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O)
Your ref -
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Dear Sirs

**RE: SOUTHWARK COUNCIL'S POLICY & PRACTICE ON OVERCROWDING-
RESPONSE TO OPEN LETTER**

We refer to your open letter dated 14th September 2020.

The local authority will respond as follows:

MIGRATION

The Migration Observatory Organisation has the following information on it's website:

In 2018, the migrants who came to England settled in different areas of the country as follows:

London-38%
South East England-14%
Northern Ireland-7.5%
Wales-6.3%
North Eastern England-6.2%

The migrants who come into the country have a choice with regards to the areas they settle in.

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SOUTHWARK'S HOUSING REGISTER

On the 1st July 2020, there were 12,859 applicants on the Housing Register. Of these, 7563 belong to the BAME category. Some of the applicants declined to provide any information with regards to their ethnicity.

For example, it currently takes between four and ten years for an applicant in band 3 to put in a successful bid for a property.

Please see the link below for the updated information on the time it takes for applicants in the different priority bands to bid successfully for properties.

<http://www.southwarkhomesearch.org.uk/content/Information/AverageWaitingTimesandLettingsInformation>

SOUTHWARK'S ALLOCATIONS HISTORY FROM 2015-2020

YEAR	ALLOCATIONS(HOUSING ASSOCIATIONS AND SOUTHWARK HOUSING STOCK)
2019/2020	1033
2018/2019	1459
2017/2018	1601
2016/2017	1410
2015/2016	1684

The Southwark local authority, like other inner London local authorities, faces a huge gap between the demand for and the supply of social housing.

JUDICIAL AUTHORITY

The courts have acknowledged the problems faced by the local authorities in several cases.

In the case of **R (Ahmad) v Newham London Borough Council, (2009) UKHL 14** the court made the following observations:

PARAGRAPH 7

“The unfortunate fact of the matter is that where a Council is faced, as this appellant Council is faced, with a demand for Council housing that greatly exceeds the available housing stock, there is no allocation system that can be devised to avoid hard cases such as, undoubtedly, Mr Ahmad and his family present. The section 167(1) scheme devised by the appellant Council complies with the statutory requirements of the 1996 Act, as amended, and in so far as its provisions for the allocation of housing to those in the section 167(2) priority band are concerned, cannot, for the reasons given by my noble and learned friends, which I find cogent and compelling, be described as irrational or unlawful.

PARAGRAPH 12

“Secondly, the relief claimed is important because no-one suggests that Mr Ahmad has a right to a house. At most, he has a right to have his application considered in accordance with a lawful allocation policy. Part VI of the Housing Act gives no-one a right to a house. This is not surprising as local housing authorities have no general duty to provide housing accommodation. They have a duty periodically to review housing needs in their area (Housing Act 1985, s8). They have power to provide housing accommodation by building or acquiring it (1985 Act, s9). They also have power to nominate prospective tenants to registered social landlords or to others. They are required to have an allocations policy which applies to selecting tenants for their own housing or nominating people for housing held by others (Housing Act 1996, s159(2)). But this does not mean that they have to make available any particular quantity of housing accommodation, still less that they must have enough of it to meet the demand, even from people in the “reasonable preference” groups identified in section 167(2). In some areas there may be an over-supply of council and social housing. In others, there may be a severe under-supply. Newham is one of them.

PARAGRAPH 13

“Thirdly, there is a fundamental difference in public law between a duty to provide benefits or services for a particular individual and a general or target duty which is owed to a whole population. One example of the former is in Part VII of the 1996 Act, which deals with the housing authority’s duties towards individual people. If certain conditions are fulfilled, section 193(2) requires that the authority “shall secure that accommodation is available for occupation by the applicant”. The individual applicant has the right to challenge a decision that the duty is not owed in the county court.....In the case of social housing, there is not even a duty to provide it, although there is a duty to have and to operate a lawful allocation policy”

PARAGRAPH 15

“Fifthly, even if the scheme is not unlawful because it fails to comply with section 167(2), is it unlawful because it is irrational? The earlier decision in the High Court and Court of Appeal, culminating in R (A) v Lambeth London Borough Council (2002) EWCA Civ 1084(2002) HLR 998, concluded that a policy was irrational if it did not contain a “mechanism for identifying those with the greatest need and ensuring that so far as possible and subject to countervailing factors (for example, past failure to pay rent etc.), they are given priority (para 18). There are numerous problems with that approach. The Act only requires a “reasonable preference” to be given to particular groups of people. It cannot be said that a scheme for identifying which individual households are in greatest need at

any particular time is the only way in which a reasonable council might decide to give reasonable preference to those groups.....

