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*Charity Law Unit*

*Housing The  
Mentally Vulnerable:  
The Role of Charities*

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## THE CHARITY LAW UNIT

The Charity Law Unit was established in October 1994 to provide a focus for the already well-established reputation of the Faculty of Law, University of Liverpool for research and teaching in Charity Law. The Charity Law Unit has grown from strength to strength since its establishment and it is the only such unit in England and Wales.

The Charity Law Unit's mission is to be recognised as *the* centre of excellence for legal research of the charity sector. It aims to do this *both* by responding fully to the demands for legal research raised by the charity sector *and* by being pro-active in highlighting and pursuing legal research in areas where the law and its application requires clarification, guidance or possible reform.

The report, *Housing The Mentally Vulnerable: The Roles of Charities*, was written by Warren Barr and Nicola Glover-Thomas. Warren Barr is currently Director of the Charity Law Unit, and has published widely in the related fields of charities and property law. Nicola Glover-Thomas is author of *Reconstructing Mental Health Law* published by Butterworths *Law In Context Series* in 2002, and has written many articles in the area of mental health law.

The empirical work for *Housing The Mentally Vulnerable: The Role of Charities* was undertaken by David Haggerton and Rachael Moss, who were employed as Research Assistants on the project. The other member of the research team was Jean Warburton.

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To respect their confidentiality, participants' names and potentially identifying circumstances have been altered.

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## OVERVIEW

The community care policy emphasises the community as the primary environment for psychiatric care, so that many inpatient facilities closed following the policy's introduction. In the early days of the policy there was inadequate recognition of the fundamental role played by housing; leading to insufficient housing stock being made available to the mentally vulnerable. A general lack of funding, gaps in legislative provision, problems caused by homelessness and the need for effective multi-agency working have all contributed to the increasing involvement of charities in housing the mentally vulnerable. While it is accepted that the charity sector have an important and increasingly vital role to play in housing this group, it has been difficult to ascertain exactly what the nature of its involvement is in the provision of both long-term and temporary/emergency housing. This research sought to gain a better perception of the nature of the involvement in this particular area of housing provision.

The fragility of the funding regime, the multiplicity of referral bodies, the particular support demands of the client group, and the confusing legal framework of occupation arrangements all suggest that charities involved in housing and support provision face significant hurdles in delivering such provision. The multifarious problems, both practical and legal in nature, which charitable bodies that are charged with this provision face regularly were also examined in the research.

In mapping the character of charities' involvement in housing and support provision, this research sought to provide firm data on the scope and nature of the problem. It is recognised that such data will have potentially wide implications for the support of the mentally vulnerable and policy reform in the future. In particular, the work sought to identify the legal and practical problems these organisations face on a regular basis and it is expected that the data collected will also advance the current legal debate on housing law reform and suggest ways of harnessing best practice.

## INTRODUCTION

Mental health care provision has been the subject of significant policy change over the past twenty years. Since the inception of the modern community care policy in the 1980s, which sought to emphasise the role of the community in the provision of care and support to the mentally vulnerable, charities (and other bodies) have increasingly been engaged in the provision of housing (with and without attendant services) to this group. By virtue of the removal of the institution as the primary environment in which care and support is provided to the mentally vulnerable, the housing needs of this group necessarily require careful consideration. However, at the start of the community care policy the question of providing appropriate care and support was divorced from the question of housing availability and a multiplicity of problems have arisen as a result. The practical repercussions of this has been a lack of adequate housing stock, inadequate resourcing of support and housing services and related problems caused by homelessness (Evans, 'Tackling deprivation on social housing estates in England: An assessment of the Housing Plus Approach', *Housing Studies*, 1998).

In addition, the community care policy necessitates the involvement of several different agencies and as such, effective multi-agency working, both in terms of seeking a balance between different funding regimes and in providing appropriate services, is essential. Yet, despite this, as Staite and Martin observe, "[w]orking together is not easy. Old rivalries, old misconceptions – even old personal animosities – can act as a barrier to creative multi-agency working" (Staite & Martin, 'What else can we do? New initiatives in diversion from custody', *Justice of the Peace*, 1993). It has been observed that "[f]undamental divisions remain between the health, social care and housing fields which are having a direct negative impact on users, carers and the community at large" (Palmer *et al*, *Making Connections*, Unpublished, 1996). These divisions are a result of professional, cultural and institutional differences, which have led each agency to hold different priorities and objectives. Effective multi-agency working necessarily requires agencies to put their differences to one side in order to provide the level of care and support a mentally vulnerable individual needs (Pinch, 'The barriers to homeless people accessing community care', *Community Care, Planning and Management*, 1993; Fletcher, 'Housing and community care: from rhetoric to reality', *Community Care Planning and Management*, 1993).

### *The Community Care Policy*

By the 1960s, community care was understood as the provision of appropriate care and support (although not including the forcible administration of medication) outside the confines of a hospital. The shift away from institutional environs towards less restrictive care surroundings in the twentieth century resulted from several influencing factors. Without doubt, political zeal for community care was brought about by financial considerations. The Rt. Hon., Enoch Powell, MP, a Minister of Health, introduced the Hospital Plan in 1961; a plan which led to a large-scale reduction of psychiatric hospital facilities for the mentally ill and impaired. The closure of psychiatric hospitals and the re-positioning of such care in the community were viewed as a cheaper option. "Residential care was seen by many as an expensive form of provision which consumed resources which needed to be used to fund non-

institutional services such as home care, day care and sheltered housing” (Bosanquet, *A Future for Old Age*, London, Temple Smith, 1978). Furthermore, the drive for community care was fuelled by a growing disillusionment with institutional provision, which was reflected in the work of the anti-psychiatry movement of which many of its suppositions were anti-institutional rather than anti-psychiatry in nature (Bartlett & Wright, ‘Community care and its antecedents’ in Bartlett & Wright (eds) *Outside the Walls of the Asylum*, London, Athlone Press, 1999; Goffman, *Asylums*, London, Penguin, 1961; Szasz, *Law, Liberty and Psychiatry*, New York, Syracuse Press, 1963). The Human Rights movement, which picked up speed in the 1960s and 1970s, was also embraced by mental health activists like Larry Gostin of MIND in the 1970s who advocated the need to protect psychiatric patients’ rights. These influencing factors resulted in a reduction in hospital facilities and an increasing reliance on community-based care. Now “community care has come to be almost universally espoused as a desirable objective for service users and a central pillar of policy for governments and politicians of all persuasions” (Means, *et al*, *Community Care: Policy and Practice*, Basingstoke, Palgrave Macmillan, 2003). The purpose of community care is to offer vulnerable individuals the opportunity of living in the community, which would allow them to maintain relationships with relatives and friends, while also providing the social and psychiatric support they need. Care within the community was once concerned with the distribution of food and shelter to those in need prior to the construction of the large, imposing lunatic asylums and workhouses during the nineteenth century (see, Walmsley, *et al*, ‘Community care and mental deficiency 1913 to 1945’, in Bartlett & Wright *Outside the Walls of the Asylum*, London, Athlone Press, 1999). Since the 1980s, community care focuses rather on the provision of a more structured approach to care with the intention of enhancing the skills and independence of the mentally vulnerable. One of the inherent aspects of the policy was to provide alternative domiciliary arrangements outside the institutional setting (Department of Health *Caring for People: Community Care in the Next Decade and Beyond*, Cm. 849, London, HMSO, 1989; DOE/DOH Housing and Community Care Circular 10/92 12, London: HMSO, 1992). Now, ‘community care’ is a label which refers to the full spectrum of care which is offered to all vulnerable groups; the mentally vulnerable, the mentally impaired and the elderly.

*“Community care means providing the right level of intervention and support to enable people to achieve maximum independence and control over their lives. For this aim to become a reality, the development of a wide range of services provided in a variety of settings is essential. These services form part of a spectrum of care, ranging from domiciliary support provided to people in their own homes, strengthened by the availability of respite care and day care for those with more intensive care needs, through sheltered housing, group homes and hostels where increasing levels of care are available, to residential care and nursing homes and long-stay care for those for whom other forms of care are no longer enough”* (Department of Health, White Paper - *Caring for People*, HMSO, 1989).

### *The Assessment and Fulfilment of Need*

The changing focus in mental health service provision from reliance on the clinical setting of a hospital towards the provision of care in a less restrictive environment has required appropriate levels of community support. In the early 1980s, it was recognised that a positive duty to provide after-care services was necessary (Gostin,



‘The ideology of entitlement: The application of contemporary legal approaches to psychiatry’, in Bean, *Mental Illness: Changes and Trends*, Chichester, Wiley, 1986). Section 117 was included in the *Mental Health (Amendment) Act 1982* (as amended by the *Mental Health Act 1983*) to meet this need.

Section 117 of the *Mental Health Act 1983* imposes a duty upon health and social services authorities to provide after-care services, such as social day-care support. It applies:

- To patients that have been detained under Part II of the 1983 Act, under section 2, 3 and 4.
- To patients who are ‘liable to be detained’ or ‘liable to be recalled to hospital’ such as those who have been granted leave of absence under section 17 of the 1983 Act.
- To patients who were restricted under section 41 of the 1983 Act and have been granted a conditional discharge.

Section 117 places an unequivocal duty upon relevant authorities to provide appropriate after-care services. If the relevant authorities are not prepared to provide these services themselves, they are required to seek them from elsewhere (*R v. Ealing District Health Authority, ex parte Fox* [1993] 1 WLR 373). The supply of such after-care services under section 117 are “not subject to charging under section 17 of the *Health and Social Services and Social Security Adjudications Act 1983*” (Advice Note for use by Social Security Inspectorate – *Discretionary Charges for Adult Social Services*, January 1994) which was confirmed in 1998 that “charges cannot be levied for services, residential or non-residential, which are provided under section 117 of the *Mental Health Act*” (HC Deb Vol 317 Col. 172 wa, 28 July 1998 The Rt. Hon. Mr Paul Boetang, Parliamentary Under-Secretary of State). In *R v. London Borough of Richmond, ex parte Watson* ([2001] QB 370), it was noted that section 117 provides a ‘freestanding duty’ on the local authorities to provide and finance needed after-care services.

The *National Health Service and Community Care Act 1990* created the Care Programme Approach and implements some of the proposals put forward by the Griffiths Report 1988. Local social services should “ensure that the needs of individuals within the specified groups are identified, packages of care devised and services co-ordinated” (Griffiths, *Community Care: Agenda for Action*, London, HMSO, 1988). The 1990 Act’s objectives are:

- To move the provision of ‘community care’ services from health to local social services authorities.
- To implement the Care Programme Approach.
- To assess an individual’s need (section 47(1)).
- To devise a care plan and packages of care (section 46).
- To co-ordinate services between different responsible agencies.
- To review failures in the discharge of social services duties (section 50).
- When the needs of the patient are of a housing nature, the local social services authority must consult and work together with the relevant housing authority (section 47(3)(b)).

Housing bodies become involved with individual clients upon receipt of a referral from a referral agency or authority. The referral process will depend largely on the individual housing body, whether the accommodation sought is of a short or long – term nature, whether the circumstances of the particular case is an emergency, the risk assessment process and the nature of the housing available, i.e. shared housing or self-contained units. These multifarious factors can influence the housing body's decision about the nature of housing to provide. The usual referral route comes through health and social care professionals. If an individual has been hospitalised and his or her mental state has stabilised sufficiently for less restrictive care within the community, the health authority will normally take the lead on seeking accommodation for the individual. If an individual is living in the community following a period of formal detention in hospital and is in receipt of after-care services provided under section 117 of the *Mental Health Act 1983*, then, again, the health authority will normally be responsible. However, for many mentally vulnerable individuals, hospital stays may be an incredibly rare or non-existent aspect of their care and as such, the support they receive within the community is provided by social services. Where housing bodies take homeless clients, referral is usually more direct for the body itself may pick an individual up off the street or from a crisis centre which offers a bed for the night with a hot meal.

### *The Nature and Funding of Housing and Support Services*

As the community care policy emphasises least restrictive care, this has necessarily impacted on the mentally vulnerable in housing terms as those who were once hospitalised now live in the community, without, as indicated above, additional funding being made available to provide extra housing stock. There have been a number of studies which have assessed the availability of housing, yet none of these studies have considered the affect the community care policy has had on the housing market (Niner, *Housing Needs in the 1990's: An Interim Assessment*, National Housing Forum, London, National Federation of Housing Associations, 1989; Office for Public Management *Assessment of the Housing Requirements of People With Special Needs Over the Next Decade*, London, National Federation of Housing Associations, 1992). The lack of choice around stock has been exacerbated by changes in legal regulation, which have increased the cost of adequate housing in real terms by replacing rent control with market rents (see, Glover – Thomas & Barr, 'Housing An Individual: Property Problems with the Mentally Vulnerable', in Hudson (ed), *New Perspectives on Law, Human Rights and the Home*, Cavendish Publishing Ltd, 2003, which considers these issues in depth).

Housing provision for the mentally vulnerable takes a number of forms, and is funded by differing regimes. Broadly, the division is between mainstream housing and special needs housing. Mainstream housing, which is housing without any special building requirements or resident support services, is the most widespread form of provision. However, it may not be suitable for many mentally vulnerable individuals, either because of the physical condition of the building itself or because of a lack of support facilities. Special needs housing, by contrast, describes accommodation which has either been specifically built or adapted in order to reflect particular needs. This descriptor covers a range of housing, from hostels with a high level of support to accommodation providing limited support for individuals who have progressed sufficiently in order to lead lives that are more independent. However, there is limited

special needs housing stock, as they are expensive to fund. The result is that such accommodation tends to offer a temporary stay only, and has become associated with the early transition period between hospital and community. Moreover, existing research suggests that an emphasis on special needs housing actually harms provision for the mentally vulnerable overall, by deflecting attention away from the need to provide sufficient, affordable and appropriate mainstream housing. The result, it is argued, is that only a small percentage of mentally vulnerable individuals were offered the housing they need (see Wheeler, 'Housing policy and elderly people' in Phillipson & Walker (eds) *Ageing and Social Policy: A Critical Assessment*, Aldershot, Gower, 1988).

The provision of housing services has also shifted away from direct local authority involvement, with most functions discharged through housing associations, now designated as Registered Social Landlords under the *Housing Act 1996*. These associations are registered with the Housing Corporation, which is a government agency responsible for funding and regulating social housing outside of the local government sector.

Existing research indicates that approximately two thirds of registered social landlords are registered charities (Alder & Handy, *Housing Associations: The Law of Social Landlords*, 3<sup>rd</sup> Edition, London, Sweet & Maxwell, 1997) which is unsurprising, given the fiscal and other benefits associated with the award of charitable status. It does not, however, indicate whether these bodies are actively involved in provision for the mentally vulnerable. Charitable providers might therefore own their own stock. Preliminary research indicated that charities and other voluntary sector bodies may manage housing resources for a landlord association, even if they do not strictly provide the housing themselves. It was suggested that this might be a popular model in special needs accommodation, as it helps bridge the funding gap created by the Housing Corporation, whose funding does not extend to personal care or services except to the limited extent that these costs are reasonably incidental to the overall cost of housing management as a whole (Alder & Handy, 1997). It would be expected that a substantial number of charitable social landlords or other voluntary sector bodies would be involved in servicing the housing needs of the mentally vulnerable, but there is no clear indication of how that role is discharged by charities.

Into this potent mix, changes to the funding regimes have meant that, for example, there is now a possibility of floating support services, which can be attached to mainstream housing, so that services can be delivered irrespective of whether the property is classed as mainstream or special needs property. There is a continuum of funding which has changed over time, with new methods being attempted in a bid to improve provision. This suggests that there may be charities which focus simply on support, but, once again, there was no existing research to demonstrate this.

Currently, housing bodies fund the housing projects they own, manage or provide floating support services to, through several routes. Housing placements are usually funded through rent provision that is obtained by way of the housing benefit system (for details see, [http://www.dwp.gov.uk/lifeevent/benefits/housing\\_benefit.asp](http://www.dwp.gov.uk/lifeevent/benefits/housing_benefit.asp)). Where support and attendant services are offered in conjunction with housing, the Supporting People framework funds this (for details see, <http://www.spkweb.org.uk>). The Supporting People programme provides support services to a wide range of

vulnerable people. Supporting People includes the cost of housing-related support services in all sheltered housing, supported housing for people with mental health problems, learning difficulties, physical disabilities, homeless people amongst others. It also includes funding for Home Improvement Agencies (e.g. Care and Repair) and Community Alarm services. The funding through the Supporting People programme is distributed directly to support providers. The Office of the Deputy Prime Minister has recently announced an overall budget of £1.72 billion for the year 2005/6, followed by £1.7 billion for both 2006/7 and 2007/8 respectively ([http://www.dh.gov.uk/PublicationsAndStatistics/Bulletins/ChiefExecutiveBulletin/ChiefExecutiveBulletinArticle/fs/en?CONTENT\\_ID=4089643&chk=cNIaNc#4778147](http://www.dh.gov.uk/PublicationsAndStatistics/Bulletins/ChiefExecutiveBulletin/ChiefExecutiveBulletinArticle/fs/en?CONTENT_ID=4089643&chk=cNIaNc#4778147)).

Where a housing provider owns or manages nursing homes for individuals whose mental health difficulties or learning disabilities require 24-hour support; these nursing homes were shown to be largely funded by the local health authority as the care and support offered tends to fall under the healthcare umbrella.

### *Homelessness and the Legislative Gap*

Owing to the implementation of community care without incorporation of additional housing entitlement into the policy, the reliance on market forces to establish rental levels and the reduction in good quality housing which meets the particular needs of vulnerable people, the homelessness problem has inevitably become more acute.

Not only does homelessness itself trigger new or aggravate existing mental health problems (Fischer, P. & Breakley, W., 'Homelessness and mental health: an overview', 1986 14(4) *Mental Health Journal* 4; Gill *et al*, OPCS, *Survey of Psychiatric Morbidity in Great Britain Report 7: Psychiatric Morbidity Among Homeless People*, London: HMSO, 1995), but problems with a satisfactory legal definition of 'homelessness' and a conflict between the 'priority need' (section 189) and 'intentional homelessness' (section 191) provisions under the *Housing Act 1996* (unresolved by the *Homelessness Act 2002*) contribute to a situation where some mentally vulnerable individuals slip through the current statutory duties to be housed (see, Glover, 'Mental Health and Housing: A Crisis on the Street?', *Journal of Social Welfare and Family Law*, 1999).

*"How can the researcher begin to define [homelessness]...writers have used it in almost every conceivable way - from meaning complete shelterlessness to simply having serious accommodation difficulties, from having no fixed abode to living in a hostel or lodging house"* (Watson, & Austerberry, *Housing and Homelessness and Feminist Perspective*, London, Routledge and Regan Paul, 1986).

The legislative definition of homelessness as found in the *Housing Act 1996*, observes a narrow interpretation of homelessness; homelessness involves having no accommodation, being locked out of accommodation or being forced to leave accommodation because of something beyond an individual's control (section 175 *Housing Act 1996*; see also, Stewart, 'Rethinking housing law: A contribution to the debate on tenure', *Housing Studies*, 1994).

When a patient is discharged from a psychiatric hospital or is moved out from accommodation, as his or her needs are no longer met by his or her current accommodation, he or she is homeless until alternative living arrangements are made. The duty placed upon a local authority to provide housing under the *Housing Act 1996* is set out in section 189; the applicant must have a priority need. In *R v. Waveney District Council, ex parte Bowers*, Lord Justice Waller noted that “the first question which has to be considered is whether or not there is vulnerability” ([1983] Q.B. 238, pages 245H-246A). Vulnerability means “less able to fend for oneself so that injury or detriment will result when a less vulnerable man will be able to cope without harmful effects” (Lord Justice Waller at page 244). In *R v. Bath City Council, ex parte Sangermano* ((1984) 17 H.L.R. 94), it was held that ‘vulnerability’ must be considered in housing terms or in the context of housing. The elements for consideration as to whether a person is vulnerable for the purposes of the *Housing Act 1996* are: the creation of detriment to the individual, the influence such a condition could have upon obtaining and maintaining housing and that, ultimately, the decision is a question of fact. Upon discharge, an individual who becomes homeless may be found to have a priority need under section 189 (1)(c) owing to mental illness as long as further evidence can be provided to show that the mental illness suffered by the individual could lead to vulnerability in the housing market.

However, a mentally vulnerable individual may fall foul of section 191 of the *Housing Act 1996* which provides that where an individual decides to leave accommodation which has been provided, he or she may be viewed as ‘intentionally homeless’ for the purposes of the Act. Whether a mentally vulnerable individual’s decision to leave accommodation could be seen as intentional depends largely on whether the criteria are met.

- Has the individual ceased to occupy the accommodation?
- Was the accommodation available for his or her occupation?
- Would it have been reasonable for him or her to continue to occupy the accommodation?
- Did the individual deliberately do or fail to do something in consequence of which he or she ceased to occupy it? (*R v. Salford County Council, ex parte Davenport* (1983) 8 HLR 54)

For the mentally vulnerable, a conflict may exist between these two central homelessness provisions within the *Housing Act 1996*. Clearly, an individual with a mental disorder or disability will fall within the definition of priority need if it can be demonstrated that the mental condition causes the individual to be vulnerable. Yet, for many sufferers of psychiatric vulnerability, they may reject or leave accommodation, which is provided as part of a care plan. Inevitably, the actions of housing authorities are restricted by the available resources they have at their disposal. For persons who are deemed intentionally homeless, a local authority’s duty to house such persons is limited. Indeed, it is only required to provide assistance in an individual’s attempt at securing accommodation. However, where an individual does have a priority need but is deemed intentionally homeless; the housing authority is, under section 190(2), under a duty to provide temporary accommodation whilst the applicant finds longer-term housing. Yet, where an authority is faced with persistent behaviour leading to a finding of intentional homelessness, the level of available resources will clearly influence its long-term action. Ultimately, “[h]omeless people could miss out on

community care altogether while already housed people with mental health problems could simply end up homeless because they can't hold down a tenancy without support" (Norden, 'Passed parcel', *Roof*, 1993). Therefore, where mentally vulnerable individuals regularly leave accommodation they may no longer be supported by the local authority, and other organisations such as charitable housing bodies, will have to meet these needs.

