

Draft Homelessness Code of Guidance

Response from the Northern Housing Consortium

About us

The Northern Housing Consortium (NHC) is a membership organisation based in the North of England that works with local authorities and housing associations to advance the cause of housing. Our membership covers around 90% of all social housing providers in the North. The NHC brings its members together to share ideas, and to represent their interests and to ensure they are heard at a regional and national government level. Our member organisations have contributed to this response and we welcome the opportunity to respond to the consultation paper.

Consultation Questions

Personal Information

Q1: Are you responding as:

On behalf of an organisation

Q2: If you are responding as a private individual, is your main interest as: A individual with experience of homelessness? An individual who delivers a homeless service? Other?

N/A

Q3: If you are responding on behalf of an organisation, is the interest of your organisation as:

“A supplier of services to local authorities”

Q4: Please enter the first part of the postcode in England in which your activities (or your members’ activities) are principally located

North East, North West, Yorkshire & Humber

Format of the Homelessness Code of Guidance

Q5: Do you agree that annexes should be removed from the guidance?

Yes

Comment

The new Code of Guidance contains the relevant information.

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?

Comment

Yes, we agree with withdrawal of existing supplementary guidance documents.

Q7: Do you agree that the revised Homelessness Code of Guidance should incorporate the additional supplementary guidance documents?

Yes

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. Comment:

No, however if caselaw is used to supplement the Guidance, this should be regularly reviewed and updated.

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?

Comment

The style and tone is generally a practical guide to a complex policy area.

One of the key intentions of the new duties is to involve and work with a wide range of partners who are not specialists in housing law and guidance. While the main use of the Guidance will be by local authority members and staff, the new duties placed on other public bodies, particularly through the duty to refer, means that this Guidance will have a wider audience who may benefit from the use of plain English and a glossary of phrases and terminology.

Bearing in mind this determination for wider partnership working, it would also help if references and hyperlinks to relevant legislation were consistently referred to throughout.

Content of the Homelessness Code of Guidance

The following questions are specific questions on the content of the Homelessness Code of Guidance.

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.

Comment:

The housing allocations process can play a significant role in promoting and achieving equality at a local level and tackling socio-economic inequality.

Housing authorities need to have regard to their duties under the equalities legislation to give overall priority for an allocation to people in the reasonable preference categories and allocation schemes should not exclude those groups that fall into a protected category.

To avoid housing allocation schemes being successfully challenged for excluding some vulnerable groups, additional consideration should be given to any adverse effects that the provisions will have on certain groups, for example, whether the local connection requirement will have an adverse effect on proportionately more Gypsies and Travellers than members of the settled population.

Future monitoring will be the best way to identify any actions that may be needed to address impacts from the Draft Code of Guidance.

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

Yes

Chapter	Page and Paragraph Number	Change / add / remove	Comment
Chapter 2	2.3	<i>“Authorities are encouraged to take the</i>	We believe <i>“take the opportunity”</i> could be

		<i>opportunity to involve all relevant partners in developing a strategy that involves them in earlier identification and intervention to prevent homelessness”.</i>	strengthened to a requirement for homelessness strategies to identify how to work with relevant partners, including on obligations on Duty to Refer and intended outcomes and partners’ role in delivering those outcomes.
	2.65	<i>“work with key partners....share and maximise resources and ensure a more holistic service response.”</i>	Data sharing across partner agencies and even different departments in the same agency is often a barrier, often due to simple practicalities of using different IT systems. Local arrangements need to address this early.
	2.7	<i>“Housing authorities should ensure that their homelessness strategy is co-ordinated with the Health and Wellbeing Strategy, and that their review of homelessness informs and is informed by the Joint Strategic Needs Assessment.”</i>	We support the focus on improved health benefits with a responsibility for an inclusive strategic approach however, this needs to be two-way, rather than one-way as implied here with Health & Wellbeing Boards having responsibility to fully consult and involve others in their priority setting.
	2.9	<i>“Housing authorities will also wish to consult with service users”.</i>	This needs to clearly state that people who have been or are homeless should help design services.
	2.24	<i>“local authorities will wish to look beyond the statutory requirements to</i>	Local authorities have been successful in preventing

		<i>consider the economic and social reasons for investing in activities that prevent homelessness”.</i>	homelessness with reduced resources but to deliver beyond the statutory requirement, needs appropriate government support and investment. It may be ambitious to anticipate that local authorities will be in a position to adequately offset costs before the additional funding runs out. While the short-term cash boost is welcome, it should be followed by an effective post-implementation review of funding, resources and stock.
Chapter 3	3.3	<i>“Information provided through authorities websites and other channels should... help enable people to take action themselves... and actively encourage them to seek assistance.....”</i>	For this to be successful, good website design will be essential with an easy to use, easy to navigate system, clarity on who to contact and links to relevant support information. It is not clear that this was accounted for in new burdens funding.
	3.7	<i>“The legislation does not specify how housing authorities should ensure that advice and information on homelessness and the prevention of homelessness are made available. They could.....provide the service themselves...”</i>	The duties set out in the Code present a different role for officers in local housing authorities. They will be facilitators and advocates, concerned with problem solving and achieving positive outcomes. If this work is not contracted out, local housing providers will need to plan and resource suitable training and support for staff.

