

CIH written evidence to the DCLG Improving Access to Social Housing for Victims of Domestic Abuse consultation



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About CIH

Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

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Summary

CIH welcomes the opportunity to respond to the DCLG consultation on improving access to social housing for victims of domestic abuse. Supporting access to secure, decent and affordable housing will play a crucial role in the government delivering on its manifesto pledge to take action to prevent domestic violence and support victims to leave their partners.

Currently several different statutory guidance documents set out Government's expectations on local authorities' responses to people seeking housing assistance due to domestic abuse. CIH supports the principle of DCLG's proposal to consolidate these expectations by issuing standalone statutory guidance to local authorities. However, we believe Government can enshrine the following aspects of the proposed guidance in law:

- 1) The exemption of victims of domestic abuse from residency requirements.
- 2) The automatic deeming of those living in crisis accommodation, such as refuges, as statutorily homeless.

In this written submission, we provide answers to the following consultation questions:

- **Question 1:** Do you agree with the proposal to use statutory guidance to recommend the exemption of victims of domestic abuse from residency requirements, when they have escaped violence from another area and are currently living in refuges?

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- **Question 3:** Views are sought on the advantages and disadvantages of the proposal to apply the ‘medical and welfare’ and the homelessness reasonable preference categories to victims of domestic abuse who are living in refuges.
- **Question 5:** Do you agree that the guidance should encourage local authorities to use their existing powers to support their tenants who are the victims of abuse to stay in their homes if they wish to do so?

Question 1. Qualification for social housing

While CIH agrees in principle with the proposal to use statutory guidance to recommend the exemption of victims of domestic abuse housed in refuges and other forms of safe temporary accommodation from any residency requirement, we think Government should go further. CIH recommends that Regulations be made by the Secretary of State pursuant to section 160ZA(8) of the Housing Act 1996 to make this exemption a legal requirement.

We understand that the proposed guidance would assist access to social housing by “making it clear that local authorities are expected to disapply any residency tests” for victims who have fled to another district. However, use of blanket residency tests in allocation schemes, without discretion to disapply such criteria in exceptional circumstances (and using them when appropriate) has already been found to be unlawful. They unlawfully discriminate against women who are victims of domestic violence (contrary to the Equality Act 2010) and failure to include and apply an exceptionality clause unlawfully precludes homeless applicants who are a class of people entitled to reasonable preference under section 166A(3) of the Housing Act 1996.

In the case of [*HA, R \(On the Application Of\) v London Borough of Ealing*](#) [2015] EWHC 2375 (Admin), the full homeless duty under Part VII Housing Act 1996 was owed but the applicant - a mother and her five children fleeing domestic violence - was disqualified from the housing register because she failed to meet the residency requirements. There was an exceptional circumstances clause in the local authority’s allocation scheme but this was not used. The High Court found that Ealing fettered its discretion by not applying the exceptionality provision, or even considering applying it in this case.

The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012, pursuant to section 160ZA(8) of the Housing Act 1996, exempted categories of members and former members of the armed forces, their bereaved spouses and partners from residency requirements altogether. Local authorities comply with these legal requirements with the use of an exception to disqualification in their allocation policies. We believe domestic abuse victims should be awarded the same legal protection and any guidance issued would help local authorities exercise their functions in line with the requirement.

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Question 3. Priority for social housing

We support DCLG's proposal to make clear the circumstances in which it would expect local authorities to apply the 'medical and welfare' and the homelessness reasonable preference categories to victims of domestic abuse who are living in refuges (or in other safe temporary accommodation). However, we believe that Government should go further. CIH recommends that Regulations be made by the Secretary of State pursuant to section 177(3)(a) of the Housing Act 1996 to specify that it is not reasonable for someone to continue to occupy refuge accommodation. As a result, those living in refuges would be deemed statutorily homeless within the meaning of section 175 of the Housing Act 1996.

The consultation guidance says Government believes that those who have fled domestic abuse and are currently living in refuges should usually be classified as homeless, as it would not be reasonable to expect them to continue to occupy that accommodation on a long term basis.

The current [homelessness code of guidance](#) (at 11.12 and 11.121) states that women's refuges should generally be considered as emergency accommodation only and not be used to perform accommodation duties under Part VII Housing Act 1996. The [draft homelessness code of guidance](#) (at 21.35) ahead of the Homeless Reduction Act's implementation this April, will remind authorities that "refuges provide key short term, intensive support for those who flee from abuse" and that they should work with providers to move people on to alternative temporary accommodation in the absence of a more settled option.

CIH believes that local authorities should always aim for a settled option as the next moved from refuge accommodation to avoid additional disruptive and distressing moves for families fleeing abusive situations. However, due to a lack of affordable rented supply in many areas, this is not always possible.

CIH strongly believes that increasing overall supply and availability of genuinely affordable social rented housing will help limit the need for further moves into temporary accommodation; a prospect which can often deter victims from fleeing their situations and seeking safety and support in a refuge.

We would also ask that Government critically reviews how welfare policies like the benefit cap may be undermining efforts to assist those living in refuges and other forms of safe temporary accommodation to move into settled housing in the social rented sector.

