

A Response to the NIHE Consultation on Changes to the Housing Selection Scheme

January 2013

1. Introduction

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We work to achieve positive change by protecting and promoting the rights of people who are in housing need and our policy work is based on the experience of our clients. Our services are delivered throughout Northern Ireland and focus on the key areas of preventing homelessness; accessing accommodation; tackling affordability and poor housing conditions.

2. Summary

- Housing Rights Service (HRS) believes that the under-occupancy sanction is unjust and has the potential to cause real hardship and distress to many claimants and their families. We are worried the measure will have a disproportionate impact in Northern Ireland given the existing composition of the housing stock and high levels of under-occupation in social housing. In our opinion, the policy will do nothing to ease local housing pressures because the greatest demand is currently for smaller properties -precisely those that the 'spare bedroom tax' will force social tenants to try to move to. We believe the penalty will result in increased rent arrears and eviction resulting in tenants having to leave long established communities away from friends, family and other support networks.
- HRS acknowledges there is a need for the Housing Selection Scheme rules to be aligned with the proposed Housing Benefit size restrictions in order to minimise the impact on future tenants arising from potential shortfalls in rent. However the changes will not assist current tenants who have been allocated suitable sized accommodation based on current criteria only to be penalised once the under occupancy criteria is introduced. HRS would appreciate a wider discussion of ways in which social landlords can mitigate the impact on their tenants. For example, possibility for rent reductions, room re-designation and transitional protection for those approaching certain age thresholds which would exempt them from the penalties.
- HRS believes that tenants affected by the under occupancy should be given timely information about the shortfall and offered independent advice about housing options.
- HRS has concerns about the 'financial declaration of responsibility' proposed in question 6 and would like further information about this document to assess potential legal implications for tenants.

3. Background

The reduction in Housing Benefit (HB) will impose financial hardship on many families who are already experiencing shortfalls elsewhere in their income. We have major concerns that many tenants will be penalised by having their benefit reduced without being able to address such shortfalls by moving to a smaller property because of the lack of suitable accommodation.

We note that one of the aims of the 'bedroom tax' regime is to contain spending on Housing Benefit however it is clear the desired savings in such expenditure will only be realised in full if social tenants do not seek to move from the homes they are under-occupying: estimates of Housing Benefit savings are based on the current profile of tenants in the social rented sector, with little tenant mobility assumed. If a significant number of tenants wished to move, this would reduce direct savings and place extra demands on social landlords.¹ Further questions have also been raised around the impact on Housing Benefit expenditure of social tenants moving into smaller private rented accommodation given that rents are higher in that sector.

Whilst we acknowledge that the Discretionary Housing Payment (DHP) budget has been increased. This time limited support is small in proportion to the amount Government expects to cut from housing assistance each year and it is anticipated there will be a huge increase in the demands made on this budget, particularly when payments are extended to social tenants, notwithstanding the extra £3.4m allocated to the DHP budget for social housing tenants (£2.5m NIHE and £0.9m HAs). We believe it will be important to make greater efforts to publicise the existence of DHP support, given their importance as the key element of the Government's strategy for managing reductions to Housing Benefit arising from welfare reform, and to improve the guidance made available to administrators and claimants.²

We also believe it will be important to ensure that funding is provided to transitionally protect families who are approaching critical ages (i.e. children aged 10 and 16 or adults approaching retirement). The majority of affected claimants (approximately 81%) are under-occupying their accommodation by just one bedroom. On average, these claimants will have their Housing Benefit reduced by £12 per week in 2013/14. Those claimants who are under-occupying to a greater degree will experience larger average reductions in their Housing Benefit entitlement.

¹ DWP Equality Impact Assessment Housing Benefit: Size Criteria for People Renting in the Social Rented Sector. (June 2012) <http://www.dwp.gov.uk/docs/eia-social-sector-housing-under-occupation-wr2011.pdf>

² For example, see the guidance manual on DHPs recently consulted on by DWP <http://www.dwp.gov.uk/docs/discretionary-housing-payments-guide-draft.pdf>

Much will depend on the quality of advice provided by social landlords to their tenants and the strategies employed to assist tenants in downsizing. According to DSD: “The behavioural change which could be brought about by this measure is difficult to estimate, as there is currently very little mobility in the social rented sector. Any movement of tenants will be determined, not just from their own willingness to move, but on the availability of suitably sized accommodation in the area, and the approach taken by landlords to facilitate such moves.”³

