

WANDSWORTH BOROUGH COUNCIL

HOUSING OVERVIEW AND SCRUTINY COMMITTEE – 23RD JANUARY 2013

EXECUTIVE – 28TH JANUARY 2013

Report by the Director of Housing on proposals to consult on a major change to the Housing Allocation Scheme

SUMMARY

Legislative changes brought about by the Localism Act 2011 mean that the Council is no longer required to operate an 'open waiting list' and can determine who can and who cannot join the housing queues by exercising the power to specify in the Housing Allocation Scheme what classes of persons do or do not qualify for social housing in Wandsworth.

The Director of Housing is proposing that the Council should consult on proposals to significantly change and add to the qualification criteria in the Housing Allocation Scheme.

If the Executive approve consultation on the proposals and the initial equalities impact assessment, the consultation will be undertaken in accordance with the arrangements set out in this report and the results of the consultation, including any equalities issues raised, will be reported back to the April 2013 meetings of the Housing Overview and Scrutiny Committee and Executive along with the, if necessary revised as a result of consultation responses, final proposals for approval.

GLOSSARY

EIA	Equality Impact Assessment
GLA	Greater London Authority

**RECOMMENDATIONS**

1. The Housing Overview and Scrutiny Committee are recommended to support the recommendations in paragraph 3.
2. If the Housing Overview and Scrutiny Committee approve any views, comments or additional recommendations on this report these will be submitted to the Executive for consideration.
3. The Executive are recommended to authorise the Director of Housing to consult on a proposed major amendment of the qualification criteria in the Housing Allocation Scheme (attached as Appendix 1) and the Initial Equality Impact Assessment (EIA) (attached as Appendix 2) in line with the arrangements set out in paragraph 22, with the results of the consultation and final proposals being presented to the Committee and Executive in April 2013.

## ***Housing allocation scheme***

### **INTRODUCTION**

4. The Localism Act 2011 introduced wide ranging changes to housing legislation, including new powers for local housing authorities, in respect of both homelessness and allocations activity. Elsewhere on this agenda is a report (Paper No. 13-49) which sets out proposals regarding how the Council should make use of new powers granted under the homelessness legislation. This report sets out proposals regarding how the Council should exercise the new powers granted in respect of allocations.
5. As has been the case for many years, the Council is required by Section 166A(1) of the Housing Act 1996 to have a scheme (the Housing Allocation Scheme) for determining priorities and procedures to be followed in allocating housing accommodation. The Council's scheme has been amended periodically over recent years, but in relatively minor ways; whereas, this report proposes that the Council should consult on a major amendment of the scheme as set out further below. These amendments have been formulated having had due regard to the Council's Homelessness Strategy (Paper No 12-353), Tenancy Strategy (Paper No 12-350) and the current London Housing Strategy.
6. Since 2003, the Council has, due to requirements introduced by the Homelessness Act 2002, been obliged to let virtually anyone register for housing in Wandsworth, provided that they are not ineligible due to immigration status. The Localism Act 2011 has amended Part 6 of the Housing Act 1996 to: -
  - (a) restore to local housing authorities the power that they enjoyed between 1997 and 2003 to exclude from their housing registers those classes of applicant they chose to designate as non-qualifying persons (for example, applicants in rent arrears or owing other debts to the authority, applicants who had previously been evicted for anti-social behaviour, out of borough applicants or those with no assessed housing need); and
  - (b) grant local housing authorities a new power to positively prescribe, by class, the only applicants entitled to be allocated social housing under their allocation schemes.
7. In other words, the Council is no longer required to operate an 'open waiting list' and can determine who can and who cannot join the housing queues by exercising the power to specify in the Housing Allocation Scheme what classes of persons do or do not qualify for social housing in Wandsworth. For the sake of clarity, being a qualifying persona relates to whether an applicant for housing is eligible to be considered for an offer of accommodation, not to whether they qualify for an actual offer of accommodation per se. In that sense, the concept can be seen as a gateway, preliminary issue.
8. The only statutory limit on the exercise of these powers is that local housing authorities cannot use them to treat as qualifying persons those who are ineligible for social housing in England due to their immigration status. The Council is legally required to assess certain 'persons from abroad' as being ineligible for housing.
9. In addition, the Secretary of State has retained regulation-making powers to prescribe classes of person who are or are not to be treated as qualifying and criteria which cannot be used by local housing authorities to decide which classes of persons are not qualifying persons. The Secretary of State has exercised these powers to make The

Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012, which came into force on 24th August 2012. The effect of these regulations is that the Council cannot treat the following categories of applicants as not qualifying for social housing in Wandsworth on the basis that they have no local connection to the Borough: -

- (a) applicants who are serving or have served in the regular forces<sup>1</sup> within five years of the date of their application for an allocation of housing;
- (b) applicants who have recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where –
  - (i) the spouse or civil partner has served in the regular forces; and
  - (ii) their death was attributable (wholly or partly) to that service; or
- (c) applicants who are serving or have served in the reserve forces<sup>2</sup> and who are suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service.

10. As reported in Paper No. 12-682, the Housing Allocation Scheme was previously drafted to enable the Council to exercise the power that was available under Section 160A(7) of the Housing Act 1996, before it was amended by Section 146 of the Localism Act 2011 to apply only to Wales, to exclude as ineligible an applicant where satisfied that: -

- (a) he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority (as defined by Section 160A(8)); and
- (b) in the circumstances at the time his application is considered, he is unsuitable to be a tenant of that authority by reason of that behaviour.

11. This formulation was somewhat strange, as it required the Council to, when considering whether to disbar somebody on that basis: -

- (a) imagine that they were already a secure tenant of the Council;
- (b) imagine that their established past unacceptable behaviour had taken place within that imaginary tenancy;
- (c) imagine that the Council as landlord was seeking possession of that tenancy; and
- (d) further imagine, and to some extent second guess, whether a judge hearing the application would have been satisfied that the behaviour was serious enough to justify the making of an outright (as opposed to a suspended) Possession Order in favour of the Council.

12. In view of this, it will be appreciated that the legislation set out a very high test of ineligibility for allocation on grounds of unacceptable behaviour and consequently the

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<sup>1</sup> 'Regular Forces' has the meaning given by section 374 of the Armed Forces Act 2006(b), that is, the Royal Navy, the Royal Marines, the regular army or the Royal Air Force.

<sup>2</sup> 'Reserve Forces' has the meaning given by section 374 of the Armed Forces Act 2006(b), that is, 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.

## ***Housing allocation scheme***

power to assess applicants as being ineligible on the grounds of unacceptable behaviour was almost never used. In fact, in Wandsworth, it has only been used on two or three occasions in the last few years including the case of the Queen v Wandsworth Council ex parte Dixon, which is the only reported judgement on this area and which is attached for information at Appendix 3 to this report.

13. Following the removal of this power the Executive authorised the amendment of the Housing Allocation Scheme, as set out in Appendix 4 to Paper No. 12-682, to enable the Council to exercise the new power granted by Section 160ZA(7) of the Housing Act 1996, which has been inserted by Section 146 of the Localism Act 2011, to treat such persons as non-qualifying persons for the allocation of housing accommodation.

### **PROPOSAL TO CONSULT ON MAJOR CHANGES TO THE QUALIFICATION CRITERIA SET OUT IN THE HOUSING ALLOCATION SCHEME**

14. The Director of Housing is now proposing that the Council should consult on proposals to make further use of the new power to specify who can and who cannot join the Council's housing queues for social rented housing by consulting on proposals to significantly change and add to the qualification criteria in the Housing Allocation Scheme as set out in Appendix 1 to this report.
15. As set out above, for the sake of clarity, being a qualifying person relates to whether an applicant for housing is able to apply for consideration for an offer of accommodation, not to whether they qualify for an actual offer of accommodation per se. In that sense, the concept can be seen as a gateway, preliminary issue.
16. In summary, the main proposals set out in Appendix 1 to this report are that: -
  - (a) to qualify for social housing in Wandsworth, applicants must be eligible for social housing (as determined by law; that is, not ineligible due to immigration status) and, with certain limited exceptions (including exceptions that ensure compliance with the Allocation of Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012): -
    - (i) be at least 18 years old;
    - (ii) have a household income that is no greater than the household income threshold set by the Greater London Authority (GLA) for the 'First Steps to homeownership in London' scheme (currently £64,300 for applicants requiring one or two bedroom homes and £77,200 for applicants requiring properties with three or more bedrooms); and
    - (iii) live in Wandsworth and have lived in throughout the whole year immediately preceding the date they make their application for housing;
  - (b) applicants who meet the criteria set out above may, nevertheless, not qualify for social housing in Wandsworth on grounds of: -
    - (i) behaviour - applicants will not qualify for social housing in Wandsworth if the Council is satisfied that they: have obtained or attempted to obtain housing or other housing related services/welfare benefits/public funds by making a false or misleading statement or withholding information, or encouraging someone else to do so on their behalf; and/or became

intentionally homeless (as defined in the Housing Act 1996 (as amended) Section 191) from their last home; and/or are unlikely to satisfactorily manage the tenancy and/or pay their rent;

- (ii) home ownership etc. - applicants will not qualify for social housing in Wandsworth if they: own or jointly own accommodation (including shared ownership accommodation) in the United Kingdom or elsewhere, unless they satisfy the Council that it would not be possible and reasonable for them to either occupy the accommodation or sell or let it in order to obtain suitable accommodation; and/or have savings that it would be possible and reasonable for them to use in order to obtain suitable accommodation;
- (iii) not making a transfer application to their landlord - applicants will not qualify for social housing in Wandsworth if they are a tenant of a registered provider of social housing and have not made a transfer application to their landlord (unless the application is for sheltered housing or extra care housing);
- (iv) refusing a suitable and reasonable offer - applicants will not qualify for social housing in Wandsworth if they have refused an offer of suitable accommodation within the last two years and there has been no material change in their circumstances so as to make the earlier offer clearly unsuitable in the light of the applicant's changed circumstances; and
- (v) having no housing need - applicants will not qualify for social housing in Wandsworth 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 Housing Allocation Scheme.

17. The most numerically significant proposed exclusion from being a qualifying person concerns people whose current address is located outside the Borough's boundaries. This cohort numbers around 18 per cent of all applications currently registered on the Council's housing queues for social rented housing. The proposal to classify out of Borough applicants (with limited exceptions including those allocated housing through the *housingmoves* pan-London mobility scheme) as not qualifying for social housing in Wandsworth is made on the basis that it will stop what is sometimes known as "forum shopping" whereby applicants will (and do) apply to multiple boroughs including those where they may have no pre-existing connections, just a general aspiration to live in that area. Anecdotally, this proposal is consistent with the position being adopted by many, if not the majority, of London boroughs and will (a) allow the Council's focus in the letting of social housing be existing residents of the Borough; and (b) allow officers within the Rehousing Section to concentrate their efforts on advising and assisting Borough residents who wish to apply for social housing within the Borough.
18. As set out above, it is proposed that to qualify for social housing in Wandsworth, applicants should (with limited exceptions) not only live in the Borough but have lived in the Borough for all of the year immediately preceding the date they make their application for housing. This proposal is made on the basis that it will ensure that social housing in Wandsworth is in most instances allocated to people with a settled presence in the Borough rather than people who have recently moved into the Borough perhaps on a transitory basis albeit that these people may have a high level of housing need.

