

**Shelter's response to  
Fair and flexible –  
Draft statutory  
guidance on social  
housing allocation for  
local authorities in  
England**

**October 2009**

**[www.shelter.org.uk](http://www.shelter.org.uk)**

© 2009 Shelter. All rights reserved. This document is only for your personal, non-commercial use. You may not copy, reproduce, republish, post, distribute, transmit or modify it in any way.

This document contains information and policies that were correct at the time of publication.

**Shelter**

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a 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 20 advice centres
- Shelter's free advice helpline, which runs from 8am-8pm
- Shelter's website which provides 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 housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

## Executive Summary

- Shelter strongly supports the Government's view that overall priority for social housing should go to those in the greatest housing need. Consequently, we welcome the statement in the Ministerial Foreword that the Government does not propose to change the 'reasonable preference' criteria which prioritises, amongst others, those with serious medical conditions, living in overcrowded conditions or having experienced homelessness.
- We welcome the recognition that local authorities may wish to take into account local pressures when they look at reasonable preference categories to support those in greatest housing need. Where overcrowding is a particularly serious problem we would welcome local authorities prioritising overcrowding, and where appropriate, severe overcrowding in their reasonable preference criteria.
- We strongly support the Government's view that applicants should be given more of a say and a greater choice over the accommodation they are allocated. We have argued for some time that offering statutorily homeless households a time-limited priority card is not an appropriate way of ensuring that their housing needs are met. They should have priority under the allocation scheme until such time as they have been able to secure a home that meets their needs.
- We strongly emphasize the need for housing authorities to exercise extreme care when setting the allocation of social housing within the context of a wider housing options approach, as recommended in the consultation document. Whilst we agree that advice on other housing options should be made available, it should not amount to discouraging applicants from applying to join the allocation scheme or encouraging them to leave the scheme and pursue other housing options. We suggest that the guidance should require housing authorities 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.
- We support the idea of giving existing tenants who are under occupying their homes, and who wish to move to a smaller home, appropriate priority to secure a transfer within an authority's allocation scheme. We also support the suggestion that scarce accessible and adapted accommodation is prioritised for people with access needs. However, such incentives must be sensitively administered. People must not feel pressurised into moving. This is particularly important for older people who may have lived in their homes for many years and for whom a move to a new home, away from the support of neighbours, services and familiar surroundings, might be traumatic and leave them feeling isolated.
- We have previously expressed concern about policies which promote lettings to particular groups that are not in significant housing need in order to promote sustainable communities. Therefore, we continue to take issue with particular properties being allocated to essential workers or those who have skills which are in short supply, or to give preference to existing tenants who are willing to take up training opportunities.
- We strongly support the idea that housing authorities should work with their local communities in developing their allocation priorities; in providing information on how housing is being allocated; and working actively to dispel myths and misperceptions that arise. We support the consultation's suggestion that authorities should work with voluntary and community groups, particularly if they represent hard to reach groups. Shelter is often

consulted by local housing authorities about their allocation schemes and we greatly welcome this approach.

- One way to improve understanding of social housing allocation would be the publication of a single Code of Guidance on Allocations, incorporating both the existing Code of Guidance on Allocation of Accommodation (2002) and the Code of Guidance on Choice Based Lettings (2008). A single Code of Guidance would reduce the complexity in interpreting the guidance and ensure that the legislation and guidance are correctly applied by front-line housing officers.
- We welcome the clarity provided by the consultation paper that a housing authority's allocation priorities should be developed in the context of the authority's other housing functions, namely: the strategic housing market assessment; local housing strategy; regional housing strategy and the local homelessness strategy.
- We would like the guidance to clarify that housing authorities should give reasonable preference to all people who are homeless within the meaning of Part VII of the Housing Act 2004 and not just those to whom the authority owes a duty to provide accommodation. This was highlighted in the recent case of *R (on the application of Alam) v Tower Hamlets LBC* (23 January 2009), where the Administrative Court found that a homeless applicant held not to be in priority need should still have been afforded a reasonable preference under the housing authority's allocation scheme.
- We are very concerned that the consultation paper suggests that the Codes of Guidance on Allocations and Choice Based Lettings will no longer require housing authorities to have a mechanism to assess the housing need of households falling within the reasonable preference categories, and that authorities may wish to consider the scope for giving more weight to waiting time. This approach directly contradicts paragraph 4.48 of the 2008 Code of Guidance on Choice Based Lettings, which states: *It is recommended that authorities adopt a scheme which prioritises applicants according to housing need in place of a scheme based primarily on waiting time.* We strongly recommend that paragraph 4.48 is retained.
- In our view, the *Ahmad* judgment does not in any way restrain Ministers from continuing to recommend an approach based on the existing Codes. We believe that it is imperative that the Government, via the Codes of Guidance on Allocations and Choice Based Lettings, continues to recommend housing authorities provide a clear mechanism for identifying and prioritising reasonable preference applicants who qualify under more than one category on the basis of fully-assessed need and, where applicable, cumulative need as opposed to waiting time.
- We support banding schemes, which are often a useful way to group applicants with a similar level of need. However, it is important that such schemes are sensitive enough, given local demand, to provide applicants with the most urgent housing needs priority for re-housing. In areas of high housing need with thousands of applicants falling within the reasonable preference category, we argue that a complex system of determining priority may be necessary.
- We are concerned that the consultation suggests that local authorities may wish to give more priority to local connection. This could discriminate against migrants and longer settled ethnic minority communities. The consultation should clarify that local connection policies should not discriminate against any ethnic group and must comply with the Race Relations Amendment Act 2000.

