

Committee Cabinet	Date 29 July 2009	Classification Unrestricted	Report No:	Agenda No:
Report of: Corporate Director Development and Renewal		Title: Council's Lettings Policy		
Author: Jackie Odunoye Service Head Strategy Regeneration and Sustainability		Wards affected: All		

1. SUMMARY

- 1.1 The report deals with the review of the Council's Lettings Policy that was subject of an interim progress report to May 6 Cabinet. A new banding structure for determining priority for housing that will form an integral part of a new Lettings Policy has now been agreed with the Common Housing Register RSL partners and this is set out in this report along with some additional policy proposals. The Cabinet's agreement is sought to take the proposals to full public consultation. Following the consultation, a final report, will be brought to Cabinet for decision in the autumn.
- 1.2 The report also deals with amendments required to the Council's existing Lettings Policy following the successful judicial review brought by Mr Alam against the Council in December 2008. Although this matter was brought to April 8 Cabinet and a decision taken, due to an oversight regarding the statutory consultation it is considered necessary for the Cabinet to take a fresh decision on this matter.

2. RECOMMENDATIONS

Cabinet is recommended to :

- 2.1 Agree that the proposed new banding structure and policy proposals set out in the report should be submitted to full partner, stakeholder and public consultation.
- 2.2 Agree to amend paragraph 2.2.2 of the Lettings Policy (Community Group 2) as follows: *"to include persons who are statutorily homeless and who have an assessed priority need and are accepted as unintentionally homeless."*
- 2.3 Agree to amend paragraph 2.2.3 of the Lettings Policy (Community Group 3) as follows: *"to include persons who are statutorily homeless and who do not have an assessed priority need, and all other housing applicants who do not fall within groups 1,2 or 4"*
- 2.4 Agree to amend paragraph 2.3 of the Lettings Policy as follows: *"Group 3 If you are not included in any of these other groups or have been assessed as homeless but are not in priority need, your application will normally be placed in Group 3".*

3. BACKGROUND

- 3.1 Section 167 of the Housing Act 1996 requires local authorities to have an allocations scheme for determining priorities for housing. Local authorities are also required to give reasonable preference to applicants in housing need and to award greater priority where there are multiple or urgent needs. Applicants entitled to reasonable preference are: households assessed as eligible, homeless unintentionally and in priority need ; applicants in overcrowded or unsatisfactory living conditions; applicants who need to move on welfare or medical grounds including disability; applicant who need to move where hardship may occur. Interpretation of the legislation and case law to date has resulted in housing need being the determining priority factor with waiting time a secondary factor as is the case with Tower Hamlet's existing allocations scheme.
- 3.2 Last year the Scrutiny Working Group reviewed the Council's Lettings Policy and produced recommendations that were approved by Cabinet in December 2008. The Scrutiny Review found there was a significant lack of public trust, confidence and a perception that the existing scheme was not operated fairly with the potential for negative impact upon community cohesion. It found that the scheme and the allocations process was difficult to understand, in particular how priority was awarded. There was concern that the existing scheme encouraged homeless applications by giving higher priority to those assessed as eligible, unintentionally homeless , in priority need ,and therefore did not give fair access to the many overcrowded households on the housing register.
- 3.3 A review of the Lettings Policy has been underway since February 2009. A sub – group of the Common Housing Register (CHR) Forum has been meeting since April 2009 to develop proposals for a revised scheme. It consists of RSL representatives, heads of the Lettings Team and Homeless and Housing Advice services with consultancy support. Progress on proposals developed by this group was reported to 6 May 2009 Cabinet. Since then, they have developed further into a new banding structure that has been endorsed by the full Common Housing Register Forum meeting on 2 June 2009.
- 3.4 The report to 6 May Cabinet referred to the need to have a comprehensive Lettings Policy consisting of a scheme for allocation of property and an annual Lettings Plan that would set targets for apportionment of housing supply that would be agreed by Cabinet in line with the Council's objectives and the housing strategy. This report deals only with a proposed new model for the banding structure of the allocations scheme and some additional policy areas. It does not deal with Lettings Plans at this stage. In addition, concerns regarding medical assessments are being dealt with by a separate review process and the outcome will be reported to Cabinet separately.
- 3.5 The context of these proposals is the recent House of Lords decision following Newham Council's appeal against a prior decision by the Courts that their allocations policy was unlawful. Newham's allocations scheme gave more priority to waiting time in contrast to the majority of other schemes in London.
- 3.6 The judgement stated that although a local authority must give reasonable preference to those in housing need, there is no legal requirement to do so in any particular way. Hitherto CLG guidance and case law had determined that housing need should be

