Consultation Response

Homelessness code of guidance for local authorities

From the Shelter policy library

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Shelter

Shelter is the largest provider of housing advice. Last year through Shelterline our free, national, 24 hour housing helpline and 50 housing advice centres we helped over 100,000 people. Over half of Shelter's clients were homeless or threatened with homelessness.

Overview

Shelter has welcomed the significant strengthening of the homelessness safety net that the Homelessness Act 2002 and the Homelessness (Priority Need) Order have introduced. We have also welcomed the new requirements for local authorities to take a more strategic approach to tackling homelessness.

Overall the Homelessness Code of Guidance provides a comprehensive resource for local authorities and accurately reflects the policy intentions behind the changes that the Act and the Order have introduced.

Prior to preparing our comments on the homelessness Code of Guidance Shelter met with the Local Government Association, National Housing Federation and the Chartered Institute of Housing as well as national homelessness organisations (Crisis, Centrepoint and Homeless Link).

We have three main areas of concern. Firstly is that Chapter 8 of the Code as currently drafted will encourage authorities to adopt a very restrictive approach to accepting applicants under the new priority need categories. This will undermine the Government's intention of strengthening the safety net specifically for these groups that have been over-represented amongst those people that end up being homeless on the street, which could impact on sustaining the two-thirds reduction in rough sleeping.

We are also concerned about the position of former asylum-seekers who are homeless at the point of leaving their National Asylum Support Service accommodation having received a positive decision on their claim. Our concerns are two-fold:

- in the case of single former asylum seekers local authorities are failing in some cases to identify their vulnerability,
- where former asylums seekers are accepted as being homeless unintentionally and in priority need there is some confusion about the way in which the local connection rules should apply to their case.

In a recent debate on the Nationality Immigration and Asylum Bill, Lord Filkin acknowledged the difficulties former asylum seekers can face and gave a commitment to review arrangements for the resettlement of former asylum seekers (Hansard 24/10/02, col. 1456). Although some of the issues raised in that debate are the responsibility of the Home Office and the Department for Work and Pensions there are areas where the

assistance provided by NASS and the assistance provided by local authorities under homelessness legislation could be better integrated. We hope that the Homelessness Directorate will be given the opportunity to feed into that review to ensure that when appropriate, former asylum seekers are able to move from being accommodated by the National Asylum Support Service to being provided with homelessness assistance by the relevant local authority. The two issues highlighted above may be addressed through the final version of this Code of Guidance.

The Code also needs to provide further Guidance on delivering homelessness functions where the local authority no longer has a landlord function, either as the result of a large scale voluntary transfer or through having set up an Arms Length Management Company. Some suggestions are set out in our comments on Chapter 17.

Detailed comments

Suggested additions and changes to the wording of the guidance are in *italics*.

CHAPTER 1: Homelessness reviews and strategies

Overall the Guidance on reviews and strategies is helpful and, combined with the good practice handbook that has already been issued, authorities should be well placed to implement the new duties very effectively. However there are a few areas where we think the Code could be improved, in particular on the issue of keeping the strategy under review.

1.13:

In bullet point list, after 'other useful sources of data on homelessness in the district may include:'

Add

- *Records of people accommodated by the National Asylum Support Service.*

1.16:

In the bullet point list after 'relevant factors in the district may include:'

Add

- *The efficiency of Housing Benefit administration (average time for processing claims, particularly for claimants in the private rented sector);*
- *Rent arrears practices and possession action policies of the authority and RSLs;*

- *The impact of lettings policies on the availability of local authority and housing association lettings for homeless people.*

1.44-1.45:

The paragraphs dealing with 'Keep under review/ power to modify' do not tie up with the requirement to issue another strategy in five years and are too vague. Several authorities participating in Shelter's research project[1] have noted the difficulties of completing a substantive review and strategy within the first 12 months but have seen it as an important starting point for identifying gaps in knowledge that need to be filled properly in the following year. One authority stated that local circumstances, which lead to homelessness applications from particular groups, change very regularly and that an annual review and modification of their strategy would be essential. The guidance needs to more clearly indicate that ongoing review and modification will be necessary to carry forward the work started in this initial year.

The following changes are therefore suggested to these paragraphs:

1.44

Section 3(6) requires housing authorities to keep their homelessness strategy under review and gives them the power to modify it from time to time. However,

s 1. (4), requires the authority to exercise that power so as to ensure that a new homelessness strategy for their district is published within five years of the publication of their last strategy. Before modifying the strategy, they must consult on the same basis as required before adopting the strategy (see paragraph 1.41). *When* a strategy is modified, the housing authority must publish the modifications or the modified strategy and make copies available to the public on the same basis as required when adopting *the initial* strategy (see paragraph 1.43).

