



Mind's response to the Homelessness Code of Guidance for Local Authorities consultation paper

We're Mind, the mental health charity for England and Wales. We believe no one should have to face a mental health problem alone. We provide advice and support to empower anyone experiencing a mental health problem. We campaign to improve services, raise awareness and promote understanding.

This response follows the format of the online and paper versions of the consultation paper.

- **Q1: Are you responding as (please tick one):** on behalf of an organisation
- **Q3: If you are responding on behalf of an organisation, is the interest of your organisation as (tick all that apply):** Other - mental health charity
- **Q4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located (or specify areas in the box provided):**

Head office E15 4BQ and 135 independent local Minds across England and Wales with whom we work.

Not answering questions 5-7

- **Q8: Are there any other relevant caselaw 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.**

***Hackney LBC v Haque* [2017] EWCA Civ 4, [2017] HLR 14, CA**

Chapter 17 of the Code of Guidance (Suitability) should incorporate the guidelines to decision-makers considering the suitability of a property when an applicant raises medical issues as set out in paragraph 43 of ***Haque***, namely: -

i) A focus on whether the applicant suffers from a physical or mental impairment having a substantial and long term adverse effect on his or her ability to carry out normal day to day activities; i.e. that s/he was disabled within the meaning of EA s. 6, and therefore had a protected characteristic.

ii) A focus upon the specific aspects of his or her impairments, to the extent relevant to the suitability of accommodation as accommodation for him or her.

iii) A focus upon the consequences of his or her impairments, both in terms of the disadvantages which he or she might suffer in using the accommodation as his or her accommodation, by comparison with persons without those impairments (see s. 149(3)(a)).

iv) A focus upon his or her particular needs in relation to accommodation arising from those impairments, by comparison with the needs of persons without such impairments, and the extent to which the accommodation met those particular needs: see s. 149(3)(b) and (4).

v) A focus on whether the applicant's particular needs arising from those impairments might require him or her to be treated more favourably in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics: see s. 149(6).

vi) A review of the suitability of the accommodation as accommodation for the applicant which paid due regard to those matters.

Panayiotou v London Borough of Waltham Forest (2017) EWCA Civ 1624

Paragraph 8.14 of the Code of Guidance deals with the test of vulnerability set out by the Supreme Court in the case of *Hotak v Southwark LBC (2015) UKSC 30, [2016] AC 811*. This should be updated to take account of the observation of the Court of Appeal in *Panayiotou*, in particular that the test does not set a threshold of vulnerability and that the decision maker must deal with the actuality and qualitative characteristics of the applicant's situation.

Not answering question 9

Content of the Homelessness Code of Guidance

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

- **Q10: 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 examples, case studies, research or other types of evidence to support your views.**

The impact of homelessness, or the threat of homelessness is likely to be greater for disabled people, including people with mental health problems. Mind's report, 'Brick by brick' (2017), brings together research on the housing experiences of those people with mental health problems and highlights that they are more likely to be in insecure housing and to be evicted, even if they are in secure accommodation - either for financial reasons or disproportionate anti-social behaviour (ASB) enforcement. The guidance should be amended to reflect this and greater emphasis should be placed on the need to work with people perceived to be displaying anti-social behaviour to keep them in their tenancy. It is also important to note that repossessions of owned property significantly increases risk of experiencing a mental health problem (Downing, 2016; Pevalin, 2009), and a rise in repossessions is also associated with increased suicide rates – particularly in middle age (Houle & Light, 2014).

The Guidance should be amended to reflect that people who are evicted tend to have worse physical and mental health than average, and that the process of eviction itself can also have profound psychological consequences. A high proportion of people who are homeless also experience poor mental health – particularly personality disorders and psychosis. Mental health problems can contribute to someone losing their home but they can also be caused or exacerbated by homelessness.

Research conducted Habinteg and Papworth Trust (The hidden housing market, 2016) found that 1.8 million disabled people have an accessible housing need – 580,000 of whom are of working age. There are likely to be many disabled people who are living in a hidden state of unsuitable accommodation that doesn't meet their needs. The Equality and Human Rights Commission are currently undertaking a formal inquiry on housing for disabled people. It will look at whether the availability of accessible and adaptable housing, and the support services around it, is fulfilling disabled people's rights to live independently. For people with mental health problems, suitable accommodation can include supported housing with access to on-site support staff. Mental health should therefore be mentioned where reference in the Guidance is made to other relevant factors in determining whether it would be reasonable for an applicant to continue to occupy accommodation – expanding the current focus on physical health.

