

Response to consultation

Shelter's response to the consultation on the update to the Code of Guidance on Homelessness

From the Shelter policy library

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Shelter

General

The first phase of the update is focusing on chapters 5-13 of the existing code. We would welcome comments on the detail of those chapters. In particular:

- **Are there any gaps?**

Shelter is very concerned that a sentence that was included in the existing code has been removed. The final sentence in paragraph 5.13 of the current code has been removed i.e. 'If it proves impossible to obtain confirming evidence of violence or the threat of violence, the applicant's expressed fears should be considered as sufficient evidence'. It is absolutely essential that this sentence is kept in. However, it should be modified to say 'abuse' instead of violence / threat of violence.

- **Are there any practical issues that could be covered in more detail?**
- **Are there any areas where you think the emphasis is wrong or could be improved?**

NB The next phase of the update will look at prevention issues and inter-agency co-operation and will take account of existing guidance on homelessness strategies as well as any messages arising from assessment of homelessness strategies

Format and style

We want the format to be as user-friendly as possible as well as more easily updateable than the current version. We would be interested in your views on:

- **Preferred format e.g. online, hard bound, loose-leaf**
- **Style e.g. extent of cross referencing, indexing etc**

The web version of the code should be seen as the primary version, and would be a valuable resource. However, as using the web version will not always be appropriate for some practitioners, a hard copy should also be produced.

The hard copy should be produced as a ring bound version. This would allow for ease of use, and particularly allow for annual updates to be inserted. Practitioners are more than capable of keeping a ring bound version of the code up to date; the incentive for practitioners is to ensure that the document is as user friendly as possible; a code that is well used and valued by practitioners will be kept up to date. Practitioners should refer to the web version regularly to make sure they haven't missed updates. If they have, they could download these updates from the web version of the code.

The style of the current code – broken down by 'Legal', 'Guidance' and 'Good Practice' paragraphs is useful, and should be retained.

The lack of page numbers in the draft needs to be addressed. The system of paragraph numbering in the current code is preferred to the sequential paragraph numbering used in the draft.

The document should be written with a view to being easy to understand. This is crucial for ensuring that practitioners understand and follow the code easily and regularly. Many of the sentences are extremely lengthy. They are therefore difficult to follow and interpret. Paragraphs 24 and 25 are examples of this.

In general, the code is quite 'text heavy'. If the code is to be user-friendly, then the format of the code must promote use. Pages should therefore include more bullet points, some important sentences in bold, or underlined. This will make the document less daunting to look at.

Each page should contain a right-hand margin for cross referencing; this would be a much better system than cross referencing in the current index, and practitioners having to flick back and forth to use the cross referencing system.

Use of Code

- **What can be done to assist optimum use of code among frontline staff?**
- **Is training needed?**

The Scottish Executive should produce a short leaflet setting out how to use the code. The leaflet should also be uploaded onto a web version of the code. This must be written in language that is easy to understand, and should promote the importance of the code for making the work of practitioners simpler.

In addition, the Scottish Executive should offer a system of accreditation for staff dealing with homelessness. This should be available to staff who wish to attend training of this kind. It should include evidencing proof of competence and knowledge of the legislation through training/study etc and would be available at different levels for different staff (similar to National Standards for Housing Information and Advice). Shelter's experience is that some local authority staff are unaware of the existence or importance of the Code of Guidance, and are not fully trained in housing or homelessness legislation. The Scottish Executive should work to ensure that practitioners are well informed through the code and through training.

Specific questions on individual chapters

Chapter 5 - Handling of applications

- i. **Does the proactive nature of an authority's duty to make enquiries require further emphasis?**

The Code should stress throughout that the local authority's duties under the Act are of a corporate nature.

- ii. **Is there other/better guidance needed to ensure that 'first screening' of applicants does not take place? The sentence relating to 'prominently displayed notices' is welcome.**

- iii. **Should more information be given to frontline staff on community care assessments? What kind of information?**

The code should give guidance on who should carry out the assessments. Fuller guidance on the relevant Children (Scotland) Act duties would be helpful – otherwise cases and responsibility will still be passed from housing to Social Work and back again. General training would be helpful along with clear guidance about how to deal with such cases including referral procedures.

