



# Fair and flexible: statutory guidance on social housing allocations for local authorities in England





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# Foreword

Building more homes that people can afford to rent or buy is one of the highest priorities for the Government. We are investing to build the 112,000 new affordable homes over two years that we set out in the Government's plan, Building Britain's Future, in June.

As well as building more homes, we must enable local areas to respond to housing pressures in different ways. I want local councils to be more able to reflect the needs, demands and aspirations of their area in the way that they allocate housing. And I want the management of council waiting lists in every area to be better understood and seen as fairer.

By issuing this new guidance, the government sets out more clearly the freedoms and flexibilities that local authorities should use when developing allocations policies in their area.

I am reaffirming the Government's commitment to giving priority to those in the greatest housing need, through the reasonable preference categories.

Nevertheless, this guidance concerns greater scope for councils to meet local needs and priorities through their allocation policies. It strengthens councils' freedom to give greater weighting to specific local needs alongside those households who have 'reasonable preference'. In some areas this will mean giving more priority to people who have been on waiting lists for a long time or more priority for people with strong local or family connections. Elsewhere, there may be a greater need to support people in low paid work. Councils should work closely with the housing associations in their area to meet local priorities.

The system for allocating housing is complex and poorly understood. The demands and pressures on housing in an area are rarely well explained to local people. This helps give rise to the perception that the system is inflexible and unfair and the mistaken view that much public housing goes to those who have no legitimate right to it.

I want to see such myths and misunderstandings challenged. It is part of a council's responsibility to do so. Greater understanding will only come if councils do more to inform their communities about who is getting housing and do more to consult tenants and residents on their policies. This new guidance makes clear the responsibilities councils have to do exactly this when deciding how they allocate their housing.

This guidance is an important part of the Government's commitment to meet housing need across the country and we recognise that need is different in different places.

The Rt Hon John Healey MP  
Minister for Housing and Planning

# Summary

1. This statutory guidance covers a number of issues:

(i) It sets out the Government's strategic view of the objectives and outcomes which local authorities must and those they should seek to achieve in their allocation policies. These are:

- providing support for those in greatest housing need, including people who have experienced homelessness
- ensuring allocation policies comply with equality legislation
- promoting greater choice for prospective and existing tenants
- creating more mixed and sustainable communities
- promoting greater mobility for existing tenants
- making better use of the housing stock
- supporting people in work or seeking work
- delivering policies which are fair and considered to be fair

(ii) It sets out the importance of local authorities' responsibilities under the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007) to involve, inform and consult with local people; and it draws attention to the main legislative provisions governing the allocation of social housing, including the requirement to provide for 'reasonable preference'.

(iii) It emphasises the importance of communicating facts about allocations (including regular updates on how properties have been allocated), to tackle false perceptions which may arise about the way social housing is allocated.

(iv) It highlights the implications of the House of Lords judgment in the case of *R (on application of Ahmad) v Newham LBC*<sup>1</sup>, which, among other things, removes the requirement to provide for cumulative preference to be taken into account in prioritising applicants.

(v) It reinforces the flexibilities local authorities have within the allocation legislation to meet local pressures by:

- adopting local priorities alongside the statutory reasonable preference categories
- taking into account other factors in prioritising applicants, including waiting time and local connection
- operating local lettings policies

(vi) It emphasises the importance of close working between authorities and registered social landlords.

<sup>1</sup> [2009] UKHL 14

# Scope of the guidance

2. This is statutory guidance provided under s.169 of the Housing Act 1996 (the 1996 Act). It applies to local authorities in England. Local authorities are required to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act. In so far as this guidance comments on the law it can only reflect the Department's understanding of the law at the time of issue. Local authorities will still need to keep up to date on any developments in the law in these areas.
3. This guidance replaces the following parts of the *Code of Guidance on the Allocation of Accommodation* which was issued in November 2002<sup>2</sup> (the 2002 code):
  - chapters 1, 2 and 6
  - paragraphs 5.1 to 5.12 , paragraph 5.18 and paragraphs 5.23 to 5.32 of chapter 5
  - annexes 2, 4, 5, 6, 7, 8 9 and 12
4. This guidance also replaces the following paragraphs of the *Code of Guidance on Choice Based Lettings* which was issued in August 2008<sup>3</sup> (the 2008 code):
  - 4.1 to 4.49
  - 4.68 to 4.71
  - 4.79 and 4.80
5. *Circular 04/2009: Housing Allocations – Members of the Armed Forces* remains in effect.
6. This guidance is specifically for local authority Members and staff. It is also of direct relevance to registered social landlords<sup>4</sup> (referred to as RSLs). On a local authority's request, RSLs have a duty under s.170 of the 1996 Act to co-operate with local authorities to such extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority's allocation scheme.
7. For local authorities, developing their allocation scheme and carrying out their allocation functions often requires joint planning and operational co-operation between local authorities and other bodies. These are likely to include social services departments, health authorities, the probation service, children's services, other referral agencies and voluntary sector organisations, although this list is not exhaustive. This guidance will be of interest to these organisations as well.

<sup>2</sup> *Allocation of Accommodation: Code of Guidance for Local Housing Authorities*, ODPM, November 2002

<sup>3</sup> *Allocation of Accommodation: Choice Based Lettings: Code of Guidance for Local Housing Authorities*, CLG, August 2008

<sup>4</sup> Subject to Parliamentary approval, from 1 April 2010 RSLs will cease to exist in England. Any references to RSLs will after that date be understood as references to private registered providers.



8. We believe that local authorities will welcome the additional flexibilities which this guidance promotes and would encourage them to review their existing policies as soon as possible and to revise them, where appropriate, in the light of this guidance.
9. The Audit Commission will consider, through its agreed programmes of monitoring and inspection, which will be reflected in comprehensive area assessments, how well local authorities allocate social housing and therefore their response to this guidance.