1.45

Factors that will need to be addressed in the modification of the strategy, either in the interim or at the five year period are likely to include:

- *A review of homelessness data, identifying changes in the levels, likely future levels and causes of homelessness (as in 1.12 - 1.18 above);*
- *The impact of local and national policy changes;*
- *An evaluation of the effectiveness of new services provided and identification of any gaps still existing;*
- *Changes to resources available for activities (as set out in 1.19-1.25 above)*

- *A review of other relevant local plans and strategies;*
- *Significant structural changes locally, such as the transfer of the authority's stock to an RSL;*
- *Significant changes to the way services are delivered locally or nationally.*

CHAPTER 3: Applications, Inquiries, Decisions and Notifications

3.3:

Insert "*or be in any particular form*" after "*need not be made to any particular department" (R v Chiltern DC ex parte Roberts [1990] 23 HLR 387).*

3.8:

Insert "*Where appropriate, housing authorities should have procedures in place to enable applicants to be visited at home" after "...the 24 hour emergency contact should be well publicised within the housing authority's district."*

3.21:

Remove last sentence from "At this stage,". Replace with "*At this stage, housing authorities must advise applicants about their procedures on conducting reviews and that the applicant has the right to make representations.*" The current guidance refers to authorities being "recommended to advise" of their procedure on review - authorities have a duty to advise of the procedure on review and of the applicant's right to make representations (Reg 6(2) Allocation of Housing & Homelessness (Review Procedures) Regulations 1999 No.71). It is also somewhat premature for authorities to be advising applicants of their county court appeal rights before the review has even been requested or conducting. It would also be confusing for the applicant and is an unnecessary requirement at this stage.

CHAPTER 4: Interim Duty to Accommodate

4.2:

Remove "although, under the interim duty...as to its suitability" from the first sentence. Referring to the fact that the applicant cannot request a review of the suitability of s.188 accommodation undermines the requirement for the accommodation to be suitable. Alternatively, the Code should remind authorities that if accommodation is not suitable, they could be judicially reviewed. As it is currently drafted, the duty to provide suitable interim accommodation could be read as toothless.

4.6:

Insert "*subject to seeking and obtaining the applicant's consent*" after "the housing authority must". Authorities reading this section in isolation may be minded to contact social services without the applicant's consent (even though there is a reference to Ch 10).

CHAPTER 5: Eligibility for Assistance

There are problems with Annex 14 and 22, referred to in Chapter 5, which are covered below.

CHAPTER 6: Homelessness and Threatened with Homelessness

6.19:

This paragraph should reiterate the point from the previous paragraph that the fact that a threat of violence has not been carried out does not mean that it is not likely to be.

6.20 & 6.21:

It needs to be made far more explicit that authorities must not be concerned with the steps to prevent violence which it believes an applicant should take. Whether or not steps have been taken to prevent violence is irrelevant - the only issue is whether there is a probability of violence if the applicant continues occupying. (Bond v Leicester City Council [2001] EWCA Civ 1544.). This is alluded to in the final sentence of 6.21 but is far from clear. The above point should be made at the outset - if the applicant has taken measures to prevent violence, these may be relevant in reducing the issue of further violence below the probability threshold. However, the authority must not penalise the applicant who has taken no such measures nor insist that measure are taken (Bond).

CHAPTER 7: Intentional Homelessness

7.8:

Amend heading preceding 7.8 to "Ceased to occupy accommodation".

After the first sentence, insert *"[A] failure to take up an offer of accommodation is not the same as ceasing to occupy accommodation*." (R v Westminster City Council ex parte Chambers [1982] 6 HLR 15)

7.18:

It is not clear why 16 and 17 year old applicants should be particularly likely to collude with their family in making a false homelessness application. We would recommend that the second sentence of this paragraph be removed.

7.19:

Insert "*subject to seeking and obtaining the applicant's consent" after "social services are alerted*". Authorities reading this section in isolation may be minded to contact social services without the applicant's consent (even though there is a reference to Ch 10).

CHAPTER 8: Priority Need

8.10:

We would take issue with the suggestion that only in exceptional cases could a child be considered to reside with both parents. The test of residency alluded to in the preceding paragraphs is, as established, that there need only be an element of residency - it is not necessary for their to be exclusive residency for the test to be met. The final sentence in this paragraph seems to be at odds with earlier guidance, which acknowledges the increasingly common occurrence of split families. We would suggest replacing the final sentence with following:
"It will be unusual for an authority to find that a child resides with both parents, but this might be appropriate where, for example, a joint residence order is in place and the child spends time with both on a regular basis ..."