- We support the use of waiting time as a mechanism for determining priorities between reasonable preference and additional preference applicants with a similar level of housing need, including cumulative need. We agree it is simple, transparent and easy to understand. However, we are concerned that the consultation paper suggests that waiting time may be given greater weight than cumulative housing need in determining priorities. This could have the perverse outcome of a family in greater need receiving less priority simply because they had been waiting for less time.
- The unfair exclusion by registered social landlords of applicants on grounds of unacceptable behaviour is something which Shelter has been concerned about for many years. We have consistently called on housing authorities and housing associations to urgently review their practices, and stop excluding tenants for minor past faults. We have called for strong guidance in the Tenant Services Authority Code of Practice to eliminate the practice of requesting a number of nominations, and to limit housing associations' ability to decline local authority nominations, except in cases where the accommodation is clearly unsuitable for the household concerned.

## Introduction

Shelter welcomes the opportunity to respond to this consultation. We strongly support the Government's view that overall priority for social housing should go to those in the greatest housing need. Consequently, we welcome the statement in the Ministerial Foreword that the Government does not propose to change the 'reasonable preference' criteria which prioritises, amongst others, those with serious medical conditions, living in overcrowded conditions or having experienced homelessness.

We believe that the legislation and existing guidance already provide housing authorities with considerable flexibility in their allocations policies. The statutory duty can be applied in many different ways and this is reflected in the myriad of points-based and banding schemes across the country. Local housing authorities need the power to develop schemes that respond to local circumstances. However, this should not be to the detriment of those in the greatest housing need.

Our big concern is that the consultation proposes the replacement of the very detailed guidance contained in paragraphs 5.1 to 5.32 of Chapter 5 of the Code of Guidance on Allocations (2002) and paragraphs 4.1 to 4.49 of the Code of Guidance on Choice Based Lettings (2008), presumably with the clauses contained in pages 24-29 of the consultation paper (*Framing an allocation scheme*). We strongly supported the introduction of the existing guidance, particularly the Code on Choice Based Lettings, which was introduced only a year ago. In particular, we welcomed the discouragement of schemes that rely too heavily on time waiting as opposed to housing need as a means of acquiring priority.

We are therefore very concerned that the consultation paper suggests that the Codes of Guidance on Allocations and Choice Based Lettings will no longer require housing authorities to have a mechanism to assess the housing need of households falling within the reasonable preference categories, and that authorities may wish to consider the scope for giving more weight to waiting time. This approach directly contradicts paragraph 4.48 of the 2008 Code of Guidance on Choice Based Lettings, which states: *It is recommended that authorities adopt a scheme which prioritises applicants according to housing need in place of a scheme based primarily on waiting time.*

In our view, the *Ahmad* judgment does not in any way restrain Ministers from continuing to recommend an approach based on the existing Codes. We believe that it is imperative that the Government, via the Codes of Guidance on Allocations and Choice Based Lettings, continues to recommend housing authorities provide a clear mechanism for identifying and prioritising reasonable preference applicants who qualify under more than one category on the basis of fully-assessed need and, where applicable, cumulative need as opposed to waiting time.

Therefore we strongly recommend that paragraph 4.48 of the 2008 Code should be retained.

## Consultation questions

### Q1. Do you agree with the objectives and outcomes which local authorities should seek to achieve through their allocation policies?

Shelter strongly supports the Government's view that overall priority for social housing should go to those in the greatest housing need. Consequently, we welcome the statement in the Ministerial Foreword that the Government does not propose to change the 'reasonable preference' criteria which prioritises, amongst others, those with serious medical conditions, living in overcrowded conditions or having experienced homelessness. It is essential that the existing legal framework for reasonable preference in allocations remains and that guidance ensures that local allocations practice reflects the spirit in which the legislation was intended.

In particular, we welcome the recognition that local authorities may wish to take into account local pressures when they look at reasonable preference categories to support those in greatest housing need. For example, the issue of overcrowding can vary across different local authorities. In London more than one third of children who live in social rented housing are overcrowded<sup>1</sup>. This compares to around one in five children who live in social housing in England as a whole. The Government's overcrowding pathfinders have been set up to tackle overcrowding in the areas most acutely affected by the problem. Where overcrowding is a particularly serious problem we would welcome local authorities prioritising overcrowding, and where appropriate, severe overcrowding in their reasonable preference criteria. Such overcrowding should be identified using, at a minimum, the bedroom standard.

#### ***Greater choice and wider options for prospective tenants***

We strongly support the Government's view that applicants should be given more of a say and a greater choice over the accommodation they are allocated. We are therefore pleased that paragraphs 4.50 to 4.78 (Choice for applicants owed the main homelessness duty) will remain in the 2008 Code of Guidance on Choice Based Lettings. In our 2005 publication<sup>2</sup> on issues in choice based lettings, we said that, taken overall, choice based lettings had had positive effects on the conduct and perception of housing allocations. However we were concerned about some significant risks, including:

- the lack of support available to vulnerable households to enable them to navigate the system, which may leave them disadvantaged;
- the differential levels of choice being offered to homeless versus 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 systems may be reducing the range of different levels of housing need that are reflected in the prioritisation of allocations, thus putting at risk the statutory duty to give reasonable preference to those in housing need.

