

Annex 3. Out of Area Placements Protocol

Disputes Resolution Procedure

1. Introduction

- 1.1 This procedure sets out the process to be followed if a council which has agreed to be a participant in the LGA Out of Area Placements Protocol becomes aware of one or more placements made by another protocol affiliated council and it considers that the placement may have been made in breach of the protocol.
- 1.2 Agreeing to join the protocol includes agreement to follow the disputes resolution process as set out below.
- 1.3 Making use of the disputes resolution procedure does not affect any legal responsibilities of either the placing or receiving council towards any household placed out of area.
- 1.4 In particular, there is no implication that councils where households have been placed, who are concerned about the safety or wellbeing of such households should delay taking any necessary action to address such concerns.
- 1.5 The application of the disputes resolution procedure is independent of, and without prejudice to, any review process or legal procedure instigated by any member of the household, or his or her representatives.

2. Contact Officer/s

- 2.1 All councils participating in the protocol will provide contact details for a designated protocol contact officer or officers, which will be held by the LGA and be made available to other councils participating in the protocol.
- 2.2 Where appropriate, and if a council so chooses, different contact officers can be named with different areas of responsibility. For example, in unitary authorities, there may be different contact officers for Housing and Children's Services.
- 2.3 Contact details will include the name, job title, e-mail and direct line telephone number for each contact officer. If preferred, councils may set up a designated e-mail such as OOAprotocol@council.gov.uk, but the names and phone numbers of a designated officer or officers should still be given.

- 2.4 The name and contact details of a more senior officer may also be given, in case of non-response by the designated contact officer or in order to assist in resolving any difficulties.
- 2.5 The designated contact officer will be the lead person with whom to discuss any issues pertinent to the protocol, including any discussions which need to take place prior to a placement being made, as well as any concerns about placements which have already been made.
- 2.6 All councils participating in the protocol have a responsibility to ensure that contact information is kept up to date.

In the event of an alleged protocol breach:

3. Stage 1. Initial Complaint

- 3.1 If a council becomes aware of a placement made in their area, which they are concerned may have breached one or more of the protocol provisions, they should, subject to obtaining any necessary consents to share information from the household who has been placed in their area and any other person whose personal information is being shared, make contact with the designated contact officer from the placing council in the first instance with a request to discuss the case.
- 3.2 The contact officer in the placing council should acknowledge the request within three working days and make arrangements to discuss the case within five working days.
- 3.3 If any designated contact officer is on leave or otherwise unavailable for a period which would prevent the request being acknowledged within two working days, they should ensure that any council attempting to contact them about the protocol is provided with contact details of an alternative officer with whom they can discuss issues relating to the protocol, for example as part of an “out of office” e-mail message.
- 3.4 If the recipient council does not receive a response from the designated contact officer and/or generic e-mail within three working days, and alternative contact details have not been provided, they should contact a more senior officer within the placing council to request that the process be expedited.
- 3.5 This may include contacting the Chief Executive of the placing Council if no response is received by other means. The LGA will provide the e-mail address of the relevant

Chief Executive on request if this situation occurs.

4. Stage 2. – Informal resolution between the two councils

- 4.1 Once contact has been established, and subject to consent having been obtained from the affected household, full details of the alleged protocol breach should be shared with the contact officer for the placing council.
- 4.2 It may then be agreed by both councils that the placement is not in breach of the protocol.
- 4.3 If, however, it is agreed that a breach of the protocol has occurred, the placing and receiving councils should attempt to agree an appropriate course of action between them to remedy the situation.
- 4.4 If this is resolved satisfactorily, the matter may be closed at this stage.

5. Stage 3. – Independent adjudication

- 5.1 If it is not possible to reach agreement on whether the protocol has been breached or on the course of action which should be taken if it has been breached, then either council may choose to make use of an independent referee from the LGA's list of such referees in order to resolve the dispute.
- 5.2 The LGA has established an independent panel of referees for this purpose. A referee should be appointed as soon as possible, and within a maximum 21 days of the initial request to discuss the case.
- 5.3 If the councils are unable to agree on the choice of a referee, they should jointly request that the LGA appoint a referee on their behalf from the independent panel.
- 5.4 Councils should, having first agreed on the proposed referee, establish that he or she is available and willing to accept the case. Each authority is then responsible for providing the referee with such information as he or she requires to reach a decision, and ensuring prompt payment of fees and expenses.
- 5.5 A referee must not have any personal interest in the outcome of the dispute and should not accept the appointment if he or she is, or was, employed by, or is a council tax payer in, one of the disputing local authorities, or if he or she has any connection with the household who has moved out of area.

