

## RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

### **\*PART 1 – PUBLIC DOCUMENT**

#### **SERVICE DIRECTORATE: REGULATORY**

#### **1. DECISION TAKEN**

- 1.1 Approval of minor amendments to the Council's Private Rented Sector Offer policy to incorporate changes introduced by the Homelessness Reduction Act 2017.

#### **2. DECISION TAKER**

- 2.1 Ian Fullstone, Service Director – Regulatory, in consultation with Cllr Bernard Lovewell, Executive Member for Housing and Environmental Health.

#### **3. DATE DECISION TAKEN:**

- 3.1 26<sup>th</sup> March 2019.

#### **4. REASON FOR DECISION**

- 4.1 The Homelessness Reduction Act 2017, which came into force in April 2018, imposes new duties on the Council to prevent and relieve homelessness. The Council must take reasonable steps to help homeless households and those threatened with homelessness retain existing accommodation or secure alternative accommodation, which may include suitable private rented sector accommodation. The Council's Private Rented Sector Offer policy – attached at Appendix A – has been updated to accommodate these new duties.

#### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 None. The Private Rented Sector Offer policy needs revising to ensure that the Council will be able to utilise the full range of accommodation options to help it meet its new statutory obligations to prevent and relieve homelessness.

#### **6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)**

- 6.1 None; the amendments to the PRSO policy are minor.

#### **7. RELEVANT CONSIDERATIONS**

- 7.1 The Localism Act 2011 provides for local housing authorities to fully discharge the section 193(2) main housing duty owed to homeless households with a 'private rented sector offer' (PRSO). This means that homeless households accepted by the Council as being owed the main housing duty cannot refuse a suitable offer of private rented accommodation in favour of a social housing tenancy. A PRSO must be an assured shorthold tenancy, with a fixed term of at least 12 months. The Council's PRSO policy was originally approved by Cabinet at its meeting on 24<sup>th</sup> June 2014.
- 7.2 The Homelessness Reduction Act (HRA) 2017 now provides for local housing authorities to also use private rented accommodation in their work to prevent or relieve homelessness. The HRA enables the Council to use an offer of private rented accommodation to end a prevention or relief duty to a household, as long as

it is an assured shorthold tenancy of a fixed term of at least six months, and preferably 12 months (the Council has not to date had occasion to discharge its main housing duty via a PRSO due to challenges sourcing accommodation and the high rent levels in the District).

- 7.3 However, under the new HRA regime, local authorities are expected to work with many more households than previously, to help them prevent or relieve their homelessness. In order to do so successfully, and in light of the high demand for affordable housing in the district, the Council needs to make use of the full range of accommodation options available to it, which includes suitable private rented accommodation. In response to the growing need to access this accommodation, the Council has appointed a Private Rented Sector Officer to work with local landlords and secure a supply of private rented accommodation
- 7.4 Private rented accommodation is also often the only option available to households who do not qualify for the Common Housing Register (due to previous debts or convictions for example) or who would not receive a high priority for affordable housing. It should be noted however that the sector is relatively small in North Herts (comprising 13% of households according to the last Census) and that affordable housing will continue to provide a resolution to homelessness for most households owed a main housing duty.
- 7.5 The PRSO policy has been revised accordingly, to enable the Council to end the relief duty, should it be appropriate, via a final accommodation offer of suitable private rented accommodation. This is detailed in Section 3 of the policy. Refusal of such an offer will preclude the applicant from subsequently being owed the main housing duty. This is subject to the applicant having been informed of the consequences of refusal of a final accommodation offer and of their right to request a review of the suitability of accommodation.
- 7.6 Given the relatively small supply of private rented sector accommodation in the district, the PRSO policy proposes to use offers of private rented accommodation in the discharge of duties owed to homeless households only (ie the relief duty or main housing duty). The Council will continue to work collaboratively with households owed the prevention duty to explore all options available to enable them to remain in their existing accommodation or to secure alternative accommodation. This includes mediation work, referral to legal advice services, use of Discretionary Housing Payments and affordable credit union loans and general assistance with securing accommodation, including in the private rented sector.
- 7.7 Policy with regard the discharge of the main housing duty remains unchanged, set out in paragraphs 3.1 – 3.3 and 6.1 – 6.13.
- 7.8 In order to use an offer of private rented sector accommodation to discharge the Council's homelessness duties, the accommodation must be assessed as being suitable by a qualified officer. Suitability criteria are detailed and defined in homelessness legislation, statutory guidance and relevant case law. Annex A of the PRSO policy sets out further details and has been updated in line with the most recent MHCLG Homelessness Code of Guidance, published in February 2018.

