

**RUNNYMEDE BOROUGH COUNCIL**

**HOUSING BUSINESS CENTRE**

**Homeless Discharge of Duty into  
the Private Rented Sector and  
Out of Area Policy (including  
Temporary Accommodation)**

Approved:

Review due:

## 1 Introduction

Under existing legislation (principally the Housing Act 1996, as amended by the Homelessness Act 2002) local housing authorities are able to discharge their homeless duties (following acceptance of applicants as statutorily homeless) through securing suitable, available accommodation for the household (s.193 of the Act).

An offer of private rented sector accommodation can be made, although this was in the past through a 'qualifying offer' (with the consent of the applicant). An offer of suitable private rented property can also be made in order to prevent homelessness, for applicants that are threatened with homelessness within 28 days (using s.195 of the Act).

Currently Runnymede Borough Council (RBC) private rented scheme (PRS) only allows for assistance to those applicants who would meet the criteria for acceptance of the full homelessness duty under the legislation, although discretion exists for exceptional cases. Funding is available for PRS assistance to those applicants who are found to be not in priority need and unintentionally homeless, and who are either single or a couple with non dependents. This is currently under review.

The Localism Act 2011 (sections 148 and 149) amended the 1996 Housing Act, and new statutory regulations were produced. These now provide a power that allows suitable 'Private Rented Sector Offers' (PRSOs) to be used to end the main homeless duty, without requiring the applicant's agreement. The regulations require local authorities to take a number of matters into account in determining the suitability of accommodation. Legislation concerning 'Qualifying Offers' has also now been repealed.

These changes formed part of the Government's wider social housing reforms. They seek to give greater freedoms to local authorities to make better use of good quality private sector accommodation that can provide suitable accommodation for households accepted as homeless. The Government considers that allowing people owed the main homeless duty to turn down offers of suitable accommodation in the private rented sector and wait for an offer of social housing, was unfair to other households on the housing register who would have to wait longer, and to the taxpayer who is funding expensive temporary accommodation. Significant Housing Benefit savings were also expected as a result of this measure in the long term.

This approach gives local housing authorities greater opportunity to use the private rented sector to satisfy households housing needs. This should reduce Local Authorities need to use temporary accommodation as much. It has long been recognised that placing families in short term temporary accommodation, especially Bed and Breakfast style accommodation, can be very detrimental to all members of the household concerned. In Runnymede however, there are considerable difficulties in securing suitable, affordable accommodation, at the right cost, for either

temporary accommodation use, or for homeless households to access. This is both due to welfare reform changes, especially the LHA rate, and also due to a very buoyant local rental market.

## **2 Local Authority Policies**

Local Authorities must be able to evidence and explain decisions, where out of area accommodation is offered. It is also advised by the Supreme Court following recent case law (*Nzolameso v Westminster 2015*) that Local Authorities have an up to date, publicly available policy for procuring sufficient units of temporary accommodation

RBC has a Temporary Accommodation Strategy approved by Housing Committee in November 2014, which is reviewed regularly and also aligns with the Housing Development Strategy which aims to purchase and procure different tenure opportunities for both the prevention of homelessness and actual homelessness through temporary accommodation provision and private rented sector leasing arrangements

The Supreme Court suggested that such a policy would explain the factors to be taken into account in offering units close to home and if there was a shortage of such units, the factors which would make more distant accommodation suitable

This Policy therefore addresses both out of area placement and placement within area for both Private Rented Sector Offer ( PRSO) and the provision of temporary accommodation which is not Council owned stock. To date RBC has not provided out of area temporary accommodation but it is vital that we now take a forward looking approach to procuring accommodation for PRSO and temporary accommodation that may extend out of the boundaries of the borough. We must take a proactive view of the demand that is likely to arise from future welfare reforms and spending reductions generally in public service areas, that will in turn directly impact upon those most vulnerable in our communities.

