



Crisis response to DCLG's consultation paper on the Homelessness Code of Guidance for Local Authorities

December 2017

Executive Summary

Crisis is dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help people to transform their lives. Our eleven Skylight centres across the UK offer holistic support to secure access to adequate and affordable housing. Our dedicated coaches work to an integrated model of delivery that also helps people prepare for, find, sustain and progress in work. Ensuring homeless people can get access to affordable, decent, secure housing is therefore central to our work.

The Homelessness Reduction Act marks the most significant change to the homelessness legislation in 40 years and should ensure that thousands more people receive help to prevent their homelessness at a much earlier point. The Homelessness Code of Guidance for local authorities will play an essential role in helping to ensure that local authorities are able to put these changes into practice. The Act has the potential to drive a culture shift within homelessness services towards offering more meaningful, personalised support, focussed on working with households to identify the best solutions to prevent or resolve their homelessness. The guidance should encourage local authorities to see past the minimum duties and act to prevent homelessness wherever possible. For the Act to be successful this must go beyond the housing authority and homelessness prevention must be embedded into every relevant government department and public service.

We have provided detailed feedback on many aspects of the Code of Guidance in our response and have highlighted the main points in this summary. These areas will be key to ensuring the successful implementation of the Homelessness Reduction Act and will help to ensure the ambition behind the legislation is achieved in practice as it is implemented.

- As it is currently drafted the Code of Guidance does not reflect the spirit of the Homelessness Reduction Act and does not encourage the culture change in local authorities that will be needed to deliver on the ambition of the legislation.
- The duty to refer must be strengthened so that so that when a referral is made to a housing authority this actually triggers an application for housing assistance.
- The guidance should encourage housing authorities to explore the potential for partnerships and new ways of working with other departments and organisations in the area that would help ensure the duty to refer works effectively and people at risk of homelessness are identified and supported at the earliest possible opportunity.

- The prevention and relief duties should only be ended on the grounds of deliberate and unreasonable refusal to cooperate in exceptional circumstances and should not penalise those who have difficulty cooperating, for example because they have mental health problems or complex needs. The guidance must be amended to ensure there is sufficient accountability and protections in place for vulnerable individuals.

The draft Code of Guidance does not encourage the culture shift in local authorities that is needed for the legislation to achieve its intended aims. The guidance sets out the minimum that local authorities will need to do to fulfil the duties set out in the legislation, but it does not encourage the broader culture change that would lead to a transformation in the way homeless people are treated and a really effective homelessness prevention service. To achieve this transformation of homelessness services local authorities will need to take a holistic approach that recognises that applicants may have a range of needs in addition to housing. This will require effective joint working across different departments within the local authority and with other relevant organisations in the local area, including social services, housing associations, probation teams and mental health teams. This partnership approach should be embedded in local authorities' homelessness strategies and continue through every stage of the service, from identifying people at risk of homelessness to prevention and finding suitable accommodation. This must be emphasised throughout the guidance. For example, the advice provided around formulating a homelessness strategy should strongly encourage local authorities to work closely with other departments within the local authority and relevant local organisations to identify areas where homelessness can be prevented at a much earlier stage. There are further examples of this throughout the guidance, which we have outlined in more detail in answer to the relevant questions below.

The successful implementation of the duty to refer will be critical to ensuring the new legislation has the impact intended, and enables thousands more households to receive help to prevent their homelessness at a much earlier point. An effective referral mechanism, accompanied by effective partnership working, will be crucial to ensuring that households at risk of homelessness are identified and can access support with housing at the earliest possible stage. The guidance around the referral process should be strengthened so that when a referral is made to a housing authority this actually triggers an application for housing assistance. This would help to ensure that referrals are always acted upon in reasonable time and allow time for meaningful prevention activity to be carried out wherever possible. Culture change needs to go beyond the housing authority itself and we are concerned that the draft guidance does not encourage housing authorities to explore the potential for partnerships and new ways of working with other departments and organisations in the area that would help ensure the referral process works effectively and people at risk of homelessness are identified and supported at the earliest possible opportunity.

The Code of Guidance must make clear that the prevention and relief duties should only be ended on the grounds of deliberate and unreasonable refusal to cooperate in exceptional circumstances and as a last resort after all attempts to engage the applicant have been exhausted. The guidance as it is currently drafted does not include sufficient safeguards to protect vulnerable individuals from the duty being ended in this way, and should be amended to clarify that the ability to end the duty on these grounds should not

penalise those who have difficulty cooperating, for example because they have mental health problems or complex needs.

Background

Why did the legislation need changing?

For many years, Crisis has been campaigning for the homelessness legislation to be changed as we know that the majority of single homeless people are turned away by their council and given very little help or assistance. Homelessness legislation introduced in 1977 gave households in 'priority need' a right to statutory assistance and an offer of settled accommodation, but in doing so excluded most single homeless people. Subsequent legislation refined and expanded the definition of priority need, but before the Homelessness Reduction Act there had been no reconsideration of the principles of the legislation for forty years.

For the majority of single homeless applicants, who would not be owed the main homelessness duty, the local authority only had a duty to provide basic advice and information. Very little detail was provided in legislation about how this duty should be met. As a result, the service provided was inconsistent and, when poor, difficult to legally challenge. In 2014, Crisis conducted a mystery shopping exercise to examine the quality of advice and information provided to single homeless people. In 50 of the 87 visits made people received inadequate or insufficient help. It was common for mystery shoppers to simply be signposted to written information or even turned away without any help or the opportunity to speak to a housing adviser¹. The consequences of being turned away with no support can be disastrous, leaving many people with no option but to sofa surf, squat in abandoned buildings or in the worst circumstances sleep rough.

Even for applicants who are owed the main homelessness duty, the legislation did not mandate effective prevention work, meaning that people were often forced to crisis point before the local authority intervened. An applicant would only be assessed as threatened with homelessness if they were likely to be homeless in the next 28 days. This provides a local authority with very little time to carry out significant meaningful prevention work. The failure to intervene early makes it more likely that the household will lose their home.

Prior to the Homelessness Reduction Act being passed in England, both Scotland and Wales had introduced new legislation to address the historic lack of entitlements for single people. This has demonstrated the viability and success of an approach that provides a broader set of entitlements for people facing homelessness.

Evidence from Wales indicates that the new legislative framework for homelessness, which introduced new requirements for local authorities to prevent people's homelessness irrespective of whether they are in priority need or intentionally homeless, has had an array of positive impacts, including reorientating the 'culture' of local authorities towards a more preventative, person-centred and outcome-focussed approach. The co-production model used to develop the Welsh Code of Guidance and a Welsh government funded training programme for front line staff, jointly delivered in partnership with Shelter Cymru and the Welsh Local Government Association are seen to have played a key role in achieving this change.² This highlights the importance of

¹ Dobie, S., Sanders, B., Teixeira, L. (2014), Turned Away, the treatment of single homeless people by local authority homelessness services in England. London: Crisis.

² Fitzpatrick, S., H. Pawson, G. Bramley, S. Wilcox, B. Watts and J. Wood (2017) The homelessness monitor: Wales 2017. Crisis: London.

ensuring that the Code of Guidance sets the right tone so that the legislation achieves the positive change it was intended to bring about.

Crisis' vision for the new homelessness legislation

Crisis supported the Homelessness Reduction Act as it developed and became law as we strongly believed that the legislation in England needed to be expanded to increase entitlements for single people in order to effectively tackle homelessness. We recommended that a much stronger duty be placed on local authorities to provide a more robust and tailored package of support to help prevent and relieve homelessness for all households at a much earlier point. A greater focus on preventing homelessness over time should, based on the Welsh experience, reduce the numbers of people who lose their home and require an offer of settled accommodation under the main homelessness duty.

In order to design a system that would best help achieve these aims, Crisis established an independent panel of experts from across the housing and homelessness sector to review the legislation and devise an alternative framework.³ Following the panel's discussions, they sought the advice of a leading housing law barrister with specialist knowledge of homelessness (Liz Davies at Garden Court Chambers) to draft the alternative legislation.

The Homelessness Reduction Act

In May 2017 the Homelessness Reduction Act received Royal Assent. It is the most significant change to the homelessness legislation in 40 years and should ensure that thousands more people receive help to prevent their homelessness at a much earlier point. The Act was a private members Bill introduced by Bob Blackman MP and Crisis worked closely with Bob Blackman MP as the legislation progressed through Parliament.

The Act has the potential to drive a culture shift within homelessness services towards offering more meaningful, personalised support, focussed on working with households to identify the best solutions to prevent or resolve their homelessness. It places new duties on local housing authorities to intervene earlier to ensure that homelessness is tackled at the earliest point for all households and resources are used effectively. It provides new, meaningful support to those who under the old legislation were not entitled to meaningful assistance.

The Homelessness Code of Guidance for local authorities

The Homelessness Code of Guidance for local authorities provides statutory guidance on how local housing and social services authorities should exercise their homelessness functions and apply the legislation in practice. It is also relevant for private registered providers of social housing, health authorities, criminal justice agencies, voluntary sector organisations and the range of bodies working in the private rented sector as many of the activities covered in the Code will require cooperation and effective joint working. This is particularly the case for effective homelessness prevention activity.

It is essential that the Code of Guidance reflects the ambition and the intention behind the legislation and encourages the culture shift in local authorities that is needed for the

³ The homelessness legislation: an independent review of the legal duties owed to single homeless people (2016) Crisis: London.

legislation to achieve its intended aims. The Act has the potential to transform the way local authorities prevent and tackle homelessness, and should enable homelessness to be prevented at a much earlier stage and ensure everyone who is homeless or at risk of homelessness receives meaningful and personalised support. The guidance should encourage local authorities to see past the minimum duties and act to prevent homelessness wherever possible.

Personal information (questions 1 – 4)

This response is submitted on behalf of Crisis, a homelessness charity. Crisis has eleven Skylight centres throughout the UK, which offer education, training and support with housing, employment and health to support people out of homelessness for good. In England Crisis has services in Tower Hamlets, Brent, Croydon, Oxford, Newcastle, South Yorkshire, Merseyside and Birmingham.

Format of the Homelessness Code of Guidance (questions 5 – 9)

Q5: Do you agree that annexes should be removed from the guidance? If not, is there any specific information that you would suggest keeping in an annex and why?

We welcome the government's aim to streamline the Homelessness Code of Guidance to help make the legislation clearer and more accessible to local authorities. For the guidance to support the effective implementation of the legislation it is important that it is easy to use and understand, and as concise as possible while still including all necessary and important information.

To help achieve this balance we recommend including hyperlinks to external sources of information at relevant points throughout the guidance. This will ensure the guidance remains concise but that additional information, much of which was previously included in annexes, is not lost and is easily accessible via a link from the relevant chapter. In particular, it is important that the detailed information about eligibility in annexes 8-12 is retained, and either linked to or included in chapter 7 of the updated Code of Guidance. We also recommend including links to examples of best practice to help improve the standard and consistency of services across local authorities. This should include the learnings from the government's Homelessness Prevention Trailblazers.

Annexes 4, 5 and 6 in the current guidance discuss the actions other departments within the local authority, registered social landlords and other public, private and voluntary sector organisations may be expected to take to prevent and relieve homelessness and how this might be addressed through local authorities' homelessness strategies. We agree that these annexes should be removed as guidance around partnership working should be a central theme throughout the guidance and not relegated to the annexes. As we have emphasised throughout our response, it is essential that local authorities work closely with other departments within the local authority and relevant local organisations to develop their homelessness strategy and identify areas where homelessness can be identified and prevented at a much earlier stage. Effective partnership working should be embedded at every stage of the implementation of the strategy, from identifying people at risk of homelessness to preventing and relieving homelessness. This is critical for the effective implementation of the legislation and should be clearly outlined throughout the Code of Guidance. We are concerned that the draft guidance does not sufficiently emphasise the importance of effective joined up working and much more should be done to ensure that this is a central theme throughout the guidance.

We have some concerns about the removal of annex 18, which outlines the guidelines agreed by the local authority associations on the procedures for referrals of homelessness applicants on the grounds of local connection with another local authority. It is important that the relevant agreement for England is linked to in chapter 10 of the

guidance. If there is not an agreed procedure for all English local authorities, then there is a high risk that applicants will be sent back and forth between different authorities and will struggle to access the support they are entitled to.

Q6: Do you agree with the recommendations for withdrawal of existing supplementary guidance documents? Are there specific, essential elements of current guidance material that should in your view be retained and considered for inclusion in the revised guidance?

We welcome the inclusion of the supplementary guidance within the main Code of Guidance document to ensure that all relevant information is accessible in one central document. However, it is important to ensure that key information is not lost in this process.

In our response to question 16 below we have recommended some additional points that should be included in chapter 21 on domestic abuse. This should ensure that all of the key information from the supplementary guidance on domestic abuse and homelessness is included in the updated Code of Guidance. The supplementary guidance also includes several links to useful information. We recommend that these are included at the appropriate points throughout chapter 21 so that local authorities can easily access additional advice and best practice as needed.

We would also recommend the incorporation of the following key paragraphs (14, 21 and 22) from the supplementary guidance on the Localism Act 2011 and 2012 Suitability Regulations into the new 2018 guidance.

Paragraph 14: Authorities are reminded that the discretion to arrange a private rented sector offer is a power, not a duty, and as such, authorities should not seek to rely on the power in all cases. Authorities should consider whether to arrange a private rented sector based on the individual circumstances of the household and undertake to develop clear policies around its use.

This guidance is essential to remind local housing authorities that a private rental sector offer should not be seen as the default means to discharge the main (s.193) rehousing duty, or the new prevention and relief duties. It should be one type of tenancy to be considered, depending on the needs of the household and the local housing conditions. We suggest paragraph 14 above is incorporated in chapter 16 (securing accommodation) of the new guidance and that the most suitable place is following paragraph 16.18 of the draft Code.

