

Eden District Council
Housing and Health Portfolio Meeting
18 August 2017

**Discharging Homelessness Duty in the
Private Rented Sector**

Portfolio:	Housing and Health
Report from:	Deputy Director Environmental Services
Wards:	All Wards
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 This report sets out how Eden District Council (the Council) intends to use powers arising from the Localism Act 2011 to discharge its homelessness duty in certain circumstances by making a suitable offer of private rented sector accommodation; this will be known as the PRSO Policy (Private Rented Sector Offer).
- 1.2 This report sets out why this policy is being introduced and how it will be administered and also sets out how the Council will ensure that the policy is adhered to in a consistent manner.

2 Recommendation

- 2.1 That the Private Rented Sector Offer policy set out in this report is agreed to enable the Council to discharge its homelessness duty into the Private Rented Sector for some accepted cases.

3 Report Details

- 3.1 All local housing authorities have a legal duty to provide a homelessness service and the requirements of this service are set out in legislation and guidance.
- 3.2 Homelessness cases vary according to the details of each case and this can range from people who are homeless and sleeping rough through to people who may only require advice and assistance to ensure that they do not actually become homeless at all.
- 3.3 In Eden around 300 individuals or households approach the Council each year for assistance, of these around 150 require advice and assistance, a further 100 a year require specific support to prevent homelessness occurring. A further 30 a year make homelessness applications and of these around 10 a year are cases where the authority accepts a full duty to secure that housing is made available to them. These applicants will have been accepted as being homeless, in priority need, not intentionally homeless and with a local connection.

- 3.4 This final group of applicants are generally secured housing through the Choice Based Lettings system where they will be awarded an overriding priority for housing.
- 3.5 Due to a growing shortage of affordable rented properties, many other local authorities discharge their homelessness duty by securing a tenancy in the private rented sector, this is now reasonably common practice across the country.
- 3.6 The Localism Act 2011 allows local authorities to end the main housing duty to a homeless applicant by means of a 'private rented sector offer', i.e. a fixed-term assured shorthold tenancy for a minimum of 12 months.
- 3.7 This means that a person provided with accommodation in the private rented sector as final discharge of a homelessness duty will have no "reasonable preference" for an allocation of permanent housing by reason of homelessness; in other words, the homelessness duty has been discharged.
- 3.8 Any housing secured under homelessness legislation must be suitable for the individual applicant and this includes situations where the duty to secure accommodation is discharged within the private rented sector. Local authorities are required to take into account the location of accommodation offered when determining its suitability. Minimum standards are set out that must be met if a 'private rented sector offer' is to be treated as suitable, including that the landlord is a fit and proper person and that the property meets a number of requirements regarding its condition.
- 3.9 As a safeguard the government also decided that if an applicant makes a further homelessness application within two years of the acceptance of a 'private rented sector (PRS) offer', s/he is automatically to be treated as being in priority need. If the local authority decides s/he is homeless, eligible for assistance and not intentionally homeless, the main housing duty is revived and the applicant can be referred back to the authority that made the original PRS offer.
- 3.10 It is now felt that in Eden it is appropriate to ensure that the homelessness duty can be discharged into the private rented sector when there is no other option available. There is an increasing shortage of affordable rented accommodation, due to a number of factors including the right to buy, and whilst households are unable to be rehoused, they would be occupying bed and breakfast accommodation or other forms of temporary accommodation, which is both inappropriate for their needs and costly to the Council.
- 3.11 Three policy options are available to the Council:
1. Not to adopt the power to end the duty in the private rented sector for any homelessness cases.
 2. To adopt the power to end the homelessness duty in the private rented sector for some accepted cases.
 3. To adopt the power to end the homelessness duty in the private rented sector for all accepted cases.

- 3.12 This report recommends that the second option is adopted to enable some accepted cases to be secured housing within the Private Rented Sector as the final discharge of the homelessness duty.
- 3.13 For those cases where it is accepted that the Council has a full duty under homelessness legislation the current practice of ensuring that the applicant is awarded overriding priority on the housing register will continue and wherever possible social housing will continue to be secured through this route. It is however essential that the Council has an option available in cases where there is no suitable social housing available in the district that could meet the housing needs of an individual applicant or their family. In these rare cases, the Council would be able to secure suitable accommodation in the private rented sector that met their household's needs, thus preventing the household being housed in expensive temporary accommodation for very lengthy periods of time with no prospect of social housing that meets their needs becoming available.
- 3.14 It is felt that the range of safeguards embedded within the Localism Act provisions, and further safeguards introduced through secondary legislation that accompany it will ensure that the private rented sector offer will provide households with suitable and settled accommodation.
- 3.15 It should be noted that the district's existing Homelessness Strategy already promotes the use of private rented accommodation to prevent homelessness and that Eden's homelessness service has successfully helped numerous households who may be threatened with homelessness to obtain accommodation from a private landlord, often with the assistance of various incentives such as rent-in-advance and rent deposits.
- 3.16 If Council agrees to the adoption of this policy then the decision to discharge the homelessness duty through securing a tenancy in the private rented sector would only be made after very careful consideration of the facts of the case and the availability of suitable social housing in the area. The use of the new power will involve a combination of factors that will be specifically assessed to ensure the Council can suitably fulfil each households' housing needs including:
- The location required.
 - The number of bedrooms required.
 - The type of property required.
 - The rental costs that can be afforded.
- 3.17 As a further safeguard, the Homelessness (Suitability of Accommodation) (England) Order 2012 deals with suitability of location of private rented sector offers and sets out circumstances in which accommodation offered under section 193(7)(F), ie discharge of duty to secure accommodation, is not to be regarded as suitable. The Order requires that a property must fulfil certain criteria including:
- Location.

