

Report To:	EXECUTIVE CABINET
Date:	14 December 2016
Executive Member/Reporting Officer:	Councillor Gerald P Cooney – Executive Member Healthy and Working Stephanie Butterworth – Executive Director (People)
Subject:	CONSIDERATION OF DISCRETIONARY POWERS TO ACCOMMODATE PENDING A HOMELESSNESS REVIEW
Report Summary:	<p>This report proposes a new Tameside MBC policy with regard to the exercise of its discretionary powers to secure accommodation. It relates to the powers to accommodate an applicant pending a review of a decision under the Homelessness legislation (s.188 (3)), or pending an appeal to the County Court (x204(40)).</p> <p>The proposed policy is that Tameside MBC will give consideration of whether, or not to exercise its discretion in every case where an applicant requests accommodation.</p> <p>This represents a change to the Council’s policy of the last 5 years which has been always to exercise its powers to accommodate pending a review in every case that an applicant makes such a request.</p> <p>The Policy and Procedure is attached to this report at APPENDIX 1.</p> <p>The Equality Impact Assessment is attached to this report at APPENDIX 2</p>
Recommendations:	That the proposed policy is approved
Links to Community Strategy:	Tameside’s Community Strategy confirms the Strategic Partnership’s commitment to addressing housing need under the theme “Supportive Tameside”.
Policy Implications:	Subject of the report.
Financial Implications: (Authorised by the Section 151 Officer)	<p>There will be no additional financial implications arising on existing contracts as a result of this policy change.</p> <p>It is essential that each case is carefully considered to ensure the Council is not exposed to any potential legal challenge and associated costs that could arise from a decision not to accommodate in the interim period.</p> <p>It should be noted that the proposed policy change will bring the Council’s policy in line with the other boroughs in Greater Manchester.</p>
Legal Implications: (Authorised by the Borough Solicitor)	As long as each case is considered carefully on a case by case basis, with reference to the principles set out in Camden LBC ex parte Mohammed (1997), the Council should be well placed to


defend any challenges that arise from a decision not to accommodate in the interim period.

Risk Management:

Set out in section 5 of the report

Access to Information:

The background papers relating to this report can be inspected by contacting Diane Barkley, Poverty and Prevention Officer on:

 Telephone: 0161 342 3110

 e-mail: diane.barkley@tameside.gov.uk

1. INTRODUCTION

- 1.1 This report proposes a new Tameside MBC (TMBC) policy with regard to the exercise of its discretionary powers to accommodate an applicant pending a review of a decision under the Homelessness legislation (s.188 (3)), or pending an appeal to the county court (s204 (4)).
- 1.2 The proposed policy is that TMBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.
- 1.3 In accordance with the Homelessness Code of Guidance, in considering whether to exercise its s.188(3) power, TMBC will balance the objective of maintaining fairness between homeless persons in circumstances where it has been decided no duty is owed to them against proper consideration of the possibility that the applicant might be right.
- 1.4 A decision not to exercise the power to accommodate does not pre judge the outcome of the review case which will be based on all the facts and evidence obtained or provided by the date of the review itself
- 1.5 This represents a change to the Council's policy of the last 5 years which has been always to exercise its powers to accommodate pending a review in every case that an applicant makes such a request.
- 1.6 The Homelessness Code of Guidance says (para 15.23) that in deciding whether to exercise the discretionary power to accommodate pending an appeal to the county court Housing Authorities should use the same approach and consider the same factors as for a decision whether to accommodate pending a review.
- 1.7 The policy and procedure are attached to this report as **appendix 1**.

2. BACKGROUND

Legal Framework

- 2.1 The Housing Act: s.202 of the Housing Act gives homelessness applicants the right to ask for a review of an adverse decision relating to their case. s188 (3) of the Act includes a power for the Housing Authority to ensure that accommodation is available for the applicant during the review process: "...if the applicant requests a review of the Housing Authority's decision on the duty owed to them under Part 7, the authority has the power to secure that accommodation is available for the applicant's occupation pending a decision on that review".
- 2.2 Applicants have a right to appeal to the county court on a point of law against a Housing Authority's decision on a review, or if they are not notified of the review decision, against the original homelessness decision. Under s204 (4) Housing Authorities have the power to accommodate certain applicants:
 - a) During the period for making an appeal against their decision, and
 - b) If an appeal is brought, until it and any subsequent appeals are finally determined

- 2.3 The legislation provides for discretion, but not a duty, on the local Housing Authority, to provide accommodation for the applicant and the members of his or her household during the review process and the appeal process.
- 2.4 The local Housing Authority is under no obligation to consider, in every case, whether it should exercise the power. Case law confirms that an applicant who wants accommodation pending the review should ask for it. R (Ahmed) v Waltham Forest London Borough Council [2001] EWCH 540 (Admin), (2001) October, Legal Action, p.17, Admin Ct.
- 2.5 The Homelessness Code of Guidance gives guidance on how local Housing Authorities should exercise their homelessness functions and apply the various statutory criteria in practice. Chapter 15 of the Code refers to the powers to accommodate pending review and appeal.

