

Review Paper: Considering recommendations on homelessness legislation

Expert Review Panel, February 2023

This paper seeks to provide a brief outline of the key areas discussed by the Expert Review Panel to date. It aims to provide a basis for discussion upon which to outline an initial set of draft recommendations around homelessness legislation.

For each subject area, the paper sets out:

- A brief overview of current legislation
- Key points discussed by the panel
- A summary of evidence in support of these discussions (this includes an overview of research and points raised in consultation with experts by experience and stakeholders.)
- Potential recommendations for the panel's consideration.
For ease of reference, these *potential recommendations are highlighted in red italics*.
Alongside the potential recommendations, key points for consideration are also outlined, including indication of where a recommendation might be affected by other panel decisions in other areas.

The summary of discussion and evidence set out within this paper is intended as an aide memoire only. For more detailed information, please refer to the relevant panel paper.

Likewise, the suggested options for recommendations are intended as a guide only, to which panel members may wish to further consider the draft wording.

The contents of this paper are as follows:

- 1. Prevention and Relief Duties, including:**
 - i. Reasonable steps
 - ii. Failure to co-operate
 - iii. Extension of the 56 day duty to prevent homelessness
 - iv. Support to retain accommodation
- 2. The three legal tests:**
 - i. Priority Need
 - ii. Intentionality
 - iii. Local Connection
- 3. Evictions**
- 4. Allocations**
- 5. Eligibility**
- 6. Temporary Accommodation and Suitability (of TA and settled housing)**

Appendix A

Flowchart from Scotland Prevention Review Group report

1. Prevention and Relief Duties

Brief Overview of current legislation – prevention and relief duties:

Part 2 of the Housing Wales Act 2014 contains the following duties on prevention and relief:

- Section 66 (the prevention duty) sets out that a local authority must help to secure that suitable accommodation does not cease to be available for the applicant.
- Section 73 (the relief duty) states that local authorities must help to secure that suitable accommodation is available for occupation by an applicant who is homeless. This duty can end either after 56 days or, if a local housing authority is satisfied that reasonable steps have been taken, prior to the end of a 56 day period.

It is notable that the provision to end the relief duty after 56 days does not, in itself, contain a requirement that the local housing authority has taken any reasonable steps to help the applicant to secure accommodation.

Support that a local authority may provide to help secure accommodation might include:

- mediation
- payments by way of grant or loan
- guarantees that payments will be made
- support in managing debt, mortgage arrears or rent arrears
- security measures for applicants at risk of abuse
- advocacy or other representation
- accommodation
- information and advice
- other services, goods or facilities.

If the 'relief' efforts to find alternative accommodation do not succeed, under section 75 of the Housing Wales Act, only households with priority need are then entitled to have housing secured by the local housing authority (either in the private rented sector or in social housing). Applicants who 'unreasonably fail to cooperate' with the prevention or relief assistance, or refuse a suitable offer of accommodation, may not progress to this final statutory duty.

In addition, local authorities hold the following preventative duties:

- Local authorities must provide free advice about homelessness and its prevention to any person in the area. This must include publishing information on what homelessness help is available and how to access it (see section 166 of the Housing Act 1996).
- Local authorities must work with others to ensure the system works for those at particular risk of homelessness, including prison leavers, care leavers, those leaving hospital and those accessing mental health services. (See section 52 of the Housing Wales Act 2014).

Key points discussed by the panel on general prevention and relief duties:

- It was acknowledged that a lack of resourcing is undermining the implementation of existing legislation. In light of this, some panel members referenced the importance of phasing in legislative change to ensure that the system is not overloaded.
- It was raised that some applicants were keen to move straight to the final duty to be housed rather than engage with prevention duties.

- The panel considered that a wider duty could be applied to other public bodies to secure improved co-operation and success rates.
- The panel noted that the prevention and relief duties do not apply to all groups, some of which are particularly vulnerable to homelessness. This includes refugees and those with no recourse to public funding. (This matter was discussed further under eligibility, see page 32).
- The panel discussed the importance of cultural change, governance and co-operation as significant drivers for improving prevention and relief. While it was felt that legislation alone would not resolve existing issues, the panel felt legislative change would help to set the context for such a cultural change.

i. Reasonable steps

Brief overview of current law – reasonable steps:

As outlined above, under sections 66 and 73 of the Housing Wales Act, local authorities are required to “help to secure” accommodation or that the accommodation does not cease to be available.

By its definition this “help to secure” means that local housing authorities are “required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority’s resources.”

Paragraph 2.13 of the Welsh Government (2020) *Allocation of accommodation and homelessness: guidance for local authorities* sets out the below list of the minimum ‘reasonable step’ interventions that local authorities ought to have in place:

- advice services
- outreach
- tenancy support
- support services working with people to reduce the risk of homelessness, including Supporting People, Social Services and voluntary work
- housing stock and programmes to increase availability of affordable accommodation where demand is not met
- lettings schemes and their operation by social housing providers
- national and local mobility schemes
- initiatives for maximising access to private rented accommodation
- hostels and other emergency accommodation
- programme of disabled facilities grant
- housing renewal and regeneration schemes.

There is no opportunity within the Housing Wales Act 2014 for an applicant to challenge the local housing authority’s decision as to what steps it is to take, and whether those steps are reasonable. Indeed, there is no obligation to notify the applicant in writing of the local housing authority’s decision as to what those steps will be.

The applicant’s only right to challenge whether the steps taken to relieve their homelessness were reasonable steps is to request a review once the duty to relieve homelessness has ended. There is no opportunity for the applicant to request a review of the reasonable steps taken under the prevention duty.

Key points discussed by panel – reasonable steps:

- Concern that the implementation of “reasonable steps” in existing legislation is inconsistent and is not enforceable. The panel considered whether using different terms, such as “suitable steps” would assist, but determined that different terms may make little difference to the interpretation of a judge.
- An acknowledgment of the inconsistency around delivery of reasonable steps, which can vary between both local authorities and individual caseworkers and consideration of whether a minimum floor for minimum steps is needed on the face of the legislation.
- Alternative options to make the definition of “reasonable steps” more concrete included;
 - Taking a similar approach to England and require Personal Housing Plans to outline which reasonable steps a local authority will take. This ensures the reasonable steps are linked to the individual’s assessment of need.
 - Amending the relief duty could so that it only ceases when the 56 days have elapsed *and* local authorities have complied with the duty.
- The panel acknowledged the lack of enforcement around reasonable steps and considered that the law in Wales only permits a review of reasonable steps once the duty has ended. Moreover, the English act enables individuals to apply for a review of their reasonable steps. The panel considered whether the Housing Wales Act could be amended or new legislation drafted to:
 - Provide applicants with written notification of the reasonable steps to be taken.
 - Enable applicants to request a review of the local authority decision on which steps are reasonable
 - Enable the applicant a right to appeal this decision to County Court.
 - This should apply for both the prevention and relief duties.
- A potential to create some enforcement or scrutiny over types of intervention was considered.
- There was discussion around the implications for the relief duty should the panel decide to abolish priority need, see section on Priority Need for detail.
- A question was raised around whether immigration assistance could be a reasonable step to relieve homelessness. (This area was covered in more detail under Eligibility, see page 32).
- Panel members expressed the view that wider input is required from public services, for example GPs, employers where accommodation is also provided. This will be more fully considered within later aspects of the panel’s work.
- There was a query over whether, where there had been a failure to refer for prevention support, there could be a duty to provide accommodation.

Summary of evidence in support of discussion – reasonable steps:

Research:

- The Welsh Government’s evaluation of the Housing Wales Act¹ found that there was significant variation both across Wales and within local authority areas regarding the

¹ Welsh Government (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: <https://gov.wales/sites/default/files/statistics-and-research/2019-06/evaluation-of-homelessness-legislation-part-2-of-the-housing-act-wales-2014-final-report-summary.pdf>

effectiveness of prevention and reasonable steps. The evaluation identified several recommendations, including practice changes and making Personal Housing Plans more tailored to the circumstances of each individual.

- A lack of case law testing ‘reasonable steps’ has also been identified as a matter of concern.²
- It has also been reported that Welsh local authorities are often conforming to a fairly typical set of limited actions to prevent and relieve homelessness – not the highly person-centred and tailored approach as envisioned by the legislation.³
- Research by Crisis into the effectiveness of the English Homelessness Reduction Act showed that, where PHPs were used effectively, there was a correlation with positive outcomes. However, it also emphasised the need for the use of PHPs to be accompanied with multi-agency support.⁴

Stakeholder session:

The desire for assessments of need to be more person-centred was a clear theme emerging from discussions in the stakeholder event.

Potential recommendations for the panel’s consideration - Reasonable steps

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;*

² Shelter Cymru (2020) *Implementing the Housing (Wales) Act 2014: the role of homelessness reviews and litigation*

³ MacKie, Peter K., Thomas, Ian and Bibbings, Jennie 2017. Homelessness prevention: Reflecting on a year of pioneering Welsh legislation in practice. *European Journal of Homelessness* 11 (1) , pp. 81-107.

⁴ Cuchulainn Sutton-Hamilton, Michael Allard, Rebekah Stroud and Francesca Albanese, *‘I hoped there’d be more options’ Experiences of the Homelessness Reduction Act 2018-2021*, page 33.