Paragraph 21: The previous requirement (in section 193(7F)) that authorities must be satisfied that it is reasonable for the applicant to accept the offer has been amended so that no factors, other than contractual or other obligations in respect of existing accommodation, are to be taken into account in determining whether it is reasonable to accept the offer. Where an applicant has contractual or other obligations in respect of their existing accommodation (e.g. a tenancy agreement or lease), the housing authority can reasonably expect the offer to be taken up only if the applicant is able to bring those obligations to an end before he is required to take up the offer.

Paragraph 22: This change does not mean that those subjective suitability issues which have become associated with 'reasonable to accept', such as those discussed in Ravichandran and another v LB Lewisham or Slater v LB Lewisham are not to be taken

into account. The intention is that these factors as already highlighted in paragraph 17.6 of the Homelessness Code of Guidance for Local Authorities (for example, fear of racial harassment; risk of violence from ex-partner's associates) continue to be part of those factors/elements an authority consider in determining suitability of accommodation.

These paragraphs are essential to the legal definition of suitability and to retain the legal principle of 'reasonable to accept'. It is essential that the new guidance clarifies that, in determining whether accommodation is suitable, local authorities should not only refer to the suitability regulations, but consider whether it is reasonable for the applicant to accept the accommodation. For example, accommodation might be suitable in terms of size, location and affordability but it may not be reasonable to accept because it is in the same neighbourhood as a violent ex-partner. During the passage of the Localism Act, which removed the requirement that it must be reasonable for the applicant to accept an offer, DCLG made assurances that this would not remove the principle of 'reasonable to accept' because this aspect would form part of the determination of suitability. The result was paragraph 22 of the supplementary guidance. These paragraphs should be included in chapter 17 (suitability of accommodation) of the new guidance.

Q7: Do you agree that the revised Homelessness Code of Guidance should incorporate the additional supplementary guidance documents? If not, what other method or format would you suggest and why?

As outlined above, we welcome the incorporation of the information in the supplementary guidance documents into the main Code of Guidance document.

Q8: Are there any other relevant caselaw updates that you think should be considered for inclusion in the revised guidance? If so, detail the case and which chapter of the Homelessness Code of Guidance the update should be included within.

Yes, we think that a number of recent test case judgments should be included within the new guidance.

Vulnerable applicants

We would like to see clarification on the definition of 'vulnerable' for the purposes of priority need decisions. The definition of 'vulnerable' is very important for the implementation of the Homelessness Reduction Act. The Act requires local authorities to assist all eligible applicants who are threatened with homelessness. While this is a potentially huge improvement for 'single homeless' applicants, they could still remain or become street homeless at the end of the prevention or relief stages because these stages are time-limited and there is no ultimate rehousing duty. The new guidance should include clarification based on the recent case of *Panayiotou v London Borough of Waltham Forest*⁴ and the important test case which this judgment built on of *Hotak v London Borough of Southwark*⁵. This should be included in chapter 8 (priority need) of

⁴ *Panayiotou v Waltham Forest London Borough Council; Smith v Haringey London Borough Council* [2017] EWCA 1624, 19 October 2017

⁵ *Hotak (Appellant) v London Borough of Southwark (Respondent), Kanu (Appellant) v London Borough of Southwark (Respondent), Johnson (Appellant) v Solihull Metropolitan Borough Council (Respondent) Crisis & Shelter, EHRC, SS for CLG interveners* [2015] UKSC 30

the new Code of Guidance. We have outlined more detail about the clarification needed in response to question 12 below.

Accommodation out of area

We would like to see inclusion of *Nzolameso vs Westminster City Council*⁶ in chapter 17 (suitability of accommodation) of the new Code of Guidance. In this important test case the Supreme Court recommended that:

- If accommodation cannot be procured in area, then attempts must be made to find a suitable alternative as close as possible to where the household were previously living. The search for accommodation must be evidenced.
- The principal needs of the individual household must be acknowledged, including adults and children, and assessed both individually and collectively when determining the location of accommodation.
- Written evidence and explanation should be recorded and given on a case-by-case basis when making out of area placements, acknowledging each household's collective and individual needs.
- Households must be given sufficient time to make a decision on an out of area offer, when no alternatives are available, and thorough information regarding the proposed area must be provided.

While paragraph 17.47 of the draft guidance attempts to deal with the *Nzolameso* judgment, it does not adequately reflect the court's recommendations. We would like to see paragraph 17.47 significantly strengthened. We have included more detail on this in response to question 14 below.

Q9: Do you have any comments on the drafting style and tone in the revised guidance, and are there some chapters that you find easier to understand than others?

The tone throughout the Code of Guidance should reflect the ambition of the new legislation, and the potential it has to transform homelessness services so they are focused on providing meaningful, personalised support through working with households to identify the best solutions to prevent or resolve their homelessness. This will require housing authorities to take a holistic approach that recognises that people may have other needs in addition to housing, and to work effectively across different departments within the local authority and with other relevant organisations in the local area to ensure applicants are able to access appropriate support. Effective joint working will be essential for the early identification and prevention of homelessness and this should be reflected in the tone of the updated guidance. We have provided further detail on the specific areas that could be changed to help achieve this throughout this response.

⁶ *Nzolameso vs Westminster City Council* [2015] UKSC 22, 2 April 2015

Content of the Homelessness Code of Guidance (questions 10 – 17)

Q10: To inform our public sector equality analysis further we are interested in your views on the likely impacts of the Homelessness Code of Guidance on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views.

Analysis of the DCLG homelessness statistics shows that black, Asian and minority ethnic (BAME) households are disproportionately affected by homelessness and that BAME homelessness is disproportionately increasing.⁷ This means the guidance will disproportionately impact BAME households. We would therefore recommend that paragraph 3.5 (advice and information about homelessness) of the draft guidance highlight that services should address any specific needs of BAME households, such as advice to challenge the practices of landlords under equalities legislation or advice in dealing with racial harassment that might lead to homelessness. Chapter 17 (suitability of accommodation) should clarify that accommodation may not be 'reasonable to accept' if there is a fear of racial or religious harassment in the neighbourhood.

The homelessness statistics also show that 57% of households who are currently accepted for homelessness assistance are headed by lone women, mainly lone mothers (47%) combined with lone women (10%). This means the guidance will disproportionately impact women, and particularly lone mothers. The guidance should remind local authorities, in appropriate sections – such as meaning of deliberate and unreasonable refusal (paragraphs 14.47 – 14.54) and location of accommodation (paragraphs 17.46 – 17.59) – to take into account the additional challenges faced by homeless lone mothers in arranging alternative childcare or relocating to a locality where they have no support network to provide alternative childcare.

The guidance should recommend that the needs of protected groups, such as BAME households, women or people with disabilities, are taken into account in paragraph 3.5. Some BAME households, such as refugees, may feel particularly uncomfortable in approaching government officials for assistance, people with disabilities may have specific needs to access advice, whereas lone mothers may have a narrow window in which to seek face-to-face advice without the need for alternative childcare.

Q11: Taking chapters 1-5 of the Homelessness Code of Guidance which describe strategic functions consider the following questions:

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 1 – Introduction

Paragraph 1.24 should be amended to make clear that rights protected under Article 8 include the right to respect for private and family life in congregate supported housing (hostels).

Chapter 2 – Homelessness strategies and reviews

⁷ <http://blog.shelter.org.uk/2017/10/bame-homelessness-matters-and-is-disproportionately-rising-time-for-the-government-to-act/>

The guidance should strongly encourage local authorities to work closely with other departments within the local authority and relevant local organisations when formulating a homelessness strategy to identify areas where homelessness can be identified and prevented at a much earlier stage. It would also be helpful for the new guidance to suggest that strategies should be living, working tools, as well as strategic planning documents. They should be used by advisers to highlight services provided in the area for those at risk of homelessness and advisers should be encouraged to report back to strategy departments on how effective the homelessness strategy is in practice.

Duty to formulate a homelessness strategy

The government is currently consulting on proposals to improve local planning for supported housing and commissioning across service areas, as part of the wider reform of the funding approach for the supported housing sector. This includes proposals for a National Statement of Expectation and local level strategic planning to underpin the new funding regime. We suggest that paragraphs 2.9 and 2.10 should be amended to reflect these proposed changes and an additional sentence be added to encourage local authorities to consider how their homelessness strategy would inform their strategic planning for supported housing in the local area.

Preventing homelessness

Paragraph 2.23 should be amended to clarify that the Act also strengthens statutory duties to prevent homelessness for people without a local connection. We would suggest amending the text in the following way (additional text in bold): *'Furthermore, the 2017 Act strengthens statutory duties to prevent homelessness for all eligible applicants, including those who do not have priority need or a local connection, or may be considered intentionally homeless.'*

Reviewing homelessness prevention activities and resources

An additional paragraph should be added to this section to outline that local authorities should commission prevention activities based on evidence of what works. To facilitate this, the guidance should encourage local authorities to improve their data collection and analysis, to ensure they are collecting data on the prevention outcomes achieved as a result of different activities. They will then be able to use this data to develop a strong evidence base to inform future commissioning.

Formulating a strategy to prevent homelessness

Part a. of paragraph 2.28 on the elements of a prevention strategy should be amended to make clear that local authorities should take every opportunity to prevent homelessness across all departments, not just the housing authority. Ensuring that every department within the local authority and partner agencies maintains a high level of awareness about housing options and homelessness will help to ensure people at risk of homelessness can access advice and information to help them take action and get support to prevent their homelessness, even if they do not directly approach the housing authority. This will help to ensure that homelessness is identified at an early stage, greatly increasing the chances of prevention activity being successful.

Part b. of paragraph 2.28 is an example of where the Code of Guidance does not encourage the type of culture shift that is necessary for the Act to be successful in preventing homelessness for many more people. This paragraph should be expanded to

encourage housing authorities to work closely with all relevant departments and agencies in the local area to identify the points where homelessness can be prevented. This will ensure that homelessness can be identified and prevented at a much earlier stage, which will only be possible with the involvement and cooperation of all relevant organisations working in the local area. The All Party Parliamentary Group (APPG) for Ending Homelessness focused its first inquiry on three cohorts of people most at risk of homelessness: care leavers, prison leavers and survivors of domestic violence. They found that for all three groups there are clear points of intervention where homelessness can be prevented, however time and time again these people are getting lost despite, in many cases, receiving assistance from public bodies which should be a trigger to prevent their homelessness.⁸ The guidance should strongly encourage housing authorities to take this opportunity to work with all relevant public and private organisations, including other departments within the local authority, to identify the points of intervention where homelessness can be prevented and put in place measures to ensure this happens.

Part b of paragraph 2.28 should also include a non-exhaustive list of the public agencies and social housing providers that should be engaging with the housing authority to assist with earlier identification of homelessness. This should include the NHS, drug and alcohol agencies, probation teams, debt advice services, children's services, mental health teams, Jobcentres and housing associations.

Reviewing accommodation needs and resources

An additional bullet point should be added under paragraph 2.34, which lists the types of accommodation housing authorities may want to include in their review of supply and demand, to include Housing First accommodation in this list.

Accessing the private rented sector

Paragraph 2.41 encourages housing authorities to work in close partnership with local landlords to expand the provision of private rented accommodation that is available to people who are threatened with homelessness or homeless. Over the last decade, the private rented sector has expanded dramatically and is increasingly being used to meet housing demand and provide long term homes for homeless households. Private renting is now often the only housing option available to homeless households, and despite significant problems with the sector, it can be a viable housing option, even for vulnerable people, with the right support and safeguards in place.

Interim findings from the evaluation of the changes to the Welsh homelessness legislation in 2014 indicate that preventative work has been more likely to involve obtaining alternative accommodation than supporting people to remain in their existing homes. In 2016/17 43% of households supported into alternative accommodation to prevent homelessness were helped into the private rented sector.⁹ Local authorities indicated that the main prevention activity is financial assistance for rent guarantees, payment of deposits or rent arrears accrual to help people move into a private rented

⁸ APPG for Ending Homelessness report, July 2017,

https://www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf

⁹ Statistics Wales (2017) All cases where positive action succeeded in preventing/relieving homelessness. Cardiff: Welsh Assembly Government.

<https://statswales.gov.wales/Catalogue/Housing/Homelessness/Statutory-Homelessness-Prevention-and-Relief/all-cases-where-positive-action-succeeded-in-preventing-relieving-homelessness>

sector property.¹⁰ The private rented sector is already used extensively by many local authorities in England to help prevent and relieve homelessness, and this gives some indication of how important the sector will continue to be in helping local authorities to meet their new duties under the Act. In light of this, we recommend expanding this section of the guidance to provide more detail on what local authorities can do to help applicants access accommodation in the private rented sector.

Help to Rent projects are a good example of what local authorities can do to make the private rented sector a viable option for both landlords and vulnerable tenants. Schemes attract landlords by offering a suite of services to mitigate the risks that might otherwise be associated with letting to a tenant who has experience of homelessness and is in receipt of housing benefit or Universal Credit. Those services might include helplines for landlords and tenants, inventory services pre- and post-tenancy, and in some instances rental guarantees for a specified time period. Inexperienced landlords will receive training on how to manage complex tenancies and a named point of contact if something goes wrong. Anecdotal evidence from the Help to Rent projects Crisis helps fund and from Crisis Skylight Housing Coaches indicates that this support is the service most valued by landlords.¹¹ The tenant will receive structured support throughout the tenancy, to ensure the accommodation remains suitable and help gaining and maintaining employment. Adding more detail to this section of the guidance about activities that we know are successful in helping increase access to the private rented sector, such as the example of Help to Rent projects, will help ensure local authorities can work with more people to help prevent their homelessness.

