

**ROTHERHAM BOROUGH COUNCIL – REPORT TO CABINET MEMBER FOR SAFE  
AND ATTRACTIVE NEIGHBOURHOODS**

<b>1. Meeting</b>	<b>Cabinet Member for Safe and Attractive Neighbourhoods</b>
<b>2. Date</b>	<b>19 March 2012</b>
<b>3. Title</b>	<b>Rotherham Metropolitan Borough Council's Response to Government Consultations; Allocation of Accommodation and Social Housing Fraud</b>
<b>4. Directorate</b>	<b>Neighbourhoods and Adult Services</b>

## **5. Summary**

The Localism Bill, 2011, has afforded local authority landlords greater flexibility around their allocation policy. This report offers a brief summary of two government consultations;

1. Allocation of Accommodation, and
2. Social Housing Fraud

Rotherham Metropolitan Borough Council's (RMBC) draft responses to these consultations can be found at appendices 1 and 2.

## **6. Recommendations**

- Note draft consultation responses (appendix 1 and 2) and identify any changes required.
- Agree that the responses are submitted to Overview and Scrutiny Management Board on 23 March 2012.
- Agree that subject to further amendments, the response will be submitted to CLG by 30 March 2012 (Allocation of Accommodation Consultation) and 4 April 2012 (Social Housing Fraud Consultation).
- Note that a further report will be prepared to when RMBC's Allocations Policy is revised, once the changes have been confirmed by Government.

## **7. Proposals and details**

### **7.1 Background**

#### **ALLOCATION OF ACCOMMODATION**

<http://www.communities.gov.uk/publications/housing/allocationofaccommodation>

The government consultation, Allocation of accommodation: guidance for local housing authorities in England, commenced on 5 January 2012 and will close on 30 March 2012.

The consultation contains 15 questions; a summary of the proposed changes follow and the questions and draft responses are contained in appendix 1.

#### **Existing Tenants**

The majority of the proposals contained in the consultation document apply to new tenancies only, but some proposals could affect existing tenants who are allocated a property via transfer. The consultation document suggests that;

- local authority landlords should consider giving existing tenants who under occupy priority for a transfer - RMBC's allocation policy already supports this
- local authority landlords may wish to consider whether there are other provisions in their transfer policy which make it more difficult for under-occupiers to move (eg, minor rent arrears)

#### **Eligibility**

- Local authorities are advised to consider an applicant's eligibility at the time of the initial application and again when considering making an allocation
- Changes regarding eligibility of persons from abroad
- Local authorities should not disqualify Armed Forces Personnel (Former AFP if discharged within 5 years) on residency grounds (payments as compensation for injury should not be taken into account under Financial resources)

#### **Allocations**

- Homelessness strategy, Tenancy Strategy and Allocations Strategy all should align with each other and the overarching Housing Strategy
- Retain existing reasonable preference categories (the Housing Act 1996 defines these categories through homelessness, overcrowding, medical or hardship grounds) but the following could influence the granting of additional/reasonable preference;
  - Financial resources (eg, less priority to owner occupiers)
  - Behaviour (both good and bad)
  - Local connection
- Local authorities can look outside reasonable preference categories to let hard to let stock

- Local authorities to consider households in work, seeking work or contributing to their communities through voluntary work, etc, even if they sit outside the reasonable preference categories
- Consider needs of prospective foster carers/adopters who may require an extra bedroom – again, this is already taken into account in RMBC’s allocations policy

### **Flexible Tenancies**

The consultation suggests local authorities consider how best to use flexible tenancies for those in low paid work and to incentivise taking up employment opportunities.

### **SOCIAL HOUSING FRAUD**

<http://www.communities.gov.uk/publications/housing/socialhousingfraud>

The government consultation, Social housing fraud, commenced on 11 January 2012 and will close on 4 April 2012.

There are 13 questions on page 23 of the consultation document. RMBC’s draft response can be seen at appendix 2. A brief summary of this consultation follows;

### **Current Situation**

- The national cost of tenancy fraud has been estimated at £900m and involve some 50,000 properties
- Current powers for taking action against fraud are civil not criminal
- Recovering costs and damages when evicting and awarding damages is weak under civil enforcement
- Fraudsters can claim Right to Buy, at significant discount, if left undetected— although if discovered this is a criminal, not civil, offence

### **Current Penalties**

- Tenancy fraud is mostly a civil matter so criminal liability, such as fines/imprisonment, are not available
- Current Criminal Fraud Act is weak and not appropriate to Social housing fraud – not seen as a deterrent and practical barriers for using this act
- Current legislation allows for fraudster intention to return over repossession

### **Landlords’ method of detection**

- Best methods include dedicated staff, tenancy audits, data matching and whistle blowing by neighbours
- Data sharing powers as authorities are not compelled to supply personal data – existing processes create unnecessary barriers to detecting fraud

