

Expert Review Panel: Meeting 5

Minutes of meeting

Date: Friday 3 February 2023

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).

Apologies: Sam Parry (Conwy Council).

1. **Welcome**

The Chair welcomed members of the panel to the fifth meeting of the Expert Review Panel. The panel were thanked for preparing and reading the papers ahead of the meeting.

The Chair outlined that the format of the meeting would be to work through the recommendations paper, discussing each section in turn. Throughout the discussion on each area, the panel would reflect on the evidence as well as stakeholder views including Experts by Experience, frontline workers, Local Authorities and Housing Associations.

The Chair stated that the aim of the meeting would be to reflect on previously proposed recommendations with a view to reaching agreement on which recommendations to take forward. It was acknowledged there could be some compromises, but that the group would try to move forwards on the basis of overall consensus. Where agreement could not be reached, this would be noted.

It was noted that some of the technicalities within the recommendations may need further work following the decisions made today.

2. **Agreeing recommendations on prevention and relief duties**

This area of discussion includes:

- Reasonable steps
- Failure to co-operate.
- Extension of the 56 day duty to assist
- Support to retain accommodation (other areas of potential legislation)

Prevention – reasonable steps

The group reviewed the following potential recommendations.

1. *Strengthening “reasonable steps” by:*

- a) *Altering the term “help to secure.” Alternative formulations could include:***

- i. *“take steps that are likely to prevent the applicant from becoming homeless and/or are likely to secure accommodation for the applicant’s accommodation”.*
or
- ii. *“take reasonable steps to prevent the applicant from becoming homeless and/or to secure accommodation for the applicant’s accommodation”.*
and
- b) *Taking a similar approach to English legislation and embed an assessment of need into the act, requiring 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.*
and
- c) *Amending 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 to pursue reasonable steps and 56 days has elapsed.*
and
- d) *There could be rights to request a review of:*
 - i. *The reasonable steps that are to be taken;*
 - ii. *Potentially any steps that the applicant is advised to take;*
 - iii. *Whether the steps are being taken during the performance of the prevention or relief duty.*

2. Improving enforcement of reasonable steps by:

- a) *Requiring local authorities to notify applicants in writing of the reasonable steps.*
and
- b) *Requiring local authorities to inform applicants of their right to appeal.*
and
- c) *Providing for the right to appeal reasonable steps during the duty and subsequent to the end of the duty.*
and
- d) *Allowing for an appeal if no reasonable steps are given at all.*
and
- e) *Allowing for the opportunity to request a review on the grounds that the reasonable steps are not being taken.*

The following points were raised and discussed by the panel:

- In relation to recommendation 1a, a panel member indicated a preference for the wording of 1ai, stating that the wording “steps that are likely to prevent” is less open to interpretation than “reasonable” and was more outcomes focussed. Other panel members agreed.
- A panel member asked whether more emphasis could be placed on the equalities duty, so that reasonable steps take account of equality needs. In response, it was highlighted that the Equality Act would automatically apply, but that it may be possible to look at how it could be referenced within this legislation in order to underline it. Alternatively, we could look to achieve this within the Code. A further option is that the notification of reasonable steps at 2a includes an outline of how the LA has taken account of the equality in determining its reasonable steps.
- It was raised that there is an underlying resource issue within LAs, and the report needs to be explicit about that. Panel members agreed there should be a clear section at the start of the final report that identifies a list of “enabling factors” for the recommendations – the need for increased resource should to be clearly stated as an enabling factor in this way.
- It was also highlighted that the report should clearly outline the need to move towards partnership working and a person-centred approach.

- A member highlighted that the intention behind Personal Housing Plans (PHPs) is to ensure applicants are involved and central to the discussions around their housing needs. However, there is a danger of these plans being used to put duties on applicants themselves, as is being identified in PHD research. Accompanying guidance needs to safeguard against this and ensure that the reasonable steps are not placed upon the applicant.
- The need for a duty to review and update PHPs on a regular basis to keep the individual informed was discussed and will be considered further.
- The need to consider whether local authority feedback is overcomplicated and the level of bureaucracy was raised.
- Panel members felt that recommendation d(iii) was important. The question was raised as to whether statutory guidance could strengthen this point event further to ensure that swift action is taken.

The following was agreed:

To proceed with making the recommendations 1ai, 1b, 1c, 1d, 2a, 2b, 2c, 2d and 2e for reasonable steps.

To give further consideration as to:

- How underlining the importance of applying the Equality Act within “reasonable steps” could be best achieved.
- Whether the PHP could be regularly reviewed.
- Whether 1diii could be further strengthened, perhaps in statutory guidance, to secure swift action.

In relation to these recommendations, the final report should also reference:

- An emphasis on partnership working.
- An emphasis on the person-centred approach.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| Liz Davies KC | Areas to provide expert legal advice: <ul style="list-style-type: none"> • To consider how to reinforce equality needs within the reasonable steps. • Whether the PHP could be regularly reviewed. • Whether 1diii could be further strengthened, perhaps in statutory guidance, to secure swift action. | TBC |

Prevention – failure to co-operate

The group reviewed the following potential recommendations:

- 1. Abolish the failure to co-operate clause (*indicative as potential preferred option based on previous panel discussion*).**
- 2. The above recommendation could be accompanied by a recommendation on ensuring statutory guidance emphasises the need to meet an applicant’s support/access requirements so that they can fully engage and understand the system.**
or
- 3. If not recommending that the failure to co-operate clause be abolished, amend the provision by:**
 - a) Changing the definition to “deliberately and unreasonably” so that an applicant can only be deemed to fail to co-operate if they do not engage with any of the reasonable steps outlined in a PHP or advised to them.**