8.15:

Add "*In cases where people leave hospital and health and social services fail to house (as they should under s. 117 Mental Health Act 1983) housing authorities will be subject to a duty once homelessness, eligibility and priority need arise. It will not be sufficient for an authority to simply refer the case back to health or social services."*

The second factor that the guidance suggests that local authorities take into account is not consistent with the test referred to in section 8.13. It is possible that an applicant could have an illness, learning or physical disability which would mean that they were at risk of injury or harm when homeless although they have previously been able to maintain accommodation. Authorities frequently apply the wrong test and consider issues of whether a person is able to keep or maintain accommodation. This point (ii) should be replaced

(ii) the extent to which their illness or disability will mean they are at greater risk of harm or detriment if accommodation is not secured.

Having been looked after accommodated or fostered

8.19:

Add a further factor relating to the reasons for being looked after, accommodated or fostered:

(iv) the reasons for the applicant being looked after accommodated or fostered (e.g. abuse, neglect or bereavement)

Having been a member of the armed forces

8.20:

This paragraph should make it clear that an applicant released from detention in a military corrective training centre should not be considered to be homeless intentionally.

8.21:

This paragraph presumes that the housing needs of former members of the armed forces who have served more than three years will be met by the armed forces. This does not accurately reflect the position and the capacity of the Joint Services Housing Advice Office is limited and does not extend as far as the Guidance suggests. The second sentence should be replaced:
"The armed forces has a responsibility to provide housing advice and information for service personnel, however at the point of discharge the local authority will be subject to a duty if homelessness, eligibility and priority need arise."

8.22:

In point (i) while it is right that the length of time spent in the armed forces should be highlighted as a relevant factor, local authorities are already using this part of the guidance to impose a rigid threshold for the amount of time applicants must have served before they will accept them as being vulnerable. We suggest that point (i) is amended as follows:
(i) the length of time the applicant spent in the armed forces (authorities should not assume that a short period of service would not result in vulnerability);

We would also recommend that a further factor is added to cover situations where a combination circumstances including their service in the armed forces result in vulnerability (for example very young recruits who are discharged after a short period in the armed forces):
"(vi) other relevant factors, including the applicants circumstances prior to serving."

Having been in custody

8.24:

The reference in the guidance to an expectation that 'only a minority.....are likely to vulnerable as a result of their period in prison or custody' will encourage a very restrictive interpretation of the new duty. We do not consider it appropriate for Guidance to speculate as to how many people are likely to fall within a particular provision and it is in fact misleading. About one third of prisoners are homeless before entering prison, and about

one third lose their accommodation on entering the prison system[2]. This sentence should be removed.

There is a danger that the guidance could undermine the Government's policy objectives of reducing street homelessness and re-offending. The Social Exclusion Unit recently reported that stable accommodation reduced the risk of re-offending by around 20 per cent[3].

The sentence that suggests that the probation service have primary responsibility for the accommodation needs of people that have served more than one year is misleading. While it is true that those who have served for more than a year will be supervised by the probation service on release, the probation service's only responsibility is to ensure that to ensure that prisoners on release comply with the terms of their licence. Accommodation is not a statutory licence term. The probation service will have an interest in prisoners having stable accommodation because it is one of the primary indicators of successful resettlement, but without resources of its own it can only operate through statutory housing agencies and partnership arrangements. This should include assessments for homelessness assistance being made prior to release.

The sentence should be replaced with the following:
"Local authorities should liaise with the probation service in providing accommodation for vulnerable people who are homeless when they leave prison, including, where possible, making assessments of vulnerability prior to release."

In terms of the factors that local authorities should consider in determining whether someone is vulnerable as a result of having been in custody we are concerned that local authorities will interpret point (i) of the guidance in such a way as to impose a rigid threshold for the amount of time applicants must have served before they will accept them as being vulnerable. This should be amended as follows:

(i) the length of time the applicant has served in prison or custody (*authorities should not assume that a short period of service would not result in vulnerability*);

We would also recommend that local authorities are encouraged to consider how a number of factors could combine with the fact that they have been in prison or custody to give rise to vulnerability. In particular the applicants circumstances prior to conviction may be relevant. We would recommend the addition of a further factor:
"(v) other relevant factors, including the applicants circumstances prior to having been in prison or custody."

8.25:

We welcome the fact that the guidance makes it clear that authorities cannot adopt a blanket approach to the question of intentionality for applicants that have been in custody. However the guidance should be more detailed, in particular to remind authorities that intentional homelessness can only arise where a deliberate act leads to the loss of accommodation. If homelessness arises as a result of an act unrelated to the offending behaviour that led to custody, there will be no intentional homelessness - unless the loss of accommodation was a "reasonably likely" result: R -v- LB Hounslow ex p R.

Other special reason

8.33:

We welcome the recognition in the Guidance that the circumstances leading up to their application for asylum in the UK are likely to give rise to vulnerability. There are three specific points that we would like to be reflected in this guidance.