## **3 Aims and Objectives**

This policy operates alongside the Council's Independent Allocations Policy V2 May 2015, Homelessness Strategy 2014-16, and Tenancy Strategy 2015-17 and is compliant with:

- The Housing Act 1996, as amended by the Homelessness Act 2002
- Homelessness Code of Guidance 2006
- Equality Act 2010
- The Localism Act 2011

- Suitability of Accommodation Order 2012

This policy will ensure a comprehensive and consistent needs and risk assessment is carried out for each statutory homeless household – this approach will ensure applicants' needs are suitably met at all times.

#### **4 Equality**

This policy will also 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, sex and sexual orientation.

For PRSO we will ensure each tenancy is accompanied by a tenancy agreement and that the period of the tenancy is no less than a 12 month fixed period. We expect the Council's Model Assured Shorthold Tenancy Agreement will be used by the landlord to ensure consistency and legal compliance.

RBC will firstly seek to secure private sector accommodation for both PRSO and temporary accommodation within its own boundary area although we recognise there will be occasions when an applicant requests accommodation outside of the borough. In the event of accommodation not being available within the Borough, officers will seek accommodation outside of the area taking into account the Suitability Order 2012. Each case will therefore be assessed on its own merits and by taking into account statutory instruments and Codes of Guidance in force at the time.

To enable the Council to discharge its duty in the most appropriate manner into PRSO, where appropriate, we will work with our partner agencies and resident support services in order to provide tenancy support to households that we consider are vulnerable.

#### **5 Suitability of accommodation**

The government introduced a new Suitability of Accommodation Order in 2012 for private rented sector offers. This Order requires that a property must be in a reasonable physical condition and fulfil:

- Electrical and fire safety regulations
- Gas safety (Installation and Use) regulations (by having an up to date Gas Safety Certificate)
- HMO licensing regulations (where applicable)
- Energy Performance requirements (by having an up to date Energy Performance Certificate)

Where possible households will be encouraged to take part in accompanied viewings of any property identified as suitable for their needs for a PRSO, prior to taking up the tenancy in order that RBC can be made aware at an early stage of any issues that the applicant may have with regard to the property or area. Each property within Runnymede may also be subject to inspection by the Private Sector Housing Team and for out of area placements by the approval of relevant officers from the local authority area.

## **6 Selecting Homeless Households for Private Rented Sector Properties**

A formal internal selection procedure is in place in order to prioritise homeless households for all available properties, which includes RBC social housing stock, RP affordable housing stock and private rented sector accommodation. The decision to prioritise households for properties will be in line with the Council's agreed policy. Each case will be assessed on individual circumstances and in line with the terms of this policy and procedure. Please refer to the Council's Policy & Procedure for Direct Offers to Homeless Households (revised June 2015.) and the Independent Housing Allocations Policy V2 May 2015.

## **7 Procedure for a PRSO**

When a suitable property becomes available, and where a homeless duty has been accepted in full, priority will be given as follows:

**First priority**– Households with exceptional medical issues, or in circumstances where placing them in bed and breakfast/temporary accommodation would be unacceptable and/or detrimental to the physical/mental health wellbeing of the applicant and/or household members.. This will include joint partnership working with such bodies as MAPPA and MARAC

**Second Priority** - Homeless households who have been in the Council's temporary accommodation, accepted as homeless for the longest period of time taking into account needs and any information about unacceptable areas, aligning with the main criteria in the Independent Allocations Policy V2 May 2015

**Third Priority** -Households who are under offer for social housing would not normally be made a PRSO. However where there is likely to be a significant delay in the social housing property becoming available, a PRSO will be made and the social housing offer withdrawn. There is no automatic right to a social housing property only to an available and suitable property. (Significant delay is not 'time defined' and will be on a case by case basis)

## **8 Affordability Checks for Privately Leased TA and PRSO**

An affordability check, i.e. assessing the household's income and expenditure, will be completed by the Housing Options Team to determine the ability of tenants to pay the rent on the property taking into account potential housing benefit available and income level. In particular Housing Options advisers will take into account:-

- Necessities - food, clothing, heating, child care, travel costs;
- Other expenditure – debts such as loans and credit card repayments, any other reasonable expenditure, excluding 'luxury' and unnecessary expenditure.