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.*

In addition

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.*

Points that may impact on these recommendations:

- *Should the panel choose to abolish Priority Need, this would affect the future of the relief duty (see below in priority need for detail).*
- *The panel may wish to further consider scrutiny of reasonable steps taken by local authorities when discussing regulation at a later date.*

ii. Failure to co-operate

Brief overview of the current law – Failure to co-operate:

The current provision at section 79 of the Housing Wales Act 2014 is that any duty can come to an end where “the local housing authority is satisfied that the applicant is unreasonably failing to co-operate with the authority in connection with the exercise of its functions under this Chapter as they apply to the applicant.” It follows that any of the duties can end for this reason – prevention, relief and the main housing duty. If the prevention duty were to end, and the applicant subsequently become homeless, then the applicant would be entitled to make a new application for homelessness assistance and then to the section 73 relief duty.

If the relief duty were to end for this reason, the main housing duty would not apply even though the applicant had a priority need.

Similarly, if the main housing duty were to end for that reason, no further duty would be owed to the applicant.

Key points discussed by the panel – Failure to co-operate:

- Members of the panel felt that the failure to co-operate clause has led to decisions/approaches that are not intended in the spirit of the Housing (Wales) Act 2014 and could potentially be removed.
- There was a strong sentiment from the majority of the panel that the “unreasonable failure to co-operate” clause can be applied in a way that fails to recognise an applicant’s full circumstances and is not trauma-informed.
- Members of the panel felt that failure to co-operate clause does not reflect that, in order to encourage applicant co-operation, the support available should be reflective of an individual’s differing needs. At present, local authorities require individuals to cooperate and respond in a way that has been set for them, such as through letters or online. These channels may not suit all individuals and there is a need for more flexibility in the system.
- Linked to the above, members of the panel felt that there could be some equality implications for failure to co-operate and there was concern that, potentially an applicant may be considered to be failing to co-operate where the reasons for this failure was in relation to access needs. Consideration of whether reasonable adjustments are required under the Equality Act is required before applying the failure to co-operate clause.
- Whether, if an applicant refuses accommodation for viable reasons, they should be deemed as failing to co-operate.
- The panel considered whether to draw on the English Act to strengthen the failure to co-operate clause in the following ways:
 - i. To amend the Act so that, like the English Act, the applicant must have to have “deliberately and unreasonably” refused to co-operate. To have failed to co-operate in this instance, the applicant must have failed to take any of the reasonable steps recorded in their personal housing plan.
 - ii. To amend the Act so that if the applicant has a priority need and the duty comes to an end for failing to co-operate, they will still be accommodated (although this is for 6 months as opposed to 12). Under current legislation in Wales, the applicant is owed no more duties where they have failed to co-operate
- A number of panel members stated being in favour of abolishing the clause on failure to co-operate altogether, but stated that if it is to remain, a stricter test is needed and more information around what co-operation means would be required.

Summary of evidence in support of these discussions – Failure to co-operate:

Research:

- If the ‘relief’ efforts to find alternative accommodation do not succeed, only households with priority need are then entitled to have housing secured by the local housing authority (either in the private rented sector or in social housing). Critically, applicants who ‘unreasonably fail to cooperate’ with the prevention or relief assistance, or refuse a

suitable offer of accommodation, may not progress to this final statutory duty.⁵ Although it should be acknowledged that this pertains to only a small number of applicants.

- Research suggests that a council citing an applicant as ‘failure to cooperate’ can lead to “so many people fall[ing] outside the system,”⁶ with reasons given for this failure often being unclear.

Stakeholder event:

Stakeholders highlighted that applicants were being failed by a lack of support. It was felt that systems are difficult for applicants to navigate, and that assistance did not always meet their support needs.

Evidence from experts:

Consultation with experts by experience highlighted that applicants felt as though they were “set up to fail” with many citing application processes as being difficult to understand and navigate.

Recommendations on Failure to co-operate

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.*

⁵ Davies, L. And Fitzpatrick, S (2021) *The ‘ideal’ homelessness law: balancing ‘rights-centred’ and ‘professional-centred’ social policy.* Heriot-Wat University.

⁶ A. Ahmed, M. Rogers, M. Wilding, A. Gibbons, K. Jones, I. Madoc-Jones (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report. p.7 - 11

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.*

Points that may impact this recommendation:

- *Option 3a could be affected by whether the panel chooses to recommend that reasonable steps are linked to PHPs?*
- *Option 3b would be irrelevant if priority need were removed.*

iii. Extension of the 56 day duty to prevent homelessness

Brief Overview of the current law- 56 day duty to prevent homelessness:

The prevention and relief duty within the current Housing Wales Act 2014 applies where an applicant is threatened with homelessness within 56 days.

Key points from panel discussion – 56 day duty to prevent homelessness:

- It was noted that, while the guidance is clear that action to prevent homelessness should take place across the 56 day time frame, in practice, action is often focused towards the end of this limit.
- The panel discussed different options for changing the timeframe, including:
 - i. Amend the Act so that a person is regarded as threatened with homelessness once they receive an eviction notice.
 - ii. Extend the timeframe so that the prevention duties apply across the six-month timeframe in line with the no-fault eviction notice in the newly introduced Renting Homes Act. (Although reservations were expressed that authorities may still only focus on the more imminent cases.)
 - iii. Not to make any amendments and then a person may be issued with a notice for 6 months is only considered to be threatened for the last two months (56 days) of that period, so there would be four months of no duty. (It was felt that this does not meet early intervention goals.)
 - iv. Vary the emphasis across the duty, so that it is in place for six months but strengthens in the final two months. (The risk with this approach is that not much is done for the first four months.)
 - v. Removal of the timeframe on the duty altogether. (The risk remains that the focus will continue on imminent cases. A local authority representative felt that, while in an ideal world, we would lose time limits, they are required in helping local authorities to manage resourcing.)
- It was observed that officers deal prevention and relief hand in hand – could those two duties be streamlined?

Summary of evidence in support of these discussions – 56 day duty to prevent homelessness:

Research:

- Respondents to the Homelessness Wales Monitor 2021 mostly felt that further upstream prevention would be useful in terms of extending prevention duties beyond the current 56 days.⁷
- A review of priority need in Wales, published in 2020 found some participants of the review favoured a proposal to extend the definition of ‘threatened with homelessness’ beyond 56 days. Whilst some participants favoured not using a time period within the definition, others recommended any revised definition should align with Welsh Government’s proposed new timeframe for a no-fault eviction notice.⁸

Stakeholder event:

A number of stakeholders at the engagement event in November proactively raised the question of whether it would be worthwhile extending the prevention period. There was a sense that this was not enough time and, as a result, people were being “let down.”

Potential recommendations for the panel’s consideration - 56 day duty to prevent homelessness

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**).*

⁷ Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis

⁸ Mackie, P.; Gray, T.; Hughes, C.; Madoc-Jones, I.; Mousteri, V.; Pawson, H.; Spyropoulos, N.; Stirling, T.; Taylor, H.; Watts, B. (2019). Review of Priority need in Wales. Cardiff: Welsh Government.

Or

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

Points to consider:

- *Amending timeframes on prevention will impact on the potential recommendation, option c within reasonable steps.*

iv. Support to retain accommodation

Current legislation – support to retain accommodation

Under section 62 of the Housing Wales Act 2014, a local authority in Wales has a duty to assess any applicant who applies to the authority for accommodation, for help in retaining or obtaining accommodation, where they appear to the authority to be homeless or threatened with homelessness within 56 days.

The following are examples given in the legislation (section 64 of the Housing Wales Act 2014) of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant:

- (a) mediation
- (b) payments by way of grant or loan
- (c) guarantees that payments will be made
- (d) support in managing debt, mortgage arrears or rent arrears
- (e) security measures for applicants at risk of abuse
- (f) advocacy or other representation
- (g) accommodation
- (h) information and advice
- (i) other services, goods or facilities.

Key points discussed by the panel:

- Panel members discussed the possibility of introducing a **duty to provide support to help retain accommodation**, similar to that within Scottish legislation.
 - There would be a question around how open-ended the duty would be and how the duty would interact with other support duties, for example, around mental health.
 - The timeframe for such a duty would require consideration.
 - The duty could include outlining for an assessment of whether the applicant (or any member of his or her household) has a need for support in order to retain the accommodation. If the assessment identifies a need for support, then the duty owed to that applicant would be a duty to “help the applicant to secure suitable accommodation and to provide support to the applicant to retain that accommodation.”
 - Alternatively, the assessment could identify a need for support and 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.”

A summary of evidence in support of these discussions:

Stakeholder session:

The importance of meeting individual support needs and supporting people to retain tenancies was identified as a key theme.

Potential recommendations for the panel’s consideration – support to retain accommodation

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 be 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.”*

Points to consider:

- *For options a and b, consideration is needed as to whether such a duty would be time-limited, or whether 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. For such a duty to be meaningful, and appropriately performed, Welsh Government would need to issue guidance on co-operation and the provision of support in practice and provide additional resources.*
- *Much support has been expressed for wider duties on public services to co-operate and help prevent homelessness. These will be discussed in more detail in the second half of the panel's work.*

2. The three legal tests

The Housing Wales Act 2014 sets out three legal tests for determining support for those who present as homeless. The panel has discussed each of these tests in turn, acknowledging that each of the tests presents barriers and considering whether the tests should be abolished or reformed.

i. Priority Need

Brief overview of the current law – Priority need:

The priority need test remains at the centre of homelessness systems in Wales. The test has been under scrutiny for some time and has undergone changes since its initial introduction in the 1977 Act.