Insert:
"Local authorities should be aware that former asylum seekers that have been supported by NASS are likely to become homeless. At the point where they receive a positive decision on their application they will have only 28 days notice before their NASS support is withdrawn and they have to leave their accommodation. In investigating the potential vulnerability of asylum seekers local authorities should ensure that interpretation is available to enable an applicant to make their claim. Also such investigations should be alive to the specific circumstances that may result in vulnerability amongst former asylum seekers that differ from other applicants (for example post traumatic stress). Former asylum seeker applicants may be reluctant to explain why they might be vulnerable if their medical condition, including psychological problems, resulted from humiliating torture or rape or the killing of family members that is difficult to discuss with a stranger."

16 and 17 year olds

8.37:

One of the reasons that homeless 16 and 17 year olds have been included in the categories of people that will get priority need is that the Children Act 1989 has not provided an adequate safety net for homeless young people. We are concerned that under the priority need order and current guidance 16 and 17 year olds could still fall through the gaps between housing and social services if there is 'uncertainty' about which authority owes a duty. Our experience is that such uncertainty is all too common. In order to avoid a situation where homeless 16 and 17 year olds are not accommodated we would recommend that that the second sentence in paragraph 8.37 is replaced with the following:

"In all cases of uncertainty as to whether a 16 0r 17 year old applicant may be a relevant child or a child in need and social services have not accepted that they will house the child forthwith, the housing authority should accommodate them - at least until social services have accepted a duty under s. 20 of the 1989 Act."

8.38:

We welcome the inclusion of guidance on reconciliation and mediation, with the recognition that this may not always result in an applicant moving back to live with their family, at least in the short term. We would like to see all areas have a family mediation service, but young people must never be led to believe that if they approach their council for help, they will be forced home or have to go through mediation sessions when it is inappropriate.

It is not adequate for the Code to state: " The process of reconciliation may take time ... authorities may need to provide interim accommodation under s. 188". In some cases where reconciliation is taking a very long time and has not reached a conclusion, the full duty under s. 193 may arise (authorities can not lawfully defer making a decision to await the outcome: R -v- LB Ealing ex p Sidhu (1982). The Guidance should be in stronger terms, as follows:
" Where reconciliation is underway, and will take time, authorities are reminded that a housing duty will still have arisen under s. 188 of the Act and accommodation must be provided until the applicants homelessness is resolved. In cases that are clearly not going to be resolved speedily a duty to provide accommodation under section 193 may arise."

8.39:

We are concerned that the emphasis in the code on collusion in cases of 16 and 17 year old applicants will encourage local authorities to adopt a restrictive approach to meeting their duties to this particular group. It is not clear that this group should be particularly likely to collude with their family in making an application. We would recommend that this paragraph be removed.

CHAPTER 9: Main Duties Owed to Applicants on Completion of Enquiries

9.1:

the reference to s192 (3) & (9) at the end of the paragraph needs to be cross-referenced with paragraph 9.20 and Chapter 14.

CHAPTER 10: Applicants with Children who are Intentionally Homeless or Ineligible for Assistance

10.6:

There is an error here. The text reads " ... the housing authority will need to decide whether the child is in need ..."

This should read: " *... the social services authority will need ..."*

Generally on this chapter, there is likely to be some confusion on the part of authorities. The earlier versions of the Code suggested that housing always refer cases to social services where children were present (the term used was "alert social services"). However the new duty only applies where the family gives consent. Authorities may wonder, what was the legal basis for alerting social services prior to the new duty, and what impact does the Data Protection Act have on these cases, if any? Local authorities may need further guidance in this respect.

Further guidance could also be provided on the following:

1. More detail of the ways social services might help with accommodation; advice to look outside the district if necessary; ways to approach housing benefit authorities
2. Advice that social services need to act carefully in cases where there is a prospect that family members may be separated by homelessness
3. A clear steer away from taking a child away and housing under section 20 of the Children Act where there are no child protection issues or concerns about parenting. Instead the Code should advise authorities to use s. 17 to help with accommodation.

CHAPTER 11: Discharge of Duty to secure accommodation

It would be helpful for the opening paragraph to restate the provisions which give rise to a duty to secure accommodation:

Add :

"11.2 Housing authorities have a duty to secure accommodation for applicants under the following sections:

s188(1) - interim duty to secure accommodation pending a s184 decision (see Chapter 4)

190(2)(a) - duty to intentionally homeless persons in priority need

s193(2): - duty to secure accommodation for homeless persons with priority need who are not intentionally homeless

s195(2): - duty to take reasonable steps to secure that accommodation does not cease to become available for persons not intentionally threatened with homeless who are in priority need

s200(1) - duty to persons whose case is considered for referral

In addition a housing authority may be required to secure accommodation where the court has made an order under section s204 (pending an appeal)."

Bed and breakfast accommodation

We welcome the fact that the Guidance reflects the Government's target that bed and breakfast accommodation should not be used for families with children. We also welcome the guidance that use of this accommodation should be avoided generally.