RBC will ensure that, for applicants with insufficient capital, any requirement by the landlord for rent in advance/bond will be met within existing approved budgets for PRSO. Please refer to the Councils Policy & Procedure for PRS

Housing Options staff/PRS Management Officer will liaise with Revenues and Benefits in considering the need for Discretionary Housing Payments if necessary for a PRSO where they may be a 'reasonable' shortfall for the applicant, i.e. a shortfall agreed in advance with Revenues and Benefits management that is considered a reasonable amount as DHP to address LHA rates being lower than rental values in the area, where rental is higher than LHA rates.

The affordability check will be completed for any private sector rented accommodation whether for discharging the homelessness duty, prevention of homelessness as housing advice, or provision of temporary or interim accommodation

Government guidelines state that '***accommodation should be regarded as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit***'.

## **9 Other Provisions**

Standard letters will be issued to homeless applicants stating that any household that is accepted as homeless may have the homeless duty ended through one offer of a suitable private rented sector 12 month assured shorthold tenancy. Applicants will be advised of their right to appeal regarding the suitability of the offer.

An applicant may re-apply to the Council should they become homeless again within a 2 year period from the date an offer of a private rented sector tenancy was

accepted. Housing Options Officers will ensure that this date is recorded appropriately and the correct legal process is followed.

The statutory homeless duty automatically revives once and only if; an applicant remains eligible, regardless of whether the applicant has a priority need and becomes unintentionally homeless from their private rented tenancy within two years of accepting the tenancy.

In cases where the duty revives and the applicant applies to a different local authority, the applicant can be referred back to the original local authority, 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.

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

## **10 'Private Rented Sector Offers' (PRSOs)**

The existing requirement for local authorities, as far as reasonably practicable, to secure accommodation in their own district, remains, helping applicants to retain established links to schools, doctors, social workers, key services and support.

Accommodation must now only be suitable. The previous requirement that it was also 'reasonable to accept' has now been removed. This is a shift to checking issues before an offer, rather than addressing reasons for refusal after it. 'Suitability' in the Order is in two parts. The first concerns location, and the second relates to property condition and management. The detail of this is set out in the following table. The affordability of accommodation must also be taken into account. There are rights of review on suitability and appeal to the County Court.

RBC will consider a PRSO to end the main homeless duty in all cases. If a Housing Options Officer considers that a PRSO is appropriate to the needs of the applicant, and if suitable accommodation can be secured, then such an offer will routinely be made.

This will send a clear message that homelessness will no longer give any guarantee that homeless households will receive an offer of social housing. This supports the current approaches to prevent homelessness wherever possible, and to encourage applicants to apply for housing through the housing register (part 6) route, rather than through homelessness (part 7).

In considering the individual circumstances of each household, when deciding if to make a PRSO, officers will consider the following guidance:

We would not usually make a PRSO if the applicant is vulnerable, requiring supported accommodation, or who is considered unlikely to be able to adequately sustain a private rented tenancy

We would not usually make a PRSO if the applicant or a member of their household requires significant disabled adaptations to make the property suitable

We will also consider the affordability of the accommodation, having regard to Housing Benefit/ Local Housing Allowance rates and the overall Benefit Cap that could be applied to the household. This means that this measure is unlikely to be used often for single persons under 35 years of age (as the single room rent could apply). The Benefit Cap may also make a PRSO inappropriate on the grounds of cost, for larger families.

The Council will try to secure two year agreements with landlords, where possible and in particular where private sector leasing arrangements are being entered into for periods of 5 and 10 years as part of the Council's wider corporate aims.

With regard to the 'suitability' of accommodation, the right hand column of the following table lists the action that Runnymede Borough Council will take, if Housing Options Officers find it appropriate to make a PRSO:

