

## **SUMMARY OF RESPONSES TO CONSULTATION ON LOCAL CONNECTION AND INTENTIONALITY**

### **Purpose**

1. To update HPSG on the high level findings from the consultation. The consultation received 72 responses which were published on the Scottish Government website on 28 May 2019 (where permission was given).
2. The external contractor has yet to complete the formal analysis of consultation responses but we have completed our own internal analysis and the following is based on those findings.

### **Introduction**

3. Much of the apprehension from local authorities in response to the previous consultation on these issues conducted in 2006-2007 remains prevalent in their responses to this consultation in terms of concerns about increases in homeless applications and the knock-on impact of this.
4. The majority of responses from third sector and other organisations welcome the proposal to commence provisions, although there was some appreciation of the challenges for local authorities and recognition that careful planning and preparation, as well as some training, may be needed to successfully implement the changes. We received a small number of responses from individuals but no clear themes were prevalent from this group.

### **LOCAL CONNECTION**

5. Two key themes emerged in responses on proposals for changes to local connection. The first, from those who supported suspending referrals for local connection, was support for homeless individuals to be able to choose where they wish to settle. In line with the views of HARSAG, this was seen as offering choice to homeless individuals, removing unnecessary barriers to finding permanent accommodation and ensuring that homelessness and support services can be delivered at the point of need. It was also noted that sometimes people need to be able to move away from the situation that contributed to their homeless status: an example given was LGBT young people.
6. Responses covering the views of those with lived experience were in favour of suspending referrals, although there was some recognition of the challenges local authorities may face. It was noted that local connection is often the stated reason people access night shelter provision and felt its removal would reduce rough sleeping. Advice and advocacy services pointed to case evidence that both the rule and referrals are overused.
7. The second key theme, cited primarily by local authorities/housing associations, was concern over the potential for increased and unanticipated referrals in areas that do not have the resources to meet needs. Various different types of local authority were cited, including major towns such as Glasgow or Edinburgh, as well

as a corresponding negative impact on surrounding communities as people move to the cities, or rural and island and highland areas. Reasons put forward included that suspension would place uneven pressure on local authorities and that it would impact on the delivery of services such as health and social care or the availability of permanent housing. Allied to this point, a number of local authorities felt that suspension would undermine the rapid rehousing agenda with some arguing change should be delayed to allow RRTPs time to embed. There were also concerns that increased presentations would lead to pressure on local authorities to meet housing and temporary accommodation needs.

8. While there was recognition that currently referral numbers were low, there were also some concerns that this might not be a true picture and further work was required to assess current practice and develop a suitable approach to measuring impact. Rural and island areas were also concerned that even relatively small unanticipated variations in incoming numbers can put significant pressure on resources and planning for small communities. There was a specific call for a full impact analysis for the islands. Alternatively, a number of authorities reported having informal arrangements in place with neighboring authorities to facilitate transfer of the homeless duty and this had worked well.
9. In addition to this were concerns that making a homelessness application may become a more appealing option to applicants from out with the area who may perceive that they have an increased (and quicker) chance of being housed should they submit a homeless application. Allied to this was a fear of people submitting multiple applications across a wide range of local authorities putting pressure on administrative systems and planning. It was noted also that vulnerable people can find it easier to walk away from a difficult situation rather than working with the services and it would become more difficult and costly to meet their support needs.
10. Some local authorities have sought clarity about people from other parts of the UK being more likely to move to Scotland under the new rules. However, our intention is that changes apply to movement between Scottish local authorities only and existing arrangements with other parts of the UK would remain as they are currently. We can make it clear in the Ministerial Statement (required within 12 months of commencement) that the change only applies to local authorities in Scotland and list the relevant Scottish authorities affected in a schedule to the subsequent Statutory Scottish Instrument which introduces the changes.

**TABLE 1**

Breakdown of responses to our consultation question, ‘Do you think we should’:

- Suspend all local connection referrals
- Modify local connection referrals in another way (please give details)
- Not commence these provisions i.e. do nothing’

|                                 | Number                                 |                                   |                               |              |
|---------------------------------|--|-----------------------------------|-------------------------------|--------------|
|                                 | Suspend all local connection referrals | Modify local connection referrals | Not commence these provisions | Not answered |
| Housing association (3)         | 1                                      | 1                                 | -                             | 1            |
| Legal (4)                       | 2                                      | 1                                 | -                             | 1            |
| Local authority (31)            | 6                                      | 10                                | 11                            | 4            |
| Tenant group (4)                | 2                                      | 2                                 | -                             |              |
| Third sector (18)               | 17                                     | -                                 | -                             | 1            |
| Other (5)                       | 4                                      | 1                                 | -                             |              |
| <b>Total organisations (65)</b> | <b>32</b>                              | <b>15</b>                         | <b>11</b>                     | <b>7</b>     |
| Individuals (7)                 | 1                                      | 4                                 | 2                             | -            |
| <b>Total respondents (72)</b>   | <b>33</b>                              | <b>19</b>                         | <b>13</b>                     | <b>7</b>     |

## INTENTIONALITY

11. The main theme cited from those in support of removing the duty (primarily third sector respondents) was that being labelled as intentionally homeless was often unfair and did not reflect the true picture of individuals’ circumstances. As with local connection, there were concerns that some local authorities overuse the intentionality rule to discourage people from making homeless applications. Perhaps allied to this, advice and advocacy agencies describe high levels of success in challenging and overturning intentionality decisions. Examples where people were perceived to have been unfairly classified as intentionally homeless were reported to have included cases of marital splits, leaving prison, domestic violence and rent arrears. Furthermore, a number of respondents made the related observation that it is often stigmatising or harmful to be labelled intentionally homeless in terms of causing hardship and being a cause of being excluded from getting accommodation.