# Introduction

10. Social rented housing is an asset of great significance to the country, to local communities, to families and to individual people. It provides an essential part of the welfare safety net that supports many of the most vulnerable in our society. It provides a firm foundation, with the security and stability that can help people to overcome disadvantage and to build successful lives for themselves and their families. And it can help to create prosperous, healthy local communities, as part of a balanced housing market.
11. In any circumstances, the way that social housing is allocated would be a matter of real importance. That importance is greatly increased by the pressure of demand that we currently face in all parts of England. Almost every local authority has experienced significant growth in applications for social housing over the past five or six years. In *Building Britain's Future*, we set out ambitious plans to invest a further £1.5bn in building thousands of new affordable homes over this year and the next. In total we are committing more than £7.5bn over these years (2009/2011) to deliver 112,000 affordable homes, including 63,000 homes for social rent to be delivered by the Homes and Communities Agency (HCA) over the next two years. However, despite this ambitious programme of affordable housing delivery we can expect continued excess of demand over supply to continue for the medium term.
12. High levels of demand, often from families with pressing needs, mean decisions on the allocation of social housing need to be taken carefully. Because of the impact such decisions may have, people care deeply about how they are made. Whilst many local authorities are responding positively to this increased demand, we must ensure not only that decisions taken achieve the best overall outcomes for our communities: but also that they are made fairly, and in ways that can be explained and justified to all concerned.
13. The Government takes the view that decisions on the allocation of social housing – having, as they do, profound impacts at national and at local level – should rightly be taken in a framework which balances national and local interests.
14. It is important that local authorities continue to play a strong role in housing. They are best placed to assess housing need across the district, in light of demographic and economic change. Councils now have access to specific grant funding to build new council homes. We have also proposed a devolved system of accountability and funding for the existing stock. This would give more power to councils to plan long term, manage their assets and meet the housing needs of local people. They should also be working with partners to address such needs, including ensuring that the best use is made of existing housing stock. Local authorities also have responsibility for framing local allocation policies within the context set by legislation and taking into account the reality of their local circumstances. It is only at local

level that many of the key decisions can be taken, and balances can be struck between competing priorities. Many people find allocation policies complex and confusing. While the Government has a role to play in dispelling the myths which can arise around the allocation of social housing, the task of explaining local allocation policies to local people ultimately depends on effective communication and engagement by local authorities with their communities.

15. In recent years, many local authorities have felt constrained in their decisions on allocations and the way in which their allocation scheme is devised because of the way in which the legislation has been interpreted by the courts. A recent judgment by the House of Lords (see paragraph 58), which we strongly welcome, provides clarity on the allocation legislation and the extent of local authorities' discretion under the legislation. The Government's view is that this is an opportune time, as well as an important one, for local authorities to re-examine their allocation policies and to make changes which take full advantage of the scope for local decision-making.

# Objectives and outcomes which allocation policies must achieve

16. There are a number of objectives and outcomes which local authorities must achieve when framing their allocation schemes.

## Support for those in greatest housing need

17. We believe it is right that social housing – which brings with it the dual benefits of security of tenure and sub-market rents – should continue to provide a stable base for those who are likely to have more difficulty finding for themselves in the private market. For this reason, we remain of the view that, overall, priority for social housing should go to those in greatest housing need. The current statutory reasonable preference categories are set out in s.167(2) of the 1996 Act. These were rationalised in the Homelessness Act 2002 (and further refined by the Housing Act 2004) to ensure that they are squarely based on housing need. The reasonable preference categories are:
  - (a) people who are homeless (within the meaning of Part 7 of the 1996 Act); this includes people who are intentionally homeless, and those who do not have a priority need for accommodation
  - (b) people who are owed a duty by any local authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any local authority under section 192(3)
  - (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions
  - (d) people who need to move on medical or welfare grounds, including grounds relating to a disability
  - (e) people who need to move to a particular locality in the district of the local authority, where failure to meet that need would cause hardship (to themselves or to others)
18. This means that a scheme must be framed to give reasonable preference to applicants who fall within the categories set out in s.167(2), over those who do not. While local authorities must demonstrate that, overall, reasonable preference is given to applicants in all the reasonable preference categories, this does not mean that they must give equal weight to each of the reasonable preference categories. Local authorities may wish to take into account local pressures. So, for example, where overcrowding is a particularly serious problem, they may wish to give more priority to overcrowded households in their allocation scheme. Authorities might give effect to this

policy objective, for example, by assigning overcrowded households to a higher band, or by including a specific target in respect of overcrowded households in their annual lettings plan.

19. In addition, s.167(2) gives local authorities the power to frame their allocation scheme so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have urgent housing needs. While there is no requirement for an allocation scheme to be framed to provide for additional preference, all local authorities should consider, in the light of local circumstances, whether there is a need to give effect to this provision.

## Providing settled homes for people who have experienced homelessness

20. The Government places great emphasis on the prevention of homelessness and local authorities are generally responding very positively to this agenda. Through their housing options services, local authorities are increasingly helping people at risk of homelessness by intervening earlier to resolve their difficulties before they reach crisis point. This is reflected by the significant reduction in the number of households accepted as owed the main duty to secure accommodation under the homelessness legislation since acceptances peaked in 2003-04. Local authorities are increasingly harnessing the private rented sector to help meet housing needs and we are looking at how this work could be extended and made more effective. Nevertheless, there are people at risk of homelessness or living in temporary accommodation for whom an allocation of social housing continues to be the most appropriate option to meet their need for a settled home. It is right, therefore, that people who are homeless or placed in temporary accommodation under the homelessness legislation should continue to be entitled to reasonable preference for social housing.

