

## **Policy for making a Private Rented Sector Offer to statutorily homeless households**

### Purpose

This policy explains how Knowsley Metropolitan Borough Council (hereafter known as the Council) intends to use powers arising from the Localism Act 2011 to bring the main housing duty to an end by making a suitable offer of private rented sector accommodation (PRSO Policy).

This procedure explains how the policy will be administered. This is to ensure that the policy is adhered to in a consistent manner, plus ensure transparency when executing the principles of this policy.

### Legal context

The following sections in primary legislation represent the recent history of the new powers arising from the Localism Act 2011:

- s.197 Housing Act 1996 (repealed)  
s.7 Homelessness Act 2002 (amended 6 to 8 of Housing Act 1996  
s.193)
- s.148 Localism Act 2011 (S193(7F))

On 9 November 2012, the Localism Act 2011 (Commencement No. 2 and Transitional Provisions) (England) Order 2012 SI 2012/2599 brought into force the provisions in the Localism Act 2011 that allow local authorities to end the main housing duty to a homeless applicant by means of a 'private rented sector offer', i.e. a fixed-term assured shorthold tenancy for a minimum of 12 months.

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 change does not apply to people who have applied as homeless before 9 November 2012 and who were, on that date, owed interim accommodation pending a decision on their application.

Any accommodation secured by a local authority under Part 7 of the Housing Act 1996 must be suitable for an applicant. From 9 November 2012, the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601) requires local 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.

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).

The Government published on 9 November 2012 supplementary guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2102.

The policy will comply with the following legal instruments:

- 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

The policy will appropriately reflect the priorities and rules shown in the following local documents:

- Housing allocations policy
- Homelessness strategy
- Tenancy strategy

### Policy Options

Three policy options were identified to be available to the Council:

1. Not to adopt the power to end the duty for any accepted cases;
2. To adopt the power to end the duty for some accepted cases; or
3. To adopt the power to end the duty for all accepted cases.

These options have been considered in-depth via workshops attended by the Council's housing officers and workers employed at Knowsley Housing Options Service. Additionally, various good practice publications have also been consulted.

When considering which policy option to select it was considered important to ensure the Council was able to properly and safely comply with its statutory duties. It was concluded that housing market pressures on affordability, demand and supply of housing across tenure types made it necessary for the Council to be able to take advantage of the new powers available.

Furthermore, it was determined that the Council will be able reduce the length of stay for households in temporary accommodation and the costs associated with temporary accommodation provision. Additionally, it will help the Council to avoid using bed & breakfast accommodation for homeless households with dependent children and/or pregnant household members.

The Council is satisfied there is a range of safeguards embedded within the Localism Act provisions, and further safeguards through secondary legislation that accompany the main changes, to ensure that Private Rented Sector Offers afford households suitable and settled accommodation.

When considering the policy options available to the Council, weight was given to the fact that local Homelessness Strategy already promotes the use of private rented accommodation to prevent homelessness. Knowsley Housing Options Team has successfully helped numerous households who may be threatened with homelessness to obtain accommodation from a private landlord, sometimes with the assistance of various incentives, such as rent-in-advance, rent deposit or BOND guarantee.

### Policy Position

The Council has decided to adopt the power to end the duty for some accepted cases. The adoption of this approach will involve a combination of factors that will be specifically assessed to ensure the Council can suitably fulfil each household's housing needs including:

- The location required
- The number of bedrooms required
- The type of property required
- The rental costs that can be afforded

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 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.

The issue of location will be properly considered along with relevant matters that affect the sustainability of a household's accommodation including:

- Individual factors – e.g. special educational needs or factors (e.g. sitting exams), ill health (mental or physical), disability (physical/sensory)
- Interpersonal factors – e.g. being a former/present victim of crime, distance to essential local community facilities
- Environmental factors – e.g. availability of transport links, type/source of heating
- Economic – e.g. distance to employment/training opportunities

This policy will be applied on the basis of ensuring best use of housing stock in the local authority area. Whenever a household's housing needs are able to be satisfactorily sustained in either social rented housing or private rented sector housing, the Council will consider the following factors:

- Welfare reform impacts on specific household types, particularly in high cost housing market areas and on affordability for larger families; and
- Where there is low availability of social housing stock, both in terms of overall number of units and the frequency of them becoming available to re-let.

