

Expert Review Panel: Meeting 3

Minutes of meeting

Date: Tuesday 25 October 2022

Present:

Chair: Professor Suzanne Fitzpatrick (Heriot-Watt University).

Members: Matt Downie (Crisis), Liz Davies KC (Garden Court Chambers), Professor Peter Mackie (Cardiff University), Jennie Bibbings (Shelter Cymru), Katie Dalton (Cymorth Cymru), Jim McKirdle (Welsh Local Government Association), Angela Bowen (Carmarthenshire Council), Clarissa Corbisiero (Community Housing Cymru), Nazia Azad (Tai Pawb), Hannah Fisher (Welsh Government), Huw Charles (Welsh Government).

In attendance: Jordan Brewer (Crisis), Abi Renshaw (Crisis), Debbie Thomas (Crisis), Ashleigh Stevens (Conwy Council), Stevie Powell (Welsh Government).

Apologies: Sam Parry (Conwy Council).

1. Welcome, introductions, minutes & additional papers

The Chair welcomed the members of the panel to the third meeting of the Expert Review Panel, and invited introductions.

ToR: It was agreed that there were no further comments around the Terms of Reference.

Workplan: Gaps raised at the last meeting have been incorporated into the workplan. The topics of temporary accommodation, suitability, eligibility will all be covered at next meeting. The final meeting will encompass regulation enforcement. There will be a review meeting in January 2023. It was agreed that there were no further comments around the Workplan.

Minutes meeting 2: To be amended to include clarity on the panel's strong sentiment on removal of unreasonable failure to cooperate. To be circulated.

A legal advice note on eligibility will be circulated ahead of next meeting, for the panel to reflect on at the next discussion.

Panel member(s)	Action	Timeframe
Jordan Brewer	Crisis to take action on amending the minutes from meeting 2 to reflect further comments.	Immediate
Liz Davies	Legal aspects advice paper circulated ahead of next meeting on topics to be covered.	15.11.2022

2. Update from Welsh Government

HF gave a brief update from the Welsh Government, outlining that:

- The Senedd has passed legislation which adds those who are street homeless as an 11th category of priority need. Accompanying guidance has been published on this.
- The Welsh Government had consulted on a suitability order around legal time limits for housing in B&Bs. Policy officers are still working on this, but it is becoming apparent that the

proposals are not workable with the current demand on temporary accommodation in light of the Ukraine crisis and supply of housing.

- Officials are working on consulting with groups with protected characteristics and with Children in Wales to assist the work of the panel, the latter is progressing at pace.

Panel member(s)	Action	Timeframe
Hannah Fisher	Within Welsh Government's update at the next meeting, comment on: <ul style="list-style-type: none"> • Ways to move forward regarding Code of Guidance addendum, suitability order and Allocation of Accommodation and Homelessness. • Securing work stream dedicated to protected characteristics. • Stakeholder engagement with children and young people. 	Next meeting, 22.11.2022
All	Feedback to Hannah Fisher regarding her update, especially around identifying gaps within stakeholder engagement.	15.11.2022 1 week before next meeting

3. Updates on topics identified for legal consideration

LD gave an overview of her advice paper, which was circulated ahead of the meeting. She highlighted that the headline points are in paragraph 5 of the paper.

The recommendations of the panel could be presented as an amendment of part 2 of Housing (Wales) Act 2014 or as new freestanding legislation with part of the Housing (Wales) Act 2014 abolished.

The update covered six key recommendation areas outlined in the advice paper, with key points being:

a. Consideration of how to make the definition of "reasonable steps" (S.65 of the Housing Wales Act 2014) more concrete.

Three options included:

- Looking at a different formulation of the term, such as suitable steps, or a duty to take reasonable steps to secure accommodation. However, it was noted those formulations may not make much difference to the interpretation of a judge.
- The approach in English legislation is to embed an assessment of need into the act and require a Personal Housing Plan (PHP) to be drafted on the basis of that assessment of need. The PHP sets out the reasonable steps a Local Authority will take.
- There could be a possible amendment to the relief duty in current Welsh legislation, which ends after 56 days. This duty could be amended so that it only ends where authorities have *complied* with duty and 56 days has elapsed.

b. Enforcement of the Local Authorities duty to take reasonable steps

In the Welsh Act, a review of the reasonable steps taken in a case can only be requested following notification that the duty has come to an end. Whereas the English Act – written with the benefit of Welsh experience in mind - enables individuals to apply for a review of what has recorded as being their reasonable steps. This change could be an easy change to make.