In the Autumn 2017 budget the government allocated £20 million of funding for schemes to support people at risk of homelessness to access and sustain tenancies in the private rented sector. This will help to ensure that all local authorities across England can offer Help to Rent projects to support vulnerable tenants to access accommodation in the private rented sector. The guidance should acknowledge this, as it is important that the support offered by local authorities is consistent, while also being tailored to local needs, to avoid a postcode lottery in the support available to applicants.

Access to social housing

Paragraphs 2.42 – 2.48 discuss access to social housing. It is essential that the government takes this opportunity to revise national policy on social housing allocations to ensure that single homeless people and others in housing need are not prevented from accessing social housing. Housing register eligibility restrictions being imposed by some councils and social housing providers are making it difficult for some single homeless people to gain access to social housing, even in areas where there is a supply of housing that is immediately available in low demand neighbourhoods. The Localism Act (2011) increased councils' discretion over how to allocate housing and gave councils the power to restrict access to social housing allocations by excluding groups of people designated as non-qualifying persons. It is now common for local authorities to include blanket restrictions on eligibility in their allocations policy, for example by excluding

¹⁰ Ahmed, A., M. Wilding, A. Gibbons, K. Jones, M. Rogers & I. Madoc-Jones (2017) Post-implementation evaluation of the homelessness legislation (Part 2 of the Housing Act (Wales) 2014): Interim Report. Cardiff: Sustainable Housing & Urban Studies Unit (SHUSU) The University of Salford

¹¹ Gousy, H. (2016) Home: No less will do. London: Crisis.

people who do not have a local connection, who have a history of rent arrears or previous criminal convictions.

There is a growing body of qualitative evidence that the use of blanket housing register exclusions is creating a particular barrier to access for single homeless people.¹² The exclusion of people with previous criminal convictions is an example of how these blanket policies exclude individuals who already have a greater risk of homelessness from accessing social housing. There is a clear link between homelessness and offending. Nearly a quarter of residents in homelessness accommodation are prison leavers or ex-offenders¹³ and a third of people recorded as sleeping rough in London in 2015/16 had spent time in prison¹⁴. In areas with fixed periods of exclusion from social housing entitlement, people leaving custody are at significant risk of homelessness as they will not be able to access social housing. Restrictive eligibility policies undermine efforts to prevent homelessness, by restricting the options available for people to move to. This is particularly concerning when it impacts on individuals that are already at greater risk of homelessness, such as people leaving prison, whose homelessness could be prevented with the right support if suitable accommodation is available. For prison leavers, this may also undermine effective resettlement and the chances of securing work, which in turn increases the risk of reoffending.

The guidance should be amended to recommend that local authorities do not adopt blanket exclusion policies as they undermine efforts to prevent homelessness and may exclude homeless people who should be given reasonable preference for housing. Although the draft guidance (paragraph 2.46) encourages local authorities to consider the impact of their allocations policies on people at risk of homelessness, including single people less able to establish their residency or with a history of homelessness, evidence indicates that single homeless people continue to be excluded from accessing social housing and individual circumstances are not adequately considered.¹⁵

We also recommend that paragraph 2.43 is amended to confirm that applicants who are being supported under the prevention or relief duties should be given reasonable preference within the allocations scheme. In addition, the government should consider amending Section 166A(3)(b) of the Housing Act 1996 so that it includes "*people who are owed a duty by any local housing authority under section 189B, 190(2), 193(2) or 195(2)...*". This would make it completely clear that reasonable preference should be given to people who are owed the relief duty, in addition to those who are owed the main duty or the prevention duty.

Crisis also recommends that the allocations guidance for local authorities should be amended to ensure that provisions enabling a local authority to restrict access to those with a residency or local connection are not used to prevent a care leaver brought up in a different area from being re-housed. This would help to better prevent care leavers from becoming homeless. If this change is made, then we would expect the Code of Guidance to be updated to reflect this.

¹² Rowe, S. (2017) *Moving On: Improving access for single homeless people in England*. London: Crisis.

¹³ Homeless Link (2016) *Support for single homeless people in England – Annual Review 2016* London: Homeless Link Graph 5.

¹⁴ Greater London Authority. (2016). *CHAIN Annual Report Greater London April 2015 - March 2016*. London: GLA.

¹⁵ Rowe, S. (2017) *Moving On: Improving access for single homeless people in England*. London: Crisis.

Refuges and supported housing

This section should note that when local authorities are assessing levels of need for refuges, they will need to consider levels of demand from both within and outside of their district as three quarters of women move across local authority boundaries to access refuge services.¹⁶

Empty homes

We recommend that paragraph 2.52 should be expanded to more strongly encourage local authorities to link their homelessness strategy to their empty homes strategy to consider how long-term empty homes (those have been empty for more than six months) and conversions of long-term empty commercial properties could contribute to providing a sufficient supply of housing to meet estimated needs identified in the homelessness strategy. The guidance currently gives one example of how local authorities could increase the number of empty homes brought back into use. There are a range of actions that local authorities could take to help achieve this and we recommend that the guidance includes a non-exhaustive list of options local authorities may want to consider.

This could include encouraging local authorities to:

- Directly lease long-term empty homes from private owners, or work with community-based organisations and housing providers who want to do so, to secure either interim accommodation or longer-term settled housing.
- Encourage registered housing providers to seek funding from the Homes and Communities Agency to deliver new affordable homes through long-term empty properties as well as via new build schemes.
- Provide loans or grant funding to incentivise private owners to bring long-term empty homes back into use subject to, for example, the owner agreeing to let the property via the local authority, e.g. to provide settled accommodation for homeless households.
- Take enforcement action such as compulsory purchase orders and empty dwelling management orders to ensure that empty homes are brought back into use to meet housing needs, where owners are unwilling to act.

Support for single people

We suggest amending the heading for this section (paragraphs 2.64 – 2.66), which is currently titled 'Support for single people', as it does not accurately reflect the content of the section. This section discusses support for individuals at particular risk of homelessness, including young people leaving care, ex-offenders, veterans, people with mental health problems or people leaving hospital, and this will not exclusively be single people. The section could be more accurately titled 'Support for individuals at particular risk of homeless'.

Support for rough sleepers

We recommend amending paragraph 2.68 to read (additional text highlighted in bold):
*'housing authorities should consider what actions will assist in preventing **and ending***

¹⁶ Women's Aid, Meeting the Needs of Women and Children, Annual Survey, Bristol, Women's Aid Federation of England, 2016. <https://www.womensaid.org.uk/research-and-publications/annual-survey-2016/>

rough sleeping for those groups that are over represented amongst those identified as sleeping rough. It is important that housing authorities develop and deliver effective interventions for people who are already sleeping rough with mental health problems and other complex needs, so they are able to access housing and appropriate support.

The following addition (highlighted in bold) should be made to paragraph 2.69: *'Such collaborative working can help reduce the numbers of people sleeping rough and provide effective services targeted at those who are homeless or at risk of becoming homeless **when coupled with meaningful support***. Recent Crisis research has found that well targeted enforcement with genuinely integrated support can be effective at stopping anti-social behaviour and act as a catalyst for helping rough sleepers.¹⁷ However, if used without support it can be detrimental to rough sleepers, displacing people and leaving them marginalised and excluded from much needed services. We recommend that the measures in the 2014 Anti-social behaviour, Crime and Policing Act are used only as a last resort by local authorities and the police to address anti-social or criminal behaviour by those that are rough sleeping and that where used, this enforcement approach is always accompanied by a social care package and an accommodation offer.

Support for victims of domestic abuse

We welcome the guidance in encouraging housing authorities to involve any local Domestic Violence Forum and service provider(s) in formulating their homelessness strategy. The guidance should also require housing authorities to ensure their homelessness strategies are linked to their domestic abuse strategies to ensure cohesion, consistency and cross department collaboration.

Further detail should be added to the section 'Support for victims of domestic abuse' (paragraphs 2.72 – 2.73) to ensure that local authorities' homelessness strategies include appropriate housing and support to meet the needs of survivors of domestic abuse. Homelessness strategies should include a broad range of housing options for victims of domestic abuse, including but not limited to refuges, such as a Housing First model for domestic abuse survivors, sanctuary schemes which provide support for survivors in their own homes and reciprocal partnership agreements with local authorities and other housing providers to ensure survivors with secure tenancies do not become homeless and can secure a like for like property in another borough. We have provided further detail on these examples in our answer to question 16 below.

Paragraph 2.73 should be expanded to clarify that local authorities should not put a cap on the amount of women and children from outside of the local authority area who can access refuge spaces. This undermines the purpose of refuge services, which is to provide women fleeing domestic abuse with safe emergency accommodation and in many cases this will need to be outside of an individual's local area.

Chapter 3 – Advice and information about homelessness and the prevention of homelessness

Crisis supports the emphasis included in the opening paragraph of chapter 3, which states that advice and information about homelessness and the prevention of

¹⁷ Sanders, B. and Albanese, F (2017) An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales. Crisis

homelessness must be available to any other person in the district, as well as those who are owed further duties under Part 7. Good quality and easily available advice and information about homelessness and the prevention of homelessness will be essential to ensure the core aim of the new legislation, to prevent homelessness for many more households, is achieved.

To ensure that advice and information is easily accessible when people need it, an additional point should be included under paragraph 3.3 to highlight the importance of advice and information being available through other public agencies and social housing providers in the local area, such as housing associations and prisons. This will enable people to get advice about preventing homelessness at an earlier stage in places where they already live or visit, before they consider approaching the local authority for assistance.

We recommend adding a new paragraph after paragraph 3.4 to specifically set out that local authorities should provide assistance to all those who are at risk of homelessness, including people who may be deemed ineligible under the statutory duties. The following suggested paragraph could be included in bold to achieve this:

Local authorities should also provide advice and information to persons who have no recourse to public funds as a result of their immigration status. Although such persons will not be eligible for assistance under the Act, they should be given specific advice under this duty as to what they should do, and what agencies may be able to assist them, in obtaining accommodation pending resolution of their immigration problem.

The guidance should also include advice about how to make sure information and advice is available and accessible for migrants, including people with no recourse to public funds and people for whom English is not their first language. Every person approaching a local authority for assistance with housing should receive a humane and customer-focused response. To ensure that this is the case, local authorities may wish to establish a specialist team or lead officer who can provide expert knowledge about what help people are entitled to from the local authority and where they can access further support, such as immigration advice. It may be helpful for local authorities to build relationships with organisations in the area that are already providing support for migrants, so that where someone isn't eligible for housing support from the local authority they can still provide meaningful advice and signpost them to other services. Collaborative working between different agencies is important to help meet the range of needs that destitute migrants face and helps makes more effective use of the resources available.

Chapter 4 – The duty to refer cases in England to housing authorities

Developing an effective referral process

The successful implementation of the duty to refer will be critical to ensuring the new legislation has the impact intended, and enables thousands more households to receive help to prevent their homelessness at a much earlier point. The independent panel of experts convened by Crisis to consider the strengths and weaknesses of current homelessness legislation emphasised that the ability of local authorities to work with a range of partners in order to help address the multiple and overlapping factors that cause an individual's homelessness would be key to implementing an effective prevention

duty.¹⁸ An effective referral mechanism will be crucial to ensuring that households at risk of homelessness are identified and can access support with housing at the earliest possible stage. Other agencies that may already be working with a household or individual for another reason are likely to be in a better position to identify a risk of homelessness, before the situation becomes so critical that the person decides to approach the housing authority directly.

The guidance as it is currently drafted does not encourage local authorities to develop meaningful referral processes and partnership arrangements with local agencies that will effectively prevent homelessness. The guidance provided in paragraphs 4.11 and 4.12 detailing the action a housing authority should take upon receipt of a referral are particularly concerning. We recommend three key amendments are needed to strengthen this process sufficiently.

Firstly, we would argue that a referral from a public agency under section 213B should trigger an application for assistance under Part 7. As the referral must be made with the consent of the individual there is no reason why it shouldn't be the trigger for an application. This would compel local authorities to act promptly on receipt of a referral and ensure that appropriate action can be taken to prevent homelessness at an early stage. It would also increase the confidence of the agencies making referrals that their referral would be acted upon, encouraging greater cooperation between the range of organisations operating in the local area to work together to identify and prevent homelessness.

Case law has consistently recognised that it is for the local authority to recognise when it has 'reason to believe' that a person may be homeless or threatened with homelessness according to the presenting circumstances. It is not necessary for the individual to express a wish to make a homeless application. They will often have approached the council to ask for some assistance with their housing problem (e.g. to apply for the housing allocation scheme), and may not be aware of what form that assistance can take, but the council will identify from the circumstances that the individual is homeless or threatened with homelessness.

Paragraph 4.12 acknowledges this, but it is not clear why the homelessness application should be triggered only through the authority's subsequent contact following receipt of the referral. Where the referral contains at least an outline of the person's housing circumstances, this should be sufficient to generate a homelessness application.

Secondly, the guidance should specify that the local authority must respond to any referrals received within a reasonable timeframe, depending on the urgency of the situation and at least in sufficient time to undertake meaningful prevention activity if this is still a possibility. Without this requirement there is a risk that some referrals may not be acted on until there is no possibility of homelessness being prevented. Early findings from the Homelessness Prevention Trailblazer in Newcastle indicates that shared data protocols have been helped partner organisations to monitor the success of their referrals as it allows them to check whether contact has been successful and housing has

¹⁸ The homelessness legislation: an independent review of the legal duties owed to single homeless people (2016), Crisis: London.

been secured. The guidance should encourage local authorities to explore the potential for data sharing agreements with key organisations in the local area, such as Jobcentres.

