

# **Walsall Policy to discharge duty owed to homeless households into the Private Rented Sector**

**Effective from 23<sup>rd</sup> November 2022**

## **1. Background**

1.1 The Localism Act 2011 made significant changes to the way in which local authorities can deal with applications under Part VI and VII of the Housing Act 1996.

1.2 Local authorities owe applicants who are homeless and eligible for assistance and who are also in priority need and not intentionally homeless, the main housing duty to secure suitable accommodation (unless a referral to another local authority can be made under the local connection provision).

1.3 The Localism Act allows local authorities to fully discharge the main housing duty by a "private rented sector offer" [s193 (7AA) – (7AC) Housing Act 1996 as amended by 2.148 (5) – (7) Localism Act 2011]. This must be an offer of an assured shorthold tenancy with a minimum fixed term period of 12 months.

1.4 In addition to the main housing duty (193(2)), the Homelessness Reduction Act 2017 introduced a duty to prevent homelessness for those who are threatened with homelessness and a duty to relieve homelessness for those who are homeless. Under the prevention (s195) and relief (s189B) duties, Local Authorities are required to take reasonable steps to help the applicant secure accommodation - which can include, as a minimum, a 6 month Assured Shorthold Tenancy within the private rented sector. These duties arise when an eligible household presents to the Council either as homeless or threatened with homelessness within 56 days or with a valid s21 notice from a private landlord.

1.5 The introduction of the Homelessness Reduction Act 2017 requires that Local Authorities provide temporary accommodation (TA), to those households who they believe may have a priority need and in the relief stage. If the relief duty comes to an end and the Council has been unsuccessful in relieving homelessness, the household will remain in TA until the Council can discharge their homeless duty.

1.6 Walsall Council will assess each statutorily homeless household to establish whether an offer of a tenancy in the private rented sector may be suitable for the purpose of discharging the main housing duty under section 193(7F) of the Housing Act 1996.

## **2. Policy aims and objectives**

2.1 The policy will work alongside Walsall Council's Housing Allocations Policy and complies with:

- Part VII of the Housing Act 1996, (as amended)
- The Localism Act 2011
- Homelessness Code of Guidance for Local Authorities (2018)
- Homelessness (Suitability of Accommodation) (England) Order 2012

- Equality Act 2010
- Children's Act 2004

2.2 This Policy will ensure a comprehensive and consistent assessment is carried out for each household where the main applicant's homelessness assessment, and personalised housing plan (PHP), has identified that consideration of private rented accommodation is a viable option, and when there is a suitable property available within the private rented sector.

2.3 The policy aims to relieve homelessness by assisting applicants to secure long term suitable accommodation and to minimise time spent in temporary accommodation.

2.4 All households will be assessed based on their individual housing need. This policy will ensure that there is no discrimination on the grounds of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender or sexual orientation.

### **3. Suitability of Accommodation**

3.1 The Homelessness Code of Guidance (2018) gives guidance on the suitability of offers of accommodation to fulfil the Council's duties under section 193(2) of the Housing Act 1996.

3.2 The Homelessness (Suitability of Accommodation) (England) Order 2012 sets out specific conditions for private rented sector offers which are made to fulfil these duties.

3.3 The Suitability Order consists of two parts. The first part deals with the location of the accommodation. This applies to all accommodation offered under part VII of the Housing Act. The second part is concerned with those circumstances in which accommodation is not to be regarded as suitable for a person for the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996.

3.4 Where practical, households will be encouraged to take part in viewings of any property identified as suitable for their needs, prior to taking up the tenancy, in order that the Council can be made aware at an early stage of any issues that the applicant may have with regard to the property.

#### *Location*

3.5 Existing guidance on this aspect is set out in Section 17 of the Homelessness Code of Guidance (2018). The suitability of the location for all the members of the household must be considered. Particular consideration must be given to the employment, caring responsibilities and educational needs of the household.

3.6 Walsall Council will seek to secure accommodation in the Walsall area to discharge its main housing duty, unless a household wishes to be rehoused outside of the area. Where possible and appropriate, Walsall Council 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, such as access to transport and other support services. However, it will only seek to look at specific areas if there is specific welfare reason linked to family support where supporting documentation is provided, or if a dependent child in the family is in their final exam year at school, or if there are special educational needs that require attendance at a particular school.