Under section 70 of the Housing (Wales) Act 2014, certain categories of people should be accepted as being in priority need for homelessness assistance. These categories include:

- Pregnant women
- Those responsible for dependent children
- People made homeless by fire, flood or other disaster
- Young people aged 16 or 17
- People aged 18 – 20 who are at particular risk
- Victims of domestic abuse
- Armed forces personnel
- Vulnerable as a result of time in prison
- People aged 18-20 who have spent time in care
- Vulnerable as a result of some special reason e.g., old age, mental health
- People who are street homeless (*recently added with interim legislation from October 2022*)

If a person is in priority need, the council has a legal duty to:

- Provide interim accommodation whilst deciding what other help is applicable
- Provide the applicant with settled accommodation if, after 56 days has passed and all reasonable steps have been taken, they remain homeless.

Key points discussed by the panel:

- There was broad support for abolishing priority need, recognising the broad range of evidence for doing so provided. Arguments for abolishing Priority Need included:
 - The suspension of Priority Need during the response to the Covid pandemic demonstrated that operations could run successfully without the test in place.
 - Local authority frontline staff would be pleased to have greater flexibilities to help people rather than being forced to turn them away.
 - A culture change is needed, as the tests are not trauma informed. We should avoid people having to ‘meet the conditions for help’.
- However, in abolishing priority need, panel members raised the importance of
 - Consideration of whether a phased approach was needed.
 - Consideration of the impact on temporary accommodation (with awareness of the Scotland situation).
 - Emphasising the importance of the Welsh Government continuing its programme to build more social housing.

Evidence supporting panel discussions

Stakeholder event:

Conversations within the stakeholder event reflected those of the panel. Feelings on priority need were mixed. There was much support for losing priority need, but also hesitancy among some participants who cited that there needs to be a way of prioritising those who are most in need when resources do not match demand.

Experts by Experience:

Demonstrated support for abolition of priority need and a cultural change towards a trauma-informed approach. Particular concern was expressed over the impact on prison leavers no longer holding priority need.

Regional Provider Forum:

Were generally in favour of abolishing priority need but emphasised the need for this to be accompanied with resource and a trauma-informed approach.

Research:

Since the publication of the post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014, in 2018,⁹ there has been growing support for the complete removal of priority need. For example, this includes:

- That abolition of priority need was a key recommendation of the Homelessness Action Group.¹⁰
- The Housing (Wales) Act 2014 introduced a duty to provide assistance with homelessness prevention and relief to all eligible households who are homeless or threatened with homelessness - regardless of priority need. The post-implementation evaluation of this act identified that priority need was a barrier for

⁹ A. Ahmed, M. Rogers, M. Wilding, A. Gibbons, K. Jones, I. Madoc-Jones (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report.

¹⁰ Report from the Homelessness Action Group for the Welsh Government, (March 2020), The framework of policies, approaches and plans needed to end homelessness in Wales (What ending homelessness in Wales looks like)

some groups of people in accessing support who did not meet the threshold. It recommended that more clarity was needed on outlining what constituted the other special reason for being considered vulnerable under priority need.¹¹

- A survey of local authorities conducted to inform the Homelessness Monitor Wales 2021, found clear support from LA for the removal of priority need. It highlights support from housing options officers who feel disappointed at having to turn people away. The report also states: “After its ‘suspension’ throughout the Covid-19 crisis, at least with regards to people sleeping rough, and following a Welsh Government funded independent review, the momentum for permanent abolition of the priority need criterion now seems unstoppable.”¹²
 - The 2019 Review of Priority Need set out a five and ten-year timescale for abolition, adding that such a change would need to be delivered alongside investment in housing supply and resources for local authorities, a better supported workforce, and improved data capture and monitoring. The report estimated that the Welsh Government could expect to see total annual savings of around £9m if priority need was abolished over a five year period, after meeting additional costs for local authorities and support services to meet the additional demand. Such a process needs to work alongside efforts to transition to rapid rehousing approaches, as recommended by the Homelessness Action Group and accepted in principle by the Welsh Government.
- Single men and people who are street sleeping are regarded as the main group of applicants who repeatedly face these barriers, echoing existing research.¹³ Evidence shows that it is this group of people who benefitted most from legal reforms in Scotland to remove priority need.¹⁴
 - As reflected in the stakeholder event and the panel discussions, concerns are documented about the pressure abolition of priority need could place on temporary accommodation.¹⁵

Potential recommendations for the panel’s consideration - Priority need:

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

¹¹ A. Ahmed, M. Rogers, M. Wilding, A. Gibbons, K. Jones, I. Madoc-Jones (2018) *Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report*.

¹² Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis

¹³ Mackie, P.; Gray, T.; Hughes, C.; Madoc-Jones, I.; Mousteri, V.; Pawson, H.; Spyropoulos, N.; Stirling, T.; Taylor, H.; Watts, B. (2019). Review of Priority need in Wales. Cardiff: Welsh Government.

¹⁴ Fitzpatrick, S., Pawson, H., Bramley, G. & Wilcox, S. (2012) *The Homelessness Monitor: Scotland 2012*. London: Crisis.

¹⁵ Mackie, P.; Gray, T.; Hughes, C.; Madoc-Jones, I.; Mousteri, V.; Pawson, H.; Spyropoulos, N.; Stirling, T.; Taylor, H.; Watts, B. (2019). Review of Priority need in Wales. Cardiff: Welsh Government., p.96

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

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.

Points to consider:

- Whether the panel wishes to accompany this recommendation with a caution on the need to also look at improving housing and temporary accommodation stock in Wales.
- Abolition of priority need could affect the relief duty at sections 73 and 75 of the Act .
- The implication of losing priority need for those currently within a priority need category.
- There are also implications for the relief duty should the panel decide to abolish priority need, including:
 - This would streamline and simplify statutory processes to some extent, though it is possible to go further in this respect by having a process that effectively merges the prevention/relief/final duties as is proposed in Scotland (see flowchart from the Prevention Review Group report, attached at Appendix A)¹⁶
 - That all homeless applicants who are eligible would be entitled to interim accommodation.
 - The panel should then consider whether the relief duty should be retained for 56 days (so that applicants are encouraged to find accommodation themselves with assistance via reasonable steps) or abolished, so that the final housing duty would immediately apply once the local housing authority had decided that the applicant was homeless and eligible for assistance.

¹⁶ See [preventing-homelessness-in-scotland.pdf \(crisis.org.uk\)](https://www.crisis.org.uk/preventing-homelessness-in-scotland.pdf)

ii. Intentionality

Brief overview of current law – Intentionality

The intentionality test considers whether or not a person has intentionally made themselves homeless prior to offering support.

Under the Housing (Wales) Act 2014, local authorities can make the decision as to whether they will have regard to intentional homelessness.¹⁷ Local authorities can only consider whether an applicant has become intentionally homeless at the point they are assessing whether the applicant is owed the final duty under section 75 (to secure accommodation) or to refer the applicant to another local authority under the local connection clause. Those found to be intentionally homeless are not owed support to secure accommodation.

Key points discussed by the panel:

- Broad support was given for abolishing intentionality.
- The intentionality test incentivises a way of working which isn't trauma informed and fails to take account of unmet support needs.
- It was noted that although intentionality is 'officially rarely used,' it does feature in earlier conversations with people who may be on the brink of homelessness as a gatekeeping tool.
- People will 'come through the system again' with homelessness repeated if intentionality is found and they are not helped at this point.
- Panel members welcomed the use of assessments of need and supported housing models for those who struggle with the mainstream offers.
- There was discussion around whether, in abolishing intentionality, a means of controlling 'perverse incentive' to access homelessness assistance and gain unwarranted preference in social housing allocations is required. This included the suggestion that households found to "deliberately manipulate" the homelessness system should 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.

Evidence supporting panel discussions

Experts by experience:

Initially, there appeared to be support for keeping intentionality among some of the consulted experts by experience, but when looking in more detail at the responses, there is an understanding of the need for more flexibility to take account of the differing pressures that people may face. Some expressed concern that individuals felt "written off."

The Regional Provider Forum:

The forum demonstrated support for abolishing intentionality being abolished as it goes against a trauma informed approach.

Stakeholder event:

While not universal, there was a great deal of support for losing the intentionality test with participants citing the need for approaches to be person-centred. Many stated that the test is not generally used in practice anyway.

¹⁷ Section 78, Housing Wales Act, 2014

Some felt that the intentionality test provided a tool for local authorities to apply to manage 'perverse incentives' where an applicant is "gaming" the homelessness system, in order to gain unfair priority in social housing allocations.