Finally, the guidance should explicitly state that the housing authority must make efforts to contact the individual being referred directly using the contact details provided in the referral. Where this is not possible, for example because the person is in prison, the housing authority should contact the person who made the referral or another relevant person who could help facilitate contact with the individual being referred. Currently the guidance requires the housing authority to respond to the referring agency but only states that the authority 'may' wish to contact the individual. This leaves open the possibility that the referral could be ignored and the individual would have to approach the housing authority directly to get any assistance.

Encourage cooperation and partnership working

Culture change needs to go beyond the housing authority itself and this section should encourage authorities to explore the potential for partnerships and new ways of working with other departments and organisations in the local area that would help ensure the referral process works effectively. Cooperation between housing authorities and other public bodies will be of critical importance to ensure that local authorities can implement an effective prevention duty and address the multiple and overlapping factors that cause an individual's homelessness. This should be considered and included in local authorities' homelessness strategies.

Newcastle City Council have established a partnership with Newcastle Jobcentre Pluses, Crisis and Your Homes Newcastle to address homelessness prevention and ensure potential homelessness is identified and acted on at an early stage. This approach is currently being piloted as part of the Newcastle Homelessness Prevention Trailblazer. Through the partnership a training programme has been established to help Jobcentre Plus staff to better identify those at risk of homelessness or who are currently homeless and practical referral mechanisms have been established between partners to ensure that people identified as being at risk of homelessness can quickly access appropriate advice and support. Referral documents and data recording processes have been refined to ensure that useful information is being recorded, which means partner organisations are aware of what services are likely to be needed beyond housing at an early stage.

The impact of the Trailblazer has been positive and interim findings have demonstrated the value of partnership working and the importance of effective cooperation to successfully prevent homelessness. As a result of the partnership, a significant number of residents have had their homelessness prevented, either through help to sustain their current tenancy and manage their Universal Credit claim, or support to move quickly into accommodation if currently homeless. That partnership working and greater cooperation between organisations in a local area has positive results and helps to prevent homelessness is not surprising, and this should be the standard way of working for local authorities across the country.

It is essential that the guidance promotes and encourages joint working between Housing Options and Homelessness teams in the local authority and the public agencies listed in the duty to refer regulations, as well as any other relevant charitable or private organisations operating in the local area. This will ensure that homelessness is identified

and prevented at a much earlier stage, and will greatly improve the homelessness prevention service the housing authority can deliver.

This section should clarify that although public agencies are not expected to conduct housing needs assessments as part of the requirements placed upon them under section 213B, they do have a responsibility to take appropriate actions to assist someone who they have identified as being homeless or at risk of homelessness. For example, a resettlement worker in prison may refer an individual they are supporting who is likely to be homeless on release from prison but they would continue to work with the individual to plan for their release and help them to find accommodation. The role of other agencies should not end when they make a referral to the housing authority and housing authorities should seek to work closely with other agencies to help them take a more proactive role in preventing homelessness. We recommend expanding paragraph 4.2 to suggest ways that housing authorities could achieve this. This could include increasing the presence of Housing Options staff in other agencies' workplaces, for example having Housing Options staff in prisons or Jobcentres to provide housing advice and assistance for people at risk of homelessness.

Enhanced duty to cooperate for upper tier authorities

Under the government's proposed new funding approach for supported housing short term and transitional housing will be commissioned at a local level, funded by a ring-fenced grant. This includes supported housing for homeless people with support needs, people fleeing domestic abuse, people receiving support for drug and alcohol misuse, offenders and young people at risk. In two-tier local authority areas DCLG plans to allocate the grant for short-term supported housing to the upper tier authority. This means that in two tier authorities the responsibility for commissioning short term and transitional housing will sit at a different level to the housing authority who hold responsibility for preventing and relieving homelessness. This could have a significant impact on housing authorities' ability to fulfil their prevention and relief duties. We recommend that the government considers introducing an enhanced duty to cooperate for two tier local authorities to ensure that both authorities work effectively together to prevent and relieve homelessness, and appropriate short term supported housing is commissioned that meets that needs of the local population.

Q12: Taking chapters 6-10 of the Homelessness Code of Guidance which provide guidance on definitions to help inform decisions on the areas of statutory duty.

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 6 – Homeless or threatened with homelessness

People asked to leave by family or friends

We support the guidance provided in this section clarifying that there may be situations where an applicant has been asked to leave by family or friends but there is still scope for them to remain in their existing accommodation until suitable alternative accommodation can be found. Such an arrangement could be a positive way of providing homelessness relief to applicants in the short term, as they continue to occupy their existing accommodation with family and friends, and avoid having to move into

expensive and often unsuitable temporary accommodation. An additional sentence should be added to paragraph 6.12 to confirm that in these circumstances an applicant should be considered 'homeless at home' and assisted under the relief duty.

There may be circumstances where an applicant has been excluded from their home and the host is adamant they cannot return, and in these circumstances the applicant should be regarded as homeless. An additional sentence should be added to paragraph 6.12 to clarify this and confirm that applicants who have been living with family or friends can be lawfully evicted on reasonable notice, and a court order is not required. What is reasonable notice will vary according to the circumstances.

We recommend an additional paragraph be added to this section to confirm that the responsibility to prove homelessness should not be placed solely on the applicant, and an individual does not have to prove that they are homeless in order to receive help. Local authorities have a responsibility to carry out investigations themselves. Evidence from the 87 mystery shopping visits to local authority Housing Options and Homelessness services carried out by Crisis in 2014 found that on a number of occasions, mystery shoppers were denied any type of help until they could prove that they were homeless and eligible for assistance. Mystery shoppers playing vulnerable characters, including those with learning difficulties or fleeing domestic violence, were refused help until they had returned to the place where they had been staying and obtained a letter to prove their homelessness.¹⁹ This is unacceptable and a person should never be refused assistance until they have returned to family or friends to obtain proof of homelessness, and should certainly never be asked to return to a situation where they may be at risk of violence. The guidance must be revised to make this clear.

General housing circumstances in the district

Paragraph 6.27 allows the local authority to consider whether poor conditions in a property are so bad in comparison with other accommodation in the district that it would not be reasonable to expect someone to continue to live there. The condition of a home and whether it is reasonable and safe for people to live there should be assessed on the basis of the individual circumstances, and a household should not be expected to continue living in a home that would otherwise be considered unsafe or unreasonable to reside in because they happen to be living in an area where poor conditions are widespread. Local authorities should use the Housing Health and Safety Rating System (HHSRS) when making an assessment of a property's condition.

Paragraph 6.28 states that statutory overcrowding 'may not by itself be sufficient to determine reasonableness' to continue to occupy. Where a household is statutorily overcrowded under sections 325-327 of the Housing Act 1985, that will be the case on the basis that every room, including a living room, is in use as a bedroom, according to the room standard. That is a severe degree of overcrowding, and the new guidance should not regard this as merely a 'contributory factor'. There should be at least a presumption that statutory overcrowding denotes unreasonable to continue to occupy, unless there are other factors which suggest to the contrary, and it is difficult to think of what those other factors might be.

¹⁹Dobie, Sarah, Ben Sanders and Lígia Teixeira (2014) *Turned Away: The treatment of single homeless people by local authority homelessness services in England*. London: Crisis.

Chapter 7 – Eligibility for assistance

This chapter is an example of where the draft guidance does not encourage the culture shift in local authorities that is needed for the legislation to achieve its intended aims. The guidance around eligibility currently focuses on applicants who are not eligible for assistance. While we appreciate it is necessary to provide this information, we recommend that wherever possible the guidance makes positive statements about what assistance people are eligible for. This would help to encourage a culture shift towards providing people who are homeless or at risk of homelessness with as much help as possible, within the confines of the legislation and available resources. For example, the emphasis in paragraph 7.11 could be reversed to confirm that some people subject to immigration control will be eligible for assistance, and then listing the circumstances where this will be the case.

To set a more positive tone that encourages local authorities to look beyond the minimum requirements of the legislation this chapter should open by reiterating that everyone is entitled for some form of assistance, even if this is under the general (section 179) duty to provide advice and information. This section should also confirm that local authorities can use their discretion to accommodate people who are not eligible for assistance.

We are concerned that the removal of annexes 8 – 12 of the current Code of Guidance, which contain essential information about eligibility, will mean local authorities will not have the information they need to make legally accurate decisions. This information should either be included or directly linked to in this chapter.

An additional section should be included in this chapter to clarify that where an applicant is found not to be eligible for assistance from the housing authority they may still be entitled to assistance from social services. For example, adults with care and support needs may be entitled to assistance under the Care Act 2014 and families may be entitled to assistance under section 17 of the Children Act 1989. Housing Options staff should be aware of when this might be the case, and the guidance should encourage the housing authority to make a referral to the appropriate department where they believe an applicant may be entitled to support. The guidance should encourage housing authorities to develop more joined up working to ensure any referral process works effectively and all staff have a good knowledge of what support people are likely to be entitled to or know where to go to find this out.

The information provided in this chapter is subject to change following the UK's exit from the European Union so the guidance will need to be updated to reflect this at the appropriate time. It will be important to ensure that there is an opportunity to comment on the updated guidance after this update.

The habitual residence test

Paragraph 7.17 states that *'it is likely that applicants who have been resident in the UK, Channel Islands, the Isle of Man or the Republic of Ireland continuously during the 2-year period prior to their housing application will be habitually resident'*.

The period of two years as a threshold test for habitual residence is too long. While the period is only the basis for a presumption of habitual residence, and the paragraph states that the authority will need to conduct further enquiries in other cases, the reference to

two years creates an impression that a much shorter period, such as three months, is unlikely to be sufficient.

The combination of factors relevant to habitual residence, together with case law, could result in a much shorter period being sufficient to establish habitual residence. This accords with DWP practice, and indeed that of local authority housing benefit departments. There will be some cases, such as some returning UK nationals, in which the person is to be regarded as habitually resident from the day of their arrival in the UK.

We therefore recommend that paragraph 7.17 is deleted.

Chapter 8 – Priority need

In the final sentence in paragraph 8.4 'should' needs to be replaced with 'must' so the sentence reads: *'However, once all the relevant inquiries are completed, the housing authority must not defer their decision on the case in anticipation of a possible change of circumstance.'*

Vulnerability

A number of test cases have played a key role in setting out how local authorities should determine priority need as a result of vulnerability. The updated Code of Guidance provides a good opportunity to provide clarity on recent case law developments to help ensure the vulnerability threshold is applied correctly and consistently across England.

Until recently the test case that played a key role in how the vulnerability threshold was applied was *Pereira v Camden Council* (1998). The case gave rise to the 'Pereira Test', which stated that a person is vulnerable if their circumstances are such that they would suffer more when homeless than 'the ordinary homeless person' and would suffer an injury or detriment that the ordinary homeless person would not. Recent cases further restricted this definition, to the point where the comparator was 'an ordinary street homeless person'.²⁰

Research from Homeless Link and St Mungo's has demonstrated that the physical and mental health conditions of homeless people are significantly worse than the general population.²¹ Research commissioned by Crisis in 2014 found that the average age of death for people who die homeless is 47 (43 for women), compared to 77 for the general population.²² By using such a vulnerable comparator group the test therefore created an almost insurmountable hurdle for single homeless people to overcome in order to qualify as vulnerable enough to be owed the main homelessness duty.

In 2015 Crisis and Shelter, along with DCLG, intervened in the Supreme Court cases of *Hotak v London Borough of Southwark*; *Johnson v Solihull Metropolitan Borough Council*; *Kanu v London Borough of Southwark* to provide specialist evidence to argue that the application of the test for vulnerability was flawed. The experiences of the three

²⁰ *Osmani v Camden London Borough Council*, Court of Appeal, 16 December 2004

²¹ Homeless Link (2015), Health Needs Audit data tool, available at: <http://www.homeless.org.uk/facts/homelessness-in-numbers/health-needsaudit-explore-data> (based on a survey of 3,335 respondent, 93 per cent of whom were in emergency, hostel or supported accommodation, sofa surfing, rough sleeping or squatting); Dumoulin, D. (2016), *Stop the Scandal: an investigation into mental health and rough sleeping*, London: St Mungo's.

²² Thomas, B. (2012), *Homelessness Kills: An analysis of the mortality of homeless people in early twenty first century England*, London: Crisis.

single homeless people at the centre of the Supreme Court's judgment demonstrated just how high the test of vulnerability had become. Following this intervention, the Supreme Court ruled that:²³

- local authorities must now consider how vulnerable someone is compared to the ordinary person facing homelessness, not someone who is already homeless;
- a lack of resources should not affect a local authority's decision about whether or not someone is considered a priority for housing; and
- local authorities will no longer be able to rely on statistics relating to the overall homeless population to help them to assess whether someone is more vulnerable than the ordinary person facing homelessness.

The Supreme Court held in this case that a person is vulnerable if he is "significantly" more at risk of harm without accommodation than an ordinary person would be. In October 2017, in the combined cases of *Panayiotou v London Borough of Waltham Forest*; *Smith v London Borough of Haringey* the Court of Appeal provided clarification on the meaning of "significantly" in this context.²⁴ The Court of Appeal held that "significantly" does not introduce a quantitative threshold, rather, it is to be read as applying a qualitative test. The local authority should consider whether, when compared to an ordinary person if made homeless, the applicant would be at risk of suffering harm which the ordinary person would not suffer; or whether the applicant would be at risk of suffering such harm as would make a noticeable difference to his/her ability to deal with the consequences of homelessness.

Although the Court's explanation that the term 'significantly more vulnerable' is to be applied in a qualitative, and not quantitative, sense creates its own problems of understanding, it does represent a helpful analysis of its meaning. It is clear that the applicant must be more vulnerable than average, but beyond that the applicant is not required to be 'significantly more vulnerable' in a measurable sense, somewhere along a spectrum from the slightly vulnerable to the extremely vulnerable. The test does not involve a contest between one applicant and another, or between different degrees of vulnerability.