This clear legislative gap within the *Housing Act 1996* has opened up the need for other organisations to meet the housing needs of mentally vulnerable individuals. For those individuals who are not in receipt of permanent housing because they have fallen through the gaps within the existing housing system, temporary and/or emergency accommodation may be used to provide needed shelter. An increasingly difficult challenge faced by housing bodies is that while the number of street homeless has been significantly reduced, this has led in part to a rise in the number living in temporary accommodation, such as hostels and bed and breakfast establishments. The hidden homeless are thought to represent a significant proportion of the 'real' homeless figures (see, Office for Public Management *Assessment of the Housing Requirements of People With Special Needs Over the Next Decade*, London, National Federation of Housing Association, 1992). Charitable involvement in this area is significant; nearly one quarter of temporary hostel accommodation for homeless persons is either owned or managed by charitable housing bodies (DETR, No. 50, 1996).

### *Legal Arrangements for Occupation*

Turning to the legal form of occupation arrangement, there is, in theory, a range of possibilities open to housing providers. The first basic legal distinction is between a lease or tenancy and a licence to occupy. A tenancy confers an interest in land on the occupier, and thus gives the occupier some rights associated with ownership. In basic terms, a tenancy allows the occupier (properly referred to as the 'tenant' or 'lessee') the right to exclude all parties from the demised premises, including the person or organisation granting the tenancy (referred to in law as the 'landlord' or 'lessor'), as well as giving the best security against possible eviction due to statutory protection. A licence, by contrast, gives the occupier (or 'licensee') a right to exclusively occupy the premises let, but no exclusionary rights. It also provides very limited security of tenure, the only saving being that due process must be followed in evicting a licensee, which usually means obtaining a court order. (*Protection From Eviction Act 1977*, section 2B). Whether a lease or a licence is created is a matter of law, not the stated intention of the parties, and is largely decided on whether the agreement in fact confers exclusive possession on the occupier, in which case it will be a lease. (A certain term is also required – for a good, non-technical summary of the law see, generally, *Code of Practice on Tenure*, 2<sup>nd</sup> Edition, (1999) Housing Corporation).

Even where it is appropriate to grant a licence, a charity may find it difficult to do so, because of some case law which complicates the issue. This is as a result of over-protective reasoning of the courts in stressing the objective nature of the parties' intentions over the subjective intentions or purpose behind the lettings, to prevent private landlords avoiding the provisions of rent control. The latest decision of the House of Lords on the issue, *Bruton v. London & Quadrant Housing Trust* ([1999] 3 WLR 150), provides a cautionary example, as an almshouse was held to have granted

a tenancy, even though it expressed the letting to be temporary in order to fulfil its charitable purposes and had no estate in land out of which to grant such a tenancy. (The negative impact of this decision as it affects charities is considered further in Barr, *Charitable Lettings and their Legal Pitfalls* in Cooke, *Modern Studies in Property Law Volume 1: Property 2000*, 2001).

Relating the basic lease/licence to charitable housing providers, the position becomes much more complicated (for a detailed discussion of the nature of tenancies, and the piecemeal nature of legal regulation in this area, see Law Commission Consultation Paper No 162, *Renting Homes: Status and Security*, Part II (April 2003), HMSO). This is due to Parliamentary intervention into residential letting agreements for vulnerable groups, and the regulations of the Housing Corporation where property is owned by or managed for a RSL (for a more detailed explanation of the relevant law applicable to lettings, see Glover – Thomas & Barr, 2003). Put simply, there are now two basic forms of tenancy available – the (full) assured tenancy, which is for a fixed term, and the assured shorthold tenancy, which can be for a fixed or periodic term. Both tenancies are regulated by the *Housing Act 1988*. In essence, the difference between the two is that the assured tenancy offers the more permanent solution, as an assured shorthold tenancy only offers security of tenure for the first six months, as after that it can be ended by two month's notice. In either case, while the tenancy is in existence, the grounds on which a charity landlord may recover the property are regulated by statute. It is also worth noting that technically, the assured shorthold tenancy is a species of assured tenancy, so that the general rules relating to assured tenancies also apply to assured shortholds, unless there is specific provision to the contrary. The default form of letting is by assured shorthold.

Before the *Housing Act 1988* came into force, the normal form of tenancy for RSLs was a secure tenancy under the *Housing Act 1985*, which provided even greater security of tenure. Where a charity lets directly from a local authority or partner housing provider, this may be a secure tenancy, as the *Housing Act 1988* did not retrospectively change existing secure tenancies into assured tenancies. Research from 2004 illustrates that there were 195,000 RSL properties occupied by secure tenants (Carr, *The Anti-Social Behaviour Act 2003*, London, Jordans, 2004).

It is within this confusing legislative framework that charities and other housing providers must work. Conveying too much or too little security of tenure can have major consequences for the good management of all housing provision, and housing providers may not always be free to make choices about the type of legal arrangement used. Where, for example, a provider is a RSL or sources property from a RSL, it is subject to the rules of the Housing Corporation, which require that an occupier is given the most security of tenure appropriate to the aims of the organisation – if the aim of the provider is to provide semi-permanent housing, a full assured tenancy should be employed (*Code of Practice on Tenure*, 1999).

### *The Gaps in Knowledge*

Existing research in this area had identified two major gaps in knowledge:

- While it is accepted that charities have an important and increasingly vital role to play in housing the mentally vulnerable, it is difficult to ascertain exactly

what the nature of charity involvement is in the provision of both long-term and temporary/emergency housing as there is no targeted research currently in existence. The voluntary sector by its very nature tends to be involved in assisting those individuals whose needs have not been met by other means. The high levels of mental vulnerability within the homeless population as previously identified, and the disadvantages experienced by this group in accessing suitable long-term housing therefore points towards significant charitable sector involvement. The gathering of comprehensive data on the nature of this involvement and how voluntary sector organisations function within this field is therefore essential.

- Published research has highlighted possible legal problems faced by charitable organisations in the provision of housing but owing to the lack of hard data regarding how such provision is made in practice it is difficult to assess the day-to-day problems experienced by the charitable sector (Glover - Thomas & Barr, 2003), including any practical difficulties the organisations face.



## THE PROJECT

### *Aims of Research*

The main objectives of this work were twofold. First, to gain a better perception of the current role of the charitable sector in the provision of housing for the mentally vulnerable in England and Wales by seeking to classify the nature or type of housing provision made for the mentally vulnerable by charities. Second, to ascertain the legal and practical problems experienced by those organisations that are involved in providing housing to this group.

### *Research Questions*

The findings of the preliminary research, as detailed in Chapter 1, provided the basis for the research project and dictated the form of the empirical study. Consequently, three research questions were drafted to meet the aims and objectives of the research project.

The first research question was to ascertain the scope and nature of the housing provision that is currently offered to the mentally vulnerable by the charitable sector. It was intended to get a better sense of the scope of charitable sector involvement in this area, and to gain an insight into the nature of the involvement, for example whether such accommodation is offered with or without attendant services, in order to meet the more specific needs of the mentally vulnerable.

The second research question was to identify the difficulties experienced by those bodies that provide housing, and the solutions currently employed. This includes the problems common to all types of organisation and accommodation, and those that are specific to each organisation or accommodation type. Does the legal framework for occupation agreements hamper provision? Are there difficulties caused by other legal issues such as capacity, rent arrears, nuisance? What practical difficulties are faced? How are such difficulties currently tackled? For example, how does the charity deal with anti-social behaviour, especially when this affects other beneficiaries in occupation?

The third research question was to examine current debates concerning mental health provision and wider reforms of housing law. With the data collected from the research on the nature of involvement and problems encountered by providers in the sector, it is intended that this will add to the debate about how to improve housing and service provision to the mentally vulnerable living in the less restrictive environment of the community.

### *The Research Process*

The method used was empirical and involved discussing issues of housing provision within the charitable sector with those who had specialist knowledge of this area as housing providers or support bodies. The nature of the data sought was qualitative, rather than quantitative; the aim was to gain a detailed perception of the role charities played in housing and the problems they faced, rather than any statistical analysis.

It was determined that the empirical study, as a whole, would be broken down into three stages. The first stage comprised the first data collection and a verification meeting that followed the interviews. The second stage comprised the second set of data collection and the third stage comprised the write up of the research findings and the subsequent dissemination of these findings to those within the research sample. Within each stage there would be a number of distinct steps in the progression of the research project (see *figure 1*, at the end of this chapter).

The major issue that arose in relation to the data collection methods was whether to use questionnaires or interviews. Although the types of housing arrangements allowed at law are finite and categorical, the complexity of the subject and the sheer number of types of arrangements means that an exhaustive list could not be constructed in advance. This made postal questionnaires unsuitable for three reasons. First, the inclusion of questions with complex categories in a postal questionnaire was unlikely to be salient to postal respondents and would discourage them from completing the questionnaire; exacerbating the existing problem of low expected response rates. A second problem was that currently unidentified categories of involvement were unlikely to be identified by postal respondents. Thirdly, the use of postal questionnaires increases the chance of question misinterpretation, as it does not allow for the clarification of complex questions to respondents (Bryman, *Social Research Methods*, 2001). It was felt that all of these problems could be negated in an interview setting.

The purpose of holding a verification meeting after the first stage data collection was to ensure that the common issues and problems experienced by charities and the types of housing provision and/or support that was offered had been accurately and comprehensively identified. It was designed, therefore, as a safeguard against error.

In line with the ethical approach adopted by the research team and the commitment to the research participants that their confidentiality would be respected at all times, all information gathered from the research sample is presented throughout this report on an anonymous basis. This anonymity was emphasised throughout the research process.

### *Step 1*

The first step was to identify the first stage interviewees. It was decided that a small representative cross-section of providers should be approached. It was originally intended that the first stage interviews would include Registered Social Landlords (RSLs), other charitable bodies such as non-registered housing associations and advisory bodies. To give a clear account of the issues that face charities involved with housing the mentally vulnerable, the interviewees included organisations that had an advisory role or who actually provided housing, managed housing or offered housing support. However, it was soon recognised that focus should be placed on RSLs and other charitable bodies in the first research stage and that advisory bodies should be left until the second stage interviews were carried out. This would allow further verification of the results, and might help identify any gaps in the first stage findings.

Using contacts that had already been established through preliminary work and the Charity Law Unit and the Institute of Medicine, Law and Bioethics an initial list of first stage interviewees was constructed. Following from these initial contacts, a further list of possible contacts was created. This secondary list was created partly through snowball sampling (where possible interviewees were identified using a network of already known contacts) and partly through Internet searches and the Charity Commission. Snowball sampling as a means of identification had several advantages. First, it ensured that the correct people were identified as contacts; people suggested for interview were known to be heavily involved in housing the mentally vulnerable at ground level and therefore had the requisite breadth and experience to be able to provide valuable information. It also sought to avoid bias in the ultimate selection of the research sample and thereby enhanced the credibility of the project by utilising a transparent and recognised selection method. Those contacts that were made through Internet searches and the Charity Commission were subjected to particular scrutiny. Preliminary contact was made with these organisations by telephone and email to assess the scope and nature of their work and whether this work reflected what the research was focusing upon. It was accepted that the voluntary sector had an important and increasingly vital role to play in housing the mentally vulnerable and therefore, it was relatively straightforward to identify charities that were involved with this. However, it was more difficult to ascertain the exact nature of these organisations' roles and therefore, the decision to approach these organisations for interview involved a greater element of risk.

The aim of the first stage interviews was to map the nature of charitable housing provision for the mentally vulnerable and until such information had been acquired, it was decided that there would be little value in approaching advisory bodies. The most appropriate person or persons from each organisation were identified and these individuals were then approached to be interviewed. These individuals included leading professionals in the field.

Structured interviews were used to ensure the continuity of questioning content with all interviewees. As the aim behind the first stage was to map the nature of housing provision and to gain a greater understanding of the level of voluntary sector involvement, it was important to adopt a research method that would enable sufficient information to be gathered. Likewise, flexibility within the data collection method to enable interviewees to develop ideas or lines of discussion was not needed at this point in the research. Therefore, the restrictive nature of structured interviews was ideal. Although the interviews were structured in nature, it was agreed that the interviews would be tailored to providers and advisor groups where necessary.

Twenty structured interviews were conducted in October and November 2003. Interviewees were asked a broad range of structured questions which were designed to address the different issues that had been identified. These included:

- The nature and use of housing stock;
- Housing stock problems;
- The nature and scope of housing support services;
- The user's profile and risk assessment/management;
- Multi-agency working and cooperation;
- Administrative difficulties within the existing frameworks;

- Staffing issues;
- Resourcing/funding and the influence of funders;
- Anti-social behaviour and dual diagnosis;
- User involvement;
- Housing management and legal difficulties.

In terms of verification, there were several potential problems. The first related to organisations that were chosen following Internet searches and through the Charity Commission. Most organisations that were identified through this method had been involved in housing the mentally vulnerable in some way be it through the provision of housing, the management of housing or the provider of attendant support services. However, after the interview process it was clear that a couple of organisations had more limited experience in this field and were therefore, unable to provide the depth of information that was being sought.

The smooth running of the first stage interviews and the subsequent transcription process was subject to interruption. The researcher who undertook these interviews experienced personal difficulties during the interview period and had to terminate employment as a result of these problems. Despite excellent work, several loose ends were left following the departure of the researcher. These had to be tidied up by the rest of the research team afterwards but as the researcher had failed to keep notes of some of the research activities carried out during the first stage of the project, the research team had to reconstruct these.

The material obtained in one interview was lost following operational failure of the recording equipment. Owing to time constraints in terms of the research and the organisation, another interview could not be recorded. However, despite this one operational failure, the other interviews were not subject to such problems and it was considered that the information obtained from these kept any potential problems regarding loss of material to a minimum.

The interviews all lasted between 45 minutes and 75 minutes and were held at the offices of the interviewee, or, if this was not possible, in a quiet space nearby. Having obtained consent from all interviewees, each interview was recorded and later transcribed (apart from the one interview where there was an operational failure of the recording equipment). The same researcher undertook all the interviews in the first stage. This high level of consistency between each interview in the first stage, helped to ensure that the information obtained was of a uniform and reliable nature.

### *Step 2*

The first stage interview data found within the interview transcripts was then analysed with a view to identifying key issues and common themes. The analysis was then written up and disseminated to the interviewees. This formed the basis of the discussion at the meeting of participants in December 2003 before conducting the second stage semi-structured interviews.

All the first stage interviewees were invited to the meeting, which was used as an opportunity to endorse the findings to date (or otherwise) and to ensure the empirical data had been interpreted accurately. The meeting also provided an occasion for

interviewees to provide further information that may have become known since the interview, or that was stimulated through the discussion held at the meeting. The meeting was research participant led, to ensure the researchers' influence did not shape the discussion. Whilst the main conclusions of the first stage analysis were found to be correct, the meeting also succeeded in drawing out and developing the initial findings. In particular, it was clearly indicated that the influence of funders was increasingly directing organisations in the type and nature of work they undertook as long as it remained within the organisation's charitable objectives. The problems associated with dual diagnosis were identified and it was recognised that there were clear deficiencies in terms of a policy framework to address the serious issues emerging from this. Following the meeting, these additional findings were incorporated into the analysis of the first stage interview data and were, again, distributed to the first stage participants.

The meeting was intended as a mechanism to ratify data obtained during the first stage interviews and to draw out and develop initial findings. However, there was a low turnout of first stage interviewees. This presents some potential verification problems, as the opportunity to verify data and to ensure the interpretation of this data was accurate was reduced. However, in order to circumvent this problem, the first stage interview findings along with a report of the meeting following the first stage interviews was distributed to *all* first stage participants (irrespective of whether they attended the meeting or not). Furthermore, the research team gave the first stage participants an opportunity to make comments, ask questions or raise issues in response to the distributed material

### *Step 3*

Following the resignation of the project's first research assistant, the preliminary task was to write to those organisations that had been involved in the first stage interview process. The purpose of this was three-fold. First, as a means of introducing the new research assistant. Organisations that potentially would be involved in the next stage of the research project needed to be updated with the project and any significant changes within the execution of the research. Second, to refresh interviewees with regards to the first stage research findings and finally, to confirm the outcome of the December meeting. This was important because it verified and confirmed the overall findings for the first stage of the research.

### *Step 4*

The next step was to identify our second stage research sample. The purpose of the second research question was to explore, in greater depth, the legal and practical difficulties faced by charitable housing bodies. In order to meet these aims, the method of Quota Sampling was utilised to determine the sample. The Quota Sampling method had several advantages. First, Quota Sampling allowed the research team to control the variables without having a sampling frame. Secondly, if the interviewee was unavailable or refused to participate, Quota Sampling enabled the research team to replace the interviewee with another potential respondent who met the same criteria without weakening the research project.

Other factors were also considered. First, as far as possible, efforts were made to ensure that 50% of the interviewees came from London and 50% came from the Northwest; however, this criterion was not compulsory. The reasoning for this was that both regions have a high concentration of charitable housing bodies and other bodies thereby allowing for a more representative sample of the national position, or at least to identify any differences or contrasts between the two regions. Secondly, housing associations had to be primarily housing providers, as it was only these organisations which had direct experience of the day to day problems of provision. Service providers were also included, where service provision was offered alongside housing. It was also regarded as important that a sample of those organisations that we interviewed in the first stage should also be interviewed in the second stage. This approach would ensure continuity within the research. A sample of organisations that had not previously been involved with the research was also incorporated into the second stage to enable a more representative picture of voluntary sector involvement in housing the mentally vulnerable.

In order to corroborate the charitable housing bodies' interviews it was decided that a sample of mental health and support bodies, legal experts and housing support groups should be interviewed.

### *Step 5*

Once the individuals had been identified for interview, semi-structured interview questions were devised. These were of a similar nature to the first stage interview questions, but this time, the issues to be discussed were more focused in order to obtain a deeper level of information from the interviewees. Semi-structured interviews are used where the research process is more open-ended, thereby giving the interviewee the opportunity for discussing wider issues.

The questions were designed for four separate interview participants: charitable housing bodies; support bodies; the legal expert and the housing support groups. Questions for charitable housing bodies were designed in order to gain a greater understanding of what was happening at ground level in terms of the problems faced by these organisations when providing housing to the mentally vulnerable. Questions for the other participants were focused towards obtaining a greater understanding of the wider picture in terms of policy direction within housing services. This enabled the research team to gain a broader picture of the legal and practical issues faced by the voluntary sector in housing mentally vulnerable individuals.

Four different sets of questions based around the same areas were designed, each design differing slightly. The topics of discussion were as follows:

- Nature and Type Housing Stock
- Multi-Agency Working
- Risk Assessment
- Influence of Funders and Outside Bodies
- Rent and Other Late Payments, for example, Housing Benefit Issues
- Section 117 of the *Mental Health Act 1983*
- Anti-Social Behaviour
- Dual Diagnosis

- Planning
- Legal Difficulties with Forms of Letting Agreement

Fifteen semi-structured interviews took place during August, September and October 2004. Interviewees were asked a broad range of semi-structured questions which were designed to address the different issues that had been identified during the first stage of the research. A semi-structured interview method was chosen following an assessment of the first stage research findings. It was clear that this method was the only suitable method of data collection that would facilitate the attainment of detailed information and encourage expansion on the problems associated with housing the mentally vulnerable that had already been identified, as well as allowing any unanticipated problems to be recognised.

The research team ran into several difficulties during the project. First, owing to the sudden departure of the project's first research assistant, the organisation and process of the interviews was delayed with the result that they fell during the summer months. Consequently, difficulties arose as a majority of the interviewees were on annual leave either during the process of arranging the interviews or during the time that interviews actually took place. The process of organising the interviews and conducting the interviews therefore took longer than expected.

On several occasions, a potential interviewee indicated an interest in participating in the research project and for one reason or another cancelled or failed to respond. This meant that subsequent interviewees had to be appointed. Fortunately, owing to the decision to use the method of Quota Sampling we were able to replace one interviewee with another who met the particular criteria. Problems such as these meant that the interview process took longer than anticipated.

Several other practical difficulties were experienced during the research process. On one occasion, one interviewee changed the venue for the interview. Failure to find a suitable venue resulted in the interview being carried out in a noisy café. The transcription of this interview was unsuccessfully completed due to excessive background noise. Owing to time constraints of the project, an additional interview could not be arranged. The interviewee was asked to provide answers to the questions in writing, however, time constraints meant that this was not possible and the material of the interview was lost.

On another occasion, the research assistant erroneously organised an interview with a local support body when a national support body was required. However, rather than cancel the interview the research team thought it best to go ahead with the interview and arrange another interview with the national support body. This error proved to be advantageous as a comparison between the two was possible. This unexpected opportunity enhanced the research project.

After the interviews with the national support bodies, it was made clear that it might be useful to talk to their local umbrella schemes. However, due to the late stages of the interviews we thought it might be too late to arrange additional interviews. Steps were made to contact the local umbrellas, however, response was limited and we were unable to arrange the extra interviews.

Interviews were held at the offices of the interviewees or in a quiet café nearby, each interview lasting between 25 minutes and 70 minutes. The researcher requested permission to record the interview; the interviews were recorded and later transcribed. Each interviewee was granted anonymity and confidentiality of the interview and its content. The same researcher undertook all the interviews in stage two. This high level of consistency between each interview in stage two, helped to ensure that information obtained was of a uniform and reliable nature.

The research ensured confidentiality of the data at all times, with each interview coded to ensure that the identities and interests of the interviewees were protected. The interview transcripts were then anonymised to ensure that any individuals or organisations that could be identified within the dialogue were removed.

### *Step 6*

Once the second stage interviews were completed, analysis ensued. Issues were categorised and trends identified from the empirical data. This led to the report.

### *The Report*

The remaining parts of this report detail the findings of the research. These are categorised as follows

:

- The nature and type of charitable housing provision
  - The Importance and Impact of Functions and Objectives
  - Multifarious Role of Charities: Managers, Support Providers and Owners
  - Client Groups: The Place of the Mentally Vulnerable in Provision
  - Support and Service Provision
  - Types of Housing Provided
  - Duration of Stay and Legal Nature of Occupation
  - Gaps in Housing Provision
  
- Housing the mentally vulnerable - legal and practical difficulties
  - Problems with Housing Provision
  - Multi-Agency Working
  - Staffing Issues
  - Rent Arrears
  - Influence of Funders
  - Charitable Focus and Funding
  - Risk Assessment
  - Anti-social Behaviour
  - Dual Diagnosis
  - Legal Difficulties

The final chapter contains the research team's conclusions as well as highlighting some issues of support and best practice.

The report is based on the original research described in this chapter. However, earlier findings from other projects are referred to throughout the report, where relevant.



