

Consultation response

Social Housing

Allocations: A Practice

Guide

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Shelter

Scotland

Summary

- Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the revised Social Housing Allocations Guidance. This document is a useful consolidation of existing guidance and developments in policy and adds useful illustrations of practice across Scotland.
- It is vital that despite pressures on limited stock and competing local priorities, all allocations must be needs-based and adhere to all relevant legislation and statutory duties. This is supplementary guidance to existing legislation and should be used to inform allocations policies and for reference to best practice examples.
- It is very important that there is clear communication with customers throughout the allocation process and it is good to see this emphasis reflected in the guidance.
- Shelter Scotland has some concern over the sections dealing with length of residency. Legislation is clear that length of time for which an applicant has resided in an area cannot be taken into account when allocating housing. Paragraphs 41 and 42 are ambiguous and given the complexity of the area, these should be amended to avoid any confusion or misinterpretation.
- More generally, we believe that commentary and discussion around local connection is unhelpful and can misrepresent the current provisions for taking local connection into account when allocating houses. There is no evidence to suggest that local people are systematically losing out on the allocation of housing and where there are concerns they stem from pressures on stock.
- Shelter Scotland feels that the guidance on reasonable preference should be clarified to explain where statutory requirements sit alongside reasonable preference groups. There is wide consensus that the current reasonable preference category is outdated and should be revisited to reflect current priorities and circumstances.
- To improve the transparency of all allocations, Shelter Scotland recommends that a process be put in place to allow for a third party to verify any allocations where the customer feels they have been unfairly treated. In cases where it is not appropriate to disclose the reasons another person was allocated the tenancy, it would help restore faith in the system to know that the allocation was both legal and justified.

Introduction

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on guidance for the allocation of social housing. Shelter Scotland sat on the Allocations Guidance Review Advisory Group which met throughout 2009 and feels that this resulting document is an important revision to outdated guidance which offers clarity for social landlords.

Shelter Scotland believes that prioritising those in greatest housing need should be the core principle that should guide all allocation policy. Allocations policy is an increasingly complex area balancing a number of different and competing priorities and statutory duties. The lack of affordable housing across all areas of Scotland, is putting further strain on the limited resources of social landlords creating a potential gap between the expectations of applicants and the realistic outcomes. With this in mind, Shelter Scotland supports this guidance as a tool to help social landlords allocate their stock in the most fair, transparent and efficient way.

Generally this guidance meets the aim of consolidating and updating existing guidance on allocations. The use of best practice examples from different local authorities and Registered Social Landlords (RSLs) is helpful to show how the guidance and legislation is translated in practice. There are, however, some points which need further clarification to avoid misinterpretation at some point down the line. Although individual landlord discretion is important, especially taking into account the local economy and housing context, it is important to emphasise the legislative framework around which much of this hangs and which all allocation policies must adhere to. It is also important that customers understand all stages of the process especially where they have been unsuccessful in being allocated a house.

Responses to questions

Question 1 - Legislative Framework and Regulatory Standards

a. Does the guide clearly explain the law around allocating houses?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

This chapter sets out clearly the legal requirements for social landlords when managing and allocating houses showing the balance between legal requirements and individual landlord discretion. There are however two areas where further clarification is necessary:

- **Reasonable preference (2.1.2 para. 22 and 32)**

The first part of this paragraph states clearly the groups that should be given reasonable preference, however the second section relating to homeless applicants is not clear and it is not clear how statutory duty to homeless people sits with the other reasonable preference groups.

Subsection b) specifying preference to homeless persons should also include those who are not in priority need, who have been found intentionally homeless and those who are homeless but have not made a formal application. Again in paragraph 29 it should be made clear that homelessness is defined by law in Part 11 of the 1987 Act as opposed to whether a homeless application has been made. This is particularly relevant when considering how allocations policy fits in with housing options and taking a more holistic approach to housing need.

The reference to 'restricted persons' is worded in an unhelpful way and it should be simplified to help social landlords understand who this group includes and where their duty lies.

More generally, Shelter Scotland believes that the reasonable preference criteria is now outdated and does not wholly reflect either current legislation or national or local priorities particularly well. Similarly, the Scottish Government Allocations Policy Advisory Group also raised questions over the relevance of these criteria¹. We feel there is scope for a review and possibly legislative change to reflect

¹ Scottish Government Allocations Policy Advisory Group, Meeting Papers 27 March 2009
<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/management/socialhousingaccess/allocations/AdvisoryGroup/276705>

current priorities and circumstances. As previously outlined², if reasonable preference was reviewed, it would be important to develop a statement which confirms the accepted practice that social landlords should allocate housing according to housing need.

