

CIH written response to Homelessness Code of Guidance for Local Authorities consultation paper



Chartered
Institute of
Housing

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.

Further information is available at: www.cih.org

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Questions and our responses

Question 1. Responding on behalf of an organisation

Question 2. NA

Question 3. The interest of our organisation is:

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Question 4. Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located: CV4 (head office address)

Question 5. Do you agree that annexes should be removed from the guidance? If not, is there any specific information that you would suggest keeping in an annex and why?

Yes

Comment:

- Annexes that have been removed but were in 2006 code:
 - Annex one: Removal would not impact on ability of housing authorities to interpret the law in practice.
 - Annex 2: Other strategies and programmes should either be listed within 2.5 of the draft code or be returned as an annex. 2.5 refers to “other strategies and programmes” so this is important and can be very helpful for housing authorities when developing their strategies.
 - Annex 3: Other organisations that can help deliver strategy - this is helpful but not essential. If it is included, maybe it could be inserted within 2.17-2.18 of the draft code.
 - Annex 4: Objectives for homelessness strategy - this is sufficiently covered throughout chapter two in the draft.

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- Annex 5: Cooperation between registered social landlords and housing authorities - at 2.47 of the draft there is something here and sporadically scattered through the draft but it would be more helpful to include more detail on how councils can work together with housing associations. The level of detail in annex 5 is required (and updated). We would recommend that either this level of detail is included in chapter two sufficiently or that it remains as an annex in the draft code.
- Annex 6: Specific action to be taken by others - this should be included at 2.10 in the draft or somewhere else in chapter 2.
- Annex 7: Tackling common causes of homelessness - this type of information should inform the practical guidance we recommend for chapter 12 (the prevention duty).
- Annex 8-14: Eligibility - eligibility is a complex area of law. It is difficult to offer practical guidance to interpret a very prescriptive part of the process. The draft code provides sufficient guidance. The code advises housing authorities that they should ensure adequate training is given to make sure those making decisions on eligibility understand the complexities involved. This is sufficient alongside the information in chapter 7.
- Annex 15: Certificate of cessation of entitlement to occupy service families accommodation - not required.
- Annex 16: Definition of overcrowding - this should be included in chapter 17 (suitability) and referenced (with link to chapter 17) in the reasonable to continue to occupy sections of the draft code or be returned as an annex. The current draft covers overcrowding in 17.25-17.26 but in practice, officers conducting assessment will benefit from more guidance on how to assess overcrowding.

Question 6. Do you agree with the recommendations for withdrawal of existing supplementary guidance documents? Are there specific, essential elements of current guidance material that should in your view be retained and considered for inclusion in the revised guidance?

Comment: It makes sense to incorporate supplementary guidance into the main document.

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Question 7. Do you agree that the revised Homelessness Code of Guidance should incorporate the additional supplementary guidance documents? If not, what other method or format would you suggest and why?

Yes

Comment: It makes sense to incorporate supplementary guidance into the main document.

Question 8. Are there any other relevant case law updates that you think should be considered for inclusion in the revised guidance? If so, detail the case and which chapter of the Homelessness Code of Guidance the update should be included within.

Comment: [Panayiotou v London Borough of Waltham Forest \(2017\) EWCA Civ 1624](#) - update on vulnerability in priority need assessment. The test of significantly more vulnerable than ordinarily vulnerable is not a quantitative evaluation but more a qualitative one. About it not being about the *extent to which* they are more vulnerable than ordinarily vulnerable. A noticeable difference rather than how much of a difference.

Question 9. Do you have any comments on the drafting style and tone in the revised guidance, and are there some chapters that you find easier to understand than others?

Comment: A couple of things to highlight;

- Terminology - the new code should have this section, similar to Welsh code, which states that where “must” is used i.e. “housing authorities must”, this is where the law requires it. Where “should” is used, it’s not a legal requirement but it’s recommended and where “may” is used, this is to highlight it’s allowed or an option available.
- There should be an index like in the 2006 code to help with navigation. There are many topics covered in more than one area of the code and readers will need to know where all mentions are to see context.

Content of the Homelessness Code of Guidance

The following questions are specific questions on the content of the Homelessness Code of Guidance.

Question 10. To inform our public sector equality analysis further we are interested in your views on the likely impacts of the Homelessness Code of Guidance on groups with protected characteristics? Please let us have any

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examples, case studies, research or other types of evidence to support your views.

Comment: No answer

Question 11. Taking chapters 1-5 of the Homelessness Code of Guidance which describe strategic functions consider the following questions:

a) Having read these chapters are you clear what local authorities responsibilities are?

Yes

If no please provide further information: NA

b) Would you suggest any additions, deletions or changes to these chapters?