*The Research Sample*

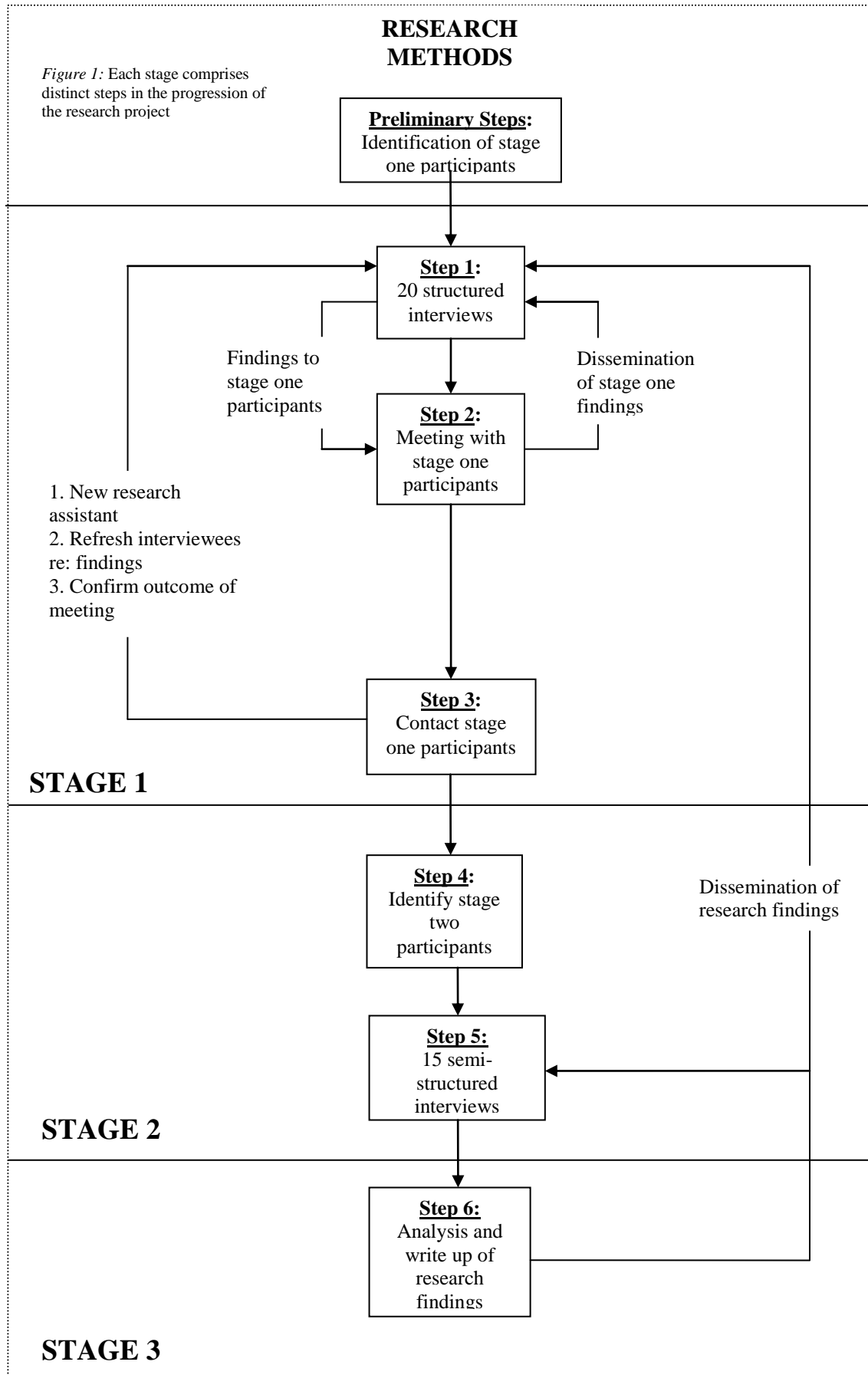
The following bodies were involved in the research project. All organisations are based in the North West, unless indicated otherwise.

CHA	=	Charitable Housing Association
HSG	=	Housing Support Group
CSG	=	Charitable Support Group
LAW	=	Legal Expert

- CHA1- This organisation provides a full support function for human resources, finance and administration to its member companies and other organisations.
- CHA1a- This is company limited by guarantee, affiliated to the National Housing Federation. It is not registered with the Housing Corporation because its exclusive function is to develop accommodation for people with special needs.
- CHA1b- A company limited by guarantee, which was set up to assist in the implementation of the Care in the Community programme. Its key function is to provide care and support for adults with mental health needs and also with learning disabilities.
- CHA2- This is a national organisation and deals with five different regions. Clients include homeless people, children coming out of care, offenders, ex-offenders; many have a dual diagnosis.
- CHA3- This organisation runs a major social inclusion project in Britain and employs 150 staff.
- CHA4- This organisation also seeks to adapt property to meet cultural and religious needs. Clients include those with mental health problems as well as those with mental impairments.
- CHA5- Since 1993, the organisation has focused on the mentally ill. Deals with 550 clients, and focus is also placed on helping people in their own homes. All services are externalised. London based.
- CHA6- This organisation is a Registered Social Landlord. The organisation buys property, converts them and manages them. Client group includes those with mental health difficulties and mental impairment.
- CHA7- This organisation has been a housing association since the 1980s. It houses people who have a background of ex-rough sleeping, mental health support needs, learning difficulties, substance abuse, maybe refugees and many, if not most, have multiple needs.

- CHA8- This organisation seeks to provide support to people with mental health problems through work with the police, criminal justice system and social, housing and health providers.
- CHA9- This organisation is a housing association, which seeks to provide a mix of housing projects to respond to different client needs. Clients include multiple needs including mental health, learning difficulties and the elderly.
- CHA10- Founded in 1988, the organisation seeks to provide high quality accommodation and care with attendant support. Aim is to offer a 'home for life'.
- CHA11- A London based supported housing organisation, created in response to the need for more coordinated 'move on' housing. Covers full cross section of client group and provides the full spectrum of support from outreach work to permanent supported housing.
- CHA12- Established in 1990 as a housing consortium. Clients have both mental health and learning disabilities.
- CHA13- It is a multidisciplinary black organisation that supports people with mental health problems who move in and out of hospital.
- CHA14- Founded in 1970, the organisation operates in London. Core business is around the provision of services for people with mental health problems, but services are run for people with HIV and AIDS.
- CHA15- Founded in 1991, this organisation initially sought to help following the closure of hospitals /institutions close in 1989. The organisation seeks to try and support people living with their families.
- CHA16- Established in 1983 for people with severe enduring mental health problems. The organisation has fifty flat schemes, which is supported housing. There are ten residential homes and one nursing home. There are also employment-based projects. Other services include respite care.
- CHA17- This organisation provides residential accommodation for about 100 mentally ill people each year, together with psychotherapy. There is a project for homeless ex-servicemen and there are 21 places at any one time.
- CHA18- Established in 1996, and was originally created because of the closure of the main two local hospitals. Following this, community care support was required. Clients include those with mental health problems and those with learning difficulties.
- CHA19- The current organisation results from two organisations merging. It manages 600 units of accommodation.

- CHA20- Established to preserve mental health and relieve those suffering mental health problems in London.
- CHA21- This organisation seeks to provide residential, rehabilitation, day care and street advice to people with problems of drink, drugs, mental health, learning disabilities and HIV/AIDS.
- HSG1- A major organisation involved with housing standards and regulations. Also offers support services to its members. National remit.
- HSG2- This organisation offers support to housing organisations nationwide England. It offers a number of services, including training.
- CSG1- The organisation seeks to help people find and keep a home. It also seeks to raise awareness of housing issues.
- CSG2- A major charity offering support to the homeless in Wales.
- CSG3- This organisation, which is based across England and Wales, works to create a better life for people with experience of mental distress.
- CSG4- This organisation offers policy advice, training, consultancy and support services on issues connected with the provision of supported housing and care.
- LAW- This organisation has considerable experience in providing legal advice and support to charities in England and Wales.



## THE NATURE AND TYPE OF CHARITABLE HOUSING PROVISION

### *Introduction*

The first research question sought to ascertain the scope and nature of the housing provision that is currently being offered to the mentally vulnerable by the charitable sector. The existing research literature (as discussed in the preceding chapter) suggested that charities are involved in the provision of housing for the mentally vulnerable, but it does not give any clear indication about the extent or nature of their role. The purpose of the research question was therefore an attempt to gain a better perception or understanding of the current role of charities in housing mentally vulnerable individuals, as well as seeking to classify the nature and type of provision made by charities, including identifying the nature of the housing provision offered and the services provided.

In the first stage of the research process, twenty organisations (split between charities in the North West and London) were interviewed in relation to the first research question; and four organisations were interviewed in the second stage of the research in order to clarify further information needed to answer the first research question. These organisations were registered charities (either traditional charitable trusts, charitable companies limited by guarantee, or exempt charities) as well as housing or support providers, and in the second stage housing regulators and support bodies were involved.

The decision to obtain a qualitative perception of the role of charities rather than any quantitative data was borne out by the research findings. For example, the **HSG2** indicated that, while it would be possible to provide qualitative data for the number of organisations involved in housing the mentally vulnerable, numerical information on charities ‘is not easy to drill down’. Similarly, one of the major support bodies, **CSG4**, which specialises in giving advice about supporting services, pointed out that ‘[it is known]...that...charities are involved in providing both long and short term accommodation but we don’t have exact figures’. Mapping provision in statistical terms would, therefore, represent a monumental undertaking, and is well outside the remit of the current report.

### *The Importance and Impact of Functions and Objectives*

The research data suggested that charities have ‘a massive role’ (**CSG1**) to play in housing the mentally vulnerable. The initial work carried out prior to this research project (see Glover-Thomas & Barr, ‘Housing An Individual: and Property Problems With The Mentally Vulnerable’ in Hudson (ed), *New Perspectives on Law, Human Rights and the Home*, 2003) suggested that charities would normally be outright owners of property with or without attendant services and functions associated with this over-arching housing role; would be facilitating short to long term accommodation through assisting Registered Social Landlords (RSLs) and local authorities to carry out their housing functions or may be focused upon the provision of temporary accommodation to the homeless or other groups through hostels and shelters and thereby acting as facilitators of crisis management. The data confirmed that charities play all these roles, but also suggested that the position is much more complicated in practice, as the nature of the charitable sector’s role in housing is much

wider than was anticipated. The data suggested that there is a mixed economy of provision, with many charities involved in housing management, housing support and/or housing project ownership and the nature of the provision ranged from 'permanent' homes to very temporary (overnight) accommodation.

More significantly, the data suggested that the nature and duration of housing and the support offered by charities to the mentally vulnerable are tied to the functions of the charitable organisation. For example, the charitable housing body's target group may very well influence the direction of the organisation and the decisions made concerning its day-to-day activities. For those dealing with clients suffering from learning disabilities and other organic brain disorders where an individual's long term prognosis is likely to remain relatively static, the charitable housing body's aim will be to provide an independent 'home for life' with easy access to care and support. As such, the organisation will therefore seek to provide occupation that confers the greatest security of tenure on the individual.

However, for charitable housing bodies that deal primarily with individuals with chronic mental illness or recurring serious mental health issues, the aim of the provider is often to provide not a home for life, but accommodation with the appropriate support necessary for the individual to become sufficiently independent to live in mainstream accommodation under his or her own tenancy. Housing provision for those with chronic mental health difficulties would therefore be of medium term duration only, with the hope that this would then lead to a long-term solution.

Charitable housing bodies that focus their attention on individuals experiencing acute episodes of mental ill health, tend to be involved with crisis management. The provision of short term accommodation (which often includes emergency care) in the form of a 'bed for the night' and 'soup kitchens' would appear to be the major aim of such organisations and any intention to offer more stable housing with or without support simply goes beyond the remit of such organisations.

This mixed economy of provision is recognised and the **HSG** evidences this finding when commenting on provision across the sector: '[Q]uite a wide range of services...[are available]...depending on the level of need...there will be a wide range of different types of provision based on identified needs locally and obviously the services that are provided are targeted at different levels of mental health need.'

Similarly, the objectives of the individual charity will play a significant role in the nature of the housing provision and services offered. For example, **CHA17**, whose aim is to promote a supportive environment with shared services, favoured shared accommodation over self-contained accommodation, whereas another member of the research sample, **CHA19**, which seeks to promote independent living for those with enduring mental health needs, favoured self-contained accommodation.

### *The Multifarious Role of Charities: Managers, Support Providers and Owners*

The data suggested, as indicated above, that many charities are simultaneously owners of housing, managers of housing and service providers to housing for mentally vulnerable people. There is a mixed economy of provision. All organisations in the research sample that manage properties also own some properties. The majority of the

sample offered support and housing together, while a minority specialised in the provision of support only. Only one interviewee provided housing alone, **CHA1a**, but this organisation is part of a larger group of charities which provides housing and support services, and has been set up to finance, build and adapt housing for the group. There is no apparent regional variation in the research sample, with the same pattern of provision existing across North West and London charities.

The predominant role of charities with a housing function is as housing managers for other organisations. They manage stock for partner Housing Associations, RSLs or local authorities directly. The nature of the management services in the research sample varied from full management of the property, in which the charity was actively engaged in all aspects of the housing provision and leased the housing stock, to day-to-day management services, where the stock owning body retained some of the major housing functions (including rent collection).

The support services offered by many of the charitable housing bodies in the research sample were provided to stock they manage or own. However, other charitable housing bodies, such as **CHA19** and **CHA20**, also provide support to property managed by other organisations, or to people in family homes. This was especially true of those organisations that were support providers only. The nature of the support and service provision by charities is considered later (see *Support and Service Provision*).

Ownership of stock, whether by freehold or leasehold, separate from a management agreement with an organisation, was less evident in the research sample. Most of the charities involved in the provision of housing directly did own some property, but this tended to be either stock acquired through old funding regimes, such as registered care homes, stock which had been purpose-built by the organisation to cover problems with existing housing stock, or, as in the case of **CHA12**, because of a return to purchasing own stock occasioned by dissatisfaction of managing stock with partner organisations (see *Housing Stock*, below, for further information).

Knowledge that charities involved with housing the mentally vulnerable are not simply housing providers was to be expected, as the nature of the persons housed means that some level of support or service provision is likely to be needed. However, the predominant role of charities as managers of housing rather than outright housing property owners proved to be an interesting find which needs further explanation.

The size of the charitable organisations and their portfolio of properties vary. At one end of the spectrum, are small, focused charities with a small scale housing function, such as **CHA8**, which has a number of housing schemes consisting of small, seven bed units. At the other end, **CHA19** has an annual turnover of £14 million, manages 600 units of accommodation and provides services to over 1000 people living in the community. In most cases, charities will not have access to the same level of stock or the same purchasing power as general Housing Associations or RSLs, and therefore partnership between such charitable housing bodies and Housing Associations and RSLs is sensible. Partnership also avoids competition, because Housing Associations 'have huge infrastructures, which means they can do things very cheaply.' (**CHA20**)

The data also suggested that RSLs, Housing Associations and local authorities may lack the specialist care or services to provide for the mentally vulnerable. There is a documented shift in provision by housing providers to concentrate on general provision, due to the pressures of market forces (see Alder & Handy, *Housing Associations: The Law of Social Landlords*, 2002). This suggested that specialist services, catering for special groups like the mentally vulnerable, are rare. This is backed up by **CSG3** in the data, when commenting on how mentally vulnerable people come to be housed in their experience:

*'I think arguably you could say that RSLs are involved in housing provision for people with mental health problems where those people meet the definition of homelessness and they have a priority need on the basis of their mental health needs...that's strictly accommodation offered to people who almost coincidentally have mental health problems, but have only got to that position because of their mental health problems and meeting the definition of homelessness.'*

Indeed, this focus on general provision led one of the data sample, **CHA1a**, to be created:

*'CHA1a quite deliberately was set up in that way arising out of a recognition that perhaps the majority of housing associations do have supported living, but basically it tends not to be their specialist area.'*

This housing association is not registered with the Housing Corporation, because it is 'prescribed [by its objects] from providing general needs housing'.

**CHA19** also suggested that RSLs are happy to involve charity in specialist services with the mentally vulnerable, particularly where there is a high level of need:

*'We have a very good relationship with our RSL partners....On the property though they tend to keep the low need end of things so when it comes to working with people with a high level of need that's where they use our specialism and skills.'*

The numerous groups that would refer clients to the charitable housing and support providers help explain another part of the puzzle of the mixed role that charities play as managers and support providers (see Chapter 1, *The Assessment and Fulfilment of Need* for further information on the nature of the referral process). The research revealed that the contact individual charities have with a particular group will be dependent on the functions the charity is seeking to carry out and the target group the charity seeks to benefit e.g. if the charity does not run a homelessness project or target the homeless for support, it will not be in contact with other voluntary agencies. This list of referring bodies includes:

- Social services
- Local (health) authorities
- RSLs
- Housing Associations
- Voluntary agencies, such as homeless schemes, learning disability teams



- Mental health teams

Charities are therefore helping these groups to discharge any obligations they may have in relation to housing the mentally vulnerable, and, given that referrals are being made by housing stock providers, it is not surprising that charities are involved in management agreements with them.

The final part of the puzzle for the mixed role of charities in housing provision is suggested by the varied reasons behind the organisations, within the data sample, involvement in housing for the mentally vulnerable.

- Some organisations, such as **CHA16** have arisen to meet a particular gap in provision in their locality.
- Others have been set up to deal with a change in policy, such as **CHA15** and **CHA18**, which arose to deal with problems caused by the closure of long term care hospitals under the Care in the Community policy (see Chapter 1, *The Community Care Policy*).
- Some organisations have merged or been created to improve the efficiency of housing functions – **CHA3** was created out of another local charity as a specialist housing and support services) and **CHA20**, as a merger of a consortium of voluntary and statutory groups.
- Some organisations have added a mental health focus to their general functions; owing to an increase in this client group, for example, **CHA5**, which, though founded in 1973, changed its focus to dealing with people with enduring mental health problems in 1993.
- Other organisations have changed their role to follow the change of funding, for example, the availability of Supporting People funding to replace capital grants from the Housing Corporation or National Health service – **CHA1a**.

The changing roles and reasons for charitable involvement thus have an influence on the varied role that the organisations play, and indicate why charities use a variety of housing methods to further their objects for their client groups.

#### *Client Groups: The Place of the Mentally Vulnerable in Provision*

Alongside the mixed roles in housing provision that charities play, the data also suggested that, while the specialism of charities in dealing with particular groups may be valuable, charities involved in housing and/or housing support are not always focused on providing services for the mentally vulnerable alone. Instead, dealing with the mentally vulnerable happens alongside their major client group or groups. **CHA2**, for example, states that 35% of its housing business is mental health related. This is in line with the findings of existing, scholarly research in the area (see Mullins & Riseborough, *Non-profit Housing Agencies: 'Reading' and Shaping the Policy Agenda* in Harris *et al* (eds), 'Voluntary Organisations & Social Policy in Britain', Macmillan, 2000; where the focus on general housing is explained by a combination of a number of factors, including increased competition between housing bodies and the high cost of specialist service provision).

This finding accords with the view of one of the housing support groups, **HSG2**, who said:

*'[T]here are some of our members....who specifically deal with people with mental health problems, or are set aside to provide services to other vulnerable categories...such as learning disabilities...but most of our members will be providing services to people that are mentally vulnerable but not necessarily setting themselves aside so that they are specifically providing for them...'*

Clearly, lack of specialist focus will not be the case with those organisations that focus particularly on the mentally vulnerable, either because they were set up to do so or because they have changed their focus to concentrate on these groups. These groups form a significant portion of the research sample. However, the data reveals that, in addition to the mentally vulnerable, the following client groups are also provided with housing and support:

- Homeless
- Ex-offenders
- Ex-servicemen
- People in prisons
- Teenagers
- Women who had suffered domestic violence
- HIV sufferers
- Asylum seekers
- Ethnic minority groups

Whether by design or otherwise, it was clear that charities are providing housing to those groups who fall through the statutory gaps in provision, particularly the street homeless. This will invariably include those who, through no fault of their own, fall between the priority need and intentional homelessness provisions (see Chapter 1, *Homelessness and the Legislative Gap*). **CHA19**, for example, is a charity whose target group is street homeless people with significant mental health problems. **CHA17**, whose speciality is support, also deals with the street homeless. That charitable organisations dealing with homelessness were also dealing with the mentally vulnerable was to be expected, as there is a well-documented link between homelessness and mental health problems (see MIND, *Housing and Mental Health Policy Paper*, 1992).

**CSG1**, a support organisation for the homeless with a nationwide focus, confirmed both the nature of the problem and the role of charities in helping to deal with it:

*'A lot of people who are street homeless have a mental illness of some sort or another and really they range from actually being street homeless to living in really inappropriate hostels, or bed and breakfast or sleeping on friends' sofas....a lot of [appropriate] hostels and short-accommodation is run by charities.'*

The involvement of charities does not, of course, remove the problem, and the provision of suitable accommodation for the homeless mentally vulnerable is noted as one of the major gaps in current accommodation provision by charities and others (see *Gaps in Provision* below).

More generally, the data also suggested that charities are dealing with mentally vulnerable clients (both the homeless and other client groups) who present very high levels of need, be it because of the serious nature of their mental health, or because of a series of complex needs, or dual diagnosis with an alcohol or drug problem. It was stated by **CHA19**, for example, that ‘technically the people we take deal with multiple needs, dual diagnoses are very common in our mental health projects.’

These groups may present very challenging behaviour (which raises issues of dealing with anti-social behaviour, which are considered in Chapter 4, *Dual Diagnosis*). Very few of the data sample, whatever their housing functions or objects, indicated that they had a policy of automatic exclusion for high need or dangerous client groups. Instead, the data suggested that the charities will risk assess individuals, and make a decision accordingly. **CHA2**, for example said: ‘There aren’t any definite nos, but obviously each case does need to be looked at so we do [the] risk assessment paperwork that we’ve got.’ **CHA11** put it more strongly, saying ‘you have to risk assess. I don’t think it’s proved that there is anybody you can’t look after with the right degree of support.’

### *Support and Service Provision*

It is clear from the data that charities dealing with housing for the mentally vulnerable provide a range of housing and other support services - in the words of **CHA19**, ‘[w]e offer people [other services], not only bricks and mortar solutions.’

The data demonstrated that charities offer a full range of support services, from visiting/floating support teams (funded by Supporting People), to live in staff for acute problems. Staff should have qualifications or experience of dealing with the particular support needs of the vulnerable groups. Obviously the level of support is dependent on the need of the client groups. **CSG3** stated:

*‘Low support is where there is an off-site worker who is available during office hours and they may meet with clients maybe once a week to talk about their support needs, which might to be with life skills, budgeting skills, sorting out benefits and that kind of stuff, and a signposting service in relation to mental health issues. Medium support is where it’s more likely that staff are to be on-site who perhaps have some expertise in the non-housing support needs that the residents would need.’*

The charitable objects or functions of the particular housing charity will also have a direct impact upon the services offered by the support provider, as will the availability of funding to provide the relevant services (see Chapter 1, *The Nature and Funding Of Housing and Support Services* for more information on funding).

