

**Report to:** Portfolio Holders  
**Date of meeting:** 19 March 2018  
**Report of:** Ayaz Maqsood  
**Title:** Interim changes needed to the Housing Nomination Policy because of the Homelessness Reduction Act 2017 coming into force

## 1.0 Summary

1.1 The Homelessness Reduction Act 2017 comes into force on 3 April 2018. The new duties under the Act have a direct impact on the Housing Nominations Policy which will need to be amended as a result. This report sets out the issues and recommends interim action and longer term action for reviewing and agreeing a revised Housing Nominations Policy to avoid potential legal challenges to any decisions the council makes from 3 April 2018.

## 2.0 Risks

2.1

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(Treat, tolerate, terminate, transfer)</i>	Risk Rating (the combination of severity and likelihood)
Receiving legal challenges as a result of not accepting new Housing Register applications from applicants with rights under the Homelessness Reduction Act 2017	Costs in terms of officer time and legal expenses defending challenges	<ul style="list-style-type: none"> <li>Update of council's website indicating new applicants affected by the Homelessness Reduction Act will be placed in Band D</li> </ul>	Treat	6

### 3.0 Recommendations

It is recommended that:

- 3.1 The Housing Nominations Policy web page on the council's website be updated to state that the council recognises the current Housing Nominations Policy does not meet the requirements of the Homelessness Reduction Act. The website update will also include the recommendation in 3.2.
- 3.2 From 3 April 2018, new applicants entitled to apply to the Housing Register under Homelessness Reduction Act 2017 through its Prevention and Relief Duties and care leavers aged under 21 placed in the borough by other local authorities, be accepted on to the Housing Register and placed in Band D.
- 3.3 The recommendation in 3.2 is authorised through the Mayor's delegated decision powers.
- 3.4 Members note plans for a review and revision of the Housing Nominations Policy.

#### **Contact Officer:**

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**Report approved by:** Nick Fenwick, Deputy Managing Director

### 4.0 Detailed proposal

- 4.1 The Homelessness Reduction Act 2017 introduces new categories of applicants eligible to apply to the council's Housing Register that are currently not catered for by the council's Housing Nominations Policy. These are applicants:
  - To whom the council owes a Prevention Duty (threatened with homelessness)
  - To whom the council owes a Relief Duty (actually homelessness)
  - Who are care leavers under 21 years of age placed in the borough by other local authorities under S22A of the Children Act 1989 (local connection established)
- 4.2 It is important to note that the categories of applicants set out in paragraph 3.1 have a right to join the Housing Register whether or not they have 5 years residence in the borough. This right comes from the Housing Act 1996 (S167(2)) which requires that all Housing Nominations/Allocations Policies must give a "reasonable preference" or an "additional preference", that is, a head start, to certain groups of applicants over others. Appendix A explains in more detail the categories of applicants that are regarded by law as having a reasonable or additional preference. The three groups of

applicant set out in paragraph 3.1 all fall into the reasonable preference categories of homelessness or welfare grounds.

- 4.3 In relation to care leavers, the government's new Homelessness Code of Guidance for Local Authorities states that:

"The definition of a 'local connection' for young people leaving care was amended by the Homelessness Reduction Act 2017 so that a young homeless care leaver has a local connection to the area of the local authority that looked after them. Additional provision is made for care leavers who have been placed in accommodation, under section 22A of the Children Act 1989, in a different district to that of the children's services authority that owes them leaving care duties. If they have lived in the other district for at least 2 years, including some times before they turned 16, they will also have a local connection with that district until they are 21." (para 23)

We are awaiting information from Hertfordshire County Council on the number of care leavers placed in Watford by other local authorities.

- 4.4 The Housing Department has found over the last year or so that the Housing Nominations Policy could be made a more efficient and effective tool for making best use of social and affordable homes made available for the council to nominate to.
- 4.5 Because of the Homelessness Reduction Act and other changes needed to the Housing Nominations Policy it is proposed that the following two stages of action are taken:
- 4.6 First Stage: To update the Housing Nominations Policy web page on the Council's website to state that the council recognises the current Housing Nominations Policy does not meet the requirements of the Homelessness Reduction Act. The website update will also include the council's intention from 3 April 2018 to accept on to the council's Housing Register applicants with rights under the Homelessness Reduction Act 2017 and that these applicants will be placed in Band D and there will be a link to the Mayor's delegated decision confirming this. For ease of reference, Appendix B sets out the banding system in the council's Housing Nominations Policy but to note quickly that Housing Register applicants in Band A have higher priority than applicants in Band D. This action will protect the council from legal challenge whilst we undertake the second stage of activity.
- 4.7 Second Stage: To review and revise the Housing Nominations Policy by working with Members and operational staff. Officers will return to the Portfolio Holders meeting in May with proposals on this.

