

Housing Rights

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Consultation Response

Response to the Department for Communities' Consultation Proposals - A Fundamental Review of Social Housing Allocations

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when everyone has a home

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1. INTRODUCTION

HOUSING RIGHTS

Housing Rights has been helping people in housing need for over fifty years and we are the **leading provider of independent specialist housing advice services in Northern Ireland (NI)**. At Housing Rights we work to improve lives by tackling homelessness and housing problems, and our policy work is based on the experience of our clients.

Housing Rights offers advice to people living in all housing tenures in NI. Indeed, we regularly provide advice, assistance and advocacy to social tenants; routinely making representations on matters involving allocations. In addition, Housing Rights frequently make representations at a county court level defending possession proceedings issued against social tenants, which have been sought under the *Housing (NI) Order 1983*. Housing Rights also litigate in the county courts on behalf of applicants wishing to challenge the Northern Ireland Housing Executive's (NIHE) statutory duty under the *Housing (NI) Order 1988*. We also work at a strategic level, securing reported legal decisions, which are used as legal precedent throughout the United Kingdom (UK). As such, our experience and expertise in this field make us acutely aware of the complexities regarding NI's Housing Selection Scheme (HSS).

In formulating this response, as well as using our own experience as an evidence base, Housing Rights has also facilitated meetings with our Housing Advice Practitioners Forum, our BME (Black and Ethnic Minority) Champions Project and representatives from the NI Migrant Forum; this has further enriched the perspective of our response, and reference will be made to their contribution where applicable.

CONSIDERING A FUNDAMENTAL REVIEW OF SOCIAL HOUSING ALLOCATIONS

The HSS

The HSS represents the single gateway into social housing in NI, whether owned and managed by NIHE or any Registered Housing Association (RHA). The statutory scheme is comprised of 84 statutory rules, governing access to and application for social housing, assessment of housing need, and ultimately allocation of a property in the social rented sector. The scheme has remained largely resolute since November 2000.

The Social Sector and The HSS – Analysis of a recent statistical picture

Each year the NI Housing Statistics Report¹ undertaken by the NI Statistics and Research Agency (NISRA) and published by the Department for Communities (the Department), provides a view of the current landscape this sector. While data provided in this report illustrates the demand on the social sector e.g. the number of

¹ Available at: <https://www.communities-ni.gov.uk/publications/northern-ireland-housing-statistics-2016-17>

applicants on the HSS housing waiting list and the areas in NI experiencing the greatest demand, it also contains important specified socio-economic information, such as the particular demographics of housing applicants who have been classified as statutorily homeless (Full Duty Applicants (FDA)) this year, and the reasons for this classification e.g. accommodation not reasonable. Also reported on is the number of actual allocations made to both existing social tenants (transfer applicants) and new housing applicants this year. As such, this report presents a valuable statistical picture which can be used to measure the impact of the current statutory scheme – the HSS.

At a glance, the Report identifies that 37,611² people in NI are currently placed on the HSS waiting list for a social home by virtue of the HSS and that 23,694 of these people are in “Housing Stress”³ The Report also highlights that this year the HSS determined that 11,889 of the 18,573 households making an application for a social home, met the statutory threshold for FDA. Notably however, only 10,440 allocations were made this year, **this is the lowest number of allocations in 9 years**, allocating housing to less than 30% of those on the waiting list and to less than 18%⁴ of those who were found of be FDA this year. (See Appendix 1)

Important environmental context

It would be remiss however, in consideration of the above statistics and when responding to a Fundamental Review of Social Housing Allocations (the Review), not to draw attention to 2 key contextual considerations which are impacting on the effectiveness of any HSS to meet the current level of housing need in NI:

- The critical lack of supply of social housing and;
- A welfare reform programme which significantly negatively impacts housing.

Notably, only 1,387⁵ social housing development programme completions occurred in 2016 – 2017. Indeed, the NI Housing Market Review & Perspectives Report 2015 – 2018⁶ highlights that between 2001 and 2014 the social housing stock has decreased from 133,900 to 110,800 – although a small proportion of social properties have been built, the subsequent decrease in stock can be attributed largely to social tenants realising their statutory “right to buy”. In addition, while Welfare Supplementary Payments (WSPs) have been secured in NI to mitigate the impacts of the Social Sector Size Criteria (SSSC) until March end 2020, once these payments cease, thousands of homes in NI will face a shortfall in their assistance with housing costs. Government policy promotes downsizing by transferring or

² NI Housing Statistics Report 2016 – 2017. Section 3 – Social Renting Demand.

³ “Those found to have a points total in excess of a defined minimum (currently 30 points) are considered to be in housing stress, or housing need (Housing Executive, 2007).” Review of Housing Need Formula for NIHE, Newhaven Research 2010. Pg.9

⁴ “The Housing Executive can discharge its housing duty in one of three ways: by re-housing of the applicant in the social or private sector, by offering the applicant three reasonable offers of accommodation which are all refused by the applicant or if the applicant re-houses him/herself and is no longer interested. It is not possible to provide a breakdown of discharged Full Duty Applicants into these three subgroups.” NI Housing statistics report, Appendix 3. Pg. 14.

⁵ NI Housing Statistics Report 2016 – 2017. Section 1 - Supply.

⁶ Available at: https://www.nihe.gov.uk/northern_ireland_housing_market_perspectives_2015-2018.pdf

exchanging to a smaller property to avoid the application of SSSC, however with NI social housing stock based on a policy of building general purpose units, there is vast shortage 1 or 2 bedroom properties.

While there is acknowledgement in the Review that more social homes are acquired to house those on the HSS waiting list and indeed, one of the proposals - Proposal 11 - concerns universal credit (UC), the Review is largely silent on discussing this important environmental context and addressing these 2 significant barriers to an effective HSS in NI.

Therefore, while Housing Rights welcomes this Review which aims to create an allocations process which is fair, transparent and effective for all - hoping to ensure a better housing system for the most vulnerable applicants and that those in greatest need receive priority, we believe that any effective Review of the HSS cannot be considered in isolation from the 2 fundamental barriers of supply and affordability. Housing Rights believe, pragmatically aiming to make the best use of NI's existing resources, without adequately addressing these barriers, will impede any significant change which can be made by the HSS to address the housing crisis in NI.

Housing Rights have welcomed and/or provided comment to each of the 20 Proposals contained within this Review, however, the need to address the supply and affordability of social housing remains our overarching declaration.

2. SUMMARY OF RESPONSE

- Housing Rights welcomes the publication of the Department's "Consultation on Proposals – A Fundamental Review of Social Housing Allocations", which aims to achieve a fair, transparent and effective HSS, ensuring applicants in the greatest need have their housing needs met. It is Housing Rights' view that further evaluation and/or refinement of some of the proposals cited could strengthen the impact of such proposals and ensure the Department's aim is achieved. Where such refinement and/or further evaluation is necessary, Housing Rights has offered the organisation's views on how this may be best achieved.
- Housing Rights strongly agrees with proposal 1. We believe there is a need for a model which provides an independent, tenure- neutral housing advice service for NI. We believe that in order for an individual to make informed housing choices, it is crucial that they receive independent, specialised and timely housing advice. However, we strongly believe that the service must have the ability to hold housing providers and other statutory bodies accountable for their decision making without any qualifications or constraints. Independent advice is advice which is not dependent, subject to control, restriction, modification, or limitation from a given outside source. The service should also be able to deliver the entire spectrum of advice; from signposting to legal challenge. Housing Rights suggest a hybrid model should be considered for this service. Finally, Housing Rights believe any service should be a standardised service and subject to external peer review; quality assurance is essential. The Promoting Social Inclusion (PSI) subgroup in their 2013 report recommends that if Housing Options is to be introduced in NI, a framework should be produced clearly setting out standards, policy, and procedures.
- Housing Rights do not agree with proposal 2. Housing Rights do not believe it is necessary to "change the law" to "make it clear how the NIHE should make a decision on eligibility". The Department propose: 1. If the NIHE has good reason to believe that a person's conduct (or the conduct of a member of their household) will improve, they should be treated as ineligible and 2. Conversely, if there is no reason to believe that conduct will improve the NIHE may determine that the applicant is unsuitable to be a tenant and therefore is ineligible for social housing or FDA status. Housing Rights state that if the current statutory test, Departmental guidance and jurisprudence are applied correctly, the intended result of the first part of this proposal is already achieved; it is already within the jurisdiction of the decision making powers of NIHE. Regarding the second part of this proposal, Housing Rights have a concern that the scope and level of discretion given to a decision maker would be disproportionate. Housing Rights believe that the current test safeguards all parties and provides the most robust and equitable method to determine eligibility.

- **Housing Rights agree with the introduction of proposal 3 - that NIHE may treat a person as ineligible for FDA on the basis of their unacceptable behaviour at any time before allocating that person a social home- as long as there are appropriate safeguards in place. Housing Rights recommend that these should include supporting individuals while in temporary accommodation, providing guidance, education and training to decision makers to understand the complexities of decisions regarding eligibility and how to apply current jurisprudence. Housing Rights also believe that the statutory right to review eligibility decisions should be safeguarded.**
- **Housing Rights do not agree with the introduction of proposal 4, as we do not believe that the PRS is as yet “fit for purpose”. Housing Rights have concerns that permitting the NIHE to discharge homeless applicants into the PRS appears premature due to the fact that the developments since 2010 have not affected sufficient improvements in standards, security of tenure and tenancy management to make the PRS an appropriate and reasonable option for homeless households. Housing Rights believe that it is important that the regulation and standards of the PRS are substantially increased before the NIHE begins any active policy of discharging to the PRS.**
- **Housing Rights welcomes the introduction of proposal 5- which aims to provide individuals with a greater choice of areas for a social home- as long as appropriate safeguards are put in place. Housing Rights recommend that important measures are taken to ensure that all applicants have access to advice on areas of choice, which is both timely and accurate. The specific circumstances of each applicant should also be considered. Housing Rights further suggest that information on waiting times, level of points needed for certain areas, and property sizes in an area should to be provided to advice agencies, who could also provide tailored housing advice, at any time during the process of waiting on a property. The sharing of this information would support agencies in providing comprehensive independent, tenure- neutral housing advice.**
- **Housing Rights agrees with the introduction of proposal 6, which proposes greater use of a mutual exchange service, again however, appropriate safeguards must be put in place. While Housing Rights welcomes the use of existing mechanisms to rehouse applicants in suitable accommodation, we would encourage the Department to ensure that steps are taken to guarantee equality in access to this exchange service and that specialised advice is provided. Housing Rights also highlight the need for specialised advice on consequences of exercising the right to exchange e.g. on the loss of WSP.**
- **Housing Rights agrees with the removal of Intimidation points from the HSS proposed in proposal 7, however we recommend that an alternative**

assessment is created in order to acknowledge an elevated trauma has occurred to individual/household. Housing Rights have reservations regarding the complete removal of this award without alternative necessary safeguards; we believe it may be too simple a solution for such a complex issue; not providing adequate protection to those in life threatening crisis situations. The proposed award of PSN points only, does not alone acknowledge the level of crisis experienced. In fact, PSN points are already automatically awarded to someone with intimidation points, therefore, there is no alternative acknowledgement proposed by the Department, only a deduction in points. While Housing Rights do not support blanket removal, we understand that the current test, does not account for victims of intimidation in all areas of life e.g. domestic violence victims or victims of sex trafficking. Housing Rights believe it would be appropriate to consider a separate award of “trauma” to encompass both a wider range of specified groups and acknowledge the life threatening critical nature of their situation.

