

Committee: Overview and Scrutiny Committee	Date: 3 rd March 2015	Classification: Unrestricted	Agenda Item: 7.1
Report of: Aman Dalvi, Corporate Director Development & Renewal Originating officer(s) Colin Cormack, Service Head Housing Options		Title: Discharge of Homelessness Duty Wards Affected: All	

1. **SUMMARY**

- 1.1 This report serves to explain how the council discharges its statutory homelessness duty, placing such activities in the context of reduced opportunities to prevent homelessness, an increasing population in homeless temporary accommodation and a diminishing supply of such accommodation locally.

2. **RECOMMENDATIONS**

- 2.1 Overview and Scrutiny Committee is asked to consider the contents of the report that serves to describe current practices of using available private sector tenancies as alternatives to the making of a homeless application in preference to such properties being offered to cease any homeless duty

3. **BACKGROUND**

- 3.1 Members have previously received a briefing on the Localism Act reforms describing the potential to discharge the homeless statutory duty via the private rented sector and how the Homeless Statement explores the advantages (and challenges) of this.
- 3.2 That briefing also referred to the difficulties of increasing homelessness, diminishing temporary accommodation supply, private landlords reluctant to let to social tenants and employment of the Mayor's Temporary Accommodation Support Fund.
- 3.3 In addition, the Committee also received the Q2 Strategic Measures report at its January meeting, where homeless preventions were noted to be below performance expectations.

4. BODY OF REPORT

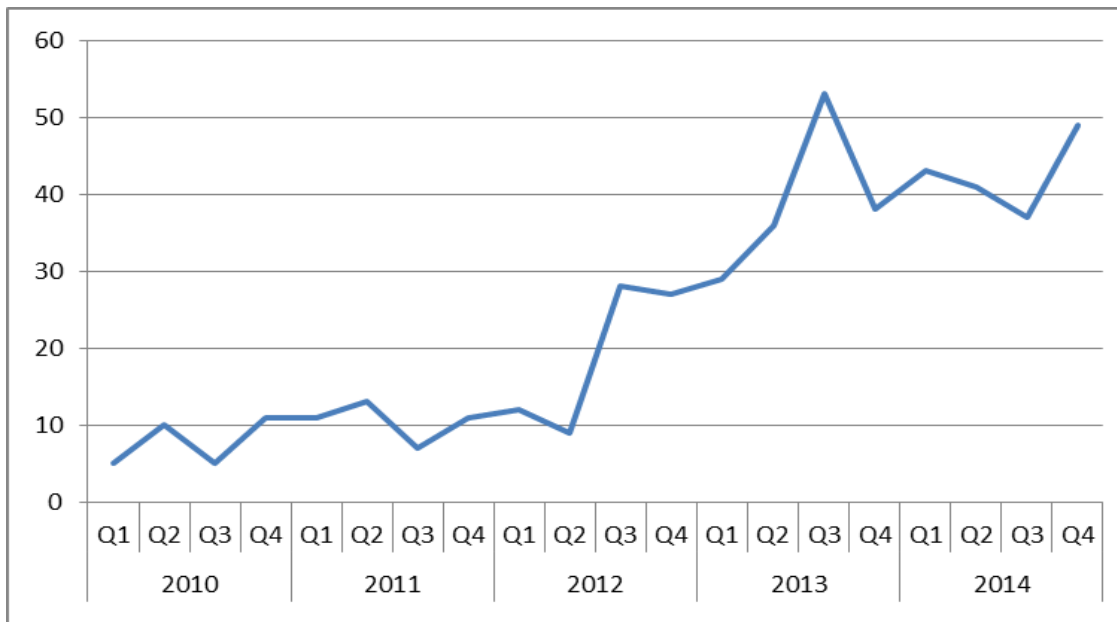
- 4.1 One of the key strategic objectives for the Housing Options Service is to prevent homelessness. This statutory obligation would, at first sight, seem to be a laudable goal but it is one that, ironically, is not the preferred service outcome for many of the Service's clients. In the context that any journey associated with a successful homeless application typically ends with the offer of a social housing tenancy, efforts to prevent, or postpone, homelessness can be taken as the council attempting to thwart any such outcome
- 4.2 That said, the Service does have a good record of success, relying as it does on understanding the cause of the homelessness and then applying the appropriate interventions.
- 4.3 Preventative efforts are, as suggested above, bespoke to the cause of the threatened homelessness and are recorded for the DCLG's P1E Returns' purposes under the broad headings of:-
- Mediation using trained family mediators
 - Conciliation by home visits for family/friend exclusions
 - Direct financial support by reliance on accessing Discretionary Housing Payments of the local Homeless Prevention Fund
 - Debt advice and/or address housing benefit claim problems
 - Sanctuary Scheme for domestic violence
 - Mortgage Arrears intervention
 - Legal advocacy to preserve private sector tenancy
 - Other assistance to preserve private sector tenancy
- 4.4 If such efforts proved unsuccessful, the Service's response was to encourage alternatives to the making of a homeless application, typically by entering into a private sector tenancy, with or without the council's financial assistance – colloquially known as the Rent Deposit Scheme
- 4.5 That is why the Service's performance on homeless preventions was creditable, with year on year achievements securing stretch target levels. However, 2012/13 saw an adverse change in performance, change that has been improved upon since but only modestly.

