



Department for Communities: A fundamental review of social housing allocations

About Law Centre (NI) and introduction

1. Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our two regional offices in Northern Ireland. It provides advice, casework, training, information and policy services in employment, health & social care and social security law and facilitates regular Advisers Network meetings and a Welfare Reform Group for our members. LCNI works with Advice NI and CAB to deliver the Welfare Reform Support Project and is a member of the Department for Communities Operational Forum and Disability Consultative Forum.
2. LCNI welcomes the opportunity to respond to this consultation. As the Law Centre does not generally advise on housing matters, we limit our comments to the areas of the consultation that relate to our areas of expertise. This is therefore a partial response to the consultation exercise. We would like to take this opportunity to endorse the response submitted by Housing Rights, which responds in full to all the consultation questions.
3. This response is in two parts: Part A responds to specific consultation questions; Part B provides comments on additional, related issues.

PART A

Proposal 1: An independent, tenure-neutral housing advice service for Northern Ireland

4. The Law Centre strongly supports this proposal.
5. We consider that independence is key. There is a parallel to be drawn with the Welfare Changes independent advice service that is funded by Department for Communities and delivered by Advice NI, Citizens Advice and Law Centre. From the outset, the organisations advocated the need for independence as outlined below:

Extract from NI Advice Services Consortium & NICVA, 'Support for statutory right to independent advice' (6 February 2015)¹

Independence is crucial.

Independent advice organisations are located within the communities they serve and therefore are more accessible than statutory agencies. Many people feel more confident speaking to independent advisors than to government officials and are more likely to provide any relevant personal information. By having a more open conversation, the adviser is better able to assess the claimant's entitlement and to advise on the most appropriate course of action. This increases efficiency: claimants do not apply for benefits to which they are not entitled and applications are correctly and fully completed. Indeed, the independent advice sector *complements* statutory services.²

The value of the independent advice sector has been acknowledged by the Assembly, the Minister for Social Development and his Department and the Committee for Social Development. In particular, the advice sector's critical role in delivering the work of benefit uptake is recognised. "*The advice sector plays a vital role in supporting people through the changes arising from the welfare reforms*" (Minister for Social Development)

6. The same principle of independence applies equally in the context of housing.
7. We welcome the commitment to ensure that this advice service is open to all adults including those whose immigration status does not allow them to apply for a social home. An inclusive approach will enable the Housing Executive to

¹NI Advice Services Consortium & NICVA, 'Briefing paper: Support for statutory right to independent advice' (6 February 2015) accessible here: <https://www.lawcentreni.org/Publications/Policy-Briefings/NIASC-and-NICVA-support-statutory-right-to-advice-2015.pdf>

² Mark Durkan contribution to Northern Ireland Assembly Motion on Advice and Awareness, 4 March 2013



gather data on those who present to NIHE but who are not eligible for assistance, which will improve understanding of migrant homelessness. This will also afford an opportunity to ensure that any ineligible applicants with care needs are referred by NIHE to Social Services and/or to Children's Services for assessment. This is important because, while immigration law prevents some migrants from accessing specific benefits/services, Northern Ireland statutory agencies may have a duty to act under community care duties in certain human rights cases. It is therefore important that there are referral pathways in place.

8. We also welcome the Department's commitment to ensure that appropriate provisions are in place to ensure client privacy and confidentiality of all users.. This includes undocumented migrants. These safeguards are important for two reasons. first, to underpin the inclusivity and credibility of the service; second, because it affords an opportunity for the undocumented migrant to be connected to relevant services, which may result in the person being able to regularise their immigration status.

Proposal 7: The removal of intimidation points from the Selection Scheme

9. Subject to our comments below, the Law Centre agrees this proposal.

The current intimidation points scheme is narrow in scope (as determined by statutory rule 23A) and does not afford equivalent recognition of other experiences of potentially life-threatening trauma e.g. domestic violence, fire/disaster, victims of modern slavery, etc. A broader approach to other such experiences, will help meet the policy intent of treating equally all homeless applicants in similarly traumatic circumstances.

