

Mayor and Cabinet		
Report Title	Interim Homeless Allocations (Locational Priority) Policy	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director for Customer Services	
Class	Part 1	Date: 15 th July 2015

1 Summary

- 1.1 On 2nd April 2015, the Supreme Court found against Westminster Council in a case relating to how it had made decision on where to place a family to which it owed a duty to accommodate under the Housing Act 1996. The *Nzolameso v City of Westminster* judgment has significant ramifications for local authorities who are now required to develop policies to show how they will procure accommodation both in and outside their boroughs and how they will decide who has priority accommodation in or close to their borough.
- 1.2 Since the judgment was made, Lewisham officers have been working with colleagues from other London boroughs to examine the impact of the judgment and to determine the appropriate approach for developing a policy which enables this authority to meet these new duties.
- 1.3 This paper outlines the judgment, its implications and some of the key considerations for the authority in terms of its development of a locational priority policy. In particular, the paper outlines how the policy will apply to the allocation of both temporary accommodation and for private rented sector discharge which was agreed by Mayor and Cabinet on 25th March 2015.
- 1.4 The paper proposes that an interim policy is adopted to guide practice over the next four months whilst more detailed work is undertaken to develop a full policy. Details of this proposed policy are included in section 8 of this report and in appendix B.

2 Purpose

- 2.1 The purpose of this report is to:
- Provide an overview of the new legal requirements emanating from the *Nzolameso v Westminster* judgment
 - Explain the rationale behind the development of an interim policy
 - Detail the supply and demand data and other considerations which have influenced the development of the policy
 - To ask for approval to implement the interim policy for four months

- To ask for approval to proceed with consultation to develop a full policy to be presented to Mayor and Cabinet on 11th November 2015.

3 Recommendations

It is recommended that the Mayor

- 3.1 Note the new legal responsibilities for the council in relation to the development of a locational priority placement policy;
- 3.2 Note the rationale for the development of an interim policy;
- 3.3 Approve the interim locational priority placement policy; and
- 3.4 Give approval to officers to proceed with consultation to develop a full locational priority placement policy to be presented to Mayor and Cabinet in November 2015.

4 The Judgment in Nzolameso v Westminster

- 4.1 On 2nd April 2015, the supreme court gave its judgment in the case of Nzolameso v Westminster City Council. The case sets legal precedent and has implications for the way in which all local authorities must now make decisions as to where to place a family to whom they owe a duty under Part VII of the Housing Act 1996. The case establishes the need for document and formalise decision making processes which are currently undertaken locally.

A summary of the facts of the case

- 4.2 Ms Nzolomeso is a 51 year old single mother with five children between eight and 14. She has longstanding health problems and has lived in London since at least January 2000. From December 2008 to November 2012, the family lived in a privately rented four bedroomed house in Westminster. In 2012, she was affected by the benefit cap which dramatically reduced the amount of housing benefit she was entitled to receive which meant she was no longer able to afford the rent. She was evicted in November 2012.
- 4.3 She applied to Westminster City Council under the homeless provisions in Part 7 of the 1996 Act and the family were temporarily housed in the Royal Borough of Kensington and Chelsea on a bed and breakfast basis. On 17th January 2013, she was notified that Westminster had decided that they accepted that they owed her a housing duty.
- 4.4 On 24th January, the authority wrote offering her temporary accommodation in a five bedroomed house in Bletchley, near Milton Keynes. In their letter to the applicant, the council explained that:

‘There is a severe shortage of accommodation in Westminster and it is not reasonably practicable for us to offer a Westminster home for everyone who applies for one. That is why we have had to offer you accommodation in Milton Keynes. Although it is outside Westminster, having considered your circumstances, we believe this accommodation is suitable for you’

4.5 The applicant rejected this offer because it was too far away and would cause disruption to the support networks which she had in place for her health and her children.

4.6 Westminster Council wrote to the applicant on 25th January stating that none of her children were of GCSE age, so it was suitable for them to move schools. They stated that the property was one hour and 15 minutes travel time from Westminster and was a suitable size. They informed the applicant that because she refused the offer, their duty under s193 of the Housing Act 1996 had ended and she was served notice.

4.7 The applicant sought a review of the local authority's decision under s202 of the 1996 Act. The review was completed on 27th May 2013 and the reviewing officer confirmed that the original decision was correct and that the accommodation offered was suitable and affordable. In their letter they stated:

'As you are aware Westminster is currently suffering from a severe shortage of both temporary and permanent accommodation. It is therefore not reasonably practicable to offer temporary accommodation in the borough for everyone who applies for it and therefore we have to offer some people temporary accommodation located outside Westminster. The council's temporary lettings team carefully assesses each application based on the individual circumstances of each household member and decides what type of accommodation would be suitable for the household. Given the shortage of housing in Westminster and all of our circumstances, including those above, I believe that it was reasonable for the Council to offer your household this accommodation outside the Westminster area'

4.8 The court noted that this appeared to be a standard paragraph which has appeared in a number of decision letters emanating from the City of Westminster. They noted that the authority had produced no evidence of their policy in relation to the procurement of accommodation, nor the location of the accommodation, nor the instructions given to the temporary letting team as to how they are to decide which properties are offered to applicants.

