

**Briefing**

# Fair allocations and choice based lettings

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## Introduction

In February 2000, Shelter published a discussion paper '*New Approaches to Housing Allocations*'. The paper considered the extent to which allocation of social housing should reflect the choices and preferences of prospective tenants, and to what extent judgements about housing need should determine allocation. Increasingly, the tension between low demand in areas of social housing and growing aspirations amongst tenants are posing challenges for traditional bureaucratic allocations policies based on need. These traditional approaches are often accused of reflecting the needs of the organisation rather than the tenant and, it is claimed, do not respond well to changing demand, causing problems for housing management and void control. Housing providers are looking at new ways of approaching allocation to overcome some of these problems and to encourage the creation of more sustainable communities. The paper concluded that in principle, introducing tenant choice into allocations procedures could bring benefits, but that introducing choice should not override the importance of prioritising those in greatest need. Since 2000 many housing providers across the UK, including the City of Edinburgh Council, have introduced an element of tenant choice into their allocations procedures, and Shelter has continued to express concerns about the day-to-day operation of these procedures. In the light of recent experience, this paper looks at the role of choice in a fair allocations policy.

It is readily recognised that 'choice' does not stand alone as a major influence on housing allocations. Housing transfer, section 5 referrals for homeless people, and the development of common housing registers are all as important. This paper cannot cover all these issues but Shelter will continue to work on them.

## Background to Choice Based Letting (CBL)

Approaches to housing allocation have been evolving over the last ten years from the traditional 'paternalistic' process where providers select potential tenants for the houses they own, to a system that explicitly reflects preference and aspiration amongst tenants. Growth in the Registered Social Landlord (RSL) sector and stock transfer has changed the profile of social housing providers and prompted reform of allocations policy. Some reforms have reflected the modern expectations of social housing applicants as 'consumers' rather than recipients of service.

Housing allocation is becoming more than just about meeting individual housing need. Allocation is increasingly seen as having a wider role to play in neighbourhood renewal and the creation of sustainable communities, and the principle of consumer choice is at the heart of this. Where people feel they have some say over where they live, it is argued

there is more chance that their tenancy will be sustained. Choice can therefore have important implications for housing management and preventing homelessness.

In England and Wales, the Office of the Deputy Prime Minister (ODPM) expects all housing authorities to be operating some form of CBL scheme by 2010. No such target has been set for Scotland and the attitude towards choice based lettings appears more cautious. The recent Scottish Housing Policy Statement<sup>1</sup> recognised, for example, that introducing choice is not unproblematic. One aspect of this is that while allocation policy has been moving towards introducing market principles of demand and supply, legislation in Scotland has introduced strict measures to protect the rights of homeless people and those in housing need. Allocations policies must increasingly balance the twin goals of enabling preferences to be taken into account and ensuring that statutory duties towards those in housing need are met.

Choice based letting systems have been adopted by a number of social landlords including Berwickshire Housing Association, for example. Edinburgh City Council introduced the largest system in Scotland to date in April 2003, and a number of other social housing providers including Glasgow Housing Association are reviewing their allocations process and considering introducing choice based letting. Despite the enhanced rights for homeless applicants brought in by the Housing (Scotland) Act 2001 and the Homelessness etc. Scotland Act 2003, there is currently no detailed national framework in Scotland for what constitutes a good and fair allocations system. The 2001 Act introduced limited provisions for governing letting, but landlords were largely left with the discretion to develop allocations policy to meet local needs. While Shelter fully supports the policy of enabling local discretion over allocations, there should also be clear principles setting out requirements which underpin a fair allocations policy.<sup>2</sup>

## What is a fair allocation system?

Shelter's core position is that an allocations policy should be able to effectively prioritise those people with the greatest housing need. This does not rule out introducing choice into the system, as long as housing need remains the most important principle. In our view, any policy or process for allocation should be judged by whether the needs of homeless people are met. There are three aspects to this. Firstly that homeless people are not disadvantaged by a system designed to provide greater choice to all tenants, secondly that the system has an effective means of establishing priority between

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<sup>1</sup> Scottish Executive (2005) Homes for Scotland's People: A Scottish Housing Policy Statement

<sup>2</sup> The Scottish Executive published a circular in 2001 that interprets the legislation on Housing Lists and Allocations. In addition, the CiH has produced a guidance note on good practice in exclusions from housing registers. Communities Scotland does not produce guidance on housing allocation but does have self assessment questions on the performance standards regarding lettings that local authorities are encouraged to address prior to a review.

applicants, and thirdly that the design and operation of the allocation system ensures that the local authority's statutory obligations are met:

- An allocation system should be fair to all and not disadvantage directly or indirectly, any individual or group: for example, people whose first language is not English or people who may be new to an area or people in the midst of a crisis. Homeless people should be entitled to compete in the same way as other applicants. This would mean not being restricted to certain properties, having no additional time limits and being entitled to the same number of bids and offers as other applicants. To ensure that this does not result in an extended stay in temporary accommodation, ongoing reviews should be given to homeless and vulnerable applicants. In particular, dedicated support should be provided to ensure that everyone has the same opportunities in the application process. Where the allocation process changes to allow applicants an active rather than a passive role in selecting their house, there should be in-built facilities to enable everyone to participate on an equal basis. This might be in the form of advice and assistance, detailed and accessible adverts or additional information for people applying with special needs.
- There will be some people who are in urgent need of housing and so cannot participate in a choice based letting system with the same flexibility as others. A CBL system is designed to allow people to bid for houses they like as they come up, and to submit many bids over a period of time until they are successful in securing the property they want. Homeless people especially will not have the luxury of time to compete in this way and so are forced to bid more often or more quickly for properties. The consequences of an unequal ability to exercise choice would be that the people least able to choose would be concentrated in the areas where fewest others would choose to be. The danger is that homeless households are pushed into low demand areas and are further marginalised. To counteract this, there should be an effective means of establishing priority for people who cannot wait to exercise choice. While choice based allocation has the potential to encourage sustainable housing solutions, without robust and sensitive means of deciding the priority between applicants, it may amplify the problems for those less able to compete.
- Legislation in Scotland gives local authorities specific duties towards homeless applicants. The operation of their allocation system must ensure that these duties are met and the rights of homeless applicants are safeguarded. These obligations include: the requirement to give reasonable preference to certain categories of applicant; the requirement to secure permanent accommodation for homeless applicants; the accommodation meets certain standards<sup>3</sup>. The law also provides that there is a right to

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<sup>3</sup> The Housing (Scotland) Act 2001 requires that permanent accommodation offered to a homeless person must meet any special needs of the applicant, be reasonable for the applicant to occupy and be in the best interests of any dependent children of the applicant.

seek a review of whether the council has discharged its statutory duties towards homeless applicants.

## Potential problems with CBL

There are many possible ways that choice can be introduced into an allocation system. One example of a CBL scheme, known as 'EH-CHOICE', has been running in Edinburgh since April 2003 and can be used to illustrate how a choice based letting system might work. In Edinburgh, properties are advertised weekly on the Internet, in a newsletter and in a local paper. Each applicant is defined as either a mover or a starter and may bid for three properties in their category per cycle. After the closing date, if more than one bid is received for a property then the successful applicant will be determined by the priority given to each. A household may be awarded a priority status classed as either 'Gold' or 'Silver'. A Gold status is awarded for applicants with health or disability needs. A Silver status is awarded to applicants who are homeless and in priority need, where rehousing is required due to demolition or regeneration works, or where the household is identified as being in exceptional housing need. Beyond priority status, applicants are ranked according to the time they have been waiting and the length of time in their last tenancy. This allocation system gives some consideration to the overcoming the problems of choice based letting for those in urgent housing need, but how does it work in practice?

### Giving priority status

Establishing priority status in a CBL system is intended to overcome the disadvantages that some applicants might face in an open market system. It is intended to protect them and enable them to access better housing outcomes. Yet in practice giving priority status does not always have this effect. The following are examples of where a system of priority status may not work for homeless people:

- Priority status may be time-limited for households who are homeless. The homeless applicant may bid for properties while in temporary accommodation but there is an additional requirement that bids must be realistic. Realistic bids can be defined as bids that the applicant has a chance of securing and applicants are advised that they have little chance of securing the most popular properties. If bids are not made or are unrealistic, priority status may be withdrawn.
- An applicant would have to have a sophisticated understanding of the allocation system rules to make the best decision in applying for housing. In certain cases it may be best for the applicant not to apply as homeless and get priority status. For example, an applicant who is entitled to apply as homeless because of relationship breakdown may have better opportunities in bidding by not receiving priority status, particularly if they have been in their current property for a long period. This is because they would have the freedom to bid for whatever properties they wanted without a time limit, and

their time in the previous house would be used to rank them when the bids were considered.

- In our example, if priority status is withdrawn after the time limit, then an offer of permanent accommodation will be made by the local authority outside of the choice system. Since the local authority's concern would be to achieve full occupancy, the properties that may be offered to a homeless applicant in these circumstances are ones for which no bid has been made and are therefore in low demand areas. Once an offer of accommodation has been made the local authority may consider that it has discharged its homelessness function. Many homeless applicants bid for houses that they do not want in order to avoid losing their priority status.