Yes

If yes please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required

Chapter	Page & paragraph number	Change/add /remove	Comment
Two		Add	At 2.41 (page 23) the code says private landlords should be engaged in developing the strategy. It is not clear that the code is saying that all relevant partners should be engaged in strategy development, especially including private registered providers, voluntary sector services, health, children/adult social care, criminal justice, health etc. What does engagement look like? The code should suggest that good engagement would be to coproduce the strategy rather than consult and then draw up the strategy followed by signing up to it by those involved. Coproduced strategies will help engage those who can contribute and to secure agreed actions to achieve objectives.
Two		Add	What about pathway protocols for people leaving prison, hospital discharge, care leaver protocols and for those fleeing DV?
Two	Page 21, 2.28	Add	b) early identification - examples of protocols or ways to identify earlier i.e. if someone makes an application

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			<p>for housing (part 6) or agreeing arrangements with local landlords to contact (with customer consent) if notice to quit is served or if there are issues with tenancy that would mean tenant would benefit from advice from housing authority.</p> <p>e) Partnership arrangements - in Welsh code there is a whole chapter on partnership working and in particular working with housing associations. The draft code would benefit from having a more extensive section on partnership working similar to the Welsh code. At 2.47 of the draft code there is a section on working with PRPs but the old code had annex 5 which went into more detail about cooperation between social landlords and housing authorities - missed opportunity to explore ways they can work together to prevent and relieve homelessness.</p>
Two	Page 22, 2.32	Add	More of a link required with housing strategies and local plans - or more emphasis in relation to reviewing accommodation needs and resources.
Two	Page 22, 2.32	Change	Supply should not just be focused on those at risk of homelessness or who are homeless. When reviewing existing supply housing authorities should look beyond risk to ensure no one reaches this point or becomes homeless. Again link to local plans and housing strategies and working with private landlords, developers and housing associations to ensure homes are in the right places, the right types of homes and at prices local people can afford.
Two	Page 22, 2.34a	Add	Include shared housing by social landlords too. It should not be exclusive to the private rented sector. Shared provision can form part of a more flexible offer to single people and can be more affordable, especially for those in work and on low incomes.
Two	Page 23-24, 2.41	Add	<ul style="list-style-type: none"> ○ More examples of how private landlords can contribute, including: <ul style="list-style-type: none"> ▪ DHPs

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			<ul style="list-style-type: none"> ▪ Bond scheme ▪ Rent guarantee schemes ▪ PSL arrangements for TA ▪ Social lettings agency - lettings and management on behalf of landlord ▪ Access schemes ▪ Tenancy deposit scheme ▪ Tenancy relations officer or other dedicated member(s) of staff to address landlord/tenant issues or disputes ▪ Training for landlords
Two	Page 24, 2.46	Change/add	Landlords should allow flexibility in policies to account for individual cases rather than applying a broad approach to disqualification from housing based on previously deemed unacceptable behaviour - the legislation allows disqualification but landlords should be assessing cases on their merits and considering availability of support if previous behaviour was linked to a support need.
Two	Page 24, 2.47	Add	This section would benefit from some examples, like pre-eviction protocols.
Two	Page 25, 2.48	Add	There may also be a case to add something about those who have no furniture and where furnished temporary accommodation can be a better option for final offer to end duties rather than placing into accommodation with limited resource to help purchase key items or where local welfare provision is limited and restricted. Where applicants have their own furniture and other items, providing unfurnished temp accommodation can allow them to store furniture in TA rather than entering the scope of protection of property duty or leading to applicants incurring storage costs.
Two	Page 25, 2.49	Add	Should also mention that B&B should not be provided for families with children beyond 6 weeks. Also should highlight importance of locally sourced TA where possible.
Two	Page 25, 2.52	Add	More examples needed here maybe -

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			<p>what else can councils do to bring empty homes back into use? Empty Dwelling Management Orders (EDMOs), how is council tax discount applied on empty homes? Recent budget announcement - to allow councils to impose an additional 100% council tax premium on empty homes (when it comes into force)</p>
Two	Page 26, 2.60	Add	<p>Should include engaging with health commissioners and health in general (not just “primary care”) locally when engaging with partners to provide support.</p>
Two	Page 28, 2.67	Add	<p>Support for rough sleepers should mention local severe weather emergency protocols (SWEPS), no first night out or no second night out programmes and engagement with the community to ensure rough sleepers come to their attention using the StreetLink service for example.</p> <p>Maybe also include something about whether use of Public Space Protection Orders to address rough sleeping is appropriate. Use of tents and sleeping in city centres being criminalised for example.</p>
Two	Page 28, 2.70--71	Add	<p>Not sure this section is detailed enough considering that social care must have regard to this guidance too. This section should have more details. Something about family intervention or support protocols if the impact of homelessness is likely to require more involvement at a later stage due to impact of homelessness on welfare of children (something like this).</p>
Two	Page 29, 2.74	Add	<p>Those placed into temporary accommodation (TA) should be provided with an information pack about their accommodation, including where their local amenities and services are e.g. GP, post office, shops, bus routes and also key contact details of services, people and support provides who may be of help while in TA.</p>

