



Haringey Council

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 <i>Tracie Evans</i>
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Lead Officer:	Bev Faulkner – Advice & Homelessness Prevention Manager
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Ward(s) affected: All	Report for Key/Non Key Decisions: Key Decision
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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



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



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- 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 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.

