

Policy for discharging statutory homelessness duty into the private rented sector

Background

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. The homelessness changes were enacted on 9 November 2012.

Local authorities owe applicants who are homeless, eligible for assistance, in priority need and not intentionally homeless the main housing duty to secure suitable accommodation (unless a referral to another local authority can be made under the local connection provisions). Applicants can remain in temporary accommodation for a long period while they wait for a permanent offer of social housing.

The Act 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 a suitable offer of an assured shorthold tenancy with a minimum fixed term of one year and only applies to households applying as homeless on or after 9 November 2012.

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

This policy has been developed by the Kent Housing Options Group (KHOG) for use by all Kent authorities. It provides a policy framework that can be amended by individual local authorities to reflect local priorities if required.

The “Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012” sets out how the new power, which allows private rented sector offers to be made to end the main homelessness duty, should work. Please refer to the Guidance for further information on the correct procedure to be followed when making a private rented sector offer.

Suitability of Accommodation

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 current guidance on suitability contained in the Code of Guidance will also continue to apply. The Suitability Order has been reproduced in Appendix A of this policy – in brief, the criteria local housing authorities must take into account when determining whether a property is suitable can be summarised as follows:

- Location – particularly when accommodation offered is outside the local housing authority's area. Proximity to place of employment, education, medical services and local amenities must also be considered.
- Physical condition of the property – a visit to the property to determine suitability must take place by either an officer from the local housing authority or someone acting on their behalf.
- Health and Safety matters – local housing authorities must satisfy themselves that the property is safe. This is likely to include checks to establish the property's electrical and gas equipment is safe, that a fire risk assessment has been carried out and that the property has an Energy Performance Certificate and valid Gas Safety certificate.
- Landlord behaviour – local housing authorities should satisfy themselves that the landlord of the accommodation is a fit and proper person.
- Elements of good management – there should be a written tenancy agreement which the local housing authority should check to ensure it does not contain unfair or unreasonable terms.

1. Policy overview

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

1.2 The policy applies to the following local authorities: (Local authorities to be added at their request)

- Ashford Borough Council
- Dartford Borough Council
- Dover District Council
- Medway Unitary Authority
- Tonbridge & Malling District Council
- Tunbridge Wells Borough Council

- 1.3 The local authorities who have signed up to the policy, are all partners in a choice based lettings system, Kent Homechoice, and its associated Information Sharing Protocol.
- 1.4 Co-operation and information sharing: the local authorities who have signed up to the policy have agreed to inform the relevant local authority if they intend to discharge duty through a private rented sector offer in another area. The local authority which is making the offer of accommodation must provide confirmation to the local authority where the property is located that it has been assessed as suitable for the applicant, in accordance with the terms of this policy.
- 1.5 The policy provides a framework which works alongside each local authority's published Allocation Policy and Tenancy Strategy and any additional local criteria identified by individual local authorities.
- 1.6 The policy will comply with:
 - The Housing Act 1996, as amended by the Homelessness Act 2002
 - The Localism Act 2011
 - Suitability of Accommodation order 2012
 - Equality Act 2010
 - Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012
 - Homelessness Code of Guidance 2006

2. Policy aims and objectives

- 2.1 This policy was written at the request of the members of Kent Housing Options Group (KHOG). The aim of the policy is to provide a framework for the Kent local housing authorities who will be discharging their homelessness duty through private rented sector offers. Adopting the policy is not compulsory, although it is hoped that as many Kent local authorities as possible will do so, to ensure a consistent approach to implementing the power across the County.
- 2.2 The policy will ensure a comprehensive and consistent needs and risk assessment is carried out for each statutory homeless household. This approach will ensure applicants' needs are appropriately met.

- 2.3 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.
- 2.4 Each case will be assessed on an individual basis, to avoid blanket policies.

3. Assessment Procedure

3.1 As far as reasonably possible, local authorities will secure accommodation in their own areas. If a local authority does make a private rented sector offer out of their own area, they must notify the housing authority in whose district the accommodation is situated within 14 days of the accommodation being made available to the applicant. This is a requirement under Section 208(2) of the Housing Act 1996 and is set out at Section 57 of the Supplementary Guidance.

3.2 The Private Sector Housing Team in the area the property is located should be notified of any potential placements. As a minimum the following should be adhered to:

A check should be made with the Private Sector Housing Team where the property is located to check the property and management history is satisfactory; and

An inspection of the property should be carried out ensuring there are no Category 1 hazards present at the property or that any such hazards present are being addressed in a satisfactory manner; and

Where appropriate the property is licensed; and

Internal local authority procedure should be followed in terms of who carries out the inspection and what is required above the legal minimum standard of housing. It is recommended that an inspection is carried out by a qualified person, preferably from the Council's Private Sector Housing Team. As well as meeting the minimum standard of housing it should be expected that the property is in good repair.

