**Joint protocol between Buckinghamshire County Council**

**and**

**District Council Housing**

**for intentionally homeless families with children**

**Responsible Manager: *Head of Quality Standards & Performance***

**Version number: V0.3**

**Date created: February 2018**

**Date of next review: February 2019**

## Aims

* + To clarify the statutory duties and agreed responsibilities under the protocol of local District Council Housing Departments and Children’s Social Care in the County Council.
  + To ensure families secure accommodation suitable for their needs and prevent homelessness by addressing support needs at the earliest opportunity and enabling tenancy sustainment.
  + To establish and clarify an approach across all agencies which will apply irrespective of which district potentially homeless families with children present in.
  + To promote cooperation and joint working between the partner agencies.

## Objectives

* + To meet the needs of potentially homeless families with children as closely as possible within the remit of legislation and the resources available.
  + To work in partnership on how best to meet these needs and identify any potential risks to the safety, health or development of the child(ren) of such families.
  + To ensure children do not become looked after by Children’s Social Care because of lack of a suitable home and that they achieve, or maintain, a reasonable standard of health and development.
  + To improve and promote joint working between the partner agencies.

## Context

## Background

3.1 This protocol covers the assessment and provision of services to families with dependent children who are potentially homeless and not eligible for assistance from Housing Services.

3.2 The local housing authority has a duty to assess homelessness applications in accordance with The Housing Act 1996 as amended by the Homelessness Act 2002. [[1]](#footnote-1)Under Section 193 of the Act the local authority has a duty to secure accommodation for people who are homeless, eligible for assistance, in priority need and not intentionally homeless. Housing authorities will make a decision following within a reasonable period after the prevention and relief stages have been exhausted.

3.3 Sometimes households are **found to be homeless**, in priority need, to have a local connection but to have made themselves ‘intentionally homeless’. Under Section 190 of the Act, such households with dependent children are offered accommodation for a ‘reasonable’ period (generally 28 days), and advice and assistance in securing accommodation by the local housing authority.

3.4 Under Section 195 of the Housing Act 1996, applicants **at risk** of homelessness but found to be threatened with homelessness intentionally, are only entitled to advice and assistance to prevent the homelessness occurring.

3.5 Section 191 of the Housing Act 1996 defines intentionality: “a person becomes intentionally homeless if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy”. Such acts of omission include rent arrears, anti-social behaviour, breaches of tenancy conditions and giving up accommodation suitable to an individual’s/ family’s needs.

3.6 The Homelessness Act stresses the need for cooperation between housing authorities and Children’s Social Care social services when dealing with intentionally homeless households with dependent children. Social services departments have a duty under Section 20 of the Children Act 1989 to accommodate any child in need whose welfare is likely to be seriously prejudiced without the provision of accommodation. The duty to co-operate for public authorities will come into effect in October 2018[[2]](#footnote-2)

## Housing authorities responsibilities towards families with children

3.7 Those in priority need who are assessed as intentionally homeless or intentionally threatened with homelessness are entitled to advice and assistance and temporary accommodation for a short period only, to give the household the chance to secure accommodation for themselves. If a household containing children under 18 is likely to be deemed intentionally homeless or intentionally threatened with homelessness then the local authority must inform Children’s Social Care. Consideration should be given to the duty to inform having due regard to Westminster v Nzolameso supreme court case (<https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0275_Judgment.pdf>)

3.8 However, under the Code of Guidance, section 10.5, there are circumstances where even if consent is withheld, the housing department may disclose information to Children’s Social Care if they have reason to believe that a child may be at risk of significant harm.

3.9 Under section 213A of the Homelessness Act, if Children’s Social Care decides the child’s needs would be best met by helping the family to obtain accommodation, they can ask the housing authority for reasonable assistance in this and the housing authority must respond. The local authority housing department would assist Children’s Social Care in discharging any obligations under section 17 of the Children Act 1989, by advising families on the range of housing options available to them which, depending on their individual circumstance, they would be expected to pursue. Advice on housing options is provided during the housing interview, as part of the homeless assessment process.

3.10 Advice and assistance as is considered reasonable might include help with locating suitable accommodation and making inspection of a property to ensure it meets adequate standards of fitness and safety; however, the duty does not extend to a requirement on the housing authority to provide accommodation for the family.

## Children’s Social Care responsibilities towards children in need

3.11 The general accommodation responsibilities of Children’s Social Care are defined by Section 17 of the Children Act 1989 and concern the responsibility towards Children in Need. Children in Need are defined as:

* + those who are unlikely to achieve or maintain a reasonable standard of health and development, unless the local authority provides services
  + those whose health and development is likely to be significantly impaired, unless the local authority provides services
  + disabled children

3.12 Section 116 of the Adoption and Children Act 2002 amends Section 17 of the Children Act 1989 to allow the assistance given by Children’s Social Care to include the provision of accommodation.

