



Public duties to prevent homelessness in Scotland

Briefing for Prevention Legal Duties Review Group

November 2019

"Tackling... fundamental inequalities and focussing resources on preventative measures must be a key objective of public service reform."

Dr Campbell Christie, 2011

Homelessness can and must be ended in Scotland. Fundamental to this vision is an effective strategy for preventing homelessness, where all public services work together to play their part in ensuring people have stable homes which they can maintain.

The Scottish Government's Homelessness and Rough Sleeping Action Group (HARSAG) recommended the development of a broad duty to prevent homelessness, building on the lessons from Wales and England, both positive and negative. The Scottish Government and CoSLA's *Ending Homelessness Together Action Plan*, published in 2018, has made prevention one of its five key planks, and taken on board the recommendation for a new duty:

"We will work with public bodies, housing providers and other partners to develop a new duty on local authorities, wider public bodies and delivery partners for the prevention of homelessness."¹

Scotland is the only nation in Great Britain not to have strengthened legislation requiring local authorities to prevent homelessness, and this needs to be addressed urgently. Like England and Wales, Scotland does not have a full duty on other public bodies to co-operate to prevent homelessness², although there are some requirements in place in certain cases, including a duty on landlords to notify the local authority when a landlord takes eviction action.

This briefing is written to inform the initial thinking of the Prevention Legal Duties Review Group. It sets out the current legal regime and practice on homelessness prevention in Scotland, the duties that have been introduced in other parts of Britain in recent years, and sets out a framework for enhanced duties on local authorities in Scotland to prevent homelessness and extended duties on other public bodies to co-operate with local authorities to prevent and alleviate homelessness.

A new typology of homelessness prevention was set out in a recent CaCHE policy briefing³, which defines it in the following ways:

¹ Scottish Government / COSLA (2018) *Ending Homelessness Together Action Plan*, p23

² The range of public bodies likely to be involved in homelessness prevention sit across reserved and devolved powers. While the Scottish Government has the powers to create duties affecting some of the key public bodies, they do not have power to direct some government departments, notably DWP and Home Office, and change in these arenas will need to come from Westminster.

³ Fitzpatrick, S, Mackie, P, Wood, J (2019) Homelessness prevention in the UK: policy briefing <http://thinkhouse.org.uk/2019/cache0719a.pdf>

- *Universal prevention* - preventing or minimising homelessness risks across the population at large
- *Targeted prevention* – upstream prevention focussed on high risk groups, such as vulnerable young people, and risky transitions, such as leaving local authority care, prison or mental health in-patient treatment
- *Crisis prevention* – preventing homelessness likely to occur within 56 days, in line with legislation across Great Britain on ‘threatened with homelessness’
- *Emergency prevention* – support for those at immediate risk of homelessness, especially sleeping rough
- *Recovery prevention* – prevention of repeat homelessness and rough sleeping

The discussions in this briefing are focused primarily on targeted and crisis prevention, and the legal duties to implement these effectively.

Crisis’ Plan to End Homelessness⁴ sets out principles for the ideal legislation to end homelessness. Those include robust prevention duties for those at imminent risk of homelessness (within 56 days), and duties on other public bodies to both prevent homelessness and to cooperate with local housing authorities in relieving homelessness, for example, by providing relevant health and social care support services.

PwC analysis shows that the benefits of taking forward the interventions in Crisis’ Plan to prevent homelessness far outweigh the costs, by a ratio of nearly 3 to 1, or £230 million benefits over 25 years, compared to costs of £84 million. Moreover, the average cost per person to address those who are already homeless is 3.5 times higher than solutions to prevent homelessness showing the benefits of moving to preventative approach.

Homelessness prevention in Scotland

While Scotland has some of the most progressive rights for people who have become homeless, the focus on preventing homelessness before crisis point has been less developed.

*Current duties*⁵

Scottish local authorities must ensure advice and information is freely available for anyone in their area who needs it for the prevention of homelessness. Under section 32(2) of the Housing (Scotland) Act 1987, if someone is threatened with homelessness in the next two months, and that this is not intentionally, then the authority must take “reasonable steps to ensure that accommodation does not cease to become available”. The Code of Guidance⁶, first published in 2005 goes on to state:

The accommodation obtained for a person threatened with homelessness need not be his or her existing accommodation, although in practice this will often be the best option; assuming that it is reasonable for the applicant to continue to occupy it. If the local authority concludes that the loss of the applicant’s present

⁴ Crisis (2018) Everyone In: How to end homelessness across Great Britain, ch13

⁵ This section focuses on the local authority duties around preventing homelessness. The Code of Guidance provides guidance on ways of working, particularly within the local authority but also with other bodies, to support the local authority duties relating to homelessness. Duties in relation to other bodies will be covered in a future briefing.

⁶ Scottish Executive (2005) Code of Guidance on Homelessness <https://www.gov.scot/publications/code-guidance-homelessness/> An interim update of the guidance was published on 7 November 2019 <https://www.gov.scot/publications/code-guidance-homelessness-2/>

accommodation cannot be avoided, it should consider what duties it would have towards him or her if the person becomes homeless and act quickly to prevent homelessness - and particularly rooflessness - actually occurring. In either case, local authorities should intervene as early as possible.

If it is not possible to prevent the loss of the accommodation, the authority must ensure that other housing becomes available. Unless there is a change of circumstances the household will still be in priority need and unintentionally homeless and therefore this accommodation should be provided on a permanent basis^{7,8}.

This raises a number of areas where there is a lack of clarity. There is no definition of what the reasonable steps should be, or what duration and security of tenure is sufficient to remove the threat of homelessness. The role of applicant choice in accepting preventative measures or choosing to seek a new settled option through a homelessness application is also not clear. Thus it is difficult for local authorities to know at what point their responsibility to prevent homelessness is discharged, or when their reasonable steps have failed and its responsibility to secure settled accommodation arises.