Research:

- An evaluation of the 2014 Act found evidence of significant variation in the interpretation of intentionality.¹⁸
- The majority of local authority representatives consulted in the above report felt that intentionality decisions are a barrier to positive outcomes, and some reported that intentionality is used as a means to 'gatekeep' access to services.¹⁹
- The success of the prevention and relief models means that the 'becoming homeless intentionally' test has become of far less significance than was previously the case. This is because it could only be applied to an applicant who has a priority need and where relief efforts have been unsuccessful.²⁰
- Research by Shelter Cymru found that intentionality decisions exacerbate a cycle of unmet support needs, "with the long-term resource burden that this implies."^{21, 22}
- Alternatively, those in favour of retaining intentionality in its current form argued it is useful as a disincentive to abusing the system. For example, the Homelessness Monitor Wales for 2021 quotes an official who states: "**[Intentionality] does not apply in many cases, so would be minimal impact; however, we feel concerned that the removal of this would send the wrong message to people, that they could behave poorly, and have no consequences.**"²³
- A paper by Fitzpatrick and Davies outlines a suggested means of safeguarding against perverse incentive to access homelessness assistance in order to gain unwarranted preference in social housing allocations. The suggestion being that households found to 'deliberately manipulate' the homelessness system would 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.²⁴

¹⁸ Ahmed, A., Wilding, M., Gibbons, K., Jones, M., Rogers, I. Madoc-Jones M. Wilding, A. Gibbons, K. Jones, M. Rogers, I. Madoc-Jones (2018) Post-implementation evaluation of part 2 of the Housing Act (Wales)

¹⁹ Ahmed, A., Wilding, M., Gibbons, K., Jones, M., Rogers, I. Madoc-Jones M. Wilding, A. Gibbons, K. Jones, M. Rogers, I. Madoc-Jones (2018) Post-implementation evaluation of part 2 of the Housing Act (Wales) 2014: final report, Project Report. Cardiff: Welsh Government.

²⁰ Davies, L. And Fitzpatrick, S (2021) *The 'ideal' homelessness law: balancing 'rights-centred' and 'professional-centred' social policy*. Heriot-Wat University.

²¹ Campbell, A, J., (2011) *The Impact of Intentional Homelessness Decisions on Welsh Households' Lives*. Swansea: Shelter Cymru

²² Rosengard, A., Laing, I., Ridley, J., Hunter, S. (2007) *Closing the Opportunity Gap: Findings of a Literature Review on Multiple and Complex Needs*. Project Report. Edinburgh: Scottish Executive

²³ Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis

²⁴ Fitzpatrick, S., & Davies, L. (2021). The 'ideal' homelessness law: balancing 'rights centred' and 'professional-centred' social policy. *Journal of Social Welfare and Family Law*, 43(2), 175-197.
<https://doi.org/10.1080/09649069.2021.1917712>.

Potential recommendations for the panel's consideration – Intentionality

1. Options 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.*

Points to consider:

- *There has been concern expressed by stakeholders that some people seeking homelessness support will 'actively worsen' or misrepresent their situation in order to be given priority access to social housing, possibly in collusion with others such as parents who say they are excluding adult children from the family home. While, it was pointed out section 97 of Housing (Wales) Act 2014 already has relevant criminal sanctions, there is a broader concern about 'perverse incentives' shaping behaviours such that those in greatest need may not be allocated social housing.*

iii. Local Connection

The intention of local connection is to ensure that no local authority bears disproportionate costs for rehousing in their area.²⁵, ²⁶ However, it is often regarded as a real barrier for people seeking support as well as a particular barrier for certain groups such as LGBTQ people.

Brief overview of the current law - Local Connection

Local authorities, in determining whether they owe an applicant the duty to help secure accommodation can consider whether a person has a local connection or not. A local connection is currently defined as one of the following:

²⁵ Equality, Local Government and Communities Committee. (2018). Life on the streets: preventing and tackling rough sleeping in Wales. Cardiff: National Assembly for Wales.

²⁶ Baptista, I., Benjaminsen, L., Pleace, N. (2015). Local connection Rules and Access to Homelessness Services in Europe. Brussels: FEANTSA

- (a) because the person is, or in the past was, normally resident there, and that residence is or was of the person's own choice,
- (b) because the person is employed there,
- (c) because of family associations, or
- (d) because of special circumstances.²⁷

These terms are not defined any further in the legislation. Definitions have been formulated and agreed by the Welsh Local Government Association with similar bodies in England and Scotland. This is commonly known as and referred to as the 'Local Authority Agreement.'²⁸

Where a local authority deems there to be no local connection to their area, it may refer to another authority where they do have such a connection.

Key points discussed by the panel:

- Thoughts on whether or not to abolish Local Connection were mixed.
- In favour of abolishing local connection were the following themes:
 - Local connection was felt to be a significant barrier which is often used as a gate-keeping tool.
 - The difficulties for particular groups who may have legitimate reasons for needing to resettle in a new area (e.g., escaping from previous influences, LGBTQ people who may not have felt outcast in previous communities and feel connected to a community in a new area).
 - A concern that keeping local connection will keep people on the streets because we can see that people will remain in areas that they move to, as is demonstrated in research.
 - Suggestion that local connection inflames connection between local authorities rather than helps.
 - Acknowledgement that local connection is not interpreted consistently or implemented lawfully .
 - The local connection test does not always take account of an applicant's full situation and is often not trauma-informed.
- However, concerns with abolishing local connection included:
 - A potential for some local authorities to acquire a greater burden than others despite a lack of housing stock and resource.
 - Consideration of how losing local connection would work in a UK context and a fear that it could lead to homeless 'tourism'.
- The panel considered some alternative and mitigating measures, including:
 - The model within The Homelessness (Scotland) Act (2003), which removes local connection, but enables local connection to be reapplied in areas where there is evidence of excess 'nonlocal' demand.
 - Whether other groups of people could be added to the existing list of those exempt from local connection. However, the concern was expressed that there is difficulty in capturing all individual circumstances within a list and the potential for differing interpretations could mean that a postcode lottery persists. The concern was also raised

²⁷ Section 81(2) of Housing (Wales) Act, 2014

²⁸ Procedures for referrals of homeless applicants to another local authority: Guidelines for local authorities on procedures for referral agreed by Local Government Association (LGA), Convention of Scottish Local Authorities (CoSLA) and Welsh Local Government Association (WLGA). [See here.](#)

that sometimes, applicants may have safety or protection concerns in reporting the reason as to why they have fled their home authority.

- There was interest in how other countries approached the abolition of local connection, as outlined in the panel briefing paper. This included action to suspend or abolish the local connection rules but make allowance for money/resources to follow people, so that applicants can apply as homeless wherever they wish to, but local authorities can reclaim costs from each other where they accept applicants whose local connection lies elsewhere. A regulatory body investigates where there are disputes. However, some were concerned about whether such a system would be accompanied with increased bureaucracy.
- Encourage, through the codes of guidance, local authorities to cooperate with each other in local connection referrals, rather than enter turf-wars as to which local authority might be responsible. Local authorities should also be encouraged to cooperate on the provision of suitable accommodation.
- Other points raised included:
 - With regard to equality, the loss of local connection may require areas to consider broadening of housing stock – e.g., around adapted housing
 - If local connection is retained should reconnection services be mandated in local authorities with the heaviest net in-flow?
 - Concerns were raised about the implementation of local connection and whether it is being inconsistently interpreted/misinterpreted by local authorities.

A summary of evidence in support of these discussions:

View of experts by experience and Regional Provider Forums:

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

Stakeholder Event:

There were mixed views around losing local connection with many participants positive about the idea, but hesitation from local authority representatives. There was particular concern around how to ensure that this does not place undue burden on certain areas. Representatives also raised fears about how this policy would work alongside England, which is not looking to make the same change.

Research by Tai Pawb reported that local connection can present a barrier for protected characteristic groups, including LGBTQ people who may be fleeing from abuse and/or seeking to connect with a LGBTQ community.

Research:

- The Homelessness Action Group recommended removing the local connection test. It also suggested making available a properly supported and voluntary (in word and spirit) 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.²⁹
- There was general consensus from local authorities responding to the Homelessness Monitor Wales (2021) survey against the ending of local connection rules. With 19 out of 22 council representatives judging that such a move would not be beneficial. The removal of the rules was seen by local authority representatives as being difficult to implement, with fears from every type of local authority that such a change would increase demand in their area.³⁰
- Key informants to the Homelessness Monitor Wales (2021) survey were more sympathetic to the removal of local connection, albeit with the understanding that the redistributive impact of demand on local authorities would need to be considered.³¹
- The post-implementation evaluation of the 2014 Housing (Wales) Act also identified local connection as an area where additional work was needed to understand what changes would be beneficial, recommending that further research be carried out around local connection with a view to establishing a national reconnection service across in Wales.³²
- The *No One Left Out* report outlines why people may seek support outside of their home authority. While there is some evidence to suggest that people move to more 'service-rich areas', the report states that this is less prevalent and significant than may be presumed.³³ Those seeking support outside their 'home' local authority typically report two or more motivating influences. The report also highlights that, even where not offered accommodation, applicants will often remain in an area.

Potential recommendations for the panel's consideration – local connection:

Potential recommendations 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

²⁹ See Homelessness Action Group 2020 report, available at [Homelessness Action Group: report July 2020 \(gov.wales\)](https://gov.wales/homelessness-action-group-report-july-2020)

³⁰ Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis

³¹ Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis

³² A. Ahmed, M. Rogers, M. Wilding, A. Gibbons, K. Jones, I. Madoc-Jones (2018) *Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report*. Available at: <https://gov.wales/statistics-and-research/evaluation-homelessness-legislation/?lang=en>

³³ Mackie, P., Thomas, I. (2016) *Transitory Single Homelessness in Wales*. Cardiff: WISERD

- 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;³⁴ 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.

Points to consider:

- *Local connection and residency requirements are also applied within social housing allocations – a separate but related point on which the Panel may wish to make recommendations (see below).*

3. Evictions

Overview of the current Law - Evictions

Social Housing and evictions:

Under the newly introduced Renting Homes Act, most social housing tenants will have a secure contract. Under a secure contract, RSLs can only evict tenants if they can provide a legal reason. For example, this may include rent arrears, anti-social behaviour, illegal activities, causing damage, overcrowding the home with lodgers, lying to obtain the property.