General points

- 2 The draft code suggests that a person being 'homeless or threatened with homelessness' triggers the need for inquiries to be made. This is not the case. There is no automatic trigger for making a homelessness assessment. Inquiries are only made if a person wishes to make a homeless application. Staff must use their initiative to identify whether a homeless application would be appropriate.
- 4 It would be useful to give examples of what is meant by screening e.g. an applicant approaches with a Notice To Quit and is sign-posted to another agency for advice on the NTQ without a homelessness assessment being offered.
- 6 It is important that staff are aware that it is the law which is the basis for their own authority's policy on homelessness. Such knowledge may empower staff to recognise weaknesses in the policy.
- 7 The code should recognise that care must be taken when asking questions in public reception areas.
- 9 At the end of the paragraph the code states that there are circumstances where it may be appropriate to 'defer taking the homeless application another day'. To ensure that the code doesn't introduce the practice of deferring applications, the code should state that while the application should always begin on the day of presentation, the interview or the inquiries could be deferred. Examples of why this could happen should be given in the code.

It might also be appropriate to say something about young people at this stage. Young people who have left the family home may not always be able to reveal the reasons for this immediately i.e. it may be too difficult, they may not trust the staff member sufficiently, they may never have revealed the reason before. Housing officers often contact parents in this situation and ask them if they will take the young person back and the parents agree. Staff should be mindful of the fact that they may be sending the young person back to a situation of abuse. In such cases it may be appropriate to allow the young person some days in the temporary accommodation so that a relationship of trust can develop with the staff member. It should be stated clearly in the code that in cases of young people approaching a local authority, the young person's parents should not be contacted without the permission of that applicant.

- 15 Recording systems should also ensure that it is possible to record even when it would be inappropriate to contact an applicant at a home address or phone number (e.g. in cases of domestic abuse).
- 18 The reference to those who have suffered violence or sexual abuse should be taken out. This is dealt with elsewhere and confuses a paragraph that is trying to give guidance on those whose first language is not English. The last sentence should be given a paragraph of its own. Staff should be trained to enable them to identify where someone has (or may have) mental health problems or learning disabilities. The local authority should access sign language interpreters for deaf applicants.
- 21 The final sentence that was in the original code (paragraph 5.13) has been removed i.e. 'If it proves impossible to obtain confirming evidence of violence or the threat of violence, the applicant's expressed fears should be considered as sufficient evidence'. It is absolutely essential that this sentence is kept in. However it should be modified to say 'abuse' instead of violence / threat of violence.
- 22 Sentence beginning – 'If the applicant alleges assault' needs to be clearer. (When discussing this sentence we had two different interpretations.) Homeless officers should ensure that an applicant is advised at the start of the interview that disclosure of certain issues may mean they need to be brought to the attention of Social Work. The use of the word 'victim' should not continue in the code. The final sentence should refer to 'abuse' instead of 'violence or sexual abuse'.
- 23 The terms 'homelessness officer' and 'case officer' are both used here. One consistent term should be used.
- 25 The phrase 'potentially homeless' should never be used – it causes confusion and in Shelter's experience can be used to mean a whole range of things, from potentially roofless to threatened with homelessness. ONLY the proper legal terms should be used, which in this case should be 'threatened with homelessness'.

Also, there *are* duties to people who are 'not homeless / threatened with homelessness' – they have to be provided with a decision letter, offered the right to review, offered advice and assistance in relation to the review and offered further temporary accommodation if appropriated while a review is

- ongoing. To make this absolutely clear, and avoid confusion, the phrasing needs to be reconsidered.
- 26 It would be useful to identify/clarify where the duty to provide a single shared assessment comes from.
- 30 This paragraph does not really give any guidance or advice. It merely sets out the problem. It would be useful to summarise the circular.

Chapter 6 - Inquiries into Homelessness

General points

- 37 This paragraph explains the legal definition of homelessness but has not been expanded to include the change in the legislation from the 2001 Act i.e. section 24(2B)(3)(e) (the Awua repair). This section is not identified anywhere else either and it is important that reference is made to it. In the 3rd bullet point, the example given is quite confusing, especially taking into account that many Homelessness Officers may only have a very basic understanding of private sector rights.
- 40 It is not clear from this paragraph whether the same applies to relationships that have the characteristics of marriage. In addition, the use of the terms 'full blood' and 'half blood' may be offensive to some users of the code.
- 41 This section should also state clearly that the homeless applicant can include whoever they see as forming a part of their household on their application. The local authority cannot carry out any form of 'screening' at this stage by refusing to allow applicants to include people on the application. If the local authority has doubts as to whether it is reasonable for an applicant to reside with persons named on the application they must inform the applicant of this within the section 30 letter.
- 42 The code should state that it is good practice to accept that a child lives with the applicant even where a child only lives with the applicant at weekends and holidays. A child is unlikely to split their time 50/50 between parents following a relationship breakdown for practical reasons like being close to school etc., however the code should treat both parents the same if they have an informal agreement for caring for the child.