In contrast, the discharge of a local authority's duty to someone who is homeless is much clearer, and can be into one of two types of permanent accommodation:

- A Scottish secure tenancy in the social sector (or a short Scottish secure tenancy in certain circumstances)
- A private residential tenancy, or in the past, an assured tenancy (but not a short assured tenancy)

A developing prevention agenda

Homelessness prevention was not strongly emphasised in Scotland in practice until the pressures of expanding priority need in the approach to the 2012 abolition deadline necessitated a stronger focus on reducing the number of people requiring homelessness assistance⁹. Guidance on preventing homelessness¹⁰ was issued in 2009 and the 'Housing Options' advice model was adopted in 2010 - some seven years after England. This led to a decrease in the number of homelessness applications¹¹, which had been rising as the priority need categories expanded, and reversed the steep rise in use of temporary accommodation.

Nevertheless, the lack of clarity about how the statutory homelessness framework interacts with non-statutory prevention-focused activity is ongoing. The tension

⁹ Paragraphs 2.15 and 9.42 of the 2005 guidance, and paragraphs 2.15 and 8.43 in the 2019 update of the guidance

⁸ A homelessness application is not mentioned at this stage of the guidance, but there is a clear expectation that the local authority has a reasonable belief that there is a threat of homelessness and that this is not intentional, which suggests an investigation has taken place. The requirement to take a homelessness application was however clarified in the 2009 and 2016 guidance, see below. If the threat of homelessness is decided to be intentional then the local authority has the responsibility to provide advice and assistance to support attempts by the applicant to ensure accommodation does not cease to become available.

⁹ Fitzpatrick S. et al (2019) Homelessness Monitor Scotland 2019

https://www.crisis.org.uk/media/240002/the_homelessness_monitor_scotland_2019.pdf

¹⁰ Scottish Government / COSLA (2009) Prevention of homelessness guidance

<https://www.gov.scot/publications/prevention-homelessness-guidance/>

¹¹ Scottish Government (2016) Homelessness in Scotland 2015/16

between the Housing Options approach and homelessness legislation was picked up through the 2014 Housing Options thematic inquiry¹² by the Scottish Housing Regulator. The report identified that some local authorities were inappropriately diverting people away from a homelessness application towards Housing Options, and also reported the request from half of all local authorities for greater clarity over the interaction of Housing Options with homelessness applications.

Subsequent guidance published in 2016¹³ again clarified that “if the local authority has reason to believe an applicant is homeless or threatened with homelessness within 56 days, then the local authority has a statutory duty to investigate”. Where there is a threat of homelessness within 56 days, the local authority must progress with the homelessness application until the duty is discharged or the application is withdrawn.

Practically, this means a local authority must take a homelessness application where anyone is threatened with homelessness in the next 56 days. Despite the new guidance, there is an ongoing tension around the prevention agenda. At a roundtable discussion organised by Crisis in September 2019, one local authority reported being “ticked off” by the Regulator for trying to pay off someone’s rent arrears to help them keep their housing. Another consultation prepared to inform the work of HARSAG on rapid rehousing highlighted a “lack of strategic alignment” around prevention and calls for a statutory focus on prevention and rehousing¹⁴. It continues:

The vast majority of consultees participating in this RRTP work have argued that there is an unhelpful tension and disconnection between legislation and policy – specifically the way homeless duties are regulated by SHR [Scottish Housing Regulator], compared to Scottish Government policy and non-statutory guidance around prevention and Housing Options. Local authorities’ experience of SHR’s regulatory approach is as a strict examination of legislative process and data collection, rather than one that incorporates understanding outcomes and benefits for homeless or potentially homeless households. (p30)

Prevention in practice

The focus on helping people maintain their accommodation and preventing homelessness remains relatively weak in Scotland. Although a threatened with homelessness application can be made 56 days prior to homelessness, this is not common. In 2018/19, 5% of applicants (1,752 households) were threatened with homelessness rather than actually homeless. This does vary widely across Scotland, from over 30% of applicants making an application before becoming homeless in East Dunbartonshire and Argyll & Bute, compared to no applicants being threatened with homelessness in Clackmannanshire, Inverclyde, Orkney or Shetland. In Edinburgh and Glasgow respectively, only 15 and 10 households are recorded as making an application prior to becoming homeless (0.5% and 0.2% of successful applicants).

¹² Scottish Housing Regulator (2014) Housing Options in Scotland: Thematic inquiry <https://www.scottishhousingregulator.gov.uk/landlord-performance/national-reports/thematic-work/housing-options-in-scotland>

¹³ Scottish Government / COSLA (2016) Housing Options guidance, p27 <https://www.gov.scot/publications/housing-options-guidance/>

¹⁴ (Indigo House (2018) Scotland’s transition to rapid rehousing: market area analysis, legislative and culture review <https://social-bite.co.uk/wp-content/uploads/2018/06/RRTP-Analysis-and-Review-JUNE-2018-pubv1.pdf> p25

Turning to the data on the preventative Housing Options service, more than half (54%) of the work done by Housing Options services involves signposting to other services, rather than a more proactive casework approach. The most common outcome of a Housing Options case is a homelessness application, accounting for 46% of outcomes. There are wide variations between local authorities. Some areas are able to find many people alternative accommodation, and some areas lose contact with nearly half of people who seek help¹⁵. However, local authorities appear to use these statistics in different ways, which can make it hard to get a clear picture of what is happening.

Outcomes through the statutory homelessness system

Looking at the outcomes of homelessness applications, 1,275 households returned to their current or previous accommodation, accounting for 5% of outcomes across Scotland (note this is not considered to be a settled outcome in the statistical analysis). But this varies between local authorities from 0.8% to 13% of outcomes, suggesting widely differing practice in preventing homelessness¹⁶.