10. Housing Rights has proposed an alternative model which would effectively award points to a housing applicant who has experienced / is experiencing trauma – regardless of the origin of that trauma. The Law Centre strongly endorses the 'trauma model' proposed by Housing Rights.

Proposal 10: Applicants will be placed into bands based on similar levels of need to meet longstanding housing need more effectively.

11. Law Centre agrees with this proposal.
12. While the Law Centre broadly agrees with the concept of a banding system, we endorse Housing Rights' request that the Department looks again at the detail and considers introducing additional bands.

13. As a discrete point, we recommend that the Department takes into account the time refugees spend in NASS asylum support accommodation for purposes of the waiting list.
14. At present, the housing system is entirely separate from the asylum support system. Asylum seekers are not eligible for help with homelessness and are not eligible to apply for Housing Benefit. Instead, asylum seekers may instead apply for asylum support and accommodation known as NASS.³ In Northern Ireland, the asylum support contract is managed by the contractor SERCO, which in turn subcontracts the accommodation element to NIHE. All the NASS accommodation is in Belfast. Asylum seekers can be required to live in a number of different properties and, because NASS accommodation is offered on a 'no choice' basis, asylum seekers cannot oppose a move. As a result, some asylum seekers have a rather disjointed accommodation experience. The amount of time a person spends in the asylum system varies considerably: periods of several years are not uncommon.
15. If the asylum seeker's application for asylum is successful, s/he is granted refugee status by the Home Office. The asylum seeker is now deemed to be a refugee. The refugee is required to leave their NASS accommodation within 28 days.⁴ As a refugee is entitled to access public funds, s/he can now present as homeless to NIHE and seek assistance. The majority of refugees are offered temporary accommodation in hostels or single let accommodation. This can be a very difficult time for refugees due to very significant delays in processing benefits.⁵ Many refugees face acute financial hardship and become entirely reliant on charitable support for a period of weeks or months.⁶ During this time, the location of the temporary accommodation can create particular difficulties for the refugee's children as there might be no money to pay for school transport.
16. As outlined above, practice to date in Northern Ireland is to consider the asylum and housing system as entirely separate. However, we ask the Department to consider taking the time an asylum seeker lives in asylum accommodation into account for purposes of the waiting period. Effectively, we ask that the waiting period is backdated to when the applicant was awarded NASS support. The rationale for this request is as follows.
17. First, under international refugee law, a grant of refugee status is 'declaratory' rather than constitutive. Thus, by granting refugee status, the Home Office is merely *recognising* that the person is a refugee. This is in contrast to the usual

³ Immigration and Asylum Act 1999

⁴ UKVI, 'Ceasing asylum support instruction' (April 2015)

⁵ Law Centre (NI), 'Time to Act: Refugees & delays with benefits' (2016)

⁶ NICRAS, 'The effects of destitution on refugees in Northern Ireland' (April 2016)



practice whereby e.g. by granting a work permit, the Home Office *bestows* a particular immigration status on an individual.

Extract from UNHCR Handbook⁷

Chapter I – General Principles

28. A person is a refugee within the meaning of the 1951 [Refugee] Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition but is recognised because he is a refugee.

18. A decision to take time spent in NASS accommodation into account would therefore reflect the declaratory nature of refugee status – effectively, the refugee was entitled to NIHE assistance from their arrival.
19. Second, such a decision would help foster the integration of refugees and would be consistent with NI's (nascent) position on refugee integration, which states that refugee integration begins at "Day One". In adopting this approach, Northern Ireland aligns itself with Scotland and Wales; in contrast, England maintains that refugee integration does not begin until the date a person is granted refugee status. The Day One approach acknowledges that refugee integration starts immediately and encourages all agencies and stakeholders to work together towards that aim.
20. As a separate issue, we would ask the Department to consider the suitability of hostel accommodation for refugees which may not be suitable for some given the level of trauma a refugee might have experienced.
21. Finally, we would ask that the Department for Communities contributes to the ongoing piece of work by the Executive Office in producing a Refugee Integration Strategy for Northern Ireland. Clearly, access to safe and secure housing is an important component of integration.