42 and 43

It is important to note in these paragraphs that, immediately following a relationship breakdown there are often no patterns of contact established. A common situation seen by Shelter staff is where the man leaves the family home and is accommodated in hostel accommodation. His children cannot visit the hostel and so he cannot state that he has contact beyond a few hours a week. He consequently gets dealt with as a single applicant and the relationship he has with his children is damaged. Staff should be sensitive to focusing not on what contact arrangements are at the point of presentation (which is often the time of most crisis and when relationships are most fragile) but instead they should focus on what the intention is for contact to become when the applicant is suitably housed. In cases of relationship breakdown staff should err on the side of presuming that the parent to leave the home will

continue provide care to his children unless evidence can be gathered to the contrary.

45 After 'private tenants' add 'and owner occupiers'.

46 The phrase, 'If it proves impossible to obtain confirming evidence of violence or the threat of violence, the applicant's expressed fears should be considered as sufficient evidence' has been missed out. This must be reinserted.

There is an opportunity to include other situations about 'unreasonable to occupy' e.g whether there has been relationship breakdown between partners or parents / teenagers.

'Act' – last word, first sentence. State that this is H(S) Act 1987 as not all users of the code will necessarily know this.

The code must state clearly, in unambiguous language, that there is no need for the police to provide a statement saying the applicant's life is in danger (as often required by local authorities) in cases of external violence.

50 In relation to statutory overcrowding, there should be no requirement to also consider the question of 'endangering health'. If someone lives in accommodation that is statutorily overcrowded, they should automatically be considered as homeless.

Chapter 7 - Inquiries into Priority Need

- iv. **How would you describe vulnerability? What definition of vulnerability should there be in the Code?**
- v. **Is further guidance on the specific categories set out in legislation required?**
- vi. **Are there other examples of vulnerability for 'other special reason' that should be included at this stage? (I.e. in advance of proposed research and next phase of expansion of priority need).**

Shelter proposes giving priority to those who may be vulnerable as a result of drug or alcohol addiction, or who have recently received treatment for drug or alcohol addiction. It should be made clear in an updated code that anyone, male or female, fleeing domestic abuse will be deemed to be in priority need, regardless of whether he or she is in a mixed or same-sex relationship. Those vulnerable as a result of external violence should also be included.

Some local authorities will find giving priority need to those vulnerable as a result of drug or alcohol addiction too great a leap in terms of practice. However, this is where the code comes into its own in terms of providing guidance, and promoting good practice.

General points

52 B

A person with whom dependent children reside or might reasonably be expected to reside.

There is still no recognition being given to the provisions contained within the Children (Scotland) Act 1995 in respect of joint/shared childcare. The Children (Scotland) Act 1995 places the emphasis very firmly on mutual arrangements between parents rather than involving the courts. The CoG places a requirement for clients to have legal arrangements i.e. joint or shared custody, which is no longer necessary and many clients will not have. The guidance should not be forcing clients down an unnecessary course of expensive legal action if they want to be awarded priority need. Clients may not be able to pursue this course of action to get the necessary legal paperwork because the emphasis is now on informal arrangements. There is a sentence in the existing CoG which states: '*Residence and access orders should not be required*'. This has not been included in the amended draft. The updated code should be building on, and improving the existing one, not making the position more difficult for clients.

C

A person who is vulnerable as a result of –

Other special reason – there is no guidance now on what circumstances may be covered by this category. It is difficult at present when there is guidance to get LA's to recognise vulnerability for other special reasons.

E

A person with whom a person referred to in paragraph C or D resides or might reasonably be expected to reside.

This should also include paragraphs G, H, I & J. It is particularly important that this is included for people who run the risk of domestic abuse, as it may be a member of the applicant's household who is not a dependent child that is at risk. The same for people fleeing violence as outlined in paragraph J.

Chapter 8 - Inquiries into Intentional Homelessness

General points

58-60 Deliberate Acts.