However we do not see any circumstances where it is likely to be "the most appropriate option for the applicant". Bed and breakfast accommodation has only ever been used because of the lack of more suitable alternatives and for reasons of administrative convenience for local authorities.

While it is true that significant numbers of single homeless people have been found to self-place in bed and breakfast hotels[4] this is largely because of the nature of direct access accommodation provision in an area:

- The absence or shortage of direct access accommodation in the area;
- Exclusion from direct access accommodation;
- The management regime in direct access accommodation deterring some potential residents.

While the use of bed and breakfast accommodation may be necessary in certain circumstances there should not be a presumption that it may be the most appropriate option. As local authorities seek to reduce their reliance on bed and breakfast accommodation for families with children there is a risk that that accommodation will be used for other homeless applicants. The guidance should not endorse the use of bed and breakfast for vulnerable single people. Inquiries into deaths arising from the failure to care for people with mental health problems have highlighted the inappropriateness of bed and breakfast accommodation for vulnerable people as a factor in those deaths.[5]

11.10 a):

should be deleted. While it is right that some vulnerable single people will find managing a tenancy difficult, this does not necessarily mean that bed and breakfast accommodation will therefore be suitable for them. Such applicants need to be provided with support - which may be best provided in a managed setting such as a hostel.

Where Bed and Breakfast accommodation is used it is essential that support services are provided. A common difficulty facing households living in bed and breakfast accommodation is access to essential services such as health and education. This should be included in paragraph

11.11:

Add "*Local authorities should ensure that where bed and breakfast accommodation is used support services are provided and assistance in accessing essential services such as health and education is in place."*

11.15:

Applicants with mental health problems often face particular problems with changing the area they live in and guidance should specifically be given in this respect. Mental health services can be specific to certain areas, often smaller than local authority districts, and the need to be able to continue to qualify and keep in touch with such services is a relevant and in some cases critical consideration in placing people in accommodation.

Add after first sentence:
" People with mental health problems may have a particular need to remain in an area, for example because of a need to maintain links with health service professionals or due to the importance of their more informal support networks. They may be less able to cope with the effects of moving and adapting to a new environment than other homeless applicants. Consideration should therefore be given to applicants with mental health problems to prioritising them for housing in the authority's district."

11.6:

Paragraph 11.6 may give the impression that a guarantor is necessary to grant a tenancy agreement to a minor. In our view this is not the case, minors can be held contractually liable for rent without a guarantor. As minors can be held liable for rent they can be sued for non-payment and rent arrears can be recovered through the courts - the only issue is the need for a guardian ad litem, and if there is no person (e.g. a parent or a guarantor) who can fill this role, the district judge will. Young homeless people are often refused accommodation because they do not have a guarantor. This paragraph should make it clear that a guarantor is not a pre-requisite to granting a tenancy to a minor.

11.27:

The second sentence is not very clear and is inaccurate. Substitute with "*However, s.209 provides that where a private landlord provides accommodation to assist a housing authority discharge an interim duty, the tenancy granted will not be an assured tenancy (including an assured shorthold tenancy)."*

At " i)" delete "under s.184" at the end - it also applies where the interim duty pursuant to s200(1) ends.

11.29:

This paragraph should also refer to the Regulatory Code for housing associations, which sets out the Housing Corporation's expectation that housing associations co-operate, to such an extent as is reasonable in the circumstances, with requests from local authorities to provide a proportion of lettings as temporary accommodation.

11.31:

If an applicant appears to the housing authority to need support they should request a community care assessment by the social services authority, rather than merely consider requesting an assessment. Social services, who have the expertise in this area, can then assess whether an assessment does indeed need to be carried out. In the third sentence replace "should consider requesting" with "*should request*".

11.40:

This paragraph assumes that there will be other types of suitable accommodation for, say, a traveller, other than in a caravan. Whereas this may normally be the case this paragraph tends to pre-judge the issue.

Insert "*necessarily*" before "required" in the second sentence.

Insert after the end of the penultimate sentence "*Accommodation must be suitable for the needs and requirements of the homeless person and his or her household*". Delete the last sentence.

CHAPTER 12: Suitability of Accommodation

Right to request a review of suitability.

12.11:

After the first sentence insert: "*Although applicant's do not have a right to request a review of accommodation provided under an interim duty, authorities nevertheless have a duty to*

provide suitable accommodation. A failure to provide suitable accommodation can be challenged by judicial review in the High Court."

CHAPTER 13: Review of Decisions and Appeals to the County Court

13.1:

add "(*s202*)" at the end of the first sentence.

13.2:

The second sentence is difficult to understand. We recommend that the second sentence be replaced with "*At this stage, housing authorities should advise the applicant of his or her right to request a review of the suitability of accommodation*."