We have previously raised concerns about the use of time limited priority cards for those in the greatest housing need. We argued that this could 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. We continue to take the view that offering statutorily homeless households a time-limited priority card is not an appropriate way of ensuring that their housing needs are met. Instead, their housing needs should give them very high priority under the allocation scheme, and 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

<sup>1</sup> Survey of English Housing 2005/6-2007/8

<sup>2</sup> Grannum, C. (2005) *A Question of Choice: Good practice and issues in choice-based letting*, London: Shelter

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 housing authority to make a final offer to a statutorily homeless household to discharge their homelessness duty, but believe that in discharging their statutory duty the authority should, as a matter of principle, aim to provide homeless households with a reasonable degree of choice. In most cases it is both unnecessary and undesirable to push homeless households to bid more quickly or more widely for properties than other households.

We strongly emphasize the need for housing authorities to exercise extreme care when setting the allocation of social housing within the context of a wider housing options approach, as recommended in the consultation document. Whilst we agree that advice on other housing options should be made available, we believe that any promotion of 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 can be useful. But even for these groups, promotion of other options should not amount to discouraging applicants from applying to join the allocation 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.

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 a prevalent cause of homelessness. Rent levels in the sector are so unaffordable that on-going Shelter research<sup>3</sup> on the local housing allowance is revealing that a significant proportion of people are making up the shortfall out of their own limited income to cover high rents. Further Shelter research shows that private tenants are struggling to cover their housing costs<sup>4</sup>.

There is a risk of applicants who need the security and affordability of social rented housing, and who are, in fact, among those in higher priority for allocation of that housing, being “sold” the alternative prospect of a private tenancy, and agreeing to this when they don't really understand the implications. Once they have accepted this tenancy, they may then be putting themselves back into a cycle of repeat homelessness when their shorthold tenancy ends, and on returning to the housing authority for housing assistance, may be in a worse position than when they first applied.

We suggest that the guidance should require housing authorities 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.

### ***Greater mobility***

We strongly support the development of regional and sub-regional choice based lettings schemes. We also support the Government's aim to expand choice based lettings so that people can move nationwide. However, in our response to the consultation on the 2008 Code on Choice Based Lettings, we expressed concern about the fact that housing authorities are not empowered to work in partnership with RSLs in sub-regional or regional choice based lettings schemes. This restriction is clearly a barrier to RSLs' full involvement in CBL schemes. We consider it would be preferable

---

<sup>3</sup> Shelter research on local housing allowance is expected to be published towards the end of this year.

<sup>4</sup> Shelter and the Money Advice Trust are soon to publish research on the private rented sector and the recession

for RSLs to be able to form full partnerships with housing authorities in order to jointly run regional and sub-regional schemes.

### ***Making better use of the housing stock***

Shelter supports the idea of giving existing tenants who are under occupying their homes, and who wish to move to a smaller home, appropriate priority to secure a transfer within an authority's allocation scheme. We also support the suggestion that scarce accessible and adapted accommodation is prioritised for people with access needs. We agree that giving priority to households occupying larger or accessible properties they no longer need could be coupled with personal support, incentives and financial payments.

However, such incentives must be sensitively administered, and be considerate to people's individual needs. We would not want people to feel pressurised into moving. This is particularly important for older people who may have lived in their homes for many years and for whom a move to a new home, away from the support of neighbours, services and familiar surroundings, might be traumatic and leave them feeling isolated. Enabling people to move in this way requires a thorough assessment of their needs and preferences. People may need support in bidding for a suitable home via the choice based lettings system. They may also need a great deal of practical support to enable the move to go smoothly, such as assistance with decorating their new home, packing and moving their belongings and gaining access to services in a new area. Sensitively dealing with under occupancy can be time-consuming and require delicate negotiation. Therefore, national mobility and mutual exchange schemes must be adequately resourced and easily accessible to tenants. Social housing management staff should have the resources to liaise with people who might be willing to move, be encouraged to prioritise mutual exchange and mobility scheme moves and be flexible with re-letting timescales ('void turnaround') if this would encourage people to move.

We have concerns about 'chain lets'. These can have the effect of only smaller properties becoming available for waiting list applicants when many reasonable preference applicants may also be overcrowded or in need of larger homes. Existing overcrowded social tenants should already be categorised as having reasonable preference and should only be prioritised over other households in this category if they have been assessed as having greater levels of need.

### ***Support for people in work or seeking work***

The main aims of local allocations schemes should be to give reasonable preference to people in housing need, particularly those who have suffered the traumatic experience of losing their home, and to ensure that people are adequately housed, particularly those who are overcrowded or living in poor conditions. Shelter has always expressed concern about policies which promote lettings to particular groups that are not in significant housing need in order to promote sustainable communities. Therefore, we continue to take issue with particular properties being allocated to essential workers or those who have skills which are in short supply or to give preference to existing tenants who are willing to take up training opportunities. Instead, we believe that for people to have the best chance of finding and keeping a job, they need first to gain access to a stable, affordable and secure home<sup>5</sup>. Given the Government's strong messages about getting people back into work, reducing access to social housing for those out of work would be counterintuitive and would make this group even less likely to move into employment in the future.