- Housing Rights agree with the introduction of proposal 8, which is that points should reflect the current circumstances for all applicants, however again, as long as appropriate safeguards are put in place. Housing Rights recommend that in order to ensure that this proposal is applied in line with the principles of equality and fairness, the Department should provide further information on the operation of this proposal.
- Housing Rights agree with the removal of Interim Accommodation points from the HSS, proposed in proposal 9. However, Housing Rights recommend that steps need to be taken to expedite the development of the “Temporary Accommodation Provision Strategy”.
- In principle, Housing Rights agree with the concept of a banding system proposed in proposal 10, however we do not agree with the specifics of the proposal due to how the bands boundaries are currently framed in the proposal. While time spent on the waiting list is not adequately accounted for by the current HSS, Housing Rights have reservations with regards the introduction of this proposal as it is currently framed and remain unconvinced that it will achieve the objective of the HSS, which is to house those in greatest housing need. Housing Rights suggest that the proposal as it is current framed, could disproportionately attribute too much weight to “time spent on the list.” Housing Rights suggest a re-evaluation of the band boundaries.
- Housing Rights agree, in principle, with the intention of proposal 11, which is to ensure that the HSS should always align with the number of bedrooms a household is assessed to need with the size criteria for eligible housing benefit customers or the housing cost element of universal credit. However, Housing Rights highlight that there is a slight difference in how

bedroom requirements are calculated for housing benefit and housing cost element of universal credit, and therefore, there will at times, be a difference in what is the required bedrooms for someone in receipt of housing benefit and housing cost element of universal credit. Housing Rights also recommend that due to the fluid nature of social security policy, the Department may wish to change “always” to “generally”, this is to ensure that housing policy is not necessarily dictated by social security policy.

- Housing Rights welcome proposals 12, 13 and 14 which seek to minimise the time that social housing stock is empty by facilitating the allocation of all types of properties, including those that are “difficult to let”. Again however, Housing Rights strongly recommend that adequate safeguards are put in place to ensure fairness, suitability and sustainability of the tenancy. Housing Rights would recommend that the Department ask social landlords to provide an explanation for what characteristics make a property “difficult to let”; clear criterion should be set to determine “difficult to let”. In addition, while these proposals are welcomed, Housing Rights recommend that it is essential that adequate and tailored advice is given to applicants when making a decision regarding accepting a property which is “difficult to let.” Any online service should also be accessible to all, or alternative measures for access put in place. Housing Rights recommend that the Department may wish to utilise other advice agencies in ensuring individuals have access to “choice-based lettings” – i.e. computer hubs or advisers could be made available to assist individuals. This would help ensure comprehensive, independent, tenure – neutral housing advice.
- Housing Rights agree with the reduction of reasonable offers to two, proposed in proposal 15, as long as important safeguards are put in place to retain the objective of the HSS. In NI, England, Scotland and Wales the legislation stipulates that accommodation offered must be “suitable”, however while “suitability” is elaborated on in other jurisdictions, it is not in NI. Instead, what is actually considered by decision makers in NI is if an offer is “reasonable”. Arguably what is a “reasonable” offer measures what the NIHE need to demonstrate in order to satisfy their duty, whereas what is “suitable” focuses on the needs of the individual and their household. Housing Rights recommend NI aligning with other jurisdictions in this matter. In addition, only NIHE have the power to consider a review of suitability of accommodation offered to FDAs under Housing (NI) Order 1988, even if the offer has come from a RHA, Housing Rights recommend consulting with the RHAs on determining suitability of offers.
- Housing Rights agree with proposal 16 which seeks to specify the circumstances in which a social landlords may withdraw an offer of accommodation. Again however, Housing Rights strongly recommend that important safeguards be put in place. Housing Rights expresses caution

with regards the first listed ground for withdrawal “where the conditions of the letter of offer are not met / are breached”, this should not include any element of consideration of if the individual can meet the rent in advance requirement. Housing Rights also recommend that the Department ensure that appropriate measures are taken to ensure that alternative methods of ID are considered or appropriate mechanisms are put in place to assist vulnerable clients, so ID verification does not act as a barrier to accessing housing.

- In principle, Housing Rights agree with the introduction of proposals 17 and 18, which propose to allow social landlords to withhold consent for a policy succession or assignment to 1. A general needs social home in limited circumstances where there is evidence the applicant needs it AND 2. Adapted accommodation or purpose built wheelchair standard accommodation where there is evidence an applicant needs it. While Housing Rights support the view that social housing stock should be used in the most appropriate manner to ensure that applicants and tenants are housed in a suitable and sustainable tenancy, we believe that this must be balanced with other considerations of the existing tenants. Furthermore, we suggest that if these proposals are implemented it is essential that strict guidelines are put in place to determine how discretion is to be applied. The HSS Guidance Manual should be amended accordingly. Avenues of challenge must be available to individuals who wish to challenge a decision under this proposal. We recommended that there must be an appropriate arbitrator of decisions of this nature. Housing Rights would ask that the Department also outline how they have considered the Article 8 ECHR implications of both these proposals.
- At this time, Housing Rights do not agree with the introduction of proposal 19 which purports to update the HSS to bring it in line with developments in Public Protection Arrangements NI (PPANI). Social landlords need to strike a balance between the needs of the individual and wider public protection issues. Housing Rights believe that the current arrangements, if delivered appropriately, are robust, proven, and offer proportionate protections. Housing Rights recommend that it may be more appropriate to consider this proposal as a stand-alone issue, with detailed consultation occurring with all the relevant parties. We further recommend that full contemplation is given to Data Protection principles when considering this proposal.
- Housing Rights agree with the intention behind proposal 20, that specialised properties should be allocated by a separate process outside the HSS, in order to ensure vulnerable individuals are adequately housed within safe, secure and sustainable accommodation. However, it is Housing Rights opinion that before any such system is implemented a separate review regarding this proposal should be undertaken. Housing Rights support the Department’s proposal that a time-bound review should be led by social landlords, to determine how specialised properties should be

allocated, however we recommend that this cannot be done solely by social landlords. Any review must involve the Trust, other supporting organisations and must include the voice of the service users; this will ensure a holistic approach. Housing Rights advise that it is essential that adequate staffing is available to effectively deliver any system that is subsequently developed.

3. RESPONSE TO INDIVIDUAL PROPOSALS

Housing Rights has structured the response to the 20 Proposals to mirror how they are presented in the consultation document – in 4 sections. Considered first are the proposals listed in “throughout the process”, which considers what may be relevant throughout the entire process of rehousing- from of applying for a social home and assessment to being allocated a property. Proposals relevant to application, assessment and allocation of social housing will then each be considered in turn.

THROUGHOUT THE PROCESS

1. An independent, tenure- neutral housing advice service for NI

Housing Rights strongly agrees that there is a need for a model which provides an independent, tenure- neutral housing advice service for NI.

KEY POINTS

- In order for an individual to make informed housing choices, it is crucial that they receive independent, specialised and timely housing advice.
- The service must have the ability to hold housing providers and statutory bodies accountable for their decision making without any qualifications or constraints.
- Independent advice is “Not dependent, not subject to control, restriction, modification, or limitation from a given outside source”.
- The service should be able to deliver the entire spectrum of advice; from signposting to legal challenge.
- A hybrid model should be considered for this service.
- Any service should be a standardised service and have external peer review; quality assurance is essential. Promoting Social Justice Inclusion (PSI) in their 2013 Report recommends that if Housing Options is to be introduced in NI a framework should be produced clearly setting out standards, policy, and procedures.

Current position

At present, individuals seeking advice on their housing options have a number of options open to them. Housing Rights are the leading provider of specialist housing advice services, providing independent specialised advice and advocacy on the entire spectrum of housing issues, on a tenure- neutral basis. Housing Rights also have a Community Housing Advice Project (CHAP) which ensures that this high level specialised assistance is available to everyone who needs it across NI, on a consistent basis. Furthermore, Housing Rights holds the legal quality assurance

certification “Lexcel” which recognises the quality in relation to legal practice management standards such as file management, client care and confidentiality.

In addition, other advice agencies and indeed private solicitors offer housing advice throughout NI.

The NIHE have also been implementing a “Housing Solutions” service in certain areas. In these areas their “Housing Solutions and Support Teams” (HSST) work with individuals who contact NIHE regarding a housing problem, to provide housing advice, guidance, prospects and support service to help them find a solution. This service is provided in tandem with NIHE’s statutory duties, under homelessness legislation and the HSS and is not an alternative to an individual’s legal rights. The HSST will engage with individuals and a range of statutory and voluntary agencies.

Proposal

The Department propose that there should be an independent, tenure neutral housing advice service for NI, which should be open to all adults, including those whose immigration status or history of anti-social behaviour does not allow them to apply for a social home, and to anyone who requires advice on private housing.

The Department have asked for views on whether a single organisation should be the main provider of this service or whether it could be carried out by a number of organisations (statutory and non-statutory) who commit to a standardised level of service.

The Department propose that the service should offer tailored advice to help individuals and households meet their specific housing need and find or keep suitable accommodation in any tenure. It should provide clear information to help people understand their housing options and the implications of the choices they might make. The service could help clients to:

- Apply for a social home
- Look for private rented accommodation;
- Get support to stay where they are (whether rented or owned);
- Consider co-ownership; or
- Consider full home ownership.

The service should also be accessible to individuals who are vulnerable through disability, long-term illness, mental health issues or lack of competency in English. Provisions should be in place to ensure client privacy and confidentiality.

It is highlighted by the Department that this advice service is a critical component of the service government provides and the effectiveness of a number of the other proposals in this document.

Our response

Housing Rights strongly agrees that there is a need for a model which provides independent, tenure- neutral housing advice service for NI.

It is Housing Rights experience that often individuals do not have the information they need regarding their specific housing rights and options; for example they may not know the avenues of redress open to them in order to challenge a housing decision, they do not know ways in which they can sustain their tenancy or the financial assistance open to them. **Housing Rights believe in order for an individual to make informed housing choices, it is crucial that they receive independent, specialised and timely housing advice.** Housing Rights support the need for a service that provides housing advice for NI which is both independent and tenure – neutral and as such wish to explore this concept in more detail and highlight some of the key components which must form a part of any such service.

