

## Policy on Discharging the Homelessness Duty into the Private Rented Sector

### Introduction

The Localism Act 2011 (sections 148 and 149) introduced provisions which enables local housing authorities to bring its statutory housing duty under section 193 of the Housing Act 1996 (as amended) (HA96) to an end, by making an offer of a private rented sector tenancy for a period of 12 months rather than a social housing tenancy.

Amendments under the Homelessness Reduction Act 2017 extended these powers in the HA96 to enable local housing authorities to bring additional accommodation duties to an end through an offer in the sector.

This policy details Ashfield District Council's (ADC) approach to making an offer in the privately rented sector to those applicants owed an accommodation duty as listed below:

- Offer of suitable accommodation to end a prevention<sup>1</sup> or relief duty<sup>2</sup>
- Final accommodation offer to end a relief duty
- Private rented sector offer to end the main housing duty<sup>3</sup>

The policy also describes what factors the Council will take into account when assessing its suitability and what steps an applicant can take if they do not agree with the Council's decision.

### Legal framework

This policy operates alongside the Council's Choice Based Lettings Policy and Homelessness and Rough Sleeping Strategy 2019-24. It is compliant with:

- The Housing Act 1996, as amended by the Homelessness Act 2002 and the Homelessness Reduction Act 2017

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<sup>1</sup> Where a local authority is satisfied that an applicant is threatened with homelessness and eligible for assistance, it must take reasonable steps to help the applicant secure that accommodation does not cease to be available for their occupation.

<sup>2</sup> Where a local authority is satisfied that an applicant is homeless and eligible, it must take reasonable steps to help the applicant secure that accommodation becomes available for at least six months.

<sup>3</sup> Where the [duty to relieve homelessness](#) has ended, the local authority is subject to an ongoing duty to secure that accommodation is available to an applicant who is: eligible for assistance, in priority need, and unintentionally homeless.

- Homelessness Code of Guidance 2018, in particular Chapter 17
- Equality Act 2010
- The Localism Act 2011
- The Homelessness (Suitability of Accommodation) Order 1996
- The Homelessness (Suitability of Accommodation) (England) Order 2012
- Guidance issued by the Courts to local authorities regarding the suitability of accommodation and out of District placements.

This policy will ensure a comprehensive and consistent needs and risk assessment is carried out for each homeless (or threatened with homelessness) household. This approach will ensure applicants' needs are appropriately met at all times.

This policy will also ensure that there is no discrimination on the grounds of any of the protected characteristics under the Equality Act.

ADC will normally seek to secure private sector accommodation within its own boundary. However, this may not always be possible and in some cases the accommodation offered may be located outside Ashfield. Each case will be assessed on its own merits and by taking into account relevant legislation and Codes of Guidance in force at the time.

#### Offer of suitable accommodation made under the prevention or relief duty

ADC may end the prevention or relief duty owed to any applicant with an offer of suitable accommodation, where there is a reasonable prospect of that accommodation being available for at least 6 months, although ADC will seek to secure a 12 month tenancy wherever possible (as recommended by the Code of Guidance).

For applicants in priority need, an enhanced test of suitability applies.

All applicants will be given an opportunity to view the property before being asked to accept the offer.

Applicants will be allowed a reasonable period to decide whether or not to accept the offer (as recommended by the Code of Guidance).

If the offer is made to an applicant owed the prevention duty and the applicant refuses the offer, ADC may discharge the prevention duty under S195(8)(d) for refusal of a suitable offer of accommodation. This will not affect any further duties owed to the applicant such as the relief duty and the main housing duty if they become homeless.

If the offer is made to an applicant owed the relief duty and the applicant refuses the offer, ADC may discharge the relief duty under S189B(7)(c) for refusal of a suitable

offer of accommodation. This will not affect any further duties owed to the applicant, if any, under the main housing duty, which will be determined through an assessment that considers priority need and intentional homelessness (this is not an exhaustive list).

