

## **Discharging statutory homelessness duty into the private sector** **Policy**

### **Background:**

The Localism Act 2011 introduced significant changes to the way local authorities may choose to exercise their functions relating to applications made under part 6 and part 7 of the Housing act 1996. The Localism Act allows local authorities to discharge the full housing duty owed to homeless households in the private sector by way of an offer of an assured shorthold tenancy with a fixed term of at least 12 months. Households receiving such an offer will not be entitled to reasonable preference on the waiting list due to homelessness.

Due to the high demand for social housing and low turn over of properties in Broadland, applicants found to be eligible, unintentionally homeless, in priority need and with a local connection to Broadland before the Localism Act changes could expect to receive an offer of social housing after a significant wait in temporary accommodation, unless they chose to seek their own solution via the private rented sector.

Following the systems thinking review of the housing service, Broadland has adopted a new allocations policy. The aim of the service is to 'understand (the clients') housing problem and help them to solve it'. We recognise that due to the limited supply of social housing only those most in need are likely to realise an offer from the waiting list. Residents in housing need will be offered the opportunity to discuss the full range of options available to them before a decision is made whether joining the waiting list is appropriate.

This policy is consistent in line with the Council's Allocations policy. The policy complies with The Housing Act 1996 as amended by the Homelessness Act 2002, the Localism Act 2011, the Equality Act 2010, the Homelessness Code of Guidance 2006 and the Suitability of Accommodation Order 2012.

The Suitability of Accommodation Order 2012 states that an offer of private rented accommodation made under this policy should fulfil the following criteria to be considered suitable:

- reasonable physical condition
- gas safety record
- electrical regulations are met
- fire safety regulations are met
- carbon monoxide alarm
- the landlord should be a 'fit and proper person'
- meet Houses in Multiple Occupation licensing requirements, where relevant
- Energy Performance certificate
- 12 month fixed term tenancy agreement as a minimum

## **Overview, aims and objectives:**

This document relates to the policy and procedures for discharging statutory homeless duties into the private sector. This document will be referred to as “the policy”.

Each case will be considered on its own merits. The policy seeks to ensure that both a comprehensive and consistent needs assessment and risk assessment are carried out for each household. This approach will ensure that each household’s needs are appropriately met.

This policy and associated procedure will seek to ensure that there is no unfair treatment of groups with protected characteristics on the grounds of those characteristics. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

## **Household assessment:**

### **Needs and risks:**

All households accepted as being owed the full statutory housing duty by Broadland will be assessed under this policy to determine whether they are suitable for an offer of accommodation in the private sector.

### **The assessment of each household will include consideration of:**

- local housing allowance bedroom eligibility criteria
- affordability
- financial circumstances and ability to manage finances
- ability to sustain a tenancy
- ability to manage personal health and hygiene
- mobility and physical health, including any requirement for adaptations
- mental health
- risk to self
- access to support
- safety
- housing history
- access to cultural and faith resources
- area of choice
- homeless application status
- any relevant issue raised by the household or their advocate

The outcome of this assessment will inform the decision whether an individual household is suitable for an offer of accommodation in the private sector under this policy. Where a household is not considered to be suitable for an offer of private rented accommodation under this policy they will be awarded priority for social housing.

### **Size criteria:**

Each household will be assessed individually and there may be circumstances where it is appropriate to deviate from the guide below, provided the resulting tenancy remains suitable and affordable to the household and the household agrees that the property is appropriate (for example, where the household has a preference for an additional bedroom for a visiting child and can afford the additional cost).

#### **Single person households:**

- Under the age of 35, **not exempt from shared accommodation rate:** shared accommodation only
- Under 35, exempt from shared accommodation rate: may be considered for shared accommodation, studio flats, bedsits and one bedroom properties
- Age 35 or older: may be considered for bedsits, studio flats or one bedroom properties

#### **Couples:**

- Considered for one bedroom properties

#### **Families, including expectant mothers:**

- Considered for properties in line with LHA size assessment

In all cases, the tenant will be over 18, accepted for the full housing duty by Broadland and assessed as suitable for an offer of accommodation under the policy.

### **Matching:**

The Council will seek to 'match' a household to an available private rented property which best meets their needs and preferences. It is likely where an applicant has a strong preference to remain in a particular area or move to a particular area that this will be easier and quicker to achieve in the private market than from social stock. Broadland has a predominantly owner occupied housing market with relatively few properties available to rent, either in the private market or from social stock. Ultimately the private landlord will have to agree to accept a particular tenant under this policy.