## ***Housing allocation scheme***

19. As also set out above, it is proposed that, in most instances, applicants should not qualify for social housing in Wandsworth if they have refused an offer of suitable accommodation within the last two years and there has been no material change in their circumstances so as to make the earlier offer clearly unreasonable in the light of the applicant's changed circumstances. This proposal is made on the basis that the percentage of offers accepted at first offer now stands at around 75 to 80 per cent of all offers and it is recommended that the current penalty in the scheme for unreasonably refusing a suitable offer (suspension of the application for 12 months) should be strengthened to further incentivise applicants to accept a tenancy of a suitable property when offered and deter applicants from refusing an offer of suitable accommodation. It should be noted that this amendment will not apply to under-occupying/decant households, so to that extent is not universal across the proposed scheme.
20. As also set out above, it is proposed that, in most instances, applicants should not qualify for social housing in Wandsworth if the Council is satisfied, once the application has been assessed, that they are suitably housed; that is, they have no assessed housing need. Under the Council's Housing Allocation Scheme, applicants are assessed as being in housing need if their application either: -
- (a) meets the criteria for registration on either the homeless queue, physical disability queue, supported queue, social care queue, Council's interest queue (essential repair transfers, management transfer and under-occupation transfers) or older persons housing queue for extra care housing; or
  - (b) meets the criteria for registration on the general needs queue, Council tenant transfer queue or older persons housing queue and for points to be awarded. A separate points scheme, which is set out in the Housing Allocation Scheme, is used for applicants who apply to join the older persons housing queue and points are awarded to any applicant to the general needs queue and Council tenant transfer queue who is: living in overcrowded accommodation; and/or lacking or sharing (with people not included on their application) a living room, kitchen or bathroom; and/or homeless; and/or experiencing diagnosed ill health or disability with relevance to current or future housing needs; and/or needing to move to a particular locality within the Borough where failure to meet that need would cause hardship (to themselves or others).
21. Currently, applicants who apply to the general needs queue, Council tenant transfer queue or older persons housing queue and are assessed as having no housing need and, therefore, awarded zero points are, in accordance with the amendment to the Housing Allocation Scheme authorised by the Executive in July 2009 (Paper No. 09-522), advised that their application has attracted no points and that, for this reason, no further action will be taken on their application unless they advise the Rehousing Section of any material change in their circumstances, in which case their application will be re-assessed. These applicants are already excluded from statistics showing the number of active applications registered on the Council's housing queues for social housing. If the Housing Allocation Scheme is amended as proposed, these applicants will be clearly advised that they do not qualify for social housing in Wandsworth rather than that no further action will be taken on their application. If their circumstances were to change, they would be free to make a fresh application. With all of these proposed categories of non qualifying applicants, it should note that the amendments to the scheme set out at Appendix 1 include a proposal that the Housing Entitlement and Assessment Manager (or more senior officer) will have discretion to waive or otherwise

dis-apply the rule to treat as non qualifying in exceptional circumstances.

22. Further, it will be noted that applicants who are notified, following individual assessment, that they are not a qualifying household will have the right to seek a review of that decision, by another officer more senior who was not involved in the original, initial decision. This is in accordance with s166A(9)(c) of the Act as amended.

### **CONSULTATION ARRANGEMENTS**

23. The Executive are asked to authorise the Director of Housing to undertake a six week consultation on the proposals to amend the qualification criteria in the Housing Allocation Scheme (set out in Appendix 1 to the report) and the Initial EIA (attached as Appendix 2 to the report) that has been undertaken on these proposals with the following organisations by contacting them by email, or where this is not possible, by letter and present the results of the consultation and final proposals to the Committee and Executive for approval in April 2013:-
- (a) every private registered provider of social housing and registered social landlord with which the Council has nomination arrangements (as required by S166A(13) of the Housing Act 1996 (as amended));
  - (b) the Council's resident management organisations and residents' associations; and
  - (c) organisations on the Housing Department's consultation database.
24. The Council's participation strategy (Paper No. 07-878) states that participants will be given sufficient time to consider and discuss issues before responding and that, for Council consultations, a minimum of 12 weeks will be allowed for written consultations wherever possible. In this instance it is considered that a consultation period of six weeks affords those consulted a reasonable opportunity to consider, discuss and comment on the proposals, while also enabling the results of the consultation to be reported back to the April 2013 meetings of the Housing Overview and Scrutiny Committee and Executive.

### **CONCLUSION**

25. Should the Committee support and the Executive approve the Director of Housing's recommendation to consult on the proposed amendments to the Housing Allocation Scheme and the Initial EIA, the results of the consultation will be reported back to the April 2013 meetings of the Committee and the Executive along with the, if necessary revised as a result of consultation responses, final proposals for approval.

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The Town Hall,  
Wandsworth,  
SW18 2PU.

ROY EVANS  
Director of Housing

15th January 2013

## ***Housing allocation scheme***

### **Background Papers**

There are no background papers to this report.

All reports to Overview and Scrutiny Committees, regulatory and other committees, the Executive and the full Council can be viewed on the Council's website

([www.wandsworth.gov.uk/moderngov](http://www.wandsworth.gov.uk/moderngov)) unless the report was published before May 2001, in which case the committee secretary (on 020 8871 6039) can supply if required.



**Proposed Major Amendment to the Housing Allocation Scheme**

Replace sections 2.0.0 to 2.0.6 of the Housing Allocation Scheme (which consists of the sections titled 'Who may apply and eligibility for allocation' and 'Eligibility and qualification for allocation') with the text set out below in this Appendix:

**Who may apply and eligibility for allocation**

2.0.0 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 queues for social housing and to be registered an applicant must be:

- a) eligible for social housing in England (that is, not ineligible due to their immigration status); and
- b) a qualifying person for social housing in Wandsworth (as determined by the following provisions of the Allocation Scheme).

**Who is eligible for social housing in England?**

2.1.0 All applicants will be eligible unless they are persons prescribed within the Housing Act 1996 (as amended) 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.

2.1.1 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.

**Who qualifies for social housing in Wandsworth?**

**Criteria for being a qualifying person**

2.2.0 This section sets out the criteria that must be met for applicants to qualify for social housing in Wandsworth. These criteria will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. (Please note: Where applications for housing are made through the *housingmoves* Pan-London mobility scheme, the Council will apply the qualification criteria set out in this section only to the extent that they are compatible with the *housingmoves* policy framework).

**2.2.1 To be a qualifying person for an allocation of social housing in Wandsworth and be (or remain) registered on the Council's housing queues for social housing, an applicant, or one of joint applicants, must:**

### **Housing allocation scheme**

- a) **Be eligible for an allocation of housing accommodation** (as determined by law and set out in section 2.1.0 above, that is, not ineligible due to immigration status); and
- b) **Be 18 years old or over** unless they are applying under the New Generation Scheme or the Housing Into Work Scheme or to the Homeless Queue, the Social Care Queue or the Supported Queue. However, it should be noted that applicants will not usually be offered a tenancy until they are at least 18 years old; and
- c) **Have a household income that is no greater than the household income threshold set by the GLA (Greater London Authority) for the 'First Steps to homeownership in London' scheme<sup>3</sup>** and in place at the time the decision on qualification is made; and
- d) **Live in the borough of Wandsworth<sup>4</sup> and have lived in the borough of Wandsworth throughout the whole year immediately preceding** the date they make their application for housing 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 (as amended) S193(2) that has not yet ceased;
  - ii. The Housing Department has accepted a nomination of the application from the Council's Adult Social Services Department, Children's Services Department or other approved partner support agency in line with inter-agency agreements, to the Supported Queue or the Social Care Queue;
  - iii. They are serving in the regular forces\*;
  - iv. They have served in the regular forces\* in the five year period immediately preceding their application for housing;
  - v. They are serving or have served in the reserve forces\*\* and are suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service;
  - 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\*; and
    - Their death was attributable (wholly or partly) to that service;
- vii. They qualify for housing through the *housingmoves* Pan-London mobility scheme;
- viii. They satisfy the Council that they need to live in Wandsworth to provide ongoing,

Definitions (S374 Armed Forces Act 2006):

\* The 'regular forces' means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force.

\*\* 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.

<sup>3</sup> [www.firststepslondon.org](http://www.firststepslondon.org)

<sup>4</sup> The Council owns a small number of properties that are not in the borough of Wandsworth. Applicants living in these properties will be classed, for the purposes of the Housing Allocation Scheme, as living in Wandsworth.

regular and significant care and support to a relative or friend who lives in Wandsworth and their application is supported by the Council's Adult Social Services Department or Children's Services Department;

- ix. 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 Wandsworth Council houses them, they will house an applicant nominated by Wandsworth Council;
- x. Rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons.

**Who is not a qualifying person**

2.3.0 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 Wandsworth. The criteria below will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. Furthermore:

- a) Where applications for housing are made through the *housingmoves* Pan-London mobility scheme, the Council will apply the disqualification criteria set out in this section but only where this is consistent with the *housingmoves* policy framework; and
- b) In the case of applicants to the council's interest queue, who are required to move urgently from a situation of immediate risk, or those requiring to move due to essential repairs (see section 3.9.0), or applicants for a discretionary offer of accommodation (as detailed in Part V of the Housing Allocation Scheme) the decision on qualification or disqualification may be taken by the area housing manager.

**1) Persons who do not qualify on grounds of behaviour**

2.4.0 Applicants will not qualify for social housing in Wandsworth 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 they became intentionally homeless (as defined in the Housing Act 1996 (as amended) S191) from their last home;
- c) 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 antisocial behaviour (including domestic violence and abuse and noise nuisance) or rent arrears;
  - ii. They have been served, within the last year, with a notice for breach of their Tenancy

## ***Housing allocation scheme***

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 antisocial behaviour (including domestic violence / abuse and noise nuisance);
- v. They have a record of failure to pay rent;
- vi. They have outstanding debt liabilities to the Council and are not making satisfactory arrangements to repay those debts.

### **2) Persons who do not qualify on grounds of home ownership etc.**

2.5.0 Applicants will not qualify for social housing in Wandsworth and be (or remain) registered on the Council's housing queues if:

- a) They own or jointly own accommodation (including shared ownership accommodation) in the UK or elsewhere, 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 either:
  - 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 savings that it would be possible and reasonable for them to use in order to obtain suitable accommodation.

### **3) Persons who do not qualify on grounds of not making a transfer application to their landlord**

2.6.0 Applicants will not qualify for social housing in Wandsworth and be (or remain) registered on the Council's housing queues if they are a tenant of a registered provider of social housing and have not made a transfer application to their landlord (unless the application to the Council is for sheltered housing or extra care housing);

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

2.7.0 Applicants will not qualify for social housing in Wandsworth and be (or remain) registered on the Council's housing queues if they have refused any offer of suitable accommodation within the last two years made by the Council and there has been no material change in their circumstances so as to make the earlier offer clearly unsuitable in the light of the applicant's changed circumstances.

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

2.8.0 Applicants will not to qualify for social housing in Wandsworth and be (or remain) registered on the Council's housing queues 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 Housing Allocation Scheme.

