

# Consultation Response

Shelter's response to the  
CLG consultation on the  
Allocation of  
Accommodation: Choice  
Based Lettings Code of  
Guidance for Local Housing  
Authorities

**April 2007**

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# Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 50 housing aid centres
- Shelter's free housing advice helpline which runs from 8am-midnight
- Shelter's website which provides housing advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include 'Homeless to Home' schemes, which work with formerly homeless families, and Shelter's Inclusion Project, which works with families, couples and single people who have had difficulty complying with their tenancy agreements because of alleged anti-social behaviour. The aim of these particular projects is to sustain tenancies and ensure people live successfully in the community.

## Executive Summary

- Shelter strongly welcomes this proposed new Code of Guidance. We think it will lead to considerable improvements in practice and will be of benefit to both Local Housing Authorities, and some of their most vulnerable applicants for housing.
- We recommend that rather than having this new Code as a supplementary document to the existing Code of Guidance, the two documents should be merged into a single unified Code of Guidance, for the avoidance of confusion.
- The emphasis in the new Code on fully meeting the Reasonable Preference Criteria is very welcome. We are particularly pleased to see the range of guidance on prioritising housing need over time waiting.
- We would like to see the guidance on eligibility from the 2002 Code reproduced in full in the new Code, if there is to be no single merged document. In particular, we consider that this new Code should give stronger guidance as to the circumstances under which it is permissible to exclude housing applicants on the

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grounds of unacceptable behaviour. We are aware of significant bad practice in this area.

- The statements in the new Code to the effect that homeless households should be given full access to the CBL scheme, and should not have discriminatory requirements applied to them, is very welcome. However we remain concerned that the new Code is still recommending that time limited priority cards are suitable for use with homeless households, where they are no longer recommended for general use.
- We consider that the new Code should go further in advocating face to face interviews to assess applicants' needs at the point of application. This practice should be part of an inclusive policy which creates the best possible opportunities for all groups to access the CBL scheme, with appropriate staff resources being devoted to this aim. Liaison with agencies providing representation for excluded groups should be a feature of all CBL schemes so that particular categories of applicants, such as prisoners, are not disadvantaged.
- We have some concerns about the sections of the new Code which promote lettings to particular groups which are not in significant housing need, in order to promote sustainable communities. This proviso undermines the guidance elsewhere in the new Code on the need to give greater emphasis to housing need as a key determinant of the level of priority. It could generate unfair outcomes which disadvantage those in greatest need. We also think that proposing that some housing could be set aside for "essential workers" from outside the area is undesirable as this group have access to a range of other housing options.
- We recommend that the new Code includes some specific guidance as to how the Secretary of State wishes to define areas of high housing demand and areas of low housing demand, given that some of the recommended good practice in the Code refers to exemptions for areas where there is low demand.
- We strongly welcome the support for setting up accessible housing registers as a means of increasing efficiency in spending on adaptations, and providing better levels of information to disabled applicants for housing. We do, however, recommend that savings from maintaining such a register are used to enable

greater flexibility in offering unadapted properties to disabled applicants and carrying out adaptations as needed, so that disabled applicants are not disadvantaged in terms of being able to choose the area and type of property they live in.

- Restrictive labeling and local lettings policies can sometimes make it difficult for certain groups of applicants to access social rented housing. We recommend that the new Code should include a direction that, where a LHA is considering introducing a local lettings policy or the use of restrictive labeling, consultation should be carried out with local stakeholders to establish the likely effects on particular groups of these restrictions, and any hardship caused, before this decision is made.
- We strongly welcome the acknowledgement that preventing applicants in priority need from bidding for certain of the most popular properties in a CBL scheme is something which may lead to applicants with significant needs being concentrated in low demand areas or property types, and is not recommended.
- We have concerns about some of the proposals in the new Code around the advertising of vacancies in the private rented sector alongside social rented vacancies. Any confusion or disadvantage to vulnerable applicants needs to be considered, given the differences between what a private tenancy can offer and what a social housing tenancy can offer. Where private sector vacancies are included, we would like to see very clear distinction between the two types of advertising. We also recommend that only private landlords who are accredited in some way with the LHA should be eligible to advertise in the CBL scheme.
- We strongly welcome the breadth of the guidance in this new Code on the provision of support for vulnerable applicants, and the firm statement that this support should enable applicants to exercise the Reasonable Preference to which they are entitled. Where support is to be provided by local voluntary and community agencies, we recommend that the Code include guidance that LHAs should be prepared not only to provide training, but funding and other resources to enable these agencies to deal with the extra workload.
- Shelter is extremely pleased to see the way in which the new Code is addressing the subject of nomination agreements, particularly with regard to their monitoring and dispute resolution provisions, and to the need to ensure that support packages are in place before nomination. We

recommend that parallel guidance is issued by the Housing Corporation to RSLs, making clear their responsibilities for cooperating with nomination agreements at this improved level.

- We strongly support the development of regional and sub-regional CBL schemes. However the guidance in this Code stating that full partnership working between RSLs and LHAs is not possible in joint allocation schemes is of concern. We would like to see steps taken to remove this obstacle to the effective working of these schemes.

## Introduction

We are pleased to see that the change in the landscape of housing allocations caused by Choice Based Lettings (CBL) is now being reflected in an addition to the Code of Guidance on Allocation. We consider it would be preferable to update and revise the entire existing Code (last updated in 2002) to incorporate the material on CBL, rather than issuing the CBL guidance as a separate, additional document. This full revision and incorporation would make the Code of Guidance easier to interpret and would reduce the likelihood of confusion and poor practice. Notwithstanding this point, the guidance is very welcome.

