

**Brighton & Hove City Council  
Housing Allocation Scheme 2016**

# **Housing Allocations Scheme and Guidance**



**Brighton & Hove  
City Council**

If you try to obtain accommodation by making a false or misleading statement, by withholding information or by failing to inform us of a change in your circumstances, it is likely that your application will be cancelled. You may also be prosecuted.

If you have moved into a council or housing association home, legal action may be taken against you to recover possession of the property. You may also be guilty of a criminal offence and be fined.

This authority is under a duty to protect the public funds it administers, and to this end may use the information you provide for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.

# Brighton & Hove City Council

## Choice Based Lettings Scheme

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# Introduction

This document is the Housing Allocation Scheme used by the council with effect from 8 December 2016. It also includes some minor amendments agreed by the Housing & New Homes Committee on 27 September 2018. The council is required by section 166A(1) of the Housing Act 1996 to have an allocation scheme for determining priorities and for defining the procedures to be followed in allocating housing accommodation. It is Brighton & Hove City Council's policy to operate a Choice Based Lettings scheme except in certain circumstances laid out within the policy below.

For the purposes of Part 6 of the Housing Act 1996, a housing authority allocates accommodation when it selects a person to be

- a secure (including flexible) or introductory tenant of accommodation held by that authority or
- nominates a person to be an assured (including assured shorthold) tenant of accommodation held by a private registered provider of social housing (PRP) or a registered social landlord.

The nominations to PRPs are made using the same priorities as for allocations to council dwellings where they are made under an obligation of a nominations agreement. However, where nominations are made to properties that fall outside of nominations agreement quotas the council respects the integrity of the lettings policy of the PRPs concerned. The scheme only covers allocations made by the council exercising its housing authority functions. The scheme also applies to existing council and housing association tenants who request an application for a transfer and the council has reason to believe that they have a reasonable preference under s166a.<sup>1</sup>

This scheme meets the requirements set out in Part VI Housing Act 1996 (as amended by the Homeless Act 2002). It also contains flexibilities introduced under the Localism Act 2011. In developing this scheme the council has had due regard to guidance issued by the Secretary of State Communities & Local Government (June 2012),<sup>2</sup> giving reasonable and additional preference to applicants in the greatest need. It incorporates the council's key objectives outlined in the following strategies:

- Housing Strategy 2015
- Homelessness Strategy 2014- 2019
- Tenancy Strategy 2013

## Housing Strategy 2015

The Housing Strategy has some key aims that are directly related to the council's allocations policy. These include

- Develop Access to Settled Homes for homeless households
- Support people to 'downsize' from social housing when they choose.
- Supports our Corporate Parenting commitment to care leavers
- Work with occupational therapists and social workers to ensure that family properties are allocated in a co-ordinated manner.

## Homelessness Strategy 2014 – 2019

The Homelessness Strategy is a sub strategy of the Housing Strategy which includes the priorities of homelessness prevention and access to settled homes. There are key priority groups within the homelessness strategy that are afforded reasonable and additional preference these include

- Military Veterans & Serving Personnel

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<sup>1</sup> Housing Act 1996 s159 (4B)

<sup>2</sup> Allocation of accommodation: guidance for local housing authorities in England (June 2012)

- People with Learning Disabilities & Autism
- People with Physical and Sensory Disability
- People with Mental Health
- People living in Temporary Accommodation

### **Tenancy Strategy 2013**

The Tenancy Strategy has a number of areas that have a direct impact on the council's Allocations Policy that include:

- All Affordable Rent and fixed/flexible tenancies to be advertised through our Homemove choice based lettings system. We also expect that
- All new tenancies will be allocated in accordance with the priorities in our adopted Allocation Policy
- Fixed or flexible tenancies must be for a period of at least five years (or two years in exceptional circumstances)
- The council would not expect any person to be able to succeed to a tenancy where this would result in a property to be under occupied.

Demand for social housing far exceeds the supply of accommodation that becomes available. Whilst the council remains committed to offering choice<sup>3</sup> to those seeking housing the scheme is also framed to take into account the limited availability of social housing in the city and the need for partner landlords to have an efficient lettings process to reduce letting times and rent loss on vacant properties. This scheme applies across the city and it also compliments the objectives of the Housing & New Homes Committee's New Homes for Neighbourhoods Programme which aims to build new affordable homes across the city. These new homes will be subject to local lettings plans, on first letting, that will be developed to meet demand.

Under the Choice Based Lettings Scheme, called Homemove, applicants<sup>4</sup> are placed into one of four bands that will take account of their housing need according to circumstances of the household. All applicants will become members of Homemove and actively search for available homes. Vacant properties<sup>5</sup> are advertised on Homemove, which is an internet based application. Members are able to bid for properties in their assessed need. Adapted, sheltered and extra care properties will be classified and offered to applicants with an assessed matching need for these properties.

The council is expecting to face a difficult financial environment over the lifetime of this scheme and therefore the scheme incorporates an allocations plan. This allocations plan will distinguish between transfers, homeseekers, homeless households and those where the council has an interest. The allocations plan will be agreed by the Housing & New Homes Committee with targets for allocations to each of these groups. Targets will be set taking into account the council's statutory obligations, financial considerations and the housing situation across the city, including past performance and projected supply and demand. Targets will be set and agreed in advance and will remain in place until they are reviewed and agreed by the Housing & New Homes Committee.

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<sup>3</sup> Housing Act 1996 s166(2)(a)

<sup>4</sup> Who are eligible and qualifying applicants

<sup>5</sup> Housing Act 1996 s166a(2)(b)

## Equalities & diversity

The council's Choice Based Lettings Scheme aims to ensure that our services are fair and equitable for our customers. We want our services to be accessible and useful to everyone regardless of age, disability, gender, race, colour, national origin, sexual orientation or any other factor that may cause disadvantage. This policy is however subject to eligibility and qualifying persons under the Housing Act 1996<sup>6</sup>. Eligibility is prescribed under the act and it is unlawful for the council to allocate to a person who is prescribed as ineligible under the Act. The council has the power to classify if a person is a qualifying person. The council has taken into account its equality duties in framing those that may not qualify to join the Housing Register. This policy has been drafted with reference to the Equality Act 2010 in particular to the council's Public Sector Equalities Duty<sup>7</sup>. The Council has adopted the Commission for Racial Equality's Statutory Code of Practice on Racial Equality in Housing.

Brighton & Hove City Council is committed to dealing with applications in an efficient and timely manner. In order to achieve this aim the council is looking to use self-service options on-line. The city council remains committed to help those who will need assistance to access social housing in the City. We will work closely with agencies and supported housing providers to try to assist customers to access this scheme and ensure that information meets the requirements of people with a disability or sensory impairment. The council has reviewed its Housing Vulnerable Person Strategy for meeting the needs of vulnerable people. This will include access points where on-line facilities are available across the city.

This policy was developed following a citywide consultation and an Equalities Impact Assessment.

## Joint Housing Register partners

Hyde Martlet – [www.hydemartlet.co.uk](http://www.hydemartlet.co.uk)

Optivo - [www.optivo.org.uk](http://www.optivo.org.uk)

Clarion - [www.clarionhg.com](http://www.clarionhg.com)

Home Group – [www.homegroup.org.uk](http://www.homegroup.org.uk)

A2Dominion- [www.a2dominion.co.uk](http://www.a2dominion.co.uk)

Moat Homes Ltd – [www.moat.co.uk](http://www.moat.co.uk)

Brighton Housing Trust (BHT) - [www.bht.org.uk](http://www.bht.org.uk)

Orbit South Housing Association – [www.orbit.org.uk](http://www.orbit.org.uk)

Places For People – [www.placesforpeople.co.uk](http://www.placesforpeople.co.uk)

Sanctuary Housing – [www.sanctuary-housing.co.uk](http://www.sanctuary-housing.co.uk)

Servite Houses – [www.servitehouses.org.uk](http://www.servitehouses.org.uk)

Southern Housing Group \_ including James Butcher HA) [www.shgroup.org.uk](http://www.shgroup.org.uk)

The Guinness Trust – [www.guinnesspartnership.com](http://www.guinnesspartnership.com)

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<sup>6</sup> Housing Act s160ZA

<sup>7</sup> The essential guide to the public sector equality duty January 2012

## Our priorities

Looking to the future the council has to make some difficult choices as resources reduce. This means that there will be an expected fall in the number of available lettings and the council will therefore have to prioritise how we allocate scarce housing resources within the law and using flexibilities in the Localism Act 2011.

- Those who have a local residence connection with the city
- People that are owed a statutory duty under the Housing Acts, Children's Act, Children Leaving Care Act and the Care Act.
- Households who have a **need** to move for welfare or medical reasons that is significantly impacted by their current housing
- Households who occupy accommodation that is overcrowded or lacks facilities
- Households needing sheltered or extra care accommodation
- Households where there is substantial disrepair that cannot be remedied

## Housing Options

As you may be aware, there is a shortage of social housing in Brighton & Hove and a huge demand for accommodation. This means that council and housing association properties are not widely available and usually only go to those who are in the most need. Here are some other housing options you may wish to consider

**Help and Advice:** The Housing Options Team is centred on preventing homelessness by offering housing options tailored to individual needs. They can offer specialist housing advice to help you keep your current home, advice for people who need support to live independently and advice on alternative housing options. Phone 01273 294400 or e-mail [housing.advice@brighton-hove.gov.uk](mailto:housing.advice@brighton-hove.gov.uk) for more information.

**Private Renting:** You can apply to the private rental agencies in the area for suitable accommodation. You may be eligible for help with paying your rent by claiming for housing benefit. Contact Housing Benefits on 01273 292000 for more information.

**Mutual Exchanges:** The council operates a mutual exchange system for council or housing association tenants who wish to swap their homes. Go to [www.exchangelocata.org.uk](http://www.exchangelocata.org.uk). Or speak to your landlord.

**Social Housing outside of Brighton & Hove:** The council helps people who are looking to relocate to other parts of the country where there is some available social rented housing if you are interested in relocating go to <https://homefinderuk.org/>

**Low Cost Home Ownership:** If you are interested in Low Cost Home Ownership then register at [www.helptobuyese.org.uk](http://www.helptobuyese.org.uk) or call the BPHA Help to Buy Team on 03333 214044 to be considered for new schemes in the city.

## Who may apply - eligibility for allocation

Any person may apply to the council for allocation of housing. However, housing will only be allocated to applicants who are registered on the council's housing register for social housing and to be registered an applicant must be:

- eligible for social housing in England (that is, not ineligible due to their immigration status); and
- a qualifying person for social housing in Brighton & Hove (as determined by the following provisions below of the allocation scheme).



## Who is eligible for social housing in England

All applicants will be eligible unless they are persons prescribed within the Housing Act 1996 S.160ZA(1) or by regulations made by the Secretary of State. This generally applies to persons from abroad without settled immigration status in the UK, apart from a limited number of exceptions.

A person will be considered to be ineligible for an allocation of under s160ZA if they are

- (i) A person subject to immigration control – such a person is not eligible for an allocation of accommodation unless they come within a class prescribed in regulations made by the Secretary of State<sup>8</sup> and
- (ii) A person from abroad other than a person subject to immigration control<sup>9</sup>

The Secretary of State has issued regulations in regard to the above and they can be found in Annex 1 of this policy<sup>10</sup>

Where a duty is owed to an applicant who is found to be homeless only by reliance on a household member who is a “restricted person” within the meaning of S184 of the Housing Act 1996, the applicant will not be given any preference under the scheme for an allocation of accommodation. The council will, so far as practicable, bring the duty to secure accommodation to an end by ensuring that an offer of accommodation, in the private sector for a period of at least 12 months, is made to the applicant. A restricted person is defined as someone who requires leave to enter or remain in the UK and does not have it, or a person who does have the required leave but that leave was granted on the condition that the person may not have recourse to public funds.

## Joint Tenancies, Household Members & Eligibility

Under s160ZA (1)(b) the council cannot grant a joint tenancy to two or more people if any one of them is a person from abroad who is ineligible. Where two or more people apply and one of them is eligible, the council may grant a tenancy to the person who is eligible. In addition, whilst ineligible family members must not be granted a tenancy they may be taken into account in determining the size of accommodation which is to be allocated.

## Changes to eligibility criteria

The Secretary of State may issue regulations at any time under the Housing Act 1996. Local Authorities are notified of any such changes by way of statutory instruments, approved by Parliament. Eligibility criteria changed by primary or secondary legislation will form part of this scheme from the date any such changes come into force without the need to refer any changes to committee<sup>11</sup>.

## Existing tenants & eligibility

The eligibility provisions do not apply to applicants who are existing tenants who are already secure or introductory tenants or assured tenants of a Private Registered Provider<sup>12</sup>

## Not eligible decision

If an applicant is not eligible to register under s160ZA Housing Act 1996, the Homemove Team will notify the applicant in writing giving the reasons for the decision. The decision will contain the right of review that must be requested within 21 days of the notification. The council will not accept requests for a review after 21 days except in exceptional circumstances. For further information please see reviews.

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<sup>8</sup> Housing Act 160ZA(2)

<sup>9</sup> Housing Act 160ZA(4)

<sup>10</sup> Allocation of Housing and Homeless(Eligibility) (England) Regulations 2006 (SI No.1294) ( the eligibility regulations)

<sup>11</sup> Updated October 2018 Statutory Instrument 2018 730

<sup>12</sup> Housing Act 1997 s160ZA(5)

# Who qualifies for social housing in Brighton & Hove?

## Criteria for being a qualifying person

This section sets out the criteria that must be met for applicants to qualify for social housing in Brighton & Hove. Decisions made on whether a person is a qualifying person are made by the assessment officer. Any such decision as to whether a person is a qualifying person has a statutory right of review. Any such review shall be carried out by a person with higher seniority than the decision maker in line with the Statutory Reviews procedure (see below). Any request for a review must be made within 21 days of the decision.

Applicants are able to apply for social housing within Brighton & Hove if they are eligible and “qualifying person”. Brighton & Hove is a high demand area where demand for social housing is in excess of supply.

To be a qualifying person for an allocation of social housing in Brighton & Hove and be (or remain) registered on the council’s housing register for social housing, an applicant, or one of joint applicants, must:

- (a) Be eligible for an allocation of housing accommodation (as determined by law and set out above, that is, not ineligible due to immigration status); and
- (b) Be 18 years old or over unless they are subject to statutory homeless duty, a statutory successor (no age restrictions apply), a non-statutory successor under the relevant policy in place at the time or referred by the council’s social care services (in which case they must be over the age of 16). Applicants under the age of 16 will only be offered accommodation in certain circumstances (see below).
- (c) Have a **household** income that is no greater than the household income threshold set by the Housing & New Homes Committee and in place at the time the decision on qualification is made; and
- (d) Live in the Brighton & Hove area<sup>13</sup> and have lived in the area continuously for the five years immediately preceding the date they make their application for housing and continue to reside in the Brighton & Hove area unless any of the following circumstances apply:
  - (i) They are homeless and the council has accepted a full duty to them under the Housing Act 1996 S193(2) that has not yet ceased;
  - (ii) The housing department has accepted a nomination for the applicant from the council’s children’s services or adult social care department or other approved partner support agency in line with inter-agency agreements, to the council’s Interest queue who has been placed outside of Brighton & Hove under a statutory duty and need to return to the city.
  - (iii) They are serving in the regular forces<sup>14\*15</sup>;
  - (iv) They have served in the regular forces\* where the application is made within five years of discharge.
  - (v) They are serving or have served in the reserve forces<sup>\*\*16</sup> and are suffering from a serious injury, illness or disability, which is attributable (wholly or partly) to that service;

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<sup>13</sup> Providing social housing for local people Statutory guidance on social housing allocations for local authorities in England

<sup>14</sup> Definitions (S374 Armed Forces Act 2006):

<sup>15</sup> \* The ‘regular forces’ means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force.

<sup>16</sup> \*\* The ‘reserve forces’ means the Royal Fleet Reserve, the Royal Navy Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force.

- (vi) They have recently ceased, or will cease, to be entitled to reside in accommodation provided by the Ministry of Defence following the death of their spouse or civil partner where their spouse or civil partner has served in the regular forces
- (vii) The council has agreed to rehouse them under a reciprocal agreement with their current landlord or local authority where their current landlord or local authority has agreed that, if Brighton & Hove houses them, they will house an applicant nominated by Brighton & Hove City Council;
- (viii) The council has accepted an application for an existing Secure or Assured tenant seeking to transfer under the right to move scheme<sup>17</sup>
- (ix) Rehousing/relocation into Brighton & Hove is accepted by the council as being essential in the furtherance of the National Witness Protection Scheme.

### **Exemptions for temporary absence from the local authority area**

A person may cease to reside in the Brighton & Hove City Council area for a temporary period in the following circumstances and not lose their local connection for the purposes of the allocations scheme.

