

Localism Act: Ending the Homelessness duty. Policy options, making it work and implications for the future of Housing Options services – Andy Gale

The session will cover:

- Gaining buy in from members and stakeholders
- The policy options for making it work
- Practical steps for implementation
- Homelessness legislation - a thing of the past?
- The new Housing Options service post Localism Act

Gaining buy in from members and stakeholders

Members

You cannot separate the homelessness changes in the Localism Act from the Allocation changes. The mistake would be to put up separate Cabinet reports that deal with the homelessness and allocations localism act changes in isolation. They are 'joined at the hip' and should be considered as one package.

Present the report as a key strategic opportunity to change the approach to meeting housing need and build sustainable social housing communities – plus include the implications for delivering the future Housing Options service.

Avoid as far as possible the risk of the changes being used politically leading to statements such as–

- 'It's a power not a requirement so we don't need to do it'
- 'It has come from the Government so shouldn't we reject it on principle politically'
- 'Isn't this all about cuts and welfare reform!'
- 'Surely the homeless are in the greatest housing need?'

Members need to see full range of strategic options from 'do nothing' to option to end the duty for all cases and what additional flexibility this may give for the allocation of social housing to other need groups. There is a strong possibility of obtaining cross party 'buy in' to the changes if the options are presented correctly.

Ensure that you get over some key messages in the cabinet report:

Strategic option now available to build sustainable social housing communities

The changes need to be 'sold' to members as a strategic package.

Currently the vast majority of accepted homeless cases are housed into social housing (over 70% of cases).

Homelessness can be manipulated to guarantee a fast track into social housing. This means fewer properties are available for other housing needs groups and transfer cases leading to frustration.

The social housing stock is reducing and only x number of empty properties are available to let each year.

Under the new Localism Act rules protection for households accepted as homeless will remain and they will be able to be housed into good quality private rented accommodation of a 12 month minimum let.

They can apply for social housing equally with all other applicants but their homeless status will no longer give them an advantage over tenants and other households in urgent housing need.

There is a need to make sure that our Allocation policy meets Strategic Objectives to build balanced sustainable social housing communities. The Council's Allocation Policy is the fundamental building block of sustainable social housing

With so few properties should we help only those in most need of help, transfer tenants and some groups who make a special contribution?

The changes provide an opportunity to retain a proportion of for those who make a "Community Contribution"

Ask key questions:

Who is social housing for?

Who must the Council house by law?

Who else does the Council believe should be given opportunities to access social housing – such as those who work but are on a low income and others who do or can make a community contribution?

We can change the balance in our social housing estates by giving more priority to new categories such as:

Low income households who are working?

Some groups who are undertaking training or volunteering?

Those prepared to undertake training course on how to be a good tenant

Clear rent account cases and good behaviour?

Ex-armed forces

Stakeholders

Once the policy position is clear from members you will need to inform stakeholders. These are potentially depending on the policy adopted the most fundamental changes to homelessness, accessing social housing and meeting housing need. Steps could include:

- Special session of the Homelessness Forum
- A one day conference on the future for tackling homelessness and accessing social housing which can also be used to consult on changes to your Homeless Strategy and Allocation Policy
- Written briefings, press articles, etc

Not all stakeholders will support the policy changes but they need to understand what they are, the strategic reasons for change and the new way services will be delivered as a result.

The Policy options for making the Homeless Localism Act changes work

Is there a need for a Policy?

The Act doesn't require a Policy for implementing the Homelessness changes but it is difficult to see how you can operate without one. There are many aspects of the Homelessness legislation that are powers that do not necessarily require a policy position or one that is approved by members (e.g. power to apply local connection; power to house temporarily the unintentionally non priority homeless), but these changes are so fundamental that it is difficult to see how they can be applied without a policy.

Ending the duty in the PRS – What are the options for implementing the Policy

There is of course the blindfold the manager and stick a pin in a list policy or the names out of a hat Policy! More realistically there are 4 policy options.

