

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

To: Strategy Committee	Report Number: M102
From: Housing Panel	Date of meeting: 18 October 2012

DISCHARGING MAIN HOMELESS DUTY INTO THE PRIVATE SECTOR

1. Purpose of Report

- 1.1 The purpose of this report is to outline a potential change to the way in which local authorities can discharge their duty to homeless households, with the offer of a private rented tenancy.

2. Recommendations

- 2.1 That the Policy for Discharging the Council's Statutory Homeless Duties (Section 2 of Appendix A) be adopted.
- 2.2 That the Head of Housing be authorised to make any minor drafting amendments to the Policy.

The Committee is able to resolve the matter.

3. Financial Implications

- 3.1 Some households may require financial assistance to pay the deposit or rent in advance for a private tenancy. Work is currently being undertaken to set up a homeless prevention fund from within existing budgets to address this issue.

4. Risk Management

- 4.1 This report is most closely linked with the Council's Corporate / Significant Business Risk No. SIT2. Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to integrate services in accordance with Strategic Priorities and the business case leads to the full benefits of joint delivery not being achieved	Noticeable	Low	Acceptance of recommendations by both authorities

5. Consultations

- 5.1 Consultations were carried out as part of the Housing Allocations Policy Review (see the Housing Allocations Policy Review report – Paper M101).

6. Equality Analysis

- 6.1 An equality impact assessment has been completed on the revised allocations policy, which includes discharging the homeless duty into the private rented sector. The assessment did not show any particular areas of concern or that any communities were unfairly disadvantaged under the existing scheme or allocations policy. <http://www.babergh.gov.uk/housing-and-homelessness/council-housing/finding-a-new-home/about-gateway-to-homechoice/>

7. Shared Service / Partnership Implications

- 7.1 A common approach by the two authorities would facilitate the move to an integrated service.

8. Key Information

- 8.1 The Localism Act 2011 allows local authorities to consider whether to change the way in which it can discharge duties to homeless households.
- 8.2 Local authorities owe applicants who are homeless, eligible for assistance, in priority need and not intentionally homeless the duty to secure suitable accommodation. Applicants remain in temporary accommodation pending the offer of a permanent social housing tenancy.
- 8.3 Although local authorities can currently offer assured shorthold tenancies with private landlords it can only be done with the agreement of the applicant who has the option to decline the offer and wait for a social housing property to become available.
- 8.4 The draft policy - see Section 2 of Appendix A - sets out the procedure for assessing, on a case by case basis, whether a private tenancy would be a suitable offer. This would take into account such issues as affordability of the property and the applicant's ability to maintain a tenancy with minimum support.
9. The Government will shortly introduce a new Suitability of Accommodation Order for private rented sector offers in order to ensure that properties are in reasonable condition and have up to date safety certificates.

10. Appendices

Title	Location
A. Briefing and draft policy	Attached

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Discharging homeless duty into the Private Rented Sector

Section 1

Briefing Report

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. At the present time we have not had a confirmed date for a commencement order for this change, but it is expected to be November 2012.

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 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 Localism 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. Applicants will lose the discretion to decline the offer as a final discharge, although they will retain the right to request a review of suitability whether or not they accept the offer.

A local authority does not have to use a private rented sector offer it is just one of the options that will be available to it.

It is expected that these changes will apply only to new applicants i.e. those that make a homeless application on or after the date of commencement.

Each local authority will have to get these changes approved by members before they will be able to use these new powers.

If an applicant is housed in this way and subsequently given a section 21 notice to leave within two years of the offer being accepted, then, where the applicant is eligible for assistance and not intentionally homeless, the homelessness duty to secure further suitable accommodation is revived. The duty revives even if the applicant no longer has a priority need, but it only applies to the first incidence of homelessness within the two-year period.

Following the coming into force of the relevant sections of the Act, 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. This will end a significant link between Parts 6 and 7 of the Housing Act 1996.

As far as reasonably possible, local authorities must secure accommodation in their own areas. In recognition that this might not always be possible (particularly in London) and many local authorities are likely to make more out-of-borough private rented sector offers, the local connection provisions are amended so that where an applicant who accepted such an offer becomes homeless again within two years of the offer being accepted and applies to a different authority, s/he can be referred back to the original authority, unless there is a risk of domestic violence.

Suitability of Accommodation

The Government will introduce a new Suitability of Accommodation Order for private rented sector offers. The current guidance on suitability contained in the Code of Guidance will also continue to apply.