## Promoting greater equality and clearly meeting equalities duties

21. In framing their allocation scheme, local authorities need to ensure that it is compatible with the requirements in the equality legislation. In particular, as well as the other duties to eliminate unlawful discrimination, local authorities are reminded that they are subject to a duty to promote equality of opportunity and good relations between people of different racial groups, as well as a duty to promote equality of opportunity between disabled persons and other persons, and between men and women. Local authorities are strongly recommended to carry out an equality impact assessment of any change to their allocation policies to ensure compliance with the local authority's legal equality duties; and to monitor lettings outcomes under the

allocation scheme and ensure that this information is made regularly and publicly available.

22. Local authorities should bear in mind that, subject to Parliamentary approval, the general public sector equality duty in the Equality Bill will mean that they will need, when carrying out their allocation function and reviewing and revising their allocation policies, to consider the impact of their decisions on people with the protected characteristics of age, race, disability, sex, pregnancy and maternity, sexual orientation, religion or belief or gender reassignment. **Local authorities should also be aware of the provision in the Equality Bill which will require all local authorities to give due regard to the desirability of tackling socio-economic inequalities, when making strategic decisions about how to exercise their functions.** The Government believes that the way in which local authorities frame their allocation scheme will be significant in ensuring they discharge this duty.

# Objectives and outcomes which the Government believes allocation policies should achieve

23. There are also a number of objectives and outcomes which local authorities should seek to achieve when framing their allocation schemes.

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

24. The Government believes that allocation policies for social housing should provide for applicants to be given more of a say and a greater choice over the accommodation which they are allocated. This is the best way to ensure sustainable tenancies and to build settled, viable and inclusive communities. Research carried out for Communities and Local Government into the longer term impact of choice based lettings<sup>5</sup> found that tenants who were offered a choice of accommodation were more likely to be satisfied with their home and remain in that home for a longer period. Satisfied tenants are more likely to meet their tenancy obligations and maintain the property in good condition.
25. It is also important that the allocation of social housing is set within a wider enhanced housing options approach, so that people receive joined-up advice and information about all the options open to them across sectors, including:
- renting in the private sector
  - low cost home ownership options
  - mobility schemes which enable applicants to move out of the district
  - mutual exchange options for existing social tenants
  - home improvement schemes or adaptations services which enable applicants to remain in their existing accommodation and
  - supported/sheltered housing for older and disabled people

## Creating more mixed and sustainable communities

26. The way in which social housing is allocated can be instrumental in helping to create safe, prosperous and cohesive communities in which people want to live and work, now and in the future. The research into the longer term

<sup>5</sup> *Monitoring the Longer Term Impact of Choice Based Lettings*, Heriot-Watt University and BMRB, October 2006

impacts of CBL suggests that the policy is encouraging applicants to think more flexibly about their housing options. It found that, where applicants have the opportunity to see details about all available vacancies, they will consider moving to areas beyond their immediate locality and beyond areas which, under a traditional allocations system, they would have specified as their 'preferred area'.

27. Alongside CBL, making greater use of the existing flexibilities within the allocation legislation can help to tackle concentrations of deprivation, creating more mixed and sustainable communities. This might include:
- setting local priorities alongside the reasonable preference categories, such as promoting job-related moves
  - setting aside a small proportion of lettings to enable existing tenants to move even where they do not have reasonable preference
  - using local lettings policies to achieve a wide variety of policy objectives, including dealing with concentrations of deprivation or creating mixed communities by setting aside a proportion of vacancies for applicants who are in employment, or to enable existing tenants to take up an offer of employment.

## Greater mobility

28. Providing social housing tenants with greater opportunities to move within the social sector can help to promote social and economic mobility, as well as meeting individual tenants' specific needs and aspirations. It can also help make the best use of social housing stock.
29. One way of increasing the opportunities for mobility between local authority areas is to develop choice based lettings schemes on a regional or sub-regional basis and our aim is to expand choice based lettings so that people can move nationwide. However, even where local authorities do not participate in regional or sub-regional choice based lettings schemes, there are ways in which they can frame their allocation scheme to increase the opportunities for mobility across local authority boundaries. So, for example, authorities could use local lettings policies to allow for a small proportion of properties to be prioritised for essential workers (or people with skills in short supply) to attract them into the district; or they could develop arrangements with other authorities or RSLs to make a proportion of their lettings available for cross-boundary nominations.

## Making better use of the housing stock

30. Making better use of the social housing stock could mean giving existing tenants who are under-occupying social housing appropriate priority to secure a transfer within an authority's allocation scheme and ensuring that



scarce accessible and adapted accommodation is prioritised for people with access needs. This might be coupled with personal support, incentives and financial payments to encourage people who under-occupy family-sized homes to downsize or vacate adapted homes they no longer need. Authorities may want to consider other approaches such as ‘chain lets’ – an approach under which a large property released by an under-occupying household can be reserved for existing overcrowded social rented tenants, where the resulting vacancy is then used to house another household with priority under the allocation scheme. For overcrowded households waiting for an allocation of larger accommodation, authorities can assist in mitigating the impacts through a range of measures. Improvements can be made to existing properties in order to improve liveability: additional toilets or wash basins, partitions or space saving furniture can all contribute to alleviating the pressures of overcrowding.

## Policies which are fair and considered to be fair

31. There are widespread perceptions that the current allocation system is unfair and favours certain groups (such as the unemployed or migrants). An Ipsos MORI survey carried out for Communities and Local Government in 2008 showed that less than a quarter (23%) of the public agreed that the way social housing is allocated is fair. One in three (32%) did not agree that it is fair. Just under a half (45%) said they did not know if it is fair or were unwilling to give an opinion and opted for ‘neither agree nor disagree’<sup>6</sup>. While these perceptions may not always be founded on fact, we recognise that they are strongly felt.
32. It is important that local authorities engage fully with their local community in developing their allocation priorities and drawing up their allocation scheme; and in providing regular, accurate, and generalised information on how housing is being allocated, working actively to dispel any myths and misperceptions which may arise. Policies which are easily understood and sensitive to local needs and local priorities are more likely to achieve acceptance across the wider community and to be, not just fair, but seen to be fair.<sup>7</sup>

<sup>6</sup> Communities and Local Government (2009) *Attitudes to housing: Findings from Ipsos MORI Public Affairs Monitor Omnibus Survey (England)*.

