



FAIR AND FLEXIBLE

DRAFT STATUTORY GUIDANCE ON SOCIAL HOUSING ALLOCATIONS FOR LOCAL AUTHORITIES IN ENGLAND

A response to the Consultation Draft from:

**The Housing Team
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Introduction

(1) The Authors

Garden Court Chambers has one of the largest specialist teams of housing law barristers in the country and has a reputation for excellence. We cover all aspects of housing law including: homelessness, allocation of social housing, security of tenure, unlawful eviction, disrepair and housing benefit. We are particularly committed to representing tenants, other occupiers, homeless people and those seeking to secure access to social housing. Our housing law team provides a full range of services, covering cases from the lowest to the highest courts, as well as undertaking advisory work. According to the trade directory *Chambers UK 2009* the housing team at Garden Court is described as:

“Arguably the best set for legal aid matters across all areas, and certainly great when it comes to housing law,”

Our work is not confined to the courtroom. We also spend time training, advising and writing on housing issues. We regularly contribute articles and case reports to professional publications. Some of the team members responsible for the present document have also written *Housing Allocation and Homelessness* (Jordans), *The Homelessness Act 2002: A Special Bulletin* (Jordans) and *Housing and the Human Rights Act: A Special Bulletin* (Jordans).

(2) Our Approach

We welcome the opportunity to comment on this further draft Code of Guidance called *Fair and Flexible*. We use the two *existing* statutory Codes of Guidance in our daily professional practices and regularly refer to the two Codes in our advisory and litigation work.

We have been anxious to test whether the new guidance is legally accurate. However, of greater importance, we set out to review and test its usefulness, clarity and workability in the hands of local government officers, applicants (together with their advisers) and lawyers.

The commentary and responses we provide follows the chapter sequence of the draft Code.

Scope of the Guidance

We are concerned that if this draft code is adopted then Local Housing Authorities (LHAs) and their advisers will have to refer to four separate documents in formulating their allocation policy. This draft Code replaces some but not all of the 2002 Code (**para 3**). The 2002 Code is out of date in respect of eligibility and all the case-law post 2002, also the 2008 CBL Code being replaced in part (**para 4**), and the 2009 April Circular is not to be replaced (**para 5**). We consider having four separate documents to which a LHA is required to refer is a recipe for confusion and mistake. We **recommend** that there be a consolidation of the Code of Guidance into one document. Such a consolidation will help limit confusion and mistake.

Objectives and Outcomes which allocation policies must achieve

Support for those in greatest housing need

1. We welcome the Government's stated commitment to giving priority to those in greatest housing need. This Chapter re-iterates the reasonable preference categories and we support its proposal not to change those.
2. However, we are concerned that if the objective is to give priority to those in greatest need, local authorities need to be encouraged and assisted in finding ways to prioritise those in greatest need through their allocations schemes. We believe that, insofar as the legislation remains unchanged, the guidance can be a strong tool for achieving this objective.
3. Whilst we recognize that the Lords in *R (Ahmad) v Newham London Borough Council* [2009] UKHL 14, [2009] 3 All ER 755, HL, have found it rational to give pre-eminence to waiting time as a factor in determining the allocation of social housing, this does not achieve the objective of giving priority to those in greatest housing need. It is therefore incumbent on the Government, while increasing the supply of social housing, to find ways of doing this through legislation as well as guidance.
4. We consider that additional preference can be used by LHAs to prioritise according to greater housing needs. The statutory power to give additional preference to persons with urgent housing needs is referred to at **para 19** (s. 167 (2)). However, the final sentence in that paragraph appears to undermine the usefulness of this provision by stating: "While there is no requirement for an allocation scheme to be framed to provide for additional preference, all local authorities should consider, in the light of local circumstances, whether there is a need to give effect to this provision."
5. Whilst this statement is intended to encourage LHAs to consider use of the power, without more, LHAs in constrained circumstances may fail to appreciate the usefulness of this provision. In fact, it is not local authorities that give effect to the provision. It has effect in any event.
6. If the Government intends to enable LHAs to allocate according to greatest housing needs, the guidance should be set in mandatory terms or at the very least in much stronger terms. The Government has, in the guidance, the opportunity to structure the way in which LHAs consider the use of this discretion and strongly recommend LHAs to use this power. We would suggest "Local authorities should give serious consideration to using this power, taking into account local circumstances including the needs of applicants, to ensure that housing is allocated to those with greater housing needs".