ADC may also to utilise the provisions of S193B(2) to bring the relief duty to an end due to the applicant's deliberate and unreasonable refusal to cooperate. Whilst the relief duty may be brought to an end, ADC will continue to have a duty under S193C(4) to make a final offer of accommodation (see below) to those applicants in priority need and unintentionally homeless.

#### Final accommodation offer to end a relief duty (sections 193A(6) and 193C(9))

ADC may bring the relief duty to an end through a final accommodation offer, whether it is accepted or refused.

ADC may also bring a S193C(4) duty to an end through a final accommodation offer, that is the accommodation duty owed to an applicant who is in priority need and not intentionally homeless but who is served a S189B(2) notice for deliberate and unreasonable failure to cooperate with ADC.

A final accommodation offer is:

- (a) an offer of an assured shorthold tenancy made by a private landlord;
- (b) made, with the approval of the authority, in pursuance of arrangements made by the authority in the discharge of their duty under section 189B(2); and
- (c) the tenancy being offered is a fixed term tenancy for a period of at least 6 months.

The accommodation secured must be available for occupation by the applicant together with any other person who normally resides with them as a member of their family, or any other person who might reasonably be expected to reside with them. It must be suitable for their occupation.

The applicant must have been informed of the consequences of refusal as well as the right to request a review of the suitability of the offer.

An applicant who refuses an offer of this type will not subsequently be owed the main housing duty (section 193A (3)).

ADC will ensure any offer allows the applicant to end any obligations they have in respect of existing accommodation, for example, to give notice.

### Private rented sector offer to end the main housing duty

ADC may make a Private Rented Sector Offer (PRSO) to end the main housing duty.

A PRSO is an offer of a fixed term assured shorthold tenancy of at least one year, offered by a private landlord and arranged by a local authority in order to end the main housing duty. If a homelessness officer considers that a PRSO is appropriate to the needs of the applicant, and suitable accommodation can be secured, then such an offer will routinely be made. It is acknowledged that a tenancy in the privately rented sector may not be suitable for all households to whom a statutory duty is owed. Therefore, ADC will consider each household's individual circumstances as to whether a private rented sector offer could be appropriate.

A Private Rented Sector Offer is defined by section 193(7AC) Housing Act 1996 (as amended) as:

- a) an offer of an assured shorthold tenancy made by a private landlord;
- (b) made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under section 193; and
- (c) the tenancy being offered is a fixed term tenancy for a period of at least 12 months.

The accommodation secured must be available for occupation by the applicant together with any other person who normally resides with them as a member of their family, or any other person who might reasonably be expected to reside with them. It must be suitable for their occupation.

ADC will ensure any offer allows the applicant to end any obligations they have in respect of existing accommodation, for example, to give notice.

ADC may end these duties if the applicant either accepts or refuses a PRSO, subject to the applicant having been informed in writing of:

- the consequences of refusal
- their right to request a review of the suitability of the accommodation
- the S195A 'reapplication duty' that may apply to any further applications to ADC within two years of accepting this offer

### Reapplication duty

A reapplication duty will apply to any applicant who makes a further homeless application to any local housing authority who is:

- homeless, eligible for assistance and not intentionally homeless
- applying within 2 years of accepting a private rented sector offer made in discharge of the main housing duty (s193)

In such cases, ADC will provide suitable interim accommodation whilst carrying out inquiries regarding the main housing duty.

ADC will owe a main housing duty if it is satisfied through these inquiries that an applicant is homeless, eligible for assistance and not intentionally homeless.

This duty also applies where an applicant has secured other accommodation following the end of their PRS offer tenancy.

The reapplication duty is only owed once following each PRS offer. If an applicant becomes unintentionally homeless again within the 2 years and have already been assisted through the reapplication duty, a new application for assistance must be made.

The reapplication duty only applies to the original applicant and not another member of their household.

Under the reapplication duty, an applicant who has been served with a valid notice under section 21 of the Housing Act 1988 will be treated as being threatened with homelessness from the date the notice is issued, and homeless from the date on which the notice expires.