- b) *Similar to the English Act, ensure that those with priority need are still owed a duty to be accommodated (albeit for a shorter period) even if they are deemed to be failing to co-operate.*
 - c) *Utilise statutory guidance or legislation to strengthen awareness that consideration must be given as to whether an applicant's access requirements are being met before applying the failure to co-operate clause. If access requirements are not being met, reasonable adjustments must be made as per the Equality Act.*
 - d) *Provide more detailed statutory guidance on interpretation of the failure to co-operate clause. For example, this should clarify that where an applicant has a viable reason for refusing accommodation, they should not be deemed as failing to co-operate.*
4. *As an aside, in order to help alleviate concerns that accessibility issues could lead to unfair usage of the "failure to co-operate" clause, consideration could be given to the Ombudsman's recommendations for improving accessibility of the housing system with the use of standardised documentation and a review of the Code of Guidance to ensure that it is explicit that human rights and equality must be taken into account when assessing homelessness applications, reviewing decisions and when allocating housing.*

The following points were raised and discussed by the panel:

- A panel member highlighted that individuals may be deemed as 'not co-operating' when, in practice their perceived lack of co-operation is a result of not receiving the support they need. Some panel members also felt that retaining the failure to co-operate clause held potential for discrimination (e.g. a perceived lack of co-operation may be as a result of not meeting an applicant's communication need).
- Other panel members agreed and felt that there was a significant weight of evidence from experts by experience pointing to the current system not being trauma-informed or equipped to take account of the complexities of individual's unique needs. These panel members felt the "failure to co-operate" clause is a contributor to this which obstructs a person-centred culture change and invites judgement.
- Some panel members felt the existence of the clause inferred a "disciplining" of homeless people and felt that abolishing it would provide a clear indication of cultural shift towards a more person-centred approach.
- Local authority representatives highlighted that this clause is rarely used in practice.
- Others felt that, while it is rarely used in a formal way, the presence of the clause can be regarded as a "stick" or referenced upstream in the process as a way to place pressure on applicants.
- A panel member raised caution that 3a could reinforce the earlier concern that PHPs place an imbalance of duty upon the applicant.
- Local authority representatives stated that 3d was their preferred approach and that they were comfortable with the wording 'deliberate' and 'unreasonable' in 3a.
- It was stated that the intention within the draft recommendation was to set out that the applicant must have failed to take any of the steps outlined in a PHP and must be notified before the action is taken to determine that there is a "failure to co-operate."
- In relation to 3b it was noted that, in the English Act, the onus is on the authority to demonstrate that there has been a refusal to act.
- There was a side discussion over whether the recommendations should refer to the housing authority or the local authority. It was deemed that changing this reference would have little impact in practice.

The following was agreed:

- There were mixed views among panel members as to whether to soften or abolish "failure to co-operate."

- It was agreed that the panel would come back to this discussion as to **whether to soften or abolish the existing clause.**
- However, it was noted that the power dynamic in current legislation is imbalanced and that, as a minimum, the panel would look to soften this clause.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| All | Discussion to be revisited to come to a way forward that is agreed on. | TBC |
| Hannah Fisher | As part of the White Paper development, Welsh Government to consider how and whether to publish a list of best evidenced interventions and to consider the resource implications of having a “must have” list of interventions as part of the Regulatory Impact Assessment. | TBC |

Prevention – extension of the 56 day duty to assist

The group reviewed the following potential recommendations:

1. Options for altering the timeframe of the prevention duty could include:

a) Not making any amendments to the 56 day duty. Note that this means that a person issued with a no-fault eviction notice for 6 months (as is now required by the Renting Homes Wales Act) 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.

or

b) Amending the Act so that, alongside the general prevention duty, where a person receives an eviction notice under section 173 or 178 of the Renting Homes Wales Act, they are automatically regarded as threatened with homelessness upon receipt of that notice.

or

c) Extending the timeframe for the prevention duty to six months but placing a greater weighting on the support in the final two months.

or

*d) Extending the duty so that prevention duties apply not when threatened with homelessness in 56 days, but within six months (**indicative as potential preferred option based on previous panel discussion**).*

or

e) Amend Act so that there is no upstream time limit on the duty to assist with prevention of homelessness at all.

The following points were raised and discussed by the panel:

- There was agreement that the duty should apply for anyone threatened with homelessness.
- There was considerable support across the panel for extending the timeframe.
- It was noted that consultation with the frontline network of workers also demonstrated overwhelming support for extending the duty.
- Local authority representatives broadly agreed that the timing of the duty should be changed, but strongly emphasised that underpinning this change, the issue of resources must be addressed as otherwise the focus will continue to be placed on the sharp end.
- There was a question as to whether there would also be a need for further workforce development as working on the preventative side requires a particular skillset. It was also

stated that local authorities would require support to help them achieve the preventative agenda.