Providing settled homes for people who have experienced homelessness

7. We strongly endorse the Government's commitment to retaining reasonable preference for the homeless and those in temporary accommodation set out in **para 20**. It is absolutely correct that an allocation of social housing is a vital resource in ensuring that those experiencing homelessness or in temporary accommodation are offered a settled home. Part 6 of the Housing Act 1996 provides a vital mechanism by which those within the safety net of Part 7 can step into homes and increased security.

Providing greater equality and clearly meeting equalities duties

8. We welcome the Government's emphasis on LHAs' equalities duties. However, we consider that **paras 21 and 22** could be made of more concrete assistance to users of the guidance.
9. The reference to the equalities impact assessment and monitoring of lettings outcomes are sufficiently important that they each warrant treatment in a separate paragraph. It should be clarified that it is in order to ensure compliance with the LHAs' legal equality duties that they are being recommended to carry out an equalities impact assessment.
10. Further, we would suggest that LHAs should be required by more forcefully worded guidance to monitor lettings outcomes and make this information regularly and publicly available. If this were set in mandatory terms in the guidance it would assist local authorities in ensuring (a) that they are complying with their duties and (b) that they are seen to be compliant.
11. This is particularly important given the emphasis in the guidance (and the Government's concern) that allocations schemes should be seen to be fair and fairly operated and that there should be greater transparency in what is otherwise a complex system. Applicants, and those already in social housing, will be more likely to be reassured that they are not subject to discrimination if this information is up-to-date and publicly available. Further, such transparency will protect local authorities from charges of discrimination or failing to comply with their equality duties where they are in fact complying with their legal obligations.
12. **Para 21** is concerned with duties that may arise under the Equality Bill, if it is approved in its current form by Parliament. The government, in asking the drafters of new allocation schemes to include the requirement that LHAs, when making strategic decisions, have regard to reducing the inequalities of outcome which result from socio-economic disadvantage, must have had in mind the implications this would have for local authorities allocating social housing. If the Bill becomes law and local housing authorities are to implement that section, they will require more concrete guidance as to how this is intended to work in practice.
13. Framing allocations schemes so that decision-makers are able to meet greatest housing needs when allocating social housing, is part of tackling socio-

economic inequalities. We recognise that the scheme of Part 6 is such that it offers a large degree of leeway to LHAs, for example, as to the reasonable preference they give between the specified categories and whether they give additional preference. However, if the Government wants LHAs to meet their obligations under the Equality Bill, subject to Parliament's approval, it must facilitate them by encouraging LHAs to use the tools available to them when framing their schemes, including the use of additional preference.

Objectives and outcomes which the Government believes allocation policies should achieve

Consultation Question 1

Do you agree with the objectives and outcomes which local authorities should seek to achieve through their allocation policies?

Response to Question 1

14. **Paras 23-25:** Greater choice in allocation is to be welcomed. It is accepted that those tenants who are offered accommodation that they have bid for, are more likely to be satisfied with their home. In our experience, applicants who have been made direct offers (sometimes to reduce the numbers in temporary accommodation) can be aggrieved that they registered to bid but have had to accept a property they did not choose. The 2006 study also found that there was dissatisfaction on the part of those who found that, although entitled to bid under the CBL schemes, their banding was such that realistically they were never going to achieve a successful bid. In our experience, when applications are pursued under Part 6 there is often no (or extremely limited) advice as to other possible options. Setting criteria for the giving of fuller information as to options and practical advice with respect to pursuing those options is to be welcomed. In terms of the list provided at **para 25:**