given greater priority than length of time on the housing register. The Scrutiny working group wished to see greater priority given to waiting time and recommended lobbying the government for a change in legislation to make this feasible. This is no longer required as the effect of the Newham House of Lords judgement is to allow discretion for a local authority to give more priority to waiting time should it wish to do so. However this does not end the duty set out in the legislation to give reasonable preference to those in housing need.

- 3.7 The CHR sub group has sought to produce proposals in response to the Scrutiny Working Group recommendations that will: achieve a better, fairer balance between housing overcrowded and households assessed as homeless unintentionally and in priority need ; reduce the incentive to apply as homeless thus reducing demand; give greater priority to waiting time by introducing date order priority wherever possible; provide the basis for a scheme that will be seen as fairer; improve the management of expectations by giving applicants clarity about their housing chances or lack of them ; reduce the level of discretion in allocation decisions ; achieve greater transparency, trust and confidence in the scheme and produce an allocations scheme that is easier to explain and administer.

4.0 Body of the Report

- 4.1 The existing allocations scheme was introduced in 2002 when choice based lettings was implemented (See Table 1 below). It consists of 4 bands called Community Groups (CG) that separate groups of applicants based upon levels of housing need. Key features are: different methods of determining priority are used across the bands and for categories within the same band; overall, housing need is given greater priority than waiting time; unintentionally homeless households in priority need are in a higher category than overcrowded households; CG3 contains housing need and non housing need categories (contrary to good practice and CLG guidance) and which is inherently confusing for applicants; CG3 contains 66% of the register but only half the band have any realistic prospect of housing.

Table 1 Existing allocations scheme (since 2002)

	Categories	Priority Method	Totals
Community Group 1	<ul style="list-style-type: none"> • Emergencies 	<ul style="list-style-type: none"> • Referral date – then • Lacking most bedrooms 	1600 (7% of register)
	<ul style="list-style-type: none"> • All decants • 	<ul style="list-style-type: none"> • Demolition date – then • Medical – then • Lacking most bedrooms 	
	<ul style="list-style-type: none"> • Under occupiers 	<ul style="list-style-type: none"> • Give up most bedrooms – then • Medical awards 	
Community Group 2	<ul style="list-style-type: none"> • Unintentionally homeless and in priority need • Extenuating Health • Extenuating Social • Extenuating Repairs 	<ul style="list-style-type: none"> • Most health awards - then • Lacking most bedrooms – then • Date of priority award 	2800 (12% of register)
	<ul style="list-style-type: none"> • Quota Groups 	<ul style="list-style-type: none"> • Date order 	
Community Group 3	<ul style="list-style-type: none"> • Overcrowded households • Tenants seeking transfer (no housing need) • Housing Register applicants (no housing need) 	<ul style="list-style-type: none"> • Lacking most bedrooms – then • Date Order of registration 	15000 (66% of register)
Community Group 4	<ul style="list-style-type: none"> • No local connection • Property Owners • No CHR partner tenants 	<ul style="list-style-type: none"> • Lacking most bedrooms – then • Date order of registration 	3300 (15% of register)

4.2 The CHR Sub group has concluded that a 5-band structure (With the top band subdivided into A & B) is the most appropriate model for a new allocations scheme to achieve the objectives set by the Scrutiny Group recommendations. This position was reached after consideration and testing of various options in a series of sub group meetings, taking into account feedback from a seminar for Cabinet members, an away day for Council' Lettings team and following a visit to Newham Council to examine how their scheme worked in practice. The proposals developed by the CHR sub – group were endorsed at a full CHR Forum on 2 June and are set out below in Table 2.