As Shelter pointed out in *A question of choice*<sup>1</sup>, we believe that, taken overall, CBL has had positive effects on the conduct and perception of housing allocations. However we have expressed concern about some significant risks:

- Lack of support available to vulnerable households to enable them to navigate the system, which may leave them disadvantaged
- Differential levels of choice being offered to homeless applicants and non-homeless applicants, which may result in the concentration of previously-homeless households in the least popular areas or types of property.
- New banding or time-waiting CBL systems may be reducing the range of different levels of housing need which can be reflected in the prioritisation of allocations. This reduction puts at risk the compliance with the Reasonable Preference criteria under the 1996 Housing Act.

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<sup>1</sup> Grannum, C: *A question of choice – good practice and issues in choice based letting*, Shelter, 2005

We consider that the draft Code has gone a long way towards addressing these concerns, and we are very supportive of its general direction and objectives. In particular we welcome the emphasis placed on ensuring that the Reasonable Preference criteria are fully met, and the discouragement of CBL schemes which rely too heavily on time waiting as opposed to housing need as a means of acquiring priority. We are also pleased to see explicit statements to the effect that homeless households should not be limited in the way they are able to exercise choice, or pressured into accepting properties which do not meet their needs. We have drawn attention in our point by point comments below, to those sections which we think represent particularly positive developments. As there are no specific consultation questions, we have ordered our comments by linking them to the relevant numbered paragraphs in the draft guide.

There are also some points which we think could be improved, and our response goes on to discuss these and offer suggestions for how this could be accomplished.

## **Point by point comments on the draft code**

### **1.3**

There is likely to be confusion created by the fact that this code is supplementary to the 2002 updating of the Code of Guidance<sup>2</sup>, rather than incorporating all its provisions and becoming a whole new comprehensive Code of Guidance. There is some material in this new draft Code which is a duplication of material in the existing Code, an example being the end of paragraph 2.4 in the new code, which covers offering applicants an opportunity to express a preference. There is some other material in the new Code which covers a subject also covered in the existing Code, but gives different guidance. For example paragraph 5.12 of the existing Code appears supportive of the idea of authorities using time limited priority cards, whereas paragraph 4.27 of the new Code states that using an extra band is preferable to using time limited priority cards. Finally there is some material in the existing Code which is omitted from the new Code. An important example of this is the detailed guidance around eligibility based on nationality

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<sup>2</sup> Revision of the Code of Guidance on the allocation of accommodation, ODPM, 2002

and residence in chapter 4 of the current Code, which is only briefly referred to in three paragraphs of the new Code.

This situation will mean that local housing authorities (LHAs) and other users will need to refer back and forth between the two Codes to ensure that they are conforming to the guidance in full. As well as being inconvenient and time-consuming, this increases the risk that the guidance will not be properly interpreted and applied, potentially disadvantaging individual housing applicants. The guidance on eligibility, in particular, will lead to hardship for some applicants if it is not followed in full. Situations may arise where LHAs may see that there is some material in the new Code on eligibility and rely on this alone, without referring back to the detailed rules in the existing Code. This could lead to the LHA making a decision on eligibility which would be contrary to the full guidance. Unless an applicant in this position managed to access housing advice and advocacy so that the decision could be reviewed, great hardship could be caused.

### **1.10**

We particularly welcome the statement that any CBL scheme should be compatible with the LHA's Housing Strategy, the Regional (and sub-regional) Housing Strategy, and the LHA's Homelessness Strategy. The policies and procedures on offering choice have a considerable influence on outcomes for homeless households and the linkage made between the two in this document is valuable.

### **3.1**

The acknowledgement that, where choice is offered, it should be offered across all the properties in the LHA's stock, and to all categories of applicant, is welcome. We are aware of some existing CBL schemes which allocate properties to statutorily homeless applicants outside the scheme, whilst only non-homeless households are able to exercise choice. The new Code should discourage this, and as such will be of benefit.

### **3.7**

We are supportive of the practice of open advertising of all vacancies, in the interests of fairness and transparency.

### **3.8 and 3.9**

We recommend that the material from the existing Code on eligibility is reproduced in full in the new Code so that cross-reference is not required. This should minimise poor or inconsistent decision making in this area.

The unfair exclusion of applicants on grounds of unacceptable behaviour is something which Shelter has particular concerns about, and we would also like to see the detailed guidance from the existing Code reproduced in the new Code, setting out the circumstances under which it is permissible to exclude an applicant on grounds of their serious unacceptable behaviour. Reproducing the guidance in the new Code will help to promote good practice. We have consistently called on LHAs and housing associations to urgently review their practices, and stop excluding tenants for minor past faults. Only current difficulties should be taken in account, and any steps to improve these should be recognised. In 2005 Shelter's North East Housing Aid Centre launched an Exclusion Campaign, with the aim of gathering evidence and raising awareness of the issue. The resultant report revealed widespread poor practice in the North East and showed that a significant number of vulnerable people were being unfairly excluded from social rented housing.<sup>3</sup> The research also revealed that minor rent arrears were often used as grounds for exclusion, with almost 40 per cent of the households surveyed excluded for arrears of less than £500.<sup>4</sup> Some of these arrears dated back to the 1980s.

Shelter's advice staff report a high number of clients affected by exclusions. We recommend that policies are put in place which create routes back into social rented housing for those who have been excluded. For example, we recommend that when applicants are excluded it should be a requirement that housing providers write to them, giving reasons for their decision and setting out the action that the applicant must take in order to have the exclusion lifted. We also suggest that housing providers should agree to allow anyone back onto their lists who is positively engaging with a recognised agency that provides emotional and practical support (and providing the agency agrees to continue to provide this support if/when the applicant is housed).

We recommend detailed guidance on exclusions covering the above good practice is added to the new Code.