- Renting homes in the private sector. At best, LHAs provide brochures to applicants identifying private sector landlords. The local housing benefit limits may make this an unrealistic option for most applicants.
- Many persons will be excluded from the low cost home ownership option as they will not be in a position to part fund the purchase of accommodation.
- Mobility schemes do not appear to have prospered in recent years as a result of a general lack of accommodation and the collapse of the Government's national mobility plan.
- Mutual exchange; in our experience moving under such schemes, has been less prevalent in recent years. Some of the CBL schemes now actively promote this option.
- In terms of home improvement schemes and adaptation. There is very often a difficulty funding such works. Even with Occupational Therapists recommending adaptations, there are often problems with Social Services providing funding.

Greater mobility

15. **Paras 26-27:** In relation to the development of choice based letting schemes on a regional or sub-regional basis this is something that was promoted in the “*Monitoring the Longer Term Impact of Choice Based Lettings*” report. That study included 4 schemes that were referred to as being “sub-regional”. The authorities under these schemes (West London Locata; East London Lettings; Home Connections; Homefinder Direct) adopted joint CBL policies and delegated the management of their allocations function; however the schemes do not involve applicants being able to bid for properties beyond the confines of the LHA where they are registered.
16. The CBL scheme for the Cambridge sub-region does provide that each Council or Housing Association puts 10% of available stock in a cross-partner section which allows for bids from anywhere in the region.
17. We are concerned that there has been no research or evaluation as to the effects of such regional or sub-regional bidding. The danger is that if the schemes are widened in this way; rather than creating a sense that local communities are benefiting, one can envisage a situation where communities may sense that their area is being unfairly flooded by applicants from other Districts. If this is to be promoted then detailed guidance is needed as to how regional bidding schemes will operate. There is no provision for such regional schemes under 1996 Act. It must be made clear how such allocations fit with the requirement, under the Act, for each authority to have its own allocations scheme and the prohibition on allocations other than in accordance with their scheme (section 167(8)). There should be guidance as to the percentage of properties to be set aside for regional cross-bidding.
18. In terms of local letting policies it could be beneficial for particular properties to be set aside to attract key workers for the district. There is a need for guidance to ensure that such local letting policies are fully published and the way they operate is fully accessible to members of the public. Guidance is needed as to the extent to which properties can be set aside to meet local needs but at the same time do not dominate the scheme and create imbalance.

Making better use of housing stock

19. **Para 28:** One of the best ways to make use of the social housing stock is, first of all, to know the stock in terms of what property is available and what property is not available. To encourage better use of stock this can already be done through housing management transfers. For overcrowded households waiting to be allocated larger accommodation the fact that some measures can be taken to ameliorate their position should not mean that as a result of overcrowding they do not attain reasonable preference. In terms of space-saving furniture such as bunk beds very often the problem is that there is no fund available to pay for such furniture. In our experience, LHAs are simply not using their powers under section 10, 11 and 11A Housing Act 1985 and these powers should be expressly stated in the Guidance. On a practical level the use of partitions generally will make very little difference as most cases

involve not so much a lack of rooms but total lack of space. Persons sharing limited space are not assisted much by dividing that up artificially. Measures to ameliorate the situation should not prevent reasonable preference being recognised.

Policies which are fair and considered to be fair

20. **Paras 29-30:** Highlighting the importance of full publication of the allocations scheme and how it operates day to day is to be welcomed. Transparency as to the way all allocations are made each month is the best way to ensure that misconceptions do not arise. Publication of allocations data should include direct offers and housing management transfers. In our experience, the provision of information as to the way in which the allocations schemes operate and setting out how allocations have been dealt with in previous years varies greatly. The provision of up-to-date information and readily accessible policies can only be helpful.

