

<b>MAYOR AND CABINET</b>			
<b>Title</b>	Private Rented Sector Discharge Policy		
<b>Key decision</b>	Yes	<b>Item no</b>	
<b>Wards</b>	All		
<b>Contributors</b>	Executive Director for Customer Services, Head of Law		
<b>Class</b>	Part 1	22 March 2017	

## **1 Purpose of Report**

- 1.1 At its meeting on 19 October 2016 Mayor and Cabinet agreed that officers should consult on the proposed policy. This report presents the results of that consultation and presents a final policy for approval.

## **2 Summary**

- 2.1 Mayor and Cabinet will be aware of the significant challenge posed by the increase in homelessness in Lewisham and in London more widely. London's population is currently increasing by 50,000 to 60,000 households per year whilst on average 27,000 new homes a year have been built in the city. The number of homeless households in temporary accommodation in London increased from nearly 36,000 in 2011 to over 53,370 at the end of September 2016. .
- 2.2 In addition to the fact that not enough homes are being built generally, there has also been a reduction in the supply of homes at social or affordable rents which become available to let. The number of social rented properties which became available to the Council to let reduced from 1,890 in 2010/11 to a projected 1,057 in 2016/17. The Annual Lettings Plan which Committee are also considering at their meeting of 7 March 2017 forecasts that in 2017/18 842 properties will become available for re-letting, though this will be supplemented by a projected 300 new affordable homes being built.
- 2.3 Alongside this reduction in the supply of affordable housing, house prices in Lewisham have increased significantly, rising from an average of £59,000 in 1995 to £417,000 in 2016. These factors combined have led to a significant growth in the size of the private rented sector in Lewisham and in London more widely. For example in 1997, approximately 38% of households aged under 35 on low to middle incomes in London lived in the Private Rented Sector whilst 40% were home owners. By 2014, 70% of London households aged under 35 on low to middle incomes lived in the Private Rented Sector whilst only 13% are homeowners. In Lewisham, the PRS has doubled in size in the last decade.

- 2.4 In Lewisham there has been an 89% increase in the number of homeless households in temporary accommodation over the last five years and there are currently just over 1,800 homeless households in temporary accommodation. Over the same period, the number of households on the waiting list for social housing has grown from approximately 7,500 to over 9,250.
- 2.5 By its nature, temporary accommodation is unsettled, and many households in temporary accommodation have to move to different types of accommodation depending on what is available, causing disruption and uncertainty. Some forms of temporary accommodation, in particular nightly paid accommodation, are also a significant cost for the Council. The table below shows the net spend on temporary accommodation by the Council over the past five financial years.

	2011/12	2012/13	2013/14	2014/15	2015/16
Net Spend on Temporary Accommodation	£1.3m	£1m	£1.2m	£3m	£3.7m

- 2.6 Incentives paid to landlords also contribute to this overspend. The council are projecting to pay £0.6m in incentives as a means of reducing the cost of nightly paid accommodation either by preventing families becoming homeless or retaining properties leased from private landlords for use as temporary accommodation. The cost effectiveness of the incentive schemes are under constant review. The table below compares the average costs of a placement in a 2 or 3 bedroom property to the average incentive paid.

	Average incentive paid	Average cost per new placement	Average saving made by preventing the need for a new placement
Inner rate	£2.7k	£5.0k	£2.3k
Outer rate	£2.7k	£8.0k	£5.3k

- 2.7 Whilst the Council is taking steps to increase the supply of social housing in the borough and 2,000 new affordable homes will be delivered during this administration, it is projected that the supply of social housing will continue its long-term decline. This is because the re-let rate of existing properties is reducing, whilst between 110 and 120 Council properties are sold each year under the Right to Buy. It is also anticipated that the 'High Value Voids' policy – where the Council will be compelled to routinely sell its higher value properties – will come into force in the coming years. Whilst its implementation has been delayed, it is also expected that the Right to Buy will be extended to Housing Association tenants in the future. All of these measures will further reduce the supply of social housing in the borough.
- 2.8 The main aim of the Lewisham Housing Needs service is to find stable, affordable, sustainable accommodation for any household that finds itself homeless or in acute housing need. Committee will be aware that a large number of initiatives have already been undertaken to help manage the pressures that the service is facing and to improve outcomes for service users. These include:

- PLACE Ladywell – Innovative development providing 24 high quality two bedroom for homeless families
- Hamilton Lodge – A former care home converted into 21 units of Temporary Accommodation
- Acquisition Programme – Over 60 properties now acquired by Lewisham Homes for use as Temporary Accommodation and Prevention
- Increasing prevention activity – 29% increase in prevention Activity in 2016/17 to date compared to same period in 2015/16
- An increased proportion of lets given to homeless households within the Annual Lettings Plan
- Delivery programme underway consisting of over 500 new council homes and working with partners to deliver 2000 new affordable rent homes

2.9 As a way of further managing the number of households in temporary accommodation, it has been proposed that the Council adopts a revised Private Rented Sector Offer (PRSO) Policy which will set out how the Council will make Private Rented Sector Offers in order to bring the duty to secure accommodation owed to homeless households ('the main housing duty') to an end by securing an offer of suitable accommodation in the private rented sector (PRS).

2.10 The proposed policy is designed to ensure that households with the highest needs are prioritised for housing in the borough, by identifying the circumstances where the Council would not normally make a PRS offer. The proposed exceptional circumstances formed part on the consultation as set out later in this report.

### **3 Policy context**

3.1 The contents of this report are consistent with the Council's policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

3.2 The proposed recommendations are also in line with the Council policy priorities:

- Decent homes for all - Investment in social and affordable housing, improve housing conditions and tackle homelessness

3.3 It will also help meet the Council's Housing Strategy 2015-2020 in which the Council commits to the following key objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renters
- Promoting health and wellbeing by improving our residents' homes

3.4 Lewisham's Housing Strategy also contains the provision to put in place the framework for the Council to use the private rented sector to house homeless families, so as to increase the supply of properties available to the Council to manage the rising number of homeless households in temporary accommodation.

3.5 On 25<sup>th</sup> March 2015, Mayor and Cabinet resolved that officers should use the existing power to discharge the Council's homelessness duty into the private rented sector, pending the development of a policy setting out exclusions, and establishing operating protocols to allow staff to successfully implement the policy. Since March 2015, local pressures regarding supply and affordability of accommodation have become more acute. Furthermore, the Council approved the Location Priority Policy (see next paragraph). Based on these factors and advice taken by the Council, officers are now recommending that the manner in which it is proposed that the PRSO power will be used is considered again.

