



Kirklees Council Housing Solutions Service

Discharging statutory homelessness duties
into the private rented sector policy
(The Private Rented Sector Offer)

April 2016

**Kirklees Council
Private Rented Sector Offer**

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1. Introduction

The introduction of the Localism Act 2011 has had a significant impact on the way in which Local Authorities can deal with applications for social housing and homeless applications under Parts 6 and 7 of the Housing Act 1996 as amended by the Homelessness Act 2002.

The Act was brought in during 2012, with the changes to homelessness duties becoming effective on 9th November 2012. Under previous legislation Local Authorities were able to discharge their homelessness duty to applicants who were eligible for assistance, in priority need and not intentionally homeless by securing a suitable social housing accommodation under Part 6 or by offering privately rented accommodation with the consent of the applicant. This was known as a Qualifying Offer.

The Localism Act has enabled Local Authorities to fully discharge the full homelessness duty by making an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months (a ‘private rented sector offer’). The acceptance or refusal of the private rented sector offer will then discharge the s193 duty, or one of the following actions or events occur, which by law will also bring the duty to an end:

- The applicant accepts an offer of settled accommodation from the Council in accordance with Part 6 of the Housing Act 1996.
- The applicant refuses an offer of suitable temporary accommodation or a social housing tenancy under the Council’s allocation scheme which the council is satisfied is suitable for their needs, and the Council informs the applicant that it regards itself as having discharged its duty under Section 193 Part 7 of the Housing Act 1996.
- The applicant becomes intentionally homeless from the suitable accommodation made available for their occupation under Section 193 Part 7 of the Housing Act 1996.
- If the applicant ceases to be eligible for assistance due to their immigration status.
- If the applicant otherwise voluntarily ceases to occupy, as their only or principal home, the accommodation made available to them to meet the full housing duty under Section 193 Part 7 of the Housing Act 1996.

Anyone provided with accommodation in the private rented sector as final discharge of the full homelessness duty is no longer considered to have a ‘Reasonable Preference’ for an allocation of permanent housing by reason of homelessness.

2. Suitability of a Private Rented Sector Offer

Each private rented sector offer will be assessed for suitability against The Homelessness (Suitability of Accommodation) (England) Order 2012 alongside existing guidance on suitability contained in the Homelessness Code of Guidance.

A suitable offer will only be made where Kirklees Council have fully considered the following:

- That the location of the private rented sector offer is suitable for the applicant or members of their household.
- That the size of the private rented property is suitable according to the bedroom entitlement assessment in Kirklees Council's Housing Allocations Policy.
- That the accommodation is affordable, having fully considered the cost of rent and any other expenditure relating to the property compared to the income of the household.
- Any other individual circumstances of the applicant's household obtained by Kirklees Council during the course of homelessness investigations.
- All existing legislation, statutory guidance and case law relating to making offers of accommodation.

A property would not be considered suitable if it is not in reasonable physical condition. Prior to making a private rented sector offer Kirklees Council will inspect the property and ensure the property is suitable in relation to:

- Meeting the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994(a)
- Reasonable fire safety precautions have been taken with the property and any supplied furnishings
- Having a valid gas safety certificate and ensuring the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the property
- Having a valid energy performance certificate as required by the Energy Performance of Buildings Regulations
- If the property is a House in Multiple Occupation (HMO) is subject to licensing, that it is correctly licensed
- That the landlord provides a written tenancy agreement which is adequate for a private rented sector offer and is no less than a period of 12 months.
- That the landlord is a fit and proper person to act in the capacity of landlord.

All property inspections will be carried out by an Officer qualified in the Housing Health Safety Rating System. Where there are concerns that a Category 1 hazard may be present, it will be assessed under Section 4 of the 2004 Housing Act.

3. Eligibility for a Private Rented Sector Offer

The eligibility for a private rented sector offer is set out below but is not an exhaustive list. Each case will be assessed on its individual merit, taking into account the operational needs of the service and the financial impact on Kirklees Council.

- Applicants who Kirklees Council hold a full homelessness duty towards but who's Choose'n'Move application is on band E due to rent arrears, previous anti-social

behaviour or do not meet the local connection criteria as set out in Kirklees Council's Housing Allocation Policy.

- Applicants who are not actively bidding for properties through the Council's Choose'n'move scheme.
- Applicants whose property requirements make it less likely they will receive an offer of a social housing property through Choose'n'move. This may include households with a need for a larger home (3+ bedrooms) or households who need to live in a specific area where the options in social housing are limited.
- Applicants who are in temporary accommodation but are not able to claim housing benefit to cover the whole cost of rent.
- Applicants who have specified a preference for rehousing in the private rented sector.

Use of a private rented sector offer will only be carried out following a thorough and fair suitability assessment. Considerations will include:

- Whether there are support needs which would mean a private rented tenancy would be unsustainable; particularly where due to Local Housing Allowance entitlement, the property would be shared living.
- Whether an adapted property is required.

Applicants under 18 year olds and Care Leavers under 21 years old will not be expected to enter the private rented sector.

4. Allocation of a private rented home

It is anticipated that there will be more applicants who will be eligible for a private rented sector offer than available homes in the private rented sector which the Council is able to access. The allocation of properties will be made at the Council's discretion taking into account the individual circumstances of applicants and the need to use properties to prevent homelessness.

Where the property is being let directly by a private landlord or letting agent, the landlord of the property will have the final decision on who will be accepted into the property.

Applicants who have been matched to a private rented property 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 authority within 2 years of acceptance of their offer. (The 're-application duty')

Where the applicant refuses a suitable offer of accommodation (or fails to respond to the offer), Kirklees Council will end its statutory homelessness duty.

5. Right to Re-application under Section 195a

If within 2 years of accepting the private rented sector offer an applicant re-applies to Kirklees Council for assistance as a homeless person, the applicant will be entitled to the full homelessness duty, or equivalent duty to those threatened with homelessness if the applicant is:

- Eligible for assistance
- Homeless or threatened with homelessness
- Did not become homeless intentionally

The main homelessness duty will be owed regardless of whether the applicant still has priority need under homelessness legislation. An applicant will be considered to be homeless, or threatened with homelessness, if they have been served with a valid notice under s.21 of the Housing Act 1988 by the landlord of the private rented sector property. The duty will still be owed even if the applicant is no longer living in the property provided as the private rented sector offer.

6. Right to request a review of the suitability of accommodation

The applicant has the right to request a review of the suitability of the private rented sector offer under Section 202 of the Housing Act 1996. The review request should be made within 21 days of the offer of accommodation being made. The review will be conducted by a Senior Officer of the Council who was not involved in the original decision.

If this review concludes that the property was suitable, applicants have the right to challenge the decision further by way of an appeal (on a point of law) to the County Court.

During the review or appeal process, Kirklees Council is not legally obliged to provide the applicant with accommodation. However, an applicant is able to accept an offer of private rented accommodation whilst a review or appeal about its suitability is being carried out.

If the applicant does not accept the accommodation pending the outcome and the review is unsuccessful. The applicant will be offered the accommodation again if it is still available. The Council will then consider the homelessness duty discharged.

Where the applicant does accept the accommodation pending the outcome and the review is successful, another private rented sector offer can be made.