- A. An applicant receiving hospital or other treatment outside of the city area in a treatment centre who is required to vacate their accommodation or is evicted from accommodation and is ready to return to the area.
- B. A person who is required to move to give care to another person, outside of the city, for a temporary period not exceeding six months.
- C. A person who loses their accommodation and is unable to find alternative accommodation in the city immediately but then returns to the city within a six week period. This will apply to applicants who have obtained local connection or who are building up their local connection with the city.
- D. Applicants who are placed on remand by the courts will not have any time placed outside of the city whilst on remand. If a person is released without conviction the time spent on remand will be discounted. If a person is convicted following a period of remand the sentence will be used to determine if local connection is removed. If a person is convicted for a period of over 13 weeks then local connection will be lost.

A person who has obtained accommodation outside of the city under a contract, either written or verbal will not be considered to have maintained continuous residence in the city area for the purpose of the local connection criteria.

For avoidance of doubt Local Connection for the purpose of the allocations scheme does not include the wider definitions of Local Connection contained in Housing Act 1996 Part VII s199.

For the purposes of determining local connection, living in Brighton & Hove will not include the following:

- Occupation of a mobile home, caravan or motor home which is not placed on an official council approved site or other council approval obtained (toleration on unauthorised sites is not included)
- Occupation of a holiday letting which includes a permanent building, hotel or bed and breakfast accommodation of the purposes of a holiday
- Resident in a bail hostel or other such accommodation
- In-patients of hospitals/specialist centres
- Rough sleeping/squatting

<sup>17</sup> Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 (SI 2015/967) ('the qualification regulations 2015')

## Who is not a qualifying person

This section sets out the circumstances in which applicants who meet the criteria set out above will nevertheless not be qualifying persons for an allocation of social housing in Brighton & Hove. The criteria below will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Homemove Manager or more senior officer in the housing department. Where an assessing officer considers that exceptional circumstances may apply, they will refer the application to the Homemove Manager or more senior officer to decide whether the criteria in this section should be waived

## Persons who do not qualify on grounds of behaviour

Applicants will not qualify for social housing in Brighton & Hove and be (or remain) registered on the council's housing queues if any of the following circumstances apply:

- (a) The council is satisfied that they have, within the preceding 10 years, obtained or attempted to obtain housing or other housing related services/welfare benefits /public funds, from any public body in the UK, by making a false or misleading statement or withholding information, or encouraging someone else to do so on their behalf;
- (b) The council is satisfied that the applicant is unlikely to satisfactorily manage the tenancy and /or pay their rent because, for example:
  - (i) they have been evicted due to anti-social behaviour (including, but not limited to domestic violence and abuse, homophobic, transphobic abuse and/or noise nuisance) or rent arrears;
  - (ii) they have been served, within the last year, with a notice for breach of their tenancy conditions;
  - (iii) another person who shared a property occupied by them left because of the applicant's violence/abuse or threats of violence/abuse against them or a person associated with them;
  - (iv) they or a member of their household have a history of anti-social behaviour (including domestic violence/abuse and noise nuisance);
  - (v) they have a record of failure to pay rent<sup>18</sup>;
  - (vi) they have outstanding debt liabilities to the council and are not making satisfactory arrangements to repay those debts<sup>19</sup>.
  - (vii) they are a person who has been removed from a premises subject to a closure order under the Closure of Premises (Anti-Social Behaviour, Crime and Policing Act 2014)
- (c) Where an applicant or member of the household has been found guilty of a criminal offence including theft, assault, criminal damage, robbery, possession or supply of drugs, burglary and fraud, sexual assault or other criminal behaviour a person may not be eligible, or may be removed, for a period no longer than the period that an offence becomes spent under the Rehabilitation of Offenders Act 1974. Each case will be considered on its merits<sup>20</sup>.

## Persons who do not qualify on grounds of home ownership, etc

Under s160ZA Housing Act 1996 the council is only allowed to allocate to an eligible and qualifying person. The Code of Guidance recommends that local authorities should avoid allocating social housing to people who already own their own homes. If the council were to allocate social housing this should only be in exceptional circumstances.

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<sup>18</sup> Rent arrears will not include any payment of Housing Benefit paid in arrears

<sup>19</sup> Debt repayment plans are in place and have been kept for at least 6 months and continue to be kept until cleared or at the point of offer.

<sup>20</sup> R (YA) v Hammersmith and Fulham LBC [2016] EWHC 1850 considered

Applicants who own their own homes will be provided advice and guidance on other housing options. Decisions will be made on a case by case basis and medical, disability, community care and other relevant needs will be taken into account.

Applicants will not qualify for social housing in Brighton & Hove and be (or remain) registered on the council's housing register if:

- (a) they own or jointly own accommodation (including shared ownership accommodation) in the UK or elsewhere<sup>21</sup>, or have a legal right to occupy accommodation in the UK or elsewhere (other than as a tenant or licensee) unless they satisfy the council that it would not be possible and reasonable for them to:
  - (i) occupy the accommodation; or
  - (ii) sell or let the accommodation in order to obtain suitable accommodation; or
- (b) the council is satisfied that they have equity and/or savings that it would be possible and reasonable for them to use in order to obtain suitable accommodation.
- (c) Where there are medical, disability, community care or other relevant needs applications will be considered under the following circumstances:
  - (i) Where it is not possible to adapt the current accommodation to meet the needs of the owner occupier's medical/disability or
  - (ii) Where it is too expensive to adapt the existing accommodation to meet the needs of the owner occupier's medical/disability and they cannot afford to buy or rent suitable alternative housing, including shared ownership or private retirement housing and
  - (iii) The sale of the property would not enable the owner occupier to purchase or rent an alternative property suitable to meet their needs. This would include shared ownership. purchase or renting outside of Brighton and Hove all will be a factors in reaching the decision.

Where a person or member of the household disposes of a property the equity received at the point of sale will be taken into account for the purposes of a financial assessment (see below). Equity that is received will be counted as income/savings in line with the policy below.

### **Person who does not qualify following disposal of property, purchased under the Right to Buy, council and registered providers**

Where an applicant or member of the household has purchased a property under the right to buy and has disposed of this asset by way of sale or gift to any other person the applicant will not qualify to join the housing register for a period of five years following the disposal of the property. Following this period the household's income will be taken into account in line with financial limits contained in this policy below.

### **Persons who do not qualify on the grounds of sufficient resources to accommodate themselves**

The council is permitted to take into account the financial resources available to an applicant to meet their own housing need. The following will not qualify to join the housing register.

An income financial assessment will be carried out. If a household's income exceeds the following amounts they will not qualify to join the housing register

|                        |         |
|------------------------|---------|
| Studio/One Bedroom     | £22,000 |
| Two Bedroom            | £32,000 |
| Three Bedroom or above | £36,000 |

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<sup>21</sup> Follows Housing Act 1996 s175

Income will be calculated taking account of all adults on the application and include income from working and any other income regardless of its source.

In addition to the cap on income, account will be taken of any savings or investments that the household has to enable them to source accommodation. The level set will be

|                         |        |
|-------------------------|--------|
| Studio/One Bedroom      | £5,000 |
| Two Bedroom             | £7,000 |
| Three Bedroom and above | £8,200 |

Where income/savings is derived from the sale of any assets such as a house then the council will assume that this sum is available as part of the financial assessment. If an applicant deliberately deprives themselves of capital or income in order to qualify for housing, they will be treated as still having it for the purpose of the financial assessment. Where a person is treated as having “notional” capital this amount may be reduced on a monthly basis to take into account living costs such as rent, council tax and other general outgoings until the notional capital is less than the financial caps under this policy. Deliberate deprivation includes gifted money to relatives and friends and payments to third parties that do not form part of authorised loans that are regulated by the financial services authority.

### **Exceptions to the Savings Cap**

The savings cap for applicants for Sheltered Accommodation will be £16,000

Applicants who require extra care accommodation may exceed the £16,000 cap that applies to sheltered accommodation but any such applicant may only be offered accommodation if there are no applicants with savings below £16,000 who are assessed as requiring extra care accommodation. This exception applies to offers of extra care accommodation only.

### **Increase in income and savings levels**

The above financial caps will be increased or decreased on an annual basis using a calculation based on average rents and average incomes in the Brighton & Hove area. The income cap will therefore allow applicants no more than 50% of their income to be spent on housing costs. The savings cap will allow four months deposit/rent in advance to secure alternative accommodation. The Executive Director – Housing will approve any increase or decrease in the caps. These changes will not be subject to ratification by the relevant council committee.

### **Carrying out financial checks**

The council will carry out checks, including credit checks, on any member of the household, who are included, on the application with the applicant in order to determine household income and savings levels. Financial checks may apply to any part of this policy, which requires such an assessment, including at the offer of accommodation stage. Income is derived regardless of source and will include income from earning, savings and welfare benefits.

The council will not take into account the following in assessment of savings or income:

Any members of the armed forces recently discharged from the forces with a payment due to injury or disability, unless there is an award towards resolving their housing costs.

Disability Living Allowance or personal independence payments or any other replacement benefit for the above.

### **Persons who do not qualify on grounds of refusing a suitable and reasonable offer**

Applicants will not qualify for social housing in Brighton & Hove and be (or remain) registered on the council’s housing register if they have refused two offers of suitable accommodation within the last two years made or arranged by the council and there has been no material change in their

circumstances so as to make the earlier offer(s) clearly unsuitable in the light of the applicant's changed circumstance.

### **Persons who do not qualify on grounds of being an applicant with no recognised housing need**

Applicants will not qualify for social housing in Brighton & Hove and be (or remain) registered on the council's housing register if the council is satisfied, once the application has been assessed, that they are suitably housed, that is, they have no recognised housing need under the council's Housing Allocation Scheme.

### **Exceptional circumstances**

There may be occasions not predicted by this allocations scheme where the applicant is deemed not to be a qualifying person and accordingly following a person having requested a review of the decision (see reviews) not to include an applicant on the basis of not being a qualifying person, the reviewer may exercise discretion not to invoke the policy in exceptional circumstances. Each case will be considered on its merits. Applicants will have to demonstrate why the case is exceptional in each case.

In circumstances not predicted by the allocations scheme where, the applicant is not deemed to be a qualifying person and has not requested a review, the council may look to exercise discretion not to invoke the policy if the applicant can demonstrate that there are exceptional circumstances. Each case will be considered on its own merits

### **Non-qualifying application decision**

If an applicant is not a qualifying person under this policy, the Homemove Team will notify the applicant in writing giving the reasons for the decision. The decision will contain the right of review that must be requested within 21 days of the notification. The council will not accept requests for a review after 21 days except in exceptional circumstances. For further information please see reviews

## **Data Protection and rights to information**

We aim to provide excellent customer service to applicants using or seeking to use the Housing Register. This includes a right to confidentiality and right to certain information.

### **Right to confidentiality**

We will not divulge (without their consent) information about a housing applicant. This includes the fact that they are an applicant<sup>22</sup>.

### **Right to Information**

An applicant has the right to see information<sup>23</sup> held about them on the Housing Register. This is known as a subject access request (SAR). We will provide this information within 40 days of a written request of the applicant a charge of £10 will be payable for a copy of this information.

After we have completed a full assessment, we will inform an applicant about their priority on the Housing Register.

We will provide information, through the Homeseeker guide and Sussex Homemove website, about property types they are eligible for.

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<sup>22</sup> 166(4) of the Housing Act 1996 as amended by the Homelessness Act 2002

<sup>23</sup> 166A (9) of the Housing Act 1996 as amended by the Homelessness Act 2002

We will provide, through Sussex Homemove website ([www.homemove.org.uk](http://www.homemove.org.uk)), feedback information<sup>24</sup> about the lettings undertaken so that the applicant can estimate the length of time they are likely to have to wait before being rehoused. This will be provided when the result of a letting is known by the council.

We will inform an applicant if they have been given any priority status on the Housing Register<sup>25</sup>.

An applicant has the right to request that we inform them of any decision about the facts of their case which is likely to be, or has been, taken into account in considering whether to allocate housing accommodation to them<sup>26</sup>.

The applicant has a right of review against any decision we make about their application. Their right to review is set out below in this policy<sup>27</sup>.

We will publish a summary of the Allocations Policy on the council's website and provide a copy of this summary free of charge to any member of the public that requests it.<sup>28</sup>

We will publish the full copy of this Allocations Policy on the council's website and make it freely available for any person to inspect at Bartholomew House, Bartholomew Square, Brighton. A person may request a copy of the full policy. A reasonable fee will be payable for this service<sup>29</sup>.

## Who can apply?

The Housing Register is open to people who are eligible and qualify under this policy and are 16 years old or over although applicants under the age of 18 will only be offered accommodation in certain circumstances (see below).

### Existing social housing tenants & joint tenants

#### Existing social housing tenants

Any secure council tenant or any assured tenant of any of the council's partners in the joint housing register living in the city may join the housing register if they are a qualifying person.

The council will not normally make an offer of accommodation to a transfer applicant where the tenant is in breach of their tenancy resulting in

- A valid Notice of Seeking Possession or suspended order for rent arrears.
- Housing Act Injunction, Anti-Social Behaviour Order, Notice of Seeking Possession for other breaches to the tenancy.

Tenants will also be asked to join the Exchange Locata mutual exchange register. This register contains the details of tenants who are looking to swap their home with someone else. Mutual exchanges can be found in the city and elsewhere if people are looking to relocate to other parts of the country. There are restrictions for mutual exchanges such a size criteria or for those in rent arrears. For further information please contact Housing Centre Services.

#### Joint tenants

Applications for transfers can only be considered from joint tenants where both tenants are moving. If one of a joint tenant is requesting a transfer then the existing joint tenancy issues must be resolved before the application can proceed. Applications will be suspended until the tenancy issues are

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<sup>24</sup> 166A (9)(ii) of the Housing Act 1996, as amended by the Homelessness Act 2002.

<sup>25</sup> section 166A(a)(i) of the Housing Act 1996

<sup>26</sup> Housing Act 1996 section 166A (9)(b) as amended by Section 16 of the Homelessness Act 2002

<sup>27</sup> Housing Act 1996 section 166(9)(c) as amended by Section 16 of the Homelessness Act 2002.

<sup>28</sup> Section 168 (1)

<sup>29</sup> Section 168 (2)

resolved and then any banding will be backdated to the date of the application. Joint tenants will be required to obtain independent legal advice on determining the joint tenancy.

## How to apply

All Homeseekers requesting rehousing and tenants requesting transfers **must** complete an application to be put onto the housing register. Applications can be made online at [www.homemove.org.uk](http://www.homemove.org.uk). Information is available on this scheme in a number of different languages at [www.homemove.org.uk/otherlanguages.aspx](http://www.homemove.org.uk/otherlanguages.aspx) .

If you are unable to complete an online application because you do not have access to the internet, you can get online free of charge at the following venues in the city:

- Customer Service Centre Bartholomew House
- Customer Service Centre Hove Town Hall
- Coldean Library
- Hangleton Library
- Hollingbury Library
- Hove Library
- Jubilee Library
- Mile Oak Library
- Moulsecoomb Library
- Patcham Library
- Portslade Library
- Rottingdean Library
- Saltdean Library
- Whitehawk Library
- Woodingdean Library

Brighton & Hove has a digital inclusion project called Digital Brighton & Hove that has a list of all free access points across the city. Digital online can also offer free places in Brighton & Hove to get online or improve your skills like searching, security, email, social media, form-filling, finding jobs, shopping and paying bills. <http://digitalbrightonandhove.org.uk/>

Digital Brighton & Hove can also assist those with no knowledge how to begin to get on line.

If you need help completing an online application, you can contact the Customer Assessment and Advice Team on 01273 294400 Option 1

If you are housebound, you may request that a member of staff assists you to make a telephone application or in exceptional circumstances you may request a home visit for someone to help you. For further information please see our Vulnerable Person Strategy.

## Who can be included on the application?

### Applications for General Needs accommodation

Demand for social housing in Brighton & Hove is extremely high. As a result the city has to ensure that it makes best use of accommodation and that it is allocated to those in need.

The following may be included on a person's application

- Applicant who is an eligible and qualifying person.
- Applicant's Husband, Wife, Civil Partner or someone with whom they cohabit.
- All dependent children under the age of 18, children of the applicant, husband, wife civil partner who are currently living with the applicant or could reasonably be expected to live within the household and residence is 100% of the time.
- This can apply to households that are split households who are not able to live together because they do not have accommodation.

- Normally other people who can be included on the application must be members of the applicant's immediate family who usually reside and have done so for a period of six months prior to the application. Any other person or persons will only be accepted as part of the applicants household in circumstance in which is reasonable for the person or person to reside with the applicant.
- A carer where the applicant can prove that a 24 hour is essential and currently lives with the applicant or there is an identified person not currently living with the person and there is a risk that the applicant may have to go into residential care if the carer is not living with the applicant.

### **People who cannot be included on the application**

People that cannot be included on a person's application include

- Lodgers
- Anyone subletting from the applicant.
- People flat sharing not in a relationship (joint tenants)
- An adult applicant may not appear on more than one application for the allocation of housing simultaneously<sup>30</sup>.
- Children who do not reside with the applicant and who have accommodation with another parent, guardian, foster carer. This includes households with shared custody where there is available accommodation for the child/ren

### **Under 18s**

Applicants who are eligible and qualify under the allocation scheme who are under 18 may register under the allocations policy. Although we will not usually offer them a property until they are over 18. In the event that there is an urgent housing need, a further assessment will be carried out and we will work with the individual to find the most suitable accommodation to meet their need. An offer of permanent accommodation will only be made if the council is satisfied that: the young person is able to live independently; able to sustain a tenancy; and has an identified package of support available to them.

