



Lead Member for Housing and Welfare Reform – Individual Member Delegated Decision

8 November 2018

Report from the Strategic Director of Community Wellbeing

Decision to Consult regarding Review of Allocations Policy

Wards Affected:	ALL
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One – Overview of current Allocations Scheme
Background Papers:	None
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1.0 Summary

- 1.1 The Council must have an Allocation Scheme for determining priorities and the procedure to be followed in allocating housing accommodation. The last review of the Allocation Scheme followed the implementation of the Localism Act 2011, and amendments were applied to the current Scheme in November 2014.
- 1.2 Having had regard to some concerns expressed by members and Chief Officers at the Council about some aspects of the current Allocations Scheme, a review of the current Scheme is taking place to consider what changes could be applied and what the impact of making these amendments will have.
- 1.3 It should be noted that as the demand for social housing by far outstrips the supply, and that any amendments made that will benefit one cohort of households, will result in another cohort being disadvantaged by decreasing their prospect of securing social housing.
- 1.4 There is a statutory requirement that any significant amendments made to the Council's Allocation Scheme can only be applied following public consultation. A report outlining proposed amendments to the current scheme was presented to the Housing Scrutiny Committee in September 2018, seeking their views on

the proposals and any other proposed changes to inform the consultation process. The committee was very helpful in giving feedback.

- 1.5 This report reflects the feedback received from members of the Housing Scrutiny Committee and provides a brief overview of the Council's current Allocations Scheme in Appendix 1.
- 1.6 For the revised Allocation Scheme to be implemented by 1 April 2019, a report setting out all of the amendments will need to be agreed at Cabinet on 11 March 2019. The timetable below sets out the sequences of events that will need to take place to facilitate the new Scheme being operational.

Timetable for implementation of revised Allocation Scheme

Date	Event
12 November 2018	Commence 10 week consultation
21 January 2019	Consultation ends
11 February 2019	Leader's Briefing
11 March 2019	Cabinet

2.0 Recommendations

- 2.1 That the Lead Member for Housing and Welfare Reform, following consultation with the Leader, agrees for consultation to proceed regarding the proposed amendments to the Council's Allocation Scheme as set out in section 4 of this report.

3.0 Background

- 3.1 The Housing Act 1996 Part VI ("The Act") provides that the Council's Allocations Scheme must be framed so as to give reasonable preference to any applicant who falls within the statutory reasonable preference categories as set out in the Act. Local housing authorities may frame their scheme so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have urgent housing needs

4.0 Proposed Amendments to the Current Allocation Scheme

Introduce a new nominations agreement with Registered Providers

- 4.1 A report was presented at PCG on 2 August 2018, outlining a proposal to implement a policy to offer newly accepted homeless households accommodation leased through Housing Associations under the Council's allocations scheme to end the main homelessness duty. Introducing this policy will require amendment to the Council's allocations scheme.

Impact

- 4.2 In 2012, in line with changes in national legislation and due to the acute shortage of social housing in Brent, Brent Council cut the tie between being accepted as homelessness and access to social housing. Before 9 November 2012, if the Housing Needs service accepted a household as homeless, the need had to be met in social housing. After 9 November 2012, if the Housing

Needs service accepted a household is homeless, the focus was on ending the homelessness duty in the private rented sector.

However, due to the shortage of affordable private rented sector accommodation, it has not always possible to end the homeless duty in the private rented sector, so some homeless households are still being placed in Temporary Accommodation

- 4.3 In the absence of enough social housing, the Council needs to increase the supply of affordable accommodation, in Brent, for Brent residents. Therefore, the council will work with RPs to procure units of private rented sector accommodation by offering a more competitive 'Reasonable Rent' through a nominations agreement. The nomination agreements would be between the Council and the RPs. The RPs would be granted leases in respect of such accommodation. The rent would be above Local Housing Allowance rates, but because it is an RP managing the property Housing Benefit would cover the additional cost. It is proposed that such offers of accommodation will be made within the Council's Allocations Scheme. Although such offers of accommodation are deemed to be "social housing" for the purposes of Part 6 of the 1996 Act, the fact these properties are leased by RPs will mean that the length of these tenancies will not be longer than the term of the leases which the RPs have leased from the private providers. As long as an offer of such RP leased accommodation to a homeless applicant (to whom the Council has accepted a homelessness duty) under Part 6 of the 1996 Act is suitable and affordable, this would be sufficient to discharge the Council's duty to provide temporary accommodation under section 193 of the 1996 Act in a lawful manner.
- 4.4 By implementing this change the majority of newly accepted homeless households will be secured suitable accommodation that is leased through Registered Providers to end their homelessness. This will have a significant impact on the number of households going into Temporary Accommodation and reduce the demand on the Housing Register from accepted homeless households.

