

PREVENTION REVIEW GROUP – 28 September 2020

Minutes of meeting

Present:

Members: Professor Suzanne Fitzpatrick (Heriot Watt University, Chair), Cllr Elena Whitham (East Ayrshire Council / COSLA), John Mills (Fife Council / ALACHO), Ruth Whatling (Scottish Government), Matt Downie (Crisis), Professor Tom Mullen (University of Glasgow), Adam Milne (Shelter Scotland), Laura Caven (COSLA), Callum Chomczuk (CIH), Maggie Brunjes (Homeless Network Scotland).

In attendance: Adrian Stalker (lawyer instructed by the Group), Fiona MacPhail (Shelter), Beth Reid (Crisis), Judith Chisholm (Crisis).

Apologies: Susanne Millar (Glasgow City HSCP), Lorna Wilson (SFHA).

1. Welcome and apologies

The Chair welcomed everyone to the meeting and noted the apologies received.

2. Draft bill and SSI: Discussion of legal drafting

2a. Introduction from Adrian Stalker and initial reactions to draft legislation

Adrian Stalker provided an overview of his approach to the legal commission and the brief from the Group formally instructing him to draft legislation that would give effect to the Group's aims and the policies that the Group wants to advance.

The draft legislation consists of amendments to the Housing (Scotland) Act 1987 (the Act), a draft Scottish Statutory Instrument (SSI) that defines stability and suitability of accommodation and exemplar draft provisions relating to the recommendations for duties on wider public bodies. . The legal proposals from the Group have been drafted on the basis that intentionality will be abolished in due course, in line with the recommendation of HARSAG and in principle acceptance by Scottish Government.

New provisions draw on recent changes to the English and Welsh legislation. The draft amendments to the Act are close to a final draft. However, there are ongoing drafting discussions about the best way to frame "suitability" and stability" within the SSI. For duties on wider public bodies, a small number of exemplar duties have been drafted. The Chair opened up the discussion to the Group for their views on the overall approach to the legal proposals.

Overall, Group members were happy that the draft proposals reflected the discussions and intentions of the Group but local authority representatives noted that they would need to seek opinion on the draft legal proposals from legal colleagues.

Action : Process for finalising report to take into consideration need to provide an opportunity for all of the participants in the Group to consult with in-house lawyers and other experts.

Fiona MacPhail noted that terms of housing outcomes the current position is the offer of permanent accommodation for people who have become homeless and in their view what is being called stable and suitable for those who are homeless or at risk of homelessness seems to indicate less secure forms of accommodation. Group members noted that a policy decision was made by the Group at an early stage to widen the housing options beyond the standard options with appropriate

safeguards around security and suitability of accommodation, based on the Group's detailed discussions and was influenced by the work of the Prevention Commission. Ensuring maximal choice in terms of housing options is a core recommendation of the Group. Ensuring the stability and the suitability of those options, with additional more specific safeguards for non-standard forms of accommodation, is a key part of the discussion in the meeting in terms of the draft SSI.

Adam Milne noted that Shelter are planning further work to look at any potential impacts on the current duties and rights that are currently available to people.

Maggie Brunjes highlighted the parallel work of the Prevention Commission over the last nine months to bring a lived and frontline experience of homelessness to all the discussions of the Group. The Prevention Commission have committed to preparing a final report containing the key themes and priorities that emerged from the Commission's work. These key themes are clearly shown in the draft legislation and the Prevention Commission consider that this is a really good and important result.

Action : Process for finalising proposals to take into consideration need to provide an opportunity for participants in the Group to consult with in-house lawyers and other experts.

3. Draft Bill

a) Definition of homelessness, and referrals

Adrian Stalker provided an overview of the draft provisions relating to the definition of homelessness and referrals.

The Chair opened up those draft proposals to discussion and invited comments particularly in relation to the time periods at which someone would be considered to be threatened with homelessness.

The Group discussed the draft legal proposals in relation to the time periods in detail. The Group have had extensive discussions in previous meetings about its ambition to ensure that its recommendations mean that preventative action takes place at a much earlier stage than the current two months.

This is so that local authorities and partners focus more on services than can deliver early preventative action, and to encourage people to seek assistance as early as possible. In practice people often seek help too late to receive practical assistance to try to prevent their homelessness. The current draft legislation misses the opportunity to re-gear the whole system to a time period where local authorities can effectively work with each household on an individual basis to try and offer a wider range of housing options.

