

**Procedure for Conducting Internal (Statutory) Reviews of Homeless Decisions**

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**Portfolio:** Communities and Housing

**Ward(s) Affected:** All wards

**Purpose of the Report:**

To notify that a process has been designed for undertaking statutory reviews of homeless decisions which creates a consistency of approach for the Council.

**Recommendations:**

For Cabinet to recommend to Council that:

1. The proposed process for undertaking statutory reviews of homeless cases is adopted and exceed the minimum statutory requirements by involving the leader of the Council and relevant Portfolio holder in six monthly reviews.

## 1. Summary

The purpose of this report is to notify cabinet of our statutory duties to undertake homeless reviews where these are requested by customers and seek political approval to implement the proposed process for undertaking statutory homeless reviews.

## 2. Background

- 2.1 All Local Authorities which have a homelessness function have a statutory responsibility to carry out reviews of the decisions they make when a customer requests that they do so. These are known as Section 202 reviews and are a statutory requirement under the Housing Act, 1996 Part VII.
- 2.2 The legislation that governs these reviews is quite prescriptive.
- 2.3 The Council is required to have a clear process in place for undertaking these reviews. At present, the Council has an out-of-date process which is clunky and could be more efficient.
- 2.4 The intention here is to create an efficient, fair and thorough process for undertaking statutory homeless reviews which ensures robust decisions are made in a transparent manner and which keeps the Council safe from successful legal challenge.
- 2.5 The number of review requests has historically been low and remains so (on average less than 1 per month). This is in large part due to the quality of the initial homeless investigations undertaken by officers, the communication with customers (including the use of 'minded-to' letters where negative decisions are anticipated) and genuinely effective efforts to secure housing outcomes for customers who receive negative homeless decisions or are owed lesser homeless duties. This approach has earned the trust of advocacy services such as Shelter and minimises the resource spent dealing with legal challenges.
- 2.6 Numbers of reviews:

Year	Reviews
2022	7
2023	7

- 2.7 The low numbers of reviews do belie the time required to undertake them. The cases and the decisions being reviewed are often complex with information from multiple sources (which may be contradictory), many quite specific legal tests which must be applied, and a significant body of guidance and case law required to undertake the assessments accurately. The more complex cases can easily

take up a working week of a senior officer or managers time to process, especially if there has been new information provided and further investigation is required.

- 2.8 After review, the next step for a dissatisfied customer would be an appeal to the County Court on a point of law, so the review process must be right in all cases.

### **3. Current positions/findings**

#### **3.1 The Statutory Provisions for Homeless Reviews**

- 3.2 Customers have a right to request an internal review of most local authority homeless decisions that weigh against them. While this function can be contracted out, almost all councils conduct their reviews internally.
- 3.3 Within the industry this is generally undertaken by senior officers within the housing teams. In terms of nearest neighbours, all Norfolk and Suffolk authorities employ this approach.
- 3.4 There are rules which stipulate that any officer undertaking a review should not have been involved in the initial decision which is being reviewed and should also be senior in rank to the officer who made the initial decision. Within the Housing and Benefits Team's existing structure, this is easily practicable.
- 3.5 There is no requirement to involve elected members in the internal homeless review process, but it is the view of officers that doing so provides valuable additional scrutiny, can add transparency and balance to the process and is an effective means of maintaining member awareness of and involvement in this important statutory function.
- 3.6 The decisions being made determine what duty the Council's owe homeless customers and ultimately whether a duty to house a customer is owed, so they are fundamentally important and impactful decisions. Many of our homeless customers are very vulnerable and the decisions that the team make are complex.
- 3.7 More information regarding the procedural aspects for and rules around Section 202 reviews is provided in appendix 1.

### **4. Proposed action**

Proposed Process for Statutory Homeless Reviews  
(Flowchart available in appendix 2)

- 4.1 Customer requests a review following notification of a decision (an advocate or Solicitor may help the customer to make their request)

- 4.2 The review request is allocated to a senior officer who was not involved in the original decision which is being reviewed and who is senior to the officer that made the initial decision. This will be either a Housing and Benefits Manager with a homeless specialism or a Housing and Benefits Senior Technical Advisor
- 4.3 The allocated officer will check that the review request is for a decision that carries a right of review, and if so, will send a Regulation 5 notification to the customer
- 4.4 The review is undertaken and during the review attention is paid to whether there were any deficiencies or irregularities in the original decision. There is an additional process (defined in legislation) to follow if any are found
- 4.5 The reviewing officer may request new information from the customer (particularly with the passage of time) or may rely on the information already held by the Council. The reviewing officer may receive additional information from the customer (or someone acting on their behalf) or the customer may elect not to provide any new information
- 4.6 A review decision is made and review a letter sent to customer
- 4.7 The review case is closed on our case management system and will automatically be registered for H-Clic reporting to Central Government
- 4.8 A 6-monthly report will be sent to the respective Leader of the Council and relevant portfolio holders to review cases and offer opportunity for member involvement, see example report – Appendix 3

## **5. Other options**

- 5.1 Statutory homeless reviews must be undertaken in line with all the relevant legislation that governs them in all cases. Any failures in undertaking these reviews leaves the Council vulnerable to successful legal challenge and ultimately means we have failed our customers.
- 5.2 Most Councils, including all local authorities in Norfolk and Suffolk, have an entirely officer-led process for conducting their Section 202 reviews and do not involve their portfolio holders and this is an option.
- 5.3 Councils can contract out this function (subject to various legal provisions) but this would not represent good value for money given we have the skills and expertise to undertake these reviews in-house.

