

APPENDIX D

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Policy on discharging the Prevention and/or Relief Duties due to the 'deliberate or unreasonable refusal' of the applicant to participate in the process

Throughout this document, 'Officer' refers to the officer of the Council undertaking the housing assessment and developing the Personalised Housing Plan – usually a Homelessness Prevention Officer.

Coventry City Council is the Housing Authority.

Legislation and Policy background:

The Homelessness Reduction Act 2017 amends the Housing Act 1996 to develop the duties that a Local Housing Authority has towards households who approach them for assistance when they are homeless or threatened with homelessness.

Section 189A of the Housing Act 1996 (as amended) requires the Housing Authority to assess an applicant's case and develop a personalised housing plan, to identify appropriate actions to prevent or relieve the applicant's homelessness.

The Housing Authority should adopt a positive and collaborative approach toward applicants, taking account of their particular needs and making all reasonable efforts to engage their cooperation.

Applicants who are eligible and are homeless or threatened with homelessness must have an assessment of their case, including:

- The circumstances that have caused them to be homeless or threatened with homelessness
- Their housing needs, and what accommodation would be suitable for them, their household and anybody who might reasonably be expected to live with them, and
- The support that would be necessary for them, and anybody who resides or might reasonably be expected to reside with them, to have and retain suitable accommodation.

This assessment is then used to develop a Personalised Housing Plan with the applicant, identifying practical and reasonable steps for the housing authority and the applicant to take to help the applicant retain or secure suitable accommodation.

Under Sections 195(10) and 189B(9)(b) the prevention and relief duties can be brought to an end as a result of the applicant's deliberate and unreasonable refusal to co-operate.

Where the Prevention Duty is brought to an end for this reason, the applicant's entitlements under any other section of Part 7, including the relief and main duties, are not affected.

Where the Relief Duty is brought to an end in this way, the main housing duty will not apply. However under Section 193C(4) the housing authority will be required to secure that accommodation is available for an applicant who has a priority need and is not intentionally homeless until such time as they make a final accommodation offer or a final Part 6 offer of suitable accommodation, or the duty comes to an end for another of the reasons set out in Section 193C(5).

This Policy Document sets out the principles and procedures that Coventry City Council Officers will follow regarding the Personalised Housing Plan 'reasonable steps' and discharging the Prevention and Relief Duties due to an applicant's 'deliberate and unreasonable refusal to cooperate'.

This policy is based on the guidance within the 'Draft Homelessness Code of Guidance for Local Authorities' published by the Department for Communities and Local Government in October 2017.

Principles relating to 'reasonable steps':

The Personalised Housing Plan:

- Should be tailored to the household
- Should follow from the findings of the housing assessment
- Must be provided to the applicant in writing
- Must be kept under review

The Personalised Housing Plan and the reasonable steps within it should be realistic, taking account of local housing markets and the availability of relevant support services, as well as the applicant's individual needs and wishes.

The Officer will make every effort to secure the agreement of the applicants to their Personalised Housing Plan and the reasonable steps within it.

If the Officer is unable to reach an agreement with the applicant about the reasonable steps to be included in the Personalised Housing Plan, they must record why they could not agree and provide the written plan to the applicant, indicating what steps they consider it reasonable for the applicant and the Housing Authority to take.

When determining the reasonable steps, the Officer must take into account the individual circumstances of the applicant and anyone who resides, or could be expected to reside, with them. This should include (but is not limited to) consideration of:

- Work or caring responsibilities
- Illness, disabilities or mental health conditions
- The capacity and any vulnerability of the applicant
- Communication difficulties or requirements
- Existing support or advice services being provided to the applicant
- The ability of the applicant to manage communications and appointments

When determining the reasonable steps, the Officer must have regard to any adjustments that may be required to the reasonable steps as a result of protected characteristics under the Equality Act 2010 and must have due regard to the Public Sector Equality Duty.

It would not be reasonable to agree steps for an applicant that are reliant on them engaging with a service provision that is not currently available or which is unlikely to be offered to them.

Reasonable steps must ensure the safeguarding of children and/or vulnerable adults in the household, and must not result in the applicant or a member of their household being required to take any action that would put them at risk of violence, harassment or abuse.

If an applicant is already receiving support or services from an agency that might contribute to preventing or relieving homelessness, the Officer will (if appropriate) seek the applicant's consent to involving them in developing and agreeing the reasonable steps and in delivering the Personalised Housing Plan.

The Personalised Housing Plan may include steps that the Officer and applicant have agreed as advisable (recommended steps) but which the applicant is not required to take if they choose not to do so. The Plan will set out clearly which steps are mandatory and which are recommended. There would be no sanction for non-compliance with a non-mandatory recommendation but compliance should be encouraged.

If the Officer becomes aware that the information the applicant has provided for their assessment is inaccurate or if there is new information or a relevant change in the applicant's circumstances and needs, a review of the assessment and Personalised Housing Plan (and the reasonable steps within it) will be carried out.

The Officer will notify the applicant in writing if the assessment of the applicant's circumstances and needs has changed, or that the agreement reached regarding reasonable steps is no longer appropriate.

The Officer will notify the applicant in writing if they consider that any of the agreed reasonable steps are no longer appropriate and there will be no consequence of failure to take any of the removed steps after notification is given.

Discharging the Prevention and/or Relief Duties due to an applicant's 'deliberate and unreasonable refusal to cooperate'

Discharging the Prevention and/or Relief Duties due to an applicant's deliberate and unreasonable refusal to co-operate should be an action of last resort once all other reasonable avenues have been explored.

