

Local Government and Communities Committee

Homelessness

Submission from the Legal Services Agency

1. About Legal Services Agency Ltd.

Legal Services Agency (“LSA”) is a charity and a law centre.

We, among other things, provide high volume, high quality advice, assistance and representation for people who are homeless or are threatened with homelessness.

This includes defended eviction (generally but not exclusively for rent arrears), defended mortgage repossession (again, generally for mortgage arrears) and advice to people who are in temporary homeless accommodation who seek permanent accommodation, as well as, crucially, people who have no temporary accommodation at all and who are rough sleepers.

The defended eviction and defended mortgage repossession work involves high volume court appearances in the Sheriff Court with many proofs set. The advice, assistance and representation we give to people who are homeless generally involves Reviews submitted to the local authority or threats of Judicial Review through the Court of Session.

We aim to be innovative.

We have, accordingly, developed human rights’ defences in certain cases, ‘equalities’ defences in eviction cases, as well as claims for compensation based on ‘equalities’ legislation for people who are homeless.

In addition to providing assistance to clients on many thousands of occasions and 5 to 10 proofs per week, we provide training and education to the sector as a whole and have produced a number of publications (available in a number of formats). This draws attention to the background to homelessness. This includes the unremitting volume of eviction actions raised against tenants and their families by, largely, Registered Social Landlords (RSLs). This is of course linked to the UK Government’s Social Security Policies (Austerity aka Social Security Reform). According to a Shelter Scotland Press Release there has been a 24% increase in evictions 2016-17. This is of course linked to nearly 40,000 Notice of Proceedings with many thousands of actions being raised thereon.

Social Security Austerity includes issues such as the benefit cap, sanctions, changing the arrangements for the backdating of housing benefit and substantial cuts to disability benefits amongst others.

In any event, LSA has given evidence and made submissions to a range of investigations and enquiries in the past, related to all these issues, including of course during the visit by your good selves to our offices in Fleming House, Glasgow.

2. The Evidence.

We note that in the call for evidence it is indicated that it would be helpful if submissions could address a number of questions.

Whilst we have views about virtually all the questions, the comments we make relate only to our direct experience.

Please note that Legal Services is an active member of the Campaign for Housing and Social Welfare Law. ("The Campaign"). Many of the comments in this submission arise from The Campaign's highly successful recent conference on Destitution. In addition, this document has received support informally from a number of members of The Campaign. Owing to the timescales however The Campaign has not had an opportunity to formally confirm its support for our proposals. In due course The Campaign hopes to be in a position to formally confirm its position if this would be helpful.

3. Housing Options and Homelessness Prevention.

LSA, among other organisations within the Glasgow Advice and Information Network ("GAIN"), as well as through our Inverclyde Housing Rights Project, of course, is part of the advice sector providing vital assistance to people in disadvantage.

LSA receives financial support from amongst others Glasgow and Inverclyde Councils as well as, of course, from the Scottish Government.

The work of the sector as a whole unquestionably makes a major difference to people who threatened with, or actually are homeless and very generally we hope that the central and local government support for our work will continue. We are very aware that ultimately we all share the same objectives.

As a consequence of funding, LSA is able to provide comprehensive services and we attach a copy of our information leaflet.

This includes drop-in surgeries virtually every day of the week and appointments, as well as an in-court advice and representation service at Glasgow Sheriff Court in regard to defended evictions and mortgage repossessions. We also supply a similar service in Greenock Sheriff Court for the Inverclyde area.

The Section 11 system set up by Glasgow City Council has also improved matters in terms of engaging with clients at an early stage before their situation in terms of homelessness becomes critical.

When the City Council receives a notice from a landlord or mortgage provider that they are initiating eviction/mortgage repossession proceedings against a resident of Glasgow, there is an arrangement whereby we contact the person threatened with homelessness and in co-operation with other agencies we advise them of the options for advice, assistance and representation that they may have through us.

Whilst the number of people who respond via this route is not large, it is significant.

In addition, we have good relationships with a number of advice centres and CABx. We are able to cross-refer in regard to relevant areas of expertise.

LSA, as you will note from above, also undertakes a fair amount of publishing and training.

The information so produced does, we believe, inform the sector and, overall, the general knowledge of what can be done has significantly increased.