### **Strengthening landlords’ powers to tackle tenancy fraud**

- More powers to compel data sharing from utility companies, etc (same powers used to investigate housing benefit fraud)

- The lack of legal powers is contributing to the estimated high number of illegal lettings
- Government considering criminal enforcement via Crown Court who can impose prison sentences/fines
- Offer incentives for landlords to make recovery of damages and courts can order money be reimbursed to the social landlord
- Add tenancy fraud to the list of criminal prosecutions that local councils can use (or bring on behalf registered providers)
- Better clarification on law on the intention to return - currently too many gaps
- Changes to assured tenancy brought into line with secure tenancies meaning that status cannot be regained once the whole property has been sublet

## **8. Finance**

There are no immediate financial implications for the above, however, if Government's proposals around restorative payments become a reality, there may be an opportunity for local authority landlords to not only make recoup the cost of recovery and damages but the courts could order monies gained through tenancy fraud, by those prosecuted, be reimbursed to the social landlord.

## **9. Risks and uncertainties**

Rotherham is currently working with a private sector company to do a sweep of our housing database and compare information of suspected fraudsters against information held with tenants' mobile phone contractors, other creditors and utility suppliers to determine the likelihood of tenancy fraud.

Once this work is completed Rotherham will have a much better idea of the extent of tenancy fraud occurring in its housing stock and the number of occasions we are likely to pursue possession through the courts.

## **10. Background papers and consultation**

CLG, 2012, Allocation of accommodation: guidance for local housing authorities in England - consultation

CLG, 2012, Social housing fraud - consultation

## **11. Contact details**

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## Appendix 1

### **Strategic Housing and Investment Service Neighbourhood & Adult Services**

Riverside House, Main Street

Rotherham S60 1AE

Tel: (01709) 255047 Fax: (01709) 823154

Email the Council for **free** @ your local library!

Our Ref: Wendy Foster

Your Ref:

Date: ?? March 2012

Dear Sirs

### **Consultation Response: Allocation of accommodation: guidance for local housing authorities in England**

Rotherham Metropolitan Borough Council's (RMBC) Housing Allocation Policy is subject to a full review to ensure that it complies with, and takes advantage of, the possible changes to allocations resulting from the Localism Bill, 2011. The review will involve residents, stakeholders and partners to ensure changes meet the needs, demands and aspirations of local people.

Please find below Rotherham Metropolitan Borough Council's Consultation Response:

**1. Does your allocation scheme/transfer policy already provide for social tenants who are under-occupying to be given priority?**

Rotherham's allocation policy awards the highest level of priority status to transfer applicants who wish to downsize. A new post was established in 2011 to identify, help and support tenants, who are under-occupying, to move. The support includes helping vulnerable people with all aspects of the move.

**2. Do you intend to revise your allocation scheme in order to make it easier for under-occupying social tenants to downsize to more appropriately sized accommodation?**

Rotherham already provides for this in its existing policy and would not seek to amend it.

**3. If so, what changes to your allocation scheme will you be considering – to make it easier for under-occupying tenants to downsize?**

We believe that our existing policy is appropriate to local circumstances and have no immediate plans to change the existing policy in relation under-occupying.

- 4. Do you agree that members of the Armed Forces and former Service personnel should not be disqualified on residency grounds? Is 5 years from the date of discharge an appropriate time limit for this restriction? If not, what would be a more appropriate period?**

Rotherham Council has in place an armed forces covenant, which gives additional consideration to the needs of ex- service personnel. Consequently, we agree that members of the Armed Forces and former Service Personnel should not be disqualified on residency grounds. These provisions recognise the position of members of the armed forces whose employment requires them to be mobile/resident abroad and who are likely to be particularly disadvantaged by residency requirements.

- 5. Does the draft guidance provide sufficient clarity on how to implement the new power for housing authorities to set their own allocations qualification criteria? If not, in what areas would more guidance be useful?**

There is very little detail in the Code of Guidance around what can and cannot be included in the qualification policies; it would appear that local authority landlords have the flexibility to include a range of qualification criteria. The sector has an appetite to include rent arrears and behavioural history as qualification criteria, consequently excluding significant numbers of people in housing need from social housing (including statutory homeless households who are owed a duty). Households who do not qualify will have to consider accommodation in the private rented sector and there are concerns that some private sector landlords may not let their properties to such potential tenants.

Households that are placed in temporary accommodation, and have been owed a duty under homelessness legislation, yet do not qualify for the housing register, will also have no option but to consider and accept an offer from the private rented sector, however, this could result in fewer 'blockages' in temporary accommodation.