- Individual factors such as special educational needs or factors (for example, sitting exams), ill health (mental or physical), disability (physical/sensory).
 - Interpersonal factors such as being a former/present victim of crime, distance to essential local community facilities.
 - Environmental factors such as the availability of transport links, type/source of heating.
 - Economic factors such as distance to employment/training opportunities.
- 3.18 The policy will be applied on the basis of ensuring the best use of housing stock in the local authority area. Whenever a household's housing need is able to be satisfactorily sustained in either social rented housing or private rented sector housing, the Council will consider the following factors:
- Welfare reform impacts on specific household types, (particularly in high cost housing market areas and on affordability for larger families).
 - Where there is low availability of social housing stock, both in terms of overall number of units and the frequency of them becoming available to re-let.
- 3.19 In some cases even if a household has successfully bid for social housing, they may still be made an offer of suitable private rented sector accommodation. This might occur when the length of time to wait for a social housing property to become ready to re-let is in excess of the time it will take a comparable private rented property to become available. This will ensure that households do not have to spend an excessive amount of time living in temporary accommodation.
- 3.20 Wherever possible, households will be made an offer of a tenancy within the Council's own boundary. When there is an occasion that a move to another area will be necessary to ensure a suitable property can be offered, the Council will adhere to what the law, under s.280 of Housing Act 1996, stipulates regarding out of borough placements.
- 3.21 Statutory homeless households are entitled to one reasonable offer of accommodation. The Council will consider its homeless duty discharged if a suitable offer (known as a "final" offer) is refused. The private sector offer must be an offer of an assured shorthold tenancy, with a minimum fixed term of twelve months. Under these circumstances, this will be considered the households' one offer of suitable accommodation and will therefore discharge the statutory homeless duty. If the household refuses the offer of accommodation, the Council can end its statutory homeless duty. Once the offer has been formally made, the household's homeless application will be closed. Should the household wish to remain on the housing register, their application will be dealt with in line with the Council's allocations policy (currently Cumbria Choice Based Lettings scheme).
- 3.22 If a statutory homeless household refuses or fails to respond to a suitable offer of accommodation in the private or social sector, the Council can end its statutory duty to provide accommodation. The Council will explain the household's right to a review of the suitability of the offer of accommodation.

The Council will also explain to the household that they may lose their right to temporary accommodation. A household, whose statutory homeless duty has ended as a result of their refusal or failure to respond, will have their housing register application dealt with in line with the Council's allocations policy.

- 3.23 If a household subsequently becomes unintentionally homeless from their private rented tenancy within two years the statutory homeless duty owed to them by the Council will automatically revive. This is called the re-application duty. However, this duty will only revive once; thus, there will be no duty owed by the Council in continuation of the original duty if the applicant again became homeless. If the household becomes homeless for a second time within two years of accepting a private rented sector offer, they must make a fresh homelessness application. In cases where the duty revives and the applicant applies to a different local authority, the applicant can be referred back to this Council if it made the original decision, unless there is an identified risk of harm to the household. The revived duty may again be discharged through a further offer of private rented accommodation, in accordance with this policy.
- 3.24 The Council will always attempt to make an offer of accommodation that is situated within its own boundary. When this is not reasonably possible, the Council shall give in writing to the local housing authority in whose district the accommodation is situated the following information:
- The name of the applicant.
 - The number and description of other persons who normally reside with him as a member of his family or might reasonably be expected to reside with him.
 - The address of the accommodation.
 - The date on which the accommodation was made available to him, and which function under this Part the authority was discharging in securing that the accommodation is available for his occupation.
- 3.25 As part of the offer process and in accordance with the Council's policies and procedures, households will be advised of their right to request a review on the suitability of the accommodation offered. Households will also be advised of advice services that may be able to assist in them to make request for a review and throughout the duration of the review.
- 3.26 Households can request a review within 21 days of the Council telling them that they consider an offer to be suitable and that it has discharged its duty under homeless legislation. Review requests can be made in writing or verbally to the Council. The Council will advise the household of the full procedure and process for completing a review of the suitability of the accommodation offered. The Council will consider review requests received after 21 days, but they are not obliged to agree to carry out the review in such cases. Once a review request has been received, the Council will write to the household to acknowledge the request and provide details of the review procedure. The Council will complete the review within 56 days of receiving the household's original review request (unless a longer period is agreed). A

senior officer at the Council will carry out the review. This officer must not have been involved in the original decision.

