

CIH response to the Department of Levelling Up, Housing and Communities' consultation on social housing allocations - March 2024

Introduction

The government's [consultation](#) on the allocation of social housing proposes a new national eligibility test and introduces mandatory qualification tests at the local level, including proposals on anti-social behaviour (ASB) previously put forward in the government's ASB Action Plan (our response to which can be found [here](#).)

CIH published its initial concerns about the proposals in the consultation, in partnership with other sector bodies, in an open [letter](#) to the Prime Minister and Secretary of State for housing.

CIH has consulted with members to inform our response to this consultation, including those in our relevant communities of interest such as the local authority and regulation network, ASB practitioners' network, and the Housing and Immigration Group, as well as leading bodies across social housing and homelessness sectors.

Summary

Social housing is a scarce resource and should be allocated appropriately to those in greatest need. That need is growing as a result of significant cost of living pressures, rising house prices and rent levels within the private rented sector. This is compounded by restrictions on help with housing and other costs for people requiring such help (in 2022, the local housing allowance (LHA) [covered](#) only 10 per cent of rents in 7 out of every 10 local markets). Consequently, more people are in real need of social housing and waiting longer for it, if they can access it at all (1.21 million were on local authority [waiting lists](#) at the end of March 2022). We recognise that government recently uprated the LHA, however, this was after a period without any uprating, during which private rents increased and the percentage of homes within the LHA rates decreased. The geographic distribution of LHA claimants is such that, even with the LHA reset at the thirtieth percentile, large numbers of claimants will still lack options they can afford and access. ([UK Housing Review 2024, chapter 6](#))

The fundamental problem is the lack of social housing supply and a severe housing shortage overall, due to a failure to develop at the scale needed over many years. [Analysis](#) shows that across the UK we require 350,000 new homes a year, of which 145,000 should be affordable and 90,000 for social rent. Yet, in 2022-23 only 9,561 social rented homes in England were delivered, compared to nearly 40,000 in 2010. In the last quarter of 2022-23, 104,510 households were in [temporary accommodation](#) including 131,370 children. On any given night in 2022, 242,000 people were experiencing the [worst forms of homelessness](#). CIH believes that the correct response to this scarcity is to build more social housing and increase the resource to meet the level of need.

We also need to increase the development of supported housing, with an appropriate ring-fenced revenue stream to fund support; this provides a critical resource for people who have experienced homelessness and other trauma, or to tackle anti-social behaviour and develop skills to sustain tenancies.

Our concerns on the detail of the proposals can be summarised as follows:

- Social housing is already targeted at households in greatest need and allocations are already made mostly to people who are UK nationals. In 2021-22, 90 per cent of [lettings](#) went to UK nationals, and of the remaining 10 per cent, 5 per cent were to EU nationals. There are already strong [legal and regulatory](#) requirements to ensure that people without the right to remain are not able to access social housing. Three-quarters of migrants to the UK in the last five years already live in the private rented sector, rather than social housing ([UK Housing Review 2024](#)). It is important that government at all levels ensures that it addresses public misconceptions that are potentially divisive and contribute to the stigma that many people in social housing experience.
- The proposals are likely to impact some groups disproportionately and may risk being contrary to human rights and equalities legislation. We therefore urge the government to undertake and publish a full equalities impact assessment for its proposals.
- The proposals outlined may lead to a range of unintended consequences, including increased homelessness applications by households, and /or for children to be picked up through the requirements of the Children's Act 1989. This is likely to increase the costs for local authorities on increased use of expensive temporary accommodation. Councils [spent](#) £1.74 billion on temporary accommodation in 2022/23; and some are close to bankruptcy from escalating costs.
- Local housing authorities are best placed to manage their waiting lists, using appropriate connection, income and other tests, to reflect the pressure on their existing housing stock and plans to develop, as already occurs under the Localism Act 2011. It is important that any such tests are used as guides, and not to fetter their discretion to respond appropriately where some applicants do not meet the criteria but have mitigating circumstances that require housing and help.
- Households with a history of ASB still require housing, and social landlords, in partnership with statutory partners, are experienced at seeking to support families to address and change behaviours to sustain their tenancies. Further investment to develop these local partnerships and support services is likely to be more effective in the long term in addressing ASB.

- The proposals could negatively impact local authority and housing association relationships. Housing associations will expect that all necessary checks are conducted by local housing authorities. Given the constraints on local authority budgets and teams, conducting these tests may take time that will impact on local authorities' ability to make timely nominations without additional support.

Below we respond to some of the questions posed in the consultation.

Questions - UK connection test

2. Do you agree that an individual should have to demonstrate a connection to the UK for ten years before qualifying for social housing (if they do not meet the test otherwise or are exempt)?