A six-month period is required to drive culture change and to ensure that the local authority can take effective intervention action and this should be expressed as a statutory duty to deliver consistent change in practice.

It was noted that there may be difficulties with that provision in terms of drafting legal clarity around who and how it would be assessed if someone was threatened with homelessness at six months, but it was recommended that this could be clarified in the statutory Code of Guidance.

The Group agreed that the legal proposals should recommend expanding the definition of abuse to cover the Domestic Abuse (Scotland) Act 2018 definition and ensure coercive control is included, so that someone who falls into that category has access to the prevention duty.

Actions: Adrian Stalker to revise draft legislation to ensure that a general duty to prevent homelessness commences where someone is at risk of homelessness within 6 months. This is in addition to the specific provisions for certain events which would trigger a duty to prevent that person's homelessness.

Adrian to expand definition of domestic abuse to cover coercive control in line with the Domestic Abuse (Scotland) Act 2018.

b) Assessment and housing support (section 30A and section 30B), link to personal housing plans and steps to assist applicant (s30C, 30D, 31)

Adrian Stalker presented to the Group on the provisions that set out the duties of the local authority once they have taken the decision that the applicant is threatened with homelessness, including assessment of homelessness situation; assessment of housing support needs; reasonable steps to secure that accommodation is available, or does not cease to be available; and the circumstances in which this duty ends.

The Chair invited comments from the Group on those legal proposals relating to assessments, reasonable steps and the circumstances in which the duty is discharged.

The Group discussed whether the assessment is the same as the personal housing plan. This needs to be clarified. The Group had indepth discussions of the role of personal housing plans. The Group thinks it best to try to bring the assessment and the personal housing plans together rather than have as separate. It was noted that Shelter are doing work around personal housing plans as part of the HPSG work and it would be helpful to understand progress on this to inform the Group's thinking. The Group considers that on the basis of those discussions, personal housing plans should be incorporated into this section of the draft Bill.

ACTIONS:

Shelter to provide update to the Group on Shelter's work on personal housing plans for the HPSG.

The Group to provide Adrian Stalker with further instructions on the Group's recommendations in relation to personal housing plans and assessments.

c) Stability and suitability of settled accommodation (s31 and statutory instrument)

Adrian Stalker presented to the Group on the legal proposals relating to stability and suitability of accommodation. This is set out in section 30D and 31 of the bill and in the draft statutory instrument. Currently the duty is that the person be provided with permanent accommodation, defined as being Scottish secure tenancy, private residential tenancy or in some cases a short Scottish assured tenancy. The Group has expressed a clear recommendation. drawing on the work of the Prevention Commission, for the range and mechanisms under which the duty is discharged to be more flexible and wider to provide a lot more choice for the applicant and this has been drafted within the SSI.

Beth Reid outlined to the Group the current proposals for drafting the SSI using the terms standard and non-standard options. The proposal is to define social tenancies (SST and sSST) and private tenancies (PRT) as "standard" accommodation options. They would be considered to satisfy the definition of stable accommodation, meaning available for at least 12 months. In terms of the PRT there would be some assurance from the private landlord that it would be available for at least 12 months and that legislation relating to those tenancies is met, for example, it is watertight etc. In

addition to being “stable”, they would need to meet suitability criteria in relation to the needs of the household.

Other forms of accommodation would be considered “non-standard” and for these there would be additional safeguards in place. They might include sharing with another household, lodgings with a residential landlord or any other outcome that is not covered by a SST, sSST, PRT or owner occupation. They would need to meet the criteria of being available for at least 12 months and be suitable in the same way as other types of accommodation, so that the accommodation is safe and meets the needs of the household, but also having additional checks to make sure they are suitable, for example ensuring access 24 hours a day, and access to adequate facilities such as own bedroom, cooking and washing facilities. Applicants may only be discharged into non-standard forms of accommodation if they have given their written consent. The Chair invited comments from the Group on the definitions of stability and suitability of accommodation.

The Group discussed the emerging proposals of standard and non-standard options. Those definitions appear to reflect the key principle of the Group’s proposals of widening out the range of housing options beyond discharge into SST, PRT or SSST to enable more flexibility and more choice for the applicant with the protections of assessing the appropriateness of the option for that individual and ensuring that the applicant is able to make an informed choice.

