

# **HOUSING LAW PRACTITIONERS ASSOCIATION**

**Providing Social Housing for Local People**

**Submission of the Housing Law Practitioners Association (HLP A)**

**October 2013**

Contact Details: Justin Bates (HLP A Vice Chair & Convenor of HLP A Law Reform Working Group)

Address: Arden Chambers, 20 Bloomsbury Square, London, WC1N 2AS

Telephone No: 0207 242 4244

Email: [justin.bates@ardenchambers.com](mailto:justin.bates@ardenchambers.com)

Web: [www.hlp a.org.uk](http://www.hlp a.org.uk)

## **About HLP**

The Housing Law Practitioners Association (HLP) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. HLP has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance. HLP's Responses are available at [www.hlp.org.uk](http://www.hlp.org.uk).

Membership of HLP is on the basis of a commitment to HLP's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

The Convenor of HLP'S Law Reform Group has prepared this communication, with assistance from other members of the Group. The group meets regularly to discuss law reform issues as it affects housing law practitioners. The Convenor of the group reports back to the Executive Committee and to members at the main meetings which take place every two months. The main meetings are regularly attended by c.100 practitioners.

## Introduction

Before turning to the specific issues raised in the consultation paper, we wish to make the following preliminary points.

We question the desirability of yet further changes to the operation of allocation policies under Pt.6, Housing Act 1996.

The current guidance (“Allocation of accommodation: Guidance for local housing authorities in England”) was only published in June 2012 and, in our experience, many authorities are still grappling with the changes and have either only recently introduced new allocations policies or have just finished consulting with local residents over new policies. We question whether there is anything to be gained – either by authorities or those seeking an allocation under Pt.6 – by further changes in the statutory guidance.

In addition, and linked to this issue, many authorities are still working on their Tenancy Strategies (Localism Act 2011) and developing policies on the use of private sector offers to discharge the duty under s.193(2), Housing Act 1996. Housing law and policy must be approached as a holistic body of work and any changes to the guidance under s.169, 1996 Act, will inevitably require revision of existing policies under other areas.<sup>1</sup>

### Two-year residency test

We are opposed to guidance being issued in these terms as we fear that it will prove impossible to craft a lawful policy, having regard to the various groups of people for whom it would plainly be unlawful to require them to demonstrate two-years residency in the area, *e.g.*:

- (a) former asylum seekers who are now lawfully present in the UK, but who are unlikely to have sufficient links to any authority;
- (b) the homeless who are entitled to statutory priority, especially if the authority use out-of-area placements to discharge the s.193(2) duty;
- (c) persons who have a nomadic lifestyle (*e.g.* gypsies and travellers) who are unlikely to have sufficient continuous links to any authority;
- (d) EU nationals who are lawfully present and exercising their Treaty rights.

These problems cannot be addressed (as the guidance suggests) simply be encouraging authorities to have regard to other ways of showing sufficient and continuous links to an area. The point is more stark than that. For such a policy to be lawful, there will need to be sufficient **exceptions** to the residency test, not simply different ways of satisfying the test.

We are concerned that none of these problems are recognised in the consultation paper. The brief discussion at para.11, does not suffice as it is concerned with “housing management” exceptions, rather than the groups set out above.

---

<sup>1</sup> For example, if an authority use an out-of-area (and private sector) offer to discharge the s.193(2), 1996 Act duty, they will need to consider how anyone accepting such an offer can maintain suitable priority under the Pt.6 allocation scheme.

**Foreign nationals**

We also have concerns about the suggestion in para.13, that “foreign nationals who are sleeping rough” could be encouraged to seek “reconnection” to their own county. How is this to be done? Are the government proposing to encourage authorities to pay for flights for the homeless?

**Further information required**

These proposals raise obvious issues under both EU law and domestic anti-discrimination law. The government are encouraged to produce an equality impact assessment on these proposals at an early stage, as such a document will be necessary in order to inform the final decision.

**Housing Law Practitioners Association**  
October 2013