In addition to support staff, the common range of services offered by those charitable bodies that either provide support exclusively or also provide housing was as follows:

- Work training schemes
- Life skills training
- Guides to tenancies
- Rights work

- Meal services
- Social inclusion projects (fostering and maintaining links with the community)
- Tenant participation and inclusion/empowerment schemes e.g. involve tenants in decisions re: properties, management boards

Not all charities provided all services, of course. A number of the sample also provided particular specialist services, for example, **CHA17** actually provides therapeutic care, and employs forty psychologists for this purpose.

The data demonstrated that charities may also be involved in less direct services for the mentally vulnerable, which includes sitting on local authority and other policy boards, in an attempt to share good practice or highlight and inform policy.

### *Types of Housing Provided*

In addition to the support services, what physical accommodation is being offered to the mentally vulnerable? In the words of **CSG1**:

*'Really there are people with mental health problems in pretty much any form of accommodation you care to name'*

In mapping the type of provision that charities in particular offer, the research sample suggested that charities hold mixed types of stock, offer differing forms of occupation arrangement and that the level of stock provision varies widely between individual charities. The type of stock offered by charities can therefore meaningfully be classified in three ways, by the physical type of stock, the mode of accommodation offered by the charity and the geographical nature of the accommodation offered.

#### (i) Physical Type of Stock

The research sample identified the following types of physical stock used by charities in housing the mentally vulnerable:

- Residential (care) homes (registered) – large, multi-bedded facilities with on site care
- Residential (care) homes (a deregistered version of the above, where the support services money comes from Supporting People)
- Nursing homes/independent care hospitals
- Old Victorian property
- Modernised Victorian property
- Modern (recent build) flats
- Bespoke, purpose built stock – modified for the particular physical needs of occupiers
- Family homes – for those for whom floating support is offered
- Crisis housing projects – large, multi-room buildings

All charities in the sample had a mixture of the above stock, with no organisation holding stock of only one type, although the proportions of types of stock did vary and few organisations had access to all types of stock. Similarly, in relation to the

level of stock holding, the data suggested that the type of stock held by or accessible to a housing provider will depend on a number of factors, including the size of the charity, the geographical remit of the services provided and the nature of individual partnership arrangements with local authorities, RSLs and Housing Associations. There is no mean or median figure for the level of housing stock available within the research sample, as some charities will have a small number of properties, while others will have a large portfolio of properties. This is likely to reflect the nationwide picture.

One reason for the variety of different ages and types of housing stock within a charitable housing provider's portfolio is a legacy of the funding regimes in relation to mental health. **CHA1b**, which is rare with the research sample in having a high proportion of self-owned (rather than managed) properties and a large number of registered care homes, cites the purchasing regime prevailing at the time of its creation as the major influence on its stock:

*'Most of our properties were bought and originally registered as residential homes with the local authority. That was seen to be the right way to provide care in the early 90s.'*

The effect of changes of funding on stock providers, where charities manage property for them, was also evident. This influence may well be beneficial. **CHA8** cited the introduction of Supporting People funding as a positive influence, as it galvanised the housing options available to them due to housing providers reviewing and increasing their stock:

*'[Applying for support services funding] was actually something that we would have done anyway and fortuitously it coincided with Supporting People where RSLs are reviewing their stock and their strategic priorities.'*

One of the major issues in relation to good management of stock is, of course, minimising voids within housing. It was expected that this might be one of the major problems faced by charities. In fact, the research sample showed that, for the most part, voids, while present, were not a major concern for providers, or that they were able to deal with it – as **CHA14** states '[w]here it is an issue, we shout loudly!'. Indeed, the data demonstrated that, in many cases, there were waiting lists for properties.

The research illustrated that charities were aware of the need to manage voids, and try and keep them to a minimum. However, charities in the research sample were more concerned about the reasons why voids might happen, than voids themselves, as they had strategies to cope with the latter. **CHA1a** felt that good matching of clients to accommodation was 'more important for the tenants and it's more important for the association and, of course, the rent figures do include provision for voids, as they do with all housing associations, your rent charge has got to encompass the fact that you might have void levels and, of course, that's based partly on historic information and partly on trends as it were and calculations.'

Voids may arise for numerous reasons, a few of which include where the original occupier might legitimately move on to other accommodation, the charity (or the

stock provider where the charity only manages stock) might have to evict someone for example due to arrears of housing benefit (for details of problems caused by housing benefit, see Chapter 4, *Rent Arrears*) or the client or a carer may decide to make use of a different provider for personal reasons (for example, another provider has stock closer to friends and family). A major factor from the research sample was linked to the type of stock being offered, as well as the type of accommodation offered in that stock. It will be seen that a client's major preference is for self-contained accommodation, as, in the words of **CHA10**, 'the ultimate ambition of most people is to have a place of their own.' Given that, it is clear that shared properties may be more liable to voids than others. Indeed, **CHA21** stated that, in terms of the type of stock:

*'The ones that I feel have had their time are the big, old care homes – big houses – set up 20 or so years ago providing communal facilities. In some cases there is low occupancy.'*

This finding, while significant, is in line with one of the major reasons behind the care in the community policy, which was to move people out of long term care and into the wider community (see, Means *et al*, *Community Care: Policy and Practice*, 2003). There may be situations, though, where this type of accommodation might be preferred by charities, and this is explored below.

It would be wrong to think that voids were never viewed as an issue in the research. At least one charity, **CHA7**, had grave concerns about voids:

*'Voids are a problem. If we don't fill them, the value of the void is much greater under SP [Supporting People]. If don't fill them, in danger of not fulfilling contract under SP and get in trouble & lose money.'*

Moreover, where voids arise, the data suggested that the current funding regimes might make it more difficult to fill voids. Funded services tied to a property might mean that an exiting occupier can only be replaced by someone showing the same level of needs, even if the charity has waiting lists for other types of property, and may be keen to house the individual. **CHA7** noted this issue in relation to medium term provision for the mentally vulnerable or the learning disabled through Supporting People funding. This is, of course, an issue of management by the charity involved, and, while frustrating, is a necessary part of making sure that funding by support bodies is not being inappropriately used.

What the data did reveal, however, were much greater concerns over the availability and suitability of existing stock for housing people with the particular needs of the mentally vulnerable.

In relation to availability, it is clear that there is a scarcity of stock. This was to be expected, as preliminary research demonstrated that there is a crisis in housing provision for the mentally vulnerable (see Glover-Thomas & Barr, 2003). This preliminary work indicated that the reasons behind the lack of housing result from the interaction of a number of complex factors, which include:

- The initial failure to incorporate community care housing services into a general housing strategy or financial provision for new housing;
- Financial tension between the provision of special needs housing and affordable, adequate mainstream housing;
- The impact of market forces, following the loss of rent control through the *Housing Act 1988* and the *Local Government and Housing Act 1989*; and
- The increasing problem of homelessness within the mentally vulnerable client group.

The lack of adequate housing stock has clear knock-on effects for vulnerable groups. It was therefore an unhappy finding of the research project that mentally vulnerable people are living in unsuitable accommodation, ‘boarding out [schemes], where there is no control over the support they receive or the actual facilities that they get for the money’ (**CHA16**). In the worst cases, as noted by **CHA3**, they are ‘[k]icked out at 9 o’clock and not allowed in until 5. Not good for your mental health.’

The data suggested that availability is a bigger issue in London than in the North West, which particularly affects move on (see *Gaps in Provision*, below). This may well be due to the increased cost of housing in the South, and a lack of extra funding to deal with these costs.

Charities in the research sample cite space and location as particularly important for the mentally vulnerable, either to minimise conflicts and tensions in shared accommodation, or to make sure that because ‘they [the mentally vulnerable] may physically appear different, that they are not subject to taunts and attacks...[so that] choosing good areas to live in is another pre-requisite’ (**CHA1a**). This has a great impact on the availability of stock, because, as summarised by **CHA12**, charities are looking for ‘attractive, spacious...properties in very nice areas’ which costing ‘£200,000 to £300,000...we just would never get a housing association to buy.’

The scarcity of funding and the scope of the problem has led to some charities changing their focus to start purchasing or building properties themselves. **CHA12** themselves have ‘gone back to our roots a little bit and we’ve started purchasing properties ourselves and developing them partly out of frustration with the lack of funding and lack of imagination on the part of some of the housing agencies. So that’s been a bit of a change for us.’

Where stock is available, there is an issue as to the suitability of the stock for the purpose. Aging properties, particularly where the stock is Victorian, can present difficult problems, particularly where the physical requirements of the property have to meet the particular needs of the learning disabled. Similarly, keeping property in repair and good standards of maintenance presents similar problems of funding. This is so even where the charity only manages stock for a provider, as **CHA11** illustrated:

*‘Relationships within the housing association are generally quite good; we can generally get capital for developments if we need it. Major structural repairs are sometimes a problem and the modernisation is sometimes a problem.’*

The imposition of the Decent Homes standard, which originates from the Office of the Deputy Prime Minister (see *A Decent Home: The Definition and Guidance for Implementation*, 2004) will have a very real impact on the required standard of social housing. Briefly stated, the Decent Homes standard is grouped around four main criteria: fitness of habitation, reasonable level of thermal comfort, reasonably modern facilities and services and reasonable state of repair. The current target for all property to meet these standards is 2010. This may lead to a stock rationalisation by charities and partner housing providers, with some inappropriate stock being sold off to purchase new stock or improve existing stock. The Housing Corporation has already published guidance on this issue (for example, *Good Practice Guide for Housing PFI*, 2005; which considers the role of the Private Finance Initiative in raising money to meet the Decent Homes standard), and is charged with ensuring that stock with RSLs meets the required standards by the target deadline. The research sample demonstrated a clear awareness of the Decent Homes standards, but did not express any particular concern in its future implementation. The Housing Corporation shares this lack of concern, following research funded by the Corporation which suggests that all providers are on track to meet the 2010 deadline (*Sector Study 32: Housing Association Progress towards the Decent Homes Standard*, 2004)

The research sample also noted that suitability for purpose is a much wider issue than the state of repair of the bricks and mortar. The wishes of the client may play an important role, as demonstrated by **CHA1b**:

*'We need to purchase property in areas they originally came from if that is where they want to live and that is what most people want to do – go back to where they are from, where they are familiar with the surroundings, and are going back to their roots and support of relatives and family. Most relatives will live in the same sort of location. It was not a question of us resettling all these people in a really nice area – it was asking them where did you come from in first place and is that where you want to go back to?'*

#### (ii) Modes of Accommodation

In conjunction with the physical type of housing stock offered, the mode of accommodation offered is perhaps the major role of charities in relation to housing the mentally vulnerable.

The research revealed that there are three major models of accommodation offered:

- Institutional accommodation – (shared rooms, or a collection of single bedded units with common facilities)
- Self contained accommodation (may share entry ways, or offer communal areas, but accommodation is self contained)
- Shared accommodation (exclusive occupancy of own room, shared facilities)

The research indicated that charities have some influence on the type of accommodation offered, in the sense that the mode of occupation is linked clearly to the function of the accommodation, the objects of the organisation and the support provision offered. **HSG2** summarised the position well:



*'Again, it really depends on the level of their need really, their mental health. If they were particularly unwell in the sense that, if they were still receiving treatment, often that type of accommodation would be in a residential care home, that type of setting, so it's likely to be a large property which could probably accommodate something like 12 people and there may well be shared facilities. Again, if it's supported housing so that they are acknowledged as needing support to be able to live independently as a community, they could well be in shared housing...but it could easily equally be self-contained and especially if people are being nominated by the local authority through a housing waiting list, they could easily be nominated to a self-contained flat. So it's difficult to say really, a complete range. It's likely that the more specialist services are going to be in shared settings.'*

The link between the mode of occupation and the function is well illustrated by **CHA7**, who are engaged in medium to long term housing of the mentally vulnerable and seek to promote independent living through support. It is clear these concerns can override the wishes of clients:

*'There is more demand for self contained accommodation. We are very clear that people start off in shared accommodation – one of the issues for us is that most of people having issues of support, are better living with others. If they go straight from streets or in-patient care to a self-contained flat, our experience is that they will not hack it. Most people would not chose to share. Practically, however, they survive well at [this organisation]. Most people like self contained accommodation – however, they are not going to get it!'*

Irrespective of the wishes of charities, the major finding of the research was that the dominant mode of accommodation offered is shared accommodation, in which occupants have their own room but share most facilities. This may be due to a lack of bespoke, self-contained accommodation (see further *Gaps in Provision*), and the research also suggested that this is linked a legacy of funding regimes. **CHA19** stated:

*'[C]ertainly we have a lot of accommodation that was developed in the late 1980s and that particular funding regime supported shared accommodation, the kind of accommodation where you have a room of your own, but you share the kitchen, bathroom and living room, very popular in the late 80s...'*

Obviously, to some charity providers the predominance of shared accommodation is of very real benefit, as the provision of such accommodation is in line with their particular requirements, namely where they are involved in medium term accommodation of people with enduring mental health problems, with the charity providing the support.

Not all charities engaged with this client group agreed. **CHA2**, for example, saw major disadvantages for people with mental health problems:

*'So if everybody in the scheme has got a mental health problem and everybody gets on well at the same time you can imagine the impact they will have on each other, they end up winding each other up and perhaps the tenancies*

*break down quicker than within a self-contained flat where somebody manages to keep their problems to themselves more, but even there it happens. People come to the communal areas and make a lot of noise because they want to cause a problem, they can't help it, that's how they are.'*

The research sample also illustrated that clients themselves and referral teams may benefit from self-contained accommodation with appropriate support.

The apparent lack of a cohesive practice in relation to managing acute mental health problems in an environment supporting independence suggested that there is no need for such a complete focus on shared accommodation, and that some charities are clearly unable to provide the mode of accommodation appropriate to the discharge of their individual objects and services. Nevertheless, the preference for self-contained accommodation may itself be linked to function, as it might be seen as a better option for those who are seeking long-term housing solutions, and are therefore not concerned with a turnover of tenants. The research sample, however, was equivocal as to this point and it is important to avoid speculation. The bottom line in relation to the mode of occupation is that shared accommodation is the dominant form offered, either through necessity or design.

The data also suggested that in most cases the accommodation offered was fully furnished by the charity, in line with the needs of the vulnerable occupier. This is to be expected, as, given the support needs, letting an empty shell to a vulnerable individual would undermine the very aims of the occupation.

### (iii) Geographical Nature of Accommodation

The final interrelated element of housing provision concerns the geographical nature of the accommodation offered. Once again, the research sample suggested three broad models used by charities:

- Clusters of accommodation – in own, self-contained community or near to services
- Accommodation within the general community
- Isolated accommodation

The geographical nature of the housing stock may be by design, or by unhappy accident, given the observations above about funding and the mixed nature of housing provision generally within the sector. Nevertheless, where charities have influence in the geographical models used, the research demonstrates that there is a clear link with the dominant functions or objects of the charity, and the mode of occupation used. Charities offering crisis services to the mentally ill will be less concerned with integration within a community than an organisation hoping to promote sufficient independence for someone with an enduring mental illness to live in their own private tenancy. **CHA12** illustrated the point succinctly:

*'I would say most of it is fairly small scale and generally our shared are for 3, 4, 5, 6 people at the most and I don't think we have any schemes where we have more, there are some exceptions, but the majority of schemes have no more than 10 or 12 units on site and that probably is at the larger end of the*

*range. Lots of schemes have 6, 8 that kind of thing units on site. It's because we are trying to promote integration into the community as we want as far as possible the environments to feel domestic in scale and in atmosphere.'*

### *Duration of Stay and Legal Nature of Occupation*

The final key in mapping housing provision by charities is to consider in detail the duration of stay offered by charities to the mentally vulnerable, and the legal form of occupancy arrangement used to facilitate this.

To a large extent duration of stay has been dealt with above, as it is clear that charities are facilitating short term, medium term and long term accommodation of different groups, as well as providing temporary accommodation to the homeless or those with emergency needs. It is worth noting that within this varied duration of provision, the link with the objects of the charity or the functions it offers are most acute. Long term occupation will be most often used for the learning disabled, where the aim of the institution will be to provide a home for life, whereas medium term accommodation is more likely for acute mental health provision, as it is envisaged that the individual will move on, either to their own private tenancy, or to another service with the same or a new charitable housing provider.

One particular point raised by the research related to a shared practice amongst providers offering mental health services in the medium term. The duration of accommodation in these projects, which is generally considered the maximum period an individual can stay before being adjudged sufficiently independent to move on to other accommodation, is two years. However, there is even flexibility here; **CHA12** noted that 'a lot of schemes of two years...is the sort of length of stay, but it's not very prescriptive, but we are very committed to moving people on into ordinary homes.'

Turning to the legal form of occupation arrangement, the range of possibilities open to housing providers has been outlined in Chapter 1, *Legal Arrangements For Occupation*. These include the full assured tenancy, the assured shorthold tenancy and the licence.

From both existing research literature and the research sample, it was clear that the form of occupation arrangement used may be influenced by historical reasons. Where a tenancy was granted by the charity or partner housing provider, all charities in the research sample had a mix of full assured and assured shorthold tenancies. This mix can partly be explained by a change in the law in 1996, which meant that assured shorthold tenancies replaced assured tenancies as the normal legal form of occupation (see *Housing Act 1988*, section 19A & Schedule 2A, as amended by the *Housing Act 1996*). The legislation did not, however, transform existing assured tenancies into assured shortholds, nor did it forbid the express creation of this form of occupation. **CHA2** provided a good example of this:

*'Some of our tenants are on old assured tenancies, which just through time they are people who've been with us a long time, but we now use assured short-holds.'*

A major point, which will be explored below, is that where charities are managing property only, they may have no control over the nature of the arrangement granted to an occupier, as this will be set by the partner RSL or Housing Association which provides the property.

When implementing an arrangement, the data demonstrated that many housing providers will use a model tenancy agreement. The Housing Federation provides a series of such agreements, which include model assured tenancies and assured shorthold tenancies for shared and single occupation properties, to its members. There is no requirement for housing associations to be registered with this trade body, but the research sample showed that the majority of these institutions are. These tenancy agreements may be freely modified by charities to suit their own particular requirements, but are carefully drafted to meet the needs of those engaged in social housing. Of course, these model agreements are silent as to the mode and delivery of service and support, which will be a matter for the individual provider. The latest version of these model agreements, at the time of writing, is July 2004. The Housing Federation updates these documents on a regular basis to take account of changes in the law or changing guidance from the Office of Fair Trading regarding the fairness of terms in tenancies (see *Guidance On Unfair Terms In Tenancy Agreements*, OFT 356, 2001). It should be noted that the model agreements do not adhere precisely to OFT guidance, on the basis that 'we feel they would compromise associations' abilities to manage their housing effectively' (*Model Assured Tenancy Agreement (Shared Housing)*, 2004).

In order to consider meaningfully the legal arrangements used, it is necessary to examine the link with the proposed duration of stay of the occupier.

#### (i) Long Term Tenure

In relation to long term tenure, where the charity is seeking to provide a home for life by providing a degree of permanence to the relationship, as, for example, with the learning disabled client group, it is clear from the research that a full assured tenancy was the dominant form of occupation arrangement used.

A major reason for this stems from the rules and regulations of the Housing Corporation in relation to tenure for social landlords (*Code of Practice on Tenure*, 1999). These will apply where the charity is itself registered with the Housing Corporation, or where in its management role it sources properties from RSLs. In summary, this regulatory code requires that assured shorthold tenancies should not normally be used for permanent lettings, nor should licences, unless the provider can show that there is no recourse to public funds in providing the letting (which means, of course, that lettings by or on behalf of charities will always be covered by the code).

Where an occupier has an assured tenancy, there can be considerable difficulty in managing the property where the letting arrangement with the particular individual does not work out (these difficulties are explored in *Chapter 4, Legal Difficulties*). These problems, which will obviously impact upon the ability to move an occupier on

where it is appropriate, mean that assured tenancies are not a popular form of letting arrangement for mental health housing schemes.

Nevertheless, the research revealed that some organisations feel so strongly about their objects and the rights of their client group, that they will use a full assured tenancy to accommodate these people from the outset and bear any potential risks in relation to the letting. This is put strongly by **CHA3**:

*'Yes, I accept they are paying, but if we give someone a tenancy and say they've got rights, then they've got rights haven't they and if we want to move them on for other reasons then I think we have to square up to the fact that there's a legal way of doing it that we'd have to do with anybody else'.*

Given the potential problems caused by providing an assured tenancy at the outset, the research revealed that charities may wish to make use of a 'test' or probationary letting arrangement to facilitate the proper management of their housing stock and the furtherance of their charitable objects. This may involve the use of assured shorthold tenancies or, in certain circumstances, licences. These are discussed further, below.

#### (ii) Medium Term Tenure

Where charities are providing medium term accommodation, which the research data has already revealed as the dominant form where charities are dealing with enduring mental health issues with a view to rehabilitation, it was clear that the major form of letting used is the assured shorthold tenancy, and the data sample also revealed that the mode of this accommodation is most likely to be shared, rather than individual, housing.

Once again, the role of the Housing Corporation regulations on tenure play an important role here in excluding the licence, as, in essence, the thrust of the regulations is that individuals are given the most secure form of tenure appropriate to the type of accommodation they are in (see paragraph 4.3, *Code of Practice on Tenure*, 1999).

There are clear managerial benefits to utilising an assured shorthold tenancy in these situations, as, in theory, if necessary, the arrangement can be brought to an end at any time after the first initial six months period by the issue of a statutory notice (see *Housing Act 1988*, Part II, Ch 2: ss19A-23). This is, of course, beneficial to clients as it means they can be moved to more appropriate provision and support, either within the same charity or a new organisation. It also avoids problems with individuals not wanting to leave, even though their needs may have outgrown the service. As **CHA2** states:

*'We've tried to change with the times and I think permanent accommodation in a shared housing scheme is perhaps not the best thing for most people, albeit from us to judge what is good for people, but actually an assured shorthold, it gives us a little bit more lee way in terms of moving people on who have no support needs any more...[before using assured shortholds]we ended up being silted up with a lot of people who liked [our accommodation], we like the fact that tea's made for us and if we want to join in we can and we really*

*don't have any responsibilities, we don't have our own bills to pay, but actually they weren't accessing any support, they didn't have any particular needs. Some of them were going out to work all day and coming back, they obviously didn't need [our] support any more and we were stuck with those sorts of people. So an assured short-hold tenancy gives us a little bit more flexibility if somebody no longer needs the support then we can move them on more easily and free up the accommodation for somebody who really needs it.'*

This flexibility means that assured shortholds may be used as a probationary or test letting, even where the relevant charity would wish to provide a more permanent service, as we have seen above. These introductory lettings may also arise because of a risk assessment of the individual e.g. where there is a history of failed arrangements with other providers, or there are significant behavioural problems which might impact on the services and functions offered by the charity. Nevertheless, there can be some difficulty in providing an assured shorthold tenancy in these situations, and this is explored in detail in Chapter 4. Similarly, whether in fact it is as easy to move people on as the statutory rules suggest it might be is open to debate, following some difficult case law on the subject, which is also discussed in Chapter 4.