**Exemptions** - An applicant who is entitled to succeed to a tenancy by virtue of Housing Act 1985 s87 (as amended) will be granted a tenancy by way of succession.

### **Under 21s**

The government has proposed to withdraw automatic housing cost for people under the age of 21. The introduction of the Youth Obligation, with its tougher conditionality, and the removal of "automatic entitlement" to housing support for 18-21 year olds It is expected that the provisions will include an element of working or learning in order to qualify for Housing Benefit (or housing element of universal credit). The policy will be updated to comply with any statutory scheme introduced by government without the need to refer to committee.

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<sup>30</sup> Someone with own application cannot also be on a transfer application.

## Considerations for assessment

### Assessment of needs

Officers will assess applications in line with this policy taking account of all available information provided by the applicant together with any information that is available to the assessor from any other source, such as Housing Benefit, Council Tax, Electoral Register, Land Registry searches and any credit checks used to confirm residence or income.

### Best use of accommodation

Assessment of accommodation will be carried out using “best use” of accommodation that is available based on the number of occupants in a property and the number of rooms. The assessment will use the overcrowding standard when assessing on this criteria.

### False or misleading information

Section 171 Housing Act 1996 makes it an offence:

- To knowingly or recklessly make a statement which is false in a material particular; or
- To knowingly withhold information which the authority has reasonably required an applicant to give the council in connection with dealing with their application.

The council may request supporting documentation in relation to any application from any member of the household to determine if a person is an eligible or qualifying person. It may request details in order to assess the application. This may include information including financial, medical, employment or voluntary contribution, property ownership or disposal of a property or any other material that may be required from time to time to allow the council to reach a decision under the policy.

Failure to provide the requested information may lead to the application being suspended for a period. Failure to continue to provide any information will lead to the applications being cancelled. Any applicant or third party person submitting information under this policy may be liable to prosecution.

Any person found to have supplied false or misleading information will have their application cancelled.

## Application and assessment process

Applications from Homeseekers, transfers and the council’s interest queue will be required to complete a housing registration form on-line at [www.brighton-hove.gov.uk/homemove](http://www.brighton-hove.gov.uk/homemove)

Applications from accepted homeless applicants will be copied over from their homeless application and will not be required to complete an application form. For the purposes of fraud or misleading information any information contained on the homelessness form will be considered under this policy.

The council will have four queues contained within this policy. These will be:

- Homeseekers - general waiting list applicants
- Homeless - Accepted Homeless under full housing duty s193(2)
- Transfer applicants – existing tenants of Brighton & Hove City Council or registered housing provider with a nomination agreement with the council
- Council’s interest queue – Quota arrangement with council or other statutory services

## Application Process

Applicant(s) will be required to provide a passport size photograph of each applicant(s) and each member of the household over the age of 18.

Any applicant applying on-line will receive a letter that gives a **provisional band** automatically. This will allow the applicant to bid on properties while their application is being verified. Any provisional band may be changed once information has been received and the applicant will be given a band on their assessed need.

Once applications are received and a person is deemed an eligible and qualifying applicant the Homemove Team carry out an initial housing needs assessment based on the information contained on the application form and other information available. The Homemove Team will have access to other data contained in other council departments such as Housing and Council Tax Benefit. Should the Homemove Team be unable to carry out a full assessment due to the lack of available evidence the highest band that the application can achieve is Band C. The Homemove Team will write to the applicant to request additional information required to fully assess an application.<sup>31</sup>

Information that is required is stated on the on-line application form on each screen. This information will be summarised at the end of the on-line application. A full and final assessment can only be carried out once the requested information is provided. Should a request for information not be complied with a second request<sup>32</sup> for information will be sent. If this second request is not complied with the application will be cancelled. If an application is cancelled the applicant will be notified in writing. The notification will give the applicant the right to a review not to be included on the housing register. This right of review must be requested within 21 days of the notification. The council will not accept requests for a review after 21 days except in exceptional circumstances. For further information, please see reviews.

Any application that is received on a paper form will be assessed in the same manner as those received on-line. This however may take longer to process than those received on-line.

Following the applicant submitting an application this application will firstly be assessed to see if a person is:

- Eligible
- A qualifying person

Applicants will need to provide information to prove that they are an eligible person. This proof will be in the form a passport or other acceptable form of identification for all persons on the application.

If a person proves that they are eligible then the council will look to see if they are a qualifying person in line with the policy above. Information may be required to ascertain if a person qualifies under the allocations policy to be included as a qualifying person. This will include proof of residence or any other consideration contained in the policy.

If the person is eligible and a qualifying person the application will be assessed taking account of the relevant information supplied by the applicant. Checks will be made where necessary to verify any information that is received. This may include, but not limited to, housing benefit, council tax records, electoral registration and household financial checks.

## Bedroom size assessment

Each application will be assessed to determine what size of property an applicant is entitled to. The assessment will be based on the following unless there is a medical requirement for an extra bedroom on the basis of medical or disability related factors.

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<sup>31</sup> FINO

<sup>32</sup> FINO reminder

| Size            | Minimum People | Maximum People       | Example Types of Household                                  |
|-----------------|----------------|----------------------|---|
| Studio          | 1              | 1                    | Single Person   |
| One Bed         | 1              | 2                    | Single Person or childless couple                           |
| Two Bed         | 2              | 4                    | One to two child family or single person with live in carer |
| 2 bed Sheltered | 2              | 3                    | A single person/couple and live in carer                    |
| 3 Bed           | 3              | 6+ depending on size | Two or more children (different sex over the age of 10)     |
| Four Bed        | 4              | 8+ depending on size | Five or more children                                       |

### **Applicant with children following a family breakdown.**

As the council has a very limited supply of social housing the council is not able to offer an applicant additional bedrooms where the children have accommodation with the other parent. A person in this situation who is eligible and a qualifying person may be offered a one bedroom property to allow occasional access arrangement. This aligns the allocations policy with Housing Act 1996 Part VII<sup>33</sup>

## **Medical assessment**

Medical priority is assessed by the Homemove Team and is based on the information supplied on the on-line or a self-assessment medical form. Medical priority is not awarded solely on a person's medical condition. There is a need to show that there is an impact of the person's current housing circumstances along with the medical condition. If there is insufficient details on the on-line application or self-assessment medical form, applicants may be requested to provide additional details before a full assessment can be undertaken.

Assessments are made on the effect of present housing considering the health condition of the member or anyone in the household (who is/are moving) and not on the medical condition alone. In reaching the decision we will consider whether the overall effect on the household (who is/are moving) or any member of the household (who is/are moving) is sufficient to warrant one of the medical priority bands.

The Homemove assessment officers have access to the council's Medical Advisor who can advise on the medical conditions and the impact of on the person's housing conditions to assist them in their decision making of when to award medical priority. The Medical Advisor must be requested to provide advice on the need for an extra bedroom over and above that an application is entitled to under this policy. The Medical Advisor may also make recommendations in relation to any mobility classification.

A medical assessment may be requested by applicants where a medical condition occurs after they have made an application. This will be assessed as above where the medical condition is having an impact based on their current housing conditions.

Medical awards can be made as follows:

<sup>33</sup> Holmes-Moorhouse v London Borough of Richmond Upon Thames considered

## **Band A**

Overriding (severe and immediate) medical priority awarded by the assessor where there is a **need to move** - where the housing conditions are having a severe and immediate adverse effect on the medical condition of the applicant or member of the current household as to warrant emergency priority.

## **Band B**

High (major) medical priority awarded by the Medical Advisor –where there is a **need to move** where the housing conditions are having a major adverse effect on the medical condition of the applicant or member of the current household as to warrant extra priority.

## **No award**

Where a person does not meet the criteria to be awarded Band A or B then no award will be made under this policy. There must be an identified **need to move** in order to justify a priority.

## **Medical Assessment Accepted Homeless Case**

Where the council receives a request for a medical assessment for a person who the council has placed into temporary accommodation under s188<sup>34</sup> or s193<sup>35</sup> the request will be referred to the Housing Options Team<sup>36</sup> for a suitability assessment. If the Housing Options Team find that the accommodation is either suitable or that an alternative accommodation can be found within a reasonable time then there will be no medical priority awarded. The applicant will be notified of the decision by the Housing Options Team. The applicant will have the right to request a review of the suitability assessment under Part VII. If the Housing Options Team find that the accommodation is not suitable and no other accommodation can be found then the case may be passed to the Homemove Manager to agree the case to be placed into Band A.

## **Assessment for accommodation in Mobility Groups**

All properties adapted for disabled people will be advertised across all bands. Properties will have a mobility classification as below and priority will be given to those with a matching need for a property that is advertised.

Properties will also be advertised with notes where the potential for adaptations or further adaptations exists and any further restrictions applicable.

## **Mobility Groups**

Irrespective of the band assessment, where a member, or one of the household, has a substantial and permanent physical disability which may place them in mobility groups 1, 2 and 3 (see below) the Homemove Team work with the Occupational Therapist Team. A report on their housing needs may be requested before any award is made. Taking into account the recommendations of the report the Homemove Team will place the member in one of the following mobility groups:

- **Mobility Group 1** – Typically suitable for a person who uses a wheelchair full time, ie indoors and outdoors. The property will provide full wheelchair access throughout.
- **Mobility Group 2** – Typically suitable for a person with restricted walking ability and for those that may need to use a wheelchair some of the time. The property will have internal and external level or ramped access, but some parts of the property may not be fully wheelchair accessible.

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<sup>34</sup> Housing Act 1996 Part VII

<sup>35</sup> Housing Act 1996 Part VII

<sup>36</sup> This is to ensure that there is consistent assessment of our statutory duty under Housing Act 1996 s210

- **Mobility Group 3** – Typically suitable for a person able to manage two or three steps, may use wheelchair but not full time, or may be unable to manage steep gradients. The property may have adaptations to assist people with limited mobility.

Where a disabled applicant applied for accommodation which does not meet his or her access needs, the council will take into account whether it is reasonable and practicable to adapt that property when assessing the offer consistent with our duties under Equalities Act 2010 and the Housing Grants, Construction and Regeneration Act 1996 and also whether it would meet the housing need. On occasion accommodation offers may be withdrawn from a case where the housing need would not be met.

Mobility cases will be banded under the medical awards above unless there is a minor need to move in which case the case may be awarded Minor Need to Move Band C (mobility).

## Unsatisfactory housing conditions and overcrowding (Homeseekers only)

The Homemove team may refer an application to the council's Private Sector Housing Team where there are major issues with regards to the condition of the property. A case will only be referred if the person agrees to work with the Private Sector Housing Team and any recommendations that are made. These referrals will require the Private Sector Housing Team to make contact with the relevant landlord or managing agent who is responsible for the property. Any applicant who withholds consent for the Private Sector Housing Team to contact the Landlord or Agent will not be eligible for a banding assessment under this policy. Following any inspection of the applicant's property if there is any required intervention and there is no prospect of this being completed within 6 months the following banding awards will apply:

Unsatisfactory housing conditions as confirmed after a visit from the Private Sector Housing Team and classed as a category 1 hazard(s) that cannot be rectified within 6 months (as assessed by the Private Sector Housing Team using the HHSRS (Housing Health and Safety Rating System (part 1 HA 2004)) will be awarded Band B.

If the works required are completed before an offer of accommodation is made then these priority award will be removed. Awards in this category will be reduced by up to one band if it is considered that the applicant has moved into accommodation that is not suitable to meet their needs or if the applicant refuses to cooperate with any works required.

### Overcrowding

Where the property is deemed to be 'statutorily overcrowded' by the Private Sector Housing Team under Part X of the 1985 Housing Act and there are no practicable means to make the property suitable for the number of occupants within a reasonable time period the applicant will be placed in Band A. Applicants will be placed in Band B if they lack two or more bedrooms and Band C if they lack one bedroom below these minimum provisions

|   |   |
|---|---|
| An independent adult (18 years+)                                | 1 bedroom, including a bedsit or studio |
| Co-habiting couples   | 1 bedroom, including a s/c studio       |
| A dependent child   | 1 bedroom                               |
| Two children of opposite gender where one is aged over 10 years | 2 bedroom                               |
| Two children of the same gender (any age)                       | 1 bedroom                               |

Please note that if there is a second reception room it will generally be deemed to be available for use as a bedroom and box room, which can reasonably be used by a child, will count as a single bedroom.

## **Assessment for full time carers (only given when caring from someone outside of your household)**

If a person who is eligible and a qualifying person and the prime applicant(s) provide care in an area of the city, the priority may be applied for in the area in which they provide the care (bids will only be considered within one square mile surrounding the household you are caring for). Carers must have been providing care to a named person for a continuous period of at least six months up to the point of application and the same at the point of offer. Care in this context is not the provision of childcare. Care must be related to a physical, mental or learning disability.

### **Need for a 24 hour live in carer**

An extra bedroom will be given to an applicant where there is an assessed need for a 24 hour live in carer. In terms of assessing the need for a live in carer this would have to be assessed as a need under the Care Act and therefore supported by Brighton & Hove Adult Social Care or Children's Services.

The Council will not normally agree to award an additional bedroom where there is a need for occasional overnight care. Assessments take account of any medical or disability, together with the occasional overnight care provided along with the circumstances of the overnight carer. In the majority of cases where there is a living room, then this would be able to be used for occasional overnight care

### **Proof required for full time care priority**

The prime applicant(s) must provide proof that full time care is required (this will be in the form of a care assessment from Adult Social Care or Children's Services). A copy of the person welfare benefits DLA with care or mobility component or PIP and Carers allowance that is being paid. We will also require a letter for the person/people receiving care. If the care status changes whilst on the Housing Register or at the point of offer it is up to the prime applicant(s) to inform the Homemove Team immediately of the changes.

### **Extra Bedroom unable to share due to disability or severe medical condition.**

Extra Bedroom based on Medical needs. There are some cases where an additional bedroom is not needed on the basis on a live in carer but based on a person's medical needs where a person is not able to share a room with another person as contained within the Allocations Policy. This is where a person would not be able to share with another person in the household based on a severe disability or medical condition. In the case of children with disabilities we will liaise with the Council's Children's disability services. If the applicant who is not able to share is an adult, then all of the facts of the case will be investigated and in either case this will be submitted to the medical advisor.

## **Accepted homeless applicants**

Accepted Homeless households owed the main duty by Brighton & Hove City Council under s193 of the 1996 Act or s.65 of the 1985 Act will be placed in the following bands **only**

Band A

- Accepted Homeless households owed the main duty by B&HCC, placed in temporary accommodation where the landlord requires the property back or the property is unsuitable<sup>37</sup> to meet the applicant's or a member of the household's needs, and where the household have been assessed as ready to manage independent accommodation and no other temporary accommodation can be sought.

#### Band C

- Accepted Homeless households owed the main duty by Brighton & Hove City Council placed in B&B or short term temporary accommodation.
- Accepted Homeless households owed the main duty by B&HCC making their own temporary arrangements or suffering family split due to a genuine lack of accommodation.
- Accepted Homeless households occupying temporary accommodation on an assured short hold or non-secure

## Care Leavers & Care Leavers leaving supported accommodation

Priority will be awarded to care leavers where Brighton & Hove City Council has a Corporate Parenting role. Care leavers will be given priority under this scheme under the care leaver protocol into Band A if they are deemed to be tenancy ready.

If the young person is not deemed to be ready to manage an independent tenancy and are offered a supported housing placement then they will awarded Band A once there is an agreement from Housing and Children's services that the young person is tenancy ready. There will be a six months bidding time and at the end of this time the Homemove Team will start to bid for the applicant until a suitable offer is made. No Band A will be given without a full support package in place and the applicant is ready for social housing.

### Leaving Supported Accommodation

In some case where a household is living in support accommodation funded by Brighton & Hove City Council, an assessment of housing need will take place. If the outcome of the assessment is that the household is not ready for independent general needs accommodation, as they are deemed not to be ready to manage an independent tenancy but need supported accommodation, then they will not be able to access general needs housing.

Households are supported in this accommodation and their skills and abilities are thoroughly assessed to ensure that they are ready to make steps to greater independence. Supported accommodation is designated as accommodation commissioned and funded through Adult Social Care (Housing).

When these households are ready to move on from supported accommodation reasonable preference will be awarded when a household is assessed as ready to move to independent settled housing on the recommendation of the supported accommodation Key Worker.

If any ongoing support needs are assessed and, and where appropriate, a support plan must be put in place. This means that only a household who is ready to manage a tenancy will be able to access social housing. The assessment will take account of being able to manage a tenancy, have no rent arrears, have no record of anti-social behaviour in the last nine months, and demonstrate that they have completed a life skills course.

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<sup>37</sup> Suitability assessment required under Housing Act 1996 Part VII

## Sheltered Housing

Applicants can apply for sheltered housing using the Housing Registration Form or can be referred by a relative, support worker, GP, or by the Medical Advisor recommending sheltered housing. Generally applicants or at least one of joint applicants must be over 55 years old.