- Another panel member acknowledged that this recommendation would require changes in practice and felt that such a legal change represented the opportunity to improve the longer-term architecture of the system.
- It was raised whether the duty for the home office to refer asylum seekers who have approved leave to remain could be strengthened to help ensure the prevention work can start as early as possible into the 28 days that they are given to leave the accommodation for those awaiting asylum application. The panel will consider whether there is potential to strengthen the wording on the duty to refer including “as soon as the Home Office have been notified.”
- In relation to the timeframes:
 - It was suggested that the 6 months fitted well with the Renting Homes Act.
 - Some felt that, particularly with current resources, guidance would be needed to help local authorities to prioritise within the 6 month timeframe.
 - Some panel members raised concern that an open-ended duty would be too loose and that a time frame was needed for structure.
 - It was stated that legislative duties generally have a timeframe.
 - The question was raised about whether the 6 months duty would work where homelessness is foreseeable ahead of that timeframe. For those serving a prison sentence, homelessness can be foreseen and assisted ahead of the 6 month period. The panel will reconsider this point when it discusses criminal justice later in its workplan.
- Panel members raised the importance of ensuring that individuals know their rights within the system.
- Panel members highlighted that there is evidence of good prevention work in Wales, even in tough times (post-Covid, cost of living crisis, Ukrainian crisis).
- Panel members discussed what type of prevention measures should be encompassed within this duty. For example, is there potential for local authorities to have a mediation service and rent deposit schemes? Clarity would be needed in the Code of Guidance.
- Some suggested that the duty should be framed as ‘if local authorities are resourced to provide’ and emphasised the need for support for LAs to perform these duties.
- It was noted that while on the one hand, having a clear outline of what the duties encompass on the face of the Act could help to secure financial support, it could also hold unintended consequences.
- It was also suggested that keeping lists within legislation dates it.
- The panel members acknowledged the importance of multi-agency working within the preventative duty. This will be discussed in more detail as the panel moves to the second stage of its workplan.
- There was discussion around what might be covered as prevention and whether this may be annually updated in a statutory Code. Some panel members felt that outlining a minimum for prevention interventions would be important. Others were concerned about negative repercussions of creating lists.

The following was agreed:

- Panel members agreed on recommendation 1d with a caveat of the need for increased resources, otherwise efforts will continue to be focussed on the sharp end of homelessness.
- In addition, panel members agreed to further consider:
 - What other recommendations can be made around prevention interventions?
 - The potential workforce needs to deliver preventative measures.

- How prevention timeframes fit for those serving a prison sentence where homelessness is often foreseeable ahead of 6 months.
- Whether the referral duty on the home office after an asylum seeker is granted leave to remain in the country can be strengthened in order to maximise the timeframe to support individuals and prevent them entering into homelessness.

| Panel member(s) | Action | Timeframe |
|-----------------|--|-------------------------|
| All | <ul style="list-style-type: none"> • Wider public sector input to prevention to be revisited within future discussions on wider public sector duties. • Consideration of what constitutes preventative measures to be revisited at a future meeting. • Consideration of how a 6 month prevention duty works in the context of criminal justice and prison leavers to be revisited as part of future meeting criminal justice meeting on 24/04/23. | Within future meetings. |
| Liz Davies KC | <p>Areas to provide expert legal advice on:</p> <ul style="list-style-type: none"> • To consider how we can ensure the 28 days asylum seekers are granted to leave accommodation are maximised under a prevention duty. | TBC |

Prevention – support to retain accommodation (other areas of potential legislation)

The group reviewed the following potential recommendations:

1. The panel could look to insert a duty to help support a person to retain a tenancy. Options include:

- a)** *Amending the Housing Wales Act 2014 so that, where a local housing authority has assessed that the applicant needs support to retain accommodation, the local housing authority is under a duty to provide housing support and to request that other authorities co-operate with the provision of non-housing support required for the applicant to retain the accommodation.*
- Suggested wording could include: “where an applicant has been assessed as needing support in order to retain accommodation, the local housing authority is under a duty: a. To provide such support as falls within its functions, and b. To request that support is provided from other public authorities.”*
- The relevant statutes, including Social Services and Well-being (Wales) Act 2014, are amended so as to provide that, where a local housing authority requests co-operation in these circumstances, a duty is owed to the applicant to provide that support.*
- Some thought would have to be given as to whether amendments could made to UK wide legislation, such as that governing the DWP, the Home Office etc.*
- The duty must have a means of being brought to an end. Either it continues for a specified time period (for example, 12 months in line with the effective minimum tenancy under the Renting Homes Wales Act), or it would end when a further assessment has been carried out and the conclusion of the assessment is that the applicant is no longer in need of support in order to help him or her retain the accommodation.*
- Guidance would need to provide details of what such support would include and how it would interact with other areas of support.*
- or*
- b)** *Section 59 of the Housing Wales Act (which contains criteria for the suitability of accommodation) could be amended to provide that accommodation secured for a person*

who has been assessed as in need of support will not be suitable unless that support is to be provided (and the applicant has been notified of the level of support to be provided). Appropriate phrases could be “a person requiring support in order to retain accommodation” or “a person with multiple and complex needs who requires support in order to retain accommodation.”

The following points were raised and discussed by the panel:

- It was noted that experts by experience have frequently raised the importance of support in maintaining a tenancy.
- It was also felt that the insertion of a duty to help sustain a tenancy was in keeping with the Welsh Government’s ethos of keeping homelessness ‘rare, brief and unrepeatable’.
- Ensuring that such support is embedded within the law and is not reliant on goodwill will help to secure funding for these vital services.
- It was suggested that social landlords have concerns when there is no support to help tenants. If the panel is looking to increase allocations to homeless households, this support will be especially important.
- There was discussion as to whether the duty should be on the local authority rather than specifically the local housing authority, since the budget for such support comes from the wider local authority and isn’t necessarily held by the housing departments. However, it was noted that the Housing Wales Act refers to Local Housing Authorities throughout and so it may be preferable to make this point by including a section within the duty to the wider local authority.
- The importance of defining what is meant by “support” within this duty was discussed. For example, one member asked whether there was scope for support services to include financial support such as paying rent arrears?