## 5.0 Implications

Possible implications are listed below.

## 5.1 **Legal Issues** (Monitoring Officer)

5.1.1 The Head of Democracy and Governance comments that if we do not take steps to acknowledge the omissions in the Housing Nominations Policy with effect from 3 April 2018 we run the risk of a challenge from those who would be entitled to be given a preference and be added to the allocations list as a result of meeting the criteria in the Homelessness Reduction Act 2017, but under our current policy would be excluded.

## 5.2 **Equalities/Human Rights**

5.2.1 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
- foster good relations between persons who share relevant protected characteristics and persons who do not share them.

Throughout the process of reviewing and revising the Housing Nominations Policy an Equalities Impact Assessment will be undertaken. This will inform both the content of the Housing Nominations Policy and the consultation exercise to be undertaken.

A consideration of Human Rights will also be undertaken as part of the review and revision process.

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## **Appendices**

- *Appendix A: What are Reasonable and Additional Preferences under the Housing Act 1996?*
- *Appendix B: Explanation of the Banding system in the current Housing Nominations Policy*

## **Background Papers**

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

- MHCLG, [Homelessness Code of Guidance for Local Authorities](#), February 2018.

#### **File Reference**

- *None*

## Appendix A - What are Reasonable and Additional Preferences under the Housing Act 1996?

By law<sup>1</sup>, all Housing Nominations/Allocations Policies must give “**reasonable preference**” to certain groups of housing applicants. This means giving these categories of applicants a “head start” or a bit more priority than applicants not in these categories. The reasonable preference categories are:

- (a) people who are homeless within the meaning of Part 7 of the 1996 Act (including those who are intentionally homeless and those not in priority need)
- (b) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under s.192(3)
- (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions
- (d) people who need to move on medical or welfare grounds, including grounds relating to a disability<sup>2</sup>
- (e) people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or others)

There are some categories of applicants that must be given “**additional preference**”, in other words, a bigger head start than applicants with reasonable preference. These categories are as follows:

- those who need to move urgently because of a life threatening illness or sudden disability
- families in severe overcrowding which poses a serious health hazard
- those who are homeless and require urgent re-housing as a result of violence or threats of violence, including intimidated witnesses, and those escaping serious anti-social behaviour or domestic violence

The following people also need to be given additional preference:

- (i) former members of the Armed Forces
- (ii) serving members of the Armed Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service
- (iii) bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner
- (iv) serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their

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<sup>1</sup> Housing Act 1996, S167(2)

<sup>2</sup> The words ‘including grounds relating to a disability’ were added by the Housing Act 2004.

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## **Appendix B - Explanation of the Banding system in the current Housing Nominations Policy**

Extracts from Appendix A of WBC's Housing Nominations Policy

Page 15:

**Priority band A** – Applicants with an Urgent Need to move.

**Priority band B** – Applicants with a Very High Need to move.

**Priority band C** – Applicants with a High Need to move.

**Priority band D** – Applicants with an Identified Housing Need

**Priority band E** - Applicants without an identified housing need but who are either over 60 (for older people's housing only) and/or social housing tenants who are living in Watford or where Watford Borough Council has nomination rights to the property who are adequately housed but requiring a transfer.

Pages 37 to 42:

### **1. Housing Needs Bands Introduction**

1.1 When an applicant's housing need is assessed they will be placed in one of five bands. Applicants in band A will have the highest priority, with applicants in band E the lowest priority. The bands are designed to give those households in greatest need reasonable preference for housing, whilst maximising use of the social housing stock.

1.2 Applicants will also be given a "priority date" which will identify priority within the bands. Initially, the priority date will be the date of application. Should an applicant's circumstances change, and their band change so may the priority date.

1.3 Where a change of circumstance results in a decrease in the applicant's priority band the priority date will be amended to the date they were originally in the lower band. If entering a lower band for the first time, the priority date will be amended to the date of registration.