Independence

Firstly, considering the definition on “independence” and what it means to be “independent”.

Black’s Law Dictionary⁷ defines independence as **“Not dependent, not subject to control, restriction, modification, or limitation from a given outside source”**. Housing Rights assert that these principles should be at the cornerstone of any housing advice service. It is essential that the advice service **“stands alone”** and that the **advice given is not constrained in any way.**

Housing Rights have some reservations with the parallels being drawn in the Review between a proposed advice service and NIHE’s “Housing Solutions” pilot. While the ‘Housing Solutions’ model has worked well in other jurisdictions, the evaluation report of the NI Pilot is still pending; Housing Rights would welcome information from the Department. Housing Rights would suggest **that ‘Housing Solutions’, in isolation, cannot be said to achieve the intention of this proposal.**

It is Housing Rights experience through our work that often clients are making contact to seek assistance with making a formal complaint against their social landlord, or wishing to formally challenge their negative decision. **Housing Rights believe that providing independent advice of this nature, would be difficult for “Housing Solutions”, if they are both the adviser and the landlord.** Indeed, Housing Rights believe that the public may not perceive this as “independent” advice; they may believe that their advice is being constrained in some way. In order for this to be an effective service, public confidence is essential. **Housing Rights believe that in order for there to be a fruitful independent, tenure- neutral housing advice service, it must be seen as a truly independent service that can hold housing providers accountable for their decision making without any qualifications.**

⁷ Available at: <https://thelawdictionary.org/independent/>

The concept of decision making leads on us to considering the second element essential to consider for the housing advice service – level of advice.

Level of advice

Housing Rights wish to seek clarity from the Department with regards the level of advice they envisage this service to provide.

Currently, under *Housing (Amendment) Act (NI) 2010*, NIHE have a duty to secure that advice about homelessness and the prevention of homelessness, is available free of charge to any person in NI. Subsequent *Homeless Persons Advice and Assistance Regulations (NI) 2011* and ‘Homeless persons – duty to provide advice and assistance’ guidance issued by the Department specify the nature of this advice. While indeed it is clear that this advice is to be comprehensive, this advice is on the “lower tier”⁸ of advice. Advice can be seen to encompass several levels: from signposting to legal challenge. **Housing Rights strongly believe that any advice service should be able to deliver the entire spectrum of advice. The scope to challenge a housing provider should be at the cornerstone of any housing advice service. Housing Providers and other statutory agencies should be able to be held accountable for their decision making.**

A Suggested Model

Housing Rights recommend that a **hybrid model** is considered for this service. **The advice service could encompass a number of bodies, that can work together to ensure that comprehensive independent tenure-neutral housing advice is available. This service should include avenues of legal challenge and independence should be at the heart of this. In addition any service should be a standardised service and have external peer review; quality assurance is essential.** Indeed, **The Promoting Social Justice Inclusion (PSI) in their 2013 Report** states that

“...One of the recurring concerns about the development of Hubs was the lack of central guidance which led to criticisms of a lack of uniformity in standards, inconsistency, inadequate monitoring and difficulties in benchmarking. No strategic objectives had been produced by the Scottish Government and little guidance was offered to individual Hubs or to local authorities on how services could be redesigned to operate the Housing Options model.... **If Housing Options is to be introduced in NI it is our view that a framework should be produced clearly setting out standards, policy, and procedures...** There is evidence that good case management standards from initial contact right through to case closure is crucial in helping households in order to achieve a successful outcome...”

⁸ Tiers of advice

2. An applicant who has been involved in unacceptable behaviour should not be eligible for social housing or FDA Status unless reason to believe, at time the application is considered – that the accepted behaviour is likely to cease

In essence, the proposal wishes to do 2 things.

Part 1- If NIHE has good reason to believe that a person's conduct (or conduct of a member of their household) will improve, they should not be treated as ineligible

AND

Part 2 – Conversely, if there is no reason to believe that conduct will improve, the NIHE may determine that the applicant is unsuitable to be a tenant and there for is ineligible for social housing or FDA.

Housing Rights do not agree with this proposal. We believe that the current statutory test is the most robust and fair assessment of eligibility, and safeguards the interests of all parties.

KEY POINTS

- There is no need for this proposal, as we believe that, if the current statutory test, Departmental guidance and jurisprudence are applied correctly, the intended result of the first part of this proposal is already achieved; it is already within the jurisdiction of the decision making powers of NIHE.
- Regarding the second part of this proposal: concern that the scope and level of discretion given to a decision maker would be disproportionate.
- The current test safeguards all parties.

Current position

The legislative authority which allows NIHE to treat a person as ineligible by virtue of unacceptable behaviour, for either FDA status or social housing, is entrenched in *Article 7A of the Housing (NI) Order 1988* and *Article 22A of the Housing (NI) Order 1981*, respectively.

The statutory test stipulates that the NIHE may decide that an applicant is ineligible if:

- He or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the NIHE,

AND

- In the circumstances at this time his application is considered, he is unsuitable to be a tenant of the NIHE by reason of that behaviour.

Legislation further states that the only behaviour which may be regarded as 'unacceptable' is that if the person (or a member of household) were a tenant, NIHE

would be entitled to have a Possession Order granted by the court under *Ground 2 or Ground 3 of the Housing (NI) Order 1983*.

At present, owing to the severity of the sanction of eligibility, the Department have issued detailed guidance on antisocial behaviour (ASB)⁹ and the application of the above statutory test; namely Annex E (eligibility regarding allocations) and Annex F (eligibility regarding FDA). The guidance provides interpretation of this statutory test and stipulates how it is to be applied by decision makers. Namely;

- Consider whether a court would decide that it is “reasonable” to grant a possession order against person (or member of household), under *Article 29 of the Housing (Northern Ireland) Order 1983* in relation to *Ground 2 or Ground 3 in Schedule 3* to that Order;

AND

- Consider that NIHE must satisfy itself that the behaviour is serious enough to make the person (or member of household) unsuitable to be a tenant of NIHE in the circumstances at the time of the application.

The guidance also provides further considerations on how this should be interpreted: namely;

“It must be emphasised that an applicant’s suitability to be a tenant should not be assessed on the basis of past conduct alone. The Executive must have regard to the circumstances at the time the application is considered. For example, it would not be appropriate to treat an applicant as ineligible because of a past conviction if they have subsequently led a blameless existence. Generally speaking, eligibility would be in question where there is reason to suppose that an individual is likely to behave in an unacceptable way.”

...the [NIHE] would need to be satisfied that, if a possession order were granted, it would not be suspended. So, for example, if there is persuasive evidence that the unacceptable behaviour by the applicant or a member of their household has ceased and is unlikely to reoccur, and that a possession order granted by a court in those circumstances would therefore be likely to be suspended, the applicant should not be treated as ineligible.”

“In reaching such a decision, the Executive will have to act reasonably. That means it will have to consider all the relevant matters. These will include all the circumstances relevant to the applicant, including health, dependants and other factors. In practice, the matters before the Executive will normally mean the information provided on and with the application form. All cases must be thoroughly investigated.”

“Where an applicant has been guilty of unacceptable behaviour but is working with a helping agency (for example, PBNI, APAC or a CAT team) in an attempt to address that behaviour, the Executive’s should take account of the agency’s views in considering whether the applicant is unsuitable to be a tenant.”

⁹ Guidance available at: <https://www.communities-ni.gov.uk/publications/northern-ireland-housing-executive-guidance>

“The Executive should not take a decision on eligibility without first considering whether any unacceptable behaviour is due to a physical, mental or learning disability and, if this appears to be the case, the Executive should consider whether the applicant would be able to maintain a tenancy with appropriate care and support. In considering such cases, the Executive will need to consult with relevant agencies, including social services, health professionals and providers of suitable housing, care and housing-related support services.”

Proposal

The Department wish to “change the law” to “make it clear how the NIHE should make a decision on eligibility” – namely, that if the NIHE has good reason to believe that a person’s conduct (or the conduct of a member of their household) will improve, they should be treated as ineligible and conversely, if there is no reason to believe that conduct will improve the NIHE may determine that the applicant is unsuitable to be a tenant and therefore is ineligible for social housing or FDA status. **It is unclear if the Department’s stated intention to change the law is a proposal to completely remove the above statutory test.**

Our response

Housing Rights consider that there is no need for this proposal, as we believe that, if the current statutory test, Departmental guidance and jurisprudence are applied correctly, **the intended result of the first part of this proposal is already achieved; it is already within the jurisdiction of the decision making powers of NIHE.** Indeed, it is a matter of concern if the jurisprudence is not being followed by decision makers.

With regard the second part of Proposal 2 – “if there is no reason to believe that conduct will improve, NIHE may determine that the applicant is unsuitable to be a tenant and therefore is ineligible”. **Housing Rights, would be concerned that the scope and level of discretion given to a decision maker would be disproportionate.** How would it be determined by a decision maker that their behaviour is unlikely to change? What would be the standard and legal burden of proof?

Undoubtedly cases concerning eligibility are both contentious and complex, and due to the serious sanction placed on an individual – no access to social housing – robust mechanisms for considering “eligibility” need to be in place. Furthermore, it must be noted that the HSS has general disqualification to social housing criteria, entrenched in Rules 49 - 51. These also apply as well as the test for eligibility. The award of FDA can override the general disqualification criteria, **therefore it is vital for all parties that that there is a robust and fair eligibility test. Housing Rights advise that, when applied correctly, the current test, is a fair assessment of “eligibility”.**

Finally, while Proposal 3 will be considered next, it is important to acknowledge the consequential nature of Proposal 3 on Proposal 2. If there is a change in the law to allow NIHE to treat a person as ineligible for FDA status on the basis of their unacceptable behaviour at any time, it would mean that at any time after FDA has been granted, if there is evidence of unacceptable behaviour, FDA can then be

removed. When FDA Status has been granted, a level of vulnerability and priority has been acknowledged; therefore any test to consider eligibility must be robust and arguably the 2nd element of proposal 2, poses a risk to this.

3. NIHE may treat a person as ineligible for FDA on the basis of their unacceptable behaviour at any time before allocating that person a social home

Housing Rights agree with the introduction of this proposal; subject to appropriate safeguards.

KEY POINTS

- It is important that appropriate safeguards are put in place to support individuals while in temporary accommodation.
- Guidance, education and training should be provided to decision makers to understand the complexities of decisions regarding eligibility and how to apply current jurisprudence.
- The statutory right to review eligibility decisions should be safeguarded.

Current Position

Currently “eligibility” for FDAs is only considered at housing application stage, rather than at a later stage. In essence this means that once a decision has been made on eligibility for FDAs, this has been determined and eligibility is no longer considered. The next time eligibility and unacceptable behaviour can be determined is when the FDA (and household) has become a tenant(s); at this stage they are subject to the grounds for statutory possession, under *Housing (NI) Order 1983*.