The following was agreed:

- There was support for a duty to help sustain a tenancy and for this to not be time limited. However, there was the caveat that the duty should apply to the wider local authority.
- The panel will need to return to discussions on further defining and clarifying support to retain a tenancy.
- The panel will also come back to consider how this duty connects to potential future recommendations around wider public duties.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| All | <ul style="list-style-type: none"> • To return to discussion on clarifying what type of support would be included within this duty. • To consider how this duty would connect with any recommendations around wider public sector duties. | Ongoing |

3. Agreeing recommendations on the three legal tests

This area of discussion includes:

- Priority need
- Intentionality
- Local connection

The three legal tests – priority need

The group reviewed the following potential recommendations:

1. Options around priority need include:

- a) *Maintaining priority need in its current form.*
or
b) *Extending the list of those considered to hold priority need. For example, to include those with protected characteristics.*

or

- c) *Abolition of Priority need (**based on previous discussions, this may be the preferred option for the majority of the panel**).*

Consideration should be given as to whether option c) should:

- i. *Be introduced with immediate effect.*
- ii. *Be phased in over a time frame (for example suggestions of 5 or 10 years have been made).*
- iii. *Take a phased approach in line with development plans of affordable housing.*
- iv. *Take a phased approach, allowing local authorities to determine which priority need groups to prioritise in the meantime.*
- v. *Take a phased approach, specifying which groups to prioritise during the phased introduction.*
- vi. *Take a phased approach that operates on a pilot basis.*
- vii. *During a phased-in approach, an assessment of need should help to identify those who are prioritised.*

in addition

- d) *Should the panel choose to abolish priority need, a decision also needs to be taken on whether to also abolish the relief duty – see points to consider below for more detail on the implications on this.*

The following points were raised and discussed by the panel:

- Panel members felt there was a momentum for the abolishment of priority need. It was noted that the local authority reference group was supportive of removing the Priority Need test.
- It was also noted that, following the pandemic's *Everybody In* approach and the recent addition of Street Homeless to Priority Need, the movement towards abolition of the test is well underway.
- However, it was noted that the homelessness system is creaking and that, as Priority Need is abolished, local authorities will need to move forward with Rapid Rehousing Plans.
- Local Authority representatives stated that there is a need for supply milestones to be met prior to the implementation of abolishing Priority Need and felt that in order for this measure to be a success, it must be phased in.
- It should also be considered that, in abolishing priority need, the profile of applicants coming through the system will change and this needs to be reflected in the type of accommodation available. For example, we will see more single occupants coming through the system, which will mean there is a need to increase in single bedroom accommodation. (It was noted how difficult encouraging the building of one bedroom units can be and that there needed to be legislative or funding ties to make this happen.)
- It was noted that, following the abolition of Priority Need in Scotland, use of Temporary Accommodation tripled.
- Panel members reflected that experts by experience had mixed views on the matter of priority need, feeling that there were groups who could benefit from it. However, experts by experience did feel that the system is too blunt and does not recognise individualised circumstances and vulnerabilities in seeking priorities.
- Frontline workers have concerns on how housing supply and resources are needed to underpin an abolition of Priority Need.

- It was suggested that reassurances are needed to make sure most vulnerable individuals do not fall through the cracks if Priority Need is removed. Without Priority need and the supply to match – how do local authorities determine who to house? In this situation, if everyone is a priority, nobody is a priority.
- Another member felt that Priority Need is currently used for gatekeeping, but that in the absence of the Priority Need test, priority would be reflected through assessments of need.
- It was suggested that guidance is needed as well as legislation, to prevent people being given a vague offer and pushed into temporary accommodation or less suitable accommodation.
- Panel members felt that there is a key need for profiling work to ascertain what development of the existing housing stock is required. Within this, there is a need to look at what types of housing are required within the 20k homes.
- With regards to how to implement priority need, the following points were discussed:
 - It was highlighted that there is an argument for the abolition of Priority Need to be brought forward with immediate effect. This panel member felt that to phase this change in would be a step backwards as many local authorities are already taking this position in practice. It was suggested that there will be a time delay between the policy intention abolish Priority Need within a Welsh Government white paper and the legislation coming into force. This time delay should be used by local authorities to prepare.
 - An alternative consideration is for Priority Need to be abolished immediately, but for the suitability standards of accommodation to be phased in while supply issues are addressed. However, there should be a goal for no one to be in Temporary Accommodation for long.
 - It was noted that, on the surface, option ciii looks tempting, but could be difficult to articulate in practice.
 - A panel member highlighted that in Scotland, the abolition was phased over a 10-year period, which felt too long. It meant that some acted much later than others. It was noted that there is a need to have positive momentum to drive forward change.
 - A member stated that if the recommendation is to phase in the abolition of Priority Need there must be a clearly defined time period and clear guidance to ensure that discrimination is safeguarded against.
 - It was suggested that the phase-in time should be linked to calculations on the time required to develop housing supply.
 - Another member suggested that having a lead in time would be preferable to a phasing in. There should be clearly defined plans for actions that need to happen during this lead in time. In the meantime, it would be important to maintain the current status quo on priority need currently, including the addition of street homelessness. It is to be acknowledged that Wales has already come far in reducing priority need and we would not want to step backwards during a lead in time.
- Regarding recommendation 1d) to abolish the relief duty, alongside priority need, the following points were raised and discussed by the panel:
 - The relief duty was originally designed to ensure single people were offered some support. However, if there is no priority need, then everyone should be owed both the relief duty and the final duty. As such, there is potential for these duties to be streamlined to simplify the system and make it less complex.
 - However, a panel member was concerned about how, if the intentionality test is to remain, how these applicants may be affected as they are currently owed a relief duty but not the final duty.

