



Association of Housing Advice Services (AHAS)

Response to Homelessness (Suitability of Accommodation) (England) Order 2012 Consultation

Who we are

AHAS represents the largest number of housing advice, housing options and homelessness services in England. The Association represents statutory housing advice and options services which are the portal from which every resident in housing needs passes through. Our members, who are all managers of Housing Advice, Options and Needs services, therefore lay claim to being uniquely placed to contribute to and inform the debate on all aspects of homelessness prevention and housing solutions. .

We offer detailed advice on enhanced housing options and the choice agenda as well as providing advice and casework to private sector residents, social housing tenants facing homelessness, disrepair and overcrowding. We represent the sections that source, negotiate and direct applicants to private sector tenancies and therefore interact as a matter of course with a large number of private landlords and agents and therefore have up to date information on trends in the private rented sector.

We welcome the opportunity to comment on the consultation document. This document represents the views of key Local Authority Housing Needs Managers in London and the South East of England.

General

Overall we welcome the powers to discharge duty to house homeless households in the private rented sector. We accept that there have to be standards attached to this. However we must highlight the difficulties faced by local authorities in London and other high regional rent areas in sourcing accommodation for families within the overall benefit cap limits.

An overheated private rented sector over populated by people who would normally have bought their first homes, and the impact of the 30th percentile have made it very difficult to source the private rented market for homeless families. Given the surplus of potential tenants over lettings, landlords are able to let above the price that claimants can afford; given a choice they are not going to chose unemployed and homeless families to let their properties to.

AHAS supports the discharge of homeless household into the private rented sector but maintaining access to lettings is key. The Regulations must avoid being overly prescriptive and becoming a barrier to providing homeless people with decent housing in the private rented sector. We are concerned that overly prescriptive regulation will be bureaucratic and add to running costs, and will invite unnecessary litigation which will limit the freedom of

local authorities to discharge their homelessness duties. If local authorities are unable to place homeless households in private rented housing then welfare reforms that are designed to reduce welfare dependency will actually have the reverse effect of driving more homeless households into publically subsidised accommodation provided directly by local authorities rather than the private rented sector. An unintended consequence will be an increase in homeless acceptances as this will be seen as the solution on how to deal with the changes in welfare legislation by applicants and their non statutory sector advisers.

The government's commentary on the reasoning for the introduction of the cap and Universal Credit was very clear that claimants had to make choices: "It is also in the interests of all taxpayers who also have to work hard and pay taxes to support a system which can currently lead to Housing Benefit allowing some to live in homes that ordinary working families could not themselves afford" (Grant Shapps Sept 2011). Surely it was never the intention that the outcome of this legislation was for local authorities and therefore the local taxpayer to pick up the bill.

Part One: Suitability of accommodation used for the purposes of a private rented sector offer to end the main homelessness duty

Overall this first part is not too prescriptive but we find that there are still ambiguities and we would welcome more clarity. There is still a large potential for litigation and parts of this section still creates a huge unmanageable burden on local authorities

Question 1: *Do you agree that these five areas should be important in determining whether accommodation is to be regarded as not suitable?*

*physical condition of the property
health and safety matters(e.g. gas, electrical and fire safety)
licensing for HMOs
landlord behaviour; and
elements of good management*

We agree in principle that the 5 tests above are important in determining whether the accommodation is suitable. However, we believe that inspecting every property is not required. Inspecting each and every property will create a huge administrative burden whether this is done by a housing officer or an EHO. We also take the view that the requirements listed for inspection are too technical for a general housing officer and would require the expertise of an EHO or trained technical officer. Landlords require their properties to be let quickly, and will not be prepared to wait the time it may take to arrange an inspection. Given the location of these properties which may be outside the local authority district, the number of properties that are required, and the turnover of private sector tenancies, this will create a lengthy and expensive administrative burden on local authorities which will also result in the majority of properties being withdrawn from offer by the landlords.

We think all of this would best be dealt with by accreditation and self certification by landlords. Local authorities have been assisting people into the private rented sector for a number of years both as a homelessness prevention tool and as discharge of duty (via Qualifying Offer) and this has in the main worked well with a high level of satisfaction from tenants without a large amount of regulation.

Question 2: *Do you agree with the proposed requirements as set out in detail above?
Please give details and reasons.*

Accommodation would not be suitable if

The local housing authority (LHA) is of the view that the accommodation is not in a reasonable physical condition.

40% of the PRS has HHSRS category 1 Hazards, even in good quality rented or owned properties. As this is a personal assessment specific to the occupier reference to this hazard system is not helpful and would require a test for each property. This is too onerous, lengthy and the landlord is likely to have relet the property before this could ever be achieved. So as to avoid missing out on reasonable properties, of a typical standard to those in the locality, the obligations on councils should be to assist the tenant to remedy any category 1 hazards that may come to light in the first few months of the tenancy.

