



NOMINATION AGREEMENT

between

ABERDEENSHIRE COUNCIL, Woodhill House, Westburn Road, Aberdeen, AB16 5GB

and

LANGSTANE HOUSING ASSOCIATION, 680 King St, Aberdeen AB24 1SL

1. Introduction

The purpose of this agreement is to assist in meeting housing need in the Aberdeenshire Area. The main intention of this agreement is to establish a framework, whereby the Council can make nominations to the registered social landlord (RSL) in order to meet identified housing need, fulfil obligations on both parties in respect of homelessness, make best use of housing stock in the area and see partnership in achieving strategic housing objectives.

2. Scope of the Agreement

The agreement will apply to RSL accommodation in the Aberdeenshire Area and will relate to all new build properties, improved properties and conversions, relets and housing that has been specifically adapted to the requirements of households with special needs. The agreement should be seen in the context of the Local Housing Strategy and should also recognise the specific allocation policies of the parties to this agreement.

3. Information and Liaison

On an annual financial year basis, the RSL will provide the Council with full information on stock numbers, property sizes, average rental levels and actual historical turnover. Information on the number and type of specially designed properties and on any specific characteristics of certain stock will also be provided. The Council will provide the RSL with information on demand for housing in terms of size area and type. Each party will provide the other with a copy of their allocations policy and any future changes in policy should be advised immediately.

Each party will have named staff with day-to-day responsibility for the operation of this agreement. Each organisation will have in place arrangements for operation of the agreement in the event of the absence of lead personnel.

Both parties accept that informal liaison may take place within the context of this agreement and the section 5 protocol attached (Appendix 3) in order to assist the parties fully consider how best an applicants needs may be met. Where such discussion results in a nomination or section 5 referral then those formal arrangements detailed in this agreement and Appendix 3 will apply.

4. Procedure

This has been designed to reflect local circumstances and is detailed below.

The RSL will provide advance notice of any vacancy. This will be a minimum two working days prior to such property becoming available for letting. In the case of new build accommodation, notice will be given as a minimum one month prior to availability for letting.

Notice will be by way of the RSL completing a Due to be Void Memo and this will be emailed to the designated officer of the Council. The Council will complete Appendix 2 and return this to the RSL within three working days of receipt. Nominees will be expected to meet the criteria specified in the Due to be Void memo. It is expected that in the case of re-lets, the number of nominations made will be restricted to three. Where a nomination is made as a section 5 referral, then it is expected that only one nomination will be supplied. Any nomination made as a section 5 referral should be clearly indicated as such by the Council ticking the appropriate box on Appendix 2. Such referrals will be subject to the specific arrangements detailed in Appendix 3.

Upon receipt of Appendix 2, the RSL will consider those nominations provided and will determine an offer to one of the nominees or rejection of the list within five working days of receiving it. The RSL will consider the list in accordance with its allocations policy and procedure.

The RSL will advise the designated officer of the Council of the outcome at the end of the five days and will detail the reason(s) on Appendix 2, why a nomination has not led to an offer. No offer situations will be restricted to those situations identified in Section 7 of the main agreement. In the case of no offer situations the RSL will request further nominations from the Council.

5. Quotas and Targets

The RSL agrees to reach a target of 50% of net lets to Council Nominees (excluding new build).

Net lets above refers to total lettings less transfers, mutual exchanges, decants, supported accommodation and any special referral arrangements that may have been negotiated outwith this agreement.

Where the Council has provided funding either in the form of cash; land below the market value; a S75 contribution or some other form of subsidy for a new build scheme the quotas will be 80% for the first let, thereafter subsequent lets will revert to 50%.

When the new scheme properties are let, the RSL will provide details to the authority about who the properties were let to within 14 days of the last property being let. This will enable the Council to monitor contributions effectively.

Within the agreed quotas the parties accept that a flexible agreement is important in sustaining balanced communities, however recognition is made of the needs of those who may be homeless or faced with such. Where a nomination is indicated as a section 5 referral, then reference should be made to the protocol attached at Appendix 3.

