

# **Thurrock Council Policy & Procedure**

## **Discharge of Homelessness Duty into the private rented sector**

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### 1. Introduction

This policy is written following the introduction of new powers under the localism Act 2011 and alongside the Council's Housing allocations scheme.

It sets out how the Council will use legislative provisions in order to discharge its homeless duty into the Private Rented Sector and who these provisions will apply to.

Objectives:

- To continue to provide a safety net duty to homeless families who, due to their circumstances, need the security of social housing,
- Whilst not giving any perverse incentive to become homeless in order to "jump the queue" of people generally waiting for social housing.

The policy gives a key message that Homelessness will no longer mean an automatic pathway into social housing – most homeless households will have the homeless duty ended through one offer of suitable accommodation in the private sector.

### 2. Background Legislation

The Housing Act 1996 s193 (2) confers a duty on local authorities to house homeless households applying to them, where they meet certain criteria:-

- Eligible for Assistance
- Homeless

- In Priority Need
- Not intentionally Homeless

The duty, known as the main homelessness duty, is to secure that suitable accommodation is made available for occupation by the applicant and his/her household.

The main homelessness duty can be discharged by offering social housing or a private rented property that is suitable for the applicants' households needs.

## **2.1 Localism Act**

The Localism Act 2011 allows an offer of private rented accommodation to be made to discharge the duty. Provided the property offered is suitable\*, the Local Authority may discharge the main homelessness duty even where an applicant refuses the offer.

\*There are strict guidelines on suitability and a statutory appeal mechanism in place. Suitability is discussed at 5.

The Localism act repeals the provision of a qualifying offer, which means an offer of a 6 month tenancy is no longer an option to discharge a main homelessness duty.

Since the legislation confers a power on Local Authorities to use this provision Thurrock Council has a number of options available to them, but has decided to use the provision in the majority of cases.

This policy sets out the circumstances where the new provisions will be used and who for.

It also sets out the procedures required for ensuring that the Council continues to meet its statutory obligations under the legislation.

## **3. Who will the new provisions apply to?**

All applicants approaching Thurrock Council as homeless will be advised of their options and all efforts will be made to assist the applicant in preventing homelessness.

Two of the options available to an applicant are:

- The Council may assist them into privately rented accommodation

OR

- The Council may take a homeless application from the applicant and investigate their circumstances, to determine if a main housing duty is owed. This may initiate a duty to provide temporary accommodation where the applicant is homeless on the day of the application.

When the main homelessness duty is accepted, the Council will need to determine how that duty will be discharged for that particular applicant.

Under this new policy, it will be the default position that the applicant will be made an offer of private rented accommodation in order to discharge that duty, subject to 3.1.

### **3.1 Cases requiring an offer of Social Housing**

It is recognised that there will be situations where the applicant requires the security of social housing, but it is envisaged that such circumstances will represent the minority of cases. Cases where the duty is discharged into social housing come under part VI of the Housing Act 1996 and are subsequently known as Part VI offers.

Such circumstances may include but are not limited to the following:-

- Where an adapted property is required for a disabled member of the household and such accommodation is not freely available in the private sector
- Where an single applicant needs self-contained accommodation, but will only be eligible for shared accommodation, in terms of benefit entitlement e.g. someone with a medical need for self-contained accommodation who would only be entitled to a single room rate form Housing Benefit
- Where an applicant or member of the household has circumstances that require long term stability in a tenancy –e.g. where the person suffers with dementia or some other ailment where moving would be detrimental to their well being

Consultation has been carried out with Adult Social Care and Children's Services in order to determine the types of cases where such security is necessary.

Each case will be assessed on its own circumstances. Further information may be sought from Adult Social Care, Children's Services and any other agency as required.

## 5. Suitable Offers

Where it is determined that the homeless duty is to be discharged into the private rented sector, any offer of accommodation must be suitable for the applicant and their household.

It will be the role of the private lettings team to procure a list of properties with private landlords that meet general standards of suitability as follows:-

- The offer must be for an assured short hold tenancy – this can include a room in a shared house provided there is exclusive possession of the room
- It must be for a minimum fixed term period of 12 months
- The property must exist and be available

It will be the role of the homeless officer making the homeless decision, to determine whether or not a particular property is suitable for the particular applicant. In so doing they must ensure that the property is suitable for the needs of all the household members.

