



**Private Rented Sector Offer
Policy**

October 2018

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1. Executive Summary

- 1.1. Following the introduction of the Localism Act 2011, the Council introduced a policy regarding discharging the main homelessness duty into the private rented sector (Housing Allocations Policy – Discharge of the Main Homelessness Duty). The Homelessness Reduction Act 2017 came into force in April 2018 which changed the duties owed by the Council; this policy supersedes the original policy, previously adopted in September 2013.
- 1.2. The Housing Act 1996 (as amended by the Homelessness Act 2002, the Localism Act 2011 and the Homelessness Reduction Act 2017) makes provision to use private rented sector accommodation as one way for the Council to discharge some housing duties.
- 1.3. This Policy sets out when the Council will make a private rented offer to a homeless applicant.
- 1.4. When such an offer is made, the policy also describes what factors the Council will take into account when assessing its suitability and what steps an applicant can take if they do not agree with the Council's decision.

2. Background

- 2.1. The Housing Act 1996, part VII (as amended) sets out the statutory obligations relating to the prevention of homelessness and the assistance to be given to people threatened with or actually homeless.
- 2.2. From April 2018 additional duties were introduced by the Homelessness Reduction Act 2017, intended to enhance the prevention of homelessness. They include a requirement to provide more extensive housing advice and, where someone is actually homeless or threatened with homelessness, duties to 'prevent' or 'relieve' homelessness, using personal housing plans developed from detailed assessments of the individual circumstances of each applicant.
- 2.3. Where prevention or relief activity has failed, a decision will be made as to the extent of any advice, assistance and / or accommodation duty owed to the applicant. Where an applicant is eligible, has a priority need, is unintentionally homeless and has a local connection with Three Rivers, the 'main housing duty' to make available suitable accommodation will be owed. The main housing duty will continue until one of the events specified in the Housing Act 1996 (as amended) ('the Act') brings it to an end.
- 2.4. Private rented accommodation can be used to prevent or relieve homelessness, or to bring the main housing duty to an end.
- 2.5. Accommodation must be suitable in all cases where the Council has secured it or helped to secure it and, in certain circumstances, must meet additional suitability requirements. These are set out in the Homelessness (Suitability of Accommodation) (England) Order 2012 and apply to private rented sector accommodation that is offered:
 - 2.5.1. To bring to an end the section 193(2) main housing duty (section 193(7F));
 - 2.5.2. As a final accommodation offer made in the 189B relief stage (sections 193A(6) and 193C(9)); or,
 - 2.5.3. To an applicant who has priority need, in order to prevent or relieve their homelessness

- 2.6. Further detail on what constitutes an offer to fulfil one of the three points above (2.5.1. – 2.5.3.) can be found in appendix one.
- 2.7. Private rented sector accommodation may not be suitable for everyone and the circumstances of individual households will be carefully considered as to whether a private rented sector offer could be appropriate.
- 2.8. This policy sets out how the Council will make use of the private rented sector (PRS) when securing accommodation to discharge the statutory homelessness functions outlined above.
- 2.9. This policy operates alongside the following strategies and policies of Three Rivers District Council:
 - Housing and Homelessness Strategy
 - Allocations Policy
 - Tenancy Policy
- 2.10. This policy complies with:
 - Part VII of the Housing Act 1996 (as amended)
 - The Homelessness (Suitability of Accommodation) Order 1996
 - Equality Act 2010
 - Homelessness (Suitability of Accommodation) (England) Order 2012
 - Homelessness Code of Guidance for Local Authorities (2018)
 - The Homelessness (Review Procedures etc.) Regulations 2018
- 2.11. We understand that many people may prefer to live in social housing than the private rented sector, because the rent is usually lower and social tenants normally enjoy the security of a longer fixed-term tenancy. However, there is a much greater demand for social housing than there is supply in Three Rivers and so the Council must utilise all available resources.
- 2.12. The Council's Housing Allocations Policy sets out the eligibility and qualification criteria necessary to be considered for the allocation of social housing, therefore this will not be covered as part of this Policy. Eligible and qualifying homeless households are given reasonable preference for an offer of social housing as detailed in the policy.