The council and housing association partners have a variety of sheltered accommodation specifically for an older community where it has been agreed that a housing and support need is called for. Applicants will be required to complete a support needs form. This form will be assessed by officers to ensure that the applicant is suitable to live in a sheltered scheme environment. On receipt of an application for sheltered housing, the Homemove Team will register the application and place it in the relevant housing and support need band. These are:

- High
- Medium
- Low

Applicants assessed for sheltered and who do not have any other “housing need” under the allocations policy will be restricted to and only offered properties that are advertised as sheltered accommodation. Applicants who place bids on any non-sheltered properties will be by-passed on any shortlist and not offered non-sheltered properties.

### **Move within existing Sheltered Scheme (Existing Tenants only)**

Applications from existing tenants who already live in sheltered schemes who have a need to move under the allocations scheme, such as reduced mobility or medical needs will be awarded Band A Move within Scheme. This only applies for a move within the same scheme.

## Social welfare considerations

**Band A** – Severe Need Authorised by the Senior Homemove Officer (or above) where members are in ‘severe need’, who would otherwise be placed in Band B, has needs which when assessed cumulatively are deemed to warrant emergency priority as to warrant them being placed in Band A (Three or more band reasons from Band B)

**Band B** – Multiple Needs. Authorised by the Senior Homemove Officer (or above) where an applicant who would otherwise be placed in Band C, has needs which when assessed cumulatively are deemed to be so severe as to warrant them being placed in Band B (three or more band reasons from Band C).

**Band B** – Enabling Fostering/Adoption. Where social services make a recommendation that permanent accommodation be provided to enable someone to foster or adopt a child, if the Homemove Team agrees this then the applicant will be placed in band B. This is only accepted with the full support of Brighton & Hove City Council Children’s Services.

**Band C** – Other social welfare/hardship. Households who need to move to a particular area in the city where failure to meet that need would cause hardship, eg to give or receive care or support.

**Band C** – Delivering a Care Plan. This is where accommodation is required to assist Brighton & Hove City Council’s Social Services in delivering a Care Plan (eg moving the member nearer to the source of care and support or to accommodate a carer), or to relieve other social/welfare hardship as agreed between Social Services and Housing.

## Other priority categories (applicable to transfer applicants only)

### Band A – Priority Transfers

Agreed in exceptional circumstances by the Homemove Manager and Housing Manager where there are significant insurmountable problems associated with the tenant's occupation of a dwelling and there is an imminent personal risk to the tenant or their family if they remain in the dwelling.

Where the Homemove Manager and Housing Manager agree a non-urgent management transfer Band B will be awarded.

### Band A – Moving for major works

Awarded to transfer applicants if their property is imminently required for essential works and the tenant cannot remain in the property. Although the council will encourage and assist such tenants to make bids through the Homemove system we recognise that we have a duty to provide suitable alternative accommodation and will make a reasonable bid within the necessary timescale.

### Band A is awarded to facilitate a tenant's move in one of the following circumstances:

- Make best use of adapted stock – for example where providing adaptations in the current property is not feasible but there may be a suitable alternative property available as agreed under Tenants Incentive Scheme (TIS).
- Statutory successors to a property who are required to move due to the person under-occupying a property.
- Non-statutory successors – approved by Tenancy Services, Housing Options and the Homemove Team for an offer of suitable accommodation.
- Enable tenants under occupying family accommodation or adapted property they no longer require, to move to smaller accommodation or alternative accommodation under the Transfer Incentive Scheme (information on this scheme can be requested from Housing Customer Services). Under occupiers who do not qualify for this scheme will be placed in Band C.
- Retiring council and HA employees, eg Sheltered Scheme Managers, Residential Estate Wardens where the council or HA has a contractual obligation to house.

Band B is awarded to facilitate a tenant's move for the following circumstance:

- Ex-tenants returning from institutions, eg rehabilitation where a commitment has been made in order to secure the relinquishment of a council or HA tenancy on entering the institution.

## Transfer Incentive Scheme (TIS)

The TIS is a popular and successful route for many households, wanting to downsize to smaller flats from larger family homes they no longer need.

The TIS is available to council tenants who move out of a family size unit of accommodation and move to another area or into an affordable and sustainable private sector property of at least 12 months duration.

The table below shows the payment amounts (before any deductions)

- Downsizing by one bedroom      £1,000
- Downsizing by two bedrooms      £1,500
- Downsizing by three bedrooms      £2,000
- Downsizing by four bedrooms      £2,500

- Moving from a wheelchair-adapted property, even if the same size £1,000

The scheme to also include tenants moving from not just fully wheelchair adapted properties, but also partially adapted properties they no longer need (graded Mobility 2), to non-adapted, non-mobility rated properties. This is because there are very few fully wheelchair adapted properties in our council stock, but many that have been partially adapted (eg with level access showers, ramps).

It should be noted that some housing association tenants can qualify for the Priority Banding but that the payments listed above are for council tenants who have held standard tenancies for at least 12 months.

A person may only receive one payment under TIS.

The TIS is a cash limited fund and applications may be refused if there are insufficient funds to make payments in any one financial year. A person who is refused on the basis of lack of funds may reapply to the scheme in future years.

Payments of the above amounts will be reduced if there is any remaining balance on the applicants rent account or if there are any amounts owing to Housing Benefits or any recharges following the ending of the tenancy. These amounts will be calculated by Tenants Service Income Management Team

Offers of accommodation may be restricted to council offers only if an applicant will still have any arrears or housing benefits overpayment to ensure that this may be recovered by the income management team

## Council Interest Queue

### **BHCC Children's Services Nominations under quota arrangements – Band A**

Under two schemes: 1. The Divert Scheme, which has been designed to prevent children being looked after by the Local Authority, and 2. General Social Services Nominations as agreed at Head of Service level.

### **BHCC Children's Services Nominations early intervention – Band B**

The Homemove Manager agrees with social service an annual quota for housing client who would not be able to meet the criteria under the policy for Band B but is considered that the early intervention would enable the family to move forward with limited social care involvement.

### **BHCC Adult Social Care Nominations under quota arrangements - Band A**

The Homemove Manager agrees with Adult Social Services an annual quota for housing clients in housing need designed to enable the person to live independently in the community and have been assessed under a care plan to be able to sustain an independent tenancy. This quota can comprise of either general needs or sheltered accommodation (agreed by sheltered panel).

### **Care leavers Protocol – Band A**

Applications will be dealt with under the care leavers protocol for applications from BHCC Care leavers team for those deemed to be tenancy ready. The Council's Children's services will inform the Housing Department of expected demand for accommodation each year so the housing department may include this demand in the Council's interest queue.

## Extra Care Housing

Extra care housing is specifically designed for applicants who have specific need of housing and support. Applicants can apply for this type of accommodation but applications will only be assessed

for extra care housing if this is supported by a Social Worker working for Brighton & Hove City Council.

Applications for extra care are considered by the Extra Care Panel. This panel will look at the support needs to ensure that best use of this type of accommodation is made. Extra Care Housing deals with a range of support levels and allocation to Extra Care Housing may take account of the needs of existing residents in prioritising applicants.

Extra Care Housing in Patching Lodge and New Larchwood is restricted to applicants or one of joint applicants who are 55 years of age.

Extra Care Housing at Vernon Gardens and Brookmead will be open to applicants who are normally over 55 years old although applications can be considered under the age restrictions on a case by case basis. Applications may be refused if the balance of these schemes are changed by the number of applicants under 55 as they are designed to meet the needs of older people.

## **Witness Protection – Band A (Homeseekers queue)**

The Homemove Manager agrees with NWMS (National Witness Mobility Service) an annual quota for housing clients in housing need.

### **Shared Ownership only.**

The Council has made provisions within the allocations policy for applicants who are over the income and savings cap to still be included on the housing register and who can then be confirmed to partner agencies who are developing schemes with the council for shared ownership. When these schemes are being developed there will be a minimum financial commitment from prospective applicants that will have a certain level of savings or a deposit and be able to afford the mortgage and rental liabilities. Any minimum and maximum financial caps can be decided on a scheme by scheme basis. Where an applicant is required to be on the Housing Register and they are eligible and otherwise a qualifying person but they exceed the income and or savings cap the application will be placed into band D Shared Ownership only. No person with this banding can be offered social or affordable rented accommodation.

## Banding structure

**Banding can only be awarded if an applicant is an eligible and qualifying person as outlined above.**

The four priority bands are:

|               |   |
|---------------|---|
| <b>Band A</b> | Overriding (severe and immediate) priority awarded by the homemove assessor after seeking advice from the Medical Advisor – where a person needs to move as the housing conditions are having a severe and immediate adverse effect on the medical condition of the applicant or a member of the applicants current household as to warrant emergency priority.   |
|               | Armed Forces personnel, or their spouses, with an urgent level of housing need who current serving members of the Armed Forces required to leave their accommodation or who have left within the last five years <sup>38</sup>  |
|               | Social Services nominations under the quota arrangements.   |
|               | Witness protection nominations under a quota arrangement agreed by the National Witness Mobility Service.   |
|               | Accepted homeless households owed the main duty by Brighton & Hove City Council and placed in temporary accommodation where the landlord requires the property back or the property is unsuitable to meet the applicants or member of the household's needs, and where the household have been assessed as ready to manage independent accommodation and no further accommodation can be sought as agreed by the Temporary Accommodation Allocations or Homemove Manager. |
|               | Transfer applicants under-occupying family sized accommodation qualifying for the Transfer Incentive Scheme.  |
|               | Transfer applicants who are statutorily overcrowded and this overcrowding has occurred by family growth or two families joining together.   |
|               | Transfer applicants needing permanent or temporary decants where the property is imminently required for major repair.  |
|               | Where the property is deemed to be statutorily overcrowded by the Private Sector Housing Team under Part X Housing Act 1985 and there is no practicable means to make the property suitable for the number of occupants within a reasonable time period the applicant will be placed into Band A subject to a person intentionally overcrowding a property (see below).   |
|               | Priority Transfers, agreed in exceptional circumstances due to significant and insurmountable problems associated with the tenant's occupation and there is imminent personal risk to the household if they remain. This may include, but not be limited to, Domestic Violence, Racial Harassment, Homophobic, transphobic, bi-phobic abuse or harassment.  |
|               | Leaving a mother and baby unit funded by Brighton & Hove City Council who has successfully completed the support placement and requires a move.   |
|               | Statutory successors who are under occupying the tenancy where the council has grounds for seeking possession by offering suitable alternative accommodation. (This category will not be considered under the TIS scheme).  |
|               | Retiring council employees, eg Sheltered Scheme Managers, Residential Estate Wardens where the council or Housing Association has a contractual obligation to house the applicant.  |

<sup>38</sup>(Additional preference for former armed forces personnel) (England) Regulations 2012

|  |  |
|--|--|
|  | Sheltered Scheme resident has an assessed need to move under the allocations scheme to move within the same scheme only.   |
|  | Care leavers – where Brighton & Hove are the corporate parent to the applicant and there is agreement from the Homemove Manager and professional colleagues within the council, this priority is not valid for care leavers where the corporate parenting role is held by another authority.   |
|  | Non statutory successors – where agreement has been provided by Tenancy Services and it is agreed that the applicant would be considered to be in priority need, as agreed by the Housing Options Service, and the council would therefore have a statutory duty to accommodate the person but the council considers that the property is too large to meet their needs. |

|               |  |
|---------------|--|
| <b>Band B</b> | Severe overcrowding – household lacking two or more separate bedrooms. This assessment may be qualified if a person is seen to have caused the overcrowding intentionally. (See below)   |
|               | Management Transfers – agreed by Housing Management for transfers on management grounds that do not satisfy the grounds of a Priority Transfer above. This will be agreed in consultation with the Homemove Manager.   |
|               | High (Major) priority awarded by the homemove assessor after seeking advice from the Medical Advisor – where a person needs to move where the housing conditions are having a major adverse effect on the medical condition of the applicant or a member of the applicants current household as to warrant emergency priority                                      |
|               | Ex-tenants returning from institutions e.g. rehabilitation, hospital – where a prior commitment has been made in writing in order to secure the relinquishment of a council or HA tenancy on entering the institution (this may also be considered for a person admitted under section in an emergency situation that would otherwise have been agreed on notice). |
|               | To enable fostering or adoption – where agreement is reached to provide permanent accommodation or foster care arrangements on the recommendation from Brighton & Hove City Council Children and Families Service.   |
|               | Social Services nominations under the quota arrangements into Band B used as a preventative measure but does not warrant an emergency move under Band A above.   |
|               | Unsatisfactory housing conditions as confirmed after a visit from the Private Sector Housing Team and classed as a priority 1 hazard(s) that cannot be rectified within six months (as assessed by the Private Sector Housing Team using the HHSRS (Housing Health and Safety Rating System (part 1 Housing Act 2004))).   |
|               | Multiple needs that warrant high priority – applicants whose needs match more than three of the priority reasons from the Band C considered cumulatively (by the Homemove Manager are deemed to be so severe as to warrant being placed in a higher priority band.   |

|               |   |
|---------------|---|
| <b>Band C</b> | Armed Forces personnel, or their spouses, with an urgent level of housing need who were former members of the Armed Forces who have left the service for more than five years <sup>39</sup> |
|               | Moderate Overcrowding – households lacking one separate bedroom   |

<sup>39</sup> (Additional preference for former armed forces personnel) (England) Regulations 2012

|  |   |
|--|---|
|  | Council and housing association tenants under-occupying that do not qualify for the Transfer Incentive or Tenants Support Schemes.  |
|  | Accepted homeless households owed the main duty by Brighton & Hove City Council placed in temporary accommodation.  |
|  | Accepted Homeless households owed the main duty by B&HCC making their own temporary arrangements or suffering family split due to a genuine lack of accommodation. These temporary arrangements cannot be from the property that a person is considered homeless from.                            |
|  | Unsanitary conditions that cannot be addressed by the Private Sector Housing Team within a reasonable time scale. Unsanitary condition are lacking one or more of the following an inside WC or a bathroom or no access to cooking facilities.  |
|  | Applications for sheltered accommodation where there is no higher need (must have a support need) allocation to general needs accommodation will not be accepted under this band reason.  |
|  | People who need to move to a particular area in the city where failure to meet that need would cause hardship, e.g. to give or receive support.   |
|  | An applicant where a household is living in support accommodation funded by Brighton & Hove City Council and has been assessed as ready to leave supported accommodation.   |
|  | Council and Housing Association tenants who are seeking to transfer and who need to move from another local authority district to be closer to work, or to take up an offer of work and the council is satisfied that the relevant person has a genuine intention of taking up the offer of work. |
|  | Minor Need to Move (mobility).  |

|               |  |
|---------------|--|
| <b>Band D</b> | Any applicant who has applied to the council and who's application has been demoted from any other band to enable an investigation to take place on their application on the basis of false and misleading information.                                    |
|               | Key workers  |
|               | Applicants required to be on the Housing Register of the purpose of obtaining shared ownership. These applicants may only be assessed for the above purpose and will not receive an allocation of social housing or be nominated to a Housing Association. |

## Notification of assessed application

Once assessed the application will be placed in the appropriate bedroom, mobility category and Band and awarded a priority date (see priority date). The Homemove Team will write to the applicant to inform them of the following:

- Registration Number
- Priority date
- Priority Band
- Band reason under the policy
- Bedroom size
- Medical assessment (if applicable)
- Mobility assessment (if applicable)

- Support Need – for sheltered (if applicable)
- Extra Care –(if applicable)

**Please keep this notification in a safe place as you will need your registration number in order to place bids on properties.**

These notifications will advise applicants that they have the right to see information held on the application under the Freedom of Information Act (subject access request). If they consider any information is inaccurate they may request that the information is corrected.

## Reviews

Applicants have a right of review on any decisions made under this policy in line with the provisions of the Housing Act 1996 Part VI. The notification will contain details of how to request a review. A request must be requested within 21 days of the decision. Requests for a review out side of the 21 day period will only be considered on an exceptional basis. There is no right to second review of the same decision. (See Reviews)

## Change of circumstances/moving

Housing register assessments are based on an applicant's current circumstance. If you move it is your responsibly to inform the council. This can be done on the on-line change of circumstances form on the homemove website. You should inform us if you wish to add or remove someone from your application. Adding someone to your application will be considered in line with the allocations policy above. A person may not appear on two applications at the same time.

Homeless applicants may have to be assessed to see if it is reasonable to add someone to their application. Having a child will automatically be approved. You should inform us if you wish a person to be removed from your application. We are not able to remove the main applicant from an application. If you do not wish to move with the main applicant you will need to make a new application.

Once an application has been re-assessed on the change of circumstances/moving a notification will be issued if there is any change to the applicants banding.

Applicants who have changed their accommodation will be reassessed on their new circumstances. Medical and mobility may also be reassessed. If your new property is suitable to meet your needs this may be reflected in a change to your banding.

## Re-registration

All homeseeker and transfer applicant must complete a review form to stay on the Housing Register once every 12 months. If you are sent a notification you will have up to six weeks following your registration anniversary date to return the form. If an applicant does not comply with this reregistration process the application will be cancelled and the applicant will be removed from the Housing Register. Applicants will be informed that they have been removed from the register and will have 21 day to appeal against this decision. (See Reviews)

## Closing of housing register applications & removal from the register

Once a household has been moved via the homemove scheme it will be deemed that the housing need has been met and therefore the housing application will be automatically be closed. If there are other applications from the same address that are impacted by the household being moved i.e. overcrowding, then these applicants will be reassessed. If a household is moved by the scheme into

council accommodation then the information contained in their file will become available to the as part of the tenancy file.