- The code should set out what 'deliberate' actually means in this context.
- **Substance abuse** problems should be *explicitly* mentioned as a factor that lessens the likelihood of an applicants actions being deliberate.
- **Youth, inexperience and education background** should also be explicitly mentioned as factors in determining what is reasonable for an individual to know about the consequences of their actions or omissions.

Mention should be made about the particular difficulties experienced by those from **socio-economically deprived** backgrounds. Something along the lines that cases should be dealt with sympathetically and that decisions should be informed by an appreciation of the problems associated with social exclusion.

Decision makers should refer to their earlier determinations of homelessness and priority need when making determinations on intentional homelessness. For instance vulnerability in terms of a section 25 determination on priority need may crossover with determinations on whether an applicant's actions were deliberate or not. A determination that the applicant is homeless because it is not reasonable to occupy their accommodation in terms of Section 24(2A) has an obvious impact on a determination concerning whether the accommodation formerly occupied was reasonable to occupy in terms of a **Section 28** intentional homelessness.

61 This paragraph mentions the duty to provide temporary accommodation and Advice and Assistance for intentionally homeless households. It talks of the duration as being equivalent to a reasonable opportunity to find accommodation. One thing that could be added is that the prescribed advice and assistance must have been given prior to any termination of temporary accommodation. A reasonable opportunity to secure accommodation cannot possibly have elapsed until the authority has completed its advice and assistance duties.

62 The paragraph is clear and phrased well, however it uses an uncommon (though serious) case example in relation to intentional homelessness; that of a young person who has been sexually abused. A better, or additional, example to use would be that of someone who has lost his or her accommodation because of rent or mortgage arrears. This is by far the most common scenario in intentional homeless cases. In Shelter's experience, leaving home because of sexual abuse is certainly an important issue but not often relevant to intentional homelessness. The guidance should try to reflect the more common scenarios as opposed to the less frequently occurring ones. These situations are where local authorities need explicit guidance.

There needs to be more emphasis on residual duties under the Children (Scotland) Act 1995, that staff should be familiar with the corporate duties that the Council has under that Act and that proper protocols should be in place to ensure that appropriate staff in e.g. Social Work Departments are made aware of potential duties at an early stage.

- 63 Confusion is created in this paragraph by calling 'unsettled accommodation' ('like a Short Assured Tenancy') 'temporary accommodation'. The term temporary accommodation should be reserved for accommodation secured by local authorities under Section 31(3) for homeless applicants. In addition what is and what is not settled accommodation is not always clear. For example where a council tenant leaves their tenancy for an SAT: is a Short Assured tenancy to be viewed as unsettled accommodation when it is the prevailing statutory tenancy in the private sector and the tenant has no other option available? In *Knight v Vale Royal* BC Court of Appeal (Civil Division) 23 July 2003 it was held that the English equivalent to the SAT was 'likely to be settled accommodation' though the issue was a question of fact and degree.

A prospective private sector tenant who wants to move for whatever reason has no other real tenure options because the Housing (Scotland) Act 1988 permits landlords to offer the less secure SAT. The paragraph suggests that the tenant should have good reasons for moving to less secure accommodation like moving to obtain employment. The paragraph as written seems to suggest that those in more secure forms of occupation should not trade down their security if a future homeless application is to be successful. This represents a restriction on the individual's right to choose where they live and acts as a disincentive to social mobility. The reason why the less secure SAT exists is because government legislation has created it and landlords have an understandable inclination to offer them as opposed to more secure forms of occupation. These circumstances are beyond the control (and not the fault of) someone who simply wants to move house and it is not in the interests of social justice or equity that an applicant may be found intentionally homeless for simply deciding to live somewhere else a number of months before. The issue is whether one can show that they deliberately 'traded down' with the intention of making a homelessness application.

There is another problem with the interpretation of paragraph 8.6 in the current code in that it does not necessarily dovetail with the principle in paragraph 8.7 of the current code that the applicant must have a reasonable understanding that their new tenancy could lead to them becoming homeless later.

The guidance previously takes the line that 'reasonable' is to be viewed in terms of what *the applicant* is likely to be aware of as opposed to any kind of objective standard of what they should be aware of. When moving from a more secure Scottish Secure Tenancy, or an Assured tenancy for that matter, to a Short Assured Tenancy is it likely that any normal person will be aware of its attendant lack of security? This would require knowledge of Sections 32 and 33 of the Housing (Scotland) Act 1988. Most tenants do not understand the security implication of the various tenancy types and think they can move freely between them.