The authority must consider whether the applicant is likely to suffer more harm in an appreciable or noticeable sense, or that (as the Court put it) s/he is at risk of greater harm in a significant way. It is enough for the applicant to bring him/herself within the formulation adopted by the reviewing officer in *Mr Panayiotou's* case, i.e. that s/he is at more risk of harm from being without accommodation than an ordinary person would be.

We recommend adding the following additional text to paragraph 8.14 to clarify this:

The authority must consider whether the applicant is likely to suffer more harm in an appreciable or noticeable sense, or is at risk of greater harm in a significant way. It is

²³ *Hotak (Appellant) v London Borough of Southwark (Respondent), Kanu (Appellant) v London Borough of Southwark (Respondent), Johnson (Appellant) v Solihull Metropolitan Borough Council (Respondent) Crisis & Shelter, EHRC, SS for CLG interveners [2015] UKSC 30*

²⁴ *Panayiotou v Waltham Forest London Borough Council; Smith v Haringey London Borough Council [2017] EWCA 1624, 19 October 2017*

enough that the applicant is at more risk of harm from being without accommodation than an ordinary person would be.

The last sentence of paragraph 8.15 states that *'the housing authority must be satisfied that the third party will provide the support on a consistent and predictable basis'*. This does not go far enough to reflect the legal position as set out in the Hotak judgment, which states that support that is sufficient to sustain the applicant when housed may not be sufficient to remove the vulnerability when the applicant is homeless. We recommend adding the following additional sentence at the end of paragraph 8.15 to clarify this:

It must also consider that support that is sufficient to sustain the applicant when housed may not be sufficient to remove the vulnerability when the applicant is homeless.

Mental illness or learning disability or physical disability

We recommend that this section be amended to encourage local authorities to give proper consideration to the impact of learning or developmental disabilities, such as autism, on an applicant's vulnerability.

Paragraph 8.24 states that, when assessing vulnerability, local authorities may consider seeking a clinical opinion. The guidance should provide clarification here that local authorities must be careful how much weight they place on such reports, bearing in mind that the external medical advisers will not have met the applicant or carried out a first-hand examination, and will be commenting second-hand on medical reports prepared by the applicant's GP or other doctors who know the applicant well. Detailed guidance on medical reports has been provided by the courts in two key cases: *Shala v Birmingham City Council* and *Thomas v London Borough of Lambeth*.²⁵ We recommend that the detailed guidance provided in these cases is incorporated into paragraph 8.24 and other relevant paragraphs of the new Code of Guidance.

Having left accommodation because of violence

Paragraph 8.35 relates to vulnerability as a result of having to leave accommodation because of violence or threats of violence which are likely to be carried out.

Special consideration is needed in relation to this cause of vulnerability. Clearly, it is not enough for the applicant to be subject to violence or the threat of violence: he or she must be 'vulnerable' as a result of the external actions.

In *Panayiotou (above)*, the Court of Appeal said that an applicant would be vulnerable if s/he is 'at risk of more harm in a significant way'. Where the applicant was compelled to leave his/her previous home because of violence, and is still subject to violence or threats of violence that are serious enough to render the current accommodation unsafe, it must follow that s/he is vulnerable for that reason, since the ordinary person is not subject to those experiences. In that particular situation, it is less a question of how badly the applicant has been affected in medical or psychological terms, or what treatment they are receiving, than of ensuring the applicant is safe from further harm.

We therefore recommend that paragraph 8.35 is amended as follows (additional text in bold):

²⁵ *Birmingham CC v Shala* [2007] EWCA Civ 624; *Thomas v Lambeth LBC* [2017] Central London County Court

*A person has a priority need if they are vulnerable as a result of having to leave accommodation because of violence from another person, or threats of violence from another person that are likely to be carried out. It will usually be apparent from the assessment of the reason for homelessness whether the applicant has had to leave accommodation because of violence or threats of violence. **If the applicant is still subject to violence or threats of violence that are serious enough to render the current accommodation unsafe, s/he should be considered vulnerable for that reason, since the ordinary person is not subject to those experiences.** In cases involving violence, the safety of the applicant and ensuring confidentiality must be of paramount concern.*

People fleeing harassment

Harassment plays a huge part in domestic abuse and coercive control more broadly, therefore we recommend amending paragraph 8.40 to clarify that harassment should be recognised as domestic abuse.

Victims of trafficking and of modern slavery

The guidance encourages local authorities to be aware of the possibility that applicants may be victims of trafficking or modern slavery, and to assess whether they are vulnerable as a result of this. It is not clear how the application process would allow for this, as most applicants who are victims of trafficking or modern slavery are very likely to be ineligible and therefore will only receive advice and information and not a full assessment. This must be clarified in the revised guidance.

Where local authorities do suspect an applicant is a victim of trafficking or modern slavery it is not clear what assistance they would then be entitled to under homelessness legislation. We recommend that at the very least applicants who the local authority suspects are victims of trafficking or modern slavery should be given immediate access to temporary accommodation. This should be clearly stated in the guidance, both in paragraph 8.41 and in chapter 25.

Chapter 9 – Intentional homelessness

We support the inclusion of paragraph 9.2, which confirms that the prevention and relief duties owed to applicants who are eligible for assistance and homeless or threatened with homelessness apply irrespective of whether or not they are considered to be homeless intentionally.

It is important that the revised guidance doesn't make the threshold any lower for determining that a household has become intentionally homeless. We recommend that the following additional sentence should be included at the end of paragraph 9.6, '*In such cases, the applicant should be considered to be unintentionally homeless*'. This ensures that the clarity about this issue included in the current guidance is retained in the updated guidance.

Ceasing to be intentionally homeless

We welcome the additional clarity included in paragraphs 9.14 and 9.15 that clarify and provide more detail about the types of intervening events that could break the link between the causal act or omission and the intentional homelessness, therefore meaning that the applicant would cease to be intentionally homeless. The second sentence of

paragraph 9.15 states '*whether accommodation is settled will depend on the circumstances of the case, with factors such as security of tenure and length of residence being relevant*'.

We recommend that further guidance is needed in relation to whether an assured shorthold tenancy (AST) is sufficient to break the chain of causation from an earlier intentional homelessness decision. In *Knight v Vale Royal District Council*²⁶, the Court of Appeal rejected the proposition that because an AST is the normal or default private sector tenancy, an AST must always count as settled accommodation which breaks the causative link. This raises the question of how an applicant can break the chain of causation if not by obtaining an AST.

We recommend that paragraph 9.15 is amended as follows to address this point (additional text in bold):

*The causal link between a deliberate act or omission and intentional homelessness is more typically broken by a period in settled accommodation which follows the intentional homelessness. Whether accommodation is settled will depend on the circumstances of the case, with factors such as security of tenure and length of residence being relevant. **An assured shorthold tenancy of six months or more is normally to be regarded as settled accommodation, unless it is clear from the outset that the accommodation will be available only for the fixed term of six months and no longer.** Occupation of accommodation that was merely temporary rather than settled, for example, staying with friends on an insecure basis, may not be sufficient to break the link with the earlier intentional homelessness. However, a period in settled accommodation is not necessarily the only way in which a link with the earlier intentional homelessness may be broken: some other event, such as the break-up of a marriage, may be sufficient.*

This will help to ensure that local authorities are better able to determine when an applicant is intentionally homeless, and reduce the risk of local authorities finding applicants to be intentionally homeless in error.

Act or omissions in good faith

Example (c) in paragraph 9.26, relating to surrendering of a tenancy in the face of possession proceedings with no scope for defence requires further clarification.

We recommend that paragraph 9.27 is amended as follows to clarify this (additional text in bold):

*In (c) although the housing authority may consider that it would have been reasonable for the tenant to continue to occupy the accommodation, the act should not be regarded as deliberate if the tenant made the decision to leave the accommodation in ignorance of relevant facts. **Furthermore, where a tenant surrenders the property in these circumstances, this is more likely to be a situation in which (a) it is not reasonable to continue to occupy the property: see para 6.16; and/or (b) as a matter of causation the tenant would have lost his/her home in any event through an intervening act, namely, the landlord's possession proceedings, by the time of the s.184 decision or s.202 review decision: see para 9.14.***

²⁶ *Knight v Vale Royal DC* [2003] EWCA Civ 1258

Additional paragraphs

The revised guidance removes two key sections that are included in the current guidance, which provide clarification about the need to refer intentionally homeless households with children under 18 to social services and confirmation that there is no period of disqualification if someone wants to make a fresh application after being found intentionally homeless (paragraph 11.29 and 11.30 of the current guidance). It is important that clarity on these points is not lost so we recommend that these paragraphs are included in the updated guidance.

- c) **When considering 'Chapter 6: Homelessness and Threatened with Homelessness' is the guidance on whether it is 'reasonable to occupy' helpful? We are particularly interested in your views on how the guidance should help housing authorities assess when it is no longer reasonable for a tenant to occupy following expiry of a valid section 21 notice**

We strongly support the new legislation and the inclusion of additional wording in the Code of Guidance, which clarifies that people who have received a valid section 21 notice that expires within 56 days are threatened with homelessness and, if eligible for assistance, will be entitled to help from the local authority to prevent their homelessness.

Crisis supports the proposed guidance in confirming that it is unlikely to be reasonable for an applicant to continue to occupy accommodation following expiry of a valid section 21 notice. We recommend that the guidance in paragraph 6.36 should be strengthened, so the final part of paragraph 6.36 would read (additions in bold):

*then it is **unreasonable** for the applicant to continue to occupy beyond the expiry of a valid section 21 notice, unless the housing authority is taking steps to persuade the landlord to allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found, **in which case the authority should take reasonable steps to avoid costly court action.***

We support the inclusion in paragraph 6.34 of potential relevant factors that a local authority should consider when making this judgement, in particular the need to take into account the preference of the applicant, the cost to both the applicant and the court system of unnecessary proceedings where there is no defence to a possession claim and the need to maintain good relations with landlords providing accommodation in the district. We strongly support the guidance in confirming that it is highly unlikely to be reasonable for the applicant to continue to occupy once a court has issued an order for possession and that it should not be considered reasonable for an applicant to remain in occupation up until the point at which a court issues a warrant or writ to enforce an order for possession. Waiting until a possession order or bailiff's warrant has been executed places a costly burden on county courts, landlords and tenants. Furthermore, tenants may accrue further rent arrears making them more vulnerable to homelessness, and landlords are less likely to let to homeless households or those at risk of homelessness in the future.

Crisis recommends that paragraph 6.32 is amended to make clear that while the expiry of a section 21 notice does not automatically render a person homeless for the purpose of the Act, in the majority of cases the applicant should be considered 'homeless at home' in these circumstances. The prevention duty should only run on after the expiry of a section 21 notice in exceptional circumstances where this is necessary to ensure that the

applicant continues to receive support from the local authority. Although the guidance on whether it is 'reasonable to occupy' is both welcome and helpful, it is important that the guidance states this clearly at the start of this section. The guidance should also clarify that, where an applicant presents to a local authority once a section 21 notice has already expired, they should be considered threatened with homelessness at a minimum, and in most circumstances, they should be considered homeless.

Research carried out by Shelter has found local authorities frequently breach the current statutory guidance in this area, which states it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the section 21 notice. The most common problem identified by Shelter's expert panel, consisting of people who had approached their local authority for assistance with homelessness, was being served with a section 21 notice and not being offered any help until after a court had ordered possession or their eviction was imminent.²⁷ We recommend that paragraphs 6.38 and 6.39 are further strengthened to clearly state that housing authorities must never require applicants likely to be in priority need to remain in possession until the day of the eviction and the authority should ensure that suitable accommodation is made available well before the day of the eviction. If local authorities continue to breach the strengthened guidance we recommend that the government should commit to statutory regulations on whether it is reasonable to occupy beyond the service of valid section 21 notice.

d) When considering 'Chapter 10: Local Connection' does the guidance provide sufficient clarity about when and how a referral can be made? Please note if there is anything more you think could be provided to help housing authorities interpret the legislation

This chapter is another example where the guidance does not reflect the spirit of the legislation and encourage the culture change required for the Act to be a success. It is heavily focused on the circumstances where a local authority could refer an applicant to another area, and the strength of local connection an applicant must have to avoid this. We are especially concerned that some of the positive and helpful statements included in the current guidance have been removed in the updated guidance.

This chapter should open with a clear statement to say that local authorities are not required to refer applicants to another local authority or make enquiries as to whether an applicant has a local connection. Currently, this information is only included in paragraph 10.19, which primarily discusses the specific requirements for asylum seekers, and comes after all of the advice about how to assess local connection. This is strongly emphasised in the current guidance, which includes this information in highlighted text on the chapter's opening page (paragraph 18.4) along with the clear statement '*Referrals are discretionary only*'. Removing this emphasis sends the wrong message to local authorities, when the new legislation should be encouraging a culture where local authorities seek to provide more not less assistance to people who approach them as homeless.

The updated draft guidance also puts less emphasis on the assessments a local authority must carry out before making a referral, whereas the previous guidance stated this clearly

²⁷ Garvie, D. (2017) "It's a personal thing" What service users need from assessments and personalised housing plans - Homelessness Reduction Act 2017. Shelter: London.

and in highlighted text on the opening page (paragraph 18.3). We recommend that this emphasis is retained in the new guidance and a clear statement should be included to confirm that local authorities can only refer applicants to another local authority after they have carried out an assessment and are satisfied that the applicant is eligible for assistance and homeless, and are therefore owed the relief duty.

