

## **White Paper on ending Homelessness in Wales**

### **Answers to the Consultation Questions on behalf of the Society of Labour Lawyers**

The Society of Labour Lawyers is the legal think tank of the Labour Party. It is the pre-eminent professional association for lawyers on the left of politics and supports the Labour Party in developing legal policy and advising on legal proposals. This response It has been prepared by the housing and levelling up sub-group of the Society of Labour Lawyers. Many of us are practising lawyers, and our members also have wide-ranging expertise in housing and related areas of policy.

#### **Questions following Chapter 1 (pages 26-55)**

**1. Do you agree these proposals will lead to increased prevention and relief of homelessness? Yes/no**

##### **ANSWER**

Yes

**2. What are your reasons for this?**

##### **ANSWER**

In brief the proposals are:-

- to refine the definition of “threatened with homelessness “ so that a person is threatened with homelessness if s/he is likely to become homeless within 6 months or has been issued with a Notice of Possession (paras 65/66 page 28);

- to refine the definition of “homeless” so that a person who is permitted to reside in an area but without access to clean water, waste and toilet facilities is to be deemed homeless (para 68). This is intended to apply particularly to those residing in caravans or houseboats.

- to introduce a statutory duty on the local housing authority to draw up a Personal Housing Plan (PHP) containing the steps the local housing authority will take to secure accommodation for each homeless applicant both at the prevention and main duty stages, the PHP will record the applicant’s views on the type of accommodation that she or he needs (paras 77/78 page 30);

- to introduce a statutory duty to review the applicant’s needs assessment and the PHP with the applicant within 8 weeks and additionally review if circumstances change (including a change to the duty owed to the applicant), that review can include the applicant’s views on the type of accommodation that she or he needs (para 81 page 31);

- to provide for the right to request:

- a review of the reasonable steps to be taken to prevent homelessness or secure accommodation outlined in the needs assessment/PHP; and
- a review of the suitability of accommodation secured at any time during the applicant's occupation (para 92 page 33);

- the right to request a review should be clearly communicated (para 95 page 34);

- the review is to be completed in 3 weeks unless an extension is agreed in writing (para 96);

- information and advice on homelessness and prevention is to be made available free of charge to any individual in a local housing authority (LHA) area or with which that person has a local connection. That information to include (1) the LHA system for tackling homelessness and how it operates (2) other assistance for the homeless (3) how to access the system.

### **Reasons for agreement**

As can be seen from the above, the proposals emphasise early intervention and constant review taking into account the views of the applicant.

In our view, early intervention is vital. As the White Paper observes the highest contributory cause to homelessness is the end of the applicant's tenancy (para 61). Early intervention can avoid homelessness altogether, for example by allowing time to solve or come to agreement with the landlord about a rent arrears situation or assisting with securing alternative accommodation. Likewise the involvement of the applicant in the PHP and review enables informed decisions to be made which will facilitate a satisfactory outcome. The PHP should make clear the steps to be taken which should avoid misunderstanding. The right to request a review should have the same effect. We observe that the proposal that the right to request a review is to be clearly communicated (para 95) should specifically state that the right to request must be communicated **in writing**.

Information and advice are also important as, for a prevention service to have effect, it needs to be generally well known so that those affected are aware this resource is available.

The Society makes further observations on the revised definition of "threatened with homelessness" in its answer to question 14.

### **3. Are there additional legislative proposals you think we should consider to improve the prevention and relief of homelessness?**

#### **ANSWER**

Referring to the last point made above, provision for pro-active dissemination of information is recommended to those who could be affected or who advise the homeless or potentially homeless- eg refuges, community centres, advice centres, Shelter Cymru, Crisis and also libraries and campaigning organisations particularly those concerned with the private rented sector (PRS).

#### **4. Do you agree with our proposal to abolish the priority need test? Yes/no**

##### **ANSWER**

Yes.

##### **Reasons for agreement**

This proposal was put forward by the Society in its September 2021 paper "[Proposals for Housing Law Reform](#)" (page 13). The proposals have been forwarded to the Labour Party shadow front bench and circulated at the 2022 Labour Party Conferences

The Society agrees with the features of the application of the test set out in the White Paper from the experience of its own housing practitioner members - as reducing assistance for single people, used for "gatekeeping", a too high threshold applied for vulnerability, inconsistent application, causing trauma to applicants and diverting attention from individual need (para 126 page 40).