- 64 The second bullet point: guidance should not say 'though a person evicted for anti-social behaviour would normally be considered intentionally homeless'. It should be replaced with the following, for the sake of clarity: 'Local authorities should not make automatic findings of intentional homelessness in cases of eviction for anti-social behaviour. Local authorities should take account of issues such as mental health problems, lack of support etc.'

66 Use of the words 'genuinely' and 'real' leave the guidance open to subjective interpretation. Shelter recommends they be removed.

66-68 There is no mention of the most common causes of financial difficulty related to home loss;

- Unmanageable levels of consumer debt. Some mention of its prevalence in modern day society would be a progressive step and as well as a statement that it should generally be considered as a genuine financial difficulty.
- Relationship breakdown and the death of a partner. These commonly reduce household income and cause great emotional distress where one partner remains in the home. In addition to the lost income the emotional stress they are under leads to difficulties coping financially.
- Prior eviction for rent or mortgage arrears is the most common scenario where intentional homelessness is used to stand in the way of a permanent offer of accommodation. While it is mentioned in the chapter it is not dealt with on its own while less common scenarios like tied accommodation are. There should be a separate paragraph on it to finally clarify the position. Issues to be covered would be:
 - It should never be assumed an applicant is intentionally homeless where they have lost their accommodation because of arrears of rent or mortgage.
 - The reasons why these arrears accrued should be fully explored and known to the officer making the decision or their decision is invalid.
 - The officer must then decide if the arrears resulted from deliberate acts or omissions by the applicant, and whether these acts or omissions directly caused them to lose accommodation that it was reasonable for them to remain in.

There then could be a reference to follow paragraphs 8.7-8.11 in the current code as guidance in making the above determinations.

67 All debt should be taken into account, not just 'second mortgage costs related to legitimate housing costs'.

There also needs to be a reference to the fact that financial difficulties may be tied to Housing Benefit; delays in processing, refusal of benefits and full costs not being met. In such circumstances, the applicant should not be intentionally homeless.

72-74 This is placed under the heading of 'Period for which intentionality lasts'. The content of the paragraph does not deal with how long an intentionally homeless determination is valid, but rather that young people are prone to false starts and that a conclusion that the applicant acted deliberately should only be reached in the most extreme of cases. It would be more appropriate to place this between paragraphs 12 (violence) and 13 (tied accommodation) in the 'Special Cases' section. Where it is placed now is confusing and could be replaced with a new paragraph suggesting that a shorter time than normal elapse when allowing repeat applications for a young person previously found to be intentionally homeless.

This paragraph comes under the general heading 'Special Cases'. Para 12 deals with violence, pregnant women and relationship breakdown. It would be clearer if each group had its own paragraph and sub-heading under the main 'Special Cases' heading. It would enhance the clarity of the guidance in that the general principles of Section 28 are addressed and then certain special groups are looked at.

Chapter 9 - Local Connection

- 78 First sentence: replace 'unintentionally homeless and in priority need' with 'in priority need and unintentionally homeless'. It is important that the sequence is correct in the guidance.

Last sentence. The accepting authority must recognise the decision of the referring authority; therefore there is no need to make any further enquiries.

It appears that the word 'permanent' has been omitted in terms of accommodation (halfway through the paragraph). '...then the duty to secure permanent accommodation will remain with that local authority'.

- 82 The final sentence of paragraph 9.6 of the original code has been removed, i.e. 'this risk includes threats of violence which are likely to be carried out (section 33 (3) (a) (b)).

- 84 The sentence, 'this applies in a Scottish context by virtue of section 27(2)(a)(iii) should read section 27(2)(a)(ii)

It would be helpful to include paragraph 9.2 of the original code titled 'General' in order to expand on paragraph 77 and to give an overview of the subsequent paragraphs. It also introduces the criteria of 'anyone who might reasonably be expected to reside with the applicant' and not only the applicant when determining local connection (later expanded on in paragraph 9.4).

Chapter 10 - Accommodation

This chapter jumps between guidance on permanent accommodation and guidance on temporary accommodation. It was viewed as confusing by practitioners within Shelter.