⁷ UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under 1951 and 1967 Protocol (1979)



Proposal 11: The Selection Scheme Rules should always align the number of bedrooms a household is assessed to need with the size criteria for eligible Housing Benefit customers.

Do you agree?

22. Law Centre strongly agrees with this proposal.
23. At present, the Selection Scheme Rules and the Housing Benefit / Universal Credit rules are not aligned. This creates confusion. We therefore welcome the proposal to amend Schedule 3 of the Housing Selection Scheme Rules to ensure that the two systems are aligned. As part of aligning the two sets of rules, it is important that the rules on rejecting an offer of accommodation are also updated: a prospective tenant should be able to reject an offer of accommodation where the bedroom tax applies without being penalised. Effectively, such an offer should not count as a 'reasonable offer'.
24. Given the possibility that Universal Credit housing policy might change during the roll out of the new benefit, it is important that the Selection Scheme rules are drafted in a way that permits updating with relative ease so as to ensure that we do not face a similar situation of disjointed policy a couple of months down the line.
25. As noted by Housing Rights, there is a slight difference in how bedroom requirements are calculated for Housing Benefit and the Housing Cost Element of Universal Credit.⁸ This should also be rectified.

Proposal 20: Specialised properties should be allocated by a separate process outside the Selection Scheme.

Do you agree?

26. Law Centre strongly agrees with this proposal and the proposal to include schemes for those people diagnosed with dementia.
27. The consultation document states that when allocating social housing, the providers should employ housing management tools including effective communication and clear tenancy agreements. This is welcome. Within this process, there is a need to ensure an effective mechanism for considering the mental capacity of the tenant to enter into a contractual relationship with the landlord. Where the adult lacks capacity, then an appropriate alternative adult

⁸ Housing Benefit Regulations, Schedule 2, Part IV. 10. Size criteria and Universal Credit Regulations, Schedule 4, Part 3.9. Number of bedrooms to which a renter is entitled.



with the required protection (via the Office of Care and Protection or otherwise) should be in place to sign the contract.

28. Our concern is that the issue of capacity is not sufficiently considered at present. We have acted in a case where an adult who did not have capacity was signatory to a tenancy agreement and was being pursued for non payment of rent at court. In a different case, a patient signed a tenancy agreement directly after being discharged from detention for compulsory treatment for a mental disorder. The patient's health was poor, fell into rent arrears and was threatened for non-payment of rent. In this case, it became apparent that the tenant did not have the necessary legal capacity to be party to a contract. Housing Providers must consider this. Where there are any doubts as to the person's capacity, the provider should refer to the Trust for guidance.

PART B ADDITIONAL ISSUES

Additional issue: Modern Slavery

29. In 2016, 33 potential victims of trafficking were identified in Northern Ireland. In 2015, the total count was 54 and in 2014 the count was 45.⁹ Human trafficking and modern slavery occurs in different guises but always involves exploitation of human beings.
30. Modern slavery is relevant to housing in at least three ways. First, people who are threatened with homelessness or who are homeless may also have increased vulnerabilities which may make them more vulnerable to exploitation and becoming victims of modern slavery. For example, a person who is street homeless might agree to work for an employer who offers accommodation – even if the work itself is unpaid, illegal, dangerous and exploitative. Second, it is possible that exploitation could take place in social housing. Third, recognised victims of human trafficking (i.e. who have successfully escaped a situation of slavery/exploitation) have a long journey ahead in terms of their recovery and rehabilitation and safe and secure housing is an important element within this journey. Victims who face an ongoing situation of uncertainty in respect of their housing – e.g. moved from one hostel to the next – may face an increased risk of re-trafficking or further exploitation.
31. If a person is identified as a potential victim of trafficking in Northern Ireland, s/he is usually entitled to accommodation through the trafficking determination process known as the National Referral Mechanism. This accommodation is offered by Women’s Aid or Migrant Help and is funded by the Department of Justice. If the NRM process concludes that the person is a victim, support ceases and the victim may be eligible to apply for social security benefits, including Housing Benefit. However, in actual fact, some recognised victims of trafficking may struggle to obtain benefits and therefore are at real risk of homelessness. For EEA victims, the problem is likely to arise if the victim is unable to satisfy the right to reside / habitual residence test. For non EEA victims, the problem could be that they are still waiting for the Home Office to grant a Residence Permit (which confers entitlement to social security and housing). There is no legislation or specific guidance in Northern Ireland that allows such victims to access accommodation and support in such circumstances.
32. States are under international obligations to provide a framework for protection and support for victims of trafficking.¹⁰ Northern Ireland recognises its obligations