The Suitability Order is likely to cover:

- Reasonable physical condition
- Electrical regulations
- Fire Safety
- CO poisoning – carbon monoxide alarm
- Fit and proper person – landlord
- HMO licensing
- EPC
- Gas safety record
- Tenancy Agreement (12 months)
- (note guidance from the DCLG said that a full inspection by an Environmental Health Officer would not be required)

Implementation of discharge of duty into the private sector

- Policy for the use of s193 (7F)
- Approval by Members
- Availability, affordability and suitability of private rented accommodation
- Training and information sharing to explain new power and new processes

Recommendation

The local authorities signed up to Gateway to Homechoice, recommend that we adopt the proposal to discharge duty into the private sector where appropriate, based on the draft policy in section 2 of this report.

The local authorities will continue to meet their legal duties to homeless households but homelessness will no longer give automatic priority for social housing as accepted homeless cases may now have the duty ended in the private rented sector wherever sufficient and suitable supply is available.

Access to social housing is limited and priority will be given in accordance with the allocations policy

Section 2

Policy for discharging statutory homeless duties

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”.
- 1.2 The policy applies to the following Local Authorities:
 - Babergh District Council
 - Braintree District Council
 - Colchester Borough Council
 - Ipswich Borough Council
 - Maldon District Council
 - Mid Suffolk District Council
 - Suffolk Coastal District Council
 - Waveney District Council
- 1.3 The local authorities, who have signed up to the policy, all participate in the Gateway to Homechoice housing register and choice based lettings system.
- 1.4 The policy works along side the Gateway to Homechoice Allocation Policy.
- 1.5 The policy will comply with:
 - The Housing Act 1996, as amended by the Homelessness Act 2002
 - The Localism Act 2011
 - Equality Act 2010
 - Suitability of Accommodation order (expected in November 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 and risks to personal safety and that of staff and the community are minimised.

- 2.2 This policy and the needs assessment procedure will ensure there is no discrimination on the grounds of gender, age, religion, race, disability, nationality or sexuality.
- 2.3 Each case will be assessed on an individual basis, to avoid blanket policies.

3. Assessment Procedure

- 3.1 Enquiries will be made by the local authority officers 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 staff 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
 - Concerns 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.
 - Confirmation of the affordability of each option. Each case will be assessed on its own merit.
 - Financial circumstances. Households above the current Gateway to Homechoice financial thresholds (for income and savings) will automatically be considered for private rent accommodation. Households with sufficient capital to meet 12 months' rent in advance in the private rented sector will receive reduced preference under the Gateway to Homechoice Allocations Policy and, if a homeless duty is accepted, then an offer (wherever possible) will be made to discharge into the private sector.
- 3.2 The outcome of these enquiries will be recorded on each local authority's Housing Advice/Enquiry form.
- 3.3 Some local authorities will complete a housing needs assessment as part of initial housing options advice and as part of the homeless application process.

- 3.4 The outcome of these enquiries will determine the eligible accommodation option(s) for each household. Available options for customers are detailed in section 4.
- 3.5 The policy and procedure for selecting households for properties is detailed in section 5.

4. Available options for customers

4.1 Assessed as suitable for discharge into private sector

a) Singles/Couples

- Singles – Under the age of 35 for shared housing only, unless they are in an exempt category of persons.
 - Singles – 35 and over and over can be considered for bedsits, studio or one beds
 - Couples – one beds
- *Must be 18 years or over*
 - *Low support needs*
 - *Homelessness Application has been accepted*
 - *Assessed income and savings are above the current Gateway to Homechoice financial thresholds (see above) or the property identified is assessed as being affordable to the household and they are assessed as being able to manage their finances with limited support.*

b) Families

- Households aged 18 years or over and have children or include an expectant mother
- *Low support needs*
 - *Homelessness Application has been accepted*
 - *Assessed income and savings are above the current Gateway to Homechoice financial thresholds (see above) or the property identified is assessed as being affordable to the household and they are assessed as being able to manage their finances with limited support.*

4.2 Suitable ONLY for Council or RP Properties

- All singles, couples and families who do not meet the criteria as above.
- For further information, please refer to the Gateway to Homechoice Allocation Policy.

5. Selecting Households for Properties

5.1 Policy

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 local authority's discretion. Each case will be assessed on individual circumstances and in line with the terms of this policy and procedure. In certain cases a landlord may determine the criteria of who will be accepted into the property.

5.2 Procedure

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

1st – Exceptional medical cases or other circumstances where it was agreed B&B/temporary accommodation would be unacceptable if the household was not prioritised for a property. Households with sufficient capital to meet 12 months' rent payments.

