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APPENDIX 2

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27 March 2009

To:

Chief Housing Officers of Local Authorities
in England

WLDG
HOUSING SERVICES DIVISION
Rec'd 30 MAR 2009
ASND B. Livstone
Action cc Stone
File L. DeGony
Lee Geol
n. Bradley
Lee Gardner

Dear Chief Housing Officer,

**Allocation of Accommodation by Local Housing Authorities
R (on application of Ahmad) v. London Borough of Newham**

This letter notifies Local Housing Authorities about the House of Lords decision in the case of R (on application of Ahmad) v. London Borough of Newham [2009] UKHL 14 which was handed down on 4th March 2009.

This was an appeal to the House of Lords by the London Borough of Newham of a Court of Appeal decision ([2008] EWCA Civ 140) which had found the council's allocation scheme under section 167(2) of the Housing Act 1996 ("the 1996 Act") to be unlawful.

The House of Lords reversed the Court of Appeal decision and found that Newham's scheme was lawful. In the Department's view, the judgment is of particular importance and relevance to housing authorities when framing their allocation schemes and considering any challenges made to those schemes. The House of Lords held:

- There is no requirement (in section 167 of the 1996 Act) for housing authorities to frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category (paragraph 14). (This reverses a line of Court of Appeal authority that held that allocation schemes were required to provide for cumulative preference).
- An allocation scheme which allows for priority to be determined between applicants in the reasonable preference categories on the basis of waiting time (alone) is not unlawful or irrational (e.g. paragraphs 4 to 5, 16 and 54).
- An allocation scheme is not unlawful if it allows for a small percentage of lets to be allocated to existing social housing tenants who wish to transfer and

Department for Communities and Local Government
Zone 1/E2
Eland House
Bressenden Place
London
SW1E 5DU

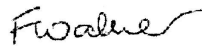
Tel 020 7944 3666
Email frances.walker@communities.gsi.gov.uk

who do not fall within any of the reasonable preference categories (paragraphs 17 to 21).

- Where a housing authority's allocation scheme complies with the requirements of section 167 and any other statutory requirements, the courts should be very slow to interfere on the ground that it is irrational (paragraph 55).

We will be reviewing the statutory guidance on allocations and choice based lettings in the light of the House of Lords judgment, in due course.

Yours sincerely,



Frances Walker