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, the vast majority of it must be allocated to those in the greatest need. In a situation of very high demand, 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 such a high degree of housing need, or who have low levels of vulnerability, will be best placed to

---

<sup>5</sup> Shelter policy briefing, *Worklessness and social housing*, October 2008

deal with this. If there is a desire to allocate social housing to certain types of employment or training, regardless of their level of housing need, a more appropriate policy response is to invest over the long term 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 the thousands of applicants on housing registers can currently only hope to secure through an allocation of social rented housing.

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 sustain their tenancies and contribute to their communities. Research shows that a potential advantage of choice based lettings is that fewer vulnerable households may end up in low demand areas. This was highlighted by the Hills Review of the future of social housing.

### ***Policies which are fair and considered to be fair***

We strongly support the idea that housing authorities should work with their local communities in developing their allocation priorities; in providing information on how housing is being allocated; and working actively to dispel myths and misperceptions that arise. We support the consultation's suggestions in paragraphs 37 to 44 that authorities should work with voluntary and community groups, particularly if they represent hard to reach groups. Shelter is often consulted by local housing authorities about their allocation schemes and we greatly welcome this approach.

We feel that it is important that there is clarity both nationally and locally about the occupation of both former and existing social housing. One outcome of the Right to Buy and Right to Acquire policies is that many former social homes are now privately owned and are often privately let. If these homes are on social housing estates or in blocks of social housing, then people will assume they still belong to the social landlord and that the residents have been housed via the local allocation scheme. This can fuel misconceptions about social housing allocation. This was the conclusion of recent research into social housing allocation and immigrant communities<sup>6</sup>, which found that 'perceptions that migrants displace UK-born social housing applicants may arise from the fact that some private rented housing which is now home to migrants is former social stock'. The research found that, of foreign-born people who have arrived in the UK in the last five years, the overwhelming majority (64 per cent) live in the private rented sector and a significant proportion (17 per cent) are owner-occupiers. However, in many cases, foreign-born households will be privately renting or will own former social housing.

It is also important that local authorities are open about contracts with the Borders and Immigration Agency to accommodate asylum seeking households. In these cases, the properties used may be existing or former social stock but are often perceived to be social housing available for allocation. For understandable reasons, BIA support packages usually provide furniture and white goods to destitute asylum seeking households. Consequently, a home becomes vacant and the neighbours witness it being fully furnished and people who have recently arrived from abroad being handed the keys. When their own children may be struggling to secure affordable housing, it is understandable that people perceive the system as unfair and are attracted to the arguments of anti-immigrant groups. Therefore, it is essential that the nature and needs of destitute asylum seekers, along with Britain's international obligations and national system to support them, are explained to local residents. As Shelter argued in its recent publication addressing the issues of housing and migration<sup>7</sup>, in areas characterised by poor resources, negligible statutory agency involvement and overcrowding in sub-standard accommodation, little space exists for good relations and the

---

<sup>6</sup> Rutter, J. And Latorre, M. (Spring 2009) *Social housing allocation and immigrant communities*, London: Equality and Human Rights Commission

<sup>7</sup> O'Hara, E. (October 2008) *No place like home? – addressing the issues of housing and immigration*, London: Shelter

tendency to stigmatise all new arrivals is increased. Yet it is often to these areas that asylum seekers are dispersed, with very little information provided to existing residents.

## **Q2. What can local authorities do to raise awareness and understanding of social housing allocation among local communities?**

We believe that, first and foremost, there is a role for Ministers, Members of Parliament and the Department for Communities and Local Government in making sure the legislation and guidance on allocations is clear and easily understandable. In May 2007, the then Trade and Industry Minister, Margaret Hodge MP, fuelled the debate on migration by claiming – incorrectly – that migrants were claiming access to social housing at the expense of British households<sup>8</sup>. Another common misconception routinely referred to by national politicians and the media, is that teenage mothers are routinely allocated social housing<sup>9</sup> and, in some cases, deliberately become pregnant in order to secure a council home. Likewise, there is no evidence to support this and no evidence to suggest that the majority of lone mothers are allocated social housing at all<sup>10</sup>.

We also believe that there is a role for the Department for Communities and Local Government in improving understanding of social housing allocation by providing a single Code of Guidance on Allocations, incorporating both the existing Code of Guidance on Allocation of Accommodation and the Code of Guidance on Choice Based Lettings. We argued for a single code in our response to the Government's 2007 consultation on the Choice Based Lettings Code of Guidance.

A single Code of Guidance would be easier to interpret and would reduce the likelihood of confusion and poor practice. In our 2007 response, we provided a number of examples of where there were duplications, contradictions and omissions between the two codes. We argued that these discrepancies would cause confusion to local housing authorities and other users of the codes and would increase the risk that the guidance would not be properly interpreted and applied, potentially disadvantaging individual housing applicants. A single Code of Guidance would reduce the complexity in interpreting the guidance and ensure that the legislation and guidance are correctly applied by front-line housing officers.

In our Choice Based Lettings Good Practice Guide (2005), Shelter highlighted the work of the London Borough of Tower Hamlets in raising awareness of the allocation of social housing and choice based lettings, particularly among black and minority ethnic households. Housing staff visit local schools to give presentations on choice based lettings. The result of these visits was that some children became the family member who accessed choice based lettings, owing to their better grasp of the technology and written English.