The shortage of social housing means that there has been a dramatic increase in the number of people in poor quality temporary accommodation, and the length of time they have to stay there. The prevalence of mental health problems in temporary accommodation is much higher than average but people receive little support. Research shows that the threat of eviction is particularly severe in temporary accommodation: "often decisions are made on arbitrary grounds or relating to unavoidable illnesses, and even in response to tenants having made complaints or reported physical problems with the property" (Maciver et al. 2016, p.14). It is welcome that the Guidance references the importance of considering the location when housing people with mental health problems in temporary accommodation to limit disruption. We suggest that the Guidance be amended to encourage housing

authorities to monitor the stability of people with protected characteristics in temporary accommodation and analyse whether certain groups are more likely to be evicted from these settings. The Guidance already acknowledges that upstream measures can save money and this should be extended to ensuring anyone stability for anyone who has to stay in suitable temporary accommodation.

Finally, the mental health of mothers needs to be considered as part of the guidance. Evidence shows that found that, "at least two years after their eviction, mothers still experienced significantly higher rates of material hardship and depression than peers (Desmond and Kimbro, 2015).

The Homelessness Code of Guidance should be amended to acknowledge these factors in order to reduce the number of people with disabilities, including people with mental health problems, who become homeless.

• **Q11: 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?

No – further information, and explicit references to local authority responsibilities towards their residents living with mental health problems, is required (as explained in part B).

b) Would you suggest any additions, deletions or changes to these chapters? Yes, please see table below

Chapter	Page and paragraph	Change/add /remove	Comment
1	p14, 1.21	Add	'People with mental health problems' to list of groups to whom housing authorities should pay particular attention
2	p.16, 2.5	Add	Explicit requirement on local authorities to link their strategies with those of mental health and other third sector organisations
2	p.17, 2.9	Add	Specific mentions of types of voluntary organisations, including explicitly mental health organisations
2	p.17, 2.12	Add	Require local authorities to consider the health (mental and physical) of their homeless population and keep this area of the homelessness strategy updated – implicitly affects the delivery of the strategy
2	p.18, 2.13 and 2.16 p.19, 2.20	Add	Encourage local authorities to use current and predicted numbers of residents with mental health problems when calculating future levels of homelessness in their districts (there is a connection between homelessness and mental health, and incorporating these stats into calculations will support local authorities to be prepared for the additional needs of homeless people with mental health problems)
2	p.18, 2.15	Add	Add example of people with mental health problems to the end of the final sentence
2	p.21, 2.28 a	Add	Encourage local authorities to produce specialist advice for groups like those with mental health problems, domestic violence victims etc
2	p.21, 2.28 b	Add	Give example of using numbers of people with mental health problems to identify people at risk of homelessness
2	p.21, 2.28 c	Add	Example of hospital discharge as a situation when pre-crisis intervention should be considered
2	p.21, 2.28 e	Add	Example of mental health organisations as potential partners
2	p.22, 2.34	Change	Recommendations around supply and demand should include reference to need to review the quality of accommodation available and to remove poor quality accommodation from supply numbers. This could include analysing the average number of properties no longer of a good enough quality each year, in order to predict future numbers falling out of circulation.

			Include reference to sufficient single bedroom properties, which are important for people with mental health who will find living in HMOs difficult and may not be able to afford larger homes.
2	p.23, 2.38 a	Add	People with mental health problems to list of different groups in the community
2	p.23, 2.41	Add	Explicitly reference quality of properties (i.e. 'expand the provision of good quality private rented accommodation') to reiterate the need to assess the quality of homes in the sector
2	p.24, 2.41	Add	Include more information about grant funding for private landlords
2	p. 24, 2.45	Change	Replace 'joint' with 'join' We would advise caution about the inclusion of the reference to previous conduct of applicants considering the unfairly harsh enforcement of anti-social behaviour orders against people with mental health problems, and their increased likelihood of falling into rent arrears.
2	p.24, 2.46	Change	This is a valuable opportunity for the Government to ensure allocations policies properly support people with mental health problems to access the kind of home that will keep them well. Currently, research shows that people with mental health problems are more likely to live in the least desirable properties, indicating that they are being left behind by allocations policies which do not come close to giving physical and mental health parity of esteem.
2	p.25, 2.49	Add	It is concerning that the section on temporary accommodation only considers the financial burden, rather than the wider impact of such unstable, inappropriate housing on the individual. We'd like to see the wording in the final sentence strengthened – all housing authorities using bed and breakfast accommodation should have a plan to reduce or eliminate it, rather than considering writing such a plan.
2	p.29, 2.74 a	Add	Mental health services after GPs