4.9 The applicant then appealed to the county court under section 204 of the 1996 Act, The appeal was heard in October 2013. The appeal was unsuccessful. In his judgment HHJ Hornby commented that:

'I appreciate that there appears to be no reference in particular to the fact that consideration was given to the particular areas within Westminster or those areas nearer than Milton Keynes, but it seems to me almost inevitable that the team must have had regard to all the stock that there was and allocated what was the most suitable property available to them for that particular person'

- 4.10 The council had been providing the family with interim accommodation for the applicant and her children during the review and appeal process. But they refused to do so pending her application for permission to appeal to the Court of Appeal. The applicant asked Westminster Children's Services Department to accommodate the whole family. They refused and on 24th February 2014, the applicant asked the Children's Service Department to provide accommodation for her children only under the Children Act 1989. The Children were divided between three different placements and care proceedings were commenced.
- 4.11 The applicant was granted permission to appeal to the Court of Appeal, but that appeal was also unsuccessful, for reasons which were essentially the same as those given by HHJ Hornby.
- 4.12 The case was heard in the Supreme Court on 17th March 2015. The appeal was allowed on the basis that it raised important issues in relation to out of borough placements of homeless applicants. The two main issues were:
- 'Reasonably practicable' – section 208 of the 1996 Act states that local housing authorities must house homeless people in their area, 'so far as this is reasonably practicable'. How is this to be applied? Is it sufficient for a local authority to have a policy for prioritising applicants for in-borough accommodation or should they check, in every case, whether accommodation is available in-borough?
 - Evidence of compliance with the Statutory Guidance – must an authority refer in their decision letter to their efforts to locate accommodation closer to London or produce evidence that they have done so? Or can the Court assume or infer that they have taken proper steps to look for accommodation in the local authority area or nearer to that area?
- 4.13 The judgment was handed down on 2nd April 2015 and the Court found against Westminster City Council. They concluded that the authority could not show that the offer of a property in Bletchley was sufficient to discharge Westminster's legal obligations under the 1996 Act. The judgment concludes that the authority did not explain adequately 'what, if any, consideration had been to providing accommodation in or nearer the borough, apart from the standard general paragraph'. Additionally, the judgment concludes that the authority could not 'show that they have properly discharged their obligation under section 11 of the Children Act 2004'.

Guidance within the judgment

- 4.14 In light of this case, the judgment goes on to provide guidance to local authorities as to how they should go about explaining their decisions as to the location of properties offered. The guidance recognises that authorities are entitled to take account of the resources available to them, the difficulties of procuring sufficient units of accommodation at affordable prices in their area and the practicalities of procuring accommodation in nearby authorities. However, the decision on an individual case will depend on the policies which

the authority has adopted both for the procurement and allocation of these units.

4.15 The guidance for local authorities therefore is as follows:

'Ideally, each local authority should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year. The policy should, of course, reflect the authority's statutory obligations under both the 1996 (Housing) Act and the Children Act 2004. It should be approved by the democratically accountable members of the council and, ideally, it should be made publicly available. Secondly, each local authority should have and keep up to date, a policy for allocating those units to individual homeless households. Where there was an anticipated shortfall of 'in borough' units, that policy would explain the factors which would be taken into account in offering units close to home, and if there was a shortage of such units the factors which would make it suitable to accommodate a household further away'

4.16 The judgment states that the approach would have many advantages. It would enable:

- homeless people, and the local agencies which advised them, to understand what to expect and what factors would be relevant to the decision;
- temporary letting teams to know how they should go about their business;
- reviewing officers to review the decisions made in individual cases by reference to those published policies and how they were applied in the particular case;
- reviewing officers to explain whether or not the individual decision met the authorities' obligations;
- applicants to challenge, not only the lawfulness of the individual decision, but also the lawfulness of the policies themselves;
- a general challenge to those policies to be brought by way of judicial review: "In some ways this might be preferable to a challenge by way of an individual appeal to a county court. But it may not always be practicable to mount a judicial review of an authority's policy, and an individual must be able to rely upon any point of law arising from the decision under appeal, including the legality of the policy which has been applied in her case."

5 Implications of the Westminster judgment for local authority policy and practice

5.1 As a consequence of the judgment in *Nzolomeso v Westminster City Council*, local authorities must all now develop a policy which:

- outlines the Council's approach to procuring accommodation both 'in borough', 'close to home' and 'further away'. This must indicate both the anticipated supply and the expected demand over the next year.

- Explains how the Council will decide who will receive priority in the allocation of these properties.