### 3.11 to 3.15

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<sup>3</sup> *Exclusions in Tyne and Wear*. An investigation by Shelter's NEHAC into why applicants are excluded from social rented housing, Shelter, April 2006

<sup>4</sup> *Exclusions in Tyne and Wear*, Shelter, April 2006, p.7



We are very glad to see this guidance stating that applicants should not be disadvantaged for refusing the offer of a property, should be given adequate time to view and make a decision, and should be offered support to enable them to go through the process.

We are also supportive of the suggestion that no limit should be placed on the number of bids which an applicant can make at any particular time. Where an applicant has only intermittent access to the means of bidding, or support to enable them to make bids, then they could be disadvantaged by having a cap on the number of bids. Once they have reached this cap, they might have no further opportunity to remove one bid and replace it with another if their preferences, or what was available, changed. On the other hand somebody who has regular access to the bidding system or perhaps a greater degree of expertise in using the system, would be at an advantage because they could regularly monitor what was being advertised and switch their bids around at will.

**Good Practice Examples – feedback during the bidding process**

Lincoln City Council has a good system for ensuring that applicants are given good and up to date feedback when bidding under the CBL scheme. When applicants telephone in with bids, the staff member inputs the bid while they wait and tells them where they are in the order of priority for that property, at that time. This gives the applicant some indication as to whether they stand any chance of that bid being successful.

Bradford Home Hunter allow applicants to bid for properties on the internet and tells them before they confirm the bid what position they are in so if they aren't very high up on the list they can

#### 4.4

We strongly welcome the Secretary of State's recognition that allocation schemes must be framed so that authorities are able to identify comparative housing need and ensure that those in greater housing need are given the appropriate priority for housing which meets their needs. As the new Code recognises, these households will then be at less risk of feeling compelled to apply for accommodation which does not meet their needs as the only means of being housed within a reasonable period of time. This, and the guidance on meeting the reasonable preference criteria which follow in the rest of this chapter, is a very positive improvement on the current position under some existing CBL schemes.

#### 4.6

The guidance that application forms should prompt the giving of information which will allow LHAs to accurately assess an applicant's housing need is useful, as is the suggestion that medical and welfare panels may have a role to play in assessing need. However we do not think that the Code, as worded, gives a strong enough indication of the importance of carrying out face to face interviews. It still implies that where face to face interviews do take place, they should pick up applicants' needs, but that there is no need to ensure that they take place universally. Shelter disagrees with this position. We would suggest that relying on a paper application form (or its online equivalent) is not a satisfactory way of assessing an applicant's needs at the time they join the CBL scheme. Instead, we recommend that all applicants should have a face to face interview with an adviser at the point of joining the scheme, or at the very least a telephone interview. This interview will enable the LHA to assess the applicant's housing needs more accurately, and ensure that appropriate support is put in place so that they will be able to navigate the CBL scheme effectively. Failure to identify an applicant's support needs at the outset may cause significant disadvantage and distress to vulnerable individuals, and all CBL schemes should have policies and procedures built in to prevent this happening.

We recognise that there are cost implications for LHAs in using interviews rather than applications by post or website, and that in many cases applicants who have no particular support needs may find the requirement to be interviewed in order to join the CBL scheme onerous. However we consider that the importance of accurately identifying support needs amongst vulnerable applicants is enough to justify making interviews mandatory and ensuring that staff who carry them out are trained to be able to identify and discuss with applicants in an objective and sensitive manner their needs for support. There are staff and administrative cost savings associated with CBL schemes, compared to traditional allocation schemes. These savings should be channeled into improving customer support and ensuring that all applicants are supported to enable them to navigate the CBL scheme.

#### **4.9 and 4.21**

We particularly welcome the guidance under sub paragraph c. that CBL schemes must allow for cumulative preference to be reflected in an application's priority, which reinforces the guidance already given in the 2002 Code. This has been a significant omission in some LHAs' allocations policies since the introduction of CBL.

#### **4.19**

The statement here that CBL schemes must not include, within the same band, people with reasonable preference, and people who do not fall within any reasonable preference category, is very valuable, and we strongly support it. In Shelter's view, one of the most significant weaknesses of some current CBL schemes has been that they allow applicants with no housing need at all to have the same, or better chance, of being allocated particular properties as applicants within reasonable preference categories.

#### **4.27-29**

Shelter has encountered a number of problems caused to households in severe housing need by the use of time limited priority cards. For this reason, we welcome the Secretary of State's statement that she considers an approach which increases the number of bands to be preferable to use of these priority cards. We have concerns over the statement in paragraph 4.28 that they are nonetheless appropriate for encouraging applicants in severe need to bid early, particularly in the case of homeless applicants in Temporary Accommodation (TA). In our view, applicants who are statutorily homeless should be able to exercise choice in exactly the same way as other applicants to a CBL scheme. If an alternative approach of increasing the number of bands to reflect different priorities is preferable, then this should be the case universally. It is unacceptable to place additional requirements constraining the choice available to households that are statutorily homeless or in TA. We set out in our report *A question of choice*<sup>5</sup> the likelihood that limiting the time in which some applicants are able to have priority under the CBL scheme will lead to these households ending up accepting an offer of a property which does not meet their needs, simply because that is all that has become available in the time given. This could then lead to a situation in which households in the greatest housing need become concentrated in the lowest demand housing stock.

We are pleased to see elsewhere in the code other statements which seem to bear out a commitment to equal treatment of statutorily homeless households, and households in the greatest need (for example under 4.4, 4.47, 4.49, 4.51).

We welcome the guidance issued under these paragraphs about the way in which priority cards should be used, when they do form part of a CBL scheme. We consider that this guidance, if followed, should lead to an improvement in practice and more desirable outcomes for statutorily homeless applicants and other applicants in severe housing need.

