

## **Report for: Cabinet**

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<b>Date of Meeting:</b>	16 March 2023
<b>Subject:</b>	Review of the Social Housing Allocation Scheme
<b>Key Decision:</b>	Yes – the decision is significant in terms of its effects on communities living or working in an area of two or more wards of the Borough.
<b>Responsible Officer:</b>	Dipti Patel - Corporate Director Place David McNulty - Director of Housing
<b>Portfolio Holder:</b>	Councillor Mina Parmar - Portfolio Holder for Housing
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All Wards
<b>Enclosures:</b>	Amended Housing Allocation Scheme Equality Impact Assessment

## Section 1 – Summary and Recommendations

This report proposes a minor amendment to Harrow Council's Housing Allocation Scheme for social housing.

### Recommendations:

Cabinet is requested to:

- (1) Approve the amendment to section 4.5 of the Housing Allocation Scheme by inserting a new paragraph 4.5(i) as follows:

*“As of 01 April 2023, the Council will remove the 5-year residency requirement for non-UK nationals with refugee status in the UK who would qualify for inclusion on the housing register but are unable to demonstrate at least 5 years' residence in Harrow or another place in the UK.”*

**Reason (for recommendations):** To ensure Harrow Council's Housing Allocation Scheme's qualification criteria for joining the housing register is in compliance with the law and that it does not directly or indirectly discriminate any particular group of housing applicants seeking to join the housing register.

## Section 2 – Report

### Introductory paragraph

Every local housing authority must have an Allocation Scheme (“the Scheme”). This is a statutory requirement, namely under section 166A(1) of the Housing Act 1996 (as amended by the Homelessness Act 2002, the Localism Act 2011 and the Homelessness Reduction Act 2017) for determining priorities and to set out procedures to be followed in allocating housing accommodation.

Harrow Council has an Allocation Scheme that sets out how it allocates the rented social housing which is either owned by Harrow Council or which is owned by housing associations (registered providers) but to which Harrow Council has nomination rights.

The aim of the Scheme is to meet local priority housing need, make the best use of the very limited social housing stock in Harrow, and ensure that the applicants who are in the greatest assessed need for social housing wait as short a time as possible.

The Scheme sets out the eligibility criteria for joining the housing register and the policy for prioritising housing applications.

The scope of the Scheme does not include homelessness accommodation, such as Emergency Accommodation and Temporary Accommodation, which is dealt with in Harrow Council's Homelessness & Rough Sleeping Strategy.

The Scheme also excludes some specific types of social housing such as Extra Care Housing for Older People which is allocated in conjunction with Adult Social Care.

Harrow Council's Allocation Scheme was last approved by Cabinet on 21 January 2021. The Scheme should be kept under review. Although Harrow Council's Allocation Scheme states that it will review the Scheme every 5 years, it is best practice to review it regularly to ensure compliance with the law and effectiveness in meeting local housing need, and to reduce the risk of legal challenges.

This report proposes a minor amendment to the current Allocation Scheme. For the reasons explained in this report, Cabinet is requested to approve the proposed amendment.

It should be noted that a comprehensive review of the Scheme is planned for later this year, to allow sufficient time for the development of amendments and the necessary consultation.

## **Options considered**

The following options were considered:

**Option 1:** To not review and amend the Housing Allocation Scheme

This option is not recommended because the Council will not be complying with the law and could potentially be in breach of section 149 of the Equality Act 2010.

**Option 2:** To review and if considered necessary and appropriate, amend relevant part(s) of the current Housing Allocation Scheme.

This option is recommended as it complies with the law.

## **Proposed amendment to the Housing Allocation Scheme**

The need to review the Allocation Scheme and proposed amendment came about following a judicial review claim against the Council in which it questioned whether the 5-year residence criteria should apply to non-UK nationals with refugee status in the UK who are eligible and would qualify for inclusion on the housing register but are unable to demonstrate at least 5 years' residence of their choice in Harrow or another place in the UK.

Non-UK nationals with refugee status are different to asylum seekers, in that an asylum seeker is someone who has arrived in a country and asked for asylum. Until they receive a decision as to whether they are a refugee, they are known as an asylum seeker. In the UK, this means they do not have the

same rights as a refugee, or a British citizen would. As such, those with refugee status will usually be eligible for housing assistance and have recourse to public funds whereas asylum seekers do not have such rights pending determination of their asylum application to the Home Office.