It is also notable that before a decision was made on a homelessness application:

- 5% of applicants (1,840 households) resolved their homelessness
- 4% (1,475) withdrew their application
- 4% (1,515 households) lost contact with the local authority before a decision was made (and a further 13%, or 3,625 households lost contact or have no known outcome after a decision was made)

Some of these households may have successfully had their homelessness prevented, whether by the local authority's intervention or their own efforts. Others may have remained in a vulnerable housing situation or lost their accommodation altogether. However, it is clear the prevention practices through the statutory system are not well recognised.

The most likely outcome of a homelessness application is a new social or private tenancy, accounting for 68% of all outcomes in 2018/19 (71% of unintentionally homeless outcomes). The vast majority (93%) of settled housing outcomes are into a social tenancy, while 7% are housed in the PRS¹⁷. Housing associations are required to give reasonable preference to homeless households and must comply with local authority

¹⁵ Scottish Government (2018) Housing Options (PREVENT1) Statistics in Scotland 2018/19

¹⁶ The available outcomes statistics cannot be analysed to show the proportion of just those threatened with homelessness who remain in their current accommodation (as opposed to those who become homeless but later return to their accommodation), meaning it is not possible to assess whether effective prevention is taking place within the statutory process. However, in some areas it is clear that a much greater number of households are returning to their accommodation than are threatened with homelessness (for example after reconciling with a partner after being asked to leave). In other areas a much smaller proportion of people are remaining or returning to their accommodation than are found to be threatened with homelessness, indicating that their homelessness is not being prevented.

¹⁷ Across the wider population just 23% of settled homes are in the social housing sector, with 15% in the private rented sector and the rest being owner-occupied. Scottish Government (2018) Housing statistics for Scotland 2018: key trends summary. This means 61% of tenancies are in the social sector across Scotland, and 39% in the PRS.

requests to provide accommodation to homeless households¹⁸, unless they have good reason not to¹⁹. Anecdotally, in some parts of the country homelessness system may thus be perceived by some as a fast-track route to social housing, particularly if their housing is already unstable.

Summary

As the Ending Homelessness Together Action Plan acknowledges, the strength of Scottish homelessness legislation causes a tension with a prevention agenda: the nature and status of reasonable steps to prevent homelessness are not clear; actions to prevent someone losing their home within 56 days of homelessness is sometimes viewed as gatekeeping (including by the Regulator); and the effectiveness of any prevention work that takes place within the statutory framework is not clearly recorded.

Reviewing current practice - prevention in RRTPs

Crisis has reviewed 31 out of 32 Rapid Rehousing Transition Plans (RRTPs) published by local authorities during 2019²⁰. Every one places a significant level of focus on prevention, in fact, an increased focus on prevention is one of the only themes that unites all authorities, despite this not being a strong focus in the RRTP toolkit. This suggests that local authorities recognise that prevention is essential to supporting a rapid rehousing agenda and reducing dependence on temporary accommodation. They set out multiple actions to reduce homelessness demand and increase tenancy sustainment in the course of the next five years. The level of analysis of existing prevention work and detail on planned interventions varies widely. Some local authorities assess their current activities to be inadequate and one in three are planning to fully evaluate the extent and effectiveness of their current prevention activity.

A wide range of strategies and activities are discussed in the RRTPs:

Changes to housing options service structures

- Changes to structures and capacity of housing options services
- Altering allocations policies in favour of homelessness prevention, including introducing homelessness prevention as a priority category for allocations
- Maximising housing options, and new or more proactive approaches to contacting applicants on waiting lists about other housing options.
- Introducing personal housing planning approaches with partners, and raising prevention awareness beyond the housing sector

Tenancy sustainment in social housing

- Use of toolkits and matrices to identify households and individuals with greater vulnerabilities or risks of homelessness
- Improving systems and resources for furniture and décor to support move on and make social housing more sustainable
- Better identification of vulnerabilities and review of council policies on arrears and antisocial behaviour

¹⁸ Scottish Government (2019) Social housing allocations in Scotland: a practice guide <https://www2.gov.scot/Resource/0054/00546453.pdf>

¹⁹ Section 5, Housing (Scotland) Act 2001

²⁰ The exception is Argyll & Bute Council which was not publicly available.

- Focus on social housing evictions procedures, including use of short Scottish secure tenancies and technical evictions, carrying out a homelessness assessment prior to the eviction, and supporting tenancy sustainment roles within housing associations.

Preventing homelessness from the private rented sector (PRS)

- Better advice, guidance and engagement with landlords
- Making greater use of PRS access schemes to prevent homelessness, although this was only mentioned in six RRTPs.
- Developing specific roles and services focused on prevention from the private sector

Section 11 notices are sent to local authorities from private and social landlords and lenders when they serve a notice of proceedings. Only ten local authorities mention these and plan to improve their response. Plans include targets to reduce the proportion of section 11 referrals proceeding to legal stages, proactively working with private and social landlords, and work in the North and Islands Housing Options hub to pilot earlier notification and agree what response housing associations would find acceptable from the tenant to suspend repossession action.

Young people

Young people are disproportionately overrepresented in homelessness statistics. Some RRTPs have a strong focus on youth homelessness, including youth support services, specific housing options services and tenancy training for young people, while others do not have a focus on it. Five local authorities have homelessness education in schools' programmes and a further seven are planning to set these up.

Five local authorities have well developed youth mediation approaches, and a further seven plan to develop them. Mediation is more likely to be offered as part of youth rather than generic homelessness teams. 12 local authorities commit to explore, implement or expand more general mediation services.

Working with other public bodies

A third of RRTPs refer to improving understanding of homelessness, prevention triggers and referral pathways from health and social care colleagues. Three local authorities are moving towards a way of operating as if a duty was already incumbent on those public bodies. More than half of RRTPs refer to the SHORE standards²¹ for those entering prison who have a tenancy and planning for those leaving care.

