



**Allocation of Accommodation: Choice Based  
Lettings  
Draft Code of Guidance for Local Housing  
Authorities'**

**Submissions on the Draft Code to the DCLG**

**April 2007**

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**SHLA: a forum for social housing professionals & their lawyers**

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## About SHLA

The Social Housing Law Association ('SHLA') is an organisation of social housing professionals and their lawyers. Its members work or regularly act for social landlords (local authorities and registered social landlords).

SHLA aims to:

1. Further the interests of social landlords.
2. Promote and develop better solutions to the legal problems faced by social landlords.
3. Provide a forum where its members can exchange and discuss ideas and information.
4. Assist in the development and training of its members.

## Introduction

SHLA has two key concerns over the draft Guidance. First, it will not assist local authorities to draft choice based schemes because it does not suggest model paragraphs or approaches that could be used. Indeed some key issues such as 'deprioritising applicants' and 'information sharing' are overlooked. Secondly, the prescriptive tone of the draft Guidance will assist claimants' lawyers to challenge choice based schemes in the courts in circumstances where the schemes are not inherently unfair. What SHLA would appreciate is Guidance that is more helpful to local authorities who are struggling, in a litigious culture, to draft and implement choice based lettings schemes.

### 1. Prescriptive

Although many local authorities have already embraced choice based lettings the courts have taken a fairly interventionist approach and it would be helpful if the government helped local authorities to resist such challenges by not itself being prescriptive. However, the draft Guidance is likely to aid claimants' solicitors by curtailing the latitude that local authorities are intended to have under the Housing Act. For example, 'a large number of bands' is encouraged (para 4.18 & 4.33); priority cards are not ideal (para 4.27); back-dating to give greater priority 'is not recommended' (para 4.31); and waiting time based schemes to distinguish between those with a reasonable preference are not recommended in areas of high demand (para 4.43). Prescriptive expressions such as, for example, saying that certain applicants 'will need a longer priority period' (para 4.51) will also fuel some judicial reviews.

### 2. Deprioritisation of certain applicants

The Housing Act enables authorities to render certain persons either ineligible or deprioritised for an allocation (ss160A(7) & 167(2A)-(2D)). These provisions are important for social landlords who may have spent considerable effort evicting a household for rent arrears or nuisance behaviour and will not therefore wish to see them readily rehoused in the social housing sector. However, the draft Guidance says nothing about how these provisions can be incorporated into a choice based letting scheme.

### 3. Local discretion over preference

Under s167(3) the Secretary of State can 'amend or repeal' any part of s167(2). We would like to urge her to repeal s167(2) in its entirety so that local authorities have a greater freedom, in the interests of local democracy, to design their own policies that meet local needs and priorities. This will also narrow the scope for applicants to bring Judicial Reviews without creating any unfairness to those who are in need of social housing. Many judicial reviews have succeeded because local authorities have had difficulty meeting the prescriptive requirements of s167(2) even though their schemes have not been inherently unfair. We appreciate that this is not an issue that can be dealt with in Guidance but we thought it appropriate to register this point of view.

#### 4. Information sharing

Many RSLs are troubled by the lack of information they are given about nominated tenants. The sections on 'Information sharing and data protection' (para 5.31-5.32) and 'Nomination agreements' (paras 6.8-6.12) could be more specific and helpful about the extent to which information can and should be shared.

#### 5. Applicants are not seen as resourceful

The draft Guidance underestimates the resourcefulness of applicants by stressing the extent to which local authorities may need to provide support. Paragraphs 4.48 & 5.18 will serve to undermine the ability of applicants to look to their families, friends and community groups for assistance when participating in choice based allocations. Clearly some applicants will need help, but local authorities know this and do not need Guidance to tell them the obvious. Claimants' solicitors will seize on such paragraphs to get judicial reviews off the ground.

#### 6. Model schemes

Local authorities are having to devote substantial resources to devising choice based schemes, especially in areas of high housing demand. The Guidance could help by drafting a series of model schemes, which local authorities could then adapt as appropriate. Model paragraphs on issues such as 'information sharing' could also be suggested. As noted above, the draft Guidance is good at telling local authorities what not to put in a scheme but by doing this it merely makes the already difficult task of designing choice based schemes harder.

The Social Housing Law Association  
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