3.6 On 11<sup>th</sup> November 2015, Mayor and Cabinet approved a Location Priority Policy which sets out how the Council will allocate individual homeless households to the supply of temporary accommodation available to the Council, including temporary accommodation located out of the borough. It also approved a Temporary Accommodation Procurement Strategy which sets out how the Council intends to procure sufficient temporary accommodation to meet demand. The Locational Priority Policy was developed to ensure the Council discharged its duty to ensure that so far as is reasonably practicable it secures that accommodation is available for the occupation of the relevant homeless applicant in the Borough, and in light of the Supreme Court decision in *Nzolameso v Westminster CC* [2015] UKSC 22.

3.7 The Allocations Policy sets out how the Council will allocate properties to Part VI applicants on the waiting list for social housing.

## **4 Recommendations**

4.1 Mayor and Cabinet is recommended to:

4.2 Note the continuing housing pressures in the borough, including the reduced supply of social housing, the increase in homelessness and the large number of homeless households living in temporary accommodation.

4.3 Note the impacts of national government housing policies and the ongoing impacts of welfare reform which have contributed to this situation and mean that the housing pressures are likely to continue.

- 4.4 Having considered the results of the consultation and the Equality Analysis Assessment contained within this report, approve the Private Rented Sector Offers Policy attached at Appendix 1.
- 4.5 Delegate authority to the Executive Director for Customer Services to make any minor changes required to the policy.

## **5 Background**

- 5.1 Prior to 9<sup>th</sup> November 2012 the principal way in which the main housing duty under s.193(2), Part VII (homelessness), Housing Act 1996 ('HA 1996') ceased was by an offer of social housing (generally either a secure tenancy through the Council or an assured tenancy through a nomination to a Housing Association) under Part VI HA 1996 (allocations). The other ways in which the main housing duty ceased related principally to a change in the applicant's circumstances.
- 5.2 Since 9<sup>th</sup> November 2012, amendments made by the Localism Act 2011 have enabled local authorities to bring the main housing duty to an end by securing a suitable offer of a tenancy in the private rented sector. The key feature of the legislative change is that the main housing duty comes to an end whether or not the applicant accepts the PRSO, i.e. previously if an applicant rejected a PRSO, the main housing duty did not come to an end.
- 5.3 In essence, a PRSO is an offer of an assured shorthold tenancy made by a private landlord to an applicant through arrangements made by the local authority with a private landlord – or with the approval of the authority – and has a minimum 12 month fixed term, and which brings the main housing duty to an end.
- 5.4 An offer of social housing made by the London Borough of Lewisham under Part VI (allocations) – after a tenant's compliance with the terms of any initial introductory period – becomes a secure periodic tenancy, subject to any claim for possession on the grounds prescribed by Housing Act 1985 or, if it is a nomination for an assured tenancy granted by a Housing Association, under the Housing Act 1988 (e.g. breach of condition of tenancy). Sometimes assured tenancies offered by Housing Associations who the Council work with are assured for fixed terms.
- 5.5 By contrast, a PRSO is an assured shorthold tenancy which provides for a fixed period of 12 months after which it will become periodic, and which may be determined (ie. brought to an end) by the landlord on a 'no-fault' basis, by service of a section 21 Housing Act 1988 notice of seeking possession. Therefore, the protections which exist for a social tenancy regarding, for example, the constraints on a landlord's right to recover possession do not apply for a private sector tenant. An offer of social housing is therefore regarded by many as preferable because it is more secure. It is anticipated that regulations due to be introduced soon will make it compulsory for Councils to give most new tenants Fixed Term Tenancies rather than Secure tenancies. This will make PRS and social tenancies more comparable, however Council tenancies will still offer significantly more security during the fixed term.

- 5.6 The Localism Act also introduced a “re-application duty” which applies where a household has been made a PRSO which then ends within two years of the commencement of the tenancy. The effect of this duty is to deem that the applicant satisfies the priority need criteria for the purposes of their re-application, as explained further below at section 17. Regard also has to be had to the broader trends in national policy and primary legislation, including in particular the new mandatory fixed term social tenancy introduced by the Housing and Planning Act, and the power to grant ‘flexible’ tenancies under the Localism Act 2011.
- 5.7 An offer of social housing under Part VI (allocations) will invariably be in the borough. Given the challenges procuring affordable private rented sector accommodation for homeless households, many PRSOs are likely to be close to or out of Borough, but not in Borough. The Council remains subject to a duty to ensure that so far as is reasonably practicable it shall secure that accommodation is available for the occupation of the relevant homeless applicant in the Borough. In determining whether a PRSO is suitable for a person, the Council must take into account a number of prescribed factors, including in the event an offer is out of Borough, the distance from the Borough and disruption caused by an offer on the employment, caring responsibilities or education of the person or members of the person's household.
- 5.8 On 11<sup>th</sup> November 2015, Mayor and Cabinet approved the Location Priority Policy and Temporary Accommodation Procurement Strategy as described in paragraph 2.6. These policies were necessary as the rising rents in the private rented sector in Lewisham meant that procuring properties within the borough has become increasingly difficult and unsustainably expensive. It is proposed that the Location Priority Policy and the Temporary Accommodation Strategy will also be used to determine how the council procures and allocates Private Rented Sector Offers, and how it will prioritise offers in and closest to the Borough, subject to the overriding requirement that all properties must be suitable and affordable.
- 5.9 The proposed policy is designed to work with the policies referenced above to provide a sustainable framework to make use of the private rented sector, taking into account current and imminent housing pressures. The Council already uses the PRS in a number of ways, including as a source of temporary accommodation. The PRS is also used for homeless prevention, which means a household can avoid having to move into temporary accommodation.
- 5.10 The vast majority of households that will be considered for a PRSO will be housed in temporary accommodation whilst a more permanent offer of accommodation can be found. Many of these households are likely to have to wait for an extended period in order to receive an offer of social housing. The average waiting time for a homeless household to receive an offer of social housing where they have a two bed need is over 92 weeks, and can be much longer. This means that a family may be in temporary accommodation for many years. By its nature, temporary accommodation is unsettled, and many households in temporary accommodation have to move to different types of accommodation depending on what is available, causing disruption and

uncertainty. The suitability requirements for a PRSO (as set out in section 16) mean that the property is likely to be of a higher standard than the temporary accommodation we are able to procure, especially compared to nightly paid accommodation.