Advice and tenancy support

- Half of RRTPs focus on reviewing availability and responsiveness of current advice provision, particularly around financial including, benefits and money advice. A few refer to co-located services, such as welfare advice in GP surgeries in Dundee, or to digital delivery, particularly in rural areas.
- All local authorities place some emphasis on the nature and responsiveness of tenancy support. Many plan to review or reshape these, making them overtly

²¹ Sustainable Housing on Release for Everyone: Scottish quality standards for housing advice, information and support for people in and leaving prison
<https://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

tenure neutral, more integrated or geographically dispersed, or tailored to people with complex needs.

The tension between legislation and prevention activity is mentioned explicitly by one local authority, Edinburgh Council, which welcomes the introduction of a stronger legal duty to prevent homelessness, and the clarity this would provide in relation to the Regulator and the utilisation of homelessness prevention funds. Other authorities focus more on their twin-track approaches, with a couple of councils emphasising how they ensure that “gatekeeping” does not take place. Perth & Kinross Council attributed a recent increase in homelessness applications to a greater emphasis on addressing potentially homeless cases through the statutory system rather than via Housing Options.

More generally, many local authorities are planning within their RRTPs to significantly increase the proportion of social lets allocated to homeless households in the short to medium term, in some cases up to 75%. This would mean that for the foreseeable future fewer social lets would be available to households in housing need who do not have an open statutory homeless application.

Some local authorities have set metrics around improving prevention and so reducing homelessness applications through their RRTPs, but similar practices came in for criticism from the Scottish Housing Regulator in their 2014 inquiry.

Overall, analysis of prevention activity described in local authority RRTPs shows a wide range of prevention activity is already taking place, including some innovative initiatives, and more is planned to reduce dependency on temporary accommodation and facilitate the rapid rehousing of people who have become homeless. However, it also suggests that many of the basic tools potentially available are not being used effectively or at all in some parts of Scotland and that there is greater scope for interagency working and involvement of other public bodies.

Role of other public bodies in preventing and alleviating homelessness

Evidence from the Homelessness Monitor Scotland 2019 suggests that lack of co-operation and failure to intervene at an early stage by partner organisations is a major barrier to improved homelessness prevention. For example, only 8 out of 28 local authorities said that their local Health and Social Care Partnership helps them prevent homelessness.

“...it’s a failure of services, whether health or social work, to pick up the harm that’s been done to that person at the time...and there’s so many different opportunities to pick that up, until the person hits the homeless service. At that point in time, what they do need is somewhere to stay, but what’s brought them there has been a series of trauma, and other incidents, that’s had a detrimental effect on their mental health and wellbeing...”

(Independent key informant, 2018)

Improving understanding of homelessness, prevention triggers and referral pathways from Health and Social Care colleagues is mentioned in around half of RRTPs.

Yet the cost of not acting early is high, not least for the individuals concerned, but also for services supporting them. Crisis published analysis in 2015²² which demonstrated that the costs of failing to intervene might be between 3 and 13 times higher than the costs of providing immediate and usually lower level support, depending on the circumstances of the individual. Many of these costs accrue to non-homelessness services, particularly A&E, psychiatric, drug and alcohol, and criminal justice services.

Learning from other parts of Great Britain

Analysis by Fitzpatrick and Bramley²³ demonstrates that compared to England and Wales, Scotland has historically had a consistently higher rate of homelessness acceptances. However this significantly increased as priority need expanded and then was abolished. The introduction of Housing Options led to some reduction but rates of households receiving statutory support from Scottish local authorities remain at around 11 per 1000 households in Scotland, compared to around 2 per 1000 in England and Wales. In the last two years, the rate of acceptances has seen a slight increase. The Scottish Government infers from this “that in its current form, the impact of housing options work is unlikely to lead to further large reductions in applications beyond those already seen”²⁴.

Demand for temporary accommodation per 1000 households similarly increased significantly in Scotland as entitlements were widened, and surpassed comparative demand in Wales around 15 years ago and around 10 years ago in England. After a small reversal in the steep increase around the time of the introduction of Housing Options approaches and the full abolition of priority need, demand for temporary accommodation remains high and over the past five years, has begun to increase again. The emphasis in RRTPs suggests that Scottish local authorities see prevention as one of the key ones of addressing the level of demand for temporary accommodation.

New legislative frameworks for homelessness prevention have developed in other parts of Britain over the past five years, first in Wales and then more recently in England. These have created a new statutory approach to tackling homelessness, providing a major supplement to the framework of the Housing (Homeless Persons) Act 1977 that has continued to guide the homelessness assistance approach of all governments in Britain.

Statutory homelessness prevention in Wales

In 2012, the Mackie Review²⁵ proposed major changes to the homelessness system in Wales which would address weaknesses in the prevention of homelessness and improve support for those who currently receive little meaningful support, especially those not in priority need, through a new duty on local authorities to ‘take all reasonable steps to achieve a suitable housing solution for all households which are homeless or threatened with homelessness’. Key objectives included ensuring single people were able to access meaningful help, increasing the emphasis on prevention, and removing the tension between prevention and existing statutory duties. Although the first is no longer relevant to the Scottish situation since the ending of priority need, the latter two remain relevant.

²² Pleace, N (2015) At what cost: An estimation of the financial cost of single homelessness in the UK. Crisis

²³ Fitzpatrick and Bramley: Homelessness and Complex Needs: Comparing Policies and Outcomes Across Great Britain. Powerpoint presentation

²⁴ Scottish Government 2018 Homelessness in Scotland 2017/18, p4

²⁵ Mackie, P., Fitzpatrick, S., Stirling, T., Johnsen, S., and Hoffman, S. (2012) Options for an Improved Homelessness Legislative Framework in Wales. Cardiff: Welsh Government

Two years later the Welsh Government introduced groundbreaking legislation which created a new framework for preventing homelessness through the Housing (Wales) Act 2014.

In brief, the local authority must make assistance (“prevention duty”) available to all households who are threatened with homelessness to ensure that the accommodation does not cease to be available. A set of minimum steps the local authority must consider are set out in primary legislation, including mediation, financial assistance in the form of grants, loans or guarantees, debt support, security measures for those at risk of abuse, advocacy, accommodation, and information and advice.

