

## The Highland Council Homelessness Policy – January 2024

### 1. Objectives and Policy Framework

1.1 Our objectives in delivering this policy are:

- To prevent homelessness and reduce its duration where it does occur
- To have regard to the Homelessness Code of Guidance and other national policy and guidance
- To fulfil the Council's legal duties.

1.2 The Highland Council will comply with:

- The Housing (Scotland) Act 1987 and the Homelessness etc. (Scotland) Act 2003.
- Homeless Persons Advice and Assistance (Scotland) Regulations 2002
- Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014
- Housing Support Services (Homelessness) (Scotland) Regulations 2012
- The Data Protection Act 1998 and 2018
- The Children (Scotland) Act 1995
- The Equality Act 2010
- The Homeless Persons (Suspension of Referrals between Local Authorities) (Scotland) Order 2022
- All relevant immigration legislation

1.3 It will promote good practice and have regard to guidance including:

- Interim Code of Guidance on Homelessness 2017
- Meeting the Best Interests of Children Facing Homelessness Guidance (2008) and Getting It Right For Every Child
- Prevention of Homelessness Guidance (2009)
- Housing Options Guidance (2016)

1.4 The primary legislation relating to the provision of homelessness services is the Housing (Scotland) Act 1987 and the Homelessness etc. (Scotland) Act 2003.

1.5 Staff are expected to follow the Council's [Code of Conduct for Employees](#).

1.6 The Council will provide translation and interpretation services when needed. The Council will ensure that information is accessible and available in formats such as large print, tape and Braille, as required.

## **2. Prevention of Homelessness, Information, Advice and Options Assistance**

- 2.1 The Council will take all reasonable steps to prevent homelessness. The Council will take a Housing Options approach to homelessness prevention.
- 2.2 Officers will be trained to provide information on a wide range of housing options and discuss possible ways to help a household remain in their home.
- 2.3 We will support the statutory rights of people who are homeless or threatened with homelessness by helping them achieve sustainable housing solutions. We will also ensure that public resources are effectively and efficiently used in a way that ensures statutory rights are maintained.
- 2.4 The Council will refer applicants to agencies that can offer independent financial or legal advice as required.

## **3. Handling Approaches**

- 3.1 All interviews will occur in a private interview room or over the phone. Service-users have the right to be interviewed by a staff member of the same sex and have a friend, relative or representative present at the interview. There may be circumstances where we cannot offer a member of the same sex due to available staff.
- 3.2 An initial housing options discussion will be held with households to establish their circumstances, whether any homeless prevention can be taken and to identify and consider their options. Where possible, this discussion will be carried out on the same day as the approach to the Council. In an emergency, outside of normal working hours, the Council will provide advice and emergency assistance through the Council's Out of Hours Service.
- 3.3 Where it is established that someone is homeless, discussion will occur on the need for temporary accommodation. Temporary accommodation will be provided when the applicant cannot source alternative temporary accommodation.
- 3.4 Where possible, the Council will advise the applicant in writing of their homeless decision within 28 days of the date of their application. Where the decision will take some time because of special inquiries that need to be carried out or if alternative options are being pursued, we will send an interim reply, explaining fully the reasons for the delay.
- 3.5 The rights of non-UK nationals to housing and homelessness provisions are complex. The Council will ensure that applications received from non-UK nationals are processed in accordance with legislation.

#### **4 Assessing Homelessness**

41 In accordance with Section 24 of the Housing (Scotland) Act 1987, a person will be considered homeless if they have no accommodation in the United Kingdom or elsewhere which they (together with any persons who normally reside with them as a family member, or in circumstances in which the Council considers it reasonable for that person to reside with the applicant) are entitled or permitted to occupy in one of the following ways:

- by virtue of an interest in it (for example, as an owner or tenant) by virtue of a court order
- by right or permission, or an implied right or permission, to occupy (for example, as a lodger or as a member of an existing household)
- by virtue of some protection given by law.

42 A household will be considered threatened with homelessness if, within two months, they will no longer be able to occupy a property as outlined above

43 The Council will investigate whether accommodation is available to the applicant and ask them to provide evidence depending on their situation.