5.2 The policy must be compliant with the existing duties of the local authority within the Housing Act 1996 and the Children Act 2004.

6 Considerations in the development of an interim locational priority placement policy

6.1 The implications of the judgment for local authorities are hugely significant as demand rises rapidly and the supply of affordable accommodation to meet this demand reduces. It is estimated that at a national level there are currently 16,000 households in temporary accommodation outside their local authority area. This has almost tripled since 2010 when the figure was 5,880.¹

6.2 In Lewisham, the council has seen a 76% increase in the number of households in temporary accommodation in the last five years (now almost 1,800 people). At the same time the number of affordable properties to let has decreased by 44%. The Council has 8,500 individuals and families on the Housing Register and the average wait for a four bedroom property is 4 years. In addition to this, the Council currently has spend in excess of £5m per annum on the provision of accommodation and other services for homeless families under s17 Children Act 1989 who are excluded from support under Housing Act 1996 (i.e. because they have No Recourse to Public Funds or have made themselves intentionally homeless).

6.3 In light of the significant variation between demand and supply, the Council needs to think carefully about how the implications from this judgment are translated into local policy and practice to ensure that:

- our policy meets our legal duties
- it is operationally sustainable
- it sets fair and consistent priorities which set an expectation of entitlements which we are subsequently able to meet.

6.4 Some of the key considerations are outlined below:

- Which types of accommodation should the policy cover? Following the decision of the Supreme Court in *Nzolameso v Westminster City Council* [2015] UKSC 22; [2015] PTSR 549, there are now four main layers of substantive legal obligations that apply to decision making about the location of accommodation secured under the homelessness legislation in Part 7, Housing Act 1996.
- As a preliminary point, these requirements apply to all accommodation secured under Part 7. That is not to say that they apply in precisely the same way to, e.g. s.188 interim accommodation as to final offers of permanent accommodation under s.193(7).
- The main requirements are as follows:

¹ <http://www.insidehousing.co.uk/landmark-case-tightens-rules-on-out-of-borough-placements/7009151.article>

- The accommodation must be within the Council's district so far as reasonably practicable: s.208(1);
 - Where possible, it should be as close as possible to where an applicant was previously living: paras 48-49, Supplementary Guidance, November 2012;
 - The accommodation must be suitable for the applicant and his or her household: s.206(1); and
 - When assessing suitability, the Council must have regard to the need to safeguard and promote the welfare of any children; and this means that the decision-maker should identify the principal needs of the children, both individually and collectively: s.11(2), Children Act 2004; Nzolameso at para 27.
- In addition, a lawful decision on location must give adequate reasons to explain why the Council has decided the above issues in the way that it has.
 - Which duties will the policy cover? Alongside the Housing Act duties we also procure temporary and ongoing accommodation for families whom we support under s17 of the Children Act 1989. In this process the authority must consider the needs of the family when determining the location of a property.
 - How should we define close to home? The Westminster judgment sets out three geographical areas that local authorities should consider when assessing locational priority: 'in borough', 'close to home' and 'further away'. The Council must consider the definitions which will apply, particularly in relation to the category 'close to home'.
 - Which groups will receive priority and how will this be assessed? Each week the Council provides temporary accommodation to between 15 and 20 families and single adults a week (90% under Housing Act 1996 and 10% under Children Act 1989 and Care Act 2014). Additionally, there are currently c. 2,100 families and single adults in temporary accommodation (c.1,800 under Housing Act 1989 and c.300 under Children Act 1989 and Care Act 2014). Given the scale of demand, our policy in terms of who has priority for accommodation must adequately reflect what is feasible to achieve and also must ensure that the processes for allocation are relevant and effective.

7 Why develop an interim policy?

- 7.1 As a result of the Westminster judgment, local authorities are now required by law to have a locational priority placement policy to guide decision making on procurement and allocation of properties.
- 7.2 However, this is a complex matter with significant ramifications for homeless households in the borough as well as on council spend on temporary and other forms of accommodation. In order to develop a coherent and lawful policy which meets the council's longer term objectives, a significant amount of work is required to map demand, gather insights and consider the full financial and equalities impacts arising from policy decisions. Detailed work is also required to consider how the policy will be implemented in practice. At a

regional level, London Councils are leading work to ensure that London local authorities design policies which are consistent and evidence based and we are expecting further outcomes to be available from this work over the summer.