1. Do nothing and stay the same Policy option
2. Partial Policy – ending the duty for a % of cases – targeted approach
3. Partial policy – ending the duty for a % of cases - less targeted approach
4. Full Policy implementation – ending the duty for all accepted cases

1) Do nothing and stay the same Policy option

The no change option is an option and for a minority of authorities where homeless pressures are in check it may be a realistic option. The implications of the do nothing policy option is:

- Accepted homeless cases will continue to have the duty ended only through social housing (Currently 72% of cases nationally)
- There will be no qualifying offer option remaining to end the duty in the PRS with a 6 month fixed term tenancy as this has been repealed for new cases. So ending the duty by consent will require a 12 month let.
- Process will be either homeless duty accepted – TA – very high priority under Part 6 – housed; or
- prevention priority given under part 6 – may reduce the need for TA – housed
- PRS continues to be used for prevention and meeting TA duty but not ending it accept by consent.

2) Partial Policy – ending the duty for a % of cases – targeted approach

A targeted approach - could be any combination of factors depending on the level of demand and supply of social stock available: For example:

- The policy could be applied to 2/3/4 bed households but not 1 beds; or
- There could be a list of exemptions for vulnerable singles and families considered at risk in some way
- Breaks the link between homelessness and social housing for some but not all

3) Partial policy – ending the duty for a % of cases - less targeted approach

This is the approach the majority of local authorities are likely to adopt.

There may be no exemption categories accept for exceptional circumstances and the level of PRS supply will determine the % that have the duty ended with a PRSO

- Message given there is no guarantee the being accepted as homeless will lead to social housing but for some it still will as the reasonable preference granted under part 6 may lead to being housed before a PRS offer is able to be made.
- Likely to be a 2 speed system. In London social housing supply pressures will mean that the PRSO offer is always more likely to 'get there' first. Outside of London a race to see whether they bid successfully for social housing before a PRSO offer. May lead to more realistic bidding.
- Option to reduce the priority band or points given to the accepted homeless in comparison to other reasonable preference groups which will

reduce the likelihood of obtaining a social housing offer before the PRSO offer.

- Still very likely to change the culture especially parent/family exclusions

Who will you allocate first?

- Shortlists by accepted cases that have been waiting longest?
- Shortlists by accepted cases that have been waiting shortest period?
- Do you include area choice as a factor or not?

4) Full Policy implementation – ending the duty for all accepted cases

- Every case accepted will have the duty ended in the PRS (subject to exceptional circumstances to make that policy judicial review proof)
- Fully breaks the link between being accepted as homeless and obtaining social housing
- Very likely to change the culture especially parent/family exclusions
- But PRS immediate supply must be available or risk of backlog in temporary accommodation and costs.
- May well need the reasonable preference for accepted homeless cases to be reduced to the bottom of the reasonable preference groups to ensure that a social housing offer doesn't come before a PRSO offer

Implementing the Policy – Possible practical steps

Step 1 – Decide on your key messages that are then communicated to all applicants and stakeholders.

Key messages statement should be given to all applicants that approach for help and should be reinforced at the start of any Housing options interview. It can even be sent to all residents as part of a re-launch of the new Housing Options Service. The key messages as a minimum should state:

- Homelessness will no longer give automatic priority for social housing as accepted homeless cases will now have the duty ended in the PRS wherever sufficient supply is available.
- Access to social housing is limited but priority will be given to following groups a,b,c, etc
- Most households in the future who is accepted as homeless will/may have that duty ended through one offer of suitable private rented accommodation

Step 2 – Implement a new approach to new cases following enactment of the Localism Act Homeless changes and decide the approach to existing 'protected' cases.

Suggested Objectives:

There are no current policy objectives but the following could be adopted:

- To provide the 'safety net duty' to the homeless and to 'break the link' wherever possible between being accepted as homeless and obtaining social housing.
- That any perverse incentive to become homeless is removed through a framework that ensures that being accepted as homeless should not result in social housing.
- The option to deal with existing accepted homelessness cases (which are protected under the existing legislation) and new post Localism Act cases as far as possible through the same process.

The suggested model for dealing with new homeless cases and existing cases post the enactment of the Localism Act.

The aim could be as far as possible to provide the same service to new and existing homelessness cases following the enactment of the Localism Act.

A suggested new approach to achieve this is set out.

