

**Royal Borough of
Kensington and Chelsea**

**Discharge of statutory homeless duty
within the private rented sector policy**

September 2014



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

<p style="text-align:center">ROYAL BOROUGH OF KENSINGTON AND CHELSEA</p> <p style="text-align:center">DISCHARGE OF STATUTORY HOMELESS DUTY WITHIN THE PRIVATE RENTED SECTOR POLICY</p>
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1.0 Summary

- 1.1 This policy sets out the circumstances under which private rented sector tenancies may be used in full discharge of the main housing duty owed to those households accepted as homeless by the Council since 9 November 2012.
- 1.2 This policy describes the route by which a discharge of duty into the private rented sector may occur. The decision to discharge the main housing duty with an offer of a tenancy within the private rented sector continues to be at the discretion of the Council, and subject to an individual decision on each occasion.
- 1.3 Homeless households should no longer make the assumption that the making of a homeless application will result in an offer of social housing.

2.0 Scope

- 2.1 This policy covers the use of the offer of a private rented sector tenancy to discharge the full statutory homelessness duty towards those households accepted as homeless.
- 2.2 It covers the utilisation of the powers granted to local authorities by the commencement of the Localism Act 2011.
- 2.3 Assistance from the Council with accessing a private rented sector tenancy using the Private Rented Access Scheme (PRAS), or any other functioning rent deposit or rent bond schemes falls outside the scope of this policy.

3.0 Policy background and purpose

- 3.1 This document relates to the arrangements for discharging the statutory homeless duties into the private rented sector following the enactment of the Localism Act.
- 3.2 The purpose of this policy is to set out the circumstances under which the private rented sector will be utilised to discharge the full homeless duty.
- 3.3 The introduction of the Localism Act 2011 has had a significant impact on 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. The Homelessness changes were enacted on 9 November 2012.
- 3.4 Under the previous legislation, local authorities were able to discharge their main homelessness duty to applicants who were homeless, eligible for assistance, in priority need and not intentionally homeless by:

- securing suitable social housing accommodation under Part 6 Housing Act 1996 (unless a referral to another Local Authority was to be made under the local connection provisions)
 - offering privately rented accommodation only with the applicant's explicit agreement (formally known as a 'qualifying offer').
- 3.5 From 9 November 2012, the Localism Act enabled Local Authorities to fully discharge the full housing duty by a 'private rented sector offer' (PRSO) under s193 (7AA)-(7AC) Housing Act 1996 as amended by s.148(5)-(7) Localism Act 2011. The accommodation must be suitable, but does not require the applicant's agreement to be a valid offer.
- 3.6 These changes are not retrospective and apply only to new applicants approaching local authorities as homeless or threatened with homelessness after the commencement date of 9 November 2012.
- 3.7 Following enactment of the relevant parts of the Localism Act on 9 November 2012, anyone provided with accommodation in the private rented sector as final discharge of a homelessness duty is no longer considered to have a 'Reasonable Preference' for an allocation of social housing by reason of homelessness.
- 3.8 This ended a significant link between Parts 6 and 7 of the Housing Act 1996 and reinforces the Council's expressed desire in the current Housing Strategy to move perceptions away from the historical notion that making a homeless application and being placed in temporary accommodation is the most advantageous route into social housing.
- 3.9 On the 9 November 2012, the Government introduced new guidance for Local Authorities covering homelessness and the suitability of accommodation for private rented sector offers. Officers are required to have regard to this guidance when seeking to discharge the full homelessness duty into the private rented sector.
- 3.10 It is important to note that existing guidance on suitability contained in the Homelessness Code of Guidance 2006 continues to apply.

4.0 Local Context

- 4.1 In 2012/13 we had over 2,250 households with a high priority for housing on our common housing register. However we only had 470 properties to let that year. In January 2014 there were 2,344 high priority households. The new Allocation Scheme was implemented in February 2014 and indications are that a similar number of households will remain on our housing register with a high priority for housing, though we still expect fewer than 500 households to be housed into social rented housing each year.
- 4.2 Of the homes becoming available, more than half are suitable only for single people and couples. Very few homes for families with three or more bedrooms become vacant and most properties, including family homes, are flats rather than houses, with very few ground floor or accessible properties.