3. Policy Aims

- 3.1. To set out when the Council will make a private rented sector offer, within the meaning of the Housing Act 1996 (as amended), to a homeless applicant.
- 3.2. To set out the factors the Council will take into account when assessing the suitability of a private rented sector offer.
- 3.3. To set out what steps an applicant can take if they do not believe the accommodation offered is suitable.

4. Assessment for Private Rented Sector Offers

- 4.1. We will collect personal data on every person that makes a homeless application, including data on persons listed within the household. This is done by the completion of our online homeless application form and through an interview with a Housing Options Officer. This data is then used to offer appropriate advice. This data will also be taken into account when considering an applicant for a private rented sector offer. Full details of the types of personal data collected can be found in the homeless application privacy notice on the Council website.

- 4.2. For applicants owed the main housing duty, they will be offered a minimum term of 12 months for private rented sector offers. The following order of priority will be followed for tenancies of this term:
 - 4.2.1. Applicants for whom the Council has accepted the s193 duty and who do not meet the Council's housing register local connection criteria
 - 4.2.2. Applicants for whom the Council has accepted the s193 duty and who do meet the Council's housing register local connection criteria
 - 4.2.3. Applicants who are owed the relief duty where the likely outcome is that the main s193 duty will be accepted should homelessness not be relieved
 - 4.2.4. Applicants who are owed the prevention duty where the likely outcome is that the main s193 duty will be accepted should homelessness not be prevented or relieved
 - 4.2.5. Applicants who are owed a relief duty but do not have a priority need but do have a local connection to the Council
 - 4.2.6. Applicants who are owed a prevention duty but do not have a priority need but do have a local connection to the Council
 - 4.2.7. Applicants who are owed a prevention duty but do not have a priority need and a local connection to the Council
 - 4.2.8. Reciprocal arrangements with other local authorities
- 4.3. If it has not been possible to secure a 12 month period on a private sector property and a six-month term has been agreed, the following order of priority will be followed:
 - 4.3.1. Applicants owed the relief duty that have a priority need and the offer would be a final offer of accommodation
 - 4.3.2. Applicants owed the relief duty that have a priority need
 - 4.3.3. Applicants owed the prevention duty that have a priority need and a local connection to the Council
 - 4.3.4. Applicants owed the prevention or relief duty that do not have a priority need but do have a local connection to the Council
 - 4.3.5. Applicants owed the prevention duty but do not have a priority need and local connection with the Council
- 4.4. When a property becomes available for a private rented sector offer, it will normally be offered to the applicant in the priority as listed in 4.2 or 4.3 above. However, there are some exceptions to this, listed below:
 - 4.4.1. If the offer discharges the Council's duty to a restricted case (see section 8)
 - 4.4.2. If the particular property would meet a particular need of an applicant, e.g. the location or property type). Where more than one applicant falls into this category and the level of need is equal, then the applicant with the highest priority as listed in 4.2 or 4.3 shall be made the offer.
 - 4.4.3. If there are other overriding operational factors. For example, a family accommodated in bed and breakfast accommodation may take precedence even if not in the highest category.

- 4.5. A private rented sector offer is made by the Council but the landlord of the property will have the final decision on whether the applicant will be accepted into the property.

5. Suitability of Private Rented Sector Offers

- 5.1. When assessing whether a property is suitable for an applicant, we will use the criteria as set by the Government in the Homelessness (Suitability of Accommodation) (England) Order 2012. We will inspect each property to ensure it is suitable; we will normally regard it as suitable unless one of the following conditions apply:
- It is not in a reasonable condition
 - Any electrical equipment supplied does not meet the relevant safety regulation standard
 - Reasonable fire safety precautions have not been taken
 - The landlord has not taken reasonable steps to prevent the possibility of carbon monoxide poisoning
 - The landlord is not considered a fit and proper person
 - The property is a house of multiple occupation subject to licencing, but has not been licenced
 - It does not have a valid energy performance certificate in accordance with relevant energy regulations
 - It does not have a current gas safety record in accordance with relevant gas safety regulations
 - An adequate written tenancy has not been provided to the Council.
- 5.2. A detailed inventory of every property is recorded and agreed with the landlord and tenant. If the inventory is not completed by the Council, we will obtain a copy from the landlord/agent for our records.
- 5.3. We will also take into account the individual circumstances of the applicant and their household to make sure that the private rented sector offer is suitable for their particular needs.
- 5.4. The particular requirements covered in 5.1 do not apply to accommodation offered to applicants that do not have a priority need, or to accommodation that the Council helped the applicant to secure but the applicant identified for themselves. However, reasonable efforts will be made to ensure that private rented sector offers for applicants who do not have a priority need is safe and in a reasonable condition. All applicants looking for their own accommodation will be provided with the details of the Government's *How to Rent* guide to enable them to consider standards within accommodation.
- 5.5. The Government's *Right to Rent* guide will be given to all applicants when offered a private rented sector offer.