The Society observes also that a significant proportion of appeals to the courts in homelessness cases involve disputes over the application of the 'vulnerability' test. The courts have been in difficulty for many years in seeking a workable definition as shown by s.71 Housing (Wales Act 2014, which contains a definition for Wales that was subsequently changed in England by the Supreme Court in the case of *Hotak v LB Southwark* [2015] UKSC 30 amongst others. Removing the priority need test will save both delay and expense.

It is noted that Scotland has likewise repealed the priority need test (Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012).

#### **5. Do you agree with our proposal to abolish the Intentionality test? Yes/no**

##### **ANSWER**

Yes

##### **Reasons for agreement**

This proposal was likewise put forward by the Society in its September 2021 paper "Proposals for Housing Law Reform" (page 13).

Again we agree with the experience of application of the test as variation of interpretation and the difficulty of reversing an intentionally homeless decision outlined in the White Paper (paras 145 page 45 and 148 page 46).

The Society observes that the application of the intentionality test (which was not included in the original draft legislation and was inserted by Parliament during the passage of what became the Housing (Homeless Persons) Act 1977) has, because of its width, gone far beyond the original intention to deny assistance to those who deliberately engineered their homelessness in order to obtain public housing, so denying the benefits of the homelessness legislation to those who otherwise would have been entitled.

#### **6. Do you agree with our proposal to keep the local connection test but add additional 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.**

## **ANSWER**

The Society would prefer application of the local connection provisions (by which an applicant can be referred to another local housing authority to that which received the application for accommodation, if the receiving authority is of the view that the applicant has no local connection with its area but does with the other) to be subject to the consent of the applicant or, at the least, the applicant's views be taken into account as a whole and not limited to the local connection criteria.

However, if that is not to be the case then the Society agrees with the proposal having regard to the wide list of exemptions as those needing care, veterans, those at risk of domestic abuse, those suffering domestic abuse and prison leavers (paras 164-5 page 47) and that special circumstances may lead to disapplying the local connection provisions for example in relation to young people, LGBTQ+, the disabled, Gypsies and Travellers (para 166).

The Society proposes that the deemed local connection for former asylum seekers providing that they are deemed to have a local connection with the area in which they were provided with accommodation by the Home Office (s.81(5) Housing (Wales) Act 2014 , be removed.

Removing the provision would permit former asylum seekers to apply to a local authority other than the one where they were accommodated at the date of grant of leave on production.

In addition, we would suggest that guidance on "special circumstances" local connection (s.81(2)(d)) provides that, in relation to former asylum seekers, they will have a local connection by way of special circumstances on production of evidence of:

Family or clan ties in that area;

Educational links in that area;

Medical links to either more than one agency and/or a link to a specialised counselling service in that area;

Suitable employment opportunities in that area.

**7. The accompanying Regulatory Impact Assessment sets out our early consideration of the costs and benefits of these proposals. Are there any costs and benefits we have not accounted for?**

## **ANSWER**

The Society notes the Regulatory Impact Assessment, which describes itself as a draft, presents a varied and imprecise picture, qualified by the acknowledgment that the picture is likely to change as legislation proceeds. The general tenor appears to be that the impact of the proposals particularly so far as costs are concerned are likely to be marginal. Better outcome for the homeless can be anticipated.

In the circumstances the Society does not consider it can make any more useful comment.

**Questions following Chapter 2 (pages 57-72)**

**8. Do you agree with the proposals to apply a duty to identify, refer and co-operate on a set of relevant bodies in order to prevent homelessness? Yes/no Please give your reasons**

**ANSWER**

Yes

This is a duty to identify those at risk of homelessness and to refer them to the relevant parts of the public services ((para 220 page 65). Coupled with a duty to co-operate between the public services themselves.

**Reasons for agreement**

We consider that such a duty would assist in focussing the public services attention on those at risk of homelessness and to taking action which could lead to that being avoided or help being provided.

However, enforceability of such a duty is likely to be difficult and complicated so its main benefit would be to set a standard. That would be a benefit, however.