5.11 Under the proposed general policy, the Council will normally seek to bring the main housing duty to an end by arranging a PRSO, subject to the exceptions set out below, and provided that the Council can identify available accommodation which it is satisfied is suitable for the circumstances of the individual household. A PRSO will not normally be offered where there are exceptional circumstances which make a PRSO inappropriate. Such cases may include the following:

- Where a household requires adaptations to meet health and disability related needs which it is not reasonably practicable to achieve in private rented sector accommodation.
- Where a household is unable to manage a tenancy in the private rented sector without a substantial level of tenancy related support.

5.12 In the preparation of this report and in the application of the proposed policy, Council officers have had and will have regard to the Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012 (“The 2012 Guidance”), DCLG, November 2012 when seeking to discharge the main housing duty into the private rented sector, in conjunction with the DCLG Homelessness Code of Guidance for Local Authorities issued in July 2006 (“The 2006 Code”). The 2012 Guidance recommends that a local private rented sector offer policy should take account of individual household circumstances, and be developed with regard to prevailing housing demand and supply pressures in the local area in order to support the best use of available housing stock locally. A link to this guidance is provided in paragraph 27.4.

5.13 The proposed policy is designed to ensure that households with the highest need for in Borough social housing are prioritised for it, by identifying exceptional circumstances where the Council will not normally seek to secure a PRSO as set out in 5.11 above. The Council will normally seek to end the main housing duty by way of a PRSO for households that do not fall into these criteria.

5.14 All PRSOs must be suitable for the individual circumstances of the household. Assessment of suitability includes assessment of affordability. The locational priorities set out in the Council’s Location Priority Policy will also be used to determine how households are prioritised for accommodation in terms of proximity to the borough, and the location of those offers will depend on the supply of accommodation available to the Council. However, officers will always try to place households as close to the borough as possible where such properties are available.

## **6 The housing context in London and Lewisham**

- 6.1 The housing situation in Lewisham is part of the wider picture of housing in London. London's housing market is characterised by an enduring undersupply of new homes against a growing population. This has caused house prices to increase significantly – higher than they were before the economic crisis.
- 6.2 There were over 48,000 London households in temporary accommodation at the end of March 2015. Research by the Centre for Housing Policy at the University of York estimated that in 2014/15 the cost of temporary accommodation for all London boroughs combined was £663m. It is estimated that £170.4m of this was met by the General Funds of London councils.
- 6.3 The undersupply of new homes is true of all tenures, but is particularly noticeable for homes for sub market rent. This is particularly significant, as councils have traditionally discharged their housing duty to homeless households through an offer of social housing, as outlined in section five above. The number of properties which became available to the Council to let for social housing reduced from 1,890 in 2010/11 to a projected 1,057 in 2016/17. The Annual Lettings Plan which Committee are also considering at their meeting of 7 March 2017 forecasts that in 2017/18 842 properties will become available for re-letting, though this will be supplemented by a projected 300 new affordable homes being built.
- 6.4 Whilst their implementation has been postponed, some of the measures in the Housing and Planning Act are likely to further reduce the number of re-lets available because the Council will be compelled to sell a number of vacant properties, whilst more Housing Association properties will be subject to the Right to Buy.
- 6.5 In the short-term, the supply of new build affordable housing in Lewisham is forecast to increase slightly, as the Council's own programme starts to deliver additional new homes in the next two years. In addition, a number of schemes by housing associations which commenced in the last few years are due to complete. The scale of demand for new housing, however, means that this supply will be absorbed quickly and demand will continue to significantly exceed supply. Over the longer-term the supply of new homes for affordable rent is likely to decrease further as the government policies outlined above come into effect.

## **7 Housing supply in Lewisham**

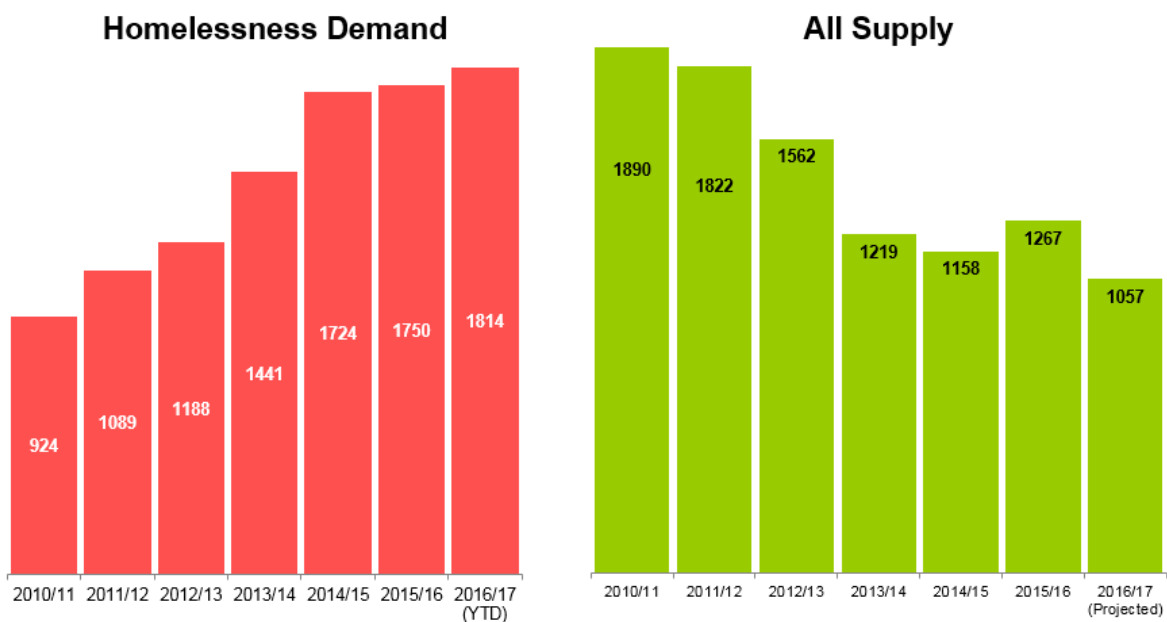
- 7.1 Lewisham has a target for new homes of all tenures of 1,105 per year. Lewisham has regularly exceeded this annual target, and in the past decade exceeded the target by 2,765 homes in total.
- 7.2 In this Mayoral administration up to 2018, 6,100 homes will be built of all tenures. The vast majority of these will be built by private developers or housing associations. Around one third of these homes will be affordable, including affordable rent and shared ownership. However due to government policies, not all these affordable homes will be suitable for households on lower incomes.
- 7.3 The Council's own programme will deliver 650 new homes of which 500 will be



for social rent (80%). The wider Council-enabled programme including regeneration schemes will deliver nearly 1100 homes which will include homes for social rent, market rent and sale. This means that the Council itself will deliver over 1,700 new homes to help meet demand in the borough.