Allowing households currently in Band D to retain the waiting time they accrued when in a higher band if they become homeless and are placed in TA

- 4.6 In April 2013 the Executive approved amendments to the Allocation Scheme in order to implement policies set out in the Tenancy Strategy, which was approved by the Executive in July 2012. These amendments were implemented in November 2014. One of these amendments was to hibernate all households registered in Priority Band D on the Housing Register so they are not eligible to make bids on Locata for social housing.

Another amendment was to change the priority awarded to households lacking one bedroom, as whilst lacking one bedroom is a housing need it was recognised there was a need to both distinguish it from more severe overcrowding and to acknowledge that such overcrowding is so common that it should not attract significant priority within the scheme. Therefore those

households lacking one bedroom were moved from a higher Band to Band D, resulting in them now being ineligible to bid.

Some households accrued significant waiting time when they were in Band C, which was lost when they were relegated to Band D. If the household subsequently become homeless and are placed in TA, they are automatically placed in Band C, as a cohort who are given reasonable preference – accepted homeless. However their registration date starts from the date of their placement in TA, and they do not retain any of the waiting time they accrued when they were previously in a higher Band due to lacking one bedroom.

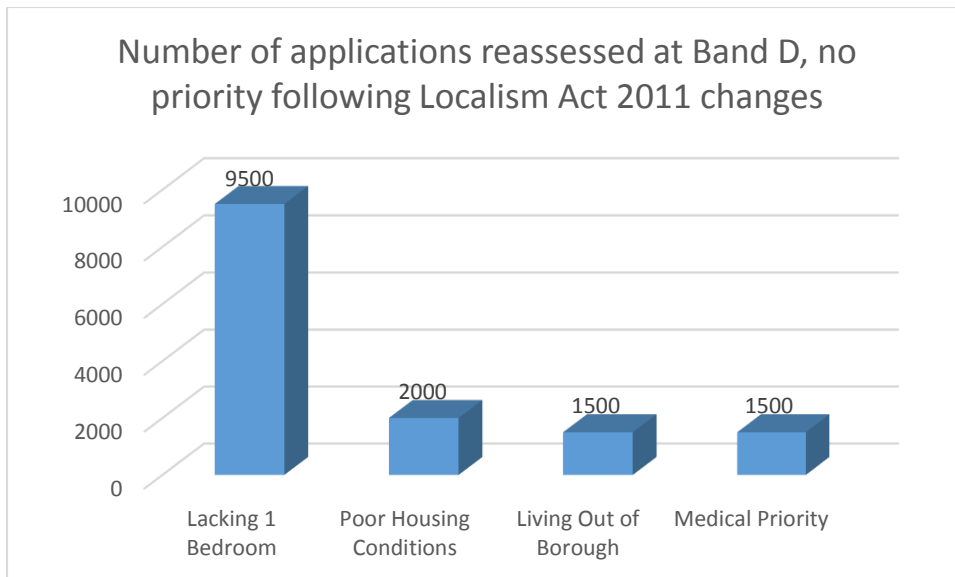
This amendment would allow a household to include the waiting time previously accrued in a higher band to be added to their waiting time if they become homeless and are placed in TA.

Impact

- 4.7 As described above, the link between homelessness and the allocation of social housing was severed with the implementation of the Localism Act 2011, and the policy to meet new homelessness demand with suitable accommodation in the private rented sector. By making the above amendment and allowing households to include previously accrued waiting time if they are homeless and placed in TA, they will be in a far better position to secure social housing than other homeless households placed in TA who were not previously registered. This amendment may have the unintended consequence of incentivising homelessness applications from this cohort of households.

When the previous amendments were made to the Scheme in November 2014, the approximately 17,000 households were moved from a higher Band to Band D. This means that as these households are added to the Housing Register and awarded their previously accrued waiting time, they will push back households who have been getting close to success in their bids.