## **Q3. How can local authorities engage most effectively with local communities in order to shape local allocation policies?**

As we state above in response to question 1, we strongly support the idea that housing authorities should work with their local communities in developing their allocation priorities; in providing information on how housing is being allocated; and working actively to dispel myths and

---

<sup>8</sup> Hodge, M., *A message to my fellow immigrants*, The Observer, 20 May 2007

<sup>9</sup> In his recent speech to the Labour Party Conference, Prime Minister Gordon Brown said: 'It cannot be right for a girl of 16, to get pregnant, be given the keys to a council flat and be left on her own'.

<sup>10</sup> Economic and Social Research Council Research Centre, *Household formation and housing tenure decisions of young people*, University of Essex: only 10 per cent of women who become lone mothers were found to be living alone with their child in social housing six months after the birth.

misperceptions that arise. We would support the consultation's suggestions in paragraphs 37 to 44 that authorities should work with voluntary and community groups, particularly if they represent hard to reach groups, such as homeless, private renting or BME households. Shelter is often consulted by local housing authorities about their allocation schemes and we greatly welcome this approach.

For example, South Somerset council invites Shelter staff to bi-annual strategy days and forums to discuss their allocation scheme. The authority is flexible in its approach and open to suggested changes to its scheme. Consequently, Homefinder Somerset (launched in December 2008) is a generally fair and efficient choice based lettings scheme, where housing authority staff assist people in the bidding process and people in housing need appear to be gaining access to suitable accommodation quite quickly.

#### **Q4. What is the best way for local authorities to provide information and facts about how the allocation process is working in their area?**

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 where this feedback includes advice on housing options.

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.

#### **Q5. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to local authorities when formulating allocation policies?**

Shelter believes that the legislation and existing guidance already provided housing authorities with considerable flexibility in their allocations policies. The statutory duty can be applied in many different ways and this is reflected in the myriad of points-based and banding schemes across the country. Local housing authorities need the power to develop schemes that respond to local circumstances. However, this should not be to the detriment of those in the greatest housing need.

We welcome the clarity provided in paragraph 52 of the consultation paper that a housing authority's allocation priorities should be developed in the context of the authority's other housing functions, namely: the strategic housing market assessment; local housing strategy; regional housing strategy and the local homelessness strategy. This reiterates the guidance in paragraph 1.5 of the existing Code of Guidance on Allocation of Accommodation. In particular, it is extremely important that the guidance requires local allocations policies and procedures to be consistent with the local homelessness strategy in aiming to combat homelessness and discharge the homelessness duty.

However, we are very concerned that the consultation proposes the replacement of paragraphs 5.1 to 5.32 of Chapter 5 of the current Code of Guidance (2002) and paragraphs 4.1 to 4.49 of the Code of Guidance on Choice Based Lettings (2008), presumably with the clauses contained in pages 24-29 of the consultation paper (*Framing an allocation scheme*). We set out the implications of this below.

### **Reasonable preference**

The proposed changes to the existing Codes would result in the replacement of paragraph 5.8 of the 2002 Code and paragraph 4.7 of the 2008 Code, which set out the categories of people to whom reasonable preference must be given. We would like to see this paragraph retained. We would also like the new Code to provide more guidance for housing authorities on the interpretation of the reasonable preference criteria, setting out the policy intentions of these categories. In addition, we would like the guidance to make clear that housing authorities should give reasonable preference to all people who are homeless within the meaning of Part VII of the Housing Act 2004 and not just those to whom the authority owes a duty to provide accommodation. This was highlighted in the recent case of *R (on the application of Alam) v Tower Hamlets LBC* (23 January 2009), where the Administrative Court found that a homeless applicant held not to be in priority need should still have been afforded a reasonable preference under the housing authority's allocation scheme.

### **Determining priorities**

The guidance contained in paragraph 5.9 of the 2002 Code and paragraphs 4.5 to 4.10 of the 2008 Code underlines the importance of local authorities assessing and prioritising those with greater housing need. It requires allocation schemes to provide a clear mechanism for identifying applicants who qualify under more than one 'reasonable preference' category and for taking this into account in assessing their housing need. It also gives a clear indication as to how housing authorities might reconcile choice and need by prioritising applicants via banding or priority card systems. Specifically, paragraph 4.48 of the 2008 Code states: *It is recommended that authorities adopt a scheme which prioritises applicants according to housing need in place of a scheme based primarily on waiting time.* We are very concerned that the consultation paper (paragraphs 56-60) suggests that the Codes of Guidance will no longer require housing authorities to have a mechanism to assess the housing need of households falling within the reasonable preference categories. We are also concerned that draft guidance (paragraph 65) states that authorities may wish to consider the scope for giving more weight to waiting time in the light of *Ahmad*.

We accept that the House of Lords judgment in the case of *R (on application of Ahmad) v. Newham LBC* found that there was no requirement within the legislation for housing authorities to frame their allocation scheme to provide for cumulative preference. The essence of the judgment is to the effect that Newham's policy in basing priority on waiting time was not an irrational interpretation of the obligation in section 167(2) to accord reasonable preference to certain classes of applicant. However, the judgment does not, and could not, require authorities to adopt such a policy; nor does it in any way restrain Ministers from continuing to recommend an approach based on the existing Codes. We believe that it is imperative that the Government, via the Code of Guidance on Allocations, continues to recommend housing authorities to provide a clear mechanism for identifying and prioritising reasonable preference applicants who qualify under more than one category.