## 8 Homelessness in Lewisham

8.1 The shortage of supply of both social housing and affordable private rented accommodation in Lewisham continues to lead to high demand on the Housing Needs Service. This is demonstrated by the supply and demand graph shown below. This shows the decrease in the supply of re-lets/new homes against the increase in households in temporary accommodation. There has been a 96% increase in the number of households in temporary accommodation between 2010/11 and 2016/17 – as at the end of February 2017 there are currently 1,814 homeless households in temporary accommodation. This number has stabilised over the last 12 months, despite the challenges of the reduced supply of accommodation in the PRS and the increasing unaffordability of all tenures, as well as increased demand caused by welfare reform.



8.2 In over 55% of acceptances the main reason for homelessness was the end of an assured shorthold tenancy, and in the majority of these cases the AST was terminated. This represents a continuation of the trend seen in previous years. 30% of acceptances were as a consequence of exclusion by friends or relatives.

8.3 Where possible, officers seek to prevent homelessness. In between April and December 2016, the council was able to prevent homelessness in 715 cases, an increase of 29% on the figures for the same period in 2015. In this way, the Council makes use of the Private Rented Sector to prevent a household becoming homeless, avoiding them having to move into temporary accommodation.

## 9 Proposed Private Rented Sector Offers Policy

- 9.1 The proposed Private Rented Sector Discharge Policy is intended to provide a framework for the way in which the Council will bring its main housing duty owed to homeless households under s.193 Housing Act 1996 to an end by making a suitable offer of accommodation in the private rented sector. The policy applies to homeless applicants owed a duty for housing assistance under Part VII Housing Act 1996 and not allocations under Part VI HA 1996 (the waiting list for social housing).
- 9.2 The proposed policy is attached to this report at Appendix 1.
- 9.3 Since 9<sup>th</sup> November 2012, changes made by the Localism Act 2011 have enabled Local Authorities to discharge the main housing duty by securing a suitable offer of a tenancy in the private rented sector ('PRSO') under s.193(7AA)-(7AC) HA 1996. The key feature of the legislative change is that the main housing duty will come to an end whether or not the applicant accepts the PRSO, i.e. the Local Authority does not require the applicant's agreement to secure an offer. Whilst the offer is '*made*' by the proposed landlord (s.193(7AC)(a) HA 1996) and '*approved*' by the Council (s.193(7F)(ab) HA 1996), for the purposes of this report any references to the Council securing or arranging an offer should be taken to include the identification of the property, consideration of its suitability and approval of an offer.
- 9.4 A PRSO is an offer of an assured shorthold tenancy made by a private landlord to an applicant in relation to any accommodation which:
- has been made available for the applicant's occupation by arrangements made by the local authority with a private landlord or
  - is made with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the section 193(2) duty to an end, and
  - is a fixed term Assured Shorthold Tenancy for a period of at least 12 months.
- 9.5 The applicant must (and will) be informed in writing of the following matters:
- the possible consequence of refusal or acceptance of the offer,
  - that the applicant has the right to request a review of the suitability of the accommodation, and
  - the effect under new section 195A of a further application to the authority within two years of acceptance of the offer (the 'reapplication duty') (see further below at section 17).
- 9.6 Applicants can continue to request a review of the housing authority's decision that the accommodation offered to them is suitable, see further below at section [20].

## **10 Aims of the policy**

10.1 The overall aim of the Housing Needs service is to find stable, affordable, sustainable accommodation for any household which find themselves homeless and in acute housing need.

10.2 The aims of the Private Rented Sector Offers Policy are:

- To increase the supply of suitable accommodation available to the Council for those who the Council has determined it owes the main housing duty.
- To make best use of all available housing supply having regard to the prevailing housing circumstances.
- To enable households owed the main housing duty to receive an offer of suitable accommodation in the shortest possible time.
- To prioritise households most in need of a social housing tenancy.
- To displace the presumption that those households owed the main housing duty under Part VII HA 1996 will be made an allocation of social housing under Part VI HA 1996.
- To apply the locational priorities set out in the Locational Priority Policy to PRSOs taking into account constraints regarding affordability and availability.

## **11 When Private Rented Sector Offers will be made**

11.1 In light of the local pressures outlined in this report, the Council proposes that it will normally seek to bring the main housing duty under Part VII to an end by securing a PRSO. Therefore, a PRSO will normally be secured for applicants owed the main housing duty, subject to the exceptions set out in the proposed policy, and provided that the Council can identify available accommodation which it is satisfied is suitable for the circumstances of the individual household.

11.2 A PRSO may be secured in respect of accommodation inside or outside the London Borough of Lewisham. The local pressures set out above mean that finding affordable accommodation in borough is challenging and the Council increasingly has to look out of Borough to identify accommodation which is affordable. However, the Council's consideration of whether accommodation is suitable includes consideration of the distance from the Council and disruption to ties to the Borough.

11.3 The Council has identified that there may be exceptional circumstances which would make a PRSO inappropriate, for example households that require adaptations because of health and disability related needs and households unable to manage a PRS tenancy without a substantial level of support. These households will not normally be offered a PRSO, see the extract from the proposed policy at 2.2 (a) and (b) below.

11.4 Those households with specific needs who the council has already identified under the Location Priority Policy as having priority for in-borough accommodation will not normally be offered a PRSO on the basis that they are vulnerable households with prioritised needs justifying the additional stability of a secure tenancy and also taking into account the practical pressure of procuring affordable accommodation in borough, where those households in particular have an exceptional need to be accommodated, see the extract from the proposed policy at: 2.2 (c) to (g) below.

11.5 Under the proposed general policy, the Council will normally seek to bring the main housing duty to an end by arranging a PRSO, subject to the exceptions set out below, and provided that the Council can identify available accommodation which it is satisfied is suitable for the circumstances of the individual household. A PRSO will not normally be offered where there are exceptional circumstances which make a PRSO inappropriate as follows:

“2.2 A PRSO will not normally be offered where there are exceptional circumstances which make a PRSO inappropriate. Such cases may include the following:

(a) Where a household requires adaptations to meet health and disability related needs which it is not reasonably practicable to achieve in private rented sector accommodation.

(b) Where a household is unable to manage a tenancy in the private rented sector without a substantial level of tenancy related support.