3.13 If a child or children are in need solely as a result of homelessness, Children’s Social Care are expected to consider whether the best way of meeting the need is to help the family obtain accommodation, possibly by providing accommodation, a deposit, and/or rent in advance under Section 17 of the 1989 Children Act.

3.14 The Children Act 1989 responsibility applies to children living or found in the local authority area and applies regardless of any decision taken by another authority within any other legislative framework (e.g. Housing’s ‘Habitual Residence Test’ which is a test for eligibility for assistance).

3.15 Some families deemed to be intentionally homeless will also be adjudged to have no recourse to public funds (NRPF) as a consequence of their illegal status in the United Kingdom (UK) or an unresolved immigration application. Children’s Social Care will review their situation and look to provide support and advice to families in these circumstances. Support should be **a temporary solution** whilst immigration status is resolved – either to regularise a stay in the UK or return to country of origin – subsistence rates and temporary NRPF accommodation are not suitable for long term support of residents but do act as a final safety net to protect children and vulnerable adults from destitution.

## Procedure

## Referral

* 1. Once the Housing Department has made the decision that a family with children is intentionally homeless or intentionally threatened with homeless, the Homeless Officer will issue a Section 184 letter to the household explaining the Council’s decision. The letter will include a standard paragraph explaining that their case will be referred to Children’s Social Care for a Child and Family Assessment. Households with children will normally be given a further 28 days in emergency / temporary accommodation from the date of the Section 184 decision. The cost of this accommodation is borne by the Housing Authority.
  2. Within three working days of the Section 184 letter being issued the Homeless Office will make the referral to the First Response Team in Children’s Social Care. The referral will be made by completing the on-line [Multi Agency Referral Form](http://www.bucks-lscb.org.uk/professionals/thresholds-document/) (MARF) or by sending a copy of the decision letter to the secure email address [secure-cypfirstresponse@buckscc.gcsx.gov.uk](mailto:secure-cypfirstresponse@buckscc.gcsx.gov.uk). The First Response Team can be contacted on 0845 460 0001.
  3. If there is current Children’s Social Care involvement with the family, known to the Housing Department, the referral will be made to the named social worker.

## After the referral has been received by Children’s Social Care

* 1. Children’s Social Care are required to make a decision on the referral within 72 hours.
  2. If the manager decides that the threshold for social care intervention has been met, the referral will be progressed to the relevant Team to complete a Child and Family Assessment.

## Assessment

* 1. The Assessment Team (or responsible team)will visit the family and see the child alone within 5 days of receipt of the MARF by Children’s Social Care.
  2. The primary aim of the assessment is for Social Services to decide whether the child (or children) is ‘in need’.
  3. To determine whether the lack of housing is having a specific impact, the social worker should consider the following:
* what is the impact of the housing situation on this child? (e.g. effect on the child’s health, emotional and educational wellbeing etc)
* what impact is it having on the capacity of the parents to “parent”?
* how are the parents responding to this stressor?
* what financial and other resources are available to the family to help deal with it? (Role of extended family/accommodation available elsewhere – if so, is that place safe or does it present a risk)

All of these elements must be recorded fully in writing.

## Outcomes

* 1. If following an assessment the child is found not to be ‘in need’ the family and the local housing authority should be informed in writing to include the reasons for that conclusion. Children’s Social Care will then have discharged its duty in respect of that referral. This decision by Children’s Social Care can be challenged by the housing authority using the agreed multi-agency escalation, challenge and conflict resolution process – <http://bscb.procedures.org.uk/pkqlq/joint-working-procedures-and-guidance/escalation-challenge-and-conflict-resolution-procedure/#s1247>
  2. If the assessment determines that the child is ‘in need’ but there are no needs beyond the lack of housing and there is no question over the parent/s ability to cope, CSC will consider the following options (and will bear the cost of a family accepting an option):

1. Accommodation with extended family - Details of family members both locally and elsewhere in the UK should be obtained with parents expected to fully explore the possibility of staying with extended family whilst they look for alternative accommodation. Payments for fares to access family elsewhere in the UK would be considered.
2. Accommodation is available elsewhere in the UK or abroad - When a family is able to obtain or return to accommodation in another part of the UK or overseas, consideration should be given to meeting the costs of travel.
3. Rent deposit - Where accommodation cannot be provided through an extended family arrangement a rent deposit may be considered. A family would be expected to seek accommodation in the private sector subject to an assessment of the applicant’s affordability of the rent for any property they may find.

Parents should be expected to seek accommodation over a wide geographical area both within and beyond the District/ Borough in order to increase their chances of obtaining such accommodation. They should be provided with a letter confirming that children’s social care would be willing to pay a deposit equivalent to one month’s rent approximately equivalent to the local housing allowance.

