

## Response to the Scottish Government's Consultation on Local Connection and Intentionality

April 2019

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help. We're here so no one has to fight bad housing or homelessness on their own.

Shelter Scotland welcomes the opportunity to respond to this consultation on local connection and intentionality. Both local connection and intentionality were considered by the Homelessness Taskforce in the early 2000s and the groundwork was laid for these provisions to be suspended or removed, but no action has been taken since. We believe that this has resulted in a system in many areas which does not holistically consider a person's situation when they approach their council for homelessness assistance and creates unnecessary barriers.

We support that this is being revisited following on from the Homelessness and Rough Sleeping Action Group's (HARSAG) recommendation and believe that changing these two tools in the way that is proposed could pave the way for a more person-centred homelessness system, in line with the principles of the Scottish Government's Ending Homelessness Together action plan. Shelter Scotland feels that changing these measures will show a truer picture of homelessness and housing need in Scotland and go some way to ensuring that all those in housing need can get the help and support they require.

Key points:

- **Shelter Scotland agrees with the proposals** to change the local connection and intentionality tests. However, we do not think they go far enough. **Shelter Scotland advocates removing these tests entirely** but recognises that this is a longer process and interim steps should be taken.
- **Shelter Scotland frequently assists clients with both local connection and intentionality decisions**, and most of our frontline advisers state that they get a new case involving an intentionality decision at least once a week, and a local connection case slightly less often.
- Most of the clients we work with are **successful in overturning their intentionality or local connection decision** and are eventually given a full homelessness duty.
- So, we believe that local connection and intentionality are being used as **rationing tools** to prevent or delay people from accessing a full homelessness duty and that people are often being given an incorrect decision without full cognisance of the facts surrounding their homelessness. As a result, their time in the homelessness system is unnecessarily prolonged, which can add avoidable distress and uncertainty for people at an already difficult time.
- In terms of local connection, **we believe that if people who are homeless leave an area where they have a connection or present as homeless in a different area to where they have been staying, it is usually for a very good reason** and that the decision they have made is most often in the best interests of their household.
- In terms of intentionality, we believe that this barrier is particularly overused and **intentionality decisions are often made without proper investigation of a person's circumstances**. We find that effort is rarely made on the part of the local authority to understand the situation in its fullness, whether better support and preventative work could have helped to avoid the situation, and what impact an intentionally homeless decision will have on the household's ability to access a secure and affordable home.
- **A strong, sustained programme of affordable housebuilding** is central to the success of these policy changes, to address the pressure currently facing the system,

and to ensure that any localised variations in demand for temporary and permanent accommodation as a result of these policy changes can be met.

- **Both local connection and intentionality** hinders people in moving away from homelessness. This is not in line with the driving principles behind the HARSAG recommendations or Ending Homelessness Together plan of collaborative working, a person-centred system and a 'no wrong door' approach, and Shelter Scotland strongly supports change in this area.

**1. Commencing the local connection provisions in the Homelessness etc. (Scotland) Act allows Scottish Ministers to modify referrals relating to local connection. The HARSAG has recommended that referrals should be suspended between all local authorities for all groups. Do you think we should:**

- Suspend all local connection referrals**
- Modify local connection referrals in another way (please give details)**
- Not commence these provisions i.e. do nothing**

**Please explain your answer.**

While Shelter Scotland agrees with the principle of suspending the power to refer, we believe that this proposal should go further in that the power to assess someone's local connection should simply be suspended in its entirety, with the view of full removal once its impacts are measured and understood.

We question whether the proposed modification of local connection referrals truly fulfils the policy intention of helping to deliver a person-centred approach, giving people access to support where they need it. It appears that by modifying or removing the ability of a local authority to refer a person to another local authority, this removes the main power of the local connection policy, but raises questions around whether the local authority can still deem someone to have no local connection and what impact this will have on the person's ability to access the support they may require as well as access to housing provided by the local authority.

The information provided in Annex E of the consultation paper states that there were 495 people in 2017-18 who were assessed as having a local connection with a different local authority, however only 117 people were referred to another local authority under the provisions of the 1987 Act. These figures for no local connection are in our view, minimal, and represent just over 1% of all homeless decisions made in that year. We therefore think suspending referrals will not have an unmanageable impact on local authorities' ability to properly fulfil their duties. The gap between those with a local connection to another authority and those who are referred suggests that most people have a strong need to stay in the new local authority regardless of the decision they have been given and raises questions as to what their eventual housing outcomes really are. Further, we are aware that many referrals are made informally between areas and as well as raising questions about how well this is captured by official data, we are concerned that if the policy change is made, local authorities may continue to refer, but increasingly on an informal basis, rather than via the 1987 Act.