No

CIH does not agree with the requirement that someone should have to demonstrate a connection to the UK for ten years before being eligible (if they do not otherwise meet the test or fall into an exempt group). Social housing should be available for people in housing need that cannot be met through the market. Denying access to households in housing need, particularly those who have often experienced trauma and have additional support needs, leads to costs falling in other areas (such as the expansion of households in temporary accommodation).

Extending the length of time to qualify for social housing to ten years will discriminate against non-UK nationals that have the right to remain and receive public funds but will now be ineligible for social housing. Many refugees have fled traumatic circumstances and experienced further suffering en route to seeking safety. They are likely to experience further hardship and poverty, and have significant challenges in finding decent housing they can access in the private rented sector; 42 per cent reported that they had struggled to find a landlord or letting agent to rent to them as a migrant, and 21 per cent reported difficulty in providing valid ID to landlords ([Generation Rent, Housing in a hostile environment, April 2023](#)). Most non-UK nationals already spend many years after entering the country, before being able to receive indefinite leave to remain, and imposing further limitations on their access to housing is an unnecessary further complication.

The government should bear in mind that a 'ten-year rule' restricting access to housing waiting lists was found to be discriminatory in a case that went to the Court of Appeal in 2019. In *R (TW) and R (Gullu) v London Borough of Hillingdon*, the council's ten-year rule was challenged by two claimants, with the assistance of the Equalities and Human Rights Commission. The argument was that Hillingdon's rule discriminated against refugees and Irish Travellers, who would find it impossible to meet the requirement. The court found against the council, which subsequently put in place a shorter residency requirement for these groups. One claimant was a refugee (Mr Gullu) who had lived for three years in the borough and was originally refused access to the list. Clearly a newly imposed ten-year rule is likely to be viewed by the courts in a similar light to the Hillingdon case, and may

well be found to be discriminatory against refugees who are in a similar position to Mr Gullu's.

We believe that this proposal could result in more households applying to local housing authorities via the homelessness route or children being picked up by social services under the Children's Act 1989. This will lead to local authorities being further stretched to investigate claims and to accommodate more households in expensive and often poor quality temporary accommodation.

Many who will be affected are asylum seekers who, on gaining refugee status, lose accommodation and often have to go through the homelessness route to find housing, resulting in them remaining for long periods in expensive temporary accommodation. The British Red Cross [estimated](#) in 2023 that it had seen a 140 per cent increase in refugees they support experiencing destitution. The level of LHA is inadequate to access private rented homes in many local authorities across the country, and many households' incomes are also constrained by the benefit cap.

We are concerned that treating refugees differently on the basis of whether a government sanctioned resettlement route was available to them when they had to flee their own country is both divisive and potentially discriminatory. Many of the housing professionals that we spoke to highlighted the concerns that this approach will act against community cohesion and deprive people of the opportunity to settle and become established within communities. It also involves local authorities and others making distinctions that are not based on common sense: for example, if an accepted refugee from Afghanistan who has fled the Taliban needs accommodation, why should it matter if they originally arrived via a resettlement route or claimed asylum on arrival at the UK border?

If the proposals were to be taken forward as currently set out, there are several issues where clarity is required. For example, when would the ten years be counted from (when seeking asylum, when granted refugee status etc)? What would be expected from individuals to prove the length of time in the country? This has already proved a complex and contentious issue for people of the Windrush population, and for many arriving in more difficult circumstances, such proofs may not be readily available (as indicated above).

We disagree with any time restriction being applied, but if the government is inclined to introduce one, it should be only a maximum of two years or in line with the relevant local authority's own local connection test (whichever is shorter).

3. Do you think there should be any further exemptions to the UK connection test, for example for care leavers?

Yes

The consultation proposes exemptions for care leavers, and those entering through an approved resettlement or relocation scheme.

If the UK connection test is applied as proposed, we would argue that there should be further exemptions to include the Syrian Vulnerable Persons Resettlement scheme. It should also include all those who have been given settled status (as currently), and those who have claimed asylum and been granted leave to remain in the UK already.

We also think there should be exemptions for those who have experienced domestic abuse, people who have been trafficked or subject to modern slavery, and people who have care and support needs.

Local connection test

9. Do you agree that an individual should have to demonstrate a local connection with an area for two years before qualifying for social housing (unless exempt)?

No, we do not agree with a local connection test for two years being mandated for all local authorities.

We believe that any such restriction, if necessary, should be applied by local housing authorities, as currently under the Localism Act 2011. This is due to their understanding of the needs of their local population and taking account of the existing homes available and the plans they have for development of more social housing.

In addition, we believe that local authorities should be sensitive in how they apply such a test, and must be careful not to fetter their discretion to take each case on merit, to ensure that they respond appropriately to households where there are exceptional circumstances to house without a local connection, for example people fleeing domestic abuse, care leavers, ex-offenders, where it would benefit for them to move away from their previous place of residence, people moving for employment etc. Again, there may be other exceptions to be made outside any mandated test and exemptions, and local housing authorities should have that power to do so.

