



Glasgow and West of Scotland
Forum of Housing Associations

The Scottish Government's consultation on its proposed legislation on homelessness prevention: GWSF response on key implications for housing associations

March 2022

1 Introduction

On behalf of its 65 member associations, GWSF welcomes the opportunity to comment on the proposals of the 2021 Prevention Review Group.

This response focuses on the proposed new duties on housing associations and, with the exception of our final comment (on the provision of 'stable accommodation'), does NOT cover additional prevention duties or powers being proposed for local authority homelessness functions or other public bodies' such as health boards and the police.

2 General comments

A cautious welcome

Whilst GWSF will be keen to influence the detail of new legislative duties on housing associations, we would cautiously welcome them in principle. We believe that the proposed housing association duties will largely be a reflection of the many efforts already made to help sustain tenancies and prevent homelessness. One exception to this may be the proposed requirement to have policies and procedures on dealing with domestic abuse – again this is something we would generally welcome.

A further focus on tenants' rights, not responsibilities

There is arguably an undercurrent, behind the Review Group's proposals, that tenancy breakdown is primarily a failure on the landlord's part, not the tenant's. But the proposals, if and when they become law, seem unlikely to make a big difference to the most challenging cases social landlords deal with, most notably those where getting any kind of response or engagement from a tenant has proved extremely difficult.

The proposals could also be said to further put landlords in the tricky position of both taking action against people where co-operation is not forthcoming and also trying to prevent homelessness.

A long list of proposals...

It's in nature of specific-issue review groups to develop a long list of proposed changes. It is then for a wider audience to consider, from that list, what scale and volume of changes is appropriate and proportionate when taken in the wider context of overall legislation and housing policy and practice. Whilst we have not commented on the many proposals aimed at local authorities, we imagine it will be necessary to pare down the number of suggested measures eventually taken forward in the bill, as these will need to be in line with available resources.

Culture and resources can have a greater influence than legislation

It has proved challenging for existing legislation – and will continue to be so for the proposed legislation – to dictate or control the real nature of prevention work carried out at the point of presentation to local authority homelessness services. We do not believe there is a clear picture of what type of casework – sometimes needing to be intensive – is really carried out with people who present as homeless.

For all the important efforts which housing associations do and will continue to make to prevent homelessness among their own tenants (and sometimes among housing list applicants too), it is the work of local authority homelessness services that can make the single, greatest contribution to preventing homelessness. Culture, working practices and available resources probably influence the real scale and nature of this prevention work more than any legislation, though having the right legislative framework in place is obviously important.

Is it true that most homelessness is preventable?

The proposals are based on two key premises. Firstly that 'most homelessness is preventable', and secondly that homelessness prevention should be a shared responsibility across a range of bodies and not just down to the local authority.

GWSF would agree more fully with the latter of these premises than with the former. It seems that language around homelessness is sometimes over-egged. We can all work to reduce homelessness but we can't ever end it. And the notion that most homelessness is preventable may also be somewhat theoretical, as this often depends on the point at which someone's circumstances become known. Housing associations may well have the opportunity to prevent homelessness among their own tenants, but for people who apply for housing and especially for those who

present to the council as homeless, things will sometimes have gone beyond being preventable.

3 Prevention Review Group proposals for social landlords (housing associations and council housing departments)

A: Tenancy sustainment

For the benefit of our members reading this response, the text below in green is the full detail from the consultation document:

PRG proposal: Where a social landlord identifies circumstances which may lead to a risk of homelessness, including:

- Rent arrears or other financial difficulty which may give rise to risk of homelessness (i.e. before difficulties have led to impending homelessness, such as eviction action or abandonment).
- Tenant behaviour or action which may give rise to risk of homelessness.
- Other circumstances, including domestic abuse, or court proceedings, for example, relating to criminal charges, which may give rise to a loss of accommodation due to remand or imprisonment.

That the social landlord must take relevant reasonable steps to mitigate that risk. Reasonable steps would include:

- Housing management practices to sustain tenancies.
- Engaging with the tenant to address relevant financial circumstances.
- Engaging the tenant to address behaviour.
- Putting in place protocols to address relevant circumstances and mitigate risk of homelessness at an early stage, including protocols relating to domestic abuse.
- Where tenants face court proceedings.

The PRG recognised that social landlords are well placed to carry out work which prevents homelessness and that much of existing good tenancy management practice may already serve to achieve this, especially work to address rent arrears and antisocial behaviour. Legislative pre-action requirements aimed at providing further protection for tenants facing eviction for rent arrears have been in place since 2012 (Section 14 and 14A of the Housing (Scotland) Act 2001).