- 7.3 There is an inherent tension between the need to comply with the law and our ambition to ensure that our policy encompasses the full breadth of implications which arise from it. On an operational level, decisions are made every day as to where to place homeless households being supported by both our housing and children's services department. We need to take all necessary steps to comply with the legal position as it currently stands, which primarily relates to our housing duties, whilst working on a fully mature and coherent overall policy relating to our wider duties to all those eligible for temporary housing assistance from the Council. We intend, however, for the interim policy also to extend, as applicable, to those to whom we owe a duty under s17 Children Act 1989 (see below para 8.2).
- 7.4 The locational priority placement policy included in appendix B of this report has been developed in consultation with a range of internal stakeholders (including housing needs, social care, finance and legal services). It is based on data which is already available on supply and demand for accommodation and the demographics of those who present to our services. It also draws from the information available from other boroughs on approaches which are already in place for out of borough placements.
- 7.5 Putting in place an interim policy of this kind will ensure that the council has set out an approach which can be used to guide decision making, reviews and response to challenge in the interim whilst enabling the authority to ensure that it puts in place a suitably robust and coherent policy to meet longer term objectives. Establishing an interim policy has the additional benefit that it will enable the authority to 'trial' a new approach and ensure that the learning from this informs our ongoing approach.

8 Proposed interim policy for locational priority

Scope of the policy

- 8.1 The policy covers how locational decisions will be made for all types of temporary accommodation, including bed and breakfast, hostel, Private Sector Leased and leased and managed housing. The policy also covers private rented discharge provided under the Housing Act 1996.
- 8.2 The policy will also apply to all types of accommodation sourced by the council under its duties flowing from s17 of the Children Act 1989. However, it should be noted that s.17 Children Act 1989 does not provide entitlement for any range, type or level of services from the local authority therefore each case will be considered on a case by case basis under the policy. The Council therefore will exercise its discretion to depart from the guidelines, where it is

appropriate to do so in any particular case, after consideration of all the relevant facts.

Definitions of locality categories

8.3 The Westminster judgment identifies three geographical areas that the Council should consider when assessing locational priority. These are defined for the purposes of this policy as follows:

- 'in borough': within the London Borough of Lewisham
- 'close to home': within 90 minutes travelling distance of Lewisham, with particular reference to the school, place of employment or other physical place which gives rise to the need to be accommodated close to home. Travelling distance will be defined as travelling by public transport on the quickest available route.
- 'further away': will be defined as anywhere beyond 90 minutes travelling distance of Lewisham. In deciding accommodation offers for individuals and families further away, the Council will always have regard as to the suitability of the property and the area that that property is in. In particular we will consider the availability of services such as schools and health services to ensure that the welfare of children is fully considered in line with our duties under the Children Act 2004.

Demand

8.4 We currently have approximately 2100 families in temporary accommodation who are being accommodated under the Housing Act 1996. This number has risen by 77% over the last five years. It is expected that demand for services will increase in line with the implementation of any future welfare reforms, for example the proposal to reduce the benefit cap from £26,000 to £23,000.

8.5 The Council has a requirement to find temporary accommodation for approximately 50 families applying to the Council's Children's Services Department as a person who is homeless and either intentionally homeless or has no recourse to public funds. This is in addition to the existing accommodation requirement for temporary accommodation for approximately 300 families who are already being supported.

8.6 In addition to this the council expects to need Private Rented Sector (PRS) accommodation to house families in some circumstances. The Housing Department expects to need between 150 and 250 PRS properties in line with our recent policy decision to pursue discharge to the PRS for some homeless families. Additionally, the Children's Service Department expects to need approximately 150 private rented properties for families to move when the authority no longer needs to house them temporarily, as they gain access to public funds, but who are still not owed a duty by our housing service.

Supply: In borough temporary accommodation

8.7 Alongside a rising demand for housing support, the council has also been impacted by a 44% reduction in supply over the same period. Locating properties within LHA rates locally has become increasingly difficult. The Council's in borough temporary accommodation consists of a mix of hostels which are owned and managed by the Local Authority and Private Sector Leased (PSL) properties which are procured on long leases and managed by the authority. The table below shows the current number of properties in borough:

Number of hostel units	330
Number of PSL properties	621

8.8 In addition to this, the council purchases B&B accommodation for those it is not able to accommodate in one of the accommodation units above. It is increasingly difficult for the authority to find affordable bed and breakfast accommodation. This is a problem experienced across London. Lewisham is part of the Inter Borough Accommodation Agreement. This agreement sets the maximum rates which local authorities should pay for temporary accommodation so as to encourage cooperation across London. This agreement is designed to market manage, as best London Councils are able to, so as to ensure a reasonable supply of available affordable accommodation for all Councils and that we are not in a bidding war against each other, which would restrict supply, drive up costs and be likely to result in failures on the part of responsible Local Authorities to access accommodation for their eligible households. Currently we have 154 families in bed and breakfast accommodation in borough. Based on current London wide agreements, we expect to be able to sustain this number of in borough bed and breakfast placements over the year. Taking this into account, the number of units available in borough is as follows:

Number of hostel units	330
Number of PSL properties	621
Number of B&B units	154
Total in borough units	1105

Supply: Close to home temporary accommodation

8.9 In addition to the properties procured in borough, the Council procures bed and breakfast accommodation and PSL properties in the Greater London area. These properties are not in borough but are within an hour and half travelling distance from Lewisham.