• **Q12: 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?

b) Would you suggest any additions, deletions or changes to these chapters? Yes, please see table below

Chapter	Page and paragraph	Change/add /remove	Comment
6	p. 41, 6.12	Change	"Encourag[ing]" authorities to be "sensitive" to situations where parents or carers are finding it difficult to continue with caring arrangements but are reluctant to revoke the licence of the person being cared for is vague. We would encourage a stronger steer to authorities to consider as homeless people in this situation.
6	p. 46, 6.40	Add	A sub-paragraph should be added to 6.40 to indicate that it would be not reasonable for an applicant to continue to occupy accommodation if that would adversely impact their mental health or that of a member of the household. See further question 12 c) below.
8	p. 58, 8.14	Add/change	Paragraph 8.14 of the Code of Guidance deals with the test of vulnerability set out by the Supreme Court in the case of Hotak v Southwark LBC (2015) UKSC 30, [2016] AC 811. This should be updated to take account of the observation of the Court of Appeal in Panayiotou, in particular that the test does not set a threshold of vulnerability and that the decision maker must deal with the actuality and qualitative characteristics of the applicant's situation.
8	p. 58, 8.16	Add/change	The third sentence of 8.16 starts " <u>If</u> the applicant has a disability..." [emphasis added] and then goes on to set out what the housing authority

			should assess. The cases of <i>Pieretti v Enfield LBC</i> [2010] EWCA Civ 1104, [2011] HLR 3, CA and <i>Hotak v Southwark LBC</i> (2015) UKSC 30, [2016] AC 811 make it clear that the housing authority should actively focus on whether the applicant has a disability and not simply consider disability if it obvious. This should be made clear before setting out what it must then assess if the applicant does have a disability
8	p. 60	Change	<p>Paragraphs 8.24 – 8.26 set out what a housing authority should have regard to when assessing whether an applicant is vulnerable by virtue of mental illness, learning disability or physical disability. In broad brush terms we are concerned that the requirement that a housing authority will need to “take account” of all relevant factors including those matters set out at a), b) and c) could lead to a “tick box” exercise by assessors. This concern is compounded by the very limited guidance provided in paragraphs 1.15 – 1.18 of the draft Code of Guidance on the public sector equality duty which, of course, is imported into all assessments of vulnerability. It should be made clear in the draft Code of Guidance that rather than simply taking account of these matters, the authority should conduct a substantial, rigorous and open-minded assessment of these issues in order to satisfy the PSED.</p> <p>While we welcome the guidance that authorities should seek a clinical opinion if there is any doubt about the extent of vulnerability, and the guidance that the assessment of vulnerability will require co-operation between various agencies, we at Mind hear time and again from our beneficiaries of their concerns that the assessors themselves appear to have little understanding of mental health issues. We urge that the guidance contain a requirement that decision-makers be specifically trained on mental health awareness in particular and would support a requirement that they be trained more widely on learning disabilities and physical disabilities.</p>
8	p. 62, 8.38	Change	<p>This paragraph deals with the “other special reason” category in s. 189(1)(c). We would suggest that this be amended. As it stands it may be that some could be of the impression that if someone were to have a “common mental health problem” then this when “taken alone” would not be sufficient for them to be considered vulnerable under the category of mental illness or handicap. “Common mental health problems” is not a term of art, but is often used when referring to depression and anxiety. Mind is strongly of the view that both of these conditions (which have spectrum of severity) would often render an applicant vulnerable under section 189 when taken alone.</p>
9	p. 64-5, 9.5 and 9.11	Change	<p>The Guidance points out at 9.5 that the exception to the general rule that it is not for applicants to prove their case on intentionality relates to acquiescence to another member of the household causing intentional homelessness. Here “<i>acquiescence may be assumed by the housing authority in the absence of material which indicates to the contrary</i>”. 9.11 states that authorities in considering this issue should take into account whether the applicant could reasonably have taken a position through “<i>fear of actual or probable violence</i>”. Mind is concerned about the effective reversal of the burden of proving intentional homelessness when it comes to other members of the household, and the only example cited as pointing away from acquiescence being the fear of violence. This ignores other forms of coercion and other dynamics within a household which may mean that someone, perhaps with mental health problems, feels unable to challenge conduct of a member of the household.</p>
9	67-68, 9.16 – 9.20	Add, change	<p>This section sets out guidance on acts or omissions which should not be considered as deliberate. In 9.17 examples of acts or omissions not to be considered deliberate. It is clear from these examples that the bar is set extremely high: - in terms of a) it relates to financial difficulties “<i>beyond the applicant’s control</i>”; in terms of b) the applicant must be “<i>incapable of managing their affairs, for example, by reason of age, mental illness and disability</i>” (emphasis added). Mind would urge i) either not setting the bar</p>