The court is not in a position to re write the whole policy and to weigh the claims of the multitude that are not before the court against the claims of the court who are.....It would be different, of course. If the most deserving households had a right to be housed, but that is not the law”

PARAGRAPH 16

“Sixthly, therefore, the question is how broad the brush can be. One can of course, imagine policies that would be irrational...But one possibility might be a policy which ensured that small families had priority over large ones, or that people coming from outside the borough had priority over those living within it, or that people who had been waiting the shortest time had preference over those waiting the longest. Section 167(2) makes it clear that, subject to the express provisions, it is for the council to decide on what principles the scheme is to be framed.

PARAGRAPH 18

“The problem with this argument is that section 167(2) only requires that these groups be given a “reasonable preference”. It does not require that they should be given absolute priority over everyone else. Still less does it require that an individual household in one of those groups should be given absolute priority over an individual household which wishes to transfer. The decision in R (A) v Lambeth London Borough Council (2002) HLR998, 16-17, 37, appears in part at least to have been based on this mistaken premise. The scheme is about the overall policy for allocating the available stock between groups.

PARAGRAPH 22

“It is apparent that all judges considering this problem have stressed that it is for the local authority to provide an allocation scheme according to it’s Part VI duty, and the merits as to who, how and when priority should be afforded is a matter for the local authority, subject to it’s special duties. Judges must be particularly slow in entering the politically sensitive area of allocations policies by over broad use of the doctrine of irrationality. A particular scheme cannot be castigated simply because it’s not a familiar one to the court or is not considered solution to a difficult, if not impossible question to resolve”

“Castigating a scheme as irrational is of little help to anyone unless a rational alternative can be suggested. Sometimes it may be possible to do this. But where the question is one of overall policy, as opposed to individual entitlement, it is very unlikely that judges will have the tools available to make the choices which Parliament has required a housing authority to make”

PARAGRAPH 25

“The allocation of social housing is a difficult and potentially controversial matter, which gives rise to very hard choices, at all levels of decision making, whether strategic, policy or specific. Social housing is an increasingly scarce (and correspondingly valuable) resource, for which demand considerably outstrips supply, in some areas (such as Newham) by an

enormous margin, even if one restricts one's assessment of demand to those whose claims would be characterised by most people as very pressing"

PARAGRAPH 37

"It is clear from section 167(6) that, subject to complying with the other provisions of section 167, and subject to rationality and compliance with any other relevant legislation, the terms of any allocation scheme are a matter for the local housing authority ("the authority"). Paras (a) to (e) of section 167(2) requires every scheme to give "reasonable preference" to those applicants whose households include at least one person falling within one or more of those paragraphs. The primary issues on this appeal is whether, as the courts below held, section 167 requires an authority to go further and accord priority as between reasonable applicants by reference to the relative gravity of their needs, and if so, the extent to which such ordering of priority is required.

PARAGRAPH 38

"In my view, there are a number of reasons for doubting there is such a requirement on an authority. The first three reasons turn on the wording of the section; the fourth and fifth reasons rely on policy considerations.

PARAGRAPH 39

"First, the opening words of section 167(2), when read together with the ensuing five paragraphs, as a matter of ordinary language, require an authority to accord reasonable preference to people who fall within one or more of those paragraphs over people who do not. To read the opening words as additionally requiring an authority to assess the degree to which a particular person or household satisfies the requirements of any of the five paragraphs, and to accord priority accordingly, involves those opening words performing, as it were, a double duty, and therefore places more weight on those words than, in my view, they naturally bear"

PARAGRAPH 46

"Fifthly, as a general proposition, it is undesirable for the courts to get involved in questions of how priorities are accorded in housing allocation policies. Of course, there will be cases where the court has a duty to interfere, for instance if a policy does not comply with legal requirements, or if it is plainly irrational. However, it seems unlikely that the legislature can have intended that Judges should embark on the exercise of telling authorities how to decide on priorities as between applicants in need of rehousing, save in relatively rare and extreme circumstances. Housing allocation policy is a difficult exercise which requires not only social and political sensitivity and judgment, but also local expertise and knowledge".

PARAGRAPH 48

"If section 167 carries with it the sort of requirements which can be said to be implied by the decisions of the Court of Appeal and the Deputy Judge in this case, then judges would become involved in considering details of housing allocation schemes in a way which would be both unrealistic and undesirable. Because of the multifarious factors involved, the

large number of applicants, and the relatively small number of available properties at any one time, any scheme would be open to attack, and it would be a difficult and very time consuming exercise for a Judge to decide whether the scheme before him was acceptable. If it was not, then the consequences would also often be unsatisfactory: either the authority would be in a state of uncertainty as to how to re formulate the scheme, or the Judge would have to carry out the even more difficult and time consuming (and indeed inappropriate) exercise of deciding how the scheme should be re formulated to render it acceptable. As Baroness Hale said, that point is well made by looking at the Deputy Judge's order in this case, which requires the scheme to be re considered "in accordance with the law set out in this judgment".