The Code of Guidance is clear however that the local authority must be proactive and consider additional steps. Once this assistance has been exhausted and if homelessness cannot be prevented, the local authority must then take reasonable steps to help secure accommodation (“relief duty”), which must be available for at least six months. Local authorities must be able to demonstrate the steps that have been taken for both these duties.

If the steps under the prevention and relief duties are unsuccessful in securing accommodation, a person will be entitled to be housed by the local authority (“full statutory duty”) only if they are in priority need. If a person “unreasonably fails to co-operate” at any stage the local authority may discharge all its duties towards them. In regard to other public bodies, there are duties on registered social landlords and on social services to co-operate with the local housing authority in meeting these duties.

An evaluation of the initial operation of the legislation²⁶ shows that it has had a major impact. Local authorities and service providers expressed unanimous support for the intent and ethos of the legislation, and almost all feel that it has enabled a more person-centred approach, though this is a work in progress. In the words of another analysis, it has “effected a genuine reorientation... towards earlier and more effective preventative interventions” and “provided a spur to positive ‘culture change’”. In the first year, full homelessness acceptances fell to around a third of the previous year²⁷, and though they have subsequently risen, they remain less than half the historic norm.

In sharp contrast with the Scottish system, now almost two thirds (62%) of people who approach prevention services in Wales have their homelessness prevented, with 77% assisted into alternative accommodation. 18 out of 22 local authorities say they are doing more prevention work, and that it is more inclusive, and 13 out of 22 also say it is now more effective. Half of local authorities reported an increased use of the PRS for the relief duty and local authorities and service providers acknowledge the need to use the PRS to prevent and relieve homelessness. However, affordability, landlord reluctance to take welfare recipients and security of tenure posed challenges.

Implementation is not without its issues. There is concern about variations in practice between different areas and high rates of lost contact in some cases. People with complex needs or other vulnerabilities seem to be at risk of failing to meet some of the more stringent aspects of the legislation. Around 5% of prevention cases are being

²⁶ Ahmed, A, Wilding, M, Gibbons, A, Jones, K, Rogers, M, Madoc-Jones, I (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final report

²⁷ Fitzpatrick, S. et al (2017) Homelessness Monitor: Wales 2017. Crisis

discharged where people are deemed to fail to co-operate, and there are concerns that this is being used as a means of gatekeeping access to services.

The expertise and culture among frontline staff is critical, as workloads have become more complex, requiring additional skills, and with an additional administrative load. Resourcing has also been a challenge for implementation, but £20 million has been allocated a year. Welsh Government also funded a programme of training for local authorities, delivered jointly with Shelter Cymru and the Welsh Local Government Association.

Many local authorities reported that they have gained additional leverage through the new legislation in dealing with relevant partners:

“The awareness of changes in legislation amongst partners has helped us to foster new and improved relationships with other council departments and external partners and work towards a more collaborative approach to managing and mitigating homelessness.” (Rural LA respondent, 2017 in Homelessness Monitor Wales 2017)

However the evaluation reported that the picture for partnership working is mixed and often comes down to individual relationships. There have been successful arrangements with social services in some areas, but partnership with mental health services needs considerable development.

The Welsh system is not perfect: the ability to discharge duty on individuals who fail to co-operate is a cause for concern, and many “non-priority” homeless people are not rehoused because of the ongoing test of priority need. Notably, the evaluation identifies that greater strategic direction is needed from Welsh Government to align agendas around homelessness, mental health, social services and registered social landlord practice, including the development of shared indicators capturing performance.

Homelessness prevention in England

In 2015 Crisis put together a panel of experts to look at legal reforms in England, following evidence of systematic gatekeeping in English local authority homelessness services²⁸. The group was chaired by Professor Suzanne Fitzpatrick and produced a set of proposals that drew on learning from the reforms in Wales²⁹. These were developed into a parliamentary bill that ultimately became the Homelessness Reduction Act (HRA) 2017. This came into force in April 2018.

The spirit of the legislation was to widen access to support (particularly in light of the priority need test remaining), with new homelessness ‘prevention’ duties, for those at risk, and ‘relief’ duties, for those already homeless, that take no account of priority need status or intentionality (the local connection criterion is applied at the relief but not at the prevention stage). As in Wales, the ‘main’ duty to secure accommodation after the relief duty has come to an end is still only owed to priority need applicants.

²⁸ Dobie, S., Sanders, B. and Teixeira, L. (2014) Turned Away: The treatment of single homeless people by local authority homelessness services in England. London: Crisis.

²⁹ Crisis (2015) The homelessness legislation: an independent review of the legal duties owed to homeless people. London: Crisis.

Two key aspects of the HRA for our purposes are the detailed new duties on local authorities to prevent homelessness, and a duty on other public bodies to refer to the local authority if they believe someone is at risk of homelessness. The local authority must carry out an assessment setting out the applicant's housing need, what accommodation would be suitable to meet that need and any support needed to enable the household to have and retain suitable accommodation and must agree a Personal Housing Plan with the applicant. A number of "reasonable steps" that a local authority should consider are set out in the Code of Guidance³⁰. These should be agreed with the service user following a full assessment, and must be written up into the Personal Housing Plan, with clear actions for both parties. Like the Welsh legislation, the local authority can be legally challenged on the actions it takes. The HRA contains measures to address where an applicant does not co-operate with assistance, however the language was strengthened in comparison to the Welsh legislation to require the lack of co-operation to be "deliberate and unreasonable".

The duty to refer applies to a wide range of bodies including prisons, police, Jobcentre Plus, social services, emergency departments and hospitals and the regular Armed Forces. It does not apply to housing associations or GPs. The original intention of the bill was to legislate for co-operation and prevention among wider public bodies, but through the parliamentary process this was ultimately amended to become a referral duty.