Number of B&B units	402
Number of PSL properties	2
Total number of units	404

8.10 It is also important to note that of the total 623 PSL properties we currently manage, we have received notice that on 93 properties that landlords wish to withdraw from current arrangements.

Supply: 'in borough' and 'close to home' private rented sector

8.11 The Council has regular contact with landlords and letting agents who supply privately rented accommodation in our borough and across London. Following a search on the main agencies and websites offering properties we were able to establish that currently on the market there are:

'In borough'

Property type	Total available	Total within LHA rates
1 bed PRS	265	13 (5%)
2 bed PRS	563	19 (3%)
3 bed PRS	197	9 (5%)
Total affordable PRS in borough		41

'Close to home'

Property type	Total available	Total within LHA rates
1 bed PRS	52819	1087 (2%)
2 bed PRS	38572	754 (2%)
3 bed PRS	15625	883 (6%)
Total affordable PRS in London		1850

8.12 This is a snapshot of current supply, there will of course be a flow of properties which come on to the market each year but as indicated, the supply of affordable properties both locally and across London is very limited. This is exacerbated by a number of demand factors. Critically:

- Local authorities face the additional barrier that landlords can decide whether or not they wish to rent their properties to households on benefits. We contacted five agencies who were advertising properties within LHA rates in Lewisham. Three indicated that they did not rent properties to people on benefits, one said they would only do so with a guarantor and the fifth said it would be at the discretion of individual landlords. In reality, this means that the number of PRS properties actually available for many of our families in Lewisham is actually much lower than these figures indicate.
- All local authorities are in competition to secure PRS properties across London. There are approximately 46,000 people in temporary accommodation in London many of whom could be considered for a move to a PRS property.²
- Additionally, these properties are available on the open market. Local authorities are therefore in competition with all other individuals and

² <http://www.insidehousing.co.uk/london-has-75-of-englands-households-in-temporary-accommodation/7007333.article>

families seeking private rented accommodation in London. The scale of this competition is impossible to predict on individual property types, but over 50% of London households are renters.

Summary: supply and demand

Temporary accommodation

8.13 The table below demonstrates how many families we expect to be able to place in borough, close to home and further away based on expected procurement over the next year. It is important to note that this is indicative at present and requires more detailed modelling of flows in and out of accommodation. The housing market in London is also extremely dynamic and this may affect our ability to retain PSL stock and bed and breakfast accommodation in borough.

% of people the council expects to be able to place in temporary accommodation 'in borough' and 'close to home'	70%
% of people the council expects to be able to place in temporary accommodation 'further away'	30%

Private rented sector

8.14 There are a number of factors which make it very difficult to predict the number of families and single adults for whom we will be able to secure private rented properties in borough or close to home.

- The number of properties for which rent is within LHA rates. In theory LHA rates are set at the 30th percentile meaning that 30% of the total number of c. 30,000 private rented properties in Lewisham should be within LHA rates. However, our analysis suggests that in fact, this is closer to 5% of available properties.
- The flow of affordable properties into the market. Even if properties are being rented within LHA rates, the council needs them to become available to new tenants in order to be able to place families.
- Competition for properties within the market. This includes competition from families and individuals not being supported by the council and competition from other authorities seeking to find private rented accommodation for families.
- The willingness of landlords to accept housing benefit claimants. The council's Private Sector Housing Agency has devised a number of strategies to overcome this. For example, offering small financial incentives to landlords and providing short-term Discretionary Housing Payments. The effectiveness of these strategies will be impacted by the level of competition in the market.

8.15 Given the complex landscape, it is not possible to place an accurate prediction on the number of properties we will be able to secure in Lewisham

or London. What is clear though is that demand is likely to significantly outstrip supply. In light of this, section 8.20 of this report sets out how we will go about searching for and procuring private rented properties and section 8.22 and 8.23 explains our approach to allocation.

- 8.16 During the period that this interim policy is in place we will record the number of affordable properties we have been able to procure in Lewisham, close to home and further away. This will form the basis of our predictions in terms of the number of families and single adults we expect to be able to house locally when a full policy is developed.
- 8.17 In particular, the extent to which landlords are willing to accept benefit claimants is difficult to predict. We have set the following targets which are based on the council being able to
- 8.18 However, based on the current number of properties available within LHA rates, we have set a realistic target

Approaches to procurement

8.19 In September 2013 the Council set up a Private Sector Housing Agency (PSHA) to lead on the procurement of a range of accommodation from the private rented sector including shared and self-contained bed & breakfast both spot purchased and block booked; private sector leased accommodation; directly managed leased and a range of tenant finders schemes. The Agency was established as a response to a much more challenging and competitive private rented market where the council was at risk of being out-priced and out manoeuvred. The services of the Agency are offered council wide, although the highest demand is from the Housing Options service for households who are homeless, at risk of homelessness. The Agency procures properties where it can both in and out of the Borough and in and out of London. The Agency has had a lot of success even within an ever more challenging environment but to ensure the council can continue to compete and source the number and range of properties needed to meet demand. The Agency and associated departments:

- Offers a range of landlord incentives in the form of up front incentives or bonds to make the council offer more competitive in the market where our rents are required to fall within Local Housing Allowance levels;
- Offers a full range of leased and managed products to meet the individual requirements of landlords from a fully leased and managed service to a Tenants Finders scheme only;
- Ensures that Lewisham participates in pan London or sub regional initiatives to increase access to supply including membership of the west London consortium which, working on an economies of scale principle, will allow us to access more accommodation that historically has been unavailable to us.
- Enters into partnerships with large landlords, including block booking TA to secure supply at peak times;

- Uses any available grant, like empty homes grant to attract landlords to the council, delivering 5 year leased accommodation for use as TA;
- Undertakes advertising campaigns in local and national press, radio, on buses and taxis etc to increase our profile and show there is a very viable alternative to lettings agents;
- Supports landlords as businesses including offering a range of information, landlord days and tenant training.
- In addition to this wide ranging strategic development work, the service is also responsible for undertaking regular checks with landlords for individual properties which are available and affordable which can be used to meet the accommodation needs of our families and single adults. This consists of daily contact to Bed and Breakfast providers. For private rented properties we undertake weekly searches of the main agents, both locally and out of borough, to identify available properties within LHA where the landlord will accept a housing benefit claimants.
- This practice will continue to be a core part of the function of the PSHA. In light of the judgment we will record the findings of our searches in line with the categories outlined in this policy – ‘in borough’, ‘close to home’ and ‘further away’ to facilitate the appropriate allocation of these properties based on our assessment of locational priority need.

Priority groups

8.20 The proposed policy in relation to priority groups is appended to this report.

Approach to allocation

8.21 In parallel with the priority need assessment undertaken on all households who present to the council by the assessment teams a locational priority will also be made based on the principles contained within the locational priority policy. This locational priority assessment will be signed off by the on duty manager. The household will then be allocated accommodation in line with this locational priority assessment.

8.22 However there may be instances where, despite an in Borough or “close to home” assessment, available and affordable accommodation cannot be found. This section outlines how we propose to deal with these circumstances for individuals and families seeking accommodation support under Housing Act 1996 or Children Act 1989:

For emergency temporary placements:

- We will seek to identify properties within the relevant locational priority. If this is not available and there is a need for a placement to be made that day, the household will be moved to the closest appropriate and available accommodation. The procurement team will then seek alternative TA in an area that is a closer match to their agreed locational priority within a 4 week timescale. If this is sourced they will be transferred into that accommodation.

- If accommodation cannot be sourced within a 4 week period, a review will be undertaken as to the impact of this and will consider alternative avenues for meeting the family's needs.

Private rented sector offers or non-urgent accommodation offers:

- We will seek to identify properties within the relevant locational priority. The first stage of the search process will continue for 4 weeks. During the time that this search is undertaken, the family will remain within the accommodation that they currently reside in.
- If accommodation cannot be sourced within the 4 week period, the council's procurement service will notify the original assessing officer. A review will be undertaken to determine the best course of action for the family. The review will consider whether the best interests of the children and family are best served by extending the time for the search (thus extending the length of time in temporary accommodation) or whether the best course of action is to extend the search area thus reducing the time in temporary accommodation.

9 Development of full policy

9.1 The following activities will be undertaken to develop a full locational priority placement policy:

- Engagement with London Councils and other London boroughs to gather insights into the approaches being undertaken by other boroughs
- Consultation with advocates and homeless households likely to be affected by this policy
- Detailed supply and demand analysis and comparison to other boroughs
- Analysis of impacts of interim arrangements for homeless households and service delivery
- A full financial impact assessment
- A full Equalities Analysis Assessment

9.2 The full policy will be presented to Mayor and Cabinet on 11th November 2015.

10 Comments from the Housing Select Committee

10.1 Given the timescales involved in preparing this policy, it was not possible to provide the Housing Select Committee (HSC) with a copy of the report in advance of this Mayor and Cabinet meeting. However, a briefing was given to members of the HSC on 8th May 2015 including a presentation covering the background to the policy and some of the key principles underpinning it. Their comments will be provided as an addendum at the meeting.

11 Financial implications

- 11.1 In addition to the £5m accommodation costs on S17 clients and those with No Recourse to Public Funds, mentioned in paragraph 6.2, the Council also spent £23m on temporary accommodation costs for housing tenants in 2014-15, some £3m over the budget provision.
- 11.2 The costs incurred implementing the proposed interim plan is not expected to increase the current budget pressures. A fully costed business case in respect of any acquisitions plan will need to be presented to members when the fully policy is proposed.