Support for people in work or seeking work

21. **Para 31:** Whilst this is not one of the reasonable preference criteria, it does appear to be a legitimate consideration if there are particular needs within particular local authorities in terms of skilled workers. Again, guidance is needed as to the proportion of properties that may lawfully be annexed for allocation in this way. There is an obvious danger if schemes are loosely drafted to give preference to those generally seeking work or training in an area. This could afford an easy method of queue jumping.

Summary of response to question 1

22. We **recommend**, as set out above, that more guidance is needed to spell out the way in which the objectives can legitimately be met. The outcomes sought are beneficial to applicants. The objectives should include an explicit commitment in every housing scheme to giving priority to those with greatest housing needs.

Involving, consulting and raising awareness with local communities

Consultation Question 2

What can local authorities do to raise awareness and understanding of social housing allocation among local communities?

Consultation Question 3

How can local authorities engage most effectively with local communities in order to shape local allocation policies?

Consultation Question 4

What is the best way for local authorities to provide information and facts about how the allocation process is working in their area?

Introduction

23. We are pleased that the Secretary of State recognises the need for clear and effective guidance on these issues so as to dispel the myths and false perceptions in local communities concerning the allocation of social housing.

Response to Question 2

24. Although, as in **para 32**, we accept that poorly trained or poorly supported staff may contribute to false perceptions of unfairness or create myths as to allocation it is our view that this is not the cause. It is our view that the causation of these myths and false perceptions arises out of the poor quality of information provided to the local community by the LHA as to amount of and availability of suitable housing. We **recommend** that LHAs need to have high quality and up to date data which is easily accessible to its frontline staff concerning its housing stock to properly inform service users or potential service users of (1) the limitations on their housing resources; and (2) how long it will take a particular service user to find suitable accommodation under the LHAs allocation scheme.
25. It is our view that for an allocation scheme to be considered fair by a local community the LHA must have accurate information on which it can provide a service user with a reasoned answer to an inquiry.
26. In summary, the LHA must not shy away from the reality of informing the local community as to how limited local social housing stocks are. Also the LHA must not shy away from the reality of how long it may take a service user to access accommodation under its allocation scheme.
27. It is our view that the key to success of this guidance or any guidance is for LHAs to actively and effectively manage their available housing stock so that

up to date information is available for their frontline staff to inform service users or potential service users as to the availability of suitable accommodation and how long it will realistically take those service users to have access to social housing. This will require the use of up to date information technology combined with the use of extensive and regularly updated databases.

Response to Question 3

The requirement to have an allocation scheme

28. At **para 35** of the consultation it states:

“Local authorities must have an allocation scheme for determining priorities and for defining the procedures to be followed in allocating housing; and they must allocate in accordance with that scheme (s 167 of the 1996 Act).”

29. It is our view that this is an inaccurate statement of the law as rather than “defining the procedures” s 167 of the 1996 Act requires the scheme to describe the procedures to be followed and that the scheme must be published.

Involving and consulting about the allocation scheme

30. At **para 38 and 39** the draft guidance identifies the “duty to involve” local communities with the aim of developing allocation policies which are seen to be fair and transparent.

31. We are concerned that the draft guidance fails to identify either a mechanism or methods to use in the consultation and/or best practice in conducting such a consultation. It is our view that those to be consulted would necessarily include existing tenants of the LHA and those who aspire to be tenants. We consider that those who should be necessarily consulted are those who are homeless, persons with disabilities or special needs, organisations which engage with the homeless, voluntary organisations, as well as members of the local community who may have a personal or political interest in the allocation of social housing. We **recommend** that in order for the guidance to meet the aim of meeting the greatest housing need there must be consultation with those who are in the greatest need of social housing. We consider the guidance on consultation is vague and fails to identify those persons and organisations who need to be consulted with any degree of precision.