The first year of statistics of the HRA were published in September 2019³¹. In its first year 263,720 families and individuals were assessed as needing advice, 92% of the 286,410 households who were assessed were owed a duty of support from the local authority.

145,020 households, just over half (55%) of those requiring assistance, were owed a prevention duty. The other 45%, 118,700 households were owed a relief duty. Many of these cases, especially single people and those not in priority need, would not have received any help under the old system.

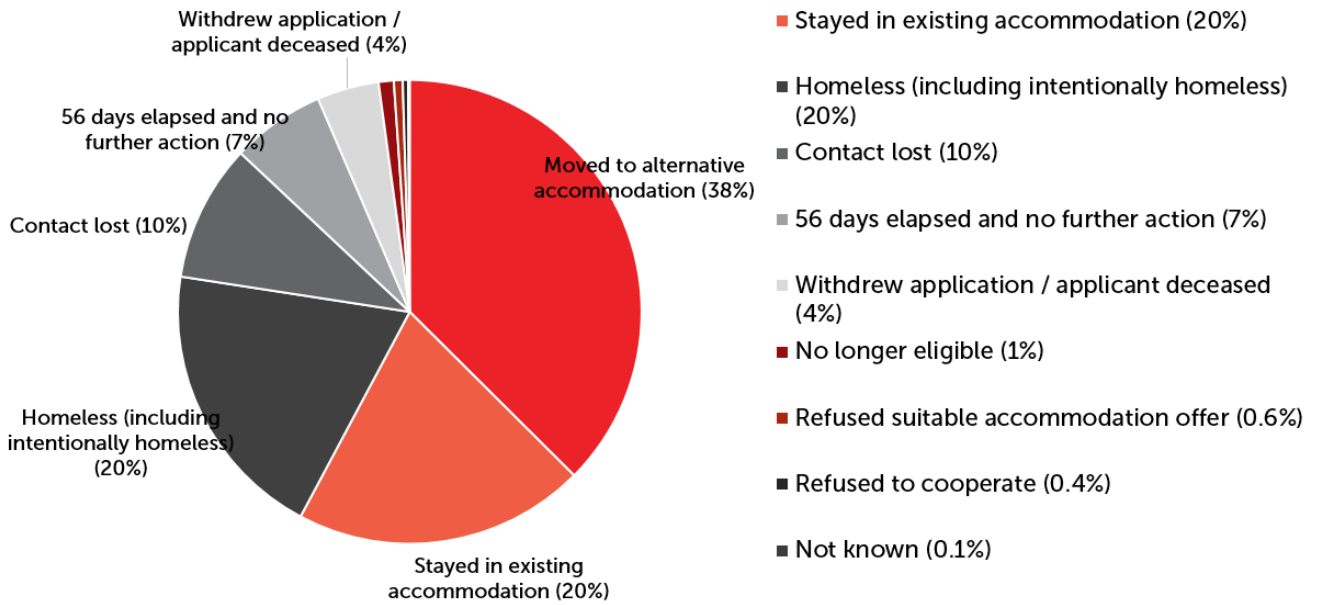
Of the prevention cases that were closed, 58% secured accommodation for six months or more and so had their homelessness prevented. 20% became homeless and went on to the homelessness relief duty. For 10% contact was lost and 7% had no further action taken.

Notably where it is known what accommodation was secured, this was evenly split between the private and social sector. 42% were housed in social accommodation and 42% in private rented accommodation, and a further 9.5% stayed with family.

³⁰ MHCLG (2018) Homelessness Code of Guidance for Local Authorities
https://assets.publishing.service.gov.uk/media/5a969da940f0b67aa5087b93/Homelessness_code_of_guidance.pdf

³¹ MHCLG (2019) Homelessness statistics
<https://www.gov.uk/government/collections/homelessness-statistics>

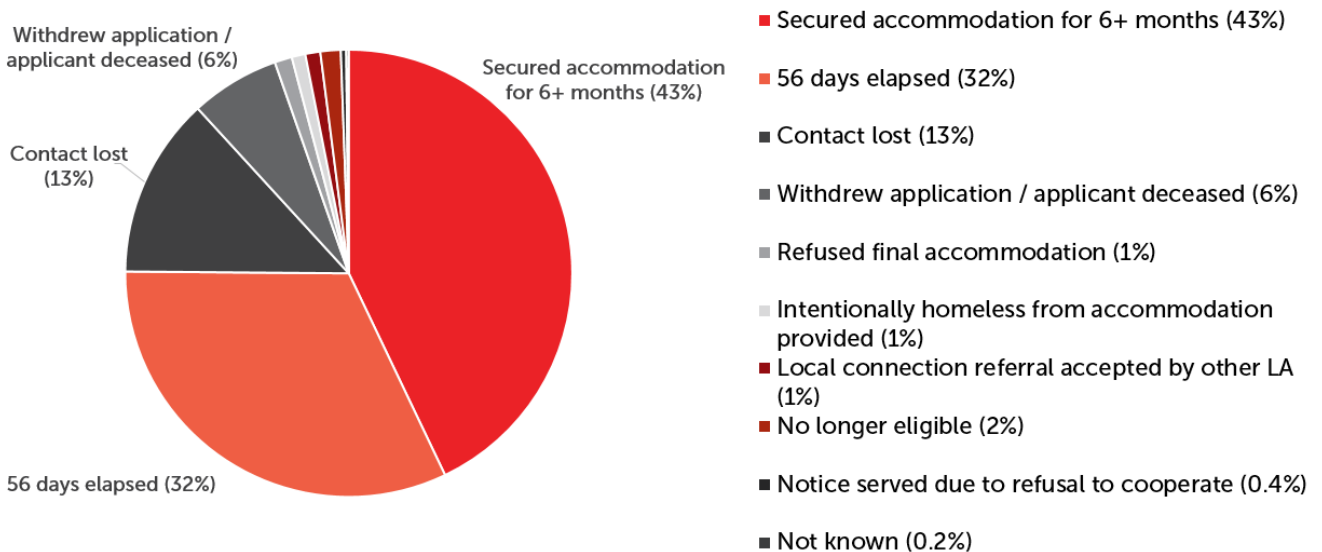
PREVENTION ACTIVITY (55%)



For those owed a relief duty, 43% secured accommodation through the assistance they received. For a third (32%) the duty lapsed with no outcome, and contact was lost with 13% of applicants.