3.27 The review outcome can be:

- Unsuccessful – in this situation the Council's original decision will stand.
- Successful – in this situation the Council will amend their original decision.

3.28 Once the review has been completed, the Council will write to the household informing them of the review decision. The letter will be sent to the household or will be available for collection from the local authority offices. The outcome letter will explain the following:

- The review decision.
- How the local authority reached this decision; and
- The right to appeal the review decision, and refer to the County Court if the applicant believes the decision is legally incorrect.

An appeal must be made within 21 days of being notified of the review decision.

3.29 During the review process, the Council is not legally obliged to provide the applicant with temporary accommodation. Households will be advised to accept the final offer of accommodation whilst the review is being considered where the landlord has confirmed they are happy to release the household from the tenancy if the review request is successful.

This is because:

- The household will have somewhere to stay during the review process.
- There is no guarantee of a further offer of accommodation following the outcome of the review.

3.30 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 household may be offered the property again. The local authority will then consider its homelessness duty discharged.

3.31 A household can appeal to the County Court on any point of law for one of the following reasons if they feel the review decision is legally incorrect or if the Council has not met the time limit to complete the review process. All appeals must be made to the County Court within 21 days of the review decision. Households considering an appeal to the County Court will be advised of local advice services that may be able to assist in them to make request for an appeal and throughout the duration of the appeal. The Council is not legally obliged to provide the applicant with accommodation during an appeal process.

3.32 If a household is not satisfied with a review decision, 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. The

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

- Delayed taking action without good reason.
- Taken into account irrelevant considerations or ignored relevant considerations.
- Not followed rules (legal or local procedures).
- Given the wrong decision.
- Not reached a decision in the correct way.

4 Policy Framework

4.1 The Council has four corporate priorities which are:

- Decent Homes for All;
- Strong Economy, Rich Environment;
- Thriving Communities; and
- Quality Council.

4.2 This report meets Decent Homes for All corporate priority.

4.3 This report addresses the strategic action of 'meeting homelessness duties' set out in the Council Plan.

4.4 This report helps to meet the Council's Homelessness Strategy.

5 Consultation

5.1 This new policy will be submitted to Portfolio, Executive and Council for consideration and approval.

6 Implications

6.1 Financial and Resources

6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 17 September 2015.

This policy will not increase costs to the Council and it is possible that it might lead to a reduction of use of temporary accommodation. This cannot be accurately assessed at present.

6.2 Legal

6.2.1 This policy aims to make use of powers set out in the Localism Act 2011.

The following sections in primary legislation represent the recent history of the new powers arising from the Localism Act 2011:

- s.197 Housing Act 1996 (repealed).
- s.7 Homelessness Act 2002 (amended 6 to 8 of Housing Act 1996 s.193).
- s.148 Localism Act 2011 (S193(7F)).

6.2.2 The Government published on 9 November 2012 supplementary guidance on the homelessness changes in the Localism Act 2011 and on the

Homelessness (Suitability of Accommodation) (England) Order 2102 was published.

6.2.3 The policy will comply with the following legal instruments:

- The Housing Act 1996, as amended by the Homelessness Act 2002.
- The Localism Act 2011.
- Equality Act 2010.
- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012.
- Suitability of Accommodation order 2012.
- Homelessness Code of Guidance 2006.

6.3 Human Resources

6.3.1 There are no direct impacts on human resources arising from this policy.

6.4 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	None
Health, Social Environmental and Economic Impact	All homelessness cases are likely to have the potential for such impacts but the adoption of this policy in a fair manner as set out in this report will help ensure that homelessness can continue to be resolved effectively and efficiently in the district.
Crime and Disorder	There are no impacts on crime and disorder arising from this report and victims of abuse and or violence will be treated with extreme sensitivity.
Children and Safeguarding	The needs of children are always fully taken into account if they form part of a homelessness applicant's household.

6.5 Risk Management

Risk	Consequence	Controls Required
With the limited amount of social housing in the district it is possible that no housing options are available to discharge the Council's duty to secure accommodation.	A homeless applicant for whom the Council has a duty to secure housing could remain living in temporary accommodation indefinitely.	The ability to secure accommodation from the private rented sector will provide the security of knowing that accommodation will be available to meet applicants' housing needs.

7 Other Options Considered

- 7.1 Consideration was given to not introducing this policy but it was decided that the risks of the Council having a duty to secure housing that it could not meet in the social housing sector were too high.
- 7.2 Consideration was given to introducing this policy for all homeless applicants for whom the Council has a duty but this was felt unnecessary as in most cases social housing that meets households needs will be available in the district.

8 Reasons for the Decision/Recommendation

- 8.1 The adoption of this policy is recommended to ensure that the Council can remain confident that it will be able to secure housing for all eligible homeless applicants that meets their needs. Social housing is a scarce resource and the flexibility provided by this policy will mean that the Council will continue to ensure that it can meet its responsibilities under homelessness legislation.

Tracking Information

Governance Check	Date Considered
Chief Finance Officer (or Deputy)	9 August 2017
Monitoring Officer (or Deputy)	9 August 2017
Relevant Deputy Director	9 August 2017

Background Papers: None

Appendices: None

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