- A local authority will need to make a Policy decision that they will adopt the power to end the duty in the PRS for all accepted homeless cases subject to exceptional individual circumstances.
- A procurement exercise is required to source accommodation providers so that there is always PRS accommodation available to the Council. For some authorities in London this may inevitably mean looking for accommodation outside of their area.
- These arrangements can be on a 'placement fee' or similar arrangement and should not be based on any open ended commitment.

An authority could consider adopting a Policy statement which is sent to every resident stating 4 clear messages:

1. *The Council will continue to meet its legal duties to homeless households but that homelessness will no longer give priority for social housing*
2. *The Housing Options Service is now a service for all residents who need advice on their housing options or help to prevent homelessness and is no longer just a homelessness service*

3. *Access to social housing is limited but priority will be given to low income working households (plus any other local priorities set by the authority).*
4. *Due to resource constraints and high private sector rents in the district any household in the future who is accepted as homeless will have that duty ended through one offer of suitable private rented accommodation.*

Step 3 - An approach for dealing with new homelessness cases post enactment.

- A household approach claiming to be homeless and it appears that they may have a priority need.
- They are given clear advice on their options and the clear 4 message priority statement above is explained and reinforced.
- The key message from that statement is reinforced which is that being accepted as homeless will only result in PRS accommodation and will not be likely to result in an offer of social housing
- The Council will use all endeavours to try and prevent the household from becoming homeless. Failure to co-operate with prevention could, depending on the lack of cooperation, result in the household becoming intentionally homeless.
- Where homelessness cannot be prevented and a homeless application is lawfully triggered the household will be offered one of two options 1) The prevention alternative PRS accommodation route option or 2) the Homelessness Application route option.

i) Alternative Prevention route option

A household cannot choose the prevention route option until all efforts to prevent their homelessness have failed.

If they accept a prevention option they have the choice of:

- a) Remaining with relatives or friends and finding PRS accommodation themselves in their own timescale backed by any deposit or Bond guarantee scheme.
- b) Remaining with relatives and friends and receiving 2 or several offers of accommodation through the private sector access team.
- c) If they are physically homeless and have no relatives or friends to stay with the PRS access team can make one immediate offer of PRS accommodation of their choice depending on the availability that day.

Those that take a prevention option which is outside of the district could be allowed to remain on the Council's Housing Register (although of course they

will not be granted reasonable preference for being homeless). This will allow households to seek social housing through work in the district or some other locally set criteria.

The 'deal' in effect is if a household accept a PRS offer as prevention they will have some choice and retain control over their housing future. They can continue to refuse to take alternative PRS accommodation as a prevention option and proceed to a homelessness application as long as one has been lawfully triggered. However, there may be risks and less choice if accepted as homeless.

ii) Homelessness Application route

- Risk 1) there is no guarantee that the case will be accepted as homeless, in priority need and unintentionally homeless and that if the case fails on one of these grounds no accommodation help will be given. Plus
- Risk 2) if they reject a PRS offer now and continue to a homeless application there may be no choice of PRS offer or area and the Council will end its homeless duty with an offer of suitable accommodation.
- The target time for all homelessness investigations and decisions will be no longer than 48 hours. Interviews will be structured to obtain most evidence at the interview itself followed by rapid targeted fast track inquiries. Once sufficient evidence is obtained a decision will be taken..
- Cases that are not accepted as being owed the full homeless duty will have to make their own arrangements.
- Cases accepted as being owed the full homelessness duty will receive one immediate offer of suitable private sector accommodation to end that homelessness duty. Careful pre offer assessment will need to be undertaken into employment, schooling, health and support factors and any areas where there may be fear of violence.

Summary

The prevention route option would give an applicant more choice of area for the PRS offer and is therefore likely to be chosen as the default option. To further boost the Prevention route there is the option that an applicant may be given several offers whereas for accepted homeless cases one offer and this will be provided only if the case is accepted as passing all the statutory legal homelessness tests.