However, we are unable to comment on the impact that Housing Options may have had. Our work has increased and is increasing. Whether Housing Options has meant that it is not increasing as much as it might have otherwise is a matter of speculation.

4. Temporary Accommodation.

Our experience is that large numbers of rough sleepers are unable to obtain temporary accommodation on a regular, consistent basis. This is a problem both in terms of the availability of appropriate accommodation, including accommodation with appropriate support for people in a homeless situation, and a problem in terms of local authorities gatekeeping and failure to provide accommodation despite being under a statutory duty to do so.

There appears to be a significant crisis in the availability and quality of temporary accommodation. Often this accommodation does not have the necessary support systems for clients with complex needs. It ought to be used as a temporary measure, but in our experience people often have to remain in temporary accommodation for months. In our experience there is a significant reliance on hostel accommodation. Whilst we recognise that sometimes hostel accommodation is an appropriate way for a local authority to fulfil its duty to provide temporary accommodation, such accommodation often does not assist people in getting out of a homeless situation and into permanent accommodation, and it should be used for as short a time period as possible.

One of the central aims in terms of homelessness must be tackling the problem of people remaining in temporary accommodation for a long time without a secure tenancy agreement, and people stuck in a cycle of homelessness where they dip in and out of the homeless system, unable to obtain permanent accommodation. Where the homeless system prevents people from obtaining permanent accommodation timeously this must be seen as a failing in the homeless system. Increasing availability of alternative accommodation, such as temporary furnished flats, and accommodation with adequate support systems would go a long way in improving the system.

There is also a significant issue about the cost of temporary accommodation. We have identified that temporary homeless accommodation can cost significantly more than the amount a person would ordinarily pay. The rent charged can, on occasion, be wholly disproportionate to the value of the property as compared either with the

private sector or Registered Social Landlord properties. This is an area in which we are pursuing Judicial Review proceedings.

There is a risk that this is causing more people not to engage with the homeless system where they might have a right to accommodation through it. People can be trapped in overcrowded or difficult housing situations due to the lack of affordable temporary accommodation. In our experience there is a barrier for people engaging with the homeless system without taking temporary accommodation, and it is difficult for these people to obtain permanent accommodation.

In our experience, there is a problem with gatekeeping in terms of temporary accommodation. A significant number of our homeless clients are people who have tried to obtain temporary accommodation but have been turned away by the casework teams and not provided with accommodation. We take action in these cases through corresponding with the local authority and taking judicial review proceedings. However, these are cases which should to occur in the first place, given the clear breach of statutory duty.

In short, there needs to be much more temporary accommodation of a higher quality.

The speed with which people are offered permanent accommodation needs to be increased in order to increase the availability of that temporary accommodation.

The costs at all stages for homeless people need to be kept within an affordable range in order to make the system workable and accessible for everyone.

5. Permanent Accommodation.

Our experience is that the allocation of permanent accommodation for homeless people is an imperfect system.

As stated above, obtaining settled, permanent accommodation for homeless people should be the ultimate goal of the homeless system. However the current system does not fully reflect this goal.

It is often a very slow process, and people can be waiting months to obtain permanent accommodation. Whether this is a failing in the length of time it takes to assess whether a person is entitled to accommodation under the homeless legislation, or a problem in the system of allocating accommodation is not clear. However, it is clear that there are barriers to people obtaining accommodation, and the process could be streamlined significantly to obtain better outcomes for homeless people.

A further problem with the allocation of permanent accommodation is the fact that often homeless people are offered only one property. If they refuse this property the local authority can discharge their duty to provide permanent accommodation. While this policy of only making one offer is not necessarily problematic in itself, there is a problem in communicating the seriousness of refusing such an offer to homeless people. There should be a system in place where people offered accommodation are directed to law centres to ensure they are fully aware of their rights and the

possible consequences of refusing accommodation before they refuse the accommodation. This would streamline the system and allow more people to obtain permanent accommodation, and make it more likely that people refusing accommodation have access to appropriate advice and are more likely to have a good reason for refusing it.

However, there should also be more flexibility in the system, and we are not convinced that a blanket policy of only making one offer of accommodation is the right approach. Situations should be dealt with on a case by case basis, and there can be circumstances where multiple offers would be appropriate.

