



Tonbridge and Malling Borough Council

Housing Services

Private Rented Sector Offer (Discharge) Policy

<b>Document History</b>		
<b>Version</b>	<b>Date</b>	<b>Comments</b>
1.0	08.06.20	First draft for comment
1.1	06.07.20	Paragraph 2.14 – Legal clarification that offer will go to next home who pass affordability test

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## **1. Introduction**

**1.1.** The implementation of the Localism Act in 2011 had a significant impact on the way in which Local Authorities were able to deal with applications for social housing and homelessness applications under Part VI and Part VII of the Housing Act 1996.

**1.2.** 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 Housing Act 1996 (unless a referral to another Local Authority was to be made under the local connection provisions)
- offering privately rented accommodation only with the applicant's explicit agreement (formally known as a 'qualifying offer').

**1.3** From 9 November 2012, the Localism Act s.148 (5) – (7) amended the Housing Act 1996 and enabled Local Authorities to discharge the full housing duty via a 'private rented sector offer' (PRSO) under s193 (7AA)-(7AC) Housing Act 1996. Any accommodation offered has to be suitable, but it no longer required the applicant's agreement to be a valid offer.

**1.4** Part VII of The Housing Act 1996, sets out the statutory obligations placed on Tonbridge and Malling Council relating to the prevention of homelessness and the assistance that should be given to those households threatened with, or who are actually homeless. From the 3 April 2018, additional obligations came into force via the introduction of the Homelessness Prevention Act 2017.

**1.5.** The additional duties that arose as a result of the new Homelessness Prevention Act have enhanced the prevention and relief of homelessness and include a requirement to provide more extensive housing advice and, where someone is actually homeless or threatened with homelessness, duties to 'prevent' or 'relieve' homelessness. This is done through the use of personal housing plans developed from detailed assessments of the individual circumstances of each applicant.

**1.6.** If homelessness is unable to be prevented or relieved, a decision will be made as to the extent of any advice, assistance and / or accommodation duty owed to the applicant. Where an applicant is homeless, eligible, has a priority need, is unintentionally homeless and has a local connection with Tonbridge and Malling, the 'main housing duty' to make available suitable accommodation will be owed. The main housing duty will continue until one of the events specified in the Housing Act 1996 brings it to an end.

**1.7.** There is provision within the Housing Act to use private rented sector accommodation as one way in which to discharge the prevention and relief duties, as well as a continuation of the ability to discharge the main housing duties. Accommodation must be suitable in all cases where the Council has secured it or helped to secure it and, in certain circumstances, must meet additional suitability requirements set out in the Homelessness (Suitability of Accommodation) (England) Order 2012.

**1.8.** Private rented sector accommodation will not be suitable for everyone and the circumstances of individual households will be carefully considered before pursuing this option to discharge a duty. However households should no longer assume that making a homeless application will lead to an offer of social housing.

**1.9.** This policy sets out how the council will make use of the private rented sector (PRS) when securing accommodation to discharge the statutory homelessness functions outlined above.

**1.10.** This policy operates alongside the following strategies and policies of the Council:

- West Kent Housing and Homelessness Strategy 2016- 2021
- Tonbridge and Mallings Allocations Scheme
- Tenancy Strategy

This policy complies with:

- Part 7 of the Housing Act 1996
- The Homelessness (Suitability of Accommodation) Order 1996
- Equality Act 2010
- Homelessness (Suitability of Accommodation) (England) Order 2012
- The Localism Act 2011
- Homelessness Code of Guidance for Local Authorities (2018)

## **2. Private Rented Sector Offers**

**2.1.** The private sector can be used to prevent or relieve homelessness or bring the main housing duty to an end

**2.2.** Tonbridge and Malling council will work closely with local providers of private rented accommodation to provide opportunities for all applicants, including those who do not have a priority need, to access private rented accommodation.

**2.3.** Any accommodation that the Council secures for an applicant to discharge homelessness must be suitable. To ensure suitability a range of factors including affordability, size, condition and location of accommodation must be considered. However, there are additional suitability requirements that apply to private rented sector accommodation that is offered:

- (a) To bring to an end the section 193(2) main housing duty (section 193(7F))
- (b) As a final accommodation offer made in the 189B relief stage (sections 193A (6) and 193C (9))
- (c) To an applicant who has priority need, in order to prevent or relieve their homelessness

**2.4.** These additional suitability requirements are set out in Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012 (see section 4)

### **Ending the Main Housing Duty**

**2.5.** If making an offer to end the main housing duty, this is defined by section 193(7AC) Housing Act 1996 as an offer of an assured shorthold tenancy made by a private landlord to an applicant in relation to any accommodation which:

- (a) has been made available for the applicant's occupation by arrangements made by the Council with a private landlord or
- (b) is made with the approval of the Council, in pursuance of arrangements made by the authority with the landlord with a view to bringing the section 193(2) of the Housing Act 1996 duty to an end, and
- (c) is a fixed term Assured Shorthold Tenancy for a period of at least 12 months.