10. The government intends to use the same definition of local connection as in section 199 of the Housing Act 1996. This definition would mean that a person has a local connection:

- **because they are, or in the past were, normally resident there, and that residence is or was of their own choice;**
- **because they are employed there;**
- **because of family associations; or**
- **because of special circumstances.**

Do you agree that definition should be used?

As above we do not agree with a nationally mandated local connection test. Where local housing authorities apply one, these are reasonable definitions, if used carefully, to ensure that appropriate discretion is applied to help households where they might lack a

connection and/ or might fall short of the timeframe but have other mitigating factors to consider.

11. The government proposes to exempt care leavers from the local connection test for social housing up to the age of 25 to align with broader Corporate Parenting Principles, which sets out the responsibilities of local authorities towards children and young people in care. Do you agree?

Yes.

12. Do you think there should be any further exemptions to the local connection test?

Yes.

We think that there should be exemptions in addition to care leavers, which should be drawn as widely as possible. These should include people fleeing domestic abuse; ex-offenders where it would benefit them to be housed away from their previous place of residence; people moving for employment; people moving to give or receive care and support, including those moving from supported housing or who are found statutory homeless and in priority need.

Income test

16. Should the same threshold for the income test apply across England or should it vary?

We believe it should vary by locality – set by the local housing authority.

17. Should income data be assessed at household or individual level? If household, whose income data should be assessed?

It should be assessed on whoever will be on the tenancy agreement.

18. Assuming household income is based on the two highest earners working full time, what should the income test be set at?

In many cases, as demonstrated by the evidence quoted in the consultation paper, the scarcity of social housing means that people on lower incomes are those prioritised for allocation, by default. Any income test to be set should be defined by the local authority, taking account of local income levels as well as the affordability of housing generally (house prices and private rents), and how accessible these are to those on median local incomes, and taking account of the impact of housing costs and household expenses on levels of disposable income (for example child care costs which are likely to have higher impacts for single parent households). It does not make sense to introduce a 'one size fits all' approach.

19. Should capital assets be included in the assessment? If yes, what type of capital assets should be included, and what threshold should be set?

Capital assets could include savings in an interest-bearing savings account; savings in a non-interest-bearing current account; bonds, stocks and shares; property that the applicant does not live in; and land.

As above, this decision should be taken at the local authority level.

20. Should income data be assessed at household or individual level? If household, whose income data should be assessed?

It should be assessed on whoever will be on the tenancy agreement.

22. Do you think there are any circumstances where a minimum income threshold to determine who should be allocated a social home is appropriate, for example to incentivise being in work? If yes, please detail?

No.

Many social landlords already apply an affordability test. These should be used only to identify where tenants might need support to sustain their tenancy and to connect tenants with help to maximise their incomes, to take up training or employment where appropriate etc. We do not think that there should be a minimum income applied as by definition, this will exclude very low income and vulnerable households who are most likely to need and benefit from social housing.

ASB test

24. Do you agree that a conviction/sanction for anti-social behaviour should result in a disqualification period from accessing social housing? If yes, how long should someone be disqualified for?

No, we do not agree with a national mandated disqualification, which would be difficult to enforce without a national database of people who have been convicted.

Local housing authorities already have flexibility to deprioritise households for a period where someone is convicted of serious ASB, under Part 6 of the Housing Act 1996. In many cases this is applied where the ASB is serious and often publicised; it can be difficult for local housing authorities to check other cases, and they are often reliant on what the applicant declares. The ASB action plan proposed a national database which is not referred to in the consultation; without such a database it will be very difficult and time consuming for local authorities to check all applications where only partial or no disclosure is made. If the check is done only at the point of allocating social housing, it will likely lead to additional delays and costs to landlords, whilst checks are undertaken (or costs of evicting someone once false statements have been proved).

Most social landlords work hard with perpetrators of ASB to address and change the behaviour and sustain their tenancies, whilst also supporting local communities. Problems arise where the support services and networks amongst partner agencies such as the police and local authorities is reduced or lacking, limiting what landlords themselves can do alone. If more support services were available, more households could be helped to address their ASB. Should there be an exclusion from social housing for these households, it is likely that they will move into the private rented sector, and the pattern of behaviour will continue, with less incentive and capacity of local agencies to tackle it.

The powers under the ASB, Crime and Policing Act 2014 are very flexible and useful, but some are not widely known and used, such as the ASB case review. Where partners are well resourced and able to utilise such powers, and where the public is more aware of them, there are sufficient ways to tackle ASB and mitigate the impacts for local communities.