A greater portion of accommodation secured under this duty was in social housing, with 56% of known households finding accommodation there, and 31% finding it in the private rented sector. 5% found accommodation with family under this duty. There was a significantly higher proportion of unknown accommodation outcomes than for the prevention duty.

RELIEF ACTIVITY (45%)



In relation to the main duty (following the relief and prevention duties), there were 50,710 decisions, and 29,530 households owed the full main duty during 2018/19. Compared to

the previous year, these are major reductions of 46% fewer decisions and 52% fewer households requiring the full rehousing duty.

The Homelessness Monitor England 2019³² contained findings from a survey of local authorities which paints a relatively positive picture of initial reactions on implementation. Although problems were noted in relation to increased bureaucracy, there was widespread acknowledgement of benefits to organisational culture and service quality. Two thirds of local authorities saw a benefit for single people, and interestingly, a third also saw benefits for families.

Crisis is carrying out a largescale three-year project in six local authority areas in England to gain insight into the implementation of the HRA. We are also supporting five local authority areas in developing best practice in implementing the HRA. As in Wales, initial findings³³ show that there is variation in practice and the spirit of the HRA, with some areas restructuring their entire approach and embracing a coaching model, strengths based working and reflective practice. Other areas have made no substantial changes to their ways of working. £72.7 million was made available to local authorities to meet the new duties in the Act, but according to the Monitor findings, most English local authorities (70%) feel this to be insufficient.

Duty to prevent

Six months into implementation, well over half of survey respondents (62%) feel the Act has enabled a more “person-centred approach”. 46% of local authorities say the Act has prompted more effective homelessness prevention work, and 58% say they have introduced new prevention and relief services as a result³⁴.

“The Homelessness Reduction Act has changed the culture within the Housing Solutions service 100 per cent. Customer satisfaction is now 89 per cent, an increase from 67 percent. Homelessness preventions have increased by 50 percent.” (LA respondent, London, 2018 in Homelessness Monitor England 2019)

“It’s very exciting. In a way, this whole divide between statutory and non-statutory has now gone, because there’s an obligation, a statutory obligation towards so many more people that local authorities now have to respond to.” (Statutory sector key informant, 2018 in Homelessness Monitor England 2019).

The importance of a shift in culture is emerging strongly and we are finding this is a key area of support for local authorities. In Crisis’ research in the case study areas, it is clear that the most common area of activity is around information on access to the private rented sector. Size of caseload is relevant, with some staff having caseloads of between 100 and 200, meaning they can only provide the bare minimum of support and deal with immediate need, but there is scope for local authorities to use their duties more effectively, acting at an early stage within the 56 day period.

³² Fitzpatrick et al (2019) Homelessness Monitor England 2019

³³ Crisis (2019) Crisis evidence to the Communities and Local Government Select Committee inquiry: One year on since the introduction of the Homelessness Reduction Act

³⁴ Homelessness Monitor England 2019

Duty to refer

Views coming through the Homelessness Monitor of the duty to refer were mixed, with some areas feeling a benefit, but others feeling the duties needed to be stronger:

“We are now seeing referrals from partners under the duty to refer who we have not previously had regular contact from and this is positive.” (LA respondent, the South, 2018 in Homelessness Monitor England 2019)

“The Government have missed a trick by not making the DTR two-way and needs to expand the statutory bodies to agencies such as the police and community based services such as Mental Health and Registered providers.” (LA respondent, the South, 2018 in Homelessness Monitor England 2019)

65% of service users in the case study research³⁵ were engaging with at least one other service at the time of attending Housing Options, and so the importance of the Duty To Refer is clear. Overall there was a theme that those services most likely to be working with people with the highest support needs were more likely to advise someone to seek support for their housing needs than more universal services, such as health and JobCentre Plus. GPs were the most common service to be engaging with, with 32% having been to their GP since their housing issues arose, but these are not covered by the Duty to Refer, and were among the least likely to refer in to the local authority. Only 8% had engaged with the police prior to attending Housing Options, but 50% of these stated that the police have advised them to go to Housing Options for help³⁶.

There is an increasing call for the duty to refer to be transformed into a focus on co-operation, recognising the role of other factors alongside housing in contributing to homelessness, including income and employment.

“There absolutely needs to be a duty to collaborate and to prevent and relieve because that then places the duty with health, with criminal justice system and I would widen it. I’d have it in education, I’d have it in a whole range of places. I’d give it to social landlords!” (Voluntary sector key informant, 2018 in Homelessness Monitor England 2019)

The English Local Government Association have produced constructive guidance on the referral duty, describing it as an “opportunity to co-operate to prevent and alleviate homelessness”³⁷.

What might a prevention duty on Scottish local authorities look like?

A duty on local authorities to prevent homelessness could require local authorities to take specified steps to prevent homelessness for anyone who is likely to become homeless in the near future. Currently the requirement in all nations of Great Britain is to address potential homelessness within the next 56 days. Consideration may be given to

³⁵ Crisis (2019) Crisis evidence to the Communities and Local Government Select Committee inquiry: One year on since the introduction of the Homelessness Reduction Act

³⁶ It should be noted that the research was largely carried out before the new Duty to Refer had been fully introduced.