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<sup>5</sup> Grannum, C: *A question of choice – good practice and issues in choice based letting*, Shelter, 2005

#### **4.33 and 4.34**

We have been concerned to see some of the outcomes from existing CBL schemes which result from an excessive reliance on time waiting as a means of deciding priority for allocation. We therefore welcome the statement in 4.33 that an alternative method such as the creation of another band is preferable to relying on time waiting, to ensure that accommodation is allocated in accordance with applicants' level of housing need.

#### **4.35 to 4.40**

We have concerns over this section which discusses acceptable policy objectives under which LHAs would want to ensure that some of their vacancies are allocated to those not in the greatest housing need. These objectives are stated as being:

- ensuring a balance between meeting the housing needs of existing tenants and new applicants
- promoting more sustainable and balanced communities
- widening the housing opportunities for those who are not in greatest housing need.

Whilst we support all the above objectives, we are concerned at the prospect of LHAs aiming "for a certain proportion of lettings to be made to applicants who have no identified housing need or only low-level need." (paragraph 4.36) Given the current context of massive under-supply of social rented housing, and the poor levels of security of tenure and affordability available in other sectors, we do not agree with this approach. Where a product is in such short supply, we believe the vast majority of it must be allocated to those in the greatest need. We do not believe households with little or no housing need should have quotas of properties made available to them which will result in households in severe housing need having to wait longer, or not being allocated a social rented tenancy at all. In a situation of extreme scarcity, inevitably many households will be unable to access social rented housing and will end up having to rely on the private rented sector for accommodation, with the possibility of insecurity and high rent levels. Households who are not in any housing need, or who have low levels of vulnerability, will be best placed to deal with this.

One way to meet the stated objectives would be to increase the supply of social rented housing so that it is not necessary to ration it so severely; and to improve what is available and accessible in other sectors, so that private renting and home ownership can offer the levels of affordability, good management and security which applicants can currently only seek through social rented housing.

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Allocating housing to those in the greatest need, or who have significant levels of vulnerability, need not be inconsistent with the drive to achieve sustainable communities. Shelter's Inclusion Project in Rochdale has shown clearly that with the correct type of support, even tenants with significant support needs can be enabled to sustain their tenancies and function as part of a community<sup>6</sup>.

We strongly disagree with the idea of quotas and targets being set for allocations to those in no, or low, housing need. We are, at least, glad to see the guidance in paragraph 4.39, that such quotas should not result in the more popular or scarce types of property being allocated disproportionately to those who are not in identified housing need. Whilst this guidance may curtail the most unfair practices which currently exist, we would urge that this section of the new Code be revised to discourage the practice of quotas for low housing need applicants altogether. The recent report on the future of social housing under Professor John Hills' review<sup>7</sup> highlights as a potential advantage of CBL the fact that research is indicating that fewer vulnerable households may end up in low demand areas under CBL. It is important that allocations policies are not framed in such a way as to prevent this effect from taking place, if a quota of properties (particularly those in higher demand) are taken out of the pool which high-need or vulnerable applicants might expect to have high priority for.

#### **4.41 and 4.42**

We are pleased to see the encouragement given here to improved access being made available to those from outside the local area, so that a lack of a local connection does not act as a bar to their chances of being housed. We support the suggestion that applicants who fall in the reasonable preference criteria but have no local connection should receive greater priority than applicants with a local connection who do not have reasonable preference.

#### **4.43 to 4.44**

We are very pleased to see the guidance that schemes based primarily on time waiting are not appropriate where there is high demand for social housing, and that a scheme based on housing need is preferred. We are, however, concerned at the inclusion of the

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<sup>6</sup> Jones, A et al: Addressing antisocial behaviour – an independent evaluation of the Shelter Inclusion Project, University of York/Shelter, 2006. This research found that 60% of tenants who had been supported through the project were no longer exhibiting any antisocial behaviour, while a further 11% had shown improvements in behaviour. 84% were no longer subject to any possession action putting them at risk of homelessness. The service was considered to be cost effective in light of the high costs of pursuing punitive action against perpetrators of ASB, and of eviction and repeat homelessness.

<sup>7</sup> Hills, J: Ends and means: the future roles of social housing in England, ESRC/DCLG, 2007, p180

qualifying statement that this applies mainly to areas where there is high demand for housing or a high proportion of applicants are in urgent housing need. Even localities where there used to be low demand for social rented housing have experienced an increase in demand over recent years as house prices have risen and low-demand stock has been scheduled for demolition. If this sort of proviso is to be included, we would suggest that some sort of definition or guidelines as to what constitutes high demand, needs to be given. Otherwise, there will be a lack of clarity as to when systems based on time waiting will definitely not be appropriate.

#### **4.47 to 4.55**

We strongly welcome the statements made under this section about homeless households being able to participate in the CBL scheme, and not being penalised for refusing the offer of a property. As outlined above under the discussion on 4.27 to 4.29, we do not consider that offering statutorily homeless households a time limited priority card is a suitable way of ensuring that their housing needs are met. We believe, instead, that their housing needs should give them very high priority under any allocation scheme based on points or banding, and that that priority should remain until such time as they have been able to secure accommodation, just as households in less housing need are able to wait without penalty for an unlimited period of time until a property is advertised which actually does meet their needs. We recognise that there may be occasional circumstances where it will be necessary for a LHA to make a final offer to a statutorily homeless household to discharge their duty, but believe that in discharging their statutory duty the LHA should, as a matter of principle, aim to provide homeless households with a reasonable degree of choice. For most cases it should not be necessary or desirable to push homeless households to bid more quickly, or more widely for properties than other households.