11.6 Under the Housing Act 1996, the Council must be satisfied that if the applicant has any existing contractual obligations in respect of his or her current accommodation that s/he is able to bring those to an end before taking up the offer. Officers will therefore always consider this.

## **12 Ensuring suitability of accommodation: Location / Affordability / Condition**

12.1 The Council must secure that accommodation which is made available for households in the discharge of their homelessness functions under Part VII HA 1996 is suitable for the household. That includes PRSOs.

12.2 No PRSO will be made unless the Council is satisfied that it is suitable. The Council will have regard to the Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012, DCLG, November 2012 when seeking to discharge the main housing duty into the private rented sector.

12.3 Space and arrangement will be key factors in determining the suitability of accommodation. However, consideration of whether accommodation is suitable requires an assessment of all aspects of the accommodation in the light of the relevant needs, requirements and circumstances of the homeless person and his or her family. Relevant social considerations may include risks of violence, racial harassment or domestic violence.

12.4 There are a number of considerations, prescribed by delegated legislation, which the Council must take into account when considering whether or not a PRSO is suitable. Some of these provisions were introduced specifically to ensure that PRSOs meet necessary standards in relation to their condition & safety.

### ***Location***

12.5 Firstly, the Council is required to ensure that so far as is reasonably practicable it shall secure that accommodation is available for the occupation of the relevant homeless applicant in the Borough.

12.6 In determining whether a PRSO is suitable for a person, the Council must take into account the location of the accommodation, including—

- (a) Where the accommodation is situated outside Lewisham, the distance of the accommodation from the borough;
- (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 well-being 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.

### ***Affordability***

12.7 The Council is required to consider the affordability of a PRSO, and to consider in particular the following:

- (a) the financial resources available to that person;
- (b) the costs in respect of the accommodation;
- (c) payments which that person is required to make under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child and payments of child support maintenance; and
- (d) that person's other reasonable living expenses.

### ***Condition of the Property***

12.8 The Council is required to have regard to the provisions of primary legislation regarding slum clearance, overcrowding and the licensing, regulation of safety and condition of residential properties.

12.9 The Council is also specifically required when arranging a PRSO to be satisfied as to the adequacy of the following matters before it can conclude that the

property is suitable:

- (a) electrical safety;
- (b) fire safety;
- (c) gas safety;
- (d) carbon monoxide safety;
- (e) HMO licensing regulations;
- (f) energy performance certification requirements;
- (g) whether the landlord is a fit and proper person;
- (h) that the property is reasonable physical condition; and
- (i) the adequacy of the tenancy agreement.

### **13 Reapplication Duty**

13.1 The effect of the below provisions is to mitigate to a degree the potential for instability in the private sector by deeming an applicant to have priority need (one of the conditions to be satisfied before the main housing duty is owed under Part VII to homeless applicants) whether or not they do in fact satisfy that condition when an application is made within two years of accepting a PRSO whether on the basis that the applicant is actually homeless or is threatened with homelessness.

13.2 Under section 195A(1) HA 1996 (re-application after private rented sector offer), the section 193(2) duty applies regardless of whether the applicant has a priority need where:

- (a) a person makes a re-application for assistance within two years of accepting a private rented sector offer, and
- (b) the applicant is eligible for assistance and has become homeless unintentionally.

13.3 Under section 195A(3) HA 1996, the section 195(2) duty (owed to eligible applicants in priority need and threatened with homelessness) will apply regardless of whether the applicant has a priority need where:

- (a) a person makes a re-application for assistance within two years of accepting a private rented sector offer, and
- (b) the applicant is eligible for assistance and is threatened with homelessness unintentionally.

### **14 Viewing the Property**

14.1 The Homelessness Code of Guidance for Local Authorities (July 2006) at Chapter 14.18 states that the Secretary of State recommends that applicants are given the chance to view accommodation before being required to decide whether they accept or refuse an offer, and before being required to sign any written agreement relating to the accommodation (e.g. a tenancy agreement).

14.2 It will not always be possible for an applicant to view a property before being required to decide whether they accept or refuse it. In these cases, an Information Pack will be provided. To that (limited) extent, the Council would be departing from the 2006 Code but any departure will be assessed on a case by case basis. A relevant factor will be that, unlike under Part VI (allocations), the Council cannot directly control the period for which a private landlord will 'hold' a PRSO available for the Council in order to accommodate a viewing.

## **15 Acceptance of an Offer**

15.1 Once the main homelessness duty has been brought to an end, applicants who have accepted or refused a PRSO will no longer be owed a 'reasonable preference' for an allocation of housing under Part VI HA 1996 on the basis that they are homeless. Their priority will be reviewed accordingly.

## **16 Discharge & Review**

16.1 Where an applicant does not accept a PRSO which the Council is satisfied is suitable for their household, the Council will normally decide the main homelessness duty has been discharged and they are not under a duty to provide them with accommodation. This will be made clear to Applicants when offers are made so that they understand consequences of accepting or rejecting them. An applicant can request a review of the decision that the accommodation offered to them is suitable whether or not s/he has accepted the PRSO. Applicants can request a review of the Council's decision to discharge duty. (Often these requests for review are rolled into one). If the applicant is not satisfied with the decision on review, they are entitled to bring an appeal to the County Court.

## **17 Consultation on the proposed policy**

17.1 At its meeting on 19 October 2016 Mayor and Cabinet agreed that officers should consult on the proposed policy. The method of consultation and the results are set out below.