If a person is moved to one of the partner registered providers then the information may be passed to the registered provider to form part of their tenancy file.

The council will hold a copy of any application that is closed for a period of six years from the date that it is closed. After this date the council will destroy any information relating to the application. If a person reapplies within the six year period and is subsequently removed from the Housing Register then the time period will run from the date that the later application is removed.

## **Re-assessing need and priority dates**

The council may review all applications annually. If an applicant's circumstances change, at any time, they may be moved up or down the bands depending on their need.

All applicants must inform the Homemove Team immediately when their circumstances change. If any change results in a band change, the homemove will write to inform the applicant of the new band, their priority date, if applicable, and of their right to request a review of this decision. The principal of the scheme is that no one should overtake existing applicants in a Band.

### **Moving up a band**

If an applicant moves up a Band their priority date will be as follows:

- Overcrowding due to the birth of a child. Date that information is received.
- Priority or Management Transfer – date as agreed by the Housing Manager.
- For Private Sector Housing Team reasons the date the decision is received from the Private Sector Housing Team.
- For Social Services nominations, the date request is received from Social Services.
- Medical reasons, the date the information is received into the Homemove Team.
- Homeless Households, the date the duty was accepted by Brighton & Hove City Council.
- All other band changes, the date the information is received.

### **Moving down a band**

If an applicant moves down a band, then their priority date will revert to the date that applied when the applicant was previously in that band, or an earlier date in a higher Band.

### **Multiple Needs**

As part of the assessment of an applicant's needs, those applicants who have a range of needs will be identified. These cases will be assessed to identify those applicants whose needs, when considered cumulatively, are deemed to be so severe as to warrant them being placed in a higher band. Where such exceptional circumstances exist and a higher priority band is thought appropriate the Homemove officer will, having fully considered the details of the case, forward their recommendation to the Senior Housing Needs Officer to seek authorisation that the applicant be placed into a higher priority band. The applicant will be notified of the decision of the Senior Housing Needs Officer and if this is refused the applicant will be notified and given the right of review. (See Reviews).

### **Circumstance that result in reduction of band awarded**

The council may reduce a person's band award if there are indications that a person has moved into accommodation knowing that this accommodation is not suitable to meet the needs of their

household. This will include moving into studio accommodation that causes statutory overcrowding and moving additional people into accommodation knowing that this will cause severe overcrowding. This is to ensure that applicants do not use the Housing Register to be housed over and above others that have waited to be accommodated. The Band reason may be reduced by one Band.

## How the council allocates properties

The council is facing a number of challenges and has to provide services with reduced resources. In order for the council to meet these challenges the council requires the allocation of social housing to be flexible. The applications will be assessed and be placed into one of four queues. These are

1. Homeseeker
2. Transfer
3. Homeless
4. Council's interest (care leavers and other agreed quotas)

The council will formulate an allocation plan each financial year that prioritise the proportion of lettings to each queue. The allocations plan will be based on the performance of the last financial year to take account of the number of lettings required to each of the above groups. This will be enable the council to balance the ongoing pressures and at the same time allow it to meet its statutory obligations, for example to discharge its homeless duty or to provide stable housing for someone leaving care or other commitments within children and adult social care.

“An allocation plan\* will be drawn up and be in place for a two year<sup>40</sup> period to make best use of the social housing stock so as to have regard to the council budget and seek to drive down those costs. The current plan will be in place from October 2018 to September 2020 as follows:

|  |                          |
|--|--------------------------|
| Homeless households in temporary accommodation | 40%                      |
| Transfers                                      | 30%                      |
| Homeseekers                                    | 20%                      |
| Council Interest                               | 10% (Children's and ASC) |

There needs to be a 5% tolerance in either direction to enable officers to respond to changing demands and also a degree of flexibility is required if the right size/mix of properties do not become available”<sup>41</sup>

The allocations plan must ensure that it still meets the requirements to those that are assessed as having a reasonable or additional preference. The allocations plan will be agreed by the Housing & New Homes Committee each year and provide up to a certain level of lettings to each of the four queues.

The allocation plan will be applied to all adverts for properties that are available to let on the Homemove scheme. Priority will be given to applicants in the allocated queue. If there are no successful applications from within the advertised queue then the property will be allocated in accordance with the allocation policy to an applicant in one of the alternative queues in priority order.

## Advertising available properties

The council uses Sussex Homemove [www.homemove.org.uk](http://www.homemove.org.uk) to advertise all properties that are available. Full details on how to bid are set out in the scheme user guide. The council will advertise properties in one of four queues, selected by the landlords, in accordance with the allocations plan (see above). These are:

<sup>40</sup> Amended by Housing & New Homes Committee 19 September 2018

<sup>41</sup> Inserted by amendment following the Policy, Resources & Growth Committee 8<sup>th</sup> December 2016

- Transfer
- Homeseeker
- Homeless
- Council's interest

You may bid on properties in any of the queues; however priority will be given to applicants within the advertised queue before other applicants will be considered. You will be notified which queue you have been allocated to in your assessment letter. Other eligibility criteria will be laid out in the adverts for each property, such as:

- The minimum and maximum number of persons in the household
- If there are age limits of households without young children
- The mobility group, if applicable, and details or potential for adaptations
- If pet are allowed
- Whether it is sheltered or extra care housing
- Who the landlord is (either council or housing association)
- The minimum and maximum weekly charge<sup>42</sup> including any other charges

## Security of tenure & fixed term tenancies

The council has a Tenancy Strategy that lays out the expected security of tenure; Council tenancies will be issued as introductory tenancies. Housing Associations will normally issue a starter tenancy. Under the Localism Act 2011 and Housing & Planning Act 2016, landlords may offer different types of tenancy, which could be either a lifetime tenancy or a tenancy with a fixed number of years (that is then renewed if you are still in need).

New tenants will normally be given a 12 month starter or introductory tenancy before a longer tenancy is allowed. Existing tenants transferring will usually keep the same type of tenancy when moving.

The advert will clearly state which tenancy applies to that property. More information is available in landlords' respective Tenancy Policies.

Under the Housing and Planning Act 2016 it will be compulsory for all new council tenancies to be offered for a fixed term of between two and ten years. This policy may be amended to comply with any future legislative provisions that have been passed that impact the council's ability to let properties on a fixed term basis and to align it with its Tenancy Strategy.

## Housing & Planning Act 2016

The Housing & Planning Act 2016 has introduced measures that will affect the levels of rents that will be charged. Any applicant(s) will be subject to a financial assessment. This assessment will look at the financial means of the household. All income must be disclosed on this assessment including income from any source of employment, saving, income from any other source including bank accounts. Any persons who do not disclose all income may be withholding information that they should disclose and may be committing an offence under s171 Housing Act 1996.

The council will make such enquires into the financial details of any applicant and any other member of the household as required to under the Housing & Planning Act 2016. This may include credit

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<sup>42</sup> Housing & Planning Act 2016 pay to stay regulations

checks on bank accounts and any other financial transactions that the person have had including any mortgages for example.

## Size of property you can bid for

An assessment of your housing need is made and you will be informed of the size of property you can bid for, please see the table below for guidance.

| Size            | Minimum People | Maximum People       | Example Types of Household                                  |
|-----------------|----------------|----------------------|---|
| Studio          | 1              | 1                    | Single Person   |
| One bed         | 1              | 2                    | Single Person or childless couple                           |
| Two bed         | 2              | 4                    | One to two child family or single person with live in carer |
| 2 bed sheltered | 2              | 3                    | A single person/couple and carer                            |
| 3 bed           | 3              | 6+ depending on size | Two or more children of different sex over 10 years old     |
| Four Bed        | 4              | 8+ depending on size | Five or more children                                       |

In deciding the appropriate size of a property, the age and gender of the children within the household are considered, for example a male and female child where one is over 10 years are not expected to share a bedroom. Therefore some two child families are eligible for a two bed property and others with two children are eligible for a three bedroom property.

### Large properties with dining rooms.

The council has some large properties that may have two separate living rooms. The properties are currently advertised by the number of bedrooms (i.e. three beds) with an additional “dining room”. This means that occupancy levels on these properties can be as low 3 people. The size of the property could be suitable for a much larger family, many of whom are in overcrowded situations. In order to achieve the best use of the housing stock in the city we will look to assess all incoming void properties and in some cases will advertise them as a four-bedroom property. Any other properties will be advertised as three bedroom properties but the minimum number of occupants can be raised to reflect the size of the property. Any application without the required number of people will be by passed in favour of an application with the required number of people in the household. If there are no applications with the minimum number of applicants, then the property may be let in accordance with the normal bed size in the allocations policy

Extra bedrooms applicants may apply for extra bedrooms by submitting medical and or mobility information. This medical or mobility needs will have to be very high to meet the requirements of being awarded an additional bedroom. (See above)

### Homeless applicants and property size

In cases where households have been accepted as homeless under Part V11 Housing Act 1996 and have been awarded the relevant band, a household may bid for accommodation that falls outside of the above criteria if it has been assessed that the property is reasonable for the households needs. The offer will discharge the council’s duty under Part VII Housing Act 1996.

### In addition:

- Where there is overriding medical need to support the request the council will allocate households up to one additional bedroom over the standards set above
- No applicants can bid for properties that would result in overcrowding or under-occupation
- Where a household is moving to smaller accommodation, they may be entitled to assistance under the Transfer Incentive Scheme
- **If there are no eligible bidders over 50 years of age where an age restriction applies, applicants under 50 without children will be considered.**

## The bidding process

Eligible applicants can make bids for properties advertised, by telephone bidding or by bidding online via the website. Applicants can also nominate a proxy bidder, and in exceptional circumstances request that the council bid on their behalf (assisted bidding). Full details of how to bid are set out in the Scheme User Guide, which will be sent out to all new applicants and is available on the website [www.homemove.org.uk](http://www.homemove.org.uk).

Applicants with support needs and those who have difficulty with written English will be supported by an appointed support provider or the Homemove Team.

Applicants who urgently need to move and who do not bid for properties may receive a direct bid. (see 'Direct bidding').

All bids for a property are checked against the eligibility rules, for example any age restrictions or size of property. Ineligible bids are excluded from consideration. We will provide advice and support to applicants who regularly bid for properties they are not eligible for.

Applicants can bid for up to a maximum of three properties they are eligible for. No bids can be placed on any available property after a shortlist deadline. Applicants are not required to place all three bids at the same time. Shortlists will be created within three working days for housing associations properties.

Council tenancies will be shortlisted once the Housing department has notified Homemove that the property is vacant and ready for letting. Successful applicants will be contacted as soon as possible by the landlord. Homemove are not responsible for the letting process this is carried out by the landlord.

The shortlist sent to the landlords will include the three applications that are eligible for the property in accordance with the scheme. These will be:

- Top applicant
- 1st reserve candidate
- 2nd reserve candidate

If an applicant is the top applicant in any shortlist then they will still be able to place bids on other properties. However, while the applicant is waiting to view the property they will not be considered for any other properties until the result of the offer is known. If the property is unsuitable then the applicant will be able to resume bidding. If the property is refused and deemed suitable the application will remain suspended until the result of the review is known.

If none of the shortlisted applicants accept the property then this will then be offered to the next eligible applicant and this will continue until the end of the shortlist. If no applicants accept the property this will then be re-advertised.

## Changes to advertising, shortlisting, selection and offers

The council is in the process of tendering for a new IT system to underpin the assessment and allocation of social housing. This policy may be updated, without the need to refer changes to committee, to reflect changes that are made with any new IT system in how properties are advertised, shortlisted or offered to applicants and to reflect any enhancements that may be available that increases customer choice, such as automated bidding mobile apps or any enhancements that reduce property void times such as daily or continuous bidding so long as it does not make changes to eligibility, qualifying persons, local connection or exemptions agreed in the policy.

## Detection of fraud

The council is obliged to ensure that offers of a social housing tenancy are only awarded to those that are entitled to be offered the accommodation. Housing is a valuable community asset and unfortunately is sometimes obtained fraudulently. The council is committed to improving our detection of fraud and reducing our losses from fraud.

Fraud is an act of deception intended for personal gain or to cause loss to another party. The harm caused by fraud is not just financial; it causes harm to local people. It can include:

- Failure to disclose information - for example providing false information on the housing application.
- Abuse of a position that is carried out to make personal gain - for example someone using their knowledge of council policies and procedures to gain advantage such as gaining access to a council service.
- False representation – someone submitting false information on your behalf that is untrue and designed to increase the chance of an applicant obtaining housing.

Before the shortlist is passed to the landlord, the Homemove team will pass the successful candidates to the council's Corporate Fraud Team who will carry out any necessary checks in relation to the application. These checks will include cross checking against council records, financial checks (including any bank accounts held), checks with other local authorities or checks with utility and mobile phone companies.

If any information comes to light that contradicts any information held by the Homemove Team in any respect, then the council will by-pass any application on the shortlist and may continue to investigate an application. If any fraud is found to be true then the applicant will be informed of the council's decision and removed from the Housing Register. If the information is not correct then the application will be reinstated. Offers of accommodation will not be held open if the case is suspected of being fraudulent or during an investigation.

Once an offer has been made the applicant has the choice to refuse the property. If they refuse they may be able to bid again the following cycle, there are exception to this and 'refusals' further in this scheme should be considered. If an applicant is an Accepted Homeless Band A case and refused a successful bid (irrespective of bidding deadlines) then the Housing Options Team and the Homemove Team may consider that this is a full discharge of duty. Any accepted homeless case considering refusing a part 6 offer should contact the Housing Options Team before formally refusing a property

## The selection process

All eligible bids for each property are placed in priority order. Priority is decided first on the advertised queue and then by the priority band, thirdly by priority date within the band. Where a property has been advertised to give preference to a mobility group, bids from these applicants will be prioritised in band order above bids from members who are not in that stated group. Every bid will be assigned a

random number when the bid is made. This number is used to resolve a tie; the highest number gets the priority. If there are no eligible bidders for a property the Homemove Team may decide to re-advertise the property.

If the property is owned by a housing association, the prioritised list will be referred to the landlord.

To minimise delays all landlords may arrange multiple viewings for up to three applicant households per property. Applicants will be required to bring proof of identity (for example Driving Licence or Passport) to the viewing. For general needs housing, the Rehousing Officer will:

- Contact the applicant using the telephone or e-mail contact provided; applicants are responsible to keep Homemove updated of any changes to contact details. Any contact details that are not kept up to date may result in an applicant being by-passed on a shortlist.
- Offer the applicant the option to accept and invite to sign for the tenancy or agree a decision within 24 hours
- If the applicant chooses to refuse, the Rehousing Officer will note the reasons for the refusal and the next applicant is selected for an offer. Applicants will be offered one offer of suitable accommodation to meet their housing needs, except in certain circumstances contained in this policy. Properties are not kept open if they are refused.
- Applicants who do not provide proof of identity at the viewing will be given 24 hours to provide proof at a council office prior to signing for the tenancy, if this is not provided there is the chance the offer may be withdrawn and the case referred back to the Homemove Team for investigation
- Once an offer of accommodation has been accepted the Housing Application will be closed by the Homemove Team or the Rehousing Team
- A failure to respond to an offer or viewing will be deemed for the purposes of this policy as a refusal. A failure to contact the Rehousing Team following a viewing will also count as a refusal.

If the property is considered to be a sensitive let any issues surrounding this will be discussed with the incoming tenant prior to a tenancy being granted. If a property is considered to be a sensitive let and an applicant refuses the property this will not count as a suitable offer of housing.

## How shortlisting takes place

Offers will normally be made to applicants at the top of the shortlist. In very exceptional circumstances we may need to reject an applicant on the shortlist for a particular property to ensure that we meet the following objectives:

### **To ensure that communities are as balanced as possible**

Landlords may adopt Local Lettings Plans for specific areas. These plans will need to be agreed by stakeholders and Brighton & Hove City Council and will consider the problems that need addressing, backed up by evidence. Properties subject to Local Lettings Plans will be clearly advertised and priority will be given to those that meet the agreed criteria.

### **To ensure that allocations are sensitively made**

In exceptional cases, for housing management reasons, we may not offer to the person at the top of the shortlist. You will be contacted by the landlord in writing with the reasons for this decision. Any property that requires a “sensitive let” will be notified to the Homemove Team before it is advertised. Any person that requires a sensitive let will be notified as part of the assessment process.

### **To make best use of the council’s stock and to reduce under occupation**

From time to time a property may be advertised for those who are releasing larger council accommodation or reserved for those who need to move urgently because the council is undertaking work on the property

### **To ensure properties are let quickly**

This is important to minimise rent loss and empty property turnaround time. Applicants must be available and able to take up an offer of accommodation, applicants will be contacted by telephone or e-mail or in certain cases by letter, and if there is no contact after three days then the offer will be withdrawn and counted as a refusal.