The current legislative and guidance position on local connection is wide and vague. In order to have a local connection, a person must;

- Be normally or previously resident in the area, and the residence was of their own choice; or
- Be employed in the area; or
- Have family associations; or
- Have special circumstances.

If a person does not (to the local authority's satisfaction) fulfil one or more of the above criteria, the local authority has the power to refer them to a local authority where they do have a local connection. Despite the guidance around local connection being wide, we believe it to be frequently applied incorrectly and many people are being referred as soon as there is the slightest indication that another local authority may have a duty towards them, without considering what is in the best interests of the household. People must be trusted

and empowered to make decisions that are best for them, and not encounter unnecessary barriers along the way. We have also worked with people who have been referred back to their local authority despite being at risk of violence, which is completely inappropriate and unsafe and counter to the Code of Guidance. It is therefore imperative that guidance is updated and strengthened.

## **Case study**

Shelter Scotland is currently supporting a young woman to appeal a no local connection decision that she received. The client had been homeless in a different local authority but left due to an assault which occurred in her temporary accommodation. She went to the local authority that her father had moved to six months previously to be closer to him and to receive support for a mental health disorder. The new local authority tried to refer her back to her original area, but the client did not wish to go.

Our experience working with people who have been deemed to have no local connection to the area they have chosen to present in is that they will more often than not remain in the area and attempt to find alternative accommodation there. Concerningly, we have worked with people whose no local connection decision has directly led to them to rough sleeping, often for years on end. Otherwise, we know that people opt for expensive private rented sector accommodation through lack of other options, which risks putting them into hardship. Our advisers have told us that people with no local connection *"...can be pushed into situations where they end up with landlords who are waiting for someone who is desperate and will accept poor housing, which tends to be advertised directly on likes of Gumtree and not through reputable letting agents"*.

We acknowledge the difficulties that some local authorities may face, as the work opportunities and availability of services in certain areas make them appealing to live in. We emphasise the importance of the Scottish Government working closely with local authorities to understand the impact of the policy but to keep service users and the policy intention behind the HARSAG recommendation at the forefront. The exercise of suspending local

connection referrals may also provide a valuable opportunity for the Scottish Government to understand what services or lack thereof are driving people to and from areas.

**2. Please tell us about any potential impacts of suspending referrals relating to local connection for people who are homeless or at risk of homelessness. Please include any positive or negative impacts.**

**We are particularly interested in your views on the potential impacts for the following:**

**(i) People with multiple and complex needs....**

**(ii) Families with children....**

**(iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....**

**(iv) Local authorities and partner organisations....**

**(v) Business or third sector organisations...**

**(vi) People experiencing domestic abuse...**

**(vii) Others....**

In terms of the impact on specific groups, we believe that changing the provisions around local connection would benefit all groups who are seeking homelessness assistance. It may have a particularly positive impact on people who have multiple and complex needs and who struggle to access the services they require if they live in an area which is not particularly well-served by support services.

We frequently advise and support people who have moved to a certain area for work due to the lack of opportunities in their own area. Being able to move into sustainable work is central to being able to move out of poverty, however having no local connection risks being a barrier to this transition. This was particularly the case in the North East of Scotland that many people moved there to seek opportunities in the oil and gas sector before the downturn. Since the downturn, we are anecdotally aware of several people in the area who have lost their jobs in this sector but who have been deemed as having no local connection when they approached their council for assistance.

Otherwise, if the provisions around local connection were commenced and properly implemented, it would mean in practice that our advisers' time, as well as that of other advice and advocacy organisations could be spent helping more people with their housing issues.

## **Case study**

Over the course of two years, Shelter Scotland worked with a client who had significant mental health issues, which were exacerbated by his homelessness. For much of his homelessness, the client slept rough while two local authorities disputed who had a homeless duty to him. He initially presented to the local authority he previously had a tenancy in but chose to leave and apply somewhere else as he was working, and the cost of temporary accommodation was too high. He applied to a neighbouring council, who tried to refer him back to the original council twice on the basis of no local connection. The new council did not provide any temporary accommodation or accept an application, despite the client rough sleeping.