Shelter's advice work indicates that the time limits on priority cards are often set too short, and for this reason we are pleased to see the guidance in 4.51 stating that the priority period should be set at the average time which it would actually take somebody with priority to secure accommodation under the scheme. We have experienced a lot of time being wasted by LHAs on the administration involved in extending a priority card for a further period when no suitable property has become available in the time originally allowed. As well as being inefficient for the LHA to administer, setting unrealistic deadlines places a great deal of stress on the applicant, and leads to exactly the sort of pressure to accept unsuitable accommodation which paragraph 4.51 warns against.

We welcome the guidance in 4.49 stating that homeless households should not be penalised for refusing an offer of a property, and the clarification that it is for the household themselves to decide whether a property meets their needs, not for the LHA. Also valuable is the statement under 4.51, that applicants should not be put under pressure to bid for accommodation which is, again, not suitable to meet their needs. Evidence from Shelter's housing advice work indicates that this is often not the case under existing CBL schemes, and that homeless households are, time and again, placed under pressure to bid quickly or to accept a property they do not want.

#### Case Study

Shelter's Client, a woman with 3 children aged 19, 15, and 13, made a homelessness application to the LHA in 2006, following the loss of a tenancy in the private rented sector. Due to serious domestic violence from her former partner, they were placed in a refuge as interim accommodation. They were given temporary priority through the local CBL scheme for a period of 3 months.

The client bid for a total of 10 properties in the 3 month period - none of the bids were successful. She found living conditions stressful (the whole family were living in 1 room in the refuge) and has been off work sick due to this. She is now nearing the end of the 3 month priority period. The client was told that she will be taken off the CBL scheme and made a final offer as a discharge of duty if she does not bid

Paragraph 4.52 states that "Where it becomes clear that *nothing suitable* [our italics] had been advertised during the period, that the applicant had not fully understood what he or she was expected to do under the scheme, or that the applicant was incapable of accessing the scheme without advice and assistance, the authority should consider extending the priority period and addressing any need for further advice and assistance to enable the applicant to participate effectively in the scheme." If time-limited priority cards are to continue to be used for statutorily homeless households (and we have made clear above that we do not think this is necessary or desirable) then we suggest that the wording of 4.52 should be amended to read "Where it becomes clear that nothing which the applicant regarded as suitable had been advertised during the period....". This would ensure a similar approach to Paragraph 4.49. This states that the applicant should not be penalised for refusing an offer "regardless of whether the authority considers the accommodation is suitable for them."

#### 4.56 to 4.62

We strongly support the setting up of accessible housing registers covering all LHA areas, whether these registers apply to a single LHA, or to several across a region. Holding a register of adapted housing which disabled applicants can view when they join

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the housing register will facilitate the effective matching of applicants and suitable properties, and prevent wasted resources when adaptations put in at significant expense have to be removed because the incoming occupant does not need them. We agree that applicants who have need of adapted accommodation should have priority for properties advertised under the CBL scheme which are already adapted to wheelchair-accessible standard. A balance will need to be struck between the cost of holding adapted properties empty for a period of time if there is nobody on the CBL scheme who immediately requires the adaptations, and the cost of adding and removing adaptations as individual dwellings move from occupation by households who require the adaptations and households who do not.

We also believe that there should be a presumption that, if a disabled applicant bids successfully under the CBL scheme for housing which is not presently adapted to meet their needs, the LHA should carry out the adaptations which are needed to enable that applicant to take up a tenancy, rather than expecting the applicant to wait until a suitably adapted house becomes available for letting under the CBL scheme.

#### **Case Study**

Shelter's client was given a medical priority for 3 months on the CBL scheme due to his disability. He was assessed as needing a ground floor 3 bed flat or 3 bed bungalow. There are very few properties in this category and so the client was having to bid across the city sometimes in areas unknown to him, where his family would have been isolated and vulnerable. In the limited 3 month period of his priority, nothing suitable came up. The LHA refused to allow him the option of bidding for a house in the preferred area where adaptations could be made.

We also strongly support the requirement under 4.62 for support to be provided to disabled applicants to enable them to use the CBL scheme fully. However the final bullet point under 4.62 raises some concerns. It could lead to hardship for applicants with learning difficulties if they were only able to access support from the LHA to help them navigate the CBL system if they "do not have support from any other source". We would suggest that support being provided by the LHA should be an option available to any disabled applicant, whether their disability results from a learning difficulty or some other factor. There may well be cases where the applicant does have people who wish to act on their behalf or support them, but does not wish to accept this support, or feels that the support being offered does not actually coincide with their best interests. In

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these circumstances, independent support being provided by the LHA may well be of great value and should be a free choice available to them, rather than as a matter of last resort.

#### **4.63 to 4.67**

Shelter has some concerns over the way in which local lettings policies, and restrictive labeling of properties under a CBL scheme, are used. Firstly we are concerned that these policies and restrictions are sometimes not made clear in published documentation, which causes confusion, frustration and disappointment for applicants who bid for properties, unaware that they have no chance of being considered for them. For this reason we welcome the statements under 4.64 and 4.67 that, where used, these restrictions should be clearly set out in the LHA's published allocations policy, and be also made clear on any advertising of properties to which they apply. We also welcome the statement that local lettings policies and restrictive labeling should not be used in such a way as to detract from the LHA's ability to comply with its duty to give preference to applicants in the appropriate reasonable preference categories.

Our second concern is not addressed by the new Code. This is that local lettings policies and restrictive labeling are often used in ways that make it difficult for certain categories of people to gain access to housing. For example, Shelter's Ricochet project in Rotherham works with 16-25 year olds to enable them to improve their housing situation and avoid repeat homelessness. Project workers often find that between a quarter and a half of all the advertised vacancies under the local CBL scheme are advertised with age restrictions which exclude their clients. We recommend that the new Code include a direction that, where a LHA is considering introducing a local lettings policy or the use of restrictive labeling which affects significant numbers of properties as above then consultation should be carried out with local stakeholders. This could establish the likely effects on particular groups and any potential hardship, before decisions are made.