32. We **recommend** that the guidance needs to identify clear methods by which the consultation is to be carried out and to provide worked examples of best practice. We **recommend** that in the process of consultation the LHA will have to formulate its own draft policy and present considered questions for comment by the local community. The draft guidance fails to provide a clear and structured approach as to how this may be achieved. At present the draft guidance is vague and almost non-existent as to the methods and mechanisms to be used in the consultation.

33. The guidance needs to identify methods and mechanisms for how the results of the consultation will be evaluated by the LHA. Then, how the results are to be measured against any proposed policy forwarded by the LHA as part of the consultation. These results may need to be subject to statistical analysis and possible audit. There may be a need for a comparative analysis of the results of the consultation against neighbouring LHAs. The guidance fails to deal with such issues.
34. As part of the consultation process, the LHA will need to publish the results and will need to give clear reasons for either adopting or rejecting the responses of the local community. The guidance needs to identify how these results and reasons will be disseminated to the community. The guidance will need to identify how the LHA is then to formulate its allocation policy based on the results of the consultation.
35. The guidance fails to identify that as part of the consultation process there will be a need to post-consultation and post-implementation research to determine if the consultation was effective and whether the local community considers the scheme adopted as a result is fair and transparent. The results of this research will need to be published. The guidance fails to provide for this and fails to provide any guidance as to methodology or good practice.
36. In summary, the response to Question 3 is that the guidance needs to be more precise as to the specific identification of those who need to be consulted, more precise as to the methods and mechanisms of consultation and more precise as to the methods of evaluation and post implementation research.

Information about evaluations

Response to Question 4

37. We consider it is absolutely essential that the local community understands how social housing is allocated. We **recommend** that rather than merely “encouraging” LHAs to publish their allocation scheme on their website (**para 45**) the guidance should require them to publish it and that the guidance should also require the LHAs to publish their local lettings policy.
38. As to **paras 46-49** we **recommend** that the guidance should require the LHAs publish the information referred to. We **recommend** that this information should be available via online services provided by the LHA and that it should be regularly audited and updated to ensure its accuracy.
39. As to **para 49 and 50** we consider that the mere reference to an applicant being provided with information about the relevant complaints procedures available to them is inadequate. It is clear that the applicant should be provided with clear information as to their right of review, the decisions which are subject to review, the procedure upon review and any right of a legal challenge to the review decision they may have. This information should include the timescales in which these rights may be exercised. The information

provided should identify decisions where the applicant does not have the right of review and should provide clear information as to other complaint procedures available and any right of legal challenge.

40. In this context we refer to the letter from the Office of the Deputy Prime Minister to Directors of all local authorities in England of the 11 November 2002 concerning the revision of the Code of Guidance which states:

“The Code does not contain detailed guidance on the procedures which housing authorities should adopt when carrying out reviews of decisions under Part 6 of the 1996 Act. The issue of local authorities’ review procedures under Part 6 of the 1996 Act has been considered on more than one occasion by the Court of Appeal. We understand that one of those cases may be subject of an appeal to the House of Lords. We will consider whether it would be appropriate to bring out further guidance to cover review procedures under Part 6 of the 1996 Act as the law continues to develop. In the meantime, housing authorities should ensure that the procedure for any review carried out at the request of an applicant as mentioned in paragraphs 4.30, 5.58 and 6.13 of, and annex 13 to, this guidance is fair and compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)(see sections 1 and 6(1) of, and schedule 1 to, the Human Rights Act 1998). In doing so, they will wish to have regard to relevant judgements of the domestic courts and the European Court on Human Rights.”