Table 2 Proposed banding model for determining priority

	Categories in Band	Priority Method	Totals in Band
New Band 1	Section A <ul style="list-style-type: none"> • Emergencies • Urgent decants • Under occupiers • Medical/disability ground floor 	Section A Date Order (except overriding priority to under occupiers)	Section A 1500 (7% of register)
	Section B <ul style="list-style-type: none"> • Extenuating medical • Extenuating Social • Extenuating repair • Decants • Special Quotas 	Section B Date Order	Section B 1100 (5% of register)
New Band 2	<ul style="list-style-type: none"> • Overcrowded families • Unintentionally homeless and in priority need 	Date Order	7000 (30% of register)
New Band 3	<ul style="list-style-type: none"> • Overcrowded single/couple applicants • Unintentionally homeless and not in priority need 	Date Order	2500 (11% of register)
New Band 4	<ul style="list-style-type: none"> • Tenant transfers (not in housing need) • Sons & daughters quota 	Date Order	2700 (12% of register)
New Band 5	<ul style="list-style-type: none"> • Housing register applicants (not in housing need) • Property owners • No local connection • Non CHR partner tenants 	Date Order	8000 (35% of register)

Date Order Priority

4.3 A major departure from the existing scheme is the use of date order in virtually all bands to determine priority (except where necessary to ensure targets set out in the annual Lettings Plan are achieved). Determining priority for the majority of available housing in date order will be seen as fairer and more transparent than the relatively complex priority arrangements in the existing scheme.

4.4 With date order priority applicants will only move up the band. Under the existing scheme applicants can move up the band as those above them are rehoused or down if someone in greater housing need moves into the band. Date order priority will improve capacity to advise clients on how long they will have to wait. It will be administratively easier to target applicants at the top of bands for updating and

verifying their application details and will help reduce fraud. It will enable greater efficiency and effectiveness in the use of resources.

New Band 1 (Section A)

- 4.5 This retains emergency cases and under occupiers as in existing scheme CG1. The main changes from existing scheme CG1 is to restrict decants to those within one year of scheme date and decants who require a larger property (4 bed or larger) as these take longer to achieve due to shortage of supply. All other decants will be placed in New Band 1 (Section B). A new category is introduced for applicants with medical priority for ground floor property or who require wheelchair adapted property. This is to ensure that this type of property is offered to these high priority applicants first. This has not always been the case under the existing scheme.

New Band 1 (Section B)

- 4.6 This will contain applicants awarded additional priority on medical or social ground and the quota groups as in existing CG2. However compared with existing CG2 this band will not contain households assessed as unintentionally homeless and in priority need and will include decant cases with more than one year to go to scheme date.

New Band 2

- 4.7 This band will consist of all overcrowded applicants for 2-bed property or above and all households assessed as unintentionally homeless and in priority need. Priority will be in date order of registration. It will contain approximately 7000 households and will account for up to two thirds of lettings annually.
- 4.8 The Scrutiny Working group correctly identified that whilst date order priority can bring greater transparency and simplicity to allocations policy, it will be less responsive to individual needs. The date order priority in this band means that an overcrowded applicant may well be rehoused ahead of an applicant with a greater level of overcrowding but who applied later. This will be emphasised during the public consultation to ensure that unrealistic expectations are not created.
- 4.9 Since 2002 households assessed as unintentionally homeless and in priority need have been placed in a higher band than overcrowded households and over the last 5 years accounted for 39% (3935) of all lettings, compared with 32% (3270) to overcrowded households. Although a good record on overcrowding, there is a substantial backlog of overcrowded households. The Scrutiny Working Group felt that the existing scheme encouraged homeless applications by placing them in a higher band (CG2) than overcrowded households (CG3). Although many households have been on the register for many years prior to making a homeless application, there is a perception that some applicants were effectively "jumping the queue".
- 4.10 This proposed new band is the most significant change from the existing scheme and will affect a large group of applicants. How it would work in practice has been considered carefully by examining the date order profile of homeless, tenants and housing applicants on the register over 12 years. This has led to two main conclusions: -
- 4.11 **Conclusion 1:** That combining overcrowded and households assessed as unintentionally homeless and in priority need is workable for overcrowded applicants requiring 2-bed property or above and will produce more balanced outcomes over time (See Appendix 1). It is anticipated that there will be a reduction in homeless applications, as the change will remove some of the perceived advantages under the existing scheme. This was confirmed by

the experience of Newham Council who have operated a similar band for some years.