⁹ National Crime Agency, National Referral Mechanism annual statistics.

¹⁰ ECHR Article 4, Council of Europe Convention on Action Against Trafficking in Human Beings, European Trafficking Directive 2011/36/EU



as set out in the NI Human Trafficking & Modern Slavery Strategy 2016-21.¹¹ However, despite these obligations, as outlined above, there is no specific legislation that enables all victims to access accommodation post the NRM trafficking decision. In contrast, we note that the Department for Communities & Local Government is currently consulting on its Draft Homelessness Code of Guidance for Local Authorities in England.¹² The draft Code includes a brief chapter on Modern Slavery and Human Trafficking. The chapter confirms that a victim of slavery may be given 'priority need' and confirms that the housing authority should, among other things, be particularly aware of the risk of their being exposed to further abuse if they are threatened with homelessness or are homeless.¹³

33. Accordingly, we ask the Department for Communities to consider amending current homelessness legislation and practices to cater to the needs of victims of modern slavery. Specifically, Law Centre recommends that victims of modern slavery are given priority housing status and also that housing providers are required to consider the suitability of accommodation for trafficked victims (similar principles apply to trafficked victims as to refugees: depending on past experiences it might be re-traumatising e.g. to require a female victim of sexual exploitation to share a hostel with male service users). We urge the Department to consider what role it might play within the wider NI Modern Slavery Strategy.

Additional issue: Refugee Family Reunion

34. An additional issue to consider is refugee family reunion. We invite the Department to consider developing a process to assist refugees arriving through refugee family reunion. If a person is granted refugee status, s/he is entitled to apply to be reunited under refugee family reunion. Understandably, family reunion is of great importance to refugees, for whom the safety of their loved ones is their priority.

35. Family reunion applies to spouse/partners and dependent children under the age of 18 years.¹⁴ Generally the process is as follows. The family members living abroad submit an application for family reunion to a British Embassy/Visa Application Centre. Decisions are made within 3 months. If granted, the family members are issued 'leave in line' to correspond with the sponsor's status (the sponsor is the refugee living in UK). To all intents and purposes, this means that

¹¹ DoJ, 'NI Human Trafficking & Modern Slavery Strategy 2016-17' accessible here: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/ni-human-trafficking-and-modern-slavery-strategy-2016-17.pdf>

¹² Department for Communities & Local Government, 'Draft Homelessness Code of Guidance for Local Authorities' October 2017
Dehttps://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652343/Draft_Homelessness_Code_of_Guidance.pdf

¹³ Chapter 25

¹⁴ In exceptional circumstances, family reunion can also apply to extended family members.

the family members are granted refugee status and have the same associated rights. Entry clearance is granted for a period of 28 days only; the family members must therefore arrive in the UK within a month.

36. The British Red Cross play an important role in supporting refugees through the family reunion process. It is the Law Centre's understanding that the majority of refugees arriving in Northern Ireland through family reunion come with the assistance of the Red Cross. The Red Cross can provide financial assistance to pay for the flights and can provide casework support to families on arrival to help them access the services they need (and are entitled to receive).