If an offer is not made to the applicant at the top of the shortlist, the reasons will need to be agreed by the Homemove Manager in line with this policy.

### **Affordability of accommodation due to the welfare benefit cap.**

The Allocations Policy includes giving a reasonable preference to those that the council has accepted a full housing duty to homeless households. In order to discharge this duty, the council can only do so in one of the ways laid out in the Housing Act 1996 as amended. One of these ways is to offer a suitable offer of accommodation. There are a number of things that the council has to take into account when offering accommodation. Amongst the items under consideration is that the accommodation should be affordable. In a small number of cases where the property on offer is under an affordable rent and the applicant is subject to a welfare benefit restriction the property would not be considered affordable. If a property is considered to be unaffordable and therefore unsuitable the applicant can be by passed for the offer or the offer can be withdrawn. The allocations policy also makes provision that offers are suitable to other groups and therefore this provision will equally apply to any applicant where the offer is deemed unsuitable

## **Time limits for bidding for properties**

There is a three-month time limit for bidding for the following categories of applicants (except where otherwise noted):

- Social Services nominations under quota arrangements
- Witness Protection nominations under a quota arrangement and agreed through the National Witness Mobility Service
- Reciprocal letting arrangements with another landlord or local authority
- Accepted homeless households owed the main duty by Brighton & Hove City Council Band A
- Accepted homeless household in Band C who are not bidding under the scheme.
- Households who are statutorily overcrowded
- Transfer applicants needing a permanent or temporary decant where the property is imminently required for major repair
- Where the property is deemed to be 'statutorily overcrowded' by the Private Sector Housing Team under section X of the 1985 Housing Act and there are no practicable means to make the property suitable for the number of occupants within a reasonable time period.
- Priority transfer, agreed in exceptional circumstances due to significant and insurmountable problems associated with the tenant's occupation and there is imminent personal risk to the household if they remain.
- Retiring council and HA employees, eg Sheltered Scheme Managers, Residential Estate Wardens where the council or HA has a contractual obligation to house.

- Non-statutory successors - where agreement has been provided by Tenancy Services and Housing Options that the council will try to re-house in accommodation suitable for the applicant's housing need.
- Under-occupiers who have succeeded to the tenancy where the council has grounds for seeking possession by offering suitable alternative accommodation.
- Care leavers - where the applicant has been placed by Brighton & Hove City Council and there is agreement from the Homemove Manager and professional colleagues within the council. This priority is not valid for care leavers from other authorities.
- Management Transfers - agreed by Housing Management for transfers on management grounds.
- Ex-council and HA tenants released or discharged from an institution that the council has given an undertaking to house who have not successfully bid within the timescale will be made one offer before duty is discharged or priority lost.

After the bidding time allowed above has passed and the applicant has not been successful, the council will then place bids on behalf of the applicant that are more likely to receive an offer of accommodation this is known as direct bidding.

## Applicants not bidding

Applicants who are not subject to a minimum bidding time limit who fail to make any bids within a 12 month period will be informed that they must be actively bidding. Applicants will be given one written warning giving them a further month to make a bid. If an applicant fails to make bid then the application will be cancelled and removed from the housing register. Applicants may reapply to the housing register but this will be considered to be a new application and be assessed accordingly. There will be no backdating of any priority dates to a former application that is removed.

## Direct Bidding

It is our aim to advertise all properties through Homemove but there may be circumstances where we will make bids on behalf of households.

- Special circumstances, eg applicants who are assessed as high risk offenders have their application processed through a multi-agency panel. This group will be restricted from bidding and a property identified as recommended by the panel. The panel will make one reasonable offer and if refused the applicant can request a review. The final decision on eligibility to bid lies with the Homemove Manager.
- Accepted Homeless households in Band A or C who have failed to exercise choice through the bidding process within the three month timescale or who have bid within the timescale but have not been successful. The council may make one reasonable offer of accommodation before duty is discharged.
- Retiring council employees or those who have highly specific requirements or who have failed to bid successfully within their bidding time will be offered one property. If refused, the Homemove Manager will review the case and priority may be lost and/or request proceedings possession begins.
- Tenants who need to be temporarily or permanently decanted who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost.
- Ex-council & HA tenants released or discharged from an institution that the council has given an undertaking to house who have not successfully bid within their bidding time will be offered one

property. If refused the Homemove Manager will review the case and priority may be lost and/or request possession proceedings begins.

- Non-statutory successors who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost and/or request proceedings possession begins.
- Statutory successors who need to downsize who have failed to bid successfully within their bidding time will be offered one property
- Priority Transfers who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost and/or request proceedings possession begins.
- Social Services nominations under quota arrangements who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost.
- Witness Protection nominations under a quota arrangement and agreed through the National Witness Mobility Service who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost.
- Care leavers - where the applicant has been placed by Brighton & Hove City Council and there is agreement from the Homemove Manager and professional colleagues within the council, this priority is not valid for care leavers from other authorities. If refused the Homemove Manager will review the case and priority may be lost.
- Management Transfers – agreed by Tenants Service for transfers on management grounds who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost and/or request proceedings possession begins.
- Where the property is deemed to be 'statutorily overcrowded' by the Private Sector Housing Team under Part X of the 1985 Housing Act and there are no practicable means to make the property suitable for the number of occupants within a reasonable time period who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost.
- Reciprocal housing agreement with another landlord or local authority who have failed to bid successfully within their bidding time will be offered one property. If refused the Homemove Manager will review the case and priority may be lost.

## **Offers of accommodation**

Applicant, who are not subject to direct bidding above, who have refused two reasonable first offers of accommodation within two years of the date of the original offer made or arranged by the council and there has been no material change in their circumstances so as to make the earlier offer(s) clearly unsuitable in the light of the applicant's changed circumstances will have their case closed and will have to reapply to the housing register subject to being an eligible and qualifying person. People who are second or third on the shortlist and become the first, due to the refusal of the first or second applicant, and refuse will be deemed "first" under this part of the policy.

It should be noted that if a tenancy is accepted and then refused without the tenancy being moved into this will be seen as a refusal and dealt with as such. It should be noted that a failure to respond then an offer of accommodation will be seen as a refusal unless there is good reason for not responding.

Offers of accommodation that are the subject of a review will not be held empty while the refusals

are reviewed but let to the next available applicant.”

### **Exceptions to one offer policy**

- Applicants accepted under the Tenants Incentive Scheme (TIS) or Tenants Support Scheme (TSS) downsizing from family accommodation
- Applicants accepted under the TIS or TSS Scheme releasing adapted properties
- Applicants in Homeseeker and Transfer groups seeking sheltered accommodation (three reasonable offers of accommodation in any one 12 month period will apply)

## **Suitability of offers**

In order to maintain a transparent and open system that aligns offers of accommodation across all groups the allocations policy will apply suitability of all offers of accommodation using the criteria that is used for homeless applicants under the Housing Act 1996<sup>43</sup>

## **Refusals following bidding or direct bidding**

In the above cases the council will make a suitable offer, one that as far as possible matches the size, and type of property the applicant is eligible for. The applicant must give their reasons for refusing. The property will not be held empty while the refusal is reviewed but will be let to another applicant.

If the offer is to a homeless household the Temporary Accommodation Allocations Manager will check the case and see if the offer will be enforced. Applicants will be given the required notification on their rights to request a review under Housing Act 1996 Part VII s202. Applicants will be advised that they should accept an offer of accommodation and can still request a review under Part VII. This will at least leave the person with some accommodation if the review process does not uphold their review.

If an offer is to other categories of applicant the Homemove will consider the reasons for refusal. If there is a clear mismatch, eg where applicant or property details were incorrect, the offer will be withdrawn and the applicant notified. If the offer was found to be a reasonable one, the Homemove Manager will advise the applicant of the reasons for this finding and of the effect that this decision has on their application.

### **Refusals of suitable accommodation member bidding**

Applicants who have refused a suitable offer of accommodation will have their application closed, please note that if applicants who are second or third become first for an offer and refuse will be deemed 'first' under this part of the policy.

It should be noted that if a tenancy is accepted and then refused without the tenancy being moved into this will result in the application being closed. There is no facility for an application set to a status of let being reopened. This will be seen as a refusal and dealt with as the above.

All cases will be dealt with based on information supplied and submitted. There is no right to request a further review of the decision.

It should also be noted that this does not include Accepted Homeless cases where if households in this group are successful in obtaining an offer of accommodation within three months, this will be considered a final offer. Any refusal of offers for accepted homeless case will be dealt with under the reviews procedure under Part VII Housing Act 1996 and not under the allocations policy.

The council may exercise discretion to retain the current bandings or priority dates in certain

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<sup>43</sup> Housing Act 1996 Part VII s210

instances, for example where a council or housing association tenant is releasing a property they are under occupying or one that has been adapted that could meet the needs of households who are waiting in a high banding.

## **Feedback on let properties**

All properties let will be listed on the Homemove website showing the number of bidders for each property and the band and priority date of the successful applicant.

## **Ending a joint tenancy when one party to the tenancy leaves**

Joint tenants remain jointly and severally liable for the terms of any tenancy granted by the council of housing association. A tenancy agreement is a legal contract between the landlord and the tenant. If one of the joint tenants leaves or abandons the property it is the responsibility of the remaining tenant to take action to resolve the situation. As the council is an interested party the remaining joint tenants will be advised to seek independent legal advice on how to bring a tenancy to an end.

Broadly speaking the council will grant a joint tenancy to partners applying together for housing as long as both parties are eligible. A joint tenancy remains in joint names until one or both joint tenants terminate the tenancy. Where there has been a relationship breakdown then one of the joint tenants may make an application for a property adjustment order. If there is a dispute as to who should remain in the property the courts will make a decision on who can remain.

## **Local Lettings Plans**

A local lettings plan is an agreement between the social landlord and local tenants and residents that restricts lettings in the area to certain households. This is done to tackle a specific issue or problem that has been identified locally at either block, street, estate, neighbourhood or city level, or to achieve a sustainable community on a new development. Local lettings plans allow the council or HA to:

- Identify and explore the barriers to access housing.
- Deliver better outcomes and improve life chances for current tenants and future residents.
- Developing a stock and demand profile of the area alongside the views of local tenants and residents groups will primarily identify the need for any local lettings plans.

Four key elements will be considered when developing a new local lettings plan:

- Selective lettings - there may be some restrictions as to who can apply for certain properties or areas. For example, this may involve age restrictions or a requirement to have a local connection.
- Making the best use of housing stock.
- Developing a balanced and sustainable community - where a local policy would promote community cohesion and balance the needs of existing and new tenants to create more inclusive neighbourhoods where people want to live. This may be in areas where there is a high turnover of properties either within an estate or amongst certain property types.
- Attract potential tenants - for example certain properties may be offered with a level of furnishings.

### **Key stages of development**

Developing a stock and demand profile of the area - this may include a breakdown of, and information on:

- Property types and numbers
- Household type, including customer profile information of residents
- Voids and lettings within last financial year
- Numbers and reasons for refusal
- Reasons for rehousing and reasons why tenants leave
- Where most availability has occurred and why
- Number of registered transfers
- The level of demand for properties in the area
- How long tenancies are lasting
- How quickly vacancies are filled
- The layout of the area and services available
- Social issues within the area and any multi-agency involvement
- An estimate of vacancies expected
- Local targets for performance

### **Involving and consulting residents and tenants**

The landlords and partners will be responsible for consulting with residents and existing tenants and involving them in the development of any proposals for Local Lettings Plans. This may involve carrying out 'door to door' surveys to collate resident and tenant's views. Partner landlords who have stock within the area will be consulted on the need or otherwise for a local plan. Full Equality Impact Assessments will be carried out on all plans.

### **Evaluating the information**

The council will evaluate the information in the stock and demand profile. It will also take account of tenants' views when identifying recommendations to develop local lettings criteria. The council must also consider diversity and equal opportunity issues of local communities when formulating any local lettings plans.

### **Making recommendations**

Recommendations may include some of the following criteria:

- Setting a maximum or minimum age limit for certain properties.
- Preference to tenants / applicants with a local connection or who already live or work in that area.
- Preference to tenants / applicants who are giving or receiving support to or from family/extended family, voluntary work, day care, playgroups or other support from locally based organisations.
- Preference to people who are employed.
- Preference to other household types who would not normally be eligible under the council's letting policy – eg this could be couples without children, where there is a high density already in the area of families with children.
- Preference to specific groups of people for specific types of properties or in specific localities where this would benefit the community.
- Preference to people from BME and religious cultures.
- Meeting need of a category of people to ensure most appropriate use of stock.

## Impact of Local Lettings Plans on the Allocations Policy

Once a report with recommendations has been finalised, the council will have to formally adopt the plan and this will override the current eligibility criteria. This will take into account the impact of overall lettings in the district. Any property subject to a Local Lettings Plan will be clearly labelled (LLP) within the advertisements.

## Review of Local Lettings Plans

The council will ensure that Local Lettings Plans are publicised and implemented. In addition, they will ensure that these plans are continuously monitored and reviewed annually or in line with the Local Lettings Plan recommendation of any review period not exceeding four years, with the involvement of local tenants and residents. If a Local Lettings Plan is agreed it will be promoted within the affected area. If a Local Lettings Plan is not reviewed on an annual basis or in line with the recommendations agreed by committee, then the Local Lettings Plan will lapse.

## Reviews under Part VI Housing Act 1996

An applicant will be notified of the right to a review under the allocations policy. The Right of Review under the allocations policy are as follows:

- (i) A decision an applicant is not eligible<sup>44</sup>
- (ii) A decision concerning the facts of the case which are likely to be or have been taken into account in considering whether to allocate accommodation<sup>45</sup>
- (iii) A decision that an applicant is not a qualifying person for an allocation<sup>46</sup>

### Reviews concerning the facts of the case in above (ii) above include

- a) The type of property for which an applicant will be considered
- b) The extend of the applicant's household to be considered for housing with the applicant
- c) The applicant's medical condition or welfare needs
- d) Other fact used to determine whether the applicant in entitled to a reasonable preference
- e) Whether the applicant should receive additional preference on the grounds of urgent housing need or otherwise and
- f) Determining the applicant's priority including his or her financial resources, behaviour (or that of his or her family), and local connection.

## Procedures on review

The Secretary of State has issued guidance<sup>47</sup> on how the local authority should carry out reviews under the allocations policy.<sup>48</sup>

The review procedures should be clearly set out, including timescales for each stage of the process, and must accord with the principles of transparency and fairness. Failure to put in place a fair procedure for reviews, which allows for all relevant factors to be considered, could result in a judicial review of any decision reached. The following are general principles of good administrative practice:

## Review time scales

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<sup>44</sup> Housing Act 1996 160ZA(9)(a) & (c)

<sup>45</sup> Housing Act 1996 166A (a)(b) & (c)

<sup>46</sup> Housing Act 1996 160ZA 9(b) & 166A(9)(c)

<sup>47</sup> Allocation of accommodation: guidance for local housing authorities in England June 2012

<sup>48</sup> Housing Act 1996 s166a (10)

Applicants will be notified that they will have 21 days to request a review of any decision that is statutorily reviewable.

Review requests that are received outside of the 21 day time limit may be accepted if there are exceptional circumstances as to why the applicant was unable to request a review within 21 days.

Applicants will be notified that the request for review should be made in writing, and that it would also be acceptable for the request to be submitted by a representative on their behalf. Applicants will also be advised of the information which should accompany the request.

Representation for the review will normally be made in writing setting out the grounds for the review and any other submissions that the applicant wishes to be considered as part of the review. In exceptional circumstances the council may allow an applicant to make verbal representations to the person carrying out the review, if for example the case is extremely complex.

The review will be carried out by an officer who is senior to the person who made the original decision by at least one grade. It will not be carried out by a person who made the original decision or involved in the decision that is subject to the review.

The review will be considered on the basis of the authority's allocation scheme, any legal requirements and all relevant information. This should include information provided by the applicant on any relevant developments since the original decision was made – for instance, the settlement of arrears or establishment of a repayment plan or departure of a member of the household responsible for anti-social behaviour or a change in a person's medical or mobility.

Reviews should be completed wherever practicable within eight weeks from the date the review is requested. The applicant or their representative may request an extension of time to submit representations. The council will look to notify an applicant if the review cannot be completed with eight weeks with the reason for the extension.

Applicants will be notified in writing of the outcome of the review. The notification will set out the reasons for the decision. This is to assist the applicant and the authority if, for example, the applicant is not satisfied with the outcome and decides to seek a judicial review or to take their case to the Local Government Ombudsman.

### **Rights of applicants following a review**

An applicant who is dissatisfied with the outcome of a decision made on review can either decided to pursue their case to the Local Government Ombudsman or to seek a judicial review. If an applicant is seeking to pursue the matter by way of judicial review then they are advised that to seek advise from a legal advisor before doing so.

**There is no right for an applicant to request a second right of review.**

## **Right to Move (transferring tenants from another local authority only)**

### **Work**

In order to qualify for an exemption of the local connection criteria the following will be taken into account in assessing if an exemption applies.

The Right to Move qualification regulations 2015<sup>49</sup> only apply if work is not short-term or marginal in nature, nor ancillary to work in another district. Voluntary work is also excluded.