- **Local connection & residency (2.1.3 para. 40, 41, 42; 2.1.4. para. 50, 51)**

The law as stated in Section 20 (2) of the 1987 Act (as amended by section 10(3) of the 2001 Act) makes it clear which factors a landlord **cannot** take into account when allocating housing stock. This includes length of residency to make sure that applicants moving from outside their area are neither advantaged nor disadvantaged against those who have resided in the area for a considerable time.

While we appreciate that there may be some concerns over 'local people' losing out on housing allocations, there is no evidence to suggest that systematically local people are missing out due to any unfairness. Evolving provisions around local connection already allow social landlords to take local connection into account and any issues arising are more to do with pressures on housing stock rather than unfairness in the allocation system.

Question 2 - Understanding your communities and developing a policy

a. Does the guide make it clear what you need to do to develop an allocation policy?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

While this section gives useful guidance on the ways in which tenants can and should be consulted when developing any allocations policy, Shelter Scotland believes it is also important to speak with homeless people and potential tenants as part of this process. Paragraph 65-67 highlight the importance of consulting tenant groups and equalities groups but homeless applicants are absent from this list. While social landlords may find it difficult to consult with homeless people, they do represent a significant future tenant group and it should be mentioned in this section that consultation with those who are or have been homeless route is important.

² 'Draft Housing (Scotland) Bill: a consultation' August 2009
http://scotland.shelter.org.uk/_data/assets/pdf_file/0003/209163/Shelter_Housing_Bill_consultation_response_2009.pdf p23

Question 3 - Access to housing

a. Does the guide make it clear how you should manage access to housing and housing lists?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

Shelter Scotland is particularly pleased to see the inclusion of paragraphs 104 and 105 which address communication with applicants and letting them know what they can expect. It is extremely important that tenants know what they can expect and allocation processes are transparent.

- **Rights of non-UK nationals (4.3 boxed text)**

Immigration status, the rights of asylum seekers and other non-UK nationals is a complex area which is covered briefly here. It would be useful to put in references at this point where more information can be found. It should also be clarified in paragraphs 20 and 21 that while being under immigration controls may impact on your eligibility to be allocated a house, there is nothing that prevents asylum seekers applying to either local authority or RSL lists.

- **Housing Options (4.5 para 106-10)**

Shelter Scotland supports the inclusion of guidance on the delivery of housing options and believes that a more holistic approach to housing can help to match need and available housing successfully. It should be noted however, that the advice on housing options should be delivered taking in to account a person's circumstances and the avenues it would be realistic for them to pursue at that time. When delivering housing options advice, it is important that all options are fully explained including potential short, medium and long-term implications financially, and to your waiting list place.

In certain circumstances, it can be very frustrating for applicants who miss out on a property but do not have all the information to understand why someone else's need was greater than theirs. For data protection and client confidentiality reasons it is not appropriate to disclose why individual allocations have been made, however in such cases, it could be introduced that a third party is tasked with verifying the allocation on behalf of the client without disclosing any details. This would mean in practice that where an applicant is dissatisfied with an allocation on reasonable grounds, it would be independently checked to ensure the allocation was made within the law and the allocation policy of that landlord. Landlords could contract directly with an independent third party in these cases.

The terms of what is reasonable should also be defined, and this should not be a measure that is used frequently, but reserved for cases of extreme dissatisfaction where the landlord cannot disclose the rationale for their decision but wants to be clear there are justifiable grounds. Appropriate checks would need to be inbuilt to this process to avoid unnecessary complaints and overuse of this appeal mechanism. This would help ensure the process is transparent and to maintain faith in local allocation policies when allocations are seemingly 'unfair'.

Question 4 - Working with others to simplify and maximise access

a. Does the guide clearly explain how landlords can work with others to simplify and maximise access to housing?

b. Does the guide clearly explain what landlords should consider when housing ex-service personnel?

c. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

- **Section 5 referrals (5.4)**

This section addresses Section 5 of the 2001 Act which puts a statutory duty on RSLs to house homeless referrals from local authorities. Shelter Scotland believes that this legislation is currently being applied inconsistently and this section could be strengthened to emphasise the legal requirement to adhere to these regulations. More consistent use of Section 5 referrals would help to ensure better outcomes for those in housing need as recognised by the Scottish Housing Regulator³ and also relieve some pressure on local authorities⁴.