### (iii) Short Term and Temporary Tenure

Where charities and their housing providers are engaged in providing short term or temporary accommodation for people with acute episodes of mental health or housing the homeless, it is clear that an assured tenancy would be an inappropriate method of providing accommodation to the individual.

The Housing Corporation regulations, where they apply, would suggest that an assured shorthold tenancy is the most appropriate form of arrangement, and the research sample demonstrated that the majority of such lettings will indeed use an assured shorthold.

However, it is also clear that, particularly where the Housing Corporation rules do not bite, charities are making use of licence agreements to regulate the occupation of property. Some charities, for example, are using licences in place of assured tenancy provisions for assessment purposes. This is particularly so where the six month period of tenure guaranteed by the assured shorthold is inappropriate to the assessment needs of the charity. **CHAS** commented, '[i]f I'm talking about the support needs of client...to understand [the] obligations of the tenant I would say three months'. The research also demonstrated that licences may only be used by providers in an emergency.

A clear link between the physical type of accommodation and the use of licences is demonstrated by the research sample. Licences are the dominant form of occupation arrangement given to people in care hospitals, where they are divorced from the need from independent support. This may also have to do with the issue of the capacity of those individuals to enter into the obligations of a tenancy, an issue that is explored in Chapter 4.

The other major type of housing provision that uses a licence is where charities are involved in operating temporary hostels and projects for the homeless or other client

groups, for example, young people with mental health problems. The reasons why a licence may be preferred in this situation are succinctly summarised by **CHA2**, which operates a number of such projects, ‘if things get volatile you need to be able to evict somebody very quickly rather than have them staying in the scheme.’

The quick procedure for evicting a licensee (the need for a court order is a procedural point only, as no substantive reason for wishing to terminate the licence is required – *Protection From Eviction Act 1977*, section 3(2B)), may be even easier where a charity is engaged in temporary housing, as they may grant an ‘excluded’ licence, which can be ended on notice, without the need for a court order (*Protection From Eviction Act 1977*, section 622).

In relation to hostels, the increased risk of anti-social behaviour or drug problems from the homeless client base has led some charities to use licences in favour of assured shorthold tenancies to facilitate proper management of these resources. However, recent case law may have made it more difficult to evict a mentally vulnerable licensee, in common with other occupiers – this is discussed in Chapter 4 under *Legal Difficulties*.

### *Gaps in Provision*

Those who took part in the research were asked what, in their experience, were the current major gaps in providing housing to the mentally vulnerable. In terms of mapping provision, it is important to understand where charities themselves perceived that there are gaps which they need to fill.

#### (i) Move On Accommodation

The research suggested that the most obvious gap is the lack of move on accommodation, so that a resident can be taken from one scheme and moved to a more suitable scheme, either within or without the current housing provider. This is particularly significant for those charities engaged in short term or medium term provision, where a turnover of tenants is expected.

There are many practical reasons that explain why there is a need to move someone on from the scheme. One of the most obvious concerns are the desires of residents themselves, who feel they may have reached a sufficient level of independence to avoid living in a charitable housing scheme. **CHA10** gives a good summary of these reasons:

*‘Of course, not everybody wants to live in a scheme, which is labelled to whatever degree as a mental health scheme and most people who don’t want to be associated with that don’t move in the first place, but perhaps some do and then decide, I just want to live in an ordinary tenancy now. So we’ve had a few who have moved on, either to private or council tenancies because they want a more ordinary tenancy or it might be to be near their family, something along those lines.’*

Another reason, already identified, is that the mentally vulnerable individual may have outgrown the particular needs of the current type of housing provision and attendant support, and is occupying space and draining financial reserves for a service that is no longer necessary.

Where move on accommodation is available, it may not be suitable – as **CHA2** noted ‘the external factor would be finding suitable accommodation and/or floating support services because a lot of people are ready to move on, but not to completely independent accommodation with no support at all.’

Where suitable move-on accommodation is not readily available, this has at least two major knock on effects. First, there may be a huge delay, in which the providing charity has to decide to keep a person on at great expense for a service they do not need. One large provider, **CHA3**, stated that ‘[t]he time it takes between us identifying the need and them being able to provide the need is enormous, it can be two years.’ Second, the result may be that mentally vulnerable people, as **CHA8** identified, are ‘stuck for years and years in temporary lettings’.

The research sample reveals, that, while a definite problem for all charities involved in non-permanent lettings, the scope of the problem is greater in London. **CHA8** noted ‘[move] on is still a massive problem..., it’s everywhere, but some supported housing projects just don’t get move on at all.’ Similarly, **CH14** stated: ‘Move on in London is a horrendous problem. It isn’t there and what is there isn’t often of the [necessary] quality’.

One of the factors suggested by the research which contributes to the paucity of move on accommodation, beyond a lack of adequate funding for stock (see Chapter 4, *Problems with Housing Provision* for further detail), is a lack of joint working between different providers and funding bodies to co-ordinate move on accommodation. **CHA20** stated:

*‘It’s also problematic because there isn’t a comprehensive and robust system for referrals and move on in the borough...; they don’t know where the referrals will come from, who is going to manage them, is there going to be a central point of reference, where is all the move on coming from.’*

It is unlikely this is an isolated incident, as lack of joint working around other major issues affecting housing provision is one of the major practical difficulties explored in Chapter 4, *Multi-Agency Working*.

## (ii) The Hidden Homeless

The research data confirmed that there is a continuing and real problem in housing the homeless with mental health problems, which is supported by earlier research (see Chapter 1, *Homelessness and the Legislative Gap* for details). The data illustrated two particular facets of the problem.

First, it is clear that general needs hostels are ill equipped for people with mental health needs. **CHA19**, which is rare in providing a specialised service for homeless people with enduring mental health needs, states ‘we still feel there’s not enough



access for people who have been sleeping rough who have a high level of need. The options for people sleeping rough tend to be...general needs hostels, which are much better than they've ever been, but still difficult places to live in.'

Second, is the problem of 'hidden' homelessness, where persons with mental illness are drifting from one friend to another. **CSG2** commented, 'vulnerable clients are often in unsuitable B&B for long periods. Inadequate provision of suitable long term or emergency accommodation for people with those needs.'

### (iii) Managing Chronic Mental Illness

Another major gap identified regards non-hospitalised care of people when people become seriously mentally ill. This is identified as a funding gap by the research sample, as Supporting People does not fund this form of support provision, nor will Social Services. **CHA16** is clear about what is needed:

*'Yes, we have short-term accommodation. There is no respite nowadays in that if there is a crisis situation and you've got somebody who's got to be moved from home, from the parent's home whatever, there is nowhere other than a hospital ward, which beds are so short, so I do think there are things like respite that's needed and I do think rehab. We can often get people who are progressing and it isn't right for them to stay in hospital or residential, but also they are not ready to come into our flats. That little bit in the middle where if they were to go into a rehab unit...'*

In the words of **CHA2**, it's about being 'able to actually support people who's illness doesn't fall nicely into one department or the other, but clearly do have huge support needs'.

**CHA17** suggested that the 'ultimate problem in mental health is the division of funding and the way in which mental health does not fit within the general medical model. So while they [Social Services] insist on having the medical model and it being treated in this way, we are going to continue to have the difficulties we have got.'

### (iv) Specialist Groups: Young People (Under 25s), Women, Asylum Seekers

Participants in the research were clear that there was a lack of specialist provision for mentally vulnerable individuals within these three groups. This was despite the fact that some of the organisations interviewed actually did provide such services.

Lack of funding was cited as the major reason, but, in the case of young people under twenty five, **CHA10** suggested that the problem was linked directly in the youth of the target group:

*'I think a lot of people we are dealing with under the age of 25, they still haven't reached a level of stability, they are still experiencing the worst effects of their illness and still trying to get it to a manageable state. That probably explains why we don't get as many young referrals for our type of accommodation.'*

## **HOUSING THE MENTALLY VULNERABLE - LEGAL AND PRACTICAL DIFFICULTIES**

### *Introduction*

The second research question sought to ascertain the difficulties experienced by those charitable housing bodies that provide housing to the mentally vulnerable. Investigating the problems that are commonly associated with such housing provision is crucial in gaining a better perception of charitable housing provision in this context. It was anticipated in the proposal stage of the research that some problems would simply present too many obstacles for the charitable housing bodies to overcome and may influence the present or future direction of a charity in meeting its charitable aims. However, overall, the data suggested that this is not the case. The initial intention was to distinguish those problems, which were organisation or accommodation specific, and those problems that affected all types of organisation or accommodation. However, it became apparent during the execution of the second stage of the research process that this distinction was a rather crude one to draw. Problems experienced by organisations involved in this field tended to cross different bodies with different charitable aims; the interconnection between these factors was often present but not always possible to predict. While clear problems have been identified and are discussed below, it is worth noting at the outset that many of these difficulties could have been discussed under several headings as they frequently arose together and are often interrelated.

While the primary objective of the second research stage was to study the extent to which charitable housing bodies were affected by problems when providing housing to the mentally vulnerable, it was essential first to understand the context in which these problems arose, which was outlined in Chapter 1 and the nature of the housing provision actually made by charities, which was investigated in the first stage of this research, as detailed in the preceding chapter. Having established a clear perception of charitable involvement in this context, it enabled the research team to investigate the particular problems that are commonly associated with this specific type of provision.

### *Problems With Housing Provision*

The data suggested that one of the most common and challenging problems identified by charitable bodies in terms of providing housing for the mentally vulnerable is, rather unsurprisingly, a financial one. Eight out of the ten charitable housing bodies, which were actively involved in the provision of housing the mentally vulnerable and were interviewed in the second stage of the research process mentioned either explicitly or implicitly difficulties arising out of funding restrictions. From a housing perspective, these funding restrictions manifested themselves in two forms: first, lack of financial capital and secondly, lack of ongoing and reliable funding.

Lack of capital presents serious problems in terms of initiating new housing projects. Every organisation that was interviewed in stage two noted that more housing was needed in order to meet the level of demand. In order to establish more housing projects with the support and/or care required by potential clients, large sums of money are essential. However, **CHA1** noted:

*“Nobody has any capital, the Commissioners, whether it’s PCT’s (Primary Care Trusts) or local authority social services departments. So that requires us to borrow money and in order to do that we have to secure levels of housing benefit that will service...a mortgage”.*

This also presents difficulties in terms of ‘move on accommodation’ (**CHA9**) that amounts to accommodation with varying levels of support and is designed for those individuals whose needs are reducing and whose independent living skills need to be enhanced. Indeed, the data suggested that where money is limited, it is the ‘move on accommodation’ that is most gravely affected as the charitable objectives of the organisations within the sample all seek to offer housing with or without attendant services to people with significant needs. (Cowan, ‘Accommodating Community Care’, *Journal of Law and Society*, 1995; Evans, ‘Tackling deprivation on social housing estates in England: An assessment of the Housing Plus Approach’, *Housing Studies*, 1998; Glover, ‘Mental health and housing: A crisis on the street?’, *Journal of Social Welfare and Family Law*, 1999) Therefore, those individuals who no longer need as much support yet who are not ready to move into mainstream housing, would seem to be the most likely group to suffer from inadequate levels of funding. The data also suggested that charitable involvement in this field is primarily concerned with filling the housing gaps for those people who really would experience difficulty in obtaining and maintaining a housing agreement within the private rental market.

Lack of ongoing and reliable funding has, from the data collected, a subtler, though equally adverse, affect as the lack of financial capital. All ten charitable housing bodies involved in the actual provision of housing and/or housing support referred to the difficulties in providing a service when funding sources were not always guaranteed. In practical terms this means that for many organisations within the sample, many potential clients that are referred to them have to be rejected on the basis that the individual’s support needs are too financially onerous. **CHA1** commented that “housing people with special needs is always more expensive”; and from the data collected it can be surmised that more accommodation is available for people with medium to low support needs whereas for those with more demanding and extensive needs; the accommodation levels are simply not there to meet the demand. Likewise, there is inadequate provision for suitable long term or emergency housing needs (**CSG2**). The data suggested that there are resource implications for the charitable housing body in terms of the nature of housing provided and the type of client they are willing to accept. The data suggested that long-term accommodation, which offers life long security to the individual, would appear to be an aim for many of the charitable housing bodies that were included within the sample, however, achieving this objective for some clients is tempered by the fact that fewer individuals are likely to receive housing from the organisation at all.

The difficulty of ensuring that capital injections and ongoing resources are available to initiate and maintain a housing project often feeds into a waiting list problem. For those organisations that aim their support particularly at those individuals with both mental and physical difficulties, and where the goal is to offer a ‘home for life’, it was stated by **CHA10** that there would always be twenty or so individuals who would benefit from being housed by their organisation. However, as clients tend to stay with the charitable housing body once a placement had been secured, there is “little turn

over”. For **CHA10**, the solution is to maintain a very short waiting list of about six potential clients, and then any further indication of interest by individuals is discouraged; it is then suggested that these individuals should seek housing support elsewhere.

This alternative housing support may not be available to the individual in the immediate locality. **CHA1**, **CHA9**, **CHA5** and **CHA3** all observed that when supported housing was not available in the vicinity, people “are...placed out of district, away from the districts of origin and where their family and support networks are” (**CHA1**). This approach means that in effect, a policy of forced migration is implemented in order to ensure housing provision of some kind is made to those in need. This can have some major implications for the mentally vulnerable. Existing research shows that the psychological impact of such moves may be significant particularly when taken in association with the intrinsic vulnerability of this group (for example, see Ritchie *et al. Report of the Inquiry into the Care and Treatment of Christopher Clunis*, 1994, where it was recognised that appropriate housing was vital in a mentally disordered individual’s overall community care plan). Likewise, a move to other accommodation may result in key support networks through family, friends and established key workers being lost. Without this support, there is an increased possibility that vulnerable individuals will lose out on the necessary psychiatric or social services, which, in turn, increases the possibility of the individual’s mental and/or physical state deteriorating.

Other problems, which may be indirectly connected to funding issues, exist in terms of charitable housing bodies filling the housing gaps for the mentally vulnerable. **CHA3** noted that one particular problem it faces when “[d]eveloping a project from new,...[is]...the gestation period...[as it]...is so enormously long”. This interviewee suggested that when initiating a new housing project, charitable housing bodies need to adopt “a much more aggressive strategy”, than they have in the past. **CHA3** also stated:

*“[That on average]...any new housing scheme which is planned with a traditional housing association where [they] identify a property, renovate it...[and] ...do it up...[takes]...about 12 – 18 months”.*

These long periods of time present several different problems for charitable housing bodies. On the one hand, while these projects are being set up, potential clients cannot be housed by the charitable housing body which means they may in effect block a bed in a facility which no longer meets their needs but cannot meet the needs of other individuals until the bed is free. **CSG2** noted that the lack of adequate mainstream and specialised housing services to tackle the housing gaps for the mentally vulnerable has meant that the issue of bed blocking is a real and on-going problem for local authorities. Alternatively, where an individual is discharged from a specialist facility and new housing projects run by charitable housing bodies, are still to be operational, the other risk for the individual is that of becoming homeless (see, for example, Hughes & Lowe, *Public Sector Housing Law*, 2000). On the other hand, the longer projects take to become active schemes; the more money is being spent while no income from housing benefit or other funding sources is available.

### *Staffing Issues*

Charitable housing bodies that seek to provide housing to the mentally vulnerable do so through a variety of different routes such as, through housing management, the provision of housing support or housing project ownership. Irrespective of which mode a charitable housing body operates, this provision relies heavily on the employment of staff that have the appropriate levels of training, experience and commitment to the organisation's charitable objects. For all the charitable housing bodies within the research sample this proved problematic.

Initial difficulties appear to surface when organisations seek to recruit staff. By the nature of the work charitable housing bodies usually need staff that have some experience with the mentally vulnerable and who are willing to work flexible hours. Where charitable housing bodies operate housing projects, which have 24 hour staffing this will necessarily require staff to work night shifts as well as day shifts. Several of the interviewees commented that this was often a problem. It was also noted that staff often face the risk of 'burn-out' because of the nature of the work. **CHA8** commented:

*“Recruitment [and retention]...has been a challenge and I think...the possibilities of burn-out is quite severe...[on the]...other side of it is because it is intrinsically psycho-dynamic with a small 'p' that it puts people under strain”.*

The stressful nature of the work creates enough difficulty for charitable housing bodies when seeking to employ staff but as **CHA10** recognised:

*“Working in mental health is not perceived as a popular career route; staff must be more paper and policy aware arising out of...[the Supporting People funding stream]...the availability of staff is seen as key to sustaining the health and well-being of clients”.*

Going hand in hand with the demands of the job, **CHA3** noted that charitable housing bodies have trouble competing within the employment market, “recruitment is difficult – we pay the best for our sector but not compared with other professions”. In the past charities have relied upon the “idealistic university graduates who felt that they could make a difference in the world” where income and professional kudos was not necessarily the employee's goal. This is no longer the case and as such, attracting staff is increasingly difficult. The recruitment pool is limited in size by virtue of the type of work that housing the mentally vulnerable involves, the need for experience and skills and a willingness to work around a flexible timetable. **CHA6** commented that “[t]here is a limited pool of people out there with the skill set we need”.

However, the demands of the work affect not only the ability of an organisation to recruit staff but it also leads to serious problems in staff retention – a problem which, from the research data, would seem to be particularly acute in London. Inadequate pay, limited pension and employment perks and limited professional recognition, taken together with a demanding and stressful job mean that for many employees when other employment opportunities come up, employees take them.

### *Multi-Agency Working*

“Multi-agency working is a really difficult thing to achieve” (**CSG1**). Existing research shows that multi-agency working is problematic because as different organisations and agencies have developed, their cultures have become more diverse (see Goss & Kent, *Health and Housing: Working Together? A Review of the Extent of Inter-agency Working*, 1995). Clearly, an organisation, which has a particular focus, will not necessarily see issues from a broader perspective nor will they automatically perceive issues from the viewpoint of other agencies.

*“[There is a] ...[d]ifference in cultures between organisations so I suppose to put it in its simplest, organisations that have grown up developing and supplying services to people, sometimes have a different way of doing things and indeed a different way of thinking”* (**CHA1**).

Within this context, it has to be recognised that charitable housing bodies, will have objectives and agendas, which are not always the same; their aims, are very often disparate as they reflect their own distinct charitable objects. Public agencies, likewise, have different targets which have to be fulfilled. Indeed, **CSG1** suggested that, “housing associations find it difficult to fully co-operate with other agencies because they are concerned with their own agenda and performance targets set by the Housing Corporation”. These overarching factors will tend to direct the manner in which services are offered and the way in which agencies work with each other. **CHA8** noted: “each agency has its own specific objectives and does not link, in a meaningful way, with the objectives of other services”. In addition, **CHA2** went further by remarking that “[a]gencies sometimes seem to be working against each other with different criteria, agendas and aims”. The data suggested that all the charitable housing bodies within the second stage research sample recognised that good multi-agency working was crucial in order for services to be effectively delivered. Yet, it was acknowledged, that it was one of the most difficult goals to achieve and that every agency (including themselves) could probably improve their performance in this area.

All the charitable housing bodies, advisory bodies and regulatory bodies that were interviewed during the second stage of the research suggested that the key to good multi-agency working was effective communication. However, in the experience of those interviewed, this was rarely achieved. The data suggested that these communication failures frequently occur at the outset when a potential client is referred to the charitable housing body. **CHA10**, **CHA3** and **HSG** suggest that the referral process is frequently prejudiced by inadequate levels of information being shared, in terms of the actual needs of the individual and the physical support structures that are required, in order for the placement to be successful. Several of the charitable housing bodies supposed that this failure in communication occurs because the referring body is concerned that full information regarding the individual may lead the receiving agency or charitable housing body to reject the application. However, it is apparent from the research data that for most of the charitable housing bodies, rejection of an application on the basis of difficult and extensive needs would be avoided where possible; every effort would be made to house the individual.

Communication failures also occur because of inadequate education. For example, **CHA1** noted that a “[n]umber of healthcare professionals with whom...[we have

been]...in partnership with, and indeed, social services,...have no understanding of the limitations of the powers, or indeed the rights that tenants have, and so they will suggest things to you which are entirely illegal or impractical or indeed immoral, but it suits their own purposes". The data suggested that there are those working within the field, particularly healthcare professionals that do not seek information from other agencies; if they did so, they would be aware of the limitations of what is possible. By failing to exchange or provide adequate information, problems can arise in terms of ensuring a charitable housing body can provide housing which meets the needs of the individual, that it can react to violent or anti-social behaviour and that it can balance up the needs of the individual with those of other tenants.

The exchange of information is essential in order to allow for charitable housing bodies to provide appropriate responses to given situations. All interviewees believed that better communication between agencies would ultimately improve the service offered to individuals in need and that information should be made as freely available as possible (within the bounds of confidentiality). Indeed, **CHA3** noted that information sharing should be carried out for the sake of the individual in need and that "people...[should not]...use access to information as a tool of negotiation". It would seem that some of the charitable housing bodies, within the research sample, have experienced information swapping as a bargaining device where information is given when agreements to act or provide a service have been made.

The data suggested that one of the difficulties surrounding information sharing and effective communication between agencies is the issue of confidentiality. Agencies handle personal information of varying degrees on a daily basis. The decision to 'share' this information must be made with an understanding of what the information will be used for and who will have access to it (for a general discussion on the law of confidentiality see, Fox, M *et al*, *Health Care Law: Text and Materials*, 2005). This lack of trust between agencies as to what the information will be used for has resulted in a reluctance to share confidential information even where the information is vital for appropriate decision-making. Indeed, **CHA10** found confidentiality was frequently used to limit information sharing thereby preventing decisions to be made or hampering the decision-making process. For **CHA3**, the ethical and practical minefield of sharing confidential information has been partly circumvented by the use of a code of conduct, which prescribes good working practices when dealing with information of a confidential nature. However, this was the only organisation within the research sample that adopted such a practice.