- 6. Do you agree that the bedroom standard is an appropriate measure of overcrowding for the purpose of according reasonable preference? If not, what measure do you consider would be more appropriate?**

Yes, we agree that the bedroom standard definition of overcrowding clearly sets out whether the number of people sleeping in the dwelling contravenes the 'bedroom standard'.

- 7. Should this guidance provide advice on how to define 'overcrowding' for the purpose of according additional preference? If so, would an appropriate measure be two bedrooms or more short of the bedroom standard?**

Clarity is always helpful to avoid inconsistency across providers and two bedrooms or more is an excellent starting point.

- 8. How does your allocation scheme currently define ‘overcrowding’ for allocation purposes? Does it, for example, use the bedroom standard, the statutory overcrowding standards in Part 10 of the Housing Act 1985, or another definition? If the last of these, please provide brief details.**

Rotherham’s allocation policy defines overcrowding by;

- a) the standard specified in section 325, Housing Act 1985 (the room standard), or
- b) the standard specified in section 326 (the space standard)

If the assessment determines that the household is not statutory overcrowded but does not meet the bedroom space standard as defined in appendix 1 of the LACORS’ regulations (which is based on ages and family composition) the housing application will be placed in the general plus group and dated from the date notification.

- 9. The Government proposes to regulate to require housing authorities to frame their allocation scheme to provide for former Service personnel with urgent housing needs to be given additional preference for social housing. Do you agree with this proposal?**

Yes, we agree with this proposal. Rotherham has signed a Rotherham Armed Forces Community Covenant where local members of the armed forces, both past and present, together with their families, receive a public promise of support from the people of Rotherham. The Armed Forces Covenant published by Government last June, supports and complements the Rotherham Community Covenant.

- 10. Does your allocation scheme already make use of the flexibilities within the allocation legislation to provide for those who have served in the Armed Forces and be given greater priority for social housing? If so, how does your scheme provide for this?**

Rotherham’s allocation policy already awards the highest level of priority to former service personnel on discharge;

- applicants remain in the general group
- when notification of discharge is received, and the applicant becomes in housing need, their application is amended to priority plus status.

- 11. If not, do you intend to take advantage of the flexibilities in the allocation legislation to provide for former members of the Armed Forces to be given greater priority for social housing? If so, what changes might you be considering?**

Rotherham had already used the flexibilities in allocation legislation to provide for Members/Former Members of the Armed Forces.

- 12. Does your allocation scheme already provide for some priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, what changes might you be considering?**

Rotherham had local lettings policies in some areas of the Borough that award priority status to applicants in employment or training.

Rotherham has included community contribution in their consultation programme around the use of wider allocations criteria with the intention of increasing priority for some working households. The definition of a working household will need to be clarified (and evidence provided by the tenant).

**13. If not, do you intend to revise your allocation scheme to provide for more priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, what changes might you be considering?**

Other possible community contribution criterion for consideration includes;

- Positive tenancy history and behaviour
- Pre-tenancy qualification (formal NVQ or attendance of a good tenant course with an interview at the end)
- Evidence of community contribution through voluntary work

**14. Are there other ways in which housing authorities can frame their allocation scheme to meet the needs of prospective adopters and foster carers?**

Rotherham's allocation policy already includes prospective adopters and foster carers in housing need in the highest level of priority status.

**15. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to housing authorities when framing their allocation scheme?**

The draft guidance could include further examples of applicants to be awarded/excluded from reasonable preference and community preference categories.

I trust this information is helpful; should you require further assistance please do not hesitate to contact this office.

Yours faithfully

Councillor R McNeely  
Cabinet Member for Safe and Attractive Neighbourhoods

## Appendix 2

### **Strategic Housing and Investment Service Neighbourhood & Adult Services**

Riverside House, Main Street

Rotherham S60 1AE

Tel: (01709) 255047 Fax: (01709) 823154

Email the Council for **free** @ your local library!

Our Ref: Wendy Foster

Your Ref:

Date: ?? March 2012

Dear Sirs

### **Consultation Response: Social Housing Fraud**

Rotherham Metropolitan Borough Council (RMBC) has a stock of some 21,000 properties and feels its housing stock is an integral part of not only the Borough's housing market but the Borough's economy. There are currently more than 29,000 housing applicants on our register, illustrating the high demand for social housing in Rotherham.

Measures which support local authorities and other housing providers in tackling tenancy fraud, and ensuring fair access to valuable housing stock, are welcome.

Please find below Rotherham Metropolitan Borough Council's Consultation Response:

#### **Q1 Do you agree that a new criminal offence should be created?**

The proposal to include housing fraud as a criminal offence sends a strong message regarding the seriousness of committing tenancy fraud. On balance, there are few incentives to allocate resources to pursue possession through civil court; similarly there is little deterrent for those seeking to profit from subletting or other forms of tenancy fraud.

