



Allocating social housing: the policy context

This is the first of three articles which discuss the allocation of social rented housing in the context of the statutory frameworks of Housing Act (HA) 1996 Parts 6 and 7. The remaining articles will be published in August and October 2008 *Legal Action* respectively. This article focuses on the policy context. Parts 2 and 3 will focus on the allocation of social housing by local housing authorities (LHAs) and registered social landlords (RSLs). **Robert Latham** considers the developments since his previous articles (see March 2005 *Legal Action* 16 and May 2005 *Legal Action* 15).

Introduction

The articles published in 2005 considered the legislative background to allocating social housing in the context of the policies adopted by 12 London LHAs. These were Brent, Camden, Ealing, Islington, Lambeth, Lewisham, Newham, Redbridge, Southwark, Tower Hamlets, Wandsworth and Westminster. While these were not representative of LHAs in England and Wales, it is the inner London authorities where housing stock is most limited in quantity and quality and where the mismatch between demand and supply is the greatest. It is all the more important that such LHAs ensure that social housing is allocated in a fair and transparent manner to those in greatest need.

The current articles consider how the situation has changed over the past three years, again using these 12 LHAs as examples. During this period, the stock of social rented housing has continued to decline. While in 1997, there were 3.4m local authority rented dwellings, by 2006 this had declined to 2.09m.¹ This has been offset partly by the increase from 0.99m to 1.85m in the number of RSL dwellings over the same period. However, there has still been an overall reduction of 10.3 per cent in the stock of social rented housing. In 2008, it is probable that RSLs will grant more tenancies than LHAs.

The role of social housing

The government under Tony Blair saw home ownership as the solution to the nation's housing crisis. Gordon Brown has adopted a different approach and has put housing much higher up the political agenda. The housing green paper, *Homes for the future: more affordable, more sustainable*, July 2007, set a target of 45,000 new social rented

properties a year.² However, the government continues to oppose the fourth option (the other options are Private Finance Initiative, Large Scale Voluntary Transfer and Arms Length Management Organisations) whereby LHAs are permitted to increase their stock of rented housing, an option which party delegates have raised as an annual ritual at recent Labour party conferences. RSLs will rather be expected to meet this target.

In the heyday of municipal socialism, social rented housing was seen as a radical alternative form of tenure to home ownership or the private rented sector. As a result of the decline in social housing over the past 30 years, social housing has been increasingly allocated to those in greatest need, making it all the more difficult to meet the government's objective of establishing sustainable communities.

In her speech to the Fabian Society in February 2008, Caroline Flint MP, the housing minister, noted that more than half of all households in the social rented sector have no working aged adults employed. She suggested that social housing could be used as part of the government's welfare to work strategy. Tenants could risk eviction if they failed to find employment. This suggestion was described in *Inside Housing* as 'so stupid, it's frightening'.³

A more measured discussion is to be found in *Ends and means: the future roles of social housing in England*, Professor John Hills, February 2007.⁴ He suggests the need to move beyond an approach of rationing towards the key question: 'How can we help you to afford decent housing?' Housing should not be seen in isolation from other policy objectives to support people's livelihoods and to boost the means at their disposals. Choice-based lettings (CBL) and

Table 1 Homeless households in temporary accommodation (TA)

	3rd Quarter 2004		4th Quarter 2007		Change	
	Total in TA	Homeless at home (H at H)	Total in TA	H at H	No in TA	H at H
Brent	4,412	80	3,953	118	- 10%	+ 48%
Camden	2,106	462	1,478	103	- 30%	- 78%
Ealing	2,056	376	1,996	64	- 3%	- 83%
Islington	1,495	0	1,042	0	- 30%	0
Lambeth	2,077	728	2,133	108	+ 3%	- 85%
Lewisham	1,550	786	2,589	689	+ 67%	- 12%
Newham	5,517	64	5,752	0	+ 4%	-100%
Redbridge	2,435	0	2,726	-	+ 12%	-
Southwark	966	422	1,367	409	+ 42%	- 3%
Tower Hamlets	3,049	21	2,539	-	- 17%	-
Wandsworth	1,599	45	1,024	19	- 36%	- 58%
Westminster	3,060	810	2,908	119	- 5%	- 85%

(Source: CLG quarterly homelessness statistics¹²)

homelessness prevention strategies should be seen in this context.

Homeless households in temporary accommodation

Between June 1997 and September 2004, the number of homeless households in temporary accommodation increased from 45,290 to 101,300 (an increase of 124 per cent) (the homelessness statistics published by Communities and Local Government (CLG) define temporary accommodation as including accommodation secured under both HA 1996 ss188 and 193).⁵ While the government widened the classes of applicants to whom a full housing duty is owed through the Homelessness (Priority Need for Accommodation) (England) Order 2002 SI No

2051, it denied LHAs the resources to meet this demand.