**2.6.** The Council will consider its main duty to have ended, if an applicant accepts or refuses a private rented sector offer, subject to the applicant having been informed in writing of the following matters (as set out in section 193(7AB) Housing Act 1996):

- (a) the possible consequence of refusal or acceptance of the offer
- (b) that the applicant has the right to request a review of the suitability of the accommodation, and
- (c) in a case which is not a restricted case, the effect under new section 195A of a further application to the authority within two years of acceptance of the offer (the 'reapplication duty') (see section 3),

The Council must also be satisfied that the offer:

- (i) is suitable for the applicant and other household members, and
- (ii) that the applicant is not under contractual or other obligations in respect of his or her existing accommodation or, that if he or she is, they must be able to bring those obligations to an end before being required to take up the offer.

### **Ending the Relief duty (S189B) with a final accommodation offer**

**2.7.** An offer is a “final accommodation offer” if

- (a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become available for the applicant’s occupation
- (b) it is made with the approval of the authority, in pursuance of arrangements made by the authority in the discharge of their duty under section 189B(2), and
- (c) the tenancy being offered is a fixed term tenancy within the meaning of Part 1 of the Housing Act 1988 for a period of at least 6 months.

**2.8.** The authority’s duty to the applicant under section 189B(2) comes to an end if the applicant accepts or refuses a final accommodation offer, subject to the applicant having been informed of the consequences of refusal and the applicant’s right to request a review of the suitability of accommodation.

The Council must also be satisfied that:

- (i) the offer is suitable for the applicant and other household members, and
- (ii) the applicant is not under contractual or other obligations in respect of his or her existing accommodation or, that if he or she is, they must be able to bring those obligations to an end before being required to take up an offer

If an applicant refuses a final offer this precludes then from subsequently being owed the main housing duty

If the S189B(2) duty ends as an applicant deliberately refuses to co-operate then the main housing duty will not apply, but the council are obliged to ensure that accommodation is made available to the household (S193C(4)) and this will end if the applicant then accepts or refuses a final offer of accommodation.

### **An offer to an applicant who has a priority need in order to prevent or relieve their homelessness**

**2.9** An offer of private sector accommodation to an applicant who has priority need in order to prevent or relieve homelessness must meet the additional suitability requirements of Article 3 (Homelessness (Suitability of Accommodation) (England) Order 2012).

### **Households that will be considered for a private rented sector offer**

**2.10** A private rented tenancy may not suit all households, and as such the council will consider each household’s circumstances as to the appropriateness of a private sector offer.

**2.11** To achieve this consideration will be given to suitability factors applicable to all accommodation used to secure accommodation under Part 7 of the Housing Act 1996, including any medical, physical and / or support needs identified in personalised housing plans.

**2.12** The factors taken into consideration when determining whether a private rented sector offer is suitable will be recorded in decision letters.

### **Private Rented Sector Offer Allocation Process**

**2.13** When a property becomes available for a private rented sector offer, it will normally be offered to the household that has the earliest section 184 decision date and for whom the property is suitable. There shall be exceptions to this procedure as follows:

**2.13.1.1** A private sector offer may be made for a household that has a later date of a homeless decision than other households for whom the property would be suitable in the case that the property would meet a particular need (for example, location or property type), where that need would be unlikely to be met through a Part 6 offer through the Housing Allocations Scheme. Where more than one household falls into this category and the level of need is equal, the household with the earliest decision date shall be made the offer. The decision to make an offer under these circumstances would be at the discretion of the Housing Options and Support Manager and be made on the basis of benefit to the household.

**2.13.1.2** Where the offer discharges the Council's duty to a 'restricted case' (see 2.17)

**2.14** All applicants being considered for a private rented sector offer of a specific property will undergo an affordability assessment, which will take into account income, expenditure and costs. A property will be judged to be affordable if a household would be able to meet their priority debts as they fall due, taking into account their necessary or reasonable living expenses. Applicants will not be made a private rented sector offer that is not affordable for them at the time of the offer. If a property is unaffordable, then the offer will go to the household with the next earliest s184 decision letter which does pass the affordability test

**2.15** A private rented sector offer is made with the approval of the local authority. However, the landlord of the property will have the final decision on whether a particular household will be accepted into the property.

**2.16** Households may continue their registration on the Housing Allocations Scheme following the acceptance or rejection of a private rented sector offer. The application will be assessed in light of their new circumstances as per the Council's Allocations policy.