- 4.12 **Conclusion 2:** For 1 bed applicants lacking a bedroom, the numbers are so substantial (2500), putting them in new Band 2 to compete in date order with single vulnerable priority need homeless cases (300) would not produce a balanced outcome and would be unworkable. (See Appendix 2) Single homeless applicants assessed as vulnerable and in priority need would be constantly outbid for very long periods of time. This could be subject to challenge because it could be argued that they were not being given a “reasonable preference” as required by the legislation. It was agreed that in contrast to 2 bed plus cases, this band was unworkable for 1-bed applicants.
- 4.13 Various options were considered, for example to create sub categories within the band, but it was decided that this would introduce a level of complexity that the new scheme was aiming to avoid and would also undermine prioritising in date order. The conclusion reached by the CHR sub – group was that creating a new band (3) for 1-bed applicants lacking a bedroom was the best solution.
- New Band 3**
- 4.14 This band was created for the reasons given above to cater for one bed single or couple applicants lacking a bedroom. This will include single/couple homeless households not in priority need. It would consist of about 2,500 households; would cater for a substantial amount of 1-bed allocations annually, be simple to administer and advise customers of their rehousing chances. This proposal has met with strong support from RSL partners.
- New Band 4**
- 4.15 This band will cater for tenants of CHR partners who are not in housing need but are seeking a transfer (2660). They are currently in CG3 but realistically have very little chance of a transfer. Placing them in a lower band than at present will make their position much clearer and reduce unrealistic expectations.
- 4.16 However, to manage the transition and to improve prospects for this group of applicants it is proposed that a quota of 5% of annual lettings is made available for like for like transfers in this band. This would provide opportunities for transfer that do not exist under the present scheme and would generate vacancies so that there would be no net loss of supply. Newham operate a similar band for tenants seeking transfer who are not in housing need without difficulty although they report that the take up rarely reaches 5% of annual supply.
- 4.17 In addition, a new options advice service could be developed to identify and assist tenants with alternative options. These measures would ameliorate what may be seen as a “*demotion*” by these tenants although there is a strongly held view amongst CHR Forum members that the position of these tenants in the revised scheme must reflect more honestly their relatively low priority in contrast to the ambiguous position they have in the existing scheme.
- New band 5**
- 4.18 This would cater for all remaining applicants who do not qualify for bands 1 - 4, namely: Housing register applicants who are not overcrowded (4800); applicants with no local connection (2252); property owners (125); tenants of non CHR RSL partners (820).

- 4.19 This band will cater for a substantial proportion of the existing housing register (8000 or 35%). These applicants stand virtually no chance of rehousing although under the existing scheme 4,800 of them are currently in CG3. This band would help end unrealistic expectations, be simple to administer and be easier to advise applicants.

Summary

- 4.20 After considerable careful consideration of various options, the CHR sub – group reached the conclusion that the banding model outlined above as a basis for a new allocations scheme would be the best way to meet Tower Hamlets particular needs and to implement the main recommendations of the Scrutiny Working Group. On 2 June 2009 the Common Housing Register Forum endorsed the proposed new banding structure and supported taking it and the policy proposals below to full public and stakeholder consultation.
- 4.21 Placing applicants assessed as unintentionally homeless and in priority need and overcrowded households in the same band with priority determined by date order of registration in New Band 2 is a significant change with certain risks attached. For many years, priority need homeless households have been allocated the largest proportion of lettings (39% over the last 5 years, overcrowded households 32%). This has been a key factor in controlling numbers in temporary accommodation. Placing these two groups in the same band has the potential to reduce the amount of housing supply to priority need homeless households. However it is anticipated that the number of homeless applications will reduce under the proposed new policy. But unless this occurs at the same rate as any reduction in lettings to priority need homeless households the outcome will be a rise in temporary accommodation numbers with cost implications for the Council. To avoid this, appropriate transitional arrangements will be needed including deciding upon a target proportion of lettings to go to priority need homeless households set out in an annual Lettings Plan. This will ensure control of temporary accommodation numbers and costs is maintained. As homeless demand is reduced by the new policy, the proportion of lettings targeted for priority need homeless households can be adjusted accordingly. There will also need to be careful monitoring of demand and supply factors and trends to ensure appropriate control is maintained.