In January 2005, the government published *Sustainable communities: homes for all. A five year plan from the Office of the Deputy Prime Minister*, setting a target for LHAs to halve the number of homeless households in temporary accommodation by 2010.⁶ By 31 December 2007, the number had been reduced to 79,500 (a reduction of 22 per cent).⁷

As Table 1 illustrates (see above), the trend in London has not been consistent. While there have been significant reductions in the number of homeless households in temporary accommodation in Wandsworth (36 per cent), Islington (30 per cent) and Camden (30 per cent), there have been

increases in Lewisham (67 per cent) and Southwark (41 per cent) between September 2004 and December 2007.

The situation in Lewisham is explained by the litigation in *R (Ho-Sang) v Lewisham LBC* CO/5652/2003, 19 March 2004; July 2004 *Legal Action* 19. Complaint had been made that Lewisham was in manifest breach of its statutory duty to secure suitable HA 1996 s188 interim accommodation for homeless applicants. On 19 March 2004, Lewisham conceded that its stock of temporary accommodation was insufficient and agreed to rectify this. Some 1,900 additional units of temporary accommodation have been secured to enable Lewisham to discharge its statutory duties.

Southwark is among a number of LHAs

Table 2 Homelessness applications

	3rd Quarter 2004		4th Quarter 2007		Change	
	Decisions	Duty accepted	Decisions	Duty accepted	Decisions	Duty accepted
Brent	751	190 (25%)	441	206 (47%)	- 41%	+ 8%
Camden	512	284 (55%)	108	58 (54%)	- 79%	- 80%
Ealing	563	211 (37%)	314	91 (29%)	- 44%	- 57%
Islington	521	248 (48%)	203	89 (44%)	- 61%	- 64%
Lambeth	502	306 (61%)	193	89 (46%)	- 62%	- 71%
Lewisham	559	338 (60%)	270	236 (87%)	- 52%	- 30%
Newham	434	360 (83%)	204	78 (38%)	- 53%	- 78%
Redbridge	217	148 (68%)	201	132 (66%)	- 7%	- 11%
Southwark	705	468 (66%)	294	135 (46%)	- 58%	- 71%
Tower Hamlets	480	333 (69%)	-	-	-	-
Wandsworth	501	220 (44%)	312	128 (41%)	- 38%	- 42%
Westminster	960	252 (26%)	278	124 (45%)	- 71%	- 51%

(Source: CLG quarterly homelessness statistics¹³)

which are decanting a number of their estates for demolition/renovation. The short-life accommodation that is becoming available is being used as temporary accommodation for homeless families. This is an effective use of resources.

Homelessness applications

Between September 2004 and December 2007, there has been a significant reduction in the number of both homelessness applications and the number of homeless applicants to whom a full housing duty has been accepted. In England, the number of acceptances has been reduced from 32,220 households to 15,240 (a decline of 53 per cent).

As Table 2 illustrates (see above), this trend has also been reflected in London. Four of the 12 London boroughs have seen a reduction in excess of 70 per cent in the number of homeless applicants to whom a full housing duty has been accepted (Camden – 80 per cent; Newham – 78 per cent; and Southwark and Lambeth – 71 per cent).

In three authorities, there has not only been a reduction in the total number of acceptances, but also a substantial reduction in the proportion of cases in which a full housing duty has been accepted (Newham – a reduction from 83 per cent to 38 per cent; Lambeth – a reduction from 61 per cent to 46 per cent; and Southwark – a reduction from 66 per cent to 46 per cent).

HA 1996 Part 7 abounds with administrative discretions. There is evidence that a number of LHAs are imposing a higher threshold before accepting that applicants are 'vulnerable', and thereby in priority need. CLG has encouraged authorities to use NowMedical in assessing medical evidence submitted by applicants (see 'Homeless people and vulnerability: evidence and medical advisers', February 2008 *Legal Action* 33). Housing practitioners report that NowMedical rarely assesses such medical evidence favourably.

There is also evidence that LHAs are imposing a higher threshold before accepting that applicants are homeless in that it is not reasonable for them to continue to occupy their current accommodation. Over the past ten years, the level of overcrowding in London has increased by 50 per cent. In *Harouki v Kensington and Chelsea RLBC* [2007] EWCA Civ 1000, 17 October 2007; December 2007 *Legal Action* 37, the Court of Appeal accepted that it is open to an authority to find that an applicant is not homeless, albeit that s/he is living in statutorily overcrowded accommodation and thereby committing a criminal offence. The claimant has recently lodged a petition seeking permission to

appeal (see April 2008 *Legal Action* 34).