It may depend on the PRS supply available to a local authority be important to remain robust for investigations into homelessness for those that choose an application. The option of just accepting a full homeless duty with minimum investigation as all the applicant will achieve is a PRS property is not

a viable option in a position where the supply of that PRS accommodation is stretched

It is important that the prevention offer is similar to the homelessness end of duty PRS offer otherwise the homeless route will be a more attractive option. There could be variations to this approach for example the prevention offer could be a 6 month AST with a promise by the landlord to renew whereas the PRSO end of duty offer must be a 12 month fixed term tenancy.

By breaking the link between homelessness and social housing many households, (especially those living with parents and relatives where homelessness may be seen as the way to obtain social housing), will no longer apply as homeless. Many will remain living with parents and extended family. Those that do apply are more likely to take a prevention PRS option than take their chances with continuing to pursue a full homelessness application.

A local authority would be able to apply a homelessness policy that fully supports the sensible objective that the homelessness legislation should be a safety net to provide accommodation for the most vulnerable but will not allow households to 'jump the queue' for social housing.

The overall conclusion of introducing this framework is inevitably that new statutory homelessness applications will become minimal.

Possible approach to existing accepted Homeless Cases in temporary accommodation

By the date of enactment of the homelessness clauses in the Localism Act a local authority will still have a number of cases who are accepted as homeless and in temporary accommodation who will be protected under the current legislative rules. In some authorities this will run into many hundreds and even thousands of cases.

Possible approach to existing accepted homeless cases.

Required Policy changes

Accepted homeless cases in temporary accommodation will by law retain their reasonable preference status (that is their head start under the Allocation Policy and cannot have this removed by a PRSO offer other by consent and then only through the strict qualifying offer rules). However, that RP status can be set to the lowest reasonable preference level that can lawfully be given. When set against the lack of social housing vacancies in an area this downgrade may effectively mean that existing accepted homelessness cases will not be likely to obtain an offer of social housing.

Actions, approach and process to implement the new framework for existing accepted cases.

- Option that all existing cases could be written to and informed that the Council has met its legal duty to provide temporary accommodation and that duty has been met.
- There is the option to 'close' the case as the duty has been met and the household is adequately housed in temporary accommodation. The duty would remain if the household became unintentionally homeless again and they should be informed to contact the council if they believe that their accommodation was no longer suitable. Other than that the Council has met its duty and the case is now closed. All would be informed that they retained reasonable preference under the Allocation Policy and what their prospects were of obtaining an offer of social housing. Any arrangements for managing the temporary accommodation need to be communicated.
- This is a mind-set change for Housing Options Services. Cases are accepted as homeless, placed in suitable TA and kept as a live case until rehousing into social housing. Whereas the duty is to provide suitable TA and when that duty has been met the case can effectively be closed as whether the applicant is re-housed into social housing will depend on their priority under part 6 the allocation scheme. A TA duty continues to be owed but the duty to provide that TA has been met and the case can be closed.
- All informed that if they become homeless again and choose to approach the authority it will assess their circumstances to determine if they are still eligible for assistance and if they have become homeless intentionally from the accommodation. If these tests are passed the council will provide one offer of suitable temporary accommodation to continue to meet its duty and the case will be 'closed' again even though they will retain their temporary accommodation status.
- All to be provided with the option of taking a 'qualifying offer' in the private rented sector (this is the piece of the existing legislation which allows the council to end a homelessness duty in the PRS by the consent of the applicant). Those that take a qualifying offer will at least retain control over their housing future. Otherwise if this option isn't taken whilst they remain in TA the council reserves the right to move them into alternative suitable TA for cost reasons or stock management reasons.
- Those that opt for a qualifying offer can either search for property themselves or ask the Council's private sector access team to search for suitable accommodation for them.

Making Suitable offers of Accommodation to meet a TA duty or to end any duty with a PRSO offer.

Suitability the new legal battleground?

Likelihood that legal challenges will move from challenging whether a homeless application has been taken or challenges to intentionality and move to challenges on suitability.

The second test of suitability which is whether the offer is reasonable for the applicant and their household to accept has been altered by the Localism Act. Where will caselaw (*Slater v Lewisham* and *Ravichandran v Lewisham* now sit following these changes)?

The courts may end up redefining suitability through caselaw. Long list of challenges – including when is an offer an offer and has an applicant actually refused accommodation where a landlord is not prepared to accept them due to their behaviour at the viewing.