### Suitability

Where ADC has secured accommodation to discharge a prevention, relief or main housing duty, the accommodation must meet the suitability considerations set out in the relevant Acts and case law and the Homelessness Code of Guidance 2018.

This means that a range of factors including affordability, size, condition and location of accommodation must be considered in determining suitability for the applicant's household.

However, there are additional suitability requirements that apply to private rented sector accommodation that is offered:

- (a) To bring to an end the section 193(2) main housing duty (section 193(7F))
- (b) As a final accommodation offer made in the 189B relief stage (sections 193A(6) and 193C(9))

(c) To an applicant who has priority need, in order to prevent or relieve their homelessness

In these instances the accommodation must also comply with Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012.

The suitability of the location for all the members of the household must be considered. Particular consideration must be made of the employment, caring responsibilities and educational needs of the household. Where possible ADC will try to seek to secure accommodation close to where the applicant was previously living in order to retain established links with schools, doctors, social workers and other key services and support and close to any persons for whom the applicant is a registered carer.

Properties will be inspected by a suitably qualified officer who must be satisfied that it is in a reasonable condition and free from any Category 1 hazards under the Housing Health & Safety Rating System. In determining whether the property is in reasonable physical condition attentions should be paid to signs of damp, mould, indications that the property would be cold, for example cracked windows, and any other physical signs that would indicate the property is not in good physical condition.

ADC will require a copy of a written tenancy agreement specifying the terms of the tenancy and will review whether it is adequate. An adequate agreement sets out in a clear and comprehensible way the tenant's obligations. For example, a clear statement of the rent and other charges, and also the responsibilities of the landlord. Acceptable agreements will not contain unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy unless in the instance that wilful damage has been caused.

The tenant will be given a copy of this agreement and the Council will hold a copy on file.

All 12 month tenancy agreements made under private rented sector offers to end the main housing duty should include an option for the renewal of the tenancy for a further 12 months if agreed upon by both the landlord and the tenant.

Where private rented sector offers are used to discharge a prevention or relief duty, the Council encourages the use of tenancies for longer than 6 months wherever possible.

A property will not be considered suitable if the landlord cannot provide evidence of the following:

- i) All electrical equipment in the property is safe, meeting the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994.

- ii) Furniture and furnishings supplied must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).
- iii) That reasonable precautions have been taken to prevent the possibility of carbon monoxide poisoning, where such a risk exists, for example the installation of a carbon monoxide alarm.
- iv) A valid, current, energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.
- v) A current Gas Safety certificate in accordance with the Gas Safety (Installation and Use) Regulations 1994.
- vi) A House of Multiple Occupation (HMO) Licence for properties subject to sections 55 and 56 of the Housing Act 2004.
- vii) Also for properties subject to HMO licencing, a fire risk assessment of the common or shared parts of the building leading to adequate and appropriate fire safety measures.

A written record will be kept of the officer that inspected the property, the date, copies of relevant documentation and instructions for any works to be undertaken.

Applicants will only be offered accommodation owned by persons that the Council is satisfied are 'fit and proper' to act in the capacity of a landlord. Local authorities are required to consider any convictions in relation to:

- housing and landlord and tenant law
- fraud or other dishonesty
- violence or drugs
- discrimination and/or sexual offences
- management failures
- harassment or illegal eviction
- the Equality Act 2010

In order to investigate the above, the Council will check its own records and conduct appropriate and proportionate checks, on all landlords whose properties are being used in discharge of the Authority's duties.

The particular requirements of Article 3 do not apply to accommodation secured for households that do not have a priority need, or to accommodation that the authority helped the applicant to secure but the applicant identified for themselves. This is in accordance with homelessness legislation and the Homelessness Code of Guidance 2018. However, reasonable efforts will be made to ensure that private rented sector accommodation secured for applicants who do not have a priority need is safe, and in reasonable condition. All applicants looking for their own accommodation will be provided with sufficient guidance to enable them to consider standards.