Chapter 4	4.1	<i>“public authorities...are required to notify a housing authority of service users they consider may be homeless or threatened with homelessness.”</i>	If not fully coordinated, there is potential for people being referred to fall through the net. The referring body will have fulfilled their duty once the referral is made. Beyond that there is no certainty on whether the local authority will be able to successfully make contact with the applicant directly. Confirmation is needed of the limit of the local authorities’ responsibilities at this point.
	4.3	<i>“The housing authority should incorporate the duty to refer into their wider homelessness strategy and joint working arrangements and establish local arrangements with agencies in regard to referrals.”</i>	New protocols at local level will guide successful relationships. While local authorities may lead on the local arrangements, we do not believe it is the role of local authorities to train other public sector bodies on the new duty and this should be enabled by Government.
	4.11	<i>“A referral made by a public authority to the housing authority under section 213B will not in itself constitute an application for assistance.”</i>	Further clarity is required on the local housing authorities’ duty to provide advice upon receiving the referral if they are unable to establish contact with the person, and whether the authority has an on-going requirement to assist. In such circumstances, this should not necessarily constitute a ‘refusal to

			<p>cooperate’.</p> <p>We agree that the authority must know when to conclude its attempts to contact a referred individual. The Guidance implies the duty ends when the authority has provided information on accessing advice through the authority’s website. If this is the case, it should be made clear.</p>
	4.12	<p><i>“If the housing authority’s subsequent contact with the individual following receipt of the referral reveals details that provide the housing authority with reason to believe that they might be homeless or threatened with homelessness it will trigger an application for assistance.”</i></p>	<p>There must be an expectation that the majority of referrals will trigger a homeless application, assuming the named public bodies are well informed of their duties.</p> <p>Our view is that if a referral is made with consent, it should trigger an application for assistance and the local authority will need to investigate its duty to assist, sooner rather than later so that, at referral stage, the request for assistance is taken seriously.</p>

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

No

c) When considering 'Chapter 6: Homelessness and Threatened with Homelessness' is the guidance on whether it is 'reasonable to occupy' helpful?

Yes

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.

Paras 6.33 and 6.34 are helpful in making it clear that each case should be individually assessed and that there should not be a blanket policy or practice on the point at which it will no longer be reasonable for an applicant to occupy following the expiry of a section 21 notice.

In the North, around 15% of all homelessness presentations are due to termination of an assured shorthold tenancy and so there is a burden on local housing authorities to respond appropriately and provide good advice to tenants which does not put them at risk of homelessness or incur court costs. The Guidance in the Code seems to require an authority to perform a balancing act between landlord, tenant and on fulfilling their duties where the tenant remains beyond the expiry of a valid section 21 and the test of reasonableness.

If the landlord, having served a valid section 21 notice, intends to seek possession, and the local housing authority have exhausted all options for persuading the landlord otherwise and there would be no defence to possession, then it is unlikely to be reasonable for someone to continue to occupy their accommodation beyond the expiry date of the notice.

To ease the burden on local housing authorities, and to establish reasonableness, there may be some sense in authorities, where they are satisfied that the landlord intends to seek possession through the courts, they then seek to negotiate with the landlord that the person can stay for a 56-day period (or a period of time that is mutually agreed) beyond the expiry of a valid section 21 in cases where there is no pressing reason for the landlord to obtain possession, and no overriding reason that the tenant needs to leave earlier.

The authority could provide a written guarantee that if they cannot resolve the issue that led to the notice being served within that 56 day period, or cannot find any other accommodation they will guarantee to offer temporary accommodation at the end of the 56 days. This would mean no court costs for the landlord or tenant and the landlord would be able to obtain the property back earlier than if they had to go through due process and recover through a possession order and possibly a bailiff warrant.

Chapter 10 – Local Connection and referrals to another housing authority

d) When considering ‘Chapter 10: Local Connection’ does the guidance provide sufficient clarity about when and how a referral can be made?

