

London Borough of Lambeth

Homelessness Discharge of Duty into the Private Rented Sector

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Forward

It is our vision that all of our residents live in a home they can afford, that is safe and well managed in a neighbourhood they can be proud of. In an ideal world this would mean an extensive range of housing options, with residents able to choose the area and tenure they want to live in.

However affordable housing is becoming an increasingly scarce commodity in Lambeth and the capital as a whole. The annual supply of social housing is reducing and after a long period of steady reduction numbers of households in temporary accommodation (TA) are increasing. The affordability of TA for Lambeth Council is a major concern. Changes to TA subsidy rules, welfare reform, and a private rental market experiencing above inflation rises all combine to put significant financial pressure on the Council.

The introduction of the Localism Act 2011 has had a significant impact on the way in which Local Authorities deal with applications for social housing and homelessness applications under Parts VI and VII of the Housing Act 1996. Homelessness changes enacted now afford Council's a new power that allows suitable 'Private Sector Offers' to be used to end the main homeless duty, without requiring the applicant's agreement. This applies to all households who have made a homeless application after November 9th 2012 and are owed a full duty.

The Policy

Lambeth intends to make use of the new power to fully discharge its full housing duty by way of a 'private rented sector offer' under (s193 7AA - 7AC) Part VII Housing Act 1996 as amended by s.148 (5)-(7) Localism Act 2011. The policy will apply for *most* homeless applicants who have made a homeless application to Lambeth after November 9th 2012 and will particularly be apt in cases where there is a significant financial burden on the local authority or applicant.

Appropriate applicants will be encouraged to take a private sector offer, rather than being forced to do so. Those who move voluntarily into private rented housing will qualify for an increased priority through the allocations scheme as households 'working with us to prevent homelessness'. There will not be a blanket application of the new power and a decision will be taken after a full consideration of each household's individual circumstances and the facts that apply to that case.

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

How it will be applied?

For any applicant that has made a homeless application after November 9th 2012 and is owed a full duty that duty will remain under S193 until either the council arrange 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; being:

- If the applicant accepts an offer of settled accommodation 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 under the council’s Allocation scheme which the council is satisfied is suitable for their needs, and the council inform the applicant that it regards itself as having discharged its duty under Section 193 Part VII of the Housing Act 1996.
- If the applicant becomes intentionally homeless from the suitable accommodation made available for his/her occupation under Section 193 Part VII of the Housing Act 1996
- 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 under Section 193 Part VII of the Housing Act 1996 .

To whom will it apply ?

The criteria set out below is not an exhaustive list but provides relevant examples of selecting applicants to be made a PRS offer to fully discharge the homeless duty and will include those that:

- Have expressed a preference to live in a particular area. Area choice will be considered when making a PRS offer but cannot be guaranteed.
- Are in temporary accommodation where there is an unsustainable cost to the council
- Are in temporary accommodation where due to the level of rent charged there is a cost to the applicant

- Are in temporary accommodation and require longer term accommodation as a matter of urgency.
- That have been accepted as being threatened with homelessness and owed a full housing duty and where a PRS offer will avoid the need for the household to go into temporary accommodation.
- Where there are no exceptional circumstances relating to the need for the provision of long term social housing to provide longer term stability for a household (e.g. this could be where a household has a child or children on the at risk register or where a household requires an adapted property to meet their long term disability needs)

One or several criteria may apply at the same time. Regardless of the fact that an applicant has met the criteria for being considered for a PRS offer the council will still ensure that it only makes a PRS offer after a full consideration of each household's individual circumstances and the facts that apply to that case.

Any use of PRS to discharge homelessness duty will only be carried out **following a thorough and fair suitability assessment**. Considerations will include:-

- Affordability; is temporary accommodation affordable to both the Council and applicant? This is particularly likely to be an issue for larger families or those in Bed + Breakfast / annex accommodation
- Care leavers will not be expected to enter the PRS
- Whether there are support needs which mean private rented accommodation is unlikely to be sustainable. This is likely to be particularly relevant for under 35 year olds who would be unable to have their own self contained accommodation in PRS.
- Age; as there is a relatively abundant supply of social sheltered housing, we are less likely to discharge older people into the private sector
- Whether an adapted property is required
- Any safeguarding issues. Generally location is likely to be a more important consideration than tenure and this is covered in the Placements Policy.
- Time spent in Lambeth – we are more likely to discharge into the private rented sector for households who have not spent much time in Lambeth.