4.6 This single adverse change was private sector landlords' reducing preparedness to work with potentially benefit-dependent households. Aware of the threats to rental income associated with the Coalition Government's Welfare Reforms, the sector's reaction was two-fold:-

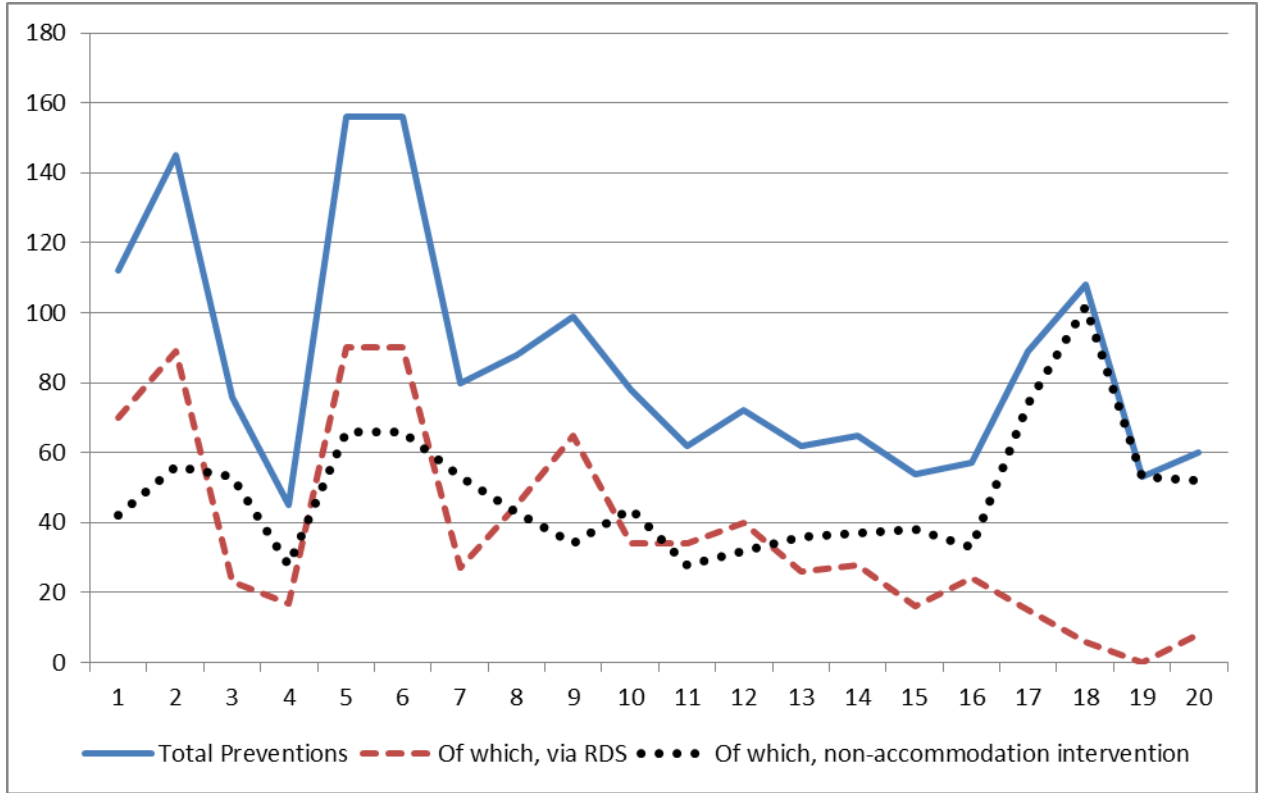
- An increase in evictions of private sector tenants, thereby occasioning an increase in homeless applications
- The stated advice that new "prevention-type" tenancies would not be entered into – just at the time of this increasing demand