In circumstances such as these, the operation of a choice based letting system may leave homeless applicants in a position where they have no real choice but to accept properties that may be unsuitable or in the worst areas and this may result in them not being able to keep the home they have got. In this example, the system appears to act against the interests of people in the most urgent housing need.

### **Being fair to all**

A significant weakness of CBL schemes for homeless applicants is that they may not be in a position to cope with the responsibility of bidding, or may not have access to the resources, such as the Internet, that people in stable housing circumstances have in order to make the process easier. It may be possible to have the award of priority status postponed until the applicant is ready or in a position to begin bidding, but this is only likely to happen if they are already in contact with a support agency. Once an applicant is receiving support it is more likely that they will be able to bid effectively anyway.

### **Fulfilling legal duties towards homeless people**

There are three particular areas that Shelter has identified where the operation of a choice based letting system could impede a local authority from meeting its legal duties:

- Firstly, the requirement to give reasonable preference to certain categories of applicant under Section 20 of the Housing (Scotland) Act 1987. The shortcomings of the priority status system have already been discussed above, but it could also undermine the ability of a local authority to meet their statutory duties. A CBL system that gives different levels of priority based on particular needs, for example first level priority for urgent medical needs, and second level priority for unintentionally homeless should be able to give higher priority to someone who falls into both categories. A Court of Appeal in England recently found a CBL scheme operated by Lambeth Local Borough Council to be unlawful because it only gave the highest applicable level of priority. The court observed that where an applicant falls into more than one category

they should be treated as having greater priority than if they are an applicant to whom only one category applies.

- Secondly, Section 32 of the Housing (Scotland) Act 1987 (as amended by the 2001 Act) makes certain requirements in relation to the offer of permanent accommodation made to a successful homeless applicant. For example, it must not be overcrowded, meet any special needs, and be in the interests of children. The Act provides that any accommodation offered to the applicant is not accommodation for the purposes of the Act if it doesn't meet those standards. There is no automatic way to assess whether a property offered to a homeless applicant through the CBL scheme above meets the statutory requirements. The only necessary preliminary to an offer made by a local authority is that the homeless applicant has bid for the property. Thus, where an applicant, having made a successful bid decides they do not want to accept the offer, the local authority may insist that its duty is discharged, irrespective of any consideration as to whether the property meets Section 32 of the Act. Under these circumstances, the local authority shifts the burden of making the Section 32 assessment onto the applicant who is expected to make this judgement on the basis of an advert for the property.
- Thirdly, under the Housing (Scotland) Act 1987, the applicant has the right to seek a review of whether the local authority has discharged its duties. There is a danger that reviews are limited to a discussion of the bids that the applicant has made or not made, and then the applicant is blamed for his failure to bid properly or 'realistically'. The review the local authority is conducting, therefore, is of the applicant's use of the system rather than whether the council has discharged its duties.

In the example we have used, the impact of the CBL scheme seems to be to shift the burden of responsibility for securing permanent accommodation from the local authority onto the homelessness applicant. This is contrary to the intentions of the legislation.

## **Can choice based lettings be made to work for those in urgent housing need?**

There are, however, many possible ways to introduce tenants choice into an allocations procedure. The problems highlighted in our example indicate that choice and need are not easy to reconcile, but these problems are not necessarily insurmountable. In addition, there are many possible positive impacts of introducing choice into letting. A report published by Shelter in England, based on investigations of the local authorities piloting CBL ahead of 2010 deadline set by the ODPM, found that perceptions of how social housing is allocated had improved, and therefore the image of social housing itself was given a boost. The investigation found that applicants on the housing waiting list, local politicians and council members describe CBL as fairer and more transparent than

bureaucratic allocations systems. Using the Internet to view properties and make bids with quick responses has also improved the image of social housing and released staff that previously had to deal with appeals against allocations to concentrate on advising applicants.

However, the report echoes our concerns that in many cases the operation of CBL does not benefit homeless people. Where demand for houses outstrips supply, homeless applicants who are in urgent housing need are forced to accept accommodation that no-one else bids for. Their choice is restricted because they do not have the time or resources to compete in the market that choice based letting creates. The report does see potential for choice based letting to be improved in the interests of those in the greatest housing need. Using CBL, housing providers can be given the information they need to adapt more quickly to changing demand across their housing stock and the system could free-up resources to respond to specific needs. The report concludes that the flexibility and ability to adapt to changing demand could be used to meet the needs of homeless and vulnerable people better. This might include greater emphasis on advising applicants to make good choices and offering a dedicated adviser to help vulnerable people through the entire process from application to moving in.