**Initial Equality Impact Assessment – Policy Change (Housing Allocation Scheme – Qualifying Persons)**

Department	Housing
Policy	Housing Allocation Scheme
People involved	Dave Worth (Head of Housing Services) Ghazell Nasir (Rehousing Manager) Anna Williams (Policy and Performance Officer)

**1. What are the aims of the policy and what changes are being proposed?**

Aims of the policy

The Housing Allocation Scheme sets out how the council determines priorities when allocating properties. Wandsworth Council is committed to the promotion of equal opportunities and aims to ensure that homes are let fairly to all sections of the community and in accordance with the Housing Allocation Scheme. Housing applications are assessed and, providing the applicant is eligible, registered on one of eight housing queues:

- **General Needs Queue**
- **Homeless Queue**
- **Council Tenant Transfer Queue**
- **Council's Interest Queue** (essential repair transfers, management transfers (including those granted due to domestic violence or hate crime and harassment) and underoccupation transfers).
- **Supported Queue** (Applicants do not apply directly to this queue. It is for applicants with support needs who have been nominated to the housing department by either adult social services or other approved organisations such as the Mental Health Trust, in line with inter-agency agreements).
- **Social Care Queue** (Applicants do not apply directly to this queue. It is for families with children or other persons nominated by children's services to the housing department).
- **Physical Disability Queue** (This queue is for people seeking a specially designed or adapted property suitable for those who are physically disabled, including wheelchair users).
- **Older Persons Housing Queue** (for sheltered housing and extra care housing).

Changes proposed

Background

Legislative changes brought about by the Localism Act 2011 mean that the Council is no longer required to operate an 'open waiting list' and can determine who can and who cannot join the housing queues by exercising the power to specify in the Housing Allocation Scheme what classes of persons do or do not qualify for social housing in Wandsworth. The only statutory limit on the exercise of these powers is that the Council cannot use them to treat as qualifying persons those who are ineligible for social housing in England due to

## ***Housing allocation scheme***

their immigration status. The Council is legally required to assess certain 'persons from abroad' as being ineligible for housing. In addition, the Secretary of State has retained regulation-making powers to prescribe which classes of person are or are not to be treated as qualifying and criteria which cannot be used by local housing authorities to decide which classes of persons are not qualifying persons. The Secretary of State has exercised these powers to make The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012, which came into force on 24<sup>th</sup> August 2012. The Housing Allocation Scheme currently states that all eligible applicants will qualify for allocation unless the council is satisfied, after considering the individual facts of their application including their current housing circumstances and housing history, that the applicant or a member of her / his household has been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant of the authority, as defined in the Housing Allocation Scheme and, in the circumstances at the time her / his application is considered, the council is satisfied that she/he is unsuitable to be a tenant of the council because of that behaviour. For the sake of clarity, being a qualifying person relates to whether an applicant for housing is able to apply for consideration for an offer of accommodation, not to whether they qualify for an actual offer of accommodation per se. In that sense, the concept can be seen as a gateway, preliminary issue.

### ***The proposal***

It is proposed that the Council should significantly change and add to the qualification criteria in the Housing Allocation Scheme. In summary, the main proposals are that the Housing Allocation Scheme should be amended to state that:

**A) To qualify for social housing in Wandsworth and be (or remain) registered on the council's housing queues for social housing, applicants must be eligible for social housing (as determined by law i.e. not ineligible due to immigration status) and, with certain limited exceptions (including exceptions that ensure compliance with the Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012):-**

- (i) **Be at least 18 years old;**
- (ii) **Have a household income that is no greater than the household income threshold set by the GLA for the 'First Steps to homeownership in London' scheme** (currently £64,300 per annum for applicants requiring one or two bedroom homes and £77,200 per annum for applicants requiring properties with three or more bedrooms); and
- (iii) **Live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application for housing** (with applicants living in properties owned by the Council that are not in Wandsworth being treated, for the purposes of the Housing Allocation Scheme as living in Wandsworth and please note the proposed exceptions below); and

**B) Applicants who meet the criteria set out above may nevertheless not qualify for social housing in Wandsworth on grounds of:**

**(i) Behaviour** –applicants will not qualify for social housing in Wandsworth if the Council is satisfied that they:

- Have obtained or attempted to obtain housing or other housing related services / welfare benefits / public funds by making a false or misleading statement or withholding information, or encouraging someone else to do so on their behalf; and / or
- Became intentionally homeless (as defined in the Housing Act 1996 (as amended))

Section 191) from their last home; and / or

- Are unlikely to satisfactorily manage the tenancy and / or pay their rent;

**(ii) Home ownership etc** –applicants will not qualify for social housing in Wandsworth if they:

- Own or jointly own accommodation (including shared ownership accommodation) in the UK or elsewhere, 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 either occupy the accommodation or sell or let it in order to obtain suitable accommodation; and / or

- Have savings that it would be possible and reasonable for them to use in order to obtain suitable accommodation;

**(iii) Not making a transfer application to their landlord** –applicants will not qualify for social housing in Wandsworth if they are a tenant of a registered provider of social housing and have not made a transfer application to their landlord (unless the application is for sheltered housing or extra care housing);

**(iv) Refusing a suitable and reasonable offer** –applicants will not qualify for social housing in Wandsworth if they have refused an offer of suitable accommodation within the last two years and there has been no material change in their circumstances so as to make the earlier offer clearly unsuitable in the light of the applicant's changed circumstances; and

**(v) Having no housing need** –applicants will not qualify for social housing in Wandsworth if the Council is satisfied, once the application has been assessed, that they are suitably housed i.e. they have no recognised housing need under the Housing Allocation Scheme.

It is proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth (as set out in A and B above) will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department.

**Residency criteria**

In relation to the proposal that the Housing Allocation Scheme be amended to state that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application for housing (with applicants living in properties owned by the Council that are not in Wandsworth being treated, for the purposes of the Housing Allocation Scheme as living in Wandsworth), it is proposed that this requirement should apply 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 (as amended) S193(2) that has not yet ceased;

(ii) The Housing Department has accepted a nomination of the applicant from the Council's Adult Social Services Department or Children's Services Department or other approved partner support agency in line with inter-agency agreements, to the Supported Queue or the Social Care Queue;

(iii) They are serving in the regular forces\* (see definition below);

(iv) They have served in the regular forces\* (see definition below) in the five year period immediately preceding their application for housing;

## ***Housing allocation scheme***

(v) They are serving or have served in the reserve forces\*\* (see definition below) and are suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service;

(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\* (see definition below) and their death was attributable (wholly or partly) to that service.

Definitions (S374 Armed Forces Act 2006):

\* The 'regular forces' means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force.

\*\* 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.

(vii) They qualify for housing through the *housingmoves* Pan-London mobility scheme;

(viii) They satisfy the Council that they need to live in Wandsworth to provide ongoing, regular and significant care and support to a relative or friend who lives in Wandsworth and their application is supported by the Council's Adult Social Services Department or Children's Services Department;

(ix) 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 Wandsworth Council houses them, they will house an applicant nominated by Wandsworth Council;

(x) Rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons.

### **2. What is the rationale behind these changes?**

Demand for social housing in Wandsworth far exceeds supply so applicants are unlikely to be offered social housing unless they have a very high priority or need for housing. A huge amount of time and effort is wasted (by both the applicants themselves and Council officers) in making, assessing and maintaining applications from applicants who will in reality never have a realistic chance of being offered a property. It would therefore be nonsensical for the Council not to consider making use of the new powers that have been made available to introduce qualification criteria.

#### Rationale behind the proposed age criteria

It is sensible that applicants should, in general, only be offered social housing when they are at least 18 years old.

Any eligible 16 or 17 year olds who are unintentionally homeless and have a local connection with Wandsworth will be assisted by the Council in accordance with homelessness legislation (e.g. through the provision of temporary accommodation) until the duty is brought to an end through the offer of suitable accommodation (either social housing or a tenancy in the private rented sector).

#### Rationale behind the proposed household income criteria

It is proposed that, to qualify for social housing in Wandsworth, applicants should have a household income that is no greater than the household income threshold set by the GLA



for the 'First Steps to homeownership in London' scheme (currently £64,300 per annum for applicants requiring one or two bedroom homes and £77,200 per annum for applicants requiring properties with three or more bedrooms). This proposal is made on the basis that it would not make sense for households who have an income that is too high for them to qualify for Intermediate housing such as shared ownership housing and Intermediate Rent properties (which are targeted at households with low to middle incomes who cannot afford to purchase a suitable property on the open market) to qualify for social housing (which is targeted at households with low incomes – The Ministerial foreword to the 'Allocation of accommodation: guidance for local housing authorities in England' published by the CLG on 29 June 2012 clearly states that the Government expect social homes to go to 'people who genuinely need them').

Rationale behind the proposed residency criteria

The most numerically significant proposed exclusion from being a qualifying person concerns people whose current address is located outside the borough's boundaries. This cohort numbers around 18 per cent of all applications currently registered on the Council's housing queues for social rented housing. The proposal to classify out of borough applicants (with limited exceptions – see above) as not qualifying for social housing in Wandsworth is made on the basis that it will stop what is sometimes known as "forum shopping" whereby applicants will (and do) apply to multiple boroughs including those where they have no pre-existing connections, just a general aspiration to live in that area. Anecdotally, this proposal is consistent with the position being adopted by many, if not the majority, of London boroughs and will (a) allow the Council's focus in the letting of social housing be existing residents of the borough; and (b) allow officers within the Rehousing Section to concentrate their efforts on advising and assisting borough residents who wish to apply for social housing within the borough.

As set out above it is proposed that to qualify for social housing in Wandsworth, applicants should (with limited exceptions) not only live in the borough but have lived in the borough throughout the whole year immediately preceding the date they make their application for housing. This proposal is made on the basis that it will ensure that social housing in Wandsworth is allocated to people with a settled presence in the borough rather than people who have recently moved into the borough perhaps on a transitory basis albeit that these people may have a high level of housing need.

The proposed exceptions to the residency criteria set out above are made on the following basis:

It is proposed that homeless households to whom the Council has accepted a duty that has not yet ceased are excluded from the residency criteria to ensure that the Council's ability to meet its statutory duty to homeless households is not fettered.

It is also proposed that the Council should continue to register for housing the following categories of applicants even if they don't meet the residency criteria:

- Applicants who are nominated by the Council's Adult Social Services Department or Children's Services Department or other approved partner support agency in line with inter-agency agreements; and
- Applicants who satisfy the Council that they need to live in Wandsworth to provide ongoing, regular and significant care and support to a relative or friend who lives in Wandsworth and whose application is supported by the Council's Adult Social Services Department or Children's Services Department.

These proposals are made to ensure that the Council can continue to promote independent living for older and disabled people including people with learning disabilities and mental health problems and that the Housing Allocation Scheme continues to support other Council objectives such as working with suitable applicants to enable them to adopt or

## ***Housing allocation scheme***

foster.

The rationale for excluding from the residency criteria the categories of applicants listed in (iii) to (vi) above (i.e. certain categories of applicants who are serving or have served in the regular forces or reserve forces and the spouses or civil partners of people who have lost their life as a result of serving in the regular forces) is that this is necessary to ensure compliance with The Allocation of Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012, which came into force on 24<sup>th</sup> August 2012.

The rationale for excluding from the residency criteria, applicants who qualify for housing through the *housingmoves* Pan-London mobility scheme is that the Council participates in the scheme and accordingly up to five per cent of the properties that become available for re-letting or nomination each year will be made available through the scheme to tenants from other boroughs. As a result of the Council's participation in the scheme Wandsworth Council tenants can apply through the scheme to be considered for vacancies in other London local authority areas and the Council closely monitors the volume of moves, both into and out of the Borough, under the scheme within a policy objective of ensuring that they achieve balance, or very near balance, at any given point in time.

Finally it is proposed that, to ensure that best use can be made of the Council's housing stock and that the Housing Allocation Scheme supports the Council's broader policy objectives, the following applicants should be excluded from the residency criteria:

- Applicants who the Council has agreed to rehouse under a reciprocal agreement with their current landlord or local authority where their current landlord or local authority has agreed that, if Wandsworth Council houses them, they will house an applicant nominated by Wandsworth Council; and
- Applicants for whom rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons.