## **8. LEGAL IMPLICATIONS**

- 8.1 The Cabinet approved the previous version of the PRSO policy at its meeting on 24<sup>th</sup> June 2014. The Cabinet also resolved at that meeting that authority be delegated to the Head of Housing and Public Protection (now the Service Director – Regulatory), in consultation with the Executive Member for Housing and Environmental Health, to make minor amendments to the policy from time to time.

- 8.2 Section 4 of the Homelessness Act 2002 confirms that the District Council is the local housing authority under the Housing Act 1985 Section 1(1).
- 8.3 Section 193 (7AA-7AC) of the Housing Act 1996, as amended by section 148 of the Localism Act 2011 allows for the local housing authority to discharge a main housing duty via a private rented sector offer and sets out the requirements that need to be met in order to do so.
- 8.4 Section 189B(9) of the Housing Act 1996, as amended by section 5 of the Homelessness Act 2017 allows for the local housing authority to end a relief duty under section 193A of the Housing Act 1996, via a final accommodation offer of private rented accommodation.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 There are no financial implications.

## **10. RISK IMPLICATIONS**

- 10.1 Private rented accommodation in the district is in high demand and accommodation that is affordable to the Council's customers is especially scarce. There is a risk that the Council will not be able to secure enough privately rented accommodation to meet its needs, with potential knock on impacts on the number of households in temporary accommodation and in other forms of emergency housing such as bed and breakfast. In order to mitigate this risk, the Council has appointed a Private Rented Sector Officer to work with local landlords and secure a supply of private rented accommodation.

## **11. EQUALITIES IMPLICATIONS**

- 11.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 11.2 No adverse equality implications are expected to occur as a result of amendments to this policy. Offers of private rented sector accommodation will comply with relevant legislation and statutory guidance. The suitability of accommodation offered must be considered on a case by case basis, requiring an assessment of all aspects of the accommodation in the light of the relevant needs, requirements and circumstances of the homeless applicant and their household.

## **12. SOCIAL VALUE IMPLICATIONS**

- 12.1 The Social Value Act and "go local" policy do not apply to this decision.

## **13. HUMAN RESOURCE IMPLICATIONS**

- 13.1 There are no human resource implications.

## **14. BACKGROUND PAPERS**

- 14.1 None.

## **15. NOTIFICATION DATE**

*Date sent to all Members, put on website and appears in MIS - Committee and Member Services will insert*

Signature of Executive Member Consulted ..... *A. Lovell* .....

Date ..... *26/3/19* .....

Signature of Decision Taker ..... *[Signature]* .....

**Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.**

**Call-in does not apply to NON-EXECUTIVE DECISIONS**

# North Hertfordshire District Council

## Private Rented Sector Offer Policy

### Policy on making an offer of private rented sector accommodation to discharge homelessness duties

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#### 1. Introduction

- 1.1 This policy sets out how North Hertfordshire District Council (NHDC) will discharge its statutory homelessness duties via accommodation in the private rented sector.
- 1.2 The Localism Act 2011 provides for local housing authorities to fully discharge the main housing duty with a 'private rented sector offer'. Most recently, the Homelessness Reduction Act 2017 provides for local housing authorities to use private rented accommodation to prevent or relieve homelessness.
- 1.3 The policy complies with:
- Housing Act 1996, as amended by the Homelessness Act 2002 and the Homelessness Reduction Act 2017;
  - Equality Act 2010;
  - Localism Act 2011;
  - Homelessness (Suitability of Accommodation) Order 1996
  - Homelessness (Suitability of Accommodation) (England) Order 2012;
  - Homelessness (Review Procedure etc.) Regulations 2018; and
  - Homelessness Code of Guidance, 2018.
- 1.4 This policy operates alongside the Council's Housing and Homelessness Strategies, its Common Housing Allocation Policy and Tenancy Strategy.