**9. Do you agree with the proposed relevant bodies, to which the duties to identify, refer and co-operate would apply? Would you add or remove any services from the list?**

**ANSWER**

The bodies identified appear to include all those public bodies in contact with those who are likely to be at risk of homelessness as social services departments, Local Health Boards, Registered Social Landlords, DWP, Youth Justice, Probation Service, Prisons, HM Court and Tribunal Service, Police, the Home Office (especially as regards those who have been granted refugee status and are no longer to be accommodated by the Home Office ) and the Secretary of State for Defence (paras 227/9 page 67). We would not remove any of them.

We note the reference to private landlords and the proposal that landlords be required to refer contract holders at risk of homelessness to the local housing authority when notice requiring possession is served (para 235 page 69).

We support that proposal and also propose the same should apply not only to contract holders who are tenants of private landlords, but also to contract holders who are licensees so that it applies whenever an owner of property terminates the right of a person to occupy any premises or part as a residence - eg licensees of a resident owner.

**10. In your view have we struck the right balance between legislative requirements and operational practice, particularly in relation to health?**

**ANSWER**

Yes.

There is nothing the Society can usefully add.

**11. What practical measures will need to be in place for the proposed duties to identify, refer and co-operate to work effectively? Please consider learning and development needs, resources, staffing, location and culture.**

**ANSWER**

Plainly procedures will need to be established but such detail goes beyond the Society's area of expertise.

**12. In addition to the broad duties to identify, refer and co-operate, this chapter contains proposals to provide enhanced case co-ordination for those with multiple and complex needs. To what extent will the proposals assist in preventing homelessness amongst this group?**

**ANSWER**

The duty will be oriented towards those at risk of homelessness and, once identified, referring them to where assistance can be provided. This is likely to involve helping them to make that contact. The enhanced case co-ordination - including the direction of a leading professional should assist (para 247). We also commend the Housing First approach.

**13. The accompanying Regulatory Impact Assessment sets out our early consideration of the costs and benefits of these proposals. Are there any costs and benefits we have not accounted for?**

**ANSWER**

The Society refers to its response to question 7

**Questions following Chapter 3 (pages 74-119)**

**14. Are there other groups of people, not captured within this section, which you believe to be disproportionately impacted by homelessness and in need of additional targeted activity to prevent and relieve this homelessness (please provide evidence to support your views)?**

**ANSWER**

The groups identified, being children, young persons, care experienced young persons, people with complex health needs including mental illness, those suffering from substance abuse and those leaving hospital, domestic violence survivors, the disabled, Armed Forces personnel, people leaving prison and those subject to the No Recourse to Public Funds condition (NRPF), cover those particularly in need (page 74 para 252).

In the Society's view the revised definition of "threatened with homelessness" should include former asylum seekers at the point when they have been granted refugee status or other leave to remain on humanitarian grounds. Usually they would have been accommodated in Home Office funded accommodation pending decision on their claims. After that decision has been made they are sent notice to leave that accommodation generally within 28 days (recently curtailed to 7 days but then restored to 28 days).

The Society considers that local authorities should be advised to treat former asylum seekers, given leave to remain, as threatened with homelessness from the receipt of grant of leave to remain, rather than waiting for receipt of the notice to quit. This would provide a longer period for the local authority to perform the prevention duty, in the hope that accommodation could be secured for the former asylum seeker before he or she is served with a notice to quit. We note that at the point of grant of leave to remain the "right to rent" provisions of the Immigration Act 2014 cease to apply. The Society considers that this should be made clear in any subsequent legislation or, at least, in accompanying guidance.

In this context, the Society also notes that the Home Office is one of the bodies to which the proposed duty to identify, refer and co-operate would apply (answer to question 9).

**15.What additional legislative or policy actions could be taken to prevent or relieve homelessness for the groups captured by this White Paper?**

**ANSWER**

Provision for timely identification of a homelessness situation arising and the availability of accommodation or other assistance to meet the need identified are each key to prevention. It is observed that the aim of the White Paper is to achieve those aims in respect of each group and to enable co-operation and co-ordination between the relevant authorities eg between Social Services Departments and Housing Departments in respect of 16/17 year olds (para 280 page 80), particularly noting that those leaving the justice system within 6 months are to be the responsibility of the LHA (para 285). The Society also welcomes the proposals that bed and breakfast accommodation (B&B) be considered as not normally suitable for 16/17 year olds (para 271) and that no 16/17 year olds are to be accommodated in unsupported accommodation (para 281 page 81). By way of further example similar provisions are proposed for those being discharged from hospital (paras 311, 312, 317) and the disabled (para 383 page 101).