To facilitate the best use of housing stock in the Aberdeenshire Area, the RSL agrees to accept 100% nomination rights where the Council agrees to the rehousing of a RSL household where under occupation exists and/or the consequential vacancy results in the availability of adapted accommodation.

6. Refusal by a Nominee

Where a nominee refuses an offer of accommodation, written refusal will be requested by the RSL and a copy of this will be passed to the Council if provided. The applicant will be advised that such a refusal may affect their position on the Council's own list and may lead to their suspension. If the Nominee has been referred in terms of section 5 then the RSL will advise the applicant to contact the Council to clarify whether their referral affects any priority awarded to them in terms of relevant legislation concerning homelessness. Both the RSL and the applicant must discuss the situation with the Council, within three working days of the date of notice of refusal, before withdrawal or refusal is accepted.

7. No offer Situations

The RSL must provide the Council with confirmation of the reasons where it has been unable to make an offer to one of those nominees provided by the Council. Where this is the case, the process will revert to that indicated in Section 4. Should further failure occur then the RSL will refer to its own list.

Refusals to accept nominations should be restricted to the following circumstances:

- Where the nominee fails to meet criteria as specified in the RSL's allocation policy
- Where it is found that any information supplied by the applicant is either false or untrue

- Nominations that are not section 5 referrals should still have regard to paragraph 4 of Appendix 3

In the case of a nomination made in terms of section 5, then no offer situations will be dealt with in accordance with the Protocol at Appendix 3.

Failed nominations will be notified by the RSL to the Council using Appendix 2 and monitored as set out in Section 8 below.

8. Monitoring and Review

The Council will maintain a record of nominations and targets and relevant outcomes for monitoring purposes. These will be passed to the RSL on an annual basis and by the RSL requesting this information provided that seven working days notice is provided.

Designated staff of both organisations will meet on an annual basis to discuss the nomination process and to agree and implement any changes required in light of operational experience, legislative requirements or good practice guidance from recognised professional bodies.

Annual figures will be produced to assist the monitoring against both organisations strategic objectives and be used at a year-end review meeting.

9. Equal Opportunities

Both Organisations adhere to the objective of equality of opportunity in access to housing. This aims to ensure that no applicant receives less favourable treatment than others on the grounds of race, colour, religion, ethnic or national origin, sexual orientation, sex or marital status. Each party to this agreement will supply the other with copies of their equal opportunities policies.

10 Data Protection Obligations

All personal information shared between both parties will be kept confidential. Information shall be stored securely and will be processed fairly, lawfully and transparently and in compliance with the General Data Protection Regulation (GDPR) and the Data Protection Act (2018) which both came into force on the 25th May 2018

The protocol at Appendix 3 provides more details.

11 Dispute Resolution

Where it is felt that this agreement has been broken or procedure not followed notification will be given by either party to the other in writing. Such notice will indicate the nature of concern and provide supporting evidence where relevant. It is expected that issues will be resolved through a meeting of designated officers to be arranged within 5 working days of notification. If an agreement cannot be reached this will result in referral to an arbiter, the cost of which will

be split equally between both parties. In the case of section 5 referrals special dispute resolution procedures apply and are contained within Appendix 3.

This agreement is made between Aberdeenshire Council (The Council) and Langstane Housing Association, (RSL)

Date 5/12/17

Date 29/11/18.



Nomination Form

Reference No: _____ Target For Return: _____

PART 1

TO BE COMPLETED BY RSL

Housing Provider: _____

Contact Name: _____ Tel No: _____

E-mail: _____

Number of nominations required: _____ Date sent: _____

New Build Property: YES/NO

(Please record details of new build properties in additional information section)

1) Address of property: _____

2) Any special requirements: _____

3) Date available: _____

4) Monthly rent/service charge (inclusive): _____

5) Preferred household type: _____

6) Size / type of property: _____



Gordon House, Blackhall Road, Inverurie AB51 3WA
01467 628194

TO BE COMPLETED BY ABERDEENSHIRE COUNCIL

NOMINATION FORM

Property Address: _____

RSL: _____

Nominating Officer: _____

Telephone number: _____

E-mail: _____

Date of request by RSL: _____ Date of return to RSL: _____

Nominations:

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____

| Section 5 Nomination | Accepted | Refused |
|----------------------|----------|---------|
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| | | |
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| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Tick One Box

Target Date for Decision: _____ Notification to Council: _____



Nominee Details (1 for each nominee listed in Part A should be completed)

Name: _____ Date of Birth: _____

Address: _____

Telephone: _____

Household Members Names and Dates of Birth: _____

Aberdeenshire Council Banding Award: _____

RSL Award (detail and points/banding and category): _____

Other relevant information : . (Council Use)

TICK ONE BOX

Accepted:

Refused:

Outcome of nomination

PROTOCOL IN RESPECT OF SECTION 5 OF THE HOUSING (SCOTLAND) ACT 2001

1. Introduction

This purpose of this protocol is to detail the specific arrangements between the RSL and the Council in respect of section 5 of the Housing (Scotland) Act 2001. It forms part of a nomination agreement agreed between the RSL and the council.

2. Scope of the Protocol

This protocol will apply to the RSL's accommodation in the Aberdeenshire area and relates in addition to re-lets, all new build properties, improved properties and conversions. Also included are properties that have been specifically adapted to the requirements of households with special needs. Where the RSL has special arrangements with specialist agencies, it is expected that such agencies will liaise with the Council in allocating vacancies.

3. Information and Liaison

This will be in accordance with paragraph 3 of the principal nomination agreement.

4. Procedure

Referrals will be made via the procedure indicated at paragraph 4 of the principal nomination agreement. The Council should clearly indicate where a nomination represents a section 5 referral.

In making a referral, the Council will have **regard** to the following:

- Lets which are not sensitive to local circumstances e.g. where a clash in lifestyles might arise
- Stock designation e.g. sheltered/unsuitable for children/amenity.
- Referrals where the applicant has no desire to live in the area.
- Where an applicant was recently evicted on grounds of anti social behaviour by a RSL, a referral that would result in that household being housed in the immediate neighbourhood where their previous tenancy was located.
- Support needs of the referred household.

When receiving a referral, the RSL will provide the Council with a response within five working days of receipt. This response will detail clearly one of the following:

- That it will comply with the request and an offer will be made to the subject household
- That it will not comply and that it has good reason not to do so and any reason(s) is/are clearly indicated

Where an offer is made the RSL will indicate to the Council what the outcome of that offer is within two working days of the applicant's decision.

It will be the Council's responsibility to assess whether any reason for refusal of an offer made is reasonable or not and how that affects any homelessness priority. The RSL will however advise the household when making an offer that refusal may have an impact on their priority. If the refusal can be addressed by remedial action on the part of the RSL, then it is expected that this will be fully considered by the RSL. Both the RSL and the applicant must discuss the situation with the Council before the formal withdrawal or refusal of the offer.

5. Non Compliance

Upon receipt of an RSL response that it will not comply, the Council will consider the reason(s) given for non-compliance. If the Council considers that the reason(s) given are not acceptable then a meeting should be arranged between the RSL and the Council within three working days. This meeting will aim to reach an outcome regarding the referral that was the subject of the non-compliance. The outcome will be expected to be one of the following:

- Compliance by the RSL and an offer made within a mutually agreed time-scale
- Acceptance by the Council of the reason(s) for non compliance
- Action by either party leading to compliance (e.g. putting in place support)
- Agreement by the RSL to make an offer of the next suitable alternative vacancy.
- Continued non-compliance and referral to arbitration.

6. Arbitration

Arbitration is required in terms of section 6 of the Housing (Scotland) Act 2001 and the Housing (Scotland) Act (Appointment of Arbitrator) Order 2002. This process is to be conducted in accordance with the legislation and Communities Scotland statutory guidance contained within CSGN 2002/12 issued in September 2002.

Appointment

The council and the RSL will agree on whom to appoint as an arbitrator.