- 4.3 Like many other London boroughs we are finding it increasingly difficult to procure temporary accommodation, especially within central London and the surrounding boroughs and will need to look further afield and increase out of London temporary accommodation procurement.
- 4.4 We already work to a policy detailing which households will be prioritised for temporary accommodation in-borough, out of borough and out of London. The criteria used for those households assessed as suitable for a temporary accommodation placement outside of Kensington and the local area (Greater London or outside of London suitability) will be the same one utilised for assessing those households for whom a discharge of duty within the private rented sector is likely to be appropriate. The criteria for the placement of applicants into temporary accommodation in compliance with the 1996 Housing Act Part VII is reproduced in full in Appendix One.
- 4.5 In summary, the following list indicates all the household circumstances where a discharge into the private rented sector will not be made:
- a) Applicants with a severe and enduring health condition requiring intensive and enduring specialist medical treatment only available in Kensington and Chelsea.
 - b) Applicants who are in receipt of a significant care package and a range of healthcare options which cannot be transferred.
 - c) Applicants with a severe and enduring mental health problem who are receiving psychiatric treatment and aftercare provided by local community mental health services and have an established support network where a transfer of care would severely impact upon their ability to engage with treatment and care plans.
 - d) Households containing a child or children with special educational needs who are receiving education or educational support at a local school in Kensington and Chelsea, or in a neighbouring borough and where a change to another school or learning establishment would be detrimental to their continuing development.
 - e) Households with a child(ren) subject to a Child Protection Plan in Kensington and Chelsea or families who have high social needs who are linked into local support services and where it is verified that a transfer to another area could be detrimental to their welfare.
 - f) Applicants who are currently employed in Kensington and Chelsea and who have been continuously employed for at least six months and where financial assessment confirms the cost of travel would render accommodation in another area unaffordable. Each case will be assessed on an individual basis. Pregnant women who are on maternity leave but who intend to return to work at their place of employment in Kensington and Chelsea will also be considered under the criteria.

4.6 If a household containing any of the situations described in (a) to (e) above wishes to be considered for accommodation within the private rented sector they can discuss this and other options with their housing officer who will then make a recommendation for the most appropriate one.

5.0 Legal framework

5.1 The policy complies with:

- The Housing Act 1996, specifically Parts VI and VII, 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
- The Homelessness (Suitability of Accommodation)(England) Order 2012
- The Homelessness Code of Guidance 2006
- Royal Borough of Kensington and Chelsea Housing Strategy 2013 – 2017
- Royal Borough of Kensington and Chelsea Allocation Scheme 2014

6.0 Discharge of the main homeless duty using an offer of a private rented sector tenancy

6.1 The Royal Borough of Kensington and Chelsea intends to fully discharge any full housing duty by way of a 'private rented sector offer' made using the power granted to it (s193(7AA)-(7AC) Housing Act 1996 as amended by s.148(5)-(7) Localism Act 2011).

6.2 A decision will be taken after a full consideration of each household's individual circumstances and the facts that apply to that case. Having undertaken this consideration if the Council is satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) the presumption will be that it will discharge its full housing duty towards homeless households by arranging for a private landlord to make a suitable offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months (a private rented sector offer).

6.3 This will only apply to households who made their application under Part VII Housing Act 1996 from 9 November 2012.

6.4 Each private rented sector offer will be assessed for suitability against the Homelessness (Suitability of Accommodation) (England) Order 2012 Part 2 and matched to an individual household.

6.5 A suitable offer will only be made where the Council has fully considered:

- The Homelessness (Suitability of Accommodation) (England) Order 2012 and specifically all the statutory requirements in Part 1 which cover the suitability of the location of accommodation and Part 2 which sets out the

circumstances in which accommodation is not to be regarded as suitable for a person and/or their household.

