

London Borough of Barking and Dagenham

**Discharge of the
Statutory Homeless
Duty within the Private
Rented Sector Policy**

1. Introduction

- 1.1 The Council has a statutory duty to assist households presenting as homeless where they are eligible for assistance and in priority need under the Housing Act 1996, as amended (the Housing Act). This policy relates to those cases where the Council is satisfied that it can end its main duty under s.193(2) (the main housing duty) with an offer of accommodation in the private rented sector (PRSO).
- 1.2 The Council is dealing with an unprecedented demand for accommodation from homeless households due to the impact of welfare reform, the loss of private rented properties for temporary accommodation and the low annual turnover of social lettings.
- 1.3 The Government's implementation of welfare reforms is also applying fresh pressure to households' budgets and tenancy sustainment making local housing unaffordable for a significant number of residents. Private sector rents have increased by 25% over the last two years and the shortfall between market rents and the LHA cap is currently £465 a month for the average two-bed property.
- 1.4 Research into the impact of welfare reforms in Barking and Dagenham reported that 1,050 households who claim benefits have 4 or more children. Out of work families with 4 or more children are also being impacted by the reduction in the level of the Benefit Cap. 40% of these families currently live in the private rented sector (PRS). The research found that even working households who may see marginal rises in their income through the National Living Wage will still be 18% worse off in five years under the reforms because of inflation and rent increases. This threatens tenancy sustainment and risks a new wave of evictions.
- 1.5 Currently the DWP are implementing the reduced benefit cap and over 500 households have been affected. This is expected to rise to up to 700 by the end of 2016/17 when the exercise is complete. This means that for working families in receipt of some welfare entitlement, PRS housing in the borough will become increasingly unaffordable. The reduction in the Benefit Cap to £20,000 a year outside of London will make traditional temporary placement areas like Essex even less affordable.

- 1.6 The changing dynamics within the local PRS are also affecting the Council's ability to source affordable accommodation. Changes to tax breaks have encouraged landlords to sell their properties or make way for tenants willing to pay higher rents. Local market research recently found that 92% of letting agents were now closing their books to housing benefit claimants and renting to higher-paying in-work tenants. Last year of the number of households owed a duty to be rehoused, 47% were homeless due to eviction from their privately rented accommodation under a section 21 Notice. Ministry of Justice figures now suggest that 1 in every 45 homes in Barking and Dagenham are subject to possession order proceedings – the second highest in the UK.
- 1.7 The freezing of LHA and reduction of the Benefit Cap to £23,000 in London and £20,000 outside is severely restricting the Council's Accommodation Team's ability to procure suitable properties and planning supply for another 1,000 housing repossessions expected by 2020. The policy of relocating residents outside of Barking and Dagenham but within one hour of travelling time has already been amended as it is no longer feasible and the reduction in the Benefit Cap will make many of the Council's traditional placement areas generally unaffordable.
- 1.8 Last year the Council received 1,811 homelessness applications of which it accepted a duty to rehouse 53% (i.e. 961 households), representing one of the highest acceptance rates in the capital. As at October 2016, the borough had 1,800 households in temporary accommodation. Housing need in the borough continues to far outstrip the available supply of affordable homes. Whereas homeless households are owed a Reasonable Preference for permanent housing through the Council's housing register, this group must not be allowed to dominate the register to the detriment of other priority groups such as those with urgent medical needs.
- 1.9 Neighbouring boroughs are experiencing similar difficulties. Consequently, where out of borough placements are made by Barking & Dagenham Council, they often have to be made in accommodation situated a considerable distance outside of its area. The reality this policy both recognises and addresses is that it is not reasonably practicable for the Council to rehouse more than a few of those to whom it owes the main housing duty in its own housing stock; in its own area or even in Greater London and its immediately surrounding areas.

- 1.10 To assist it in the discharge of its statutory duties to the homeless in these circumstances, the Council intends to begin the cessation of its housing duty by way of a PRSO in all appropriate cases, ensuring that an affordable housing choice is achieved for applicants.

2. Legal Framework

- 2.1 The policy takes account of the statutory requirements placed upon local authorities in the discharge of its duties, including:
- Sections 193, 195A, 206, 208 and 210 Housing Act 1996
 - Housing Act 2004, Parts 1-4
 - Equality Act 2010, Parts 2, 3 and 11
 - Homelessness (Suitability of Accommodation) Order 1996/3204; Homelessness (Suitability of Accommodation) (England) Order 2003/3326; Homelessness (Suitability of Accommodation) (England) Order 2012/2601
 - Homelessness Code of Guidance 2006, especially chapters 16 and 17
 - Children Acts 1989, Part 3, and 2004, Part 2
 - Department of Communities & Local Government Supplementary Guidance on the Homelessness Changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012, dated November 2012
 - Relevant case law including *Nzolameso v Westminster CC* [2015] UKSC 22
- 2.2 It also should be read in conjunction with the Council's corporate objectives set out in the Housing Strategy 2012/17, the Allocation Scheme 2015 and the Temporary Accommodation Placements Policy 2015, as amended (see paragraph 1.7 above).
- 2.3 This policy reflects changes in homelessness law and guidance, including the *Nzolameso* judgment, and ensures that the Council can offer sufficient and suitable accommodation in which to meet its statutory duties in a local market suffering from a chronic shortage of affordable housing. Henceforth there will be a presumption that the main housing duty, where it is owed, will be addressed by way of a PRSO compliant with s.193(7AA-7AC) of the Housing Act, as introduced by s.148 of the Localism Act 2011, for all appropriate cases. In "restricted cases" (as defined in s.193(3B) of the Housing Act), the Council will, so far as reasonably practicable, always seek to