In exceptional circumstances both a deposit and a month’s rent in advance could be agreed. If there are any concerns about the quality of the accommodation obtained the relevant Housing Services should be requested to check the accommodation. Any deposit or rent in advance should only ever be paid direct to a landlord and not the applicant. The landlord should confirm, in writing, receipt and that any deposit will be paid back to the Children’s Social Care when the tenant leaves the accommodation provided that there is no claim on the deposit by the landlord.

* 1. Children’s Social Care will advise the housing authority, in writing, of the outcome within 3 days of the assessment having being completed.
  2. Should the family obtain accommodation and require on-going housing related support to resettle and prevent future homelessness, a referral for Floating Support provided under Supporting People should be made to the named person for the District.

## Resolution of Disputes

5.1 Where disputes arise from the outcome of a Child and Family Assessment, or where on occasions delays occur or cooperation is not achieved, the case will be referred to the Housing Manager in the Housing Authority and the Team Manager (or if necessary the relevant Head of Service) in CSC. On the very rare occasions where there is still no agreement the respective Senior Service Managers of the organisations will agree the final position.

## Appeals

6.1 Any ‘Intentionally Homeless’ decision is challengeable via an internal review under S202 of the Housing Act 1996; by a senior officer not involved in the original case with a discretionary duty to continue to provide accommodation pending the outcome if there are sufficient grounds to do so and the applicant is entitled to seek legal advice..

6.2 Should the reviewing officer choose not to exercise this duty then the applicant will need to vacate any accommodation provided within a reasonable timescale. The applicant can, at this stage also seek a judicial review of any decision not to continue to provide accommodation, usually with the help of a solicitor.

6.3 Again, should a request for continued accommodation be declined, a copy of the decision is sent to [secure-cypfirstresponse@buckscc.gcsx.gov.uk](mailto:secure-cypfirstresponse@buckscc.gcsx.gov.uk).

6.4 At the end of the notice period, the applicant is required to vacate the accommodation provided and has no legal right to remain as they are exempt from the Protection from Eviction Act 1977, depending on the type of accommodation provided

6.5 If the applicant has been provided with accommodation pending the outcome of the review, the reviewing officer will continue to provide accommodation pending the outcome. Should the intentionally homeless decision be upheld, the reviewing officer will inform Children’s Social Care via [secure-cypfirstresponse@buckscc.gcsx.gov.uk](mailto:secure-cypfirstresponse@buckscc.gcsx.gov.uk) both at a ‘minded to’ and final stage.

6.6 Again, 28 days’ notice will be provided if no duty is owed to the applicant with no rights to remain in the accommodation post this period. A further notification is sent to [secure-cypfirstresponse@buckscc.gcsx.gov.uk](mailto:secure-cypfirstresponse@buckscc.gcsx.gov.uk) of any final decision on review.

6.7 The applicant can seek a further appeal via the Courts under Section 204 of the Housing Act 1996 on a point of law, and can again seek discretionary accommodation pending the outcome. A decision will be made by the reviewing officer as to whether accommodation will continue. The applicant can, at this stage also seek a judicial review of any decision not to continue to provide accommodation, usually with the help of a solicitor.

6.8 Further appeals can be made on points of law to the Courts of Appeal and higher should the applicant choose to do so

## Monitoring

7.1 The Housing Authorities will maintain a file/s of all cases referred for assessment. The referral, assessment and outcomes will be recorded on this file. This will allow for monitoring as required.

## Targets

* 100% of intentionally homeless households with children referred to Children’s Social Care within 3 working days of Section 184 being issued.
* 100% of families who have agreed to a Child and Family Assessment will be seen within 5 working days by social services.
* No children have been assessed, and taken into Local Authority care solely due to lack of accommodation.

## Review of Protocol

9.1 The protocol will become effective following its launch in conjunction with the Homeless Young Persons’ Protocol. The protocol will be reviewed periodically to ensure that it is up to date and appropriate or at any point that legislation referred to in this protocol changes.

1. **Related documents**

* Buckinghamshire Joint Protocol for 16 and 17 year olds – see link:

[N:\Children & Young People\$Information Bank\Getting to Good in Children's Services\Quality Assurance\TriX 2018\#Resource Library\Joint protocol 16&17 year olds](file:///N:\Children%20&%20Young%20People\$Information%20Bank\Getting%20to%20Good%20in%20Children's%20Services\#PracticeJoint protocol 16&17 year olds.pdf)

* Housing Protocol and Procedures for Young People Leaving Care in Buckinghamshire – see link:

[N:\Children & Young People\$Information Bank\Getting to Good in Children's Services\Quality Assurance\TriX 2018\#Resource Library\Care Leavers Protocol Review Nov 17](N:\\Children & Young People\\$Information Bank\\Getting to Good in Children's Services\\" \l "Practice\Care Leavers protcol Review Nov 17.docx)

1. Homeless Reduction Act 2017 will come into force 3rd April 2018 – this will introduce personal housing plans and introduces duty to refer for public authorities from October 2018 [↑](#footnote-ref-1)
2. Homeless Reduction Act 2017 [↑](#footnote-ref-2)