

## **Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation.**

Response on behalf of City of York Council. Consultation involved representatives of the Housing Options Team, Temporary Accommodation Team and Private Sector Team. The Landlord Association have been encouraged to submit an independent response to CLG

### **Background.**

City of York Council have not yet made any decision about using the private rented sector to discharge duty under the homeless legislation but can envisage circumstances where this may be the preferred option<sup>1</sup>.

### **General Comments**

City of York Council broadly welcome the principle of setting standards for private rented sector if it is to be used to house homeless households. It gives individual Local Authorities the leeway to set and raise standards in private rented sector and to contribute to reducing pressure on social housing by accessing the private rented sector where appropriate.

### **Part 1. Response to specific questions (suitability).**

- 1. Do you agree that these 5 areas should be important in determining whether accommodation is to be regarded as not suitable**
  - **Physical condition of property**
  - **Health and Safety matters (gas, electrical and fire safety)**
  - **Licensing for Houses in Multiple Occupation**
  - **Landlord behaviour and**
  - **Elements of good management**

In principle we agree with these 5 areas.

- 2. Do you agree with the proposed requirements as set out in detail above?. Please give details and reasons.**

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<sup>1</sup> Note to Tracey Simpson Laing – may be cases where a family want to live in certain area but there is no social housing stock, people who have arrears / exclusions and while CYC have a duty to house they do not meet the criteria of the NYHC allocations policy and so are 'stuck' in temporary accommodation, where CYC does not have the right size stock for a household but we could source it from a private landlord.

On reading the document City of York Council have a small number of minor concerns at some elements of the text.

**Physical condition.** Point 14. Would like to see additional phrase added (italics) .....This was one of the primary concerns of members of Parliament with issues of damp, mould and cold highlighted in particular '*as a result of property condition or defects*'. It is vital to recognise that a property which has significant damp / mould due as a result of inadequate heating systems, no / inadequate insulation no / inadequate damp proof course is not suitable as oppose to a property which develops condensation / mould as a result of drying clothes, not opening windows etc.

**Inspection for Category 1 Hazards.** In reading the consultation we are concerned that there appears to be a contradiction between Paragraph 15 '*The Government considers that when determining the suitability of accommodation secured under the homelessness legislation, local authorities should as a minimum, ensure that the accommodation is free of Category 1 hazards*' (agree) and Paragraph 17 '*We are, therefore, proposing that the Order requires local authorities to be of the view that the property is of a reasonable physical condition in determining whether it is suitable*' and Paragraph 18 '*In order to assess whether accommodation is in a reasonable physical condition, we would expect that a local authority officer, or a person acting on behalf of the authority such as a letting agent, would visit the property. In doing so they should take account of the property's general condition and state of repair*'.

We wish to make the point that visiting a property and taking account of general condition/repair to assess whether it is of a reasonable condition is not the same as ensuring that the accommodation is free from category 1 hazards. Letting Agents commonly fail to spot quite serious cat 1 hazards because they have not had the training to pick up on them. If a Cat 1 hazard is missed by the visiting officer it opens up the possibility of a legal challenge and/or enforcement action against the landlord which would be embarrassing. To guard against this there should be a requirement that whoever visits the property is able to demonstrate a formal knowledge of HHSRS. A formal knowledge should be satisfied by attendance at Day 1 of <http://www.cieh.org/events/hhsrs-2012.html>.

**Health and Safety matters.** Point 19. Welcome incorporating requirement for gas, electrical and fire safety checks, plus additional

carbon monoxide checks but feel that this should not be restricted to private rented sector in respect of homeless. There were some concerns that it is a difficult balance to ask landlords to take homeless customers, for 12 months tenancies with more extensive requirements than general PRS and as such will dissuade them from working with Local Authorities in respect of this customer group.

Also concern that if Local Authorities are left to set own standards their may be inconsistency across the county and as a result of this inconsistency landlords investing in the private sector market may be dissuaded to expand their portfolios into LA's with higher standards which would be detriment.