- 4.8 The main groups of clients who were reassessed in Band D as a result of the changes are described in the graph below. Other categories included households registered for sheltered accommodation and households who were not bidding:



A short description of these categories is below:

- Lacking 1 bedroom- households who had access to one bedroom less than their need but with a separate living room, which counts as sleeping space were Band C under the previous policy. The vast majority of these clients were never invited to view a property.
- Poor Housing conditions – Band C was awarded to households who claimed to be living in such housing conditions but was not verified until they were shortlisted for a property – the vast majority were never invited to view a property.
- Living Out of Borough - these were households with a housing need but residing in another borough. Brent applied the residency criteria following the implementation of the Localism Act 2011 focusing local housing for local residents.
- Medical Priority – households with a medical condition affected by their current housing were given Bands A, B or C depending on the severity of the impact. This changed to Bands A or B for those households with an urgent need to move due to a major adverse impact. Again, the vast majority of households in Band C were never invited to a viewing.

4.9 The number of council and housing associations properties we have nominations rights to which become available to let annually is approximately 600 properties and has remained at this level for the past five years

Local Lettings Policy - Give priority to households who need a transfer to bid for accommodation that becomes available on their current estate

4.10 A tenant can apply for a transfer on the basis of housing need – for example that the household is overcrowded – and the application will be assessed on the basis of reasonable preference. However, the Council is also able to set its own transfer policies in relation to tenants who have asked for a transfer but do not meet the reasonable preference criteria. There are currently 281 Brent

Council Tenants who are registered for a management transfer due to overcrowding, medical or other reason and have been assessed in Bands A-C and therefore be able to place bids.

The Council's aim is to give priority to existing tenants where a move would support the Council's aim to increase the supply of affordable housing and effective use of the housing stock. In particular, this will include moves that would:

- Reduce under-occupation
- Mitigate the impact of changes to Housing Benefit
- Tackle overcrowding
- Promote mobility for employment purposes
- Facilitate repairs and improvements or regeneration schemes

4.11 The Council is proactively working to increase the supply of affordable accommodation in Brent, including building new council housing. Due to the lack of suitable sites that are available, every development opportunity is considered including "in-fill" development. New properties are built on existing estates by making the best use of the land, for example by demolishing underutilised garages.

4.12 It is proposed that existing tenants who are registered for a transfer should be given priority to bid for new units that become available on their estate, to enable them to remain on the estate and avoid having to relocate to another area.

Impact

4.13 By giving existing tenants registered for a transfer priority to bid for new units that become available on their estate they will be better placed to secure a transfer, over other households who may have been waiting for a transfer for a longer period. Having said that, the homes they move out of will then become available for others to bid for.

4.14 Also, while tenants who need to move due to overcrowding will be the beneficiaries, those needing to move due to violence or hate crime may be adversely affected.

Local Lettings Policy - Give priority to accepted homeless households living in Temporary Accommodation on an estate that is being regenerated, for an allocation of social housing that becomes available on the same estate

4.15 Another proposal similar to the above, is to give existing households who the council has accepted the main homelessness duty to and who are living in

Temporary Accommodation priority for an offer of social housing on the same estate if the estate is being regenerated.

Impact

- 4.16 By giving accepted homeless households living in temporary accommodation on an estate that is being regenerated priority for social housing on the same estate, they will be better placed to secure a unit of social housing over other homeless households who may have been waiting for an allocation for a longer period.
- 4.17 Also, the majority of the homeless households living in the Temporary Accommodation will have been accepted after the implementation of the Localism Act 2011. The Council's current policy to offer accepted homeless households suitable accommodation in the private rented sector to end the homelessness duty.
- 4.18 Implementation of the above proposal would result in accepted homeless households living in temporary accommodation on regeneration estates being treated differently to the majority of homeless households to whom the Council accepts a duty. This may have the unintended consequence of incentivising homelessness approaches in the hope that households are accommodated on estates that are being regenerated.

Revising Quotas.

- 4.19 The current Allocation Scheme contains the following quotas enabling services to have direct access to Council accommodation for the cohort of households the quota has been arranged for.
- **Children leaving Care** - Young people referred by Brent Social Services who are unable to make alternative arrangements.
 - **Probation Service** - Applicants nominated to Brent Council by the Probation Service to avoid the risk of reoffending and where housing is a particular issue as judged by the Probation Service in Brent.
 - **Children Services** - Existing tenants and non-tenants referred by Brent Social Services where accommodation is needed on grounds of children's welfare e.g. child protection cases.
 - **Adult Social Care** - To release supported housing and approved for independent living by Brent Social Services and The Housing Department.