41. By contrast to Part 7 of the Housing Act 1996 there are no statutory provisions under Part 6 governing the procedure for exercise of rights of review. For example, there are no specified time limits within which a review may be requested and no prescribed form or procedure for making the request for review. Under section 167(5) of the Housing Act 1996 the Secretary of State is empowered to make regulations governing “the procedure to be followed” which may include the procedure to request and conduct a review. However, no regulations have been made to govern the procedure and practice to adopt in the review of allocation decisions.
42. There is clearly a procedural vacuum which ought to be filled by the new guidance in the English Code given that detailed guidance is available under Part 7 and under the Welsh Code on allocations in respect of adverse decisions on eligibility or no preference (Welsh Code, paragraph 3.26).
43. We **recommend** that given the procedural vacuum, the contents of the letter of 11 November 2002 from the ODPM, and given that the objectives of the revision of the guidance is to demonstrate that allocation schemes are fair and transparent, the Secretary of State ought to use this opportunity to introduce guidance to cover review procedures under Part 6.

Monitoring and evaluation

44. **Para 51:** we agree that it is essential that there be monitoring and evaluation schemes in place. However, the guidance as presented is again vague and fails to provide clear guidance as to the methods of monitoring and evaluation. We **recommend** that the guidance provide clear examples of good practice.

Framing an allocation scheme

Consultation Question 5

Does the draft guidance provide sufficient clarity on the extent of flexibilities available to local authorities when formulating allocation policies?

45. We welcome the Government's commitment to retaining the existing categories of reasonable preference, so as to give priority to those in greatest housing need (see foreword by the Minister).
46. The guidance in this chapter is crucial to ensuring that the Government's stated priority of allocating on the basis of greatest housing need is maintained.
47. In short, it is our view that if the Government's aim is to be achieved, then the Government should be advising local housing authorities to continue to use mechanisms that prioritise between applicants (who are entitled to a reasonable preference) on the basis of need. That means recommending that cumulative preference continues to be used as a tool, so that those in greatest housing need receive greatest priority over those with fewer needs. If waiting time is used as the sole method of prioritising between applicants entitled to a reasonable preference, those with the greatest housing needs will be waiting as long as those with fewer needs.
48. We **recommend** that the Government advises that local housing authorities should use cumulative preference as a way of identifying those in the greatest housing need, and prioritising them accordingly. Waiting time and other factors such as local connection, behaviour and financial resources, can then be used to prioritise between those applicants who have the same amount of need.
49. It is important to note that the House of Lords did not expressly approve Newham's allocation scheme in *R (Ahmad) v Newham London Borough Council* [2009] UKHL 14, [2009] 3 All ER 755, HL. Indeed, it would have been inappropriate of their Lordships to do, as they expressly recognise (Lord Neuberger para 46 judgement). The House of Lords found that Newham's scheme was not unlawful. It does not follow that other local housing authorities are obliged in law to follow Newham's example or should do so.

Banding or points

50. For the reasons we set out above, we do not support broad banding schemes. We are concerned that the interests of simplicity and transparency over-ride the interests of need. A points-based scheme is the most reliable identifier of various types of need, and can also include points for waiting time. Bands, on the other hand, necessarily group applicants who have different types, and different severities, of need together.

Allocations to those not in reasonable preferences

51. As the draft Code states, the House of Lords' decision was that “an allocation scheme is not unlawful if it allows for a small percentage of lets to be allocated to existing social housing tenants who ... do not fall within any of the reasonable preference categories”.
52. The House of Lords did not overturn the existing law which has held that applicants entitled to a reasonable preference are entitled to a “reasonable head-start” over those who are not so entitled (*R v Wolverhampton MBC ex parte Watters* (1997) 29 HLR 931 CA).
53. On the particular facts in *Ahmed*, the quota up to 5% of annual lets made available to applicants who did not have a reasonable preference was not unlawful.
54. The House of Lords left unanswered what percentage would render an allocations scheme unlawful. The draft Code does not answer this problem. It simply says that such lettings should “not dominate the scheme” (**para 70**).
55. In the absence of any judicial authority, it is our **recommendation** that the Government should give clear advice to local housing authorities as to what proportion of lettings to applicants not entitled to a reasonable preference the CLG would regard as unlawful and dominating the scheme.
56. We are **concerned** that the emphasis in this chapter on “local lettings policies” would permit local housing authorities to skew their allocation schemes unlawfully, so that those applicants entitled to a reasonable preference no longer receive a reasonable head-start overall. This chapter does not advise local housing authorities as to what percentage of their stock can be reserved under local lettings policies. It is our view that section 167(2E) Housing Act 1996, which provides the authority for reserving some properties from the main pool of properties available under a choice-based lettings scheme, is intended to reserve suitably adapted properties for those who have physical needs for them. We do not consider that this section necessarily provides the power to reserve certain lettings in rural villages, or to try to deal with concentrations of deprivation.