			as high as incapability or beyond control, or ii) recognising within the Guidance that the reality for many people with mental health problems is that their mental health problems can overwhelm their capabilities. Similarly, examples of acts or omissions which may be regarded as deliberate include c) neglecting affairs having disregarded sound advice, and e) having been evicted due to anti-social behaviour, nuisance or harassment. These examples, if applied inflexibly (which many authorities will) significantly disadvantage people with mental health problems. Mind would urge that some flexibility be built into this part of the Guidance to indicate the reality that for a small minority of people with mental health problems, these problems may find expression in neglectful or challenging behaviour. Often this is reflective of an unmet need for support and this should be investigated rather than simply used as a means of denying assistance under Part 7 of the Housing Act 1996.
10	72, 10.6	Add/change	10.6 suggests a working definition of residence sufficient to establish a local connection. This potentially disadvantages people with mental health problems who studies have shown to be twice as likely to move as those with no problems (Lix et al: <i>Residential Mobility and Severe Mental Illness: A population-based analysis. Administration and Policy in Mental Health Services Research, 32(2), pp. 160-171</i>)

c) When considering 'Chapter 6: Homelessness and Threatened with Homelessness' is the guidance on whether it is 'reasonable to occupy' helpful? We are particularly interested in your views on how the guidance should help housing authorities assess when it is no longer reasonable for a tenant to occupy following expiry of a valid section 21 notice -

d) When considering 'Chapter 10: Local Connection' does the guidance provide sufficient clarity about when and how a referral can be made? Please note if there is anything more you think could be provided to help housing authorities interpret the legislation Paragraph 6.40 sets out examples of the factors relevant to determining whether it would be reasonable for an applicant to continue in occupation. There are a range of circumstances whereby someone's housing can have a serious impact on their mental health, such as the physical condition of the property, overcrowding, the local environment, affordability of housing costs, physical security, social connections with neighbours and the impact of housing on identity and self-esteem. This section of the Code of Guidance offers no guidance on how these issues might be taken into account in considering whether it is reasonable for an applicant to continue to occupy the accommodation. In our view it is not reasonable for an individual to continue to occupy accommodation which is having a detrimental impact on their mental health or that of a member of their household.

• Q13: Taking chapters 11-14 of the Homelessness Code of Guidance which focus on the prevention and relief duties consider the following questions:

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

No, further definitions required, as explained below

b) Would you suggest any additions, deletions or changes to these chapters? Yes, please see table below

Chapter	Page and paragraph	Change/add /remove	Comment
11	p.82, 11.7 b/c	Add	Homelessness assessments should include reference to a person's mental health status and the kind of accommodation that will help them to stay well. Assessors should also be appropriately trained to support people to complete the assessment process which can be distressing and stressful.
11	p.82, 11.8	Add	Support for individuals who may struggle to remember information (e.g. past addresses), and what they might need in order to complete