3. RATIONALE FOR A NEW POLICY

Review of all homelessness provision

- 3.1 Members have considered previous reports about the increase in homelessness presentations and the number of people to whom the Council owes a duty.
- 3.1 The increase in Tameside reflects a national trend since quarter 4 2014/15. In quarter 1 of 2016/17 15,170 households were accepted as homeless - a jump of 10% on the same period last year. On 30 June 2016 there were 73,120 households living in temporary accommodation, 9% higher than the same date in 2015.
- 3.2 In Tameside, key data shows an increase in demand starting in quarter 4 2014/15. Table 1 shows that the number of people presenting as homeless has more than doubled in 2015/16, compared to 2014/15, from 220 to 451 households. To date in 2016/17, 285 people have presented as homeless, representing a further increase compared to 2015/16.

Table 1: Data on homelessness presentations and acceptances in Tameside

	Jun-14	Sep-14	Dec-14	Mar-15	Jun-15	Sep-15	Dec-15	Mar-16	Jun-16	Sep-16
Homelessness prevention	239	240	190	202	107	151	190	230	227	238
Presentations as homeless	43	52	38	87	99	116	103	133	125	160
Acceptance of full duty	11	12	14	26	37	45	33	47	58	61

- 3.3 There has been a subsequent increase in placements into temporary accommodation in 2015-16, 605 compared to 193 in 2014-15, an increase of 213%. At the end of quarter 2 in 2016/17, there has been 309 placements in temporary accommodation.
- 3.4 In line with the increase of people presenting as homeless and subsequent decisions made TMBC has experienced an increase in requests for a review of adverse decisions from 6 in 2013/14 to 28 in 2015/16, an increase of 367%. At the same time there has been a reduction in the proportion of decisions overturned on review.
- 3.5 In response to the increase in homelessness in Tameside the Council has reviewed its current homelessness provision. It has already agreed via an Executive Decision on 2 September 2016 to an increase in the provision of temporary supported housing by 10 additional units to meet demand. It has also agreed via a further Executive Decision to a

variation to the contract for Tameside Housing Advice to allow for an increase in homelessness prevention work.

- 3.6 With regard to the provision of accommodation pending a review outcome, the Council has reviewed its current policy in line with practice in Greater Manchester. This review has identified that Tameside is the only borough in Greater Manchester that always and automatically provides accommodation when an applicant that is requesting a review of an adverse decision requests accommodation during the review process. Tameside has previously adopted this position to ensure that there is no risk of an applicant challenging the authority that, it in not exercising its discretion to provide accommodation pending the review; it has pre-judged the outcome of the review.
- 3.7 The policy in the other boroughs in Greater Manchester is to assess each individual request as it is made, in accordance with the Homelessness Code of Guidance and subsequent case law and to make a decision whether or not to exercise the power of discretion in each case.
- 3.8 This is the approach that the Council propose to adopt in Tameside supported by a robust procedure that will ensure that the risk of successful challenge is reduced.
- 3.9 Paragraph 15.19 of the Homelessness Code of Guidance says that where generally, only a small proportion of requests for a review are successful, it may be open to Housing Authorities to adopt a policy of deciding to exercise their powers to accommodate pending a review only in exceptional circumstances. However, such a policy would need to be applied flexibly and each case would need to be considered on its particular facts. In deciding whether there were exceptional circumstances, the Housing Authority would need to take account of all material considerations and disregard all those which were immaterial.
- 3.10 In the case of *R v Camden LBC exp. Mohammed* (1997) 30 HLR 315, the Court held that it is lawful for an authority to exercise its power to accommodate only in exceptional circumstances.
- 3.11 The proposed Tameside policy does not go so far as to assume that the exercise of the power to accommodate may occur only in exceptional circumstances. 25% of reviews in Tameside over the past 2 years have been successful; this does not fit the definition a “small proportion”. However, the Council has agreed that it is good practice to have in place a written policy and procedure and that these comply with the principles set out of considering every case on its particular facts.