The team or officer matching and formally making the suitable offer of accommodation will be key. Authorities must get this right. The authority must be satisfied that the offer is suitable when it is made and wait to consider the issue of suitability when it is refused.

Current common practice

- ✓ Check made that the property is of the right size and depending on the policy on choice what area it is in.
- ✓ Check made that the applicant would not be at risk of violence in a particular area.
- ✓ There may or may not be further checks into schools and employment.
- ✓ Either no pre offer checklists or inadequate checklists.

Future required practice

- ✓ The authority must be satisfied that the offer is suitable before it is made.
- ✓ Clear information recorded on a standard form by the Options case officer covering the all subjective matters such as schools, employment, health, support, risk of violence, etc
- ✓ Matching officer or team take this information and the information known re the property (size, fitness, rent, location, etc) and consider if the accommodation is suitable by strictly applying steps 1-4 below.

- ✓ Where an offer is refused consider any new information presented by the applicant that is not known previously at the offer stage and reapply test of suitability using steps 1-4 below.

Step 1 – Is the offer suitable on the facts of the property itself – overcrowding, fitness standards, etc (existing requirement)

Step 2 – Is the offer affordable which will require an income and expenditure assessment (existing requirement). A full income and expenditure assessment will need to be undertaken at the offer stage as well as by the Options officer. Issues such as rent gaps and impact of Energy Performance information on expenditure for fuel costs will need to be considered.

Step 3 – Is the property reasonable for the applicant to accept listing all subjective matters such as impact on education, health, employment, support (existing code of guidance, case law and possible new regulations). The new suitability order and regulations - part 2 of the suitability consultation document need to be applied.

Step 4 – For PRSO offers to end the duty consider the offer against the new PRS regulations (part 1 of the suitability order consultation need to be applied) covering standards, safety and management. However, even though this applied to PRSO offers only it should be common practice that is applied to all offers of accommodation to meet a TA duty or even to prevention offers.

The new Housing Option Service Post Localism Act

Once the Localism Act changes to Homelessness and Lettings are implemented this will provide an opportunity to reconfigure the Housing Options Service to provide help and advice to more residents who have a housing need.

This is an opportunity to change the focus of Housing Options Services from that of largely a Homelessness Service to one that provides help and advice for many more residents in the community who need help and advice on their housing problems. This provides the opportunity to reinforce a message that Housing options should be about addressing housing need and not just Homelessness. The Homelessness legislation remains a safety net becomes the minor part of the new service.

Many residents have some form of housing need and obtaining independent advice on complex housing problems or alternative housing options is often not available. Yet currently, most would see the Housing Options Service as a service only for those who are homeless or in extreme housing need.

There will still be many residents in extreme need that need housing help and advice and this will only grow in the recession. However, this is an opportunity to "phase out" the traditional homeless type service and reconfigure the

service and staff resource to deliver a broader service that is essential and relevant to far more residents.

The new service would be placed at the heart of any council's community based services, where anyone in housing need or who require advice on their housing pathway would see the Housing Options service as the natural place to seek help and advice. Whether a person needs advice on homelessness, its prevention, options, leasehold, repairs, grants loans, equity, shared ownership or outright home ownership the first place to seek advice would be the Options Service. The approach of the new service could also be to provide the help and advice for people to help themselves and not for people to act as passive recipients of services.

The spin off here is also the potential for Options Services to help join up key agendas such as employment and. Housing can act as a barrier to obtaining employment and vice versa. The new Housing Options Service could be developed firmly on the principle of 'rights and responsibilities'. The service would set out what the advice and options available and people would be expected in return to take action based on the help available. It could provide a clear commitment to residents which could be described as:

- Residents with any form of housing problem can expect to receive professional advice and appropriate actions to help them to resolve their own problems.
- Residents have a right to help, advice and support but also have a responsibility to help themselves and act on the advice given
- Where a problem cannot be resolved they will receive professional advice on their alternative housing options in the district, region or elsewhere in the UK.
- Being homeless will not result in social housing. Social housing will be accessed other housing need or local priority criteria.