However the Society considers awareness of these provisions is also key to their implementation and success. So far as is practicable those employed in the various sectors by the authorities as hospitals, prisons, social services and housing departments, the Armed Forces etc should be made aware of the means and provisions to avoid homelessness and requested to look out for those in need actual or potential so that the assessors and providers can be informed. Again so far as is practicable, the individuals in need (or those assisting them) should be informed, as patients, young persons, prisoners, Armed Forces personnel etc so that they can approach the authorities for assistance. This could be part of the responsibilities of those administering co-ordination between the various authorities.

**16.Our proposals related to children, young people and care experience seek to improve and clarify links between homelessness legislation and the Social Services and Wellbeing Act. Significant policy development is required to assess the practicality of this. What, in your views are the benefits and challenges of our approach and what unintended consequences should we prepare to mitigate?**

## **ANSWER**

The Society has nothing to add on this question.

**17. Do our proposals go far enough to ensure that 16 and 17 year olds who are homeless or at risk of homelessness receive joint support from social services and local housing authorities? What more could be done to strengthen practice and deliver the broader corporate parenting responsibilities?**

## **ANSWER**

The Society considers that the proposals, in the White Paper, properly implemented, should be sufficient to avoid homelessness for those with whom the authorities are in contact or of whom they are aware. As outlined in our answer to question 15, promoting general awareness of these measures will, through publicity, advice agencies etc, hopefully, bring those in need into contact with the authorities.

**18. Do you agree or disagree that the Renting Homes (Wales) Act 2016 should be amended to allow 16 and 17 year olds to be able to hold occupation contracts?**

## **ANSWER**

The Society agrees with the principle set out in the Housing (Wales) Act 2016 that those being provided with residential accommodation, in the private or public sector, should also be provided with an occupation contract - which can be for a tenancy or a licence - and which includes a written statement of rights and obligations. As with adults, the advantage is that of clarity as to what those rights and obligations are to the benefit of all parties. In relation to children, (ie those below the age of 18) who are to be provided with supported accommodation only, (para 281, page 81 of the White Paper) some alteration to the current provisions relating to standard or secure occupation contracts will probably be required. The Society also recognises that enforcement of such contracts can present difficulty (ie claim or defence has to be made via a "litigation friend" who may or may not be identified in the contract). However to state the rights and obligations of the parties is, in itself, of value.

**19. The accompanying Regulatory Impact Assessment sets out our early consideration of the costs and benefits of these proposals. Are there any costs and benefits we have not accounted for?**

## **ANSWER**

The Society refers to its response to question 7

## **Questions following Chapter 4 (pages 121-154)**

**20. To what extent do you agree or disagree with the short-term proposals to increase the suitability of accommodation? Are there additional immediate actions you believe should be taken for this purpose?**



## ANSWER

The Society assumes that the proposals referred to are those at pages 129-135 of the White Paper, which substantially include long term accommodation as well.

The Society welcomes these proposals. In particular that it is proposed to legislate:

- that accommodation with category 1 hazards (as defined by the Housing Act 2004) is unsuitable;
- that accommodation deemed unfit for human habitation having regard to the 29 matters listed in the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 is unsuitable;
- that shared sleeping space is impermissible (para 500);
- that the same standards are to apply to Private Rented Sector (PRS) and local housing authority (LHA) accommodation (para 503);
- that placement in an overcrowded area is never to be permitted (except in discharge of the prevention duty and at the applicant's request (para 508));
- that for young persons under 25 and 16-17 year olds, no unsuitable B&B or shared accommodation is permissible and only supported accommodation is to be considered suitable (paras 510 and 511).

The Society also welcomes the proposal that the applicant's views as to suitability are to be ascertained by the LHA when completing the PHP even if it is not possible to meet all needs (para 506 page 130).

