

Background

1.1 In order to eliminate rough sleeping in Scotland, the Action Group will make recommendations likely to cover significant shifts towards:-

- Much greater levels of preventative activity and rapid rehousing for the majority of homeless people who don't have complex needs
- A paradigm shift to 'rapid re-housing' type approaches supported by highly trained, empowered frontline services for the minority who do have complex needs

1.2 The Action Group recognise that the law has an important role to play in delivering these shifts, particularly in building on the existing strengths of the rights based system in Scotland. However, this must be balanced with the risk of over-legalising the system in ways that lead to an adversarial, process-orientated, defensive model.

1.3 There is a consensus in the Action Group that whilst Scotland has a strong rights-based approach, coupled with a clear policy commitment to prevention and early intervention, there is still evidence of variations in practice across the country, differences in interpretation, and a general agreement that the Homelessness system (both making an application to a local authority and accessing wider services) itself is very complex and difficult to navigate.

1.4 The key challenges are seen to be resources and practice, and a culture which underpins an historic approach to the provision of homelessness services that hasn't significantly shifted despite reforms in law and policy.

1.5 Acknowledging that, and mindful of recent legislative developments in both England and Wales, the Group identified the need for a specific workstream on legislative reform. We have noted that in addition to changes to statutory duties and guidance, real and lasting change will also require a focus on leadership, culture and the creation of a system that can identify and share best practice, but this paper discusses and proposes specific changes to the legislative framework.

Summary of the evidence base

2.1 There is a range of evidence available to inform this workstream. There is a good understanding of people who are at increased risk of rough sleeping (those who have experienced poverty, Adverse Childhood Experiences, those with mental health or addiction issues, etc.) and of the high-risk times (exiting from care, release from prison, etc.).

2.2 There is strong evidence around what works for those who are experiencing homelessness. For people with multiple and complex needs, a Housing First approach should be applied. And more generally, services that are person-centred, assertive, flexible and based on a 'recovery' model (including trauma-informed care) are much more likely to deliver positive outcomes.

2.3 This evidence about what the system *should* do is complemented by evidence about how the system currently operates. Although the existing legislation is focused on the right to be helped and be housed once homeless, there is evidence that this is not being applied consistently, and that the complexity of the system can prevent or deter some vulnerable individuals from exercising their

rights; prevent them from having their rights fulfilled; and/or that they may be deterred from reapplying.

2.4 A compilation of case studies gathered by Shelter and considered by the Action Group in December 2017 suggests that, particularly in some Local Authority areas, people are having difficulty exercising their rights to make a homelessness application, and/or to access temporary or settled accommodation.

2.5 Similar evidence was heard from the 'Aye We Can' research commissioned by the Action Group to gather the views and knowledge of people who have direct, personal experience of homelessness. Participants wanted a system that did everything it could to prevent rough sleeping and homelessness. And for those people who are currently rough sleeping and/or homeless with complex needs, or where prevention hasn't worked, the system needed to be much less complex, more flexible, and more connected and joined up between different parts of the sector.

Options Considered

3.1 In order to increase the focus on prevention, to make homelessness services in Scotland more responsive and flexible and to ensure high service standards that are consistent across the country, the workstream has considered how the overall legislative framework can be improved in four areas:

- Statutory duties
- Individual assessments and access to services
- Statutory guidance
- Regulation of services

3.2 Broadly, these are about who is responsible and what those responsibilities are, how an individual's needs and requirements are determined, service standards, and how those standards are assured. Within this framework, the Group have agreed one set of definitive recommendations, and have highlighted a further set of specific areas of legislation which should be either taken into consideration alongside other Q2 recommendations, or revisited as part of the Q3 and Q4 work.

Recommendations

4.1 The Group agreed that there is a need to support the shift towards preventing rough sleeping with new legislation, making clear where the statutory duty lies, and what public bodies can and should do to exercise that duty. They also agreed that, for those at risk, the current tests around intentionality and local connection need to be reviewed. There was a recognition that the existing statutory guidance needs to be updated and regularly reviewed, and finally that there is a cohort of people who currently do not have access to public funds.

4.2 The Action Group therefore have broad consensus on the following recommendations to support eradication of Rough Sleeping:-

1. Scottish Government should examine the case for introducing a comprehensive homelessness prevention duty in Scotland, learning from recent experience in Wales and England.

The principles for such a duty need to be considered and the HRSAG will recommend a process for defining these principles, and on how best to implement them in practice, which will include consideration of which public bodies the duty should be applied to.