- **Voluntary Sector** – To release supported housing but not known to Adult Social Care, and approved for independent living by Brent Housing Needs.
- **Young People** in employment or apprenticeships

4.20 Some of these quotas have resulted in the unintended consequence of households not considering other housing options because they are aware that the quota exists and although the actual number of units available in the quota is very small they hold on to the belief that they will be successful in securing social housing via the quota.

4.21 An example of this is the Voluntary Sector quota, set up for households living in supported housing schemes. These supported schemes are used to accommodate homeless households who are too vulnerable to live independently and are designed to equip them with the support and life skills to enable them to move on into the private rented sector, possible with a floating support package to assist them. The maximum period a person should remain in these schemes is 12-18 months. However some households who are ready to move on are reluctant to do so as they are aware that the quota, in this case 5 Units, which delays their move on and silts up the spaces available in the supported housing scheme for vulnerable homeless households who require them.

Impact

4.22 By moving away from a quota system for some of the cohorts listed above, there would be more social housing available, which could be used on a case by case referral from the service.

Prioritise Unaffordability

4.23 The shortage of supply of both social housing and affordable private rented accommodation in Brent continues to lead to high demand on the Housing Needs Service. Homelessness demand is being driven by a lack of access to affordable housing. The supply of this accommodation in the private rented sector has been significantly impacted in Brent by Welfare Reform, specifically the changes to the Local Housing Allowance (LHA) and the introduction of the Overall Benefit Cap (OBC)

4.24 Due to the gap between the LHA rate and the market rate for private sector accommodation in Brent, the majority of households who are on low incomes or dependent on benefits find it difficult to find affordable accommodation in

the private rented sector in Brent. If they do not have a recognised priority as set out in the current Allocation Scheme, they will not be eligible to bid for social housing.

- 4.25 It is therefore proposed that households on low income or dependent on benefits, who do not have a recognised need for housing, be given priority on the Housing Register, and be eligible to bid for social housing.

Impact

- 4.26 By making the above amendment and awarding priority to households on low incomes or dependent on benefits to bid for social housing, the volume of demand on the Housing Register will increase significantly. The table below shows the current number of households in Brent who are receiving 100% Housing Benefit to pay their rent, and making no financial contribution. The table also shows how many households have to make a contribution towards their rent along with contribution band they fall within contribution of HB broken down into “bands” of £50

Number of households currently receiving Housing Benefit and making a financial contribution

Contribution Bands	Number of HB Claims
£0 to £49.99	16065
£50 to £99.99	5323
£100 to £149.99	2278
£150 to £199.99	788
£200 to £249.99	307
£250 to £299.99	133
£300 to £349.99	46
£350 to £399.99	27
£400 to £449.99	10
£450 to £499.99	12
£500 to £600	8
£600 to £700	2
£700 to £800	2
£800 to £900	12

£900 to £1000	12
£1000+	16
No Contribution	11653
Total	36694

7.0 Financial Implications

- 7.1 The outlined amendment to the allocations policy will not have a direct financial implication, but will allow for the introduction of the “Reasonable Rents” policy.
- 7.2 The Reasonable Rents policy, if successful, could potentially reduce the cost of TA by up to £1.8m pa.

8.0 Legal Implications

Allocations Scheme

- 8.1 The requirements regarding allocations schemes are set out in section 166A of the Housing Act 1996 (“the 1996 Act”), which has been inserted by section 147 of the Localism Act 2011.
- 8.2 Under section 166A(1) of the 1996 Act, every local housing authority (which includes Brent Council) shall have a scheme for determining priorities and as to the procedure to be followed in allocating housing accommodation. The allocations scheme must also include the authority’s statement on offering choice of accommodation or how people are offered the opportunity to express their choice.
- 8.3 Under section 166A(14) of the 1996 Act, a local housing authority shall not allocate social housing accommodation except in accordance with their allocation scheme. In other words, if a Council pursues allocation policies that are outside its scheme, then it will be deemed to be unlawful.
- 8.4 Under section 166A(12) of the 1996 Act, a local housing authority must, in preparing or modifying their allocation scheme, have regard to: (a) its current homelessness strategy under section 1 of the Homelessness Act 2002, (b) its current tenancy strategy under section 150 of the Localism Act 2011, and (c) as Brent Council is a London Borough, the London housing strategy prepared by the Mayor of London.
- 8.5 Section 166A(13) of the 1996 Act states that before adopting an allocation scheme, or making an alteration to their scheme reflecting a major change of policy, the Council must -
- (a) send a copy of the draft scheme, or proposed alteration, to every private registered provider of social housing and registered social landlord with which they have nomination arrangements (see section 159(4)), and

(b) afford those persons a reasonable opportunity to comment on the proposals.