It was highlighted that the Prevention Commission’s principles of choice and control are central to the Group’s recommendations and the categories of standard and non-standard accommodation are central to facilitating this. The Commission feel that the key problem with the current system is that the people in the greatest housing need have the fewest housing options. The Commission consider that the Group’s recommendations need to equalise and extend that the current housing options in order to address that. The Commission recognised a mismatch between the duties toward people who are homeless compared to the duties to people that are threatened with homelessness. If people are homeless the duties are too restrictive and there is no choice and control and the second set of duties for threatened with homelessness are not clear. The Commission used a framework of factors influencing housing choice to guide their discussions around choice and control and security versus choice. The Commission’s finding was that it is not possible to prioritise those factors because priorities were dependent on individual situations. It was clear from the Commission’s discussions that security of tenure is only one of a number of factors for people when making decisions in relation to their housing options, and not always the highest priority. factor

The Group discussed the position in relation to discharge of the local authorities duty if someone is provided with non-standard accommodation which is not sustained during the 12 months. As the legislation has been drafted the intention is that it would be a fresh application as the discharge of duty whether it is following homeless application or prevention application would include this wider range of options.

The Group discussed return to the former home in relation to persons who are at risk of abuse. The Group are clear that this may be appropriate if the individual chose and felt safe to do this, for example, by removing the perpetrator. In terms of the recommendations of the Group there should not be a presumption either way and it is for individual choice and consent.

d) Reviews and appeals (Sections 35A, 35B and 35C)

Adrian briefly noted that the sections relating to review and appeal have been drafted to reflect the Group’s recommendation that the review process is extended and that if an applicant is still not

satisfied with the review then the right of appeal would be to the Housing and Property Chamber of the First Tier Tribunal.

4. Wider public duties and duties on landlords

Adrian Stalker presented to the Group on his drafting in response to Part 2 of the brief from the Group for duties on wider public bodies and landlords. The proposed approach is that the duties are more likely to be effective if they are drafted into legislation most relevant to each public body or landlord rather than the homelessness legislation. The suggested approach is to draft a few exemplar clauses in relation to RSLs, social work and prison authorities rather than being comprehensive. Those would form part of the legal proposals as drafting examples to illustrate how the Group's intentions could be implemented into law and would sit alongside the Group's policy recommendations for other public bodies and landlords. The Group agreed with this approach.

In line with the Group's intention to create a notification duty as part of the referral process from secondary organisations or other agencies, section 24A of the draft amendments to the 1987 Act creates such a duty on a social landlord if they consider there is a person occupying a house who is or maybe threatened with homelessness and who has not made an application for assistance.

Section 28A places the primary responsibility towards people under the age of 18 at risk of homelessness with social work under the Children (Scotland) Act 1995.

There was discussion that the Group have found the Prevention Commission's views helpful in terms of framing its recommendations, namely the concepts of the duty to ask and the duty to act. The duty to act is still being developed into legal proposals, and will be different for each public body or landlord rather than it being a generic duty to act.

Beth Reid referred to the paper circulated in advance of the meeting entitled 'Draft summary of PRG proposals by topic' and said she would welcome comments on it. That contains a summary of the policy intentions of the Group in relation to wider public bodies and landlords together with notes on the progress on developing the proposals for the duties on public bodies and landlords including the duty to ask, and the duty to act.

It was noted that a key element of the effectiveness of any duty to refer to the housing or homelessness service of a local authority or any duty to act depends on this happening as early as possible to ensure that any prevention activity is effective.

The Group agreed with the general approach to legal drafting in relation to the legal duties on wider public bodies and landlords.

ACTION: Legal drafting of proposals for duty to act to be prepared and circulated to the Group for comment.

5. Discussion of wider implications including resourcing

It was agreed that consideration of wider implications, for example costings of recommendations were factors that are outside the terms of reference of the Group. The Group's clear remit from the Scottish Government was to recommend the legal framework not the implementation framework.

6. Next steps for producing report and recommendations

- The Group to provide written comments on the paper 'Draft summary of PRG proposals by topic' re: whether that reflects Group's policy intentions by 10 October.

- The Group to provide information on the timescales that members of the Group need to have legal advisors or experts review the draft legislation. Noted that still some additional work to be done on the draft SSI but that the draft Act is in near final form so that should enable members of the to begin to seek legal input on that.
- A draft of the report will be circulated to the Group at end of October, giving two weeks for the Group to provide comments on the draft report.
- Aiming to finalise the report by the end of November
- Proposal is that the process of finalising the report of recommendations, including the legal proposals, would be by written comments and correspondence. An additional meeting can be arranged if necessary.

ACTION: Group to be provided with a more detailed timeline and schedule for process for finalising the report.