Other policy proposals for consultation

Direct Offer Policy

- 4.22 Direct offers are lettings made outside the choice based lettings process. Under the existing scheme the policy allows for direct offers to be made to priority need homeless households who have not bid for or accepted a permanent home after 12 months from acceptance in order to conclude the Council's statutory duty. But the vast majority of properties are let through choice based lettings. This is in contrast to other councils, for example, Newham, which lets 25% of its property by direct offers to applicants in the highest levels of need as a policy.
- 4.23 It is proposed that the present position of allocating the highest possible proportion of property through choice based lettings should be maintained. But the review has examined the case for a direct offer policy to be available that may benefit some applicants and the Council. For example, as part of a local lettings plan aimed at reducing overcrowding; to facilitate a "knock through"; to rehouse some vulnerable customers; for public protection cases; to ensure the Council has met a legal obligation; to resolve emergency cases quickly and to facilitate under occupation moves.

- 4.24 A feature of existing CG1 and CG2 is that some households that are awarded very high priority and placed in these bands have remained in them for many years, in some cases up to 10 years. The present bidding policy allows them to bid as often as they like and it appears that some households in the high priority bands do so for long periods of time to ensure that they acquire the most desirable property outcome. This undermines the original purpose of placing them in the high priority bands, which was to resolve an urgent housing need.
- 4.25 It is proposed therefore that a direct offer policy forms part of the new Lettings Policy. Applicants placed in New Band 1(A & B) would be able to bid under CBL for six months. If this is unsuccessful under a new policy they could be made a reasonable offer suitable to their needs and if refused unreasonably they would revert to their original status on the register without loss of their original priority position in a date order queue. This would balance the high priority access to the available housing supply they had been given due to special circumstances with not allowing them to retain this status indefinitely. In some cases, the length of time may be due to the lack of a suitable property. This policy would obviously not be applied in these circumstances, unless under the direct offer policy an offer could be made to them that demonstrably met their needs.

Sons & Daughters quota

- 4.26 The existing sons & daughters quota was designed to assist transfer for urgent medical cases, severe disrepair or for severely overcrowded households. However, only 8 applicants were rehoused in 08/09. The CHR sub-group concluded that the level of overcrowding to qualify is set very high.
- 4.27 To qualify under this quota the parent's household must lack three bedrooms (excluding the adult son or daughter applicant) i.e. lacking at least 4 bedrooms. This is a very high test. It is proposed the criteria is reduced to the parents households lacking 2 bedrooms (excluding the son or daughter applicant) subject to an assessment of likely demand and an equalities impact assessment before taking the proposals to wider consultation. Being able to offer a solution to more highly overcrowded households to achieve some improvement will support the Council's overcrowding reduction strategy.
- 4.28 It is also proposed that an additional criteria to be added where rehousing an adult child of a tenant would support the provision of foster carer placements.

New provision for sons & daughters

- 4.29 Consideration has also been given to a new provision for sons & daughters of existing CHR partner tenants that go beyond the special circumstances that are provided for in the existing quota above. It is proposed a proportion of 1 bed and bed-sit supply to be set aside each year for this group. A qualifying criteria would be the same as for the existing sons & daughter quota where the applicant must have lived in the borough for five years at their parent's home as their main residence. The amount of lettings set aside for this group would be decided by Cabinet when agreeing an annual Lettings Plan.
- 4.30 Various options were considered to distribute lettings for example, in relation to Local Area Partnerships in proportion to the number of qualifying applicants within those areas and so that applicants would be rehoused in the same immediate locality as their parent's households. However, it was felt this would be overcomplicated to explain and administer.

- 4.31 The conclusion reached was that the simplest means to increase rehousing opportunities to this group was through setting aside a proportion of 1 bed and bed-sit dwellings and for applicants to bid through choice based lettings in date order of priority on the register in order for them to exercise choice of location. However, this would not rule out some of the annual supply being set aside to be included in Local Lettings Plans for particular schemes should these be proposed and agreed as part of the annual Lettings Plan process. This approach would give greater opportunities in general to sons & daughters of existing social housing tenants where their landlord is a member of the Common Housing Register Forum, but would also allow for specific local lettings in support of sustainable communities objectives.
- 4.32 In the past controversy and community tension arose in relation to sons & daughter lettings policies that were eventually withdrawn as potentially discriminatory. All aspects of the proposed new lettings policy will be subject of an equalities impact assessment before final decision is taken and should this identify the potential for any adverse impact upon any particular section of the community, appropriate action will be taken to ensure this does not occur.