<sup>7</sup> An Ipsos MORI survey for Inside Housing shows that people consider the most important factors for prioritising social housing (where demand is greater than supply) as: how long someone has been on the waiting list (23%); whether they are currently living in inadequate accommodation (22%); how long someone has lived in the local area (15%); and being a key worker (e.g. nurse or teacher) (14%). Inside Housing, 6 June 2008, pp 22–25.

## Support for people in work or seeking work

33. Local authorities should consider how they can use their allocation policies to support those who are in work or who are seeking work. This could involve using local lettings policies to ensure that particular properties are allocated to essential workers or to those who have skills which are in short supply, regardless of whether they are currently resident in the authority's district. Alternatively, authorities may choose to give some preference within their scheme to existing tenants who are willing to move to take up employment or training opportunities – where, for example, the authority has identified a need to address skills shortages and worklessness, perhaps as part of their skills strategy.

# Involving, consulting and raising awareness with local communities

34. For many people, the frustration engendered by long waiting times for social housing, the complexity and lack of transparency of many allocation policies, and poorly trained or supported front line housing officers, can contribute to false perceptions of unfairness or generate myths about 'queue jumping' by other groups. These myths and false perceptions need to be countered through effective, transparent communication.
35. Local authorities need to do more to help people locally understand how social housing is allocated<sup>8</sup>. The public are more likely to accept that allocation policies are fair if they have a clear understanding of what those policies are and what the justification for those policies is. Clarity about why social housing is prioritised for certain groups is key. To give a specific example, if an authority provided information about the amount of housing they have which is, not only accessible, but capable of being made accessible, and explained why priority for this accommodation is given to those with access needs, it is likely that people would view it as a fair and sensible use of that stock.
36. That is why it is important to engage fully with the whole community in developing allocation policies. It is also why it is important to provide feedback on properties let through choice based lettings<sup>9</sup>, and wider statistics about who is actually accessing social housing. Simple banding schemes play a role here too, since they can be more easily explained to applicants. Front line staff need to be properly trained and supported so that they provide accurate and consistent messages about how social housing is allocated, and elected members need to take a leading role in explaining to local people how social housing is being allocated and managed in their district – and what their local authority is doing to help increase availability of social housing.

## The requirement to have an allocation scheme

37. Local authorities must have an allocation scheme for determining priorities and the procedures to be followed in allocating housing accommodation; and they must allocate in accordance with that scheme (s.167 of the 1996 Act).
38. The requirement to have an allocation scheme applies to all local authorities, regardless of whether or not they retain ownership of the housing stock

<sup>8</sup> The Ipsos Mori survey reports that 8% of the general public said they know a lot about the way social housing is allocated, 48% know a little and 41% said they know nothing, with 3% giving a 'don't know' response.

<sup>9</sup> Further guidance on feedback in the context of choice based lettings is provided at paragraphs 5.14–5.18 of the 2008 code.

and whether or not they contract out the delivery of any of their allocation functions. Authorities are prohibited from contracting out certain allocation functions, including adopting and altering the allocation scheme, which includes the principles on which the scheme is framed. 'Procedure' includes all aspects of the allocation process, including the people, or descriptions of people, by whom decisions are taken. It is essential that the scheme reflects all the local authority's policies and procedures, including information on whether the decisions are taken by elected members or officers acting under delegated powers.

## Involving and consulting about the allocation scheme

39. Part 6 of the 1996 Act imposes certain requirements on local authorities when consulting on changes to their allocation scheme, or before they adopt a new scheme. Authorities are required to consult with RSLs with which they have nomination arrangements (s.167(7)); while anyone likely to be affected by an alteration to the allocation scheme which reflects a major change of policy must be notified of it (s.168(3)).
40. Under section 3 of the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007) an authority is under a general duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Under s.3A of the Local Government Act 1999, where an authority considers it appropriate for representatives of local persons to be involved in the exercise of any of its functions by being provided with information, consulted or involved in another way, it must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way. Statutory guidance published by the Government in July 2008<sup>10</sup> sets out the issues which local authorities should consider under the 'duty to involve'.
41. Engaging with and involving local communities in the development of allocation policies will contribute to:
  - better awareness among local people of the facts around social housing, including a clearer understanding of the amount of housing available
  - reduced opportunities for the circulation of misunderstandings and myths about the ways in which social housing is allocated
  - local allocation policies which better reflect local pressures and priorities
  - a greater sense among local people that housing is allocated fairly
  - stronger community cohesion