A joint letter of appointment will be sent and the council and the RSL agree to be jointly and severally liable for the arbitrator's fees. Any arbitrator appointed will be provided with:

Section 5 and 6 of the Housing (Scotland) Act 2001.

Scottish Executive guidance on good reason as defined within section 5 of the above Act.

Scottish Government guidance on homelessness arbitration.

Other relevant areas of housing and homelessness legislation.

Alternatively the council and the RSL agree to appointment of a suitably qualified arbitrator by the Chartered Institute of Arbitrators.

Costs

The costs of arbitration under section 6(4) of the Housing (Scotland) Act 2001 is to be shared equally between the local authority and the RSL unless the arbiter determines otherwise.

Information

At the commencement of arbitration, the arbiter should be provided with details of the original request by the local Council, the response from the RSL and any other supporting information provided by either the Council or the RSL in connection with the request for housing of a homeless person the council and the RSL are free to provide more information. The arbiter may request additional information to assist with any deliberation.

Where the views of the homeless person to which the dispute relates have been taken into account by the RSL or the Council, these views should be included as evidence submitted to the arbiter. The arbiter may also take a statement of the facts directly from the homeless person. The arbiter will consider the Council's and the RSL's submissions and evidence; act fairly and impartially; and act according to the law. However, it is worth bearing in mind that the arbiter:

- will, in most cases, decide the case solely on the argument and evidence presented by the local authority and the RSL; and
- will not normally receive information about the case from anybody else; and
- is not an investigator. Therefore, they will work on the facts as presented rather than trying to uncover new facts.

It is therefore in the interests of both parties that the case is stated clearly and that all relevant supporting documents are provided.

Matters for decision by the arbiter

The arbiter will only be able to deal with matters referred to in the original request. They will not be able to arbitrate on any additional requests. However, both parties may agree with the arbiter at the preliminary meeting, if there is one, to alter the matters that will be arbitrated, particularly if agreement on any of them has been reached.

Conduct of arbitration

In the interests of both time and costs, homelessness arbitration will normally be conducted on the basis of documents provided by the Council and the RSL. However, if the arbiter considers it necessary, the arbitration may involve a hearing to provide both parties with an opportunity to explain points of view in person. The hearing should, in most cases, be limited to half a day.

Documents-only arbitration

On a specified date agreed by all parties, but not later than 7 days, after his or her appointment the arbiter will consider all the documents and other evidence that has been given. Both parties should also receive copies of all the documents and evidence submitted.

Hearings

The arbiter should agree a time and place convenient to both parties, and should also fix a time limit for each part of the hearing. Both parties will present their case, the local authority first. The arbiter may ask questions to clarify understanding. Each party will then have the right of reply and may be questioned by the other party and the arbiter. The arbiter will summarise the facts of the case. Both parties should be able to record any disagreement with the summary.

Where the reasons for refusal of the RSL to comply with the Council's request directly related to the personal circumstances of the homeless person, the arbitration should take into account the personal circumstances in question. The arbiter may seek evidence from the parties that the homeless person's views have been taken into account. If the arbiter wishes to take evidence from the homeless person, the Council should make the arrangements for attendance at arbitration by that person.