Failure of agencies to work together effectively has a significant impact on all concerned. **CSG2** noted that a lack of multi-agency working could have a disproportionate impact on people with mental health problems, especially if they are not receiving support of any kind.

### *Rent Arrears*

One of the primary difficulties associated with the provision of housing relates to funding both in terms of capital ownership and ongoing funding for the management of housing provision. Most of the charitable housing bodies within the research sample, obtain regular funding from two main sources – Supporting People (<http://www.spkweb.org.uk/>) or Housing Benefit

([http://www.dwp.gov.uk/lifeevent/benefits/housing\\_benefit.asp](http://www.dwp.gov.uk/lifeevent/benefits/housing_benefit.asp)). However, the data suggested that when problems arise with these sources of funding, a significant impact results in terms of the charitable housing body being able to meet its objectives. Late payments and arrears can be quite devastating for the charitable housing bodies' accounts and their cash flow; it may also have a knock on effect in terms of the legal relationship with the tenant. Where the charitable housing body is not receiving any income for a placement, they may have to consider evicting the tenant even when the tenant is clearly not at fault. This may be particularly so where the charity is managing property for an RSL, which may not be so understanding about rent arrears. The overwhelming view of all the charitable housing bodies in the sample was that housing benefit provision created the largest difficulty. Nine out of ten of the charitable housing bodies that were interviewed contended that inadequacies within the housing benefit system presented the major problem for them in terms of day-to-day funding. The housing benefit system is slow, unreliable and seemingly inconsistent as its application is location specific; many claims are pending (**CHA6**). **CSG1** remarked that "housing benefit administration is appalling, often people are taken to court whilst waiting for housing benefit claims to come through". **CSG4** agreed, stating that "[d]elays are usually caused by housing benefit administration".

It can be inferred from the data, that the extent to which housing benefit delays affect an organisation depends largely on the organisation's size and whether it has reserves to cover a deficit of rent. **CHA2** recognised that it was fortunate in being a large organisation as this allowed it to manage the late payment of rent; it also prevented it from being required to take pro-active steps to obtain payment that would ultimately prejudice an individual's placement. Therefore, for larger charitable housing bodies that have reached its size through gradual growth or merger to form much larger charitable entities, late payment of rent becomes an inconvenience rather than something that could affect the long-term future of the organisation.

The research data indicated that charitable bodies involved in the provision of housing for the mentally and/or physically vulnerable come up against problems with housing benefit payments on a regular basis. As a result, all the charitable housing bodies in the research sample had adopted various methods to combat these difficulties. For example, **CHA4** considered the only way of dealing with the inadequacies in the housing benefit system is to make a formal complaint as soon as a delay or evidence of mismanagement arises. **LAW** suggested that once problems with housing benefit surface, charitable housing bodies should not "waste time on informal phone calls...[but]...[should]...gear up to the formal process as soon as possible"; and try and tackle the problem early on (**CHA9**). Acting speedily seems to be an approach favoured by all charitable housing bodies within the sample but when problems persist or no response is received, **CHA3** stated that perseverance was the only option, as the opportunity for dialogue needs to remain open in order for solutions to be found. All charitable housing bodies recognised the need "to simplify and streamline the benefits system" (**CHA2**). However, in terms of working within the current system, it was accepted that when all other approaches to resolve a problem have failed, "sometimes a client will need to be served with a notice of eviction to force housing benefit to try and speed up the process". Bearing in mind the charitable housing bodies' charitable aims, any steps that are taken which could have a potentially adverse effect upon the vulnerable client is regarded as an unconscionable act and should be avoided, where possible. However, all interviewees emphasised that



the threat of eviction is only ever used as a last resort when all other avenues to resolve the housing benefit crisis have failed.

### *Influence of Funders*

Clearly, the charitable housing body's ability to carry out its functions rests largely upon whether it is able to fund the services and support it seeks to offer. Therefore, it was anticipated that funders would have a significant level of influence over these organisations. To ascertain whether this was an accurate supposition, the research sample was asked whether they thought that funders had any influence over their work. All charitable housing bodies thought that this was undoubtedly the case to either a greater or lesser degree. For those bodies that obtain most of their funding through the Supporting People funding stream, this influences the type of client they can house. **CHA3** and **CHA2** explicitly noted, "Supporting People inform us of the criteria to apply". This particularly affects those charitable housing bodies that have traditionally provided housing and housing support to those individuals who have been hospitalised in a psychiatric facility under section 3 (admission for treatment) of the *Mental Health Act 1983*. Following a patient's discharge from hospital, he or she will need housing support in the community in the event that returning to his or her family is not possible. Section 117(2) of the *Mental Health Act 1983* provides that:

*It shall be the duty of the Health Authority and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the Health Authority and the local social services authority are satisfied that the person concerned is no longer in need of such services.*

Until the Supporting People funding stream became available, several of the charitable housing bodies within the research sample housed individuals in this particular situation. However, **CHA2** remarked that Supporting People overtly restricts to whom they can offer their housing services.

*"[For anyone]...who is under section 117 of the Mental Health Act...[we]...cannot provide social care...anymore which is linked with housing provision".*

Therefore, for several of the interviewees, this restriction has affected their core workload quite considerably. In practice, this means that charitable housing bodies cannot provide care any longer – only housing. In terms of housing that is offered with attendant services, the attendant services have to have a clearly wider scope than simple care provision as this would then fall outside the Supporting People limitations. Despite this, it would seem that the Supporting People funding stream is very complicated and those working within the field do not fully understand how it works. This was confirmed by **CSG4** who suggested that there remains a "lack of clarity about service users discharged under section 117 and whether some of the services they receive are eligible for Supporting People funding". With this uncertainty, it would seem that some charitable housing bodies, within the sample, are providing attendant care services with the housing, when perhaps, they should not; whilst at the same time, some providers have interpreted the Supporting People funding more narrowly and no longer offer such services to those who may be in

need. This confusion has been found to be difficult to work with. Several charitable housing bodies, within the sample, who have interpreted Supporting People as not allowing for care services to be funded, consider this to be a significant flaw with this funding stream and **CHA8** suggest that this prevents it from being “a reflective service”. **CHA8** suggest that Supporting People funding is about the charitable housing body performing according to a given set of criteria rather than trying to work with the individuals who come to them with a recognised need. **CHA8** also suggested that statutory funding sources are bureaucratic and far too restrictive.

The difficulties with Supporting People funding and the apparent restrictions that are placed on those organisations that receive this funding, may ultimately mean that some people are not getting the care and support they need as part of an overall housing package. It is accepted that the reason for many charitable housing bodies offering such services to the mentally vulnerable is that such individuals could not adequately function within the mainstream housing system (see, Means *et al*, 2003; Clapham & Smith, ‘Housing policy and needs’, *Policy and Politics*, 1990). Their mental health difficulties lead to problems in obtaining and maintaining a tenancy agreement and therefore, additional support is required. Where such support is viewed as an aspect of ‘care’ provision, Supporting People will not regard this as within its ambit. Owing to this, **CHA1** observed, “fewer housing...[bodies]...are willing to take on people with special needs because of the funding issue”. The question remains whether funders are influencing the direction of charitable housing bodies to such an extent that people with the worst problems are not being provided for as local authorities are setting their budgets too tightly. Where such care and support are likely to be obtained from by mentally vulnerable individuals in the future remains an open question.

The data also suggested that funders seek to have more influence over charitable housing bodies yet often ask charitable organisations to carry out impossible tasks. For example, **CHA3** stated:

*“[F]unders don’t always understand the needs and abilities of clients and impose criteria that cannot work. This leads to the need to find alternative funding or lose the Supporting People funding...Some funders ask...[us]...to purchase services that are no longer regarded as best practice...[with the result that if we do not provide the service, we lose the funding]”.*

At the same time, as **CHA4** pointed out that some “funders (local authority care management) are quite often not sure what it is they actually want delivered”, resulting in the charitable housing body being left without any clear indication of what they can and cannot do within the funding regime. This presents serious dilemmas for charitable housing bodies, as they cannot provide any services without appropriate funding being available; yet, where funders are asking for more than is possible or are not clear about what they want, the funding may be lost.

The data suggested that there is one positive aspect to funders having influence over what can and cannot be done by the charitable housing body. **CHA9** noted that “...[y]ou now have to prove yourself...[in order]...to get funding” and therefore from an auditing perspective, charitable housing bodies need to be able to justify the direction the organisation is seeking to follow. It may be argued that this acts as an

effective checking mechanism that scrutinises particular projects and allows for an evaluation of its likely overall merit.

### *Charitable Focus and Funding*

As has been observed above, it is clear that many of the problems experienced by the charitable bodies that were interviewed in the second stage of the research process, centred around funding issues and their practical impact on service provision. Following from this, all the interviewees were asked whether the charitable body they represented had ever changed direction or re-focused the work it carried out in order to follow a new funding stream. For many of the charitable housing bodies, its direction had not radically altered in accordance with funding opportunities. This may partly result from the size of the organisation, for if the charitable body is relatively large, then it is more able to manage funding deficits easily and therefore less likely to seek out funding which would require a reassessment of the charity's direction. Alternatively, the organisation may already be highly focused specialising in a particular form of housing provision/support and therefore, little room for re-focusing the work pursued by the charity may exist. The data also suggested that the majority of the sample regarded such moves as counter-productive as funding streams are constantly changing focus. Therefore, there is little guarantee that funding would always be available if a charitable housing body reassessed and changed its charitable aims to fit in with new funding opportunities. In addition, any changes of this nature could potentially have a detrimental effect upon some, if not all, of the current clients; a result which all interviewees were clearly keen to avoid, where possible. Rather than re-orient their work, some charitable housing bodies, within the sample, have in the past, narrowed their focus somewhat in order to gain access to other possible funding sources. **CHA2** observed that “[the charity]...used to support people according to need – now support is offered according to what is requested by...[the]...funders”.

**CHA5** remarked that re-focusing or narrowing service provision could be a good thing as it can encourage charitable bodies to be innovative and forward looking in the creation and maintenance of the services they offer. Clearly, if funding streams are the impetus for this re-focusing then there is nothing wrong with this as long as the outcomes are positive. **CHA3** said that funders could influence the direction of the organisation or where new funding is followed, but this depends largely on whether the organisation wishes to follow this new direction. **CHA3** stated that they only ever followed new funding opportunities if the work fell in with their particular aims at the time – “I’d change the charity’s objectives as long as it was what we wanted to do. I would not do it just because the money was there. The piece of work would have to be in line with what our plans were and what our mission statement was”.

It is a difficult balance to achieve, on the one hand seeking to support and provide for individuals in need, while on the other hand, accepting that unless there is the financial support, the charitable housing body’s endeavour will be limited. As **CHA6** stated, “the restriction that is placed on me is that I can only deliver services that I can get funded”.

### *Risk Assessment*

Problems surrounding risk assessment and housing the mentally vulnerable emerged as another significant problem for all charitable housing bodies interviewed in the second stage of the research process. For all charitable housing bodies, a risk assessment of a potential client is essential in order to establish whether the organisation has the required facilities to meet the needs of the individual and deal with the potential problems. A risk assessment tool needs to be accurate and as comprehensive as possible (see, Monahan *et al.* 'Developing a clinically useful actuarial tool for assessing violence risk', *British Journal of Psychiatry*, 2000; Silver *et al.* 'Assessing violence risk among discharged psychiatric patients: Toward an ecological approach', *Law and Human Behaviour*, 1999; Steadman *et al.* 'Violence by people discharged from acute psychiatric inpatient facilities and by others in the same neighborhoods', *Archives of General Psychiatry*, 1998). Yet, despite this, the data suggested that charitable housing bodies experience several problems. The commonest difficulty, which was mentioned by all interviewees, was the lack of detailed information provided at the referral stage. When a potential client is referred to a charitable housing body, information is passed to the receiving organisation about the individual regarding his/her needs, his/her mental health condition, other relevant information and the particular service that would be appropriate. However, the details about an individual are often inadequate or inaccurate, leaving the charitable housing body with a limited impression about the individual's needs and its assessment about whether it can meet those needs. **CHA2** noted that a "[m]ajor problem is the lack of detailed information from referral" with the result that, on occasion, clients are taken on by the organisation, and prove to be problematic. This links with the general problems of multi-agency working, explained above.

There are several possible reasons for this including the continuing confusion over whether such information is confidential and therefore, not available for disclosure to other bodies. Yet, the data suggested that the issue of confidentiality does not present a significant problem in itself. Indeed, the primary problem relates to health authorities and social service authorities fearing that if complete information about an individual is passed to a charitable housing body, then this may prejudice the individual's chances in obtaining housing. **CHA6** commented "[y]ou are relying on selective perceptions of individuals who might distort a piece of information in order to persuade you to accept them as a tenant. I can think of several occasions when peoples' chronic joke habits haven't been revealed until after they've been offered a tenancy". The data suggested that charitable housing bodies are aware of the generic types of risks associated with the mentally vulnerable, and the threat of possible arson or anti-social behaviour is not, in itself, going to dictate to the charitable body whether to offer accommodation or not. All individuals that these bodies have contact with experience a variety of problems and have different behavioural traits; therefore, little will shock or prove difficult or impossible to manage. However, unless the charitable housing body is given detailed, specific information about the particular individual, the organisation cannot make important decisions such as, where to place the individual concerned and whether certain tenants would be best placed together or to be kept apart. This can prove problematic for both the service user and provider as **CHA3** commented that when difficulties with the individual and the tenancy emerge "they have to be moved on or...[the charitable housing body has to]...acquire extra resources to deal with the issue". Moving people on to other accommodation or to social services because a tenancy fails is something all the charitable housing bodies in the research sample wanted to avoid where possible. Such action can have

significant repercussions for the individual concerned, as a move could have a destabilising influence on the individual's mental state and could prove ultimately counter-productive while from the perspective of the charitable housing body, moving an individual on in these circumstances would, as suggested by the data, be viewed as a failure and something to be avoided. Therefore, improvements in the disclosure of information and risk assessments by health and social service authorities or by referring agencies would, as suggested by the data, reduce unfortunate situations arising where charitable housing bodies have offered a tenancy to an individual whose needs cannot be properly met by the accommodation or where other tenants/staff experience at ground level anti-social behaviour from the individual concerned. All interviewees agreed that this relatively common experience by charitable housing bodies could only ever be avoided with better education of the referring bodies and greater assurances that difficult behaviour or complex needs would not, in themselves, prejudice a decision to house an individual.

### *Anti-Social Behaviour*

Anti-social behaviour exists within and without supported housing projects. As **CSG4** stated "people with mental health problems can be both victims and seen as perpetrators of anti-social behaviour". The mentally vulnerable who suffer from mental health problems or mental or physical impairments are popularly regarded as the ones who are responsible when anti-social behaviour arises. This image feeds in to practical issues such as obtaining planning permission for a new housing project to be set up and run. For example, as **CSG3** noted "often when a housing provider seeks planning permission to set up supported housing, local community opposes on the basis that it may bring anti-social behaviour problems" with it and in turn, planning permission may then not be granted. Yet, this image of a one-sided threat from the mentally vulnerable is far from real as the wider community causes similar difficulties to the mentally vulnerable (for example, see, Silver, 'Race, neighbourhood disadvantage, and violence among persons with mental disorders: The importance of contextual measurement', *Law and Human Behaviour*, 2000).

When anti-social behaviour emanates from the mentally vulnerable, this usually comes in the form of noise pollution. The data suggested that tenants are not always aware of the impact their behaviour has upon those around them and all the charitable housing bodies interviewed suggested that a reinforced message needed to be given to the individual concerned about the effects his or her behaviour had upon others. Where this is insufficient, then good behaviour contracts can be drawn up between the housing body and the tenant. When these contracts are breached, the charitable housing body may then consider whether to evict the tenant. In the case of excess noise, all interviewees in the research sample expressed the view that this was a behaviour trait that could generally be handled and no interviewee was aware of a single instance of eviction following excess noise. Of course, other types of anti-social behaviour can occur, such as arson or other dangerous activities that may place other tenants and staff in danger as well as the individual concerned. However, the data suggested that this is very rare and for most of the charitable housing bodies, efforts would be made to overcome the problem rather than move on or evict the individual.

Where anti-social behaviour emanates from the wider community, several interviewees suggested that this depended largely on the location of the housing project. **CHA2** noted that where anti-social behaviour occurred from the wider community it “tends to depend on the area” and **CHA7** said that in certain areas, “tenants vulnerabilities are often exploited by junkies who colonise their homes and sell drugs”. The data suggested that there is little charitable housing bodies can do except establish good links with the Police, local organisations such as Neighbourhood Watch, and churches. Problems of anti-social behaviour from the wider community can only be overcome with the help of community leaders and the police. **CHA1** noted that:

*“we work through the usual channels of the Police, we would contact local councillors and that sort of thing, local community leaders if there’s a Home Watch scheme, that kind of thing. Occasionally, we would attempt to appeal to the better natures of the aggressors pointing out what may appear to them to be sport to taunt a person with a learning or physical disability, but it is not much fun for those who have to experience it”.*

Overcoming anti-social behaviour irrespective of whether such behaviour can be sourced within or without the housing project is difficult for charitable housing bodies simply because success in dealing with the problem relies on the input of others and the willingness of the individual(s) concerned to cease their destructive ways. However, from the data collected it is clear that those organisations interviewed, have all established links with other organisations in an attempt to take proactive steps against anti-social behaviour and its damaging impact on mentally vulnerable tenants and the housing project as a whole.

### *Dual Diagnosis*

Anti-social behaviour would appear, from the data, to be an ongoing difficulty for charitable housing bodies. This may partly result from increasing levels of dual diagnosis being recognised in the mentally vulnerable population. ‘Dual diagnosis’ is a label placed on an individual with complex needs who has a clinically recognised psychiatric condition in addition to a drug or alcohol addiction (Abou – Saleh, ‘Dual diagnosis: management within a psychosocial context’, *Advanced Psychiatric Treatment*, 2004). Dual diagnosis presents several problems to charitable housing bodies, as individuals with these complex medical and social difficulties require much more flexible support. The major challenge relates to relevant agencies taking responsibility for the individual. To achieve this, agencies that undertake responsibility of clients with a dual diagnosis will face high financial and support costs. The data confirmed the research team’s supposition that charitable housing bodies frequently find that agencies that are involved in the care and support of their clients try and offload the cost to other agencies. **CSG2** commented:

*“[t]here is ‘bouncing’ between the services and the lack of appropriate accommodation makes it difficult to work with people. Those with both drug/alcohol and mental health problems experience problems such as lack of basic budgeting skills, difficulties with sustaining daily routines, paying bills and complaints of anti-social behaviour”.*

Where an individual finds that no agency will take responsibility for his or her care and support, “this can lead to the client having nobody else involved with them and the client then deteriorates. Agencies need to talk to each other and share the costs in these cases” (**CHA2**). The financial burden of supporting an individual with a dual diagnosis is clearly one which influences an agency’s decision to accept them, yet it would also seem that the continuing problems associated with multi-agency working is also having a detrimental effect upon individuals whose complex needs may need to be met by a variety of agencies (see, Means *et al*, 2003).

*“As diagnoses are frequently more complicated, the needs of people with a dual diagnosis can only effectively be met if better multi-agency working, and good working partnerships are achieved between different agencies. Without such working relations needs are unlikely to be met”* (**CHA8**).

Lack of financial wherewithal and inadequate communication between agencies is leading to some of the most vulnerable people being left with little or no support.

The charitable housing bodies within the research sample all recognised the particularly challenging aspects of dual diagnosis yet all interviewees commented that where possible, an individual with a dual diagnosis would not be turned away from their services. However, where there is no recognised care and support from relevant health or social services authorities, a charitable housing body may have difficulty in offering accommodation. **CHA5** noted:

*“There are people that we don’t accept because we cannot manage them on the basis of risk. If we felt we could not safely cope we would try and do it jointly with other agencies if we could. However, this is sometimes not possible. Sometimes we have to withdraw the service, if we are not able to provide the service maybe because the person is consistently threatening”*.

The charitable housing body has to consider the needs of the individual and the needs of other tenants. Where an individual is clearly in need of additional support or requires more support than the charitable housing body can offer, without appropriate levels of backing from other agencies, the data suggested that accommodation will not be offered or will be withdrawn. **CHA6** commented that it is “almost impossible to get services for dual diagnosis. We refer clients to mental health services but we can’t work with them because of the substance misuse and vice versa”. The pervasive nature of drug and alcohol problems makes the accommodation of people with addictions in existing provision incompatible with their personal, staff and other residents’ needs. As such there is difficulty in placing people with dual diagnosis because of a frequent lack of joint working, an inconsistent interpretation of what dual diagnosis is which leads to ineffective service provision and the blurring of responsibility, and a lack of protocols for providing services and pathways to those with a dual diagnosis.

Dual diagnosis in many ways reaches the heart of the issue of housing the mentally vulnerable. It highlights the specialised needs of this group. Multi-agency working is crucial as is recognition that the mentally vulnerable have accommodation needs that exceed what can be offered in mainstream housing. Interestingly, **CHA3** commented that dual diagnosis was no longer an unusual feature of some mentally vulnerable

people; as such all agencies including charitable housing bodies need to make changes to their services to reflect this growing need.

*“Most people now have a dual diagnosis and we as providers need to accept this. We need to change our services to meet those needs; we need to skill our staff up so staff are more aware about drugs and alcohol issues...The worst thing is for organisations to say, it is a separate problem which they do not deal with and if someone is taking drugs they say they need to be referred on”.*

### *Legal Difficulties*

It has been demonstrated above that the provision of housing to the mentally vulnerable is not always a straightforward process and many practical difficulties can hamper this provision. The law and the framework that directs the creation and management of housing arrangements also limit the practices adopted by charitable housing bodies. The research indicates four major legal problems which charitable housing bodies face.

#### (i) Discrimination Through Planning Regulations

This particular legal concern, as raised by **CHA3** and **LAW** in the research sample, relates to new build or converted shared accommodation mental health projects which require planning permission.

In summary, problems arise from the open nature of the planning procedures. Public objections to a proposed planning application can be lodged, and must be taken by the local planning authority to a public committee of local councillors, who will decide whether to grant the permission. The fact that most committees will allow members of the public to speak at the committee proceedings means, as **LAW** states “that makes the environment highly political, highly sensitive and a bit like a tin box at times.”