Proposal

The Department intend to “change the law to make it clear that the NIHE may treat a person as ineligible for FDA status on the basis of their unacceptable behaviour at any time before allocating that person a social home”.

Our Response

Housing Rights acknowledge that there was an attempt to realise this intention via *Section 3 of the Housing (Amendment) Act (Northern Ireland) 2010*, which sought to amend *Article 7A(5) of the Housing (NI) Order 1988*. The amended *Article 7A(5)* refers to the NIHE deciding that a ‘person’ is ineligible for assistance, rather than an ‘applicant’. However, due to the wording, the legislation still requires both:

1. The person or a member of their household, has been guilty of unacceptable behaviour,
AND

2. At the time their application is considered (and no later), they are unsuitable to be social tenants by reason of this behaviour

Housing Rights understand the rationale for this proposal, however wish to highlight the **consequential affect that Part 2 of Proposal 2, if implemented, is likely to have on Proposal 3**. There is a concern that this could lead to an increase in instances of street homelessness. In essence, Housing Rights support the introduction of proposal 3 as long as a robust and rigorous statutory test remains.

In addition, Housing Rights wish to stress the need to understand that it is not uncommon for FDA applicants to spend years in temporary accommodation, often occupied by (other) vulnerable adults and a living situation like this can aggravate a situation and lead to behavioural issues, thus risking eligibility status. **Therefore it is important that appropriate safeguards are put in place to support these individuals e.g. increased support in hostels**. While Housing Rights welcome the Department's intention to issue guidance to the NIHE to ensure that it takes account of the stressful nature of homelessness and the possible impact on an individual's behaviour, **we would also suggest that education and training is provided to decision makers to understand the complexities of decisions regarding eligibility and how to apply current jurisprudence**. Housing Rights strongly recommend that it is essential that the statutory right to review eligibility decisions is safeguarded, and that the **Departmental ASB guidance and HSS Guidance Manual is updated accordingly**.

4. NIHE can meet their duty to homeless applicants on a tenure – neutral basis, provided that the accommodation meets certain conditions

Housing Rights do not agree that NIHE should, at this time, be able to meet their duty to homeless applicants on a tenure – neutral basis, as we do not believe, at present, that the private rented sector is “fit for purpose” to be used in discharge of the NIHE’s statutory duty.

KEY POINTS

- **Permitting the NIHE to discharge homeless applicants into the PRS, at this stage, appears premature. Developments since 2010 have not affected sufficient improvements in standards, security of tenure and tenancy management to make the PRS appropriate and reasonable for the discharge of homeless households.**
- **It is important that the regulation and standards of the PRS are substantially increased before the NIHE begins any active policy of discharging to the PRS.**

Current position

Currently, while the *Housing (NI) Order 1988* allows the NIHE to discharge its statutory duty into the private rented sector (PRS), the NIHE seeks to meet its duty by offering a tenancy in a social home.

Proposal

The Department propose for NIHE to potentially meet its homelessness duty by securing suitable accommodation in the PRS. This practice would bring NI in line with practice in other areas of the United Kingdom.

The Department have stated that this would enable the NIHE to meet its homelessness duty on a tenure-neutral basis, provided the accommodation that it offers:

- is reasonable for the household to occupy;
- is of the appropriate standard; and
- is available for a reasonable period of time, e.g. a 12-month tenancy

The Department have acknowledged that supply of social housing is an issue and that often individuals may have insufficient priority to access an allocation when it becomes available. The Department has provided further rationale for proposal 4, such as:

- Ongoing improvements to the regulation of the PRS provide evidence that the NIHE can meet its duty to homeless applicants in appropriate PRS accommodation

- Meeting the homelessness duty on a tenure-neutral basis is crucial in providing a greater and more effective range of solutions to meet a household's housing need.
- Following a consultation of this proposal in 2010, the stakeholders welcomed this proposal, provided greater regulation and security of tenure were secured for the PRS.

Our Response

Housing Rights believe that permitting the NIHE to discharge homeless applicants into the PRS, at this stage, appears premature. Developments since 2010 have not affected sufficient improvements in standards, security of tenure and tenancy management to make the PRS appropriate and reasonable for the discharge of homeless households.

Housing Rights state that it is important that the regulation and standards of the PRS are substantially increased before the NIHE begins any active policy of discharging to this sector. In order to illustrate the prematurity of this proposal, Housing Rights have considered the Department's rationale for this proposal in more detail below.

- Improved tenancy management and security of tenure

The Department has stated that since 2010, it has worked on greater regulation and security of tenure within the PRS.

While **Housing Rights acknowledge that certain regulations have been passed, it does not agree that regulation and standards within the PRS have improved sufficiently to permit NIHE to discharge its duty into the PRS.** For example, good "tenancy management" encompasses a broad range of factors, including the initial marketing of a property; letting the property; entering tenancy agreements; collecting rent; maintaining the property; and ending a tenancy. The Tenancy Deposit Scheme (TDS) can only be said to contribute to one facet of "tenancy management" - the specific context of deposits.

Similarly, the Landlord Registration Scheme cannot be considered to have improved security of tenure. Under Landlord Registration, private landlords are simply required to register their status as landlords, and allow very limited information – their name and the properties they let – to be placed on a publicly searchable database. Whilst there is scope for the framework of the Landlord Registration Scheme to be valuably used to further improve regulation and support landlords, in its current form, the scheme is simply a database. **Housing Rights would encourage the Department to again consider using the Landlord Registration database as a basis for landlord licensing. The potential for discharge of homeless households increases the need for a regulatory mechanism such as landlord licensing, which could provide an effective and valuable framework to ensure the quality of accommodation for homeless households.**

- Accommodation available for a reasonable period of time

It is Housing Rights' view that a 12-month tenancy is not long enough to justify the NIHE discharging their duty into the private sector; sufficient stability and security to satisfy the discharge of the homeless duty cannot be achieved. Housing Rights notes the Joseph Rowntree Foundation's (JRF) research into 'Poverty, Evictions and Forced Moves'; in a context where local authorities have been able to discharge homeless households into the private sector since 2011, this research finds that "no fault" evictions – whereby a landlord can evict a tenant without any specific grounds, after their tenancy has reached the end of its fixed term – have increased significantly. This often leads to a pattern of recurring homelessness for households attempting to sustain private tenancies. Furthermore, the NI Audit Office 2017¹⁰ Report on homelessness, cites loss of rented accommodation as one of the top 3 reasons for homelessness. In this regard, Housing Rights notes the current NIHE Homeless Strategy, which includes an indicator of reducing 'instances of repeat homelessness.'

If the Department is proposing to permit the NIHE to discharge into the private sector, it is Housing Rights' view that the minimum length of tenancy should be longer than 12 months, to ensure stability and security. **Housing Rights would encourage the Department to consider recent legislative developments in Scotland, where private tenancies from 1st December 2017 are indefinite, and can only be ended by the landlord on proscribed grounds; and the Republic of Ireland, where private tenancies last 4 years by default.**

- Accommodation of the appropriate standard

Housing Rights would welcome clarity from the Department on two areas: firstly how "appropriate standard" will be defined, and secondly how the enforcement and realisation of this standard will be executed and quality assured.

The Department will be acutely aware, in the context of property standards, of its separate and ongoing review of the statutory minimum Housing Fitness Standard for all tenures of dwelling. In our response to this Review, Housing Rights has highlighted concerns both with the current low threshold of this Standard and at levels of disrepair in the PRS. For example, the current Fitness Standard requires 'adequate provision for . . . heating' – in practice, this requirement can be satisfied by the presence of an electrical socket into which the tenant can plug an electric heater.

Housing Rights believe that the current housing Standard does not robustly ensure that individuals are living in housing of a decent minimum standard. There are also issues with the lack of legal protections afforded in relation to the current Standard, and the inadequacy of Local Councils' statutory enforcement powers in relation to the Standard. Additionally, Housing Rights is concerned that issues with poor standard housing are disproportionately high in the PRS.

If the Department is proposing to permit the NIHE to actively discharge its homeless duty into the PRS, then given the above-identified issues with both the current

¹⁰ Full Report Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Homelessness%20in%20Northern%20Ireland%20Full%20Report_0.pdf

standard and current levels of disrepair specifically in the PRS, Housing Rights would recommend that this only be considered consequent to the completion of the current review of the Housing Fitness Standard, and the execution of any improvements which are identified as necessary. Housing Rights would also encourage clarity from the Department on how any new or amended standard would be actually executed and quality assured, in order to ensure any legislative improvements are realised for tenants.

While the PRS in NI has considerable potential to become a “sector of choice”, which could provide decent homes for FDA homeless households,¹¹ in Housing Rights’ view, at present, the PRS does not meet the standards necessary for NIHE to discharge its duty into this sector.

Specifically, the Department should give consideration to the below, before any active policy step is taken to permit the NIHE to discharge into the PRS:

- **Execution of the “Proposals for Change” to the PRS.** The Department’s proposals for change to the PRS were published and consulted on in early 2017. Proposals on tenancy management and security of tenure, as well as supply, affordability, property standards and dispute resolution, have been advanced. These proposals should be reviewed in light of responses to this consultation, and consequently brought into law.
- **Execution of the Review of the Housing Fitness Standard.** The Department’s review of the fitness standard was consulted upon in 2016. Given both the general concerns with the current statutory Standard, and the fact that the PRS is home to a disproportionate share of sub-standard housing (both outlined above), Housing Rights would encourage the Department to bring forward proposals for change to this Standard for consultation, and execute any improvements to this Standard.
- **Longer tenancy terms for FDA-discharge tenants.** If FDA households are to be discharged into the PRS, Housing Rights recommends that the Department increase the minimum tenancy term beyond the proposed 12 months, and consider recent developments in private tenancies in Scotland and the Republic of Ireland.

Finally, Housing Rights wish seek clarity on the operations of this proposal. Housing Rights contend that it is essential that the Department evidence how this proposal would be fairly applied, in order to ensure equality within the HSS. In addition, please see proposal 15 for information regarding the lack of a legislative definition of “suitability” of accommodation. Housing Rights view that there will need to be robust avenues of challenge if this proposal was realised.

¹¹ Indeed, previous research commissioned by Housing Rights found that evidence from parts of Europe and the USA ‘suggests that the PRS can be used effectively to meet the needs of even the most vulnerable homeless, and create sustainable, long term tenancies.’

APPLICATION

5. A greater choice of areas for all applicant for a social home

Housing Rights agree with the introduction of this proposal, as long as appropriate safeguards are put in place.

KEY POINTS

- Important measures must be taken to ensure that all applicants have access to advice on areas of choice, which is both timely and accurate. The specific circumstances of each applicant should also be considered.
- Information on waiting times, level of points needed for certain areas, and property sizes in an area should to be provided to advice agencies, who could also provide tailored housing advice, at any time during process of waiting on a property. The sharing of this information would support agencies in providing comprehensive independent, tenure-neutral housing advice.