6. Location of Private Rented Sector Offers

- 6.1. In order for the Council to discharge relevant housing duties (see 2.5.1-2.5.3) under the Housing Act 1996 (as amended), the Council will, as far as reasonably practicable, make private rented sector offers for applicants within our own district.
- 6.2. Where this is not possible, private rented sector offers may be made outside of our district. If accommodation is offered outside of the district it will be in the nearest practicable local authority area.
- 6.3. There are occasions when there are clear benefits for applicants to be given private rented sector offers outside of the district, for example, if an applicant is at risk of violence or if an ex-offender would benefit from breaking links with previous negative contacts. This is not an exhaustive list.

- 6.4. There are also occasions in which the applicant may request that accommodation is sought in a particular area outside of the district. As far as is reasonably practicable, the Council will consider these requests on a case by case basis.
- 6.5. When considering the suitability of the location of the private rented sector offer, we will take into account:
 - 6.5.1. The distance of the property from the district
 - 6.5.2. The significance of any disruption to the employment, caring responsibilities or education of any member of the applicant's household
 - 6.5.3. The proximity and accessibility to local services, amenities, transport, medical facilities or other support which are essential to the wellbeing of any member of the applicant's household.
- 6.6. Where a private rented sector offer is made outside of the district, we will notify the relevant local authority, providing the name of the applicant, the people who form the household and the duty that we have discharged as a result of the offer. This notification will be made within 14 days of the applicant moving into the property.

7. Affordability of Private Rented Sector Offers

- 7.1. When assessing if a private rented sector offer is affordable for an applicant, full income and essential expenditure will be taken into account, in accordance with the Homelessness Code of Guidance (2018). We will be guided by Universal Credit (or benefit system applicable from time to time) standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but will ensure that the wishes, needs and circumstances of the applicant are taken into account.
- 7.2. For applicants that require assistance with their rent through Local Housing Allowance or Universal Credit, it will be the responsibility of the applicant to make the relevant application themselves.

8. Reviews of Private Rented Sector Offers

- 8.1. Applicants will be advised of their right to review decisions issued by the Council in accordance with Section 202 of the Act; this includes decisions as to the suitability of relevant private rented sector offers, as defined within the Act.
- 8.2. An applicant may request a review as to suitability regardless of whether or not they accept the property. Such request for a review must be made within 21 days of the offer. This can be done in writing or verbally.
- 8.3. Once a review has been requested, the Council will acknowledge the request in writing and provide details to the applicant of the review procedure.
- 8.4. The Council will complete the review in line with The Homelessness (Review Procedure etc.) Regulations 2018. This will normally be within eight weeks of the request for the review. However, if both the applicant and the Council agree, this period can be longer.
- 8.5. A Council officer senior to the original decision maker and not involved in the original decision will complete the review or the review may be sent to an independent reviews officer contracted out through a framework agreement.

- 8.6. The Council is not legally obligated to provide temporary accommodation to an applicant pending the outcome of the review decision but an applicant will be advised to accept the offer of accommodation whilst the review is considered. This will ensure the applicant will have accommodation during the review process and beyond, as there is no guarantee of a further offer of accommodation following the outcome of the review.
- 8.7. The outcome of the review of the suitability of the private rented sector offer can be:
 - 8.7.1. Upheld – this means the offer of accommodation will have been deemed to be suitable and the decision to discharge the homelessness duty will still apply; or
 - 8.7.2. Overturned – this means the Council will revisit the offer of accommodation and make a further offer of suitable accommodation with consideration as to the reason that the previous offer was deemed unsuitable. The relevant homelessness duty will not be discharged until this further offer of suitable accommodation is made; or
 - 8.7.3. Withdrawn – the applicant has the right to withdraw their request to review the suitability of the private rented sector offer at any time.
- 8.8. The Council will inform the applicant of the decision made on the review in writing. The letter will explain the review decision, how the Council reached its decision and the right to appeal the review decision to the County Court on a point of law. An appeal must be made to the County Court within 21 days of being notified of the review decision.
- 8.9. The Council is not legally obligated to provide temporary accommodation to an applicant pending the outcome of the appeal decision.