In addition, the code should state clearly the difference between interim accommodation and temporary accommodation, and when they should be used. Throughout this chapter, the term 'temporary accommodation' is used many times when the term 'interim accommodation' should have been used. Confusion in this area will lead to bad practice, and should be avoided at all costs.

- vii. **Is the guidance on 'reasonable opportunity' sufficient? Should an indicative timescale be included or will that lead to blanket policies that do not sufficiently consider individual and local circumstances?**

More guidance is required on what constitutes 'reasonable opportunity'. Many Local Authorities are still working to 28 days. While the code should not be highly prescriptive, as this risks further bad practice, it should set out criteria which Local Authorities should take into account when determining 'reasonable opportunity'. This would avert the problem of deciding how long an individual should spend in temporary accommodation.

viii. Is more information needed on dealing with those in financial difficulties? If so, what kind of information would be helpful?

ix. What factors should a local authority take into account when determining the level of reasonable charges for a family or individual in temporary accommodation?

Re 'reasonable charges': this needs to be more consistent across local authorities. They should consider the housing costs that applicants were paying in their previous accommodation or the amount that they would be likely to pay in a mainstream council tenancy if their financial circumstances were the same.

General comments

94 'Local authorities should bear in mind the possibility that transitional arrangements may be required when this duty expires'. This sentence is very ambiguous and should be made clearer.

96 Requires to be split into 2 paragraphs; one dealing with the duty to provide temporary accommodation and advice; the other setting out that it is possible to set up a non Scottish secure or assured tenancy in such circumstances.

Shelter believes the code should include a section stating that it would be good practice to give the same level of advice and assistance to applicants who are homeless, in priority need and not intentionally homeless.

103 This paragraph should also refer to the duty of a local authority to have regard to the best interests of dependent children.

104 Regarding taking into account what is a reasonable offer; this should be a large and well-emphasised section of this chapter, and it will impact on Chapter 12, i.e. the number of reviews that are applied for. When emphasising what should be taken into account, the code should also set out other requirements as in 2001 Act, i.e. best interests of the dependent children, special needs of the applicant etc. The code should give a list of examples of what should be taken into account. For example, whether the dependent children would have to leave school, whether a former drug user would be put at risk of restarting an addiction because of the proximity of other drug users etc.

107 Temporary Accommodation).

Shelter is aware of some cases of poor practice regarding s.5 referrals from local authorities to housing associations. The code should advise local authorities to monitor RSL practice regarding s.5 referrals. If particular RSLs are continually refusing lets then appropriate action should be taken. At all times, the priority should be to house the homeless person in accommodation that is reasonable within a short period of time.

104-109 (Permanent Accommodation).

RSLs should not refuse a referral merely because it has appropriate stock but thinks it may not have any availability during the specified six- week period. From experience, some RSLs are refusing referrals, saying they wont have accommodation within the specified time. This refusal limits the local authority in meeting its obligations, particularly given the fact that some local authorities have no housing stock of their own. Given that there is no way that an RSL can be sure that no accommodation will become available, the local authority should consider whether it would be in the applicant's best interest to make the referral and monitor the turnover in stock.

113 It is unclear whether this paragraph is referring to temporary or permanent accommodation.

If it is referring to permanent accommodation, emphasise that many private landlords will only provide Short Assured tenancies. In such circumstances the local authority has not fulfilled it's duty to applicants to whom they owe a duty to provide permanent accommodation.

118 Why the need to notify the other local authority of the outplacement? This needs to be made clear.

Chapter 11 - Advice and Assistance

General points

156. Local Authorities should be encouraged to exercise their discretion to accept late appeals.
160. Shelter disagrees with the use of the term 'if appropriate'? Reasons for the decision should always be given.

Chapter 12 – Notification and review of decisions

- x. **If an applicant has requested a review of a decision, should the particular property offered be held pending the outcome of the review? What are the implications of this? What other approaches could be taken?**

The code should state that accommodation offered to an applicant should always be kept available for that applicant until the outcome of review is known. This is because when an applicant requests a review, he/she is refusing the offer on the grounds that it does not meet the standard set down in section 32(5) of the Housing Act. If the review finds in his/her favour, then a new offer must be made, and the accommodation can be offered to someone else. If the review finds against the

applicant, then he/she has to decide whether or not to accept the offer, even though he/she believes it does not meet the required standards. If the accommodation has been offered to someone else, making that decision is not possible for the applicant.