4. PROCEDURE FOR CONSIDERING WHETHER TO EXERCISE POWER

- 4.1 In accordance with the Homelessness Code of Guidance and case law, the Tameside procedure will ensure that the details of every case where the applicant requests accommodation pending a review are fully considered. It will also ensure that process of consideration is recorded and the rationale for the final decision is described.
- 4.2 In the case of *R v Camden LBC exp. Mohammed* (1997) 30 HLR 315, the Court held that in exercising the discretion, certain matters would always require consideration by the local Housing Authority: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.
- 4.3 The proposed procedure will ensure that each of these factors is given full consideration and that the results of this are recorded. It also ensures that the rationale for the final decision is described.

5. RISKS

- 5.1 **Of legal action:** If the local Housing Authority declines to exercise its discretionary power, a court will only intervene if the local Housing Authority has made an error of law in considering the exercise of its discretion (or has failed to consider the request for accommodation at all)¹. Any challenge to the local Housing Authority's exercise or non-exercise of discretion must be made by way of judicial review proceedings
- 5.2 The procedure will ensure that the requirements of the Code of Guidance and subsequent case law are complied with and that full consideration is given to each case. In cases where the TMBC officer is in any doubt then they must check their conclusion with TMBC Head of Legal Services before notifying the applicant of the outcome. This reduces the risk of legal action.
- 5.3 In developing this policy and procedure the Council has consulted with colleagues in Greater Manchester. In each case the local Housing Authority has adopted a policy of exercising their power to accommodate in only exceptional cases; only 1 local authority reported that an applicant had applied for judicial review following a decision not to exercise discretion to accommodate.
- 5.4 **That a decision not to accommodate presupposes the outcome of a review:** The procedure ensures that a decision not to exercise discretion to accommodate will not pre-judge the outcome of the review case. The review case will be based on all the facts and evidence obtained or provided by the date of the review itself.

6. EQUALITIES

- 6.1 An Equality Impact Assessment (EIA) has been carried out on this strategy and is attached at **Appendix 2** of this report. Before approving this strategy, Members need to consider and be satisfied that the assessment has been carried out properly and meaningfully in order to discharge their public sector duty under S149 of the Equalities Act 2010.
- 6.2 The EIA identifies that a high proportion of people requesting a review (37.5%) have a disability and that of these, 55.5% have resulted in the adverse decision being overturned. The Council will ensure that the assessment of whether or not to use the discretionary power to accommodate takes account of all the particular and relevant circumstances of the applicant. The Council is also obliged to take account of its public sector equality duty.

7. CONCLUSION

- 7.1 The Code of Guidance and subsequent case law provides the local authority with the power to accommodate pending a review in exceptional cases only. It also says that the Housing Authority should adopt the same approach and consider the same factors in considering whether to exercise its discretion to accommodate pending an appeal to the county court.
- 7.2 The proposed policy is that TMBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant

¹ Jan Luba QC and Liz Davies, Housing Allocation and Homelessness Law and Practice (3rd Edition) Bristol, (2012)

7.3 The evidence of the last 2 years is that the number of requests for reviews that the Council receives is increasing, while the proportion of those that are over turned is decreasing. The availability of a policy and procedure for the consideration of whether or not to exercise this discretion provides safeguards for applicants that the Council is following a fair and legal process.

8. RECOMMENDATIONS

8.1 As detailed on the report cover.

APPENDIX 1

Tameside Policy and Procedure: DISCRETIONARY POWERS TO SECURE ACCOMMODATION (HOUSING ACT 1996 S188 (3), S204 (4))

Tameside MBC
September 2016
Final Version

1. The policy:

- 1.1** Tameside MBC (TMBC) has agreed a policy that in considering whether to exercise its s.188(3) or s(204(4) power, TMBC will give full consideration to the particular facts of each case when a request for accommodation is made and apply the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.
- 1.2** In accordance with the Homelessness Code of Guidance it will balance the objective of maintaining fairness between homeless persons in circumstances where it has decided no duty is owed to them against proper consideration of the possibility that the applicant might be right.
- 1.3** A decision not to exercise the power to accommodate does not pre-judge the outcome of the review case which will be based on all the facts and evidence obtained or provided by the date of the review itself.
- 1.4** The Homelessness Code of Guidance says (para 15.23) that in deciding whether to exercise the discretionary power to accommodate pending an appeal to the county court Housing Authorities should use the same approach and consider the same factors as for a decision whether to accommodate pending a review.

2. The procedure

This document sets out the process whereby TMBC will consider and decide whether it will exercise its power to accommodate pending a review under S188 (3) or s 204(4) of the Housing Act 1996.

The procedure includes the actions that will be taken by Tameside Housing Advice (THA) staff, and by TMBC staff.

This policy and procedure will be reviewed in 12 months or immediately following any relevant case law.