The LHA are of the view that any electrical equipment provided does not meet with the identified Electrical Equipment (Safety) Regulations.

It is not reasonable for local authorities to check that each appliance has been PAT tested. We would expect this to be done by self certification

The LHA are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishing supplied.

The LHA are of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning

We fully accept that the property has to be safe with compliance with fire regulations and carbon monoxide detectors. Again inspection would be onerous and we would expect landlords to self certify.

The LHA are of the view the landlord is not a fit and proper person to act in the capacity of landlord.

We think the 'Fit & Proper' test for each property and landlord is too onerous. Local Authorities currently check their records for any prosecutions under the PEA77 and liaise with EHD for evidence of bad management and disrepair, but applying for CRB checks when there may not be any reason to do so goes too far. Local authorities also find that a large proportion of properties are managed by managing agents, not landlords and this no longer becomes feasible as there may be a number of employees and turnover of staff in the organisation.

An HMO is subject to mandatory or discretionary licensing and it is not licensed.
We agree with this

The property does not have a valid EPC
We agree with this

The property does not have a current gas safety record.

We agree with this as long as there is a gas supply in the property.

The landlord has not provided the LHA with a written tenancy agreement which the LHA considers to be adequate

We agree with this. Local Authorities often provide landlords with model tenancy agreements.

We agree that it would not be practicable to require that the LHA is satisfied that the household's deposit is placed in a tenancy deposit protection scheme, given that this does not have to happen before the tenancy starts.

As good practice, the LHA could remind the landlord of the requirement to use a tenancy deposit protection scheme.

Question 3: *Are there any additional elements that should form part of the Order or any other comments you wish to make?*

No

Part Two – Location of accommodation

Affordability

With regards to affordability the current Homelessness Code of guidance guidelines states:

“In considering an applicant’s residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition of the applicant’s household. A current tariff of applicable amounts in respect of such benefits should be available within the authority’s housing benefit section. Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials.” Homelessness Code of Guidance for Local Authorities, DCLG, July 2006, Para 17.40

This guidance suggests that that accommodation will be regarded as “unaffordable” if the income that is left to the household after meeting their rent is less than their previous Income Support entitlements.

The proposed introduction of Universal Credit and Housing Benefit Cap will be in conflict with the homelessness guidance. According to the current guidance on affordability, every household who is housed under the homelessness legislation who is affected by the overall cap could challenge the local authority in a review because the accommodation is not affordable.

This cannot be the intention of the legislation. It will give a perverse incentive to households affected by the cap to make a homeless application. They would then just need to make a

homeless application, and then rely on the Local Authority to provide "affordable" accommodation, with the benefit cap made up again by the tax payer. Clearly the above guidance is out of date and contradicts the intention of the Benefit cap.

We recommend that government provides Local Authorities with new homelessness guidance on affordability in light of the benefit caps as a matter of urgency. The guidance has to ensure that the need of homeless households are balanced with the original intention of the legislation i.e. that households on benefits should face the same choices regarding where to live/rent as average working households. The new guidelines has to avoid the costs of such accommodation falling on the Local Authority/Council tax payer and avoid loophole being created in the homelessness legislation/guidance where households affected by the caps are incentivised to apply as homeless and avoid the caps by enjoying rents subsidised by the council tax payer.

The new guidance has to address how local authorities should treat households affected by the cap that don't or can't pay their rent. If, as we believe these households cannot be found intentionally homeless, then the only option will be to provide them with accommodation under the homelessness legislation and subsidise the rents.

Question 4: Do you agree that the existing provisions on location and suitability should be strengthened so that homeless households are placed nearer to home wherever possible?

No, we do not agree that existing provisions on locations and suitability should be strengthened. There is adequate case law, existing practice and code of guidance on this. But we think the existing provisions should include "affordability" and sustainability. Welfare reforms mean that a number of families – generally those with three or more children - will not be able to afford to rent anywhere in London and high rent pockets around the country. The only way they will be able to be housed will be for them to move to low rents areas well away from their previous home.

Private sector rents, like house prices, are primarily related to location. If the Government's intention is that people on benefits should not be able to afford to live in properties that would be unaffordable to someone on an average working wage, how can this be achieved other than by moving to a cheaper area? If Local Authorities are not allowed to relocate people away from expensive areas then they will be forced to provide people with unaffordable housing, and the local taxpayer will bear the burden of paying for the higher housing costs not met by welfare benefits, resulting in cuts in other services or substantial increases in council tax. The cost to the public purse must be a deciding factor. These costs are likely to increase year on as more families will have to be accepted through the homelessness route because they will be unable to afford the cost of living in the area through the benefit system alone.