Our response to Question 5 is that the guidance:

- 1 fails to advise local housing authorities that cumulative need remains available as a method of prioritising between applicants who are entitled to a reasonable preference;
- 2 fails to recommend to local housing authorities that they should use cumulative need for those purposes;
- 3 fails to identify to local housing authorities to what extent allocations to those not entitled to a reasonable preference would unlawfully dominate

the scheme; and

- 4 fails to grapple with the problem of how applicants who have a reasonable preference should be prioritised against each other, so as to achieve the Government's aim of "giving priority to those in greatest housing need".

Partnership working with RSLs

Consultation Question 6

(1) How effective, currently, is cooperation between RSLs and local authorities over the allocation of social housing?

(2) What further measures could help?

Introduction

57. We are pleased to see that the Secretary of State recognises the need for additional guidance on this topic. The guidance in the initial Allocation Code (2002) was sparse and compared poorly with the extended guidance given in the Homelessness Codes of Guidance¹. To some extent the gap was partly filled by material in the CBL Code (August 2008) but that was, understandably, primarily directed at those LHAs and RSLs working in partnership in a CBL scheme.
58. The present draft guidance, sadly, represents simply more “gap-filling” and underscores a point made earlier in our response (see “Scope of the guidance” at page 3 above) about guidance on allocation being strewn jigsaw-fashion across three Codes and a Circular. There should be a single Code with a single chapter on joint working between RSLs and LHAs. It cannot seriously be expected that officers in LHAs and RSL should both need to make reference to a string of source materials (in addition to all the materials to which those documents themselves refer) in order to help map the arrangements they make for joint working.
59. As the draft guidance recognises (**at para 86**), a real substantive push towards more effective joint working in future should, and hopefully will, come from the new national standards and guidance to be issued by the TSA and which will come into force in April 2010.
60. The situation obtaining from 2002-2010 was not satisfactory. The guidance issued by the ODPM and later CLG to local housing authorities led them to expect a high degree of co-operation and access to a great deal of RSL stock. For its part, the Housing Corporation’s Guidance emphasized RSL independence and self-management of the allocation process (see Circular 02/03 at para 4.2). This schizophrenic approach in the guidance must at all costs be avoided from April 2010. It is vital that CLG and TSA are by then singing from the same hymn sheet.
61. The position until that is achieved is far from satisfactory and is not addressed by the text of the proposed draft guidance. It is absurd, for example, in the

¹ See. For example, Annex 5 of the 2006 Homelessness Code.

context of the LSVT legacy and the now numerical stock superiority of RSLs as social housing providers, that any guidance suggesting a mere 50% of voids (still based on the very strict interpretation of voids in the Corporation guidance) should continue in circulation - let alone be referred-to with seeming approval in **para 86** of the present draft guidance. If there is any value in issuing any freestanding guidance from CLG on partnership working ahead of April 2010, it must surely seek to raise the bar.

Response to Question 6(1)

How effective, currently, is cooperation between RSLs and local authorities over the allocation of social housing?