The Officer must be satisfied of all of the following:

- The steps recorded in the Personalised Housing Plan are reasonable in the context of the applicant's particular circumstances and needs;
- The applicant understands what is required of them in order to fulfil the reasonable steps, and is therefore in a position to make a deliberate refusal;
- The applicant is not refusing to co-operate as a result of mental health needs or other health need, for which they are not receiving support, or because of a difficulty in communicating;
- The applicant's refusal to co-operate with any step was unreasonable in the context of their particular circumstances and needs.

In the first instance, if the Officer believes that the applicant is not cooperating with the Personalised Housing Plan, they will arrange a review of the Plan with the applicant.

Where efforts have failed and the Housing Authority wishes to discharge the prevention/relief duties due to the deliberate and unreasonable refusal of the applicant to cooperate, **these principles shall apply:**

- The individual circumstances of the applicant's situation must be taken into account – the refusal to co-operate with any mandatory step must have been unreasonable in the context of their particular circumstances and needs.
- The Officer will make reasonable efforts to obtain the co-operation of the applicant, including seeking to understand the reasons for their lack of co-operation.
- The Officer will consider whether there has been a change in circumstances or any unforeseen circumstances, which explain why it has not been possible for the applicant to carry out an agreed reasonable step and therefore do not constitute 'deliberate and unreasonable refusal to co-operate'. This may include (but is not limited to):
 - Emergency caring responsibilities that could not have been foreseen
 - Prioritising attending an appointment (for example, a medical appointment or Jobcentre appointment) where this is reasonable, given the relative consequences of failing to attend. Applicants should inform the Officer of such appointments giving reasonable notice.
 - Other personal circumstances such as bereavement of a close relative.
- The Officer will also consider whether any previously undisclosed or unidentified circumstances or needs indicate that refusal to co-operate has not been 'deliberate and unreasonable'. This may mean that the 'reasonable steps' should be amended. Officers should be sensitive to the reasons for previous non-disclosure. Section 193B(6) provides that the housing authority must have regard to the particular circumstances and needs of the applicant, **whether or not identified in the assessment under section 189A**, in deciding whether refusal by the applicant is unreasonable.
- However, if the applicant has knowingly or recklessly withheld information, or has knowingly or recklessly provided false information, with the intent of inducing a housing authority to believe that the applicant or another person is entitled to accommodation or assistance under Part 7 of the Housing Act 1996, this is an offence under Section 214 of the Housing Act 1996 (provided that this explanation was given at the initial assessment and there is no other reasonable excuse for non-compliance). The Officer will explain the importance of providing full and accurate information.
- Where the applicant is receiving support from other services, the Officer should alert the relevant services to the problem as soon as possible and seek to involve them in supporting the applicant to resolve the situation.
- The Officer will take into account any particular difficulties an applicant may have in managing communications and appointments, especially if they are street homeless or insecurely housed ('sofa surfing').

- The Duties may only be discharged if the applicant refuses to cooperate with the mandatory reasonable steps in the Personalised Housing Plan, not any recommended steps that were included.

The Draft Code of Guidance recommends that the housing authority has procedures in place to maintain or regain contact with applicants who have ceased contact prior to deciding to end the prevention or relief duty under this subsection. Where the housing authority considers that the applicant has withdrawn their application because they have failed to maintain contact, the duty will be ended under section 195(8)(g) or section 189B(7)(f) (withdrawn application).

Procedure for discharging duties due to the applicant's 'deliberate and unreasonable refusal to co-operate':

[NOTE – to be reviewed when additional regulations relating to the procedure to be followed in connection with notices are made]

In the first instance, if the Officer believes that the applicant is not cooperating with the Personalised Housing Plan, they will arrange a review of the Plan with the applicant. This will review the original assessment and the appropriateness of the steps in the Plan, and the Officer will explain the consequences of not co-operating before a warning is issued.

If it has not been possible to obtain the co-operation of the applicant, the Officer will issue a warning letter to the applicant which will include:

- An explanation of the reasons for their assessment that the applicant is 'deliberately and unreasonably refusing to co-operate';
- what the applicant can do to rectify the situation (including identified timescales for actions);
- informing the applicant that it is the intention of the housing authority issue a notice to bring the prevention or relief duty to an end (whichever is relevant) unless the non-cooperation is rectified; and
- the consequences of this notice being issued.

If this is unsuccessful and the applicant continues to deliberately and unreasonably refuse to cooperate, the Officer can issue written notice that they consider the prevention or relief duty is ended (whichever is relevant) due to the applicant's deliberate and unreasonable refusal to co-operate.

The decision will be peer reviewed by an equivalent Officer who has not been involved in the original case before the written notice is issued. The decision will be referred to the Senior Housing Officer if there is a disagreement about the decision at the peer review.

Right to Review of decisions:

Applicants have a right under Section 202 to request a review of the reasonable steps included by the Housing Authority in their Personalised Housing Plan.

Applicants have a right under Section 202 to request a review of the decision to issue a notice to discharge the prevention and/or relief duties as a result of the applicant's 'deliberate and unreasonable refusal to cooperate'.

Requests for reviews must be made within 21 days of being notified of that decision, or such longer period as the housing authority may allow in writing.

Written notifications will include details of the right to request a review and the process for doing so.

Reviews of this Policy:

This Policy will be reviewed annually and also in the event of a change in legislation, a change in statutory guidance or as a result of relevant case law.

[NOTE – to be reviewed when the final Code of Guidance is published – expected Spring 2018]

[NOTE – to be reviewed when additional regulations relating to the procedure to be followed in connection with notices are made]

Date	Event/Reason for review	Changes made?	Approving Body/Officer
06/03/2018	Cabinet meeting to approve Policy		To be approved by Cabinet
06/03/2019	Annual review		
06/03/2020	Annual review		