Assessing local connection

Paragraph 10.16 confirms that if an applicant does not have a local connection with any district in Great Britain then the duty to secure accommodation will rest with the housing authority that has received the application. To avoid applicants being bounced between various local authorities, additional wording should be added to this paragraph to clarify that the authority that the applicant first approaches is required to undertake enquiries to establish what assistance the applicant is eligible for and, if they choose to use their discretion to assess this, whether they have a local connection to this or another borough.

Referrals to another housing authority

Paragraph 10.25 states that if the referral is made at the relief stage, the notifying authority must also give the notified authority a copy of the applicant's assessment and any revisions made to it, and should also (with consent) provide 'any' personalised housing plan agreed with the applicant where this remains relevant, and with the applicant's consent. We recommend that 'any' be replaced by 'the' to make clear that the authority is expected to conduct an assessment and prepare a personalised housing plan under the prevention duty, even if the applicant does not have a local connection to the area.

The assessment will identify support needs as well as accommodation needs, which, if urgent (such as urgent mental health support or urgent debt advice), could start to be met in the applicant's current location, even if they will only be there temporarily. It therefore makes sense for the receiving authority to make the assessment and provide a personalised plan. If the receiving authority does not undertake an assessment, then the applicant would have to return to where they have a local connection for this to be fully undertaken, even though they may have nowhere to stay in the area.

If the receiving authority does not provide a plan, but only refers back to the local connection authority, the applicant may be unclear as to what will happen next, or how they might cooperate with this. This could also make it unclear to an applicant which authority should be helping them. The provision of a brief plan would help to provide clarity.

This approach would require cooperation between the notifying and receiving authorities and the applicant. It could result in a more person-centred service, providing clarity to the homeless person. It could also lead to savings in the provision of interim accommodation to those in priority need, while allowing urgent support needs to start to be met where the applicant is temporarily residing.

Risk of violence

It is essential that this section is amended to make clear that this includes all types of domestic abuse and is not limited to physical violence. For further details please see our response to question 16, discussing chapter 21 (domestic abuse).

Q13: Taking chapters 11-14 of the Homelessness Code of Guidance which focus on the prevention and relief duties consider the following questions:

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 11 – Assessments and personalised plans

We welcome the clear message at the start of this chapter that housing authorities should adopt a positive and collaborative approach to working with applicants to develop a personalised plan to help prevent or relieve their homelessness. This is a central part of the new legislation and getting this process right will be key for the successful implementation of the Act. There are several opportunities in this chapter where small changes and additions would help to improve the overall tone of the guidance and bring it more in line with the spirit of the legislation.

An effective assessment process will be holistic and will ensure that all of an applicant's housing and support needs are captured and recorded in one place. This will allow appropriate referrals to be made so that the applicant is able to access the support they need. The guidance should encourage local authorities to consider agreeing data sharing protocols with relevant local organisations to ensure that this process works as smoothly as possible.

Initial assessments

We recommend adding a sentence to paragraph 11.3 to confirm that if an applicant is believed to be homeless or threatened with homelessness following an initial assessment then it is very likely that they will be entitled to some level of assistance through either the prevention or relief duties.

We support the proposed guidance (paragraph 11.6) in encouraging housing authorities to take a flexible approach toward applications for assistance where there is an evidenced risk of homelessness, which might not necessarily result in homelessness within 56 days. Rather than advise the applicant to return when homelessness is more imminent the housing authority may wish to accept a prevention duty and begin to take reasonable steps to prevent homelessness. Where local authorities are able to respond to the threat of homelessness at a much earlier point, a greater number of options will be available to help prevent someone becoming homeless, meaning there is a higher chance of successfully preventing homelessness.

Assessment of circumstances and needs

It is essential that applicants are treated with empathy, dignity and respect, and that Housing Options staff are able to effectively conduct assessments for all applicants, including those who are especially vulnerable. We support the inclusion in paragraph 11.9 of the proposed guidance that housing authorities should ensure staff have sufficient skills and training to conduct assessments of applicants who may find it difficult to disclose their circumstances, including people at risk of domestic abuse, violence or hate crime.

Research carried out by Crisis which used mystery shoppers to examine the quality of advice and assistance provided to single homeless people by local authorities' Housing

Options and Homelessness services found that interactions with staff during the assessment process had a significant effect on how mystery shoppers felt and how easy it was for them to present their case. Where mystery shoppers felt that staff had taken an interest in them as an individual and shown empathy this lessened the impact of other negative elements of the visit, such as the office environment or the waiting timings, and reassured applicants that they would not be treated as just another number.²⁸ The Homelessness Reduction Act and the updated Code of Guidance is an opportunity to initiate a culture change in the way homeless people are treated when they approach public services for assistance. The Code of Guidance should emphasise this important point.

We recommend that an addition is made to this paragraph to emphasise the importance of providing a private space for interviews, for both initial and full assessments. The mystery shopping research carried out by Crisis found that the lack of privacy in housing authorities was a significant problem. In all of the 16 local authorities approached through the research the initial interviews were conducted at reception desks that were situated in full view and hearing range of the waiting area where other applicants were waiting to be seen. The mystery shoppers found the lack of privacy very unsettling – it made the experience all the more stressful and compounded feelings of anxiety and shame.²⁹

Arrangements for carrying out assessments

We support the proposed guidance in stating that housing authorities should provide assessment services that are flexible to the needs of applicants and the confirmation that in most circumstances applicants will require at least one face to face interview. The guidance must recognise the importance of face to face interviews for providing an effective assessment, as this ensures that all the important details of someone's situation are captured. It would be easy to miss key information through an online form as it would not be possible for a form to be nuanced enough to apply to every applicant's individual circumstances and applicant's may not be aware that certain bits of information are relevant or important enough to share. The use of online forms, whether for initial or full assessments, can also create a barrier to accessing services that would prevent or make it more difficult for vulnerable people to access support with housing. For these reasons we do not consider online forms to be an appropriate method for carrying out a homelessness assessment.

The guidance should clearly state that online forms should not be used by local authorities as a method for conducting assessments. The majority of applicants will require an assessment interview in person, and telephone or online interviews should only be used where this is to meet the needs of the applicant. We support the inclusion of the example given in 11.14 that when an applicant is in prison they could have an assessment completed through a video link or with the help of a partner agency. This will ensure that the assessment is completed before an individual leaves prison, which would enable better support planning for a person's release from prison. If an applicant knows they will be accommodated in a particular area, they can plan to have support such as a

²⁸ Dobie, S., Sanders, B., Teixeira, L. (2014), *Turned Away, the treatment of single homeless people by local authority homelessness services in England*, London: Crisis.

²⁹ Dobie, S., Sanders, B., Teixeira, L. (2014), *Turned Away, the treatment of single homeless people by local authority homelessness services in England*, London: Crisis.

GP and benefits set up in that area in advance. Currently, many people are not assessed until they have been released and this makes planning resettlement support very challenging.

Process and timing

Paragraph 11.28 provides advice about when a local authority can refer an applicant to another borough when the prevention duty ends and the relief duty begins. This is another example where the default position presented in the guidance is for the local authority to discharge duty, and the option of continuing to provide support where this would benefit the applicant is not mentioned. This paragraph should be amended to clarify that a local authority may want to use their discretion not to refer the case if it would be more beneficial for the applicant to continue being supported by the initial authority. For example, if prevention activity was ongoing that could still have a successful outcome then it wouldn't make sense to stop this and refer the applicant to another local authority.

It would also be helpful for the guidance to encourage local authorities to involve another authority at an earlier stage if it is clear that they will be referring the applicant to that authority when the prevention duty ends. For example, this could be the case if the applicant is looking to find accommodation in the area where they have a local connection or if they have a better chance of having their homelessness prevented in another district.

Chapter 12 – Duty in cases of threatened homelessness (the Prevention Duty)

The requirement for local authorities to have a much greater focus on prevention is a central part of the Homelessness Reduction Act and has the potential to transform the homelessness services provided by local authorities and lead to a significant reduction in the number of people who become homeless. It is critical that this chapter of the Code of Guidance supports local authorities to achieve this.

Effective joint working across the local authority and with other public, private and voluntary agencies working in the area will be critical for enabling effective homelessness prevention. This will ensure that people at risk of homelessness are identified and can access support at the earliest possible stage, increasing the chance that their homelessness can be prevented. This will also help housing authorities to effectively address the range of multiple and overlapping factors that can cause a person's homelessness. The guidance should strongly encourage a joint working approach.

We would also recommend that some examples of good prevention activity are included in this chapter. We appreciate the need to achieve a balance between being prescriptive about the prevention activities local authorities should be undertaking while still ensuring that authorities have the flexibility to innovate and respond to local needs. Providing some examples of good practice here will help to clarify what meaningful prevention activity should look like, and reduce the risk of a postcode lottery developing. Some examples from the Welsh Code of Guidance could be used here. This could include the provision of specialist welfare or debt advice, independent mediation services, use of Discretionary Housing Payments or other financial assistance, Help to Rent projects to help people access the private rented sector and joint working with registered social landlords, prisons and social services. Feedback on the Welsh Code of Guidance has been

positive, and almost all local authorities have indicated that they found it useful in facilitating understanding of and compliance with the new legislation.³⁰

There is currently limited evidence on the effectiveness of homelessness services, particularly when compared with evidence of what works in other sectors, such as social care. Crisis has recommended that this gap in evidence is addressed through the commissioning of an outcomes framework across the homelessness sector in England and a 'what works' approach is introduced which systematically looks at effective practice for homelessness services (statutory and non-statutory) with the end goal of providing improved services for homeless people. This chapter should be updated as more examples of good practice are established, for example through the Homelessness Prevention Trailblazers or evaluations carried out through the outcomes framework. To achieve a balance between the length of the guidance and the inclusion of sufficient detail so that it is useful for local authorities this chapter could include links to examples of good practice.

Chapter 14 – Ending the prevention and relief duties

Paragraphs 14.24 – 14.27 outlines what happens when an applicant has refused an offer of suitable accommodation. There are two key scenarios for applicants being assisted under the relief duty:

1. there is a reasonable prospect of the accommodation being available for 6 months (which ends the relief duty but doesn't stop the main s.193 duty arising – s.189B(7)(c)); and
2. where the accommodation consists of a final accommodation offer (which ends the relief duty and the main duty does not apply – s.189B(9) and s.193A(3)).

The guidance should be amended to make the difference between these two scenarios clearer. Clarification should be added to note that in the second scenario where the accommodation consists of a final accommodation offer the applicant must have received a warning of the consequences of refusing the offer and understand that by declining it they will receive no further assistance.

c) When considering 'Chapter 11: Assessments and Personalised Plans' do you consider the guidance on 'reasonable steps' is sufficient, and is helpful?

We welcome the guidance in stating that housing authorities should work with applicants to identify practical and reasonable steps for the housing authority and the applicant to take to help the applicant to retain or secure suitable accommodation. We support the confirmation that applicants and housing authorities should work together to identify reasonable steps that are tailored to the household and that the steps agreed should take account of the local housing market and the availability of relevant support services, as well as the applicant's individual needs and wishes.

We recommend expanding paragraph 11.23 to set out some more detailed examples of the reasonable steps a local authority and applicant may want to take to help prevent homelessness. The Welsh Code of Guidance includes a list of some of the causes of

³⁰Ahmed, A., M. Wilding, A. Gibbons, K. Jones, M. Rogers and I. Madoc-Jones (2017) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Interim Report. Cardiff: Sustainable Housing & Urban Studies Unit (SHUSU), The University of Salford

homelessness and suggested reasonable steps the local authority may want to consider, depending on the individual circumstances and needs of the applicant, and it would be useful to include this information in the English guidance.³¹ Part a. of paragraph 11.23 should also be amended to clarify that it is not reasonable to advise people to attempt reconciliation with family or friends where this option is likely to further damage family relationships, which will be important for future support, and definitely not where it might put people at risk of violence.

An addition is needed to this section to require local authorities to take into account the capacity and vulnerability of the applicant when considering what would constitute reasonable steps. Evaluation of the changes to the Welsh homelessness legislation concluded that for some service users (for example, those with additional vulnerabilities) being a more active 'partner' is not always straightforward and achievable.³² Local authorities must properly take this into account when agreeing reasonable steps.

Local authorities should also recognise that some people will face more barriers to accessing accommodation than others. This means it is not sufficient for the guidance to only require authorities to take account of the local housing market, but they should also take account of the applicant's prospects of being able to find and access affordable accommodation. For example, homeless people face particular barriers to accessing private rented sector accommodation. Independent research conducted for Crisis found that only 18% of landlords were willing to let to homeless households.³³ Young people may also find it particularly difficult to find accommodation, as they are likely to only be eligible for the Shared Accommodation Rate of Local Housing Allowance and not have any tenancy history so would be unable to provide a reference from a previous landlord.

The guidance should also provide clarification here that an applicant's personalised housing plan may need to include steps to help the applicant obtain identification documents, if they do not have these already or are unable to access them. The assessment process should be flexible enough to ensure that applicants who do not have identification, but the authority has reason to believe are eligible for assistance, do receive a full assessment. If the local authority has reason to believe an applicant is eligible for assistance, then the reasonable steps in their personalised housing plan should include a support plan to help the applicant obtain identification documents. This might include options for accessing legal advice and application fees and help obtaining supporting documents. Identification documents are fundamental for accessing accommodation, employment, health services and bank accounts so support obtaining identification will be central to preventing or relieving homelessness.

- d) When considering 'Chapter 14: Ending the Prevention and Relief duty' would any additional information on applicants who deliberately and unreasonable refuse to cooperate be helpful?**

³¹ Paragraph 12.174, Welsh Government (2016) Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness. <http://gov.wales/docs/desh/publications/160324-code-of-guidance-for-local-authorities-on-allocation-of-accommodation-and-homelessness-en.pdf>

³² Ahmed, A., M. Wilding, A. Gibbons, K. Jones, M. Rogers and I. Madoc-Jones (2017) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Interim Report. Cardiff: Sustainable Housing & Urban Studies Unit (SHUSU), The University of Salford

³³ Gousy, Hannah (2016) Home: No less will do. Crisis. London.