12 Legal Implications

- 12.1 The implications of the decision of the Supreme Court in *Nzolameso v Westminster City Council* have been set out in this report. There are two main groups of applicants to whom the Council owes a duty to source accommodation on a temporary basis- those to whom a Children Act 1989 duty is owed, following assessment, and those to whom a homelessness duty is owed, pursuant to the 1996 Act and Guidance.
- 12.2 The position with respect to the Councils duties pursuant to ss17 and 20 of the Children Act 1989 are that:-
- (s17) It is a general duty of every local authority
 - to safeguard and promote the welfare of children within their area who are in need; and (b)so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs. These services can include accommodation.
 - Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.
 - Children in need are those who are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority ;whose health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or who are disabled.
 - (s20) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of (inter alia)— the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.
- 12.3 It is of note that the facts of the Westminster case are significantly stark: the parent had health issues, and it may seem to observers that the decision to refuse accommodation pending appeal, under their housing duties, and then to refuse accommodation to the family pursuant to s 17 Children Act 1989, restricting their support to the children alone under s20, then to split the sibling

group and commence care proceedings, should have prompted a review of the family's situation as a whole focussing upon the children's welfare. However, that is not the course that Westminster pursued, with good cause or not. The Supreme Court did not comment upon the child protection issues, if any. They did however consider the issues relating to the children's welfare very strongly in the light of the overall duties owed to the children flowing from s11(2) Children Act 2004, which states that the Local Authority, in the discharge of their functions,(in this case their housing function under the 1996 Act) must make arrangements for ensuring that they have regard to the need to safeguard and promote the welfare of children, including in their arrangements with other agencies.

- 12.3.1 As Lady Hale, giving the leading judgment, remarks-
S11 2004 Act does not define "welfare". S 10 provides a statutory framework for co-operation between the local authority and relevant agencies with a view to improving the "well-being" of children in the area. Well-being for this purpose is defined as (a) physical, mental and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) the contribution made by children to society; and (e) social and economic well-being (section 10(2)). The welfare of the child has long been given a broad meaning in family proceedings, encompassing physical, psychological, social, educational and economic welfare.
- 12.3.2 It has been held that section 11 applies, not only to the formulation of general policies and practices, but also to their application in an individual case. As Pitchford LJ put it, in *R (Castle) v Metropolitan Police Commissioner* [2011] EWHC 2317 (Admin), [2014] 1 All ER 953, para 51: Page 11 "The chief officer's statutory obligation is not confined to training and dissemination of information. It is to ensure that decisions affecting children have regard to the need to safeguard them and to promote their welfare."
- 12.3.3 However, he went to point out that:
"This does not mean that the duties and functions of the police have been re-defined by section 11 ... the guidance accurately states the obligation of chief officers of police 'to carry out their existing functions in a way which takes into account the need to safeguard and promote the welfare of children'."
- 12.3.4 Thus s11 imposes a similar duty upon a local authority to carry out their functions in a way which takes into account the need to safeguard and promote the welfare of children.
- 12.3.5 The Supreme Court in *Westminster* laid emphasis upon that need to promote as well as safeguard the welfare of children flowing from s11.
- 12.3.6 Lady Hale again "Its suitability to meet their needs is a key component in its suitability generally. In my view, it is not enough for the decision-maker simply to ask whether any of the children are approaching GCSE or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote, as well as

to safeguard, their welfare. The decision maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision.

12.3.7 *However, section 11 does not in terms require that the children's welfare should be the paramount or even a primary consideration.*

12.3.8 It is also the case that there will almost always be children affected by decisions about where to accommodate households to which the main homelessness duty is owed. Such households must, by definition, be in priority need, and most households are in priority need because they include minor children. The local authority may have the invidious task of choosing which household with children is to be offered a particular unit of accommodation. *This does not absolve the authority from having regard to the need to safeguard and promote the welfare of each individual child in each individual household, but it does point towards the need to explain the choices made, preferably by reference to published policies setting out how this will be done* "(my emphasis)

12.4 Such a duty under s11 is therefore a "have regard" duty. It is arguable (and will no doubt be subject to further litigation) the extent to which such a duty is owed to any individual child.

12.5 However, as things stand, any policy in relation to the procurement, allocation and eligibility of temporary or more settled housing for families, should have due regard to the general duties imposed under s11, as well as the assessed individual needs of each child under s17 Children Act 1989.

12.6 Sections 206 and 208 of the Housing Act 1996 ["the 1996 Act"] impose distinct but related requirements upon the local authority.

12.7 Section 206(1) provides that the authority may discharge their housing functions only by securing "suitable" accommodation, albeit by a variety of routes.

12.8 Section 208(1) provides that: "So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district".

12.9 By virtue of section 205(1) of the 1996 Act, their "housing functions" refers to their functions under Part 7 to secure that accommodation is available for a person's occupation. It is clear, therefore, that these are duties owed to the individual person to whom the main homelessness duty is owed. The accommodation offered has to be suitable to the needs of the particular homeless person and each member of her household and the location of that accommodation can be relevant to its suitability: This has since been fleshed out in statutory guidance.