- 5.6 Following appointment, the referee shall invite both councils to submit written representations within a period of fourteen working days, specifying the closing date, and requiring them to send copies of their submission to the other council involved in the dispute.
- 5.7 Councils must have the opportunity to see each other's written statements, and should be allowed a further period of ten working days to comment thereon before the referee proceeds to determine the issue.
- 5.8 The referee may also invite further written representations from the authorities, if considered necessary.
- 5.9 The household to whom the dispute relates is not a direct party to the dispute but the referee may invite written or oral representations from members of the household, or any other person, which is proper and relevant to the issue.
- 5.10 It is important that where relevant, the referee takes the wishes of the household into account in any part of his or her determination which is likely to affect that household.
- 5.11 Where the referee invites representations from a person they may be made by another person acting on the person's behalf, whether or not the other person is legally qualified.
- 5.12 Following examination of the evidence presented by both councils, the referee will provide written decision to both councils which will:
- Set out the circumstances of the case
 - Make a determination on whether and how the protocol has been breached
 - If the protocol has been breached, set out recommendations for a suitable remedy
 - Determine the apportionment of payment for the referee's fixed fee.
- 5.13 Normally, if a breach has occurred, the breaching council will pay the referee's fee, and if a breach has not occurred the council alleging the breach will pay the fee. However, there may be circumstances where a different apportionment may be made at the discretion of the referee. For example this could be in the case where a trivial breach occurred, or the breaching council offered to make an appropriate remedy but this was not accepted by the complainant council, or one of the councils was uncooperative in working with the referee.
- 5.14 Officers at each council will be given a copy of the draft written decision and will have five working days to submit queries or to correct errors of fact or other errors.

6. Stage 4. - Action in the event of a breach

- 6.1 If it is determined that a breach has occurred, then the full written decision of the referee will be sent to both the Chief Executive and the Leader of the breaching council, and a copy sent to the LGA. The LGA will make the contacts details of the relevant Chief Executive and Leader available to the referee.
- 6.2 It is expected that breaching councils will move expeditiously to bring into effect the remedy determined by the referee.
- 6.3 If this does not happen, then the LGA should be informed. However, any escalation will need to take place between the two councils. The LGA does not have and cannot have an enforcement role in ensuring that referees' decisions are implemented.

7. Payment of fees and costs

- 7.1 The LGA recommend a flat rate fee of £1,200 per determination, which should be paid in full and as speedily as possible after the determination has been received.
- 7.2 However, in exceptional cases where a dispute takes a disproportionate time to resolve, a referee may negotiate a higher fee. In addition, the referee may claim the actual cost of any travelling, secretarial or other incidental expenses which s/he has incurred.
- 7.3 The LGA will determine such additional fees as may be appropriate for any additional work which may subsequently arise should there be a further dispute or appeal after the initial determination has been made.
- 7.4 The referee's fees and expenses, and any third party costs, would normally be recovered from the unsuccessful party to the dispute, although a referee may choose to apportion expenses between the disputing authorities if s/he considers it warranted. Referees are advised, when issuing invoices to local authorities, to stipulate that payment must be made within 28 days.
- 7.5 If no payment is received within 28 days, the referee should inform the local authority of their intention to escalate the matter with the LGA.

7.6 If, following this, no commitment to pay is received by the referee within a further week, the referee should inform the LGA, who will contact the council.

7.7 If there is no response within a further period of one week, the LGA will escalate to relevant director of services, and if necessary then the chief executive.

8. Some example remedies for different types of protocol breaches

8.1 Referees have discretion to determine appropriate remedies taking into account the full circumstances of each case, including the wishes of the household who has moved out of area, where applicable. The following examples are intended to set guidelines for what may be appropriate in the case of some types of breaches, but are not intended to be exhaustive.

Type of Breach	Example Remedy
Accommodation not suitable following lack of proper inspection	<ul style="list-style-type: none"> • Urgently remove any category 1 hazards or end the placement and provide suitable accommodation for the household • Remedy any other problems in a timely fashion or end the placement and provide suitable accommodation for the household • Put in place clear arrangements to ensure all properties are inspected in future in line with the protocol provisions.
Accommodation does not meet minimum size and location requirements or is overcrowded by more than one room	<ul style="list-style-type: none"> • End the placement and provide suitable accommodation for the household.
Accommodation not suitable for the particular household following lack of a proper suitability assessment.	<ul style="list-style-type: none"> • Rectify the situation if this is feasible, or end the placement and provide suitable accommodation for the household • Review procedures to ensure suitability assessments meeting both legal requirements and the terms of the protocol take place in all future cases.
Vulnerable households placed out of area in breach of protocol terms.	<ul style="list-style-type: none"> • Rectify the situation if this is feasible or end the placement and provide suitable accommodation for the household. • Put measures in place to ensure this is not repeated.
Household is in difficulties due to non-provision of resettlement support	<ul style="list-style-type: none"> • Provide resettlement support as set out in the protocol.

	<ul style="list-style-type: none"> • If the household has suffered a financial loss e.g. because of lack of support in claiming benefits, then if considered appropriate by the referee recompense the household for the financial loss (this should not however include compensating households for deliberate omissions not linked to vulnerability or lack of understanding)
Non-compliance with the protocol in relation to measures to be taken when a duty ended out of area.	<ul style="list-style-type: none"> • The placing authority should then take responsibility for providing accommodation for the household under the homelessness or children's services legislation as appropriate.
Children do not remain at their existing school or gain a place at a school in the new area (as appropriate)	<ul style="list-style-type: none"> • Provide support to urgently assist the child into an appropriate school, working closely with the receiving authority as necessary • Review procedures to minimise the chances of this reoccurring
Bulk moves into a new block do not comply with protocol requirements	<ul style="list-style-type: none"> • Urgently work with the host authority and other placing authorities as necessary to ensure that all future placements are compliant • If the block is unsuitable, move to stop placing there as soon as possible consistent with any legal obligations entered into
Placements are not notified to receiving authorities as agreed under the protocol terms.	<ul style="list-style-type: none"> • All current placements should be notified as soon as possible. • Procedures should be reviewed to ensure all future placements are properly notified.