Stopping the arbitration

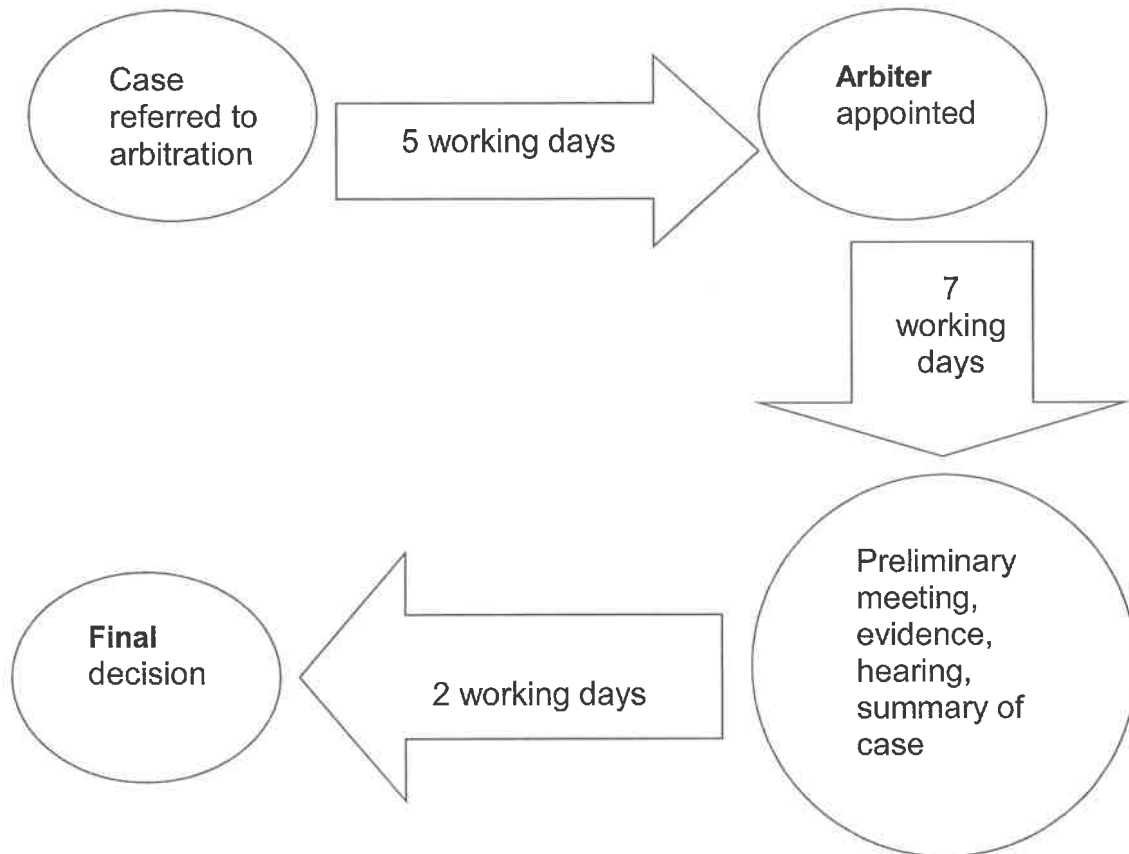
It is open to the parties to negotiate and agree to settle the dispute at any time. The appointment of the arbiter can be withdrawn in these circumstances with the written consent of both parties. Should an agreement be reached before the arbiter has reached a decision, both parties must inform the arbiter immediately, otherwise the arbitration will continue to a decision and the arbiter may make an award of costs to date associated with the arbitration procedure. In these circumstances the payment of all fees and expenses due will be shared equally between the parties.

Timescales

In both documents-only arbitration and arbitration involving a hearing, the arbiter is required to arrange any preliminary meeting, consider the evidence and invite submissions from both parties and arrange for any hearing within seven working days of his/her appointment. The arbiter is then required to make a final decision within two working days of the hearing or submission of documents where it is a documents-only arbitration. A summary of the facts will be made by the arbiter at the hearing, if there is one. This final decision may be notified to both parties verbally and will be confirmed in writing. The maximum length of the arbitration procedure from referral to arbitration to the arbiter's decision should be no longer than 14 working days. However, the arbitration process should be conducted as quickly as possible. The shorter the timescale, the less time that a homeless person is kept waiting.

The following summarises the homelessness arbitration process:

Homelessness Arbitration Process



Homelessness arbitration is intended, in the interest of time and cost, to allow both parties to present their case without the need for a lawyer to be present to speak for them. However, legal or other representation will be allowed if desired by either party. Each party will be liable for the costs of its own legal advice unless the arbiter determines otherwise.

Confidentiality

The arbiter will only issue his/her report to the Council and the RSL involved in the arbitration. Any publication by R&I relating to the arbitration process will protect the identity of the parties involved.