62. It is, frankly astonishing that this question should be posed at all. If – as it should be – the draft CLG Guidance is being drafted by officers with some contemporary and real experience or understanding of the world of housing allocation, the question would not be posed. Experience plainly shows that presently co-operation is largely superficial and often represented by bland policy pronouncements.
63. On the ground there are real difficulties. They primarily arise from the lack of a common approach to the criteria by which homes are actually allocated and the unwillingness of RSLs to make their stock available unconditionally for access under Part 6 arrangements. As we wrote in our response to the draft CBL Code:

“56. **Paras 6.6 – 6.15:** The criteria adopted by RSLs for acceptance onto their own allocation schemes is frequently different to the statutory criteria set out in Part 6 Housing Act 1996 (s.160A(7)). The criteria operated by RSLs are often more restrictive than the statutory criteria. A common example is that RSLs will not allocate to anyone with rent arrears, whether or not the statutory test at s.160A(8) is met.

57. It is not uncommon, in our experience, for local housing authorities to nominate to a RSL an applicant who has been accepted as eligible pursuant to the statutory criteria. However, if the applicant does not qualify as eligible under the RSL’s own criteria for allocation, the RSL will refuse the nomination. This occurs even where the nomination is in accordance with the agreement between the RSL and local housing authority whereby the RSL will accept a certain number of local housing authority nominations.

58. It is our view that the Department, in association with the Housing Corporation, should provide explicit guidance to RSLs to the effect that RSLs must accept all nominations made by the local housing authority. If an applicant has been found to be eligible under the statutory criteria, we see no reason why he or she should then have to face a non-statutory bar imposed by the RSL to which the local housing authority nominates.

59. This situation applies to all local housing authorities, as nowadays all have nomination agreements with RSLs, but is particularly acute where the local housing authority is no longer owner of any stock, it all having been transferred (**paras 6.18 – 6.22**).”
64. Those issues were not adequately addressed in the final CBL guidance and the problems remain. They have been documented by others. Not least by the Bristol School of Law in *Problematic nominations* (December 2007) and in the Housing Corporation’s *Tackling Homelessness: Efficiencies in lettings functions* (November 2007). Our professional legal work and our experience as trainers and conference speakers working with LHA and RSL staff has shown them to be still prevalent. Neither document is referred-to in the draft guidance. None of the issues raised by them, nor the evidence in those reports are directly addressed in the draft guidance.
65. Indeed, the fact that the problems have survived the production of the CBL Code simply underscores the point we made in our response to that Code in draft – that its effectiveness and impact would be seriously diminished if it was seen (as it has been) as an unimportant optional add-on to the main Allocation Code. It is vital that the guidance on the single topic of allocations is in a single authoritative Code.
66. Much of the blame for this present state of affairs rests with the inadequacy of the guidance proffered by CLG, even in the present draft. Take para [86], which simply regurgitates the statutory co-operation duty in section 170 of the Act. One would expect the text to then run “*This means in practice that ...*”. There is nothing of that type. Not even an explanation that section 170 can operate in respect of at least three forms of request – a request to assist an individual applicant, a request to assist a specific group of applicants, or a general request to assist with all an LHA’s priority applicants.
67. What applicants for social housing need is access to clear, simple and straightforward arrangements dealing with distribution of all forms of social housing in their area – council housing, ex-council housing now owned by an RSL and all local RSL housing. Part 6 requires that local arrangement to be run by the LHA. The Secretary of State’s guidance should insist that it is underpinned by legally enforceable contractual obligations on RSLs to comply with the arrangements published.
68. There is no justification for RSLs ring-fencing certain stock (within or outside a local allocation scheme) or applying their own independent criteria or decision-making - particularly where the RSL was created to take a LSVT. Fairness requires that an applicant who “was with the council” has as much if not more access to the RSL’s housing through the portal of Part 6 as he or she would have had if the stock transfer had not taken place.

Response to Question 6 (2)

What further measures could help?

69. We hope we have supplied a clear answer. What is needed is straightforward practical guidance to both LHAs and RSLs that, although given to both separately, conveys the same message to the same end. Both forms of guidance should be strengthened by full explanation and examples.
70. On the CLG side, the need is for a single authoritative source of such guidance – a new, single Housing Allocation Code.