3.7 Applicants whose household has a need for social services support or a need to maintain links with other essential services within the borough, for example families with children who are subject to safeguarding arrangements, should be given particular attention when temporary accommodation is allocated, to try and ensure it is located in or close to the housing authority's own administrative area. Careful consideration should be given to applicants with a mental illness or learning disability who may have a particular need to remain in a specific area, for example to maintain links with health service professionals and/or a reliance on existing informal support networks and community links. Such applicants may be less able than others to adapt to any disruption caused by being placed in accommodation in another council area.

#### *Physical condition of the property*

3.8 Authorities should secure accommodation that is in a reasonable physical condition. Authorities should ensure that the property has been visited by either a local authority officer or someone acting on their behalf to determine its suitability before an applicant moves in. Existing aspects of suitability such as space and arrangement as set out in statutory guidance continues to apply.

3.9 In determining whether the property is in a reasonable physical condition, attention 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 a reasonable physical condition.

3.10 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 (HHSRS).

#### *Health and Safety matters*

3.11 All accommodation must comply with the following:

- Landlords are by law required to ensure that all electrical equipment in a property is safe. The local authority is required to satisfy themselves that any electrical equipment provided in the property meets the requirements of Schedule 1 of the Electrical Equipment (Safety) Regulations 2016.

- All landlords/agents will be asked to supply a satisfactory Electrical Safety Certificate from within the last five years.
- Any moveable electrical items in the property will require evidence of a Portable Appliance Test (PAT) within the last year.
- The inspection of the property will seek to identify any broken fittings or obvious electrical defects such as loose wiring, or electrical faults.
- The Regulatory Reform (Fire Safety) Order 2005 applies to the common or shared parts of multi-occupied residential buildings (e.g. houses of multiple occupation). As such landlords, owners or managing agents will need to carry out a fire risk assessment of the common parts and implement and maintain appropriate and adequate fire safety measures. As part of their responsibilities, landlords should put in place appropriate management and maintenance systems to ensure any fire safety equipment or other equipment which may represent a fire hazard, is maintained in good working order, and in accordance with the manufacturer's instructions.
- Private Sector Landlords are required to have at least one smoke alarm installed on every storey of their properties.
- Landlords are also required to ensure that all furniture and furnishings supplied comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).
- The Council and the fire and rescue authority will work together to ensure the safety of domestic premises including the provision of fire safety advice to households (such as the benefits of a working smoke alarm). The Council will need to satisfy itself that these regulations have been adhered to.
- The landlord must take reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, where a risk of this exists. Taken together with a valid gas Safety Record, the installation of a carbon monoxide alarm fitted in all rooms containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove) would constitute a reasonable precaution to prevent the possibility of carbon monoxide poisoning, where such a risk exists.
- The landlord must make sure that the fire and carbon monoxide alarms in its rented properties are in working order at the start of each new tenancy.
- If the accommodation is or forms part of residential property which does not have a valid Energy Performance Certificate (EPC) as required by the Energy Performance of Buildings (England and Wales) Regulations 2012, then it will not be regarded as suitable. The Council will ensure it has had sight of a current certificate with a rating of 'E' or above to ensure that this requirement has been met.
- Accommodation that is or forms part of relevant premises in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 must have a current gas safety certificate. The Council will check this by requesting sight of the valid Gas Safety certificate.

3.12 Compliance with the requirements listed in 3.11 above will be checked during the property inspection and landlords should provide copies of any relevant certificates.

### *Landlord behaviour and Management of the Property*

3.13 The landlord must be a fit and proper person to act in the capacity of a landlord. Walsall Council will take appropriate steps to satisfy itself that the landlord is a fit and proper person.

3.14 To assess if a landlord is “fit and proper person” the Council will consider the following points:

- Any offences committed by the landlord involving fraud or other dishonesty, violence or illegal drug use or sexual offences that are listed in Schedule 3 to the Sexual Offences Act 2003(b) (offences attracting notification requirements).
- Practises by the landlord constituting 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.
- Whether the landlord has contravened any provision of the law relating to housing (including landlord or tenant law).
- Prosecutions of the landlord for offences of harassment and illegal eviction.
- If the landlord has 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(c).