The guidance should make clear that the prevention and relief duties should only be ended on the grounds of deliberate and unreasonable refusal to cooperate in exceptional circumstances and as a last resort after all attempts to engage the applicant have been exhausted. It must be clearly stated that the ability to end duty on this ground should not penalise vulnerable people or those who may have difficulty cooperating. DCLG make this clear in a factsheet they have produced about the Homelessness Reduction Act, which states "The bar is set at 'unreasonably refusing to co-operate' so that it does not penalise those who have difficulty co-operating, for example because of poor mental health or complex needs." This point was reiterated by Marcus Jones MP, Minister for Local Government, in the evidence he gave to the CLG Select Committee on this subject on 27 November 2017, where he stated that, "What we are trying to achieve here is to set the bar for non-co-operation at a fairly high level".³⁴ This point must be made clear in the guidance.

Paragraph 14.48 refers to a '*lack of cooperation*'. This should be amended to make clear that the ground for ending duty is 'deliberate and unreasonable refusal to cooperate', which requires more than a lack of action on the part of the applicant. If a local authority discharges duty on these grounds, then they must be able to demonstrate that the applicant deliberately refused to take reasonable steps while having full knowledge of the consequences of this action.

Paragraph 14.50 should be re-phrased to make clear that the housing authority should take into account any particular difficulties an applicant may have in managing communications and appointments, not just the two examples listed, when considering if an applicant's failure to cooperate is deliberate and unreasonable. Street homelessness should be included as an example of a particular difficulty.

The examples given in paragraph 14.51 (d) of where an applicant's refusal to cooperate was unreasonable in the context of their particular circumstances and needs are inappropriate and should be removed. The examples provided suggest that an applicant should be required to prioritise viewing a property above attending a Jobcentre or medical appointment or caring for a sick child, and if they failed to do this it could be considered deliberate and unreasonable refusal to cooperate. The very fact that the applicant has a valid reason of any kind for his/her actions, and has put some thought into prioritising that commitment, indicates that the choice involved cannot be seen as a refusal to co-operate. The local authority may consider that a particular choice is unreasonable, but the question is whether it is actually a "refusal" (not merely a failure) to co-operate. This must be assessed across all of the authority's engagement with the applicant, not only in relation to one or two specific omissions or decisions. As stated above, a refusal to co-operate denotes a wilful failure to engage, and the example given does not come anywhere near that threshold. The inclusion of this example would give authorities the impression that the bar for deliberate and unreasonable refusal to co-operate is far lower than it actually is.

Paragraph 14.54 should be amended to specify that the reasonable period of time which must be given to the applicant before duty is ended on this ground must give the

³⁴ CLG committee, Homelessness Reduction Act inquiry, oral evidence session 27 November 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/homelessness-reduction-act/oral/74980.html>

applicant sufficient time to begin taking reasonable steps to prevent or resolve their homelessness. We recommend that this should be at least 14 days.

The guidance should specify that the decision to end duty on the grounds of deliberate and unreasonable refusal to cooperate must be signed off by another officer within the local authority of equal or higher seniority to the officer making the decision. This extra safeguard will help to ensure that vulnerable people are not penalised unfairly under this ground. Although applicants will have the right to review the final decision not everyone will understand or have the capacity to exercise their right to review so it is essential that adequate safeguards are put in place before this point.

Q14: Taking chapters 15-17 of the Homelessness Code of Guidance which focus on accommodation duties and powers consider the following questions:

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 15 – Accommodation duties and powers

Ending Section 188 interim duty

Paragraphs 15.8 (a) and 15.10 (b) refer to the duty to provide interim accommodation coming to an end because the authority decides that they do not owe the applicant the relief duty. There is uncertainty about what the Act means here and this has created confusion. In reality it is unlikely that the authority would reverse its decision that the applicant is homeless, so the only circumstances in which an authority is likely to decide that the relief duty is now owed is where the applicant has ceased to be eligible for assistance because of a change in his/her immigration status. It would be helpful if the guidance could address this question directly and explain when it is likely that the duty will be "not owed", rather than merely repeating the statutory wording.

Discretionary powers to secure accommodation

Paragraph 15.24 should include the vital qualification that the Schedule 3 exclusion of people without recourse to public funds does not apply where there would otherwise be a breach of a person's Convention rights or EU Treaty rights. There should be a cross reference to paragraphs 7.19 – 7.20.

Section 193C(4): Duty to accommodate applicants who have deliberately and unreasonably refused to cooperate pending final offer

Paragraph 15.37, and anywhere in the Code where there is a reference to a final accommodation offer, should include clarification that a final accommodation offer must meet the enhanced standard of suitability for private rented sector offers. The requirements for this are set out in paragraphs 17.11 – 17.16, and there should be a cross reference to these paragraphs here. This cross-reference should also be added to paragraph 15.41(c).

Chapter 16 – Securing accommodation

Securing and helping to secure accommodation

Paragraph 16.4 should be amended to confirm that some applicants may require more assistance from the local authority than others in securing accommodation. Local authorities should take into account an applicant's vulnerability and capacity to take steps to secure their own accommodation when determining what support and advice they will provide to help an applicant identify and secure accommodation.

Accommodation arrangements to meet particular needs

Following the government's proposed new funding approach for supported housing, which would see short term and transitional funding commissioned at a local level by the upper tier authority we recommend expanding paragraph 16.38 to require greater cooperation in two tier local authorities to ensure they work effectively together to prevent and relieve homelessness.

Paragraph 16.40 and 16.41 discuss the provision of refuges for victims of domestic abuse. This section should be expanded to confirm that while it is important for local authorities to maintain close links with local refuges to support and commission services, they should not put a cap on the number of non-local women who can access refuge spaces. This is crucial as three quarters of women move across local authority boundaries to access refuge services.³⁵ It is also important that local authorities do not place limits on the length of time women can stay in a refuge. Although the average length of stay in a refuge is six months, women should not have to move out before they are ready and placing a limit on the length of stay will mean some women have to move out before they are ready or when they do not have suitable accommodation to move into.

Paragraphs 16.40 and 16.41 should be expanded to clarify that local authorities should consider a wider range of housing options for victims of domestic abuse, such as working in partnership with housing providers to enable victims to transfer their tenancy to another borough and Housing First models for victims of domestic abuse. We have provided more detail about these housing options in our answer to question 16.

Paragraph 16.42 discusses the provision of Housing First accommodation. The first sentence in this paragraph should be amended to remove 'long term' so the sentence reads: '*Housing First is an approach to ending homelessness for people with complex needs*'. The paragraph should be extended to encourage local authorities to commission Housing First provision based on an assessment of those qualifying for it in the local area. The guidance should also note that in the Housing First model support and housing are provided separately and so the local authority will need to commission them separately.

Chapter 17 – Suitability of accommodation

Crisis supports the confirmation provided at the start of this chapter that accommodation that the local authority secures or helps an applicant secure to bring the main or interim housing duty to an end, including the prevention and relief duties, must be suitable in accordance with section 206 of the 1996 Housing Act. The guidance should be amended to ensure that there is sufficient flexibility within this to allow for circumstances where the applicant wants to remain in their own home even if it doesn't meet these suitability requirements.

³⁵ Women's Aid, Meeting the Needs of Women and Children, Annual Survey, Bristol, Women's Aid Federation of England, 2016. <https://www.womensaid.org.uk/research-and-publications/annual-survey-2016/>

Suitability of private rented accommodation

Additional advice should be included alongside paragraph 17.13(e) in relation to the requirement that there should be a written tenancy agreement which the authority considers to be adequate. The Supplementary Guidance on the Homelessness Changes in the Localism Act 2011 states the following: *"It is expected that the local authority should review the tenancy agreement to ensure that it sets out, ideally in a clear and comprehensible way, the tenant's obligations, for example a clear statement of the rent and other charges, and the responsibilities of the landlord, but does not contain unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy."* This is helpful advice and should be retained in the updated Code.

Standard of B&B accommodation

Paragraphs 17.42 and 17.43 should be amended to emphasise that where housing authorities are unable to avoid using B&B hotels to accommodate applicants they should ensure that such accommodation is of a suitable standard. This should include consideration of the size and occupancy levels of rooms, the provision and location of cooking, toilet and bathing facilities, and management standards. This information is included in the current guidance, and further guidance is provided in annex 17 which recommends minimum standards for B&B accommodation. This information should be retained in the new guidance.

Suitability: reasonable to accept a final offer under s.193

Key information from the Supplementary Guidance on the Homelessness Changes in the Localism Act 2011 in relation to whether it is reasonable to accept a final offer under section 193 have not been included in the new Code of Guidance. As explained above in response to question 6 we recommend that paragraphs 20, 21 and 22 of the Supplementary Guidance should be included in chapter 17 of the new guidance.

- c) When considering Chapter 16: Helping to secure and securing accommodation are you clear what local authorities' responsibilities are in helping to secure or securing accommodation?**

Please see above response to question 14 (b) for the additions, deletions and changes we believe are required to clarify what local authorities' responsibilities are in helping to secure or securing accommodation.

- d) When considering Chapter 17: Suitability of Accommodation are you clear what local authorities' responsibilities are? Is there any further guidance required to help housing authorities assess affordability of accommodation, or the suitability of accommodation out of district?**

Affordability of accommodation

The proposed draft guidance makes a significant change to the direction given to local authorities to help them assess the affordability of accommodation. We are concerned that this change shifts the responsibility for determining whether a household's accommodation is affordable from a minimum standard set by central government to local authorities' own discretion.

The existing Code of Guidance recommends that local authorities '*regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the [applicable] level of income support or income-based jobseekers allowance*' (paragraph 17.40). The new draft Code of Guidance removes this reference to the applicable level of benefit and instead states: '*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 specific to their circumstances*' (paragraph 17.45).

This risks undermining an important principle that – to be affordable – accommodation must not leave households without a subsistence level of income. It suggests that applicants should be able to live off less than the amount of residual income set as the minimum standard by government and appears to be an active admission that if a household is not actually destitute then they can be allowed to live in extreme poverty below the level of income support without their accommodation being considered unsuitable.

It also shifts the responsibility for deciding what residual income a household needs to be able to live without forfeiting basic essentials from a figure defined by government (the level of income support), to a figure determined by the local authority. Each local authority will interpret paragraph 17.45 and set its own standards for what constitutes absolute poverty. This is likely to lead to inconsistency between local authorities, which cannot be acceptable. It could result in a race to the bottom, where a local authority which sets a more decent standard for residual income will be at a competitive disadvantage in seeking accommodation in the private rental market compared to a local authority which is more ruthless. It could also encourage local authorities to scrutinise people's income and expenditure to an intrusive and in depth level to determine whether accommodation is affordable for them. This level of scrutiny cannot be conducted in a way that is consistent with treating applicants with respect and dignity.

This proposed change also risks increasing homelessness. While it may help to increase the number of properties considered suitable for applicants in the short term, supporting households to move into properties they can barely afford is unsustainable and increases the risk that they will become homeless again in future.

Suitability of accommodation out of district

Crisis supports the inclusion of the confirmation that, where possible, housing authorities should try to secure accommodation that is as close as possible to where the applicant was previously living (paragraph 17.48), although we recognise that this might not always be possible. Where local authorities do place homeless households in accommodation outside of the borough they must take into account the household's full circumstances to determine whether it is suitable.

The guidance should be amended to highlight the 2012 Suitability Regulations³⁶ and associated guidance, which clearly set out what is deemed suitable in terms of location of accommodation, as well as the findings of the Supreme Court ruling on out of area temporary accommodation in the *Nzolameso vs Westminster City Council* case. Key recommendations made by the Supreme Court in this case that should be explicitly

³⁶ [The Homelessness \(Suitability of Accommodation\) \(England\) Order 2012](#)

outlined in the guidance include the requirement to acknowledge the principal needs of all individuals within the household, including adults and children, and to assess these needs both individually and collectively when determining the location of accommodation. Local authorities should also record written evidence and an explanation for their decision when making out of area placements, that acknowledges a household's collective and individual needs. The ruling also required local authorities to give households sufficient time to make a decision on an out of area offer and provide thorough information about the proposed area. The guidance should explicitly state that households must not be requested to make this decision on the same day that the out of area offer is made.

The guidance should encourage better partnership working between the placing and receiving local authority when an out of area placement is made. While there is a requirement to notify the receiving authority when placing an applicant in their area, we suggest that the guidance goes further in encouraging local authorities to develop better ways of working together where this is likely to be a common occurrence. This will help to ensure both authorities have a suitable supply of accommodation for applicants approaching them for assistance and that applicants being placed in accommodation in a new area are able to access appropriate support there.

Paragraph 17.54 notes that there may be some circumstances where there will be clear benefits for the applicant of being accommodated outside of the district. This paragraph should be amended to add that local authorities must take into account applicant's wishes when considering whether this is the case.

Q15: Taking chapters 18-20 of the Homelessness Code of Guidance which focus on casework administration consider the following questions:

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 18 – Applications, decisions and notifications

Crisis supports the guidance set out in paragraph 18.29 that confirms the principle that local authorities must take steps to ensure applicants fully understand the decisions being communicated to them.

- c) **When considering Chapter 18: Applications, inquiries, decisions and notifications would any additional information on issuing notifications and decisions be helpful?**

Q16: Taking chapters 21-25 of the Homelessness Code of Guidance which focus on particular client groups consider the following questions:

- a) Having read these chapters are you clear what local authorities' responsibilities are?
- b) Would you suggest any additions, deletions or changes to these chapters?