Therefore, we take issue with the statement in paragraph 59 of the consultation paper that 'it is no longer necessary to distinguish between degrees of housing need, or to provide that those applicants who fall within more than one reasonable preference category are given greater priority for an allocation than those who have reasonable preference on a single, non-urgent basis' and 'it is no longer necessary to make a detailed prioritisation of applicants within the reasonable preference categories'. We argue that, despite the Ahmad judgment, the Government should continue to recommend that housing authorities distinguish between households within the reasonable preference category on the basis of fully-assessed need and, where applicable, cumulative need as opposed to waiting time.

This is because in many local authority areas, there are thousands of households falling within the reasonable preference category. In London Borough of Newham, for example, there were 22,180 households falling within the reasonable preference category in 2008. In Nottingham, there were 15,668 and in Birmingham 13,817. In areas with such great housing need, the position of a

household on the waiting list determines whether they are likely to wait for weeks or years for an allocation of housing: only those households at the very top of the reasonable preference category are likely to be successful in receiving an allocation within a reasonable amount of time and those at the bottom of this category are likely to have to wait for many years, particularly if they require a family-sized home that will rarely become available in high need areas. The Ahmad family, for example, had been waiting for eight years. In areas where the reasonable preference category runs into the thousands it is vital that the local authority uses a mechanism to determine and allocate housing on the basis of greatest need. Indeed, the consultation paper acknowledges (paragraph 61) that: 'for practical purposes, allocation schemes will need to have some mechanism for determining priorities between applicants with a similar level of need'. Such a system needs to be sufficiently nuanced and detailed to take into account cumulative need.

We strongly argue that, in areas where there are thousands of households in the reasonable preference category, it is not appropriate to determine between applicants in the reasonable preference category by waiting time alone. This is too crude and simplistic a way to assess overwhelming levels of need. Such a system would result in households whose needs fall under a number of the reasonable preference categories (for example a family which may be homeless, living in insanitary and overcrowded conditions and with a number of welfare and medical needs) having to wait years longer for an offer of accommodation than a family with far fewer needs, simply because the latter had been waiting for longer. This cannot be acceptable. We therefore argue that paragraph 5.9 of the 2002 Code should remain in the new Code and paragraphs 4.5 to 4.37 and 4.48 of the 2008 Code on Choice Based Lettings should be retained.

### ***Banding schemes***

The consultation paper suggests that housing authorities that continue to operate a points-based system of prioritisation should consider replacing it with a banding scheme. This continues the position of the 2002 Code, which states (paragraph 5.11) that 'housing authorities should consider adopting a simplified system of applicant prioritisation in place of a complex points-based approach', such as banding systems. There is much more detailed guidance on banding schemes in paragraphs 4.12 to 4.37 of the 2008 Code on Choice Based Lettings.

Shelter supports banding schemes, which are often a useful way to group applicants with a similar level of need. However, it is important that such schemes are sensitive enough, given local demand, to provide applicants with the most urgent housing needs priority for re-housing. We therefore support the consultation's guidance (paragraph 69) that 'authorities should bear in mind that a banding scheme should be consistent with and give effect to the principles in the authority's allocation scheme for determining priorities for an allocation. The greater the number and complexity of these principles, the more complex the banding scheme will normally need to be'. We acknowledge that 'banding schemes which involve a large number of bands, based on degrees of housing need, are likely to be more expensive and time consuming to operate, more based on value judgment, more open to argument, and more opaque' (paragraph 67). However, in areas of high housing need with thousands of applicants falling within the reasonable preference category, we argue that a complex system of determining priority may be necessary. We therefore argue that paragraphs 4.12 to 4.37 of the 2008 Code on Choice Based Lettings should be retained.

### ***Medical and welfare grounds***

We are concerned that the consultation paper proposes replacing the guidance contained in paragraphs 5.13 – 5.15 of the 2002 Code, which, among other things states that, where accommodation is allocated to a person who needs to move on medical or welfare grounds, it is essential to assess their support and care needs via liaison with relevant agencies. It also proposes to replace paragraphs 4.5 to 4.6 of the 2008 Code on Choice Based Lettings, which gives detailed guidance on assessment of housing need. It is essential that housing authorities make a full and thorough assessment of need. Therefore, we strongly recommend retaining these paragraphs in the new Code.

### **Local connection**

The consultation paper sets out the legislative criteria for determining relative priorities between applicants in the reasonable (or additional) preference categories, including local connection. This is consistent with paragraph 5.23 of the 2002 Code. We are pleased that the consultation (paragraph 63) acknowledges that local authorities cannot exclude people who do not have a local connection from applying for social housing. However, we are concerned that the consultation suggests that 'some local authorities may wish to give more priority to 'local connection' ensuring that, wherever possible, social housing goes to those people who live or work in the district, or to those who have close family associations with it' and that authorities may want to include local connection as a policy priority. The consultation also omits to clarify that local connection policies should not discriminate against any ethnic group and must comply with the Race Relations Amendment Act 2000.

We are very concerned that if allocations schemes give a policy priority to people with a local connection, this could discriminate against migrants. A recent report by the Equalities and Human Rights Commission found that 'some local authority social housing allocation policies gave priority to certain social characteristics, for example, local connection and this had the potential to discriminate against migrants and longer settled ethnic minority communities, who may have few relatives in the UK or a lesser period of settlement.'<sup>11</sup>

The problem with giving too much policy priority to local connection criteria, at the expense of housing need, is illustrated by the recent case of *R (Van Boolean) v. London Borough of Barking and Dagenham* (Administrative Court, 31 July 2009). The applicant was fleeing harassment in the nearby borough of Newham but was assessed as having no local connection with Barking and Dagenham. However, she was at the top of the band according to both reasonable preference and waiting time, and the 'top bidder' for a number of properties. However, each time she was outbid by other applicants who had a local connection. The consequence of this policy was that, despite her need to flee harassment, the applicant could remain at the top of the queue indefinitely and never actually get an allocation, because there would always be someone behind her with a local connection.

