

The Southend-on-Sea Borough Council Discharging Homelessness Duty policy

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.

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.

Currently we can and do offer assured shorthold tenancies with private landlords. However the applicant can decline such offers as a full and final discharge of duty and insist that such accommodation should only be provided as temporary accommodation.

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 an offer of an assured shorthold tenancy with a minimum fixed term of one year.

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.

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, that allows private rented sector offers to be made to end the main homelessness duty, should work. The Guidance provides 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 Order requires that a property will not be considered suitable if:

- The accommodation is not in a reasonable physical condition.
- Any electrical equipment provided does not meet with the identified Electrical Equipment (Safety) Regulations.
- The landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied.

- The landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning.
- The landlord is not a fit and proper person to act in the capacity of landlord.
- A House of Multiple Occupation is subject to mandatory or discretionary licensing and it is not licensed
- The property does not have a valid Energy Performance Certificate
- The property does not have a current gas safety record
- The landlord has not provided the local housing authority with a written tenancy agreement which the local housing authority considers to be adequate

Assessment of whether a private rented sector property is suitable will be undertaken on a case by case basis. Wherever possible and in line with available resources a Council officer will inspect the property prior to offer to confirm that it meets suitability standards as set out in the Order. In certain cases where the standard of the property cannot be verified a full HHSRS inspection may be commissioned to be carried out by a Private Sector Enforcement Officer.

Due to the higher standards expected of properties managed by landlords and letting agents who are a member of South East Alliance of Agents, Landlords and Residents (SEAL) or accredited under a Council recognised scheme (Eastern Landlords Association, National Landlords Association) the Council will expect to work closely with these landlords to ensure compliance with Suitability of Accommodation Order.

1. 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 Council’s published Allocation Policy, Strategic Tenancy Strategy and Homelessness Prevention Strategy 2012-14.

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

2. Policy aims and objectives

The Council has and continues to discharge duty for a proportion of statutory homeless households via offers of private rented accommodation. This approach has helped the Council to meet the needs of households who could not be assisted in the social rented sector. Homeless households who require assistance with deposits are assisted with low cost loans and this approach has formed part of a homelessness prevention strategy which has successfully reduced the number of applicants who require temporary accommodation.

The private rented sector in Southend has continued to grow in importance rising as a proportion of overall stock from 14% in 2001 to over 20% in 2011 (Census, 2011).

The current economic situation and austerity measures mean that the risk of homelessness for some households is likely to increase. At the same time demand for a limited supply of social rented housing remains at a high level. As such the Council believes that private rented accommodation will continue to play a vital role in meeting the needs of homeless and potentially homeless households.

In order to meet future demand for homelessness services the Council wishes to use the option of discharging statutory homelessness duty for all households into suitable private rented sector where appropriate.

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.

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.

The Council recognise that discharge into the private rented sector may not be suitable in all cases and that each case should be assessed on its own merits, to avoid blanket policies.

The extent to which the Council exercises the power to discharge duty in the private retained sector will be reviewed periodically based on a value for money assessment of taking his approach in relation to the cost of funding deposits and available staff resource to assess suitability of private rented accommodation.

The decision to discharge duty into the Private Rented sector may be taken based on the requirements of the household and the availability of suitable social housing. Where there is a shortage of a certain type of property eg 2 bed or 4 bed, suitable accommodation could be sought in the private rented sector freeing up supply for non-homeless households on the housing register.

Strategic Implications of this duty

The ability to discharge duty into the private sector enables us to build on providing more sustainable options in social housing communities. In 2011/12 604 social properties were let through the On the Move Choice Based Lettings system 86* of these lets went to those where we had accepted a statutory duty (14%*). The vast majority of accepted homeless applicants are housed into social housing.

As a reasonable preference category, homelessness will continue to be prioritised within the Allocations Policy.

3. Assessment Procedure

The Council will secure accommodation in the local area in all cases except for exceptional circumstances.

Each case will be assessed on its own merit. Enquiries will be made by the Council 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
- Area of preference. The use of the private rented sector will potentially provide greater opportunity for households to remain in their preferred area.
- Affordability.
- Financial circumstances, as referred to in individual local authority allocation policies.

The Council's assessment, based on the above factors, will determine whether the household is considered eligible for a private rented sector offer.

4. Assessed as suitable for discharge into private sector

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, a social rented tenancy will then be considered for this household in line with the Suitability Order.

5. Selecting Households for Properties

Allocation of available properties will be at the Council's discretion. Each case will be assessed on individual circumstances and in line with the terms of this policy. Where the property is being let directly by a private landlord or letting agency, the landlord of the property will have the final decision on who will be accepted into the property.

Assessed as suitable for discharge into private sector

Singles/Couples

- Singles – under 35 for shared housing only
- Singles – over 35 can be considered for bedsits or one beds
- Couples
 - *Must be over 18 years*
 - *Low support needs*
 - Homelessness Application has been accepted

Families

- Households aged over 18 years and have children or include an expectant mother
 - *Low support needs*
 - Homelessness Application has been accepted

In some circumstances it may be decided that it is not appropriate for a household to be rehoused in the private rented sector. In these instances households will be able to bid for properties via the Council's choice based lettings scheme. Under the proposed draft Allocations Policy accepted statutory homeless households will receive reasonable preference (Band B) and will be expected to bid for suitable properties when they are advertised. The Council reserves the right to directly allocate property to a statutory homeless household if they have not bid for suitable properties (without good reason) within a four week time period.

Procedure

When a suitable property becomes available priority will be given as follows:

1st – Exceptional medical cases or other circumstances where it was agreed temporary accommodation would be unacceptable if the household was not prioritised for a property.

2nd - Households in temporary accommodation (longest stay first).

Then if none (or none suitable)

3rd- Households where negotiations have taken place (e.g. with a landlord) to avoid temporary accommodation if they are prioritised for a property.

Then if none (or none suitable)

4th - Next suitable homeless household (where a homeless duty has been accepted) with the oldest application date.

6. Offers of accommodation

Statutory homeless households are entitled to one reasonable offer of accommodation.

The Council will consider its homeless duty discharged if a suitable offer (known as a "final" offer) is refused.

The private sector offer must be an offer of an assured shorthold tenancy, with a minimum fixed term of one year.

Under these circumstances, this will be considered the applicant's one offer of suitable accommodation and will therefore discharge the statutory homeless duty.

If the applicant refuses the offer of accommodation, the Council can end its statutory homeless duty.

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 Council's allocations policy.

7. 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. For further information, please refer to section 9 below and to the relevant local authority Reviews Procedure.

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 Council's allocations policy.

8 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 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.

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.

9. Reviews on the suitability of accommodation offered

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.

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 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.

The local authority will consider review requests received after 21 days, but they are 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
- provide details of the review procedure.

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 mutually agreed).

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 making process.

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 and make an alternative suitable offer of accommodation

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.

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).

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 although an applicant can request that this be considered. 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, the property originally offered 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. The local authority will consider its homelessness duty discharged.

10. 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.

11. Complaints to the Local Government Ombudsman

From April 2013 If an applicant is not satisfied with a review decision and all internal complaints procedures have been exhausted, 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: 03000610614

Website: <http://www.lgo.org.uk/>

12. Reviewing the Policy and Eligibility

This Policy will be reviewed in line with any significant changes in legislation, guidance issued by the Government or significant case law. Separate to this it should be reviewed in line with the refresh of Southend-on-Sea Borough Council's Homelessness Prevention Strategy.