Haringey Council

**NOTICE OF MEETING**

# Cabinet Member Signing

TUESDAY, 11TH AUGUST, 2015 at 10.00 am HRS - CIVIC CENTRE, HIGH ROAD, WOOD GREEN, N22 8LE.

MEMBERS: Councillor Alan Strickland, Cabinet Member for Housing and Regeneration

**AGENDA**

**1. FILMING AT MEETINGS**

Please note that this meeting may be filmed or recorded by the Council for live or subsequent broadcast via the Council's internet site or by anyone attending the meeting using any communication method. Although we ask members of the public recording, filming or reporting on the meeting not to include the public seating areas, members of the public attending the meeting should be aware that we cannot guarantee that they will not be filmed or recorded by others attending the meeting. Members of the public participating in the meeting (e.g. making deputations, asking questions, making oral protests) should be aware that they are likely to be filmed, recorded or reported on.

By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

The chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual or may lead to the breach of a legal obligation by the Council.

**2. URGENT BUSINESS**

The Leader/Cabinet Member will advise of any items they have decided to take as Urgent Business.

## 3. AMENDMENT TO THE ALLOCATIONS POLICY TO REFLECT THE ALLOCATION OF HOUSING (QUALIFICATION CRITERIA FOR RIGHT TO MOVE) (ENGLAND) REGULATIONS 2015. (PAGES 1 - 6)

The report will seek Cabinet Member approval to amend the Allocations Scheme to comply with the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 and statutory guidance. These regulations require Local Authorities to make available a minimum of 1% of their annual lettings to the Right to Move scheme.

## 4. AMENDMENT TO THE HOUSING ALLOCATION POLICY TO ENSURE COMPLIANCE WITH LEGISLATION AND TO RENAME THE EXCEPTIONS PANEL (PAGES 7 - 12)

The report will seek Cabinet Member approval to amend the Allocations Policy (2015) to reflect the name change of the Exceptions Panel to the Decisions Panel. The report will also seek Cabinet Member approval to promote those households with reasonable preference in Band D in the current Allocations Policy to comply with legislation. The Allocations Scheme (2015) reduces the number of housing bands from five to three.

## 5. NEW ITEMS OF URGENT BUSINESS

To consider any new items of Urgent Business admitted under Item 2 above.

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Published on 3rd August 2015

Agenda Item 3

**Haringey** Council

| Report for: | Cabinet Member Signing | Item Number: | |
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| Title: | Amendment to the Allocations Policy to reflect the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015. |
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| Report Authorised by: | Tracie Evans – Chief Operating Officer |
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| Lead Officer: | Bev Faulkner – Advice & Homelessness Prevention Manager |
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| Ward(s) affected: | Report for Key/Non Key Decisions: |
|---|---|
| All | Key Decision |

1. Describe the issue under consideration

1.1 To amend the Allocations Scheme to comply with the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 and statutory guidance.

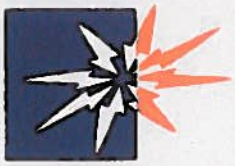
2. Cabinet Member introduction

2.1 The Right to Move scheme has been implemented to ensure that the mobility of working, social housing tenants is not adversely affected by the residency requirement in many allocations policies.

2.2 The Haringey Allocations Policy approved by Cabinet in October 2014 included a local connection requirement of three years residence in the borough, with a limited number of exemptions. The Right to Move Regulations provide a statutory framework to support the Right to Move scheme and Statutory Guidance recommends that we make available a minimum of 1% of annual lets to qualifying social tenants who wish to move to Haringey.

3. Recommendations

3.1 That the Allocations Scheme approved by Cabinet on 14 October 2014 be amended to comply with the Right to Move regulations:



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3.1.1 by inserting at the end of paragraph 3.5.4 a further condition as follows:

*"They are (whether or not within Haringey) a secure or introductory tenant or the assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord and:*

- *Need to move to a particular locality within Haringey, where failure to meet that need would cause hardship (to themselves or to others); and*
- *either work within the borough or have a genuine intention of taking up an existing offer of work within the borough. that is not voluntary, short-term or marginal in nature, or ancillary to work in another borough"*

3.1.2 by providing a new section 15.17 to detail a direct let quota in any Council year of 1% of the previous year's annual lettings as follows:

*"Right to Move*

*The Council will release 1% of the previous year's annual lettings to be available for applicants who qualify for the Right to Move scheme. Details relating to the facilitation of the scheme in Haringey are contained in the Right to Move Procedure".*

4. Alternative options considered

4.1 There are no viable alternative options. The Secretary of State for Communities and Local Government issued guidance that All Local Authorities are required to have regard for the Right to Move Scheme in exercising their functions under Part 6 of the Housing Act 1996.