The proposals as to the suitability of location are also welcome (paras 511 and 513 page 132).

The Society also welcomes the acceptance of cultural aversion to "bricks and mortar" accommodation on the part of the Gypsy, Roma and Traveller community at para 515 :-

*"We propose legislation provides for sites (rather than bricks and mortar accommodation) to be generally considered the most suitable accommodation for an applicant from the travelling community (Gypsy, Roma and Travellers) and the local housing authority should be obliged to ask an applicant from the Gypsy, Roma and Travelling Community whether or not they are culturally averse to bricks and mortar and to ensure suitability of accommodation is culturally appropriate for the applicant."*

Although for the sake of clarity we would suggest inserting "caravan" before "sites" in the first line.

This recognises that the "occupation of a caravan is an integral part of [the] ethnic identity of a Gypsy" as stated by the European Court of Human Rights in Chapman v UK [2001] 33 EHRR 18.

Again the Society observes that whether the provision of "bricks and mortar" accommodation for Gypsies and Travellers is "suitable" has been a regular source of litigation in this area of law (see Gypsy and Traveller Law ed Marc Willers KC and Chris Johnson, 3<sup>rd</sup> ed, pub LAG 2020 pages 423-430).

The Society also welcomes the proposal that suitability standards be reviewed every 3 years (page 135). This enables the Government to respond to any increase in supply of accommodation and also to ensure that suitability standards reflect modern circumstances.

**21.To what extent do you agree or disagree with the proposals around the allocation of social housing and management of housing waiting lists? What do you believe will be the consequences of these proposals?**

**ANSWER**

The proposals are :-

- that RSLs (Registered Social Landlords - housing associations) be required to rehouse a statutory homeless referral by a LHA (Local Housing Authority) within a specified time period subject to exceptions (eg that the RSL is unable to provide suitable accommodation as to locality (para 573, page 145 and para 575));

- that the scope of the “Unacceptable Behaviour test” by which an applicant can be excluded from the housing waiting list of a LHA should be understood as applying only when an applicant or member of the household has been guilty of serious unacceptable behaviour which would lead to an outright order for possession **and remains unsuitable to be a tenant** by reason of that behaviour at the time of consideration of the application. This is the current legal test but guidance is needed so that it is applied correctly and consistently, and so that the applicant can contend that the reason for exclusion no longer applies by reason of changed behaviour or changes in circumstances (page 147 para 581);

- that the LHA has the power to remove persons with no housing need from the waiting list (para 584 page 148); at present there is no such power;

- that additional preference for an offer of housing be given to those who are homeless and owed a duty to accommodate over other priority groups on the waiting list but who are also in urgent housing need (para 588); also additional preference for people who are homeless and fleeing abuse and for those homeless and care experienced (leaving care) (para 590 page 149);

- that RSLs and LHAs be required to operate Common Allocation Policies and a Common Housing Registers so as to ensure applications are dealt with consistently and in co-operation (para 591);

- that a ‘deliberate manipulation’ test be introduced for the removal of persons from the housing waiting list, which could include “*falsifying evidence as to the availability of accommodation or the financial circumstances of the applicant*”; and would permit the applicant to request a review of any finding (page 150, paras 596-9);

Generally the Society welcomes these proposals which should further assist in reducing homelessness. In addition the Society makes the following points:-

(1) The result of increasing the facilitation of accommodation for the homeless through the housing waiting list will inevitably result that others on the list (who will regard their own housing situation as requiring assistance) will wait longer or in vain (as the White Paper acknowledges). The presentation of these proposals should take this into account and endeavours be made to mitigate that result.

(2) The proposal for a review of the new ‘deliberate manipulation test’ by which an applicant can be removed from the housing waiting list is welcome as it requires housing officers to carry out investigations and come to conclusions of fact. Since this involves findings of dishonesty (as well as removal) such decisions are likely to be contentious. We do consider that there needs to be clear guidance both as to circumstances that might constitute

“*deliberate manipulation*”, but also circumstances that might not fall within the test. The review decision would itself be subject to judicial review, if there were an error of law in the decision or the procedure which led to the review decision. This would be a further safeguard.

