

Policy on Discharging the Council's Homelessness Duty into the Private Rented Sector

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Version 1.0



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1. Introduction

- 1.1 The Council is required to secure suitable accommodation for applicants who are homeless, eligible for assistance, in priority need and not intentionally homeless, and this duty ordinarily comes to an end following the offer of suitable social housing (i.e. affordable housing let through housing associations).
- 1.2 The Localism Act 2011 amended Section 193 of the Housing Act 1996 to provide a power to local authorities to discharge the housing duty by way of a 'private rented sector offer'. This offer must include an assured shorthold tenancy for a minimum 12 month period, and the Council must satisfy itself that the accommodation is suitable for the household.
- 1.3 The private rented sector offer must be made in writing, and must inform the applicant of the consequences of refusing or accepting the offer and of the right to request a review of the suitability of the accommodation offered.
- 1.4 Where the Council ends its housing duty through a private rented sector offer and the household becomes unintentionally homeless within two years of accepting the offer, the Council is obliged to accept the applicant as being homeless regardless of any priority need.
- 1.5 This policy details the circumstances in which the Council intends to exercise its power to end its duties as set out in the Housing Act 1996¹ through an offer of private rented accommodation rather than social housing.

2.0 Policy aims

- 2.1 Across Woking, the demand for housing is high, and not all residents can readily access affordable housing within the social housing sector. Consequently, the private rented sector has an important role to play in providing capacity for affordable housing through its choice of good-quality accommodation and flexibility to meet households' needs.
- 2.2 The Council is committed to supporting households who experience episodes of homelessness. This is especially the case where emergency temporary accommodation is necessary due to the disruption caused from a stay in temporary accommodation.
- 2.3 As such the Council aims to reduce the length of stay in all forms of temporary accommodation, and recognises the role that the private rented sector can play in providing appropriate accommodation for homeless applicants.
- 2.4 For some homeless households there is likely to be a delay between accessing the housing register and being offered social housing. It is for these households that a private rented sector offer is likely to provide an important opportunity to secure

¹ Section 193 as amended by Section 148 of the Localism Act 2011

stable accommodation and as a consequence reduce the negative impacts of homelessness.

- 2.5 The Council provides a range of support and assistance for tenants in the private rented sector, and this support will be prioritised for homeless households who move into the private rented sector in accordance with this policy.

3.0 The offer of private rented sector accommodation

When will a 'private rented sector offer' be appropriate?

- 3.1 In order to resolve each applicant's housing need efficiently and effectively, all cases where a homelessness application has resulted in a housing duty being owed will be assessed under this Policy to determine whether a 'private rented sector offer' is appropriate.
- 3.2 The Council will assess the suitability of the 'private rented sector offer' for the needs of the household and the outcome of this assessment will be recorded and will inform the Council's decision as to whether the household is suitable for an offer of accommodation in the private rented sector.
- 3.3 An offer of private rented sector accommodation will not be appropriate in all cases, for example where a household's particularly vulnerable would jeopardise the sustainability of a tenancy in the private rented sector.
- 3.4 Where it is not possible to make a suitable 'private rented sector offer' the Council will continue to provide temporary accommodation suitable for the household.

Making the 'private rented sector offer'

- 3.5 Where a 'private rented sector offer' is considered suitable for a particular homeless household the offer will be made to discharge the Council's housing duty.
- 3.6 The 'private rented sector offer' will be provided in writing and consist of an offer of an assured shorthold tenancy for a minimum 12 month period with a private landlord. The offer will also inform the applicant of the consequences of accepting or refusing the offer and the right to request a review of the suitability of the accommodation offered.
- 3.7 Households will be offered an opportunity to view any 'private rented sector offer' property they are offered prior to any expectation that they decide whether to accept or refuse the offer.
- 3.8 The 'private rented sector offer' may also include assistance through the Council's range of homeless prevention tools, including but not limited to a rent deposit bond.
- 3.9 Where the 'private rented sector offer' is accepted the Council will work with both the landlord and the prospective tenant to ensure that the tenancy commences at the earliest opportunity.