Yes

Please note if there is anything more you think could be provided to help housing authorities interpret the legislation

In assessing local connection, there will be cases which require a high level of discretion, particularly on the ‘standard of proof’, for example, people fleeing domestic violence are unlikely to be able to provide a high level of personal identification to establish proof of a local connection in another district.

It would be useful to cite good practice examples established through Trailblazers and provide examples for guidance as to when discretion can be used with a common sense approach.

Illustrations of good practice would also assist in deterring perverse incentives such as the practice of some London authorities relocating residents to Northern locations. There has been evidence under the existing arrangements whereby some placing local authorities have not notified host local authorities. This is not only to the detriment of the individual or family, but to the host local authority.

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

Yes

Chapter	Page and Paragraph number	Change / add / remove	Comment
11	Para 11.15	<i>‘face to face meetingif the applicant requests it’</i>	Local housing authorities are facing a substantial additional burden with these requirements and may not have the capacity for face-to-face

			interviews with every applicant
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Chapter 11 – Assessments and personalised plans

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

Yes

Chapter 14 – Ending the prevention and relief duties

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?

Yes

Comments

We would be concerned if the Guidance does not fully reflect the circumstances in which an individual may not be capable of cooperating or be unaware of the consequences of non-cooperation. The assumption of the Guidance is to advise, help and ultimately house someone in need. It can be anticipated that there will be a minority of deliberate non-cooperation examples however an applicant’s vulnerability and capacity should be fully considered.

For example, there is an assumption that non-attendance at a meeting is illustrative of non-cooperation however, the individual may be required to attend an employment benefits appointment which would lead to sanctioning on failure to attend. There needs to be a level of distinction between difficulty cooperating and deliberate non-cooperation. Examples could be included in the Code. We fully appreciate that the individual must take responsibility but the balance of responsibility needs to be shared.

Para 14.49 “*Having local information sharing arrangements in place*” - Information sharing between agencies in the care, health, criminal systems can be notoriously difficult, if not, non-existent in some areas, despite attempts at cooperation. This should be part of a duty to cooperate alongside a duty to refer, requiring stakeholder organisations to take reasonable steps to share relevant information.

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

No

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?

Yes

Comments

A review of the implementation of the Act will be essential to monitor anticipated increase in demand and therefore additional burdens on housing providers to secure accommodation.

Chapter 17 – Suitability of Accommodation

d) When considering Chapter 17: Suitability of Accommodation are you clear what local authorities responsibilities are?

Yes

Is there any further guidance required to help housing authorities assess affordability of accommodation, or the suitability of accommodation out of district?

In relation to affordability, Para 17.44"a housing authority must take into account whether the accommodation is affordable"

In order for local housing authorities to deliver affordability assessments within the resources available, it will be necessary to prioritise and work with the people who present the greatest risk of falling into rent arrears. This is likely to be single people receiving Universal Credit and larger families affected by the benefit cap.

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

No

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

No

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?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

No

Q17: Are there any other comments that you would like to make on the Homelessness Code of Guidance?

Comments

We welcome the shift of emphasis presented by the Guidance and our Members believe that additional measures requiring households to take reasonable steps to relieve their own homelessness, in addition with earlier intervention and prevention measures will result in positive outcomes.

We believe the new draft Code has retained the detail of existing Code and will support housing authority officers in carrying out their day-to-day duties, without the need for legal recourse.

Despite the overall increasing levels of homelessness, local government has been increasingly successful in preventing it. In 2015/16 more than 90 per cent of households helped by councils had their homelessness prevented. However, with new burdens and responsibilities, councils cannot tackle rising homelessness on their own, and we welcome the renewed sense of partnership working and the challenge for all stakeholders to work together. So, while we welcome the Guidance, if it is to incentivise and to assist local authorities and all partners in delivering their responsibilities, it could be re-framed in some areas to better interpret the spirit of the Homelessness Reduction Act which is to support the shift in culture that is truly needed.

There can be little argument with the policy intention but in all probability the new prevention duty will place an additional burden on local authorities and, the introduction of such a measure will need to be supported by adequate resources.

While our members welcome the provisions in the Act, some of our members were less certain that the provisions will result in early savings: it is hoped that higher levels of prevention will impact on the number of households progressing to the main housing duty but there will inevitably be an increased level of caseload work to be managed by local housing authorities. These new provisions will only work if the services and the people needed to deliver them can be adequately supported and have targeted financial backing.

Additional funding may well help housing authorities to “hit the ground running”, but this must be followed by an effective review of funding, resources and housing stock, as promised by Government.

For enquiries about this submission, please contact:

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