- 8.6 Section 166A(3) outlines priorities to which the scheme must give reasonable preference. These categories are outlined in detail within the scheme, but in summary they are;
- Homeless households
 - Homeless households in temporary accommodation
 - People living in overcrowded or unsatisfactory housing
 - People who need to move on medical or welfare grounds (including any ground relating to a disability)
 - People who need to move to a particular locality within the district where to not move them would cause hardship (to themselves or others).

Additional preference may be given to any particular category where there is urgent housing need.

- 8.7 Subject to the content of section 166A(3) of the 1996 Act as set out in the previous paragraph, the allocations scheme may contain provision about the allocation of particular housing accommodation: (a) to a person who makes a specific application for that accommodation; (b) to persons of a particular description (whether or not they are within the categories set out in the previous paragraph). The Secretary of State has the power to make regulations to specify factors which a local housing authority in England must not take into account in allocating housing accommodation.
- 8.8 The allocations scheme must be framed so as to secure that an applicant for an allocation of housing accommodation has the right to request such general information as will enable him to assess— (i) how his application is likely to be treated under the scheme (including in particular whether he is likely to be regarded as a member of a group of people who are to be given a reasonable preference); and (ii) whether housing accommodation appropriate to his needs is likely to be made available to him and, if so, how long it is likely to be before such accommodation becomes available for allocation to him.
- 8.9 The allocations scheme must also be framed so that an applicant for a housing allocation has the right to request the Council to inform him of any decision about the facts of his case which is likely to be, or has been, taken into account in considering whether to allocate housing accommodation to him and he also has the right to request a review of such a decision and to be informed of the decision on the review and the grounds for it. There is also the right to request a review against a decision of the Council by an applicant on grounds of being ineligible for an allocation and of not being a qualifying person to be allowed to be given an allocation of housing under section 160ZA(9) of the 1996 Act.
- 8.10 Section 160ZA of the 1996 Act sets out which classes of persons that local authorities shall not allocate housing accommodation under their allocations scheme and these are mainly on grounds of immigration status.
- 8.11 The Department for Communities and Local Government has issued statutory guidance in June 2012 and is entitled: Allocation of accommodation: guidance

for local housing authorities in England. The Council has given regard to this statutory guidance when drafting its allocations scheme.

- 8.12 When considering the proposed changes to the allocations scheme, consideration needs to be given to the impact on families and children under the right to respect for private and family life under Article 8 of the European Convention of Human Rights and section 11 of the Children Act 2004, the latter of which places a duty on local authorities to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children.
- 8.13 The Council is entitled to have a transfer policy relating to applicants who fall outside the remit of Part 6 of the 1996 Act and outside the allocations scheme. However, section 159(4B) of the 1996 Act states that Part 6 of the 1996 will apply to transfers if (a) the allocation involves a transfer of housing accommodation for that person/applicant; (b) the application for the transfer is made by that person/application and (c) the Council is satisfied that the person is to be given reasonable preference under section 166A(3) of the 1996 Act.
- 8.14 An Equality Impact Assessment (“EIA”) will need to be carried out in respect of the proposed changes to the Council’s allocations scheme and the results of the EIA will need to be considered by the Cabinet when it makes a final decision after the consultation process regarding whether to approve the proposed changes to the Council’s allocations scheme. This will assist the Cabinet in meeting its requirement to comply with the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010 when making a final decision on whether to approve the proposed changes to the Council’s allocations scheme. Carrying out an EIA will help to clarify whether any of the proposed changes to the Council’s allocations scheme adversely affect groups with “protected characteristics” under the Equalities Act 2010 and whether actions need to be carried out to mitigate any adverse impact.
- 8.15 The four key principles in relation to consultation are set out in the the four principles of consultation in the *R v Gunning v Brent LBC* case and those principles are as follows:
- (i) consultation must take place when the proposal is still at a formative stage;
 - (ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
 - (iii) adequate time must be given for consideration and response; and
 - (iv) the product of consultation must be conscientiously taken into account.
- 8.16 The decision to start and agree the consultation process comes within one of the categories of decisions for individual Cabinet Members, to be taken in consultation with the Leader, under paragraph 13 of Part 3 of the Council’s Constitution. The appropriate Lead Member is the Member for Housing and Welfare Reform.