Chapter 21 – Domestic abuse

Crisis strongly supports the use of the cross-government definition of domestic abuse or violence in this chapter. This should be reflected throughout the guidance, wherever the

advice relates to domestic abuse. Currently the guidance focuses heavily on physical violence outside of this chapter, which could lead to many instances of domestic abuse being wrongly overlooked by housing authorities.

Identifying abuse and preventing homelessness

This section should be extended to recommend that housing authorities should establish referral arrangements with local police services. Research from the APPG for Ending Homelessness found that too often the housing needs of survivors of domestic violence are only considered if they are considered to be a high enough risk to be referred to a MARAC (Multi Agency Risk Conference). This leads to discrepancies and poor decision making, as risk is not static but can change very quickly in domestic violence cases. It also creates gaps, as survivors who are assessed at a lower risk of violence, but have other risks and needs, including the risk of homelessness, are not supported. The APPG recommends that every case of domestic abuse which is brought to police officers' attention should be referred to a Housing Options or Homelessness team with the person's consent.³⁷ This initiative aligns closely with the duty to refer and is already used successfully in some areas. It should be included in the Code of Guidance as an example of the procedures local authorities should put in place to identify abuse and prevent homelessness for survivors of domestic violence to ensure it is used consistently across England.

Duties to those homeless or threatened with homelessness

We welcome the clear message in paragraph 21.21 that it is essential that inquiries do not provoke further violence and abuse. However, we are concerned that the evidential thresholds are currently too high and this prevents victims of domestic abuse from getting the support they need and puts their lives at risk. The APPG for Ending Homelessness inquiry found that a survivor will face abuse 40 times on average before calling the police, and therefore relying on corroborative evidence from the police will not be possible in many cases. The guidance should also reference the safety implications of approaching family and friends of a victim for corroborating evidence, as this could also generate further violence and abuse. Approaches to family and friends should be led by the person as they will have the best understanding of their situation and the potential risks.

Paragraph 21.22, which states that interviews should be conducted by an officer trained in dealing with the particular circumstances, should be extended to recommend that robust and comprehensive training is put in place for all Housing Options staff so that any team member who may work with survivors at some point can do so safely and sensitively. Training should include all forms of domestic abuse, and special precautions should be made for survivors who are financially dependent on their abuser as they are likely to have a high need for housing support. We also recommend that the second sentence in this paragraph be amended to read (additional text highlighted in bold): *'Applicants should be given the option of being interviewed by an officer of the same sex, **sexuality and ethnic origin** if they so wish'*.

³⁷ APPG for Ending Homelessness report, July 2017, https://www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf

The guidance should encourage local authorities to work with local domestic violence support services to obtain alternative solutions to identification and official documents so people fleeing domestic violence can proceed with their homelessness application. The APPG for Ending Homelessness heard extensive evidence of survivors being turned away as they did not have sufficient forms of identification. This is reiterated in Crisis' Turned Away report.³⁸ Many survivors flee from their homes quickly, and are unable to collect sufficient proofs of identification. In addition, it is difficult for survivors to know what they need when presenting at Housing Options as the legislation itself does not specify what type of ID is needed. It is unacceptable in these circumstances that they are forced to return to the home they are fleeing from to retrieve it and put themselves at further risk. The police and local authorities can work together to retrieve ID documents where appropriate but this is not always feasible. Where police are involved with a case they often do not have the resources to follow up with local authorities. Therefore, specialist domestic abuse services should work in partnership with local authorities to verify a survivor's identity. Local domestic violence support services already help survivors with accessing benefit entitlements and public services, so they are well placed to be able to oversee identity verification. This recommendation should be included in the Code of Guidance.

Providing suitable accommodation

The guidance should encourage local authorities to consider working in partnership with other local authorities and housing providers to implement a reciprocal agreement to enable survivors of domestic violence to transfer their tenancy to another borough, ensuring safety is guaranteed and homelessness prevented. The Pan London Reciprocal could be cited as an example of good practice, which the APPG for Ending Homelessness recommended should be implemented nationwide to prevent homelessness for domestic violence survivors. Priority Management Transfers are another good option that ensure social housing tenants can move to a safe property while retaining their security of tenure. Many social housing providers already offer this, but the guidance should encourage this practice to be universal.

A Housing First model for survivors of domestic violence could also be recommended here as an approach to providing suitable accommodation that local authorities may wish to consider. A Housing First approach would ensure that survivors of domestic abuse are in safe and secure accommodation quickly, and are provided with appropriate support to help them address their other needs, including mental health and other specific trauma induced issues.

Paragraph 21.28 discusses injunctions and notes at the end of the paragraph that: *'To ensure applicants who have experienced actual or threatened violence get the support they need, authorities should inform them of appropriate specialist organisations in the area as well as agencies offering counselling and support'*. This point is of critical importance and should be a separate point emphasised in bold to reflect this.

Local connection referrals

³⁸ Dobie, S., Sanders, B., Teixeira, L. (2014), Turned Away, the treatment of single homeless people by local authority homelessness services in England, London: Crisis.

The APPG for Ending Homelessness heard evidence at their inquiry that local authorities are failing to suspend local connection criteria for survivors of domestic abuse. Although the guidance makes clear in paragraph 21.37 that a housing authority cannot refer an applicant to another housing authority where they have a local connection if they would be at risk of violence or abuse in that district we recommend that in the light of the APPG's findings further clarity and emphasis is required. We recommend adding an additional paragraph immediately before paragraph 21.37 that clearly states that: '*Local authorities should accept all survivors of domestic violence or abuse who approach with a housing need, regardless of whether there is a local connection or not*'.

We appreciate that the government is currently consulting on this issue through DCLG's open consultation, 'Domestic Abuse Victims' Access to Social Housing'³⁹, which invites comments on proposals to issue statutory guidance to assist victims of domestic abuse in refuges to access social housing due to residency or local connection restrictions in local authority's allocations schemes. We welcome the opportunity to contribute to this consultation and would expect to see the Code of Guidance updated in line with the outcome of this consultation.

Chapter 22 – Care leavers

Prevention and relief of homelessness

We recommend that paragraph 22.15 should be amended to advise that in most cases it will not be appropriate to find care leavers intentionally homeless. The APPG for Ending Homelessness found that the risk of care leavers becoming homeless after being found intentionally homeless is high. Care leavers have often lived very fragmented and sometimes chaotic lives before leaving care, therefore transitioning to adulthood can be challenging. The APPG inquiry suggested that Housing Options teams are not properly investigating why a care leaver may have lost their accommodation or taking steps to resolve the issue, perhaps through mediation.⁴⁰ The government should take this opportunity to strengthen the guidance for local authorities in this area to reduce the risk of care leavers becoming homeless as a result of being found intentionally homeless.

Chapter 23 – People with an offending history

We welcome the overall tone of this chapter and the improved consideration of the challenges facing people with an offending history in accessing housing. We are pleased that this chapter considers people with an offending history, rather than just offenders. We support the strong emphasis of the importance of housing authorities working in close collaboration with prisons, providers of probation services, Youth Offending Services and other relevant partners to prevent people leaving custody, or living in the community, from becoming homeless.

We recommend that paragraph 23.3 be extended to add voluntary organisations that provide accommodation or advice and support with accommodation to the list of organisations that housing authorities will need to work in collaboration with to prevent homelessness. This paragraph should also be expanded to emphasise the importance of

³⁹ DCLG consultation, Domestic Abuse Victims' Access to Social Housing, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655655/Domestic_Abuse_consultation.pdf

⁴⁰ APPG for Ending Homelessness report, July 2017

early assessments being carried out by the housing authority to increase the chance that homelessness can be prevented and to encourage the development of partnerships that allow for data sharing of prisoner information. The APPG for Ending Homelessness identified this as a cause of delays in getting accommodation organised for people leaving prison, increasing the risk of people being homeless when they are released from prison.⁴¹

We are concerned that the guidance does not make the role of housing authorities explicitly clear in relation to public, private and voluntary organisations working in the criminal justice sector, which could lead to people falling through the gaps in provision as agencies' roles and responsibilities are not clearly defined. Recent reports from Clinks, Homeless Link and the APPG for Ending Homelessness have found there is a lack of understanding of who is responsible and accountable for meeting the housing needs of prison leavers.⁴² The Code of Guidance is an opportunity to help provide clarification of the roles and responsibilities of the different agencies working with people with an offending history. We recommend strengthening the last sentence in paragraph 23.3 so that it reads: "*Housing authorities should develop clear, effective referral arrangement and accommodation pathways that involve all relevant agencies, specifying their unique role and responsibility, to provide appropriate jointly planned help and support to prevent homelessness*". This makes it clear that housing authorities are responsible for leading on this process.

Further clarification is also needed in paragraph 23.5 to better reflect the roles and responsibilities of Community Rehabilitation Companies, the National Probation Service and housing authorities. We recommend replacing the last sentence in this paragraph with the following text: "*Probation providers have a responsibility to support people under their supervision to reduce reoffending. Community Rehabilitation Companies and the National Probation Service must provide direct support to someone to help them find accommodation and housing authorities should continue to work with these agencies, as well as with prisons and voluntary sector organisations to ensure their clients can access suitable accommodation.*"

Advice and information

We support the inclusion in paragraph 23.7 of the suggestion that housing authorities may want to consult with prisoners or people with an offending history when developing specialist resources. We would like to see this strengthened to recommend that housing authorities should consult with and work closely in partnership with people with an offending history and relevant voluntary sector organisations when developing these resources.

Paragraph 23.9 should be strengthened to reflect the statutory requirement for housing advice to be made available to people before they are released from prison. Further clarification needs to be added here to make clear which agency is responsible for providing housing advice for people while they are in prison to avoid duplication and ensure every prisoner receives housing advice. It is essential that every person in prison

⁴¹APPG for Ending Homelessness report, July 2017

⁴²APPG for Ending Homelessness report, July 2017; Clinks and Homeless Link (2017) Are the accommodation needs being met for people in contact with the Criminal Justice System? Clinks: London.

has a resettlement plan in place before they are released to ensure people are not homeless when they are released from prison.

Prevention

We recommend amending paragraph 23.15 to acknowledge that although Community Rehabilitation Companies are required to take action on someone's resettlement plan 12 weeks before they are released from prison in many cases this does not happen. This is primarily due to high case-loads, a lack of adequate resources and the conditions in prisons making it challenging to access people and plan for their release.⁴³

Vulnerability

People in contact with the criminal justice system often have multiple and complex needs, including mental health problems, drug and alcohol misuse issues and learning difficulties, and may also have experience of trauma and abuse. The guidance provided in paragraph 23.18 should be expanded to clarify that local authorities must undertake a holistic assessment of someone's needs, including all the considerations we have listed here, in addition to those relating to their time in custody. We welcome the encouragement in the guidance that housing authorities should take into account the advice of criminal justice agency staff when considering if an applicant is vulnerable, but recommend extending this to include voluntary sector organisations that are working with the applicant.

Intentional homelessness

We welcome the confirmation provided here that local authorities should not adopt a blanket policy which assumes that people who have lost their accommodation whilst in custody will or will not be assessed as intentionally homeless. However, we are concerned that the intentionality test can act as a barrier, preventing people in contact with the criminal justice system accessing accommodation. We recommend that paragraph 23.21 be expanded to encourage housing providers to engage with all relevant professionals, including prison staff, voluntary sector organisations and probation providers, to assess whether someone is intentionally homeless.

Local connection

An additional paragraph should be added here to acknowledge that some people leaving prison, especially those who have served long sentences, may not have a local connection to any area. In these circumstances the duty to secure accommodation will rest with the housing authority that has received the application, as per the guidance in chapter 10. We believe it is worth reiterating this point here as a significant number of prisoner leavers may be in this situation.

Accessing accommodation

This section should acknowledge the impact of local authority allocations policies restricting access to social housing for people with an offending history, in particular the increasingly common use of blanket restrictions on eligibility. We have outlined this issue in more detail in our response to question 11. Local authorities should be encouraged to

⁴³APPG for Ending Homelessness report, July 2017; Clinks and Homeless Link (2017) Are the accommodation needs being met for people in contact with the Criminal Justice System? Clinks: London.

limit the use of blanket restrictions and consider their impact on people at particular risk of homelessness, including people with an offending history.

Chapter 25 – Modern slavery and trafficking

We raised concerns earlier in this response, in answer to question 12, that the application process will make it very difficult for local authorities to identify victims of trafficking or modern slavery as they are likely to be ineligible and therefore will only receive advice and information and not a full assessment. It is likely that a different process will need to be put in place to ensure that victims of trafficking or modern slavery who are not eligible for assistance are still identified, assessed and receive support. The guidance should also specify what support suspected victims of trafficking or modern slavery are entitled to. At the very least this should include immediate access to temporary accommodation.

In addition to providing guidance on modern slavery and trafficking in relation to applicants who are homeless or threatened with homelessness, we recommend that this section is expanded to include all Violence Against Women and Girls. There will be considerable overlap between these groups, as many victims of modern slavery and trafficking are also likely to be victims of Violence Against Women and Girls. The government's national Violence against Women and Girls Strategy aims to make sure that all agencies are aware of and able to identify Violence Against Women and Girls, and can support victims to access appropriate support from specialist victim services.⁴⁴ Housing authorities should consider the guidance provided within this strategy to ensure they are better able to identify victims.

This section should also include guidance about victims of torture and encourage local authorities to recognise the specific needs and vulnerabilities of torture victims.

For more information, please contact:

Ruth Jacob, Senior Policy Officer

Tel: 020 7426 3893

Email: ruth.jacob@crisis.org.uk

⁴⁴ Home Office (2016) Strategy to end violence against women and girls: 2016 to 2020.

<https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>