### **Short-term**

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<sup>49</sup> Statutory guidance on social housing allocations for local housing authorities in England 2015

In determining whether work is short-term, the following are relevant considerations:

- whether work is regular or intermittent (This is likely to be particularly relevant in the case of the self-employed).
- the period of employment and whether or not work was intended to be short-term or long-term at the outset
- if a contract of employment that was intended to last for less than 12 months would be considered to be short-term.

### **Marginal**

The following considerations would be relevant in determining whether work is marginal:

- the number of hours worked
- if less than 16 hours a week could be considered to be marginal in nature. This is the threshold below which a person may be able to claim Income Support and the threshold for a single person's entitlement to Working Tax Credit. (The fact that a tenant only works 15 hours a week, for example, may not be determinative if they are able to demonstrate that the work is regular and the remuneration is substantial).
- the level of earnings.

### **Ancillary**

Work must not be ancillary to work in another local authority's district. This means that, if the person works occasionally in the local authority's district, even if the pattern of work is regular, but their main place of work is in a different local authority's district, the work is excluded for the purposes of this policy.

A further relevant consideration would also be whether the tenant is expected eventually to return to work in the original local authority district. If a local authority has reason to believe this is the case, they should seek verification from the tenant's employer.

A person who seeks to move to Brighton & Hove to be closer to work in a neighbouring authority – for example, where the transport links are better in the first local are also excluded from the right to work

## **Voluntary work**

Regulations exclude voluntary work. Voluntary work means work where no payment is received or the only payment is in respect of any expenses reasonably incurred.

## **Apprenticeship**

The term 'work' includes an apprenticeship. This is because an apprenticeship normally takes place under an apprenticeship agreement which is an employment contract (specifically a contract of service).

## **Genuine intention to take up an offer of work**

Where the tenant has been offered a job and needs to move to take it up, they must be able to demonstrate to the local authority's satisfaction that they have a genuine intention to take up the offer.

## **Verification and evidence**

In all case the council will want verification and evidence that the work or job-offer is genuine and therefore the following documentary evidence will be required:

- a contract of employment
- wage/salary slips covering a certain period of time, or bank statements (this is likely to be particularly relevant in the case of zero-hours contracts)
- tax and benefits information – eg proof that the applicant is in receipt of working tax credit (if eligible) P60 or other information related to the employment.
- a formal offer letter and letter of acceptance
- the employer to verify the position.
- Letters should be on company headed paper.

Applicant must qualify for an allocation under the right to move both at the time of the initial application **and** when considering making an allocation. This means that proof we have to be provided that the person's circumstances have not changed.

Any application that is suspected of attempting to supply false or misleading statements in order to obtain accommodation with the council commits an offence and may be prosecuted. If a property is allocated following false or misleading statements a person may face eviction.

Section 166A provides that the council must frame the allocations policy to ensure that reasonable preference is given to move to the area, where failure to meet that need would cause hardship to themselves or others. Reasonable preference for the Right to Move Scheme has been set at Band C under the banding structure. In exceptional circumstances an applicant may be awarded a higher band under the scheme on the basis of a medical condition to Band B. This will be assessed on the same basis as those with a local connection if they meet the relevant criteria above.

## **Quota of properties under right to work**

The secretary of state recommends that council set a quota to allow people to move under this scheme. The recommended quota is advised to at one percent of letting each year. Councils that wish to set aside less than one percent of allocations have to be ready to explain publicly why this is the case.

In this allocations policy it is recommended that the council sets aside half a percent (0.5) as a quota for the Right to Work Scheme. The rationale for this figure is that Brighton and Hove is an area of high housing demand that the council is unable to meet the needs of local residents including those that the council has a statutory duty to accommodate. Since the introduction of the right to move scheme

there have been no applications to the council under this scheme. It is likely that people that move to the city are likely to move to employment that affords them the ability to source their own accommodation. It is also likely that the job market in the locality may only provide seasonal work to those on lower incomes.

This quota will be kept under review to see if it meets demand. This quota may be varied to a maximum of one percent of allocations by the Assistant Director-Housing.

## **Rehabilitation periods for certain types of sentence / disposal under the 1974 Act (as amended by the 2012 act)**

| <b>Sentence/disposal</b>   | <b>Rehabilitation period if aged 18 or over when convicted/disposal administered</b>      | <b>Rehabilitation period if aged under 18 when convicted/disposal administered</b>        |
|--|---|---|
| A custodial sentence of over 48 months                             | Never spent   | Never spent   |
| A custodial sentence of over 30 months but not exceeding 48 months | 7 years from the date on which the sentence (including any licence period) is completed   | 42 months from the date on which the sentence (including any licence period) is completed |
| A custodial sentence of over 6 months but not exceeding 30 months  | 48 months from the date on which the sentence (including any licence period) is completed | 24 months from the date on which the sentence (including any licence period) is completed |
| A custodial sentence of up to 6 months                             | 24 months from the date on which the sentence (including any licence period) is completed | 18 months from the date on which the sentence (including any licence period) is completed |
| Fine   | 12 months from the date of the conviction in respect of which the fine was imposed        | 6 months from the date of conviction in respect of which the fine was imposed             |
| Community order  | 12 months from the last day on which the order has effect                                 | 6 months from the last day on which the order has effect                                  |
| Simple caution, youth caution                                      | Spent immediately   | Spent immediately   |
| Compensation order   | On the discharge of the order (ie when it is paid in full)                                | On the discharge of the order (ie when it is paid in full)                                |

All offences that are not spent must be disclosed to the council on the application form. No offences that are spent have to be disclosed under the Rehabilitation of Offenders Act 1974.

### **Sexual Offences Act 2003**

Applicants who are required to sign onto the sex offenders register are required to inform the council that they are required to do so. Offers of accommodation for this group may require authorisation from the public protection or Multi-Agency Public Protection Arrangements before they can proceed to an offer of accommodation. Any refusal by public protection or MAPPAs to agree to the offer will result in the offer being bypassed.

## Reciprocals

The council recognise the need for the allocations scheme to contain an element of social mobility whilst protecting social housing as a valuable and scarce resource. In order to strike a balance the council will enter into reciprocal arrangement with another local authority or housing association.

All reciprocal arrangements are agreed on a discretionary basis and the council retains the right to decline a request for a reciprocal agreement if it is not considered to be in the interests of the council.

Applicants must have been registered on a mutual exchange system and have been unable to obtain housing through these schemes, except in the case of domestic violence.

The Homemove Manager must approve all reciprocal arrangements both in and out bound.

Requests for a reciprocal agreement will only be accepted if a person would otherwise meet the eligibility and qualification criteria contained in this policy requests for a reciprocal agreement for anti-social behaviour and rent arrears will usually be refused. Applications will be considered to take into account the Benefit Cap on any reciprocal request.

Reciprocals are only agreed when there is no material loss to the council in terms of available housing stock. In most cases, this means that the council will expect back a property of equal or larger size than the unit offered. The unit must also be comparable in terms of quality and type. If a property requirement is within mobility groups one or two it will be mandatory that the reciprocal is of the same group and in the case of an inbound request that an outbound reciprocal will have to be identified before a request will be agreed.

In exceptional circumstances, the council may agree to accept an equal number of bedrooms in exchange for a larger unit of the same number of bedrooms, ie one three-bed for three one-beds or one one-bed and one two-bed, This will only be considered where there is no other re-housing option available to the applicant and where there is a strong welfare reason to support the request. This request may be agreed where a tenant under the TIS or TSS schemes will vacate family size accommodation.

The council expects to receive back the replacement unit within twelve months of the original re-housing.

The local authority or housing association concerned will be required to provide a written commitment to the terms of the reciprocal, as agreed by the Homemove Manager.

Applicants approved on a reciprocal basis will be placed in and be able to bid for the agreed housing appropriate to meet their needs for three months and if unsuccessful during this period will be given one direct offer of suitable accommodation. If this is unreasonably refused the application will be closed. The council's one offer policy applies.

The council will contact the applicant's landlord at the point of re-housing, to notify them of the move and to request details of the property being provided in replacement.

The applicant will not be re-housed out of turn and all of the terms of bidding, shortlisting and letting apply.

## **Part Two**

### **Brighton & Hove Allocations Scheme guidance to officers on the assessment and implementation of this policy**

In order to implement the council's allocations scheme the following is guidance to officers on the use of council systems and procedures following council's agreement of the scheme by Members. This will be developed following the policy above. This guidance may change from time to time to reflect changes in the law or service delivery within the housing department or other services involved.

## Annex 1: Eligibility

- i) As a local housing authority we must consider all applications made in accordance with the procedural requirements of our allocation scheme (Housing Act 1996 sections 166(3) and 166A(14)). In considering applications, we must decide:
- if an applicant is eligible for an allocation of accommodation, and
  - if he or she qualifies for an allocation of accommodation

### Eligibility

- ii) An applicant may be ineligible for an allocation of accommodation under s.160ZA(2) or (4). We will consider an applicant's eligibility at the time of the initial application and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.

### Joint Tenancies

- iii) Under s.160ZA(1)(b), we must not grant a joint tenancy to two or more people if any one of them is a person from abroad who is ineligible. However, where two or more people apply and one of them is eligible, we may grant a tenancy to the person who is eligible. In addition, while ineligible family members must not be granted a tenancy, we should take them into account in determining the size of accommodation which is to be allocated.

### Existing Tenants

- iv) The eligibility provisions do not apply to applicants who are already our tenants. Most transferring tenants fall outside the scope of the allocation legislation (s.159(4A)); while those who are considered to have reasonable preference for an allocation are specifically exempted from the eligibility provisions by virtue of s.160ZA(5).

### Persons from abroad

- v.) A person may not be allocated accommodation under Part 6 if he or she is a person from abroad who is ineligible for an allocation under s.160ZA of the 1996 Act. There are two categories for the purposes of s.160ZA:
- a person subject to immigration control - such a person is not eligible for an allocation of accommodation unless he or she comes within a class prescribed in regulations made by the Secretary of State (s.160ZA(2)), and
  - a person from abroad other than a person subject to immigration control – regulations may provide for other descriptions of persons from abroad who, although not subject to immigration control, are to be treated as ineligible for an allocation of accommodation (s.160ZA(4))
- vi) The regulations setting out which classes of persons from abroad are eligible or ineligible for an allocation are the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006 No.1294) ('the Eligibility Regulations'). Persons subject to immigration control
- vii) The term 'person subject to immigration control' is defined in s.13(2) of the Asylum and Immigration Act 1996 as a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

The following categories of persons do not require leave to enter or remain in the UK:

- British citizens
- certain Commonwealth citizens with a right of abode in the UK

- Irish citizens, who are not subject to immigration control in the UK because the Republic of Ireland forms part of the Common Travel Area (see paragraph 3.11 (iii) below) with the UK which allows free movement
  - EEA nationals<sup>50</sup>, and their family members, who have a right to reside in the UK that derives from EU law. Whether an EEA national (or family member) has a particular right to reside in the UK (or another Member State) will depend on the circumstances, particularly their economic status (eg whether he or she is a worker, self-employed, a student, or economically inactive) persons who are exempt from immigration control under the Immigration Acts, including diplomats and their family members based in the UK, and some military personnel.
- viii) Any person who does not fall within one of the four categories in paragraph x) will be a person subject to immigration control and will be ineligible for an allocation of accommodation unless they fall within a class of persons prescribed by regulation 3 of the Eligibility Regulations (see further below).
- xi) If there is any uncertainty about an applicant's immigration status, we will contact the UK Border Agency (UKBA). UKBA provides a service to housing authorities to confirm the immigration status of an applicant from abroad (non asylum seekers) by email at LA@UKBA.gsi.gov.uk. Where UKBA indicates the applicant may be an asylum seeker, enquiries of their status can be made to the Immigration Enquiry Bureau helpline on 0870 606 7766.
- x) Regulation 3 of the Eligibility Regulations provides that the following classes of persons subject to immigration control are eligible for an allocation of accommodation:
- a person granted refugee status: granted 5 years' limited leave to remain in the UK
  - a person granted exceptional leave to enter or remain in the UK without condition that they and any dependants should make no recourse to public funds: granted for a limited period where there are compelling humanitarian or compassionate circumstances for allowing them to stay. However, if leave is granted on condition that the applicant and any dependants are not a charge on public funds, the applicant will not be eligible for an allocation of accommodation. Exceptional leave to remain (granted at the Secretary of State's discretion outside the Immigration Rules) now takes the form of 'discretionary leave'.
  - a person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area): such a person will have indefinite leave to enter (ILE) or remain (ILR) and is regarded as having settled status. However, where ILE or ILR status is granted as a result of an undertaking that a sponsor will be responsible for the applicant's maintenance and accommodation, the person must have been resident in the Common Travel Area for five years since the date of entry - or the date of the sponsorship undertaking, whichever is later – to be eligible. Where all sponsors have died within the first five years, the applicant will be eligible for an allocation of accommodation.
  - a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who has been transferred to the United Kingdom under section 67 of the Immigration Act 2016(3) and has limited leave to remain under paragraph 352ZH of the Immigration Rules<sup>51</sup>
  - a person who has humanitarian protection granted under the Immigration Rules<sup>52</sup>: a form of leave granted to persons who do not qualify for refugee status but would face a real risk of suffering serious harm if returned to their state of origin (see paragraphs 339C-344C of the Immigration Rules (HC 395))

<sup>50</sup> European Economic Area nationals are nationals of any EU member state (except the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland

<sup>51</sup> inserted by Statutory Instrument 2018 No.730 (transfer to the UK under section 67 Immigration Act 2016

<sup>52</sup> Inserted by the Allocation of Housing and Homelessness (Miscellaneous Provisions) (England) Regulations 2006

## Other persons from abroad who may be ineligible for an allocation

- xi) By virtue of regulation 4 of the Eligibility Regulations, a person who is not subject to immigration control and who falls within one of the following descriptions is to be treated as a person from abroad who is ineligible for an allocation of accommodation:
- a person who is not habitually resident in the Common Travel Area (subject to certain exceptions - see paragraph 3.14 below)
  - a person whose only right to reside in the UK is derived from his status as a jobseeker (or his status as the family member of a jobseeker). 'Jobseeker' has the same meaning as in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) ('the EEA Regulations').
  - a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations
  - a person whose only right to reside in the Common Travel Area is a right equivalent to one of the rights mentioned in (ii) or (iii) above and which is derived from EU Treaty rights
- xii) See Annex 2 for guidance on rights to reside in the UK derived from EU law.
- xiii) The following persons from abroad are eligible for an allocation of accommodation even if they are not habitually resident in the Common Travel Area:
- an EEA national who is in the UK as a worker (which has the same meaning as in regulation 6(1) of the EEA Regulations)
  - an EEA national who is in the UK as a self-employed person (which has the same meaning as in regulation 6(1) of the EEA Regulations)
  - a person who is treated as a worker for the purposes of regulation 6(1) of the EEA Regulations, pursuant to the Accession (Immigration and Worker Authorisation) Regulations 2006 (ie nationals of Bulgaria and Romania required to be authorised by the Home Office to work until they have accrued 12 months uninterrupted authorised work)<sup>53</sup>
  - a person who is a family member of a person referred to in (a) to (c) above
  - a person with a right to reside permanently in the UK by virtue of regulation 15(c), (d) or (e) of the EEA Regulations f) a person who left Montserrat after 1 November 1995 because of the effect of volcanic activity there
  - a person who is in the UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK. This could include EEA nationals, if the person was settled in the UK and exercising EU Treaty rights prior to deportation from the third country. Where deportation occurs, most countries will signal this in the person's passport.
- xiv) A person who is no longer working or no longer in self-employment will retain his or her status as a worker or self-employed person in certain circumstances. However, accession state workers requiring authorisation will generally only be treated as a worker when they are actually working as authorised and will not retain 'worker' status between jobs until they have accrued 12 months continuous authorised employment. 'Family member' does not include a person who is an extended family member who is treated as a family member by virtue of regulation 7(3) of the EEA Regulations (see annexes 2 and 3 for further guidance).

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<sup>53</sup> As of 1 May 2011, nationals of the 8 Eastern European countries (A8 nationals) which acceded to the EU in 2004 are no longer required to register with the Workers Registration Scheme in order to work in the UK. Regulation 4(2)(c) of the Eligibility Regulations no longer applies to applications from A8 workers as of that date. Rather applications from A8 workers should be considered on the same basis as those from other EU workers under regulation 4(2)(a).

- xv) The term 'habitual residence' is intended to convey a degree of permanence in the person's residence in the Common Travel Area; it implies an association between the individual and the place of residence and relies substantially on fact.
- xvi) Applicants who have been resident in the Common Travel Area continuously during the two year period prior to their housing application are likely to be habitually resident (periods of temporary absence, eg visits abroad for holidays or to visit relatives may be disregarded). Where two years' continuous residency has not been established, housing authorities will need to conduct further enquiries to determine whether the applicant is habitually resident (see annex 4 for further guidance).

## **Annex 2: Rights to reside in the UK derived from EU law**

- i) EEA nationals and their family members who have a right to reside in the UK that derives from EU law are not persons subject to immigration control. This means that they will be eligible for an allocation of accommodation under Part 6 unless they fall within one of the categories of persons to be treated as a person from abroad who is ineligible for an allocation of accommodation by virtue of regulation 4 of the Eligibility Regulations.