In *Manchester City Council v Moran; Richards v Ipswich BC* [2008] EWCA Civ 378, 17 April 2008, the Court of Appeal held that it is open to a LHA to find that a women's refuge could be accommodation for the purposes of HA 1996. It had previously been assumed that women fleeing violence and seeking shelter in such refuges would retain their status as homeless applicants.

Housing options schemes

The Homelessness Act 2002 requires LHAs to adopt homelessness strategies. This has been reinforced by *Homelessness prevention: a guide to good practice*, CLG, June 2006.⁸ It stresses that the housing options approach should 'never' replace or delay a statutory homelessness assessment where the authority has reason to believe that someone is homeless or threatened with homelessness (para 2.11).

LHAs have now introduced 'housing options schemes', whereby homeless applicants are encouraged to consider the alternatives in the private rented sector before pursuing homelessness applications.

At their best, LHAs have brought together the three previously separate services of homeless persons, rehousing and housing advice. The unified service seeks to identify an applicant's options and prospects as soon as possible and offer a set of realistic options to prevent him/her from becoming homeless. If a private sector solution is chosen, the applicant should not be penalised under the LHA's allocations scheme in respect of his/her application for permanent accommodation under HA 1996 Part 6.

However, Ms Trush's case suggests that the reality may be somewhat different. In January 2006, she approached Ealing for accommodation; she was facing eviction and thereby being threatened with homelessness. Ealing completed two sets of papers:

- a homelessness application under HA 1996 Part 7; and
- an application under its housing options scheme.

The advantages of housing options were explained in terms of quality, location, speed and choice. When Ms Trush became homeless, bed and breakfast (B&B) accommodation was secured under Part 7. Thereafter, no steps were taken to determine her homelessness application.

In May 2006, Ealing secured accommodation under its housing options scheme at a rent of £362pw. This was private sector-leased accommodation which would previously have been used as temporary accommodation for homeless families. In due course, Ms Trush was notified that Ealing had

'prevented her homelessness'. When she inquired about her priority for permanent accommodation under Ealing's allocation scheme, she was advised that she was not entitled to the priority afforded to a 'homeless applicant'. When threatened with judicial review by Southall Rights Legal Advice Centre, Ealing finally issued a HA 1996 s184 decision. It concluded that Ms Trush was not homeless by reason of her 'housing options' accommodation. Ealing was able to claim that it had one less homeless household in temporary accommodation.

Homeless at home

Between September 2004 and December 2007, the number of homeless households who were 'homeless at home' declined in England from 23,130 to 8,080. Table 1 confirms that this trend is also reflected in London.

Many homeless families are content to be treated as 'homeless at home'. Albeit that their current living conditions are so unsatisfactory that it is not reasonable for them to continue to endure them, they prefer to do so rather than face a period in B&B and a longer period thereafter in temporary accommodation.

There can be no objection to such an approach provided that:

- it is the choice of the applicant to remain in his/her current accommodation; and
- the applicant is not penalised in his/her Part 6 application for permanent accommodation under the LHA's allocation scheme.

However, there are strong financial advantages to LHAs in persuading such applicants to remain where they are, rather than incur the cost of securing temporary accommodation, often at considerable expense, in the private sector. In *Birmingham City Council v Aweys* [2008] EWCA Civ 48, 7 February 2008; March 2008 *Legal Action* 21, the Court of Appeal held that the LHA had fallen foul of both these principles. Six applicants had been found to be homeless in that it was not reasonable to continue to occupy their current accommodation.

However, none of the applicants had chosen to remain in their existing accommodation. Furthermore, each found that they had been given a lower priority for permanent accommodation under Birmingham's allocation scheme than homeless applicants who were accommodated in suitable temporary accommodation.

Birmingham was held to be in breach of its mandatory Part 7 duty to secure suitable temporary accommodation for their occupation. Furthermore, Birmingham's allocation scheme was held to be irrational, and thereby unlawful, in its disparate treatment of the homeless at home.

Gate-keeping

There is a lively debate about the reasons for the decline in homelessness acceptances and the number of households who are 'homeless at home'. Does this reflect effective homelessness prevention strategies which enable housing applicants to make informed decisions to pursue alternative options in the private rented market? Or, is it unlawful gate-keeping which deters homeless applicants from pursuing their statutory rights under Part 7? The answer is probably a combination of both questions.

There is evidence that homelessness prevention strategies are encouraging LHAs to intervene at an earlier stage when applicants are threatened with homelessness. Constructive dialogue with landlords, for example, where rent arrears have arisen through housing benefit problems, may prevent the eventual homelessness to the mutual satisfaction of landlord, tenant and LHA.