Regardless of never being properly interviewed, the new council eventually gave the client an intentionally homeless decision but did not provide the advice and assistance that this decision entitled the client to. During this time, the client managed to hold down a job and did at one point manage to save enough for a deposit and rent in advance but could not get a private let as he could not get references or pass a credit check as he had no address for 18 months. The client contacted both councils and Shelter Scotland many times to try to get help and was only accepted as homeless and was housed by the new council after many months and many attempts at interventions by Shelter Scotland. This case study exemplifies how a person chose to go to a new local authority for legitimate reasons, but his support needs were overlooked and worsened while two local authorities disagreed over the case.

**3. We propose monitoring the impact of any changes to the local connection legislation through continued collection and analysis of HL1 data. Please give us your views on this.**

Currently, while it is available on request, local connection data is not adequately published or clarified in the biannual homelessness statistics publications. We feel that it is extremely important to consider how the data is collected, published and understood in order to appropriately measure how local connection tests are currently used and to gauge the impact of changing this policy, particularly the outcomes for people. We have also mentioned above that we know many referrals take place on an informal basis and are not recorded, and this being captured properly is intrinsic to understanding the issue better. It is also particularly important to ascertain how different localities experience the change. If data collection on local connection is continued, there should be robust guidance around this and emphasis on the fact that this is for monitoring the impact of the change only.

**4. Commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003 leads to giving authorities a discretion, rather than a duty, as to whether to investigate whether or not a household is intentionally homeless. Do you think we should:**

- Remove the duty on local authorities to assess households for intentionality**
- Not remove the duty on local authorities to assess households for intentionality**

**Please explain your answer.**

We support in principle the proposal to change the provisions around intentionality to make it a power for local authorities to investigate rather than a duty, however we also believe that, ideally, the intentionality test should be removed in its entirety. It should be replaced by a far more narrow and targeted power to investigate if there is a strong and evidenced suspicion of manipulation of the system. This would need to be further consulted on and very carefully legislated for and accompanied by detailed guidance. Our response to the proposal around deliberate manipulation regarding this is outlined in more detail in our response to Question 7.

We understand that the intention of this policy change is to approach people's homelessness more holistically and enable more people to access the support they need, and we wholeheartedly welcome this. However, we question whether simply reducing the duty to investigate intentionality to a power will have any real effect as local authorities struggle to meet need with insufficient resources, which in turn has created a culture of rationing in several areas. Investigating local connection is a power rather than a duty and we believe this not to have stopped its overuse, and there is not much distinction between a power and a duty if a local authority chooses to use it thus. On the other hand, this may open up additional legal avenues to challenge local authorities' decisions and advocate for clients, for example, legal challenges about the application of the power to investigate may be more possible if it is felt that the power is being applied in an indiscriminate way.

According to Scottish Government homelessness statistics, intentionally homeless decisions made up 1,551 or just over 5% of all assessments made in 2017-18. As above, a significant part of our work is to support people to challenge an intentionally homeless decision. We find that most of our clients have a strong reason to appeal their decision, the vast majority of appeals are successful and they are given a new unintentionally homeless decision. At this point, most people then go on to access socially-rented accommodation. This suggests that intentionality tests are often being used inappropriately and are unnecessarily prolonging a person's homelessness where a full duty is in fact owed.

### **Case study**

An EEA national with a 6-year-old son came to one of our community hubs for assistance as they were due to be evicted the following day for rent arrears. The Council refused to defer the eviction for further investigation into the client's right to reside.

The client was evicted but Shelter Scotland staff arranged temporary accommodation and a homeless assessment. This assessment confirmed that the client had derivative right of residence. The initial decision of intentional homelessness was overturned, and the family were made statutorily homeless. The client and their son are now in a permanent tenancy,

and a backdated benefits payment which Shelter Scotland helped them obtain has allowed them to pay for appliances for the property.

We frequently find that local authorities, through time pressure, culture or misunderstanding, do not always take into account all the factors of a person's homelessness and make a decision based on superficial facts. Most of our intentionality cases are where people have been given an intentionally homeless decision based on previous arrears. This is despite the Code of Guidance stating in Section 7.17 that;

*"It should not be assumed automatically that an applicant is intentionally homeless where they have lost their accommodation because of rent or mortgage arrears. Reasons should be fully explored and decisions made as to whether arrears resulted from deliberate acts or omissions."*

### **Case study**

Shelter Scotland recently assisted a lone mother with three children who was in a Short Assured Tenancy. She had a rent shortfall of £146 per month due to the benefit cap and lost her tenancy. The household applied as homeless but the council returned an intentional decision due to high rent arrears. The client also had issues with a controlling ex-partner who stopped her making rent payments, which wasn't taken into consideration. Shelter Scotland is currently helping the client to appeal the decision.

