HOUSING LAW PRACTITIONERS ASSOCIATION

Homelessness Reduction Bill

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1. The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

Homelessness Reduction Bill

2. HLPA strongly supports the purpose of the Bill and in broad terms supports the provisions of the Bill overall. However, there are some concerns with specific elements of the Bill as drafted.

Evidence of success from Wales

3. The statistics from the first year of operation of the Housing (Wales) Act 2014 provisions, on which the Bill has drawn, are encouraging, with some specific concerns and cautions for the future.

4. The headline figures are as follows[1]:
    - Households assessed for homelessness: 17,913 (an increase of 26.5% on the previous year)[2]
    - 3,605 households helped under prevention duty with a success rate of 64.8% (23% remaining in current accommodation). This includes a success rate of 57.6% for single households – a very important increase.
    - 3,695 households helped under relief duty, with a success rate of 43.3%
    - Of remaining 56.7% remaining at the end of the relief duty, 40% were found not in priority need and 40% were owed the final, full duty. This is a reduction of 76% on the 6 months prior to April 2015.

5. In short, while numbers of households assessed, and numbers of households assisted saw a significant increase, the numbers owed the full housing duty by local authorities (and with it, the provision of expensive and often unsuitable temporary accommodation) significantly decreased.

6. These are early figures, but encouraging, both in the reduction in homelessness amongst households which would not receive any adequate assistance at all under the current English legislation, and in preventing or relieving homelessness which would otherwise become an expensive and difficult problem for local authorities owing the full duty.

[1] http://gov.wales/docs/statistics/2016/160824-homelessness-2015-16-en.pdf
[2] http://sheltercymru.org.uk/eight-things-we-learned-this-week-from-welsh-homelessness-figures/

7. This positive view must be caveated if applied to England. The housing situation in Wales overall is simply not comparable to the most pressured areas of England, and it is frankly unlikely that the same levels of success in preventing homelessness, or through the relief duty, can be realistically expected in London, Birmingham, Bristol or other pressured areas.

8. Nonetheless, the indication is that the prevention duty can successfully help more households (including single households) while reducing the numbers to whom local authorities owe the full housing duty, with the expense, uncertainty and often unsuitable accommodation that follows.

Non-cooperation and intentional homelessness

9. A further important caveat is that the numbers of households for which any duty was declared discharged by local authorities by reason of 'non-cooperation' (an innovation in the Wales Act, taken over in modified form in the Bill) rose quite dramatically over the course of the year to 10.3% in the last quarter (to April 2016).

10. Shelter Cymru, who have been involved in the operation of the new rules in Wales, identify this as a significant concern[3]. There is no data on what behaviour was considered unreasonable or the reasons for discharge. The fear is that vulnerable people, or people with communication or social difficulties are not being supported. There is also the concern that 'non-cooperation' may be, or become, a perceived route of escape from a duty for some local authorities facing difficult resource restrictions.

11. It should be noted that some local authorities may be tempted to view any disagreement with their proposals or with offers made as 'non-cooperation'. However, a decision such as refusing proposed accommodation is not non-cooperation and has a separate route of review. Clarity of the meaning of 'non-cooperation' in regulations by the Secretary of State will be important.

12. The Bill provides for the possibility a review of any decision to end a duty for non-cooperation, which is an improvement on the Welsh model.

13. However, the Bill also provides for possible finding of intentional homelessness based on non-cooperation at the prevention and relief stages in very broad terms

[3] http://sheltercymru.org.uk/eight-things-we-learned-this-week-from-welsh-homelessness-figures/

(at 8. – the amendment to section191). HLPA strongly opposes this proposed amendment for the following reasons.

14. Firstly, it runs against the principle of the Bill to reduce or weaken the existing statutory duties to the homeless and in priority need. Such a broad brush extension to the existing definition of intentionality (itself a heavily litigated definition) will inevitably result in bad decisions, extensive further litigation and a lack of homeless support for households with children.

15. While a review of a decision of non-cooperation is possible, there is no obligation to provide or secure accommodation during that period, it is discretionary, and the review period is 56 days. A bad or borderline decision would therefore leave households with children homeless without accommodation during that review period.

16. Further, given the figures from the first year of the Welsh experience, it is clear that the prevention and relief duties will still leave a substantial proportion of applicants homeless and owed the full duty housing at the end of the prevention period. As set out above, it is likely that in high pressure areas in England, the proportion of homeless applicants who will still be owed the full housing duty after the prevention and relief stages.