## **What place for choice in a fair allocations system?**

Shelter has no objection in principle with CBL as long as it meets certain operational criteria. We recognise that there are genuine benefits to reforming allocation policies to make choice a central feature and that changes in the culture of housing allocation are necessary to bring about genuine change. This change in culture can have wider impacts on the image of social housing and is part of repositioning the affordable housing sector as not simply a tenure of last resort. Introducing choice into letting policy may make tenancies more sustainable and therefore contribute to preventing homelessness. There is also an important principle of ensuring that in an increasingly consumer-orientated society, the people on the lowest incomes are not excluded from having choice over their accommodation. However, within a CBL system the following criteria must be met to ensure that vulnerable and homeless applicants are not disadvantaged:

- A sensitive and sophisticated system of determining priority need, and an effective way of ensuring that needs are met within (or beyond) a choice based allocation system. The way that any priority status is given and administered should meet the requirement of homelessness legislation, and be sensitive to ongoing changes such as the phasing out of priority need by 2012.
- A high level of help and support given to homeless and vulnerable applicants to prevent them from being disadvantaged either by a restricted ability to choose because of extreme need, or by a reduced ability to compete in and use the system.



This support might include one-to-one assistance in choosing properties, or additional guidance and information about the procedure and their options.

- The penalties for refusing offers could be reduced or eliminated for certain vulnerable groups. This may result in longer reletting times and more voids, but the trade-off could be less tenancy turnover overall.
- Barriers, such as unreasonable time limits, which prevent homeless applicants exercising choice in the same way as other applicants, should be removed. All homeless applicants, particularly those with time-limited priority status, should be given regular review to ensure that the time they spend in temporary accommodation is minimised and they are given dedicated support to ensure that their housing needs are met.
- A proportion of vacancies could still be set aside for priority cases. These properties would represent a cross section of those available to let.
- Having a robust procedure for reviewing whether the statutory duties have been met.
- Ongoing monitoring is vital to ensure that the policy continues to meet its aims.

A detailed debate over the way that choice is introduced and the criteria that should be applied should not distract from the larger and more persistent issue of the lack of affordable housing. Real choice can only be achieved by additional investment in the quantity and quality of affordable housing available.

## Conclusions

CBL is not a standard model, but a different approach to allocation. As such, it should be viewed as one element in a broader system of allocation that should be looked at as a whole. Rather than condemning or endorsing choice as a basis for allocation, we need to focus on what is necessary to achieve a more widespread fair allocation policy. We would not seek a prescriptive allocation system. It is important that a wide range of allocation systems should be available to meet each local need, but that these should be underpinned by clear principles of fairness.

What is important for an allocation system is that it should be appropriate to the landlord, and their local context and housing market, while still guaranteeing that statutory duties are met. It is particularly important that vulnerable households receive the support they need to participate in the system effectively and that they are not disadvantaged by the design or operation of the system. The emphasis in any allocation system should always be on finding solutions for homeless people and not just ensuring that statutory duties have been discharged.

The recent Scottish Housing Policy Statement<sup>4</sup> recognises that there are a range of emerging issues for allocations policy and practice, including the relationship of CBL and common housing registers, and how to meet the twin objective of giving priority to those most in need and the development of balanced communities. The Executive is considering the development of specific guidance for landlords wishing to implement choice based letting in order to ensure that they are delivered consistently within the overall context of delivering common housing registers<sup>5</sup>. It is vital that this guidance gives proper consideration to protecting vulnerable and homeless households from being marginalised or disadvantaged by introducing choice into the allocations procedure.

A final consideration when assessing the impact of choice based letting is whether it is promising more than it can deliver in the context of chronic over demand and under supply in the social housing sector. Being able to choose is only beneficial when there is a meaningful choice to make. CBL may make allocations systems more transparent and fair than traditional bureaucratic systems, but they will not generate any real choice without ongoing investment in affordable housing.

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<sup>4</sup> Scottish Executive (2005) Homes for Scotland's People: A Scottish Housing Policy Statement

<sup>5</sup> op cit. page18. The Executive is collaborating in research being carried out by the ODPM on the longer term impacts of CBL based on 12 of the English pilot schemes and two schemes running in Scotland (the City of Edinburgh 'EH -CHOICE' scheme and the Borders 'Homehunt' scheme). This research is due to be published in April 2006. Scottish Executive Guidance is not expected until August 2006.