4.7 In essence, the cause of homelessness associated with existing private sector tenancies on lower incomes no longer being able to afford to rent locally also meant only limited and diminishing prospects of brokering new tenancies.

4.8 Just how the rise in the number of evictions from private sector tenancies manifested themselves as homeless applications can be seen from the following graph. The data illustrates those cases where the cause of homelessness is cited as being "loss of Assured Shorthold Tenancy (AST)".



4.9 In the same way then that there has been a significant rise in evictions from the PRS sector, accessing that sector as a mechanism to provide an alternative to the making of a homeless application has been significantly interrupted, this then occasioning a direct correlation with the reduction in the total numbers of homeless preventions:-



- 4.10 In the climate then of increased homeless applications from PRS tenants and a reduced ability to access that sector as a homeless prevention mechanism, two further dynamics came into play, one of which not being unrelated.
- 4.11 Most significantly, many of the suppliers of homeless temporary accommodation have expressed the wish for their respective properties to be returned. Consistently, the driver for this has been the council's inability to uplift its fees to landlords, constrained as it is by those Housing Benefit subsidy rules that mean that rents payable to match those fees will experience a £ for £ loss in Housing Benefit subsidy if they exceed the formula of "Local Housing allowance as at January 2011 less 10%".
- 4.12 To that end, 211 properties have already been returned and therefore lost to the portfolio and a further 237 requests have been received, each of which has been dealt with by way of insisting that possession is sought. Together, these figures represent over 25% of the private licenced portfolio of temporary accommodation.
- 4.13 The second dynamic was the introduction of the Welfare Benefit Cap (£26,000 per household per annum). That cap was applied to some 400 households in temporary accommodation. To avoid those households having to move "en masse" to cheaper accommodation, and to give officers capacity to visit those

households to discuss mechanisms they might be able to adopt to avoid the cap (principally by getting a job), resources were agreed to complement the Discretionary Housing Payments budget that could serve as a rent top-up.

- 4.14 Aside from the obvious advantages to the individual households, there was an additional benefit; many requests to return properties happen on vacation and, by postponing the occupying family's move to cheaper temporary accommodation, requests for property returns were a little less than they might otherwise have been.

5. Homelessness Duty – prevention versus cessation

- 5.1 Until the fundamental change in the PRS market, a private sector tenancy in preference to the making of a homeless application was something that proved to be the preferred product for some households.
- 5.2 Such a remedy to impending homelessness meant avoiding years in temporary accommodation and, importantly, allowed much greater application of choice in regard to property type, cost and location, the latter being of particular importance to those who did not see their long-term future being in the area.
- 5.3 Even if a duty was accepted, the council could, and indeed did, continue to nurture consideration of this sector as a remedy to the individual's homelessness, any offer being so made coming within the term "Qualifying Offer", this meaning no obligation to accept and no penalty for refusing.
- 5.4 So, until the homeless provisions of the Housing Act 1996 were amended by the Localism Act, an accepted homeless duty could only be ended if, amongst other things, the applicant:-
- accepted a Part 6 offer (an allocation of long term social housing) including an offer of an assured tenancy of a registered social landlord
 - accepted an offer of an assured tenancy from a private landlord
 - accepted a qualifying offer of an assured shorthold tenancy of a private landlord
 - refused unreasonably a final offer of accommodation under Part 6
 - ceased to be eligible for assistance
 - became homeless intentionally from accommodation made available to him
- 5.5 In practice, the work done around relying on PRS to avoid the need for a homeless application or for use as a qualifying offer relied on more favourable demand –v– supply relationships, with supply being so plentiful as to not have

landlords insistent on immediate nominations. Rather, this was the more relaxed environment of choice, bringing with it the inevitable practice of people simply changing their minds.