However, there are some circumstances where a social housing tenant may be issued with a standard contract. For example, a person moving into supported housing might be placed on a standard contract in recognition of the intention to move onto a permanent home once the person

³⁴ Mackie, P. and Thomas, I. (2016) Transitory Single Homelessness in Wales. Cardiff: Cardiff University.

is equipped to live independently. Under a standard contract, community landlords (councils and housing associations) will be required to provide 6 months' notice for a "no-fault eviction" and would not be entitled to issue such a notice until 6 months of tenancy.

Where a contract-holder has breached the occupation contract, the minimum notice period that must be given is one month. However, this notice period can be shorter where it relates to a breach of the anti-social behaviour or the serious rent arrears terms.

Private Housing and evictions:

Under the Renting Homes Wales Act, private landlords are usually not allowed to give a 'no fault' notice until at least 6 months after a periodic standard contract starts. The notice period is 6 months.

Some renting arrangements with standard contracts allow private and community landlords to give a 'no fault' notice ('section 173 or, a break clause notice if you have a fixed term standard contract) **at any time**. For example, if an employer is providing the property, if a person is living in temporary accommodation provided by the council, those living in supported accommodation, and those with a prohibited conduct standard contract.

Key points discussed by the panel:

- It was noted that evictions, both from social housing and PRS, are often a result of unmet support needs.
- The view was expressed that RSLs are already putting proactive measures in place to prevent evictions so legislative change is not required. Alternatively, others felt that legislative change would embed and future proof existing good practices.
- It was stated that eviction into temporary accommodation should be regarded as an eviction into homelessness.
- Some members expressed that there is a need for improved data on evictions from social housing.
- Concern was expressed that Wales risks becoming the only GB nation to have no-fault evictions.
- The Minister has indicated that ending no-fault evictions would require the introduction of new grounds for eviction. Could the panel consider a new set of grounds that could replace no-fault evictions? It was noted that the National Residential Landlords Association (NRLA) in England is supportive of abolishing no-fault evictions provided mandatory grounds are in place.
- There are a high numbers of illegal evictions in Wales with no consequences for landlords. Members of the panel wondered whether Rent Smart Wales could be given the power to impose civil penalties.

A summary of evidence in support of these discussions:

- The panel's legal advice stated that, in reality, the Court will only find that it is not reasonable to make an order for possession or (much more usually) suspend any order if it considers:
 - That the tenant has a realistic prospect of paying current rent and repaying the rent arrears over a reasonable period; or
 - That the tenant will abide by any conditions intending to prevent anti-social behaviour.

As a result, tenants owing rent arrears or where they or a member of their household has committed anti-social behaviour will often be evicted into homelessness.

- Prior to the pandemic, Wales was working towards a policy of ‘no evictions into homelessness.’ In October 2019, the Homelessness Action Group recommended that a ‘pact’ should be agreed to ensure no evictions from social housing (or housing supported by the public purse) into homelessness and increased allocations to homeless households.³⁵ The Homelessness Action Group also noted the wider debate about regulation in this area, e.g., housing association regulations and/or a regulator with powers to address homelessness.
- The Welsh Government indicated in its action plan that it wants to use the reduction in evictions due to pandemic measures to as a catalyst for a ‘no evictions into homelessness’ policy to be ‘adopted close to a universal level’.³⁶

Stakeholder event: Attendees at the stakeholder event highlighted that evictions are often a result of unmet support needs, especially within the private rented sector, where landlords do not have the support.

Potential recommendations for the panel’s consideration – evictions:

1. Include a ‘duty to provide support’ to retain accommodation on the face of the Housing Wales Act

Refer to recommendations on page 11 for details.

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:

³⁵ See [Homelessness Action Group: report October 2019 | GOV.WALES](#)

³⁶ See [Ending homelessness in Wales: a high level action plan 2021 to 2026 | GOV.WALES](#)

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.”

Points for consideration:

- *If recommending a ‘Duty to Support’ there may need to be an accompanying recommendation on increasing revenue funding to match this*
- *Amending the pre-action protocol would require Welsh Ministers to negotiate this with the UK Ministry of Justice.*
- *It is worth noting that within the current development of no-fault evictions legislation in England (the Renting Reform Bill), tenant bodies, charities, and landlords do not agree with the grounds to replace section 21. Tenant bodies and charities are leaning more towards discretionary grounds, whereas the NRLA is calling for some mandatory grounds.*
- *Recommendation 4(a(ii)) above assumes that priority need is abolished. If it isn’t, then those being evicted from social housing who lacked priority need would not be entitled to interim, temporary or settled housing – so acceptance of a ‘duty’ by the local authority does not necessarily mean that they would have accommodation to go to.*
- *If the Panel was to seek to bar evictions from social housing into temporary accommodation – including for those being evicted on grounds of Anti-Social Behaviour, as well as rent arrears – the implications in terms of prioritising this group over others in housing need for access to settled housing (including people being made homeless for other reasons) in order to allow evictions to take place needs to be considered. For this reason, the Scottish proposals are to bar evictions into rooflessness rather than (statutory) homelessness.*
- *It was noted that recommendations around illegal evictions and civil penalties is beyond the scope of the panel, but general policy context should be included in the final report.*

4. Allocations

Brief overview of the current Law on Allocations of Social Housing in Wales:

Local Housing Authorities:

Allocation of housing accommodation by local housing authorities in Wales is governed by Part 6 Housing Act 1996. Homeless functions within Part 2 of the Housing Wales Act 2014 also hold relevance.

Local housing authorities in Wales have very little discretion to exclude applicants from the allocation scheme (“the waiting list”). Grounds for exclusion include:

- Applicants who are guilty of unacceptable behaviour as defined at section 160A(7) and (8) of the Housing Act 1996 may be excluded from the allocation scheme;
- Applicants will be excluded from the allocation scheme on the basis of their immigration status or being persons from abroad;

Save for those excluded on the basis of immigration status, local housing authorities may not exclude classes or groups of people from the allocation scheme, each application has to be considered individually and only the unacceptable behaviour test can be applied.

In terms of prioritisation with local authority allocation schemes, local housing authorities:

- **must** frame their schemes so as to give reasonable preference to applicants in the five groups set out at section 167(2) of the Housing Act 1996. These are; people who are homeless; people who are owed any duty by a local housing authority under section 66, 73 or 75 of the Housing (Wales) Act 2014; people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; people who need to move on medical or welfare grounds; and people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).”
- can **choose** to frame their scheme so as to give additional preference to applicants who have a reasonable preference and have urgent housing needs
- can **choose** to frame their scheme so as to give greater preference or lesser preference on the basis of: i. Financial resources available to an applicant; ii. The applicant’s behaviour; and/or iii. Local connection. So local connection can be used to prioritise but not to exclude from an allocations scheme.
- can withdraw reasonable preferences or lower the preference of an applicant found guilty of unacceptable behaviour.

RSLs and Housing Associations:

The Housing Act 1996 Act requires registered social landlords to “co-operate” with local authorities in offering accommodation to people with priority on the local authority’s housing register and in offering assistance to homeless persons. This duty does not require an RSL to accept all nominations and there is no statute or governing the circumstances in which RSLs can refuse to accept nominations. The basis on which a RSL can accept, or refuse, any nomination by the local housing authority should be contained in the contractual arrangement agreed between the RSL and the local housing authority.

The regulatory framework sets minimum standards for the operation of Housing Associations in Wales. However, there is no standard governing the allocation of accommodation, whether directly by RSLs or in co-operation with local housing authorities.

The Housing Association Circular RSL 004/15 (Welsh Government, July 2015) directs RSLs to “take account” of the Welsh Code. This requires that they should consider carefully the information about their allocation policies; should not involve Board members in decision-making on individual allocations; and that they should monitor their allocation outcomes.

Beyond that, RSLs are free to draw their own allocation schemes in order to govern direct lettings. Such schemes cannot of course be discriminatory as prohibited by the Equality Act 2010 but otherwise there are few constraints.

Key points discussed by the panel:

- Social housing allocations to homeless households are proportionately much lower in Wales than Scotland and there is very little legislation on allocations in Wales, though there appears to have been a recent increase. This is an area where the Minister is looking to the panel to bring forward legislative proposals.
- Consideration of whether the data on allocations presents an accurate picture.
- Allocations do not come under legal aid, so it is difficult for people to challenge. There is a need to ensure that review of allocation is accessible.
- Allocation legislation in Scotland covers both local authorities and housing associations. Panel members suggested that all local authorities in Wales should move to common housing register and have a common allocations policy with their local RSLs. A person entering the system at crisis point to access housing, regardless of where they are in Wales, should have equity in expectations and process to allocations. It was raised however, that even with a common housing register and a common allocations policy, there is still a possibility for inconsistencies around how both lettings processes work and how prioritisation criteria are applied.
- Some LAs have increased their percentage of allocations to homelessness households to up to 50% of their nominations. But households that are not homeless may feel it necessary to 'become homeless' to reduce their waiting time on permanent accommodation. It was felt unlikely that the Panel would look to set quotas through legislation as local decisions are needed.
- Identified examples of policies for exclusion on allocations included rent arrears, history of offending, antisocial behaviour and pets. There should be a trauma informed, case-by-case approach to assessing these examples and giving second chances.
- The social allocation systems used by different LAs are unclear and confusing for (potential) applicants. Reasons for prioritisation and waiting times should be clearly communicated with applicants. This needs to be addressed but is perhaps beyond the scope of the Panel.
- The panel discussed whether an approach similar to the section 5 used in Scotland should be considered for Wales. This legislation gives local authorities power to require that a housing association rehouses a statutorily homeless household referred to them. There were mixed feelings among the panel, some were supportive of the notion feeling that it would operate as a good backstop. However, it was noted that in discussion with the CHC working group on homelessness, housing association representatives had not been supportive of the idea. There was a feeling that, in Wales, Housing Associations enjoy a more collaborative relationship with LAs and there was concern about the risks to the independence of HAs should a similar model be adopted. It was also suggested that the way Common Housing Registers work in Wales also reduces the need for section 5. The alternative of a duty to encourage partnership working and early discussion around how cases could be housed, alongside the appropriate resources to support them, was discussed.
- Concern was raised that legislating around allocations might potentially trigger a reclassification of housing associations.
- It was recognised that there is evidence of good-will and work on improving allocations, but some members of the panel felt that legislation would help to ensure such practice continues beyond personnel change and is delivered more consistently across Wales. There was concern about excessive reliance on 'goodwill'

- Panel members felt there was a need to ensure that review of allocation is accessible for people who do not have recourse to legal aid.