bring its main housing duty to an end with an offer of a PRSO and this Policy applies to such cases with the necessary modifications.

- 2.4 Taking into consideration the Council's obligations under s.208 Housing Act 1996, the policy aims to deliver a clear understanding to households presenting as homeless that although the Council will continue to do its best to source private accommodation in Barking and Dagenham, placements will be made in the PRS outside of London where suitable and affordable accommodation is not available locally, whether within the Council's own or adjoining areas. This excludes households whose circumstances outlined in Section 5 may require a priority placement in or close to Barking and Dagenham.
- 2.5 For the purposes of the Council's Housing Allocations Scheme, the cessation of the homelessness duty by way of a PRSO will mean the applicant will no longer be considered to have a Reasonable Preference for an allocation of social housing by virtue of being homelessness (s.166A(3)(a), (b)).

3. Exercising the Discharge of the Homelessness Duty with a PRSO

Who is affected?

- 3.1 This policy applies to the placement of households who have presented themselves as homeless, are eligible for assistance and in priority need and where the main housing duty under s.193(2) of the Housing Act has been accepted. It applies to households who made their application under Pt 7 Housing Act 1996 from 9 November 2012.
- 3.2 Where the Council has accepted the main housing duty it has the discretion to discharge it by way of a PRSO. Its approach will now be as per sub-paragraph 2.3, above, and sub-paragraph 3.4, below).
- 3.3 It should be noted that this policy does not apply to households placed under an interim duty for accommodation through s.188 Housing Act – where homelessness enquiries are undertaken to establish their circumstances and whether the main duty should be accepted or not.

Offers of accommodation

- 3.4 Where applicants are accepted for the main housing duty under s.193 of the Housing Act the Council can make a PRSO for a 12-month assured shorthold tenancy with a private landlord. Due to the acute shortage of affordable and suitable accommodation within Barking and Dagenham and its immediately surrounding areas, the general presumption will be that such an offer will be made outside of London unless mitigating circumstances mean the placement will need to be prioritised for local or near-local accommodation.
- 3.5 The offer of a PRSO will be made depending on the availability of accommodation and a decision will be made after a full consideration of each household's personal circumstances and against the suitability criteria set out in paragraph 4 (and Annex A) below and under the relevant regulations including the Homelessness (Suitability of Accommodation) (England) Order 2012.
- 3.6 Following an assessment, applicants will be given one offer of suitable accommodation. Whereas there is no obligation upon the Council to enable applicants to view accommodation prior to acceptance, it will do what it reasonably can. Where the accommodation is situated in the area of another local housing authority, the Council will notify that other authority in writing of the applicant's name; the number and descriptions of persons who normally reside with the applicant, or might reasonably be expected to do so, the date on which the accommodation was made available to the applicant and that it was made available pursuant to the main housing duty under s.193 of the Housing Act.

Repeat applications

- 3.7 The Council may have a new duty to secure accommodation for any household to whom it has previously ceased its duty by way of a PRSO and who has subsequently lost this accommodation if it is satisfied that they are unintentionally homeless or threatened with becoming homeless and eligible for assistance, regardless of whether the household continues to have a priority need. However, if the household were accommodated outside the borough of Barking and Dagenham, the responsibility may fall instead on the local housing authority in whose area the household were so accommodated if any member of the household will, upon return to Barking and Dagenham,

run the risk of domestic violence or other violence where that has occurred and its recurrence is probable.

4. Suitability of Accommodation

4.1 In determining the offer of the PRSO the Council will satisfy itself as to the suitability of the accommodation and will take account of all relevant factors in accordance with the relevant regulations including the Homelessness (Suitability of Accommodation) (England) Order 2012. It will provide:

- A comprehensive assessment of a household's circumstances and needs
- A balanced assessment of those needs against the characteristics of the properties available at the time of application

4.2 The Council will have full regard to the distance from the borough and travel costs, size of the property, potential disruption to employment, education or caring responsibilities, accessibility of essential medical facilities and support, local amenities, services and transport.

4.3 All suitability assessments will have regard to the Council's obligations under the Children Act 2004 including the need to safeguard and promote the welfare of children.

Size and location

4.4 The Council will provide accommodation with adequate space and room standards for the households and be fit to inhabit.

