Policy on offering accommodation to end the Council’s Housing Duty for statutorily homeless households

Background

Legal Context

1. 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.

2. Local housing 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 housing 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.

3. Section 193 (7AA)-(7AC) of the Housing Act 1996 (as amended by section 148(5) -(7) of the Localism Act 2011) requires an offer of an assured shorthold tenancy with a minimum fixed term of one year.

4. 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 social housing by reason of homelessness.

5. These changes do not apply to people who have applied as homeless before 9 November 2012 and who were, on that date, owed a housing duty (whether interim or the full duty) resulting from their application.

6. Any accommodation secured by a local authority under Part 7 of the Housing Act 1996 must be suitable for the applicant. From 9 November 2012, the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601) requires local housing authorities to take into account the location of accommodation offered when determining its suitability. The order also sets out the minimum standards that must be met if a ‘private rented sector offer’ is to be treated as suitable, including that the landlord is a fit and proper person and that the property meets a number of requirements regarding its condition. The Suitability Order is attached at Appendix A.

7. From 9 November 2012, if an applicant makes a further homelessness application within two years of the acceptance of a ‘private rented sector (PRS) offer’ s/he is automatically to be treated as being in priority need. If the local authority decides s/he is homeless, eligible for assistance and not intentionally homeless, the main housing duty is revived and the applicant can be referred back to the authority which made the original PRS offer (except where there is a risk of domestic violence).

8. On 9 November 2012, the Government published supplementary guidance on the homelessness changes within the Localism Act and on the Homelessness (Suitability of Accommodation) (England) Order 2012. This guidance is attached at Appendix B.
Policy Context

The Council considers that housing market pressures on affordability, demand and housing supply across tenure types make it necessary for the Council to be able to take advantage of the new powers available. The Council considers that the private sector is capable of providing a suitable solution to the crisis of homelessness in the shorter term, allowing the Housing Register to provide a single access route for those who need social housing in the longer term. Utilising the new powers will prevent some applicants from refusing offers of non-social tenancies and, therefore, relieve some pressure on the Housing Register.

Furthermore, it is anticipated that the Council will be able to reduce the length of stay for households in temporary accommodation and the costs associated with such provision. It should, additionally, help the Council to avoid using bed and breakfast accommodation, particularly for homeless households with children.

The Council is satisfied that there are sufficient safeguards within the Localism Act provisions, and through the accompanying secondary legislation, to ensure that Private Rented Sector Offers will be able to afford households suitable and settled accommodation.

When developing this policy, strong consideration was given to the Council’s existing policy of utilising the private rented sector to prevent homelessness. The Council’s Homelessness Prevention Team has successfully helped numerous households who were threatened with homelessness to obtain accommodation from a private landlord. In many cases the Council’s assistance has included incentives such as arranging rent in advance, providing a rent deposit guarantee bond, arranging tenancy support and providing tenancy documentation. This approach is promoted and endorsed by the Council’s Homelessness Strategy.

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”. The policy will comply with:

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

2. Policy aims and objectives

2.1 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.

2.2 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.
3. Assessment Procedure

3.1 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.

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

- 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
- Affordability
- Financial circumstances, taking into account any provisions within the Council’s Allocation Scheme

3.3 The outcome of these enquiries will be recorded and will determine whether the household is considered eligible for a private rented sector offer.

3.4 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.

4. Selecting Households for Properties

4.1 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.

4.2 The Homelessness (Suitability of Accommodation) (England) Order 2012 deals with the 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. Statutory guidance on suitability contained in the Code of Guidance will also continue to apply in conjunction with this policy document.

4.3 In determining the suitability of a property for an applicant, the issue of location will be properly considered along with other relevant matters with particular reference to the standard of the accommodation, its affordability and any other factors specific to the needs of the individual household.