#### **4.72**

We strongly welcome the acknowledgement that preventing applicants in priority need from bidding for certain of the most popular properties in a CBL scheme is something which may lead to applicants with significant needs being concentrated in low demand areas or property types, and is not recommended. As regards the qualification about it not being recommended only in areas of high housing demand, we would repeat our earlier argument under paragraph 4.43 to 4.44.

#### 4.74

Shelter supports most of the proposals made here for increasing mobility across local authority boundaries. However, we have concerns about 4.74 ii, which suggests that the Secretary of State would look favourably on LHAs which brought in a local lettings policy allowing social rented housing to be allocated to particular types of “essential workers” from outside the area. Given the extremely limited supply of social rented housing lettings, these lettings need to be prioritised towards those in the greatest housing need. For further development of the reasons why this is so, please see our comments under paragraph 4.35 to 4.40. Local lettings policies should be used sparingly, and only when it is necessary to support clearly identified and publicised policy objectives which have the agreement of all relevant stakeholders.

Assuming that “essential workers” is likely to be defined in a similar way to existing definitions of “key workers”, then this group already have access to a range of low cost home ownership and intermediate renting options. Whilst we recognise the importance of key workers’ roles in the public services, there has already been some controversy over the programmes for offering low cost home ownership to this group, in terms of the value for money to the public purse which it offers<sup>8</sup>, the unfairness which can result from the way in which particular jobs fall inside and outside the category of “key worker”, and indeed the low level of demand amongst key workers which has resulted in many units lying empty. Given the above difficulties, we do not believe it is appropriate for this group to be singled out for priority in allocation of the limited amount of available social rented housing by the creation of local lettings policies.

#### 5.3

We are pleased to see the acknowledgement here of the importance of consulting and involving local stakeholders in setting up and running a CBL scheme. In particular, we agree that organisations which represent the interests of groups likely to be disadvantaged or excluded must have a voice in the design and running of CBL schemes.



Shelter works directly with many excluded groups. One is 16-25 year olds, the group mentioned in the good practice example above. We also run a number of projects providing advice and advocacy to prisoners, and we have found that this group is significantly disadvantaged and excluded by CBL schemes. We have found it very beneficial to be able to discuss this problem with LHAs and agree solutions. We would like LHAs to make this standard practice, given the vulnerability of ex-offenders, and the importance of enabling them to access good accommodation on their release, from a re-offending point of view as well as for their own personal welfare.

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## 5.6

We would also like to draw attention to the plight of prisoners in considering arrangements for making applications to the CBL scheme.

The introduction of CBL has not had a positive impact on a prisoner's chances of successfully contacting housing providers, accessing their allocations process and receiving an offer of housing. Many prisoners do not understand how CBL systems work. They are often unable to get hold of the newspapers advertising properties and have very limited, or no, access the Internet for bidding. Some CBL schemes do not take into consideration the special circumstances of prisoners and, as such, they are unfairly discriminated against. A prisoner may join a CBL scheme, for example, but may then be removed because they are not able to make in-person contact with the scheme operator. Another common problem for prisoners who wish to access CBL is that in some schemes it is difficult to be housed unless the applicant is awarded priority status. Some LHAs will not award priority status until an applicant is released and attends the Housing Advice Centre.

### **Case Study**

Shelter's client was a prisoner at HMP Everthorpe. He referred himself to Shelter's Yorkshire and Humberside Prison Housing Advice Service (PHAS) because he wished to go on a LHA's waiting list to bid for a property and secure accommodation upon release. He was unable to successfully bid for accommodation because of the LHA's practice of placing applications received from prisoners in Band 8 (the second from lowest), regardless of their circumstances. This effectively meant that applications from prisoners were put 'on hold' and their bids were not being accepted. Prisoners were expected to reapply to the waiting list upon release. This resulted in many prisoners leaving prison before securing accommodation.

After reviewing the case PHAS advisers arranged a meeting with the LHA. A direct outcome of this meeting was that the client's banding was changed from Band 8 to Band 4 and he was able to bid for properties whilst still in prison (thereby increasing his chance of securing accommodation upon release). The Council agreed to change its policy for applications from prisoners and introduced a fast track form. Those prisoners who apply to the waiting list will now have their application fast tracked. It was decided that those prisoners who were already on the waiting list would have their application viewed with the added weight that they would be homeless within 28 days. This significantly increases chances for a successful bid.

those applicants who wish to take part in the CBL scheme. Sheffield Homes will also bid

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on behalf of prisoners who they have contacted in this way one or two weeks before release. Several people have successfully secured accommodation on release through this good practice. As an alternative, in areas where there is housing advice and advocacy available for prisoners, caseworkers may be able to be accepted as authorised representatives, and bid on their clients' behalf.

## 5.9

Whilst we agree that advice on other housing options which applicants could pursue should be made available, we do believe that any promotion of these other options needs to be approached with caution. When applicants are in low, or no, housing need, and their income and circumstances are such that they could afford and sustain a tenancy in the private rented sector, or indeed low cost home ownership, then promotion of these options is useful both to them and to the LHA. But even for these groups, promotion of other options should not amount to discouraging applicants from applying to join the CBL scheme, or encouraging applicants to leave the scheme and pursue other housing options. Maintaining a clear dividing line between providing information, and encouraging the use of other options becomes especially important in the case of vulnerable applicants, or applicants in severe housing need. Because, in some high-pressure areas such as London Boroughs, even applicants in the most severe housing need are likely to have long waits for housing under the CBL scheme, the guidance given in the new Code under 5.9 could result in encouraging LHAs to suggest to vulnerable applicants that they may be better off giving up the idea of social rented housing and instead pursuing a tenancy in the private rented sector.