13.3:

The actual wording of the statute is easy to misunderstand and the guidance is misleading in relation to the time limit. See s202(3)

Suggest replace 13.3 with "*An applicant must request a review before the end of the period of 21 days beginning with the day on which he or she is notified of the authority's decision. This means that a request for a review must be made within 20 days following the date of being notified of the decision. There is no right to request a review of a decision reached on an earlier review. The housing authority may specify a longer period during which a review may be requested. Any extension of time should be confirmed in writing."*

13.4 b):

add at end "(*duties to persons found to be homeless or threatened with homeless nes*s)"

13.4c):

in the parentheses replace with *"(i.e. a decision to refer to another housing authority.)*" If a fuller explanation is given references to impact of the risk of violence in another authority should also be referred to.

A problem that applicants' or their advisers frequently face in connection with reviews is the failure of local authorities to provide a copy of the applicant's housing file promptly or to disclose documents where the information is provided by third parties, such as the applicant's doctor. We consider that it is important that guidance is given in this respect.

Suggest add the following after 13.5

"PROVIDING A COPY OF THE HOUSING FILE

13.6

An applicant may request a copy of their housing file in order to consider whether to request a review of the local authority's decision or in order to make representations for the purpose of the review. When an applicant requests a copy of their housing file this should be provided to them promptly. In order to ensure fairness of the review procedure, a review should not be carried out until the applicant has had an opportunity to consider the documents in their file and had an opportunity to make representations on matters arising from it.

13.7

Note that section 35 of the Data Protection Act 1998 provides that the non-disclosure provisions of that Act do not apply where the disclosure is necessary for the purpose of obtaining legal advice or is otherwise necessary for the purposes of exercising legal rights. An applicant should therefore be provided with a copy of all the documents on their file unless, in exceptional circumstances, there are strong reasons for not disclosing a copy of a document on file. In this case the applicant should nevertheless be given sufficient information about the matters raised in the non disclosed document to allow him or her to know the case against them and to respond to it.

13.20:

At the end of this section add:
"It is not possible for housing authorities and applicants to agree an extension of the time limit within which the appeal must be made. Only the court can do this.

The circumstances in which the court can grant an extension of time are limited. Applicants and their solicitors will not normally want to rely on the court's limited discretion to extend time and will need to issue an appeal within the 21 day time limit wherever possible.

In order to avoid unnecessary court action, where the local authority consider that their decision may not be lawful they will want to consider withdrawing their review decision and making a fresh decision to which the 21 day time limit to appeal will apply. The time limit will not be extended merely by agreeing to reconsider their review decision, the decision must be withdrawn."

13.23:

Replace "*lawfulness*" for "reasonableness" in the third sentence, as this is what the High Court will test.

CHAPTER 14: Powers to Secure Accommodation

14.2:

The second sentence of 14.2 says that applicants have to be homeless and have a priority need to be subject to the power to secure accommodation pending review/appeal. This is incorrect. All instances when the power is exercisable are not included.

Replace 14.2 with the following (and can delete 14.3):

"Housing authorities have a power to secure accommodation for applicants under the following provisions:

s188(3) (power to accommodate pending a review of a decision)

S192(3) (power to accommodate homeless applicants after a decision has been made that they are not intentionally homeless and not in priority need)

s195(8) (power to accommodate pending a review of a decision (threatened homelessness))

s195(9) (power to take reasonable steps to secure that accommodation does not cease to be available to an applicant where a decision has been made that the applicant is not in priority need and not threatened with homelessness intentionally)

s200(5) (power to accommodate pending a review of a decision that the conditions for referral are met)

s204(4) (power to accommodate pending an appeal to the county court)"

14.5:

replace all references to s190 with s192.

14.10:

replace s190(3) with s192

14.11:

This is misleading. Delete all of this and replace with: "*The housing authority have a power to accommodate applicant's who have requested a review of the decision on their case (s188(3); s195(8); s200(5)).*"

14.13:

We do not think that it is helpful to provide in the guidance that a housing authority may have a policy only to exercise the power to accommodate in exceptional circumstances. Each case must, as you point out, be considered on the particular facts and this should be in accordance with the guidance set out in 14.12. To have a policy to say that applicant's will only be housed in "exceptional circumstances" confuses the issue and may set up an alternative test - that of exceptional circumstances. We suggest that paragraph 14.13 be deleted.

CHAPTER 15: Local Connection and Referrals

15.4:

add ",*under s198*," after "A housing authority may" at the beginning of this section.

The Guidance on local connection has not been updated to take account of the Government's policy of dispersal of asylum seekers.

Local connection and former asylum seekers

Since April 2000, destitute people who are awaiting a decision on their asylum application are excluded from the mainstream welfare and housing system. Careful consideration should be given where local authorities enquire into the local connection of applicants who are former asylum seekers and who have previously been assisted with their housing through the National Asylum Support Service (NASS). Through NASS accommodation is provided on a dispersal basis. People applying to NASS are only offered housing in one the NASS dispersal regions, unless they can prove that they have needs that can only be met in the South East. Although the Home Office is committed to making a decision on an asylum application within four months and any appeal within a further two months, a large number of people are spending at least six months in the dispersal area before receiving a final decision.