Having reviewed the Scheme, it has been determined that it is right that non-UK nationals with refugee status in the UK should be exempted from the need to show local connection, in same way as those who have experienced domestic abuse, as recently arrived refugees or those who were in Home Office asylum accommodation since arriving in the UK will not be able to demonstrate a local connection to Harrow. Duties under the Equality Act 2010 means that the Council must treat such applicants in same way as other groups for whom local connection to Harrow is not required or is unreasonable requirement.

For this reason, it is proposed that the Council should remove the 5-year residency requirement for non-UK nationals with refugee status in the UK from the Scheme. This approach will be in line with that of other local housing authorities and would have a positive impact on the small number of housing applicants, namely applicants who are non-UK nationals with refugee status in the UK.

For the purposes of this report and in order to comply with the law, it is proposed that a new paragraph, namely paragraph 4.5(i) is inserted in section 4.5 of the current Allocation Scheme.

The new paragraph 4.5(i) will read as follows:

- (i) *As of 01 April 2023, the Council will remove the 5-year residency requirement for non-UK nationals with refugee status in the UK who would qualify for inclusion on the housing register but are unable to demonstrate at least 5 years' residence in Harrow or another place in the UK.*

### **Ward Councillors' comments**

The Portfolio Holder for Housing has been consulted. Limited consultation has been carried out within the timescale set by the Order.

### **Risk Management Implications**

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below.  
**n/a**

The following key risks should be taken into account when agreeing the recommendations in this report:

<b>Risk Description</b>	<b>Mitigations</b>	<b>RAG Status</b>
Statutory Duties: The Council does not review the Allocation Scheme and make necessary amendments then this could potentially be a breach of statutory duties.	Reviewing the Allocation Scheme and obtaining approval from Cabinet to amend the current Allocation Scheme will ensure the Council is complying with its statutory duties.	Green
Risk of Legal Challenge: There is a risk of future legal challenge(s) against the Council on grounds that it's Allocation Scheme is in breach of statutory duties and/or it directly or indirectly discriminates certain groups of housing applicant.	Reviewing the Allocation Scheme and Seeking approval from Cabinet and amending the Allocation Scheme will ensure the Council is complying with its statutory duties and this will reduce the risk of legal challenges in the future.	Green
The Council fails to amend the Allocation Scheme and does not make the necessary changes to its decision-making, policies and day-to-day practice on housing allocations.	Reviewing the Allocation Scheme and securing, approval from Cabinet to make the necessary amendments, and briefing housing staff will ensure the Council is complying with its statutory duties and not unfavourably treating a group of housing applicants.	Green

## Procurement Implications

There are no direct procurement implications resulting from the recommendation in this report. If any procurement is required, it will be conducted compliantly in line with the Contract Procedure Rules.

## Legal Implications

Section 166A(1) of the Housing Act 1996 (as amended by the Homelessness Act 2002, the Localism Act 2011 and the Homelessness Reduction Act 2017) requires that every local housing authority must have a Housing Allocation Scheme ("the Scheme"). Its purpose is to determine priorities between qualifying persons in allocating housing and to set out the procedures to be followed.

The allocation of housing by local housing authorities is regulated by Part VI of the Housing Act 1996 ("the 1996 Act"). Section 159(1) of the 1996 Act

requires that local housing authorities must comply with the provisions of Part VI when allocating housing accommodation. However, subject to this compliance, authorities may otherwise allocate housing in any manner they consider appropriate (see section 159(7) of the 1996 Act).

The 1996 Act also requires local housing authorities to give reasonable preference in their Allocations Scheme to people with high levels of assessed housing need. The Scheme may be framed to give additional preference to particular descriptions of people (see section 166A(5) of the 1996 Act). However, a local housing authority must not allocate housing accommodation except in accordance with its allocation Scheme (see section 166A(1) of the 1996 Act).

As a result of changes made by the Localism Act 2011, with effect from 18 June 2012, local housing authorities have been able to decide who “qualifies” for an allocation. Accommodation can therefore only be allocated to someone who qualifies under those local criteria (see section 160ZA(6) of the 1996 Act) and local housing authorities can largely determine who qualifies (see section 160ZA(7) of the 1996 Act).

The Secretary of State does however have the power to prescribe classes of persons who are, or are not, to be treated as qualifying persons(see section 160ZA(8) of the 1996 Act).

In formulating or amending its Scheme, a local housing authority must have regard to its current homelessness strategy under section 1 of the Homelessness Act 2002.