The code should give local authorities guidance on how to prevent a high number of reviews being applied for. If the local authority properly considers what is reasonable accommodation for the applicant, and sets out in the decision letter why the accommodation was considered reasonable, then in Shelter's experience as an advocacy organisation, far fewer applicants would be willing to apply for a review.

xi. Are there other matters that a 'model' decision letter should contain?

The Code of Guidance should provide a checklist, as well as model decision letter, as local authorities are unlikely to agree to a standardised letter across all Local Authorities

The checklist ensures that a local authority must consider all areas, while not restricting the format of letters. Some local authority representatives wished flexibility in the format of a letter depending on appropriateness for each applicant.

The Code of Guidance must include that offers of accommodation must be given to applicants in writing, and must include the applicant's right to review. This letter is in addition to, not instead of, the homeless application decision letter. This is an important point as offers are frequently made up to a year after the initial decision letter.

xii. It would be helpful to know of any specific experiences of the new legislative review procedures (that is the procedures introduced by the 2001 Act).

The parameters of the review process appear unclear, for example whether the review only addresses the specific area of disagreement. It is not clear whether it gives the local authority and applicant an opportunity to review all or any aspect regarding the case?

The Code of Guidance should clarify this point, particularly to assist applicants and advisors in preparation of any appeal submission.

General points

- 152 The code should not use the term 'suitable accommodation' in this context. This will confuse practitioners. The term 'reasonable accommodation' should only be used, to ensure consistency.
- 155 Change the last line of this paragraph to 'Applicants should be advised that they have a *continued* right to *interim* accommodation while the review is being carried out'.

Chapter 13 - Protection of Property and Action on Unoccupied Houses

General points

The draft Code of Guidance does not make reference to the requirement for a landlord to complete a written inventory of belongings prior to any removal or storage. Good practice would suggest this should be completed with the applicant (if available) signing an agreement and receiving a copy of the inventory. This would minimise future disputes regarding complaints of missing items etc.

The draft Code of Guidance does not refer to where responsibility for storage rests in the event of a Section 35 or Section 38 referral from one Local Authority to another. (Including delivery arrangements)

Section 38 of Draft Code of Guidance states that local authorities must wait a minimum period of 6 months prior to disposal of belongings. Is this correct? I understood it was only 28 days and only 6 months if the value of the belongings was assessed as greater than the cost of storage for 6 months.

Appendix One

Shelter held a seminar on the draft Code of Guidance on the 16th October. The seminar was attended by practitioners from across Scotland who use the code on a regular basis. They were given the opportunity to put forward their views on the new code in afternoon workshops. Below are the responses made by practitioners in workshops to various aspects of the consultation on the code.

NB The views expressed below are those of attendees at the recent Shelter seminar on the Code of Guidance. Attendees were asked for their views in workshops in the afternoon. The views below are not necessarily the views of Shelter.

Chapter 12. Notification and review of decisions

If an applicant has requested a review of a decision, should the particular property offered be held pending the outcome of the review? What are the implications of this? What other approaches could be taken?

Current practice appeared to vary across L.As. General opinion agreed offer should be held open to conclusion of review, however concern expressed over the potential loss of rental income and delay in applicants moving out of temporary accommodation as a result. View that reviews should be convened promptly to minimise delay and loss of income.

Action: This issue must be addressed in the Code of Guidance and separately in any Local Authority/RSL Best Practice protocols.

Are there other matters which a 'model' decision letter should contain?

Representatives discussed the merits of a checklist of areas to cover in any decision letter. General consensus was that Code of Guidance should contain both a 'model decision' letter and a checklist. There was concern the model decision letter was 'too legalistic' and could be difficult to understand. Explanatory leaflet in 'plain English' would be useful. One suggestion regarding the 'model decision' letter was to include a named contact person giving contact details to be available to clarify any issues regarding the review.

It would be helpful to know of any specific experiences of the new legislative review procedures (that is the procedures introduced by the 2001 Act).

Some local authorities were simplifying their review procedures and this appeared to be in part due to the workload of reviews and resource implications of Applicants continuing in temporary accommodation.

Generally, the concern over limited resources, both in temporary and permanent accommodation, through a reduced housing stock permeated all areas of debate.

The monitoring and accountability of review outcomes was raised, with a suggestion of a need for an external body to independently evaluate local authority's review decision outcomes.