- That the property is suitable in relation to existing suitability requirements that relate to space and arrangement.
- Any other subjective matters and issues that relate to an applicant's circumstances and that of any other household members obtained by the Council from our investigation of their application.
- That the accommodation is affordable having fully considered the cost of the rent and any other expenditure relating to the property compared to the income available to the applicant with or without benefits and specifically the outgoings which are needed for them to feed and clothe themselves and their household; heat the property, plus any other expenditure that we are satisfied is essential to meet the ordinary necessities of life, plus all other reasonable living expenses.
- All existing legislation, statutory guidance and caselaw relating to making suitable offers of accommodation and specifically paragraphs 17.40 and 17.41 of the Homelessness Code of Guidance.

6.6 The level of private rented sector supply will determine the number of households that will have their full duty ended with a suitable private rented sector offer.

6.7 For any applicant that has made a Homeless Application after November 9 2012 and is owed a full duty that duty will remain until either the authority arranges for a private landlord to make an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months (a private rented sector offer), or one of the following actions or events occur which by law will also bring the duty to an end. These are:

- If the applicant accepts an offer of social housing from the Council (in accordance with Part VI of the Housing Act 1996).
- If the applicant refuses an offer of suitable temporary accommodation or a social housing tenancy offered under the Council's Allocation scheme which the authority is satisfied is suitable for their needs, and the authority informs the applicant that it regards itself as having discharged its duty under Section 193 of the Housing Act 1996.
- If the applicant becomes intentionally homeless from the suitable accommodation made available for his/her occupation.
- If the applicant ceases to be eligible for assistance due to their immigration status.
- If the applicant otherwise voluntarily ceases to occupy as their only or principal home, the accommodation made available to them to meet the full housing duty.

6.8 Where there are more households owed the full homeless duty than properties available in the private rented sector to end the duty, applicants will be selected to be offered a PRSO offer using criteria set to meet the operational needs of the service and the financial impact on the authority. The current criteria is shown in Appendix Three. Criteria may change subject to operational or financial circumstances and a copy of the current criteria used will always be available for any applicant, or member of the public, who requests a copy.

7.0 Action following acceptance of a private rented sector offer

7.1 Housing Needs will ensure that all households who have accepted a PRSO are kept under review for the length of the tenancy period in order to actively manage those cases approaching expiry of their 12 month Assured Shorthold Tenancy.

8.0 Dealing with Repeat applications

8.1 If within two years of accepting the offer an applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the authority is satisfied that they are homeless, or threatened with homelessness, and eligible for assistance, and not satisfied that they became homeless intentionally, then a new duty to secure further accommodation will fall to the authority.

8.2 An applicant who reapplies will be considered to be homeless, or threatened with homelessness, if they have been served with a valid notice under s.21 Housing Act 1988 by the landlord of the private rented sector property. Applicants deemed to be intentionally homeless will not be assisted.

9.0 Monitoring of the policy

9.1 A record will be kept of any discharges of the full homelessness duty using offers of a tenancy within the private rented sector for monitoring or reporting purposes.

10.0 Review of the policy

10.1 This policy will be formally reviewed after it has been in operation for 12 months.

10.2 The policy operates in conjunction with the authority's existing Allocation Scheme and will be reviewed in parallel with any future proposed changes to that Allocation Scheme.

10.3 The Policy may also be reviewed at any time, in line with any applicable changes in legislation or Guidance issued by relevant Government Departments.

- 10.4 If changes are required these will be made as and when required. As a result users need to check that they have the current version of the criteria as this may change during the life of the policy.
- 10.5 Any amendments to the policy will be included on the version that the authority provides on its website. This will always be the current version of the policy.

APPENDIX ONE

Criteria For The Placement Of Applicants Into Temporary Accommodation In Compliance With The 1996 Housing Act Part VII.

The Council has a statutory duty to provide temporary accommodation to homeless applicants in certain circumstances. This is governed by legislation. Guidance in how to perform the duty can be found in the Code of Guidance. This is split into two parts. The first part contains details on the applicants the Council considers to be a priority for temporary accommodation in Kensington and Chelsea and the local surrounding areas.