### Rationale behind the other disqualification grounds

The rationale for the proposals outlined previously in this document that applicants who are not disqualified by the age, income or residency criteria, may nevertheless not qualify for social housing in Wandsworth on grounds of behaviour, home ownership etc, not making a transfer application to their landlord, refusing a suitable and reasonable offer, or having no housing need are as follows:

#### Behaviour

The rationale for proposing the inclusion of these disqualification grounds is that social housing in Wandsworth should be allocated to those who 'play by the rules' and that the Council has a duty to existing residents to ensure that, as far as possible, properties are not allocated to tenants who refuse to pay their rent (as it is not right that those who do should subsidise those who don't) and / or engage in antisocial behaviour.

#### Home ownership etc.

The rationale for proposing the inclusion of these disqualification grounds is that the Council agrees with the Government that (as stated in the Ministerial foreword to the 'Allocation of accommodation: guidance for local housing authorities in England' published by the CLG on 29<sup>th</sup> June 2012) 'social homes should go to people who genuinely need them, such as hard working families and those who are looking to adopt or foster a child in need of a stable family; and not to those who do not, such as people who already own a home that is suitable for them to use'.

Not making a transfer application to their landlord

The rationale for proposing the inclusion of this disqualification ground is to ensure that applicants who are tenants of other registered providers of social housing maximise their chances of meeting their housing needs by also making a transfer application to their landlord rather than only applying to the Council.

Refusing a reasonable and suitable offer

As set out above it is proposed that applicants will not qualify for social housing in Wandsworth if they have refused an offer of suitable accommodation within the last two years and there has been no material change in their circumstances so as to make the earlier offer clearly unreasonable in the light of the applicant's changed circumstances. This proposal is made on the basis that the percentage of offers accepted at first offer now stands at around 75 to 80 per cent of all offers and it is recommended that the current penalty in the scheme for unreasonably refusing a suitable offer (suspension of the application for 12 months) should be strengthened to further incentivise applicants to accept a tenancy of a suitable property when offered, and deter applicants from refusing an offer of suitable accommodation.

Having no housing need

As set out above it is also proposed that applicants will not qualify for social housing in Wandsworth if the Council is satisfied, once the application has been assessed, that they are suitably housed i.e. they have no assessed housing need.

Under the Council's Housing Allocation Scheme, applicants are assessed as being in housing need if their application either:

- a) Meets the criteria for registration on either the Homeless Queue, the Physical Disability Queue, the Supported Queue, the Social Care Queue, the Council's Interest Queue (essential repair transfers, management transfers (including those approved on the basis of domestic violence / abuse and hate crime or harassment) and underoccupation transfers) or the Older Persons Housing Queue for extra care housing; or
- b) Meets the criteria for registration on the General Needs Queue, the Council Tenant Transfer Queue or the Older Persons Housing Queue for sheltered housing and for points to be awarded. A separate points scheme, which is set out in the Housing Allocation Scheme, is used for applicants who apply for sheltered housing and points are awarded to any applicant to the General Needs Queue and Council Tenant Transfer Queue who is:
  - Living in overcrowded accommodation; and / or
  - Lacking or sharing (with people not included on their application) a living room, kitchen or bathroom; and / or
  - Homeless; and / or
  - experiencing diagnosed ill health or disability with relevance to current or future housing needs; and / or
  - Needing to move to a particular locality within the borough where failure to meet that need would cause hardship (to themselves or others).

Currently, applicants who apply to the General Needs Queue, the Council Tenant Transfer Queue or the Older Persons Housing Queue and are assessed as having no housing need and therefore awarded zero points are, in accordance with the amendment to the Housing Allocation Scheme authorised by the Council's Executive in July 2009 (Paper No. 09-522), advised that their application has attracted no points and that, for this reason, no further action will be taken on their application unless they advise the rehousing section of any material change in their circumstances in which case their application will be re-assessed.

## ***Housing allocation scheme***

These applicants are already excluded from statistics showing the number of active applicants on the Council's housing queues for social housing. If the Housing Allocation Scheme is amended as proposed, these applicants will be clearly advised that they do not qualify for social housing in Wandsworth as they are suitably housed rather than that no further action will be taken on their application. If their circumstances were to change they would be free to make a fresh application.

### **3. What information do you have on the policy and the potential impact of your policy change in relation to the following (race, gender, disability, age, faith and sexual orientation)?**

We do not know what the race, gender, disability, age, faith or sexual orientation will be of applicants wanting social housing in Wandsworth who may either:

- Realise on the basis of information provided about the qualification criteria that they will not qualify for social housing in Wandsworth and not therefore apply; or
- Apply and, following assessment of their application, be advised that they do not qualify for social housing in Wandsworth.

However, analysis has been undertaken of the applicants registered on the Council's housing queues for social housing as at the end of November 2012 to determine what the impact might be in terms of race, gender, disability and age of excluding, in accordance with the proposals, from the queues those who are already registered. Information about applicants' sexual orientation and religion is not sought or recorded.

In relation to the proposed age criteria, only 6 applicants would be excluded which is clearly too low a number to allow for any statistically significant analysis.

In relation to the proposed household income criteria, data currently held about applicants' incomes is not sufficiently comprehensive or robust to allow analysis. However, analysis of the applicants on the Council's housing queues as at 31<sup>st</sup> March 2012 found that a household income exceeding the thresholds set by the GLA for the First Steps into homeownership scheme was recorded for no applicants. To fully assess applicants on the basis of household income, measures will need to be put in place to ensure that information about household income is provided, checked and recorded. However, on the basis of the information currently available it seems unlikely that many (if any) applicants with incomes above this level have applied, or will apply, for social housing in Wandsworth.

Similarly, it is impossible to model who may be excluded on grounds of (as set out above):

- Behaviour – However, the number of applicants excluded on these grounds is likely to be fairly low;
- Not making a transfer application to their landlord – However, if an applicant were to not qualify on this ground alone all they would need to do to qualify is make an application so there is no reason for anyone to not qualify on these grounds; or
- Refusing a suitable and reasonable offer – However, applicants will be warned of the consequences of refusing a reasonable and suitable offer so it will be within their power to ensure that they are not excluded on these grounds.

Furthermore, this EIA does not include an assessment of the impact of excluding from the Council's housing queues applicants with no assessed housing need because (as set out above) these applicants are already, in accordance with the amendment to the Housing Allocation Scheme authorised by the Council's Executive in July 2009 (Paper No. 09-522) taking into account the EIA and consultation that was carried out at that time, advised that their application has attracted no points and that, for this reason, no further action will be taken on their application unless they advise the rehousing section of any material change in their circumstances in which case their application will be re-assessed. Therefore they are in

a way already excluded from the Council's housing queues.

Therefore, data is provided below (based on analysis of the applicants registered on the Council's housing queues for social rented housing as at the end of November 2012) to show the potential impact of excluding from the queues, in accordance with the proposals set out above, those applicants who are already registered on the basis of:

- a) The residency criteria; and
- b) The home ownership ground.

For the purposes of this assessment, it has been assumed that:

- Anyone living in Wandsworth who is registered on the queues has been living in Wandsworth for at least a year (and would not therefore be excluded on the basis of insufficient length of residence); and
- Any applicants whose tenure is recorded as 'Owner occupier' would be excluded on the home ownership ground (i.e. it has been assumed that it would be possible and reasonable for all of these applicants to either occupy the accommodation or sell or let the accommodation in order to obtain suitable accommodation).

Race

**Analysis of Impact on General Needs Queue by ethnic group of main applicant:**

White	Mixed / multiple	Asian / Asian British	Black / African / Caribbean / Black British	Other	Not known	Total
Applicants on the General Needs Queue as at 30 November 2012:						
1,696 35%	221 5%	654 14%	1,931 40%	166 3%	140 3%	4,808 100%
Applicants who would be excluded due to residency criteria:						
346 33%	53 5%	106 10%	464 45%	34 3%	30 3%	1,033 100%
Applicants who would be excluded due to home ownership ground:						
11 34%	0 0%	7 22%	12 38%	1 3%	1 3%	32 100%
<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
<b>358 34%</b>	<b>53 5%</b>	<b>112 11%</b>	<b>471 44%</b>	<b>35 3%</b>	<b>31 3%</b>	<b>1,060 100%</b>
Applicants who would be left on the queue:						
1,338 36%	168 4%	542 14%	1,460 39%	131 3%	109 3%	3,748 100%

## Housing allocation scheme

### **Analysis of Impact on Physical Disability Queue by ethnic group of main applicant:**

White	Mixed / multiple	Asian / Asian British	Black / African / Caribbean / Black British	Other	Not known	Total
Applicants on the Physical Disability Queue as at 30 November 2012:						
38 45%	3 4%	13 15%	26 31%	1 1%	4 5%	85 100%
Applicants who would be excluded due to residency criteria:						
2 67%	0 0%	1 33%	0 0%	0 0%	0 0%	3 100%
Applicants who would be excluded due to home ownership ground:						
0 0%	0 0%	1 33%	1 33%	0 0%	1 33%	3 100%
<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
<b>2 33%</b>	<b>0 0%</b>	<b>2 33%</b>	<b>1 17%</b>	<b>0 0%</b>	<b>1 17%</b>	<b>6 100%</b>
Applicants who would be left on the queue:						
36 46%	3 4%	11 14%	25 32%	1 1%	3 4%	79 100%

### **Analysis of Impact on Older Persons Housing Queue by ethnic group on main applicant:**

White	Mixed / multiple	Asian / Asian British	Black / African / Caribbean / Black British	Other	Not known	Total
Applicants on the Older Persons Housing Queue as at 30 November 2012:						
476 73%	9 1%	68 10%	81 12%	12 2%	8 1%	654 100%
Applicants who would be excluded due to residency criteria:						
134 70%	4 2%	21 11%	26 14%	6 3%	0 0%	191 100%
Applicants who would be excluded due to home ownership ground:						
59 82%	1 1%	4 6%	6 8%	0 0%	2 3%	72 100%
<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
<b>175 73%</b>	<b>5 2%</b>	<b>22 9%</b>	<b>31 13%</b>	<b>6 2%</b>	<b>2 1%</b>	<b>241 100%</b>
Applicants who would be left on the queue:						
301 73%	4 1%	46 11%	50 12%	6 1%	6 1%	413 100%