12. People with lived experience who had been themselves assessed as intentionally homeless strongly supported the proposal to remove the duty on local authorities. They saw intentionality decisions as unfair and not based on a realistic understanding of the complexity and desperation of people’s situations.

13. There were three main themes mentioned by respondents who were in favour of not removing the local authority intentionality assessment duty. Firstly, a large number of respondents cited concerns about the lack of consistency of approach on the issue, both at local authority level and between local authorities. Interestingly, there were also some concerns raised that removing the duty could possibly exacerbate a lack of consistency which already exists in the approach across local authorities. Specific potential problems arising from the perceived potential for a lack of consistency, included:
- Applicants approaching multiple local authorities in the hope of getting a more favourable decision (particularly if local connection referrals are suspended).
  - Equalities and human rights issues arising from a lack of consistency.
  - Discrimination issues arising from a lack of consistency.
  - How to justify investigations in some cases but not in others.
14. Secondly, there were concerns expressed within a number of responses (and beyond just by local authorities) about people manipulating the system. It was commented that there could be instances where making a homeless application is seen as preferable compared to a lengthy wait on a housing transfer list, payment of rent or compliance with tenancy conditions. It was noted that clear and rigorous guidelines and training was needed to safeguard against those that are manipulating the system as well as ensuring local authorities are applying the test appropriately. On the call for additional training for implementing these changes, it is worth noting, as some respondents have highlighted, that the introduction of the Housing Options Toolkit across all local authorities may enhance service provision and advice and allow households to exercise their housing options in the most sustainable way possible.
15. Thirdly, there were a number of concerns expressed that removing the duty could take away the need for individuals to take personal responsibility to retain their accommodation (e.g. timeous payment of rent). Other potential negative unintended consequences raised were:
- Tensions arising between those making assessments and housing providers (e.g. where there has been a previous failed tenancy).
  - Increased tenancy related debts being transferred to former tenant debt.
  - Constant rehousing having negative effects on other tenants or the wider community.
  - Problems with housing providers being put in a position of greatly increased arrears.
  - Increased risk of challenge/appeals against decisions
16. As with local connection, there was recognition that current numbers were low and constitute a small proportion of all homelessness cases, though there are significant variances across local authority areas. Again, it was noted that more detail was needed on the how the proposed change might work and a better understanding of how the duty to assess is currently applied.

**Table 2**

Breakdown of responses to the consultation question, Do you think we should:

- Remove the duty on local authorities to assess households for intentionality?
- Not remove the duty on local authorities to assess households for intentionality?’

|                          | Number   |  |              |
|--------------------------|--|--|--------------|
|                          | Not remove the duty on local authorities to assess households for intentionality | Remove the duty on local authorities to assess households for intentionality | Not answered |
| Housing association (3)  | -  | 1  | 2            |
| Legal (4)                | -  | 3  | 1            |
| Local authority (31)     | 19   | 7  | 5            |
| Tenant group (4)         | 1  | 2  | 1            |
| Third sector (18)        | -  | 16   | 2            |
| Other (5)                | 1  | 3  | 1            |
| Total organisations (65) | 21   | <b>32</b>  | <b>12</b>    |
| Individuals (7)          | 3  | 4  | -            |
| Total respondents (72)   | 24   | <b>36</b>  | <b>12</b>    |

Narrowing the intentionality definition to deliberate manipulation

17. The consultation also asked about HARSAG’s recommendation to narrow the definition to deliberate manipulation of the homelessness system, although we were clear this was not something we intended to introduce at this point. Around 20 respondents supported narrowing the definition; around 10 definitely did not support the proposal; and around the same number sought more information and evidence, before they would be able to comment. A number of the other responses did not provide a clear position. A key theme by more than half of respondents and across groups was of a need for a careful definition of what would constitute intentionality and deliberate manipulation. There were also some calls for updated Code of Guidance. Some respondents did not believe that the intentionality provisions in the 2003 Act should be commenced separately from wider reforms to intentionality, including narrowing the definition. And there was a call that any move to change the definition would require significant consultation and a full understanding of the likely impacts.

**MEASUREMENT**

18. There was broad agreement that HL1 provides a good basis for monitoring impact but that it is unlikely to be sufficient on its own, and we need to more fully consider how we can ensure we evidence the impact of these changes.
19. Some respondents expressed concern that HL1 misses people who don't make formal homelessness applications e.g. people with multiple and complex needs, those using night shelters and those receiving 'informal' advice from local authorities to apply elsewhere. It was suggested also that HL3 can help in terms of monitoring patterns of temporary accommodation usage and could consider monitoring changes through PREVENT 1.

**Homelessness Team  
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