

Assisting Ineligible Rough Sleepers

Final Decision-Maker	Communities, Housing & Environment Committee
Lead Head of Service	William Cornall
Lead Officer and Report Author	John Littlemore
Classification	Public
Wards affected	All

Executive Summary

To consider the approach to be taken when assisting street homeless persons from the EEA post January 2021.

Purpose of Report

To decide the approach to be adopted by the Council's Housing Service.

This report makes the following recommendations to this Committee:

1. That the Committee adopts Option 2 set out in Paragraph 3.2 of this report.

Timetable

Meeting	Date
Communities, Housing and Environment Committee	2 February 2021

Assisting Ineligible Rough Sleepers

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Safe, Clean and Green • Homes and Communities 	Head of Housing & Community Services
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected 	Head of Housing & Community Services
Risk Management	Already covered in the risk section	Head of Housing & Community Services
Financial	<p>Accepting Option 2 and 3 may result in a loss of income normally associated with the charges for providing temporary or supported accommodation. The weekly charge levied for Pelican Court is £132.86.</p> <p>MHCLG has previously written to LHAs to confirm that the Rough Sleeper Initiative grant cannot be used to cover the cost of providing accommodation to persons who are ineligible under the Housing Act 1996.</p>	Head of Housing & Community Services
Staffing	We will deliver the recommendations with our current staffing.	Head of Housing & Community Services
Legal	Accepting recommendation1 will fulfil the Council's duties under the Housing Act 1996 as amended by the Homelessness Reduction Act 2017.	Team Leader (Contentious)

	Acting on recommendations 2 and 3 may be within the Council’s powers under the Localism Act 2011, due to the changes to Schedule 3 of the Nationality, Immigration and Asylum Act 2002, however, this approach has never been confirmed by caselaw.	
Privacy and Data Protection	Accepting the recommendations will have a neutral impact on the collection of data.	Policy and Information Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Head of Housing & Community Services
Public Health	<p>We recognise that Option 2 and 3 will have a positive impact on population health or that of individuals.</p> <p>Homelessness is a social determinant of health, it is associated with adverse health, education and social outcomes, particularly for children. Homeless individuals represent some of the most vulnerable and needy members of our communities and have greater public health needs than the population as a whole. A decision to remove assistance for this cohort is likely to increase health inequalities.</p>	Senior Public Health Officer
Crime and Disorder	Option 1 may have a negative impact on Crime and Disorder. The Community Protection Team have been consulted and mitigation has been proposed	Head of Housing & Community Services
Procurement	None identified	Head of Housing & Community Services

2. INTRODUCTION AND BACKGROUND

- 2.1 Persons who are homeless or threatened with homelessness are assisted by local housing authorities (LHA) under the Housing Act 1996 (later amended by the Homelessness Reduction Act 2017). A common theme of the statutes is that certain persons are not eligible for assistance, either through the provision of temporary or settled accommodation provided by Local Housing Authorities (LHA).
- 2.2 In the main, eligibility relates to the person’s immigration status. For example, persons granted entry on the basis that they are sponsored and

have no recourse to public funds will find themselves not eligible for housing assistance and unable to claim housing benefit.

- 2.3 The rules governing persons from the EEA differed whilst the UK was part of the European Union, so that so long as the person was exercising their treaty rights they could be eligible for assistance. One way of demonstrating that the person was exercising their treaty rights is being employed, or having previously been employed are currently unemployed and actively seeking work.
- 2.4 If the EEA national ceased exercising their treaty rights, their eligibility for housing assistance and benefits fell away. This has led to a number of EEA nationals who became street homeless, lost their employment and as they became entrenched in being homeless were no longer seeking work.
- 2.5 These individuals often succumbed to illness, became involved in alcohol or substance misuse and in some cases criminality in order to obtain funds. The solution for someone in this position was either to assist them to get back into the job market or help them return to their country of origin. This could be further complicated as often they had lost their identification papers whilst living in the street, which made either solution challenging to achieve in the short term.
- 2.6 Through national lobbying, the Government acknowledged the dilemma that LHA's were prevented from providing any form of temporary housing to EEA nationals who were no longer eligible for assistance during the pandemic, when the government asked all LHAs to ensure everyone was accommodated from the being street homeless.
- 2.7 In June 2020, to enable the eligibility criteria to be set aside, the Government suspended an EU derogation (normally applied through Article 24(2) of the EU Free Movement Directive) to enable an LHA to accommodate and support the specific group of rough sleeping EEA nationals for up to 12 weeks. This derogation remained in force until 31 December 2020.
- 2.8 The UK left the European Union under a new treaty with effect from 1st January 2021 and all EEA nationals residing in the UK before this date applying for housing assistance will first be subject to transition regulations until the end of June 2021. All EEA nationals residing in the UK during the transitional period should apply for this status under the EU Settlement Scheme. For all those EEA nationals resident in the UK who do not apply to join the scheme, they will cease to be eligible for housing or benefits from 1st July 2021. All EEA nationals entering the UK for the first time from 1st January 2021 will be treated in the same way as persons from outside of the EEA.
- 2.9 However, this leaves a vacuum for those EEA nationals not exercising their rights prior to or during the transition period. The ability to assist those persons under the derogation will no longer be available. The Committee is therefore asked to consider the approach to be taken by the Council's Housing Service towards persons from the EEA who are street homeless and not eligible for assistance.