The new Housing Options Service: A brief description

A modernised Community based Housing Options service – an overview

The new Housing Options Service would be delivered through a far more flexible structure and streamlined lean processes.

The team would be structured to deliver front office help and advice covering all first contact work either through 'face to face' contact or by phone. Much of the work would be delivered through structured telephone interviews backed by streamlined processes using DIY self-help internet technology; standard forms, checklists, scripts, letters and packs.

There would be a back office team whose role would be to undertake complex and time consuming work and to deliver the functions needed to make the new homelessness model work such as procuring sufficient private sector

accommodation. If fully introduced the modernised model might achieve up to 50% more efficiency in processing work.

It is by accepting and abiding strictly to the 'get it right at first contact' principle that a modernised Housing Options Service can be delivered in a much simpler but radically different way. The service will become more efficient and can be delivered effectively regardless of resource constraints. It will also provide a better customer service ensuring that the advice and actions needed are delivered first time and are appropriate to the problem, releasing casework time to resolve more complex and time consuming cases.

There would be 4 distinct work streams to deliver the new Housing Options Service:

Tier 1 services – Based firmly on the principle that residents should wherever possible seek their own solutions to their housing problems this would be the self-help tier 1.

An on-line self-assessment tool covering self-help on homelessness prevention, social housing prospects and alternative options would be developed. All customers would be required and encouraged to use the self-help tools first when they approached the council either through the call centre or face to face. Touch screens could be available for those without internet access. It would include the on-line registration service for the social housing register.

Customers would be able to print off their own housing plan which would include advice on the actions to take to resolve all common housing queries; the actions that needed to be taken to prevent homelessness; how to access the private rented sector and the help available, plus the customer's prospects for social housing based on the self-assessment of housing need.

This self-assessment tier 1 service has the potential to reduce some demand through accurate realistic advice on a person's social housing prospects and alternatives. For customers that required further help following the self-assessment, they would be advised to approach the next stage of the service described as tier 2 services described below.

Tier 2 services – This would be the front end first contact interview part of the new service. The aim would be to deliver the functions for homelessness prevention, housing options and applications for homelessness assistance through a generic Housing Options Team that would be responsible for delivering advice and actions for the overwhelming majority of cases (up to 80% of the cases that approach) the same day and at the first point of contact (the 80% model).

This tier would be for those that required a Housing Options problem solving interview as their problem could not be resolved by tier 1 self-help. This Housing Options Interview would be delivered both through face to face and telephone assistance. Advice would be given at that interview and any actions that needed to be taken by the Council taken immediately. The help given

would be confirmed by a short confirmation of help letter and a standard pack including the on-going self-help that is available would be given, sent or e-mailed to the customer depending on the form of interview granted.

Tier 3 services – would consist of the casework function responsible for 'complex or time consuming' problem solving casework where a problem could not be resolved at tiers 1 or 2. This would be the back-office function delivering:

- Complicated Part 7 homelessness enquiries, decisions and reviews for those few applicants that choose the Homelessness application route option.
- Complex homeless prevention casework for debt, mortgage arrears and similar complex cases and cases where success is more likely to depend on time consuming direct or telephone intervention with landlords, parents or work with applicants themselves.

Tier 4 services – would be the back office non-operational functions and administration. This would consist of:

1. The sourcing and procurement of private rented accommodation to either meet or end any homeless duty and to provide options for those in housing need.
2. Accommodation matching team dealing with offers of accommodation as prevention, TA duty and end of duty and ensuring that such offers are suitable.
3. The management of temporary accommodation including liaison and contract monitoring with agents and RSLs, income recovery, complaints, hand backs and general TA administration.
4. Homelessness and Housing need Policy, performance monitoring, strategy and new initiatives.
5. Statutory reviews for Homelessness and Housing Register application.
6. General administration and Business support including matching of private sector properties to customers and choice based letting shortlisting, offers and administration.

The modernised Housing Options Service: A table summarising the possible new service

<p>Tier 1 Web and DIY self help</p> <p>All households in housing need to be</p>	<p>Delivered by:</p> <ul style="list-style-type: none"> ➤ Partners referring people to on-line advice system first and assisting customers to access it
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