- 12.10 Under section 182(1) of the 1996 Act, local housing authorities are required to have regard to such guidance as may from time to time be given by the Secretary of State. The current general guidance is contained in the Homelessness Code of Guidance for Local Authorities (Department for Communities and Local Government, 2006). As to the duty in section 208(1), this provides: “16.7. Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contracts which could exert a negative influence.”
- 12.11 As to suitability, the Code says this about the location of the accommodation: “17.41. The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.”
- 12.12 This has since been expanded upon. Under section 210(2), the Secretary of State may by order specify (a) the circumstances in which accommodation is or is not to be regarded as suitable, and (b) the matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. During the passage of the Localism Act 2011, the Government undertook “to remain vigilant to any issues that arose around suitability of location”. It had come to light that some local authorities were seeking accommodation for households owed the main homelessness duty “far outside their own district”. The Government was therefore “willing to explore whether protections around location of accommodation need to be strengthened and how this might be done” (Department for Communities and Local Government, Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation, May 2012, para 38). A full consultation exercise showed widespread support for strengthening that protection (Department for Communities and Local Government, Homelessness (Suitability of Accommodation)(England) Order 2012 – Government’s Response to Consultation, November 2012): “Government has made it clear that it is neither acceptable nor fair for local authorities to place households many miles

away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household.”

- 12.13 The method chosen was to make it a matter of statutory obligation to take the location of the accommodation into account when determining whether accommodation is suitable. Hence, in October 2012, shortly before the decisions were taken in this case, the Secretary of State made the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601).
- 12.14 Article 2 provides: “In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including - (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority; (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person’s household; (c) the proximity and accessibility of the accommodation to medical facilities and other support which - (i) are currently used by or provided to the person or members of the person’s household; and (ii) are essential to the wellbeing of the person or members of the person’s household; and (d) the proximity and accessibility of the accommodation to local services, amenities and transport.”
- 12.15 The Government’s response to consultation had emphasised that the Order “does not prevent or prohibit out of borough placements where they are unavoidable nor where they are the choice of the applicant”. However, the Department also issued Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012 (November 2012), which strengthened the obligation to secure accommodation as close as possible to where the household had previously been living:-

“48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the Page 9 distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority’s district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

49. Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or

education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.” (Emphasis supplied).

- 12.16 The guidance goes on to deal with employment, caring responsibilities, education, medical facilities and other support, and also with cases where there may be advantages in the household being accommodated somewhere outside the local authority’s district, including employment opportunities there.
- 12.17 The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. “Reasonable practicability” imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate “in borough”, they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an “out of borough” placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2002] EWHC 280 (Admin), [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 58, were decided.
- 12.18 An applicant who is dissatisfied with any of the local authority’s decisions listed in section 202(1) of the Act can request a review of that decision. The decisions listed do not in terms include a decision to place “out of borough” despite section 208(1). But they do include, at (f), any decision of a local housing authority as to the suitability of accommodation offered in discharge of their duty under, inter alia, section 193(2). They also include, at (b), any decision as to what duty (if any) is owed, inter alia, under section 193(2). It is common ground that (b) includes a decision that the duty is no longer owed because it has been discharged.
- 12.19 Under section 204, an applicant who has requested a review under section 202 and is dissatisfied with the decision may appeal to a county court “on any point of law arising from the decision” (alternatively, if the review decision has not been notified within the prescribed time, arising from the original decision).

13 Equalities Implications

- 13.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

13.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

13.3 The initial phase of reviewing the impact of proposed changes is to gather evidence on the demographic profile of the users of our services. The council's P1E homelessness return collects demographic information on the people approaching the council's homelessness service. Based on the data available from the last return:

- Ethnicity:
 - 55% of applicants are black, 25% are white, 5% are Asian, 5% are mixed. In total 10% of applicants said their ethnicity was 'other' or did not state an ethnicity.
- Gender:
 - 87% of applicants are female, 13% are male
 - 62% of applications are from lone parent households where the applicant is female
- Age:
 - 69% of applicants are aged between 25 and 44, 16% are aged between 16 and 24 and 15% are aged between 45 and 59.
- Disability:
 - Data on the most recent P1E return shows that 1% of applicants reported that they had a mental health or physical disability.

13.4 As part of the process for developing a full policy, we will be further analysing the impact of the changes against the protected characteristics and will complete a full Equality Analysis Assessment using the data collected during this initial period to inform the development of our full policy in November 2015.

14 Environmental Implications

14.1 No specific environmental implications have been identified as arising from this report.

15 Crime and Disorder Implications

15.1 No specific crime and disorder implications have been identified as arising from this report

16 Background Documents and report author

- Appendix A: JUDGMENT Nzolameso (Appellant) v City of Westminster (Respondent)
- Appendix B: Locational Priority Placement Policy

16.1 If you require further information about this report please contact Genevieve Macklin on 020 8314 6057.