- 5.6 What changed was not in consequence of the provisions of the Localism Act. What really changed was the fact that supply was being completely outstripped by demand. This caused the market to shift from 'buyer' to 'seller'.
- 5.7 Significantly, the elements of reduced supply and rising charges fostered a change in relationships between the PRS suppliers and those otherwise homeless applicants minded to consider this sector – reduced choice and little tolerance for anything other than immediate decisions. That is why PRS offers for use as preventions reduced and significantly so for this was hardly the best environment to encourage acceptance of this form of remedy to a household's homelessness.
- 5.8 Had it not been for the Localism Act provisions, this might well have occasioned the general demise of any reliance on PRS properties. However, those Localism Act provisions were enabled, thus:-

Section 148 a local authority shall cease to be subject to the main homelessness duty, if the applicant accepts or refuses a private rented sector offer

Section 149 a private rented sector offer being defined as an offer of an assured shorthold tenancy made by a private landlord to an applicant in relation to any accommodation which is a fixed term Assured Shorthold Tenancy for a period of at least 12 months.

- 5.9 Thus, the potential to employ private sector offers not as qualifying offers (where there is no penalty for a refusal) but as duty cessation offers (conditional on said offer being 'reasonable') were appreciated. Such appreciation led first to this potential being included within the Homeless Statement as adopted by Cabinet and, subsequently, was translated into operational practice. For a Service that understands the principles and value of 'Choice' this was not an easy decision; far from it.
- 5.10 The stark fact was though that the few PRS properties being offered came with the expectation that tenancies needed to be completed quickly. Couple this with the fact that such scarcity meant little ability to satisfy the usually higher expectations of RDS clients as far as type and location are concerned and the experience was that offered property were usually withdrawn long before a match could be found. So many lost opportunities could not be ignored when, within the temporary accommodation portfolio, local stock was diminishing and there was greater and greater reliance on B&B hotels in consequence.

- 5.11 For the Service, every PRS duty cessation meant one less household in B&B. That was felt, on balance, to be a better outcome than the alternative – of allowing choice in the sure and certain knowledge that many PRS properties would not be accepted, conduct that would do nothing to erode B&B numbers.
- 5.12 That is why, when any PRS property has been offered by way of an Assured Shorthold Tenancy, that property has been used as a duty cessation, typically by offering the same to ‘new’ homeless families in B&B.
- 5.13 In the period between 1st November 2013 and 26th November 2014, 72 households had their respective homeless duties ceased by way of a PRS offer. Only 4 of these were out of borough and only then because they were either “Benefit-capped” (and therefore could not afford in-borough rents) or had a limited homeless duty owed. Of the 72 offers, 20 of these were Poplar Harca “buy-backs” they being of 5-year terms.
- 5.14 Notwithstanding the above, the Cabinet Member for Housing and Regeneration has approved a proposal to operate a 6-month pilot of operating a mechanism where available PRS properties are offered as prevention opportunities only i.e. not as mandatory duty cessation.
- 5.15 During the pilot period, the number of such properties becoming available will be monitored against take-up with a view to understanding the potential for such properties being lost from the availability pool, principally through tardy take-up by applicants.
- 5.16 At the end of the pilot period, a decision will be taken about whether continue with this mode of operation or to revert back to duty cessation practices, that decision being influenced by the percentage of properties lost and whether, in the current climate, such a percentage, if above natural “wastage” is something that can be tolerated.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 This report provides an update to the Overview and Scrutiny Committee on the activities of the Homelessness Section and outlines the difficulties and challenges currently being faced by the service.
- 6.2 Although the Homeless Service operates with a net 2014-15 budget of £2.8 million before DCLG Homelessness Grant is applied, the gross budget is £32 million. The major cost element is the £26.1 million budget for the rent payable to landlords for the supply of temporary accommodation. Staffing costs represent £4 million and, due to the nature of the service, there is a significant bad debt provision. The main sources of income are the rents and charges levied to customers.