Question 5 - Allocations in practice

a. Does the guide help you understand the flexibilities landlords have when allocating social housing?

³ 'RSLs and Homelessness', Scottish Housing Regulator, 2009: "We have also identified some specific areas where current practices could be improved, to help councils move towards the 2012 target and RSLs to make more of a contribution. We recommend that councils should work more effectively with RSLs to agree evidence-based targets for their contribution to housing homeless people, and share information to maximise the availability and suitability of lets. This may mean setting aside their current reluctance to use section 5 powers".

⁴ For example, the discussion paper (paragraph 8 of chapter 1) notes that 45% of council lets go to homeless households. However, this is a misleading figure. Once RSL lets are taken into account, the proportion of lets to homeless households is a more modest 32%.

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

This guidance is clear on the flexibility that social landlords have to take certain factors into account when allocating houses, however some points need to be clarified.

- **Age (6.6.1)**

Paragraphs 244 and 245 should be reiterated to make it clear that landlords cannot allocate on age-specific criteria and cannot take a blanket approach to age. It needs to be made clear that the example given in paragraph 244 - of only letting to people over the age of fifty – is contrary to the law and poor practice. The eligibility criterion in that scenario is disability and that should be regardless of age.

Question 6 - Maximising Choice

a. Does the guide explain how landlords can maximise choice for tenants?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

Choice is important when allocating homes, but as noted in the guidance, this can be difficult when demand outstrips supply. While choice-based letting systems (CBLs) have been implemented relatively successfully in some areas in Scotland, Shelter Scotland has reservations about how well this system addresses vulnerable applicants and those with multiple support needs. In particular, we have concern that choice-based letting systems might discriminate against those who are experiencing a crisis, who do not have English as their first language or who are moving from another outside the local authority and do not know the area. A recent Shelter England report highlights examples of where vulnerable people are being excluded or where a failure to support vulnerable people means that they can lose out through choice-based lettings⁵.

At the very least, where choice-based letting systems are in use, information must be easily accessible and available in a number of different formats. As mentioned in paragraph 310 the needs of all service users must be considered. We would recommend that the guidance is strengthened in this area and should stipulate that properties must be advertised in hard copy as well as electronically and a postal service must be made available for applicants with mobility issues.

We also support the suggestion in paragraph 312 that in where houses are allocated through CBLs, the local authority must undertake an assessment of need to proactively

⁵ 'Shelter's response to the CLG consultation on the Allocation of Accommodation' April 2007 http://england.shelter.org.uk/_data/assets/pdf_file/0003/39207/28026.pdf

identify priority status. In relation to homeless applicants, Shelter Scotland supports the suggestion that CBLs should put in place safety mechanisms for homeless people to support them through the application process if necessary and to ensure that where there is a statutory duty, appropriate housing options are identified.

Question 7 - Creating sustainable tenancies

a. Does the guide provide adequate information about creating sustainable tenancies?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

Good tenancy support increases the likelihood of the tenancy succeeding and we support the guidance on what factors social housing providers should consider at the start of any new tenancy. Added to paragraph 334 should be considering advice given to young people especially those who have not lived independently before.

Question 8 - Performance monitoring and reporting

a. Does the guide provide good advice on monitoring, reviewing and revising an allocations policy?

b. Is there anything you think needs to be added to, or areas that you feel need more explanation in, this chapter?

Question 9 - Practice examples within the guide

a. How useful are the practice examples within the guide?

b. What other practice examples would you find useful to see within the guide?

The practice examples through the guide are extremely useful and help to clarify notes in the text.

Question 10 - Overall

a. This guide aims to help social landlords understand the legal framework for the allocation of housing in Scotland and the flexibilities landlords have to respond to the housing needs of communities. In a scale of 1 (lowest) to 10 (highest) how successful is this draft in meeting that aim.

b. Is there anything that you haven't already commented on that would improve that rating.

This Guidance is an extremely useful document to clarify a complex policy area for social landlords although there are a few sections, as detailed above, that do require further clarification to avoid misinterpretation.

Question 11 - Equality

a. Are there any issues around allocations for particular groups, for example, age, disability, gender, race or religion that are not covered within the guide or the Equality Impact Assessment (EQIA)? (The EQIA can be found at: <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIADetails/Q/Id/197>)

The needs of the most vulnerable people must be considered at all stages of the allocations process and all social landlords must put in place adequate support mechanisms to ensure processes are fair, open and transparent.

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