### **Waiting time**

The consultation paper states (paragraphs 64-65) that the simplest way of determining priorities would be to take into account waiting time and that housing authorities may wish to consider the scope for giving more weight to it in the light of the Ahmad judgment, where this is seen locally as the fairest means of distinguishing between otherwise similar applicants. We support the use of waiting time as a mechanism for determining priorities between reasonable preference and additional preference applicants with a similar level of housing need, including cumulative need. We agree that it has the benefit of being simple, transparent and easy to understand. However, as already outlined above, we are concerned that the consultation paper suggests that waiting time may be given greater weight than cumulative housing need in determining priorities. This could have the perverse outcome of a family in greater need receiving less priority simply because they had been waiting for less time. We therefore strongly argue that paragraph 4.48 of the 2008 Code on Choice Based Lettings, which recommends that 'authorities adopt a scheme which prioritises applicants according to housing need in place of a scheme based primarily on waiting time' should be retained. The consultation cites the 2008 Ipsos MORI survey for *Inside Housing* as showing that 23 per cent of people think waiting time is the most important factor in prioritising social housing. However, this survey found that 22 per cent thought that people currently living in inadequate accommodation should be prioritised<sup>12</sup>.

---

<sup>11</sup> Rutter, J. And Latorre, M. (Spring 2009) Social housing allocation and immigrant communities, London: Equality and Human Rights Commission

<sup>12</sup> *Inside Housing*, 6 June 2008, pp22-25

We support the consultation paper's clarification on waiting time (which is consistent with that contained in the existing Code) as running from the date of the original application in the case of new applicants and from the date of application for a transfer in the case of existing tenants. However, Shelter would like to see the new Code provide further clarification on 'date of application'. The need for this is illustrated by two cases. In the first, the housing authority caused an unreasonable delay in setting the registration date following receipt of all the required information from the applicant. We would therefore suggest that the guidance should clarify that waiting time should run from the date on which the applicant provides all necessary information. In the second case, a homeless applicant was not placed on the housing register as having a 'reasonable preference' at the time they were accepted as homeless and placed in temporary accommodation. The applicant subsequently spent five years in temporary accommodation before the assured shorthold tenancy was brought to an end. These five years were not counted as waiting time because the applicant had not been placed on the housing register as having a reasonable preference.

### ***Existing tenants seeking a move***

We have some sympathy with the consultation paper's view that authorities should have scope to provide within their allocation scheme for existing tenants who do not have reasonable preference to transfer to similar sized accommodation where they can demonstrate good reason for seeking a move, for example where they want to take up an offer of employment. However, we are concerned about the quality of accommodation of properties that may be offered to applicants in the reasonable preference category as a result. The consultation says that such moves are broadly stock neutral (every transfer creates another void which can be used to meet housing need). However, this policy may result in existing tenants falling outside of reasonable preference being allowed transfer to the more popular properties in the more popular areas, thereby vacating the more undesirable property, to be allocated to people in the greatest housing need. We do not want to see a policy where those in the greatest need (households who have experienced homelessness and may have multiple medical and welfare needs) are only able to access inferior accommodation in the least desirable neighbourhoods. In such cases, it would be much more difficult for the tenancy to be successfully sustained.

### ***Quotas, targets and lettings plans***

We have some sympathy with the suggestion that housing authorities may set targets for the proportion of properties it expects to allocate to various groups within the allocation scheme, such as the proportion of family-sized homes to be allocated to overcrowded households. However, once again, the aim of such quotas should be to allocate housing in order to address pressing local housing need.

### ***Local lettings policies***

We strongly disagree with the idea of setting aside particular accommodation to people of a particular description, even if they do not fall within the reasonable preference categories. We have argued in the past that setting aside some housing for 'essential workers' or 'key workers' is undesirable as this group are likely to have access to a range of other housing options. Therefore, we have concerns about the impact of paragraphs 77 to 81 of the consultation paper, which suggests setting aside housing on a particular estate, or certain types of property across the stock, for applicants who meet specified criteria, such as those who are in employment, key workers and members of the armed forces and people with a local connection in rural areas.

### ***Equal opportunities and black and minority ethnic groups***

We are concerned that the consultation proposes to replace paragraphs 5.28 to 5.32 of the existing Code, which require housing authorities to: ensure that their allocations policies and procedures do not discriminate; ensure that their allocations scheme and lettings plan are representative of the community and promote community cohesion, and comply with statutory requirements relating to equal opportunities and the relevant codes of practice. These requirements do not appear to have been replaced by similar requirements in the new draft guidance.

## **Q6. How effective, currently, is cooperation between RSLs and local authorities over the allocation of social housing? What further measures could help?**

The unfair exclusion of applicants on grounds of unacceptable behaviour is something which Shelter has been concerned about for many years and highlighted in some detail in our response to the consultation on the 2008 Code on Choice Based Lettings. We have consistently called on housing authorities and housing associations to urgently review their practices, and stop excluding tenants for minor past faults. Only current difficulties should be taken into account, and any steps to improve these should be recognised.