#### 2. Aims and Objectives

- 2.1 Social housing in the district is in high demand and households often face long wait times before they are housed. The Council intends to utilise all resources available to it in order to meet its statutory obligations. It therefore intends to employ the powers granted to it to, wherever possible, use good quality, suitable private rented sector accommodation to discharge its duties to homeless households.
- 2.2 Private rented sector accommodation will not be suitable for all households and the circumstances of individual households will be carefully considered before pursuing the option to discharge duty via an offer of private rented accommodation. If the Council is satisfied that it is appropriate to do so, it may discharge its duty by arranging for a private landlord to make a suitable offer of an assured shorthold tenancy in the private rented sector for a period of either:
- at least **12 months** in cases where it is the main housing duty which is being discharged; or
  - at least **6 months**, in cases where it is a final accommodation offer made to end the relief duty.

- 2.3 Note that private rented accommodation in the district is in short supply and the ability to apply this policy will depend on prevailing market conditions.

### 3. How the policy will be applied

#### Discharge of the main housing duty

- 3.1 The Council may use a private rented sector offer to bring to an end a main housing duty owed to an applicant<sup>1</sup>. This applies to any applicant who has made a homeless application after November 9<sup>th</sup> 2012.
- 3.2 A private rented sector offer is defined by section 193(7AC) of the Housing Act 1996 as:
- an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation and which:
  - is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's main housing duty to an end; and
  - the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months.
- 3.3 The Council will have discharged its main housing duty whether the applicant accepts or refuses a private rented sector offer so long as the applicant has been informed in writing of the following<sup>2</sup>:
- the possible consequence of refusal or acceptance of the offer;
  - that the applicant has the right to request a review of the suitability of the accommodation; and
  - in a case which is not a restricted case, the effect under section 195A of the Housing Act 1996 of a further application to the authority within two years of acceptance of the offer (the 'reapplication duty').

#### A final accommodation offer to end the relief duty

With effect from 3<sup>rd</sup> April 2018, applicants who are owed a relief duty by NHDC may be made a **final accommodation offer**<sup>3</sup> of private rented sector accommodation if it is deemed appropriate following an assessment of the applicant's case.

- 3.4 An offer is a final accommodation offer if: -
- (a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become available for the applicant's occupation;
  - (b) it is made with the approval of the authority in pursuance of arrangements

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<sup>1</sup> s193 (7AA) - (7AC) Housing Act 1996, as amended by s.148(5) - (7) Localism Act 2011

<sup>2</sup> S193(7AB) Housing Act 1996.

<sup>33</sup> S193A(4) and s193C(7) Housing Act 1996, as amended by section 7 of the Homelessness Reduction Act 2017.

made by the authority in the discharge of their duty under section 189B(2); and  
(c) the tenancy being offered is a fixed term tenancy within the meaning of part 1 of the Housing Act 1988 for a period of at least 6 months.

- 3.5 Wherever possible, the Council will seek to offer a tenancy term of 12 months, especially when housing families with dependent children.
- 3.6 Refusal of a final accommodation offer in the relief stage will bring the s189B(2) relief duty to an end<sup>4</sup> and will preclude the applicant from subsequently being owed the main housing duty. This is subject to the applicant having been informed of the consequences of refusal of a final accommodation offer and of their right to request a review of the suitability of accommodation.
- 3.7 In cases where the relief duty ends as a consequence of the applicant's deliberate and unreasonable refusal to cooperate<sup>5</sup>, the main housing duty will not apply but the Council will be obliged to secure that accommodation is made available to the applicant<sup>6</sup>. This duty will cease if the applicant accepts or refuses a final accommodation offer.