5. Background information

5.1 On 20th April 2015, the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 came into force. These regulations required Local Authorities to make available a minimum of 1% of their annual lettings to the Right to Move scheme. Any Local Authority failing to do so is required to explain publicly why they are offering less.

5.2 The Localism Act 2011 gave councils the power to set their own rules relating to qualifying for social housing in their area. One consequence of this power is that mobility for social housing tenants has been restricted as many councils have set strict residency criteria as a requirement to join the housing register. The Haringey Allocations Policy approved by Members on 14th October 2014 includes a residency criterion of three continuous years in Haringey to qualify for inclusion on the housing register with certain exceptions.

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5.3 The Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 prevent local authorities disqualifying certain persons on the grounds that they do not have a local connection with the authority's district. Specifically, a local connection may not be applied to existing social tenants seeking to transfer from another local authority district in England who:

- Have reasonable preference under s.166(3)(e) because of a need to move to a particular locality within the local authority's district to avoid hardship, and
- need to move because the tenant
  - works in the district, or
  - to take up an offer of work

The Regulations do not apply if the work is:

- Short-term or marginal in nature;
- ancillary to work in another district; or
- voluntary (the Regulations define what is meant by voluntary)

5.4 The statutory guidance issued with the Right to Move regulations states that the local authority must ensure that it is not simply the case that the tenant needs to move for work, but that, if they were unable to do so, it would cause them hardship. A number of factors to support the authority's decision making on this point have been suggested, including :

- The distance and/or time taken to travel between work and home
- The availability and affordability of transport, taking into account level of earnings
- The nature of the work and whether similar opportunities are available closer to home
- Other personal factors, such as medical conditions and child care, which would be affected if the tenant could not move
- The length of the work contract
- Whether failure to move would result in the loss of an opportunity to improve their employment circumstances or prospects, for example, by taking up a better job, promotion or apprenticeship.

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5.5 The statutory guidance recommends that a minimum quota of 1% of lettings be made available for out of borough social housing tenants who need to relocate into the borough to take up a job or apprenticeship. Based on the number of lettings made in 2014/15, such a quota would require seven units of accommodation to be made available in 2015/16. Whilst the guidance is moot on the point of how a council determines the bedsize composition of their contribution to the scheme, a local scheme would be at reduced risk of challenge if the composition reflected the size of stock available. Therefore, it is suggested that four x one bed units, one x two bed units, one x three bed and one larger unit are made available to the scheme.

5.6 Each local authority received a grant of £3044.00 from central government to support start up costs associated with the scheme. The operational aspects of the scheme are currently being developed locally. The favoured approach will be to join with partners in the North London sub-region to deliver the scheme via the existing national Homefinder scheme. The costs of doing this will not exceed the grant received. In the event that a sub-regional approach is unsuccessful, the scheme will be managed locally and absorbed into the work of the Housing Demand directorate.

6. Comments of the Section 151 Officer and financial implications

6.1 Amending the existing Housing Allocations policy to be compliant with legislation will ensure that the council is not exposed to the risk of legal challenge and the costs associated with such action.

6.2 Introducing the changes to policy and procedure under the Right to Move scheme will be funded by central government grant in the sum of £3,044 and will be cost neutral to the council.

6.3 Making 1% of housing allocations available to tenants outside of the borough under the Right to Move scheme equates to 7 lettings per annum and is unlikely to have a material financial impact on the authority's homelessness position.

7. Comments of the AD Governance and legal implications

7.1 The Assistant Director of Corporate Governance has been consulted in the preparation of this report.

7.2 The Assistant Director's comments in the report on the adoption of the Allocation Scheme before Cabinet on 14 October still apply. As set out in those comments, the Council is required in accordance with the Housing Act 1996 to have and to publish an Allocations Scheme, setting out how it determines priorities for allocating housing accommodation and the procedures to be followed. All allocations must be in accordance with that Scheme.

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7.3 Transfer applications by tenants of social housing fall within the Scheme, whereas decants do not.

7.4 Since the Scheme was adopted the Secretary of State has made the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 and issued guidance to which (pursuant to s169 of the Housing Act 1996) the Council must have regard.

7.5 The effect of the Regulations is set out at paragraph 5.3 above. The Regulations apply not only to cross-borough moves, but also to moves within the borough.

7.6 The broad effect of the Guidance is set out at paragraphs 5.4 and 5.5 above. The Guidance further suggests that, because a within-borough move is broadly stock-neutral, a borough should be more flexible in its approach to the question of whether work is short-term, marginal etc when considering whether within borough transfer applications fall within the Regulations.