Overall, the system should be streamlined and providing people with permanent accommodation should be prioritised.

6. Multiple and Complex Needs.

There appears doubt as to whether the services provided for homeless people reflect sufficiently the needs of people with “protected characteristics” in terms of ‘equalities’ legislation in general and, in particular, people with mental health difficulties.

We appreciate that people with complex needs can be demanding to deal with and pressurised public services have difficulties in that regard.

On the other hand, reasonable adjustments by law require to be made. In our experience this does not always happen.

We are taking strategic litigation in this area. We are pursuing a claim for compensation under ‘equalities’ legislation as a consequence of a client having been refused any form of temporary accommodation for a substantial period of time. That client had very high needs and a significant disability. We hope that this approach will encourage local authorities to focus on their duties under ‘equalities’ legislation, and adapt their practices.

The background to this is, of course, that poverty, homelessness and disadvantage unquestionably increased mental health difficulties. For instance, the National Child Development Study found homeless children are four times as likely to experience mental health problems as settled children.

7. Rough Sleeping.

Our main office is at Fleming House, 134 Renfrew Street is located in Glasgow city centre.

As a consequence, we see significant numbers of clients who are either rough sleeping or may be required to do so. Others have had temporary accommodation on an insecure basis and require our assistance in order to secure further temporary accommodation. The number of clients ranges from 5 to 10 per week.

There is no doubt, however, that many rough sleeper do not access our services and there is room for work on uptake in that regard.

When resources permit, we will increase our publicity with a view to encouraging them to pursue the remedies that the law provides.

Our observation is that the number of rough sleepers has soared. They are younger and there appear to be many more young women than was previously the case.

This group appear to be very vulnerable.

We have also noted a significant number of people who have been granted refugee status engaging with our homelessness service. This group engage with us at several stages in the homeless application, including obtaining temporary accommodation and reviewing decisions to discharge duty after refusing permanent accommodation offers. Ensuring that refugees are given appropriate support and advice in the homeless system is vital.

8. Specific Proposals.

We would make the following specific proposals to improve the position.

1. Information.

There should be systematic information given to homeless people, people in temporary accommodation or people sleeping rough as to the legal options open to them and where to access these rights. This should be available in a number of formats including written.

There is no doubt that Scots Law in homelessness is progressive and there is much to be proud of.

A right, however, is no use if you don't know about it and, even when you do know about it, it is useless if you don't know where to go to assert it.

Given that public authorities have indeed made provision and organisations such as ourselves are available, this should be publicised so that the most vulnerable and the most isolated do not suffer as a consequence.

Linked to this should be a systematic attempt to make sure that wi-fi is available to homeless people in all the places that they may be accommodated in, or attend.

If people do not have access to the internet, it becomes very much more difficult to avail themselves of even the most basic services.

Of course, information should be available in writing as well and LSA is proud of the attempts we have made in that regard.

There is, of course, room for much more.

2. Homeless Code of Guidance.

The Code of Guidance is an important document and very fully sets out important points that housing providers, public authorities and advisors need to know about.

There might be value in reviewing it to take into account contemporary circumstances and to enhance the way that 'equalities' legislation is discussed in general and, in particular, the Code could provide more information about what reasonable adjustments should be made for people with mental health problems or other protected characteristics.

There is also fundamentally a problem about how the Code is regarded by the law. The Court of Session has held that the 'Code is at best persuasive of the meaning to be given to legislative provisions' (in *Ellis v Angus Council*, 2011, SLT 942 at para 14).

The law should be amended to give a stronger status to the Code. Public authorities/local authorities should be required not only to have regard to it but, as far as is practicable, **comply with it**.

This would turn the Code of Guidance from guidance to a regulatory requirement with some "teeth".

3. Referrals.

There appears to be a significant problem with the ability of some local authorities to make referrals to housing associations under the Section 5 referral procedure. Thought needs to be given to significantly tightening this procedure. Possibly housing associations in receipt of public funding should be given an explicit duty to provide homeless accommodation. This comment is made in the context that it has been said that, at any one time, there are over 3,500 void houses in the socially rented sector in Glasgow, yet temporary accommodation is "jammed" with people who cannot find housing accommodation, hence the rough sleeping problem, at least in part. This issue is overdue for reconsideration.