#### **4. Prioritisation of offers**

- 4.1 The level of private rented sector supply will determine the number of households that may be made a suitable offer of private rented sector accommodation. In situations where the number of applicants exceeds the supply of properties, the following applicants will be given priority:
- restricted cases<sup>7</sup>, as defined by Section 193(3B) Housing Act 1996;
  - applicants who do not qualify for inclusion on the North Herts Common Housing Register, who are owed the main housing duty and who are occupying temporary accommodation;
  - applicants who have been accepted as threatened with homelessness and owed the main housing duty and where no suitable temporary accommodation is available;
  - applicants with whom it has been agreed that a private rented sector tenancy can best meet their needs and preferences; and
  - applicants who are owed the relief duty where the likely outcome is that the main housing duty will be owed should homelessness not be relieved.
- 4.2 Applicants within the above categories will be prioritised by date of acceptance of the main housing duty, (i.e. earliest acceptance first) where relevant, and the suitability of the property in terms of size, type and location and other suitability matters (see Annex A).

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<sup>4</sup> s193A Housing Act 1996 as amended by s7 of the Homelessness Reduction Act 2017.

<sup>5</sup> S193B and s193C Housing Act 1996 as amended by s7 of the Homeless Reduction Act 2017.

<sup>6</sup> S193C(4) Housing Act 1996 as amended by s7 of the Homeless Reduction Act 2017.

<sup>7</sup> A restricted case is one where the applicant's households contains a 'restricted person' (someone who is subject to immigration control with no recourse to public funds, defined by section 184(7) Housing Act 1996) and it is the presence in the household of the restricted person that has led to the main housing duty having been accepted. In restricted cases, local authorities must bring the section 193(2) main housing duty to an end by making the applicant a private rented sector offer.

## **5. Offers of private rented sector accommodation**

- 5.1 Before making an offer of private rented sector accommodation to end either the main housing duty or the relief duty, the Council must be satisfied that:
- the accommodation is suitable for the applicant (see Annex A) and other household members; and that
  - the applicant is not under any contractual or other obligations in respect of his or her existing accommodation, or, if he or she is, that they are able to bring these obligations to an end before being required to take up the offer.
- 5.2 Applicants will be invited to view accommodation before being required to decide whether they accept or refuse the offer and before being required to sign any written agreement relating to the accommodation.
- 5.3 The applicant will be given a reasonable period to decide whether or not to accept the offer. In deciding what a reasonable period is, the applicant's circumstances, such as whether they wish to seek advice in making their decision, if they are in hospital or temporarily absent from the district, will be taken into account.
- 5.4 The applicant can request a review of its suitability whether or not the offer has been accepted.
- 5.5 Where a suitable offer of accommodation located outside North Hertfordshire is accepted, the Council will notify the housing authority in whose district the accommodation is situated, in writing, within 14 days of the accommodation being made available to the applicant.
- 5.6 Households accepted onto the Common Housing Register for social housing in the district may remain on the Register following the acceptance or rejection of an offer of private rented sector accommodation. Their application will be assessed in light of their new circumstances as per the Council's allocation policy.