The Local Government Association has also stated:

*“Councils will be crucial in influencing the dynamic/behavioural change the Government is seeking in regard to Welfare Reform, particularly in the housing market. For example, the strategic housing role could allow councils to influence landlords and tenants, driving rent adjustment rather than reductions in families' disposable income; or councils could remain in a backstop role. In addition to developing services to help people back into work, councils could consider developing services to help families deal with new family budgeting challenges following the introduction of the various caps and the direct payment of benefits monthly in arrears. Councils may also want to think about how to counter the temptation for hard-pressed benefit claimants to seek temporary financial respite in the hands of loan sharks”.*⁴

Research carried out by the Cambridge Centre for Housing and Planning Research (CCHPR), for the Housing Futures Network, indicates that a substantial number of under-occupying households do not regard themselves as such. Their “spare” bedrooms are used by children (irrespective of age and gender) who need their own rooms. For example, such spare bedrooms are used when children visit at weekends as part of a shared parenting arrangement or rooms are used for storing their disability related equipment. The key message in the study from social landlords seems to be that cash incentives for claimants are largely irrelevant in most cases. According to the research, what is important, and leads to successful moves, is the provision of the right support and finding the most appropriate property. The CCHPR concludes that successful schemes to reduce under-occupation “generally only manage to move a very small proportion of all under-occupiers each year. The main reason for this is that most do not want to leave the homes they are settled in.”⁵ The CCHPR has also identified some approaches that social landlords can adopt to reduce the impact on tenants:

³ DSD. Welfare Reform Bill (Northern Ireland) 2011. Completed Equality Impact Assessment. (April 2012). Pg 53

⁴ Local Government Association. Welfare Reform – Impact on Local Government. (February 2012)

⁵ Cambridge Centre for Housing and Planning Research, Under-occupation and the new policy framework (December 2011)

- Revise allocation policies to ensure that the initial allocation is at the bedroom standard for working age households
- Inform tenants ahead of implementation in order to provide them with a chance to prepare and downsize where possible
- Review and publicise policies on taking in lodgers
- Have effective downsizing schemes in operation
- Have plans in place for tenants who fall into arrears as a result of the under-occupation restrictions.⁶

Given that there is a Government commitment to facilitate the independent monitoring of the implementation of the size criteria, we would also have appreciated a discussion of how social landlords in Northern Ireland can assess and evaluate the impact of the measure on their tenants and how the proposed rule changes will be evaluated and reviewed. Further information also needs to be provided to tenants in regard to how the intended exemptions for supported and sheltered housing will be guaranteed and what grace periods will be offered to claimants if a member of the household dies, or to those who have been made unemployed. In addition, more detail is required on determining the arrangements for temporary absences for respite care, rehabilitation, hospital or residential care, imprisonment or higher education.

4. Responses to Consultation Questions

In this section we detail our responses to the questions contained in the consultation paper.

Consultation Question 1

Do you agree with the recommendation that the Age Criteria for Children sharing bedrooms should be amended as outlined in line with the proposed amendments to Housing Benefit Regulations?

We acknowledge that Schedule 3 of the Housing Selection Scheme rules need to be amended in order to align the age criteria for minimum bedroom requirements with Housing Benefit regulations. We appreciate that this will mean that two children of different sex will now be expected to share up to the age of 10 years (currently up to 7 years) and children of any age of the same gender will be expected to share up to 16 years (currently 18 years), while persons of 16 years and above will be determined to require a bedroom of their own (currently 18 years). As the consultation paper states: “This proposed change will mean that while younger children of different sex will be expected to

⁶ Ibid

share a bedroom for longer, until age 10, on the other hand, it will be more generous for older children who will be assessed as requiring their own bedroom from age 16”.⁷

The consultation paper is silent in regard to the implications of the Court of Appeal judgment in the cases of Burnip, Trengove and Gorry⁸ whose children are unable to share a bedroom because of their severe disabilities and are now able to claim Housing Benefit for an extra room since the judgment in May 2012.⁹ We understand from DWP guidance that “it is a matter for social landlords to assess the individual circumstances of the claimant and their family and decide whether their disabilities are genuinely such that it is inappropriate for the children to be expected to share a room. This will involve considering not only the nature and severity of the disability but also the nature and frequency of care required during the night, and the extent and regularity of the disturbance to the sleep of the child who would normally be required to share the bedroom. DWP advise that this will come down to a matter of judgment on the facts”.¹⁰

As there is a common selection scheme for housing in Northern Ireland, we believe there is an opportunity to embed this judgement into the scheme’s rules to guide social landlords when making allocations in such circumstances.