44 An applicant will be assessed as homeless if it is not reasonable for them to continue living in their current accommodation.

45 Homeless applicants may live in temporary accommodation not provided by the Highland Council (e.g. sofa surfing or living at a friend's or family's) and retain their status as Homeless. The applicant's homeless status will be withdrawn if that accommodation becomes secure or settled. Should an applicant return to their family home or the property they became homeless from their homeless status may be withdrawn.

46 The Council will not consider someone threatened with homelessness from a private rented tenancy until their landlord has secured an Eviction Order. Tenants will be advised to remain on their property until then. Officers will consider the reasonableness of continuing to occupy the property and find the applicant homeless if it is unreasonable for them to remain there.

47 The Council will never seek information from an alleged perpetrator of abuse nor insist that "proof" must be provided by a third party where there is alleged domestic abuse.

#### **5 Assessing Intentionality**

51 Where an applicant is homeless or threatened with homelessness, the Council has the discretion to investigate if the applicant is intentionally homeless.

52 The Council will consider each case on its merit to decide whether to use this power.

53 A decision of intentionality will only be made where all three of these requirements are satisfied:

- a person has become homeless, or threatened with homelessness, because they deliberately did or failed to do something that caused them to lose their accommodation which was previously available to them; and
- the person was aware of all relevant facts that their actions or lack of action would result in their homelessness; and
- it would have been reasonable for that person to have continued to occupy their previous or current accommodation.

54 An applicant will normally be assessed as intentionally homeless if they did or failed to do something which caused them to lose their accommodation. The following are examples of intentionality:

- Ending a tenancy or selling a property in which it would have been reasonable for them to continue living in.
- Non-payment of rent or mortgage.
- Failure to maintain and conduct a satisfactory tenancy.
- Voluntary relinquishment or sale of property without first ensuring that alternative permanent accommodation is available.
- Failure to follow reasonable advice which would have prevented homelessness.
- Loss of tenancy through tenancy breaches.

55 An applicant will not normally be intentionally homeless if it would not have been reasonable for them to continue to occupy their previous accommodation. The Council will consider reasonableness in the context of the general circumstances prevailing in relation to housing in the area.

56 The Council will ask the applicant to provide evidence depending on their situation.

57 Where the Council finds the applicant intentionally homeless, the Council will provide the applicant with advice and assistance in finding accommodation. During this period, the household will be expected to make every effort to find alternative accommodation and may be asked to evidence what they have done in this respect.

58 If the household is in temporary accommodation, they must leave after being given a reasonable opportunity to find accommodation. This period will vary depending on the circumstances of the applicant.

## **6 Assessing Local Connection**

- 61 Where an applicant is unintentionally homeless or threatened with homelessness, the Council has the discretion to investigate if the applicant has a local connection.
- 62 The Council will consider each case on its merit to decide whether to use its power.
- 63 An applicant will have a local connection to a Local Authority area when:
- the household has or had the past “normal residency” in it, and this residence was of their own choice; or
  - the household has qualifying employment in the area; or
  - the household has qualifying family associations in the area; or
  - there are special circumstances (e.g., the applicant has no local connection anywhere in the United Kingdom).
- 64 The Code of Guidance on Homelessness and Housing (Scotland) Act 1987 explains the specific meanings of each test and what considerations Housing Officers should give when assessing Local Connection.
- 65 Residence in a local authority area because the applicant was accommodated in, for example, a prison or a mental health institution will not allow the applicant to establish a local connection.
- 66 Residence within Highland due to serving in the armed forces qualifies as normal residency. Under the Armed Forces Covenant, family members who resided in Highland with a member of the armed forces will also have a local connection under normal residency.
- 67 The Council will not make a Section 33 Referral to another Scottish Local Authority as per legislation and accept a full homeless duty towards any applicant whose only Local Connection is with another Scottish Local Authority.
- 68 The Council will consider making a Section 33 Referral to an English or Welsh Local Authority if the applicant has a Local Connection to one and no connection to the Highland Council.
- 69 Where temporary accommodation is being provided, this will remain available pending the outcome of the referral. If the applicant refuses to accept the referral, they will be required to leave temporary accommodation following a reasonable period, which would not normally be more than seven days.