Once people receive a positive decision - full refugee status, exceptional leave to remain or indefinite leave to remain - they lose their entitlement to NASS support after 28 days. They are then generally entitled to apply for assistance from the mainstream welfare and housing system.

At this point, some people choose to leave the NASS dispersal region. This can be for a variety of reasons: to be near their only relatives or close friends in the UK, to more readily obtain employment, to enter higher education, to be nearer to established refugee communities, to be in a place they feel more comfortable and less threatened by racial harassment. Many people head for areas that have large immigrant populations.

Some people who make a homeless application to the local authority where they would like to live - either in the dispersal region or elsewhere - are finding that they are being referred back to another authority where the original authority claims they have formed a local connection. This is most commonly happening when people apply to a local authority that is not the one they were dispersed to, which then refers them back to the dispersal authority. But there have also been cases where the applicant wants to remain in the dispersal area but the authority refers them back to London or another area, where they may have spent some time before being 'dispersed'.

Confusion arises from different interpretations of whether time (of at least six months) spent living in the dispersal area in accommodation provided by NASS is defined as the applicant's 'normal residence of choice'. Some London authorities are arguing that it is accommodation of choice and are therefore referring applicants back to the dispersal authority. Some dispersal authorities are arguing that it is not accommodation of choice and, if the household previously spent at least six months in emergency accommodation in London, are referring people back there.

Shelter is currently supporting a case that is going to the Court of Appeal (Maria Osmani v London Borough of Harrow). The applicant in this case was dispersed to NASS accommodation in Glasgow and she applied to the London Borough of Harrow because her brother settled in that area (although he has not been their long enough for his sister to have formed a local connection with the borough).

As in the case above people may have very good reasons for applying to a local authority other than the one in which they have been dispersed. Former asylum seekers are likely to feel very isolated once their NASS support is withdrawn and there should be some circumstances that allow them to apply to an area where they will benefit from support from family, friends and the wider community. The local connection rules can mitigate against this because a refugee's only family resident in the country may fall outside of the rules, either because they are not 'immediate' enough or because they have not been resident in the area for long enough. The rules make no allowance for the particular significance to former asylum seekers of friends from their own country of origin or an established refugee community.

Section 199 (1)(d) provides a provision for an applicant to form a local connection because of special circumstances. Where an applicant is a former asylum seeker Guidance under this provision should allow for former asylum seekers to form a local connection with their dispersal area or an area where:

- The applicant has family associations in the area. The definition of this should be widened for refugees where they have no family members resident in the UK that meet the usual local connection criteria. At present, to have family associations an

applicant, or member of his/her household, must have close relatives (namely parents, adult children or brothers or sisters) currently residing in the area and these relatives have been resident for a period of at least five years. For refugees, this should be widened to include a wider group of relatives including grandparents, uncles, aunts, first cousins and in-laws. Also, there should be no requirement for these relatives to have lived in the area for at least five years. Instead, the fact that they have settled accommodation in the area should suffice.

- An applicant has no relatives in the UK, the fact that an applicant has close friends in the area should give rise to a local connection. Authorities should be guided on the circumstances in which people would have a close enough link with a friend. These could include people with whom they served as conscripts in the armed forces or were imprisoned in their countries of origin, or people with whom they fled the country or travelled to the UK.
- An applicant spent at least six months living in the area to which they have applied as homeless prior to making an application for asylum and/or being dispersed by NASS. People fulfilling these circumstances would include those who were studying in an area for some time before making an asylum application, those who have spent months in an area in NASS 'emergency' accommodation prior to being dispersed, or those accommodated by local authorities under the previous or interim arrangements before applying to NASS. They may have established a greater connection to these original areas than their dispersal area and it would therefore seem reasonable that they should be able to settle there on receipt of a positive decision.

There are also some other areas where the local authorities joint agreement on local connection needs to be updated, these are also set out in our comments on Annex 11.

CHAPTER 16: Protection of Property

16.1 & 16.2:

do not reflect the legislation accurately. The protection of property duty applies where a duty is owed under sections 188,190,193,195 and 200. It is not limited to where a duty to secure accommodation is owed under those sections.

It would be helpful to start with an introduction to the provisions.

Suggest replace 16.1 -16.3 as follows:
"16.1 Sections 211 and 212 set out the powers and duties of a housing authority in relation to the protection of the personal property of applicants.

The sections apply where a housing authority have reason to believe that -

(a) there is a danger of loss of, or damage to, any personal property of an applicant by reason of his inability to protect it or deal with it, and

(b) no other suitable arrangements have been made or are being made.