a) **Failure to co-operate**

- There is potential to strengthen this in two ways:
 - i. Looking to the English Act, which uses words ‘applicant must have deliberately and unreasonably refused to co-operate.’ To have failed to co-operate, the applicant must have failed to take any of the reasonable steps recorded in their personal housing plan.
 - ii. Under the English Act, if the applicant has a priority need and the duty comes to an end for failing to co-operate, they still get accommodated (although this is for 6 months as opposed to 12). In Wales, the applicant is owed no more duties where they have failed to co-operate.
 - iii. Another alternative is that this duty is abolished.

b) **Six-month no-fault notices**

- Under the regulations in the Renting Homes Act, which comes into force on 1 Dec 2022, a no-fault notice cannot be served within the first six months of a tenancy. The current legislation is clear that a person is only regarded as threatened with homelessness if they are likely to become homeless in next 56 days.
- Potential changes include:
 - Amend Act so that a person is regarded as threatened with homelessness once they receive a notice.
 - Extension in the Act so prevention duties apply not when threatened with homelessness in 56 days, but within six months.
 - Not make any amendments and then a person may be issued with a notice for 6 months is only considered to be threatened for the last two months (56 days) of that period, so there would be four months of no duty. This does not meet early intervention goals.
 - Could there be a prevention duty that applies throughout the six months but strengthens in the final two months. The risk with this approach is that not much is done for the first four months.

c) **Duty to provide support to help retain accommodation**

- There is potential to include supporting applicants to retain accommodation into legislation. This duty is in the Scottish legislation, but unclear how effective in practice. There would be a question around how open-ended the duty would be and how the duty would interact with other support duties, for example, around mental health. It would need to be considered how long that would last for.

d) **Duties to refer and co-operate**

- Duties to refer and co-operate could be inserted into legislation as seen in England.
- Potentially this duty could extend to more public authorities than in England, such as Home Office.

LD stated that while all these duties are possible, what would make them effective is based around culture, governance and co-operation, rather than the legislation itself. However, the duties do set the context for this culture.

To be discussed at a future meeting: The future of the relief duty if priority need is abolished.

4. Discussion on LD update

The panel thanked Liz for her comprehensive paper and for the overview.

The following points were raised on **duty to refer**, although it was suggested that this area was to be discussed in greater detail in a future meeting:

- Could there be a duty for local authorities to accommodate where there has been a failure to refer?
- Migrants are often in tied accommodation – could the duty to refer also be applicable to employers?
- Establishing whether there is a duty for migrants can take time.

Panel members generally supported abolishing **failure to co-operate**, but raised the following points:

- It was raised that there can be equalities implications around this and suggested that we could look at what cohorts of people have been classed as failing to co-operate and consider whether reasonable adjustments have been made.
- Panel members stated being in favour of abolishing the clause on failure to co-operate, but if it is to remain, a stricter test of this and more information around what co-operation means would be required. Refusal to cooperate is better than failure to cooperate, but abolishing it is better than keeping both.

The panel members raised the following points on **Reasonable steps**:

- Panel members were encouraged by the models for reasonable steps that enabled review in the moment, rather than waiting until the end of the duty.
- Could there also be a right to review if the local authority has not acted at all or produced a PHP?

Panel members expressed the following in regard to **Prevention**:

- A panel member was interested in considering whether there could be no time limit at all on duty to help prevent homelessness.
- A local authority representative highlighted that, while in an ideal world, we would lose time limits, they are required in helping local authorities to manage resourcing. With high caseloads, support has had to be loaded toward those facing homelessness within the two months.
- It was observed that officers deal prevention and relief hand in hand – could those two duties be streamlined?
- A panel member suggested that more support workers/time would be needed to deliver some of the options outlined in Liz's paper around PHPs.

General points:

- Legislation sets out expectations for local authorities, but also for the way Welsh Government distributes local authority grant – so enhanced statutory duties can help protect funding.
- Currently, the minimum standard of 56 days is the standard generally worked to in practice – despite guidance encouraging earlier engagement. Therefore, keen to embed more ambitious position on the face of the legislation.
- Having more “musts” in the guidance could also be helpful too.
- CC was interested in SF's statement that the 2013 duty in Scotland requiring local authorities to provide housing support appeared to be helping culture change.

- Consideration of how, if adopted, the right to adequate housing, will change the threshold of reasonable steps.
- This situation is made more difficult in some local authority areas by the inability to use the private rented sector due to limitations on LHA funding.

Panel member(s)	Action	Timeframe
Jordan Brewer	To email panel members inviting comment on held over topic of evictions, ahead of next meeting.	Immediate
Clarissa	To consider whether a link up with Scottish counterparts on the 2013 duty around support and the culture change this has helped with.	