³⁷ Local Government Association (2018) Duty to refer: an opportunity to cooperate to tackle homelessness Advice for local housing authorities

whether this is the appropriate period for a statutory prevention duty³⁸. Steps may include a set of activities similar to those mandated in Wales (including housing advice, PRS access schemes, mediation, domestic abuse victim support, tenancy sustainment support etc.), ideally specified in secondary legislation, that local authorities can work through to help prevent and relieve homelessness. Households would be able to access the full range of housing options and be rapidly rehoused or maintain their current housing before they hit crisis point and become homeless. It would also provide greater clarity to local authorities of what prevention steps are appropriate to take to discharge their duty.

Once the local authority and applicant has gone through this process and if homelessness could not be prevented through these activities, then the individual or household should be entitled to settled accommodation as under the current system.

We envisage that in the future there would be no test for local connection, and the test for intentionality would be replaced by a test of deliberately manipulating the system³⁹, and so there would be little or no requirement for a duty to help secure accommodation.

Consideration may be given to allowing homeless households to access maximal housing options at every stage of a revised statutory homelessness journey, as long as the accommodation is suitable to the household. Discharge options could be flexible and should meet the households needs, ensuring there is parity in the housing outcomes whether someone is homeless or threatened with homelessness. Discharge into the PRS can be an appropriate and flexible option for some households, but prior to the introduction of the more secure Private Rented Tenancy, there were conditions on discharge into the private sector, and this may be one reason for the very low use of PRS as a discharge option. Other households may be able to benefit from options such as owner occupation or shared housing, where these are the choice of the applicant.

Legislation in other parts of Great Britain has a strong focus on suitability, which is valuable when considering how to maximise housing options. For example, this is described in detail in chapter 17 of the English Homelessness Code of Guidance, which specifies that space and arrangement will be key aspects of suitability, along with any physical or medical needs of the household, and social considerations such as risk of violence or racial or other harassment in a locality (alongside other requirements on a par with Scottish housing standards such as the Repairing Standard and the Scottish Housing Quality Standard). Under this system, regard should also be paid to affordability, location (particularly in relation to out of district placements), and whether the household has pets. Households have a right to request a review of suitability of accommodation offered on a permanent basis.

Who else needs to work towards preventing and alleviating homelessness?

In order to end homelessness, there needs to be joint responsibility on a range of public bodies: it cannot be the sole responsibility of local authorities. Key partners may include:

³⁸ Under a Private Residential Tenancy, a landlord must give 84 days' notice to a tenant who has lived in the property for more than 6 months, unless the grounds for eviction are related to the tenant's behaviour. In all other cases the notice period is 28 days.

³⁹ [https://consult.gov.scot/housing-regeneration-and-welfare/local-connection-and-intentionality/The test of intentionality was changed from being a requirement to being a power on 7 November 2019](https://consult.gov.scot/housing-regeneration-and-welfare/local-connection-and-intentionality/The%20test%20of%20intentionality%20was%20changed%20from%20being%20a%20requirement%20to%20being%20a%20power%20on%207%20November%202019).

- Health and Social Care Partnerships to assist where households have physical and mental ill health or substance abuse issues
- GPs
- Public health
- Children’s services where there are children in the household, and where young people are leaving home or care
- Schools and other education providers
- Police Scotland
- Scottish Prison Service
- Housing associations
- Private landlords

Public bodies operating in Scotland but where responsibility is reserved to Westminster also have a role in preventing and alleviating homelessness, including:

- Jobcentre Plus
- Asylum seeker accommodation providers

Different bodies will have very different roles and some may have a stronger focus on identification and prevention for those at risk of homelessness and others on co-operating to rehouse people and meet support needs. Some may do both. The duties may operate at a range of levels from ensuring joint planning to operational service provision, such as a requirement to provide relevant support identified in a needs assessment.

Some requirements already exist. These include the requirement to inform the local authority where an eviction notice has been served (section 11 notices, mentioned above), requiring housing associations to co-operate with rehousing people with an open homelessness application (section 5 notices) and the Scottish Housing Charter standards around housing options advice. More strategically, Housing Contribution Statements to Health and Social Care Partnerships and other strategic planning tools can have an important role to play. This will be the subject of a further briefing.

The First Minister’s Advisory Group on Human Rights Leadership⁴⁰ has recommended a new Human Rights Act which would include a right to adequate housing. Under the proposals, all public bodies would have a duty to “pay due regard” to the rights in a new Act. Subsequently they recommend a “duty to comply” and provisions for remedies. This may provide a tool to support some of this work, as might consideration of homelessness through the new socio-economic duty on public bodies to tackle inequality of outcomes from socio-economic disadvantage.

We also recognise that legislation may not be a sufficient driver of change. For example the commitment in the Action Plan to join up strategic planning also has a key role, as well as the vision that no government policy should exacerbate homelessness. The prevention of homelessness should be built into relevant outcomes frameworks, including the National Outcomes Framework, and other strategic drivers.

⁴⁰ <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

Conclusion

New duties are urgently needed in Scotland to stem the flow of people into homelessness, and to ensure that if people do lose their home, support is available from a range of agencies to help them move forward into permanent accommodation as soon as possible.

This briefing sets out the current conflicts within the homelessness prevention agenda in Scotland, as well as some of the practice that is happening across Scotland. It sets out learning from the development of duties in England and Wales. The new prevention duties in other parts of Great Britain have much to recommend them, but there is also emerging learning about what is not working with these models. As a result the briefing identifies some of the key areas that a new prevention duty on local authorities might cover. These include mandated steps to prevent homelessness for anyone at imminent risk of homelessness, enabling applicants to access a maximal range of housing options, and ensuring that households are housed in accommodation which is suitable to their needs.

It also identifies some of the key public bodies for consideration for duties to prevent homelessness. Neither Wales nor England have gone far enough in ensuring that addressing homelessness is the responsibility of public bodies beyond the homelessness service. We need to take the best from these models and build on them so that there are clear and coherent responsibilities on all agencies working with people in housing need, so that people who are homeless are supported to find a settled home which meets their needs, and that every opportunity is taken to prevent homelessness in the first place.