3. Legal Framework:

S188 (3) Housing Act

"..if the applicant requests a review of the Housing Authority's decision on the duty owed to them under Part 7, the authority has the power to secure that accommodation is available for the applicant's occupation pending a decision on that review.

S204 (4) Housing Act

Applicants have a right to appeal to the county court on a point of law against a Housing Authority's decision on a review, or if they are not notified of the review decision, against the original homelessness decision. Under s204 (4) Housing Authorities have the power to accommodate certain applicants:

- a) During the period for making an appeal against their decision, and
- b) If an appeal is brought, until it and any subsequent appeals are finally determined

Homelessness Code of Guidance:

Para 15.15 says: “In considering whether to exercise their s.188(3) power, Housing Authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided no duty is owed to them against proper consideration of the possibility that the applicant might be right.”

Para 15.19 says: “Where, generally, only a small proportion of requests for a review are successful, it may be open to Housing Authorities to adopt a policy of deciding to exercise their powers to accommodate pending a review only in exceptional circumstances. However, such a policy would need to be applied flexibly and each case would need to be considered on its particular facts. In deciding whether there were exceptional circumstances, the Housing Authority would need to take account of all material considerations and disregard all those which were immaterial.”

Para 15.23 says “that in deciding whether to exercise the discretionary power to accommodate pending an appeal to the county court Housing Authorities should use the same approach and consider the same factors as for a decision whether to accommodate pending a review.”

Case Law

R v Camden LBC exp. Mohammed (1997) 30 HLR 315: the Court held that in exercising the discretion, certain matters would always require consideration by the local Housing Authority: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.

Legal Guidance

Source: Jan Luba QC and Liz Davies, *Housing Allocation and Homelessness Law and Practice* (3rd Edition) Bristol, (2012)

19.142 – The local Housing Authority has discretion, but not a duty, to provide accommodation for the applicant and the members of his or her household during the review process. The discretion is available whether or not the applicant has been accommodated prior to the original decision.

19.143 – The local Housing Authority is under no obligation to consider, in every case, whether it should exercise the power. An applicant who wants accommodation pending the review should ask for it. *R (Ahmed) v Waltham Forest London Borough Council* [2001] EWCH 540 (Admin), (2001) October, Legal Action, p.17, Admin Ct.

19.144 – If the local Housing Authority declines to exercise this power, a court will only intervene if the local Housing Authority has made an error of law in considering the exercise of its discretion (or has failed to consider the request for accommodation at all). Any challenge to the local Housing Authority’s exercise or non-exercise of discretion can only be made by way of judicial review proceedings.

4. Procedure for consideration:

4.1 Timescale:

All considerations must be completed and concluded the same working day as the request for the review and for accommodation pending the outcome of the review has been submitted. If this is

not possible then THA staff must arrange accommodation overnight and ask the applicant to return to THA the following working day. THA staff must explain to the applicant the purpose of them returning to THA.

4.2 Officers responsible for undertaking the consideration

The TMBC officer making the consideration of whether to exercise the power to accommodate must be appropriately qualified to do so.

4.3 Process

THA staff must notify TMBC staff by email immediately that an applicant has requested a review and asked for accommodation to be provided pending the outcome of the review.

THA staff must ensure that the TMBC officer has full access to the applicant's case notes, including their full circumstances, all supporting evidence, the decision and the reason for the decision

Once a request for accommodation pending the outcome of a review is received the TMBC officer must establish the following

- The identity and circumstances of the applicant;
- The decision that has been taken;
- Whether the applicant has provided any additional information with the review request.

4.4 Assessment

The TMBC officer must then undertake the assessment by considering each and all of the issues below. The TMBC officer must keep a written record of their conclusions against each issue using the template attached at **Appendix A**.

4.4.1 What are the merits of the case for a review?

- a) Does the decision taken appear to be contrary to the merits of the case?
- b) Did the decision require a fine balance of judgement that could have gone either way?
- c) Have there been any procedural irregularities in arriving at the decision?
 - Was all the evidence taken into consideration?
 - Did the decision maker take account of all representations made?
 - Did the decision maker advise the applicant of all negative findings and give the applicant an opportunity to respond?
 - Were all appropriate enquiries made before arriving at the decision?

4.4.2 Has any new material been provided?

- a) Consider whether any new material, information or argument provided by the applicant would be likely to alter the original decision.

4.4.3 What are the applicant's personal circumstances and what would be the consequences to them of a decision not to accommodate?

- a) Is the applicant a single person?
- b) Does the applicant have dependent children?
- c) Do they have any friends / family / other support networks?
- d) What was the actual decision – i.e. if it was not homeless then TMBC is of the view that the applicant has somewhere to stay; if it was not priority need then TMBC is of the view that the applicant is no more vulnerable than the ordinary person on becoming homeless.