3.15 The landlord must provide a written tenancy agreement which they propose to use in renting the property, which is adequate and does not contain unfair or unreasonable terms. The landlord will also provide the tenant with a copy of the current Governments ‘How to Rent Guide’.

3.16 The tenancy must be an Assured Shorthold Tenancy with a minimum fixed term period of 12 months to discharge the main housing duty or a minimum of 6 months under the prevention and relief duties of the Homelessness Reduction Act 2017. The Council will seek, where possible, to secure 2-year tenancies.

3.17 The landlord will within 30 days of receipt protect deposits under a Government Approved Scheme.

3.18 The landlord will secure a licence if the property is a house in multiple occupation (HMO).

## **4.0 Circumstances where a private sector offer of accommodation will be made**

4.1 A private sector offer made to applicants under the prevention and relief stages of the Homelessness Reduction Act may end the prevention and relief duties

(Sections 195(8)(a) and 189B(7)(a)) as well as those owed under the main Section 193 duty.

4.2 It is however acknowledged that private sector property/tenancies may not be suitable for all applicants. The following persons will not normally be considered as suitable for an offer of accommodation in the private rented sector for the purposes of discharging a homelessness duty:

- People requiring supported accommodation (due to old age, physical disability, learning disability or mental health).
- Households requiring adapted properties.
- In cases of domestic violence, racial harassment or hate crime, where the property concerned is deemed to be too near to the alleged perpetrator and could put the household at risk of harm.
- In cases where the household has extra support needs (learning disability and/or learning disabilities) where the available accommodation is located too far from the household support networks.
- Where the applicants are under 18 years of age.

## **5.0 An offer to bring to an end the main housing duty**

5.1 An offer to end the main housing duty is defined by section 193 Housing Act 1996 as an offer of an Assured Shorthold Tenancy made by a private landlord to an applicant in relation to any accommodation which:

- Has been made available for the applicant's occupation by arrangements made by the Council with a private landlord; or
- Is made with the approval of the Council, in pursuance of arrangements made by the authority with the landlord with a view to bringing the duty under section 193(2) of the Housing Act 1996 to an end, and
- Is a fixed term Assured Shorthold Tenancy for a minimum period of at least 12 months and where possible the Council will seek 2-year tenancy agreements

5.2 If an applicant accepts or refuses a private rented sector offer the Council will consider its main housing duty ended, subject to the applicant having been informed in writing of the following matters (as mentioned in section 193(7AB) Housing Act 1996):

- The possible consequences of refusal or acceptance of the offer;
- That the applicant has the right to request a review of the suitability of the accommodation; and
- In a case which is not a restricted case, the effect under new section 195A of a further application to the authority within two years of acceptance of the offer (i.e. the reapplication duty).

5.3 The Council must also be satisfied that the offer:

- Is suitable for the applicant and other household members, and
- That the applicant is not under contractual or other obligations in respect of his or her existing accommodation or, that if he or she is, they must be able to bring those obligations to an end before being required to take up the offer.

## **6.0 A final accommodation offer made in the 189B Relief Stage**

6.1 An offer is a “final accommodation offer” if

- It is an offer of an Assured Shorthold Tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become available for the applicant’s occupation, and
- It is 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
- The tenancy being offered is a fixed term tenancy within the meaning of part 1 of the Housing Act 1988 for a period of at least 6 months.

6.2 The Council’s duty to the applicant under section 189(B) comes to an end if the applicant accepts or refuses a final accommodation offer, subject to the applicant having been informed of the consequences of refusal and subject also to the applicant’s right to request a review of the suitability of accommodation.

6.3 The Council must also be satisfied that the offer is suitable for the applicant and other household members, and the applicant is not under contractual or other obligations in respect of his or her existing accommodation or, that if he or she is, they must be able to bring those obligations to an end before being required to take up the offer.

6.4 The refusal of a final accommodation offer precludes the applicant from subsequently being owed the main housing duty.

6.5 In cases where the section 189B(2) duty ceases as a consequence of the applicant’s deliberate and unreasonable refusal to co-operate, the main (section 193) housing duty will not apply, but the Council are obliged to secure that accommodation is made available to the applicant (section 193C(4)). This duty will cease if the applicant accepts or refuses a final accommodation offer.