Under Occupation Policy

- 4.33 1,300 tenants have registered for an under occupation transfer but only 80 were rehoused in 08/09. There may be potential to increase this number amongst households who are unable to move because at present they feel they need space in the family home for adult children. It is proposed that a policy be adopted to be able to offer a smaller property to parents and a bed-sit / 1bed to adult children to release a much needed larger property. This is an example where a direct offer policy would be needed as simultaneous offers would need to be made.

Bidding Policy

- 4.34 At present applicants can bid for any size of property regardless of their bedsize needs and as often as they wish. During 2008 the lowest number of bids in a week was 15,000, the highest 50,000. There was an average over the year of 500 bids per property advertised. Already this year the number of bids in one week has risen to 53,000. This is a very high rate of bidding by London authority standards, is complex and costly to administer and is more like a lottery than exercise of choice.
- 4.35 A policy change to restrict bidding to applicant's bed size (or one below their needs) attracts wide support. It is therefore proposed that a change is introduced to restrict bidding to the applicant's bed size only, or in defined circumstances, one bedroom less.
- 4.36 Improved feedback and personalised information about position on the register might result in more targeted and valued bids by applicants. Many applicants are bidding with no hope of success with 22,000 on the register and annual supply of approximately 2,000 properties. The proposed new banding model will provide much clearer indication of rehousing chances and may discourage bidding where it is clearly futile. Some boroughs restrict bidding to applicants over a certain points level or only restrictive advertising on most properties. This is in line with CLG guidance and it is proposed a form of this should be adopted in Tower Hamlets where appropriate so that clear information is given to applicants especially when they have no realistic chance of success.

Existing Policy of Unlimited Bids

- 4.37 There is a concern that some high priority applicants make many successful bids, receive offers and regularly refuse them. This impacts on void rates, is

administratively costly and undermines the process. This “scatter gun approach” and a high refusal rate may suggest some applicants place little value on their bids which may be encouraged by the existing policy. In effect they exercise choice at the viewing stage not the bidding stage.

- 4.38 The Scrutiny Working Group considered restricting bidding to 2 bids per applicant per weekly cycle. However, the sub group has proposed that a limit of 5 bids per cycle is taken to public consultation. This will still be higher than most London boroughs but a considerable reduction on the present unlimited policy. The most frequent objection to a limit on bids is where a new development is coming on stream and applicants would like to be considered for any vacancy suitable for their needs. It is therefore proposed that in these circumstances applicants would be able to enter one of their bids for all suitable vacancies on a new scheme, or on a particular floor level.

Consultation

- 4.39 Section 167 of the Housing Act 1996 specifies minimum mandatory consultation required before making an alteration to an allocation scheme reflecting a major change of policy. The Council is also required to consider statutory guidance when exercising its functions under the Act. The Code of Guidance issued by the Secretary of State recommends consultation with social services departments, health authorities, supporting people teams, connexions partnerships, relevant voluntary sector organisations and other recognised referral bodies. The guidance recommends a minimum consultation period of 12 weeks. An extensive programme for consulting upon these proposals is being prepared with the support of the Council’s Participation and Engagement Team. If Cabinet agrees, this will take place over August, September and October to ensure the proposals are fully consulted upon, and amended where appropriate in order to achieve full public, partner and stakeholder support. Of particular importance will be consultation on the proposed change from a scheme based upon housing need to one based upon greater priority to waiting time.

5.0 Amendments to the existing Lettings Policy

- 5.1 Mr Alam was a non priority homeless case and in 2008 took legal action against the Council regarding his application being placed in Community Group 3. He argued that according to the wording of the council’s lettings policy he should have been placed in Community Group 2. A report to Cabinet on 8 April 2009 dealt with the Court’s decision on Mr Alam’s successful application for Judicial Review.
- 5.3 As stated in the 8 April report, before amending its Lettings Policy the Council has a statutory duty to inform partner RSL’s of the proposed alteration and give them reasonable opportunity to comment. It was correctly reported to April 8 Cabinet that all RSL members of the Common Housing Register Forum were informed of the proposed amendments in writing and invited to comment. No comments were received. However, RSLs who are not members of the Forum were not informed of the proposed amendments or given an opportunity to comment.
- 5.4 All RSLs who are not members of the Common Housing Register Forum have now been consulted. No comments have been received. As the proper consultation has now been carried out, and taking into account the matters addressed in the report to Cabinet of 8 April 2009, members are asked to make a fresh decision and agree the amendments as set out in paragraphs 2.2, 2.3 and 2.4.
- 5.5 These amendments will not alter or reduce the service that has been provided for some time to non priority homeless households. They will ensure that the wording of

the existing Lettings Policy is fully in line with existing practice pending the outcome of the review of the Lettings Policy that is also dealt with in this report.