- 6.3 The financial implications within the service budget cannot however be looked at in isolation because there are also pressures within the Housing Benefits budget due to the high rent levels charged by suppliers of temporary accommodation – these are explained in paragraph 4.11 and in the paragraph below.
- 6.4 As a result of the combination of the increasing numbers of applications to the homelessness section, the scarcity of available temporary accommodation and the high levels of rent charged to the Council, significant budgetary pressures are being faced. This particularly affects the Housing Benefits budget where a growth bid was submitted as part of the 2015-16 budget process to set aside additional funding of £1.6 million to finance the pressures that arise from the effects of welfare reform, together with the impact that high rents have on the Benefits Subsidy received by the Council.
- 6.5 Although the Council has a statutory duty to pay benefits, the level of subsidy that is recouped from the DWP is capped. The report proposes a pilot system in relation to the use of private rented sector properties which, if it is as successful in reducing the Temporary Accommodation population as the duty cessation route, will not incur additional expenditure. The principle then of revisiting the pilot's success or otherwise is supported.

7. LEGAL COMMENTS

The Council is required by Section 9F of the Local Government Act 2000 to have an Overview and Scrutiny Committee and to have executive arrangements which ensure the committee has specified powers. Consistent with that obligation Article 6 of the Council's Constitution provides that the Overview and Scrutiny Committee may consider any matter affecting the area or its inhabitants and may make reports and recommendations to the Full Council or the Executive, as appropriate, in connection with the discharge of any functions. It is consistent with the Constitution and the statutory framework for the Committee to be asked to comment on the matters set out in the report.

Section 193 of the Housing Act 1996 sets out the duties to those housing applicants that the local housing authority are satisfied are eligible, homeless, in priority need and not intentionally homeless.

Previously, the duty could be discharged in one of three (3) ways

- i) by securing that suitable accommodation provided by it is available for the applicant e.g. by making a Housing Act 1996 Part 6 offer (housing allocation)*
- ii) by securing that the applicant obtains suitable accommodation from some other person (referral to another local housing authority, subject to neither the applicant or any person living with them having a local connection with the district or authority where the application is made); or*

- iii) *by giving the applicant such advice and assistance as will secure that suitable accommodation is available from some other person*

Once a housing duty has been accepted, the housing authority is obliged to provide housing assistance.

Sections 148 and 149 of the Localism Act make amendments to section 193 of the Housing Act 1996 by introducing a new power that allows the Council to make Private Rented Sector (PRS) offers to end the main homelessness duty. Section 148(5) of the Localism Act states that the local housing authority shall cease to be subject to the duty if:

- (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant;
- (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer; and
- (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.

A private rented sector offer must be made to the applicant in writing. The written notice must inform the applicant of the possible consequences of refusal or acceptance of the offer and of the right to request a review of the suitability of the offered accommodation. In most cases, the applicant must also be informed that s/he may make a further application to a local housing authority within two years of acceptance of the offer if the accommodation comes to an end.

The Homelessness (Suitability of Accommodation) (England) Order 2012 requires the Council to put in place arrangements to ensure that the PRS offer of accommodation is suitable.

The changes in the legislation mean that the Council can (not must) consider bringing the main homelessness duty to an end by making a PRS offer. When considering whether to arrange a PRS it should be based on the individual circumstances of the household.

The Council may choose not to use the new powers and to retain the existing system whereby most applicants who are owed the main housing duty will be accommodated until they receive an offer of, or successfully bid for, a secure or assured tenancy. Alternatively, the Council can choose to have a pilot scheme as proposed in this report. Whether the Council adopts the new power or puts in place the pilot scheme for a limited period, it should undertake to develop clear policies around its use and how it will monitor it in order to ensure and prevent any potential legal challenge by those who will be affected.

The introduction of the pilot scheme is within the provisions of the Localism Act 2011.

8. ONE TOWER HAMLETS CONSIDERATIONS

8.1 The proposals have no direct impact on the goals of encouraging positive relationships and tackling divisions. However, indirectly, the use of PRS offers are now to be the subject of choice during the pilot period is likely to see more local people housed locally, the cohesive benefits of this being fully recognised.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

9.1 This report has no environmental implications

10. RISK MANAGEMENT IMPLICATIONS

10.1 There are no risk management implications arising from this report.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

11.1 These proposals do not contribute to the reduction of crime and disorder

12. EFFICIENCY STATEMENT

12.1 This report has no implications for efficiency

13. APPENDICES

**Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report**

There are no background papers