4.4 As far as reasonably possible, accommodation will be secured within the District of Tandridge. However in exceptional circumstances, it may be considered appropriate to make an offer of private rented accommodation outside the District. Examples of such situations would include:
- Where the needs of the applicant are such that an alternate location outside the District would provide better access to support, education, employment or other aspects that would usually be a significant factor in determining suitability
- Where there is no available property suitable within the District to meet the needs of the applicant and it is considered unlikely that a suitable property will become available within a realistic timescale
- Where it is not reasonable for the applicant to remain in the District, or a particular part of it, and there is little prospect of a property becoming available in any part of the District that may be reasonable for the applicant

4.5 This policy will be applied on the basis of ensuring best use of housing stock in the Council’s area. Whenever it is possible for a household’s housing needs to be satisfactorily met in either social rented housing or private rented housing, the Council, will consider the following factors:

- Welfare reform impacts on specific household types, particularly in high cost housing areas, and on affordability for larger families
- The availability of social housing stock in the area and the demand for this housing from other households in need on the Council’s Housing Register

The level of private rented sector supply will ultimately determine the number of cases where the full housing duty is ended through a private rented sector offer. In some cases it may be that the reasonable preference accorded to the household on the Housing Register may be sufficient for social housing to become available to the household before a private rented sector offer can be made. This may particularly be the case in areas of lower demand and/or higher social rented housing supply. However, in the majority of areas, social housing supply pressures are likely to mean that a private rented sector offer will be made before an allocation of social housing becomes possible.

4.6 In the event that accommodation is secured outside the District, the local housing authority where the accommodation is situated should be notified in writing. Any other relevant agencies (as may be appropriate depending on the needs of the applicant’s household) should also be notified.

5. **Offers of accommodation**

5.1 Statutory homeless households are entitled to one reasonable offer of accommodation to end the main housing duty.

5.2 The Council will make a single suitable offer of accommodation. If the applicant accepts or refuses this offer, the Council will consider its homelessness housing duty ended.

5.3 For households whose homelessness application was made on or after 9 November 2012, this offer could be a final offer of social housing, made under Part 6 of the Housing Act 1996 and in accordance with the Council’s Allocation Policy, or a private rented sector offer. For households whose homelessness application was made prior to 9 November 2012, this offer will be a final offer of social housing made under Part 6 of the Housing Act 1996.

5.4 The private rented sector offer must be an offer of an assured shorthold tenancy, with a minimum fixed term of one year.
6. Refusal or failure to respond to an offer of suitable accommodation

6.1 If a homeless applicant, owed the main housing duty, refuses or fails to respond to a suitable offer of accommodation in the private or social sector, the Council’s statutory duty to provide accommodation will end. The Council will explain the applicant’s right to a review of the suitability of the offer of accommodation.

6.2 The Council will also explain to the applicant that they may lose their right to temporary accommodation. For further information, please refer to section 8 below and to the Council’s Reviews Procedure.

6.3 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 Council’s Allocation Policy.

7. New approaches from applicants previously housed into the private sector

7.1 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 that 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.

7.2 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.

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

8. Reviews on the suitability of accommodation offered

8.1 As part of the offer process, 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.

Review process

8.2 Applicants can request a review within 21 days of the Council 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.

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

8.4 The Council will consider a review request received after 21 days but is not obliged to agree to carry out the review.

8.5 Once a review request has been received, the Council will write to the applicant to:
• acknowledge the request
• provide details of the review procedure.

8.6 The Council will need to complete the review within 56 days of receiving the applicant’s original review request (unless a longer period is agreed).

8.7 The review will be carried out by a senior officer at the Council. This officer must not have been involved in the original decision.

Review outcome

8.8 The review outcome can be:

• Unsuccessful – in this situation the Council’s original decision will stand
• Successful – in this situation the Council will amend their original decision.

8.9 Once the review has been completed, the Council 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.

8.10 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

8.11 During the review process, the Council is not legally obliged to provide the applicant with temporary accommodation. Applicants will be advised to accept the 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.

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

8.13 If the review is unsuccessful and the property is still available, the applicant may be offered the property again. The Council will consider its homelessness duty ended.

9. County Court Appeals

9.1 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

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

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

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

10. **Reviewing the Policy and Eligibility**

10.1 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.