Evidence supporting panel discussions

Concerns regarding reclassification: Further research into the concern that legislation on allocations could trigger a reclassification of housing associations has suggested that this would be highly unlikely. The historical reasons for reclassification have been centred around a permanent transfer of asset ownership as opposed to allocations.

Concerns regarding data: Housing Associations have expressed concern that current statistics do not demonstrate the full extent of allocations to homeless households.

Some Housing Associations have suggested that data should be reviewed for accuracy before deciding whether legislation is required in this area. Others feel that legislating in this area would serve to future-proof for the continuation of any good practice.

Stakeholder event:

- There is wide concern about how allocation policies (e.g., on a history of rent arrears, convictions, unacceptable behaviour and no pet policies) can present obstacles for those with a history of rent arrears, convictions, or what is deemed unacceptable behaviour.
- Allocation systems are not consistent, and many talked about the need for a more collaborative approach.
- Some raised the importance of a person-centred approach to allocating placements and matching support needs.
- Housing supply and the lack of types of accommodation (e.g., for single occupants) was highlighted as a key issue.

Attendance at housing association working group on homelessness:

- Concern was raised that data on allocations is believed to be unreflective of the work done allocating to homeless households.
- Attendees were concerned about having percentage allocation targets which would not reflect the wider picture of support provided.
- Attendees talked about the need to consider resourcing the support needs of homeless applicants and how this needs to be balanced with the viability of running costs for a project.

Research:

- In 2006, the Local Government Ombudsman for Wales published a special report on homelessness and allocations.³⁷ The report outlined that in many cases, the Ombudsman had found local authority allocations policies to be unlawful. For example, applying blanket policies that failed to take account of individual needs.

³⁷ Housing Allocations and Homelessness: A Special Report by the Local Government Ombudsman for Wales, 2018. See <https://www.ombudsman.wales/wp-content/uploads/2018/03/Housing-Allocations-and-Homelessness-E-1.pdf>

- A further 2021 report published by the Ombudsman highlighted failings with homelessness services and suggested there be consideration of a Housing/Homelessness Regulator role to support and provide information and guidance to local authorities.³⁸
- At the time the CIH 2020 review was published, 19 of the 22 local authorities in Wales were utilising a common housing register (CHR). The review outlines that local authority staff felt that, though not without its challenges, working with a CHR promoted better relationships and collaboration with their housing association partners
- In 2020, CIH Cymru published a review of the allocation of social rented housing in Wales within the context of COVID-19.³⁹ This review suggested that the biggest issue facing those responsible for allocating social housing is the mismatch between supply and demand which subsequently leads to allocation schemes becoming part of a rationing process.
- People trying to secure social housing in Wales are found to have very different experiences depending on where they present. Analysis from the review of the allocation of social rented housing in Wales found that under normal circumstances (i.e., before the COVID-19 pandemic), the schemes used by at least 7 local authorities in Wales do not place homeless applicants, or those threatened with homelessness in the highest priority banding.⁴⁰
- The Homelessness Monitor Wales (2021) suggests that RSLs have taken positive steps around ending evictions into homelessness but highlighted that some key informants were of the view that this had not yet been matched with a similar level of commitment on allocations to homeless households.
- StatsWales data suggests that a lower proportion of housing association homes are let to homeless households than local authority housing.⁴¹ The Homelessness GB monitor (2022)⁴² also shows housing associations in Wales as having the lowest proportion of allocations to homeless households. The monitor reports that in highlights that in 2018-19 (the latest year data available for all three GB countries), 39% of lettings to new social tenants in Scotland were used to resolve homelessness compared to 25% in England and 22% in Wales, though latest data suggests an increase in Wales to 30% of allocations.⁴³
- Applicants can find allocation systems difficult to navigate. The 2020 *Time to refocus?* Review of social housing suggests that systems need to be modernised and easier to access.
- Statistics published by the Welsh Government suggest that there is significant variation in the percentage of places allocated to homeless households.⁴⁴
- It should be acknowledged⁴⁵ that data collection on Housing Association allocations in Wales is regarded by many as flawed and may not accurately represent the number of households experiencing homelessness being accommodated by RSLs. The Wales Homelessness

³⁸ See *Homelessness Reviewed: an open door to positive change*, The Public Services Ombudsman for Wales 2021

³⁹ J. Kent, E. Brock (2020) *Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19*

⁴⁰ J. Kent, E. Brock (2020) *Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19*, p.7.

⁴¹ [Number of lettings during the financial year by local authority area and type of letting \(gov.wales\)](#)

⁴² B. Watts, G. Bramley, S. Fitzpatrick, L. McMordie, H. Pawson, G. Young (2022) *The homelessness monitor: Great Britain 2022*. London: Crisis

⁴³ Note that the scale of the gap is overstated because of data problems, especially with the Welsh data, but the overall picture of Scotland's more generous policy towards rehousing those accepted as homeless is accurate.

⁴⁴ See [Microsoft Word - Quarterly Surveys - Sep 2022 - Welsh HAs - Survey Summary report - Eng \(gov.wales\)](#).

⁴⁵ Community Housing Cymru (2019) *The Allocation of Social Housing to Homeless Households in Wales*

Monitor⁴⁶ identified that key informants criticised these statistics on the grounds that the basis on which they are compiled had failed to be updated to take account of changes in the homelessness legislation post the passage of the Housing (Wales) Act 2014.

Potential recommendations for panel to consider – allocations

1. Options to strengthen allocations to homeless households could 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

⁴⁶ Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis

preference in social housing allocations because of their statutory homeless status. This test would have no bearing on any other homelessness-related entitlements.

Points to consider:

- It is deemed to be unlikely that legislation on allocations could trigger a reclassification of housing associations. However, the panel could advise in making any recommendations in this area that Welsh Government lawyers seek to safeguard against this when drafting legislation.*
- Considering concerns raised, the panel may wish to consider a recommendation around data collection on allocations to homeless households in Wales*
- Engagement with Housing Associations to seek their views in this area is ongoing.*

5. Eligibility

Brief overview of the current Law on Eligibility in Wales:

A local authority has a duty to carry out a homelessness assessment to determine whether a person is eligible for help when they apply to the authority for accommodation or for help obtaining accommodation and it appears that they may be homeless or threatened with homelessness.

Schedule 2 of the Housing (Wales) Act 2014 also outlines that a person is not eligible for assistance under Part 2 of the Act, if;

- they are a person from abroad who is ineligible for housing assistance.
- they are a person who is subject to immigration control within the meaning of the [Asylum and Immigration Act 1996](#), unless they are of a class prescribed by regulations made by the Welsh Ministers.

In April 2022, The Welsh Government amended these regulations enabling those who are fleeing the current Ukraine crisis to be eligible for allocation of housing.⁴⁷

The eligibility rules contained in the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 govern homelessness applications. Regulation 5 sets out the classes of people who are subject to immigration control but are still eligible for housing assistance. Regulation 6 sets classes of people who are not subject to immigration control but are still to be treated as persons from abroad who are ineligible for housing assistance.

In order to be eligible for certain aspects of welfare support in the UK, including benefits and housing allocation, a person must be considered to have recourse to public funds. A person is considered to have No Recourse to Public Funds (NRPF) if they are 'subject to immigration control', as defined at section 115 of the Immigration and Asylum Act 1999. The NRPF Network website lists the types of immigration status a person must have to access public funds.⁴⁸

In practice, NRPF can include people with status who have an NRPF condition attached to their visa, people applying for asylum, and people who don't have status, for example because their asylum claim was rejected or they overstayed their visa. The options for support for people in these different situations will vary even though all have NRPF.

⁴⁷ [The Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) \(Amendment\) Regulations 2022](#)

⁴⁸ See <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements>.

Concurrent jurisdiction means that eligibility regimes are different in different nations in the UK. In Wales, Welsh Ministers are able to make eligibility regulations for people subject to immigration control in Wales. The UK Secretary of State makes similar regulations for England. However, the definition of “people subject to immigration control” is contained in UK legislation and so is the responsibility of the UK Secretary of State.

Welsh Ministers do have the power to decide who can receive homelessness assistance in Wales. The Housing (Wales) Act 2014 identify as eligible:

- i. Certain people subject to immigration control, i.e. refugees with permission to come to the UK. Welsh Ministers have the power to decide whether to *include* them and make them eligible for homelessness support.
- ii. Other persons from abroad who are not subject to immigration control, i.e. returning British/Irish citizens. Welsh Ministers have the power to decide whether to *exclude* them and make them ineligible for homelessness support.