### Consultation Method

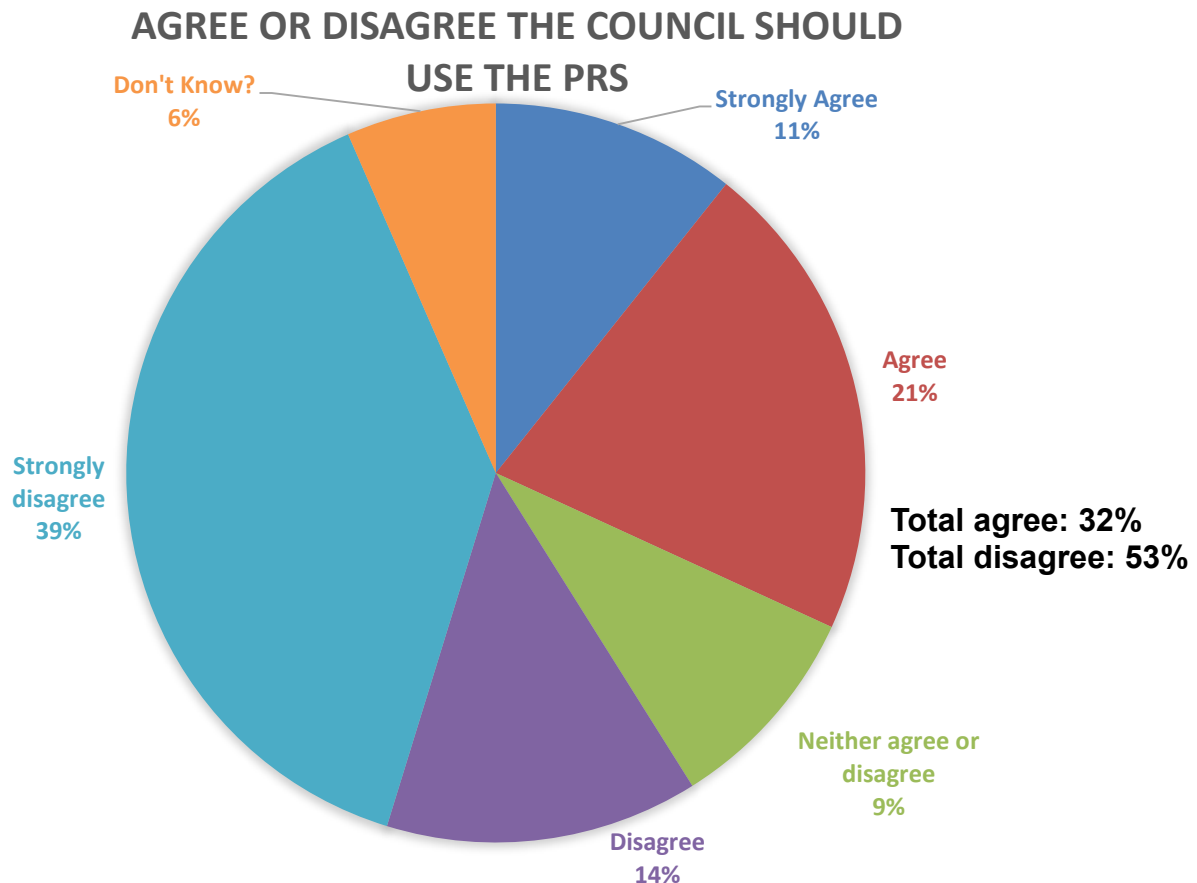
17.2 In order to ensure that all residents who may be directly affected by the policy had an opportunity to contribute to the consultation, officers wrote to all households who are currently in temporary accommodation to explain the proposed policy and to ensure they had an opportunity to respond to the consultation. They were all sent a copy of the questionnaire and a Freepost envelope. A copy of the letter and questionnaire is attached at Appendix 3.

17.3 The consultation was also placed on the Council's consultation portal, and a link to this was sent to organisations such as the Council's housing partners and housing charities including Shelter. The consultation ran for six weeks and closed on 3<sup>rd</sup> March 2017, however postal responses received after this date were also included.

Results of the consultation

17.4 341 responses were received, of which 304 were from clients currently housed in temporary accommodation. Demographic information regarding respondents to the consultation is included in Appendix 3.

17.5 Responses to question 1: Should the Council use the PRS to discharge its housing duty?



17.6 Reasons given for answer

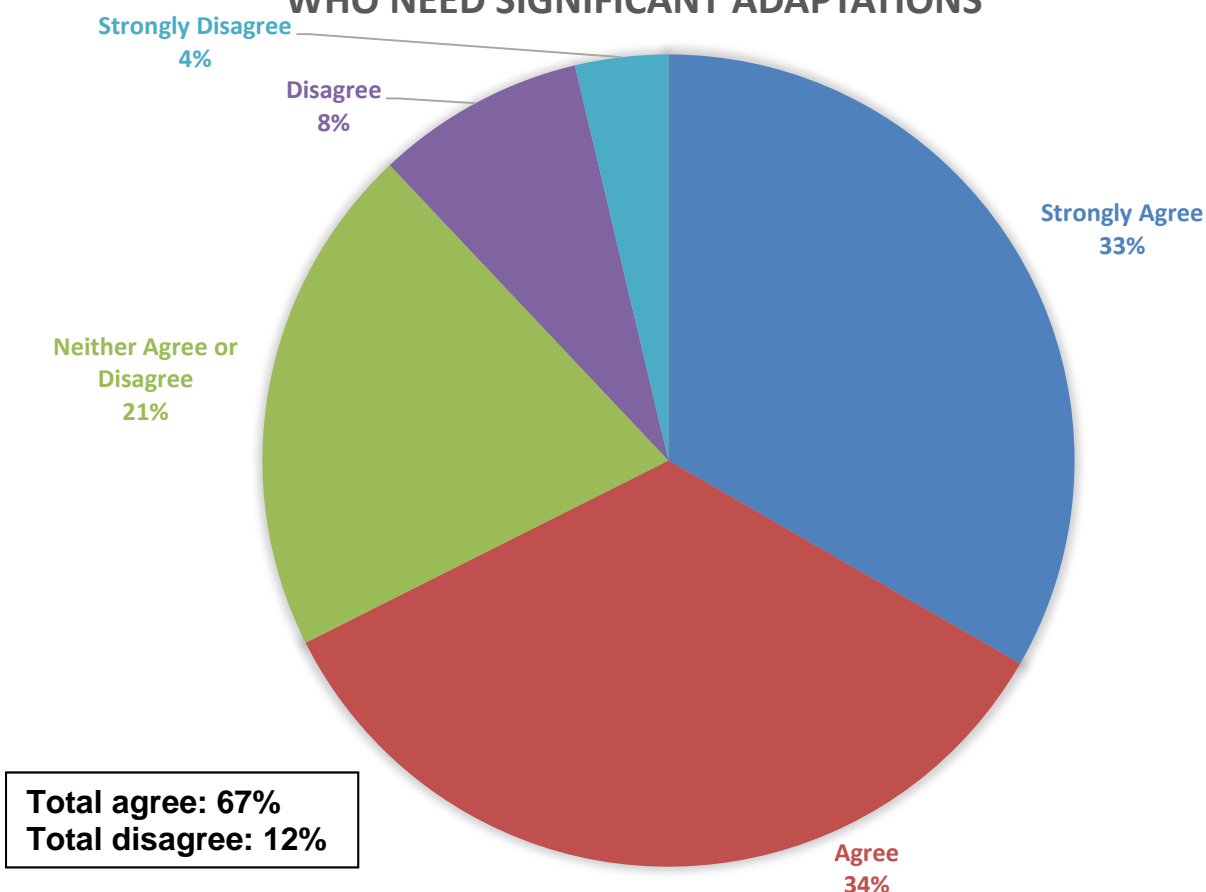
Type of comment	Response
A number of respondents raised concerns regarding the cost of the private rented sector	<p>The Council is required to consider the affordability of any potential PRS offer, and to consider in particular the following:</p> <ul style="list-style-type: none"> <li>• the financial resources available to that person</li> <li>• the costs in respect of the accommodation</li> <li>• payments which that person is required to make under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child and payments of child support maintenance</li> <li>• that person's other reasonable living expenses.</li> </ul>