Refugee family reunion in Northern Ireland

In 2017, the Red Cross assisted 16 families with family reunion in Northern Ireland. This resulted in 49 people arriving through family reunion, comprising of 13 adults and 36 children.¹⁵

37. Most family members are homeless on arrival. This is because the sponsoring refugee tends to be living in a hostel or single let accommodation and so is not able to accommodate their spouse/partner and children. Family members are therefore encouraged to go directly to NIHE to register as homeless and to seek housing assistance. This can be an extremely stressful experience for all involved. Some of the families arriving through family reunion are large and so there are a number of children, which can make it very difficult for housing officers to identify suitable accommodation. Some of these families have travelled directly from refugee camps. Many cannot speak any English and have no understanding of housing procedures in Northern Ireland. The whole process is bewildering for the families and difficult for staff. The challenges/difficulties exponentially increase if Red Cross casework staff are not involved.
38. Law Centre recommends that the Department for Communities works with NIHE to agree a system whereby the process of identifying suitable accommodation can commence prior to the family's arrival. We make the following observations:
- a) A comparison can be drawn with the Syrian Vulnerable Persons Resettlement Scheme. Under this scheme, Syrian refugees arrive in Northern Ireland throughout the year. The Department for Communities has operational responsibility for the scheme. The Syrians are accommodated in a Welcome Centre for up to five days where they receive a comprehensive orientation programme including guidance and assistance on housing matters. The Syrians are then transferred to their temporary accommodation, which is paid for through Housing Benefit. While accommodation is in the private sector,

¹⁵ Statistics provided by Red Cross to Law Centre



the NIHE plays an important role in securing the accommodation and in ensuring it is suitable and appropriate for the family's needs (e.g. in relation to any physical disabilities, proximity to schools, hospitals, etc.) and vetting the safety of the accommodation with the PSNI's assistance. Like the VPR Syrians, family reunion refugees have had their visas granted by the Home Office and therefore have undergone a screening and approval process. Given that the majority of family reunion refugees arrive with the assistance of the Red Cross (which is a key delivery partner in the VPR Syrian Consortium), the arrival details of the families are known in advance and could be shared with NIHE so that a similar approach may be taken in other instances of family reunion.

- b) At a meeting in November 2017 with Red Cross, Extern and Law Centre, the Department for Communities Social Policy Unit agreed to develop a system whereby it pre allocates National Insurance Numbers to all refugees arriving through family reunion. Essentially, DfC has agreed to extend its approach to Syrian VPR refugees to all refugees. This is very welcome. We ask that the same approach is taken to housing applications.
- c) Law Centre considers that the family reunion refugees should be able to satisfy Rule 14 of the Housing Selection Scheme (i.e. connection with Northern Ireland requirement) prior to their arrival. This is because the sponsor (i.e. a member of the applicant's household) is habitually resident in NI.



Summary of recommendations

The Law Centre:

- Recommends that the Department implements an independent, tenure-neutral housing advice service (Proposal 1) and stresses the need for independence and confidentiality.
- Recommends the removal of the current intimidation points system (Proposal 7) subject to the recommendation that the Department adopts the Housing Rights' proposed 'trauma model'.
- Recommends that in relation to housing bands (Proposal 10), the Department takes into account the time refugees spend in NASS asylum accommodation for purposes of the waiting list. Additionally, the Law Centre recommends that the Department considers the suitability of hostel accommodation for refugees and that it contributes to the Executive Office's Refugee Integration Strategy.
- Recommends that the Department aligns the Selection Scheme Rules with the size criteria (Proposal 11).
- Recommends that specialised properties should be allocated by a separate process outside the Selection Scheme (Proposal 20) and that all Housing Providers consider whether tenants have the legal capacity to be party to a contract.
- Recommends that the Department considers amending current homelessness legislation and practices to cater to the needs of victims of modern slavery. Specifically, victims should be given priority housing status and the Department should consider what role it might play within the wider NI Modern Slavery Strategy.
- Recommends that the Department develops a process to assist refugees arriving through refugee family reunion with housing. The Law Centre recommends that process could be modelled on the Syrian VPR process.

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