<sup>10</sup> *Creating Strong and Prosperous Communities*, July 2008

42. Some local authorities currently make significant efforts to engage with local communities in the development of allocation policies, using techniques such as questionnaires and surveys aimed at residents or those on the waiting list, citizens' panels and focus groups. There is scope for all authorities to develop their approaches further, drawing on good practice from within the housing sector and more broadly.<sup>11</sup>
43. Anyone who is affected by or interested in the way social housing is allocated should be included when consulting on changes to an authority's allocation scheme. It will be important to engage with a wide range of stakeholders in the statutory and voluntary and community sector, as well as applicants and the general public. Consultation gives people the opportunity to have their views heard but it also gives local authorities the opportunity to engage the community, to raise awareness about the pressures on social housing, and to ensure that people have a better understanding of why certain groups are prioritised for social housing.
44. However, authorities should also engage with and involve the wider community before they produce their allocation scheme so that people are given the opportunity to contribute to the development of the allocation priorities. Only in this way can authorities ensure that the allocation scheme properly reflects local priorities and issues. An important aspect of engagement will be managing expectations. Providing clear information about allocations, including which households must be given priority under the allocation legislation and what social housing is available in the district, may be helpful here; as also ensuring that any consultation on allocation priorities is set firmly within the context of the local authority's overarching strategic priorities.
45. It will be important to take action to ensure that all groups within the area are engaged. Voluntary and community organisations can be useful here as they often have strong links with their particular communities or client groups. Authorities will need to give particular thought to how to engage those who can often be marginalised but for whom social housing may be particularly relevant (such as substance misusers, gypsies and travellers and ex-offenders). Again, the voluntary and community sector may be in touch with hard to reach groups and can help ensure that they are involved in the consultation process. For this reason, it is particularly important that third sector organisations are involved at an early stage in the consultation process.
46. Where local authorities involve individuals or groups in developing their allocation priorities or consult them on their allocation scheme, they should consider how they can feed back the outcomes of such involvement or consultation. In doing so they should make clear how the input to consultation and involvement has contributed to the published allocation scheme.

<sup>11</sup> *The Duty to Involve: Making it Work* published by the Community Development Foundation (2009) provides advice and examples of effective engagement.

## Information about allocations

47. It is important that applicants and the wider community understand what social housing is available in their district, how social housing is allocated, and who is getting that social housing. Accordingly local authorities are encouraged to make appropriate information about allocations widely available in a way which is easy to access and to understand<sup>12</sup>. This is in addition to the duty in s.168 to make the full allocation scheme available for inspection and a summary of the scheme available free of charge. However, to ensure that local people have access to as much information as possible, authorities should publish their full allocation scheme on their website as well as in hard copy.
48. Local authorities must ensure that advice and information is available free of charge to everyone in their district about the right to apply for an allocation of accommodation (s.166(1)). This includes general information about the procedures for making an application; as well as information about how applicants are prioritised under the allocation scheme.
49. If applicants are to view the system as fair, they need to know how their application will be treated under the allocation scheme, what their rights and expectations are under the scheme, and they need reassurance that the scheme is being complied with and applied consistently across all applicants. So, for example, applicants have the right to be informed of certain decisions in relation to their application<sup>13</sup> and the right to a review of such decisions (s.167(4A)(d)). It is important that applicants have clear information about these rights as well as the procedure upon review. Applicants should also be provided with information about any other relevant complaints procedures which are available to them.
50. However, information about allocations should go beyond publication of the allocation scheme itself or information about how to apply for an allocation. Most applicants will want to know how long they are likely to have to wait to be allocated accommodation which meets their needs and aspirations (this is in line with their rights under s.167(4A)). Authorities can help applicants assess whether particular accommodation is likely to be available and how long they are likely to wait for it, by making available general information about the profile of their stock (amount, type, size, location and accessibility); together with information about how often property of that type/size/ location becomes available and estimated waiting times. Information should be kept up-to-date and published on a regular basis. It should be widely available as it may be of interest to people who may be considering applying for social housing as well as those who are already on the waiting list.

<sup>12</sup> Chapter 5 of the 2008 code provides detailed guidance on how to ensure that information is provided in a way which is accessible and that advice, assistance and support are available to those who need them in order to apply for social housing.

<sup>13</sup> Applicants have the right to be informed of any decision and the grounds for it, relating to their eligibility (160A(9)) and to be informed of a decision not to give them preference on grounds of unacceptable behaviour (167(4A(b))). Applicants also have the right on request to be informed of any decision about the facts of their case which are likely to be, or have been, taken into account in considering whether to allocate accommodation to them (s.167(4A)(c)).

51. It is important that local authorities go wider than simply informing applicants, and consider how they can share information about allocation policies and outcomes with the wider community. Where tensions are associated with housing allocations, communication may need to be part of a wider community cohesion strategy.
52. Key individuals and organisations need information and training to ensure that they understand how the allocation system works and that they provide consistent messages both to applicants and to the wider public. Training needs to be ongoing, recognising that allocation policies change over time and that council staff and other personnel move on. When communicating messages about why certain groups have access to social housing, it is important to work together with the statutory bodies or community organisations which support those groups and individuals. So, for example, local authorities should work together with local drug action teams and crime and disorder reduction partnerships to explain why providing a stable base for substance misusers or ex-offenders can reduce crime and anti-social behaviour.

## Monitoring and evaluation

53. Monitoring and evaluation systems should be put in place and lettings outcomes published so that people can see that the allocation scheme is being complied with and is fair, and that the authority is meeting its duties under the equality legislation (see paragraph 21). Local authorities should give people the opportunity to feedback comments about how the allocation scheme is working. This might include periodically carrying out surveys of people on the waiting list to find out about their experience over time, or people who have bid for social housing through a choice based lettings scheme (both successfully and unsuccessfully).



## Framing an allocation scheme

54. An authority's allocation priorities should be developed in the context of the authority's other housing functions. Consideration should be given to the wider objectives of meeting the district's housing needs, as set out in the strategic housing market assessment. The allocation scheme should also be compatible with the local authority's housing strategy and the relevant regional housing strategy. Furthermore, since the allocation of accommodation under Part 6 of the 1996 Act is one of the ways in which the main homelessness duty can be discharged, allocation policies and procedures should also be consistent with the local authority's homelessness strategy.
55. It is also important that the allocation scheme is compatible with and flows from the authority's sustainable community strategy<sup>14</sup> which sets the overall strategic direction and long-term vision for the economic, social and environmental well-being of the local area.
56. It is strongly recommended that local authorities put in place allocation schemes which, not only meet the requirements in the legislation to ensure that reasonable preference for an allocation goes to those in the reasonable preference categories, but also:
- reflect the Government's objectives, and
  - take into account the particular needs and priorities of the local area
57. We recognise that getting the balance right will be challenging, particularly given the constraints within which local authorities operate in terms of the supply of and demand for social housing. Nevertheless, we believe that there is considerable flexibility within the existing statutory framework, particularly following the recent decision in *Ahmad*.