#### **Q2 What would you consider to be a suitable maximum penalty for Crown court conviction for tenancy fraud?**

Unlawful sub-letting and occupation of social housing deprives families from accessing much sought after affordable housing and can lead to a financial loss to the public purse. It is unacceptable for tenants to gain financially through tenancy fraud therefore we support the proposed £50,000 fine/2 years maximum imprisonment.

#### **Q3 Do you agree with our core proposal to give a broad definition to tenancy fraud? Which form should be included?**

The broader definition of tenancy fraud should include;

- Giving false information in order to obtain an offer of housing
- Sub-letting the whole home
- Remaining in a property after the named tenant has left or died (in some cases there is a right to succeed but this only applies where certain conditions are met and the landlord has been made aware of the named tenant's departure)
- Gaining financially or otherwise from retaining a tenancy without occupying the property

**Q4 Do you agree that restitution payments should be introduced and if so should they be available in both civil and the criminal court?**

Profits gained through tenancy fraud should be available to landlords who seek possession in order to cover costs incurred. With the potential increase in financial gain through incentivised Right to Buy, local authorities should not carry the financial burden of identifying and tackling tenancy fraud just as fraudsters should not be allowed to keep hold of monies gained through tenancy fraud.

Restitution payments may be viewed as a disincentive to potential fraudsters and Rotherham would like to see these payments available through both civil and criminal court.

**Q5 Should local authorities have the power to prosecute for tenancy fraud?**

Yes, local authorities should have the power to prosecute for tenancy fraud; this would align with power to prosecute against housing benefit fraud.

**Q6 Do you agree that a mandatory gateway should be introduced ?**

A mandatory gateway would offer another tool to local authority landlords to help build a case against tenancy fraud and Rotherham would welcome this.

**Q7 Do you agree that a mandatory gateway should cover banks building societies and utility companies? Should other data holders be included?**

The address held by utility suppliers and financial organisations usually offer a strong indication of an individual's current abode. Other data holders could include letting agents and the Benefits Agency.

**Q8 How the intention to return should be amended? What would be an appropriate period of time for which a tenant could be absent? What would constitute a voluntary absence?**

Further guidance regarding the length of time a tenant can be absent from their property would be welcome. Residents' absences through hospital treatment, residential admittance, rehabilitation and incarceration are understood but ambiguity around intention to return can lead to tenanted properties being unoccupied for very long periods of time. In light of the huge demand Rotherham has for its council housing, this is unacceptable.

**Q9 Should assured tenancies be brought into line with secure tenancies, meaning that status cannot be regained once the whole of the property has been sublet?**

Yes. This may also act as a disincentive and bring parity across both tenancy types.

**Q10 As a social landlord, which factors would you consider when deciding whether to pursue a case using the criminal rather than civil route, e.g. strength of evidence, length of time the home has been unlawfully occupied, amount of money involved history of the tenant , etc? How often do think you would pursue cases using the criminal law?**

The decision to seek possession would be based on the strength of the evidence gathered, the chance of securing possession, the resources needed to gain possession and the individual circumstances of the case, including length of time and monetary gain.

Rotherham's experience of tenancy fraud is fairly limited and the couple of cases encountered have been swiftly resolved through the tenant quitting the property prior to RMBC beginning proceedings. It is difficult to gauge the extent to which RMBC would pursue cases using criminal law.

**Q11 As a social landlord, how would the creation of a new criminal offence influence the likelihood of you taking cases of tenancy fraud to court rather than simply accepting a tenant voluntary termination of their tenancy**

The decision to pursue tenancy fraud is likely to depend on the extent of the fraud and the likelihood of success, recovering costs and seizing profits from the convicted person(s).

**Q12 As a social landlord how many requests for data for matters related to tenancy fraud would you envisage submitting per year and to what type of organisation would you expect the majority of your requests be submitted**

Rotherham would be looking at a relatively small number of requests as we currently experience low numbers of tenancy fraud. We would look primarily at receiving information from utility companies, banks and government departments.

Rotherham is currently working with a private sector company to do a sweep of our housing database and compare information of suspected fraudsters against information held with tenants' mobile phone contractors, other creditors and utility suppliers to determine the likelihood of tenancy fraud.

Once this work is completed Rotherham will have a much better idea of the extent of tenancy fraud occurring in its housing stock and the number of occasions we are likely to submit requests through the gateway.

**Q13 As a data holder, what do you believe would be the unit costs of processing a data request**

We currently charge a unit price of £25 for a tenancy reference, for example in the Right to Buy process.

I trust this information is helpful; should you require further assistance please do not hesitate to contact this office.

Yours faithfully

Councillor R McNeely  
Cabinet Member for Safe and Attractive Neighbourhoods