Current Position

Currently applicants can choose 2 areas in which they prefer to live; in NI there is currently over 800 Common Landlord Areas and 300 General Housing Areas.

Proposal

The Department proposes to allow applicants to choose as many or as few areas at they wish; allowing them to increase their chances of an allocation OR to limit their choices to areas where they genuinely wish to receive an offer of accommodation. In addition, there is a proposal to remove the 6 month automatic expansion of Areas of choice for FDAs.

Our Response

Housing Rights share the Department's hope that this will hopefully limit the number of refusals. Housing Rights recommend however that in order for this proposal to achieve its intended outcome in an equitable manner, **important measures must be taken to ensure that all applicants have access to advice on areas of choice, which is both timely and accurate. The specific circumstances of each applicant should also be considered.**

While the Department have stated that the Housing Solutions and Support Team (HSST) will be there to provide advice both before and at the time of housing application, and also will carry out a 6 month review after application for FDAs, Housing Rights suggest that further steps need to be taken in order for this proposal to work effectively. Indeed, it is Housing Rights experience that applicants often change their mind at any stage from application through to allocation, and often seek advice from advice agencies on this. **As such, Housing Rights recommend that**

information on waiting times, level of points needed for certain areas and property sizes should to be provided to advice agencies, who could also provide tailored housing advice, at any time during process of waiting on a property. This information could also be made publicly available; of course, adhering to the principles of data protection. Housing Rights recommend that consideration should also be given to providing this information via a number of methods and forums to ensure equality access, in line with equality legislation.

The provision of this information, would ensure that applicants have preferred sources from which they can obtain the specific information required to make an informed choice.

6. Greater use of a mutual exchange service

Housing Rights agree with greater use of the mutual exchange service, as long as appropriate safeguards are put in place.

KEY POINTS

- Welcome the use of existing mechanisms to rehouse applicants in suitable accommodation, however we would encourage the Department to ensure that steps are taken to guarantee equality in access to this exchange service and that specialised advice is provided.
- Recommend that specialised advice on consequences of exercising the right to exchange is given e.g. on the loss of WSP.

Current position

The right to exchange is a statutory right for secure tenants, entrenched in *Article 32A of the Housing (NI) Order 1983*; introductory tenants do not acquire this statutory right, however in exceptional circumstances an exchange can be considered. Currently, NIHE currently operates mutual exchange service via a procured service; “HomeSwapper”.

Proposal

The Department propose that NIHE and RHAs should promote the mutual exchange service more, and when applying for a transfer this service should be discussed. The Department also propose that assistance and support to register and use the portal will be provided and that victims of intimidation or domestic violence might be advised not to register.

Our Response

While Housing Rights encourage the use of existing mechanisms to rehouse applicants in suitable accommodation, like in proposal 6, we would encourage the Department to ensure that steps are taken to guarantee equality in access to this exchange service and that specialised advice is provided. **Housing Rights reiterate the Department’s caution in the use of a public exchange service for applicants who are victims of intimidation, antisocial behaviour and domestic violence.**

As previously mentioned and what remains a continuous theme throughout the Review, Housing Rights would like to highlight that there needs to be scrutiny of **potential welfare reform consequences of this proposal**. Housing Rights have experienced a number of instances when applicants have applied for and been approved for exchange, and as a consequence under the mitigation regulations, lost their WSP. In these instances, adequate advice had not been provided to the applicants to allow them to make an informed decision.

Housing Rights recommend that tailored advice on consequences of exercising the right to exchange is given.

ASSESSMENT

7. Removal of Intimidation points from the HSS

Housing Rights agree with the removal of intimidation points, however we recommend that an alternative assessment is created in order to acknowledge an elevated trauma has occurred to individual/household.

KEY POINTS

- Reservations regarding the complete removal of this award without alternative necessary safeguards; too simple a solution for such a complex issue; not providing adequate protection to those in life threatening crisis situations.
- The proposed award of PSN points only, does not alone acknowledge the level of crisis experienced. In fact, PSN points are already automatically awarded to someone with intimidation points, therefore, there is no alternative acknowledgement proposed by the Department, only a deduction in points.
- While we do not support blanket removal, we understand that the current test, does not account for victims of intimidation in all areas of life e.g. domestic violence victims or victims of sex trafficking.
- It would be appropriate to consider a separate award of “trauma” to encompass both a wider range of specified groups and acknowledge the life threatening critical nature of their situation
- The level of trauma must be distinguished.

Current position

The award of intimidation points is determined by statutory rule 23A. The test can be seen as 2 fold; it must firstly be determined that:

- The Applicant’s home has been destroyed or seriously damaged (by explosion, fire or other means) OR The Applicant cannot reasonably be expected to live, or to resume living in his/ her home because, if he or she were to do so, there would, in the opinion of the Designated Officer, be a serious and imminent risk that the Applicant, or one or more of the Applicant’s household, would be killed or seriously injured.

It must then be established that the above is

- as a result of a terrorist, racial or sectarian attack, or because of an attack motivated by hostility because of an individual’s disability or sexual orientation, or as a result of an attack by a person who falls within the scope of the NIHE’s statutory powers to address neighbourhood nuisance or other similar forms of anti-social behaviour

As such, the first element of the test stipulates that a high threshold for danger/harm is required and that once this has been established, the danger and harm must be attributed to a specified circumstance i.e. sectarian, racial etc. Important guidance is contained within the HSS Guidance Manual for the application of this test. Operational procedures and outlined and verification procedures are stipulated.

Proposal

The Department propose the removal of the intimidation points from the HSS; applicants who have been made homeless by intimidation will continue to receive 70 points for FDA status and 20 points for Primary Social Needs. (PSN)

Our response

Housing Rights acknowledge that the award or withholding of an award of intimidation points is one of the most contentious decisions that can be made under the current HSS; owing to the fact that the decision to grant an applicant “intimidation points”, results in an applicant receiving 200 points for intimidation, 70 points for FDA status and 20 points for PSN - Fear of Violence. This can often lead to individuals moving to the top of the list.

However Housing Rights also wish to highlight difficulties in the current assessment process; it is our experience that the investigation procedures have at times been protracted, causing additional anxiety on an applicant and their household. In addition, we have successfully challenged decisions where NIHE have requested “double verification” of intimidation; a requirement which is ultra vires.

Although **Housing Rights have experienced some difficulties in the application of Rule 23, we have seen the award of these points act as a necessary safeguard to applicants who are in a critical situation.** Indeed, during our meeting with the BME Champions Project, members expressed grave concern at the removal of such a test and explained several members of their community have used this rule as a lifeline to protect themselves and their families.

As such, Housing Rights have reservations regarding the proposal to completely remove this award without alternative necessary safeguards; **we wonder if this is too simple of a solution for such a complex issue; not providing adequate protection to those in crisis.** Indeed, the Review states that although there have been media reports of abuse of this test to gain access to desirable properties, there have been no verification of this.

While Housing Rights do not support blanket removal, we understand that the current test, does not account for victims of intimidation in all areas of life e.g. domestic violence victims or victims of sex trafficking. During our consultation with members of the NI Migrants Forum attention was drawn to the specific vulnerability of these specified groups and how the current test does not account for their intimidation.

Furthermore, the award of intimidation points acknowledges an escalated harm or crisis, **Housing Rights state that the proposed award of PSN points only does not alone acknowledge the level of crisis experienced. In fact, PSN points are already automatically awarded to someone with intimidation points, therefore,**

there is no alternative acknowledgement proposed by the Department, only a deduction in points. Indeed, HSS Guidance Manual states:

“3.3.2 NUMBER OF POINTS

Applicants awarded Intimidation points will qualify for an additional 200 housing points. Applicants also qualify for a further 20 ‘Housing Points’ under Primary Social Needs Factor 1 (only PSF1 should be selected in this type of case)”

At this stage Housing Rights would also like to highlight that in “The Modelling Research” section of this proposal, in case studies 3 -5, which are based on real life applicants, it appears that PSN points have not been awarded in the Applicant 1. However, it would be the case, that currently in real life these applicants would have received 20 PSN points.

Under the current statutory rule for the award of PSN points, Rule 43, it is possible that someone can be awarded PSN for fear or risk of violence due to an issue with a neighbour, and while this a difficult situation, to state that the level of trauma such as an applicant’s home being destroyed due to a hate crime, should fall under the same points award, is not satisfactory. **The level of trauma must be distinguished and the award of points must reflect this.**

In light of the above, Housing Rights recommend, that it would be appropriate to consider a separate award of “life threatening trauma” to encompass both a wider range of specified groups and acknowledge the critical nature of their situation. This could possibly be an award of 60 points.

Finally, Housing Rights would ask the Department to provide information on how they have consulted the PSNI on this proposal. It is our understanding that the PSNI are due to launch a campaign specifically on intimidation.

8. Points should reflect current circumstances for all applicants

Housing Rights agree that points should reflect the current circumstances for all applicants, as long as appropriate safeguards are put in place.

KEY POINTS

- **Recommend that in order to ensure that this proposal is applied in line with the principles of equality and fairness, the Department should provide further information on the operation of this proposal.**

Current position

At present, when an applicant reports a change of circumstances, NIHE carries out a reassessment. Following a reassessment, an ordinary housing applicant can have points either added or taken away from their total, however FDAs can only have points added, not removed; this has been referred to as the “No Detriment” Policy. This Policy is custom and practice, it is not a statutory rule. The rationale for this was to recognise the applicant’s homelessness journey and to assist in discharging the statutory duty in a reasonable period of time.

Proposal

The Department have proposed that points should reflect current circumstances for all applicants. Points should reflect current, not historic circumstances. This reflects current housing need.

Our Response

While Housing Rights agrees with the introduction of this proposal, it has some reservations regarding the operations of applying this new policy. The Department have stated that at all changes of circumstances all applicants should be reassessed and given points appropriate to their current circumstances. It is also proposed that PSN points will be the exception to this rule, as they are awarded in serious circumstances. **At this stage Housing Rights would like to confirm that it is not the Department’s intention to include withdraw of FDA points in this proposal.**

Housing Rights recommend that in order to ensure that this proposal is applied in line with the principles of equality and fairness, the Department should provide further information on the operation of this proposal. e.g.

- How will application of this policy be monitored to ensure fairness?
- What are the methods in which changes of circumstances can be reported?

Housing Rights recommend that applicants on their annual review form affirm to the fact that their circumstances are the same. As previously mentioned, transitional protection and amendments to the HSS Guidance Manual need to be considered in the implementation of this proposal.

9. Removal of Interim Accommodation points from the HSS

Housing Rights agrees with the removal of interim accommodation points, however steps need to be taken to expedite the development of a “Temporary Accommodation Provision Strategy”.