## **7.0 An offer to an applicant who has a priority need in order to prevent or relieve their homelessness**

7.1 An offer of a private sector accommodation to an applicant who has priority need in order to prevent or relieve homelessness must meet the additional suitability requirements of Article 3 (Homelessness (Suitability of Accommodation) (England) Order 2012).

## **8.0 Assessment Procedure**

8.1 When the Homelessness Service has sourced a private rented property that is suitable, affordable and has regard to the household's Personalised Housing Plan (PHP), the property will be offered to that applicant under the relevant homelessness duty.

8.2 Each case will be assessed on its own merits. Assessments will be made into the following area of need and risk:

- Bedroom requirement for the composition of the family, dependant on the need and having regard to national guidance on housing related welfare benefits.
- Physical, mental and emotional health needs.
- Location needs, where these are linked to social support networks and educational requirements for dependent children in their final exam year at school.
- Risk to personal safety and community.
- Recent housing history/tenancy.
- Affordability and financial circumstances (including eligibility for assistance with housing costs).
- Availability of appropriate resources.

8.3 All applicants being considered for a private rented sector offer of a specific property will undergo an affordability assessment which will take into account the applicant's income, expenditure and costs. A property will be judged to be affordable if a household would be able to meet their priority debts as they fall due, taking into account their necessary or reasonable living expenses. Applicants will not be made a private rented sector offer that is not affordable for them.

8.4 The Council will ensure that applicants with insufficient capital to satisfy any requirement by their prospective landlord for rent in advance/bond will be considered by the Housing Options Service on a case by case basis. Subject to acting in accordance with data protection laws, the Housing Options Team will also liaise with the Council's Revenues and Benefits team regarding the possibility of assistance via a Discretionary Housing Payment (DHP).

8.5 Young single applicants will normally be considered for Housing in Multiple

Occupation, unless they are in an exempt category. If the single person is able to afford a one-bedroom property and the property is suitable, then this may also be considered.

8.6 If the applicant is matched to a property, or they have identified a property themselves, the officer will invite the applicant to view the property, providing full details of the viewing time and location. The applicant will be sent/given an offer letter which will explain the details of the offer and the implications of not attending or refusing the offer.

## **9.0 Offers of accommodation**

9.1 The allocation of available properties will be at the local authority's discretion. Each case will be assessed on individual circumstances and in line with the terms and procedure set out in this policy.

9.2 A private sector offer is made with the approval of the local authority. However, the landlord will have the final decision on whether a particular household will be accepted as a tenant of their property.

9.3 If Walsall Council has accepted a statutory duty towards an applicant and a private rented property is available and suitable for the applicant, an offer will be made immediately.

9.4 The applicant will be informed in writing of the offer and the letter will include the following matters:

- the consequences of refusing the offer of accommodation.
- the consequences of accepting the offer of accommodation.
- that the applicant has the right to request a review of the suitability of the accommodation.
- the effects under new section 195A of a further application to the Council within two years of acceptance of the offer (the 'reapplication duty')

9.5 Once the offer has been made, and the applicant has been housed, the Council's housing duty will be discharged. If the applicant wishes to remain on the housing register, their application will be dealt with in line with the Council's allocations scheme.

## **10.0 Re-application within two years**

10.1 The re-application duty Housing Act 1996 Part VII s. 195A applies where:

- The application for homelessness assistance was made on or after 9<sup>th</sup> November 2012; and
- The applicant accepted a private rented sector offer which brought the main housing duty to an end; and
- The private rented sector tenancy subsequently ended within 2 years of the duty ending.

10.2 The applicant will be entitled to the main housing duty, or to the equivalent duty owed to those threatened with homelessness, if the applicant:

- Is eligible for assistance; and
- Is homeless or threatened with homelessness and
- Did not become homeless intentionally.

10.3 The main housing duty will be owed regardless of whether the applicant still has a priority need.

10.4 There are three situations where the re-application duty will not be owed:

- Where the duty has been discharged into the private rented sector but the household is a 'restricted case'.
- Where the re-application duty has already been activated and a further offer of private rented accommodation has been made and accepted. If this tenancy then comes to an end within two years of the date of acceptance, the applicant must make a fresh application for homelessness assistance and would have to have a priority need in order to be entitled to the main housing duty again.
- This special provision will not apply to those applicants whose applications for assistance are made more than two years after the date of acceptance of a private rented sector offer.