Research published by Shelter in 2006 found widespread poor practice in the North East of England with a significant number of vulnerable people being unfairly excluded from social rented housing, often because of low levels of rent arrears: 40 per cent of households surveyed were excluded for arrears of less than £500, some of which dated back to the 1980s<sup>13</sup>. Our evidence showed that, where exclusions were challenged (and where the outcome was known), more than half of the exclusions were overturned on appeal. Some 43 per cent of the excluded households were families with children. When these families were homeless, they were often owed a duty of accommodation by the local authority under the homelessness legislation, yet social housing providers refused to accommodate them. This can lead to a situation where local authorities are forced to accommodate families in temporary accommodation for long periods because they are homeless, yet excluded from social housing. Shelter's advisers continue to report a high number of clients affected by exclusions.

A further problem between RSLs and housing authorities is the common practice for RSLs to ask for details of three or four applicants at once when they request a nomination. They then select one and return the others. Some authorities write to each of the applicants informing them that they have been nominated to a housing association. All but one is then disappointed when they hear that they will not receive an allocation. In some cases the same applicant can receive many such letters, repeatedly raising their hopes and then letting them down. This has a damaging effect on vulnerable people.

In our recent response to the Tenant Services Authority consultation on building a new regulatory framework, Shelter supported the proposed objectives for the allocations standard. However, we recommended that detailed guidance on exclusions should be included in a TSA Code of Practice on Allocations:

- Firstly, where applicants are excluded for reasons of unacceptable behaviour, we recommend housing providers should be required to write to the applicant, giving reasons for their exclusion and setting out the action that the applicant must take in order to have the exclusion lifted.
- Secondly, we suggest that housing providers should agree to allow anyone back onto their lists who is positively working with a recognised agency that provides support to deal with issues such as budgeting problems or anti social behaviour (and providing the agency agrees to continue to provide this support if and when the applicant is housed).

---

<sup>13</sup>[http://england.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/exclusions\\_in\\_tyne\\_and\\_wear](http://england.shelter.org.uk/professional_resources/policy_library/policy_library_folder/exclusions_in_tyne_and_wear)

- Thirdly, we called for strong guidance in the TSA Code of Practice to eliminate the practice of requesting a number of nominations, and to limit RSLs' ability to decline local authority nominations except in cases where the accommodation is clearly unsuitable for the household concerned. We would like RSLs to simply house the applicant deemed by the housing authority to have the highest priority. In particular, where an applicant has been assessed as statutorily homeless, there should be no room for an RSL to refuse the nomination on the ground that the applicant may have previous rent arrears or a history of tenancy problems.
- Finally, the quality of local authority nomination agreements and their level of enforceability need to be improved. Whilst the 2004 good practice guide<sup>14</sup> contains good and comprehensive guidance on nomination agreements, there is no evidence that most nomination agreements are anywhere near approaching this standard. Such information that Shelter has available indicates that many nomination agreements are not even written down, or that the written agreement is so old that it cannot be traced. We are also aware that local authorities often do not enforce or even clearly monitor the terms of these agreements. We therefore recommended that the TSA Code of Practice should require housing authorities and RSLs to publish their nomination agreements so they are widely accessible to those who may have an interest in them.

#### **Q7. How have you involved your local community in putting together your response to this consultation document?**

Through its network of advice centres, free helpline and range of specialist projects, Shelter has direct day-to-day contact with thousands of people requiring allocation of social housing. Our response to this consultation is based on the experience of our clients and the specialist housing expertise of our advisers and other project workers.

In 2004 and 2005, Shelter was actively involved in three Choice Based Lettings pilot schemes, in the London Borough of Croydon, Stockport Metropolitan Borough Council and Sheffield Metropolitan Borough Council. In Stockport, we provided support with policy development and carried out a qualitative research study based on interviews with applicants to evaluate the extent to which the pilot scheme had met its policy objectives. In Sheffield, Shelter's Homeless to Home Project in the city undertook to work with previously homeless clients who had been housed under the scheme.

#### **Q8. Do you intend to revise your allocation scheme in light of the new statutory guidance?**

We have no comment to make on this question.

#### **Q9. If so, what changes will you be considering, and how might you engage local people and organisations in this process?**

We have no comment to make on this question.

---

<sup>14</sup> Office of the Deputy Prime Minister, Housing Corporation, National Housing Federation and the Local Government Association (November 2004), Effective Cooperation in tackling homelessness: Nomination Agreements and Exclusions

**Q10. Do you agree with the estimate in the impact assessment on the one-off familiarization cost associated with this policy?**

We have no comment to make on this question.

**Q11. Is there any further evidence or analysis relating to the initial assessment in the impact assessment of the wider costs and benefits of this new guidance which we should consider for the final impact assessment?**

We have no comment to make on this question.

**Q12. Is there any further evidence or analysis relating to the initial assessment in the impact assessment of the impact on race, disability and gender equality which we should consider for the final impact assessment?**

We have no comment to make on this question.

**Q13. Is there any further evidence or analysis we should consider for the full equalities impact assessment which we will be undertaking in light of this consultation in the autumn?**

We have no comment to make on this question.

**Q14. What impacts, costs and benefits do you think might be associated with any changes to your policy which you will be considering in the light of this guidance?**

We have no comment to make on this question.