4.4.4 Are there any other relevant issues in favour of exercising discretion to house?

The TMBC officer must satisfy themselves that they have considered all issues in the applicant's file, and any additional material provided.

4.5 Conclusion:

4.5.1 Decision not to exercise discretion

In reaching a decision **not** to exercise discretion to provide accommodation the TMBC officer should be satisfied of the following:

That

- the original decision was a clear one based on the facts of the case known at the time;
- there were no procedural irregularities in making the original decision;
- there is no new information, material or argument that is strong enough to merit the use of the power to accommodate;
- the applicant's personal circumstances, and the consequences to them of not exercising the discretion to accommodate do not warrant the use of the power to accommodate;
- there are no other relevant issues in favour of exercising discretion to accommodate.

The TMBC officer must draft a letter for the applicant using the template letter attached at **Appendix B**.

In cases where the TMBC officer is in any doubt whether exceptional circumstances apply then they must check their conclusion with TMBC Head of Legal Services before notifying the applicant of the outcome.

If no one from legal is available then the TMBC officer must notify THA staff and request that accommodation be arranged overnight and that the applicant must return to THA the next day.

4.5.2 Decision to exercise discretion

The TMBC officer must advise THA staff / manager / accommodation officer immediately that the TMBC has decided to use its discretion to accommodate pending the outcome of the review.

Date of review: December 2017

APPENDIX A

Record of procedure for consideration of powers to accommodate pending a review S188 (3) or appeal to the county court (s204 (4))

Name of applicant	
Date of Birth	
Abritas reference	
Decision	
THA officer name	
Date of review request	
Today's date	

Reviewing officer	
Is this a s188(3) or s204(4) request	

Issue	Y/N	Finding / Rationale
Has the applicant provided any additional information with the review request		
What are the merits of the case for a review		
Does the decision that was taken appear to be contrary to the merits of the case?		
Did the decision require a fine balance of judgement that could have gone either way		
Have there been any procedural irregularities in arriving at the decision?		
Was all the evidence taken into consideration?		
Did the decision maker take account of all representations made?		
Did the decision maker advise the applicant of all negative findings and give the applicant an opportunity to respond		
Were all appropriate enquiries made before arriving at the decision?		
Has any new material been provided?		
Is any of the new material, information or argument provided by the applicant likely to alter the original decision		
What are the applicant's personal circumstances and what would be the consequences to them of a decision not to accommodate?		
Is the applicant a single person?		

Does the applicant have dependent children?		
Do they have any friends / family / other support networks?		
What was the actual decision – i.e. if it was not homeless then TMBC is of the view that the applicant has somewhere to stay; if it was not priority need then the TMBC is of the view that the applicant is no more vulnerable than the ordinary person on becoming homeless		
Are there any other relevant issues in favour of exercising discretion to house?		

Conclusion

Finding (delete as appropriate)	Rationale
the original decision was / was not a clear one based on the facts of the case known at the time	
there were / were not procedural irregularities in making the original decision	
there is / there is not new information, material or argument that is strong enough to merit the use of the power to accommodate	
the applicant's personal circumstances, and the consequences to them of not exercising the discretion to accommodate do / do not warrant the use of the power to accommodate	
there are / are not other relevant issues in favour of exercising discretion to accommodate	

--	--

Decision

Decision	Rationale
Decision not to exercise discretion:	
Decision to exercise discretion	

APPENDIX B

DECISION TO REFUSE TO PROVIDE INTERIM ACCOMMODATION PENDING A REVIEW, or an Appeal to the County Court (APPLYING THE MOHAMMED TEST) – LETTER TO APPLICANT.

Name

Address

Dear [name]

Re: Request for a review under section 202 of the Housing Act, part 7, as amended by the Homelessness Act 2002 / or request for accommodation pending an appeal to the county court

Thank you for your letter dated [date], received on [date]. I note that you are requesting a review of this Authority's decision taken on [date] that you are not *homeless/in priority need/eligible/intentionally homeless/duty ended** (*delete as appropriate). / I note that you have lodged an appeal in the County Court

You have asked that the Authority provide you with accommodation pending the review/the appeal.

Having carefully considered your request for accommodation pending the outcome of the review, I regret to advise that this will not be possible.

In reaching this decision I have fully considered the whole of your circumstances in accordance with paragraphs 15.12 – 15.16 and 15.19 of the Homelessness Code of Guidance and relevant case law and I am satisfied that the decision I have reached is not at odds with the guidance in the code. Accordingly I have considered (1) the merits of the substantive case, (2) whether there was new material on review that could affect the decision (3) your personal circumstances and the consequences to you if accommodation is not provided and 4) I have also considered whether there are any other relevant issues.