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Four	Page 33, 4.2	Add	<p>Applicants should be given information or signposted to information about what they can expect if they consent to the referral being made; the process, the type of support they can expect to receive, the expectation that they will carry out reasonable steps as well as the authority, that their wishes and preferences will be considered but that type and location of property the council can help them secure will have to be realistic in terms of size and cost etc.</p> <p>4.6 does cover this but just for local connection i.e. that applicants should be informed about how local connection will be considered in their case but I think the advice should cover more to allow a fully informed decision to consent to referral.</p> <p>What about those who do not give their consent? Should there at least be a way of capturing numbers (not individual personal info) to allow monitoring of numbers and possibly reason why consent was not given.</p>
Four	Page 34, 4.11		<p>Suggest that responses to referrals does not have to be direct contact but should account for individual needs and that referral procedures should allow for capturing vulnerabilities - suggest councils may wish to incorporate whether direct contact required in their referral processes.</p>

Question 12. Taking chapters 6-10 of the Homelessness Code of Guidance which provide guidance on definitions to help inform decisions on the areas of statutory duty.

a) Having read these chapters are you clear what local authorities responsibilities are?

Yes

b) Would you suggest any additions, deletions or changes to these chapters?

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Yes

If yes please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required.

Chapter	Page & paragraph number	Change/add /remove	Comment
Six	Page 41, 6.15	Add	Refer to joint statutory guidance on dealing with 16/17 year olds
Six	Page 44, 6.29	Add	Mention pre-tenancy assessment criteria to access all forms of social housing. Agreeing criteria with private registered providers who have agreed to nominations. Could tie suitability affordability assessment approach in with affordability part of landlords' pre-tenancy assessments. This would help achieve a consistent and broadly agreed approach to assessing affordability.
Eight	Page 58, 8.14	Add	Panayiotou v London Borough of Waltham Forest (2017) EWCA Civ 1624 - update on vulnerability in priority need assessment. The test of significantly more vulnerable than ordinarily vulnerable is not a quantitative evaluation but more a qualitative one. About it not being about the <i>extent to which</i> they are more vulnerable than ordinarily vulnerable. A noticeable difference rather than how much of a difference.

c) When considering 'Chapter 11: Assessments and Personalised Plans' do you consider the guidance on 'reasonable steps' is sufficient, and is helpful?

Yes

Comments:

- 11.8 - need to include when assessing circumstance leading to actual homelessness - currently just says threat of homelessness.
- 11.17 - when referring under public duty to refer, some agencies may be better at establishing threat of homelessness - this should also include establishing actual homelessness that goes beyond rough sleeping, sofa surfing etc. More training should be provided to specified public bodies (and any other organisations who may have agreed to refer on a voluntary

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basis) to give examples of those likely to be homeless or threatened but may not be immediately obvious to those not working directly in homelessness.

- 11.23 - the types of steps housing authorities can make to prevent/relieve homelessness - examples should include money advice to maximise income where affordability is an issue or where it can help with accessing alternative accommodation (reducing debt, managing debt, managing financial affairs, increasing entitlement to benefit etc.), also help to access or remain in the private rented sector (advice on how to defend possession proceedings for example).
- 11.31 talks about “recommended steps” but doesn’t provided any examples of what these might look like.

d) When considering ‘*Chapter 14: Ending the Prevention and Relief duty*’ would any additional information on applicants who deliberately and unreasonable refuse to cooperate be helpful?

Yes

Comments:

- 14.51 suggests that councils may be able to penalise someone for deciding to attend a jobcentre of medical appointment over carrying out “reasonable steps” identified in their personal housing plans, but that councils should weigh up comparative consequences before deciding if someone has acted reasonably. This may lead to some officers placing pressure on applicants to put their housing plan actions above important appointments. Non-attendance in the short term may have long term implications for the applicants. Are applicants best to decide this? Certain income conditions like attending jobcentre appointments should always take priority over housing plan actions as it will directly impact income and therefore ability to pay rent and cover basis essential costs.
- At 14.51 the draft code says that the reader should refer to chapters 21-24 for client group specific considerations but there is no hyperlink. There should be a link to at least chapter 21.