## **6. Issues and risks**

- 6.1 There is considerable risk to the Council if any Section 202 reviews are conducted in a way that does not meet all the legislative requirements and timescales. Any deficiencies would likely have cost implications and cause reputational damage.

- 6.2 **Resource Implications** – There are no resource implications. The Council currently receives and undertakes Section 202 reviews, the basic legislation for these dates to the 1996 Housing Act.
- 6.3 **Legal Implications** – These reviews are very legislative, and any deficiencies could lead to successful appeals in the County Court, fines or reparations being required of the Council and reputational damage. They must be conducted fastidiously.
- 6.4 **Equality Implications** – Every Section 202 review undertaken by the Council is subject to Public Sector Equality Act considerations which must be made with rigour.
- 6.5 **Environmental Impact** – There are no environmental implications.
- 6.6 **Crime and Disorder** – There are no impacts upon crime and disorder.

## 7. Conclusion

- 7.1 Our rationale for the recommendations here is that this process will provide a consistency of approach for both Councils in undertaking their Section 202 reviews. The proposed process meets all legal requirements and while it exceeds the bare minimum requirements, by adding an additional process to report regularly to both the Leader of the Council and Portfolio holders on the reviews we undertake, we believe this additional checking mechanism improves accountability and adds balance, without compromising efficiency.

## 8. Recommendations

- 8.1 The proposed process for undertaking statutory reviews of homeless cases is adopted and exceed the minimum statutory requirements by involving the leader of the Council and relevant Portfolio holder in six monthly reviews.

### Background papers

None

## Appendix 1

There are multiple checks and balances before an initial decision on homelessness is even made. These include case discussions in 1:1's, structured case reviews of officers' caseloads by the senior technical advisors and, where a negative decision is likely to be made, officers will normally write a 'minded-to' letter for the customer. This pre-decision letter explains the decision that is likely to be made and the reasons for it, the information which has been used to make the decision and invites the customer to tell us if there is anything they consider to be inaccurate, misunderstood by us or if we are missing any key information before a final decision is made.

At the point a decision is made, it is not made in isolation by an officer but is subject to peer sign off. A homeless decision report is completed, and peer checked and signed off before the decision is issued.

Upon receipt of a review request a notification must be sent to the applicant that they (or someone on their behalf) may make written representations to aid their review, it must outline the time limits for this and give an overview of the procedure for the review. This is known as a Regulation 5 notification and the purpose is to allow the customer to state their grounds (if they wish) and to draw out any new information which the applicant may have.

The Public Sector Equality Duty applies to the homeless review process and must be applied thoroughly and on a case-by-case basis.

If, during the review, the reviewing officer becomes aware of any deficiencies or irregularities in the original decision, there is a separate process that must be followed by law in undertaking the review.

There are statutory time limits within which Section 202 review decisions must be made. These are dependent on the decision which is being reviewed and are as follows:

<b>3 weeks</b>	<b>8 weeks</b>	<b>10 weeks</b>	<b>12 weeks</b>
Reasonable steps to relieve homelessness	Eligibility for assistance	Where the decision concerned whether the conditions for referral to another authority are met and was made jointly by the concerned authorities	Where the original decision was made by an appointed arbitrator and concerned a local connection referral

Reasonable steps to prevent homelessness	Notice as to what duty is owed to the applicant (including decisions on non-priority need and intentional homelessness)		
Notice to bring a prevention duty to an end	Notice to bring a relief duty to an end		
Notice to end a prevention duty due to deliberate and unreasonable refusal to co-operate	Referral to another authority where the main housing duty is owed		
	The outcome of the decision on whether the conditions for a referral to another authority are met		
	Suitability of accommodation (including in the private rented sector)		
	Notice due to end relief duty due to deliberate and unreasonable refusal to co-operate		

## Appendix 2

### Proposed Homeless Review Process

#### Customer (or advocate)

- Requests review
- Supplies any information they wish considered as part of the review

#### Senior Officer

- Records review request on IT system
  - Review allocated
  - Check that request is valid and decision reviewable
  - Send Regulation 5 Letter
  - Undertake review and any investigations as necessary
  - Assess for deficiencies or irregularities in original decision
  - Make decision and send decision letter to customer
  - Update review case management on IT system
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- Create a 6 monthly report for each council and send to the respective Portfolio holders



### Appendix 3

#### Example Homeless Review Report to The Leader and the Portfolio Holders

<b>Local Authority</b>	
<b>Year</b>	2023
<b>Quarters</b>	Q3 & Q4
<b>Reviews Completed</b>	3

<b>Decision Reviewed</b>	<b>Outcome</b>	<b>Procedural deficiencies/irregularities or Issues</b>
Eligible, Homeless, in Priority Need but Intentionally Homeless	Upheld	None
Eligible, Homeless but Not in Priority Need	Overtured	Decision of no priority need was made more than 56 days after relief duty was accepted however it is clear this was due to delays in information being supplied by customer's GP and there were no procedural deficiencies in the investigation were identified. Customer was found to be vulnerable on review due to mental health difficulties.
Suitability of Accommodation offered to end Main Housing Duty	Upheld	None

Subsequent Appeals to County Court	0
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