PARAGRAPH 62

"This point also highlights how inapt it is for the courts to interfere with housing allocation schemes, save in clear and exceptional circumstances. This follows from the striking imbalance between supply and demand for housing, the very large families with an urgent need to be housed under Part 6 of the 1996 Act, and the almost infinite number of different permutations of circumstances giving rise to the urgency. Knowledge of the circumstances of applicants generally, long term strategy considerations, expertise, political and social awareness, and local knowledge all have a part to play when it comes to formulating and implementing a housing allocation scheme. With information essentially consisting of the Scheme itself, the circumstances of the particular applicant and a few statistics (of questionable mutual consistency), the court should be very slow indeed to second guess Newham.

LOCAL AUTHORITY'S SUBMISSIONS

DELIBERATE CONDUCT

1) The London Borough of Southwark (like all the other inner London local authorities, faces a huge gap between the supply and the demand for social housing. It therefore has to carry out a careful balancing exercise when allocating social housing.

2) Southwark council has a public law duty to operate an allocation scheme that is fair to all the applicants on the Housing Register. Part of this duty is to ensure that some applicants are not disadvantaged by the actions of other applicants on the Housing Register.

3) Applicants who move into properties which are unsuitable for them right from the beginning and then seek to be placed in the highest priority band place all the other applicants in other categories at a disadvantage. It will take an even longer time for them to be rehoused. The local authority sought to address this chasm in the supply and demand of the housing stock and the disadvantage to other categories of applicants on the Housing Register by inserting the "deliberate conduct" clause in the allocations policy.

4) The local authority disputes the assertion that this clause is discriminatory on the following grounds:

a) Everyone has a choice to make with regards to their stay in any particular area or local authority. The applicants who move with their families into unsuitable properties do not have to do so.

b) Everyone (British people and migrants) have a choice to make when they are searching for places to stay.

c) One would not expect a British person on a low income to move his/her large family into unsuitable accommodation in Knightsbridge or Kensington and then seek to be placed in the highest priority band on the ground that they could only afford to rent unsuitable accommodation in those two boroughs.

d) One would not expect a British person on a low income who migrates to New York to move his/her family into an unsuitable property in one of the prime areas of Manhattan and then seek the highest priority band in the Housing Register in the neighbouring New York boroughs on the ground that he/she could only afford that unsuitable property in Manhattan.

e) One would expect migrants from other countries to search for affordable, suitable accommodation in areas they can afford and then commute to work. When a person migrates to another country, he/she does so in the expectation that they are going to have different experiences in a new country. They would expect that they have to make adjustments-adopting new cultures and different ways of living. The adjustments would include learning new languages and forming associations with diverse communities.

f) Migrants have been coming to the United Kingdom from different parts of the world for centuries. They have settled in different parts of the land. For example, there are Latin American communities in Ireland, Scotland and Wales. There are Polish communities in Wales, Scotland and Ireland. There are Ghanaian communities in different parts of the United Kingdom. There are Indian communities in different parts of the United Kingdom.

g) People from all social/economic classes of the society have to commute from their residences to their places of work. Judges, cleaners, bus drivers, social workers, lawyers, company executives, environmental officers, bin collectors all have to commute.

h) If they all had a choice, they would all take up tenancies or buy unsuitable properties in unaffordable areas which they truly love and desire to live in and which are close to their work places but one would not expect most people to do that.

i) The percentage of the applicants on the Housing Register as a whole, who belong to the BAME group is more than 50%. As stated above, the local authority owes a public law duty to all the applicants on the Housing Register. The duty is not just owed to the applicants who are represented by lawyers and interest groups.

j) The Supreme Court in the Ahmad v Newham case recognised the real difficulties faced by some local authorities in the allocation of the very scarce resource of social housing.

k) For every applicant who gains an unfair advantage under the allocations policy, another member of the BAME group, who is on the Housing Register, is disadvantaged.

SEVERE SHORTAGE OF SOCIAL HOUSING

5) Parliament recognised the fact that there is a severe shortage of social housing in some parts of the country and this is the reason why it did not grant everyone a universal right to social housing. It is impossible to allocate social housing to everyone who wants it. The central government also recognises this fact and this is why it has made funds available to local authorities so that they can pay incentives to landlords in the private sector-to encourage them to grant tenancies to applicants on low income-who are eligible for housing benefit and the housing element of Universal Credit.

LACK OF CLARITY-DIFFERENCE IN TREATMENT

6) All the applicants on the Housing Register present with different circumstances. The local authority assesses different applicants-based on their specific circumstances. The applicant's circumstances are also not stagnant. They change over time.