## **6. The Re-application Duty following discharge of main housing duty**

- 6.1 Where the section 193(2) main housing duty has been discharged via a private rented sector offer and the applicant becomes homeless within two years of the date that the offer was accepted, a re-application duty<sup>8</sup> will apply provided that:
- the applicant is eligible for assistance; and
  - the applicant did not become homeless intentionally
- 6.2 The re-application duty means that the applicant will be owed a main housing duty under section 193(2) regardless of whether the applicant has a priority need. The Council must provide suitable interim accommodation while it carries out its inquiries.
- 6.3 The duty will apply regardless of whether the accommodation from which the applicant is homeless is the accommodation secured as a result of a private rented sector offer, or accommodation subsequently secured by the applicant,

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<sup>8</sup> S195A Housing Act 1996, as amended by s149(4) of the Localism Act 2011.



provided that:

- it is not a restricted case, as defined by s.193(3B) – the re-application duty is not owed in restricted cases; and
  - the applicant remains eligible for assistance; and
  - the applicant is not intentionally homeless.
- 6.4 For the purpose of a reapplication following a private rented sector offer, an applicant that has been issued with a valid notice under section 21 of the Housing Act 1988 is to be treated as being homeless from the date that the notice expires<sup>9</sup>.
- 6.5 An applicant issued with a valid notice under section 21 of the Housing Act 1988 must be treated as threatened with homelessness from the date the notice is issued<sup>10</sup>. This means that the Council must take steps to secure that accommodation does not cease to be available to the applicant.
- 6.6 The re-application duty will only apply once.
- 6.7 There is no requirement that the new homelessness application be made to the same local housing authority that arranged the earlier private rented sector offer.
- 6.8 The applicant will be referred back to the local authority that arranged the private rented sector offer unless:
- there is a risk of domestic violence to the applicant or any person who might reasonably be expected to reside with them in the other authority; or
  - a member of the household has suffered violence in the district of the other authority and it is probable that the return would lead to further violence.
- 6.9 Referrals regarding re-applications are not subject to any consideration of local connection by the local authority that receives the referral.
- 6.10 The referral will only be made once it has been established that the re-application has been made within two years and the conditions for referring a case to another local authority have been met<sup>11</sup>.
- 6.11 In making the referral, the Council will have regard to the Homelessness Code of Guidance for Local Authorities.
- 6.12 The applicant will be notified of the decision to refer them to another authority and the duty to provide interim accommodation will cease. However, the duty to secure that accommodation is available to the applicant until the question of whether the conditions of the referral are met will apply.
- 6.13 The applicant's position on the Common Housing Register will be reviewed upon re-application. Any preference to which they are entitled for homelessness or threatened with homelessness will be applied.

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<sup>9</sup> S195A(2) Housing Act 1996 as amended by s149(4) Localism Act 2011.

<sup>10</sup> S195A(4) Housing Act 1996.

<sup>11</sup> S198(2ZA), as amended by s149(6) Localism Act 2011.

## **Annex A**

### **Suitability of accommodation**

#### **1. Overview**

- 1.1 Accommodation secured by the Council in discharge of its homelessness duties must be suitable in relation to the applicant and to all members of their household who normally reside with them, or who might reasonably be expected to reside with them.
- 1.2 Suitability requirements are set out in homelessness legislation, statutory guidance, relevant case law and the Homelessness Code of Guidance 2018. This Annex provides an overview of the requirements. Space and arrangement will be key factors in determining the suitability of accommodation. In general, consideration of whether accommodation is suitable will require an assessment of all aspects of the accommodation in the light of the relevant needs, requirements and circumstances of the homeless applicant and their household.
- 1.3 Properties will be inspected by a suitably qualified officer, who must be satisfied that the property is in a reasonable condition and free from any Category 1 hazards under the Housing Health and Safety Rating System.
- 1.4 The Council will require a copy of a written tenancy agreement specifying the terms of the tenancy and will review to ensure that it:
  - sets out the tenant's obligations, for example, a clear statement of the rent and other charges; and
  - sets out the responsibilities of the landlord; and
  - does not contain unfair or unreasonable terms, for example, callout charges for repairs or professional cleaning at the end of the tenancy unless in the instances that willful damage has been caused.

