

Kent Housing Group Pre-Eviction Protocol

The purpose and objectives of this protocol

All local authorities and housing associations in Kent have a shared interest to minimise the number of evictions. When a tenant is evicted the consequences of this include the increased demand on local authority housing options services, the county council social services and potentially associated costs for the provision of temporary accommodation. For each landlord, local authority or housing association an eviction will mean the burden of administrative and legal costs, rent loss while the property is empty, the cost of the work needed to re-let it, and the reduced likelihood of recovering any rent arrears owed by the evicted tenant.

A key outcome from this protocol is that tenants are supported to sustain their tenancies, avoiding where possible all associated costs of an eviction and the risk of homelessness.

All signatories to this protocol agree:

- ◆ To work together to minimise the number of evictions across Kent and Medway
- ◆ To share information effectively in a way that safeguards individuals' rights and complies with GDPR
- ◆ To resolve any disputes arising in a co-operative and professional manner, in full understanding of the other parties' duties and needs

Information Sharing

Sharing information will be critical to the success of this protocol to ensure that where possible eviction is prevented or in the worst case scenario to notify in advance the relevant agencies about the likely outcome for a household is the loss of their accommodation.

Kent and Medway Information Sharing Agreement

The Kent and Medway Information Sharing Agreement¹ is an established document that is overseen and reviewed annually by the Kent and Medway Information Partnership (K-MIP) and is updated to be GDPR compliant further to the introduction of the Data Protection Act 2018². The main purpose of the agreement is to provide services in Kent and Medway with a best practice framework for the governance and exchange of personal and sensitive data.

As the local authority would be using information provided by a housing association landlord to perform their own legal obligations, they will be using the data for their own purposes and therefore in respect of GDPR they are a controller. The housing association landlord will not be employing them to process the personal data on their behalf, so the relationship is controller-controller and if the housing association landlord is a signatory of the Kent and Medway Information Sharing Agreement, this would be the suggested mechanism to share information with local authorities.

The Duty to Refer

The Homelessness Reduction Act 2017³ inserts two parts into section 213 of the Housing Act 1996. The relevant part is section 213B, which only applies to 'public authorities'. Where a public authority considers an individual to be homeless or to be threatened with homelessness, that public authority must ask the individual for their consent to refer them to a local authority.

Housing associations are not considered a public authority for the purposes of this section. The Homelessness Regulations 2018 contain a list of organisations which constitute 'public authorities' such as prisons, Jobcentre's and hospitals, housing associations are not on this list. Therefore, housing associations do not have a duty to refer⁴ and cannot justify sharing information under this section without consent of the tenant.

¹ https://www.kelsi.org.uk/_data/assets/pdf_file/0010/87265/Kent-and-Medway-Information-Sharing-Agreement.pdf

² <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted/data.htm>

³ <https://www.gov.uk/government/publications/homelessness-reduction-bill-policy-factsheets>

⁴ <https://www.gov.uk/government/publications/homelessness-duty-to-refer>

Commitment to Refer

Despite housing associations not being recognised as a 'public authority' under the Homelessness Reduction Act 2018 the National Housing Federation, in consultation with its members and MHCLG developed a new initiative, the 'commitment to refer'⁵. This commitment came into force at the same time as the Duty to Refer, Monday 1st October 2018.

This commitment is a voluntary commitment that a housing association will refer an individual or household to a local housing authority if they are homeless or threatened with homelessness, thereby supporting the aims of the Homelessness Reduction Act and particularly the Duty to Refer.

The Duty to Assist

The Housing Act 1996 section 213 provides that where a local authority needs assistance to comply with their homelessness duty, as a registered social landlord we must provide that assistance, however, the legislation does not define 'assistance'.

If the local authority requests assistance from a housing association under this section by instructing them to share the details of people they consider to be homeless or threatened with homelessness, then a housing association landlord must comply. Under data protection legislation, a housing association can process personal data where necessary to comply with their legal obligations without the consent of the individual.

This protocol acts as the Local Authorities request for assistance under S.213 of the Housing Act 1996 to be notified of any tenants at risk of eviction and to share relevant personal data of the tenant, in order for the Authority to comply with its homelessness prevention duties".

Therefore, in complying with a request under this section from a local authority, a housing association can share the relevant personal data without asking for consent.

Tenancy agreements

The newest versions of local authority and housing association tenancy agreements may contain a reference to the privacy notice on their websites. The privacy notice will state that an organisation can share tenant's personal data with local authorities where necessary. However, this does not automatically make the sharing lawful, housing associations will still have to rely on their duty to assist the local authority as their lawful justification for sharing data.

It does, however, make the sharing of personal data more transparent. There is no requirement under data protection legislation to send the privacy notice to all tenants, only to make reference to it when collecting personal data and to have it available on request.

Processes

Kent Housing Group has developed a process map (Appendix One) to ensure that the contact between the landlord and the local authority occurs at the appropriate point in the process and that the necessary prevention processes take place at all appropriate opportunities. The information passed to the local authority Housing Options Team will be in an agreed format, by email. Where appropriate, and where the tenant has agreed to sharing of information about their tenancy, the local authority will contact all relevant agencies to establish the current status of any outstanding claims for welfare/housing benefits/

Where appropriate the Housing Management team/landlord and Local Authority Housing Options team will visit the tenant at home.

Date of Endorsement by Kent Housing Group

May 2020

⁵ <https://www.housing.org.uk/resource-library/browse/commitment-to-refer-guidance-for-housing-associations/>