We find that people are often misinformed by local authority staff about what constitutes intentionality and that they will be "causing their own homelessness" if for example they leave a home when threatened with eviction by a landlord before the whole process has been completed. This puts tenants in very uncomfortable, unnecessary and sometimes even unsafe situations for fear that they will not be accepted as homeless. This example reiterates why definitive guidance is so crucial.

## Case study

A client approached their council for assistance after he was seriously assaulted in his council flat and felt it was unsafe to remain there. The council advised him that if he gave up the tenancy, he would be deemed intentionally homeless, despite evidence and letters from his psychiatrist, care manager and MP. A referral was made to Shelter Scotland's assisted presentation group after the council refused to take a homeless application. Shelter Scotland's assisted presentation group supported the client to present as homeless but no temporary accommodation was offered. The following day, the client was supported to present again and supported accommodation was provided. Two weeks later, the client was given a positive homelessness decision and received a written apology.

Our advisers describe how intentionality is applied as;

*"Generally poor level of investigation and reasoning. Guilty until proven innocent type thinking in majority of decisions. If decision is not turned over then people are usually forced into situations that are less than ideal and sometimes harmful e.g. examples of clients returning to addiction, prison, rooflessness."*

*"...LA's seem to not look into it and just what's on the face of it. Issue seems to be a lack of consistency in doing reviews, also no learning is ever taken from the decisions and they continue to be made."*

As touched on above, if an intentionally homeless decision is not overturned, we have found that people are sometimes forced into dangerous situations, such as returning to addiction, going to prison and similarly to those with no local connection, finding themselves roofless. We have also found that many people who have an intentionally homeless decision experience a life in limbo while they struggle to access suitable and affordable housing; we have worked with clients who have had little option but to remain in temporary

accommodation for months and even years, as they have no reasonable alternative accommodation. As we have highlighted many times in our campaigning and policy work, temporary accommodation is often extremely expensive and this type of situation is a poor use of resources, but is unavoidable if there are no other options for the person.

Through our casework Shelter Scotland is able to take the time to thoroughly discuss and consider a person's situation, and coupled with being an organisation that people trust with often sensitive and difficult issues, this means that we can understand the situation in a more rounded and holistic way and are able to advocate on the basis of this. It is also evident to us that many people with an intentionally homeless decision will have a support need which has either led to or has been exacerbated by their housing situation, which until we engage with them may not have been recognised by the local authority, or worse, ignored.

#### **Case study**

Shelter Scotland recently supported a young man who had received an intentionally homeless decision due to abandoning their previous tenancy. This was despite the fact that the client had significant mental health and alcohol dependency issues. Another organisation had appealed the decision unsuccessfully before and Shelter Scotland appealed again on the basis of the lack of advice and assistance provided to the client by the local authority. This appeal was unsuccessful. Eventually, a new homeless application was taken after Shelter Scotland's law service became involved in the case.

If the provisions are commenced, we would hope that this would mean that local authorities take a more rounded approach to assessing a person's homelessness. However, once a support need is identified, there is a further question of whether this support is actually provided. Desktop analysis of how well support needs are currently met showed that of 11,435 households identified as having a support need under housing support regulations, 9,420 (82%) received support either during their application or as part of their rehousing

outcome, while 2,015 (18%) did not.<sup>1 2</sup> Given that these statistics relate only to people who have an unintentionally homeless decision and nearly 20% of needs were not met, this raises the question of whether there is enough support provision to include more people as should inevitably (and correctly) happen if the intentionality provisions were to be enacted. Again, many people we work with who have intentionality decisions often have support needs which go unmet for long periods, and these needs would be better met if they did not have the barrier of intentionality.

It is important to note that an intentionality case requires many hours of casework on the part of our advisers. It is resource intensive, and when the high rate of decisions being overturned is considered, this makes the case that if the local authority took the time to consider all elements of a person's homelessness, they would almost inevitably be given an unintentionally homeless decision at the outset. Therefore, changing the intentionality provisions would mean that our advisers would be able to advise and support more people in other challenging situations.

Again, we have concerns that this outlined change would have a limited impact in areas of significant housing pressure. There is the risk that the spirit of changing the intentionality test from a power to a duty may not be embodied by local authorities who already struggle to fulfil their statutory duties and so must be complemented by a strong housebuilding programme of affordable and social homes, so that local authorities does not lapse back and overuse the power as a rationing tool, as we see happening now.