OVERCROWDING

7) As stated above, the local authority owes a public law duty to all the applicants on the Housing Register. Under s167 Housing Act 1996, there are several categories of applicants in the reasonable preference groups. In addition to the applicants in the statutory overcrowding group category, there are applicants who are homeless, people who need to move on medical or welfare grounds, and people who need to move to a particular locality in the district of the authority-s166A (3) HA 1996.

8) In situations where applicants move into properties which are unsuitable for their families and then seek to be placed in the highest priority band, other applicants in the other "reasonable preference" groups are disadvantaged. Some of them have been bidding for 5/6/8 years-because of the severe shortage of available social housing. Some of these applicants have lived in the borough for decades but they are disadvantaged.

COUNCIL PENALISING APPLICANTS ON LOW INCOMES

9) The local authority disputes the allegation that it is penalising applicants on low incomes by stating in its allocations policy that those applicants whose statutory overcrowding is caused by "deliberate conduct" will not be eligible for the highest priority band. There is no intention to blame anyone.

10) The conundrum for the local authority is that it has to manage the very scarce resource of social housing in the most efficient way possible. The unfortunate reality is that there is

simply not enough supply to meet the demand and not everyone who wishes to be allocated social housing will be successful in gaining it.

11) As stated above, the local authority has a public law duty to all the applicants on the Housing Register and so it has a duty to ensure that everyone is given a fair chance. It would be unfair if the other applicants are not treated fairly because they do not have lawyers or interest groups fighting for their rights. As a matter of fact, most of the applicants on the Housing Register are on low incomes. It is therefore not right to assert that the “deliberate conduct” clause in the allocations policy is discriminatory against people on low incomes.

12) Applicants who move into unsuitable properties and then get awarded the highest priority bands are putting all the other applicants in different categories at a disadvantage.

13) The local authority appreciates the fact that migrants want to take up tenancies in areas where there are already established communities but the local authority has a duty to balance all the competing interests of the different categories of applicants.

14) Migrants who wish to live near the members of their communities can take up tenancies in neighbouring local authorities which have more affordable suitable properties for the sizes of their families.

15) Some of these neighbouring local authorities are only a 30 minute ride away on the bus or train.

16) The reality of life is that not everyone can afford to live in areas they truly love and so they have to choose affordable areas.

DIFFERENTIAL TREATMENT-SOME OVERCROWDED HOUSEHOLDS IN BAND 3 AND OTHERS IN BAND 4

17) The applicants on the Housing Register do not all have the same circumstances. The local authority assesses each application based on the specific circumstances.

18) It is stated in Clause 5.23 of our allocations policy that Southwark has a right to reduce an applicant’s priority. Applicants who would otherwise be placed in band 1, 2 or 3 but due to reasons given in sections 3.5.13 to 3.5.20 have been placed in the reduced priority band.

PRIORITY STARS

19) The purpose of the priority star system was to grant extra priority to applicants in different circumstances.

20) There was no intention to award statutory overcrowding priority stars to those who moved into properties which were unsuitable for them right from the beginning and whose statutory overcrowding conditions were caused by “deliberate conduct”.

21) The local authority later acknowledged the fact that there was an omission in this part of the policy because it was not made clear that applicants whose statutory overcrowding is as a result of “deliberate conduct” would not be eligible for this star.

22) The local authority has now awarded the statutory overcrowding star to all the applicants who are living in households which are statutorily overcrowded.

FIVE YEAR LOCAL CONNECTION

23) The local authority is already under immense pressure with regards to the allocation of social housing because of the wide gap between the demand for and the supply of social housing.

24) It currently takes years for applicants to bid successfully.

25) If the local authority reverts to the six month local connection criteria, it will greatly increase the number of the applicants on the Housing Register and give them a false hope that they will be allocated social housing. In reality, not all of the people who want social housing can obtain it. There is simply not enough housing stock to satisfy the demand.

WAY FORWARD

26) As stated above, the central government has acknowledged the fact that there is simply not enough social housing stock in some local authorities to satisfy the demand. This is the reason why it has provided funds to the local authorities so that they can offer incentives to private sector landlords-to encourage them to consider granting tenancies to applicants in receipt of housing benefit. Housing element of Universal Credit.

27) Southwark is inviting the various interest and community groups to partnership with the local authority and explore ways of encouraging applicants on the Housing Register to consider moving into suitable private sector properties. Some private sector landlords/landladies are willing to work with the local authority.

ALLOCATION POLICY

28) Southwark has no plans to amend the current allocation policy.

As stated above, the local authority acknowledges the fact that there is an omission in the policy. There was no intention to award the statutory overcrowding priority star to households whose statutory conditions were due to “deliberate conduct”.

Southwark has now made a decision to award the statutory overcrowding priority star to those households which are living in statutory overcrowding conditions.

Yours faithfully,

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