### **Statutory Requirement**

#### **Suitable Location?**

<b>If outside district, the distance from it</b>	RBC will always seek to offer private sector accommodation, if available and affordable, within the district, except::  When it considers it beneficial to move applicant/household out of area, for example, to reduce the risk of domestic violence, other violence, or harassment; or to assist persons in breaking away from detrimental situations, such as drug or alcohol abuse, or  When the applicant consents to move away from Runnymede, or  When a person has no local connection to Runnymede (for example, they may have
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	<p>approached having fled violence from another area)</p> <p>However, the private sector market in Runnymede is unable to produce sufficient suitable accommodation at Local Housing Allowance (LHA) rates.</p> <p>Therefore, unless any of the following three considerations apply (as set out below), then where suitable accommodation is not available within Runnymede, PRSOs will be made in the next nearest location, and where there are reasonable facilities and transport links. Surrey is a small County and the Council does not consider it unreasonable to travel some distance outside of the area . All cases will be assessed individually depending on the location and the household involved.</p>
<p><b>The significance of any disruption caused by the location from employment, caring responsibilities, or education of the household</b></p>	<p>In determining whether a location is suitable, RBC will consider:</p> <p>If the applicant (or their partner) are in employment (usually taken to be at least 16/ 24 hours per week). If they are, then the location must be within a reasonable travel to work area of that employment, and have transport links frequent enough to enable this. For employment in Runnymede, the 'travel to work' area will include all of Surrey,</p> <p>If the applicant is verified as the carer for another person, who cannot readily withdraw this care without serious detriment to the well-being of the other party, then the location will need to be of sufficient proximity to enable this, although this may require public transport. Although sometimes inconvenient it is not always unreasonable to rely on public transport.</p> <p>If any members of the household are undertaking GCSEs at school (Years 10 &amp; 11 – children aged 14 to 16), or other</p>

	<p>proven vital examination, then they should not be required to change schools.</p>
<p><b>The proximity &amp; accessibility to medical facilities &amp; other support which are used by, or essential to the well-being, of the household</b></p>	<p>If the applicant or any member of the household requires specialist medical treatment or support, which can only be provided in Runnymede, then the location will need to be of sufficient proximity to enable this, although this may require public transport. RBC will also have regard to other medical treatment or support required by the applicant or any member of the household, and where health professionals consider that it will be significantly detrimental to change provider or location. Significantly means exceptional and evidenced and not desirable by either applicant or health professional</p>
<p><b>The proximity &amp; accessibility to local services, amenities &amp; transport</b></p>	<p>Regardless of location, RBC will seek to offer accommodation that is reasonably accessible to local services and amenities, especially for persons on low incomes, and those with a need to rely on public transport.</p>
<p><b>Accommodation not suitable?</b></p>	

<p><b>Where the local housing authority are of the view that the accommodation is not in a reasonable physical condition</b></p>	<p>RBC officers will either:  physically inspect all PRS accommodation before it is offered, or  require a letting agent to physically inspect a property (usually requiring that agent to be a member of a suitable trade body, such as Association of Residential Landlord Agents (ARLA), or  request another local authority or agent to undertake an inspection on its behalf (usually for out-of-area property)</p> <p>Inspections will be documented to record condition (using broadly similar categories to the HHSRS approach) and to ensure consistent quality. They will usually be undertaken by Housing staff, but where possible HHSRS category 1 or 2 hazards are identified, then a further inspection by qualified HHSRS assessors will be required (usually from Environmental Health/PSH)</p>
<p><b>Where the local housing authority are of the view that any electrical equipment does not meet the requirements of the Electrical Equipment (Safety) Regs 1994</b></p>	<p>All landlords/ agents will be asked to supply a satisfactory Electrical Safety Certificate from within the last 12 months. Any moveable electrical items in the property will require a Portable Appliance Test (PAT) within the last year, with a suitable indication of this usually expected to be identifiable on the inspection on the appliances plug.</p> <p>The physical inspection of the property will seek to identify any broken fittings or obvious electrical defects, such as loose wiring, or electrical faults.</p>
<p><b>Where the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions</b></p>	<p>The physical inspection of the property will check that it is fire safe. Working smoke detectors are expected to be provided (battery or mains) in all accommodation. Should additional fire safety provisions be expected, for example, where a building has common parts, then a copy of the Fire Risk Assessment will be required from the Landlord. If required, expert assistance will be sought from Environmental Health. All furniture and furnishings supplied by</p>