- 2.10 Whilst the quantum of EEA nationals falling into this category is relatively small compared to some metropolitan areas, the impact can be felt by the business and rest of the community. The number of non-EEA nationals who fall within the ineligible category and approach MBC for assistance is even fewer.
- 2.11 It is natural that street homeless persons band together into small groups for mutual support and company. A feature in Maidstone is of small groups of between 4 and 6 EEA nationals living in tents often along the riverside or in parks. This has led to complaints about anti-social behaviour and waste. Engagement with these groups has mainly been positive and they have been helped through the derogation power with accommodation. This provides a period of time in which to work with the individuals to assist them with obtaining new documents, work attire and getting back into the job market; or returning back to their home country.
- 2.12 The Housing Service will develop an exit strategy to enable those persons accommodated in this way to move onto a more stable housing solution. This will be based on the learning gained during the March lockdown and 'Everyone In' initiative that saw a large number of single households accommodated and then assisted into a range of housing or other solutions.
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3. AVAILABLE OPTIONS

- 3.1 Option 1. Strictly apply the legislation as it is written, meaning persons not eligible for assistance will not be provided with accommodation by the LHA.
- 3.2 Option 2. Provide assistance to EEA nationals not eligible for assistance who have a connection to Maidstone for a period of 12 weeks until 30 June 2021, in line with other transition arrangements.
- 3.3 Option 3. Until the Committee instructs otherwise, provide assistance to EEA nationals not eligible for assistance, who have a connection to Maidstone for a period of 12 weeks.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 **Option 1.** Is the simplest route, as it sets the Council back to the statutory position prior to derogation announcement. The Council will apply the legislation as set out by Parliament and administering the regulations correctly means there is a very low risk of legal challenge and no direct financial burden. Persons who are destitute and vulnerable might be provided with help through the Care Act 2014 but that would be a matter for Kent County Council to assess and provide.
- 4.2 The risk is that EEA nationals will remain street homeless with the incumbent problems that this tends to bring, affecting both residents and businesses. The solutions would be limited and tend towards a punitive approach if behaviours were having a negative impact on the local community. For humanitarian reasons and to limit the potential negative

impacts from rough sleeping on the rest of the community, this option is not recommended.

- 4.3 **Option 2.** Informal advice from the Specialist Advisers at the Ministry of Housing & Local Government suggests the Council might explore a limited means of assistance in line with the previous derogation. This would enable a 12 week period to provide accommodation and to work with the person to help them to either obtain work or reconnect with their country of origin.
 - 4.4 This approach may be more defensible than an open commitment as the period could be extended in line with the transition arrangements that come to an end on midnight 30 June 2021. This offer would only be available to EEA nationals who can demonstrate a connection with the Maidstone area.
 - 4.5 Whilst this is the preferred option, there is a risk is that the Council might be open to legal challenge. It was suggested that assistance could be provided by the Council under its powers within the Localism Act 2011. However, this approach is untested through case law, particularly on the point as to whether these powers are sufficient to overrule primary legislation e.g. the eligibility criteria contained within the Housing Act 1996. Section 2 of the Localism Act 2011 does not enable a local authority to do something it is expressly unable to do by a predating or subsequent statute.
 - 4.6 Secondly, there would be a financial burden on the Council that would be unrecoverable. The Government has made its position clear that grants provided under the Rough Sleeper Initiative and Flexible Homelessness Grant cannot be used for persons whose status is 'no recourse to public funds', which include this cohort. Similarly, no charge for occupation of temporary accommodation would be recoverable through housing benefit for the same reason. Therefore, any provision of accommodation would be at the Council's own cost.
 - 4.7 **Option 3.** As with Option 2 but carrying an increased risk of challenge and financial cost due to there being no end date in the approach. This option is not preferred for that reason.
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5. RISK

- 5.1 The risks associated with this proposal are set out in the Options paragraphs above. It is difficult to quantify the likelihood of a legal challenge, as it would be unlikely to come from the persons the Council is attempting to assist. It may arise from a council tax-payer who disagrees with the approach of helping persons who are not eligible for assistance; or from a similar person not eligible for assistance who is also not an EEA national. However, no such challenge has been received during the derogation period and the likelihood of challenge is therefore considered to be small.
- 5.2 The cost of providing accommodation will result in an increase in costs to the Council, as the occupation charge cannot be recovered in the normal way and cannot be funded from existing grant. However, given the number of persons that fall within this category the quantum is likely to be limited.

We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. REPORT APPENDICES

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7. BACKGROUND PAPERS

Part 6 & 7 Housing Act 1996
Homelessness Reduction Act 2017
Localism Act 2011