**22.To what extent do you agree or disagree with the proposal for additional housing options for discharge of the main homelessness duty? What do you foresee as the possible consequences (intended or unintended) of this proposal?**

**ANSWER**

This proposal (at page 151 from para 601) relates to discharging the main housing duty by other means than an offer of social housing or private rented housing. Examples would be supported lodgings, supported accommodation or the accommodation previously occupied by the applicant and his/her household, the example given being the victim of domestic abuse, who has been assisted with the exclusion of the perpetrator, change of name on the occupation contract as necessary and safety measures taken in respect of continued occupation.

The Society notes the precautions proposed (at paras 606-8) to ensure that the applicant consents to this method of discharge, arrangements for independent advice to be given, that the suitability of the accommodation is considered and that the LHA be under a duty to check suitability within a fixed period after occupation.

In those circumstances the Society had no further observation to make.

**23.The accompanying Regulatory Impact Assessment sets out our early consideration of the costs and benefits of these proposals in relation to access to housing. Are there any costs and benefits we have not accounted for? 168**

**ANSWER**

The Society refers to its response to question 7.

**24.To what extent do you think the proposals outlined above will support the implementation and enforcement of the proposed reforms?**

**ANSWER**

The aims of the proposals, as understood from para 52 page 23, are early intervention, a person centred approach, easier access to assistance, multi-agency support, improved standards to temporary (and long term) accommodation, maximum use of social housing and targeted action.

All the proposals above are welcome. The Society supports those aims and the means of achieving them.

**25. What other levers/functions/mechanisms could be used to hold local housing authorities and other public bodies accountable for their role in achieving homelessness prevention?**

**ANSWER**

The Society notes that decisions under the homelessness and allocation legislation are subject to judicial control by statutory appeal (most homelessness cases) or judicial review (allocation decisions and remaining homelessness cases). The Public Sector Ombudsman can hold local housing authorities and registered social landlords to account in cases of maladministration. The ultimate means is, of course, the ballot box. The Society considers these means sufficient at the present time.

**26. The accompanying Regulatory Impact Assessment sets out our early consideration of the costs and benefits of these proposals. Are there any costs and benefits we have not accounted for?**

**ANSWER**

The Society refers to its response to question 7

**27. What, in your opinion, would be the likely effects of the proposed reforms in this White Paper on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. a. Do you think that there are opportunities to promote any positive effects? b. Do you think that there are opportunities to mitigate any adverse effects?**

**ANSWER**

Regrettably the Society does not have the expertise to answer this question.

**28. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

**ANSWER**

Thank you for this opportunity. The Society proposes the repeal of s 89 (5) and 7 (a) Housing (Wales) Act 2014.

Section 89 contains the power of the county court to hear an appeal against the refusal of the local housing authority (LHA) to secure accommodation for an applicant pending a hearing of an appeal (the main appeal, brought under s.88) against a decision of the LHA. Those decisions in the main appeal will usually be either that the local housing authority does not have a duty to secure accommodation to the applicant or that the accommodation secured is unsuitable. While the court has the power under s.89(4) to order the LHA to secure accommodation pending the hearing of the appeal, the exercise of that power is severely restricted by subsections (5) and (7).

In other civil proceedings, where an applicant seeks an interim order pending the hearing of the trial or appeal, it is decided on the basis of the applicant having a prima facie prospect of success in the main claim or appeal and the balance of convenience being in the applicant's favour (*American Cyanamid v Ethicon* [1975] AC 396 ). Instead those subsections require the applicant to show that the LHA's decision not to secure accommodation pending the hearing of the appeal was an error of law ie not fact (the same test as has to be established against the LHA's decision which is the subject of the main appeal). Secondly the applicant must show that the failure to secure that accommodation would prejudice the applicant's ability to pursue the appeal. This is difficult to establish as the appeal rests solely on legal submissions on a point of law.

The result is that the applicant and his/her household is at serious risk of being homeless pending the decision of the court as to whether s/he is owed a duty to accommodate by the LHA or not - whenever that might be (considering the current state of the court lists).

Such a result would not appear to be in accordance with the approach of the White Paper.

This proposal was likewise put forward by the Society in its September 2021 paper "Proposals for Housing Law Reform" (page 14)