	<b><u>Analysis of Impact on All Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) by ethnic group of main applicant:</u></b>						
	<b>White</b>	<b>Mixed / multiple</b>	<b>Asian / Asian British</b>	<b>Black / African / Caribbean / Black British</b>	<b>Other</b>	<b>Not known</b>	<b>Total</b>
	Applicants on all Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) as at 30 November 2012:						
	2,210 40%	233 4%	735 13%	2,038 37%	179 3%	152 3%	5,547 100%
	Applicants who would be excluded due to residency criteria:						
	482 39%	57 5%	128 10%	490 40%	40 3%	30 2%	1,227 100%
	Applicants who would be excluded due to home ownership ground:						
	70 65%	1 1%	12 11%	19 18%	1 1%	4 4%	107 100%
	<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
	<b>535 41%</b>	<b>58 4%</b>	<b>136 10%</b>	<b>503 38%</b>	<b>41 3%</b>	<b>34 3%</b>	<b>1,307 100%</b>
	Applicants who would be left on the three queues:						
	1,675 40%	175 4%	599 14%	1,535 36%	138 3%	118 3%	4,240 100%
Gender	<b><u>Analysis of Impact on General Needs Queue by gender:</u></b>						
	<b>Female with children</b>	<b>Female without children</b>	<b>Male with children</b>	<b>Male without children</b>	<b>Joint with children</b>	<b>Joint without children</b>	<b>Total</b>
	Applicants on the General Needs Queue as at 30 November 2012:						
	1,005 21%	1,220 25%	165 3%	1,439 30%	706 15%	273 6%	4,808 100%
	Applicants who would be excluded due to residency criteria:						
	238 23%	266 26%	38 4%	308 30%	128 12%	55 5%	1,033 100%
	Applicants who would be excluded due to home ownership ground:						
	8 25%	6 19%	2 6%	6 19%	5 16%	5 16%	32 100%
	<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
	<b>244 23%</b>	<b>273 26%</b>	<b>40 4%</b>	<b>312 29%</b>	<b>132 12%</b>	<b>59 6%</b>	<b>1,060 100%</b>
	Applicants who would be left on the queue:						
	761 20%	947 25%	125 3%	1,127 30%	574 15%	214 6%	3,748 100%
	<b><u>Analysis of Impact on Physical Disability Queue by gender:</u></b>						

## Housing allocation scheme

	Female with children	Female without children	Male with children	Male without children	Joint with children	Joint without children	Total
Applicants on the Physical Disability Queue as at 30 November 2012:							
	20 24%	30 35%	1 1%	11 13%	14 16%	9 11%	85 100%
Applicants who would be excluded due to residency criteria:							
	0 0%	2 67%	0 0%	0 0%	1 33%	0 0%	3 100%
Applicants who would be excluded due to home ownership ground:							
	0 0%	1 33%	0 0%	0 0%	0 0%	2 67%	3 100%
<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>							
	0 0%	3 50%	0 0%	0 0%	1 17%	2 33%	6 100%
Applicants who would be left on the queue:							
	20 25%	27 34%	1 1%	11 14%	13 16%	7 9%	79 100%
<b>Analysis of Impact on Older Persons Housing Queue by gender:</b>							
	Female with children	Female without children	Male with children	Male without children	Joint with children	Joint without children	Total
Applicants on the Older Persons Housing Queue as at 30 November 2012:							
	0 0%	362 55%	0 0%	224 34%	0 0%	68 10%	654 100%
Applicants who would be excluded due to residency criteria:							
	0 0%	104 54%	0 0%	60 31%	0 0%	27 14%	191 100%
Applicants who would be excluded due to home ownership ground:							
	0 0%	44 61%	0 0%	17 24%	0 0%	11 15%	72 100%
<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>							
	0 0%	134 56%	0 0%	74 31%	0 0%	33 14%	241 100%
Applicants who would be left on the queue:							
	0 0%	228 55%	0 0%	150 36%	0 0%	35 8%	413 100%
<b>Analysis of Impact on All Three Queues (General Needs Queue, Physical</b>							



	<b>Disability Queue and Older Persons Housing Queue) by gender:</b>						
	<b>Female with children</b>	<b>Female without children</b>	<b>Male with children</b>	<b>Male without children</b>	<b>Joint with children</b>	<b>Joint without children</b>	<b>Total</b>
	Applicants on all Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) as at 30 November 2012:						
	1,025 18%	1,612 29%	166 3%	1,674 30%	720 13%	350 6%	5,547 100%
	Applicants who would be excluded due to residency criteria:						
	238 19%	372 30%	38 3%	368 30%	129 11%	82 7%	1,227 100%
	Applicants who would be excluded due to home ownership ground:						
	8 7%	51 48%	2 2%	23 21%	5 5%	18 17%	107 100%
	<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):</b>						
	<b>244 19%</b>	<b>410 31%</b>	<b>40 3%</b>	<b>386 30%</b>	<b>133 10%</b>	<b>94 7%</b>	<b>1,307 100%</b>
	Applicants who would be left on the three queues:						
	781 18%	1,202 28%	126 3%	1,288 30%	587 14%	256 6%	4,240 100%
Disability	<p>The analysis above suggests that, if the proposed qualification criteria were in place as at the end of November 2012, only 6 of the 85 applicants on the Physical Disability Queue would not qualify for social housing in Wandsworth (three due to the proposed residency criteria and three due to the proposed home ownership ground).</p> <p>This may in fact be an overestimate because, as explained above it has been assumed for the purposes of this impact assessment that any applicants whose tenure is recorded as 'Owner occupier' would be excluded on the home ownership ground (i.e. it has been assumed that it would be possible and reasonable for all of these applicants to either occupy the accommodation or sell or let the accommodation in order to obtain suitable accommodation). None of the applicants with learning disabilities or mental health problems registered on the Supported Queue would be excluded.</p>						
Age	<b>Analysis of Impact on General Needs Queue by age of main applicant:</b>						
	<b>Under 25</b>	<b>25 to 34</b>	<b>35 to 44</b>	<b>45 to 54</b>	<b>55 to 64</b>	<b>65 or over</b>	<b>Total</b>
	Applicants on the General Needs Queue as at 30 November 2012:						
	722 15%	1,578 33%	1,353 28%	809 17%	253 5%	93 2%	4,808 100%
	Applicants who would be excluded due to residency criteria:						
	138 13%	351 34%	293 28%	181 18%	56 5%	14 1%	1,033 100%
	Applicants who would be excluded due to home ownership ground:						
	0 0%	3 9%	10 31%	10 31%	7 22%	2 6%	32 100%
	<b>Total no. of applicants who would be excluded (due to age or</b>						

## Housing allocation scheme

residency criteria or home ownership ground):						
143	354	299	188	60	16	1,060
13%	33%	28%	18%	6%	2%	100%
Applicants who would be left on the queue:						
579	1,224	1,054	621	193	77	3,748
15%	33%	28%	17%	5%	2%	100%

<u>Analysis of Impact on Physical Disability Queue by age of main applicant:</u>						
Under 25	25 to 34	35 to 44	45 to 54	55 to 64	65 or over	Total
Applicants on the Physical Disability Queue as at 30 November 2012:						
4	13	24	18	11	15	85
5%	15%	28%	21%	13%	18%	100%
Applicants who would be excluded due to residency criteria:						
0	0	2	0	1	0	3
0%	0%	67%	0%	33%	0%	100%
Applicants who would be excluded due to home ownership ground:						
0	0	1	0	1	1	3
0%	0%	33%	0%	33%	33%	100%
Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground):						
0	0	3	0	2	1	6
0%	0%	50%	0%	33%	17%	100%
Applicants who would be left on the queue:						
4	13	21	18	9	14	79
5%	16%	27%	23%	11%	18%	100%

<u>Analysis of Impact on Older Persons Housing Queue by age of main applicant:</u>						
Under 25	25 to 34	35 to 44	45 to 54	55 to 64	65 or over	Total
Applicants on the Older Persons Housing Queue as at 30 November 2012:						
0	0	0	0	245	409	654
0%	0%	0%	0%	37%	63%	100%
Applicants who would be excluded due to residency criteria:						
0	0	0	0	61	130	191
0%	0%	0%	0%	32%	68%	100%
Applicants who would be excluded due to home ownership ground*:						
0	0	0	0	13	59	72
0%	0%	0%	0%	18%	82%	100%
Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground)*:						
0	0	0	0	70	171	241
0%	0%	0%	0%	29%	71%	100%
Applicants who would be left on the queue:						
0	0	0	0	175	238	413
0%	0%	0%	0%	42%	58%	100%

\* This may in fact be an overestimate because, as explained above it has been assumed for the purposes of this impact assessment that any applicants whose tenure is recorded as 'Owner occupier' would be excluded on the home ownership ground (i.e. it has been assumed that it would be possible and

	<p>reasonable for all of these applicants to either occupy the accommodation or sell or let the accommodation in order to obtain suitable accommodation).</p> <table><tr><th colspan="7"><b><u>Analysis of Impact on All Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) by age of main applicant:</u></b></th></tr><tr><th><b>Under 25</b></th><th><b>25 to 34</b></th><th><b>35 to 44</b></th><th><b>45 to 54</b></th><th><b>55 to 64</b></th><th><b>65 or over</b></th><th><b>Total</b></th></tr><tr><td colspan="7">Applicants on all Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) as at 30 November 2012:</td></tr><tr><td>726 13%</td><td>1,591 29%</td><td>1,377 25%</td><td>827 15%</td><td>509 9%</td><td>517 9%</td><td>5,547 100%</td></tr><tr><td colspan="7">Applicants who would be excluded due to residency criteria:</td></tr><tr><td>138 11%</td><td>351 29%</td><td>295 24%</td><td>181 15%</td><td>118 10%</td><td>144 12%</td><td>1,227 100%</td></tr><tr><td colspan="7">Applicants who would be excluded due to home ownership ground*:</td></tr><tr><td>0 0%</td><td>3 3%</td><td>11 10%</td><td>10 9%</td><td>21 20%</td><td>62 58%</td><td>107 100%</td></tr><tr><td colspan="7"><b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground)*:</b></td></tr><tr><td><b>143 11%</b></td><td><b>354 27%</b></td><td><b>302 23%</b></td><td><b>188 14%</b></td><td><b>132 10%</b></td><td><b>188 14%</b></td><td><b>1,307 100%</b></td></tr><tr><td colspan="7">Applicants who would be left on the three queues:</td></tr><tr><td>583 14%</td><td>1,237 29%</td><td>1,075 25%</td><td>639 15%</td><td>377 9%</td><td>329 8%</td><td>4,240 100%</td></tr></table> <p>* This may in fact be an overestimate because, as explained above it has been assumed for the purposes of this impact assessment that any applicants whose tenure is recorded as ‘Owner occupier’ would be excluded on the home ownership ground (i.e. it has been assumed that it would be possible and reasonable for all of these applicants to either occupy the accommodation or sell or let the accommodation in order to obtain suitable accommodation).</p>	<b><u>Analysis of Impact on All Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) by age of main applicant:</u></b>							<b>Under 25</b>	<b>25 to 34</b>	<b>35 to 44</b>	<b>45 to 54</b>	<b>55 to 64</b>	<b>65 or over</b>	<b>Total</b>	Applicants on all Three Queues (General Needs Queue, Physical Disability Queue and Older Persons Housing Queue) as at 30 November 2012:							726 13%	1,591 29%	1,377 25%	827 15%	509 9%	517 9%	5,547 100%	Applicants who would be excluded due to residency criteria:							138 11%	351 29%	295 24%	181 15%	118 10%	144 12%	1,227 100%	Applicants who would be excluded due to home ownership ground*:							0 0%	3 3%	11 10%	10 9%	21 20%	62 58%	107 100%	<b>Total no. of applicants who would be excluded (due to age or residency criteria or home ownership ground)*:</b>							<b>143 11%</b>	<b>354 27%</b>	<b>302 23%</b>	<b>188 14%</b>	<b>132 10%</b>	<b>188 14%</b>	<b>1,307 100%</b>	Applicants who would be left on the three queues:							583 14%	1,237 29%	1,075 25%	639 15%	377 9%	329 8%	4,240 100%
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Faith	None - Information about applicants’ faith is not sought or recorded.																																																																																				
Sexual Orientation	None - Information about applicants’ sexual orientation is not sought or recorded.																																																																																				