The second part details how applicants are considered for temporary accommodation in the wider London area and outside London.

All placements are subject to a suitability assessment to determine the type and location of temporary accommodation that should be offered.

The criteria set out in Part 1 and Part 2 is not an exhaustive list; as this policy recognises that individual cases must be assessed on their own merit to establish whether they are sufficiently exceptional to depart from the policy.

Part 1 - Local Temporary Accommodation – Priority Applicants

The six categories listed under sections one and two attract equal priority for local temporary accommodation, dependent upon the supply of suitable temporary accommodation and individual circumstances.

Part 1 - Section 1

Priority for local temporary accommodation will be given to the following applicants.

Under the following three categories, applicants will be assessed by the Council's Medical Assessment Team to determine eligibility under this criteria.

- Applicants with a severe and enduring health condition requiring intensive and enduring specialist medical treatment only available in Kensington and Chelsea.
- Applicants who are in receipt of a significant care package and a range of healthcare options which cannot be transferred.
- Applicants with a severe and enduring mental health problem who are receiving psychiatric treatment and aftercare provided by local community mental health services and have an established support network where a transfer of care would severely impact upon their ability to engage with treatment and care plans.

Applicant households meeting the criteria under the following three categories will be considered to have priority for a local temporary accommodation placement subject to verification from employers or service providers.

- Households containing a child or children with special educational needs who are receiving education or educational support at a local school in Kensington

and Chelsea, or in a neighbouring borough and where a change to another school or learning establishment would be detrimental to their continuing development.

- Households with a child(ren) subject to a Child Protection Plan in Kensington and Chelsea or families who have high social needs who are linked into local support services and where it is verified that a transfer to another area could be detrimental to their welfare.
- Applicants who are currently employed in Kensington and Chelsea and who have been continuously employed for at least six months and where financial assessment confirms the cost of travel would render accommodation in another area unaffordable. Each case will be assessed on an individual basis. Pregnant women who are on maternity leave but who intend to return to work at their place of employment in Kensington and Chelsea will also be considered under the criteria.

Part 1 - Section 2 - Criteria for allocating local temporary accommodation to low priority or non-priority applicants:-

Properties that do not meet the needs of any priority applicant will then be offered to non-priority applicants in temporary accommodation outside the borough on a date order basis. This means that properties should be offered to the applicant household that have been in temporary accommodation for the longest.

A refusal of a suitable offer will usually mean discharging duty if a property has been unreasonably refused.

Part 2 This part deals with accommodation outside Kensington and Chelsea and outside the local area.

The following three categories attract equal priority for accommodation outside Kensington and Chelsea and outside the local area, dependent upon the supply of suitable temporary accommodation and individual circumstances.

Priority for placement into properties in the greater London area will be given to:

- Applicant households containing a child or children who are attending a London school and who are enrolled on a public examination course.
- Applicant households who have full time employment in the London area.
- Applicant households who are living in temporary accommodation provided by the Royal Borough outside London but who have been offered permanent employment in the London area.
- Applicant households already placed by the Council in temporary accommodation outside London but who wish to return to the London area will be assessed in accordance with this criteria but weight will be given to those who have been living outside London for the longest period.

For new applicants being placed in temporary accommodation

All applicant households undergo a suitability assessment to determine the type and location of accommodation that is considered suitable.

In a situation where more than one household needs to be placed but only one property is available in the London area and neither household meets the above criteria, preference will be given to the applicant household who has lived in Kensington and Chelsea for the longest time.

Applicants who are not considered a priority for temporary accommodation placement in Kensington and Chelsea or the local area (as in part 1) or who are not considered a to have priority for a temporary accommodation placement in the London area (as contained in part 2) will be considered for an offer of accommodation outside London (if conditions dictate that it is not reasonably practicable to provide accommodation in the London area).