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) it will discharge its duty by arranging 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”).

We anticipate that the majority of applicants would be suitable for PRS housing, however entry into the PRS is likely to be considerably constrained by our ability to secure suitable supply.

Suitability of Offers

Under the Policy the Council will make “suitable” offers of PRS accommodation to discharge their homeless duty. In assessing the allocation of accommodation the Council will comply with the relevant legislation, associated case law and give regard to the Homelessness Code of Guidance and in doing so give particular consideration to factors such as location, condition and affordability.

1. Location

Location of the accommodation will be a significant factor when discharging duty. As well as having regard to the statutory requirements and relevant case law¹ - **Lambeth’s Placements Policy** which also applies to the location of Temporary Accommodation and sets the principals in determining this aspect of suitability.

2. Property Condition and Management

The Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 2 sets out a list of requirements relating to the property and its management that must be met in order for the property to be suitable.

Accommodation offered should be in a ‘reasonable physical condition’. For all properties within Lambeth or London, we will require landlords to be accredited through LLHAS. For areas outside of London we accept properties where the landlord is signed up to a similar accreditation scheme, or arrange for an inspection to be carried out by the receiving local authority or suitable qualified person. The accreditation / inspection will ensure that the following:-

The local authority must be of the view that the accommodation is in reasonable physical condition. The authority must also satisfy itself that the property is suitable in relation to:

- Certain electrical regulations
- Fire safety
- CO poisoning – there must be adequate carbon monoxide alarm/s
- HMO licensing
- The property has a valid energy performance certificate (EPC)
- Gas safety record

¹ Homelessness (Suitability of Accommodation)(England) Order 2012; Homelessness Code of Guidance 2006; Section 208, Part VII Housing Act 1996; case law includes Abdi vs Waltham Forest (2012)

- That a written tenancy agreement will be provided
- And that the landlord is a fit and proper person to act in the capacity of landlord.

To ensure suitability against these statutory standards a property will always be visited by an officer from the Council's PRS or services or undertaken by the authority's agent.

There is no requirement in the suitability order for a technical inspection to be undertaken by qualified HHSRS officer but where an officer or the authority's agent have any concern that a Category 1 hazard may be present they will refer the property on for a technical assessment under Section 4 of 2004 housing Act.

3. Affordability

For the property to be suitable it must be affordable under Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No. 3204).

In assessing affordability the Council will consider not only if it is affordable now but whether it will be affordable in the *next 12 months* if it is known that the household based on their known circumstances is likely to receive a reduction in income due to changes in benefit entitlement due to welfare reform.

An individual affordability assessment will be undertaken for every applicant to be certain they can afford the housing without being deprived of basic essentials such as food, clothing, heating, transport and other essentials; and in so doing will take account of costs resulting from the location of the accommodation.

Where appropriate, particularly for out of borough applicants, the council will provide assistance with reasonable relocation costs.

Refusal or failure to respond to an offer of suitable accommodation

If a statutory homeless applicant refuses or fails to respond to a suitable offer of accommodation in the private or social sector, the local authority can end its statutory duty to provide accommodation. The local authority will explain the applicant's right to a review of the suitability of the offer of accommodation.

Re- applications

If within 2 years of accepting the PRS 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 that accommodation will fall to the authority. 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.

Statutory Review

As with other offers made to end the main duty, applicants will be able to discuss any concerns with their [housing options] officer before during and after the viewing. Applicants will receive a written decision letter confirming the Council's position on the suitability of the offer after its refusal, stating reasons for why the decision has been taken.

Applicants have the right to request a review from a more senior officer. The review process allows for the applicant to make representations and avail themselves of professional qualified legal advice. If this review concludes that the property was suitable, applicants have the right to challenge the decision further by way of an appeal (on a point of law) to the County Court.

Notifying other Local Authorities and Support

The Inter Borough Accommodation Agreement (IBAA) is a Pan London agreement between that applies to the placement of households in Temporary accommodation and private rented sector accommodation from one borough to another. This is similar to the more established 'NOTIFY' system used for temporary accommodation placements.

Clients will be provided with practical information packs to support placements which will include details on matters such as local schools, amenities, health care services etc and offered assistance with any claims for HB etc. Support with moving costs can also be provided as described above.

Reviewing the Policy

The Policy will be monitored and reviewed formally in line with the development of a new Homelessness Strategy in 2016. The Policy may also be reviewed at any time, in line with any relevant changes in legislation or Guidance issued by relevant Government Departments.