We think that the regulations need to specify that only in "exceptional circumstances" should families need to be housed within their previous areas, and that normally they would have to move if accommodation in their local area is unaffordable. We think that this was the aim of the welfare reforms which were much publicized; if there is a bar on moving people out of London and high rent area this will drive a coach and horses through the intention and implementation of the welfare reforms. This is already being seen in London and around the country ahead of household benefit cap and the Universal Credit implementation.

We therefore believe that greater freedom to provide housing outside of expensive areas is required to give effect to the Government's policy intentions. To encourage good practice

and mitigate the impact of change, the obligation on Local Housing Authorities should be to help families to settle in their new areas by giving advice and support about schools, health services, transport, faith groups etc, and appropriate practical assistance with physical re-location

We also believe that the impact assessment did not highlight this risk to local authorities.

Question 5: *Do you agree that regulations should specify the factors in relation to location which authorities should take into account when considering the suitability of accommodation?*

No we do not agree that regulations are needed. Local Authorities are used to balancing the needs of the households with the availability of properties. For those families that have an overwhelming need to remain in their locality the Local Authority will have to subsidise the rent. Councils will have to balance each family's need to remain with the impact on the public purse and that family's ability to pay rent. Each family is different with a spectrum of needs which would open the way for challenges and litigation to test the degree at which a local letting can be provided. We believe Local Authorities can be relied on to make such decisions without further regulations.

Question 6: *Do you agree that those factors listed above are the ones local authorities should take into account when considering location?*

Factors suggested are:

distance of the accommodation from the applicant's previous home

- I. disruption to the employment, caring responsibilities, or education of members of the household;*
- II. access to amenities such as transport, shops and other necessary facilities;*
- III. and*
- IV. established links with schools, doctors, social workers and other key services and support essential to the well-being of the household*

No we do not agree that the factor listed above should be taken into account when considering location. The criteria is too prescriptive. This is a key issue and the wording of such a clause will be critical. Local Authorities already try their utmost to house families as near to their previous locality as possible but in the likely event that this will not be possible because there is no accommodation available at a price the family can afford then other housing locations will have to be offered. That households living in expensive areas need to consider moving somewhere cheaper is a key part of the Government's policy, and this necessarily involves a degree of upheaval such as moving to new schools and GPs.

The criteria listed are already in use when assessing suitability; however schools, hospitals, social workers and support services are available anywhere in the country and whilst Local Authorities should consider exceptional circumstances and reducing disruption as much as possible, these essential services can be provided in another location and therefore severance with existing services should not be a bar to a move outside their locality.

Inclusion of these factors in these regulations will completely restrict Local Authorities' ability to house applicants outside their current locality and raise expectations that cannot be met with all the substantial costs already mentioned.

Ultimately this has to be balanced against the financial burden to the local taxpayers.

To illustrate our point we present a real case study from one of our member council:

Mr & Mrs A, and 8 children all under 14 currently live in 5 bed accommodation in West London. They receive £461 LHA for their rent and a further benefit income of £649 (Job Seekers Allowance, Child Benefit and Child Tax Credit). In November their LHA will be capped at £346 as their 9 month transition period ends following April 2011 HB changes (specifically abolition of 5 bed rate). They may be able to pay something towards the rent shortfall. Based upon inflation adjusted benefit payable in 1997, they may be able to contribute £120 towards the shortfall. (Alternatively using Bank and Building society affordability on benefit as if it was net earnings from salary to pay a 4.2% repayment mortgage, they may be able to afford £175 per week)

Even if they can stay in their 5 bed accommodation until April 2013, if they have been unable to find and keep continuous employment, they will then receive zero HB/LHA as their income exceeds the overall benefit cap. Inevitably they will become homeless if they remain in West London. The council who has to discharge housing responsibility would need to provide at least 4 bedroom accommodation at a cost of upwards of £461 per week locally. So we would need to subsidise them by at least £200 per week.

Alternatively they could be settled in the Midlands where their £649 income could cover rent on a 4 bed property of £160 (Kettering) per week or even less in Burnley (£139). They should even be able to afford a larger property more suited to their needs in Burnley, without having to seek continual subsidy by local council taxpayers.

Clearly long term accommodation they can afford without extra subsidy (avoiding the continual threat of renewed homelessness and overcrowding because the subsidy may not be available) is in the families' best interest as well as the local council taxpayers.

We agree with the analysis of the alternative approach which we believe is already one that is in place and do agree that it can have some unintended consequences.

The IBAA (Inter Borough Accommodation Agreement) is very bureaucratic and we would suggest that an extension to NOTIFY would be preferable.

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