In addition to the learning from homelessness prevention duties in other UK administrations (see Annex A), there are also examples in Scotland of both statutory and non-statutory approaches to prevention. On the statutory side, the Pre-Action Protocol for social landlords sets out the steps that must be taken in advance of applying to a court to commence eviction proceedings against a social tenant. These measures include providing advice and support, checking benefit eligibility and trying to agree a repayment plan for any arrears.

For a non-statutory example, the recently published Sustainable Housing on Release for Everyone (SHORE) standards. These standards aim to ensure that the housing needs of individuals in prison are handled at an early stage, in a consistent and prevention-oriented way across Scotland, regardless of where they come from, their housing status and how long they have been in prison or young offenders' institution.

2. Review the legislative arrangements for intentionality and local connections to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping.

We recognise the need for intentionality provisions to mitigate against perverse incentives, but the current formulation and practice of intentionality goes far beyond that and effectively works against people with complex needs. The Action Group recommends narrowing the definition to focus on instances of deliberate manipulation of the homelessness system where the applicant actually foresees that their actions would lead to them becoming homeless. Even in these cases, there must be a bottom-line accommodation offer (as already legislated for in 2003).

Similarly with local connection, the Action Group recognises the need to distribute fairly the burden of tackling homelessness, but this needs to be achieved in a way that doesn't form a barrier to a solution being identified. We recommend consideration of the following options:

- (i) suspend or abolish local connection rules, but make provision for their reapplication by statutory instrument for specific local authority areas suffering undue pressure as a result of net inward migration of applicants (this would require to be evidenced by research that monitors flows across boundaries);
- (ii) suspend or abolish the local connection rules but make allowance for money/resources to 'follow people', so that applicants can apply as homeless wherever they wish to but local authorities can reclaim costs from each other where they accept applicants whose local connection lies elsewhere; and
- (iii) Improve the operation of the current local connection rules by being more humane/realistic about how and when people have established a local connection.

3. Amend and update Scottish Code of Guidance on Homelessness to reflect both existing non-statutory guidance on Housing Options and any new legislative requirements, and ensure the Code is updated regularly to reflect such changes

There is currently no single source of guidance for Local Authorities seeking to implement best practice in homelessness services. Section 37(1) of the 1987 Act requires local authorities to have regard to Guidance issued by the Secretary of State in the exercise of their homelessness functions. The Code of Guidance on Homelessness provides such guidance and should be used as a supporting document for local authority staff in carrying out relevant activities and discharging their responsibility. Whilst this statutory guidance remains useful, however, certain elements of it are out of date or have been superseded by the current non-statutory guidance on Housing Options.

In order to strengthen requirements on local authorities to follow best practice in homelessness services, and clarify the guidance therefore, the Group recommends that the Code of Guidance be brought up to date, and that a process is established to keep it up to date.

4. Scottish Government should clarify in the Code of Guidance the role and responsibility of local authorities to support people who have no access to public funds (so-called NRPF)

One thing that the additional efforts to minimise rough sleeping this winter has shown is that there is a significant cohort of people who, for various reasons, are deemed to have no recourse to public funds (NRPF). This can lead to destitution and rough sleeping, and there can be confusion as to what support local authorities can and cannot offer. In order to clarify matters, and to empower local authorities to support people in their local area experiencing destitution, the Group recommends that the Scottish Government develops a definitive statement of responsibilities for this group of people is developed, and that it adds this material to the revised Code of Guidance (see recommendation 3).

Areas for Further Consideration

5.1 In addition, the workstream also identified the following areas of potential legislation which could be considered as part of other workstreams on Q2.

5.2 On access to accommodation, whilst the Group did not feel that it was necessary or practical to legislate for 'Housing First' per se, some consideration should be given to ensure that legislation supports the recommended shift towards a default position of rapid rehousing, perhaps through a right to settled accommodation.

5.3 Similarly, the workstream considering front-line support should consider how best to ensure that individuals with multiple and complex needs can access the necessary assessments, and whether this would require additional requirements being placed upon not just local authorities, but other public bodies, such as Integrated Joint Boards.

5.4 Separately, there were some proposals that the Group felt were relevant and worth considering, but that were linked to Q3 and Q4 (on transforming temporary accommodation and ending homelessness for good). These proposals should be explored in more detail in the next phase of the Action Groups work, and include:

- Consideration of how the long-term sustainability of settled accommodation should be considered when developing a solution for someone at risk of or experiencing homelessness, and the part that affordability should play in that assessment of sustainability (see Annex B for details);
- Consideration of specialist large-scale homeless hotels/hostels particularly whether improved regulation is required with the aim of significantly improving the level of standards in this type of accommodation as an emergency measure in the interim; and whether we should be seeking rapid progress towards closure of such accommodation;
- Reviewing the housing regulatory framework for homelessness services in Scotland to ensure it will support the transformational changes being sought;
- Potentially extending the housing regulatory framework to include private rented sector homelessness services.