### **Restricted Cases**

**2.17** There are some households who are assessed as being statutorily homeless but are defined as a 'restricted' case. A restricted case occurs when:

**2.17.1** The main applicant is an eligible person; and

**2.17.2** The applicants household contains a 'restricted person' (someone who is subject to immigration control with no recourse to public funds); and

**2.17.3** It is the presence in the household of the restricted person that has led to the main housing duty having been accepted (i.e. the presence of the restricted person denotes that the household has a priority need)

**2.18** In the event of a 'restricted case' local authorities must bring the section 193(2) main housing duty to an end by making the applicant a private rented sector offer so far as is reasonably practicable. The Council will use the private rented sector to discharge this duty to 'restricted case' households.

### **3 Reapplication duty**

**3.1** If the household becomes unintentionally homeless within two years of accepting a private rented sector tenancy which the Council has secured for them to end the main housing duty (s.193 (7AA)), then the reapplication duty (section 195A (1) Housing Act 1996) applies.

**3.2** Under section 195A(1), the section 193(2) Housing Act 1996 duty will apply regardless of whether the applicant has a priority need where:

(a) a person makes a re-application for assistance within two years of accepting a private rented sector offer

(b) the applicant is eligible for assistance and has become homeless unintentionally

**3.3** Section 195(2) Housing Act 1996 duty, owed to eligible applicants in priority need and threatened with homelessness, will apply regardless of whether the applicant has a priority need where:

(a) a person makes a re-application for assistance within two years of accepting a private rented sector offer

(b) the applicant is eligible for assistance and is threatened with homelessness unintentionally

**3.4** If, following the expiry of the initial 12 month assured shorthold tenancy, an applicant secures their own accommodation and then subsequently becomes homeless within two years of accepting the original private rented sector offer then the re-application duty will still apply.

**3.5** The re-application duty does not apply in a restricted case (see sections 2.17 and 2.18).

**3.6** An applicant can only be owed the re-application duty once following each private rented sector offer. If an applicant becomes unintentionally homeless again within the two year limit and have already been assisted under the re-application duty, then they must make a fresh homelessness application.

#### **Referrals to Other Local Authorities**

**3.7** The section 193(2) duty on re-application within two years will apply regardless of whether or not the Council is the same authority that arranged the private rented sector offer. The Council will first carry out investigations to determine whether the applicant is homeless through no fault of their own, under sections 195A and 195(2) Housing Act 1996. Once it has been established that the applicant is unintentionally homeless and eligible for assistance, the Council may refer the applicant to the authority that made the private rented sector offer. The authority which made the private rented sector offer will owe the reapplication duty and it will be their responsibility to secure accommodation is available for occupation by the applicant.

**3.8** Referrals to another local housing authority will only be made if there would be no risk of domestic violence, or any other form of violence to either the applicant, or anyone who might reasonably be expected to reside with the applicant, in the district of the other authority, and it is likely that a return to that district would lead to further violence.

#### **Section 21 Notices**

**3.9** As a consequence of the introduction of the re-application duty, the Council is required to treat section 21 notices differently.

**3.10** Where an applicant has been given a notice under section 21 Housing Act 1988, the applicant must be treated as threatened with homelessness from the date the notice is issued. This means that the Council must take reasonable steps to secure that accommodation does not cease to be available for their occupancy.

**3.11** Section 195A(2) provides that, for the purpose of section 195A(1) Housing Act 1996, where an applicant has been given a notice under section 21 Housing Act 1988, the applicant must be treated as homeless from the date the notice expires. It is not necessary for a possession order to have been sought by the landlord for the applicant to be considered homeless.

## **4 Suitability**

**4.1** Where the council has secured accommodation to discharge a prevention, relief or main housing duty, the accommodation must meet the suitability considerations set out in the Housing Act 1996, relevant case law, and the Homelessness Code of Guidance 2018.

**4.2** Where a private rented sector offer is made to discharge duties under section 2.3 (a), (b) or (c) above, the accommodation must also comply with Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012.

**4.3** The suitability of the location for all the members of the household must be considered. Particular consideration must be made of the employment, caring responsibilities and educational needs of the household. Where possible the Council will try to seek to secure accommodation close to where the applicant was previously living in order to retain established links with schools, doctors, social workers and other key services and support and close to any persons for whom the applicant is a registered carer.

**4.4** Properties will be inspected by a suitably qualified officer who must be satisfied that it is in a reasonable condition and free from any Category 1 hazards under the Housing Health & Safety Rating System.

**4.5** The Council will require a copy of a written tenancy agreement specifying the terms of the tenancy and will review whether it is adequate. An adequate agreement sets out in a clear and comprehensible way the tenant's obligations.