- RSLs in receipt of public funding should be given an explicit duty to provide homeless accommodation, and should see themselves as having an equivalent responsibility to the LA for the achievement of sustainable outcomes for statutorily homeless households.
- There appears to be a number of difficulties with the informal system of "pre-referrals" – a term used to describe the initial contact made between a local authority (LA) and a Registered Social Landlord (RSL) to discuss the appropriateness of putting forward a particular household under the Section 5 process. We are concerned that this informal process gives the RSL the opportunity to reject the Section 5 referral before a formal referral is ever made. Due to the risk of under-reporting of rejections, we recommend that LAs make referrals under Section 5

without pre-screening by the appropriate RSLs. In such a way, housing will be provided to those who are most in need of it.

- RSLs should give greater priority to re-housing statutorily homeless households. In a more practical sense, this might involve RSLs requiring to make the same level of their available lets of statutorily homeless households as the council do.

4. Temporary Accommodation Rent.

The practice of charging rent in temporary accommodation that is significantly over the fair market rent should cease.

Under the terms of the Housing (Scotland) Act 1987 ('the 1987 Act'), a local authority which secures temporary accommodation for an applicant pending the provision of permanent accommodation has the power to require that person to pay reasonable charges for that temporary accommodation. In addition to the legislative provisions, a local authority, when exercising its homelessness functions, is obliged by the terms of section 37 of the 1987 Act to have regard to a statutory Code of Guidance on Homelessness. Paragraph 9.83 of the Code makes it clear that the Council must take into account what the applicant can pay in the longer term. It should also take into account the likely level of housing benefit when considering the charge. However, the terms of the legislation and guidance do not specify that the applicant's personal financial situation is the only factor that can be taken into account when assessing its reasonableness.

Although it is within the Council's discretion to decide the appropriate level of charge, it is unlikely to be exercising that discretion reasonably if the homeless person in question is required to pay a level of rent which would leave him/her with insufficient resources for the basic necessities of life. Unfortunately, this appears to be current practice for many local Councils. There are groups who are not entitled to housing benefit, such as students, EEA nationals and people who earn over the limit to obtain housing benefit. If the rent for temporary accommodation is not set in accordance with the amount that a person can afford to pay, these people will have to pay the same amount as someone with the benefit of housing benefit would. A person who is not eligible for housing benefit may have a similar disposable income to a person on benefits, but would have to pay rent from their own funds. This is a problem where the rent is high as it is for temporary accommodation.

It is therefore essential to explore a definition of reasonable charge which takes a realistic approach to the valuation of temporary accommodation and does not deter people in need from engaging with the homeless system from the outset. The question of reasonableness would be more appropriate assessed by having regard to the charge made for similar property in the area and market rentals.

5. Rent in Advance.

Other practices by housing providers could be improved to assist people who are homeless. The socially rented sector should not charge rent in advance and the letting procedures should include plenty of information about how to obtain free or cheap furniture and assisting people with related practical problems. We appreciate that good practice includes this already.

6. Prisoners on Release.

We are aware that many prisoners on release have outstanding housing problems and become very speedily part of the homeless population. We would look to working with prisons in the provision of advice, assistance and representation for people in this situation in general.

We recognise, in particular, the important role that the provision of Housing Benefit can play in the prevention of homelessness among the prisoner population. Under present arrangements, a person who is being held in custody pending trial or sentencing, or who must stay somewhere other than that person's home as a condition of bail, can continue to receive Housing Benefit for up to 52 weeks. If that person is subsequently sentenced for more than 13 weeks, any Housing Benefit claimed by that person will be discontinued after the expiry of the initial 13 week period. Thereafter, no assistance is paid – resulting in an increased likelihood of arrears, loss of tenancy and, ultimately, homelessness on discharge from prison.

A homeless ex-prisoner is more likely to reoffend as one who has a home to which he or she can return. Ensuring that prisoners have access to appropriate housing and accommodation upon release is fundamental to the rehabilitation process. It is our view that any undue restriction on Housing Benefit received by prisoners, whether remanded in custody or serving their sentence, is therefore likely to greatly reduce the effectiveness of any attempt by the Scottish Government to facilitate the rehabilitation of ex-offenders into society and improve the chances of those persons leading crime-free lives thereafter.