I have considered your circumstances in line with Tameside MBC policy and procedure regarding the discretionary powers to accommodate. This policy states that Tameside MBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of *R v Camden LBC exp. Mohammed* (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.

Issue 1

The merits of your case for a review

In considering this issue, the Authority has considered the written representations you have made, received on [date] directly or through your representative and all the information already on file about your circumstances. I have considered the information you provided; namely [insert detail].

I have considered the merits of the case itself and the extent to which it could be said that the decision was either one that appears to be contrary to the merits of the case or one that required a very fine balance of judgement that could have gone either way. I am satisfied that it was a clear decision reached on the facts of the case known at the time.

I have also considered whether there have been any procedural irregularities in making the original decision that could have affected the decision that was taken and I am satisfied that there were no procedural irregularities. In arriving at the original decision the Authority considered all representations. All negative findings were put to you and an opportunity to comment was given. I have found that all necessary and appropriate enquiries were made in this case.

Issue 2

Consideration of any new material

I have considered whether any new material, information or argument has been put to the Authority, which could alter the decision under review. Without pre judging the outcome of the review case I am satisfied that none of the new material submitted to date would have a real effect on the review outcome for me to reach the decision that the accommodation pending the review should be granted.

Issue 3

Do your personal circumstances warrant an exercise of the discretion to house?

In considering the issue of our discretion to provide accommodation, I have taken account of your circumstances and the consequences to you of not exercising the discretion to accommodate which are as follows:

List circumstances and whether:

- a) *if single - family friends and support is available to them – the decision itself i.e. if it is a not homeless decision the authority are of the view there is accommodation available; if it is a non-priority decision the authority are of the view that the person would not suffer more harm in comparison with an ordinary person on becoming homeless*
- b) *If a family - whether family friends or support is available as well as whether a referral to children's services has been made for an assessment under child in need. Plus for intentionally homeless families the reasonable period of time that has or will be granted to make their own arrangements*

Issue 4

Are there any other relevant issues in favour of exercising the discretion to house you/your client?

Having considered your file again, I am satisfied that there was no evidence upon which one could suggest that any other relevant issues exist.

In the circumstances, I confirm that it is with some regret that I advise that the Authority will not provide you with accommodation pending the outcome of the section 202 review/pending the appeal to the county court.

In reaching my decision I have had regard to all relevant matters that relate to the facts of your case and have given these appropriate weight and consideration. I have ignored all facts and matters that are not relevant. I am satisfied that the facts of your case support the decision I have reached and have been applied to the correct legal tests for decision making in homelessness cases.

I have also, in making my decision, had regard to this Local Authority's Homelessness Strategy.

None of this in any way pre judges the outcome of the review case which will be based on all the facts and evidence obtained or provided by the date of the review itself (*delete if not appropriate*).

You have the right to challenge this decision not to accommodate you pending review by way of a judicial review. You can find guidance on this process at: <https://www.justice.gov.uk/downloads/courts/administrative-court/applying-for-judicial-review.pdf>

Or

You have the right to appeal to the county court against a decision to appeal to the county court against a decision not to secure accommodation for you pending your main appeal.

Yours sincerely

APPENDIX 2

Subject / Title	DISCRETIONARY POWERS TO SECURE ACCOMMODATION (HOUSING ACT 1996 S188(3), S204(4))
------------------------	---

Service Unit	Service Area	Directorate
CUSTOMER CARE AND ADVOCACY	STRONGER COMMUNITIES	PEOPLE

Start Date	Completion Date
SEPTEMBER 16	OCTOBER 2016

Lead Officer	DIANE BARKLEY
Service Unit Manager	DIANE BARKLEY
Assistant Executive Director	EMMA VARNAM

EIA Group (lead contact first)	Job title	Service
Diane Barkley	Poverty and Prevention Manager	Customer care and advocacy
Colm O'Brien	Senior Housing Strategy Officer	Customer care and advocacy

PART 1 – INITIAL SCREENING

1a.	What is the project, policy or proposal?	DISCRETIONARY POWERS TO SECURE ACCOMMODATION (HOUSING ACT 1996 S188(3), S204(4))
1b.	What are the main aims of the project, policy or proposal?	<p>This report proposes a new Tameside MBC policy with regard to the exercise of its discretionary powers to secure accommodation. It relates to the powers to accommodate an applicant pending a review of a decision under the Homelessness legislation (s.188(3)), or pending an appeal to the County Court (x204(4)).</p> <p>The proposed policy is that TMBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.</p>