## **11.0 Reviews on the suitability of accommodation offered.**

11.1 As part of the offer process and in accordance with part VII of the Housing Act 1996, applicants will be advised of their right to request a review on the suitability of the accommodation offered. Applicants will also be advised of external advice services.

11.2 Applicants can request a review of suitability within 21 days of the offer. This can be done by writing or verbally. If the review request is outside of the 21 days, careful consideration will be given to the agreement of the review taking place, as this is not an automatic right. The decision not to grant an out of time review must be rational and proportionate to the circumstances being reviewed.

11.3 Once a review request has been received, Walsall Council will write to the applicant to acknowledge the request and to provide details of the review procedure.

11.4 Walsall Council will complete the review in line with the Allocation of Housing and Homelessness (Review Procedures) Regulations 2018. This will normally be within 8 weeks of the request for the review, however this period can be longer if both the applicant and the Local Authority agree in writing. The review will be carried out by the Senior Housing & Welfare Officer who will not have been involved in the original decision.

11.5 Once a review decision is made, Walsall Council will write to the applicant informing them of the decision. The letter will be sent to the applicant or will be available for collection from Walsall Council's Customer Service Centre.

11.6 The review outcome can be:

- *Upheld* – in this situation the offer of accommodation will have been deemed to be reasonable and suitable and the decision to discharge the main housing duty will still apply.
- *Overtured* – in this situation Walsall 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 main housing duty will not be discharged until a further offer of suitable accommodation is made.

11.7 The Council's decision letter will explain the review decision, how Walsall Council came to the decision and the applicant's right to appeal the review decision to the County Court on a point of law. An appeal must be made within 21 days of being notified of the review decision.

11.8 There is no 'general' right of appeal to the County Court against every decision made under Part VII the Housing Act 1996. The pre-requisites for a County Court appeal against a substantive part VII decision are that:

1. the initial decision must have been a reviewable decision; and
2. the applicant must have made a request for a review; and
3. the review decision must have been properly notified to the applicant; and
4. the time limit for proper notification of a review decision must have expired; and
5. the appeal must be on a point of law; and
6. the appeal must be brought within the prescribed time limit (21 days or such extension of it as the court may allow)

## **12.0 Accommodation during and after a review decision**

12.1 Walsall Council is not legally obliged to provide the applicant with any temporary accommodation pending an outcome of any review that has been requested by the applicant.

12.2 Applicants will be advised to accept the offer whilst the review is being considered and the landlord agrees to release the applicant from the tenancy if the review is overturned. This is encouraged as it ensures that the applicant has accommodation during the review period and in the event that the review is not successful.

12.3 During the review process the property originally offered may (at the landlord's discretion) be held open whilst the review is considered. If the review is unsuccessful and the property is still available, the applicant may be offered the property again. In this instance Walsall Council will consider its homelessness duty discharged.

### **13.0 Complaints to the Local Government and Social Care Ombudsman**

13.1 If an applicant is not satisfied with a review decision and believes that maladministration has been committed by the Council, they can complain to the Local Government Ombudsman. The Ombudsman will not consider certain matters, for example if 12 months has passed since the cause for complaint occurred, or when matters are, or could be, subject to court proceedings.

13.2 The Local Government and Social Care Ombudsman will normally only consider a complaint if the complainant has already followed the Council's complaints procedure. The Ombudsman does however have the discretion to take on complaints, where it is felt that the case is sufficiently urgent to require their intervention.

13.3 The Ombudsman will consider a complaint if an applicant believes they have been treated unfairly as a result of maladministration. Examples include:

- Delay taking action without good reason.
- Taking into account irrelevant considerations or ignoring relevant considerations.
- Not following the applicable rules (legal or local procedures).
- Giving wrong information.
- Not reaching a decision in the correct way.

13.4 The contact details for the Local Government and Social Care Ombudsman are:

Telephone: 0300 061 0614

Website: [www.lgo.org.uk](http://www.lgo.org.uk)

## **14.0 Monitoring and review**

14.1 Details for whom a duty is discharged will be reported on quarterly to the DLUHC on the H-CLIC data collection system.

14.2 This policy will be reviewed by the Council every three years unless a review is required prior to the end of the three-year period. In addition, this policy will be reviewed by the Council in line with any significant change in legislation, or if new guidance is issued by the DLUHC, or if a significant case occurs which changes the law.