

	London Borough of Hammersmith & Fulham CABINET 30 MARCH 2015
AMENDMENT TO HOUSING ALLOCATION SCHEME FOLLOWING THE COURT OF APPEAL JUDGMENT IN R (JAKIMAVICUITE) V LB HAMMERSMITH & FULHAM	
Report of Councillor Lisa Homan: Cabinet Member for Housing	
Open report	
Classification - For Decision	
Key Decision: Yes	
Wards Affected: All	
Accountable Executive Director: Melbourne Barrett – Executive Director for Housing and Regeneration	
Report Author: Mike England - Director for Housing Options, Skills & Economic Development	Contact Details: Tel: 020 8753 5344 E-mail: mike.England@lbhf.gov.uk

1. EXECUTIVE SUMMARY

- 1.1 The Council's current scheme Housing Allocation Scheme was approved by the Council's previous administration in December 2012. The purpose of this report is to allow the current administration to revise the scheme following the Court of Appeal Judgment in R (Jakimavicuite) v LB Hammersmith & Fulham which found a part of it to be unlawful.
- 1.2 This judgment has ruled a specific element of the Housing Allocation Scheme (described in Section 5.1 below) is unlawful and this must be remedied by the Council.
- 1.3 Officers do not consider it advisable to delay a revision to the Housing Allocation Scheme (December 2012) to reflect the Court of Appeal judgment until a wider review of the Housing Allocation Scheme is completed later in 2015.

2. RECOMMENDATIONS

- 2.1 That the Housing Allocation Scheme adopted by the previous Council administration in December 2012 be amended to **delete** paragraph Section 2.14(d).
- 2.2 That any associated transitional costs arising from implementing the change to the Scheme be funded from an existing approved earmarked reserve set aside for this purpose.

3. REASONS FOR DECISION

- 3.1. The reason for the decision is to comply with the judgment of the Court of Appeal.

4. INTRODUCTION AND BACKGROUND

- 4.1 The Council is statutorily obliged to adopt and operate a Housing Allocation Scheme (also known as the 'Scheme of Allocation') which sets out the rules by which it allocates available affordable rented accommodation. The current Housing Allocation Scheme was adopted by the previous council administration in December 2012 and implemented from April 2013.
- 4.2 The Housing Allocation Scheme will be the subject of a review later in 2015 and an initial consultation process, as part of the broader housing strategy revision process, began on 6 January 2015. Cabinet will be asked to adopt a final Housing Strategy document on 19 May 2015, with a final Housing Allocation Scheme adopted later in the year.

5. PROPOSAL AND ISSUE

- 5.1. Section 2.14 of the Housing Allocation Scheme (December 2012) includes classes of persons who do not normally qualify for inclusion on the housing register. The proposal is to **delete** paragraph Section 2.14(d) which reads as follows:

“Section 2.14 (d) – Homeless applicants placed in long term suitable temporary accommodation under the main homelessness duty, unless the property does not meet the needs of the household or is about to be ended through no fault of the applicant. Long term temporary accommodation can include the private sector homes let via the council or a housing association under a leasing arrangement, and non-secure tenancies on regeneration estates.”

- 5.2 As set out above the Council has a statutory obligation to adopt and operate a Housing Allocation scheme and it is also required to give

'reasonable preference' to certain classes of applicant in defined needs groups. Households who are owed the statutory duty to accommodate under homelessness legislation ("the full homelessness duty") are one of the defined reasonable preference groups.

