offer, they must make a fresh homelessness application.

In cases where the duty revives and the applicant applies to a different local authority, the applicant can be referred back to the original local authority, unless there is an identified risk of harm to the household.

The revived duty may again be discharged through a further offer of private rented accommodation, in accordance with this policy.

## **10 Reviews on the suitability of accommodation offered**

As part of the offer process and in accordance with the Council's policies and procedures, applicants will be advised of their right to request a review of the suitability of the accommodation offered. Applicants will also be advised of advice services, for example Citizens Advice Bureau or Shelter.

### **10.1 Review process**

Applicants can request a review within 21 days of the local authority telling them that they consider an offer to be suitable and that it has discharged its duty under homeless legislation. This request can be made by a representative on behalf of an applicant.

Review requests can be made in writing or verbally. The local authority will advise the applicant of the full procedure and process for completing a review of the suitability of the accommodation offered.

The local authority will consider review requests received after 21 days, but is not obliged to agree to carry out the review.

Once a review request has been received, the local authority will write to the applicant to acknowledge the request and provide details of the review procedure.

The local authority will complete the review within 56 days of receiving the applicant's original review request (unless a longer period is agreed).

The review will be carried out by a senior officer of the local authority. This officer must not have been involved in the original decision.

## **10.2 Review outcome**

The review outcome can be:

Unsuccessful – in this situation the local authority's original decision will stand

Successful – in this situation the local authority will amend their original decision.

Once the review has been completed, the local authority will write to the applicant or their representative informing them of the review decision. The letter will be sent to the applicant or will be available for collection from the local authority offices.

The outcome letter will explain the following:

- the review decision
- how the local authority reached this decision; and
- the right to appeal the review decision to the County Court if the applicant believes the decision is legally incorrect. An appeal must be made within 21 days of being notified of the review decision. (For further information on the appeals process, please see below).

## **10.3 Accommodation options during and after a review decision**

During the review process, the Local Authority is not legally obliged to provide the applicant with temporary accommodation. Applicants will be advised to accept the final offer of accommodation whilst the review is being considered where the landlord has confirmed they are happy to release the applicant from the tenancy if the review request is successful.

This is because the applicant will have somewhere to stay during the review process there is no guarantee of a further offer of accommodation following the outcome of the review.

During the review process if the offer has not been accepted, it may, at the landlord's discretion, be held open whilst the review is considered.

If the review is unsuccessful and the property is still available, the applicant may be offered the property again. If the review is successful, the applicant will be entitled to another final offer.

## **11 County Court Appeals**



An applicant can appeal to the County Court on any point of law for one of the following reasons:

- if they feel the review decision is legally incorrect; **or**
- if the local authority has not met the time limit to complete the review process

All appeals must be made to the County Court within 21 days of the review decision.

Applicants considering an appeal to the County Court are advised to obtain independent legal advice e.g. citizens advice bureau or shelter.

The local authority is not legally obliged to provide the applicant with accommodation during an appeal process.

## **12 Complaints to the Local Government Ombudsman**

If an applicant is not satisfied with a review decision, they can complain to the Local Government Ombudsman.

The Ombudsman will not consider certain matters, for example, if 12 months has passed since the cause for complaint occurred or when matters are, or could be, subject to court proceedings.

The Ombudsman will consider a complaint if an applicant believes they have been treated unfairly as a result of maladministration. Examples include:

- Delayed taking action without good reason
- Taken into account irrelevant considerations or ignored relevant considerations
- Not followed rules (legal or local procedures)
- Given the wrong decision
- Not reached a decision in the correct way

Contact details for the Local Government Ombudsman are:

The Local Government Ombudsman

PO Box 4771

Coventry

CV4 0EH

Telephone: 0300 061 0614

Website: [www.lgo.uk](http://www.lgo.uk)

## **13 Reviewing the Policy and Eligibility**

This Policy will be reviewed in line with any significant change in legislation, guidance issued by the DCLG or significant case law. Separate to this it should be reviewed every two years.

## **Appendix A**

### **Suitability and location / subjective circumstances of the applicant**

The Homelessness (Suitability of Accommodation)(England) Order 2012 Part 2 requires the Council to take into account the location of the accommodation including:

- (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority
- (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household
- (c) the proximity and accessibility of the accommodation to medical facilities and other support which
  - Are currently used by or provided to the person or members of the person's household; and
  - Are essential to the wellbeing of the person or members of the persons household and
- (d) The proximity and accessibility of the accommodation to local services, amenities and transport.

Each case will be assessed against the location regulations using a standard checklist.

In addition any other subjective matters which on the facts and circumstances relating to the applicant or a member of their household may affect the suitability of the property offered will also be considered at the point the property is matched to the applicant: these could include for example:

- Safety issues relating to possible harassment or domestic abuse that relate to the location of the accommodation offered
- Any medical issues that do not relate to the proximity and accessibility of medical facilities including issues of support
- The size of the accommodation offered in respect of bedroom eligibility under Local Housing Allowance rules.
- Any physical, mental health, or addiction issues and the impact of the accommodation on these issues
- Any claim that the property is too far from a Church or Mosque

- Any claim that there is no access to a garden which is essential
- Any claim that the property location will impact on childcare which is essential for the applicant to continue in education or training.

### **Suitability – Property Standards & Management**

The Homelessness (Suitability of Accommodation)(England) Order 2012 – part 3 sets out a list of requirements relating to the property and its management that must be met in order for the property to be suitable.

The Council must be of the view that the accommodation is in reasonable physical condition and is suitable in terms of:

- Certain electrical regulations
- Fire Safety
- Gas Safety Record & CO alarm
- HMO Licensing
- The property has a valid Energy Performance Certificate (EPC)
- That a written 12 month assured shorthold tenancy agreement will be provided
- And that the landlord is a 'fit and proper' person to act in the capacity of landlord.

To ensure suitability against minimum statutory standards a property must be accredited under the Council's property accreditation scheme and will be inspected by a Council Officer to ensure that it is free from Category 1 hazards under Section 4 of the Housing Act 2004 Housing Health & Safety Rating System.

### **Suitability and affordability**

For the property to be suitable it must be affordable under Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No3204).

The following will be considered to assess whether the property is affordable:

Where an applicant is on benefits and qualifies for local housing allowance (LHA), the rent required will be considered against the amount of benefit the applicant will receive under the LHA scheme. Where there is a shortfall and the rent cannot be reduced through negotiation, the authority will consider the applicant's residual income after meeting the costs of accommodation including the shortfall and all other expenditure required for that applicant to provide the ordinary necessities of life. If following this assessment the applicant is not left with a residual income that is less than the level of income support or income based job seekers allowance, then the property will be deemed to be suitable.

Where an applicant is working and not in receipt of LHA or partial LHA the authority will consider whether the applicant's residual income after meeting

the costs of accommodation and all other expenditure required for that applicant to provide the ordinary necessities of life. . If following this assessment the applicant is not left with a residual income that is less than the level of income support or income based job seekers allowance that would be applicable if they were entitled to claim such benefit, then the property will be deemed to be suitable.

The authority will also consider whether the property will be affordable in the next 12 months if it is known that circumstances are likely to change for example due to welfare reform.

The ordinary necessities of life will always be the amount of income required for heating, eating and clothing and may also include childcare costs, travel costs and any other expenditure deemed to be essential.

Before deeming the property to be suitable the authority will consider paragraph 17.40 of the Homelessness code of guidance.