Shelter, of course, accepts that vulnerable households and those in severe housing need have the perfect right to make a choice along these lines. However, before doing so they need to be aware of all the consequences of making this choice. The ending of an Assured Shorthold Tenancy in the private rented sector is the third most prevalent cause of homelessness<sup>9</sup>. Rent levels in the sector are so unaffordable that around half of tenants in receipt of Housing Benefit in the sector are having to make top-up payments out of their own limited income to cover high rents<sup>10</sup>. There is a risk of applicants who need the security and affordability of social rented housing, and who are, in fact, amongst those in higher priority for allocation of that housing, being "sold" the alternative prospect of an immediate tenancy in the private rented sector, and agreeing to this when they don't really understand what they will be getting. Once they have accepted this tenancy, they may then be putting themselves back into a cycle of repeat

<sup>9</sup> Statutory Homelessness: 3<sup>rd</sup> quarter 2006, England. CLG Statistical Release, table 5

<sup>10</sup> DWP estimates that 50-60% of tenants in the PRS experience housing benefit shortfalls

homelessness when their shorthold tenancy ends, and on returning to the LHA for housing assistance, may be in a worse position than when they first applied.

We suggest that the guidance given under 5.9 needs to place LHAs under a requirement to present a balanced view when advising about housing options, setting out potential risks and benefits of tenancies in the social rented sector and the private rented sector. In particular, the applicant should always be made aware of the lack of security of tenure across most of the private rented sector, and the fact that Housing Benefit may not cover the full rent charged.

#### **5.15**

We support the idea of providing feedback to applicants who have bid unsuccessfully for a number of properties, or to other applicants at regular intervals. However we would repeat the caution set out above in our comments on paragraph 5.9, where this feedback includes advice on housing options.

#### **5.16**

We agree that the application form should be detailed enough to enable the authority to identify an applicant's housing need and priority. However it is not possible to determine from an application form alone what level of support an applicant is going to need to enable them to navigate and use the CBL scheme. We suggest that paragraph 5.16 should contain guidance to LHAs that they should not be relying on an application form alone to determine an applicant's likely support needs. We would like to see an extra sentence advising LHAs to carry out preferably face-to-face, or at least telephone interviews, with all applicants to the CBL scheme. This interview should be used to help determine their housing need, and agree what support needs to be provided to enable the applicant to navigate the CBL scheme, and who is going to provide this support.

#### **5.18 and 5.19**

We strongly welcome this guidance to LHAs on identifying support needs of applicants to the CBL scheme. We particularly value the strength of the guidance in 5.19 which states that "Authorities must ensure that applicants are given the assistance which they need to take advantage of the reasonable preference to which they are entitled."

#### **5.20**

We strongly welcome the guidance on which groups of applicants may need assistance and support contained in this paragraph. We would suggest one minor correction for the sake of consistency and clarity: in the 7<sup>th</sup> line of paragraph 5.20, we suggest the wording

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in italics is added to the sentence as shown – “The following is a list of people who may have difficulty in making an application *or participating in a choice based lettings scheme* without assistance of some sort”.

## 5.21

We value the recognition that vulnerable applicants may need intensive support throughout the whole process of using the CBL scheme. Shelter is aware through our advice and advocacy work of a significant amount of bad practice by existing CBL schemes which has disadvantaged vulnerable applicants by failing to take into account their support needs, and we hope that the new Code will go some way towards improving practice in this area.

### Case Study

Shelter's client was successful in bidding for a property under the CBL scheme. The LHA telephoned the client at 8.30am to tell him he had an offer of a property. He works nights in a restaurant so he was woken up by the call. He was half asleep, English is not his first language and he did not understand. The LHA interpreted his confused response as a refusal of the offer and allocated the property to somebody else. They did not make any offer in writing. Despite having been given Shelter's details as a point of contact for the applicant and being advised that the organisation was providing support to him, the LHA did not contact Shelter either to make the offer, or to inform us about the client's response. A complaint was made and upheld as being bad practice for not communicating in an adequate manner with the client

## 5.22 to 5.23

We value the guidance in this paragraph, stating that LHAs need to work together with other local statutory and voluntary agencies to identify support needs and ensure that that support is available. We are aware of good practice being carried out in the area of liaison and training of voluntary agencies by Sheffield Homes. Shelter has also been directly involved in liaising between the local CBL provider and community advocates from BME communities<sup>11</sup>, in order to develop their capacity to help members of particular BME communities to gain better access to social rented housing through CBL. The role local statutory and voluntary agencies play in advice and support is vital. However, if the intention is that LHAs should primarily be seeking to ensure that support is provided to applicants from other statutory and voluntary agencies, rather than providing it themselves, then there needs to be some acknowledgement of the fact that these other agencies are not resourced to provide this new type of support. LHAs will

<sup>11</sup> Through Shelter's Multi-Lingual Project in Newcastle

need to ensure that funding is provided to enable the agencies to take on this new area of work.

We suggest that LHAs should be required under this paragraph to not only consider and provide for the training needs of organisations and individuals providing the support, but also to consider funding where needed to ensure that organisations are in a position to provide that support<sup>12</sup>.

#### **5.24**

We support the idea of LHAs maintaining a list of applicants who may need support so that they can ensure that these applicants are bidding and are not being disadvantaged through lack of appropriate support. However we refer back to our recommendation under 5.16 above i.e. that an application form is not an adequate way of assessing applicants' needs for support. We would like the guidance in this paragraph strengthened to say that LHAs should institute such procedures (eg the use of an initial interview) as are required to ensure that applicants' support needs are identified at the initial application stage. Having made this clear, the guidance should then go on to discuss the need to look out for applicants who have "fallen through the net" at initial application stage, and to ensure that these applicants are picked up through regular monitoring and a support package put in place to enable them to use the CBL scheme effectively.