## **7 Provision of Temporary Accommodation**

- 7.1 The Council will offer temporary accommodation when it has a legal duty to do so.
- 7.2 Every effort will be made to provide accommodation in a suitable location for the applicant, although the availability of temporary accommodation will influence this.
- 7.3 All temporary accommodations and furnishings provided by the Council will meet reasonable standards of repair, fire safety regulations, etc. The Council will inspect all temporary accommodation it owns or provides through a contractual framework.
- 7.4 All properties rented by the Council must have all necessary licenses and registrations.
- 7.5 The Council will make all efforts to not accommodate, for more than seven days, households in accommodation that breaches The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2014.
- 7.6 Homeless applicants with temporary accommodation will be responsible for paying rent and service charges. It is the tenant's responsibility to complete any benefit applications they may be entitled to.
- 7.7 In accommodation where breakfast, heating and lighting are provided, this charge is not eligible for benefit. The tenant is responsible for making regular payments to cover this charge. These are called service charges.
- 7.8 Failure to make rent and service charge payments may result in the tenant being asked to leave the accommodation.
- 7.9 Any complaints of anti-social behaviour in temporary accommodation will be investigated and may result in the applicant being asked to leave the accommodation.
- 7.10 Any willful damage to temporary accommodation will result in the applicant being asked to leave.
- 7.11 The applicant will be re-charged for any willful damage caused to the property or related furniture and fixtures by them, anyone living with them or someone visiting them. Criminal charges for any damages may also be considered.
- 7.12 Where someone has been removed from temporary accommodation, the Council will continue to have a duty to secure permanent accommodation for the applicant. The Council will make all efforts to support the applicant to allow them

to return to temporary accommodation.

## **8 Protection of belongings and storage**

81 The Council has a duty to protect the belongings of applicants where there is a risk of damage because they cannot protect them, and they cannot make any suitable arrangements to protect them. Where this is the case, the Council will offer to remove and store the applicant's belongings. The Council will always look to have the belongings stored with the applicant in their temporary accommodation or with family and friends in the first instance.

82 Any arranged removals and storage of belongings will be recharged to the applicant. The applicant will be informed of the repayment costs for their agreement before the service is commissioned.

83 When the Council's homeless duty ends, its duty to protect belongings ends. Belongings left uncollected within temporary accommodation or storage facilities will be disposed of. This is because belongings cannot be secured indefinitely. The Council will make all reasonable efforts to contact the applicant before they dispose of any belongings.

84 Applicants will be informed of this when they are initially provided with temporary accommodation.

## **9 Provision of Settled Accommodation**

91 Where the Council has accepted a full Homelessness Duty towards an applicant, it, or a Register Social Housing Landlord, will offer permanent accommodation unless the applicant resolves their own homelessness or the Council loses contact with the applicant. The applicant may be offered a Scottish Secure Tenancy or a Short Scottish Secure Tenancy.

92 Homeless applicants will be awarded appropriate priority in accordance with the Highland Housing Register Allocations Policy.

93 Homeless applicants will be made one reasonable offer of accommodation with homeless priority. A reasonable offer of permanent accommodation meets the applicant's housing need, but it may not be the type of accommodation or the location (either community or area) that the applicant prefers.

94 If a reasonable offer of accommodation is refused, the Council will consider its homelessness duty discharged. In these circumstances, the household's housing application will be handled according to the general allocation policy but without homeless priority. The applicant will be given notice to vacate any temporary accommodation provided. This notice will align with the terms of the applicant's leasing agreement.

- 95 The Council will use Section 5 referrals to Registered Social Landlords to discharge its homelessness duty.
- 96 The Council will advise applicants that we may discharge our rehousing duty by sourcing settled accommodation in the private rented sector.
- 97 If an applicant feels that an offer of housing made to them is unreasonable, they can ask for a review of this.