	<p>the Landlord must also be shown to comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended).</p>
<p><b>Where the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent carbon monoxide poisoning</b></p>	<p>If the property has an active gas supply (for heating or cooking) then should a recent carbon monoxide detector not be provided by the landlord, RBC will provide a detector and appropriate advice and assistance to ensure it is properly fitted. Gas fires will usually be expected to be removed.</p>
<p><b>That there is not a current gas safety record for the property</b></p>	<p>If the property has a gas supply, then all landlords/ agents will be asked to supply a current Gas Safety Certificate. Lettings will not be started until the Council has receipt of a copy of this.</p>
<p><b>That the accommodation does not have a valid Energy Performance Certificate (EPC)</b></p>	<p>All landlords/ agents will be asked to supply a valid EPC Certificate for the property.</p>

<p><b>Where the local housing authority are of the view that the landlord is not a fit and proper person to be a landlord</b></p>	<p>Environmental Health/PSH and legal will be contacted to check that any landlord or agent used is deemed a 'fit and proper' landlord,</p>
<p><b>That the accommodation is an HMO (inc subject to additional licensing) and is not licensed</b></p>	<p>HMO properties are not usually expected to be used for PRSOs. Where they are, Environmental Health/PSH will be contacted to ensure that the property is properly licensed and compliant.</p>
<p><b>That the landlord has not provided a written tenancy agreement that the local authority considers to be adequate.</b></p>	<p>RBC offer a model Assured Shorthold Tenancy (AST) for landlords to use. Where this is not used, Officers will ensure that an acceptable, written AST is used, clearly setting out the tenants and landlords obligations, rent and charges, and is free from any unfair or unreasonable terms. Landlords will also be informed of the requirements to use Tenancy Deposit Schemes prior to sign-ups.</p>

## **11 Legal Requirements**

This policy is consistent in line with the current Independent Allocations Policy, V2 May 2015 . This policy also complies with the Housing Act 1996 as amended by the Homelessness Act 2002, the Localism Act 2011, The Equality Act 2010, The Homelessness Code of Guidance 2006 and the Suitability of Accommodation Order 2012.

## **12 Refusals of PRSOs and the Review Process**

Households accepted as homeless will be made only one suitable offer of accommodation. The Council will discharge its duty upon refusal. Applicants do have the right to review details of which is contained within all Part 7 offer and discharge correspondence to applicants.

## **13 Reviews on the suitability of accommodation offered**

As part of the offer process and in accordance with RBC policies and procedures, 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..

### **Review process**

- 1) Applicants can request a review within 21 days of the Council telling them that they consider an offer to be suitable and that the homelessness duty has been discharged under homeless legislation.
- 2) Review requests must be made in writing to the Council and we will advise the applicant of the full procedure and process for completing a review of the suitability of the accommodation offered.
- 3) Once a review request has been received we will write to the applicant to acknowledge the request and provide details of the review procedure.
- 4) We will complete the review within 56 days of receiving the applicant's original review request (unless a longer period is agreed).
- 5) The review will be carried out by a Senior Officer who will not have been involved in the original decision.

### **Review outcome**

The review outcome can be:

- Unsuccessful - in this situation RBC's original decision will stand.
- Successful - in this situation RBC will amend its original decision.

Once the review has been completed the Council will write to the applicant informing them of the review decision. The outcome letter will explain the review decision, how the Council reached this decision, and the right to appeal the review decision 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. (For further information on the appeals process, see below).

#### **14 Accommodation options during and after a review decision**

During the review process RBC is not legally obliged to provide the applicant with temporary accommodation. Applicants will be advised to accept the final offer of accommodation whilst the review is being considered. This is because the applicant will have somewhere to stay during the review process and there is no guarantee of a further offer of accommodation following the outcome of the review.

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 RBC will consider its homelessness duty discharged. If the property is not available as the landlord will not hold the property the Council will still consider its duty discharged because the property would have been available at the time of offer.

#### **15 County Court Appeals**

An applicant can appeal to the County Court 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. Applicants considering an appeal to the County Court are advised to obtain independent legal advice. The Council is not legally obliged to provide the applicant with accommodation during an appeal process.

#### **16 Complaints to the Local Government Ombudsman**

If an applicant 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 an applicant believes they have been treated unfairly as a result of maladministration. Examples include:

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