5. Engagement paper

DT updated the panel on the work Crisis are planning to engage stakeholders, and presented a paper building on work from KT and HF. There are key three aspects of this:

- A webpage which will provide details of the panel's work and an opportunity to submit points for the panel's consideration.
- A list of stakeholder events to run parallel to panel meetings and engaging with relevant organisations for the identified specialist topics.
- A reference group for local authorities.

Panel responses included:

- The importance of engaging widely with LAs given the variation in approach and pressures across the 22 LAs. It was discussed that developing a reference group in conjunction with LA representatives will be an important part of addressing this.
- The need to link in with existing HA networks.

Panel member(s)	Action	Timeframe
Jordan Brewer / Abi Renshaw / Debbie Thomas	Crisis to share draft webpage text with the panel for the Expert Review Panel Crisis page.	Early November
All	Panel members to let Crisis know if they wish to put themselves forward as a panel lead for particular theme/stakeholder event and to feedback any comments on the engagement paper.	15.11.2022 1 week before next meeting
Jordan Brewer / Debbie Thomas	<ul style="list-style-type: none"> • Circulate a list of stakeholders to invite per session for panel members to add to. • Include panel's feedback into engagement paper, including channels that panel members can utilise in their networks, such as Housing Associations. • Collaborate with Jim, Angela and Ashleigh for Local Authority reference group. • Circulate proposed questions to be asked at Local Authority stakeholder engagement session on 18 Nov. Panel invited to feedback on questions. 	15.11.2022 1 week before next meeting

6. **Discussion on potential changes to the current three legal tests of priority need, intentionality and local connection.**

KD provided an update on the work of Experts by Experience within each discussion area.

a. **Priority need**

Broad support given for abolishing with a way forward recognised. However:

- It was heavily stressed that Local Authorities would need substantial investment in resources and housing supply to meet any additional duties. A key message from the panel should be around the case for requiring further resourcing.
- The Covid experience showed we could operate successfully without the test in place, aware of importance and difference it made. However, longer term, more staff would be needed to deliver this as well as an investment in more *suitable* temporary accommodation.
- LA frontline staff would be pleased to have greater flexibilities to help people rather than being forced to turn them away.
- There needs to be an emphasis on longer-term resources too (e.g., linking in with rapid rehousing and the types of housing required under the commitment to build 20,000 social homes) to avoid people staying in temporary accommodation for long periods of time.
- There is a need to learn from Scotland and emphasise prevention to avoid large numbers of people in temporary accommodation when abolishing priority need. Scotland implemented phased approach, is this necessary for Wales given the ongoing 'everyone in' approach being continued through interim legislation?
- A culture change is needed, as the tests are not trauma informed. We should avoid people having to 'meet the conditions for help'.

View of experts by experience and Regional Provider Forums:

- Large number said they wanted the test abolished and for no one to be left behind.
- Respondents acknowledged the current lack of housing and market pressures, people who currently qualify are not seeing this being translated into housing. Access to temporary accommodation is under huge pressure and is leading to priorities within priority need.
- Felt had to reach crisis point to meet conditions.
- Felt application process is neither fair nor consistent across Wales. Right home right place, to avoid repeated homelessness.
- Percentage felt if priority need is kept, it should be changed to benefit young people, survivors of domestic abuse and prison leavers. Current concerns for prison leavers after change to 2014 Act, as they had to be deemed vulnerable in connection to time in prison to be priority need.
- Regional Provider Forum in general in favour of abolishing but accompanied by right resources and the need for a trauma informed approach essential. Individual interpretation of a person's situation can lead to people slipping through the net.

b. **Intentionality**

Broad support was given for abolishing intentionality.

- The intentionality test incentivises a way of working which isn't trauma informed. It incentivises judgement around who is or is not deserving of support and does not take account of unmet support needs.
- It was noted that although intentionality is 'officially rarely used,' it does feature in earlier conversations with people who may be on the brink of homelessness as a gatekeeping tool.
- A lot of the time when people are found 'intentionally homeless' there is a clear unmet support need.

- People will 'come through the system again' with homelessness repeated if intentionality is found and they are not helped at this point.
- Intentionality is a feature of an archaic system. Legislation was originally designed for a different purpose to stop those playing the system to gain access to social housing more easily.
- Welcome the use of assessments of need and supported housing models for those who struggle with the mainstream offers.
- There is a concern some individuals will 'actively worsen' their situation in order to be accommodated or mislead the authority to their true situation (very few and far between but there are cases). With demand on social homes so high, it is important to consider this. SF suggested that this forms part of the allocations discussion. It was pointed out s.97 of Housing (Wales) Act 2014 already has relevant criminal sanctions.