8. Equalities and Community Cohesion Comments

8.1 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who share those characteristics and people who do not.

8.2 A full EqIA was completed in 2014 to support development of the Council's Allocations Policy. Consultation as part of the EqIA indicated overwhelming support for the 3 year residency requirement. However, the subsequent Right to Move regulations require local authorities to make a proportion of housing allocations available to tenants outside the borough where they need to move for work and would face hardship were they unable to do so. The suggested principles for decision-making in this area take into consideration the personal factors of the applicant, such as medical conditions and childcare needs, and should therefore have a positive impact for the protected groups.

8.3 The EqIA has been reviewed in light of the proposed policy changes and it is considered that this proposal should not impact adversely on those with the protected characteristics. The EqIA documentation will be updated to reflect changes to the Allocations Policy.

9. Head of Procurement Comments

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9.1 No impact on the procurement regulations or processes.

10. Policy Implications

10.1 The council has a duty to implement the Right to Move regulations. Doing so will reduce potential legal challenge.

10.2 Both Haringey Council's current and proposed Housing Strategies are in alignment with the regulations as they set out the council's commitment to ensuring social and affordable rented homes are offered to households most in housing need, including those in employment.

11. Reasons for Decision

11.1 To ensure that the Allocations Policy is compliant with legislation.

12. Use of Appendices

12.1 None.

13. Local Government (Access to Information) Act 1985

13.1 There is no information contained in this report which is exempt from public viewing.

Agenda Item 4

Haringey Council

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| Report for: | Cabinet Member Signing | Item Number: | |

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| Title: | Amendment to the Housing Allocations Policy to ensure compliance with legislation and to rename the Exceptions Panel. |

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| Report Authorised by: | Tracie Evans – Chief Operating Officer |

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| Lead Officer: | Bev Faulkner – Advice & Homelessness Prevention Manager |

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| Ward(s) affected:<br><br>All | Report for Key/Non Key Decisions:<br><br>Key Decision |

1. Describe the issue under consideration

1.1 To seek approval to amend the Allocations Policy (2015) to:

i) Reflect the name change of the Exceptions Panel to the Decisions Panel, and

ii) to promote those households with reasonable preference in Band D in the current Allocations Policy (2011) to Band C in the new Allocations Policy to comply with legislation.

2. Cabinet Member introduction

2.1 The Allocations Policy was approved by Cabinet in October 2014 and at that time was compliant with legislation.

2.2 Changing the name of the Exceptions Panel to Decisions Panel makes operational sense as it better describes the activity of the Panel.

2.3 The amendment to Bands C and D detailed below is necessary to comply with a judgement issued subsequent to Cabinet approval of the Allocations Policy and is needed to ensure the Policy remains legal and resistant to

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Challenge which would have financial and reputational repercussions.

3. Recommendations

3.1 It is recommended that the Allocations Policy approved by Cabinet on 14 October 2014 be amended to;

i) substitute the name "Decisions Panel" for the name "Exceptions Panel" at paragraph 15.28.1 of the Allocations Scheme, and

ii) promote those households in Band D pursuant to the current Allocations Scheme (2011) who are entitled to reasonable preference under s166A(3) of the Housing Act 1996 be promoted to Band C in the new Allocations Scheme (2015) to ensure that the Council is compliant with legislation.

4. Alternative options considered

4.1 The Exceptions Panel could continue to be known as such and practice be changed to accord with the Scheme as written.

4.2 Failure to amend the Allocations Policy (2015) in light of the Judgement in *R (on the application of Jakimaviciute) v Hammersmith & Fulham (2014) EWCA Civ 1438*, ("*Jakimaviciute*") decided by the Court of Appeal subsequent to Cabinet approval of the Allocations Scheme (2015) would leave the Council open to legal challenge which would have financial and reputational repercussion. There are no viable alternative options.

5. Background information

5.1 The Allocations Scheme (2015) was approved by Cabinet on 14th October 2014 and a phased implementation plan began in February 2015. The inaugural meeting of the Exceptions Panel was in February 2015. The implementation plan indicates that as from June 2015, households currently in Bands D and E pursuant to the Allocations Scheme (2011) will be removed from the housing register as the Allocations Scheme (2015) reduces the number of housing Bands from five to three. The rationale behind the decision to delete the lower bands was to reflect the fact that households in those two lower bands have no realistic chance of securing social housing and that their inclusion on the housing register mismanages expectations. There are currently a total of 4650 households in Bands A – C.