The objections of concern to charities are where local groups “petition to stop a particular type of group home being established. They will sight issues about lack of supervision, fear of crime, effects on their children, lack of supervision.” (**LAW**)

Lack of clear guidance as to relevant considerations, and pressure on committee members to balance needs of what “can be quite vociferous and very focused” (**LAW**) protest by the community at large against their planning obligations and the needs of the mentally vulnerable means that decisions may not always favour charitable housing providers.

**CHA3** has had some experience of this situation happening in the past, and usually seeks, where possible, to avoid disclosure about the purpose of new build projects to the local community to avoid this form of discrimination. The organisation is equally clear about what the nature of the solution to the problem:

*“I think we ought not to be pandering to these prejudices, we need to say that, yes if there are planning considerations, i.e. badly designed or its not got parking facilities or it’s an inappropriate conversion, those are reasons to say*



*no, but one of the reasons to say no and one of the questions you should not have to ask or answer is, who's the end user. It seems to me there is a need for very unequivocal planning guidance to local authorities so that people just know that in the end it's not an appropriate question to ask. Otherwise what we get is people trying to use planning considerations for non-planning reasons."*

Ultimately, these legal difficulties with planning permission, unless addressed, actually end up hurting the public purse, as self-contained accommodation or institutional care for mentally vulnerable individuals is more costly than shared accommodation provided by a charity.

## (ii) Capacity

It is a trite principle of law that in order to enter into a legally binding relationship, a party signing any form of legal agreement must have the capacity to understand what he or she is signing and must be eighteen years or over. The test for capacity, is, however, somewhat opaque, and has come in for considerable criticism from a variety of sources, which has led to Law Commission investigation, and a proposed Mental Capacity Bill 2004 (see Law Com No 231 *Mental Incapacity*, HMSO, 1995)

In essence, the current law does not preclude a person with a mental illness or learning disability from entering into a legally binding arrangement. Generally the law presumes that an adult has capacity, unless it can be shown that they do not. Medical evidence of a recognised mental impairment may, however, raise a contrary presumption that a mentally vulnerable person lacks the necessary capacity to make valid legal transactions (see *Simpson v. Simpson* [1992] 1 FLR 601; *Re C* [1994] 1 All ER 819). Nevertheless, it is also clear that any mental impairment must be judged, not in the round, but in relation to the agreement that is being entered into, as the extent of understanding necessary is relative to the particular transaction under scrutiny (see *Re Beaney* [1978] 1 WLR 770). What results are complex questions of expert evidence on a case by case basis, which makes it difficult to predict when a person's mental vulnerability will adversely affect their capacity.

Evidently, in relation to a letting arrangement, whatever form it takes, this is a complex legal document and this complexity may mean that for a great number of the potential clients of charities, there may well be real problems.

The research data demonstrated, however, that a number of charities appear to have quite a blasé attitude to questions of capacity. **CHA3**, for example, who deal with people presenting complex needs, said:

*"No, I can't say that it's something that keeps us awake at night. If we were really worried we would make sure they had proper representation and advocacy and legal support, but it's not something that we get worried about is it?"*

One of the reasons why **CHA3** may be less concerned than many others is because "we work very hard at passing information over to [service users] and putting it in plain English so they understand it. Sometimes they can get confused with all the

jargon and stuff like that, so we break it all down and send support workers in.” Where charities at least try to address the difficulties of understanding, without judging whether these methods might be effective or not, there is at least an awareness of capacity problems, and an attempt to address them.

Of greater concern is a lack of understanding about the issues raised by capacity evidenced by the research sample. **CHA5** states “Although part of the business I have just got involved in have got quite a lot of learning disabilities and I’m not sure how that works at the moment.” Similarly, a trustee of **CHA10**, when asked about the capacity issues said they were “[w]e are, not terribly aware. I suppose I should be better aware.”

Questions of capacity may well be beyond the expertise of housing charities, as **CHA6** noted:

*“Our view is that we are not medically qualified to determine whether a tenant is of the ability to understand and the capacity to know what a tenancy agreement is. We have to rely on the people responsible for providing that kind of support to them.”*

If a charity is providing housing and/or services to someone without capacity, however, potential legal problems can occur. These arise from the legal status of the mentally vulnerable occupier/service user.

Technically, the mentally vulnerable individual could be classed as a trespasser. A lack of capacity does not necessarily make the occupier a licensee, as they must have capacity to enter into a licence agreement. If the individual is not a trespasser, they will be a mere licensee, which means they would be in the property with the consent or permission of the charity, but would have no legally binding rights enforceable by or against them. Nevertheless, rent may still be payable, as the common law allows a company supplying necessary services to recover a reasonable price for those services, even where the agreement is technically unenforceable – (see *Code of Practice on Tenure*, 1999). Whether this exception would cover the cost of service provision, from Supporting People funding, for example, has yet to be tested. If it does not, the charity may be forced with having to evict the mentally vulnerable individual in the interests of the proper management of the charity.

However, where the mentally vulnerable occupier was still paying rent, by collecting housing benefit, the charity could nevertheless be complicit in and potentially liable for fraud, as the lack of a formal, legally recognised occupation arrangement would mean that the individual was not entitled to collect housing benefit. Similarly, where the occupier is a trespasser or mere licensee, the trustees of the charity could find themselves in breach of trust, where their objects are to provide long term care or housing.

One potential solution might be provided where an advocate or family member is used, it may well be that this third party will actually hold a tenancy on trust for the mentally vulnerable individual, with all the attendant duties which trusteeship imposes (see, generally, Pearce & Stevens, *The Law Of Trusts and Equitable Obligations*, 2002).

What these considerations demonstrate is that the issue of capacity is a complicated and potentially confusing one, and is worthy of further research in its own right.

### (iii) Use of Probationary Tenancies

In Chapter 3, the reasons why charities might wish to make use of a probationary letting were explored. Briefly restated, these include situations where the charity needs to conduct an assessment before housing an individual on a more permanent basis, as, for example, where someone is presenting specific needs which the charity is unsure it can meet or has a history of dangerous or destructive behaviour. The use of an probationary arrangement means that the chances of success in matching the individual to suitable provision or of safeguarding the interests of existing residents are increased, as it allows for the individual to be easily moved on to another project or provider.

The research data illustrated that charities can, however, face real problems from letting partners in securing the right to use probationary tenancies. In theory, the Housing Corporation's rules on appropriate use of tenure (see *Code of Practice on Tenure*, 1999) would seem to allow the provision of probationary tenancies for assessment purposes "provided that the tenancy is converted into an assured periodic tenancy after the trial period...and...the use of assured shorthold tenancies is consistent with the RSL's practice for other temporary supported housing, such that discrimination could not be said to exist." (*Code of Practice on Tenure*, paragraph 4.13). It is this fear of discriminating against a person with a particular mental impairment that complicates the position, and leads the Housing Corporation to suggest that "RSLs considering the use of assured shorthold tenancies during trial periods should first seek legal advice." (paragraph 4.13). Similarly, the purpose of the housing body will be a significant factor in determining whether an probationary tenancy can be used, as the overarching rule in the Code of Practice is that tenure should be appropriate to the aims of the organisation. It is therefore the interpretation of the code, as set against the needs of the charity and the aims of any partnering housing provider, which creates the problem.

There research data highlighted this clear tension between the needs of appropriate management in the best interests of the mentally vulnerable and charities as a whole, against the restrictions through purpose and anti-discrimination rules.

**CHA10**, which runs long term accommodation schemes, noted that the current interpretation of the rules on probationary lettings it did not help its housing purposes:

*"[T]he Housing Corporation says that the basic aims of the scheme, which we can't deny, the overall is to provide long-term accommodation and you can't use these as introductory or probationary tenancies. The difficulty for us is that it means once we've taken somebody, we've taken them, we're left holding the baby."*

**CHA3**, by comparison, objected to the use of probationary tenancies, on the ground that it is discriminatory to people with mental health problems, echoing the guidance of the Housing Corporation:

*“It’s wrong, it’s not right that all the people shouldn’t be asked. To them it’s just because they fit the criteria of having a mental health problem, they then think we’ll put them on trial on a tenancy for a period of time, which we strongly argued that people should just go into an assured tenancy.”*

In spite of this tension, the research also illustrated recognition on the part of some housing providers that a form of probationary occupation agreement should be used, although this is certainly not universal. **CHA16** said that it was their housing partner who required an probationary tenancy:

*“[M]ore housing associations are now saying to us, especially with taking people with dual diagnosis who are obviously more risky, that we can go on short hold tenancies, which are six months, but it wasn’t our choice, it was definitely the housing associations.”*

What was also clear from the research data was that charities who wish to make use of probationary tenancies may well be choosing to do so, whatever the legal position might be, on the basis of the practical realities of carrying out their objects. **CHA8** noted, “there are issues about legality and some [probationary tenancies] are on three months and some are on longer. Really we have to seek the guidance and good judgement of our partner agencies and in a sense we would be quite happy to work with people who use models just so that we can learn what works and what doesn’t.”

The Housing Corporation rules do not set down a minimum length for a probationary tenancy, just that the maximum period should not exceed twelve months (*Code of Practice on Tenure*, paragraph 4.13). It is not the length of the letting which is the legality issue, but the question of whether tenancies should be adopted at all on balance. While it is easy to see the sound practical reasons behind a strategy of choosing simply based on the best management of carrying out the charitable objects of the organisation, it is a dangerous one to follow without legal advice, as the provider may be leaving itself open to costly legal challenge on the grounds of discrimination against its users or for breach of its objects and the code set down by the Housing Corporation.

There is clearly a need for some further guidance or intervention to clarify the position for charities and partner RSLs in using probationary tenancies, so that they can be employed, where necessary, in a manner which appropriately balances the concerns of the Housing Corporation as regulator, and the effective management needs of charities and housing providers.

Where charities source their property directly from local authorities, the *Housing Act 1996* provides for ‘introductory tenancies’, which are a recognised form of probationary tenancy for a period up to one year, after which they become secure tenancies (see Chapter 1 for details of the secure tenancy regimes). However, local authorities cannot simply choose to use an introductory tenancy as and when it is felt to be appropriate. They must pass a resolution in Council to do so, and the effect of this is that all new tenancies granted by that authority have to be, at least initially, introductory. Also, unlike a probationary assured shorthold tenancy, an action of

possession by court order must include the reasons why the Council is seeking possession, and the decision is open to review (*Housing Act 1996*, section 129(1)).

There is therefore an anomaly between the approach to probationary agreements, dependent on where a charity sources property from or the statutory regime applicable in social housing. This adds weight to the argument for clarity in this area of the law.

#### (iv) Tenure and Evictions: Management Difficulties

In considering the types of tenure used by charities in Chapter 3, it was suggested that there is a link between the legal form of tenure adopted to house a mentally vulnerable individual, and the needs for property management of housing stock and support. Appropriate choice of legal form may facilitate the move on of a resident who no longer needs the level of service and support in the property provided by the charity e.g. using an assured shorthold tenancy in place of a fully assured tenancy, as it confers less security of tenure. It was also noted that the law may have interfered with the benefits conferred by the differing legal forms, and that there might be difficulties in actually choosing the appropriate arrangement. Before considering these problems around tenure, the research data revealed some important information on the nature of management difficulties likely to be faced by charities in housing the mentally vulnerable.

In terms of legal actions, the data revealed that a major cause of disputes with charities is for nuisance claims. In many senses, the issues are similar to those highlighted in relation to anti-social behaviour above, but nuisance is a civil wrong or tort which gives an adjoining occupier a right to sue for damages for unlawful disturbance of the use and enjoyment of his property (see, generally, Rogers, *Winfield & Jolowicz on Tort*, 2002). That this is a management issue for charitable housing providers is evidenced by **LAW** in the research sample, which stated:

*“[L]egal disputes tend to centre on whether the charities are supervising the clients in residential premises and to what extent the neighbours are suffering nuisance because of it.”*

It might be thought that control of behaviour such as nuisance could be managed by insertion of particular terms in the lease. Invariably, leases will include such clauses and the model tenancy agreements offered by the Housing Federation contain such provisions. At best, however, these obligations are only useful where they are understood, and fear of breach of the provision is unlikely to concern someone with a significant mental illness or learning disability. This accords with the experience of **LAW**, which stated:

*“I don’t think the formal terms of a lease or a licence could ever hope to control a tenancy with somebody who is mentally ill. It really cannot be dealt with in that way.”*

Where management breaks down, therefore, the ultimate sanction or solution is eviction, whether this is meant in the sense of permanently removing the occupier from property owned by the charity, or simply facilitating move on to other property. It is here that the conflict with tenure becomes apparent.

The research demonstrates that the questions of tenure and eviction can be emotive and divisive issues for charities. It may present a direct conflict between the furtherance of the charitable objects and the inherent desire not to discriminate against those with mental health needs, set against the need to effectively manage and maintain properties for the benefit of all users of the housing services. It is clear from the research that for many charities, initiating proceedings for eviction is viewed as a failure.

However, where the issue concerns simply facilitating move on of a client who no longer needs the services offered, eviction may be the only route available where the client does not want to leave. This clearly does not raise the same concerns. In the words of **CHA19**:

*“One mantra that the organisation has is that evictions shouldn’t be forever. If somebody goes out onto the street you want them back again at some point or to give them the option of coming back at some point.”*

What, then, are the problems caused by security of tenure? First, there can be a problem in providing too little security of tenure. If this is not matched to the needs of the relevant scheme, this may lead to sanctions from the Housing Corporation where the property is owned by a charitable RSL or managed for a RSL. It can also contribute to the problem of hidden homelessness, as discussed in Chapter 3, as it will mean that an individual is moving between different accommodation, which will inure to the benefit of his or her mental health

Second, there is a major danger where too much tenure has been granted. This may occur where the organisation has a need to move people on, as, for example, where the provision is for managing mental health issues and promoting independence. It was seen in Chapter 3 that the normal maximum duration of such an arrangement is two years. If, for example, the organisation has instead granted a full assured tenancy, then there are very real problems in seeking to have the tenant move out of the accommodation provided, if the tenant does not agree. The problem is well stated by **CHA16** in the research:

*“I think the problem with giving a lifetime tenancy is you get very little move on. People say, well it’s my tenancy, I’m staying here and this and that and we don’t want to push them out, but if we have somebody who’s troublesome and we have difficulties with getting them out, they’ve got a lifetime tenancy, we can’t wait six months and then, sorry, your tenancy’s ended. That does cause us problems.”*

Similarly, as a management issue, where a full assured tenancy is perfectly in keeping with the aims of the organisation, the legal straightjacket it imposes can cause problems if the tenancy is not working out. **CHA10** sums up the approach of charities in the research sample:

*“It does mean, though, that we’ve got to be fairly rigorous in our selection and also at times you are taking a chance on whether or not it’s going to work out and the difficulty is, once you have accepted somebody on a permanent*

*tenancy, it's the Devil's own job to find them an alternative, or get them out to put it crudely, if it doesn't work out."*

The reality is that if a charity houses someone under a full assured tenancy, it may be very difficult to evict them or move them on. In basic terms, the agreement can only be brought to an end by serving a notice on the occupier, detailing one (or more) of seventeen statutory grounds of possession and obtaining a court order for possession (see *Housing Act 1988*, section 5). These grounds can be mandatory, where the court has to order possession where the requirements of the ground are proved (for example, arrears of rent), or discretionary, where the court ultimately makes the decision whether to grant the order for possession if it considers it 'reasonable' to do so. The first eight grounds are mandatory; the remaining nine discretionary. None of these grounds have been drafted with the particular interests and needs of charities housing the mentally vulnerable in mind. (The position is even worse where the tenant is a secure tenant under the *Housing Act 1985*. The situations in which this might arise were considered in Chapter 1. Here, the statutory grounds for eviction are even more limited, as there are no mandatory grounds for possession (see *Housing Act 1985*, Schedule 2)).

The research data confirms the difficulty, that, even where the aim is to move the person on to a more suitable type of accommodation if "they've got a permanent tenancy [it is very difficult] to get anybody to actively look for an alternative for them until you get to crisis point." (**CHA10**).

Another reason for choosing appropriate type of tenure is that, particularly where charities are involved in less permanent housing solutions, it would be unwise for a charity to seek to bear the risk and give full tenure. If the resident is no longer needs the relevant services and cannot be removed, the charity may be in breach of trust, as the person may be housed against the charities objects, yet the charity has no power to vary its objects without the approval of the Charity Commission. The situation may be worse where the charity takes the form of a company limited by guarantee, as in continuing to operate in this way, it might be considered wrongful trading (for a succinct discussion of the problem as it relates to charitable companies, see Warburton *et al*, *Tudor On Charities*, 2003).

The data revealed a striking example of a situation where someone could have been given provision if he could have been evicted, and had destroyed the contents of his property, yet could still not be evicted. This came from **CHA18**:

*"They are perfectly happy if he is homeless maybe I could push that to somebody that I need a bed for him in a specialist area, but until he is homeless he has got a place to live, it's not my problem, everybody is washing their hands. Fair enough, I haven't managed to evict this guy, he's destroyed the whole house, literally destroyed it. He committed enough crime that he had to go to prison for three months. Even then I couldn't evict him because there was not enough grounds, he was a mental health client, he was a criminal, how could I evict him? So he is back now...."*

Does the law really permit this sort of behaviour to go on without eviction, or is this just an aberration of a particular charities' adverse experience of the legal system of

possession? Certainly, two recent cases, *North Devon Homes v. Brazier* [2003] 2 EGLR 14 (*Brazier*) and *Manchester City Council v. Romano* [2004] EWCA Civ 834 (*Romano*), have the potential to make it even more difficult for charities to regain possession when it may be necessary to do so. These are also the cases which cast doubt on recovery of possession generally, irrespective of the form of legal arrangement used.

These cases arise out of the interface of mental illness or learning disability, housing and the *Disability Discrimination Act 1995* (hereafter referred to as the *DDA 1995*) and were concerned with nuisance (*Brazier*) and anti-social behaviour (*Romano*) by disabled tenants. It is the definition of a 'disabled person' that is of major interest here, which, although technical, is worth detailed consideration.

Under section 1(1) of the *DDA 1995*, a disabled person includes someone who "has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day to day activities". A mental illness is a 'mental impairment' for the purposes of the Act, if the illness is one which is 'clinically well recognised' (Schedule 1, paragraph 1(1)). It is clear that this will include any mental illness which is recognised by a respected body of medical opinion, or is mentioned in a respected professional publication such as the World Health Organisation Worldwide Classification of Diseases (see *Morgan v. Staffordshire University* [2002] IRLR 190 *per* Mr Justice Lindsay). Similarly, an impairment will be of long term affect if it is 'likely to last for the rest of the life of the person affected' or has lasted or is likely to last for at least 12 months (see Schedule 1, paragraph 2(1)). Finally, an impairment will affect the ability of the affected person to carry out 'normal day to day activities' if it affects one of eight criteria set out in Schedule 1, paragraph 4 of the *DDA 1995*, which includes 'memory or ability to concentrate, learn or understand', 'manual dexterity' and the 'perception of the risk of physical danger'.

This definition includes those with learning difficulties, as well as more traditional mental health problems like schizophrenia. Even where a impairment can be managed rather than cured by medical treatment, it is included within the definition of disability (see further *Guidance on matters to be taking into account in determining questions relating to the definition of disability*, sections A to C, issued by the Secretary of State under powers conferred by section 3 of the *DDA 1995*. See also *The Disability Discrimination (Meaning of Disability) Regulations 1996*). Many mentally vulnerable clients getting housing support from charities will therefore fall within the definition of disability.

Where a mentally vulnerable client housed is classed as disabled under the *DDA 1995*, the net result of *Romano* and *Brazier* would appear to be that it is not possible to obtain possession against such a person holding under a secure or (full) assured tenancy where the reason why the landlord is seeking possession relates to the tenant's disability, unless the eviction can be objectively justified under the terms of the *DDA 1995*. This is because, under section 22(3)(c) of the Act, discrimination includes 'evicting the disabled person, or subjecting him to other detriment' and, unlike other anti-discrimination legislation (e.g. *Race Relations Act 1976*), it is not necessary to show that the disabled person has been treated differently from a non-disabled person - the order seeking possession is enough. In effect, the test of justification, which is contained in section 24 of the *DDA 1995*, replaces the statutory



grounds for possession contained in either the *Housing Acts 1985* or *1988* with a two part test:

*‘(1) Did the landlord hold the opinion that it was necessary to serve a notice seeking possession and/or to bring possession proceedings in order that the health of A (an identified person or persons) would not be put at risk?  
(2) Was the opinion objectively justified?’* (per Lord Justice Brooke. in *Romano*)

This presents a major encroachment on management of housing stock, as it is only where the health of at least one other occupier is at risk that an order for possession may be justified. The normal grounds for possession no longer apply. (For an excellent examination of the *Romano* decision, see Arden, ‘Who cares in and who cares about the community?’, *Journal of Housing Law*, 2004). Mr Arden QC was counsel for Manchester City Council in the *Romano* litigation).

In considering whether eviction is necessary not to endanger the health or safety of any person, *Romano* established that the definition of ‘health’ is the wide ranging one adopted by the World Health Organisation, which states that “health is a complete physical, mental and social well-being and is not merely the absence of disease and infirmity”. Continued nuisance or anti-social behaviour against individuals would, for example, affect their health on this definition. It may also cover the situation outlined in the research sample by **CH18**. This would not, however, help a charity that simply wished to move on a mentally vulnerable individual to another housing service where no threatening behaviour against other (vulnerable) occupiers was in evidence. This would be prohibited as being discriminatory, even though it would be intended (and may be necessary) to further both the objects of the charity and the objective best interests of the housed individual.

Of course, the possession action will only be discriminatory where the reason for possession relates to the tenant’s disability. This is not, however, a matter of the intention behind the possession action, so that a charities motives in seeking possession are irrelevant. Instead, given the very wide definition of what amounts to discrimination within sections 22 and 24 of the *DDA 1995*, this can potentially relate to any of the terms of the tenancy. Lord Justice Brooke himself in *Romano* noted this:

*“A further difficulty [with the legislation] arises from the fact that a tenant could assert that his landlord could not recover possession for non-payment of rent because the reason why he could not manage his financial affairs efficiently relates to his mental health”.*

This was due, in his Lordship’s view, to the fact that the *DDA 1995* had “not been subjected to rigorous scrutiny of the type customarily undertaken by the Law Commission”, which led to “evident difficulties...which call for remedy at an early date”. These difficulties did not alter the reasoning of the court, however, as to the test applicable for possession.