**4.6** The tenant will be given a copy of this agreement and the Council will hold a copy on file.

**4.7** All 12 month tenancy agreements made under private rented sector offers to end the main housing duty should include an option for the renewal of the tenancy for a further 12 months if agreed upon by both the landlord and the tenant.

**4.8** Where private rented sector offers are used to discharge a prevention or relief duty, the Council encourages the use of tenancies for longer than 6 months wherever possible.

**4.9** A property will not be considered suitable if the landlord cannot provide evidence of the following:

**4.9.1** All electrical equipment in the property is safe, meeting the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994

**4.9.2** Any furniture and furnishings supplied must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended)

**4.9.3** That reasonable precautions have been taken to prevent the possibility of carbon monoxide poisoning, where such a risk exists, for example the installation of a carbon monoxide alarm

**4.9.4** A valid, current, energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

**4.9.5** A current Gas Safety certificate in accordance with the Gas Safety (Installation and Use) Regulations 1994

**4.9.6** A House of Multiple Occupation (HMO) Licence for properties subject to sections 55 and 56 of the Housing Act 2004

**4.9.7** Also for properties subject to HMO licencing, a fire risk assessment of the common or shared parts of the building leading to adequate and appropriate fire safety measures

**4.10** A written record will be kept of the officer that inspected the property, the date, copies of relevant documentation and instructions for any works to be undertaken (as per 4.4 above).

**4.11** Applicants will only be offered accommodation owned by persons that the Council is satisfied are 'fit and proper' to act in the capacity of a landlord. Local authorities are required to consider any convictions in relation to:

- housing and landlord and tenant law
- fraud or other dishonesty
- violence or drugs
- discrimination and/or sexual offences
- management failures
- harassment or illegal eviction
- the Equality Act 2010

In order to investigate the above, the Council will check its own records and conduct appropriate and proportionate checks, on all landlords whose properties are being used for private rented sector offer. This will include checking the database of rogue landlords or letting agents. In cases where any problems are flagged, the Council may make checks with local police and probation services through the existing Information Sharing Protocol and may also do a credit check.

**4.12** The particular requirements of 4.11 do not apply to accommodation secured for households that do not have a priority need, or to accommodation that the authority helped the applicant to secure but the applicant identified for themselves. This is in accordance with homelessness legislation and the Homelessness Code of Guidance 2018. However, reasonable efforts will be made to ensure that private rented sector accommodation secured for applicants who do not have a priority need is safe, and in reasonable condition. All applicants looking for their own accommodation will be provided with sufficient guidance to enable them to consider standards.

## **5 Location**

**5.1** Section 208(1) of the 1996 Act requires that authorities shall, in discharging their housing functions under Part 7 of the 1996 Act, in so far as is reasonably practicable, secure accommodation within the authority's own district.

**5.2** Where this is not possible a private rented sector offer may be made outside of Tonbridge and Malling and the relevant local authority will be notified. When using accommodation outside of the district, wherever possible, the accommodation will be in the nearest practicable local authority area.

**5.3** There may be clear benefits for some households in being made an offer outside of the Borough, for example where a member of the household is at risk of violence or where ex-offenders or drug/alcohol users would benefit from being accommodated away from the area to break links with previous negative contacts.

**5.4** When considering the suitability of location of accommodation, the authority will take into account:

- distance of accommodation from the applicant's previous home
- disruption to the employment, caring responsibilities, or education of members of the household
- access to amenities such as transport, shops and other necessary facilities; and established links with schools, doctors, social workers and other key services and support essential to the wellbeing of the household

**5.5** Where a placement is made outside of the District, notice shall be given within 14 days to the receiving local housing authority in whose district the accommodation is situated.

## **6 Review process**

**6.1** Applicants will be advised of their rights in relation to Council decisions that are reviewable (S202 of the Housing Act) and will be conducted in line with Tonbridge and Malling's review procedures.

## **7 Monitoring and Review**

**7.1** Details of households for whom a duty is discharged through a private rented sector offer will be reported:

- Monthly to the Housing Options and Support Manager
- Quarterly to the Head of Housing and Environmental Health
- As required to Tonbridge and Malling's Management Team
- As required to the Communities and Housing Advisory Board
- Quarterly to the Ministry of Housing, Communities and Local Government via the HClic data collection system

**7.2** The policy will be reviewed in the first instance after 12 months of operation and subsequently every three years and, in exceptional circumstances, in response to significant changes in supply or demand conditions. It will also be reviewed in line with any significant change in legislation, guidance issued by the Ministry of Housing, Communities & Local Government or significant case law.

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