### **General**

#### **Nationals of EU countries**

- ii) Nationals of EU countries enjoy a number of different rights to reside in other Member States, including the UK. These rights derive from the EU Treaties, EU secondary legislation (in particular Directive 2004/38), and the case law of the European Court of Justice.
- iii) Whether an individual EU national has a right to reside in the UK will depend on his or her circumstances, particularly his or her economic status (e.g. whether employed, self employed, seeking work, a student, or economically inactive etc).

#### **Nationals of Bulgaria and Romania - the A2 accession states**

- iv) A slightly different regime applies to EU nationals who are nationals of Bulgaria and Romania which acceded to the EU on 1 January 2007. Bulgaria and Romania are referred to in this guidance as the A2 accession states. The Immigration (European Economic Area) Regulations 2006.

#### **The Immigration (European Economic Area) Regulations 2006**

- v) The EEA Regulations' – SI 2006/1003) implement into UK domestic law Directive 2004/38. Broadly, the EEA Regulations provide that EU nationals have the right to reside in the UK without the requirement for leave to remain under the Immigration Act 1971 for the first 3 months of their residence, and for longer, if they are a 'qualified person' or they have acquired a permanent right of residence.

#### **Nationals of Iceland, Liechtenstein and Norway, and Switzerland**

- vi) The EEA Regulations extend the same rights to reside in the UK to nationals of Iceland, Liechtenstein and Norway as those afforded to EU nationals. (The EU countries plus Iceland, Liechtenstein and Norway together comprise the EEA.) The EEA Regulations also extend the same rights to reside in the UK to nationals of Switzerland. For the purposes of this guidance, 'EEA nationals' means nationals of any of the EU member states (excluding the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland.

#### **Initial three months residence**

- vii) Regulation 13 of the EEA Regulations provides that EEA nationals have the right to reside in the UK for a period of up to three months without any conditions or formalities other than holding a valid identity card or passport. Therefore, during their first three months of residence in the UK, EEA nationals will not be subject to immigration control (unless the right to reside is lost following a decision by an immigration officer in accordance with regulation 13(3) of the EEA Regulations).
- viii) However, regulations 4(1)(b)(ii) and (c) of the Eligibility Regulations provide that a person who is not subject to immigration control is not eligible for an allocation of accommodation if: his or her only right to reside in the UK is an initial right to reside for a period not exceeding 3 months under regulation 13 of the EEA Regulations, or his or her only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area) is a right equivalent to the right mentioned in (i) above which is derived from the EU Treaty

### **Rights of residence for ‘qualified persons’**

- ix) Regulation 14 of the EEA Regulations provides that ‘qualified persons’ have the right to reside in the UK so long as they remain a qualified person. Under regulation 6 of the EEA Regulations, ‘qualified person’ means:
- a) a jobseeker
  - b) a worker
  - c) a self-employed person
  - d) a self-sufficient person
  - e) a student

### **Jobseekers**

- x) For the purposes of regulation 6(1)(a) of the EEA Regulations, ‘jobseeker’ means a person who enters the UK in order to seek employment and can provide evidence that he or she is seeking employment and has a genuine chance of being employed.
- xi) Nationals of Bulgaria and Romania who need to be authorised to work do not have a right to reside in the UK as a jobseeker<sup>54</sup>. However, they may have a right to reside by virtue of another status, eg as a self-sufficient person.
- xii) Although a person who is a jobseeker is not subject to immigration control, regulation 4 of the Eligibility Regulations provides that a person is not eligible for an allocation of accommodation if:
- his or her only right to reside in the UK is derived from his or her status as a jobseeker or the family member of a jobseeker, or
  - his or her only right to reside in the Channel Islands, the Common Travel Area is a right equivalent to the right mentioned in (i) above which is derived from the Treaty establishing the European Community

### **Workers**

- xiii) In order to be a worker for the purposes of the EEA Regulations, a person must be employed. That is to say, he or she is obliged to provide services for another person in return for monetary reward and is subject to the control of that other person as regards the way in which the work is to be done.
- xiv) Activity as an employed person may include part time work, seasonal work and cross-border work (ie where a worker is established in another Member State and travels to work in the UK). However, case law provides that the employment must be effective and genuine economic activity, and not on such a small scale as to be regarded as purely marginal and ancillary.

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<sup>54</sup> Regulation 6(2) of the Accession (Immigration and Worker Authorisation) Regulations 2006 (SI 2006/3317).

xv) Provided the employment is effective and genuine economic activity, the fact that a person's level of remuneration may be below the level of subsistence or below the national minimum wage, or the fact that a person may be receiving financial assistance from public benefits, would not exclude that person from being a 'worker'.

xvi) A person who is a worker is not subject to immigration control, and is eligible for an allocation of accommodation whether or not he or she is habitually resident in the Common Travel Area.

### **Retention of worker status**

xvii) A person who is no longer working does not cease to be treated as a 'worker' for the purpose of regulation 6(1)(b) of the EEA Regulations, if he or she:

(a) is temporarily unable to work as the result of an illness or accident; or

(b) is recorded as involuntarily unemployed after having been employed in the UK, provided that he or she has registered as a jobseeker with the relevant employment office, and:

(i) was employed for one year or more before becoming unemployed, or

(ii) has been unemployed for no more than 6 months, or

(iii) can provide evidence that he or she is seeking employment in the UK and has a genuine chance of being engaged; or

(c) is involuntarily unemployed and has embarked on vocational training; or

(d) has voluntarily ceased working and embarked on vocational training that is related to his or her previous employment.

### **A2 state workers requiring authorisation who are treated as workers**

xviii) By virtue of the Accession (Immigration and Worker Authorisation) Regulations 2006 ('the Accession Regulations'), nationals of the A2 states (with certain exceptions) must obtain authorisation to work in the UK until they have accrued a period of 12 months continuous employment.

xix) An A2 national requiring authorisation is only treated as a worker if he or she is actually working and:

(i) holds an accession worker authorisation document, and

(ii) is working in accordance with the conditions set out in that document (regulation 9(1) of the Accession Regulations)

xx) We may need to contact the employer named in the authorisation document, to confirm that the applicant continues to be employed.

### **Self-employed persons**

xxi) 'Self-employed person' means a person who establishes himself in the UK in order to pursue activity as a self-employed person in accordance with Article 49 of the Treaty on the Functioning of the European Union.

xxii) A self-employed person should be able to confirm that he or she is pursuing activity as a self-employed person by providing documents relating to their business. A person who is no longer in self-employment does not cease to be treated as a self-employed person for the purposes of regulation 6(1)(c) of the EEA regulations, if he or she is temporarily unable to pursue his or her activity as a self-employed person as the result of an illness or accident.

xxiii) A2 nationals are not required to be authorised in order to establish themselves in the UK as a self-employed person.

xxiv) A person who is a self-employed is not subject to immigration control and is eligible for an allocation of accommodation whether or not he or she is habitually resident in the Common Travel Area.

### **Self-sufficient persons**

xxv) Regulation 4(1)(c) of the EEA regulations defines 'self-sufficient person' as a person who has:

- (i) sufficient resources not to become a burden on the social assistance system of the UK during his or her period of residence, and
- (ii) comprehensive sickness insurance cover in the UK

xxvi) By regulation 4(4) of the EEA Regulations, the resources of a person who is a self-sufficient person (or a student – see below) and, where applicable, any family members, are to be regarded as sufficient if (a) they exceed the maximum level of resources which a UK national and his or her family members may possess if he or she is to become eligible for social assistance under the UK benefit system or, if (a) does not apply, (b) taking into account the personal situation of the person concerned and, where applicable, any family members, it appears to the council that the resources of the person or persons concerned should be regarded as sufficient.

xxvii) Where an EEA national applies for an allocation of accommodation as a self-sufficient person and does not appear to meet the conditions of regulation 4(1)(c) of the EEA regulations, the housing authority will need to consider whether he or she may have some other right to reside in the UK.

xxviii) Where the applicant does not meet the conditions of regulation 4(1)(c) but has previously done so during his or her residence in the UK, the case will be referred to the Home Office for clarification of their status.

xxix) A person who is a self-sufficient person is not subject to immigration control, but must be habitually resident in the Common Travel Area to be eligible for an allocation of accommodation.

### **Students**

xxx) Regulation 4(1)(d) of the EEA regulations defines 'student' as a person who :

- a. is enrolled at a private or public establishment included on the Register of Education and Training Providers<sup>55</sup>, or is financed from public funds, for the principal purpose of following a course of study, including vocational training, and
- b. has comprehensive sickness insurance cover in the UK, and
- c. assures the Secretary of State, by means of a declaration or such equivalent means as the person may choose, that he or she (and if applicable his or her family members) has sufficient resources not to become a burden on the social assistance system of the UK during his or her period of residence.

xxxi) A person who is a student is not subject to immigration control but must be habitually resident in the Common Travel Area to be eligible for an allocation of accommodation

### **Permanent right of residence**

xxxii) Regulation 15 of the EEA Regulations provides that the following persons shall acquire the right to reside in the UK permanently :

- a. an EEA national who has resided in the UK in accordance with the EEA regulations for a continuous period of 5 years

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<sup>55</sup> Now known as the register of sponsors and held by the UKBA

- b. a non-EEA national who is a family member of an EEA national and who has resided in the UK with the EEA national in accordance with the EEA regulations for a continuous period of 5 years
- c. a worker or self-employed person who has ceased activity (see regulation 5 of the EEA Regulations for the definition of worker or self-employed person who has ceased activity)
- d. the family member of a worker or self-employed person who has ceased activity
- e. a person who was the family member of a worker or self-employed person who has died, where the family member resided with the worker or self-employed person immediately before the death and the worker or self-employed person had resided continuously in the UK for at least 2 years before the death (or the death was the result of an accident at work or an occupational disease)
- f. a person who has resided in the UK in accordance with the EEA regulations for a continuous period of 5 years, and at the end of that period was a family member who has retained the right of residence (see regulation 10 of the EEA Regulations for the definition of a family member who has retained the right of residence).

Once acquired, the right of permanent residence can be lost through absence from the UK for a period exceeding two consecutive years.

xxxiii) A person with a right to reside permanently in the UK arising from (c), (d) or (e) above is eligible for an allocation of accommodation whether or not he or she is habitually resident in the Common Travel Area. Persons with a permanent right to reside by virtue of (a), (b), or (f) must be habitually resident to be eligible.

## **Rights of residence for certain family members**

### **The right to reside**

xxxiv) Regulation 14 of the EEA Regulations provides that the following family members are entitled to reside in the UK:

- (i) a family member of a qualified person residing in the UK
- (ii) a family member of an EEA national with a permanent right of residence under regulation 15
- (iii) a family member who has retained the right of residence (see regulation 10 of the EEA Regulations for the definition)

xxxv) A person who has a right to reside in the UK as the family member of an EEA national under the EEA Regulations will not be subject to immigration control. The eligibility of such a person for an allocation of accommodation should therefore be considered in accordance with regulation 4 of the Eligibility Regulations.

xxxvi) When considering the eligibility of a family member, we will consider whether the person has acquired a right to reside in their own right, for example a permanent right to reside under regulation 15 of the EEA Regulations.

### **Who is a 'family member'?**

xxxvii) Regulation 7 of the EEA regulations provides that the following persons are treated as the family members of another person (with certain exceptions for students – see below):

- (a) the spouse of the person
- (b) the civil partner of the person
- (c) a direct descendant of the person, or of the person's spouse or civil partner, who is under the age of 21

- (d) a direct descendant of the person, or of the person's spouse or civil partner, who is over 21 and dependent on the person, or the spouse or civil partner
- (e) an ascendant relative of the person, or of the person's spouse or civil partner, who is dependent on the person or the spouse or civil partner
- (f) a person who is an extended family member and is treated as a family member by virtue of regulation 7(3) of the EEA regulations (see below)

## **Family members of students**

xxxviii) Regulation 7(2) of the EEA regulations provides that a person who falls within (c), (d) or (e) above shall not be treated as a family member of a student residing in the UK after the period of 3 months beginning on the date the student is admitted to the UK unless:

- (i) in the case of paragraph 37(c) and (d) above, the person is the dependant child of the student, or of the spouse or civil partner, or
- (ii) the student is also a qualified person (for the purposes of regulation 6(1) of the EEA regulations) other than as a student

## **Extended family members**

xxxix) Broadly, extended family members will be persons who:

- (a) do not fall within any of the categories (a) to (e) in paragraph 37 above, and
- (b) are either a relative of an EEA national (or of the EEA national's spouse or civil partner) or the partner of an EEA national, and
- (c) have been issued with an EEA family permit, a registration certificate or a residence card which is valid and has not been revoked

## **Family members' eligibility for an allocation of accommodation**

### **Relationship with other rights to reside**

xxxx) This section concerns the eligibility of an applicant for an allocation of accommodation whose right to reside is derived from his or her status as the family member of an EEA national with a right to reside. In some cases, a family member will have acquired a right to reside in his or her own right. In particular, a person who arrived in the UK as the family member of an EEA national may have subsequently acquired a permanent right of residence under regulation 15 of the EEA Regulations, as outlined in paragraph 32 (a) – (f) above. The eligibility for an allocation of accommodation of those with a permanent right of residence is discussed at paragraphs xxxii) and xxxiii)

### **Family members who must be habitually resident**

xxxxi) For family members with a right to reside under regulation 14 of the EEA Regulations, the following categories of persons must be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland in order to be eligible for an allocation of accommodation:

- a) a person whose right to reside derives from their status as a family member of an EEA national who is a self-sufficient person for the purposes of regulation 6(1)(d) of the EEA regulations
- b) a person whose right to reside derives from their status as a family member of an EEA national who is a student for the purposes of regulation 6(1)(e) of the EEA regulations
- c) a person whose right to reside is dependent on their status as a family member of an EEA national with a permanent right to reside a person whose right to reside is dependent on their status as a family member who has retained the right of residence

### **Family members who are exempt from the habitual residence requirement**

xxxii) A person with a right to reside under regulation 14 as a family member of an EEA national who is a worker or a self-employed person for the purposes of regulation 6(1) of the EEA regulations is exempted from the requirement to be habitually resident by regulation 4(2)(d) of the Eligibility Regulations. However, we note that an extended family member (see above) is not counted as a

family member for the purposes of regulation 4(2)(d) of the Eligibility Regulations (see regulation 2(3) of the Eligibility Regulations).

### **Family members of UK nationals exercising rights under the EU Treaty**

xxxiii) There are some limited cases in which the non-EEA family member of a UK national may have a right to reside under EU law. Under regulation 9 of the EEA Regulations, the family member of a UK national should be treated as an EEA family member where the following conditions are met:

- (i) the UK national is residing in an EEA State as a worker or self-employed person, or was so residing before returning to the UK, and
- (ii) if the family member of the UK national is his spouse or civil partner, the parties are living together in the EEA State, or had entered into a marriage or civil partnership and were living together in that State before the UK national returned to the UK

xxxiv) Where the family member of a UK national is to be treated as an EEA family member by virtue of regulation 9 of the EEA Regulations, that person is not subject to immigration control, and his or her eligibility for an allocation of accommodation should therefore be determined in accordance with regulation 4 of the Eligibility Regulations.

## **Annex 3: Statutory Overcrowding**

### **The statutory overcrowding standard**

There are two standards in Part X of the 1985 Housing Act that are used to assess whether a home is 'statutorily overcrowded.' If either or both of these standards are breached a dwelling will be statutorily overcrowded.

#### **1.1 The room standard**

Section 325 of the Housing Act 1985 provides that there is overcrowding wherever there are so many people in a house that any two or more of those persons, being ten or more years old, and of opposite sexes, not being persons living together as husband and wife, have to sleep in the same room. For these purposes children under ten may be disregarded and a room means any room normally used as either a bedroom or a living room. A kitchen can be considered to be a living room provided it is big enough to accommodate a bed. When interpreting this definition a local authority looks at how the sleeping arrangements within the premises could be organised rather than how they are actually organised

Thus, a couple, with two children of opposite sexes and aged ten years old or more, with two living rooms (eg bedrooms), are not statutorily overcrowded because the couple could occupy separate rooms, with one each of the children (of the appropriate sex). There is no limit on the number of people of the same sex who can live in the same room although there may be a contravention of the space standard (see below).

#### **1.2 The space standard**

This standard works by the calculating the permitted number of people for a dwelling in one of two ways. The lower number thus calculated is the permitted number for the dwelling. One test is based on the number of living rooms in the dwelling (disregarding rooms of less than 50 square feet):

- One room = two persons
- Two rooms = three persons
- Three rooms = five persons
- Four rooms = seven and a half persons

- Five rooms or more = ten persons plus two for each room in excess of five rooms.

A child below the age of one does not count and a child between the age of one and ten counts as a half person.

The other test is based on floor areas of each room size:

- less than 50 square feet = no-one
- 50 to less than 70 square feet = half a person
- 70 to less than 90 square feet = one person
- 90 to less than 110 square feet = one and a half persons
- 110 square feet or larger = two persons.