**Houses in Multiple Occupation.** Point 26. We agree that duty if discharged is to HMO covered by licensing regulations

**Landlord behaviour.** Point 28. That landlords should be 'fit and proper persons'. While CYC agrees with this principle there may be a requirement placed upon the Police to co-operate in providing the relevant information especially in determining if further information (CRB check) may be requested

**Elements of Good Management.** Valid Energy Performance Certificate. Point 31. Aware that The Energy Act 2011 contains powers to allow government to make regulations so that, from 2016, reasonable requests by tenants are not refused where a finance package, such as the Green Deal and/or the Energy Company Obligation (ECO), is available, and from 2018, it would be unlawful for landlords to rent out properties that do not reach a minimum standard energy efficiency rating. We understand that the intention is for this to be set at EPC rating 'E' but have concerns that older, stone built properties may be unable to achieve this standard and if they are a large proportion of PORS stock in th3 district may limit options significantly.

**Deposits** Point 33. Clarification required. Agree that landlord should place deposit into a deposit scheme but CYC are presuming that 'paper bonds' are still an option. Concern about the potential cost to LA to provide bonds and rent in advance if discharging duty into PRS.

**3. Are there any additional elements that should form part of the Order or any other comments you wish to make**

Some concern about different approaches LA may take to utilising PRS to discharge homeless duties and if this will have an adverse affect on which LA an applicant would approach. Need for clear and transparent criteria for use of PRS, especially if tenancy lengths are significantly different for social housing and PRS. Need to tie up to tenancy strategy and use of fixed term tenancies in certain cases.

## **Part 2. Response to specific questions (location).**

### **General Comments**

City of York Council do not feel that this is a significant issue within the authority but recognise there are occasions where out of area placements may alleviate a persons housing problem (eg. securing PRS out of area for someone fleeing violence). There is some concern that other Local Authorities may place people into York which would potentially place a disproportionate drain on the city's resources (eg health services, social services, support services) if it were common practice.

#### **4. Do you agree that existing provisions on locations and suitability should be strengthened so that homeless households are placed nearer to home wherever possible?**

Yes, in the main but consideration needs to be given to the safety of the applicant and the receiving authority. Need to be able to discharge out of area, especially when there are numerous factors preventing discharge in the local area. This is true when in areas of high rental costs, where there are gaps PRS and social stock (eg. no large family houses) and realistic opportunities to discharge duty within the district. In the case where there is limited large family housing it may not be possible to discharge duty into social hosing or PRS within district but possible in a neighbouring authority. Need to weigh up physical housing needs against support / employment / education needs.

Primary legislation section 208 Discharge of Functions. It may be that additional requirements are placed on the referring authority to notify the relevant social services and education departments, Police, Probation and health services where appropriate. A requirement to provide necessary risk assessments and set up care and support packages if required prior to a move. In addition help may be needed in transferring benefit claims, ensuring people had access to money to live during transition

17.14 Code of Guidance. Quite rightly places emphasis on taking account of applicants support networks / employment and education needs wherever possible but additional guidance may need to be incorporated to override this in cases of violence and that the Local Authority dose not believe it is safe for them to remain within the district.

**5. Do you agree that regulations should specify the factors in relation to location which authorities should take into account when considering the suitability of accommodation**

- Distance of accommodation from applicants previous home
- Disruption to employment, caring responsibilities, or education of members of household
- Access to amenities such as transport, shops and other necessary facilities and established links to schools, doctors, social workers and other key services and support essential to the well being of the household

This was difficult, while it would be beneficial and admirable to have consistent regulations we feel it is necessary to set the balance between raising expectations and legal challenge and beingworkable. If using out of area placements for whatever reason it is unlikely that these regulation could be achieved. In addition, particularly in large rural districts, it could be argued that the same should be considered for in district placements which in many cases would be unachievable.

Current caselaw indicates that other than in exceptional circumstances (eg for health, safety reasons) the main aspect of suitability is property size not location / design. While there should be an expectation placed on Local Authorities to aim to meet these **guidelines** in all cases (not just discharging into the private rented sector out of district) it is not always possible – especially in more rural areas. We must remember that while we need to provide the best possible service for people who are homeless, it is an emergency process unlike an allocations policy where, for example customers have choice to remain in poor / overcrowded conditions to await a property in their preferred area etc. It is also important to ensure that if introducing strict regulations this will not hinder Local Authority temporary accommodation targets

There are also issues about who would be responsible for checking the property, landlord and necessary accreditation in an out of area placement and (point 43) how would you determine or evidence that the out of area accommodation you had used was in the nearest practicable district. This we feel is unenforceable.

**6. Do you agree that those factors listed above are the ones local authorities should take into account when considering location.**

As previously discussed, while honourable, these proposed may be unviable and result in significant costly legal challenge. General guidelines may be more appropriate but may also result in significant legal challenge.