Outcome of arbitration

Written notification of the arbiter's decision will set out the arbiter's determination, as to whether the RSL had good reason for not complying with the request from the local authority to provide housing for a homeless person in accordance with section 5 of the Housing (Scotland) Act 2001 and taking account of the guidance issued by Scottish

Ministers "Section 5: Guidance on Good Reason" and will set out reasons for this decision. The written notification will also set out the award of costs to both parties.

Review of guidance

The Council and the RSL are expected to retain relevant information relating to homelessness referrals and arbitration cases for their own purposes and to help inform the review of the guidance and any publication relating to the arbitration process.

Rights of review and appeal

Under section 6(6) of the housing (Scotland) Act 2001, the arbiter's decision is final and binding. Therefore, having referred a dispute to arbitration, a party cannot thereafter refer the matter to the Courts.

Data Protection Act 2018

All personal information shared between the Council and RSL in terms of this Protocol will be kept confidential. Both Parties undertake that the information shall be stored securely and will be processed fairly, lawfully and transparently and in compliance with the General Data Protection Regulation (GDPR) and the Data Protection Act (2018) which both came into force on the 25th May 2018

Each of the partners of the protocol have existing confidentiality and data protection policies and will adhere to data protection legislation when carrying out tasks relating to the protocol. The following principles of data protection will be met by both parties:

Principles.

The regulations set out six principles which the Council and RSL must follow:-

- 1) Personal data shall be processed lawfully, fairly and in a transparent manner;
- 2) Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with these purposes;
- 3) The personal data collected shall be adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed;
- 4) Personal data shall be accurate and where necessary kept up to date;
- 5) Personal data shall be kept no longer than for the purpose for which it was collected and processed;
- 6) Personal data shall be processed in a manner that ensures appropriate security of the personal data including protection against unauthorised or unlawful processing and against accidental loss, destruction or change.

Individual rights

Under GDPR, individuals have a right, to:

- be informed about what will happen to their personal data. This will be managed through Privacy Notices.
- access personal data held about them. This right exists under current legislation however organisations will have a shorter period to provide information (one month) however in certain cases, where there is a lot of material, this may be extended to three months.
- have inaccurate personal data amended.
- object to certain types of processing.
- restrict automated decision-making and profiling.
- have their personal data deleted. This 'right to be forgotten' will only apply in certain circumstances.
- have their personal data transferred directly to another data controller. Again will also only apply in certain circumstances.

Data Security & Management Of A Security Incident

Both the Council and RSL warrant that they will take appropriate technical and organisational measures against the unauthorised or unlawful processing of data and against the accidental loss or destruction of, or damage to, data.

Both the Council and RSL recognise that any breach of confidentiality, integrity or availability may seriously undermine and affect the credibility of the objectives of the Protocol and may render either organisation liable for a breach of the law.

Both the Council and RSL undertake to comply with all data protection and other legal requirements relating to confidentiality at all times.

Any breach of data must be reported to the relevant Data Protection Officer in the first instance who will investigate and confirm the breach and if serious will notify the Information Commissionaires Office (ICO) The ICO must be notified of any serious breach within 72 hours of the breach being confirmed. The ICO will investigate the facts and confirm whether a breach has happened. Whoever suffers the breach needs to let the partners know what has happened once it is confirmed a breach has occurred.

Data Transfer

All data transferred between the Council and RSL should be made by secure email. All requests for information must be as specific as possible and, in particular, must enable the person in respect of whom the disclosure is sought to be identified.

Additional information may also be shared in the following ways:

- Verbally (through face-to-face discussions or by telephone)
- Secure mail
- At meetings between the Council and RSL representatives

Information Requests

The Council and RSL shall as necessary co-operate in handling and responding to any requests made under the Freedom of Information (Scotland) Act 2002 ('FOISA'), the Environment Information Regulations 2004, and/or the General Data Protection Regulation and Data Protection Act 2018.

Retention And Deletion Of Data

The information to be shared between the Council and the RSL will be the minimum required to make a decision on the nomination. Information provided for a refused nomination will be disposed on in accordance with the RSL retention and disposal schedule..

At the end of the Retention Period all parties agree to destroy the Data securely in accordance with HMG Information Assurance Standards.