### **Making the offer:**

Households accepted as homeless are entitled to one offer of suitable accommodation.

The Council may consider its duty to a statutorily homeless household discharged if a suitable offer is refused.

The private rented tenancy must be available with a fixed term of at least 12 months.

Where a household is considered suitable for an offer of private rented accommodation under this policy, and a suitable property is available they will be made this offer without delay.

This will be considered the household's one offer of suitable accommodation and whether the household accept or refuse this offer, it will discharge the Council's statutory homeless duty.

The household's homeless application will be closed once duty is discharged. If the household was on the waiting list they will be removed as no longer in housing need. Should the household's circumstances change in the future and the household re-approach the Council, advice will be offered to try to resolve the housing issue and if appropriate they may be added to the waiting list for social housing again.

If a statutory homeless household successfully housed under this policy becomes unintentionally homeless from the accommodation within two years of the tenancy commencement, the full homeless duty is revived (regardless of priority need). This reinstatement of the homelessness duty can only happen once. When the household applies to a different local authority in these circumstances they may be referred back to the local authority which made the offer of accommodation under this policy, unless to do so would place the household at risk of harm. The revived duty may be discharged into the private sector again in accordance with this policy.

#### **Refusal/failure to respond:**

If a statutory homeless household refuses or fails to respond to an offer of suitable accommodation under this policy, the Council's duty to provide accommodation, including temporary accommodation, may end.

The household has a right to request a review of the suitability of the accommodation offer. (Further down)

Failure to respond or refusal of an offer of accommodation under this policy will result in the household's waiting list application being reviewed.

#### **Suitability review:**

With an offer of accommodation under this policy, households will be advised of their right to request a review of the suitability of the accommodation. Agencies such as the Citizens Advice Bureau or Shelter will be signposted to if appropriate.

An applicant can request a review of the decision that a property is suitable and that the duty owed to them under the homelessness legislation is discharged within 21 days of being notified of the decision. Review requests received later than this will only be accepted in exceptional circumstances.

Review requests may be made verbally or in writing to the Council.

Once a review request has been received the Council will write to the applicant to acknowledge receipt of the request and to provide details of the review procedure.

The review will normally be completed within 56 days of the review being requested, unless a longer time period has been agreed.

The review will be carried out by a senior officer who was not involved in the original decision.

The review may be unsuccessful (original decision upheld) or successful (original decision amended). Once the review has been decided the Council will write to the applicant informing them of their decision.

This letter will be sent to the applicant's home address, or where this is no longer known, a copy will be available for collection from the Council's offices.

The decision letter will give reasons for any findings that are made against the applicant. It will also set out the limited right of appeal to the County Court (see below).

#### **Accommodation pending outcome of review:**

The Council is not obliged to provide temporary accommodation during the review process and would only do so in exceptional circumstances. A review can be completed after the disputed offer has been accepted provided this is within the timescales above. Applicants will be advised to accept the disputed offer even if they wish to request a review to ensure that, if unsuccessful, they are not left without accommodation.

#### **County Court appeals:**

An appeal to the County Court must be made within 21 days of being notified of the review decision.

Applicants considering an appeal are advised to seek independent legal advice from a solicitor, the Citizens Advice Bureau or Shelter. Details will be provided on request.

The Council is not obliged to provide temporary accommodation during the appeals process and would only do so in exceptional circumstances.

An appeal to the County Court may only be made on a point of law. In other words, there must be a concern about the basis on which the Council reached its decision. Applicants cannot appeal to the County Court just because they are disappointed by or disagree with the decision.

### **Complaining to the Local Government Ombudsman:**

An applicant may complain to the ombudsman. But, as a general rule, the ombudsman will not become involved where legal remedies can be pursued. And, even if the situation may be one of maladministration, it will normally be necessary for the applicant to exhaust the council's internal complaints procedure first.

The Local Government Ombudsman may be contacted at:  
The Local Government Ombudsman  
PO Box 4771  
Coventry  
CV4 0EH

T. 07624803014

W. [www.lgo.uk](http://www.lgo.uk)

Reviewing the policy:

This policy will be reviewed every two years, or on the release of significant new caselaw or guidance if sooner

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