### 5.1 Suitability

Suitability relates to a number of requirements. Only when all the requirements are met will the property be deemed suitable.

#### 5.1.1. Physical condition of property

- Size for household – see section 9. below
- Accessibility should be considered where there are issues of disability involved
- Fitness of the property – the property must be free of any category 1 hazards and of a reasonable physical condition
- Health & safety matters
  - Gas safety (original certificates must be seen)
  - Electrical safety – visual checks for impairments and PAT testing on equipment
  - Fire safety – any furniture must comply with regulations re labelling/ smoke alarms etc
  - Carbon Monoxide poisoning – sufficient precautions must be in place

#### 5.1.2. Affordability

- The property must be affordable for the particular household. Where the household would be in receipt of full housing benefit to meet all the rent there will be no issue of affordability.
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- For other households, including those who have a working member, it will be necessary to carry out an income & expenditure assessment.
- Account also needs to be taken of the impact of energy performance since this could impact on the cost of utilities.

### **5.1.3. Good management of the property**

- The Landlord must manage the property in a good manner and will be required to be a “fit & proper person” – this means the Council will consider the landlords history – convictions, re landlord & tenant law, fraud or dishonesty, violence, drug use, discrimination & sexual violence. Only where the Council is satisfied that the landlord meets the criteria will the property be deemed suitable.
- The Landlord must be accredited via the Councils’ Landlord Accreditation scheme
- The landlord must provide an Energy Performance Certificate by law
- A written tenancy agreement is required and must be inspected by the private rentals officer
- The landlord must agree to use a tenancy deposit scheme – a requirement by law but something that is carried out after the commencement of the tenancy

### **5.1.4. Location**

- S208 Housing Act 1996 requires that so far as is reasonably practicable the property needs to be in the applicants’ previous district
- It will not be reasonable to move applicants miles away from their previous district unless this is their choice
- However, it would be unreasonable for applicants suffering from violence within a district to continue to reside in that district
- The applicants individual circumstances must be considered
- Location of the property must be suitable for all members of the household
- Account must be taken of places of employment and the educational needs of children, particularly at critical points such as when taking GCSEs
- Isolated locations should be avoided – availability of public transport, shops and other facilities is important
- Links with previous location should be maintained when possible – e.g. schools, GP etc

### **5.1.5. The property must be suitable for everyone in the household**

All of the above criteria apply to all members of the household.

Members of the household will include those who are reasonably expected to reside with the applicant in line with s176 Housing Act 1996. This will be assessed on a case by case basis taking into account the particular circumstances of each case.

## **6. Procedures**

The options available to potentially homeless applicants need to be discussed with the applicant at the first point of contact i.e. when threatened with homelessness, and before any decision is made. The default position should be made clear, and applicants made aware of the benefits of taking a prevention option. This advice needs to be reiterated whenever dealing with the applicant so that a consistent message is achieved.

Officers will need to identify whether there are any reasons why the applicant should **not** be made a private rented sector offer. For cases where there is an indication that a private offer is not suitable, a homeless application will usually be investigated.

For all other cases the applicant should be advised of two available options:-

### **6.1. Option one: An offer of private rented accommodation can be made by the Council without a homeless application being taken, as a homeless prevention measure**

Such an offer will be advantageous to the applicant since it can be refused with no consequences. An applicant will therefore have more choice

No temporary accommodation will be provided at this point since a homeless application and subsequent duty to accommodate pending enquiries will not be initiated.

The applicant would remain at the current accommodation until suitable alternative accommodation is secured

Offers can be made as soon as a section 21 notice is received – there will be no need to wait for the 2 month notice period to expire or any subsequent court action

## **6.2. Option two: A full (Part VII) homeless application can be taken.**

All applicants have the right to make a homeless application to any local authority

Subsequently, where a homeless duty is accepted, the duty will be discharged into the private rented sector unless there are special circumstances which make this option inappropriate

Only one offer of suitable accommodation will be made

If the offer is refused – the duty will be ended but there will be a right of appeal

If a homeless application is taken and no duty is accepted, no further offer of private rented accommodation will be made

Subsequently, if the applicant is found to be in no priority need or intentionally homeless, he/she will need to meet their own housing needs – subject to the Council protocol for intentionally homeless families.