### *R (on application of Ahmad) v. London Borough of Newham*

58. In March 2009 the House of Lords gave judgment in the case of *R (on application of Ahmad) v. Newham LBC*<sup>15</sup> ("*Ahmad*"). The case has significant implications for the way local authorities frame their allocation scheme. In particular the House of Lords found:
- there is no requirement for local authorities to frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category.

<sup>14</sup> S.4 of the Local Government Act 2000

<sup>15</sup> [2009] UKHL 14



- an allocation scheme which allows for priority to be determined between applicants in the reasonable preference categories on the basis of waiting time (alone) is not unlawful or irrational
  - an allocation scheme is not unlawful if it allows for a small percentage of lets to be allocated to existing social housing tenants who wish to transfer and who do not fall within any of the reasonable preference categories
  - where a local authority's allocation scheme complies with the requirements of section 167 and any other statutory requirements, the courts should be very slow to interfere on the ground that it is irrational
59. Through their judgment in the *Ahmad* case, the House of Lords have recognised the complexity of allocation policy and the need for local decision-making.
60. The following paragraphs consider the factors which local authorities should consider in developing their allocation priorities and the different tools and mechanisms available to them to allow for greater flexibility within their allocation scheme and to adapt their scheme to respond to local needs.

## Removal of the requirement to provide for 'cumulative preference'

61. The House of Lords decision in *Ahmad* reverses a line of Court of Appeal authority that has held that allocation schemes were required to provide for cumulative preference. This means that it is no longer necessary to distinguish between degrees of housing need, or to provide that those applicants who fall within more than one reasonable preference category are given greater priority for an allocation than those who have reasonable preference on a single, non-urgent basis (indeed there is no requirement for any system of determining priority between those in the reasonable preference groups). In the light of the decision in *Ahmad*, what is important is that an allocation scheme makes an appropriate distinction between those applicants in the reasonable preference categories and those who are not. It is no longer necessary to make a detailed prioritisation of applicants within the reasonable preference categories (instead it is open to local authorities to determine between applicants in the reasonable preference categories by waiting time alone (see paragraph 65).
62. Removing the requirement to provide for cumulative preference gives scope for local authorities to develop simpler, more transparent, systems of applicant prioritisation which are easier for applicants to understand and for housing staff to operate.

## Determining priorities between households with a similar level of need

63. For practical purposes, allocation schemes will need to have some mechanism for determining priorities between applicants with a similar level of need, for example between applicants who are in the same band.
64. Section 167 (2A) provides that authorities may frame their allocation scheme to take into account certain factors for the purposes of determining relative priorities between applicants in the reasonable (or additional) preference categories. Examples of factors which may be taken into account are given in the legislation: local connection<sup>16</sup>, financial resources and behaviour. However, these examples are not exclusive and authorities may take into account other factors instead or as well as these.

## Waiting time

65. The simplest way of determining priorities between those with a similar level of need would be to take into account the length of time which applicants have been waiting for an allocation (in the case of new applicants this will normally be the date of their original application or date into band, and in the case of transferring tenants, the date they applied to transfer).
66. Waiting time has the benefits of being simple, transparent, and easy to understand. It also accords with the view held by some sections of the public about how social housing should be prioritised. Of course, we recognise that waiting time will already play a role in most allocation schemes. However, authorities may wish to consider the scope for giving more weight to it in the light of *Ahmad*, where this is seen locally as the fairest means of distinguishing between otherwise similar applicants.

## Behaviour

67. This would allow local authorities to take account of good as well as bad behaviour. So, for example, authorities could provide for greater priority to be given to applicants who can demonstrate that they have been model tenants or whose actions have directly benefited other residents on their estate or the community more generally. Bad behaviour would include unacceptable behaviour which was not serious enough to justify a decision to treat the applicant as ineligible, or to give him no preference for an allocation, but which could be taken into account in assessing the level of priority which was deserved relative to other applicants. An example could be minor rent arrears or low level anti-social behaviour.

<sup>16</sup> For these purposes, local connection is defined in accordance with s.199 of the 1996 Act.

## Local connection

68. Some local authorities may wish to give more priority to 'local connection', ensuring that, wherever possible, social housing goes to those people who live or work in the district, or to those who have close family associations with it or have other special circumstances. While local authorities cannot exclude people who do not have a local connection from applying for social housing, there is nothing to prevent them from framing their allocation scheme to include local connection as a policy priority, provided that overall the scheme continues to meet the reasonable preference requirements in s.167.
69. An allocation scheme which attaches particular weight to local connection could disadvantage individual applicants. One example might be someone who has been placed out of the district they would normally live in for a period of time, while being looked after by children's services – although each case would need to be considered on its merits (care leavers might be able to establish a local connection through family association or special circumstances). Local authorities may wish to provide for circumstances such as these by setting aside a proportion of lettings (e.g. by including a specific target in their lettings plan, or by means of an appropriate local lettings policy) to help meet the housing needs of such applicants where they meet the reasonable preference criteria.