View of experts by experience and Regional Provider Forums:

- Just over half of survey respondents think it should remain, but in the body of their answers there was an understanding the need for more flexibility due to sorts of pressures people face; support needs, financial pressures, social issues and how can impact.
- Individuals feeling of being "written off" but not knowing why.
- Regional Provider Forum in favour of intentionality being abolished as it goes against a trauma informed approach. Unmet support needs are the bigger picture.

c. **Local connection**

There is no immediate clear way forward, with mixed views on abolishing local connection, but lots of practical solutions to explore. If local connection is abolished, panel members emphasised that this needs to be implemented in a consistent way across all Local Authorities. If kept, it needs to be more specific and cannot continue as it is, to make trauma informed.

Local authority representative stated that there is a clear consensus among local authorities around retaining local connection and the representative was not convinced that alternative options in use elsewhere were effective.

It was noted that Scottish legislation enables local connection to be reapplied in areas where there is evidence of excess 'nonlocal' demand and asked if that may be a way forward.

Local Authorities felt there are a whole range of housing pressures which need to be considered before losing local connection. There was also recognition of how different local connection might look in different authorities, particularly rural/ urban.

A representative from local authority suggested that other groups of people could be added to the existing list (which currently includes those fleeing domestic abuse) could be added to the list of groups exempt from the local connection test.

Another talked about whether local connection inflames connection between local authorities rather than helps.

If local connection is kept it needs to look different as it is causing harm to people, if not abolished it needs to be more specific.

Another member welcomed the example of how other countries approached losing local connection and moving around resources, as outlined in the paper, but wondered about any unintended consequences, around increased bureaucracy.

There was consideration of how migrants are affected by local connection and whether, in light of these difficulties funding could be considered to help this group. and whether grants could be considered as a way forward for this group.

With regard to equality, the loss of local connection may require areas to consider broadening of housing stock – e.g., around adapted housing

If local connection is retained should reconnection services be mandated in local authorities with the heaviest net in-flow?

There is a difference between what local connection means both legally and practically with regard to a) homelessness duties, and b) social housing allocations. Some of the discussion has been more from an allocation perspective.

There is evidence of local authorities not applying the local connection law correctly – e.g., applying it to those fleeing abuse. Local connection has been used as a gatekeeper to prevent applications, which is unlawful because it should not be considered until later in the process. Many of the concerns about local connection are not so much about the law itself, but about unlawful application.

There is a lack of data on the movement of people between authorities so we don't understand the full nature of the problem.

There is a concern that keeping local connection will keep people on the streets because we can see that people will remain in areas that they move to, as is demonstrated in the paper.

It was pointed out that we should be mindful that the relief duty is local connection-blind if we consider abolishing it.

View of experts by experience and Regional Provider Forums:

- Confusion between allocations and homelessness duty. Mixed response to local connection being abolished.
- Vast majority of comments were about the very difficult circumstances people find themselves in and why it would not be in their best interest to return to their home authority.
- There may be reasons why people are unsafe in their local area which may be difficult for some to accept politically, e.g. fleeing due to addiction or associations with the “wrong crowd.” Sometimes people had fled an area for reasons that they felt unable to report to the police and this acted against them when presenting at an alternative local authority.
- If keeping local connection, it needs to be more trauma informed and flexible to take account of these situations.
- Could be looked at regionally, not just within Local Authorities, supporting shared resources?

Panel member(s)	Action	Timeframe
Liz Davies	Areas to provide expert legal advice on key questions raised:	15.11.2022 1 week before next meeting
Pete Mackie	Share doctoral analysis on reasonable steps with Matt, Suzanne and Liz, to explain thinking around how right to adequate housing will impact.	Next meeting, 22.11.2022
Jordan Brewer	Compile practical suggestions on how to mitigate local connection.	Ahead of January meeting

7. AOB

Evictions to be held over to the next meeting.

Panel agreed to extend meetings from 2hrs to 3hrs to facilitate more full discussion.

Crisis members DT and JD summarised on the upcoming work:

- November stakeholder questions are being planned. Crisis team will use this to seek views on some of the key points for the next meeting. Important questions to feed into next meeting. To be circulated to the panel to comment on.
- Text for webpage on the work of the panel to be circulated soon for approval.
- Dates for 2023 meetings to come shortly. January's meeting to be in-person and an all-day event.

The next meeting will be held on Zoom on Tuesday 22 November 2022.

Panel member(s)	Action	Timeframe
Abi Renshaw	Work with panel members to secure 3hrs for next meeting on 22 Nov. Propose and secure dates for future meeting dates in 2023.	Immediate