	Therefore any PRSO arranged by Lewisham Council would have to be affordable for the particular household in question.
A number of respondents expressed a preference for social housing rather than private rented sector housing.	<p>As set out in this report, there is a significant mismatch in the demand for social housing and the supply of social housing in the borough. It is this fact which has led to the growth in the number of households in temporary accommodation. This is particularly the case for households requiring larger properties.</p> <p>Therefore it is not possible to provide social housing for all households who have expressed a preference for social housing. One of the aims of the proposed PRSO Policy is to set out which homeless households would be prioritised for what social housing is available, for example due to disability or health related needs.</p>

17.7 Responses to question 2: Do you agree with the proposal to exempt households that need significant adaptations to their property to meet health and disability related needs?

### AGREE WITH THE PROPOSED EXEMPTION FOR THOSE WHO NEED SIGNIFICANT ADAPTATIONS

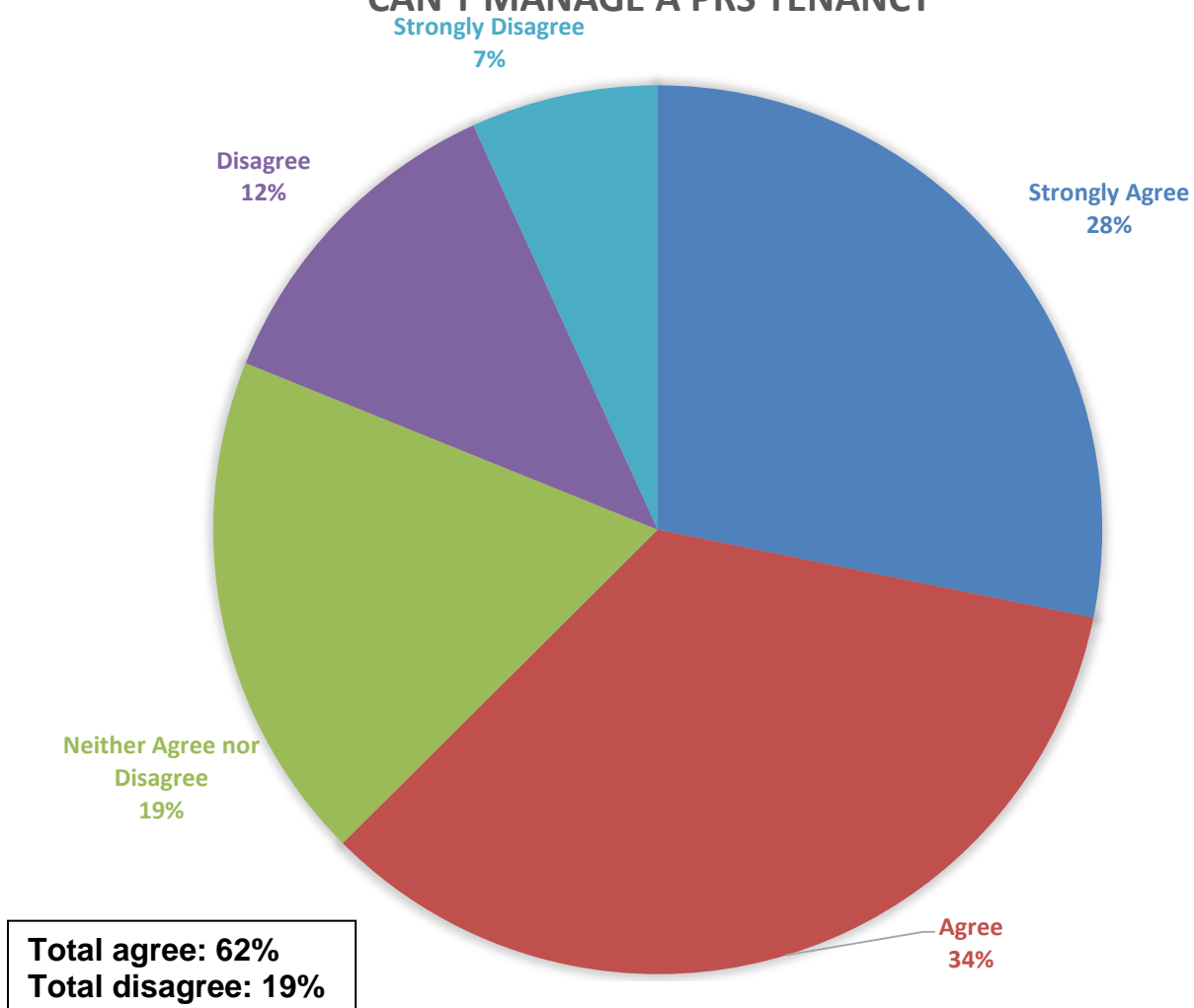


17.8 There was significant agreement with the proposal to include the following exemption to the policy:

“Where a household requires significant adaptations to their property to meet health and disability related needs which it is not reasonably practicable to achieve in private rented sector accommodation.”

17.9 Question 3: Do you agree with the proposal to exempt who are unable to manage a tenancy in the private rented sector without a substantial level of support?

### AGREE WITH PROPOSAL TO EXEMPT THOSE WHO CAN'T MANAGE A PRS TENANCY



17.10 There was also significant agreement with the proposal to include the following exemption to the policy:

“Where a household is unable to manage a tenancy in the private rented sector without a substantial level of support.”