Consequently, thought should be given to extending the period for which Housing Benefit is paid whilst a prisoner is in custody from **13 weeks to 1 year**. Such an extension will prevent prisoners from building up rent arrears whilst in prison which may then impede their ability to obtain accommodation on release. The current arrangements seem to enhance many problems rather than reduce them.

7. Legal Aid.

LSA has benefited in the provision of our advice, assistance and representation for homeless people from grants from not just local authorities but also the Scottish Government. We also use the Legal Aid scheme in connection with much of our work for homeless people. It should, however, be noted that the payments through much of the Legal Aid scheme is well

below cost and policy makers need to recognise that, if legal advice, assistance and representation is to be made available, it will require to be in part funded by core grants, which, as above indicated, LSA has benefited from. We appreciate that there is an ongoing Legal Aid Review but this issue is worthwhile bearing in mind in considering the generality of homelessness issues.

8. Homeless People with an Insecure Immigration Status.

We have a number of concerns surrounding the introduction of certain provisions of the Immigration Act 2016, which aims to “introduce new sanctions on illegal working, prevent illegal migrants accessing services and introduce new measures to enforce immigration laws’ (Home Office 2015, Immigration Act 2016).

At present, the Home Office provides support to failed asylum seekers by way of Section 4 of the Immigration and Asylum Act (known as Section 4 support). Families with children who have had their asylum claim rejected, continue to receive support under Section 95 of the same Act (known as Section 95 support). Whereas Section 4 support covers the provision of accommodation and vouchers (the latter credited weekly onto a pre-paid card which can only be used in certain stores), Section 95 support can encompass both accommodation and cash support.

Section 66 of the Immigration Act 2016 (which is not yet in force) aims to severely restrict the support which is currently given to people whose claims for asylum have been rejected and their dependents. As well as abolishing Section 4 support, the 2016 Act also aims to remove Section 95(5) support from asylum seeking families following the determination of their claim and the exhaustion of all rights of appeal.

We are particularly concerned that Section 66 will negatively impacts some of the most vulnerable people in society – including children and families, as well as individuals who have fled persecution. We highlight that the Immigration Act 2016 appears to be using destitution as a policy lever, which is frankly inhumane. We concur with the report: “Hidden Lives – New Beginnings: Destitution, Asylum and Insecure Immigration Status in Scotland” (Published 22 May 2017) that the Scottish Government, prior to making any regulations in respect of these changes, undertakes a nationwide consultation to properly assess the impact of destitution on this already vulnerable group.

9. The Right to Rent

Shelter Scotland’s blog on the “Right to Rent - Immigration Checks in Scotland” describes these as ‘Recipe for Confusion, Complexity and Discrimination?’

We agree with this analysis. The Immigration Act 2016 seeks to add measures to the statute book which compel private landlords to carry out checks on prospective and current tenants’ immigration status. We understand this has not yet been implemented in Scotland.

We understand that the Secretary of State is empowered to make regulations to amend Residential Tenancy Law in Scotland seeking to draw in a new ground for eviction where a tenant fails to meet the 'right to rent' check.

Leaving aside the significant human rights and devolution issues, we fear that this move will directly and indirectly discriminate against persons private landlords consider may be of an insecure immigration status, whether accurate or not. An attempt to 'drive underground' people who may have resolvable immigration issues is highly undesirable. The proposed changes may increase homelessness and are not directed towards a mischief that needs to be solved. We support Shelter's concerns.

10. Conclusion.

Scotland can indeed be proud of the historical concern that policy makers have had about reducing homelessness. There have, however, been unintended consequences of some policy decisions, such as the closure of hostels and stock transfer. In addition, austerity has impacted on the most vulnerable in highly disadvantageous ways. Our national commitment to not only tackling the causes of homelessness but also assisting people who are homeless, or threatened with it, needs, accordingly, to be enhanced.

The fact that this inquiry is being undertaken is, of course, an indication of the recognition from policy makers on this point.

We would be very happy to provide further information or give verbal evidence if required.

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