

Title: HOMELESSNESS FROM AN ASSURED SHORTHOLD TENANCY

Statement:

We the undersigned petition Brighton & Hove Council to adopt a policy that when citizens apply as homeless from an assured shorthold tenancy that BHCC implement the guidelines "that authorities should note that the fact that a tenant has a right to remain in occupation does not necessarily mean that he or she is not homeless" as prescribed by the "HOMELESSNESS CODE OF GUIDANCE" (Under Part 7 of the Housing Act 1996) BHCC should assist citizens that are faced with the certainty of homelessness in the same way as if they are homeless and not wait for the time when Court action is taken, costs incurred, and families are on the street. This is unjust, results in additional costs to BHCC and the family involved, and is socially damaging.

Justification:

At the present time BHCC follows the practice of a number of English local authorities (although not recommendations of national government) requiring assured shorthold tenants, who have been served with a notice of the landlord's intention to seek possession under section 21 of the Housing Act 1988, to remain in situ until a court order/bailiff's warrant has been obtained before accepting a statutory duty under the homelessness provisions of Part 7 of the Housing Act 1996 (as amended).

It should be noted that the ending of an assured shorthold tenancy (AST) has been the most frequently occurring reason for loss of a settled home in the last 15 consecutive quarters. 31% of all homeless acceptances in England between October and December 2015 arose from the termination of an AST. ([Show truncated justification text](#))

Submitted by: STEVE PARRY, 1 KEBBELL LODGE, HIGH STREET, BRIGHTON, EAST SUSSEX, BN2 1SU

Status: Requested

Date submitted: 26/05/2016

Response

Thank you for your petition about homelessness and the ending of private sector tenancies in Brighton & Hove.

Tackling homelessness is a priority for this administration and the council is working hard to maintain and develop its work in assisting households facing homelessness and housing difficulties in an increasingly difficult housing market.

Practice of Housing services with respect to homelessness from PRS

The Council is increasingly trying to become involved earlier and earlier in situations that are likely to result in homelessness, in order to try and prevent it. To avoid homelessness by either resolving the issues to sustain the accommodation or to work with the household to find alternative accommodation and hence avoid homelessness is a better option for all parties and is at the core of our Homelessness strategy.

In terms of actual homelessness or when households are legally threatened with homelessness, the council has not adopted a policy about the timing of assistance when a private sector tenancy is ending, as we want to be involved at an early stage.

However the council does have various roles in such circumstances. We must advise tenants about the legal process of a tenancy ending and this must, necessarily, include advice about the process after a section 21 notice is served by the landlord.

It would be to neglect the council's legal obligations as the statutory provider of good quality, professional, lawful, accurate and free housing advice to do otherwise. The council must necessarily operate within a fine balance of acting to provide advice about rights to occupy and acting on the differing interests of its customers who are both tenants and landlords and the Council itself and this is why each case is considered on its individual merits as per the Code of Guidance.

The statutory homelessness Code of Guidance, which local authorities are required by law to have regard to contains guidance on how authorities should treat homelessness applications in circumstances where a tenant has received a valid s.21 notice. It says that housing authorities should not, in every case, insist upon a court order for possession and that no local authority should adopt a blanket policy in this respect. The Guidance states that if the landlord intends to seek possession and there would be no defence to an application for a possession order then it is unlikely that it would be reasonable for the applicant to continue to occupy the accommodation, *however each case needs to be considered on a case by case basis and balanced against the general cost to the authority*. The relevant sections of the Homelessness Code of Guidance are as follows:

“8.31. In determining whether it would be reasonable for an applicant to continue to occupy accommodation, the housing authority will need to consider all the factors relevant to the case and decide the weight that individual factors should attract. As well as the factors set out elsewhere in this chapter, other factors which may be relevant include the general cost to the housing authority, the position of the tenant, the position of the landlord, the likelihood that the landlord will actually proceed with possession proceedings, **and the burden on the courts of unnecessary proceedings where there is no defence to a possession claim.**

8.32. Each case must be decided on its facts, so **housing authorities should not adopt a general policy of accepting – or refusing to accept – applicants as homeless or threatened with homelessness when they are threatened with eviction but a court has not yet made an order for possession or issued a warrant of execution.** In any case where a housing authority decides that it would be reasonable for an applicant to continue to occupy their accommodation after a valid notice has expired – and therefore decides that he or she is not yet homeless or threatened with homelessness – **that decision will need to be based on sound reasons which should be made clear to the applicant in writing.** The Secretary of State considers that where a person applies for accommodation or assistance in obtaining accommodation, and:

(a) the person is an assured shorthold tenant who has received proper notice in accordance with s.21 of the *Housing Act 1988*;

(b) the housing authority is satisfied that the landlord intends to seek possession; and

(c) there would be no defence to an application for a possession order;

then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the s.21 notice, unless the housing authority is taking steps to persuade the landlord to withdraw the notice or allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found.”

The costs of private rented accommodation in this area plus the requirements and additional fees charged by letting agents means it is increasingly difficult for households on low and medium income to obtain alternative accommodation and hence it can take longer to find alternative accommodation. It is generally this that causes a household to remain in their home after the expiry of the Notice.

When the council is able to assist, or when a family being helped finds accommodation before this, the council will always advise that the new tenancy starts at the same time as the Notice expires. Sometimes some extra time is requested because of the issues associated with moving that may come up unexpectedly.

What is more difficult is when a family that the council is assisting has not found another home to move to and has no alternatives. In this case the family does become homeless and the council's statutory duties to provide accommodation come into play.

In these cases the council will always consider cases on an individual basis and we have agreed, when necessary and pragmatic to do so, to provide statutory temporary accommodation earlier than a possession order.

The cost, to local tax payers (which include landlords) will be considerable if a policy were adopted to always guarantee to provide statutory temporary accommodation on expiry of the s21 Notice and this also would be contrary to the Code of Guidance which says in 8.32 not to have a blanket policy.

With respect to Mr Parry's specific petition, the council position is as follows:

- The council does assist before the court date, and in many cases it has helped families move before court action is needed.
- It is a fact of law that vacant possession is obtained by order of the court. It is also a fact of law that a homeless duty – to provide statutory temporary accommodation – is only triggered at the time that a household becomes

homeless. However the Code of Guidance sets out considerations to be taken into account when reaching a decision as to when to provide accommodation which the council complies with.

- Families we are assisting do not end up on the street. The council provides statutory temporary accommodation where homelessness cannot be avoided, the time to be determined on a case by case basis.
- Fulfilling the lawful way of ending a tenancy does not result in additional costs to BHCC. To provide temporary accommodation does incur costs and this is taken into consideration when determining at what stage to provide temporary accommodation, as per the Code of guidance.