17.11 Respondents were asked whether they thought any further exemptions should be added to the policy. Most people did not respond to this, but responses provided are categorised below:

Type of comment	Response
<p>Increase the renting period and ensure that rents are affordable.</p>	<p>Many private sector tenancies last for a year or less, but the Council’s general approach to PRSOs will be to offer two year tenancies. In addition, these will need to meet exacting requirements relating to standards set by the government as contained in the Homelessness (Suitability of Accommodation) (England) Order 2012.</p> <p>The Council is also required to consider the affordability of any potential PRS offer, and to ensure a potential PRSO would be affordable for the particular household in question.</p> <p>In addition, if someone who is given a PRSO is evicted within 2 years of accepting a PRSO then the reapplication duty will apply. This means that the household would be accepted as homeless and a duty owed to them. This helps to mitigate the potential for instability in the private sector.</p>

17.12 The majority of respondents expressed a preference for social housing over accommodation in the private rented sector. However, there is insufficient supply of social housing in the borough to meet demand. This results in households being placed in temporary accommodation for long periods of time, and creates a significant financial pressure for the Council. This means that without taking further measures, the number of households in temporary accommodation is likely to increase and the cost to the council of temporary accommodation will remain unsustainably high.

17.13 There was clear support for the proposed exemptions to the policy. A number of respondents raised concerns around the cost of the private rented sector as well as the stability of PRS tenancies. It is the case that the PRS is both more expensive and less stable than social housing. However, the Council’s general approach to PRSOs will be to offer two year tenancies, and these are required to meet exacting requirements relating to standards set by the government (this is called the Homelessness (Suitability of Accommodation) (England) Order 2012). This includes a requirement to ensure that the offer is affordable to the individual household, taking into account its specific circumstances.

17.14 In addition to the questions described above, a number of questions regarding equality were asked as part of the consultation. These are described in detail in the section below.

## **18 Comments of the Housing Select Committee**

18.1 Housing Select Committee have considered the proposed policy twice - at their meeting on 25 May 2016 and at their meeting on 7 March 2017. At their meeting on 25 May 2016 committee noted the rationale for the proposed policy but asked officers to consider the wording of two specific parts of the draft policy:

- Committee felt that the exception relating to children subject to Child Protection Plan should apply if there was *any* detriment to a child's welfare – not just *serious* detriment.
- They also noted, in relation to the exception about carers in receipt of carer's allowance, that many family members who provide care do not actually qualify for carer's allowance.

18.2 The two clauses above are contained in the Council's Location Priority Policy which was approved by Mayor and Cabinet in November 2015. Following further review, it is proposed that the PRSO Policy is revised to remove the clauses already contained in the Location Priority Policy. Therefore the two proposed exemption clauses for the PRSO Policy are now as follows:

- Where a household requires significant adaptations to their property to meet health and disability related needs which it is not reasonably practicable to achieve in private rented sector accommodation.
- Where a household is unable to manage a tenancy in the private rented sector without a substantial level of support.

18.3 When determining the location of a PRSO, the existing approved Location Priority Policy will be applied. This policy states that the Council will endeavour to place all households within or as close as possible to the borough.

18.4 The Committee also stressed that the equalities impact assessment for the policy needs to be very thorough. Equality considerations are addressed in this report.

18.5 Committee further considered the proposed policy at its meeting on 7 March 2017 following the consultation. Committee noted the results of the consultation, and their comments have been incorporated into this report.

## **19 Monitoring and review of the policy**

19.1 This policy, subject to any revisions and if it comes into force, will be monitored and reviewed 12 months after the date of its commencement. Housing Select Committee will be provided with updates on the operation of the policy as part of its work programme.

## **20 Financial Implications**

20.1 The purpose of this report is to provide provisional feedback from the consultation on the proposed Private Rented Sector Discharge policy. As such

there are no direct financial implications arising from this report.

20.2 Members may wish to note that the Council is projecting to spend in the region of £25m on nightly paid accommodation and homelessness prevention measures in 2016/17, £0.6m in excess of the budget provided for this purpose.

20.3 As a part of its approach to the current shortfall in temporary accommodation, the Council is making a capital investment of around £51.8m in property acquisition.

20.4 The capital investment is expected to assist in reducing the level of spend on nightly paid accommodation, depending on the levels of demand. The ability to discharge its homelessness duty into the private rented sector will, subject to no further increases in homeless applications, further assist in reducing this cost

## **21 Legal Implications**

21.1 The relevant legal duties and powers under the Housing and Homelessness legislation (principally Part VII Housing Act 1996) has been set out in some detail above where relevant, see in particular paragraphs 13 [1] – [6], 14 and 15 and so is not repeated further here.

21.2 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 11 partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

21.3 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.

21.4 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

21.5 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have

statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-ofpractice-and-technical-guidance/>

21.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

21.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and 12 resources are available at:

<http://www.equalityhumanrights.com/adviceand-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

## 22 Crime and Disorder Implications

22.1 There are no specific crime and disorder implications arising from this report.

## 23 Equality Implications

23.1 The equality implications of the proposed policy are addressed within the body of the report, and in the attached Equality Analysis Assessment at Appendix 2.

## 24 Environmental Implications

24.1 There are no specific environmental implications arising from this report.

## 25 Background documents and originator

25.1 The background papers to this report are:

Title	Date	File Location	Contact Officer
Using Private Rented Sector Accommodation to Address Homelessness in Lewisham	25 March 2015	Available at this <a href="#">link</a>	Genevieve Macklin

Homelessness: Lewisham Homes Property Acquisitions	14 January 2015	Available at this <a href="#">link</a>	Genevieve Macklin
Private Rented Sector Discharge Policy	19 October 2016	Available at this <a href="#">link</a>	Genevieve Macklin

- 25.2 The current Location Priority Policy referred to in the report is available here: <http://councilmeetings.lewisham.gov.uk/documents/s39600/Appendix%20A%20Location%20Priority%20Policy.pdf>
- 25.3 The current Temporary Accommodation Procurement Strategy referred to in the report is available here: <http://councilmeetings.lewisham.gov.uk/documents/s39602/Appendix%20C%20Temporary%20Accommodation%20Procurement%20Strategy.pdf>
- 25.4 The Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012 referred to in paragraph 4.12 is available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270376/130108\\_Supplementary\\_Guidance\\_on\\_the\\_Homelessness\\_changes\\_in\\_the\\_Localism\\_Act\\_2011\\_and\\_on\\_the\\_Homelessness\\_Order\\_2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270376/130108_Supplementary_Guidance_on_the_Homelessness_changes_in_the_Localism_Act_2011_and_on_the_Homelessness_Order_2012.pdf)
- 25.5 Appendix 1: Proposed Private Rented Sector Offer Policy
- 25.6 Appendix 2: Equality Analysis Assessment
- 25.7 Appendix 3: Consultation Letter and Questionnaire
- 25.8 If you would like any further information on this report please contact Madeleine Jeffery on 020 8314 9484.