Key points discussed by the panel:

- It was suggested that around 3% of people who make an application for homelessness assistance are not eligible. However, this likely does not show the whole picture as many people know they are not eligible so do not apply.
- The panel sought legal advice on recommending to the Welsh Government that the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014, SI 2014/2603 (“the Regulations”) are amended so as to include, at Reg 5, “persons subject to immigration control whose leave is subject to a condition that they have No Recourse to Public Funds” as eligible for homelessness assistance. It was deemed that while the Welsh Government could make this change, to make it feasible in practice, there would need to be political discussion between Welsh Government and Westminster.
- The panel discussed that if legislation extends the eligibility for homelessness assistance to those with NRPF, local authorities would need additional services to properly support and move people into settled accommodation because they do not have access to housing benefit.
- Panel members discussed examples of other groups that they feel should be eligible for homelessness assistance, despite having NRPF. For example, women on spousal visas fleeing domestic abuse, people with NRPF who have children with special needs, victims of modern slavery. Welsh Ministers may wish to make a case that the people in these situations are presenting to Welsh local authorities and the local authorities have to act quickly, rather than wait for the Home Office to assess whether their immigration status means they have access to public funds or not.
- There are examples of public funds that people with NRPF do have recourse to. For example, access to social services for children, access to emergency healthcare. Therefore, it may be possible to seek assistance for these groups via the Social Services and Wellbeing Act guidance.

Evidence supporting panel discussions

Research:

- The Welsh Government declared Wales a Nation of Sanctuary and launched its *Nation of Sanctuary Plan* in 2019.⁴⁹ The Plan pledges positive measures to support integration of people seeking sanctuary in Wales and to mitigate destitution.
- In their feasibility study⁵⁰ on providing accommodation for refused asylum seekers in Wales, Petch and Stirling outline that the Nation of Sanctuary Plan,⁵¹ requires cross-Government actions across Welsh Government and Westminster.
- In 2021, in the first representative survey conducted with people with NRPF, Citizens Advice found that in the UK almost half (48%) report living in overcrowded accommodation and 1 in 5 (18%) have experienced homelessness or housing insecurity.

Stakeholders: Tai Pawb work with experts by experience from equality groups, including refugees is ongoing.

Potential recommendations for the panel's consideration – eligibility:

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.*

Points to consider

- *There is a potential unintended consequence that the Home Office may choose to amend Section 115 of the Immigration Asylum Act 1999, which currently excludes people with NRPF from cash benefits, to specifically exclude them from access to homelessness assistance.*
- *The Westminster Government will likely not accept changes to NRPF – making public funds accessible to those who do not have a leave to remain would be inconsistent with the current*

⁴⁹ https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf

⁵⁰ H. Petch, T. Stirling (2020) Providing Accommodation for Refused Asylum Seekers in Wales

⁵¹ https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf

policy direction. However, if the Home Office believed that the result of the provision would be statistically insignificant, it is possible that the Home Secretary may accept it.

- *Within future meetings, the panel will consider how to strengthen the use of duties already present in the Social Services and Wellbeing Act to assist those with NRPF in vulnerable housing situations.*

6. Temporary accommodation and suitability (both within temporary and settled accommodation)

Brief overview of the current law - Temporary Accommodation:

Temporary accommodation is designed to give homeless households a safety net whilst acting as a bridge to more settled accommodation. A local authority's duty to provide accommodation to a homelessness applicant depends on a number of factors, as explained below.

If an applicant is in priority need, under section 68 of the Housing Wales Act, a local authority has a duty to provide interim accommodation. This duty runs concurrent to section 73 which requires an authority to help an applicant secure suitable accommodation.

When the section 73 duty comes to an end, some applicants will then be eligible for support under section 75 of the Housing Wales Act. Under section 75, if the applicant is a priority need, not intentionally homeless and is eligible for support, the local authority must secure accommodation for the applicant (unless there is no local connection, in which case they can be referred to the home authority). Where there is no permanent accommodation available, local authorities in practice utilise temporary accommodation.

The Homelessness (Suitability of Accommodation) (Wales) Order 2015 sets out time limits for which B&B accommodation is suitable for temporary accommodation. It sets out that those who are priority need should only be placed in temporary bed and breakfast accommodation in an emergency and generally should not remain there for longer than **six weeks**. Where the accommodation is classed as a "basic standard," the length of stay should be reduced to **two weeks**. However, time limits do not apply when:

1. *the authority believes that the applicant may be homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster, and no other accommodation is reasonably available to the authority; or*
2. *the authority has offered suitable accommodation to the applicant, but the applicant wishes to be accommodated in other accommodation.*

Overview of current legislation - Suitability:

Whenever a local housing authority in Wales secures accommodation under the Housing Wales Act 2014, that accommodation must be "suitable" for the needs of the applicant and for anyone who is residing with the applicant or might reasonably be expected to reside with the applicant.

Accommodation provided under the interim accommodation duty (section 68) and the final housing duty (section 75) must be "suitable."

Section 59 provides that in determining whether accommodation is suitable for a person, a local housing authority must have regard to the following enactments:

- Part 9 of the Housing Act 1985 (slum clearance);

- Part 10 of the Housing Act 1985 (overcrowding);
- Part 1 of the Housing Act 2004 (housing conditions);
- Part 2 of the Housing Act 2004 (licensing of houses in multiple occupation);
- Part 3 of the Housing Act 2004 (selective licensing of other residential accommodation);
- Part 4 of the Housing Act 2004 (additional control provisions in relation to residential accommodation);
- Part 1 of this Act (regulation of private rented housing).
- In determining whether accommodation is suitable for a person, a local housing authority must have regard to whether the accommodation is affordable for that person.

The Codes of Guidance in both England and Wales contain recommendations that, as a minimum, local housing authorities should ensure that accommodation is free of Category 1 hazards (English Code, para 17.25; Welsh Code, Para 19.37).

In addition, the Homelessness (Suitability of Accommodation) (Wales) Order 2015, contains standards of suitability for bed and breakfast and shared accommodation.

Local housing authorities in Wales are required to consider, when assessing whether accommodation is suitable for any applicant who has, or may have, a priority need:

- The specific health needs of the applicant and of any member of his or her household;
- The proximity and accessibility of family support;
- Any disability;
- Proximity and accessibility of medical facilities and other support services which are currently used by or provided to the applicant or a member of household and are essential to that person's well-being;
- The proximity of alleged perpetrators and victims of domestic abuse (Reg 3 Homelessness (Suitability of Accommodation) (Wales) Order 2015).

There are also three conditions that must be satisfied before a private rented sector offer for applicants to whom the main housing duty to fulfil a section 75 duty. Those relate to the physical condition of the property and the suitability of the landlord.

Furthermore, suitability of accommodation is affected by duties under the Equality Act and by duties to safeguard children.

Case law around suitability is from England but is instructive for Wales. This has demonstrated that suitability can be considered to vary over timeframes; that suitability must be applied for the whole household; and that blanket policies on what is suitable is inappropriate.

An applicant has the right to turn down an accommodation offer if it is not suitable for their needs and continue to be owed the rehousing duty. A suitability review must be requested within 21 days of receiving the offer.

Social housing is subject to the following quality and performance regimes:

- **Welsh Housing Quality Standards.** The Welsh Housing Quality Standard (WHQS) is the Welsh Government standard of social housing quality. The WHQS was first introduced in 2002 and aims to ensure that all dwellings are of good quality and suitable for the needs of existing and future residents. The WHQS measures 41 individual elements within seven categories.

- **The Regulatory Framework for Housing Associations Registered in Wales.** The Welsh Ministers have general functions under section 75 of the Housing Associations Act 1985 to facilitate the proper performance of the functions of registered social landlords and to maintain a register of social landlords. In addition, under the 1996 Act, Welsh Ministers have powers to regulate registered social landlords in Wales. Furthermore, under section 33A, the Welsh Ministers may set standards of performance (the regulatory standards) to be met by registered social landlords in connection with their functions relating to the provision of housing and matters relating to their governance and financial management.
- **Renting Homes (Wales) Act 2016 - Fitness for Human Habitation.** The Renting Homes Act sets out a requirement for properties in Wales to be 'fit for human habitation'. This is based on the 29 hazards under Housing Health and Safety Rating System and includes keeping the exterior such as drains and gutters in repair as well as all services like gas, electricity, and water.