However, case law precedent has already clarified that crisis accommodation (such as refuges) should not fall within the definition of 'accommodation' for the purposes of deciding if accommodation is available when determining homelessness (s175 Housing Act 1996). This position was made clear in [Birmingham v Ali and Moran v Manchester \[2009\] UKHL 36](#) where Baroness Hale (citing Women's Aid Federation of

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England and Wales at paragraph 43) highlights that “a refuge is not simply crisis intervention for a few nights. It is a safe haven in which to find peace and support. But it is not a place to live. There are rules which are necessary for the protection of residents but make it impossible to live a normal family life. It is a place to gather one’s strength and one’s thoughts and to decide what to do with one’s life”.

Moran v Manchester confirmed that short term crisis-type accommodation, such as women’s refuges, direct access hostels and night shelters, should not be considered accommodation that is reasonable to continue to occupy in the medium and long term. The judgment held that since refuges were not reasonable for women to continue to occupy indefinitely, they did not need to decide whether refuges were accommodation within the meaning of section 175 Housing Act 1996.

In our view, if Government legislated for treating residents of refuges as statutorily homeless, in accordance with existing case law, relevant reasonable preference should always be awarded. However, in cases where reasonable preference under allocation policies’ homelessness categories does not amount to “appropriate” priority for social housing, the ‘medical and welfare’ category of reasonable preference should be awarded.

Guidance should expand on the use of medical and welfare priority to either supplement (where cumulative need can lead to higher priority in a scheme) or override the homelessness priority.

Question 5. Supporting victims in their existing homes

CIH agrees that guidance should encourage local authorities to use their existing powers to support tenants who are the victims of abuse to stay in their homes if they wish to do so.

We note the consultation document refers to the powers available to seek to evict perpetrators under ground 2A of Schedule 2 to the Housing Act 1985. CIH believes DCLG should also encourage local authorities to consider making use of ground 1 of the same Schedule, which enables a possession order to be granted where “an obligation of the tenancy has been broken or not performed”. If local authorities include clauses in their tenancy agreements prohibiting the use of, or threatening the use of, domestic violence (or indeed any other violence) to anyone legally entitled to occupy the property, they could seek to evict perpetrators under ground 1 in cases of domestic abuse.

CIH also encourages DCLG to include information about the use of sanctuary schemes in any guidance issued. Anecdotally, we understand that providers of domestic abuse services are reporting that, increasingly, women are unwilling to go into refuges as they see the initial move and the necessary subsequent move as stressful and fear also that they will have to stay a long time. Sanctuary schemes can provide the type

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of support needed to make remaining in the home a viable and preferred option in circumstances where victims require additional security to feel able to do so.

Additional points

In addition to our answers to the specific questions posed in the consultation, we would also ask DCLG to consider our views on the following associated issues: the position of victims of domestic abuse who are single and the proposals for the future funding of supported housing which includes refuge provision.

Victims of domestic abuse who are single

CIH welcomes Government's commitment to supporting victims of domestic abuse by improving access to secure, decent and affordable housing. But we believe there is currently insufficient protection in Part VII the Housing Act 1996 for victims of abuse who are single, namely the sections dealing with priority need (section 189 of the Housing Act 1996).

The Homelessness (Priority Need for Accommodation) (England) Order 2002, pursuant to section 189(2) extended the descriptions of people with a priority need for accommodation to include (among others) people who are "vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out". Someone who falls into this category does not have an automatic priority need for accommodation but instead local authorities are required to apply the vulnerability test to determine priority need. The vulnerability test has a notably high threshold and places single victims of domestic abuse at increased risk of further abuse and a significant risk of ending up rough sleeping.

Research has highlighted the particular link between domestic abuse and female homelessness in the UK, specifically those who have to resort to rough sleeping ([Moss, K. & Singh, P., 2015](#)). If women fleeing domestic abuse are not found to be in priority need, there is a significant risk that they will return to abusive situations or end up sleeping rough or making some other unsafe arrangement. Female rough sleepers often have underlying mental health problems and histories of complex trauma and [research by Crisis](#) has shown that they are more likely than male rough sleepers to be subject to intimidation or threat of violence.

By removing the vulnerability test from cases where single people are fleeing abuse, Government has the opportunity to ensure all victims of domestic abuse are provided with sufficient support to help them leave their abusive partners and limit the detrimental affects their abusive pasts can have on their futures.

Funding of supported housing proposals

CIH welcomes the lead from Government to ensure that victims/survivors of domestic abuse are prioritised for appropriate housing and relevant support. However, we are

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concerned that proposals for supported housing funding may undermine this. Short-term and crisis accommodation is largely funded through the help that residents receive with their housing costs via housing benefit and universal credit. Plans to replace this with a funding pot devolved to local authorities are raising some concerns. Women's Aid highlights how vital housing benefit is as a secure form of funding for refuges and that one in ten specialist refuges operating without any local authority funding at all.

Concerns include:

- How co-operation will work between counties and districts to sustain refuges, when the statutory responsibility for homelessness lies with districts.
- Whether there will be adequate funding in the pot when initially devolved to local authorities, and if/how that pot will be increased in the future to enable provision of new schemes where needed.
- Whether the ring-fence to the fund will/can be maintained in the long term to ensure that it is focused on sustaining existing refuges and developing new provision if needed.

A specific concern for refuge provision relates to co-operation across local authority boundaries. For example, it is important that local connection requirements are not applied to refuge funding as people are often placed outside their own local authority area, either for safety reasons or because of a lack of bed spaces locally.

The national statement of expectations has aimed to address many of these issues by requiring authorities to work collaboratively with lower tier and neighbouring authorities and other public bodies but, where this does not work well, we have real concerns about the consequences for people experiencing abuse.