5.2 Part 6 of the Housing Act 1996 ("the Act"), as amended by the Localism Act 2011 states that, subject to eligibility on immigration grounds, a person may be allocated housing accommodation by a local housing authority if that person is a 'qualifying person': s.160ZA(6). The Secretary of State has the

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power to prescribe classes of persons who are, or are not, to be treated as 'qualifying persons' or criteria which may or may not be used to decide what classes of persons are not qualifying persons: s.160ZA(8). Subject to that, each authority has discretion to decide what classes of persons are, or are not, qualifying persons: s.160ZA(7).

5.3 The Act also requires a local housing authority to 'have a scheme (their 'allocation scheme') for determining priorities, and as to procedure to be followed, in allocating housing accommodation': s.166A(1). As to priorities, an authority are subject to a duty to frame the scheme 'so as to secure that reasonable preference is given to - ...(b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3)': s.166A(3).

5.4 In *Jakimaviciute* the Court determined that households entitled to reasonable preference within s166A(3) of the Act cannot lawfully be disqualified from inclusion on the housing register.

5.5 Section 14 of the Allocations Policy (2011) included in Band D the following categories of households who are entitled to reasonable preference:

- Applicants who are overcrowded and living in private rented accommodation in Haringey
- Applicants who are tenants of a non-partner Housing Association who are overcrowded and have a local connection with Haringey
- Applicants living in accommodation lacking permanent facilities or sharing facilities with others not included on their application.

There are c3500 households within these categories in Band D. In order to be compliant with the Judgement the criteria for inclusion in Band C of the Allocations Policy (2015) needs to be amended to include these Band D categories.

6. Comments of the Section 151 Officer and financial implications

6.1 A change of policy to be compliant with legislation will ensure that the council is not exposed to legal challenge and the costs associated with defending such action.

7. Comments of the AD Governance and legal implications

The Assistant Director of Corporate Governance has been consulted in the

7.1 preparation of this report.

7.2 The Assistant Director's comments in the report on the adoption of the Allocation Scheme before Cabinet on 14 October still apply save as modified here. As set out in those comments, the Council is required in accordance with the Housing Act 1996 to have and to publish an Allocations Scheme, setting out how it determines priorities for allocating housing accommodation and the procedures to be followed. All allocations must be in accordance with that Scheme.

7.3 Paragraphs 5.2 and 5.3 above set out the effect of the relevant parts of the Act.

7.4 At the time that the Allocations Scheme (2015) was adopted, *Jakimaviciute* had not been decided by the Court of Appeal. The case was an application for judicial review of LB Hammersmith & Fulham's Allocations Scheme for failing to accord reasonable preference by disqualifying from the Scheme certain categories of persons entitled under the Act to reasonable preference.

7.5 The Administrative Court had refused permission to pursue the claim. Following adoption of the Allocations Scheme (2015) on 14 October 2014. The Court of Appeal handed down its judgment (on 6 November 2014) to the effect set out at paragraph 4.2 above.

7.6 The terminology used to describe the body described at para 15.28.1 of the Scheme has no legal implications; but it is preferable that the name used for the body be body be correctly stated in the Allocations Scheme.

8. Equalities and Community Cohesion Comments

8.1 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who share those characteristics and people who do not.

8.2 The proposed change extends the criteria for inclusion in Band C to those currently in Band D with a defined reasonable preference and should

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therefore benefit a wider number of applicants.

8.3 A full EqIA was completed in 2014 to support development of the Council's Allocations Policy. The EqIA has been reviewed in light of the proposed policy changes and it is considered that this proposal should not impact adversely on those with the protected characteristics. The EqIA documentation will be updated to reflect changes to the Allocations Policy.

9. Head of Procurement Comments

9.1 No impact on the procurement regulations or processes.

10. Policy Implication

10.1 The amendment to change the name of the Exceptions Panel to Decisions Panel better reflects the work of this Panel, the key activity of which is to determine the housing need of Housing Register applicants.

10.2 The amendment to retain Housing Register applicants with reasonable preference currently in Band D by moving them to Band C will reduce legal challenge to the council.

10.3 Both Haringey Council's current and proposed Housing Strategies are in alignment with the proposed amendments set out in this report. Both documents set out the council's commitment to ensuring social and affordable rented homes are offered to households most in housing need.

11. Reasons for Decision

11.1 To ensure legal compliance of the Allocations Policy to the Housing Act 1996, Part VI (as amended).

12. Use of Appendices

12.1 None attached.

13. Local Government (Access to Information) Act 1985

13.1 There is no information contained in this report which is exempt from public viewing.