## Banding schemes

70. An appropriate method of applicant prioritisation could be a system that groups applicants into a number of 'bands' that reflect different levels of housing need or relative priorities within a housing authority's allocation scheme. Such systems are commonly referred to as 'banding schemes'.
71. The House of Lords in *Ahmad* recognised that simple banding schemes could have a number of advantages over more nuanced systems. They are clear, relatively simple to administer and highly transparent. Whereas banding schemes, which involve a large number of bands based on degrees of housing need, are likely to be more expensive and time consuming to operate, more based on value judgement, more open to argument, and more opaque. The House of Lords also considered that more complex banding systems may need to be monitored more closely to take account of the fact that applicants' circumstances are liable to change over time.
72. In addition to the benefits identified in *Ahmad*, simpler banding schemes may also make it easier for authorities to work together to put in place sub-regional and regional choice based lettings schemes.
73. Authorities should bear in mind that a banding scheme must be consistent with and give effect to the principles in the authority's allocation scheme for determining priorities for an allocation. The greater the number and

complexity of these principles, the more complex the banding scheme will normally need to be.

## Points based approaches

74. Many local authorities have adopted a points-based approach to the prioritisation of applicants. Points-based systems can be complex and consequently lacking in transparency and difficult for applicants to understand. Local authorities that wish to continue with a points-based system should consider whether there is any scope to simplify it.

## Including local priorities alongside the statutory reasonable preference categories

75. Section 167(6) of the Housing Act 1996 makes it clear that, subject to the reasonable preference requirements, it is for local authorities to decide on what principles their allocation scheme is to be framed.
76. An allocation scheme may provide for other factors than those set out in s.167(2) to be taken into account in determining which applicants are to be given preference under a scheme, provided they do not dominate the scheme and that overall the scheme operates to give reasonable preference to people in the reasonable preference categories. This means that an allocation scheme may include other policy priorities, such as promoting job-related mobility, prioritising under-occupiers, or providing move-on accommodation for people leaving supported housing, provided that:
- they do not dominate the scheme and
  - overall, the scheme operates to give reasonable preference to those in the statutory reasonable preference categories over those who are not
77. The House of Lords in *Ahmad* accepted that local authorities are entitled to allocate to people who do not fall within the reasonable preference groups. For example, Newham's very favourable treatment of under-occupiers was not unlawful, notwithstanding the fact that they were unlikely to fall within any of the reasonable preference groups. It was accepted that account could be taken of wider housing management considerations (as well as the needs of those in the reasonable preference categories), and the judgment made the point that encouraging people in larger homes to transfer to smaller ones could be to the advantage of those in housing need because it produces an overall increase in the accommodation available.
78. Lettings outcomes should be evaluated over time to ensure that the authority is able to meet the priorities and principles set out in its allocation scheme and the reasonable preference requirements in s.167(2). Robust monitoring systems are essential here.

## Existing tenants seeking a move

79. Part 6 of the 1996 Act extends to existing tenants of local authorities and RSLs who apply to transfer within the social rented sector. This means existing tenants applying for a transfer must be treated on the same basis as other applicants in accordance with the reasonable preference requirements in s.167. However, the House of Lords in *Ahmad* recognised that there could be good housing management reasons for enabling existing tenants to move, even where they do not have reasonable preference – provided that overall those in the reasonable preference categories continued to receive some preference. This is because such moves are broadly stock neutral (every transfer creates another void which can be used to meet housing needs). The House of Lords also recognised that people who are allowed to move to properties or locations which they prefer are likely to be happier and, as a result, better tenants.
80. In the light of *Ahmad* we consider that authorities have the scope to provide within their allocation scheme for existing tenants to transfer to similar sized accommodation where they can demonstrate good reason for seeking a move, for example, where they want to move to take up an offer of employment. The extent to which there is scope to allow existing tenants to move within the stock will depend on the particular circumstances in the district, taking into account the demand from other applicants in greater housing need and the effect which this could have on lost revenue from increased void periods. In *Ahmad*, the court considered that setting aside a small proportion of lettings for transferring tenants was not unreasonable.

## Quotas, targets and lettings plans

81. An authority may want to set targets for the proportion of properties which it expects to allocate to the various groups within the allocation scheme as part of an annual lettings plan. So, for example, this might set a target for the proportion of large family-sized accommodation to be allocated to overcrowded households, or for the proportion of lettings to be given to transferring tenants.
82. Authorities should avoid setting rigid quotas which cannot be amended in the light of changing circumstances. However, they may wish to set broad targets which should be published alongside the authority's allocation scheme. Targets should be published as part of an annual lettings plan and monitored, and lettings outcomes against the targets should be published. Published targets, together with information about lettings outcomes, help make the allocation process more transparent.
83. In setting targets, authorities should take into account:
- the size and composition of the waiting list

- the profile of their stock and the vacancies which are likely to become available.

## Local lettings policies

84. Section 167(2E) of the 1996 Act enables local authorities to allocate particular accommodation to people of a particular description, whether or not they fall within the reasonable preference categories, provided that overall the authority is able to demonstrate compliance with the requirements of s.167. This is the statutory basis for so-called 'local lettings policies'. This could mean setting aside houses on a particular estate, or certain types of property across the stock, for applicants who meet specified criteria.
85. A study carried out by Heriot Watt University<sup>17</sup> for Communities and Local Government in 2008, based in two regions, found that about half of responding authorities (23 out of 52) operated local lettings policies. This would suggest that local authorities may not be making as much use as they could of the flexibilities which the allocation legislation allows them.
86. Local lettings policies may be used to achieve a wide variety of policy objectives. So for example, they may be used to:
  - deal with concentrations of deprivation or create more mixed communities by setting aside a proportion of vacancies for applicants who are in employment or to enable existing tenants to take up an offer of employment
  - attract essential workers into the district by giving them priority for a small number of properties even though they may not fall within any of the reasonable preference categories
  - deal sensitively with lettings in rural villages and on s106 exception sites by giving priority to those with a local connection to the parish
  - ensure that properties which are particularly suited to being made accessible (e.g. ground floor flats) are prioritised for those with access needs

<sup>17</sup> *Exploring local authority policy and practice on allocations* (Hal Pawson and Anwen Jones) (CLG 2009).