4.5 As stated at 3.4 above, due to the chronic shortage of affordable and suitable accommodation within Barking and Dagenham there will be a general presumption that a PRSO will be made outside of London unless mitigating circumstances mean the placement will need to be prioritised for local or near-local accommodation set out in Section 5 below.

4.6 In many cases, relocation out of the borough will provide a more stable and affordable housing choice for the placement in the long-

term. With lower rents, households will have a better chance of meeting their household and subsistence costs and sustaining their tenancies.

Affordability

- 4.7 Affordability decisions will be made in accordance with the relevant regulations and having due regard to the Code of Guidance, taking into consideration the household's entire income including any welfare entitlements, the cost of travel to and from the applicant's normal place of work, the cost of additional travel to and from children's school or educational institute, the cost of additional travel to access medical services for on-going treatment or aftercare and any other relevant factor.
- 4.8 PRSOs will be offered in areas deemed affordable based on the above factors.

Health factors

- 4.9 The Council will consider health factors, such as the ability to climb stairs, care and support provided by other statutory agencies or the need to access specialist medical services that are only available to them in Barking and Dagenham. The Council will determine whether the medical condition itself makes certain accommodation offered unsuitable. For example, problems such as depression, asthma, diabetes and back pain may not make a property unsuitable, as the problem may persist in any type of accommodation. The Council has the discretion to refer the case for an occupational therapy assessment to determine what type of accommodation should be provided.

Education

- 4.10 Attendance at schools will not be considered a reason to refuse accommodation though priority will be given to special educational needs and the Council will exercise discretion with regard to students close to taking public examinations in determining priority for local placements.

Employment

- 4.11 Where relevant the Council will consider the need of applicants who are in paid employment to reach their normal workplace from the accommodation that is secured. However, the Council will evaluate whether the sort of work of the client is transferable and if satisfied that it can be this will no longer be considered a barrier to the offer.

Proximity to schools and services

- 4.12 The Council will consider the proximity to schools, public transport networks, primary care services and local amenities in the resettlement areas.

5. General exemptions from Out of London Placements

- 5.1 The Council already works to a policy detailing which households will be prioritised for temporary accommodation in Barking and Dagenham, out of borough and out of the capital and the criteria used to assess those households will be the same applied for the discharge of duty.
- 5.2 The following list indicates all household circumstances where a discharge into a PRSO will not be made:
- Applicants with a severe and enduring health condition requiring intensive specialist medical treatment only available in Barking and Dagenham
 - Applicants in receipt of a significant social and/or healthcare package which cannot be transferred to the area of resettlement
 - Applicants with a severe and enduring health condition and are in receipt of psychiatric treatment and aftercare package provided by local community mental health services and have an established support network where a transfer of care would be deemed to have a severely detrimental impact upon the client's ability to engage with treatment and care plans

- Households containing a child or children with special educational needs who are receiving education or educational support at a local school in Barking and Dagenham or in a neighbouring borough and where a change of schooling would be deemed to have a severely detrimental impact upon the child's continuing development
- Households with a child/children subject to a Child Protection Plan in Barking and Dagenham or families who have high social needs who are linked into local support services and where a transfer to another area would be deemed to be detrimental to their welfare
- Applicants who are currently employed in Barking and Dagenham and who have been in continuous employment for at least twelve months and where financial and suitability assessments confirms the cost of travel would render the accommodation in a further afield area, unaffordable. Each case will be assessed on its merits and on an individual basis but where that assessment confirms that the employment is transferable, this will no longer be considered a barrier to the offer.

5.3 Where the Head of Service, or other person duly authorised by her/him, considers that exceptional circumstances not covered by the foregoing arise, s/he may direct that a PRSO will not be made.

6. Guidance and Advice on Relocation

- 6.1 Ensuring placements are suitable is dependent upon the suitability assessments providing relocation advice which is bespoke and tailored to the needs of each household.
- 6.2 As part of the relocation advisory service Barking and Dagenham will:
- Provide training for each client household ensuring they have the tools to maintain their AST
 - Give each household a comprehensive directory of their relocation area covering transport networks, a summary of public transport commuting costs, health and care services, school availability, listing faith and community centres and

gauging work and training opportunities in the local labour market

6.3 Where it is appropriate the Council will provide a discretionary service which will:

- Make the connections through JobShop in the relocation area enabling the household access and advice to training courses and work opportunities; where appropriate job exchange possibilities could be possible;
- offer accompanied viewings to the prospective areas, a reasonable furniture allowance and covering removal fees where it is feasible to do so;
- Sign-up households to local income maximisation and citizen's advice centres to support the relocation to the new area and carry out the appropriate checks with the resettlement authority around Local Council Tax Support;
- Where appropriate make the supported links with district, unitary, county council services and primary care authorities for clients who are deemed able to for resettlement but may have health and social care needs, to ensure a smooth transition for the households into the areas.

End of policy