#### **5.26 to 5.29**

We welcome this guidance on monitoring, particularly the level of detail recommended, which will pick up any potential disadvantage to particular groups, in terms of the type and quality of properties which they are being allocated. It is, of course, vital that monitoring of this sort succeeds in identifying applicants, or groups of applicants who are being disadvantaged, and that these issues are addressed through the continued development of the CBL system.

#### **5.30**

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<sup>12</sup> It may be considered more appropriate for funding to be provided from central government, such as a continuation of the Home Office Connection Communities Plus grants programme in 2005/6, rather than from local authorities' own CBL budgets. Whether funding comes from local or central government, we recommend that the new Code includes a requirement for local authorities to consider the funding needs of voluntary and statutory agencies, and ensure that these are met.



We would like to repeat the point we have made elsewhere about the inadequate nature of paper application forms for communicating effectively with vulnerable individuals, and apply it to the guidance under this paragraph about reviewing the waiting list on a regular basis. There is a significant likelihood that, if the waiting list is reviewed by writing a letter to all applicants asking them to reply by a certain date if they still want to be on the list, then many vulnerable applicants will fail to respond and end up being removed from the list in error. We would like the new Code to include guidance in this paragraph that, as part of the process of reviewing the waiting list, all applicants who have been identified as in need of support are contacted via their support provider as well as directly.

### **6.8 to 6.15**

Shelter is extremely pleased to see the way in which the new Code is addressing the subject of nomination agreements, particularly with regard to their monitoring and dispute resolution provisions, and to the need to ensure that support packages are in place before nomination. We also strongly welcome the guidance in 6.14 which states that LHAs should be monitoring failed nominations to establish whether particular applicants in the reasonable preference categories are being consistently denied access to accommodation for which they should be given priority. Under this last point, we would like to see some indication of the action which LHAs should be taking if their monitoring picks up this problem.

We also hope that, when this new Code is published in its final version, the Secretary of State will liaise with the Housing Corporation to ensure that the Corporation issues strong guidance of its own to RSLs covering the importance of RSLs cooperating with LHAs over nomination agreements and allocations. In Shelter's response to the Housing Corporation's strategy on Tackling Homelessness<sup>13</sup>, we recommended that Circular 02/03<sup>14</sup> should be updated and revised to provide tighter guidance on good practice around nominations, and the Corporation have stated in their Tackling Homelessness strategy document that this possibility is under review<sup>15</sup>. We urge the Secretary of State to press for this revision to take place so that the revised version of Circular 02/03 is in place to complement this new Code of Guidance and ensure the best outcomes for housing applicants.

### **6.23**

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<sup>13</sup> Available on Shelter's website

<sup>14</sup> *Housing Corporation Regulatory Circular 02/03 – Local Authority Nominations*, Housing Corporation, 2003

<sup>15</sup> *Tackling Homelessness – the Housing Corporation Strategy*, Housing Corporation, 2006, p9

Shelter has concerns about the possibility of a lack of clarity about the differences between private sector and social tenancies if they are advertised alongside each other in CBL advertising. Under our comments on paragraph 5.9 above we pointed out the dangers of vulnerable applicants who need the security and affordability of the social rented sector taking up a private tenancy because they do not fully understand the difference in what is being offered. We consider that this confusion is likely to be increased by advertising vacancies in both sectors side by side.

Having said this, we can see the benefits of enabling private landlords to advertise in the CBL scheme advertising; this could then allow anybody looking for housing in an area to get a fuller picture of what is available locally through one source. It could also provide an incentive for local landlords to cooperate with the LHA, and to improve the service they offered to tenants. This could be brought about if membership of, or advertising alongside the CBL scheme was restricted to private landlords who were accredited in some way by the LHA.

We would suggest that the only acceptable way to advertise private lettings through the CBL scheme would be for these properties to be contained in a separate section of any newsletter or website advertising, and to have wording placed prominently under each individual advertisement, stating the terms of the tenancy which is being offered and the allocation criteria. In addition to this wording, every page of the advertisements for private sector tenancies would need to contain a prominent warning to applicants of the different level of rent and security of tenure available across both sectors.

## 7.8

We have concerns about the fact that LHAs are not empowered to work in partnership with RSLs in sub-regional or regional CBL schemes. This restriction is clearly a barrier to RSLs' full involvement in CBL schemes, which is an objective of the Housing Corporation, and indeed is stated as an objective of the government through this new Code (7.1). We consider it would be preferable for RSLs to be able to form full partnerships with LHAs in order to jointly run regional and sub-regional schemes. The alternative, that RSLs will only be able to participate in regional and sub-regional schemes by offering those properties over which the LHA has nomination rights, is an unsatisfactory compromise. This will add to administrative confusion and expense, because RSLs will need to maintain two separate methods of dealing with their vacancies and run them side by side. Given that reduction in administrative time and expense through dealing with parallel systems is one of the advantages of Regional or

Sub-regional CBL schemes given in para 7.2 of this new Code, we would suggest that this situation needs to be addressed.

## Conclusion

Shelter strongly welcomes this new Code of Guidance and the measures it contains, which should help to ensure fairer access to social housing for homeless and vulnerable households. There are still some areas where the guidance given is insufficient, or in our view likely to have adverse consequences for these groups. We have made a number of suggestions above for improvements with a view to addressing these issues, and will be happy to discuss them further if that would be useful.

### Shelter Policy Unit

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