<p>1c. Will the project, policy or proposal have either a direct or indirect impact on any groups of people with protected equality characteristics? Where a direct or indirect impact will occur as a result of the policy, project or proposal, please explain why and how that group of people will be affected.</p>	
--	--

Protected Characteristic	Direct Impact	Indirect Impact	Little / No Impact	Explanation
Age	x			Homelessness may affect any member of the population regardless of age. Age may be pertinent to any assessment of vulnerability and to any assessment of the impact on the applicant of a decision to not exercise discretion to accommodate
Disability	x			Homelessness may affect any member of the population regardless of disability. Disability may be pertinent to any assessment of vulnerability and to any assessment of the impact on the applicant of a decision to not exercise discretion to accommodate
Race	x			Homelessness may affect any member of the population regardless of race
Sex / Gender	x			Homelessness may affect any member of the population regardless of gender
Religion or Belief	x			Homelessness may affect any member of the population regardless of religion or belief
Sexual Orientation	x			Homelessness may affect any member of the population regardless of sexual orientation
Gender Reassignment	x			Homelessness may affect any member of the population regardless of gender reassignment
Pregnancy & Maternity	x			Homelessness may affect any member of the population regardless of pregnancy and maternity. Pregnancy and maternity may be pertinent to any assessment of vulnerability and to any assessment of the impact on the applicant of a decision to not exercise discretion to accommodate
Marriage & Civil Partnership		x		Homelessness may affect any member of the population regardless of marital or partner status

Are there any other groups who you feel may be impacted, directly or indirectly, by this project, policy or proposal? (e.g. carers, vulnerable residents, isolated residents)

Group (please state)	Direct Impact	Indirect Impact	Little / No Impact	Explanation
Homeless people	<u>x</u>			The policy relates to services offered to people who have presented as homeless to the Council.

Wherever a direct or indirect impact has been identified you should consider undertaking a full EIA or be able to adequately explain your reasoning for not doing so. Where little / no impact is anticipated, this can be explored in more detail when undertaking a full EIA.

1d.	Does the project, policy or proposal require a full EIA?	Yes	No
		x	

1e.	What are your reasons for the decision made at 1d?	All of the protected characteristic groups will potentially experience a direct or indirect impact as a result of the strategy.
-----	---	---

If a full EIA is required please progress to Part 2

PART 2 – FULL EQUALITY IMPACT ASSESSMENT

2a. Summary
<p>This EIA is of the Council's proposed policy with regard to the exercise of its discretionary powers to accommodate an applicant pending a review of a decision under the Homelessness legislation (s.188(3)), or pending an appeal to the county court (s204(4)).</p> <p>The proposed policy is that TMBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always be considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant.</p> <p>In accordance with the Homelessness Code of Guidance, in considering whether to exercise its s.188(3) power, TMBC will balance the objective of maintaining fairness between homeless persons in circumstances where it has decided no duty is owed to them against proper consideration of the possibility that the applicant might be right.</p> <p>A decision not to exercise the power to accommodate does not pre-judge the outcome of the review case which will be based on all the facts and evidence obtained or provided by the date of the review itself.</p> <p>This represents a change to the Council's policy of the last 5 years which has been always to exercise its powers to accommodate pending a review in every case that an applicant makes such a request.</p> <p>The Homelessness Code of Guidance says (para 15.23) that in deciding whether to exercise the discretionary power to accommodate pending an appeal to the county court Housing Authorities should use the same approach and consider the same factors as for a decision whether to accommodate pending a review.</p>

2b. Issues to Consider
<p>Recent case law has clarified the relationship between a local authority's public sector equality duty and its duty under the homelessness legislation. A conjoined case in the Supreme Court in 2015, Hotak and others (Appellants) vs London Borough of Southwark and another (Respondents) [2015] UKSC 30 found that a local authority's public sector equality duty is complementary to its duty under the homelessness legislation.</p> <p>The Supreme Court emphasised that a homelessness decision (or review) must be made with the equality duty in mind, and that the officer must take account of: a) whether an applicant has a relevant protected characteristic; b) its extent c) its likely effect, when taken together with any other features, on the applicant, if and when homeless and d) whether the applicant is vulnerable as a result.</p>

2c. Impact

The Mohammed case referred to above ensures that in every case where the local authority is considering a request to provide accommodation, then the individual circumstances of the applicant, including the potential impact on them and other members of their household, of accommodation not being provided is taken into account. In this case the local authority is required to take account of the public sector equality duty.

In each of these cases the policy of considering each case individually when considering whether or not to exercise discretion to accommodate, rather than to accommodate automatically on request, may result in the applicant not being accommodated.

