

## **Item: 13**

**Education, Leisure and Housing Committee: 11 November 2020.**

**Intentionality Criteria within Homelessness Legislation.**

**Report by Executive Director of Education, Leisure and Housing.**

### **1. Purpose of Report**

To consider the Council's approach to intentionality.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That, following commencement of Section 4 of the Homelessness etc (Scotland) Act 2003, from 7 November 2019, a local authority's duty to investigate intentionality changed to a discretionary power.

#### **2.2.**

That, locally, a relatively low number of households are found to be intentionally homeless, averaging four per annum over the last three years.

#### **2.3.**

The requirement to determine a policy position surrounding the intentionality criteria within the homelessness legislation, to inform future homelessness assessment decisions.

**It is recommended:**

#### **2.4.**

That investigation into the intentionality criteria should continue within the homelessness decision making process in order to prevent "deliberate manipulation" of the homelessness system.

### **3. Background**

#### **3.1.**

Scotland has the most progressive homelessness legislation in Europe. A significant piece of legislation introduced was the Homelessness etc (Scotland) Act 2003 which presented the intention of amending the four hurdles within homelessness legislation to one.

### **3.2.**

The homelessness assessment process will continue to change as a result of the Homelessness etc (Scotland) Act 2003 and ultimately consideration will only require to be given to whether the household is homeless.

### **3.3.**

From 1 January 2013, the homelessness legislation has contained three hurdles, as follows:

- Is the household homeless?
- Has the household become homeless intentionally?
- Does the household have a local connection (for example have they lived in the area for six out of the last 12 months, three out of the last five years, have a connection as a result of employment or some other special reason)?

### **3.4.**

Households who meet all three hurdles are entitled to permanent accommodation provided by either the Council or by nomination through referral in respect of Section 5 of the Housing (Scotland) Act 2001, to Orkney Housing Association Limited. That is the process of requiring a housing association to permanently rehouse a homeless household.

### **3.5.**

Members have previously considered responses to consultations surrounding the Scottish Government's proposals in respect of the removal of local connection.

## **4. Intentionality Classification**

### **4.1.**

The circumstances in which a household may be regarded as having become intentionally homeless are set out in Section 26 of the Housing (Scotland) Act 1987. There are three requirements – all of which must be satisfied:

- The applicant, if homeless, must deliberately have done, or failed to do, something in consequence of which they have ceased to occupy accommodation which was at the time available to them.
- It must have been reasonable for the applicant to have continued to occupy the accommodation.
- The applicant must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above.

## 4.2.

Where a household is found to be intentionally homeless, the Council has a duty to provide temporary accommodation for a “reasonable length of time” and to provide them with advice and assistance to enable them to find a more permanent housing option, usually within the private sector. There is no requirement for the Council to provide a secure tenancy to the household.

## 4.3.

All households are currently assessed in respect of intentionality. The level of households locally found to be intentionally homeless is outlined below.

Financial Year	Total Number of Homeless applications	Households found to be Intentionally homeless
2019 to 2020	118	2
2018 to 2019	134	1
2017 to 2018	119	9

## 4.4.

An intentionality decision is only made when there is clear evidence to support this. The Council assists those households found to be intentionally homeless to support them in finding alternative accommodation.

## 4.5.

Any applicant has the right to appeal the Council’s homelessness decision under the homelessness legislation, if they wish. This may be because they have been found to:

- Be not homeless.
- Be intentionally homeless.
- Have no local connection.

## 5. Changes to the Intentionality Classification

### 5.1.

Following commencement of Section 4 of the Homelessness etc (Scotland) Act 2003, from 7 November 2019, a local authority’s duty to investigate intentionality changed to a discretionary power. Therefore, the Council can choose to implement a policy of not considering whether a homeless household has become intentionally homeless.

### 5.2.

The policy decision must apply to all homelessness decisions.

### **5.3.**

If intentionality is investigated, this allows a focus on whether the applicant has done something which a reasonable person could appreciate would lead to them becoming homeless. Examples may include non-payment of rent or mortgage for reasons other than poverty.

### **5.4.**

If intentionality is not investigated, this would mean that applicants falling within the criteria as outlined at section 4.3 above would require to be accepted, providing they met the other two hurdles, without question.

### **5.5.**

In addition, the Homelessness and Rough Sleeping Action Group has made a recommendation to narrow the definition of intentionality to focus on instances of “deliberate manipulation” of the homelessness system. This is where the applicant actually foresees that their action would lead to them becoming homeless.

## **6. Options for Consideration**

### **6.1.**

If investigation into intentionality were not investigated, this could lead to an increase in homeless applications where applicants may “deliberately manipulate” the homelessness system in order to gain permanent housing as outlined at section 5.3 above.

### **6.2.**

If it were decided that investigation into intentionality continue, the status quo would remain and there would be no change in process.

## **7. Corporate Governance**

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **8. Financial Implications**

### **8.1.**

Expenditure on homelessness is charged to the Other Housing budget within the General Fund.

### **8.2.**

The net homelessness budget for 2019/20 was £800,100 with an actual net spend of £693,100 which gives an underspend for the financial year of £161,000.

### **8.3.**

The decision to not investigate intentionality could lead to increased operational costs in the delivery of service.

## **9. Legal Aspects**

### **9.1.**

The statutory definition of homelessness is given below. Any other relevant statutory references are contained within the body of the report.

### **9.2.**

In terms of section 24 of the Housing (Scotland) Act 1987, a person is homeless or threatened with homelessness if there is no accommodation in the UK or elsewhere, which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him:

- Is entitled to occupy by virtue of an interest in it or by virtue of an order of a court.
- Has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy.
- Occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

### **9.3.**

Further, a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

### **9.4.**

Regard may be had in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.

### **9.5.**

In terms of Section 24(3), a person is also homeless if he has accommodation but:

- He cannot secure entry to it.
- It is probable that occupation of it will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)), or it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that accommodation or elsewhere.

- It consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- It is overcrowded within the meaning of section 135 and may endanger the health of the occupants.
- It is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him i.e. a local authority is satisfied that an applicant is homeless.

## **9.6.**

A person is threatened with homelessness if it is likely that he will become homeless within 2 months.

## **9.7.**

For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation:

- Of which the person is the heritable proprietor.
- Secured by a Scottish secure tenancy.
- Secured by an assured tenancy or private residential tenancy that is not a short assured tenancy.
- Where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy, i.e. has been evicted previously and therefore tenancy has been granted as a short Scottish secure tenancy.

## **10. Contact Officers**

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