- It was felt that the current relief duty does provide space for problem solving and therefore, if a relief duty is to be abolished, a closer look is needed at the section 75 duty.
- The group were keen to consider whether applicants could have a right to challenge in a situation whereby a final offer of accommodation made at section 75 is not suitable. There is potential to link this challenge to an assessment in PHPs.
- A panel member suggested that if we are losing a relief duty, should we look to extend the prevention duty to 12 months instead of 6 months?

The following was agreed:

- The panel agreed to recommend 1c, the abolition of priority need.
- This abolition should have a clearly defined lead-in time, following which it should take immediate effect.
- During the lead in period, it will be imperative that existing steps forward in this area remain in place, including the encompassing of street homelessness as a priority need category.
- There will be a need during the lead in time for clear profiling of housing supply and to develop resources and housing supply accordingly.
- The panel will potentially recommend the abolition of the relief duty but will first consider whether protection is needed for those who are deemed to be “intentionally” homeless.
- The panel will also need to consider whether further measures would be required within the section 75 duty, such an ability for an applicant to challenge where accommodation offered is unsuitable. This could be linked to a needs assessment.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| Liz Davies KC | Areas to provide expert legal advice on key questions raised: <ul style="list-style-type: none"> ● How the abolition of the relief duty would affect those deemed to be “intentionally homeless” if intentionality is not also abolished. ● Whether there could be an insertion of a right to challenge an offer of housing under section 75 if it is not suitable/does not meet the applicants needs as outlined in their PHP. | TBC |

The three legal tests – intentionality

The group reviewed the following potential recommendations:

1. Options around intentionality include:

- a) *Retaining the intentionality test in its current form.*
or
- b) *Retaining the intentionality test, but with further guidance and monitoring.*
or
- c) ***Abolish the intentionality test (based on previous discussions, this is likely to be the panel’s preferred option).***
or
- d) *Abolish the intentionality test and at the same time introduce new provisions into social housing allocations legislation that limit/remove any additional priority given on the basis of homelessness to those who are found to have engaged in ‘deliberate manipulation’ of the homelessness system in order to gain advantage in social housing prioritisation.*

The following points were raised and discussed by the panel:

- Panel members felt that a balanced person-centred and trauma-informed approach is needed.
- It was stated that to abolish this legal test would be to irradicate the notion of ‘intentionally homeless.’
- It was noted that Intentionality was intended to be a solution to an individual deliberately manipulating the system. However, it is instead felt to be used as a means of discipline. Intentionality in its current form, presents an imbalanced power dynamic.
- It was noted that the test is not used often and only for a narrow set of applicants. However, members felt that keeping the test in place is limiting culture change.
- Other panel members suggested that although the intentionality test is rarely used in an official sense, there is evidence to suggest that it is utilised upstream within the application process. Citing the test in conversation with applicants can be used a means to deter people from taking certain actions/ affect their decisions.
- It was noted that the abolition of the intentionality test was supported by experts by experience and frontline workers. There was a strength of feeling that abolishing this test carves a way forward for a country that treats people with dignity.
- Local authority representatives felt that there was a need to maintain some red lines and a need for some balance in certain areas, i.e. not paying rent, behaviour. There was a feeling that if intentionality were to be abolished, the panel would need to consider how this is balanced out when looking at allocations.
- It was noted that, from a legal perspective, antisocial behaviour (ASB) is used inappropriately as includes rent arrears.

The following was agreed:

- The panel agreed to abolish the intentionality test, but while the majority favoured option c, others felt they could only support option d.
- As such, it was agreed to return to this discussion in tandem with the group’s discussion on allocations.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| All | Following the group’s discussion on allocations, to determine recommendation 1c or 1d for intentionality. | TBC |

The three legal tests – local connection

The group reviewed the following potential recommendations:

1. Options around local connection include:

a) Suspending/abolishing the test entirely.

Options to help mitigate local authority concerns with this move could include; creating a new system for local authorities to reclaim costs for supporting those without a local connection; strengthening of guidance between local authorities; making this legislative change subject to a review to consider and take action if fears that certain local authorities become overwhelmed with out-of-area applicants are realised.

or

b) Suspension of the local connection test, whilst enabling Welsh Ministers to reapply the test for specific local authority areas suffering undue pressure because of a net inward flow of applicants.

Options could include: the development of a central funding system or a system enabling local authorities to claim from one another, to be developed in conjunction with local authorities and with learning from other nations internationally; providing central funding for those who have presented from an English home authority; limiting the

abolition of local connection to those who are from Wales alongside other specific categories.

or

c) *Improving/extending the statutory definition of local connection.*

This could include; adding further groups of people to the list of exemptions to allow for non-familial connections with communities and to better take account of the reasons why someone is unable to return to their home authority (e.g. LGBTQ Communities, links to support); greater clarity on the “special reasons” category as a means to achieve a more consistent national approach; making available a properly supported end-to-end reconnection service to enable people to relocate to their country of origin rather than become homeless in Wales, only if this is in their best interests and is their preferred option.

and/or

d) *Tightening guidance around application of the local connection test.*

This could include; ensuring that the test is only applied in certain circumstances and that a person-centred approach is taken in order to determine whether there is a local connection; monitoring local authority use of the test; encouragement of greater collaboration through guidance.