Current position

At present under HSS, FDAs are awarded an additional 20 points if they have spent six months in temporary accommodation, which has been arranged by NIHE under the homeless legislation. Points are not awarded to those who source temporary accommodation themselves or remain “homeless at home”. The rationale for awarding these points was to acknowledge the additional stress of living in temporary accommodation, to facilitate a fast move on and avoid expensive temporary accommodation getting “full up”.

Proposal

The Department claims that evidence has shown that the award of these points are not resulting in households being allocated a home more quickly than the average applicant. As such, it has proposed that interim accommodation points are removed, and instead that time in temporary accommodation should be recognised solely by “time waiting” rather than points.

Our Response

Housing Rights agree with the introduction of this proposal as it is often our experience that due to a number of factors, such as the lack of suitable temporary accommodation or personal preference, that several FDAs source their own temporary accommodation; they too experience additional stress which applicants occupying hostels experience.

However, Housing Rights states that **the introduction of this proposal raises the pressing issue of availability of suitable temporary accommodation**. While the Department highlight that there is an NIHE Homelessness Strategy for NI 2017 – 2022, “Ending Homelessness Together” which includes a commitment to develop a Temporary Accommodation Provision Strategy, with a view to providing the right mix of accommodation for the needs of clients, further information needs to be provided to illustrate **how the intention of this strategy is going to be realised and how the crisis regarding the lack of suitable temporary accommodation in NI is going to be addressed**.

ALLOCATION

10. HSS should place applicants into bands based on similar levels of need to meet longstanding housing need more effectively

In principle, Housing Rights agree with the concept of a banding system, however we do not agree with the specifics of the proposal due to how the bands are currently framed.

KEY POINTS

- While time spent on the waiting list is not adequately accounted for by the current HSS, we have reservations with regards the introduction of proposal 10 and remain unconvinced that the current proposal will achieve the objective of the HSS, which is to house those in greatest housing need.
- Housing Rights suggest that the proposal as it is current framed, could disproportionately attribute too much weight to “time spent on the list”
- Housing Rights reservation regarding this proposal is rooted in how the Department has determined the band boundaries.

Current position

Currently waiting time is given relatively low priority, with only 2 points awarded per year (to a max 10 points) to applicants in housing need, after they have spent 2 years on the waiting list.

Proposal

The Department propose when an applicant (or a transfer applicant) applies for a social home (or an existing applicant has a change of circumstances) their need should continue to be assessed using the points system. Their points should then be used to place them into a band with other applicants who have a similar level of points (need). Namely;

- No housing need (0 points);
- Some need, but not in housing stress (1-29 points);
- Housing stress, but below the level of 70 points awarded to Full Duty Applicants (30-69 points);
- Housing need (70-99 points);
- High level of housing need (100-129 points);
- Very high level of housing need (130+ points)

Then under the new system when a property becomes available it should go to the applicant who has waited the longest in the highest need band. The Department acknowledge to maintain the importance of waiting times, there should be special rules for how to deal with change of circumstances - if the applicant's points put them

in a lower band they should keep the application date they had in the higher band. If their points put them in a higher band the date used to decide allocation should be the date that their circumstances changed. The Department also state that need should still be measured objectively, but applicants who have waited a long time should be allocated homes before newer applicants with a broadly similar level of need.

Under the new system when a property becomes available it should go to the applicant who has waited the longest in the highest need band. To maintain the importance of waiting times, there should be special rules for how to deal with change of circumstances. If the applicant's points put them in a lower band they should keep the application date they had in the higher band. If their points put them in a higher band the date used to decide allocation should be the date that their circumstances changed. Need should still be measured objectively, but applicants who have waited a long time should be allocated homes before newer applicants with a broadly similar level of need.

Our Response

While Housing Rights believe that time spent on the waiting list is not adequately accounted for by the current HSS, we have reservations with regards the introduction of proposal 10 and remain unconvinced that the current proposal will achieve the objective of the HSS, which is to house those in greatest housing need.

Housing Rights suggest that the proposal as it is current framed, could disproportionately attribute too much weight to “time spent on the list” and could consequently impact on the objective of the HSS. Housing Rights believe that in order to achieve a fair objective assessment of housing need, an assessment should indeed give recognition of time in need, but in only a proportionate way, ensuring that those in the greatest housing need still receive priority.

Housing Rights reservation regarding this proposal is rooted in how the Department has determined the band boundaries. For example, it is our experience that there is a great disparity between an applicant on waiting list with 130 points and an applicant with 210; the level of housing need has been determined as much greater for 210. It would appear at odds with a system based on giving priority to those in greatest housing need, that if the applicant with 130 points, who had been on the list longer than the applicant with 210 points (they both had the same areas of choice and accommodation requirements), would then get the available property. **Housing Rights worry this proposal, with these boundaries, could possibly undermine need, jeopardising the very mandate of the HSS.**

Housing Rights would ask the Department to provide their evidence of analysis for evaluating the band boundaries in this way and why they thought this would ensure that housing need is addressed adequately. Housing rights suggest that perhaps the proposal should be to award more points are awarded for time in housing need or to create different band boundaries i.e. more bands and they should continue after 130, right up to over 200.

11. HSS should always align number of bedrooms a household is assessed to need with the size criteria for eligible housing benefit customers (or the Housing Cost Element of Universal Credit)

Housing Rights agree, in principle that the HSS should always align with the number of bedrooms a household is assessed to need with the size criteria for eligible housing benefit customers or the housing cost element of universal credit.

KEY POINTS

- There is a slight difference in how bedroom requirements are calculated for housing benefit and housing cost element of universal credit. As such there will, at times, be a difference in what is the required bedrooms for someone in receipt of housing benefit and housing cost element of universal credit.
- Recommend that due to the fluid nature of social security policy, the Department may wish to change “always” to “generally”, this is to ensure that housing policy is not necessarily dictated by social security policy.

Current position

At present how HSS and housing benefit regulations determine the number of bedrooms a household need, do not reconcile.

Proposal

It is proposed that the NIHE should always align the number of bedrooms the HSS say a household needs with the housing benefit regulations or the housing cost element of UC. The Department state that this change would ensure, so far as reasonably practical, that the new allocations make best use of housing stock.

Our Response

Housing Rights welcome the theory behind the proposal to align the bedroom requirements and the overcrowding rules for the HSS with those of housing benefit or the housing cost element of UC. as this should ensure a more consistent approach, avoid confusion for applicants and enable good housing management.

However, **Housing Rights wish to draw attention to the fact that there is a slight difference in how bedroom requirements are calculated for housing benefit and housing cost element of UC. As such there will, at times, be a difference in what is the required bedrooms for someone in receipt of housing benefit and housing cost element of UC.** As such, Housing Rights recommend that the Department consider how this proposal will be realised in a fair and equitable manner. (See below ***NB**)

Housing Rights suggest that HSS guidance manual is amended to account for this change and that a review is carried out to consider “flexibility in allocations” and that further safeguards that could be put in place.

Housing Rights would also recommend that due to the fluid nature of social security policy, the Department may wish to change the word “**always**” to “**generally**”, this is to ensure that housing policy is not necessarily dictated by social security policy.

***NB**

The relevant difference is under universal credit- it is that it’s “every non-dependant who is not a child” as opposed to every couple and every person who is not a child.

HB Regs. Schedule 2, Part IV. 10. Size criteria

10. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)—

(za) a member of a couple who cannot share a bedroom;

(zb) a member of a couple who can share a bedroom;

(a) a couple;

(b) a person who is not a child;

(ba) a child who cannot share a bedroom;

(c) 2 children of the same sex;

(d) 2 children who are less than 10 years old;

(e) a child

but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom or a member of a couple who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child or the member of the couple were able to share a bedroom.

UC Regs. Schedule 4, Part 3. 9. Number of bedrooms to which a renter is entitled

9.—(1) A renter is entitled to one bedroom for each of the following categories of persons in their extended benefit unit—

(a) the renter (or joint renters);

(b) a qualifying young person for whom the renter or either joint renter is responsible;

(c) a non-dependant who is not a child;

(d) two children who are under 10 years old;

(e) two children of the same sex;

(f) any other child.

E.g. A tenant living with a non-dependant son/daughter and the non-dependant’s partner will be entitled to 2 bedrooms under the Housing Benefit size criteria, but entitled to 3 bedrooms under the UC size criteria.

12. For difficult to let properties: social landlords should be able to make multiple offers to as many applicants as they think necessary
13. For difficult to let properties: social landlords should be able to use choice-based letting
14. For difficult to let properties: social landlords should be able to go direct to multiple offers if they have evidence that a property will be difficult to let

Housing Rights welcome proposals 12, 13 and 14 which seek to minimise the time that social housing stock is empty by facilitating the allocation of all types of properties, including those that are “difficult to let”, however adequate safeguards must be put in place to ensure fairness, suitability and sustainability of the tenancy.

KEY POINTS

- While these proposals are welcomed we recommend that it is essential that adequate and tailored advice is given to applicants when making a decision regarding accepting a property which is “difficult to let”.
- Any online service should also be accessible to all, or alternative measures for access put in place. Housing Rights recommend that the Department may wish to utilise other advice agencies in ensuring individuals have access to “choice-based lettings” – i.e. computer hubs or advisers could be made available to assist individuals. This would help ensure comprehensive, independent, tenure – neutral housing advice.

Current position

At present, if a property is “difficult to let”, the landlord can decide to let it by multiple offers. The HSS currently allows the landlord to ask up to a maximum of 10 applicants. A property can only be let by multiple offer if it has failed to be let by direct letting over a number of weeks.

NIHE and a number of Housing Associations have run a choice-based letting pilot in some areas of NI, as an alternative way to let “difficult to let” properties.

Proposal

The Department propose, with regards to multiple offers, that the number of applicants contacted should be the number the social landlord think most likely to secure an allocation, beginning with the applicants who have waited the longest in the highest priority band. They should be able to go straight to utilising multiple offers if they have evidence that previous similar properties have been difficult to let.

In addition, the Department propose that choice-based lettings should be an alternative to multiple offers and should be used in similar circumstances.

Our response

Housing Rights share the Department's hope that these proposals will ensure that difficult-to-let properties are let more quickly and may increase the likelihood and speed of allocation for applicants in lower housing need. Housing Rights reiterate the Department's stipulation that whichever method is used, the property must ultimately go to the applicant in the highest need who is interested in that property.

While Housing Rights welcomes these proposals we recommend that it is essential that adequate and tailored advice is given to applicants when making a decision regarding accepting a property which is "difficult to let". For example, explaining why the property is difficult to let and assessing whether or not it is suitable and sustainable for the applicant.

