

Appendix 1

Policy on Discharging the Homelessness Duty into the Private Rented Sector

1.0 Introduction

The Council agreed a revised Homelessness Strategy Action Plan in 2011 and one of the actions is to 'investigate and implement options to work with the private rented sector to discharge the homelessness duty and increase supply of accommodation to those in need'. Under one of the provisions of the Localism Act 2011 which took effect in November 2012, Local Authorities can now 'if they choose' discharge the homelessness duty into the private rented sector. This Policy forms South Lakeland District Council's approach with regard to the new power. This Policy has been formed taking into account issues arising from the Tenancy Strategy, Allocation Policy and Homelessness Strategy. As this is a power as opposed to a duty the Council can decide its approach to using this power. The main options available to local authorities are:-

- 1 Do not adopt the power
- 2 Use the power to end the duty of some, but not all cases through the use of a targeted approach
- 3 Use the power to end the duty of some, but not all cases through a less targeted approach
- 4 Use the power to end the duty for all accepted homelessness cases

The approach that South Lakeland District Council will use is Option 2 and the cases that will determine whether or not the duty is ended in the private rented sector are described below.

Additionally, the checks that are made to determine whether a property is 'suitable' should also apply to offers of interim/temporary accommodation and offers made as a prevention option.

2.0 Using the Private Rented Sector to Discharge the Homelessness Duty

This Policy considers a number of factors in discharging the homelessness duty in the private rented sector, namely:-

- In what circumstances will an offer of a private rented sector tenancy be suitable for a statutory homeless household?
- Can a sufficient supply of private rented properties be made available for this purpose?
- Is the property in a 'suitable' condition in terms of standards and management?
- Will the property be affordable to the ingoing tenants?

- Is the property a 'suitable' offer taking into account the need to be a reasonable distance from work, schools etc.

Each of these factors is examined below:-

2.1 In what circumstances will an offer of a private rented sector tenancy be suitable for a statutory homeless household?

An offer of a private rented tenancy may be made to any statutory homeless household apart from in the following exceptional circumstances:-

- The household is particularly vulnerable by way of old age, physical disability, mental health/learning difficulty and in need of supported accommodation;
- There is no suitable private sector tenancy available that meets the household's needs, for example where there is a physical disability and the property is not accessible;
- There is no suitable private sector tenancy available taking into account the provisions set out at 2.3, 2.4 and 2.5 in this Policy, i.e. condition and management of the property, affordability and location
- In cases of domestic violence only where the property concerned is deemed to be too near the alleged perpetrator and could put the household at risk of harm.
- In cases of racial harassment/hate crime only where the property concerned is deemed to be too near the alleged perpetrator and could put the household at risk of harm.
- In cases of mild to moderate mental health and learning difficulty where the accommodation is located away from support networks.

2.2 Can a sufficient supply of private rented properties be made available for this purpose?

The Council is developing a private rented sector access scheme that if approved, will open up the private rented sector to households receiving housing benefit (soon to be Universal Credit) including homeless households. A pilot scheme has been running and approval is being sought for this to be expanded.

As there are currently more applicants than properties available, cases that are currently in temporary accommodation should be given reasonable priority for private rented sector tenancies, thus allowing effective use of temporary accommodation for other households who may need this provision. Where properties do not match the needs of households currently in temporary accommodation, then reasonable

priority should be given to those cases that have been accepted and have been waiting to be rehoused the longest.

2.3 **Is the property in a 'suitable' condition in terms of standards and management?**

Each property should be subject to inspection by the Private Sector Renewal Team to ensure that there are no Category 1 hazards under the Housing, Health and Safety Rating System (HHERS), electric and gas checks are up to date, the property is in a reasonable state of repair. With reference to the Homelessness (Suitability of Accommodation) (England) Order 2012 the following must be adhered to:-

“For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996, accommodation shall not be regarded as suitable where one or more of the following apply–

- (a) the local housing authority are of the view that the accommodation is not in a reasonable physical condition;
- (b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994;
- (c) the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;
- (d) the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;
- (e) the local housing authority are of the view that the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has:
 - (i) committed any offence involving fraud or other dishonesty, or violence or illegal drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003(offences attracting notification requirements);
 - (ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying on of any business;
 - (iii) contravened any provision of the law relating to housing (including landlord or tenant law); or
 - (iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004;

- (f) the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;
- (g) the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;
- (h) the accommodation is or forms part of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;
- (i) the accommodation is or forms part of relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998; or
- (j) the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.”

Additionally, the Council will need to consider the ability of the ingoing tenants to furnish the property, unless it is already furnished. The Council will liaise with the furniture scheme provided through Impact Housing Association.

2.4 Will the property be affordable to the ingoing tenants?

As a Strategic Housing Authority the Council would wish to ensure that any tenancy can be maintained by the ingoing tenants including the ability to meet the rental charges, thereby avoiding future homelessness in accordance with the Homelessness Strategy. The majority of homeless households receiving an offer of a private rented sector dwelling will be on welfare benefits which are subject to further changes in 2013 and introduction of Universal Credit.

An affordability check, i.e. assessing income and expenditure, should be completed by Housing Options advisers to determine the ability of tenants to pay the rent on the property taking into account potential housing benefit available and income level. In particular Housing Options advisers should take into account:-

- Necessities - food, clothing, heating, child care, travel costs;
- Other expenditure – debts such as loans and credit card repayments, any other reasonable expenditure.

The Council will need to ensure that any requirement for rent in advance/bond can be met within existing resources.

Housing Options staff should liaise with Revenues and Benefits in considering the need for Discretionary Housing Payments if necessary.

The affordability check should be completed for any private sector rented accommodation whether for discharging the homelessness duty, provision of temporary or interim accommodation or accommodation provided as a prevention option. Government guidelines state that 'accommodation should be regarded as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit'.

2.5 Is the property a 'suitable' offer taking into account the need to be a reasonable distance from work, training, medical facilities, schools etc.

The Homelessness (Suitability of Accommodation) (England) Order 2012 commenced on 9 November 2012 and sets out the circumstances that will determine whether the offer is 'suitable'. In particular, in accordance with the Order the local housing authority must take into account:-

"where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

- (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;
- (c) the proximity and accessibility of the accommodation to medical facilities and other support which—
 - (i) are currently used by or provided to the person or members of the person's household; and
 - (ii) are essential to the well-being of the person or members of the person's household; and
- (d) the proximity and accessibility of the accommodation to local services, amenities and transport."

3.0 Other Provisions

When ending a duty with an offer of a private rented sector tenancy, the Council may offer a break clause to the Landlord after 6 months, thereby ensuring that the tenancy is working for both the Landlord and tenant.

Housing Options advisers should document the reason why an offer of a private rented sector has or has not been made in reaching a decision to end the homelessness duty.

Revised standard letters will be issued to homeless applicants stating that any household in the future, (i.e. from 9 November 2012) that is accepted as homeless may have the homeless duty ended through one offer of a suitable private rented sector assured short-hold tenancy. Applicants should be advised of their right to appeal regarding the suitability of the offer.

An applicant may reapply to the Council should they become homeless again within a 2 year period from the date an offer of a private rented sector tenancy was accepted. Housing Options advisers should ensure that this date is recorded appropriately and the correct legal process is followed.