			assessments. For example, a check list or pre-assessment phone call to run through the required documents.
11	p.82, 11.9	Add	Reference to supporting an applicant's mental health and therefore the required training for housing authority staff.
11	p.82, 11.10	Add	'including mental health needs' after 'or has specific medical needs'
11	p.82, 11.11	Add	Consider adding a phrase about helping applicants to work out what their needs are – not all needs are obvious to the individual and this is certainly the case with mental health related needs.
11	p.83, 11.13	Change	'Could' for 'should' ('housing authorities could not rely solely'). Housing authorities should be more strongly discouraged from relying on digital only services bearing in mind the impact on people with mental health problems, those with little access to technology and older people.
11	p.83, 11.16	Add	Consider adding a paragraph outlining the advice for applicants going through the process to help them answer questions as accurately as possible
11	p.84, 11.20	Add	Consider adding the need to connect personalised housing plans to social care and health care plans (such as aftercare plans, CPA care plans and any crisis plans).
11	p.86, 11.31	Add	Consider adding information about how to measure whether a step is 'reasonable', and how to work with individuals with mental health problems to come to decisions about their preferences and what is reasonable – an individual in a mental health crisis may not be able to follow this process or determine what is reasonable.
11	p.87, 11.36	Add	Consider offering applicants support to request a review of their personalised housing plan, and providing an advocate for meetings to discuss this review.
13	p.90, 13.2	Change	This is a considerable opportunity to strengthen the relief duty on local authorities, and taking only 'reasonable steps' to secure accommodation with only 'reasonable prospect' of being available for 6 months is insufficient. Consider extending to 12 months, or asking local authorities to make sure the property has a 'good' prospect of being available for a longer period. Unstable tenancies have a drastic impact on all tenants' mental health, and can exacerbate issues for those already living with mental health problems.
14	p.94, 14.7	Add	'And people with mental health problems' to end of final sentence ('particularly to families with children')
14	p.98, 14.33	Add	Definition of 'deliberate and unreasonable refusal' in order to ensure any mental health related behaviours are exempted and treated compassionately.
14	p.99, 14.42	Add	Consider adding requirement to have confirmed receipt of warning before issuing notice.
14	p.99, 12.43	Add	Consider offering applicants support to request a review of the decision to end the prevention or relief duty, and providing an advocate for meetings to discuss this review.

c) When considering 'Chapter 11: Assessments and Personalised Plans' do you consider the guidance on 'reasonable steps' is sufficient, and is helpful? No, requires more detailed definition.

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, there is a good reference to mental health but we would want to see links earlier on in guidance to this definition to help ensure people read the mental health exemption.

• **Q14: Taking chapters 15-17 of the Homelessness Code of Guidance which focus on accommodation duties and powers consider the following questions:**

- a) **Having read these chapters are you clear what local authorities responsibilities are?**
No, further information and explicit reference to people with mental health problems is required.
- b) **Would you suggest any additions, deletions or changes to these chapters?** Yes, please see table below.

Chapter	Page and paragraph	Change/add /remove	Comment
16	p.117, 16.30	Add	Add people with mental health problems to paragraph about groups for whom B&B is not appropriate for longer than 6 weeks: this kind of temporary accommodation offers no stability, and has been shown to exacerbate mental health problems.
16	p.117, 16.36	Add	Add people with mental health problems to paragraph about groups for whom hostel accommodation is not appropriate for longer than 6 weeks: this kind of temporary accommodation offers no stability, and has been shown to exacerbate mental health problems.
16	p.118, 16.42	Add/delete	It would be useful to see some information about the feasibility of Housing First. Without indication about whether this system will be implemented the paragraph seems obsolete.
17	p.120, 17.5	Add	Add 'including mental health needs' at end of first sentence.
17	p.122, 17.15	Change	It is deeply concerning that basic requirements (such as having appropriate licenses and protection against carbon monoxide poisoning and fire) is not required for the accommodation assigned to households without priority need. This clause should urgently be reviewed.
17	p.123, 17.20	Add	Consider adding reference to local landlord registers in order to keep accurate and up to date records of landlords and make it easier for housing authorities to satisfy themselves that landlords in their areas are fit and proper.
17	p.124, 17.25	Change	Upgrade advice to local authorities about being mindful of overcrowding provisions, to advising them to avoid placing individuals in overcrowded accommodation at all costs. Overcrowding has been proven to damage a person's mental health.
17	p.129, 17.48	Add	Add 'mental health services' in final sentence list ('where possible the authority should seek to retain established links with schools...')
17	p.130, 17.57	Add	Consider encouraging housing authorities to produce easy read versions of their temporary accommodation policies, to aide applicants' understanding.
17	p.131, 17.61	Add	Consider offering applicants support to request a review of the decision about their placement's suitability, and providing an advocate for meetings to discuss this review.

- 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
- 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?** No, it is not clear what local authorities responsibilities are and the advice could be stronger in this regard.

- **Q16: 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
 - b) Would you suggest any additions, deletions or changes to these chapters?** Yes, please see table below.

Chapter	Page and paragraph	Change/add /remove	Comment
26?		Add	Having suggested multiple additions of explicit mentions of people with mental health problems in the body of the guidance, we feel it would make sense to collate this information in a final chapter about this group. People with mental health problems are disproportionately represented in the homeless community so this is a significant group which needs to be thoroughly considered when reducing homelessness. It would be preferable to have a 'go to' chapter for housing authorities to refer to, as with other vulnerable groups.

For further details please contact:

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