

## Homeless Discharges into the Private Rented Sector

### Introduction

Under existing legislation (principally the Housing Act 1996, as amended by the Homelessness Act 2002) local housing authorities are broadly able to discharge their homeless duties (following us accepting someone as statutorily homeless) through securing suitable, available accommodation for the household (s.193 of the Act). This is usually taken to be social housing. An offer of private rented accommodation can be made, although this has usually been 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).

The Localism Act 2011 (sections 148 and 149) has amended the 1996 Housing Act, and new statutory regulations have been produced. These provide a new power that allows suitable 'Private Sector Offers' to be used to end the main homeless duty, without requiring the applicants agreement. This applies to new homeless applicants applying as homeless from the 9<sup>th</sup> November 2012. The regulations require local authorities to take a number of matters into account in determining the suitability of accommodation. Legislation concerning 'Qualifying Offers' has been repealed.

These changes are 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 are expected as a result of this measure.

This approach gives local housing authorities greater opportunity to use the private rented sector to satisfy households housing needs. This should reduce Council's 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 Oxford however, there are considerable difficulties in securing suitable 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.

### 'Private Sector Offers'

The use of 'Private Sector Offers' is a new power, and local authorities are expected to develop clear policies on the use of these, and to consider the individual circumstances of each household when deciding if to apply this option.

The term of an Assured Shorthold Tenancy must be for at least 12 months. If an applicant becomes unintentionally homeless within two years of the tenancy start date, a new 'Reapplication Duty' applies. This is regardless of their Priority Need, although they must remain eligible and be homeless unintentionally. It provides more of a 'safety net' for such applicants for this two year period. This does not have to be a re-application to the same

authority nor from the same property. So we are likely to receive re-applications and be obliged to carry out the associated checks regardless (although the local connection provisions have also been amended)

In making decisions, local authorities shall have regard to the prevailing housing supply and demand pressures in the local area. 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 (unless they have specific contractual obligations otherwise). 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.

### **Oxford City Council Approach**

It is proposed that Oxford City Council will *consider* a 'Private Sector Offer' to end our main homeless duty in all cases. If an Options Officer considers that a 'Private Sector Offer' (PSO) 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 usually be through the Council's existing Home Choice Scheme.

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 PSO, officers will consider the following guidance:

- We would not usually make a PSO 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 PSO if the applicant or a member of their household requires significant disabled adaptations to make the property suitable
- We would not usually make a PSO if the applicant was previously a social housing tenant (Council or Housing Association) and who has fled domestic violence; other violence; or harassment
- 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 PSO inappropriate on the grounds of cost, for larger families.

The Council will try to secure two year agreements with landlords, where possible. With regard to the 'suitability' of accommodation, the right hand column of the following table lists

the proposed action that Oxford City Council will take, if Options Officers find it appropriate to make a PSO:

Statutory Requirement:	Proposed Oxford City Council Measure:
<b>Suitable location?</b>	
<p>If outside district, the <b>distance</b> from it</p>	<p>Oxford City Council will always seek to offer private sector accommodation within the district, except:</p> <ul style="list-style-type: none"> <li>• when it considers it beneficial to move the 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</li> <li>• when the applicant consents to a move away from Oxford, or</li> <li>• when a person has very limited/ no local connection to Oxford (for example, they may have approached having fled violence from another area)</li> </ul> <p>However, the private sector market in Oxford is no longer able to produce sufficient suitable accommodation at Local Housing Allowance (LHA) rates. This also impacts on the Council’s ability to provide sufficient temporary accommodation, even if this could be resourced and sustained.</p> <p>Therefore, unless any of the following three considerations apply (as set out below), then where suitable accommodation is not available within Oxford, private sector offers will be made in the next nearest location, ideally within Oxfordshire, but in towns beyond that, which have reasonable facilities and transport links.</p>
<p>The significance of any disruption caused by the location from <b>employment, caring responsibilities, or education</b> of the household</p>	<p>In determining whether a location is suitable, Oxford City Council will consider:</p> <ul style="list-style-type: none"> <li>• If the applicant (or their partner) are in employment (usually taken to be at least 16/ 24 hrs pw). 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 Oxford, the ‘travel to work’ area will include all of Oxfordshire, but could be determined to be further given the high level of commuting into Oxford</li> <li>• If the applicant is verified as the carer for</li> </ul>

	<p>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> <ul style="list-style-type: none"> <li>• If any members of the household are undertaking GCSEs at school (Years 10 &amp; 11 – children aged 14 to 16), or other proven vital examination, then they should not be required to change schools</li> </ul>
<p>The proximity &amp; accessibility to <b>medical facilities &amp; other support</b> which are used by, or essential to the well-being, of the household</p>	<p>If the applicant or any member of the household require <i>specialist</i> medical treatment or support, which can only be provided in Oxford, then the location will need to be of sufficient proximity to enable this, although this may require public transport. Oxford City Council will also have regard to <i>other</i> medical treatment or support required by the applicant or any member of the household, and where health professionals consider that it will be disruptive or detrimental to change provider or location</p>
<p>The proximity &amp; accessibility to <b>local services, amenities &amp; transport</b></p>	<p>Regardless of location, Oxford City Council 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>
<b>Accommodation not suitable?</b>	
<p>Where the local housing authority are of the view that the accommodation is not in a <b>reasonable physical condition</b></p>	<p>Oxford City Council officers will either:</p> <ul style="list-style-type: none"> <li>• physically inspect all PRS accommodation before it is offered, or</li> <li>• require a letting agent to physically inspect a property (usually requiring that agent to be a member of a suitable trade body, such as ARLA), or</li> <li>• request another local authority or agent to undertake an inspection on it's behalf (usually for out-of-area property)</li> </ul> <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</p>

		will be required (usually from Environmental Health)
	Where the local housing authority are of the view that any <b>electrical equipment</b> does not meet the requirements of the Electrical Equipment (Safety) Regs 1994	<p>All landlords/ agents will be asked to supply a satisfactory Electrical Safety Certificate from within the last five years.</p> <p>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>
	Where the local housing authority are of the view that the landlord has not taken reasonable <b>fire safety precautions</b>	<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.</p> <p>All furniture and furnishings supplied by the Landlord must also be shown to comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended).</p>
	Where the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent <b>carbon monoxide poisoning</b>	<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, Oxford City Council will provide a detector and appropriate advice and assistance to ensure it is properly fitted.</p> <p>Gas fires will usually be expected to be removed.</p>
	That there is not a <b>current gas safety record</b> for the property	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.
	That the accommodation does not have a valid <b>Energy Performance Certificate (EPC)</b>	All landlords/ agents will be asked to supply a valid EPC Certificate for the property.
	Where the local housing authority are of the view that the <b>landlord is</b>	Environmental Health will be contacted to check that any landlord or agent used is not deemed a

	<b>not a fit and proper person</b> to be a landlord	'fit and proper' landlord, from the records that they hold.
	That the accommodation is an <b>HMO</b> (inc subject to additional licensing) and is not licensed	HMO properties are not expected to be used for private sector offers. Where they are, Environmental Health will be contacted to ensure that the property is properly licensed and compliant.
	That the landlord has not provided a <b>written tenancy agreement</b> that the local authority considers to be adequate	<p>Oxford City Council 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.</p> <p>Landlords will also be informed of the requirements to use Tenancy Deposit Schemes by officers prior to sign-ups.</p>