1.4 If an applicant's need increases and they go up a band, their priority date will be the date they enter the band.

### **2. Band A. Urgent Housing Need (these priorities may be time limited)**

#### **2.1 Over-riding Medical Need**

Applicants with an over-riding medical priority awarded by the Local Authority in consultation with a Medical Advisor. The applicant's medical condition will be such that it is being so severely adversely affected by their current housing situation as to warrant an emergency move.

## 2.2 Over-riding Social/Welfare Need

Applicants with an over-riding social/welfare priority awarded by the Local Authority. The applicant's social/welfare need will be such that it is being so severely adversely affected by their current housing situation as to warrant an emergency move.

## 2.3 Imminent Danger

Applicants needing to move urgently where there is a serious imminent personal risk if they remain.

## 2.4 Necessary Decant

Applicants who need to be moved out of their property on a permanent basis where:

- their home needs major work which cannot reasonably be done while they are living at the property, or
- their home is in a block of flats or a group of properties being considered for a change of use, for example to be used for a specific client group, or
- their home is in a block of flats or a group of properties due to be modernised or refurbished, and the work cannot reasonably be done while they are living at the property.

This category will only apply to applicants who are a tenant of one of the Local Authority's Partners living in the Watford Borough or where Watford Borough Council would have nomination rights to their property.

## 2.5 Applicant succeeding to a Tenancy

If someone who has succession rights to a tenancy after the death of a tenant, the applicant may be required to move to alternative housing in line with their assessed housing needs.

An applicant given priority because they are succeeding to a tenancy, is only able to apply for housing with the landlord of their current property.

Applicants should refer to the Allocation Policies of the individual Local Authorities.

## **3. Band B. Very High Housing Need.**

### 3.1 Applicants suffering from harassment

All cases of harassment will, in the first instance, be dealt with through the Local Authority or Registered Provider Anti-Social Behaviour Policy. Should the harassment reach a level where there is a recommendation from a senior officer of a relevant statutory or voluntary agency such as the police or Children's Services, that a move is necessary, the applicant may be awarded band B priority.



Where an applicant receives band B priority resulting from harassment, they will usually only be able to bid for properties of the same size and type as their current accommodation.

### 3.2 Very High Medical Need

Applicants with a very high medical priority awarded by the Local Authority in consultation with a Medical Advisor. The applicant's medical condition will be such that should the applicant be moved to a more appropriate property the need would be lessened.

### 3.3 Very High Social/Welfare Need

Applicants with an very high social/welfare priority awarded by the Local Authority. The applicant's social/welfare need will be such that should the applicant be moved to a more appropriate property the need would be lessened.

### 3.4 Applicant is under-occupying by one or more bedrooms (social housing tenants only)

To enable the Local Authority Partners to make best use of their housing stock, the Local Authorities may offer accommodation to applicants who are underoccupying their homes if the home they are under-occupying is in demand. In turn, family sized accommodation is released and offered to an applicant on the list.

To be considered as an applicant under-occupying you must be a current tenant of one of the Local Authority Partners and live within one of the HCH Local Authority areas. This includes social housing tenants occupying a one bedroomed general needs property who wish to move to a sheltered housing scheme.

### 3.5 Severe Overcrowding

In extreme cases, the Local Authority will make an assessment as to whether they feel an applicant and their household are severely overcrowded. Where the Local Authority makes this assessment the applicant will be awarded band B priority. However, the applicant will only have band B priority with the Local Authority/ies who make the assessment that they are overcrowded.

### 3.7 Applicants with composite housing needs from Band C

This band also recognises applicants with a composite housing need. To qualify to move to band B an applicant should be assessed as having either high medical need, or lacking two bedrooms (or more) plus at least one other factor from the list under band C. This does not apply to households accepted as statutory homeless who are placed in Band C.

### 3.8 Realising ground floors or one bedroom social housing

Social housing tenants in Watford occupying one bedroom general needs properties who wish to move into sheltered housing may be given priority. However this priority can only be used when bidding for sheltered housing.

Social housing tenants in Watford occupying ground floor flats who would be willing to move to flats on a higher floor may be given priority. However this priority can only be used when bidding for other flats on higher floors, not other houses or other ground floor flats.

## 4. Band C. High Housing Need

### 4.1 Homeless households (Main homelessness duty owed)

Applicants who are accepted as statutorily homeless by the Council who also fulfil the residency criteria. Priority banding will be awarded by the Local Authority who has accepted the main duty and local connection only. An applicant cannot be awarded priority for homelessness by more than one Local Authority at the same time.