## **10 Housing Support**

- 101 The Council has a legal duty under Section 32B Housing (Scotland) Act 1987 to assess homeless applicants for housing support needs and make an offer when they believe that the applicant requires such support. Where the offer of support is accepted, a referral for housing support will be made.
- 102 Where the applicant refuses housing support, a referral for housing support will only be made if we believe there is a risk to the applicant or children.
- 103 Where the applicant's needs do not meet the housing support threshold, other forms of short-term support are available, and appropriate referrals will be made to partner agencies.

## **12 Review and Appeal Arrangements**

- 121 Applicants will be notified in writing of all decisions made about their application, which will contain the reasons for the decision.
- 122 An applicant has a right to request a review of their homeless decision. The Council will only undertake a review if the applicant provides details on why they believe the decision was wrong regarding homelessness legislation, Highland Council policy and the Code of Guidance on Homelessness or provides further information or evidence that has not already been considered.
- 123 All applicants will be advised of their right to have their case reviewed when they are notified of the decision on their application.
- 124 Any request for a review of a decision should be submitted in writing within 21 calendar days of the homelessness decisions being notified to the applicant or receipt of the offer.
- 125 The case review process will have one stage.
- 126 A designated senior officer will conduct a full case review. They will have regard to the legislation and the Code of Guidance on homelessness, consider issues around vulnerability, and, where necessary, consult with appropriate staff from Legal, Social Work Services, Health, and Social Care Services.



12.7 The review will establish whether the original decision was reasonable with respect to:

- Legal tests for homelessness
- Evidence considered in arriving at the decision
- Related Council policies and joint protocols – e.g. protocol on the Children’s Act Assessments or Looked after Children.

12.8 If the reviewing officer agrees there are grounds for a review, the review will be undertaken within 14 days. Applicants will then be notified of the decision reached, including the reasons for the decision.

12.9 Temporary accommodation will be provided where needed until the outcome of the Council review is known.

12.10 If the applicant’s appeal is unsuccessful and they still believe the Highland Council acted unlawfully in its decision, they can apply for a judicial review. The Highland Council will not assist the applicant with this. An applicant should seek legal assistance to discuss this. Temporary accommodation will not be provided while a judicial review is being sought or is in progress.

### **13 Staff Roles and Responsibilities**

13.1 The Council is committed to high customer service standards and will ensure staff have the skills and knowledge to deliver a professional and effective homeless service.

13.2 Staff training and development needs will be assessed and reviewed with training provided to ensure that staff can deliver services in line with this policy.

13.3 Where evidence of risk to vulnerable applicants or staff exists, the Council will take reasonable steps to ensure their safety. Measures will be based on reliable information from statutory agencies or as disclosed by the applicant’s household.

### **14 Recording Data and Communications**

14.1 All information obtained and used to undertake this policy will be held in accordance with the Highland Council [Data Protection Policy](#) and specific [Privacy Notice for homelessness](#).

14.2 Applicants will be asked to sign a declaration that the information they provide is accurate and that they will disclose any change in their circumstances which might also affect their application. Failure to sign the form or provide the required information may result in the Council not having enough information to allow a homeless assessment. In this circumstance, the Council will have no

further duty to the applicant.

- 14.3 It is an offence to provide false or misleading information. The Council will cancel the homeless application when subsequent investigations indicate that an applicant has provided false or misleading information. It will have no further duty to the applicant until the Council is satisfied that truthful information is being provided. If temporary accommodation is provided, the applicant will be asked to leave. The Council will also report the applicant to its fraud prevention team.

## **15 Quality Assurance and Performance Monitoring**

- 15.1 A random sample of 10% of all cases will be quality assured retrospectively (after the decision has been made) by a Senior Housing Officer.
- 15.2 The Council will gather statistics and information to help us assess this policy's impact and assist in policy review. We will obtain client feedback on their experience of our homelessness service and temporary accommodation through consultation with service user forums (where they exist) and customer questionnaires/surveys. Key measures may include:
- Case numbers and timescales
  - Prevention actions
  - Temporary accommodation use and time in temporary accommodation
  - Housing support
  - Case decisions and outcomes
  - Appeals