Consultation Question 2

Do you agree with the proposal to retain flexibility to make allocations to applicants who do not meet the minimum bedroom requirements in difficult-to-let areas or properties?

We agree that it is important to retain this flexibility to enable social landlords to make allocations on good management grounds for difficult-to-let areas or properties. Single people face considerable difficulties in accessing social housing and this proposal may assist them and smaller households in benefiting from such allocations. Working age tenants on Housing Benefit in these circumstances will need to be fully appraised of the consequences before accepting such offers and demonstrate how they would meet any potential shortfall in rent as a result of the size restriction. A thorough analysis of their financial circumstances will be required and social landlords should demonstrate that all consequences have been assessed in the delivery of this advice before a

⁷ NIHE. Consultation on Changes to the Housing Selection Scheme. (November 2012). Pg 9

⁸ See [2012]HRLR 20, [2012] Eq LR 701, [2012] WLR(D) 150, [2012] EWCA Civ 629.

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/629.html>. Accessed 17.01.13

⁹ In a unanimous ruling on 15 May 2012 the Court of Appeal held that the size criteria in the current Housing Benefit regulations (only applied to claimants living in private rented housing) discriminates against disabled people by not allowing an additional room where the disabled person has a carer, or where two children cannot share a room because of disability. The rules were amended from April 2011 to allow a room for a non-resident overnight carer.

¹⁰ DWP guidance has been provided in Housing Benefit/Council Tax Benefit Circular A4/2012

claimant accepts an offer to downsize or give up a social housing tenancy. The provision of authoritative, independent advice should be offered in such instances.

Consultation Question 3

Do you agree with the proposal to continue to make allocations to certain applicants of one bedroom more than their minimum requirements to facilitate access to children?

We support the proposal to continue allocating an additional bedroom in such circumstances and the need to carefully advise working age tenants in receipt of Housing Benefit, if they accept such an offer, on how they can meet the potential shortfall in rent as a result of any Housing Benefit reduction (see response to question 2).

Consultation Question 4

Do you agree with the proposal to retain the flexibility to make allocations (of) one bedroom in excess of an applicant's minimum bedroom requirements for good housing management reasons as outlined?

We agree that there are a number of circumstances where a landlord should decide to make an allocation above the applicant's bedroom size requirements on the basis of good housing management reasons such as where smaller accommodation does not exist and for allocations of properties with special adaptations. However, we would have appreciated a wider discussion in this consultation paper of ways in which social landlords can allow for greater flexibility in their allocation policy. For example, as we have stated earlier in this response, for very small bedrooms, landlords could disregard these when deciding on the number that should be included in tenancies, as well as reducing the rent level. As Lord Freud stated in a discussion on how landlords can assist tenants who are at risk from this measure: "The designation of property size is another area where there may be flexibility. We are exploring this with social landlords as part of our implementation work".¹¹

Other flexibilities could also be considered in regard to properties with special adaptations. For example, DWP has stated: "There will be a significant number of claimants affected who live in significantly adapted accommodation due to someone in the household having a disability. It will not always be practical or cost effective for these people to move to different accommodation or they may have no other option for making up the shortfall in rent."¹²

¹¹ HL Deb 14 February 2012 c707

¹² Opt cit 11..Para 19

Consultation Question 5

Do you agree that Rule 29 should be amended to bring the age criteria for sharing bedrooms in line with the proposed Housing Benefit size restriction?

As described in our response to question 1, we support the proposal to align the age criteria for sharing bedrooms and determining overcrowding assessments with the proposed Housing Benefit size restriction. We also believe applicants with no children who are pregnant should be eligible 1 or 2 bedroom properties.

Consultation Question 6

Do you agree with the proposal that tenants who are awarded a policy succession or policy assignment and are under-occupying their property should be advised of the potential impact on a housing benefit application and will be asked to make a financial declaration of responsibility for any shortfall in rent?