25. Should all members of a household be subject to a check for history of anti-social behaviour, rather than just the lead tenant?

Only if the aim is to ensure support is provided to address the behaviour. However, this would be difficult to achieve without the national database proposed in the action plan and would increase the administrative burden for local authorities (and possibly the timeframe in responding to nomination requirements with housing association partners).

As outlined above, we have concerns over the proposals for a mandatory ban on tenants with previous history of ASB. We think it is reasonable for landlords to require commitment to take up support or engage with positive action to change behaviours to qualify for social housing. The success of this is dependent on support services being available within landlords and / or partner agencies such as local authorities and police, to enable this, plus further support and incentives to all local agencies to engage together to help households and communities where ASB occurs.

Any exclusions should not extend to allocations to appropriate supported housing; this often provides the setting in which people can be helped to address their ASB.

26. The government is considering whether exemptions to the anti-social behaviour test should be made for victims of domestic abuse; or those with a condition or disability that was a relevant contributing factor to the anti-social behaviour. Are there any additional groups that should be considered for an exemption from this test?

Yes.

ASB is often a complex matter, and there may be significant underlying issues that contribute to this behaviour. We agree with the proposed exemptions, but would also call for local housing authorities to be able to apply discretion to other cases on their merit, so that where a social housing tenancy and appropriate support is available and would help households to change their behaviour, this can be offered.

Although we welcome these exemptions, we are concerned that there is still a lack of awareness and identification of cases where the ASB masks domestic abuse or mental health problems for example, and there is a risk that a ban might still be applied to people who are particularly vulnerable and in need of support, if a mandatory ban is introduced.

29. The government is proposing that an unspent conviction, including under the Terrorism Acts 2000 and 2006 (such as for membership of a proscribed terrorist organisation) should result in a permanent disqualification from accessing social housing, unless doing so would increase public safety risks. Do you agree with this proposal? If no, please explain?

No, as we are uncertain what additional benefit this would bring.

We believe that existing powers to exclude people with unspent convictions for criminal behaviour would be sufficient to take action where that conviction was for terrorist acts. We are unclear whether the numbers that might come under this disqualification are large enough to require further legislation.

Grounds for evictions for existing tenants

32. The government has committed to exploring a 'three strikes and you're out' eviction expectation for all social landlords, meaning three proven instances of anti-social behaviour, accompanied by three warnings from a landlord, would result in eviction. How should a 'strike' be defined?

a. The powers listed in the Home Office's Anti-Social Behaviour powers: Statutory guidance for frontline professionals, which includes criminal behaviour orders, civil injunctions, closure notices/orders, community protection notices, dispersal powers and public space protection orders

As in the case with applicants for social housing, we think it more appropriate that social landlords and statutory partners are well resourced and incentivised to work with tenants to address any ASB. There are already powers for landlords to evict in the case of serious ASB.

If this is to be applied, the definition of a strike should be restricted to formal measures rather than more informal actions such as acceptable behaviour contracts. These are intended to address issues early on before they escalate to more serious ASB and develop a positive and proactive response to prevent further escalation of serious ASB.

33. Do you believe that a new ground for eviction should be introduced to ensure that those with unspent convictions for terrorism offences be evicted from social housing, unless doing so would increase public safety risk?

No

We believe that existing powers would be sufficient to address this.

Fraudulent claims

34. Do you agree that those who provide fraudulent information in social housing applications should be prevented from qualifying for a set period, in addition to any disqualification period that would have applied had they not made a false declaration? If yes, how long should this period be?

Local housing authorities and social landlords can take action where a tenancy has been obtained fraudulently. We think that this should be done at that local level, and the timeframe for disqualification should be agreed at the local level, enabling local authorities to take account of the scale of housing needs within their locality, as well as the nature of the fraudulent information given.

38. Should there be a limit on how many local housing authorities an applicant can apply to? If yes, please indicate the limit.

No.

This would increase the administrative burden for local housing authorities to check with other authorities, unless some kind of national waiting list was developed.

39. Do you expect that any of the policies affecting social housing applicants would have a particular impact on those with a particular protected characteristic? If so, please give further detail on the relevant policy and its impact.

Yes, as set out above it would impact negatively on groups of refugees with settled status that have not entered by a government sanctioned resettlement route. This may therefore impact most on households from the countries such as Iran, Eritrea, Iraq etc (see Refugee council, [Asylum Statistics Annual Trends November 2022](#)).

40. Do you expect that any of the policies affecting social housing tenants would have a particular impact on those with a particular protected characteristic? If so, please give further detail on the relevant policy and its impact.

Yes, potentially, in particular in view of the disparities in sanctions and arrests for people from BAME groups.

CIH urges government to undertake an equalities impact assessment to identify the potential impacts on people with protected characteristics.

About CIH

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Further information is available at: www.cih.org

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