9.0 Diversity Implications

9.1 The current legislation does not assist a substantial proportion of those seeking accommodation who are homeless. Currently the legislation owes a housing duty to those in priority need i.e. applicants with dependent children, applicants who are vulnerable as a result of medical/mental health issues, being in the armed forces, leaving institutional prison and who are elderly. The Homelessness Reduction Act lifts the priority need limitation to homeless applicants and opens the prevention duty to all members of the public who are eligible and threatened with homelessness. It is therefore anticipated that this change will have a **positive or neutral impact** on service users across all age group, particularly the single working age homeless group.

Report sign off:

Phil Porter

Strategic Director of. Community
Wellbeing

Appendix 1

Overview of the current Allocations Scheme

- 1 The following is an overview of the Council's current Allocation Scheme.
- 1.1 While the Localism Act grants local authorities more flexibility over some aspects of allocations, the reasonable preference criteria still apply. The current scheme therefore ensures that reasonable preference is given to people with housing needs who fall into one or more of the following groups:
 - Homeless people as defined by Part VII of the 1996 Housing Act, including people who are intentionally homeless and those who are not in priority need
 - People who are owed a duty under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under s192(3)
 - People occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions
 - People who need to move on medical or welfare grounds, including grounds relating to disability
 - People who need to move to a particular locality in the housing authority area, where failure to meet that need would cause hardship (to themselves or others)

Qualification

- 1.2 Subject to the requirement to give reasonable preference to the groups identified above, i.e. those with a housing need, the council does not operate an "open" waiting list. In addition to having a housing need, applicants must be resident in the borough and will normally need to establish a local connection through residence for three of the last five years or six of the last twelve months before being able to apply on the Register. Alternatively, a local connection may be established through working in the borough

Broadly, the following groups are able to join the Housing register:

- People over sixteen years of age who are resident in the borough
- People in hospital or prison whose last address was in the borough
- Members and former members of the armed services
- People who the council considers should be qualifying persons because of exceptional circumstances or special needs, on a case- by-case basis
- People referred by another local authority under homelessness rules where the council has a duty to assist
- Any other people who are entitled to qualify by law

- 1.3 The Act states that some people are unable to qualify and the scheme must comply with this. Persons subject to immigration control cannot qualify. In order to qualify, a person must be a British Citizen or be a person who does not require leave to enter or remain in the UK
- 1.4 The council also has to consider who would be considered to be part of the household of any applicant. In general, the scheme will take account of the Housing Benefit regulations on non-dependents and the homelessness legislation and guidance on who should normally be expected to reside with an applicant
- 1.5 For the purposes of allocation of accommodation the Council will only consider the following as a household;
- A single person without dependents
 - A married couple
 - An unmarried couple, who can prove that they have been resident together for at least 12 months at time of application and at time of offer.
 - A lone parent and their dependent children
 - A married or unmarried couple with dependent children
 - A civil partnership with or without dependent children

Income / Asset Threshold

- 1.6 The Council aims to make the most effective use of all tenures in the borough. To this end, income thresholds apply to ensure that households who could afford alternative options - shared ownership for example - are directed towards those alternatives. The thresholds have been set at a level where a household could reasonably expect to access shared ownership, taking account of the Mayor's First Steps scheme. The income thresholds are:

1bed - £35,000 a year
2bed - £45,000 a year
3 bed - £ 55, 000 a year
4 bed - £70,000 a year

Priority

- 1.7 The scheme will award priority based on housing need, in line with the reasonable preference criteria set out above but will also grant additional priority in certain circumstances.
- 1.8 The scheme will give additional priority to households in employment on the following basis:
- The applicant must be in employment at the time of application and must have been in employment for at least 9 out of the previous 12 months.
 - Self-employment will also be given additional priority, subject to mechanisms to verify employment status

- 1.9 Within the overall banding scheme, applicants are prioritised in date order. Additional priority for employment will be reflected by the award of an additional five years notional waiting time, effectively backdating the application by that period and moving applicants further ahead within the appropriate band, which will be awarded according to need as noted above and set out in the banding scheme