6 COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 Cabinet approval is sought, with regard to Recommendation 2.1 of this report, to refer a number of changes to the current lettings allocation policy for stakeholder consultation. The key aim of the proposals, as outlined in paragraph 4 of the report, is to adjust the priority weighting between housing overcrowding and homelessness.
- 6.2 Paragraph 4.21 of the report outlines the potential financial risk, with regard to likely growth in homelessness costs arising from a need for more temporary accommodation. This financial risk to the General Fund needs to be considered in the context of Government proposals to change benefit rules which may also increase the net cost of providing homelessness services. The success of measures to mitigate the risk, through appropriate transitional arrangements will need to be closely monitored.
- 6.3 Recommendations 2.2 to 2.4 seek agreement to reaffirm the decision of Cabinet of 8th April 2009 regarding a number of amendments to the current published Lettings Policy of the Council to bring the policy into line with current practices and to mitigate the potential impacts, both in terms of finance and service delivery, of the decision of the High Court with regard to the case outlined. As set out in the earlier report there are no further cost implications.

7 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 7.1 Cabinet is asked to agree that consultation may be carried out on a proposed allocations scheme having the features set out in section 4 of the report.
- 7.2 The Council is required by section 167 of the Housing Act 1996 to have a scheme for determining priorities and the procedures to be followed in allocating housing accommodation. The Council is required to allocate housing in accordance with the allocation scheme. The Lettings Policy serves the function of an allocation scheme in Tower Hamlets.
- 7.3 The allocations scheme must be framed so as to secure that reasonable preference is given to the following: (a) people who are homeless; (b) people who are owed a duty by any local housing authority under specified provisions of Part 7 of the Housing Act 1996; (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; (d) people who need to move on medical or welfare grounds (including grounds relating to disability); and (e) people who need to move to a particular locality in Tower Hamlets, where failure to meet that need would cause hardship (to themselves or others). The scheme may be framed so as to give additional preference to particular descriptions of people in these categories with urgent housing needs. The scheme may provide for priority to be allocated to persons given reasonable preference or additional preference taking into account financial resources, behaviour relevant to suitability as a tenant and any local connection. Otherwise, it is a matter for the Council to determine on what principles the scheme should be framed.
- 7.4 The proposals in section 4 of the report propose banding by reference to a number of specified categories. The details of the categories are not provided, but they may be

acceptable provided that they cover the categories set out above in respect of which the Council is required to give reasonable preference and in respect of which the Council may give additional preference. The proposal to determine priority within bands by reference to date order appears to be a lawful approach following the decision of the House of Lords in *R (Ahmad) v Newham LBC* [2009] UKHL 14.

- 7.5 The proposals regarding direct offers, sons and daughters, under-occupation and bidding may be considered to be reasonable elements to include in an allocations scheme.
- 7.6 Cabinet is asked to authorise changes to the Council's existing Lettings Policy following the outcome of the Judicial Review hearing in the case of *R (Alam) v Tower Hamlets LBC* [2009] EWHC 44 (Admin).
- 7.7 The Council has been following the lawful practice of allocating applicants assessed as homeless but not in priority need to Community Group 3 under the Lettings Policy. Unfortunately, the decision of the court in the case referred to above is that the correct construction of the Lettings Policy in its current wording is that such applicants should be placed in Community Group 2. This would be an unintended consequence, inconsistent with the Council's practice, and lead to the inconvenient consequences addressed in the report.
- 7.8 Before making an alteration to the Lettings Policy reflecting a major change in policy, the Council is required by section 167(7) of the Housing Act 1996 to carry out the following consultation –
- (a) send a copy of the proposed alteration, to every registered landlord with which the Council has nomination arrangements; and
 - (b) afford those people a reasonable opportunity to comment on the proposals.
- 7.9 The expression "major change in policy" is undefined in the Housing Act 1996. There is relevant guidance which suggests that a major change would include any amendment that affects the relative priority of a large number of people being considered, and a significant alteration to procedures. By reference to the construction that the Court has given to the Lettings Policy, it is best to consider the proposed amendments as a major change, even though they really just bring the Lettings Policy into line with what has always been the Council's practice.
- 7.10 The code of guidance for local housing authorities on allocation of accommodation contains the Secretary of State's view that, in addition to the mandatory statutory consultation referred to above, housing authorities should consult social services departments, health authorities, supporting people teams, connexions partnerships, relevant voluntary sector organisations and other recognised referral bodies. The guidance recommends a minimum consultation period of 12 weeks. It has not been possible to comply fully with these recommendations. However, the consultation that has been conducted complies with the statutory requirements and is considered adequate in circumstances where the Council needs to respond as rapidly as possible to the judgment referred to above and bring the Lettings Policy in line with existing practice. The Lettings Policy (which will include these proposed changes) will be the subject of a review in 2009 that will comply fully with the consultation recommendations contained within the code of guidance.