## **6.3 Initial Interview**

The officer carrying out the initial interview will need to record that the options have been fully discussed, and the option that the applicant has chosen to initially pursue should be noted.

If a homeless duty has been accepted and it has been determined that the duty will be discharged into a private rented sector property, the following points apply:-

- The duty will be held for 2 years - see further
- Any property identified will be inspected by a private rentals officer who will ensure that it meets the requirements listed above
- The private lettings team will be responsible for allocating the property but it will be the homeless officer making the original homeless decision who determines which property is suitable
- The applicant will be notified of the offer in writing by the private lettings team. The letter will advise the applicants of the consequences of refusing the offer, the right to review the suitability and details regarding the 2 year duty.
- Once a property has been offered the applicant will be advised, in writing by the homeless officer, that the duty has been discharged as appropriate
- A flowchart procedure can be found at section 10.



## 7. Review of Suitability

Applicants, who have been made an offer of accommodation to discharge a homeless duty, will have a statutory right to request a review of that decision.

They will also have the right to request a review of the suitability of any accommodation offered.

This right remains whether the accommodation is accepted or not; i.e. the applicant could accept the accommodation and move in but then request a review of its suitability.

Should the applicant refuse the accommodation and request a review, there is no obligation on the Council to keep the offer open pending the outcome of the review, and therefore applicants in such circumstances will be advised of such.

Any review will be undertaken by an officer senior to the officer making the original offer of accommodation.

During the review period applicants may request accommodation – this will be considered by another senior officer in line with usual procedures and the applicant notified accordingly.

## 8. Two year duty

Where an applicant, who has had their duty discharged into the private sector, becomes homeless again within the two years following the acceptance of the offer, the local authority accepting a new application will investigate the circumstances again. However, they will only consider eligibility, homelessness and intentionality - Priority Need will not be considered even if the household circumstances have changed such that they would no longer meet the priority need criteria

The applicant can re-apply on the date any section 21 notice is given – i.e. they need not wait until homeless within 28 days

At the expiry of the section 21 notice period the applicant is homeless – they cannot be required to go to court and must be accommodated.

The applicant can apply to either

- the authority holding the original duty (the placing authority) or
- the authority where the current accommodation is based (if a different local authority)

The authority receiving the application (the receiving authority) must carry out enquiries into homelessness, eligibility and intentionality. Local connection does not apply.

Once a duty is accepted the receiving authority can refer the applicant back to the original placing authority if relevant. The placing authority cannot refuse the referral unless there is a risk of domestic violence.

Thurrock Council, having accepted a further homeless duty or receiving a referral from another local authority, will re-consider the most appropriate manner in which to discharge the duty. Whilst it is expected that a further private rented sector offer is likely to be suitable, there may be cases where a Part 6 offer is deemed more appropriate due to a change in the household's circumstances.

As in section 3 above where a further homeless duty is accepted, the law confers on an applicant the right to belong to the reasonable preference group until the duty is discharged into another private rented sector property.

## **9. Bedroom Standard**

Suitable number of bedrooms for a household is based on Housing Benefit rules – these are more generous than the Council's Housing Allocations bedroom standard which allows separate bedrooms for single people at age 21 years.

The number of bedrooms required will be determined on a case-by-case basis by checking the household make-up against the Benefit rules.

### **9.1 Sharing bedrooms**

The following are expected to share:

- an adult couple
- 2 children under 16 years of the same sex
- 2 children under 10 years (regardless of sex)

The following can have their own bedroom:

- a single adult (16 years or over)
- a child that would normally share but shared bedrooms are already taken, e.g. if there are 3 children and 2 already share
- children who can't share because of a disability or medical condition\*
- a non-resident overnight carer - but only if they must stay overnight\*

\*evidence will be required and an assessment carried out to determine eligibility for an extra bedroom

## 10. Procedure Flowchart







