



POLICY ON DISCHARGING THE
HOMELESSNESS DUTY INTO THE
PRIVATE RENTED SECTOR

May 2014

Executive Summary

The homeless duty arises when a household presents to the Council as homeless or threatened with homelessness within 28 days and they meet certain criteria.

Homeless applicants usually include households with dependent children, pregnant women or a household containing a person who is vulnerable.

The Localism Act 2011 (sections 148 and 149) has amended the Housing Act 1996 by providing a new power to local housing authorities that allows suitable 'Private Sector Offers' to be used to end the main homeless duty, without requiring the applicant's agreement, provided this is done through an approved and published Policy and a 12 month assured short-hold tenancy is offered.

These changes are part of the government's wider social housing reforms. They seek to give greater freedoms to local authorities to make better use of good quality private sector accommodation that can provide suitable accommodation for households accepted as homeless. The government considers that allowing people owed the main homeless duty to turn down offers of suitable accommodation in the private rented sector and wait for an offer of social housing is unfair to other households on the housing register who would have to wait longer. This change will contribute to the reduction in the use of inappropriate temporary accommodation and the length of time spent in temporary accommodation for those households awaiting an offer of suitable housing for the long term.

Aims and Objectives

This policy operates alongside the Council's Choice Based Lettings Allocations Policy, Homelessness Strategy 2013-2018, and Tenancy Strategy 2013 and is compliant with:

- The Housing Act 1996, as amended by the Homelessness Act 2002
- Homelessness Code of Guidance 2006
- Equality Act 2010
- The Localism Act 2011
- Suitability of Accommodation Order 2012

This 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 at all times.

This policy will also ensure that 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.

We will ensure each tenancy is accompanied by a tenancy agreement and that the period of the tenancy is no less than a 12 month fixed period. We expect the

Council's Model Assured Shorthold Tenancy Agreement will be used by the landlord to ensure consistency and legal compliance.

Charnwood Borough Council will normally seek to secure private sector accommodation within its own boundary area although we recognise there will be occasions when an applicant requests accommodation outside of the borough. Each case will therefore be assessed on its own merits and by taking into account statutory instruments and Codes of Guidance in force at the time.

To enable the Council to discharge its duty in the most appropriate manner, where appropriate, we will work with our partner agencies and resident support services in order to provide tenancy support to households that we consider are vulnerable.

Suitability of accommodation

The government has introduced a new Suitability of Accommodation Order for private rented sector offers. This Order requires that a property must be in a reasonable physical condition and fulfil:

- Electrical and fire safety regulations
- Gas safety (Installation and Use) regulations (by having an up to date Gas Safety Certificate)
- HMO licensing regulations (where applicable)
- Energy Performance requirements (by having an up to date Energy Performance Certificate)

Where possible households will be encouraged to take part in accompanied viewings of any property identified as suitable for their needs prior to taking up the tenancy in order that the Council can be made aware at an early stage of any issues that the applicant may have with regard to the property.

Each property will also be subject to inspection by the Private Sector Housing Team to ensure that there are no Category 1 hazards under the Housing, Health and Safety Rating System (HHSRS), electric and gas checks are up to date and the property is in a reasonable state of repair. With reference to the Homelessness (Suitability of Accommodation) (England) Order 2012 the following requirements must be adhered to:-

“For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996, accommodation shall not be regarded as suitable where one or more of the following apply–

- (a) the local housing authority are of the view that the accommodation is not in a reasonable physical condition;

- (b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994;
- (c) the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;
- (d) the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;
- (e) the local housing authority are of the view that the landlord is not a fit and proper person to act in the capacity of landlord, having considered the appropriate checks in the Suitability of Accommodation Order 2012.
- (f) the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;
- (g) the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;
- (h) the accommodation is, or forms part, of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;
- (i) the accommodation is, or forms part of, relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998; or
- (j) the landlord has not provided to the local housing authority a *written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.”

*(We would normally expect the Council’s Model Assured Shorthold Tenancy Agreement to be used by the landlord in the majority of cases to ensure consistency).

Circumstances determining the private rented sector offer being made

An offer of a private rented tenancy may be made to any statutory homeless household apart from in the following exceptional circumstances

- The household is particularly vulnerable by way of old age, physical disability, mental health/learning difficulty and in need of supported accommodation;

- There is no suitable private sector tenancy available that meets the household's needs, for example where there is a physical disability and the property is not accessible;
- There is no suitable private sector tenancy available taking into account the provisions relating to the condition and management of the property, affordability and location.
- In cases of domestic violence where the property concerned is deemed to be too near the alleged perpetrator and could put the household at risk of harm.
- In cases of racial harassment/hate crime where the property concerned is deemed to be too near the alleged perpetrator and could put the household at risk of harm.
- In cases of mental health issues and learning difficulties where the available accommodation is located away from the household's support networks.

Selecting Households for Private Sector Properties

A selection procedure is in place in order to prioritise households for properties when they become available. The decision to prioritise households for 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 and procedure.

Procedure

When a suitable property becomes available, and where a homeless duty has been accepted, priority will be given as follows:

1st – Households with exceptional medical issues, or in circumstances where placing them in bed and breakfast/temporary accommodation would be unacceptable, or

Households with sufficient capital to meet 12 months' rent payments.

2nd- Households where negotiations have already taken place with a landlord, and it would avoid the use of bed and breakfast accommodation if we prioritised them for a property.