The following points were raised and discussed by the panel:

- Many of the Panel members felt that local connection is damaging. However, the chair noted that there was very strong feeling on both sides of the argument and that much opposition was demonstrated by the local authority reference group to abolishing the test. As such, the chair considered that the way forward may be to look to soften rather than abolish the test.
- Other panel members were keen to look at how concerns from local authorities could be alleviated by pooling resources or looking further at option b. It was felt that local connection is a gatekeeping rather than person-centred tool.
- A panel member noted that the reality of keeping local connection would mean that there will always be a street sleeping population. During Covid, Wales was local connection blind, which worked well and brought the numbers of street sleepers down.
- Panel members felt that the current local connection test is too narrow and needs to be widened and broader in the way it recognises the establishment of a connection. For example, to consider access to support networks, links to LGBTQ communities and other examples of those who are fleeing from abuse.
- Panel members felt that, moving forward, local connection must be pragmatic and trauma informed, to make a practical difference.
- It was raised that local connection could potentially be the only test remaining of the current three. This would place a significant emphasis on the test as a gatekeeper and, as such, stringent and clear statutory guidance on its implementation would be imperative.
- Guidance will also be essential in clarifying grey areas and encouraging local authorities to pool resources. There is a need to address the fact that local connection is interpreted very differently across different areas, there is a lack of consistency.
- It was noted that the law already contains a lot of information around local connection which is misapplied. Statutory guidance has a role to play in preventing misapplications of the law. It was also noted that the “special circumstances” within the law is also very broad at present, but its application differs.
- Panel members wondered whether the “special circumstances” could be more closely connected to a trauma-informed and person-centred approach.
- There is a need to address local connection being used as a deterrent before applicants apply.

- Panel members noted that the law is very clear that local connection does not apply in temporary accommodation.
- Panel members raised the need for a reconnection service or partial support to protect those who have no local connection.
- The question was also raised about how referrals back to England should be addressed.

The following was agreed:

There was strength of feeling on both sides with opinion on the panel divided on abolishing or retaining the local connection duty. Given the strength of feeling on both sides, it was determined that option 1c would be taken, but with the caveats that:

- Guidance is closely reviewed to provide greater clarity on “special reasons” making it more encompassing of the points that have been put to the panel and take account of a trauma-informed approach.
- Consideration is given to extending the list of those with exemption to the local connection test.
- That a reconnection service is considered.
- That consideration is given as to how misapplication of the law can be avoided

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| Liz Davies KC | Areas to provide expert legal advice on: <ul style="list-style-type: none"> • How “special circumstances” could be better defined to take account of individualised experience and a trauma-informed approach. • Consideration of how local connection referrals to England could be addressed. | TBC |

4. Agreeing recommendations on evictions

Evictions

The group reviewed the following potential recommendations:

- 1. Include a ‘duty to provide support’ to retain accommodation on the face of the Housing Wales Act.**
Refer to recommendations on prevention.
- 2. Ensuring that people are deemed to be at risk of homelessness once issued with an eviction notice under the Renting Homes Wales Act by:**
 - a) Inserting a deeming provision that a contract holder served with a notice requiring possession under s.173 Renting Homes (Wales) Act 2016 is threatened with homelessness. As a matter of law, the contract holder would be threatened with homelessness and the prevention duty at section 66 would apply.*
and
 - b) Extending the current provision at section 55 of the Housing Wales Act so as to provide that a person is threatened with homelessness if it is likely that the person will become homeless within six months (or 182 days). This would mean that early intervention would apply to anyone whom the local housing authority considered would be likely to be homeless within six months. It would include those who had received s.173 notices, but would not be limited to those people.*
- 3. Safeguard tenants against no-fault eviction in the private rented sector by:**
 - a) Removing no-fault evictions, in line with Scotland and England. This could potentially include a sunset clause that this change will not come into force until a separate piece of work has been done to develop required new grounds for eviction.*

4. Legislate to support the policy aim of ‘no evictions into homelessness from the social rented sector’ by:

- a) Amending the pre-action protocol OR the Renting Homes (Wales) Act to state that it will not be reasonable to make an order for possession in any claim brought against a secure tenant unless the Court has evidence that either:**
- i. The tenant has suitable alternative accommodation available for his or her occupation at the date of any possession order; or**
 - ii. That a duty under HWA 2014 has been accepted to the tenant by a local housing authority and that accommodation will be secured under that duty.” (This can mean that a tenant may be evicted into interim or temporary accommodation).**
- b) The Panel could go further and seek to apply a legislative definition of ‘eviction into homelessness’ that excludes the possibility of eviction from social housing into temporary accommodation, even once a local authority has accepted a rehousing duty. This could be achieved by amending the Renting Homes (Wales) Act so as to provide that “It will not be reasonable to make an order for possession in any claim brought against a secure tenant unless the Court has evidence that suitable accommodation is likely to be available for occupation by the [contract holder and all those who reside with the contract holder] for a period of at least 6 months at the date of any possession order.”**

The following points were raised and discussed by the panel:

- Concern was raised that option 3 could lead to a mass exit of landlords from the private rented sector. Other panel members suggested that this would need to be managed by the insertion of particular grounds for no-fault evictions.
- It was noted that there was little Ministerial appetite to change the Renting Homes Act.
- It was noted that in England, no-fault evictions is going to a white paper and in Scotland, this has already removed. Wales is the last nation to remain in this space, which feels uncomfortable. A panel aim could be to recognise in the report at the very minimum that this is under review.
- The panel recognised that there needs to be a fair balance of tenant rights and safeguards for private landlords.
- There is a need to consider unintended consequences, as without no fault eviction options, more tenants may be issued with at fault notices, making it more difficult for them to find a new home.
- The group considered whether more could be done to look at reasonable steps that must be taken prior to issuing a notice and to consider whether the pre-action protocol could be amended in this way.
- In relation to eviction from social housing, a housing association representative stated that to legislate in this area would be to fail to recognise the goodwill and steps forward that have been taken in this area. There was concern that legislation is surplus to requirement and could undermine existing good partnerships.
- While other members of the panel acknowledged current good practice, there was a drive to want to learn from this good practice and embed it within legislation in order to safeguard against future personnel changes and pressures. Panel members felt there is no harm in cementing existing good practice in legislation, rather than relying on goodwill which could all change under new leadership. Legislation is about long-term safeguarding.
- Members also noted that, although low in number, there are still evictions in social housing, especially where mental health needs are not being met. Current good practice is not necessarily consistent.