In each of these cases the decision not to exercise discretion to accommodate may lead the applicant to fear that the outcome of their review has been pre-judged.

Gender

In the last 18 months more men than women have asked for a review of their homelessness decision. In 2015/16, of 31 requests for a review, 18 (58%) were made by men, and 13 (42%) by women. In 2016/17 to date, of 17 requests, 14 (82%) were made by men and 3 (18%) by women.

AGE

In the last 18 months the age profile of people requesting reviews is

18-21	3	6%
22-25	9	19%
26-30	7	14.5%
31-40	15	31%
41-50	7	14.5%
51-60	2	4%
61-65	2	4%
66-70	0	
71-75	1	2%
Not known	2	4%
total	48	

This shows that the largest single group are aged 26-30, with 60% of applicants aged between 26 and 50 years.

A small proportion (6%) are aged over 60 and more likely to be vulnerable as a result of older age

Race / Ethnicity

In the last 18 months, the majority of requests for reviews have been made by White British households. In 2015/16, of 31 requests, 20 (64.5%) were White British, 3 (10%) were not given, 2 were Black British, 6.5%, there was 1 (3%) of each of the following: Asian other, Asian Pakistani, Black Other, Mixed white and black, Chinese and Irish. The proportion of non-White British people asking for a review is higher than their representation in the local population.

In 2016/17, of 17 requests, 15 (88%) were White British, and there was 1 of each of other EEA and other Asian.

Disability (including mental health)

There is a high representation of people experiencing disabilities among people requesting a review of an adverse homelessness decision. In 2015/16 of 31 requests, 12 (39%) were people with a disability, of these 50% of decisions were overturned. In 2016/17 of 17 requests for a review, 6 (35%) were people with a disability, of these 4 (66%) have been overturned.

This shows that the review of an adverse decision affecting a person with a disability is likely to result in that adverse decision being overturned. The assessment of whether or not to use the discretionary power to accommodate should take account of the potential adverse impact on the applicant of not being accommodated.

Sexuality

There is no current data on the sexuality of people requesting a review of their homelessness decision.

Gender Reassignment

In the last 18 months, 1 (2%) person who requested a review was undergoing gender reassignment.

Religion & Belief

There is no current data on the sexuality of people requesting a review of their homelessness decision

Pregnancy and maternity

Under the legislation, certain categories of household, such as families with children and households that include someone who is vulnerable, for example because of pregnancy, old age, or physical or mental disability, have a priority need for accommodation. A household within this category may request a review following a decision that they are not homeless, or that they are intentionally homeless.

There have been 3 (6%) households in this category over the last 18 months

Marriage and Civil Partnership

In 2015/16, 8 (26%) out of 31 applicants requesting a review were married or co-habiting. In 2016/17, 3 (17.5%) out of 17 applicants were married or co-habiting

2d. Mitigations *(Where you have identified an impact, what can be done to reduce or mitigate the impact?)*

<p>Applicant may not be accommodated</p>	<p>TMBC will give full consideration to the particular facts of each case when a request for accommodation is made in line with the finding in the case of R v Camden LBC exp. Mohammed (1997) 30 HLR 315 that in exercising the discretion, certain matters will always considered, that is: (a) the merits of the substantive case, (b) whether there was new material on review that could affect the decision, (c) the personal circumstances of the applicant. .</p> <p>The Mohammed case referred to above ensures that in every case where the local authority is considering a request to provide accommodation, then the individual circumstances of the applicant, including the potential impact on them and other members of their household, of accommodation not being provided is taken into account. In this case the local authority is required to take account of the public sector equality duty.</p> <p>In accordance with the Homelessness Code of Guidance, in considering whether to exercise its s.188(3) power, TMBC will balance the objective of maintaining fairness between homeless persons in circumstances where it has decided no duty is owed to them against proper consideration of the possibility that the applicant might be right</p>
--	--

Applicant may think the outcome has been pre-judged	A decision not to exercise the power to accommodate does not pre-judge the outcome of the review case which will be based on all the facts and evidence obtained or provided by the date of the review itself. Communication with the applicant should emphasise this.
---	--

2e. Evidence Sources
Case law on homelessness Log of review cases Housing Act 1996 Homelessness Code of Guidance for Local Authorities

2f. Monitoring progress		
Issue / Action	Lead officer	Timescale
Monitoring of applicants not accommodated – by protected characteristic	Colm O'Brien	<i>Quarterly</i>
Monitoring of quality of reviews	Diane Barkley	<i>Quarterly</i>
Signature of Service Unit Manager		Date
Signature of Assistant Executive Director		Date