Key points discussed by the panel:

- **Profiling of Temporary Accommodation supply:** Panel members acknowledged that the "everybody in" approach combined with the lack of supply of temporary and settled accommodation is placing pressure on the system. The panel noted that information available on temporary accommodation supply is not adequate. More information is needed on the current stock profile across Wales in terms of suitability, type and location. It was suggested that profiling work of the supply of temporary accommodation should be undertaken and could then be used to assist local authorities to collaborate regionally on temporary accommodation placements in order to better meet support needs of applicants. It was noted that such a process should take account of the move towards a Rapid Rehousing approach in Wales, which will ultimately reduce the need for temporary accommodation in the future. A profiling exercise should be mindful of this and, for example, could consider how temporary accommodation stock could be flipped to meet suitability for settled housing. A question was also raised around whether a review of the Local Housing Marketing Assessment system, which feeds into PDPs and decisions on allocations is helping to fund supply in the most effective way.
- **Data:** The need for more accurate data on temporary accommodation and duration of stay was discussed as well as data on how equality groups are affected by different types of temporary accommodation.
- **Support needs:** The panel noted the difficulties arising from people being placed in unsuitable temporary accommodation, or temporary accommodation that does not meet an applicant's support needs. There is a need for a trauma-informed approach and for person-centred support while in temporary accommodation.
- **Review process:** There was discussion on the review process for those who find themselves in unsuitable temporary accommodation and whether the current 56 day process presents too much of a window whereby people can be left residing in unsuitable temporary accommodation. It was decided to look into this area of legislation. The panel also wished to consider whether there is a need for legislation to be strengthened in relation to local authorities informing applicants at each key point of the process of their right to appeal and access to advocacy in order to do so.
- **Homeless at Home:** The panel raised the concept of "homeless at home," which is fairly widespread use in parts of England, and wondered whether this concept could help people to seek alternatives to temporary accommodation, while ensuring that they were not deprioritised for settled housing. It was clarified that Homeless at Home is also used in

Wales, but to a far less extent. Any encouragement of its wider use would need careful balancing to safeguard against certain situations – e.g. feeling pressurised to stay with an abusive partner. Under current legislation, those who turn down an offer of temporary accommodation and instead stay homeless and home should not be deprioritised but questions arise over whether current practices misinterpret the legislation.

- **Additions to minimum standards of suitability in temporary accommodation:** The panel discussed whether the existing minimum standards for suitability could be extended to take account of the points outlined within the experts by experience paper. There was discussion around whether the panel should look at core minimum standards for suitability that apply across all types of accommodation - interim, temporary and settled housing – but also identify any additional/different standards required in congregate settings in particular. There was also discussion around whether, some of the standards outlined in existing legislation could be strengthened. For example, existing legislation guards against sharing bedrooms with strangers, but consultation work with experts by experience demonstrates that this is happening in practice.
- **Linking suitability to person-centred/trauma informed approach:** The panel recognised that suitability is linked to individual experiences and needs. While the current law on suitability requires local authorities to take into account some specific circumstances of an individual (e.g. adaptation requirements as a result of having a disability), it does not necessarily require local authorities to make person-centred decisions on suitability. The panel wondered whether the link between suitability and a person-centred assessment of need could be strengthened on the face of legislation. The following suggestions were raised: Linking suitability to PHPs; requiring local authorities to consider a list of points in relation to suitability; inserting a legislative obligation to take into account an applicant's history and experiences, including those of trauma; placing a stronger legislative emphasis on the need for local authorities to consider the applicant's views.
- **Guidance on suitability:** It was raised whether guidance on suitability could utilise a broader definition of abuse and exploitation. While it is welcomed that the guidance highlights the need to consider location issues for those fleeing domestic abuse, consultation with experts by experience shows that there are also many other forms of abuse and exploitation that may need to be considered when finding suitable accommodation.
- **Communication with applicants:** Concerns were raised around tenant uncertainty while staying in temporary accommodation. The panel decided to consider how legislation could secure more robust communication with tenants both around progress towards finding settled accommodation and on their rights within the housing application process.
- **Consideration of policies and house rules in temporary accommodation:** The panel discussed that policies can present persistent barriers to accessibility of temporary and settled accommodation, e.g. policies around rent arrears and pets. House rules within temporary accommodation can also present barriers, for example curfews can make working difficult for some tenants.
- **Affordability:** Panel members emphasised the issue of affordability within temporary accommodation. Service charges in temporary accommodation can lead to people accruing debt, but at the moment can only be challenged through bringing forward a suitability review.
- **Regulation:** The panel noted the Public Ombudsman's report on issues around suitability and felt that this is an area where regulation and monitoring could play a crucial role. The panel will be discussing regulation at a future meeting and will revisit regulation in this area at that point.

Summary of evidence supporting panel discussions:

- Due to a multitude of factors, application levels for temporary accommodation are currently very high in Wales, see latest figures [here](#).
- A survey from Cymorth Cymru survey of people who had experience of staying in temporary accommodation showed 24% had stayed in self-contained flats or homes, 24% in a hotel or B&B, 12% in a hostel with shared space, 6% in a refuge with shared space and of the 35% who answered 'other', answers included emergency accommodation and shared housing. A number of participants had experienced a variety of types of temporary accommodation, including direct access hostels, as well as temporary supported accommodation for single people, families and young women.
- The average length of stay in temporary accommodation is not currently routinely collated on an all-Wales basis. However, a study, published by Shelter Cymru in 2015 revealed that participants spent widely varying lengths of time in temporary accommodation. Although some had spent less than the national average of 111 days, the majority had stayed for more than five months and the longest for four years.
- It is acknowledged that a range of factors are contributing to stays in temporary accommodation that are beyond the time-limit. A 2022 report from the Bevan Foundation suggests that the gap between rental costs and the Local Housing Allowance (LHA) can both push people into homelessness and *'undermine Welsh Government and local authority efforts to reduce homelessness.'*
- Perth and Kinross Council in Scotland have worked to transform their homelessness services and use of temporary accommodation from 2014. The councils have reconfigured their services, merging Housing Options, homelessness and housing allocations in an effort to offer a rapid rehousing system called Homes First. They reported reducing the length of time people spend in temporary accommodation to 79 days, compared to 199 in the whole of Scotland. The councils also report a 25% reduction in the number of homeless people waiting on settled accommodation.
- In Denmark, central government has devised a financial incentive for local governments to move people on from temporary accommodation to more permanent residencies.
- The negative impact that prolonged stays in unsuitable temporary accommodation can have on a person's wellbeing are well documented. Shelter Cymru's report looking into suitability of temporary accommodation in Wales in 2015 stated that "very few" of the participants had found their temporary accommodation to be suitable for their needs. The report highlighted that suitability was a particularly acute issue for disabled people.
- Similarly, in 2018, Crisis conducted research on the experiences of people in Scotland being housed in unsuitable temporary accommodation, such as B&Bs, for prolonged periods. Participants in the research spoke about how staying in unsuitable temporary accommodation led to isolation and loneliness which, in turn, caused a deterioration in their mental health. The lack of access to cooking facilities meant that 4 in 10 participants went without a meal daily.
- The Public Services Ombudsman's investigation into the homelessness system, published in 2021, found that many local authorities were failing to adequately consider suitability when offering accommodation. The report cited the failure to consider suitability of a placement as one of three core reasons for assessments being overturned. It referenced a host of examples of unsuitable accommodation, including being located near a perpetrator of abuse; being located away from support networks; being placed in accommodation that didn't meet a person's disability requirements; and being placed in the presence of influences when seeking to rehabilitate from substance misuse or criminal behaviour.

- The above Ombudsman report made several suggestions including:
 - Reviewing the Housing Wales Act and the associated Code of Guidance to ensure a more consistent approach to homelessness – particularly post COVID-19.
 - Reviewing 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.
 - Standardise review documentation across Wales.
 - Review the effectiveness of the post-review appeal process, given the difficulties clients have accessing Legal Aid.
 - Improve and standardise the homelessness service across Wales by considering the creation of a Housing/Homelessness Regulator role to support and provide information and guidance to local authorities.

Stakeholder event:

- Supply was identified as a core issue by many – both in terms of a lack of suitable accommodation to move onto (especially single person accommodation) and in terms of availability of a range of types of temporary accommodation to meet varying needs, including supported accommodation for those with complex needs, wet houses and self-contained rooms.
- There was a general recognition that temporary accommodation is lacking in standard and presents difficulties for occupants, often creating more trauma.
- Some participants felt the Renting Homes Act placed particular pressure on temporary accommodation.
- Participants highlighted the lack of supply and variation of accommodation types as being an underlying issue in being able to offer applicants accommodation that meets their suitability needs.
- There was an acknowledgement that, in placing people in unsuitable accommodation, their needs can increase and that people are being failed by the system.
- Concerns have been raised by Tai Pawb in its ongoing work with experts by experience that availability and awareness of suitable accommodation for disabled applicants is a particular issue.

Experts by Experience:

Points raised included:

- That there is much variation in the support available in temporary accommodation and there is not the diversity of provision required to meet individual's particular needs.
- That standards are poor with a lack of basic facilities (e.g. laundry and cooking) and privacy.
- That temporary accommodation can feel unsafe and chaotic.
- Basic health and safety standards were highlighted as an issue.
- That location of temporary accommodation was often an issue. For example, located away from child's school or located close to problematic influences.
- Families experienced particular difficulties with sharing single rooms, which led to various difficulties and restrictions in their lives.

Those consulted identified that change is needed in relation to:

- The lack of communication around progress towards accessing a settled home
- Time limits for temporary accommodation
- Better quality accommodation with access to improved facilities.

Potential recommendations for consideration by the panel – Temporary Accommodation and Suitability

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.*

Points to note:

- *Further legal advice on this area is expected.*
- *Regulation around suitability will be considered at a future panel meeting.*
- *Should the panel choose to abolish priority need, this could also have an impact on the profiling of temporary accommodation in Wales.*
- *It was raised that 'Homeless at Home', if applied incorrectly, can lead to gatekeeping or people being pressured into staying in unsuitable or abusive households.*
- *Considering whether the issues identified arise from gaps within existing legislation or from incorrect implementation will determine whether these points are best addressed within legislation or guidance.*

Appendix A

Flowchart from “Preventing Homelessness in Scotland”

Prevention Review Group, Scotland 2021

