

Appendix 3

City of Wolverhampton Council Guidance for Discharge of Duty in the private sector

Background

The Localism Act 2011 has made significant changes to the way in which local authorities can deal with applications for social housing and homelessness applications under Parts 6 and 7 of the Housing Act 1996. Local authorities owe applicants who are homeless, eligible for assistance, 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 provisions).

The Localism Act allows local authorities to fully discharge the full housing duty by a 'private rented sector offer' (s193 (7AA)-(7AC) Housing Act 1996 as amended by s.148 (5)-(7) Localism Act 2011. This must be an offer of an assured shorthold tenancy with a minimum fixed term period of one year.

This policy operates alongside the Council's Housing Allocations Policy, Prevention of Homelessness Strategy and is compliant with:

- The Housing Act 1996, as amended by the Homelessness Act 2002
- The Localism Act 2011
- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on homelessness 2012
- Equality Act 2010
- Suitability of Accommodation Order 2012
- Homelessness Code of Guidance 2006
- Homelessness Reduction Act 2018

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 appropriately met at all times.

This policy will also ensure that there is no discrimination on the grounds of all restricted characteristics

Suitability of Accommodation

The Government has introduced a new Suitability of Accommodation Order for private rented sector offers. The current guidance on suitability contained in the Code of Guidance will also continue to apply. The Suitability 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) and HMO licensing regulations (where applicable)

- Energy Performance requirements (by having an up to date Energy Performance Certificate)

In addition to the above the landlord must be a fit and proper person and complete a declaration to this effect which will be subject to checking by the Council via Rent with Confidence. Each tenancy must also be accompanied by a Tenancy Agreement approved by Wolverhampton Homes and covering the 12- month period of the tenancy.

Where possible households will be encouraged to take part in accompanied viewings of any property identified for their needs prior to taking up the tenancy in order that the Wolverhampton Homes can be made aware at an early stage of any issues that the applicant may have with regard to the property.

Assessment Process / Procedure

Each case will be assessed on its own merits. A private sector tenancy will be considered for all statutory accepted households initially, but a thorough assessment process will be undertaken to ensure that this kind of accommodation is appropriate. If this proves not to be the case then a social sector tenancy will or can then be considered.

Wolverhampton Homes will only secure accommodation within its own boundary area unless there are exceptional circumstances and this is agreed with the applicant prior to the acceptance of any offer.

Each case will be assessed on its own merit taking into account statutory instruments and Codes of Guidance. Enquiries will be made by the local authority into the following areas of need and risk:

- The financial circumstances of applicants, the affordability of available accommodation and eligibility under Local Housing Allowance
- The physical, mental and emotional health of the household, together with their social and welfare needs
- Practical support required to maintain independent living
- Location, size and layout of the property (the use of the Private Rented Sector will potentially provide greater opportunity for households to remain in their preferred area)
- Recent housing history and the status of the homelessness application

The outcome of these enquiries will be recorded and will determine whether the household is considered eligible for a private rented sector offer.

To enable the Council to discharge its duty in the most appropriate manner Wolverhampton Homes and partner agencies will provide tenancy support to vulnerable clients.

It is anticipated/acknowledged that a private rented sector tenancy may not be the most appropriate housing option for some client groups. This will be identified in the assessment procedure.

Accommodation Offers

The allocation of available PRS properties will be at the local authority's discretion. Each case will be assessed on individual circumstances and in line with the terms and procedures set out in this policy. At all times, the landlord of the property will have the final decision on who will be accepted into the property.

If an applicant is deemed to be suitable for a private sector offer and a suitable property is available, they will be made an offer immediately. The private sector offer must be an offer of an assured short hold tenancy, with a minimum fixed term of 12 months.

Under the terms and procedures set out in this policy, CWC will consider its statutory homeless duty discharged if a suitable offer (often referred to as a "final" offer) is made. Once the offer has been formally made in writing, the applicant's homeless application will be closed. If a statutory homeless applicant refuses or fails to respond to a suitable offer of accommodation in the private or social sector, CWC can end its statutory duty to provide accommodation. The local authority will explain the applicant's right to a review of the suitability of the offer of accommodation. The applicant will also be informed that they may lose their right to temporary accommodation.

An applicant, 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 CWC Housing Allocations Policy.

Re-application after private rented sector offer

The statutory homeless duty automatically revives once 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.

Review Process

As part of the offer process and in accordance with CWC policies and procedures, applicants will be advised of their right to request a review on the suitability of the accommodation offered. Applicants may also be advised to seek assistance from advice service.

Applicants can request a review within 21 days of the local authority 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 relevant local authority. CWC will advise the applicant of the full procedure and process for completing a review of the suitability of the accommodation offered.

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

CWC will complete the review within 56 days of receiving the applicant's original review request (unless a longer period is agreed). The review will be carried out by a panel that will not have been involved in the original decision.

During the review process CWC 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 CWC will consider its homelessness duty discharged.

County Court

An applicant can appeal to the County Court if they feel the review decision is legally incorrect or if the local authority 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 local authority is not legally obliged to provide the applicant with accommodation during an appeal process.

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