In addition, **Housing Rights would recommend that the Department ask social landlords to provide an explanation for what characteristics make a property "difficult to let"; clear criterion should be set to determine "difficult to let".**

Specifically in relation to Proposal 13 - "choice-based lettings", Housing Rights recommend that the Department should be asking NIHE if an evaluation has been completed of the choice-based lettings pilot to measure the outcome of the level of **tenancy sustainment**. In addition, Housing Rights suggest that it is essential that all applicants have equal access to viewing choice-based lettings. It is Housing Rights understanding that while bids can be made online or by telephone, choice-based lettings are managed online; it is Housing Rights experience that certain applicants face barriers to accessing online systems e.g. language barriers, literacy barriers and difficulties in accessing an online system due to location or accessing a computer. **Housing Rights recommend that the Department may use to utilise other advice agencies in ensuring individuals have access to "choice-based lettings" – i.e. computer hubs or advisers could be made available to assist individuals. This would help ensure comprehensive, independent, tenure – neutral housing advice. Equality in access is essential to safeguard the principles at the heart of the HSS.**

15. An applicant may receive 2 reasonable offers of accommodation

Housing Rights agree with the reduction of reasonable offers to two, however important safeguards must be put in place to retain the objective of the HSS.

KEY POINTS

- In NI, England, Scotland and Wales the legislation stipulates that accommodation offered must be “suitable”, however while “suitability” is elaborated on in other jurisdictions, it is not in NI. Instead, what is actually considered by decision makers in NI is if an offer is “reasonable”. Arguably what is a “reasonable” offer measures what the NIHE need to demonstrate in order to satisfy their duty, whereas what is “suitable” focuses on the needs of the individual and their household. Housing Rights recommend NI aligning with other jurisdictions in this matter.
- Only NIHE have the power to consider a review of suitability of accommodation offered to FDAs under Housing (NI) Order 1988, even if the offer has come from a RHA.

Current position

At present an applicant can receive 3 reasonable offers. If they refuse the third reasonable offer, they will not be offered any further properties for one year from the date of the last refusal. If an applicant refuses all 3 reasonable offers and has been awarded points under Insecurity of Tenure (i.e. Intimidation, Full Duty Applicant and Other Homeless) they will also lose these points and will not be entitled to receive any further offers for one year after the date of refusal. Where an applicant has refused 3 reasonable offers, and subsequently becomes a Full Duty Applicant within the 1 year deferral period through the award of Intimidation and/or Homelessness points, they will be entitled to one further reasonable offer. If the applicant refuses this fourth reasonable offer then the NIHE’s duty under the Housing (NI) Order 1988 will be considered to have been discharged.

Proposal

The Department proposes that this should be reduced to 2 reasonable offers of application.

Our response

Housing Rights agree with the introduction of this proposal, however we recommend that the Department reflect on some of the key issues below when considering implementation.

Firstly, the Review states that when research was conducted by NIHE into how many applicants refuse offers, and why. The research found that, in 2006/7, 16,300 offers were made to allocate 4,700 properties, i.e. for every offer of housing accepted, two were refused. However, it was also reported that a recent survey showed that the top

reason for refusing a property was that it was not in an applicant's area of choice. It must be stated at this point, that this is a valid reason for refusal; an applicant should only be offered accommodation within their area of choice. Therefore, this is not a reflection of an unreasonable applicant, but rather an administrative error. Indeed, Housing Rights have experience of applicants receiving offers that are outside of their area of choice, and also properties that are unsuitable e.g. offers of 2 storey properties, where ground floor is required.

Indeed, this issue, highlights a fundamental difference between NI and other jurisdictions regarding offers, which needs to be highlighted. In NI, England, Scotland and Wales, the legislation stipulates that accommodation offered must be "suitable", however while "suitability" is elaborated on in other jurisdictions, it is not elaborated on in NI. Instead, what is actually considered by decision makers in NI is if an offer is "reasonable". **"Reasonable" is defined in the HSS Guidance Manual. This is an important distinction to draw as arguably what is a "reasonable" offer measures what the NIHE need to demonstrate in order to satisfy their duty, whereas what is "suitable" focuses on the needs of the individual and their household. Arguably, affording legislative stipulation of "suitability" provides more protection to individuals wishing to challenge the suitability of their accommodation. Housing Rights recommend NI aligning with Scotland and England in this matter.**

Furthermore, Housing Rights recommend that in order to ensure that applicants make an informed decision regarding offers - all information regarding the property must be available, adequate time must be given to view the property and specialised housing advice must be available.

Housing Rights reiterate the importance of the Department's declaration that safeguards would still be in place for applicants to ask for a review of an offer if they feel it to have been unreasonable. However, Housing Rights wish to draw attention to the fact that at present **only NIHE have the power to consider a review of suitability of accommodation offered to FDAs under *Housing (NI) Order 1988*¹², even if the offer has come from a RHA.** In light of this, Housing Rights recommend NIHE consult with the relevant RHA when considering the suitability of their offers via review.

16. Social Landlords may withdraw an offer of accommodation in specified circumstances

Housing Rights agree with this proposal, however important safeguards must be put in place.

KEY POINTS

- **Welcome the introduction of such a rule, as it specifies the exhaustive circumstances in which an offer can be withdrawn.**
- **Caution with regards the first listed ground for withdrawal “where the conditions of the letter of offer are not met / are breached”, this should not include any element of consideration of if the individual can meet the rent in advance requirement.**
- **Recommend that the Department ensure that appropriate measures are taken to ensure that alternative methods of ID are considered or appropriate mechanisms are put in place to assist vulnerable clients, so ID verification does not act as a barrier to accessing housing.**

Current position

At present there is no explicit provisions in the HSS that sets out the circumstances in which a social landlord may withdraw an offer of accommodation; no scope is provided. Currently in practice offers are withdrawn in circumstances such as: an application provides information which is false.

Proposal

A new rule should be introduced to allow offers to be withdrawn in the following limited circumstances:

- Where the conditions of the letter of offer are not met / are breached.
- Where it is subsequently established that the offer has been made on the basis of a material error by the landlord.
- Where the offer is no longer considered reasonable under the rules of the HSS on the basis of information becoming available any time before commencement of tenancy.
- Where the applicant’s immigration status or eligibility for an allocation has changed and they are no longer eligible at the point of allocation.
- Where it is subsequently established that the applicant is no longer able to take up occupancy of the property within a reasonable period of time. (e.g. a sentenced prisoner)

Our response

Housing Rights welcome the introduction of such a rule, as it specifies the exhaustive circumstances in which an offer can be withdrawn.

Housing Rights add that HSS Guidance Manual must also be amended accordingly to provide robust guidance to decision makers.

Housing Rights further wishes to highlight a practice issue that we have become aware of via our work - social tenants being asked for “rent in advance” - this is happening to tenants, even in receipt of benefits. **Therefore we caution that the first listed ground for withdrawal “where the conditions of the letter of offer are not met / are breached’, should not include any element of consideration of if the individual can meet the rent in advance requirement. This rent in advance requirement issue is currently being considered via Housing Rights strategic casework and policy team.**

Finally, Housing Rights wish to draw attention to certain barriers individuals may face with ID requirements. Indeed, this was something that was raised by representatives from the NI Migrant Forum. Housing Rights have also become acutely aware with issues surrounding verification of ID during our work on universal credit, and as such **recommend that the Department ensure that appropriate measures are taken to ensure that alternative methods of ID are considered or appropriate mechanisms are put in place to assist vulnerable clients, so ID verification does not act as a barrier to accessing housing.**

17. Social Landlords may withhold consent for a policy succession or assignment to a general needs social home in limited circumstances where there is evidence the applicant needs it
18. Social Landlords may withhold consent for a policy succession or assignment of adapted accommodation or purpose built wheelchair standard accommodation where there is evidence an applicant needs it

Housing Rights in principle agree with the introduction of these proposals; however appropriate safeguards must first be put in place.

KEY POINTS

- While we support the view that social housing stock should be used in the most appropriate manner to ensure that applicants and tenants are housed in a suitable and sustainable tenancy, we believe that this must be balanced with other considerations of the existing tenants.
- Suggest that if these proposals are implemented it is essential that strict guidelines are put in place to determine how discretion is to be applied. The HSS Guidance Manual should be amended accordingly.
- Avenues of challenge must be available to individuals who wish to challenge a decision under this proposal. We recommended that there must be an appropriate arbitrator of decisions of this nature.
- Housing Rights would ask that the Department also outline how they have considered the Article 8 ECHR implications of both these proposals.

Current Position

Rules 74, 75 and 77 of the HSS provide for specific circumstances where a person who does not have a statutory entitlement to a succession or assignment may be awarded a tenancy.

Proposal

Proposal 17 seeks to amend amended Rules 74, 75 and 77 of the HSS to clarify that landlords may decide to withhold consent in circumstances where the new tenancy is likely to, or would, result in under occupation or overcrowding, and where there is evidence that an applicant on the waiting list is in need of the property.

Proposal 18 proposes to grant landlord discretion to withhold consent to succession/assignment where a property has been adapted or built to wheelchair standard, no one in the prospective successor or assignee household requires the adaptation, and there is evidence of high housing need in that area for a property with such features.

Our Response

While Housing Rights in principle agree with the introduction of this proposal, we have reservations regarding how it can be fairly applied. While we support

the view that social housing stock should be used in the most appropriate manner to ensure that applicants and tenants are housed in a suitable and sustainable tenancy we believe that this must be balanced with other considerations of the existing tenants.

It is Housing Rights understanding that housing stock in NI is general purpose and there are a large amount of households either under-occupying or living in overcrowded accommodation. As such, **we are concerned with the volume of individuals who could be negatively impacted by proposal 17.**

Housing Rights suggest that if these proposals are implemented it is essential that strict guidelines are put in place to determine how discretion is to be applied and to ensure fair application. The HSS Guidance Manual should be amended accordingly.

In addition, avenues of challenge must be available to individuals who wish to challenge a decision under this proposal. Housing Rights recommended that there must be an appropriate arbitrator of decisions of this nature.

Housing Rights support the Department's statement that where a tenant is awarded a policy succession, or assignment to a home with an extra bedroom(s): tenants should be advised that they will need to consider how they would meet any potential shortfall in rent if their Housing Benefit provides for fewer bedrooms than the number in their proposed home. Housing Rights suggest that this advice is specialised housing advice and tailored for the individual needs of the individual.

In addition, Housing would ask that appropriate safeguards are put in place to deal with a tenant who has been denied succession or assignment under these proposals e.g. longer notice periods or a priority assessment under HSS.

Housing Rights would ask that the Department also outline how they have considered the Article 8 ECHR implications of both these proposals. While, Article 8 is a "qualified" human right, any interference with this right must be proportionate.

19. Updating the HSS to bring it in line with developments in Public Protection Arrangements NI (PPANI)

Housing Rights do not agree with the introduction of this proposal at this time, as we believe that it should part of a separate Review.