**5. Please tell us about any potential impacts for people who are homeless or at risk of homelessness, of commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003. Please include any positive or negative impacts.**

**We are particularly interested in your views on the potential impacts for the following:**

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<sup>1</sup> Scottish Government (2018); Homelessness in Scotland 2017-18

<sup>2</sup> Adhoc statistics request to the Scottish Government

- (i) People with multiple and complex needs....**
- (ii) Families with children....**
- (iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....**
- (iv) Local authorities and partner organisations....**
- (v) Business or third sector organisations...**
- (vi) People experiencing domestic abuse...**
- (vii) Others....**

As outlined above, we feel that commencing the intentionality provision would hopefully ingrain a more holistic approach to homeless assessments, for all groups. As before, getting a decision of intentionality often leads to an unnecessary period of limbo for people and this provision being commenced would give certainty to what can otherwise be a very uncertain period in a person's life.

We anticipate that some local authorities will struggle with this change from duty to power, and if this is not recognised, we are concerned that they will overuse the power to effectively the same extent as it is currently used and bar people from accessing the services they need.

## **6. Please detail any potential costs that maybe incurred should the local connection and intentionality provisions be commenced.**

Local authorities will inevitably need resources to fully engage in this policy and practice change, and this should not be overlooked. These resources will primarily be needed to provide support for people, to increase the supply of temporary accommodation and to build more permanent affordable homes.

## **7. HARSAG recommended narrowing the definition of intentionality to focus only on instances of deliberate manipulation. Please provide your initial views on the advantages and disadvantages of amending the definition. As noted in section 2 we**

**intend to carry out further work on this at a later date and your initial thoughts will help inform this.**

We are aware of the pressures that the homelessness and housing system is under and recognise why there would be a desire to keep some type of protective element to ensure that scarce resources aren't being misused. However, we are concerned that this is not within the spirit of the legislation and believe that there is only a very tiny proportion of people who apply as homeless could accurately be described as "deliberately manipulating" the system. Applying as homeless is not something that is decided upon lightly, and when a person does so, it suggests a real and genuine need for assistance.

To us, there is a greater problem of rationing and blocking access to services, which is far more pressing. We know that people are frequently being denied their rights, and often because a decision maker has come to a quick conclusion without considering the facts, and feels pressured to do so because they know, for example, that they cannot provide enough temporary and permanent accommodation to meet demand.

If this approach were to be taken, significant clarity as to what exactly "deliberate manipulation" is would be required, and we would advocate this to be applied in only the most extreme of circumstances. In practice we know that many people who become homeless do not have any real housing options aside from a social rented tenancy, and regardless of how a person becomes homeless, a housing need often remains. We believe there should be a conversation in this regard around housing duties towards people who have for example, engaged in sustained and serious antisocial behaviour in their neighbourhood and consideration of good practice examples in some local authorities such as offering SSSTs.

Needless to say, strong guidance would need to be provided alongside any new approaches, otherwise we would have a system which is no different to the one we have now. This system does not adequately consider people's situations and support needs and this failure is being compounded further by lack of supply of temporary and permanent accommodation,

affordability problems, and support services and local government budgets being stripped away.

**8. While we are in a position to commence these provisions in 2019 we would welcome your views about the most effective timing, including reasons for your response.**

In terms of timing, while the Scottish Government may be in a position to implement the provisions in 2019, and this speed of action is welcome, we question whether rushing through this policy alongside all the other actions involved in the Ending Homelessness Together plan, namely all the actions associated with Rapid Rehousing Transition Plans, will be feasible and sustainable. In addition, the Code of Guidance has not yet been reviewed or updated and this exercise is fundamental to ensuring the success of any changes to local connection and intentionality policy.

While not intended to dissuade the Government from commencement of the provisions, it is likely that more resources will be needed on the part of local authorities to fully engage with the policy change to best effect. Commencing these provisions is likely to lead to more people being owed a full homelessness duty and support duties and as a result, this will have effects on other areas of housing policy, namely housing supply. If local authorities are not prepared and properly supported by central government, this policy will not have the intended impact.

Detailed guidance to accompany any changes will be required at the point the changes are made, in order to assist local authorities and ensure consistency of provision. There must not be a time delay between policy implementation and the publication of new guidance, as was the case with Housing Options.

**9. Please give us your views on the impact of these proposed changes on people with protected characteristics (see Annexes E and F for currently available national**

statistics):

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

We feel that the proposed changes would have a neutral effect on people with protected characteristics.

**10. In relation to local connection and intentionality provisions in homelessness legislation, please outline any other comments you wish to make, including whether you think there may be unintended consequences (you have not mentioned elsewhere) related to commencing these provisions.**

None.

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