### 4.2 High Medical Need

Applicants with a high medical priority awarded by the Local Authority in consultation with a Medical Advisor. The applicant's current accommodation will be deemed as not appropriate for their medical needs.

### 4.3 High Social/Welfare Need

Applicants with a high social/welfare priority awarded by the Local Authority. The applicant's current accommodation will be deemed as not appropriate for their social/welfare needs.

This includes nominations from approved local hostels actively involved with the multi-agency Prevention of Homelessness Consortium (POSH) under the POSH nomination arrangements.

### 4.4 Releasing an adapted property

An applicant releasing an adapted property, with no other housing need will only be placed in band C if the following criteria are met:

- a) The property has what the Local Authority Partners define as a major adaptation, and
- b) There is a current need for a property with that adaptation.

To be considered as an applicant releasing an adapted property you must be a current tenant of one of the Local Authority Partners and live within one of the HCH Local Authority areas.

### 4.5 Applicant is assessed as lacking two or more rooms

Applicants should refer to each Local Authority's policy to see how many bedrooms they are entitled to.

### 4.6 Retiring or Redundant Current or Former Council Staff in Tied Accommodation (Service Occupiers) where TUPE provisions have applied (for former staff)

A service occupier is someone occupying tied accommodation as a condition of their employment for the better performance of their duties with one of the Local

Authority Partners or a contractor of one of the Local Authority Partners where that service occupier was transferred to that contractor as a result of TUPE provisions having been applied.

- Service occupiers may be re-housed in suitable alternative accommodation (not like for like) in accordance with the conditions of their terms of employment. The service occupier will be eligible for re-housing by the Local Authority Partners only if:
  - they are required to vacate their tied accommodation due to retirement or redundancy
  - they meet stated requirements in their contract of employment
  - they meet the eligibility criteria to appear on the housing list including immigration status
  - regardless of the requirements of their contract of employment do not own another property elsewhere
  - regardless of the requirements of their contract of employment do not have income or assets that would enable them to meet their own housing needs in the private sector.

Service occupiers accepted for re-housing can only apply for housing with the authority for whom they worked.

#### 4.7 Property is subject to a Compulsory Purchase Order.

Applicant is occupying a property which is subject to a compulsory purchase order and is unable to secure suitable alternative accommodation, and where the Local Authority accepts a duty to re-house.

#### 4.8 Applicants with composite housing needs from Band D

This band also recognises applicants with a composite housing need. To qualify to move to band C an applicant should be assessed as having either medium medical need, or lacking one bedroom (or more) plus at least one other factor from the list under band D.

### 5. **Band D. Recognised Housing Need**

#### 5.2 Medium Medical Need

Applicants with a medium level of medical priority awarded by the Local Authority in consultation with a Medical Advisor.

#### 5.3 Medium Social/Welfare Need

Applicants with a medium level of social or welfare need as assessed by the Local Authority.

#### 5.4 Applicant is assessed as lacking one room

Applicants should refer to each Local Authority's policy to see how many bedrooms they are entitled to.

## 5.5 Homelessness

- Applicants who are homeless as defined at ss. 175 – 177 of the Housing Act 1996
- Applicants who have a homeless application with Watford Borough Council who have been placed into temporary accommodation under section 188(1) (interim duty to accommodate) or 188(3) (discretionary duty to accommodate) will qualify as other homeless.
- Applicants who are accepted as statutorily homeless by the council but do not fulfil the residency criteria. Priority banding will be awarded by the Local Authority who has accepted the main duty and local connection only. An applicant cannot be awarded priority for homelessness by more than one Local Authority at the same time.
- Applicants whom the council does not have a statutory homeless duty towards, but who are in one of Watford's direct access hostels will also qualify as other homeless.

## 5.6 Unsatisfactory Conditions

Applicants will be awarded band D priority where it is determined by the Local Authority that they are living in unsatisfactory conditions.

## 6. **Band E. Transfers and older people**

6.1 Tenants of registered providers seeking alternative accommodation but are otherwise adequately housed who are living in the Watford Borough or where Watford Borough Council would receive nomination rights to the resulting vacancy.

6.2 Applicants who are over 60 and are seeking accommodation designated for older people only.