- 3.10 The household will be given a reasonable period to vacate their temporary accommodation proportionate to their circumstances, however they will remain liable for the costs of their temporary accommodation until they have vacated.
- 3.11 All households will be given a single 'private rented sector offer' unless the Council withdraws the offer or there are other exceptional reasons (for example a change of circumstances affecting the suitability of the 'private rented sector offer').
- 3.12 The Council will consider that the 'private rented sector' offer has been refused where a household fails to:
- i) Accept, refuse or respond to the offer within 5 working days of the date of a private rented sector offer, or;
 - ii) Sign a tenancy agreement forming part of a private rented sector offer within 5 working days, or;
 - iii) Occupy the private rented property from the date the tenancy agreement commences.
- 3.13 Where the 'private rented sector' offer has been refused the Council will consider that its housing duty has been fully discharged and the provision of temporary accommodation will cease. The household will be given a reasonable period to vacate their temporary accommodation proportionate to their circumstances, and they will remain liable for the costs of their temporary accommodation until they have vacated.

Suitability of accommodation forming part of a private rented sector offer

- 3.14 Where the Council intends to discharge its housing duty by way of a 'private rented sector offer' the accommodation must be suitable for an applicant^{2,3,4}. Any offer of private rented accommodation will be assessed by the Council as being 'suitable' for a particular household, and the Council will always have regard to the relevant regulations⁵ and guidance.
- 3.15 Where there is a shortfall between the rent and the amount of LHA the applicant will receive or where an applicant is working and is not in receipt of LHA, the authority will consider the applicant's residual income after meeting the costs of the accommodation and all other expenditure required for that applicant to provide the ordinary necessities of life, as outlined above.
- 3.16 The matters that the Council will consider in determining whether a private rented sector offer is suitable for a particular household are set out below.

² Section 206 of the Housing Act 1996, and Chapter 17 of the

³ Homelessness (Suitability of Accommodation) (England) Order 2012

⁴ Homelessness Code of Guidance for Local Authorities, DCLG

⁵ The Homelessness (Suitability of Accommodation) (England) Order 2012

Affordability

- 3.17 The Council will ensure that any tenancy that forms part of a 'private rented sector offer' is affordable for each household to support tenancy sustainment.
- 3.18 The Council will carry out a review of the household's income and expenditure, including an assessment of reasonableness of non-essential expenditure.
- 3.19 Where an applicant is in receipt of welfare benefits and qualifies for Local Housing Allowance (LHA) the amount of rent considered affordable will be considered against the amount of benefit the applicant will receive.

Location

- 3.20 Where reasonably practicable, the Council will aim to secure accommodation within the borough of Woking, however given the demand for some property types and sizes, it may be necessary to secure accommodation in other local authority areas.
- 3.21 It is also relevant that the Borough is geographically small, and the impact of living in, for example, a neighbouring Council area may not necessarily result in a consequential negative impact.
- 3.22 The Council may make an offer of accommodation outside of the Borough in the following situations:
 - i) Where the applicant has found the accommodation themselves;
 - ii) Where the applicant does not have a local connection with the Borough;
 - iii) Where it is not reasonable for the applicant to remain in the Borough (for example, if there is a risk of violence if they were to remain);
 - iv) Where the needs of the applicant are better met outside of the Borough (or example if support or other specialised services are available outside of the Borough);
 - v) Where there is no suitable accommodation available within the Borough;
 - vi) Where it is not reasonably practicable to secure accommodation with the Borough within a reasonable time, having regard to the demand and supply of housing;
 - vii) Where the applicant is being assisted to find accommodation and relocate to another area, and;
 - vii) Where the accommodation is located in a neighbouring Borough.
- 3.23 In considering whether a property forming part of a private rented sector offer is suitable, the Council will have regard to:
 - i) The significance of any disruption which would directly result from the location of the proposed accommodation to the employment, caring responsibilities or education of the applicant (or members of the applicant's household), and;

- ii) The proximity and accessibility of the proposed accommodation to local services, amenities and transport;
- iii) The significance of disruption to employment, and;
- iv) The proximity and accessibility of the proposed accommodation to medical facilities and other support which at the time of the offer are:
 - a) Used by or provided to the applicant (or members of the applicant's household), and are;
 - b) Essential to the well-being of the applicant (or members of the applicant's household).

3.24 Where households are considered homeless by virtue of violence or a threat of violence, the Council will have regard to the risks posed by accommodation in specific locations.

3.25 Where a private rented sector offer is accepted outside of the Borough, the Council will notify the receiving local housing authority in whose district the accommodation is situated.

Property condition

- 3.26 In considering whether a property is suitable, the Council will ensure that:
- i) The proposed accommodation is in a reasonable physical condition, and for that purpose be free from any Category 1 hazards³ where a member of the household is a member of the vulnerable age group for that hazard.
 - ii) The accommodation meets the requirements to have a valid gas safety certificate (where appropriate).
 - iii) The electrical equipment supplied with the accommodation meets the requirements of Regulations 5, and 7, of the Electrical Equipment (Safety) Regulations 1994.
 - iv) The landlord has taken reasonable precautions in respect of:
 - a) The fire safety of the accommodation, and;
 - b) The fire safety of any furniture supplied with the accommodation, and;
 - c) Preventing carbon monoxide poisoning in the accommodation.

