

FREEDOM OF INFORMATION ACT 2000

Your request for information has now been considered and the Council's response to your questions is shown below.

You asked:

- 1. A copy of the council's written policy that includes a definition of a bedroom.**

The Council does not have any written policy that includes a definition of a bedroom, nor is there a requirement for such a policy.

- 2. Failing that a copy of the council's informal or working definition of what is a bedroom for under occupation / bedroom tax purposes.**

No formal definition of a bedroom has been adopted other than that of the standard English language.

In determining how many bedrooms a property has, the Council looks first at how the property has historically been described and allocated. Usually, a property will have had the same number of bedrooms, and have been allocated to meet housing need on that basis, since it was first constructed.

Most of the Council's stock was built to standardised designs, and in a given locality the rooms historically described as 'bedrooms' in properties of the same type will normally be used as such. This is because under the Allocations Policy properties are almost always let to households that need the number of 'bedrooms' the property offers.

Unless there has been a significant change to the property – e.g. substantial disability adaptations or alterations to the internal layout as part of a modernisation scheme – the Council would not look to re-classify the property. To do so purely to avoid the Welfare Reform Act could be viewed as an unlawful contrivance.

- 3. A copy of the council's written policy which states precisely how the council makes a bedroom tax decision.**

The council is responsible for the administration of Housing Benefit scheme for the city. This is a national welfare benefit. We undertake the task as administrator as an agent of the Department for Works and Pension (DWP). The DWP issue instructions or guidance to the authority to enable them to interpret the legislation laid by parliament. In this instance these are the Housing Benefit (Amendment) Regulations 2012 that were laid before Parliament on 28 June 2012.

The council has no discretion on the legislation and is legally bound to operate lawfully as the administering body. As we do not operate a

local policy because this is national welfare benefit scheme and the legislation is law we are not obliged to neither consult on the administration of the national scheme nor able to refuse to adopt the rule. The council has no discretion in this matter.

The council followed the guidance in circular A4/2012 titled Housing Benefit size criteria restrictions for working age claimants in the social rented sector from 1 April 2013.

This instrument (the remit for the legislation) introduces size criteria into Housing Benefit for those in the social rented sector (SRS), which is accommodation let by a local authority, registered housing association or other registered provider. The size criteria will be used to decide the extent to which the claimant under-occupies their home so that an appropriate percentage reduction can be made through Housing Benefit. The council followed the guidance. In particular the guidance stated in section 12:

12. Bedroom size

We will not be defining what we mean by a bedroom in legislation and there is no definition of a minimum bedroom size set out in regulations. It will be up to the landlord to accurately describe the property in line with the actual rent charged.

As landlord the council has defined your property as having a certain number of bedrooms. I refer you to our reply to question 1 and 2 in this letter which explains this process.

4. A copy of any letter or other correspondence you sent to the Council's Housing Department asking for information about my property.

No exchange of correspondence took place.

The council gathered the social housing stock information in respect of the number of bedrooms defined for each property in the following manner. Again we followed the DWP circular guidance A4/2012-information gathering:

16. As the changes take effect from the same date (1 April 2013) for all existing claims you will need to identify which households are likely to be affected by this change well before then to build in time for reassessment. Whether or not someone is affected by these new rules can be established by comparing the number of bedrooms in the claimant's accommodation with the information you hold on the membership of that household.

Gather information

It is likely that the easiest and most cost effective way to gather the required information on the number of bedrooms in a property will be to work with the registered landlords in your local authority area to gather this information, rather than writing directly to tenants. The new data sharing powers allow you to do this. You will also need to collect the same information on local authority housing stock in your area. You will be best placed to decide in what format this information should be collected.

As the council is a social landlord the information was drawn from the council's own housing stock data base. We undertook a simple matching exercise in September 2012 to estimate the impact of the change and begin our communication activity but we were unable to undertake an accurate, real time exercise to identify the households until late December 2012. We were able to undertake this activity once our administration software supplier provided the council with the necessary software to enable us to do this.

5. **A copy of any correspondence you received back from them in response to your request.**

As number 4 above

6. **Does the council's policy in making a bedroom tax decision differ from the guidance given by central government in the A4/2012 HB circular and/or the SI 3040 of 2012.**

It is unlawful for the council to operate a separate policy to the underlining legislation with regard to the housing benefit scheme and as a consequence has not introduced any operational differences to those contained within circular A4/2012.

The statutory instrument 3040 outlines the legal basis under which the legislation is based. Again the DWP and government are the responsible bodies for the statute and legislation. They provide guidance to local authorities on the interpretation of the legislation. The council has followed this guidance.

Determination of a maximum rent (social sector)

B13.—(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).

- (2) The relevant authority must determine a limited rent by—
- (a) determining the amount that the claimant's eligible rent would be in accordance with regulation 12B(2) without applying regulation 12B(4) and (6);
 - (b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in

accordance with paragraph (5), reducing that amount by the appropriate percentage set out in paragraph (3); and
(c) where more than one person is liable to make payments in respect of the dwelling, apportioning the amount determined in accordance with sub-paragraphs (a) and (b) between each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each person.

(3) The appropriate percentage is—

(a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and

(b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.

(4) Where it appears to the relevant authority that in the particular circumstances of any case the limited rent is greater than it is reasonable to meet by way of housing benefit, the maximum rent (social sector) shall be such lesser sum as appears to that authority to be an appropriate rent in that particular case.

(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable)—

(a) a couple (within the meaning of Part 7 of the Act);

(b) a person who is not a child;

(c) two children of the same sex;

(d) two children who are less than 10 years old;

(e) a child, and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where each of them is).

(8) In Schedule 2(a) (excluded tenancies) in paragraph 3—

(a) omit sub-paragraph (2)(a); and

(b) in sub-paragraph (3) omit "(a) or".

(9) In Part 2 (application of the regulations) of Schedule 10(b) (former pathfinder authorities) for paragraph 4 substitute—

"4. In regulation 12B(1) (eligible rent) after sub-paragraph (c) insert—

"(ca) any of regulations 12E to 12K (transitional protection for pathfinder cases);"

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If you are dissatisfied with the handling of your request please write to:

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FREEPOST (LE985/33)
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LEICESTER LE1 6ZG
e-mail: info.requests@leicester.gov.uk

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Water Lane
Wilmslow SK9 5AF
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