It is best practice to review the Scheme regularly (i.e. every few years) to ensure compliance with the law and good practice and that the Scheme is addressing housing need effectively. Where changes are to be made to the Scheme, it is a requirement to consult with those affected by the changes including Registered Providers.

Article 13 of the Council’s Constitution defines a ‘key decision’, which includes a decision likely to be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough. Part 3A of the Constitution states that the Cabinet is responsible for all key decisions.

Following the judicial review case, the Council carried out a review of its Allocation Scheme and determined that it would be right that refugees who are eligible for housing assistance are exempted from the need to show local connection, in same way as those who have experienced domestic abuse, as recently arrived refugees will be unable to demonstrate a local connection anywhere in UK.

Section 149 of the Equality Act 2010 requires the Council, as a public body, to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. The removal of the 5-year residency requirement for non-UK nationals with refugee status in the UK would ensure compliance with section 149 duties as the Council would put non-UK nationals with refugee status in the UK in the same position as other groups for whom

local connection is an unreasonable requirement and/or re unable to meet this requirement. The removal of the 5-year residency requirement will eliminate any potential claims of direct or indirect discrimination.

## **Financial Implications**

The Housing Allocation Scheme is a statutory requirement of Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011.

The Housing Allocation Scheme sets out how the Council allocates the rented social housing which is either owned by Harrow Council in the Housing Revenue Account (HRA) or which is owned by housing associations (registered providers) but to which Harrow Council has nomination rights.

The aim of the Housing Allocation Scheme is to meet local priority housing need, make the best use of the very limited social housing stock in Harrow, and to reduce the time which properties remain vacant whilst suitable applicants are identified.

An effective approach to allocations can minimise void times and therefore void loss to the HRA. It can also minimise the amount of time that homeless households who have applied for social housing spend in homelessness accommodation, such as emergency or temporary accommodation, which impacts on the General Fund (GF).

The Housing Allocation Scheme should be kept under review. It is best practice to review it regularly to ensure compliance with the law and effectiveness in meeting local housing need, and to reduce the risk of legal challenge which has financial implications for the Council. The amendment to the scheme has minimal financial implications.

## **Equalities implications / Public Sector Equality Duty**

Section 149 of the Equality Act 2010 outlines the provisions of the Public Sector Equality Duty which requires Public Bodies to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant characteristic and persons who do not share it.

The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- (c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

When making policy decisions, the Council must therefore take account of the public sector equality duty and in particular any potential impact on protected groups.

Accordingly, an Equality Impact Assessment has been carried out in respect of the proposed amendment. The proposed amendment will have a positive impact on social housing applicants who are non-UK nationals with refugee status in the UK who would qualify for inclusion on the housing register but are unable to demonstrate at least 5 years' residence in Harrow.

As non-UK national with refugee status in the UK have the protected characteristic of race within the meaning of section 9 Equality Act 2010, the proposed change will have a positive impact on applicants with this protected characteristic.

## **Council Priorities**

The decision sought delivers the priority 'A place where those in need are supported' because the aim of the Housing Allocation Scheme is to meet local priority housing need, make the best use of the very limited social housing stock in Harrow, and ensure that that the applicants who are in the greatest assessed need for social housing wait as short a time as possible.

## **Section 3 - Statutory Officer Clearance**

**Statutory Officer: Tasleem Kazmi**

Signed on behalf of the Chief Financial Officer

**Date: 02/03/2023**

**Statutory Officer: Kaniz Ali**

Signed on behalf of the Monitoring Officer

**Date: 06/03/2023**

**Chief Officer: Dipti Patel**  
Signed by the Corporate Director  
**Date: 2<sup>nd</sup> March 2023**

**Head of Procurement: Nimesh Mehta**  
Signed by the Head of Procurement  
**Date: 02/03/2023**

**Head of Internal Audit: Neale Burns**  
Signed on behalf of the Head of Internal Audit  
**Date: 3<sup>rd</sup> March 2023**

**Has the Portfolio Holder(s) been consulted? Yes**

## **Mandatory Checks**

**Ward Councillors notified: NO, as it impacts on all Wards**

**EqlA carried out: YES**

**EqlA cleared by: Jennifer Rock, EDI Team**

## **Section 4 - Contact Details and Background Papers**

**Contact:** Meghan Zinkewich-Peotti, Housing Strategy Project Manager  
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### **Background Papers:**

- [Current Housing Allocation Scheme approved on 21 January 2021](#)

**Call-in waived by the Chair of Overview and Scrutiny Committee - NO**