**4. Thinking about each group below please list the impact that the policy change will have.**

	<u>Positive</u> impacts of policy change	Possible <u>negative</u> impacts of policy change
Race	In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole of the year immediately preceding the date they make their application for housing, the proposal is that this requirement should not apply where rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons. It is also proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth will apply to all applications but may, in	None identified

### **Housing allocation scheme**

	exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. The flexibility built into the Housing Allocation Scheme through the inclusion of these exceptions will ensure that the Council's ability to promote equality by tackling hate crime and harassment and domestic violence is not fettered.	
Gender	In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application for housing, the proposal is that this requirement should not apply where rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons. It is also proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. The flexibility built into the Housing Allocation Scheme through the inclusion of these exceptions will ensure that the Council's ability to promote equality by tackling hate crime and harassment and domestic violence is not fettered.	None identified
Disability	<p>In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application, the proposal is that this requirement should not apply where:</p> <ul style="list-style-type: none"> <li>- Rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons;</li> <li>- The Housing Department has accepted a nomination of the application from the Council's Adult Social Services Department or Children's Services Department or other approved partner support agency in line with inter-agency agreements, to the Supported Queue or the Social Care Queue;</li> <li>- They satisfy the Council that they need to live in Wandsworth to provide ongoing, regular and significant care and support to a relative or friend who lives in Wandsworth and their application is supported by the Council's Adult Social Services Department or Children's Services Department.</li> </ul> <p>It is also proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. The flexibility built into the Housing Allocation Scheme through the inclusion of these exceptions will ensure that the Council's ability to promote equality by tackling hate crime and harassment and domestic violence, and promoting independent living for older and disabled people including people with learning disabilities and mental health problems, is not fettered.</p>	None identified

## Housing allocation scheme

Age	<p>In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application, the proposal is that this requirement should not apply where:</p> <ul style="list-style-type: none"> <li>- Rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons;</li> <li>- The Housing Department has accepted a nomination of the applicant from the Council's Adult Social Services Department or Children's Services Department or other approved partner support agency in line with inter-agency agreements, to the Supported Queue or the Social Care Queue;</li> <li>- They satisfy the Council that they need to live in Wandsworth to provide ongoing, regular and significant care and support to a relative or friend who lives in Wandsworth and their application is supported by the Council's Adult Social Services Department or Children's Services Department.</li> </ul> <p>It is also proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. The flexibility built into the Housing Allocation Scheme through the inclusion of these exceptions will ensure that the Council's ability to promote equality by tackling hate crime and harassment and domestic violence, and promoting independent living for older and disabled people including people with learning disabilities and mental health problems, is not fettered.</p>	None identified
Faith	<p>In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application, the proposal is that this requirement should not apply where rehousing / relocation into Wandsworth is accepted by the Council as being essential in the furtherance of witness or public protection, crime prevention or for other exceptional reasons.</p> <p>It is also proposed that the criteria that must be met for applicants to qualify for social housing in Wandsworth will apply to all applications but may, in exceptional circumstances, be waived at the discretion of the Housing Entitlement and Assessment Manager or more senior officer in the Housing Department. The flexibility built into the Housing Allocation Scheme through the inclusion of these exceptions will ensure that the Council's ability to promote equality by tackling hate crime and harassment and domestic violence is not fettered.</p>	None identified
Sexual orientation	<p>In relation to the proposal that to qualify for social housing in Wandsworth applicants must live in Wandsworth and have lived in Wandsworth throughout the whole year immediately preceding the date they make their application, the proposal is that this requirement should not apply where rehousing / relocation into Wandsworth is accepted by the Council as being essential in the</p>	None identified

### **Housing allocation scheme**

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**5. Is a full EIA required?** No.

**Comments - Please give the rationale here for not undertaking a full EIA**

No possible negative impacts of the policy changes have been identified.

**6. Through the initial EIA have you identified any actions that needed to be implemented to improve access or monitoring of the policy? (please list)**

No. However, the proposals and this Initial EIA will be subject to a six week consultation and the results of the consultation, including any equalities issues raised, will be reported back to Committee.

Signed

Date

Approved by:

(all initial EIAs to be approved by Clare O'Connor)

**Case No: CO/3911/2007**

**Neutral Citation Number: [2007] EWHC 3075 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**Royal Courts of Justice**  
**Strand,**  
**London WC2A 2LL**  
**Date: 20<sup>th</sup> December, 2007.**

**Before: Michael Supperstone Q.C.**  
**(Sitting as a Deputy High Court Judge)**

-----  
**DARRELL DIXON**

**Claimant**

**-and-**

**LONDON BOROUGH OF WANDSWORTH**

**Defendant**

-----  
**(Transcript of the Handed Down Judgment of**  
**WordWave International Limited**  
**A Merrill Communications Company**  
**190 Fleet Street, London EC4A 2AG**  
**Tel No: 020 7404 1400, Fax No: 020 7831 8838**  
**Official Shorthand Writers to the Court)**  
-----

**Terrence Gallivan (instructed by Flack & Co. London SW18 4JQ) for the Claimant**  
**Wayne Beglan (instructed by Borough Solicitor, London Borough of Wandsworth)**  
**Hearing Date : 4<sup>th</sup> and 6<sup>th</sup> December, 2007**

-----  
**Judgment**

## ***Housing allocation scheme***

**The Deputy Judge:**

### ***Introduction***

1. The Claimant challenges the decision of the London Borough of Wandsworth that he was ineligible for housing accommodation under the provisions of the Defendant's allocation scheme because he was guilty of unacceptable behaviour within s.160A of the Housing Act 1996.

### ***Factual Background***

2. On 18 April 1983 the Defendant granted the Claimant and his sister a joint tenancy of a 2 bedroom flat at 81 Macey House, Surrey Lane, London SW11 ("the premises"). Some time during 2005 the Claimant's sister left the premises, following an incident involving her son (but not involving the Claimant). She sought alternative accommodation from the Defendant who accepted that it was not reasonable for her to continue to occupy the premises. She was provided with alternative accommodation by the Defendant but was required to determine her joint tenancy of the premises. Accordingly the Claimant's sister determined the joint tenancy by serving a Notice to Quit on the Defendant which expired on or about 14 November 2005.
3. The Claimant requested alternative accommodation from the Defendant. By letter dated 15 December 2005 Ms S.A. Browne, Estate Manager in the Defendant's Housing Department, informed the Claimant that he would be offered a discretionary tenancy of a one bedroom flat as soon as a suitable property became available.
4. On 10 February 2006 the Police executed a search warrant at the premises where they found just over 1 gram of cocaine in the Claimant's possession with a street value of around £40 to £50. This was for his personal use. He was prosecuted in the Magistrates' Court and pleaded guilty to the offence of possession of a Class A drug. He was fined £300 and ordered to pay costs of £70. On 16 March 2006 the Police executed a further search warrant of the premises and found a small amount of herbal cannabis in the Claimant's possession with a street value of around £3 to £5. The Claimant was cautioned.
5. Following the Claimant's conviction for possession of cocaine the Defendant reconsidered their decision to offer the Claimant a tenancy of a one bedroom property and by letter dated 8 May 2006 informed him as follows:

"... Your conviction of an arrestable offence is grounds for possession and therefore your application for a discretionary tenancy of 81 Macey House will no longer be considered.

You are therefore advised to provide the Council with vacant possession of 81 Macey House ... by **Monday 15<sup>th</sup> May 2006**.

If you fail to do this you are advised that our Borough Solicitor will be instructed to seek a possession order for the property and for you to be liable for any costs incurred in this action."
6. The Claimant sought a review of that decision under s.167(4A)(d) of the 1996 Act. By letter dated 19 March 2007 the Defendant notified the Claimant of their decision on review which upheld their earlier decision that the Claimant was ineligible for allocation on the basis of unacceptable behaviour within s.160A of the 1996 Act.
7. In the course of that review the Defendant had learned that according to Police records the Claimant had been cautioned in August 1996 for possession of a small amount of cannabis and for supplying cocaine. The Claimant accepted that in August 1996 the Police had found a small amount of cannabis at the premises and cautioned him in respect of that offence. He did not



accept that the Police found any cocaine in the premises in 1996 or that he was cautioned in respect of supplying cocaine. In paragraph 7 of his Witness Statement in these proceedings dated 14 May 2007 the Claimant says:

"In addition to the two incidents in early 2006 I accept that nearly 10 years earlier on 8 August 1996 the police searched the premises and found a small amount of cannabis which I accepted was my mine. I was cautioned for possessing a small amount of herbal cannabis, again with a street value of around £3 to £5. I note that the records held by the police on their national computer also show that on the same date I was also cautioned for supplying cocaine. I honestly do not remember this. .... My recollection is that there was no cocaine at the premises and the police did not find any there. I do remember one of the police officers asking me whether I used cocaine and I replied yes, me and my wife did occasionally and the officer said to me, well that is the same as supplying cocaine. I do not remember receiving a formal caution for an offence of supplying cocaine and I must say that I understand that this would have been regarded as a serious offence which would have been unlikely to have been dealt with by way of a caution. ...".

8. By letter dated 19 March 2007 Mr Dave Worth, the Defendant's Head of Housing Services, wrote to the Claimant's Solicitors notifying him of the Defendant's decision on review stating

"--The behaviour that led the Eastern Area Team to reach its decision was your client's conviction in April 2006 following a charge of possession of a Class A drug, i.e. cocaine, and since that time, we have been in correspondence regarding your client's request for a review of that decision.

As you are aware, your client has sought to dispute the factual accuracy of information known to the Council about his past involvement with the Criminal Justice System and the review has been repeatedly deferred pending your client's enquiries with the Metropolitan Police Service as to the accuracy of his criminal record.

Your letter of 31st January 2007 concluded your representations and enclosed a letter and his record from the National Identification Service at New Scotland Yard regarding the outcome of your client's application for disclosure under Section 7 of the Data Protection Act 1998.

As you will I hope recognise, I have been particularly reasonable by agreeing a deferment of the review decision for the last 6 months in order to allow your client every opportunity to establish the factual position regarding relevant matters to the decision under review and I take your letter of 31<sup>st</sup> January 2007 to be your full and final representations for my consideration in the review process.

I have now given careful thought to the content of all your representations over the last 6 months, to the circumstances in which the original decision was taken, to the Code of Guidance on allocations and to all other relevant matters.

I have considered these circumstances against the statutory test of ineligibility for allocation and in particular, ineligibility on the grounds of unacceptable behaviour set out in Section 160A, sub-Sections 7 and 8.

Having done so, I have decided to uphold the original decision, as I am satisfied that your client is ineligible for an allocation of housing accommodation on the basis that he has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority. I am further satisfied that, as of today's date, and by virtue of that behaviour, he remains unsuitable to be a tenant of the authority.

## ***Housing allocation scheme***

My reasons for this decision are as follows:

Firstly, I take note that your client was convicted of an offence of possession of a controlled drug, i.e. a Class A drug, Cocaine, with the offence being committed on 10<sup>th</sup> February 2006.

It is established that your client accepted his guilt for this charge by pleading guilty at a hearing on 25<sup>th</sup> April 2006 at South Western Magistrates' Court. It is also confirmed that he was fined £300 with additional costs at that time.

Clearly this is a serious conviction involving Class A drugs and the circumstances of the conviction were following a search of the premises undertaken in the early morning with the police forcing entry. Such an occurrence is obviously very likely to disturb the peace and [quiet] enjoyment by your client's neighbours of their homes.

You will accept that it is naturally a disturbing occurrence to have police officers breaking into the property next door early in the morning and carrying out a drug raid.