- 5.3 Previous case law has established that the duty to give a reasonable preference to the defined groups does not amount to an individual right that applies to any member of that group. Rather the duty is owed to the group as a whole and the requirement is that overall the scheme must give preference to applicants from within those groups over applicants from outside of those groups. In the Jakimavicuite case the applicant who brought the claim argued that 2.14(d) breached the Council's duty to give reasonable preference to applicants owed the full homeless duty and, that in effect, the Council had pushed the power to set qualification criteria farther than the law allowed.
- 5.4 The power to set qualification criteria was established by the 2011 Localism Act. Where local authorities exercised that power, the potential for a 'tension' between exercising that power and the duty to give reasonable preference to certain groups was created. This tension was the issue before the court. The Court of Appeal held that it was not open to the council to use the power to set qualification criteria to 'carve out' a sub group of applicants from within the reasonable preference groups who could then be disqualified on the basis of lesser need. Consequently it held that section 2.14 (d) of the scheme was unlawful.
- 5.5 The Council is required to amend its Housing Allocation Scheme to comply with the judgment. It should be noted that the judgment did not quash the scheme, but simply declared 2.14(d) to be unlawful.
- 5.6 The Council's draft new Housing Strategy, currently out to consultation, seeks views on a range of possible amendments to the Allocation Scheme. Once comments have been received, members will wish then to consider whether to proceed with further amendments. However, this will take longer than what might be seen as a reasonable period for the council to respond to the court judgement. A two-stage approach is therefore proposed. Stage one will be focused on achieving specific compliance with the requirements of the court's judgment and stage two with the wider changes.
- 5.7 Once they have authority to amend the Allocation Scheme officers will begin the process of approaching applicants and reinstating them to the Housing Register. In the first instance, applicants are likely to be placed in Band 3 of the Housing Register. Some may be placed in Band 2 (i.e., where the applicant meets the community contribution criteria). Applicants who do not meet the five year residence criteria will however continue to have reduced priority and will be placed in band 4 until such time as the residence criteria are satisfied. Each applicant's circumstances will need to be considered and banding will be awarded accordingly. It is anticipated that around 800 applicants will be added to the Housing Register. This will have a 'knock on' impact on waiting times for the other c 850 applicants

currently on the Register. Once the re-instatement process is fully complete, officers can then begin measuring the impact of the amendment to the housing allocation scheme.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1 In the absence of an appeal to the Supreme Court there are no options available to the Council other than to comply with the judgement.

7. CONSULTATION

- 7.1. The Council is statutorily obliged to consult with Registered Providers (i.e., housing associations) when making major amendments to its Housing Allocation Scheme. Officers have informed members of the H&F Housing Association Forum (the consultative forum for the council and housing associations) of the Council's intention to make the change necessary described in section 2.1 and sought comments accordingly. The scope to influence the Court of Appeal's judgment is considered to be very limited but Registered Providers may be able to assist in advising how the change in the Housing Allocation Scheme can be most effectively implemented.

8. EQUALITY IMPLICATIONS

- 8.1. The equality implications of reinstating homeless applicants living in temporary accommodation to the Housing Register are expected to be broadly positive. Given applicants who present themselves as homeless are more likely to be from black, Asian and minority ethnic backgrounds; women; young people; then the impacts can be expected to be positive. By reinstating the c.800 former applicants to the housing register, this will have 'knock on' impacts, e.g., longer waiting times, on those already on the housing register, many of whom will also be from protected equality groups.
- 8.2. Implications completed by: Aaron Cahill, Interim Housing Strategy Manager 0208 753 1649

9. LEGAL IMPLICATIONS

- 9.1 The legal implications of this decision are contained within the report. Failure to amend the Scheme of Allocation would expose the Council to further legal challenges. This is an interim change to ensure that the Council operates lawfully pending a wider review of the Scheme.
- 9.2 Implications completed by: Janette Mullins, Principal Solicitor (Housing and Litigation) 020 8753 2744.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 It is anticipated that there will be a one-off cost associated with implementing the amendment to the Scheme of Allocation. These transitional costs are not expected to exceed £25k and relate mainly to the costs of systems changes, administration and communication costs arising from reinstating c.800 former applicants to the housing register.
- 10.2 There are no significant ongoing financial implications resulting from the amendment to the Scheme. The Housing Allocations service will continue to be sufficiently funded from existing resources.
- 10.3 It is recommended that the additional one-off costs of up to £25k are funded from the existing approved reserve held by Housing & Regeneration which was established specifically to provide for the one-off costs associated with the review of the Housing Register and the Housing Allocation Scheme.
- 10.4 Implications completed by: Kathleen Corbett, Director of Finance and Resources, 020 8753 3031.

11. RISK MANAGEMENT

- 11.1 Following the Court of Appeal judgement, the proposed amendment must be made to the Housing Allocation Scheme. Inaction on the council's part exposes the council to the risk of a further legal challenge. Compliance with Legal Duty is a Corporate risk and is noted as risk number 8 on the council's risk register.
- 11.2 Implications completed by: Michael Sloniowski, BiBorough Risk Manager Telephone: 0208 753 2587.

12. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 12.1 There are no procurement related implications contained in the report.
- 12.2 Implications verified by: Robert Hillman, Procurement Consultant (HRD), x1538

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	No unpublished papers		