Then if none (or none suitable)

3rd - Homeless households prioritised by the oldest date accepted as homeless first and/or where the household has expressed a specific interest in the locality in which the property is available.

Households who are under offer for social housing would not normally be made a Private Rented Sector Offer. However where there is likely to be a delay in the social

housing property being available and they wish to expedite their situation, the choice of an offer in the private sector may be made with their agreement.

Affordability

An affordability check, i.e. assessing the household's income and expenditure, will be completed by the Housing Options Team to determine the ability of tenants to pay the rent on the property taking into account potential housing benefit available and income level. An income and expenditure assessment compatible with the Money Advice Trust/Child Poverty Action Group models will be used. In particular Housing Options advisers will take into account:-

- Necessities - food, clothing, heating, child care, travel costs;
- Other expenditure – debts such as loans and credit card repayments, any other reasonable expenditure.

The Council will ensure that, for applicants with insufficient capital, any requirement by the landlord for rent in advance/bond will be met within existing approved budgets.

Housing Options staff will liaise with Revenues and Benefits in considering the need for Discretionary Housing Payments if necessary.

The affordability check will be completed for any private sector rented accommodation whether for discharging the homelessness duty, provision of temporary or interim accommodation or accommodation provided as a prevention option. Government guidelines state that 'accommodation should be regarded as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit'.

Suitability of Offer

The Homelessness (Suitability of Accommodation) (England) Order 2012 sets out the circumstances that will determine whether the offer is 'suitable'. In particular, in accordance with the Order the local housing authority must take into account:-

(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 applicant or members of the applicant's household;

(c) the proximity and accessibility of the accommodation to medical facilities and other support which-

(i) is currently used by or provided to the applicant or members of the applicant's household; and

(ii) is essential to the well-being of the applicant or members of the applicant's household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport.”

Other Provisions

Housing Options advisors will document the reason why an offer of a private rented sector property has or has not been made in reaching a decision to end the homelessness duty.

Revised standard letters will be issued to homeless applicants stating that any household that is accepted as homeless may have the homeless duty ended through one offer of a suitable private rented sector 12 month assured shorthold tenancy. Applicants will be advised of their right to appeal regarding the suitability of the offer.

We will normally issue all letters to applicants by personal contact to ensure their safe receipt.

An applicant may re-apply to the Council should they become homeless again within a 2 year period from the date an offer of a private rented sector tenancy was accepted. Housing Options advisers will ensure that this date is recorded appropriately and the correct legal process is followed.

The statutory homeless duty automatically revives once and only if; an applicant remains eligible, regardless of whether the applicant has a priority need and becomes unintentionally homeless from their private rented tenancy within two years of accepting the tenancy.

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.

If a statutory homeless applicant refuses or fails to respond to a suitable offer of accommodation in the private or social sector, Charnwood Borough Council can end its statutory duty to provide accommodation. We will explain the applicant's right to a review of the suitability of the offer of accommodation. The applicant will also be informed that they may lose their right to temporary accommodation.

An applicant to whom the statutory homeless duty has ended as a result of their refusal or failure to respond to one suitable offer of accommodation will have their Housing Register application dealt with in line with Charnwood Borough Council's Choice Based Lettings Allocations Policy and the Leicestershire sub-regional Statement of Shared Policy. In these circumstances as the homelessness duty will have been discharged, the housing application will be reassessed based on the applicant's other circumstances at that time. This may result in the applicant being moved out of the priority band, into a lower band.

Reviews on the suitability of accommodation offered

As part of the offer process and in accordance with Charnwood Borough Council's policies and procedures, applicants will be advised of their right to request a review on the suitability of the accommodation offered. Applicants may also be advised of external advice services.

Review process

- 1) Applicants can request a review within 21 days of the Council telling them that they consider an offer to be suitable and that the homelessness duty has been discharged under homeless legislation.
- 2) Review requests can be made in writing or verbally to the Council and we will advise the applicant of the full procedure and process for completing a review of the suitability of the accommodation offered.
- 3) The Council will consider review requests received after 21 days, but will not be obliged to carry out a review.
- 4) Once a review request has been received we will write to the applicant to acknowledge the request and provide details of the review procedure.
- 5) We will complete the review within 56 days of receiving the applicant's original review request (unless a longer period is agreed).
- 6) The review will be carried out by a Senior Officer who will not have been involved in the original decision.

Review outcome

The review outcome can be:

- Unsuccessful - in this situation Charnwood Borough Council's original decision will stand.
- Successful - in this situation Charnwood Borough Council will amend its original decision.

Once the review has been completed the Council will write to the applicant informing them of the review decision. The outcome letter will explain the review decision, how the Council 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, see below).

Accommodation options during and after a review decision

During the review process Charnwood Borough Council 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. This is because the applicant will have somewhere to stay during the review process and 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. In this instance Charnwood Borough Council will consider its homelessness duty discharged.

County Court Appeals

An applicant can appeal to the County Court if they feel the review decision is legally incorrect or if the Council 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. The Council is not legally obliged to provide the applicant with accommodation during an appeal process.

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:

- A delay in taking action without good reason.
- Taking into account irrelevant considerations or ignoring relevant considerations.
- Not following rules (legal or local procedures).
- Not reaching 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

Contact details for the Housing Options Team are:

Contact us...

by telephone: 01509 634567 - Direct line to the Housing Options Team

by email: housing@charnwood.gov.uk

on the web: www.charnwood.gov.uk

Write to the Housing Options Team, Charnwood Borough Council,
Southfields, Loughborough, Leicestershire, LE11 2TX.