If Lord Justice Brooke is correct in his reading of the *DDA 1995*, the legislation, unintentionally or otherwise, goes further than the current code of practice issued by the Disabled Rights Commission (*Code of Practice on Rights of Access, Goods,*

*Facilities, Services and Premises (Disability Rights Commission) 27 May 2002*). Paragraph 9.26 of this Code, headed ‘eviction’, provides as follows:

*“It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises by evicting the disabled person. **This prohibition does not prevent the eviction of a disabled tenant where the law allows it, for example, where he or she is in arrears of rent or has breached other terms of the tenancy, and where the reason for the eviction is not related to disability. However, in each case, appropriate court action needs to be taken to obtain an eviction order.**” (emphasis added)*

So, where a charity is dealing with a mentally vulnerable person who is sufficiently impaired to be classed as disabled is the law really saying that moving on that individual is only possible where there is a risk of harm to the health of an occupier and for no other reason? Is the practical effect of the interpretation of the relevant provisions of the *DDA 1995* in *Romano* and *Brazier* to do what the statute did not, and effectively repeal the possession grounds in the existing statutory systems of letting arrangements?

Certainly, Lord Justice Brooke seemed to think so, as he said that unless “Parliament takes rapid remedial action...the courts may be confronted with a deluge of cases in which disabled tenants are resisting possession proceedings” by methods such as those outlined by his Lordship in relation to rent arrears. If this in the position of the law, then it really must be addressed by the legislature, otherwise appropriate housing provision for disabled mentally vulnerable persons will be almost impossible to achieve, at the expense of the public purse and the proper interests of mentally vulnerable individuals (this aspect is considered further in Chapter 5, *Legal Reform*).

Perhaps another answer to these very real concerns is that the reasoning in *Romano* and *Brazier* may not be applicable to all grounds of possession, nor to all occupation arrangements. This is a very technical, legal argument, which hinges on the fact that in both the decided cases, the courts had discretion to exercise in deciding whether an order for possession could be enforced. In *Romano*, for example, Manchester City Council relied on Ground 2, Schedule 2 to the *Housing Act 1985*, which is the nuisance ground for possession, and the court could not make an order for possession under this ground unless it considered it reasonable to do so. In neither case did the court have to consider the position where the order for possession was based on a mandatory ground, such as serious rent arrears under an assured tenancy granted under the *Housing Act 1988* (Schedule 2, Ground 8). Nor did the question arise in relation to an occupational licence or an assured shorthold tenancy (following the initial six month period), which can be ended simply by the service of a valid notice to quit.

In such cases, it might be argued that, since the role of the court in considering the action for possession is procedural only (in the sense that if the appropriate requirements have been complied with, the court must order possession), there is no jurisdiction for the court to consider whether the order for possession is discriminatory or not. That such arguments might cause considerable headache for lawyers and judges alike was noted by Lord Justice Brooke in *Romano*, in what he

called the “formidable interpretive difficulties that may relate to the treatment of other tenants [not secure or assured] which may lead to an eviction”.

Indeed, in situations where a notice to quit is all that is necessary, can it really be said that the reason for possession is related to the occupier’s disability so that it falls within the definition of discrimination under section 22 of the *DDA 1995*? The law requires no reason for the ending of the arrangement – the notice is simply the trigger which ends the particular relationship between the parties involved. If this is so, it emphasises the importance of choosing the correct method of tenure appropriate to the functions and objects of the charity and makes a strong argument for the use of probationary tenancies before granting a full assured tenancy to an individual.

Whatever the legal position, the research reveals that some charities are, as with their use of probationary tenancies, putting practice above the law. **CHA20** states:

*“Nothing happens really, we encourage people to move on. There might be a legal position that we shouldn’t actually do that, we should not be encouraging people to change their tenancy but we cant do that otherwise we would close down. That’s the reality, if we cant show that there is a demand for our service it wont be strategically relevant. If we can’t move people out then we can’t have a demand for our service because there would be no vacancies.”*

A more sensible version of this strategy is suggested by **CSG4**:

*“In many cases it may be appropriate to move some one on because their support needs can’t be met by the organisation but move on in these circumstances should be done through collaboration between the organisation, social services and the individual rather than through the eviction process.”*

Sadly, practice is normally only useful until there is a problem, and a tenant does not wish to leave. Sensible choice of tenure is the only true option available, as this may make it easier to gain possession, if that is really what is needed, but it has already been demonstrated that this is not always possible. It is clear, at least for those charities involved with long term accommodation or those who have no say in the choice of legal arrangement offered, that the law is being observed in many cases by its breach.

Ultimately, actions for possession, and attitudes expressed to them by the Housing Corporation and other bodies, may come down to a matter of trust. Most charities are working in best interests of the parties they are seeking to house – they are not just clients, they are the tangible product of the charitable objects the organisation is seeking to carry out. It may need flexibility within the system to recognise that the order for possession is the trigger, not the end product. That this flexibility may need legal reform following *Romano* and *Brazier* is considered further in Chapter 5.

## CONCLUSIONS, RECOMMENDATIONS AND BEST PRACTICE

The third research was to examine current debates concerning mental health provision and wider reforms of housing law.

### *Best Practice*

It is clear that the involvement of charities in the provision of housing the mentally vulnerable is essentially a mixed economy and that such provision is undertaken in a variety of different ways. This provision can include housing with attendant services, stand alone housing or housing management where other agencies are involved with the mentally disordered at ground level. What is very clear from the research data is that it is rare for a charity to provide all aspects of housing and support to all groups within the mentally vulnerable population. Rather, charities tend to focus on particular services and seek to rely on other agencies to fill obvious gaps. It would appear that demand for housing provision is so high and spread so widely within the mentally vulnerable population that most charities do not have the means to provide for all. The importance of effective multi-agency working within this field cannot, therefore, be underestimated nor can the process of such housing provision be oversimplified. Recognising the multifarious nature of charitable involvement in this area of housing provision therefore requires a flexible attitude towards the development of best practice guidance. Yet, despite this caution, several examples of best practice have manifested themselves and can clearly be found within the research data.

- Constant difficulties were recognised in relation to how different agencies worked together. Where communication failures arise or payment of funding is delayed, such problems frequently have a knock on effect. It is suggested that charitable housing bodies seek to use of codes of conduct that can assist with joint working. Codes of conduct can be used to inform those on all sides as to what can be done and what is expected of all those involved. This would govern the way in which communications/exchanges of information are carried out.
- Good lines of communication between charities and other agencies should be sought at all times. Where difficulties arise, efforts should be made to overcome communication problems as such problems will have a negative impact upon the effectiveness of housing projects.
- Joined up working between the Local Authorities and other agencies should be encouraged. Greater levels of joint work will prevent double-provision and ensure any surplus funding can be used elsewhere. Efforts to improve joint working between agencies should be ongoing.
- The full contents of risk assessments reports should be fully disclosed to those working with the mentally vulnerable individual. Use of protocols to ensure confidentiality of the information will offset concerns about inappropriate disclosure of information. Note, however, that there may be a problem of capacity on behalf of the mentally vulnerable individual to consent to the release of information, in which case a power of attorney may be necessary for an advocate or family member to consent on their behalf.

- Altering funding streams in order to obtain new funding is often counter-productive. Funding streams and/or their focus frequently change making it difficult for charities to maintain a consistent service. Nevertheless, it is important that charities keep their objects under review, so that their objects match the services they are currently providing, and to allow for necessary growth in the future.
- Accurate, initial assessments of the level of housing benefit required are essential. If the level is set too low for the services provided, there can be real problems in having the benefit level successfully reviewed.
- For charities that have a primary objective of providing a 'home for life', of which two of the charitable housing bodies within the research sample had no other focus, the maintenance of very short waiting lists is essential. Where there is little or no housing placement turnover within a certain housing project, mentally vulnerable individuals needing housing should be discouraged from wasting too much time waiting and should seek housing elsewhere.
- Efforts should be made to keep mentally vulnerable individuals within their home territory. Although there may be limited suitable housing available, moving people into unfamiliar locations have several disadvantages, most notably the loss of support networks which are essential in the maintenance of an individual's mental stability.
- Registered Social Landlords and charitable housing associations should have clear policies about rent arrears and rent recovery practices and these should be communicated clearly to the tenant.
- A good system of advocacy is essential in order to ensure tenants understand the housing arrangements made for them, the rights and duties both they, as tenants, and their landlords have, and what tenants may do in the event that the accommodation becomes untenable.
- To minimise the effect of planning actions on new build accommodation, charities should stop thinking in terms of a fixed piece of land or a fixed development. Instead, they should try to fit any proposed scheme within the strategy of the local planning authority.
- Thought should be given as to the use of probationary tenancies for assessment of difficult needs or for known problematic tenancies. This should always be through negotiation with the housing provider, where the charity has a management role, or following discussions with the Housing Corporation.
- Charities should carefully consider the most appropriate form of legal agreement to house an individual, paying careful attention to security of tenure the agreement offers. Full assured tenancies may not be the most appropriate

form of arrangement where there is an expected turnover of residents in a scheme.

- Many charities would benefit from greater knowledge of legal matters relating to their activities. This raises questions of education, but perhaps more importantly, communication and dissemination. Much information *is* available (for example, from the Housing Corporation, in the form of leaflets or the Housing Federation, in a variety of formats), but the research data suggests that this has not reached many charitable housing bodies on the ground.

### *Support Recommendations*

From the research data collected, clear areas for some much needed support for charitable housing bodies were identified. Several support recommendations are provided here in an effort to highlight the need for charitable housing bodies to be given greater assistance and encouragement in the vital activities they are charged with. These support recommendations fall within three main categories: housing provision, allocation of resources and education/training; yet, what will not be a surprise is the need for more flexible funding in order to meet both new and continuing demand.

#### (i) Housing Provision

A continuing problem experienced by charitable housing bodies was the lack of ‘move on’ accommodation. The availability of such accommodation is essential in order to transfer mentally vulnerable individuals, whose mental conditions have stabilised and where supported housing is no longer necessary, to accommodation that is more independent in nature. When transfers of this kind are possible, it frees up accommodation that caters for those with greater needs. Housing associations need to be more involved in the provision of ‘move-on accommodation’ yet it is recognised that funding such housing projects is significantly more limited than for the creation of supported housing schemes. It is suggested that the creation of quasi- ‘move on’ accommodation would be a way of releasing supported housing to individuals whose needs would be more suitably met by such supported accommodation. Providing staff offices in the vicinity of mainstream, unsupported accommodation could create quasi- ‘move on’ accommodation by ensuring that vulnerable individuals had someone nearby from which they could seek help. This would make it possible for tenants who no longer require such supported accommodation to live in accommodation that is essentially independent barring the on-site staff.

For mentally vulnerable individuals who still require greater levels of support, available housing needs to be expanded in order to meet existing demand. It is clear from the research data that there is insufficient appropriately supported accommodation for mentally vulnerable people to be settled in to communities. There are several reasons for this shortfall: insufficient funding to establish and maintain supported housing schemes, the gestation period for a new housing project can be immense and the local environment may preclude the development of further housing projects, for example, several of the London-based charitable housing bodies within the research sample, referred to limitations in available space. Therefore, more lateral

approaches need to be adopted in order to create more accommodation for mentally vulnerable people. It is suggested that the private rental market should be harnessed more fully. Charitable housing bodies could then act as housing managers and provide floating support. Clearly, privately rented accommodation will rarely be suitable for those with mental vulnerability as it is simply not geared up to their needs, but the creation of a comprehensive licensing system in the private rental sector, which, of course, could ensure better conditions and housing management. This would, of course, require a new regulatory body for private landlords, which has obvious resource implications.

The adoption of a more flexible approach to meeting the housing needs of the mentally vulnerable could also impact on the need to re-locate individuals to different boroughs or locations in order to meet their housing needs, something which emerged from the research process. Efforts must be made to ensure individuals stay (where possible) in the location they know. The re-location of mentally vulnerable individuals results in several disadvantages, most notably the loss of friend and family support networks which assist individuals in the maintenance of their mental stability.

#### (ii) Allocation of Resources

Clearly, the provision of all services is largely dependant upon adequate resourcing. Most, if not all, service providers would gain from further funding. Yet, perhaps what is possible is the re-focusing of current funding in order to meet deficits within existing housing provision. Old, unsuitable shared housing projects need to be remodelled and funding needs to be made available for this to happen. Several charitable housing bodies within the research sample suggested that more resources had to be re-allocated to ensure the building of more specialist housing. Yet, many of the interviewees believed the Supported People funding regime is too inflexible and needs overhauling, as it is difficult to coordinate Supporting People funding with the building of such housing. It is also argued by several charitable housing bodies that Supported People funding does not allow for the complex support needs associated with housing that many individuals need.

The other resourcing problem, which was highlighted in the research, relates to the Housing Benefit system and its impact upon the housing of the mentally vulnerable. The Housing Benefit system does not react quickly enough to applications nor does it always pay up on time with the result that some tenants face eviction notices. The Housing Benefit system needs streamlining and the identification process, which is attached to initial applications, needs to be improved so that people receive their money more quickly, problems in payment arise less frequently and when problems occur, speedier responses and solutions are put in place. Clear problems exist with the Housing Benefit system but if tenants were provided with support workers, they could check that a Housing Benefit payment had been received and payment of rent made. However, it is possible that the encouragement of good working relations between charitable housing bodies and the local Housing Benefit office could assuage many Housing Benefit problems.

#### (iii) Education/Training

Many problems that were raised by interviewees in the provision of housing for the mentally vulnerable may be lessened if staff receive better and more continuous training with regard to housing management and how to effectively communicate with colleagues, clients and other agency workers. Several difficulties flowed from multi-agency working and it is suggested that improvements in communication could eradicate much of the day-to-day management problems that occur. Training and education is needed by charities and by funders to allow for a clarification of what funding packages can and cannot be used for and also what charities can, in reality, offer clients in terms of housing and support. Within the research sample, interviewees frequently complained of being 'left out of the information loop' or being given ambiguous information which affected the ability to make informed decisions about the possibility of offering housing to individuals. It is possible that greater levels of training and education could make charities, agencies, users and communities at large more aware of why supported housing projects are needed, what they entail, why information concerning the client needs to be disclosed to relevant agencies and charitable housing bodies and why it is important to support the involvement of charities in this field.

### *Law Reform*

The Law Commission is currently engaged in a root and branch reform of the legal framework of housing law (see Law Commission report No 284, *Renting Homes*, 2003). In addition, the research indicates that there are three main areas where the law might benefit from substantial reform. These are: the Housing Benefit Regulations, Planning regulations and the Disability Discrimination Act 1995.

#### (i) Renting Homes

Following a wide consultation, the Law Commission has set out (in the report *Renting Homes*, Law Commission Report No 284, (November 2003), HMSO) to create a comprehensive statutory scheme for residential letting arrangements. At the heart of these proposals is the suggestion that the mix of statutory provisions, contract law and property law which currently governs occupation arrangements should be replaced by a consumer contract, the terms of which should be 'fair' and 'transparent' in accordance with the principles underlying the Unfair Terms in Consumer Contracts Regulations 1999 (For an excellent summary of the proposals, see Partington, 'Renting Homes', *Journal of Housing Law*, 2004). The new occupation contract should be produced in writing, and sanctions are suggested to ensure that landlords comply with the requirement. Statutory model agreements are to be drafted and provided in the Act, which will themselves be UTCCR compliant, and all agreements will contain defined sets of terms.

The Commission propose that only two main types of occupation contract should exist, the Type I and Type II agreements. The distinction between a lease and a licence is to have no validity in determining whether a letting comes within the scheme, so that the new occupation contracts will govern all but a small number of excepted lettings, irrespective of whether the terms of the agreement confer an estate in land on the occupier. Similarly, the existing legal frameworks under the Housing Acts would simply be swept away.



The Type I contract, designed primarily for use by social landlords would replace most assured and other tenancies, with a monthly periodic tenancy. This tenancy would confer the greatest security of tenure, and could only be terminated by court order on one of two discretionary grounds for possession (breach of the terms of the contract and on the grounds of good estate management) and according to the particular proposals dealing with anti-social behaviour. Only in a prescribed set of circumstances would a social landlord be able to use a Type II contract, as, for example, where a landlord offers supported housing. The Type II contract is generally intended for widespread use in the private rented sector, and may be either for a periodic or fixed term. It confers less security of tenure than the Type I, and is to retain the mandatory grounds of possession currently available under the assured shorthold tenancy (see *Renting Homes*, paragraphs 9.45-9.59).

The majority of charities engaged directly or indirectly in housing the mentally vulnerable would fall within the Type I arrangement as RSLs themselves or because they manage for or source property from RSLs. Charities might also elect to confer long term security of tenure on occupants. A significant number may also be involved in lettings under the supported housing exception (see *Renting Homes*, 2003, paragraph 16.7).

The impact these proposals might have on provision for the mentally vulnerable is considered in an article written by the researchers, which is due to be published in *The Conveyancer and Property Lawyer* towards the end of the first half of 2005 (*Housing Reform – A Better Deal For The Mentally Vulnerable?*). In essence, this article posits that the Law Commission proposals, if enacted as they currently stand, would result in changes of detail and practice in lettings by charities, rather than any major differences of substance. Nevertheless, a few substantive observations are worth making here:

- The use of probationary tenancies for ‘the purposes of assessment’ (*Renting Homes*, paragraph 16.7) by charities providing supported housing is expressly authorised by the proposals. Lettings of four months or less would be outside the statutory system; lettings of more than four but less than twenty-four months would be Type II contracts.
- The lease/licence distinction is to be replaced by a consumer contract as between the lessor and lessee. However, whether the occupied property is held under a lease or licence will still be important where partner providers (RSLs and Housing Associations) merge or move stock, or where charities themselves merge, as whether a Type I or Type II occupation contract binds third parties is to remain a matter of general property law, and will not be dealt with by the statutory code (see Law Commission Consultation Paper No 168, *Renting Homes 2: Co-occupation, Transfer and Succession*, 2002, Part VIII for a detailed discussion of this issue). If the mentally vulnerable occupier holds under a licence in property law, this would not bind the new housing provider or merged charity. It will therefore be important to determine, when drafted, whether the standard form Type I and Type II contracts create a tenancy or licence at common law.
- The consumer contract should be easier to understand for all parties than the current mix of statute and common law provision.

- Grounds for possession will be limited, but clear and the discretion open to the courts will be structured in deciding a possession claim. This may or may not be of benefit to charities seeking to move on mentally vulnerable individuals. It is impossible to do anything other than speculate until a Bill is produced, as the Law Commission report contains no details of how the discretion will actually be structured.
- Particular provisions are suggested to allow charities to manage incidents of anti-social behaviour by residents, including a general target duty for RSLs to take into account the need to deal with anti-social behaviour to protect occupiers (see *Renting Homes*, Part XIII).

The Commission is not due to publish a draft bill until at least mid-2005, and it is thought that this may contain significant changes to the published report, not least because of possible alterations necessitated by translating the proposals into a legislative format. However, the current version is silent on the particular management problems caused by *Romano*, which arose after the report was published and are considered further below.

#### (ii) Housing Benefit & Planning Regulations

Alongside the suggested good practice and support in relation to housing benefit, the research suggests that there ought to be special rules which allow for the determination of a specialist level of housing benefit. While doubtless beneficial, it is unlikely that this will ever occur, as housing benefit is not designed to be a discrete service.

Similarly, there is a clear need for some statement of the relevant factors which a planning committee can legitimately have regard to when considering a planning application for a mental health (or other) project. While this is doubtless true, legislative reform may not be the best method to achieve what is really a synthesis of practice and policy across regions.

#### (iii) *Disability Discrimination Act 1995*

It has already been shown that the wording of sections 22 and 24 of the *Disability Discrimination Act 1995*, as interpreted in *Manchester City Council v. Romano* ([2004] EWCA Civ 834), may cause serious problems for charities seeking to manage housing provision for a mentally vulnerable person who falls within the definition of a disabled person under the 1995 Act. In summary, this is because discrimination takes place if the reason for a charity seeking possession is related to the mental impairment which makes the person disabled, not on any question of treatment relative to any other person or on the subjective motivations of the charity behind seeking possession. At best, possession proceedings by charities to move people on may be hampered where assured tenancies or secure tenancies are used to house the individual; at worst all lettings would be affected.

Nevertheless, there is a pressing and definite need for reform for the sake of clarity, and this has the backing of the Court of Appeal in the *Romano* case itself. That protection from discriminatory treatment is eminently desirable, and that it is protected generally under the *Human Rights Act 1998*, are not in issue. There is no

suggestion that the principles underlying the relevant sections of the *Disability Discrimination Act 1995* are anything but sound; instead, the issue lies with the definition of what amounts to discrimination within the Act.

This is one area in which Parliament can act swiftly and decisively. There is no need to go through the costly and time consuming process of reforming the wording of the statute. The *Disability Discrimination Act 1995* confers powers, under section 24(5), to issue regulations regarding what amounts to discrimination for the purposes of that section. Some clear guidance, drawn up in consultation with those involved in housing provision or a carefully chosen, select group thereof, would ensure a proper balance between the needs of managing housing provision for disabled tenants in their best interests and anti-discrimination measures.

### *Concluding Comments*

The role of charities in providing housing and/or support services to the mentally vulnerable is as major and significant a role as it is a complex one. This research has, it is hoped, provided at least the fragments of a map through the web of provision and support offered by various charities, and has highlighted the importance and specialist nature of the contributions that charities are making in dealing with the changing climate of provision in the wake of the care in the community policy. It has also demonstrated some of the very real problems which charities face in their ultimate object of providing supported housing to these groups, and has sought to suggest in this chapter how some of those practical and legal hurdles may be overcome.

Three clear messages that result from the empirical research undertaken are:

- The law has largely ignored the mentally vulnerable as a group, and their needs can only be fully met often by ignoring the law. A good example of this is in the practical solutions adopted by charities to move an individual on when this is necessary, in spite of the legal strictures of tenure. There is a definite need for the law to take greater account of the needs of the mentally vulnerable, and an opportunity is now present in the forthcoming housing law reforms to do so.
- It is important that any legislative reform is carefully implemented; the *Disability Discrimination Act 1995*, which does try to help the mentally vulnerable, may well discourage effective housing provision because it is now very difficult to regain possession against this group without falling foul of the law. In this regard the proposed wider power to modify charity powers in clause 39 of the *Charities Bill* is welcome.
- There is a clear need for charities to have wide objects and powers, and to constantly review these objects and powers. The ways in which the mentally vulnerable can be helped changes as social and medical views change, and as funding regimes change. The fragility of the funding continuum is something that may provide a fatal blow to provision, if charities are not able to adapt.

On a final and positive note, whatever the difficulties and complexities faced, this work demonstrated that charities remain committed to working with mentally vulnerable clients; charities care too much to be deflected from their main purposes.

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