- set aside a proportion of properties to help meet the housing needs of people whose employment requires them to be mobile, such as members of the Armed Forces<sup>18</sup>
88. Where a number of local authorities have agreed a common allocation policy or common prioritisation criteria, as part of a sub-regional CBL scheme, local lettings policies can be useful as a means of incorporating local priorities.
  89. Before adopting a local lettings policy, authorities should consult with those who are likely to be affected by it. So for example, where a local lettings policy is to apply to a particular estate, they should consult with tenants and residents on that estate. RSLs should also be consulted in relation to and, where appropriate (e.g. where stock they own is included in a relevant estate) involved in developing local lettings policies.
  90. The proportion of stock or lettings which may be made available through a local lettings policy to people who are not in the reasonable preference categories will depend on the particular circumstances and factors at play in the district. Authorities will need to take into account factors such as: the size and composition of the waiting list (i.e. the proportion of applicants in the reasonable preference categories); the stock profile; and the number and type/size of vacancies which are available overall.
  91. In the interests of transparency, local lettings policies should be published. Since they will often be time limited, it may not be practicable for the detailed policies to be included in the allocation scheme. One way to get around this would be for the allocation scheme to include a general statement about the intention to implement local lettings policies and to set out the detail in a separate published document or documents which could be revoked or revised as appropriate. Authorities should include an explanation of the local lettings policy which should be evidence-based wherever possible. Where it is intended that the policy is time limited, it should include an appropriate exit strategy.
  92. Local lettings policies should also be monitored as to their effectiveness and reviewed regularly so that they can be revised or revoked where they are no longer appropriate or necessary.

<sup>18</sup> For further information on the Government's commitment to ensure that Service personnel are not disadvantaged when accessing public services, authorities are referred to *The Nation's Commitment to the Armed Forces Community: Consistent and Enduring Support*, Cm7674, published 16 July 2009



## Partnership working with RSLs

93. It is important that local authorities take a strong strategic approach to meeting housing needs in their district. To do this, they will need to develop close working partnerships – both at the strategic and operational level – with RSLs, given their key role in the supply and management of social housing, to ensure that:
- best use is made of the available social housing in the district and
  - applicants are offered the widest choice of accommodation
94. This will be important for all local authorities but for those who have transferred their stock it will be crucial.
95. RSLs should be involved at an early stage in developing allocation priorities and must be consulted on the allocation scheme. RSLs which manage a large number of properties in the district are likely to be well informed about the general housing needs of the area; while specialist RSLs may have significant knowledge of the needs of minority or marginalised groups. Allocation policies which are framed to take account of local needs and priorities are more likely to gain the support of RSLs.
96. RSLs have a duty under s.170 of the 1996 Act to co-operate with local authorities – where the authority requests it – to such extent as is reasonable in the circumstances – in offering accommodation to people with priority under the authority’s allocation scheme. This is reflected in the Tenant Services Authority’s (TSA) draft allocation standard (issued for consultation on 12 November) which requires ‘registered providers’ to co-operate with local authorities’ strategic function and their duties to meet identified housing needs, including meeting obligations in nomination agreements.
97. Local authorities should ensure that they have nomination agreements in place with RSLs in their district and these should be updated regularly to ensure that they reflect changing housing markets<sup>19</sup>. Nomination agreements should set out the proportion of lettings that will be made available which should reflect the existing housing market circumstances; any criteria which the RSLs have adopted, following consultation with the housing authority, for accepting or rejecting nominees; and how any disputes about suitability and eligibility will be resolved. The TSA’s draft allocation standard requires registered providers to clearly set out, and give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes. When negotiating nominations agreements, local authorities should try to ensure that the criteria for rejecting nominees are kept to a minimum. This will be particularly important where the housing authority has transferred its housing stock.

<sup>19</sup> *Effective Co-operation in Tackling Homelessness: Nomination Agreements and Exclusions*, published by CLG in November 2004 and available on the CLG website, identifies good practice in co-operation between housing authorities and RSLs in relation to nomination agreements and exclusions.



Robust monitoring arrangements should be put in place to measure the effectiveness of the nomination agreement.

98. Authorities should also agree information sharing protocols with RSLs in their district, covering issues such as rent arrears, anti-social behaviour and support needs. Information sharing between local authorities and RSLs is particularly important and failure to get this right could undermine the nomination process or the success of a joint choice based lettings scheme; while effective information sharing should help ensure that tenancies have the best chance of being sustained. The former Housing Corporation issued a national standard protocol for sharing information about applicants which authorities may wish to follow<sup>20</sup>. Amongst other things, it provides helpful advice on data protection issues.
99. Local authorities are strongly encouraged to consider – together with RSLs in their district – the scope for developing common approaches to the allocation of social housing. This could include the adoption of a common housing register and a common allocation policy, and local lettings policies which cover RSLs as well as local authority stock. Providing a single point of access to social housing and one set of rules, should help make the process of applying for social housing simpler and more transparent for applicants, and can reduce wasteful duplication of effort by social landlords and applicants. This may help remove some of the confusion and frustration which applicants currently experience. The TSA made clear in *Building a new regulatory framework – a discussion paper* (June 2009), that it views agreement locally between social landlords and local authorities on how accommodation should be allocated as desirable and important for fairness and transparency within local areas.
100. Common housing registers and common allocation policies are particularly relevant in the context of choice based lettings. Developing common approaches requires trust between the partners which can be built by partnerships agreeing clear accountable governance structures and cost sharing arrangements and by delivering a high quality service which is viewed by applicants and by all partner landlords as an improvement on those delivered by local authorities and RSLs on their own<sup>21</sup>.

<sup>20</sup> *Access to Housing: Information Sharing Protocol*, Campbell Tickell for the Housing Corporation, November 2007.

<sup>21</sup> Further guidance on partnership working with both RSLs and private landlords is provided in chapter 6 of the 2008 code.

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