This behaviour is behaviour that I consider to be unacceptable and behaviour against which the County Court would be able and willing to grant an outright Possession Order. It clearly gives clear grounds for possession to be sought. I have reached this conclusion with regard to the seriousness of the offence and to the circumstances in which the premises were searched and the associated damage to the property.

You will be aware that following the arrest, the Council needed to undertake repairs to the premises and I consider that the County Court, on an application by the Council, would be prepared to grant an outright Possession Order.

I have secondly considered whether the behaviour is behaviour that, as of today, makes him unsuitable to be a tenant of the authority.

In this respect you have placed emphasis on your client's regret for the incident and on his efforts to overcome his substance misuse problems by engaging in rehabilitative therapy and treatment via the Community Drug Project as recorded in their letter via yourselves dated 13<sup>th</sup> October 2006.

In your representations you have argued that your client's fairly extensive involvement with the Criminal Justice System should not be considered as relevant to the question of eligibility for allocation on the basis that the majority of that involvement is now many years ago. In significant part, I would agree with you that this is the case and have, therefore, disregarded the convictions for theft and other similar offences revealed in the disclosures of the National Identification Service.

However, as regards your client's efforts to overcome his substance misuse problems, I do consider that it is important contextual information that the record discloses offences in relation to drugs prior to the conviction in 2006.

I consider that this is relevant in the sense that it indicates that your client's problems with substance misuse are very long standing and therefore, are likely to be more difficult to overcome. I also recognise and give weight to the fact that, shortly after the conviction for possession of cocaine, the property was again searched by the police and the cannabis warning issued.

### ***Housing allocation scheme***

Taking into account these issues, I am satisfied that it is appropriate to put less weight on the recent efforts and rehabilitation than on the seriousness and significance of the most recent conviction and length of the history of drug misuse.

I am, therefore, satisfied that in the circumstances applying at this time, i.e. when his application is being considered, he remains unsuitable to be a tenant of this authority by reason of his unacceptable behaviour related to drug misuse.

The contents of this letter are the Council's decision on review, which means that your client will not be considered for allocation of housing at this time.

This means that the Council is not prepared to provide your client with an offer of accommodation and that we will now move to enforce the possession order obtained previously.

As you are aware, the Council has, at my instruction, deferred the execution of the warrant of possession pending the outcome of this review but I have, by copy of this letter, instructed the Area Housing Team to liaise with the Court in order to obtain a further appointment for eviction.

This means that your client will now be threatened with homelessness and he is able to approach the authority to be considered under the terms of Part VII of the Housing Act if he wishes to do so."

### ***Legal Framework***

9. Section 160A of HA 1996 (inserted into Part 6 of HA 1996 by s.14 of the Homelessness Act 2002 with effect from 31 January 2003) provides, in so far as relevant, as follows:

#### **"Eligibility for allocation of housing accommodation**

##### **s.160A. Allocation only to eligible persons.**

- (1) A local housing authority shall not allocate housing accommodation –
- (a) ...
- (b) to a person who the authority have decided is to be treated as ineligible for such an allocation by virtue of subsection (7); or
- (c) ...
- (2) Except as provided by subsection (1), any person may be allocated housing accommodation by a local housing authority (whether on his application or otherwise).
- ...
- (7) A local housing authority may decide that an applicant is to be treated as ineligible for an allocation of housing accommodation by them if they are satisfied that –
- (a) he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority; and
- (b) in the circumstances at the time his application is considered, he is unsuitable to be a tenant of the authority by reason of that behaviour.
- (8) The only behaviour which may be regarded by the authority as unacceptable for the purposes of subsection (7)(a) is –

## **Housing allocation scheme**

(a) behaviour of the person concerned which would (if he were a secure tenant of the authority) entitle the authority to a possession order under section 84 of the Housing Act 1985 (c. 68) on any ground mentioned in Part 1 of Schedule 2 to that Act (other than ground 8); or

(b) behaviour of a member of his household which would (if he were a person residing with a secure tenant of the authority) entitle the authority to such a possession order.

(9) If a local housing authority decide that an applicant for housing accommodation –

(a) ...

(b) is to be treated as ineligible for such an allocation by virtue of subsection (7), they shall notify the applicant of their decision and the grounds for it.

(10) That notice shall be given in writing and, if not received by the applicant, shall be treated as having been given if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

(11) A person who is being treated by a local housing authority as ineligible by virtue of subsection (7) may (if he considers that he should no longer be treated as ineligible by the authority) make a fresh application to the authority for an allocation of housing accommodation by them".

10. Section 84 of the Housing Act 1985 states, in so far as relevant, as follows:

### **"84 Grounds and orders for possession**

(1) The Court shall not make an order for the possession of a dwelling-house let under a secure tenancy except on one or more of the grounds set out in Schedule 2.

(2) The Court shall not make an order for possession –

(a) on the grounds set out in Part 1 of that Schedule (grounds 1 to 8), unless it considers it reasonable to make the order, ..."

11. Section 85(2) of the 1985 Act provides:

"On the making of an order for possession of such a dwelling-house on any of those grounds, or at any time before the execution of the order, the court may –

(a) stay or suspend the execution of the order, or

(b) postpone the date of possession,

for such period or periods as the court thinks fit."

12. The material ground in Schedule 2, Part 1 to the 1985 Act is Ground 2 which states in so far as relevant that:

"The tenant or a person residing in or visiting the dwelling-house –

(b) has been convicted of –

(ii) an *arrestable* offence committed in, or in the locality of, the dwelling-house."

13. Section 169 of HA 1996 provides:

"(1) In the exercise of their functions under this Part, local housing authorities shall have regard to such guidance as may from time to time be given by the Secretary of State.

(2) The Secretary of State may give guidance generally or to specified descriptions of authorities".

14. The Secretary of State has issued the Allocation of Accommodation Code of Guidance for Local Housing Authorities under s.169 of HA 1996 ("the Code of Guidance"). The current guidance came into force on 31 January 2003. In so far as relevant it provides as follows:

**"Chapter 2: Overview of the Amendments to Part 6 of the 1996 Act made by the Homelessness Act 2002.**

2.1 Part 6 of the 1996 Act relates to the process by which people apply and are considered for an allocation of social housing. The 2002 Act introduces substantial revision to Part 6.

2.2 The main policy objectives behind the amendments to Part 6 contained in the 2002 Act are:-

- to facilitate the introduction by housing authorities of allocation schemes that offer new applicants and existing tenants a more active role in choosing their accommodation.
- to ensure the widest possible access to social housing for applicants by:
  - removing the power for authorities to implement blanket exclusions of certain categories of applicant. In its place housing authorities are given the power to decide that individual applicants are unsuitable to be tenants as a result of serious unacceptable behaviour; and
  - breaking down existing barriers to cross-boundary applications. Housing authorities must consider all applications, and cannot exclude applicants who, for example, are not currently resident in the borough. However, in determining relative priorities for an allocation, authorities are able to have regard to whether or not applicants have a local connection with the district;

...

2.4 Under s.159, housing authorities are obliged to comply with the provisions of Part 6 in the allocation of introductory and secure tenancies in their own stock and their nomination of applicants to assured tenancies in RSL stock. In this context the term allocation now includes a transfer at the tenants request (s.159(5)). (See Chapter 3).

2.5 Sections 161 to 165, which relate to housing registers, are repealed and the requirements to keep a register ceases. However there is nothing to prevent a housing authority from continuing to maintain a register of applicants, if it so wishes.

2.6 New s.160A provides that only those eligible for housing accommodation may be allocated such accommodation and defines eligibility. This includes, at s.160A (7), a power for a housing authority to decide that an applicant is to be treated as ineligible by reason of unacceptable behaviour serious enough to make him unsuitable to be a tenant. (See Chapter 4).

**Chapter 4: Eligibility for an Allocation of Accommodation**

## **Housing allocation scheme**

### **Unacceptable behaviour**

4.19 Most applicants for social housing will not be persons from abroad, and will have been resident in the UK (or elsewhere in the CTA) for 2 years prior to their application. Such applicants, together with those eligible applicants from abroad may nonetheless be treated as ineligible by the housing authority on the basis of unacceptable behaviour.

4.20 Where a housing authority is satisfied that an application (or a member of the applicant's household) is guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant, section 160A(7) permits the authority to decide to treat the applicant as ineligible for an allocation.

4.21 Section 160(8) provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant or by a member of his household that would if the applicant had been a secure tenant of the housing authority at the time have entitled the housing authority to a possession order under s.84 of the Housing Act 1985 in relation to any of the grounds in Part 1 of Schedule 2, other than Ground 8. These are fault grounds and include behaviour such as conduct likely to cause nuisance or annoyance, and use of the property for immoral or illegal purposes. Housing authorities should note that it is not necessary for the applicant to have actually been a tenant of the housing authority when the unacceptable behaviour occurred. The test is whether the behaviour would have entitled the housing authority to a possession order if, whether actually or notionally, the applicant had been a secure tenant.

4.22 Where a housing authority has reason to believe that s.160A(7) may apply; there are a number of steps that will need to be followed.

i) They will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s160A(8). In considering whether a possession order would be granted in the circumstances of a particular case, the housing authority would have to consider whether, having established the grounds, the court would decide that it was reasonable to grant a possession order. It has been established in case law that, when the court is deliberating, reasonable means having regard to the interests of the parties and also having regard to the interests of the public. So, in deciding whether it would be entitled to an order the housing authority would need to consider these interests, and this will include all the circumstances of the applicant and his or her household. In practice, courts are unlikely to grant possession orders in cases which have not been properly considered and are not supported by thorough and convincing evidence. It is acknowledged that in cases involving noise problems, domestic violence, racial harassment, intimidation and drug dealing, courts are likely to grant a possession order. Rent arrears would probably lead to a possession order, although in many cases it will be suspended giving the tenant the opportunity to pay the arrears. In taking a view on whether it would be entitled to a possession order, the housing authority will need to consider fully all the factors that a court would take into account in determining whether it was reasonable for an order to be granted. In the Secretary of State's view, a decision reached on the basis of established case law would be reasonable.

ii) Having concluded that there would be entitlement to an order, the housing authority will need to satisfy itself that the behaviour is serious enough to make the person unsuitable to be a tenant of the housing authority. For example, the housing authority would need to be satisfied that, if a possession order were granted, it would not be suspended by the court. Behaviour such as the accrual of rent arrears which have resulted from factors outside the applicant's control for example, delays in housing benefit payments; or liability for a partner's debts, where the applicant was not in control of the household's finances or was

unaware that arrears were accruing should not be considered serious enough to make the person unsuitable to be a tenant.

iii) The housing authority will need to satisfy itself that the applicant is unsuitable to be a tenant by reason of the behaviour in question in the circumstances at the time the application is considered. Previous unacceptable behaviour may not justify a decision to consider the applicant as unsuitable to be a tenant where that behaviour can be shown to have improved.

4.23 The housing authority must be satisfied on all three aspects set out in para 4.22. Only then can the housing authority consider exercising its discretion to decide that the applicant is to be treated as ineligible for an allocation. In reaching a decision on whether or not to treat an applicant as ineligible, the housing authority will have to act reasonably, and will need to consider all the relevant matters before it. This will include all the circumstances relevant to the particular applicant, whether health, dependants or other factors. In practice, the matters before the housing authority will normally mean the information provided with the application."