HRS is concerned about the legal standing of the financial declaration of responsibility that is proposed and unclear why it is required for this particular circumstance. Certainly we believe that tenants should be advised of the potential impact of under occupancy through an assessment of their ability to meet any shortfall. They should also be offered independent advice on their options.

Consultation Question 7

Do you agree with the proposal that the Housing Selection Scheme should relax the current transfer: applicant allocations ratio and include an additional priority Management Transfer category to address the needs of tenants who are under occupying and are seeking to move to a smaller more affordable home?

HRS believes transfer criteria, including a requirement for a clear rent account, needs to be relaxed. The introduction of a new Management Transfer category which will prioritise transferring tenants who are under-occupying and wish to downsize will be useful. Although we believe as a general principle priority for allocation policies should be primarily based on housing need, we nevertheless accept that, in order to free up suitable accommodation for applicants on the Waiting List in housing need, this flexibility will be useful.

Consultation Question 8

Do you agree with the proposal that the criteria for access to the transfer list and the discretion to withhold consent to a request for a Mutual Exchange should be amended in circumstances where the

tenant is under occupying and impacted by the size restriction and seeks to move to smaller accommodation?

We support this proposal and the removal of barriers impacting on tenants wishing to downsize because of the size restriction. The Department for Communities and Local Government's (DCLG) *Allocation of accommodation: Guidance for local housing authorities in England* (June 2012) refers to the importance of authorities reviewing access policies for transfer arrangements:

“1.7Authorities should also consider whether there are other provisions that might make it more difficult for under-occupiers to move, such as a prohibition against tenants with minor rent arrears transferring, and the scope for removing or revising these in relation to under-occupiers”.

Consultation Question 9

Do you agree with the proposal to allow tenant exchange across the UK?

We support the proposal to remove rules 80-83 relating to National Mobility Schemes which are now redundant. Tenant exchange is already supported through the UK-wide home swap scheme, *HomeSwap Direct*. We see no reason why such schemes could not be better promoted in Northern Ireland and indeed developed on the island of Ireland, which could be of particular benefit to social tenants living in the border region.

Consultation Question 10

Do you agree with the proposal to remove the existing 12 month residence requirement for the creation of joint tenancies?

We acknowledge that it may be beneficial to remove these rules (78-79 of the Housing Selection Scheme) to allow sole tenants to quickly establish a joint tenancy with another person. Our understanding is that such tenancies will be removed from under occupancy penalties. However we do have some concerns about the potential increase in the number of tenancy breakdowns resulting from circumstances where tenants have not developed close relationships and legal consequences following on from this i.e. bringing the whole tenancy to an end.

Consultation Question 11

Do you agree that the local lettings policies should be reviewed in light of the impending size restriction?

We agree that such a review will be necessary because of this change. We note that social landlords in the past have allocated homes to claimants for housing management reasons that under the new size criteria would be considered too large for them. The new size criteria will not take into account these local circumstances and those homes may therefore be no longer affordable. We would appreciate a discussion of the options available to social landlords to mitigate this possible impact and more information on the intention to review the Designated Lettings Policy under rule 70A. It is difficult to see how social landlords will be able to deliver balanced and sustainable communities once the size criteria is introduced unless some flexibility is allowed in the development of local letting policies.

Consultation Question 12

Do you have any information to help inform the screening process? Are there any particular equality issues that you feel should be taken into account in the screening (or equality impact assessment)?

The Housing Executive will have authoritative data to inform this discussion and we would welcome publication of this screening exercise and impact assessment before contributing to this discussion.

Consultation Question 13

Do you have any evidence to suggest that the proposals within this paper would create any adverse differential impact on rural areas?

See above.

5. Conclusion

In conclusion, we agree that, in light of the Government's programme of Welfare Reform, amendments are required to the Housing (Northern Ireland) Order, 1981 (Article 22) however we would urge social landlords to mitigate the most negative aspects of this regime by introducing flexibilities in their selection scheme for tenants affected by the size restriction. We will be pleased to provide additional information in support of this response.

For further information contact:

Peter O'Neill - Policy & Participation Officer

peteroneill@housingrights.org.uk Tel: 028 90245640