2nd - Households in bed & breakfast/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 B&B if we prioritised them for a property.

Then if none (or none suitable)

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

6. Offers of accommodation

6.1 Policy

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

The local authority will consider its homeless duty discharged if a suitable offer (known as a "final" offer) is refused, in either the private rented or social sector.

6.2 Procedure for offers in the private sector

- 6.2.1 If an applicant is deemed to be suitable for a private sector offer and a suitable property is available, they will be made an offer immediately.
- 6.2.2 The private sector offer must be an offer of an Assured Shorthold Tenancy, with a minimum fixed term of one year.
- 6.2.3 Under these circumstances, this will be considered to be the applicant's one offer of suitable accommodation and will therefore discharge the statutory homeless duty.
- 6.2.4 If the applicant refuses the offer of accommodation, the local authority can end its statutory homeless duty.
- 6.2.5 Once the offer has been formally made, the applicant's homeless and housing register applications will be closed. Should the applicant wish to reapply to the housing register, they will need to complete a new application and their priority will be assessed based on their current accommodation.
- 6.2.6 If an applicant is deemed suitable for a private sector offer and there are no suitable properties available, the applicant will be given Band B and will be able to bid for social housing, subject to location and time bidding restrictions. (For further information on time and location bidding restrictions, please refer to the Gateway to Homechoice Allocation Policy).

If a suitable private rented property becomes available before an offer of social housing can be made, then points 6.2.2 – 6.2.5 above will apply.

6.3 Procedure for offers of accommodation in the social sector

- 6.3.1 Applicants assessed as being suitable for a social housing offer of accommodation will be subject to location and time restricted bidding under the scheme. For further information, please refer to the Gateway to Homechoice Allocation Policy.

7. Refusal or failure to respond to an offer of suitable accommodation

7.1 Policy

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.

7.2 Procedure

7.2.1 If a statutory homeless applicant refuses or fails to respond to a suitable offer, the local authority will explain the applicant's right to a review against the suitability of the offer of accommodation.

7.2.2 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.

7.2.3 An applicant, whose statutory homeless duty has ended as a result of their refusal or failure to respond, can remain on the housing register; however the local authority will remove the statutory homeless priority award. Their application will be reassessed and given the band that reflects their current situation. For further information, please refer to the Gateway to Homechoice Allocation Policy.

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

8.1 Policy

If an applicant becomes unintentionally homeless from their private rented tenancy within 2 years, the statutory homeless duty automatically revives (once).

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 a risk of domestic violence.

8.2 Procedure

8.2.1 The revived duty may again be discharged through an offer of private or social 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. Applicants will also be advised of advice services, for example Citizens Advice Bureau or Shelter.

9.1 Review process

- 9.1.1 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.
- 9.1.2 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.
- 9.1.3 The local authority will consider review requests received after 21 days, but they are not obliged to agree to carry out the review.
- 9.1.4 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.
- 9.1.5 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 agreed).
- 9.1.6 The review will be carried out by a local authority senior officer. This officer must not have been involved in the original decision.

9.2 Review outcomes

- 9.2.1 The review outcome can be:
- Unsuccessful – in this situation the local authorities original decision will stand

- Successful – in this situation the local authority will amend their original decision.

9.2.2 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.

9.2.3 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).

9.3 Accommodation options during and after a review decision

9.3.1 During the review process, the local authority 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
- there is no guarantee of a further offer of accommodation following the outcome of the review.

9.3.2 During the review process, the property originally offered, may at the landlord's discretion, be held open whilst the review is considered. Unfortunately this may not be possible in cases of private rented accommodation.

9.3.3 If the review is unsuccessful and the property is still available, the applicant may be offered the property again. If the applicant refuses the offer, they will be referred to a local authority senior officer, who will confirm if the statutory homeless duty has been ended.

10. County Court Appeals

- 10.1 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
- 10.2 All appeals must be made to the County Court within 21 days of the review decision.
- 10.3 Applicants considering an appeal to the County Court are advised to obtain independent legal advice e.g. citizens advice bureau or shelter.
- 10.4 The local authority is not legally obliged to provide the applicant with accommodation during an appeal process.

11. Complaints to the Local Government Ombudsman

- 11.1 If an applicant is not satisfied with a review decision, they can complain to the Local Government Ombudsman.
- 11.2 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.
- 11.3 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

11.4 Contact details for the Local Government Ombudsman are:

The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

Telephone: 0762 480 3014

Website: www.lgo.uk

12. Reviewing the Policy and Eligibility

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 five years.

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