KEY POINTS

- **Social landlords need to strike a balance between the needs of the individual and wider public protection issues. Housing Rights believe that the current arrangements, if delivered appropriately, are robust, proven, and offer proportionate protections.**
- **Recommend that it may be more appropriate to consider this proposal as a stand-alone issue, with detailed consultation occurring with all the relevant parties.**
- **Recommend that full contemplation is given to Data Protection principles when considering this proposal.**

Current position

Currently where an applicant has been convicted or charged with a sexual offence against a child which either has or could have received a custodial sentence, restrictions may be made by the social landlord when considering suitability of an allocation. The social landlord may also take into account feedback from other statutory agencies regarding assessed level of risk.

Proposal

The Department propose that the HSS Rules should be updated to reflect more recent legislative changes and widened to enable social landlords to make restrictions based on the suitability of an allocation in relation to applicants (or a member of their household) that have been convicted or charged with:

- A sexual offence against a child;
- A sexual offence against an adult and are subject to PPANI;
- A violent offence against a child or vulnerable adult and are subject to PPANI;
- A violent offence in domestic or family circumstances and are subject to PPANI; or
- A hate crime and are subject to PPANI.

It is also proposed that additional questions are asked at application stage to help identify which applicants (or members of their household) may have been convicted of, or charged with, any of the offences listed above. The social landlord will have regard to whether the offender is risk assessed and managed under PPANI when making restrictions.

Our Response

Housing Rights understand that social landlords in NI have an important role to play in the management of the risk posed by offenders, and ensuring that appropriate offers of accommodation are made. **Social landlords need to strike a balance the needs of the individual and wider public protection issues. However, Housing Rights do not agree with the introduction of this proposal as we believe that the current arrangements, if delivered appropriately, are robust, proven, and offer proportionate protections.** Housing Rights have concerns that this proposal requires housing providers to make decisions that are more appropriately determined by the Criminal Justice System.

Housing Rights would also welcome clarity from the Department with regards what powers social landlords will be afforded, and what mechanisms, checks and requirements will be in place to ensure equity and fairness, if this proposal is implemented. **Housing Rights recommend that it may be more appropriate to consider this proposal as a stand-alone issue, with detailed consultation occurring with all the relevant parties. It is essential that this sensitive and important issue is considered in detail.**

Finally, Housing Rights recommends that full contemplation is given to Data Protection principles in considering this proposal.

20. Specialised properties should be allocated by a separate process outside the HSS

Housing Rights agree with the intention behind this proposal, however we believe that before any such system is implemented a separate review regarding this proposal should be undertaken.

KEY POINTS

- **Support the Department’s proposal that a time-bound review should be led by social landlords, to determine how specialised properties should be allocated, however we recommend that this cannot be done solely by social landlords. Any review must involve the Trust, other supporting organisations and must include the voice of the service users; this will ensure a holistic approach.**
- **Suggest that the review should be undertaken separately, outside the scope of this consultation, in order to ensure deliberations are specific, specialised and result in a system that adequately houses vulnerable individuals within safe, secure and sustainable accommodation.**
- **Housing Rights advise that it is essential that adequate staffing is available to effectively deliver the system.**

Current position

Most social homes are considered “general needs” properties and are allocated within the HSS. Sheltered housing is currently allocated within the HSS, however other specialised properties, including “housing with care” are allocated under a separate, administrative, non –pointed list. Complex needs assessments determine the accommodation most appropriate for an applicants’ needs.

Proposal

The Department propose to ‘ring - fence’ certain specialised homes and allocate these homes outside the HSS:

- ‘Housing with care’ and residential schemes
- Schemes for those people diagnosed with dementia
- Sheltered housing
- Properties designed or adapted to meet the wheelchair accessible design standard

Note, ‘Housing with care’, residential schemes and schemes for those people diagnosed with dementia are already allocated outside the normal HSS. It is proposed that a time – bound review should be led by social landlords to determine how specialised properties should be allocated.

Our Response

Housing Rights support the Department's aim of having an improved system for the most vulnerable applicants and better use of public resources. Housing Rights have experienced case examples, where applicants who require specialised properties have been waiting on the housing waiting list for a significant amount of time; remaining in accommodation which is highly unsuitable, adding additional pressures to a vulnerable household.

While Housing Rights support the Department's proposal that a time-bound review should be led by social landlords, to determine how specialised properties should be allocated, **we recommend that this cannot be done solely by social landlords. Any review must involve the Trust, other supporting organisations and must include the voice of the service users; this will ensure a holistic approach. Furthermore, Housing Rights suggest that the review should be undertaken separately, outside the scope of this consultation, in order to ensure deliberations are specific, specialised and result in a system that adequately houses vulnerable individuals within safe, secure and sustainable accommodation. Housing Rights advise that it is essential that adequate staffing is available to effectively deliver the system.**

Housing Rights have highlighted the issue of complex needs, inappropriate allocations and unreasonable to remain at the end of this Response, and wish to seek clarity from the Department with regards the current complex needs assessment for general needs accommodation. In NI, only a handful of complex needs officers are available to carry out assessments, causing delays. Housing Rights would welcome clarity on whether or not the assessment for general needs is changing. In addition, we seek clarity on whether or not individuals will be able to remain on list of general needs and specialised properties.

Finally, with regards this proposal, Housing Rights also wish to ask the Department whether or not an evaluation was completed to assess how often **Rule 48** of the HSS – “departure from the general rule of allocation where such a departure is highly desirable in order to match the special and specific needs of an applicant with the facilities and amenities accessible in a particular dwelling or location” - was employed and under what circumstances and whether or not in light of this proposal is it the Department's intention to amend this statutory rule.

4. FURTHER ISSUES TO BE CONSIDERED

In addition to identifying that any effective Review of the HSS cannot be considered in a vacuum, free from certain environmental contextual factors, Housing Rights have identified a number of additional key issues that have not be considered within the scope of the Review. Housing Rights have identified these issues as we believe they are essential considerations when deliberating a Review on the HSS.

- **HSS Guidance Manual**

The HSS Guidance Manual was developed in order to provide interpretative guidance on the application and implementation of the 84 statutory rules. This comprehensive 600 page guidance not only references operational procedures to be followed by social landlords, but also determines important principles such as standards/burden of proof for the award of points under the HSS. Indeed, the Department on their official website urge that all social landlords are to be familiar with this document. While reference is made to Departmental guidance with regards to “eligibility”, there is no reference to the HSS Guidance Manual; no consideration is given to this guidance or indeed how it will be amended in light of these changes. Housing Rights recommend that given that a number of the Proposals would require changes to primary legislation, statutory rules and/or significant policy changes; that this guidance is comprehensively amended. Housing Rights have highlighted the following statutory rules/areas which require updated guidance, however please note this is not an exhaustive list.

- **Rule 9: Eligibility.**
- **Rules 19 – 22, 45: Complex Needs**
- **Rule 23 and 61: Intimidation**
- **Rules 33 – 40: Health/Social Well Being Assessment, Functionality, Unsuitable Accommodation, Support/Care Needs and Assessment.**
- **Rules 52 – 55: Choice of Areas, Landlords and General Housing Area**
- **Rules 56 – 60: Offers and Refusal of Offers**
- **Rules 62 – 67: Applicants Convicted or Charged with the Sexual Abuse of Children**
- **Rules 69 & 70: Difficult to let properties**
- **Rules 73 – 77: Succession/Assignment of a tenancy**

Finally, Housing Rights would also like to draw attention to **Rule 70 regarding transfers**: given the importance of Management Transfer Status (MTS) in the safeguarding of WSP, Housing Rights recommend that the criteria for the award of MTS is assessed and reviewed.

- **Provision for disrepair**

At present, both the threshold set and the weight given to disrepair in the current HSS does not appear to be appropriate; There is limited opportunity the attract points in the current scheme. The Department will be aware of the recent

consultation on the Review of the Housing Fitness Standard and the issues this Review considered. Housing Rights recommend that consideration should be given to disrepair and fitness standards in any Review of the HSS.

- **Complex needs and unsuitable accommodation**

It is Housing Rights experience that there are a growing number of individuals within NI that are living in accommodation that is unsuitable for their needs. The aforementioned NI Housing Statistics Report identifies that 22% of the individuals found to be FDA this year were in fact living in accommodation which was unreasonable for them to continue to occupy. While no further statistical breakdown has been provided, it is Housing Rights experience that a number of vulnerable adults (by virtue of mental or physical health problems, learning difficulties or age etc.) are placed in accommodation that they cannot sustain. This accommodation may have become unsuitable or indeed, Housing Rights have seen a number of instances where the allocation was unsuitable and thus the tenancy is unsustainable from the outset. Housing Rights are concerned that the issue of complex needs and accommodation that is no longer suitable for individuals is not given much more of a focus throughout the Review.

- **Transitional protection**

The Review does not provide any information on how the proposals would be implemented i.e. what operational safeguards are the Department going to put in place to ensure fairness and equality for all applicants? E.g. will all applicants have their points total recalculated on the same day? Will offers of accommodation be frozen to allow calibration? Housing Rights contend that without consideration of transitional protection, the principles at the cornerstone of the HSS - fairness, transparency and equitable treatment - could be jeopardised.

5. Appendices

3.5 Social Rented Sector Waiting Lists and Allocations 2002-03 to 2016-17 ¹

Year	Common Waiting List at 31 March		Allocations	
	Total Applicants	Number of Applicants in Housing Stress	Number of Allocations to Applicants	Number of Allocations to NIHE/Housing Association Transfers
2002-03	26,248	13,042	8,766	3,384
2003-04	27,515	14,152	8,462	3,027
2004-05	29,608	15,527	7,603	2,607
2005-06	31,908	17,223	7,978	2,595
2006-07	36,182	19,703	7,772	2,416
2007-08	39,688	21,364	7,289	2,169
2008-09	38,923	20,481	8,132	2,440
2009-10	38,120	19,716	9,192	2,811
2010-11	39,891	20,967	8,074	2,586
2011-12	34,533	20,211	7,691	2,779
2012-13	41,356	22,414	8,144	3,064
2013-14	39,967	21,586	8,809	2,984
2014-15	39,338	22,097	8,129	2,763
2015-16	37,586	22,645	7,805	2,897
2016-17	37,611	23,694	7,672	2,768

1. See Appendix 3: Data Sources - Social Renting Demand.

2. 'Number of Allocations to Applicants' refers to the number of properties allocated by the Housing Executive and housing associations to applicants on the Common Waiting List who were not already social sector tenants.

3. 'Number of Allocations to NIHE/Housing Association transfers' refers to the number of properties allocated by the Housing Executive and housing associations to tenants on the Common Waiting List who had applied for a transfer from an existing tenancy.

4. 'Housing Stress' refers to those applicants who have 30 or more points under the Common Selection Scheme.

5. The waiting list figures cover new applicants only i.e. those with no existing NIHE/HA tenancy.

6. Allocations figures are based on offers accepted 1 April - 31 March.

7. Waiting list figures for 2011-12 (left hand columns in the table) were extracted on 1st May 2012 due to the implementation of the Common Selection Scheme.