3.3 Sections 46-74 of the Supplementary Guidance deal with Suitability and should be referred to alongside this policy.

3.4 Each case will be assessed on its own merit. Enquiries will be made by the local authority into the following areas of need and risk:

- Bedroom eligibility under Local Housing Allowance
- Physical Mobility / Health needs
- Mental / Emotional Health needs
- Practical Support / Advice needs
- Cultural/ Faith needs
- Risks to personal safety and community
- Risk to self (e.g. substance misuse/self-harming)
- Recent housing history
- Ability to manage finances/maintain home
- Ability to manage personal health and hygiene
- Relevant issues raised by the applicant
- Status of homelessness application
- Areas that best match the household's circumstances including taking account of educational and employment needs. The use of the private rented sector will potentially provide greater opportunity for households to remain in the area that is most suitable to their existing needs
- Affordability. This will take account of Local Housing Allowance levels, a household's income and expenditure with financial circumstances/thresholds measured according to the individual local authority's allocations policy.

3.5 The outcome of these enquiries will be recorded by each local authority and will determine whether the household is considered eligible for a private rented sector offer.

4. Assessed as suitable for discharge into private sector

4.1 Each case will be assessed on its own merits. A private sector tenancy will be considered for all statutory accepted households initially, but a thorough assessment process will be undertaken to ensure that this kind of accommodation is appropriate. If this proves not to be the case, other suitable housing options will be explored including, but not exclusively, a social sector tenancy for the household in line with the Suitability Order.

5. Selecting Households for Properties

5.1 Allocation of available properties will be at the local authority's discretion. Each case will be assessed on individual circumstances and in line with the terms of this policy. There are likely to be some differences in approach to allocation of private rented sector

properties, depending on each local housing authority's procurement arrangements for private rented sector properties.

- 5.2 However, it is important to note that irrespective of how a property is procured for the purposes of discharging a local authority's homelessness duty into the private sector, a private rented sector offer is made by the landlord of the property, not the local authority. The offer must be made by the landlord after the landlord and local authority have made an arrangement to bring the s193 duty to an end by use of s193(7AC) and when the local authority has approved this. A binding agreement will only come into force once the tenancy has been offered by the landlord and accepted by the tenant.

6. Offers of accommodation

- 6.1 If the applicant refuses the offer of accommodation, the local authority can end its statutory homeless duty.
- 6.2 Statutory homeless households are entitled to one suitable offer of accommodation.
- 6.3 The local authority will consider its homeless duty discharged if a suitable offer (known as a "final" offer) is refused.
- 6.4 The private sector offer must be an offer of an assured shorthold tenancy, with a minimum fixed term of one year.
- 6.5 Under these circumstances, this will be considered the applicant's one offer of suitable accommodation and will therefore discharge the statutory homeless duty.
- 6.6 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.

7. Refusal or failure to respond to an offer of suitable accommodation

- 7.1 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.

7.2. The local authority will also explain to the applicant that they may lose their right to temporary accommodation. For further information, please refer to section 9 below and to the relevant local authority Reviews Procedure.

7.3 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.

8 New approaches from applicants previously housed into the private sector

8.1 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 approved 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 became 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.

8.2 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.

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

9. Reviews on the suitability of accommodation offered

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

9.2 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.

- 9.3 Review requests can be made in writing or verbally to the relevant local authority. The local authority will advise the applicant of the full procedure and process for completing a review of the suitability of the accommodation offered.
- 9.4 The local authority will consider review requests received after 21 days, but they are not obliged to agree to carry out the review.
- 9.5 Once a review request has been received, the local authority will write to the applicant to:
- acknowledge the request
 - provide details of the review procedure.
- 9.6 The local authority will need to complete the review within 56 days of receiving the applicant's original review request (unless a longer period is agreed).
- 9.7 The review will be carried out by a senior officer at the local authority. This officer must not have been involved in the original decision.

9.8 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.
- 9.9 Once the review has been completed, the local authority will write to the applicant 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.
- 10.0 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).

9.10 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.

9.11 During the review process, the property originally offered may, at the landlord's discretion, be held open whilst the review is considered.

9.12 If the review is unsuccessful and the property is still available, the applicant may be offered the property again. The local authority will consider its homelessness duty discharged.

10. County Court Appeals

10.1 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

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

10.3 Applicants considering an appeal to the County Court are advised to obtain independent legal advice e.g. Citizens Advice Bureau or Shelter.

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

11. Complaints to the Local Government Ombudsman

- 11.1 If an applicant is not satisfied with a review decision, they can complain to the Local Government Ombudsman.
- 11.2 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.
- 11.3 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
- 11.4 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

12. 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

The Homelessness (Suitability of Accommodation) (England) Order 2012

(To be attached to a hard copy of the policy)