Even if a household has successfully bid, they may still be made an offer of suitable private rented sector accommodation. This will occur when the length of time to wait for a social housing unit to become ready to re-let is in excess of the time it will take a comparable private rented property to become available to re-let. This will ensure that households do not have to spend an excessive amount of time living in temporary accommodation.

The level of PRS supply will determine the number of cases that have the duty ended with a PRSO. For some it may continue as the reasonable preference granted under Part 6 may lead to being housed before a PRSO can be made. In some areas social housing supply pressures will mean that the PRSO may be more likely to become available before a Part 6 offer. In

areas of lower demand and/or higher supply of social housing, customers may seek to bid successfully for social housing before a PRSO is made.

There will be no households exempted to these rules. To ensure that households are not exposed to any threat, a risk assessment will be undertaken prior to making an offer and each household will also be secured appropriate support to be able to live independently.

Whenever possible, households will be offered a tenancy within the Council's own boundary. When there is an occasion that a move to another area will be necessary to ensure a suitable property can be offered the Council will adhere to what the law, under s.208 of Housing Act 1996, stipulates about out of borough placements.

#### Procedural requirements

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.

Households will be afforded an opportunity to view any property they are offered in discharge of the s.193 duty prior to any expectation that they should sign a tenancy agreement.

Statutory homeless households are entitled to one reasonable offer of accommodation. The Council will consider its homelessness duty discharged if a suitable offer (known as a "final" offer) is refused. The private rented 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 household's one offer of suitable accommodation and will therefore discharge the statutory homelessness duty. If the household refuses the offer of

accommodation, the Council can end its statutory homelessness duty. Once the offer has been formally made, the household's homelessness application will be closed. Should the household wish to remain on the housing register, their application will be dealt with in line with the Council's allocations policy.

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

If a household becomes unintentionally homeless from their private rented sector tenancy within two years, the statutory homelessness duty owed to them by the Council 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 the Council in continuation of the original duty if the applicant again became homeless. If the household 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 this Council if it made the original decision, 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.

The Council will always attempt to make an offer of accommodation that is situated within its own boundary. When this is not reasonably practicable, the Council shall give in writing to the local housing authority in whose district the accommodation is situated the following information:

- The name of the applicant
- The number and description of other persons who normally reside with him as a member of his family or might reasonably be expected to reside with him
- The address of the accommodation
- The date on which the accommodation was made available to him, and which function under this Part the authority was discharging in securing that the accommodation is available for his occupation.

The notification will be given before the end of the period of 14 days beginning with the day on which the accommodation was made available to the applicant.

As part of the offer process and in accordance with each the Council's policies and procedures, households will be advised of their right to request a review on the suitability of the accommodation offered. Households will also be advised of advice services that may be able to assist them to make a request for a review and throughout the duration of the review.

Households 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 homelessness legislation. A representative on behalf of a household can make this request. Review requests can be made in writing or verbally to the Council. The Council will advise the household of the full procedure and process for completing a review of the suitability of the accommodation offered. The Council 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 Council will write to the household to acknowledge the request and provide details of the review procedure. The Council will need to complete the review within 56 days of receiving the household's original review request (unless a longer period is agreed). A senior officer at the Council will carry out the review. This officer must not have been involved in the original decision.

The review outcome can be:

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

Once the review has been completed, the Council will write to the household informing them of the review decision. The letter will be sent to the household 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.

During the review process, the Council is not legally obliged to provide the applicant with temporary accommodation. Households 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 household from the tenancy if the review request is successful. This is because:

- The household 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 household may be offered the property again. The local authority will consider its homelessness duty discharged.

A household 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 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. Households considering an appeal to the County Court will be advised of advice services that may be able to assist them to make a request for an appeal and throughout the duration of the appeal. The Council is not legally obliged to provide the applicant with accommodation during an appeal process.

If a household 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 a household 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: 0300 061 0614

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

## Future Revisions

Both this policy and procedure 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.

Checks and balances will be put in place to monitor and support delivery of this policy and procedure and reports will be made available for scrutiny going forward post-implementation. Customer feedback will be continuously collected to inform delivery across the service subsequent to the introduction of this policy and procedure.