Property size

3.27 In considering whether a property is suitable, the Council will have regard to the household composition and the space afforded by the accommodation, and the impact of any particular medical and/or physical needs.

3.28 The Council will ensure that the proposed accommodation will not be overcrowded, and as such, will be free from a Category 1 'Crowding and Space' hazard⁴,

³ As defined by the Housing Health and Safety Rating System

⁴ As defined by the Housing Health and Safety Rating System

considering the occupation of the accommodation by the household subject to the private rented sector offer.

Property management

- 3.29 In considering whether a property is suitable, the Council will be satisfied that there is no evidence to suggest that the landlord of the accommodation cannot be considered a 'fit and proper person' as defined by Section 66(2) of the Housing Act 2004.
- 3.30 The Council will also be satisfied that the landlord has provided a written tenancy agreement which is adequate for the purposes of the private rented sector offer.

Property licensing

- 3.31 In considering whether a property is suitable, the Council will ensure that where appropriate the property is licensed with the Council as required by:
- i) Section 55 of the Housing Act 2004 (Mandatory HMO Licensing), or;
 - ii) Section 56 of the Housing Act 2004 (Additional HMO Licensing), or;
 - iii) Section 80 of the Housing Act 2004 (Selective Licensing).

4.0 Challenging the decision to make a 'private rented sector offer'

- 4.1 All households for whom the Council makes a 'private rented sector offer' to discharge its housing duty have the right to request a review of the Council's decision based on the suitability of the accommodation.

Requesting a review

- 4.2 All requests for reviews of the decision must be made in writing to the Housing Needs Manager either by:

Email: housingneeds@woking.gov.uk or:

Address: Woking Borough Council
Civic Offices
Gloucester Square
Woking
Surrey GU21 6YL

- 4.3 The request for a review must be made within 21 days. Where a request is made after 21 days, the Council has discretion to accept or refuse the request, having due regard to the reasons for the delay in submitting the request for a review.
- 4.4 Where an individual is dissatisfied with the outcome of a review, they may appeal to the County Court if they consider the decision of the review is incorrect.
- 4.5 Where the Council receives a request for a review of the private sector offer, it will be in the household's best interest to accept the offer pending the outcome of the review.

- 4.6 The Council will advise applicants that it is in their best interests to accept the private rented sector offer subject to a review of the decision being made rather than refusing the offer in which case the Council will consider that its housing duty has ended.

Review outcomes

- 4.7 Where the Council is not satisfied on review that it is reasonable to refuse the offer and the 'private rented sector offer' was refused, the Council will consider that its housing duty is fully discharged, and the provision of temporary accommodation will cease (if it had not done so already).
- 4.8 Where the Council is satisfied on review that the 'private rented sector offer' should be withdrawn by the Council and the private rented sector offer was refused, suitable temporary accommodation will be offered and a further private rented sector offer will be made in due course when suitable accommodation is available.
- 4.9 Where the Council is satisfied on review that the 'private rented sector offer' should be withdrawn by the Council however the private rented sector offer was accepted the following apply:
- i) Where the 'private rented sector offer' is withdrawn after the relevant private sector tenancy has commenced the Council will:
 - a) Secure temporary accommodation for the household, unless they wish to remain in the 'private rented sector offer' property.
 - b) Indemnify the tenant from any rent claim from the private landlord in respect of ending the tenancy early.
 - ii) The tenant will remain liable for:
 - a) The rent payable until the date of the withdrawal of the 'private rented sector offer' or the date they return the property to the landlord (whichever is later).
 - b) Any non-rent claim including (but not limited to) claims relating to repairs resulting from property damage, void cleaning, removal of rubbish and other items left by the tenant etc.
 - c) Any claims in respect of a rent deposit bond arising from rent arrears, or damage etc.

5.0 Complaints

- 5.1 If you are not satisfied with the way you have been treated by the Council, you can make a formal complaint.
- 5.2 All complaints will be investigated and the applicant will receive a written response within the timescale set out in the complaints policy.

- 5.3 Full details of the Council's complaints process can be found on the Woking Borough Council website:

<https://www.woking.gov.uk/council-and-democracy/customer-care-and-feedback/complaints-procedure>