- Members also considered whether it is worth strengthening the wording within the pre-action protocol, with a view to making it more explicit in taking all reasonable steps to avoid an eviction? This would need negotiated with the Ministry of Justice.
- The importance of partnership support in avoiding eviction was noted. The panel will consider this as part of its consideration of wider public sector duties later on in its work.
- Supply was again noted as an issue, with local authorities providing the temporary accommodation as tenants are evicted.
- Some panel members felt 4b was going too far.

The following was agreed:

- The Panel agreed to recommendations 1 and 2.
- The panel do not completely agree on evictions and options 3 and 4, but agreed that they would look to make recommendations in this space and hold further discussion.
- Points that will be considered will include:
 - The pre-action protocol and reasonable steps
 - Grounds for no fault evictions in the PRS
 - Points raised within the allocations consultation work that CHC and Welsh Government are to undertake.
 - Consideration of other models such as the Belgium approach and Scotland’s section 11.

| Panel member(s) | Action | Timeframe |
|-----------------|---|-----------|
| All | Panel to hold a supplementary meeting on evictions to discuss the above. | TBC |
| Liz Davies KC | Areas to provide expert legal advice on: <ul style="list-style-type: none"> • To consider strengthening the wording within the pre-action protocol on taking all reasonable steps to avoid eviction. | TBC |

5. Agreeing recommendations on eligibility

Eligibility

The group reviewed the following potential recommendations:

1. In relation to those with NRPF, the panel may wish to consider:

- a) *Recommending that the Welsh Government seeks to include people who have NRPF on the list of those eligible for homelessness assistance. This might involve:

 - i. *Announcing the Welsh Government’s intention to prescribe as eligible persons subject to immigration control those whose leave is subject to a condition of NRPF and then waiting to see what, if anything, the UK government’s response in relation to its powers under Immigration Act 1971 might be.*
 - ii. *Announcing an intention to and negotiating amending the Immigration Rules so that Welsh Ministers have the power to prescribe what constitutes “public funds” for the purposes of those who reside in Wales.**
- b) *That the panel considers how those with NRPF and vulnerable housing situations might be supported under the Social Services and Wellbeing Act as part of its discussion on this area.*

The following points were raised and discussed by the panel:

- Members of the panel expressed agreement on the clear principle of seeking to find mechanisms for Welsh Government and local authorities to provide homelessness assistance for those with no recourse to public funds (NRPF).

- It was expressed that without seeking to support this group of people, we will not end homelessness.
- The approaches were discussed and it was agreed that the panel would outline its recommendation that the Welsh Government seeks a path to support those with NRPF, but that the practicalities and choices around which path is taken in seeking this aim should rest with the Welsh Government. It will be important that in seeking this approach, mindfulness is given to “do no harm” and creating unintended consequences for this group.
- It was raised that support for those who don’t have leave to be in the country is politically a different matter. In France, there is a base level emergency accommodation offer in these instances.
- Members of the panel highlighted the potential for social services to offer support to those who do not have leave to be in the country, especially to NRPF with children. If not eligible (NRPF, asylum) then care needs assistance can be available through the Social Services Wellbeing Act.
- A panel member wondered whether social services could look at the cost of applications and arranging travel to country of origin. Or whether a council could continue with support while an application is being determined. However, it was noted that this would make the applicant known to the Home Office, which would lead to deportation.

The following was agreed:

- The panel is in agreement on recommending that the Welsh Government find a way to lawfully extend support to those with NRPF. In seeking to do so, it will be important that the Welsh Government is mindful of “do no harm” and of avoiding unintended consequences.

6. Agreeing recommendations on temporary accommodation and suitability

Temporary accommodation and suitability

The group reviewed the following potential recommendations:

- 1. That the Welsh Government looks to improve data collation on temporary accommodation in Wales, including details of duration of stay and access to temporary accommodation among protected characteristic groups.*
and
- 2. That the Welsh Government seeks to profile the availability and suitability of temporary accommodation across Wales. Such a profiling exercise should seek to facilitate a collaborative and regional approach to temporary accommodation placements that best meet applicant need. The profiling exercise should also be cognisant of the national move towards a rapid rehousing approach; consideration of how existing temporary accommodation stock links with Rapid Rehousing Transition Plans will be crucial.*
and
- 3. That the Welsh Government seeks to review how effective the Local Housing Marketing Assessment is in funding appropriate supply of housing stock.*
and
- 4. The panel awaits a further legal advice paper, but will potentially look to make recommendations on:*
 - a) Extending the Suitability Order to cover further minimum standards: In all temporary accommodation these standards should cover:*
 - i. An understanding what the applicant sees as their most important needs.*
 - ii. Assessment of support needs.*
 - iii. The amount of space that is acceptable as reasonable to occupy with family members and children.*

- iv.** *Location, taking into account; access to services, closeness to schools, safety, probation requirements, and risk of abuse or exploitation, closeness to support networks (either family or self-established).*
- v.** *Physical accessibility.*
- vi.** *Affordability.*
- vii.** *Health and Safety factors (e.g., mould, central heating, ventilation etc.).*
- viii.** *Regular communication, on both timescale for being moved on to settled accommodation.*

In congregate/shared accommodation these minimum standards should include in addition to the above:

- i.** *A clear bar on anyone ever having to share a bedroom with someone other than a partner/family member in any form of TA.*
 - ii.** *Safety and well-being - people not being placed in forms of accommodation which is unsafe or may harm their recovery.*
 - iii.** *Access to cooking and laundry facilities.*
 - iv.** *Reasonableness of house rules (e.g., CCTV).*
and
 - b)** *Further legislative responsibilities for local authorities to communicate at regular intervals with applicants on:*
 - i.** *Progress of their application for settled accommodation and expected time scales.*
 - ii.** *Their rights to appeal decisions.*
 - iii.** *Advocacy support that may be available to the applicant.*
 - iv.** *Review the suitability of accommodation.*
and
 - c)** *Tightening of the 56 day suitability review process.*
and
 - d)** *Strengthen provisions to make clear that a person may be “homeless at home” without impacting on their homelessness entitlements.*
and
 - e)** *Improving the person-centred and trauma-informed approach to decisions on suitability by:*
 - i.** *Linking suitability to PHPs.*
 - ii.** *Requiring local authorities to consider a list of points in relation to decisions on the suitability of accommodation for an individual.*
 - iii.** *Inserting a legislative obligation for local authorities to take into account an applicant’s history and experiences when determining suitability of accommodation for an individual.*
 - iv.** *Creating a stronger legislative emphasis on considering the applicant’s views when determining whether accommodation is suitable for an individual.*
 - v.** *Strengthening guidance, including broadening the definition of abuse and exploitation so that consideration is given to a wider range of safeguarding needs that an individual applicant may hold. For example, those seeking to distance from networks that are harmful to their recovery.*
- 5.** *The panel may choose to recommend that the Welsh Government considers issuing guidance on ‘house rules’ and other arrangements in temporary and supported accommodation, particularly in congregate forms of such accommodation, to address issues which are known to present access barriers or to be potentially detrimental to the well-being of residents, e.g. no pet policies; curfews; use of CCTV, service charges; rent arrears policies; exclusion policies, policies around previous convictions, etc. Such guidance should be conceived in the context of a broader strategic approach to the future of temporary and supported accommodation in Wales.*

The following points were raised and discussed by the panel:

- The panel ran out of time at the meeting to hold a full discussion on these recommendations and was also mindful that a legal advice note in this area was being drafted to help inform the discussion. It was agreed that an additional supplementary meetings would be booked to discuss further.
- However, the panel did note that there would need to be a recommendation around profiling the availability and stock of accommodation across Wales, including temporary accommodation. It was highlighted that, in the context of the move towards rapid rehousing, such profiling would need to consider the need balance of less temporary housing and more settled housing in the longer term.

The following was agreed:

- A supplementary meeting will be arranged to discuss recommendations in these areas in detail, with the benefit of legal advice which is currently being drafted.
- However, recommendations in this area will be supplemented by a clear recommendation of the need to profile housing stock across Wales, including temporary accommodation and to consider how this links to the context of rapid rehousing.

| Panel member(s) | Action | Timeframe |
|------------------------|---|------------------|
| Liz Davies KC | Legal advice to be issued on suitability and temporary accommodation following meeting of 26.01.23. | Mid February |
| Abi Renshaw | Secure further supplementary panel meetings in the diary to continue on in-depth discussion, to cement panel's recommendations going forward. | Early March |

7. Discussion on next steps for allocations

Allocations

The group reviewed the following potential recommendations:

1. Options around allocations include:

- a) *Sharing of good practice/publication of guidance.*
and/or
- b) *Changes to the regulatory framework, specifically to include minimum standards for allocations. Further consideration would be required as to the detail of those minimum standards.*
and/or
- c) *Extension of the duty to "co-operate" with local authorities on allocations to provide for more specific examples.*
and/or
- d) *Introduction of legislation similar to section 5 in Scotland, so that local authorities may requirement RSLs to rehouse statutorily homeless referrals.*
and/or
- e) *Increase statutory guidance around allocation policies which are known to present barriers, e.g., no pet policies, rent arrears etc.*
and/or
- f) *Welsh Ministers to publish direction outlining expectations around allocation approaches to homeless households.*
and/or
- g) *Recommendation to review data collection on allocations.*
and/or

h) Further guidance around the definition of “unacceptable behaviour” and support provided to such applicants.

2. *The panel may wish to consider whether, as with intentionality, there should be a legislative change to help safeguard against “perverse incentives.” For example, a clause could be inserted so that households found to ‘deliberately manipulate’ the homelessness system receive no additional preference in social housing allocations because of their statutory homeless status. This test would have no bearing on any other homelessness-related entitlements.*

The following points were raised and discussed by the panel:

- The Chair outlined that there is recognition of the strength of feeling in this area and a need for further consideration.
- The Welsh Government will be consulting further with housing associations in this regard and the panel will return to more fully discuss allocations and potential recommendations following on from this work.
- The Housing Association representative reiterated the concern that there is good will and practice in this space and queried whether legislation is needed.
- Other panel members expressed the view that legislation would consolidate this good practice and do no harm to existing good practices.

The following was agreed:

- The group agreed to schedule an additional meeting to discuss allocations as more work is underway with the Welsh Government seeking to consult further in this area.

| Panel member(s) | Action | Timeframe |
|------------------------|---|-------------------------------|
| Abi Renshaw | Secure further supplementary panel meetings in the diary to continue on in-depth discussion, to cement panel’s recommendations going forward. | Early March |
| Hannah Fisher | Inform the panel once an allocations event has been confirmed. | Update at meeting on 03.03.23 |

The next meeting will be held on Zoom on Friday 3 March 2023.