Practical Considerations

6.1 New primary or secondary legislation typically takes several years to develop, moving from informal to formal consultation, legislative drafting, the Parliamentary process and finally Commencement. However, several of the recommendations are about bringing into statute activities and processes that already exist as good practice within many existing services. In many cases, therefore, this would not be about developing new systems and processes from scratch.

6.2 The longer-term nature of these changes, and the consultative approach to developing legislation and guidance, would also offer the opportunity to develop an associated process of training and staff development, very much along the lines of the recently introduced toolkit, to support the new duties, and embed the necessary culture change.

6.3 Imposing new public duties on public bodies also inevitably imposes new costs. So it will be important to demonstrate the evidence-based nature of these recommendations, and be able to convincingly show that much of the cost savings that will result from the positive outcomes will accrue to the public bodies themselves.

Summary

7.1 Scotland has a strong right-based legislative framework, has shifted towards a more preventative approach in recent years, and has a system that is demonstrably capable of innovation and improvement. Building on this, and in light of the compelling international evidence about what works to eliminate rough sleeping and move people into settled circumstances, there is a need for some specific and targeted legislative reforms.

7.2 This paper has set out the case and made proposals in four areas: a statutory prevention duty, the role of intentionality and local connection in individual assessments, statutory guidance and the support offered to individuals with no recourse to public funds. Some of these would require primary or secondary legislation, but some would only require Ministerial action.

ANNEX A: Housing (Wales) Act 2014, Section 64

64 How to secure or help to secure the availability of accommodation

(1) The following are examples of the ways in which a local housing authority may secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant—

- (a) by arranging for a person other than the authority to provide something;
- (b) by itself providing something;
- (c) by providing something, or arranging for something to be provided, to a person other than the applicant.

(2) The following are examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant—

- (a) mediation;
- (b) payments by way of grant or loan;
- (c) guarantees that payments will be made;
- (d) support in managing debt, mortgage arrears or rent arrears;
- (e) security measures for applicants at risk of abuse;
- (f) advocacy or other representation;
- (g) accommodation;
- (h) information and advice;
- (i) other services, goods or facilities.

(3) The Welsh Ministers must give guidance to local housing authorities in relation to how they may secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant”.

ANNEX B: Housing (Scotland) Act 1987

31.— Duties to persons found to be homeless.

(1) This section applies where a local authority are satisfied that an applicant is homeless.

(2) Where they [...] ¹ are not satisfied that he became homeless intentionally, they shall, unless they notify another local authority in accordance with [section 33](#) (referral of application on ground of local connection) **secure that [permanent] ² accommodation becomes available for his occupation.**

[(2A) In a restricted case the local authority shall cease to be subject to the duty under subsection (2) if the applicant, having been informed of the matters mentioned in subsection (2B)—

(a) accepts a private accommodation offer, or

(b) refuses such an offer.

(2B) The matters are—

(a) the possible consequence of refusal of the offer, and

(b) that the applicant has the right to request a review of the decisions mentioned in [section 35A\(2\)\(e\)](#).

(2C) In this section “*a restricted case*” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.

(2D) For the purposes of this Part an offer is a private accommodation offer if—

(a) it is an offer of a short assured tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,

(b) it is made, with the approval of the local authority, in pursuance of arrangements made by them with the landlord with a view to bringing their duty under subsection (2) to an end, and

(c) the tenancy being offered is for a period of at least 12 months.

(2E) The local authority shall not approve a private accommodation offer unless they are satisfied that it is reasonable for the applicant to accept the offer.

(2F) For the purposes of subsection (2E) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.

(2G) In a restricted case the local authority shall, so far as reasonably practicable, bring their duty under subsection (2) to an end as mentioned in subsection (2A).

(2H) Subsections (2A) to (2G) are without prejudice to any other way in which the local authority can cease to be subject to the duty under subsection (2).³

(3) [In a case not falling within subsection (2), the local authority] ⁴ shall—

(a) secure that accommodation is made available for [the applicant's] ⁵ occupation for such period as they consider will give him a reasonable opportunity of himself securing accommodation for his occupation; and

(b) furnish him with advice and [assistance of such type as may be prescribed] ⁶, in any attempts he may make to secure that accommodation becomes available for his occupation.

[...] ⁷

[(5) For the purposes of subsection (2), “*permanent accommodation*” includes accommodation—

(a) secured by a Scottish secure tenancy,

[...] ⁹

(c) where [paragraph 1 or 2 of schedule 6](#) to the [Housing \(Scotland\) Act 2001 \(asp10\)](#) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy [,] ¹⁰

(d) secured by a private residential tenancy.