The intention behind this proposal is to formalise responsibilities to prevent homelessness as duties so that social landlords take action within their powers to identify and mitigate the risk of homelessness as early as possible, including the separate risks resulting from rent arrears, neighbour and relationship concerns, domestic abuse and risk to tenancy due to impending court action.

Generally GWSF welcomes these proposals. T the same time, we would be uncertain about the added value and impact of such legislation on homelessness prevention, as the duties would largely reflect what is already done to try to sustain tenancies and prevent homelessness amongst associations' existing tenants (as has been the case for 10 years with the pre-action requirements in arrears cases).

There are always risks for landlords when standard/common practice is enshrined in law, and landlords may need to doubly ensure their record keeping (e.g. about attempts to contact tenants) is thorough and reflects all the efforts they have been making to work with tenants in challenging cases.

The requirements will *not* solve the problem of lack of engagement from a minority of tenants. In these cases, it doesn't matter how long the list of required activities is, if the tenant is not responding at all. The wider issue here is whether the availability of some kind of highly specialist, independent support or advocacy might meet with greater success than the landlord's own efforts. As far as we are aware, in most areas no such service exists, and even if it did, it remains unclear how referrals might be made to, and information shared with, that service, assuming no consent could be obtained from the tenant.

In relation to having a protocol relating to impending court action, it is difficult to imagine what a protocol would cover beyond what landlords already do, as was the case when pre-action requirements were introduced, so we are generally content with this proposal. If anything it may make it even clearer to the court what efforts have been made to manage the situation. Again we would emphasise that protocol actions are unlikely to have an impact where a tenant is not engaging at all with the landlord.

One area which is specifically mentioned in the proposals is '*protocols relating to domestic abuse*'. It seems to GWSF that this is intended to have the effect of compelling social landlords to put in place – if they have not already done so – policies and procedures on dealing with domestic abuse. Currently it appears that only a small minority of housing associations in Scotland have any such visible policies and procedures and so we recognise the need for a greater emphasis on this area.

The few domestic abuse policies we have seen tend to cover a lot more than just homelessness issues, but this is obviously one key element. It may be that some landlords have been waiting for the new powers to end a perpetrator's interest in a joint tenancy to come into force.

B: Notification requirement for social landlords

Again for convenience we have reproduced the proposal in full:

PRG proposal: If the landlord considers the risk of homelessness for a tenant to require assistance beyond their powers, including where there is a growing risk of eviction, then they should notify the local authority as early as possible that there is a risk of homelessness.

This is similar to existing provisions (the Section 11 duty of the Homelessness etc. (Scotland) Act 2003), which states that landlords must notify a local authority where the landlord raises proceedings for possession. However, the intention of the proposal is to ensure that the referral is as far upstream, targeted and as preventative as possible, and to have a clear process in place between the social landlord and the local authority, so that a crisis point is avoided and no one is evicted from social housing without somewhere to stay that night.

This is a fairly loosely termed requirement. Whilst we would not oppose the proposal, many GWSF members may be sceptical about how useful earlier notification to the local authority might be. Certainly in the earlier days of the existing Section 11 notification duty, some housing associations said that notifications were often not acted upon at all by the local authority or, if they were, it was a last-minute intervention.

The consultation asks at how early a stage a landlord should be expected to notify a local authority about the risk of homelessness. GWSF would struggle to respond to this as we are not currently convinced that notification at an earlier stage than service of a possession notice would be of any practical benefit.

C: Using data to monitor prevention activity

In relation to the question - at the end of the consultation - on monitoring, GWSF would be very happy to participate in discussions around submission (to the Scottish Government) of data on the prevention of homelessness. This would be a means of recording activity which associations have always carried out, often without due recognition. The challenge would be to ensure a proportionate approach in terms of the burden the data collection places on front line staff.

D: Amending the local authority duty to provide 'stable accommodation'

GWSF welcomes this broadening of the ways in which councils can discharge homelessness responsibilities.

There seems no doubt that the great majority of people assessed as homeless will be offered a Scottish Secure Tenancy with a housing association or council housing (where the latter exists). But local authorities need to have an appropriate degree of flexibility to come to particular judgements on what may be suitable for specific households. There are areas, not least Glasgow, where any further increase in the number of homeless households will take housing associations to breaking point, and in these situations the proportionate use of alternatives needs to be permissible.