8 ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 There are many severely overcrowded households on the Housing Register which will correlate with poverty levels in many instances. Overcrowding is known to have a detrimental effect on family life, generating family conflict and breakdown, ill – health, poor school performance and anti social behaviour. The direction taken by the review of the Council’s Lettings Policy is to develop a revised Allocations Scheme and annual Lettings Plan that will support the Council’s strategic objectives and its overcrowding reduction strategy. Reducing overcrowding will have an impact on reducing poverty levels and therefore inequalities in the borough.

The Scrutiny Working Group identified a lack of confidence and trust in the existing Lettings Policy, Competition for scarce social housing resources is fierce in the borough and perceptions of lack of fairness or one group benefiting over another undermines community stability. Developing and maintaining sustainable communities was another issue raised by the Working Group and in this respect the review of the Lettings Policy includes examination of the existing sons & daughter’s quota and proposed policy amendments accordingly.

The changes recommended to the existing Lettings Policy will bring the wording of the policy into line with the status quo in relation to homeless applicants who are not in priority need. Although there is no indication that the recommendations to amend the Lettings Policy have any specific equal opportunities implications. In addition, an equalities impact assessment is being carried out on the proposed new banding structure set out in this report and will form an important part of the consultation to follow. A full report on the equalities impact assessment of all new lettings policy proposals will form part of the final report on a new lettings policy to go Cabinet for decision later in the year.

9 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

None

10 RISK MANAGEMENT IMPLICATIONS

- 10.1 The Alam judgement means that unless the Lettings Policy is amended, the Council can no longer place homeless applicants who are not in priority need, or other applicants for housing who meet the criteria for homelessness, in Community Group 3 but must place them in Community Group 2. This will be a significant change from the practice adopted since 2002.

Placing these applicants in Community Group 2 will give them significantly higher priority for a limited supply of housing pending the outcome of the Lettings Policy review and will raise expectations that are unlikely to be met unless higher priority and more vulnerable applicants are displaced. This risks damaging the Council’s reputation for sound management of the limited supply of social housing available.

11 EFFICIENCY STATEMENT

An aim of the review of Lettings Policy is to achieve a simpler, easier to administer policy that is perceived to be fairer by housing applicants, with a simplified bidding process that is more fit for purpose. This should reduce the amount of administrative time and office time spent on explaining the existing policy to customers and therefore have the potential to achieve greater efficiency.

Implementing the changes to the practice of placing homeless applicants who are not in priority need required by the judgement will place considerable additional administrative and customer contact demands on housing officers to no real purpose expect to manage unrealistic expectations and meet information needs that will potentially be required. This will impair efficiency and the effective delivery of the lettings service.

12 APPENDICES

Appendix 1 New Band 3 Impact of proposals for 2 bed plus applicants
Appendix 2 New Band 3 Impact of proposals on 1-bed applicants.

13 BACKGROUND PAPERS

Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this Report

Tower Hamlets Lettings Policy
1996 Housing Act
2002 Housing Act (Homelessness)
DCLG Allocation of Accommodation: Choice Based Lettings - Code of Guidance for Local Authorities
Contact Officer: Jim Elliott (Lettings Project Leader) jim.elliott@towerhamlets.gov.uk
07984 938 851