9. Restricted Cases

- 9.1. There are some applicants who are assessed as being statutorily homeless but are defined by legislation as a restricted case. A restricted case occurs when:
 - 9.1.1. The main applicant is an eligible person; and
 - 9.1.2. The applicant's household contains someone who is subject to immigration control, with no recourse to public funds; and
 - 9.1.3. It is the presence in the household of the restricted person that has led to the main housing duty being accepted (i.e. the restricted person confers the priority need for the household).
- 9.2. In the event of a restricted case, the law states that we must bring the section 192(2) main housing duty to an end by making the applicant a private rented sector offer so far as is reasonably practicable.

10. Reapplication Duty

- 10.1. If an applicant becomes unintentionally homeless within two years of accepting a private rented sector offer which the Council has secured for them in order to end the main housing duty (section 193(7AA)), then the reapplication duty will apply.
- 10.2. The reapplication duty is defined in section 195A(1), which applies to an applicant, regardless of priority need, if:
 - 10.2.1. An applicant makes another application for assistance within two years of accepting a private rented sector offer; and

- 10.2.2. The applicant is eligible for assistance and has become homeless unintentionally.
- 10.3. For the purpose of 6.2 above, this also applies if the applicant has been issued with a valid section 21 notice (Housing Act 1988) and will be considered homeless on expiry of that notice.
- 10.4. The reapplication duty does not apply to restricted cases.
- 10.5. The reapplication duty only applies once to an applicant from each private rented sector offer. Therefore, if an applicant becomes homeless again within the two-year period and have already been assisted by the reapplication duty, then they would need to make a fresh homeless application for consideration.

11. Reviewing this Policy

- 11.1. This policy will be reviewed in line with any significant change in legislation, guidance issued by government or significant case law. In any case, it will be reviewed every three years.
- 11.2. An Equality Relevance test has been completed on this policy.

Appendix One

An offer to bring to an end the main housing duty

An offer to end the main housing duty is defined by section 193(7AC) 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:

- a. has been made available for the applicant's occupation by arrangements made by the Council with a private landlord or
- b. is made with the approval of the Council, in pursuance of arrangements made by the Council with the landlord with a view to bringing the section 193(2) of the Housing Act 1996 duty to an end, and
- c. is a fixed term Assured Shorthold Tenancy for a period of at least 12 months.

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

- a. the possible consequence of refusal or acceptance of the offer
- b. that the applicant has the right to request a review of the suitability of the accommodation, and
- c. in a case which is not a restricted case, the effect under new section 195A of a further application to the Council within two years of acceptance of the offer (the 'reapplication duty') (see section 9),

The Council must also be satisfied that the offer:

- a. is suitable for the applicant and other household members, and
- b. 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.

A final accommodation offer made in the 189B relief stage

An offer is a "final accommodation offer" if –

- a. 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
- b. it is made with the approval of the Council, in pursuance of arrangements made by the Council in the discharge of their duty under section 189B(2), and
- c. 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.

The Council's duty to the applicant under section 189B(2) 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 the applicant's right to request a review of the suitability of accommodation. The Council must also be satisfied that:

- a. the offer is suitable for the applicant and other household members, and
- b. 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.

The refusal of a final accommodation offer precludes the applicant from subsequently being owed the main housing duty (section 193A(3)).

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. However, under section 193C(4) the Council are obliged to secure that accommodation is made available to an applicant who has a priority need and is unintentionally homeless. This duty will cease if the applicant accepts or refuses a final accommodation offer.

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

An offer of private rented 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 of the Homelessness (Suitability of Accommodation) (England) Order 2012.