Question 14. Taking chapters 15-17 of the Homelessness Code of Guidance which focus on accommodation duties and powers consider the following questions:

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a) Having read these chapters are you clear what local authorities responsibilities are?

Yes

If no please provide further information:

b) Would you suggest any additions, deletions or changes to these chapters?

Yes

If yes please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required.

Chapter	Page & paragraph number	Change/add /remove	Comment
Fifteen	Page 106, 15.21	Add	When should the referral to children's services happen in cases of possible ineligibility or intentional homelessness where children are involved? This needs to be very clear so that housing authority officers do not delay referrals and that protocols exist with children's services to set out the actions and procedures for responding to such referrals.
Sixteen	Page 113, 16.10	Add	Above 16.10 the title is "use of social housing". There should be an introductory piece like with "privately owned accommodation" at 16.16.
Sixteen	Page 113, 16.12	Add	Private registered providers - this should include access to their homes, help with TA, help with housing first, support to sustain tenancies. This definitely needs more on the role of PRPs.

c) When considering *Chapter 16: Helping to secure and securing accommodation* are you clear what local authorities responsibilities are in helping to secure or securing accommodation?

Yes

Comments: NA

d) When considering *Chapter 17: Suitability of Accommodation* are you clear what local authorities responsibilities are? Is there any further guidance required to help housing authorities assess affordability of accommodation, or the suitability of accommodation out of district?

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Yes

Comments: NA

Question 15. Taking chapters 18-20 of the Homelessness Code of Guidance which focus on casework administration consider the following questions:

a) Having read these chapters are you clear what local authorities responsibilities are?

Yes

If no please provide further information: NA

b) Would you suggest any additions, deletions or changes to these chapters?

No

If yes please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required.

NA

c) When considering *Chapter 18: Applications, inquiries, decisions and notifications* would any additional information on issuing notifications and decisions be helpful?

No

Comments: NA

Question 16. Taking chapters 21-25 of the Homelessness Code of Guidance which focus on particular client groups consider the following questions:

a) Having read these chapters are you clear what local authorities responsibilities are?

Yes

If no please provide further information:

b) Would you suggest any additions, deletions or changes to these chapters?

No

If yes please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required.

NA

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Question 17. Are there any other comments that you would like to make on the Homelessness Code of Guidance?

Yes

Comments:

- There should be more detail on working with social landlords like in Welsh code and the annex in 2006 code - should cover things like;
 - agreeing pre-tenancy criteria,
 - policies that exclude certain groups,
 - nomination agreements to reflect need,
 - TA provision and management,
 - provision of units for housing first, and
 - support to sustain tenancies and pre-eviction protocols.
- There should be more information on Housing First, to include things like how housing authorities may be able to secure accommodation and support. [This CIH guide](#) to housing first in the UK and Ireland may help with this.
- The prevention duty
 - 12.4 (page 88)- illegally evicted people are actually homeless but this talks about them as if they are threatened with homelessness - this needs to be more clear.
 - [The Welsh code](#) at chapter 12 includes lots of examples of situations where certain types of prevention activity may help - this code lacks examples to guide practice - suggest we include similar examples to the Welsh code.
- The relief duty
 - 13.7 (page 90) - Chapter 11 does not offer sufficient guidance on joint working to address rough sleeping as this section says. Chapter 11 is about assessments and plans but there is no specific section or sections dedicated to joint working to address rough sleeping - there should be more attention paid to rough sleepers in general throughout the entire code. There is a small section in the strategy part (2.67- 2.69) but that is it, other than small references in other sections. Maybe it could form part of a bigger section on partnership working as suggested for chapter two.
- Page 93-7 (A-H). This is not clear for referencing purposes. Housing authority officers need to be able to reference the code accurately in decision letters so it is not helpful not to have numbered references

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like other sections. Would it currently be classed as 14.4A and then B is 14.12B etc?

- Page 94 14.11. If the prevention duty is ended because there is a reasonable prospect of the applicants having accommodation available for at least 6 months and this covers more than one placement/home, this should be part of a recognised and formal policy to provide pathway provision to people who require support to move towards independent living. The draft appears to allow housing authorities to develop individual pathways depending on the case. There should be a policy or formal procedure for pathway provision of accommodation and support.
- Page 97, 14.31. Where a case is closed due to non-contact, applicants should have already been fully informed of the council's approach to deciding non-contact and that could it be that their case will be closed, they will be notified in writing before they decide to end duties due to non contact and they will have right to request review of decision to end these duties etc.
- Page 98, 14.33 says "refer to chapter 14" but this is in chapter 14. This should provide a more detailed reference for the user.
- Applicants should be informed of all of the ways different duties may be brought to an end.