15. It follows from s.160A (7) and (8) of the 1996 Act and paragraphs 4.22 and 4.23 of the Code of Guidance that where a housing authority has reason to believe that s.160A (7) may apply the following approach should be adopted:

- (1) First, they will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s.160A(8). (S.160A(7)(a) and para 4.22(i)).
- (2) Second, having concluded that there would be entitlement to an order, they will need to satisfy themselves that the behaviour is serious enough to make the person unsuitable to be a tenant of the housing authority so that an outright order for possession should be made (s.160A(7)(a) of the 1996 Act, s.85(2) of the 1985 Act and para 4.22(ii) of the Code of Guidance).
- (3) Third, they will need to satisfy themselves that the applicant is unsuitable to be a tenant by reason of the behaviour in question in the circumstances at the time the application is considered so that an outright order for possession should be made (s.160A (7)(b) of the 1996 Act, s.85(2) of the 1985 Act and para 4.22(iii) of the Code of Guidance).
- (4) Fourth, only when they are satisfied on (1)-(3) above can they consider exercising their discretion to decide that the applicant is to be treated as ineligible for an allocation. In reaching such a decision they will have to act reasonably and to consider all the relevant matters before them (s.160A(7) and para 4.23 of the Code of Guidance).

***Submissions***

16. In relation to the statutory conditions contained in s.160A (7)(a) of the 1996 Act, Mr Gallivan, for the Claimant, concedes that the Defendant was entitled to decide (1), that the grounds for possession under Ground 2 of Schedule 2 to the 1985 Act are made out in the light of the Claimant's possession of Class A drugs at the premises in February 2006 and his subsequent conviction; and (2) that a court would consider it reasonable in these circumstances to make an order for possession. It is not conceded that the Defendant was entitled to conclude that such an order would have been an outright, as opposed to a suspended or postponed, order.
17. S.160A (7) and (8) of the 1996 Act requires a local housing authority to be satisfied that an applicant in order to be treated as ineligible for an allocation of housing accommodation by them has been guilty of behaviour which, if he were a secure tenant, would entitle the authority to an outright order for possession under s.84 on Grounds 1-7 mentioned in Part 1 of Schedule 2

## **Housing allocation scheme**

to the 1985 Act. Mr Gallivan submits, and I accept, that the effect of the provisions is to require the local housing authority to be satisfied that a notional county court judge would probably make an outright order for possession in the circumstances of the case (see para 4.22(i) and (ii) of the Code of Guidance).

18. In my view the established case-law, to which I was referred, provides little assistance as to whether on the facts of the present case a court would be likely to grant an outright order for possession.
19. In *City of Bristol v. Mousah* [1998] 30 HLR 32, Beldam L.J. said (at p.39):

"The public interest, in my view, is best served by making it abundantly clear to those who have the advantage of public housing benefits that, if they commit serious offences at the premises in breach of condition, save in exceptional cases, an order for possession will be made. The order will assist the housing authority, who, under section 21 of the Act, have the duty to manage the housing stock and have the obligation to manage, regulate and control allocation of their houses, for the benefit of the public."

The Judge in that case had found as a fact that the tenant had persistently permitted the premises in question to be used for the purpose of the supplying of crack cocaine, Class A drug. The Court of Appeal decided that "where there is such a serious breach of a condition of the tenancy, it is only in exceptional cases that it could be said that it was not reasonable to make the order." (Beldam L.J. at p.39; and Otton L.J. at p.41; and Thorpe LJ agreed at p.41).

20. Similarly in *Sandwell Metropolitan Borough Council v. Hensley* [2007], 1 November 2007, (Lawtel abstract), the Court of Appeal held that a local authority had been entitled to an outright possession order against a tenant who had been convicted of being knowingly concerned in the cultivation of cannabis, since only in exceptional circumstances, where there was cogent evidence to demonstrate that the tenant's particular conduct had ceased, should an order be suspended.
21. However, as Lloyd J. commented in *Stonebridge Housing Action Trust v. Gabbidon* [2002] EWHC 2091 (Ch.):

"... albeit that the observations of the Court of Appeal in City of Bristol v. Mousah are cogent, they do not by themselves compel the conclusion that when the court is addressing the question ["as to whether it should exercise its wide discretion under s.85 of the 1985 Act to suspend a possession order or to stay execution"] it can come to only one possible answer in a case where incidents [of the kind in the present case] – which are to some extent comparable with those that were issues in the Mousah case – have been proved".

In *Gabbidon* the premises were used for dealings in crack cocaine, nevertheless the Judge suspended a warrant for eviction. Lloyd J. did "not accept that the drug incidents were conclusive factors which required [the judge] to reject the tenant's application whatever might be the other relevant circumstances." (para 22).

22. Accordingly, it is necessary to examine with care the facts of the individual case.
23. S.160A (9) of the 1996 Act requires the local housing authority to notify the applicant of a decision as to ineligibility for allocation by virtue of sub-section (7) and the grounds for it. The Defendant has done that by their letter dated 19<sup>th</sup> March 2007. However, Mr Gallivan submits that the Defendant has failed to take into account, properly or at all, relevant considerations in reaching their decision. In paragraph 4 (A)(i) of the Detailed Statement of Grounds in support



of the application, the considerations that Mr Gallivan said were not taken into account included "the personal circumstances of the Claimant, ... in particular, the Claimant's lengthy residence at the premises from age 17; the absence of any previous significant complaint about his occupation of the premises or conduct of the tenancy; the Claimant's efforts to address his behaviour and his offer of an undertaking in respect of the future; the likely impact on the Claimant of treating him as ineligible; the circumstances of the offence including the amount of drugs involved and the relatively modest sentence; that the Claimant's conviction is the first and only time that he has been convicted of any offence involving drugs and is the sole occasion in respect of which Ground 2 is satisfied."

24. The decision letter dated 19 March 2007, addressed to Flack & Co., the Claimant's Solicitors, refers to previous correspondence between Flack & Co. and the Defendant. In letters dated 12 June 2006, 11 August 2006, 20 September 2006, 11 October 2006 and 31 January 2007 Flack & Co. set out the Claimant's case and made representations on his behalf. The decision letter must be read against the background of this earlier correspondence. As such it is my view that the responses made by Mr Beglan, for the Defendant, to these criticisms are well-founded. In summary they are as follows:
- (1) The length of the Claimant's residence was well known to the Defendant and there is no reason to believe it was not taken into account. The focus in the decision letter was on the matter in dispute between the parties, namely the length of the history of drug misuse during the Claimant's residence at the premises.
  - (2) The overall conduct of the tenancy and the absence of serious complaint pre-dating 2006 was in issue and considered. The police records had disclosed misuse of drugs at the premises prior to the conviction in 2006, which were referred to in the decision letter.
  - (3) Mr Gallivan accepts that the Claimant's efforts to address his behaviour were considered.
  - (4) There was no reason to think that the Claimant's offer of an undertaking in respect of the future was not considered in the context of the consideration that was given as to whether his drug rehabilitation treatment was likely to be successful.
  - (5) As to the likely consequences of a finding of ineligibility, there was no information to suggest that the Claimant would be in any different position to any other ordinary homeless person in those circumstances.
  - (6) As to the circumstances of the offence, the Defendant knew that the Claimant had been convicted of the possession, rather than the supply, of cocaine and was aware of the amount involved. These matters, together with the sentence imposed, were referred to in the decision letter.
  - (7) The Defendant knew that the conviction in April 2006 was the Claimant's only conviction for misuse of drugs, but plainly it was not the only occasion on which the Claimant had committed an offence involving drugs.
25. Further Mr Gallivan challenged the findings set out in the Decision Letter that the Claimant's "problems with substance misuse are very long standing" (p.3). In my view the Defendant had a proper evidential basis for this finding. The Claimant had admitted in 1996 that he had "sometimes" used cocaine and he was cautioned in 1996 in respect of the possession of cannabis. In 2006 he was convicted of possessing cocaine and he was cautioned for the

## **Housing allocation scheme**

possession of cannabis. At no stage did the Claimant or his solicitors in lengthy correspondence with the Defendant suggest that he was a user of cocaine or cannabis in 1996 and in 2006, but not at any intervening time. In his witness statement the Claimant admits that in the past he has smoked cannabis occasionally and on rare occasions he has taken very small amounts of cocaine (para 8). Having regard to this evidence and to the police evidence as to the drug offences he committed in 1996 (see para 7 above), the Defendant was entitled to approach the case on the basis that the Claimant's drug abuse was long standing, and that it included abuse of Class A drugs.

26. I reject Mr Gallivan's suggestion that proper reasons for the decision were not given. In my view proper, adequate and intelligible reasons are set out in the Decision Letter. The reasons are stated "in sufficient detail" to enable [the Claimant] to know what conclusion [the decision maker] has reached on the "principal important controversial issues" (*Bolton Metropolitan Borough Council v. Secretary of State for the Environment* [1995] 3 PLR 37, 43C, Lord Lloyd; and see *William v. Wandsworth LBC* [2006] HLR 42 at para 18). Moreover Mr Worth balanced competing factors and explained why he concluded that some outweighed others. In particular, when considering the circumstances that applied at the time of the decision, having considered the Claimant's history of drug misuse and his efforts to overcome his substance misuse problems, he said "*Taking into account these issues, I am satisfied that it is appropriate to put less weight on the recent efforts at rehabilitation than on the seriousness and significance of the most recent conviction and length of the history of drug misuse*".
27. In my view the decision maker made proper findings of fact and analysed the evidence and relevant considerations with care. He reached a decision, applying the correct test, that he was entitled to make. I reject the submission that the decision was *Wednesbury* unreasonable.
28. Finally, Mr Gallivan submits that Article 8 of ECHR is engaged on the basis that the decision interferes with the Claimant's right to respect for his home. It is submitted that the Claimant's Article 8 rights have been violated because immediately prior to the decision under challenge the Claimant was occupying the premises as his home pending the making of an offer of alternative accommodation. It is said that the effect of the Defendant's decision is to deprive the Claimant immediately of the home in which he has resided for many years and to deprive him of the offer of alternative accommodation.
29. However the authorities referred to by Mr Gallivan do not assist. In *Kay v Lambeth London Borough Council* [2006] 2 AC 465 (following *Harrow London Borough Council v. Qazi* [2004] 1 AC 983) the House of Lords decided that a claim by a local authority owner of property to recover possession engages Article 8, notwithstanding that the person occupying the property as his home has no legal or contractual right to remain there. The earlier case of *Sheffield City Council v. Smart* [2002] HLR 34 decided that accommodation given to a person under Section 193 of the Housing Act 1986 has to be treated as the person's home when he moved into it, albeit her security of tenure is fragile and temporary. Accordingly, a court eviction order must be treated as an interference with a right to respect for her home under Article 8(1). Both these cases concerned claims for possession of property; neither of them support the submission that Article 8(1) is engaged in the circumstances of the present challenge which is to the decision that the Claimant is ineligible to be allocated housing accommodation.
30. In my view Mr Beglan is correct in his submission that it is not the decision under challenge which interferes with the Claimant's right to respect for his home. That decision arose out of the operation of the system for the allocation in the future of a scarce resource, namely social housing. The Claimant is at risk of losing his home following the Notice to Quit that was served in October 2005. The possession order that has been obtained and that the Defendant now proposes to enforce resulted from the service of the Notice to Quit and its expiration, not

from the decision that the Claimant was ineligible for accommodation.

***Conclusion***

31. For the reasons which I have explained, this claim must be dismissed. The decision of the Defendant that the Claimant was ineligible for housing accommodation under the provisions of the Defendant's allocation scheme was not unlawful.

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