Housing options schemes can also provide an effective outcome for homeless applicants who risk a negative decision should they pursue a Part 7 application. Despite evidence that LHAs are raising the threshold for accepting a full housing duty, the percentage of cases in England in which LHAs have accepted a full housing duty has actually increased between September 2004 and December 2007 from 45 per cent to 49 per cent. The explanation would seem to be that applicants with the weaker cases, who face the risk of being found to be intentionally homeless or not in priority need, are making informed decisions to pursue the housing options in the private sector, rather than pursue a homelessness application.

CBL schemes permit much greater transparency in the lettings process. The three main CBL services in London, Choice Homes (Newham and Redbridge), Home Connections (Camden, Islington, Lambeth and Westminster) and Locata (Brent and Ealing), all publish the outcomes of the previous bidding rounds. They also permit individual applicants to log into their bidding accounts; these record their bidding history and their position in the queue for their unsuccessful bids. This enables applicants not only to tailor their bids having regard to their 'currency' (ie, their priority) but also to assess whether or not they have any realistic prospect of making a bid in the foreseeable future. Thus, in Newham, a homeless applicant bidding for three-bedroom accommodation has to wait some ten to 15 years.

More applicants will be willing to remain 'homeless at home' if they are given a higher priority under the LHA's allocation scheme for permanent accommodation than if they

applied as homeless. Years condemned to temporary Part 7 accommodation where the applicant has no choice about where s/he is located is not an attractive proposition.

However, housing lawyers throughout the country are reporting that, increasingly, obstacles are being placed in the way of applicants seeking to pursue homelessness applications. Applicants are told that a housing options interview is a prerequisite to a homelessness application, regardless of whether or not the applicant may be street homeless. Other applicants are told that no temporary accommodation is available, and that they must return to the Homeless Persons Unit at a future date. While sold the advantages of the housing options scheme, applicants are rarely warned of the disadvantages. While lawyers are able to secure an effective outcome for the individual client, most homeless applicants do not access legal advice.

In Ms Trush's case, she appealed against Ealing's decision that the 'housing options' accommodation brought her homelessness to an end (7BF.01182, Brentford County Court). On 11 January 2008, Ealing conceded that its decision could not stand and agreed to a variation to record that she was homeless. One factor was Ms Trush's contention that she had been told that she had no choice but to accept the accommodation offered under Ealing's housing options scheme. Had she refused it, she was told that she would be evicted from her Part 7 accommodation. The higher courts have yet to make a ruling on the lawfulness of such policies.

The future

The ability of LHAs to develop private sector housing options as an alternative to their statutory housing duties is likely to come under increasing pressure over the next two years. Housing options schemes have been fuelled by the buy to let market, which broke through the one million properties barrier in 2007.⁹ This market will be squeezed as mortgage lenders tighten up their lending criteria.

Pressures on homelessness services will also increase with mortgage repossessions predicted to double in 2008. The number of repossession orders reached 27,530 in the first quarter of 2008, climbing to levels not seen since the early 1990s.¹⁰ As this article goes to press, the Local Government Association is predicting that waiting lists for social housing will double to two million households by 2010 as LHAs pick up the pieces of financial institutions having overstretched their credit facilities.¹¹

- 1 *Housing statistics 2007*, Communities and Local Government (CLG), February 2008, available at: www.communities.gov.uk/publications/housing/housingstatistics2007.
- 2 Available at: www.communities.gov.uk/publications/housing/homesforfuture.
- 3 See *Inside Housing* 8 February 2008, p1.
- 4 Available at: <http://sticerd.lse.ac.uk/dps/case/cr/CASereport34.pdf>.
- 5 See: www.communities.gov.uk/documents/housing/pdf/housingstatistics2007.pdf.
- 6 Available at: www.communities.gov.uk/archived/publications/corporate/homesforall.
- 7 See note 5. In addition, the majority of the statistics quoted in this series of articles are available in the quarterly *Statutory homelessness statistical release*, available at: www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/homelessnessstatistics/publicationshomelessness. However, *Statutory homelessness: England third quarter 2004* is available at: <http://nds.coi.gov.uk/content/detail.asp?ReleaseID=139055&NewsAreaID=2&NavigatedFromSearch=True>.
- 8 Available at: www.communities.gov.uk/publications/housing/homelessnessprevention.
- 9 See *Roof* May/June 2008, p23.
- 10 *Statistics on mortgage and landlord possession actions in the county courts – first quarter 2008*, available at: www.justice.gov.uk/docs/stats-mortgage-land-q1-2008.pdf.
- 11 See *Councils and the housing crisis: the potential impacts and knock-on effects of the credit crunch on councils and their housing role*, available at: www.lga.gov.uk/lga/aio/569196.
- 12 See note 7.
- 13 See note 7.



Robert Latham is a barrister at Doughty Street Chambers, London.