17. For that reason, it cannot be said that 'non-cooperation' is an action or failure to act that has resulted in the household becoming homeless, where it is entirely possible (and may even be likely) that co-operation would not have made any difference to their position. The suggestion that this will 'incentivise' co-operation in a situation where people are facing homelessness for themselves and their children is more than somewhat unlikely, and overlooks potential reasons for non-cooperation arising from mental health issues, vulnerability or the stresses of fleeing domestic abuse.

18. The proposed amendment in the Bill is therefore a more severe approach that is out of keeping with the existing statutory approach to intentionality and risks penalising vulnerable people who are pregnant or have children, or other priority need.

Somewhere Safe to Stay

19. The 'somewhere safe to stay' provision at 9 is valuable, in particular for people fleeing domestic violence who do not otherwise have a priority need. It should

be borne in mind that fleeing domestic violence is not in itself a priority need – the applicant would have to demonstrate that they are more vulnerable if homeless than an ordinary person because of the domestic violence, which is in many cases extremely difficult to show. The limited period of 56 days accommodation under this provision is therefore an important safety net.

Local connection

20. The purpose of the proposed amendment to Housing Act 1996 section 199 at 12 of the Bill is not entirely clear.

21. For clarity, the effect of section 198 Housing Act 1996 is that 'local connection' provisions at section 199 primarily concern whether an applicant can be considered to have a local connection to another authority, not conditions for an applicant to meet to have a connection to the authority to which they have applied. The effect of section 198 is that if an applicant does not have a local connection to the authority to which they have applied but does have a local connection to another authority, then a referral may be made.

22. It is therefore a threshold condition for referral of a duty to another authority, not a condition of accepting an application.

23. The proposed amended clause is predicated on the homeless applicant proving one or more of the specified conditions of local connection. But this is to misunderstand the principle purpose of section 199, which is that it is for the referring local authority to establish the applicant's local connection to the receiving authority.

24. In short, the proposed amendment to section 199 does not seem to have any function as drafted. If the intention is to set a 'local connection' limitation on eligibility for the prevention and full housing duties, HLPA would be strongly against such an intent. The referral options in section 198 are wholly adequate to deal with any risk of 'application shopping'.

25. I must also note that section 198 will certainly require more amendment than the Bill currently contains in order to manage referrals from English authorities to local authorities in Wales or Scotland.

Homelessness and threatened homelessness

26. The proposed amendment to section 175 Housing Act 1996 at 1 of the Bill has a clear purpose, to end the practice of local authorities refusing to consider a homeless application at expiry of a section 21 notice and instead requiring the tenant to remain until a possession claim has been brought and a warrant of eviction obtained by the landlord. This makes the tenant liable for the costs of the possession proceedings and means that homeless applications are only taken at the last moment, when an actual eviction date is set.

27. However, while the purpose of the amendment is entirely appropriate, the actual wording of the proposed amendment has some unintended effects.

28. As currently worded, it would not exclude a tenant served with a section 21 who had other accommodation available to them from being statutorily homeless.

29. In addition, as currently worded, the amendment would mean that a tenant who had been served with a section 21 notice would continue to be classed as homeless, even if, for example, a landlord agreed not to rely upon the section 21 notice for possession proceedings as a result of prevention work, as a section 21 notice cannot be formally withdrawn. However, for tenancies that began on or after 1 October 2015, (and from 1 October 2018, all tenancies), this will not be a difficulty as the section 21 notice has a limited period of validity of 6 months from service.

30. Alternative wording might be: 'It is not reasonable for a person to continue to occupy accommodation following expiry of a valid notice under Section 21 of the Housing Act 1988 in respect of that accommodation, for the period in which possession proceedings for that accommodation may be brought based upon that notice'.

Finances

31. A final point, and a difficult one for a private member's bill, is that there are, of course, resource implications for local authorities. While an extended prevention and relief duty may indeed result in savings on the costs of temporary accommodation for the full duty, possibly over some years, the scope of those savings per local authority area will be extremely hard to predict, as set against the additional costs in staffing, training and advice and support time.

32. While HLPA is not able to offer any informed view on the details of the resource commitments that would be involved, it seems likely that additional direct costs will be offset against savings, both immediate and wider saving in terms of the costs of homelessness. In these circumstances, it would be hoped that adequate central funds would be made available, reviewable after several years results.

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