Policy Statement

The Royal Borough of Kensington and Chelsea intends to fully discharge any full housing duty by way of a 'Private Rented Sector Offer' (PRSO) made using the power granted to it under the Localism Act 2011. This means that the Royal Borough will consider a 'Private Rented Sector Offer' to end our main homeless duty in all cases for homeless applicants who have applied to this local authority as homeless since 9 November 2012.

The Council adopted a new Allocation Scheme from 17 February which gives priority for social housing to applicants in the highest housing need especially households who work, or who are current or former armed forces members who fall within one or more of the statutory reasonable preference categories and who have urgent housing needs.

Some people experiencing homelessness may only have short-term housing need which may be met by the offer of a good quality private sector home. If the Housing Needs Department considers that a PRSO of an Assured Shorthold Tenancy lasting at least 12 months is appropriate to the needs of the applicant and their household, and if suitable accommodation can be secured, then such an offer will routinely be made whenever possible.

The Council anticipates that eventually the majority of households owed the full duty will have that duty ended with a PRSO offer.

The Royal Borough of Kensington and Chelsea sets out its vision for responding to homelessness in the area in the authority's Housing Strategy 2013 - 2017.

We want to deliver a service that enables our residents to realise their ambitions and make advantageous life choices for themselves. To do this, we must make best and fair use of our limited housing supply through a clear allocation process and easy to use Choice Based Lettings (CBL) scheme. We must also provide opportunities beyond social housing that offer people housing options which could enable them to find a property far quicker than waiting indefinitely for a social housing tenancy in the Royal Borough.

Royal Borough of Kensington and Chelsea Housing Strategy 2013-2017 (pg 20-21)

Homeless households should no longer make the assumption that the making of a homelessness application will result in an offer of social housing.

The use of PRSOs is a new power and the Council will consider the individual circumstances of each household when deciding if to apply this option rather than adopting a blanket application of this housing solution.

Having evaluated the applicant and household circumstances if the Council is satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it will discharge its duty by arranging for a private landlord to make a suitable offer of an assured shorthold tenancy in the private rented sector.

Although cases that are owed a full homelessness duty will still be owed reasonable preference priority on the Council's housing register this will end as soon as a suitable PRSO offer is made and the full homeless duty discharged. Applicants will be removed from the Council's housing register when they no longer qualify.

If an applicant becomes homeless within two years of the tenancy start date, a new 'Reapplication Duty' will apply. This means that irrespective of any Priority Need, as long as the applicant remains eligible and is not homeless intentionally this local authority will ensure that further suitable accommodation is secured for the applicant.

APPENDIX THREE

Additional considerations for ranking/ordering/distinguishing between multiple households where there are more candidates than properties will be applied in the following order of priority:

- Suitability
- Length of time in temporary accommodation
- Affordability of temporary accommodation
- Local connection to the Royal Borough of Kensington and Chelsea
- Where more than one household falls into all the above categories the decision on whom to make a PRSO under these circumstances would be at the discretion of the Housing Options and Allocations Manager.

There is one exception applied to the above ranking procedure:

- In some instances it may be possible to convert a property that has been leased from a private landlord for use as temporary accommodation into a PRSO. In this case, the household that has been most recently accommodated in this property shall receive a PRSO for this property.

Procedural resources for identifying housing needs to inform a suitability assessment for discharge into the private rented sector:

- a) **Placement Form** (initial screening of a household's housing needs used by the Housing and Homelessness Assessment Team prior to placement into temporary accommodation)
- b) **Suitability Assessment of Applicant's Temporary Accommodation Requirements** (assessment carried out by Placement Officers in the Accommodation Team each time a move into or within temporary accommodation occurs)
- c) **Housing Health and Disability Assessment Form** (post-acceptance confirmation of household's medical issues if applicable)
- d) **Direct Offers Procedure** (currently used by Nominations Team)
- e) **Procedure or guideline/operational notes**

Users need to check that they have the current version of the appendix as these may change during the life of the policy. Website version must always have the correct version as the only appendix – or an additional flagged appendix to make it clear which version to use.