#### **2. Suitability requirements specific to offers of private rented sector accommodation**

- 2.1 Private rented sector accommodation must meet the requirements of Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012 if it is to be considered suitable when offered to bring to an end the s193(2) main housing duty or as a final accommodation offer made in the 189B relief stage.
- 2.2 Accommodation shall not be regarded as suitable where the Council is of the view that any of the following apply:
  - it is not in reasonable physical condition;
  - electrical equipment does not meet the requirements of Schedule 1 to the Electrical Equipment (Safety) Regulations 2016;
  - the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;
  - the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;
  - the landlord is not a fit and proper person.

2.3 In addition, accommodation shall not be regarded as suitable if any of the following apply:

- the accommodation is a house of multiple occupation subject to licensing, but has not been licensed;
- the accommodation does not have a valid Energy Performance Certificate;
- the accommodation does not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998e;
- the landlord has not provided a written tenancy agreement to the Council which the landlord proposes to use for the purposes of an offer of private rented accommodation, and which the Council considers to be adequate.

### **3. Additional requirements for standards of accommodation**

3.1 The Council is required to have regard to the provisions set out in:

- parts 9 and 10 of the Housing Act 1985 (slum clearance and overcrowding); and
- parts 1 to 4 of the Housing Act 2004 (housing conditions, licensing of houses in multiple occupation, selective licensing of other residential accommodation, additional control provisions in relation to residential accommodation).

3.2 In multi-occupied residential buildings, landlords, owners or managing agents should demonstrate compliance with the Regulatory Reform (Fire Safety) Order 2005.

3.3 All furnishings and fittings must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).

3.4 The property must have at least one smoked alarm installed on every storey of the property and a carbon monoxide alarm in any room containing a solid fuel burning appliance. The landlord must ensure that alarms are in working order at the start of each new tenancy.

### **4. Location**

4.1 The suitability of the location for all members of the household must be considered by the Council.

4.2 The Council will secure, in so far as is reasonably practicable, private rented accommodation within North Hertfordshire. This is in accordance with section 208(1) of the Housing Act 1996.

4.3 Where it is not possible to secure accommodation within the district, the Council will take into account the distance of that accommodation from the district. The Council will try to secure accommodation that is as close as possible to where the applicant was previously living.

4.4 In all cases, the Council will also take into account, in accordance with article 2 of the Homelessness (Suitability of Accommodation) (England) Order 2012:

- the significance of any disruption to the employment, caring responsibilities or education of the applicant or members of their household;

- the proximity and accessibility of the accommodation to medical facilities and other support; and
- the proximity and accessibility of the accommodation to local services, amenities and transport.

4.5 Where an offer of private rented sector accommodation is made outside of the district, the Council will notify the relevant local authority and provide relevant details of the applicant and their household. This notification will be made in writing within 14 days of the accommodation being made available to the applicant.

## **5. Affordability**

5.1 In accordance with the Homelessness (Suitability of Accommodation) Order 1996, when determining whether a property is affordable for an applicant, the Council will take account of:

- the financial resources available to the applicant;
- savings and other capital sums which may be a source of income;
- the costs in respect of the accommodation;
- payments which the applicant is required to make under a court order to a spouse or former spouse or to, or for the benefit of, a child and payments of child support maintenance; and
- other reasonable living expenses.

5.2 Housing costs will not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet essential needs including food, clothing, heating and transport. The Council will be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but will ensure that the individual circumstances of the applicant and their household are taken into account.

## **6. Fit and proper landlords**

6.1 The Council must be satisfied that landlords are fit and proper people to act in the capacity of a landlord. This assessment involves consideration if the landlord has:

- committed any offences involving fraud, violence or illegal drugs;
- practised unlawful discrimination in, or in connection with, the carrying on of any business;
- contravened any provision of the law relating to housing; or
- acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation.

6.2 The Council will carry out reasonable enquiries into the suitability of a potential landlord including carrying out checks of internal databases. The potential landlord will be asked to declare any relevant convictions. Where there is a suspicion that the landlord may not be suitable, the Council may seek a Disclosure and Barring Service check.

6.3 The Council will remind prospective landlords and tenants of their

responsibilities around the use of a tenancy deposit scheme.