## Location

Section 208(1) of HA96 requires that authorities shall, in discharging their housing functions under Part 7 of the 1996 Act, in so far as is reasonably practicable, secure accommodation within the authority's own district.

Where this is not possible a private rented sector offer may be made outside Ashfield District Council and the relevant local authority will be notified. Wherever possible, the accommodation will be in the nearest practicable local authority area.

There may be clear benefits for some households in being made an offer outside of the District, for example where a member of the household is at risk of violence or where ex-offenders or drug/ alcohol users would benefit from being accommodated outside of Ashfield to break links with previous negative contacts.

When considering the suitability of location of accommodation, the authority will take into account:

- distance of accommodation from the applicant's previous home
- disruption to the employment, caring responsibilities, or education of members of the household
- disruption to the employment, caring responsibilities, or education of members of the household
- access to amenities such as transport, shops and other necessary facilities; and established links with schools, doctors, social workers and other key services and support essential to the wellbeing of the household
- Where a placement is made outside of the District, notice shall be given within 14 days to the receiving local housing authority in whose district the accommodation is situated.

## Review process

- i) Applicants will be advised of their rights in relation to Council decisions that are reviewable (section 202 of the Act). This includes decisions as to the suitability of relevant offers in the private rented sector.
- ii) Applicants can request a review of suitability within 21 days of the offer. This can be done in writing or verbally by the applicant or someone acting on their behalf.
- iii) Once a review request has been received, the Council will write to the applicant to acknowledge the request and to provide details of the review procedure
- iv) A senior officer within the Housing Options Team will complete the review in line with the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999. This will be normally be within 8 weeks of

the request for the review. However, if both the applicant and the Council agree in writing, this period can be longer.

The review outcome can be:

Upheld – the offer of accommodation will have been deemed to be suitable and the decision to discharge the homelessness duty will still apply.

Overtaken - the Council will revisit the offer of accommodation and will make a further offer of suitable accommodation with consideration for the reasons that the previous offer of accommodation was unsuitable. The homelessness duty will not be discharged until a further offer of suitable accommodation is made.

The Council is not legally obligated to provide the applicant with temporary accommodation pending the outcome of the review. Applicants will be advised of the consequences of accepting or rejecting the offer whilst the review is being considered.

Once a review decision is made, the Council will write to the applicant informing them of the decision. The letter will explain the review decision, how the Council came to the decision and the right to appeal the review decision to the County Court on a point of law. All appeals must be made to the County Court within 21 days of the review decision. Applicants considering an appeal to the County Court are advised to obtain independent legal advice.

ADC is not legally obligated to provide the applicant with temporary accommodation pending appeal process.

### Monitoring and Review

Details of households for whom a duty is discharged through a private rented sector offer will be recorded on ADC's database, Civica.

Quarterly returns to the Ministry of Housing, Communities and Local Government on the H-CLIC data collection system.

The policy will be reviewed in the first instance after 12 months of operation and subsequently ever three years and, in exceptional circumstances, in response to significant changes in supply or demand conditions. It will also be reviewed in line with any significant change in legislation, guidance issued by the Ministry of Housing, Communities & Local Government or significant case law.

## Appendix 1 – Flow charts

Prevention duty	
Offer of suitable accommodation made	
Refused	Accepted
Discharge the prevention duty under S195(8)(d) for refusal of a suitable offer of accommodation.	Discharge the prevention duty under S195(8)(a)
May be owed other duties such as relief or main housing duty	

Relief duty	
Offer of suitable accommodation made	
Refused	Accepted
Discharge the relief duty under S189B(7)(c) for refusal of a suitable offer of accommodation.	Discharge the relief duty under S189B(7)(a)
May be owed other duties such as main housing duty	

Relief duty	
Final accommodation offer made	
Refused	Accepted
Discharge the relief duty under S193A	Relief duty ended
No further duties owed	

Main housing duty	
Private Rented Sector Offer made	
Refused	Accepted
Relief duty ended	Relief duty ended