16.2

The duty is to take reasonable steps to prevent the loss of the personal property of the applicant or prevent or mitigate damage to it.

The duty applies where the housing authority have become subject to a duty towards the applicant under-

S188 (interim duty to accommodate)

S190 (duties to persons becoming intentionally homeless)

S193 (duty to homeless applicants in priority need who are not intentionally homeless)

S195 (duties to persons threatened with homelessness)

S200 (duties to applicant whose case is considered for referral)

The duty applies whether or not the housing authority are still subject to the duty under the above sections.

16.3

In all other circumstances housing authorities have a power to take any steps they consider reasonable to prevent the loss of the property or prevent or mitigate damage to it (211(3)).

16.4

References to the personal property of the applicant include the personal property of any person who might reasonably be expected to reside with him (s212(6)."

Continue with 16.4 - 16.8 (renumbered as appropriate).

CHAPTER 17: Contracting Out

References should be to Parts 6 and 7 of the 1996 Act, not Parts VI and VII.

This Chapter usefully brings together the relevant provisions to contracting out Part 7 functions, however it does not provide much in the way of actual guidance on their application. On the whole it is authorities that have undergone large scale voluntary

transfer that have taken advantage of the contracting out provisions. Research has shown that authorities experience of contracting out has been mixed[6] and that some authorities have contracted out functions without any means for ensuring the performance of the contracted agency is adequate[7]. We would recommend the following addition to this chapter:

"Housing authorities that are considering contracting out their homelessness functions should ensure that their contract agreement includes:

- *Arrangements for monitoring and performance targets, including sanctions for poor performance;*
- *Requirements to provide the housing authority with the information it needs to carry out its strategic housing function, homelessness review and develop its homelessness strategy;*
- *Requirements to deliver the homelessness functions in accordance with this Code of Guidance and the authority's homelessness strategy."*

Local authorities that have transferred their stock through LSVT or set up an ALMO will face particular challenges in delivering their homelessness functions. In December 2001 the Community Housing Task Force organised a seminar to discuss good practice in this area with a view to producing good practice guidance. However that good practice has never been produced and it may be that there are issues that came out of that seminar that could be addressed though this Code of Guidance. We hope that the Homelessness Directorate can request colleagues at the CHTF to provide any useful information from the seminar on this issue.

Annex 11

There are a number of issues where the local government local connection agreement needs to be updated:

4.1:

the advice in the first sentence does not reflect the legal position. In Mohammed v Hammersmith & Fulham LBC (2001) UKHL 57, the House of Lords confirmed that the relevant date for considering local connection is the date of the initial s.184 decision or, if appropriate, the date of any s.202 review decision. The housing authority had argued that the relevant date should be the date of application but the Lords categorically rejected this.

4.3:

it should be explicit that "time spent in institutions in which the household are accepted for a limited period" (4.3 (v)) does not include interim accommodation provided under s.188 or s. 202. Such accommodation can count towards a local connection and must not be disregarded (Mohammed v Hammersmith & Fulham ibid).

Annex 14

As with the Code on Allocations, it does not appear possible to activate Questions 7 to 10 on the Eligibility Pathway.

Annex 22

More emphasis needs to be given to the fact, referred to under the question Why has the applicant come to the UK?, that any applicant who was previously habitually resident in the UK, is automatically habitually resident if they are returning to resume their habitual residence. The points to consider under this question are misleading. The main issues are:

- Was the applicant previously habitually resident in the UK?
- Is the applicant returning to resume habitual residence in the UK?

If the answer to those two questions is yes, the applicant is habitually residence immediately upon returning to the UK.

End Notes:

1 Shelter is carrying out a research project monitoring the implementation of the Homelessness Act 2002 through a sample of 28 Local Authorities.

2 Reducing re-offending by ex-prisoners, Social Exclusion Unit (2002).

3 Reducing re-offending by ex-prisoners, Social Exclusion Unit (2002).

4 See Carter M (1997), The Last Resort, London: Shelter.

5 For example The Dixon Team Inquiry Report, Ken Dixon, Peter Herbert, Sue Marshall and Dr Robin Pinto

Magdi Elgizouli, aged 30, was made the subject of a hospital order with restrictions (ss.37/41) in April 1998 after he admitted the manslaughter of WPC Nina Mackay, aged 25, in October 1997. She was stabbed as she accompanied colleagues to arrest Magdi Elgizouli for breach of bail conditions. The report was published on 19th April 1999 and the full report and/or summary report can be obtained by contacting Kensington and Chelsea and Westminster Health Authority.

6 Bennett, J (2000) Out of Stock. London: Shelter

7 Pawson H, Levison D, Third H, Lawton G, and Parker J (2000) Local authority policy and practice on allocations, transfers and homelessness. London: DETR.