

Applying Intentionality to Priority Need (Homelessness Order)

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Summary

- 1.0 Under the Housing (Wales) Act 2014 (The Act), certain categories of people should be accepted as being in 'priority need' for homelessness assistance. Since the implementation of the Act there have been 10 such categories, with a new 11th category being added with effect from 24th October 2022 under the definition of 'street homeless'(listed within 4.1 of this report).
- 1.1 Under 'The Act' individuals that meet the priority need test are also subject to an 'Intentionality test' to determine whether the authority also has a duty to continue to provide temporary accommodation after 56 days, until such time that a suitable offer of permanent accommodation is made.
- 1.2 Since March 2015, Authorities in Wales have had the option of deciding whether it disregards the intentionality test for any of the defined priority need categories. In March 2015, Carmarthenshire County Council (CCC) decided to apply the intentionality test to the original 10 categories.
- 1.3 This report sets out the background information and seeks Cabinet approval to also apply the intentionality test to the 11th priority need category - 'street homeless'.

Recommendation

- 2.0 Recommend approving the retention of intentionality for all 10 priority need categories listed under the Housing (Wales) Act 2014 and apply intentionality to the additional 11th category of Street Homeless.

Introduction and Background

- 3.0 The Housing (Wales) Act 2014 came into force on 27th April 2015, replacing the Housing Act 1996.
- 3.1 Authorities apply the legislation (intentionality test) to consider whether a person presenting as homeless has done, or failed to do, something which could be considered to have caused the loss of their last settled accommodation and could therefore be deemed to have caused their homelessness ‘intentionally’. Where a person has become homeless intentionally, the Authority does not have a statutory duty to secure permanent accommodation for that person.
- 3.2 From 1st July 2015, Councils in Wales have a choice and can decide which categories of Priority Need they will apply this definition to.
- 3.3 Carmarthenshire’s Executive Board Member approved retaining intentionality in March 2015 for the original 10 priority need categories (as set out in Housing Wales Act 2014).
- 3.4 The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022 (“the 2022 Regulations”) came into force on 24th October 2022. They have the effect of adding an 11th category which describes a person who has a priority need for accommodation to the pre-existing ten categories identified within section 70 of the Housing (Wales) Act 2014 (“2014 Act”) and is to be used when determining whether a duty is owed under section 68 and 75 duties.
- 3.5 The 2022 Regulations also specify an 11th category - Street Homeless, which is added to the specified categories listed in the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015.
- 3.6 Regulations 2 and 3 of the 2022 Regulations state:

Addition of further description of person having a priority need for accommodation under Part 2 of the Housing (Wales) Act 2014

In section 70(1) of the Housing (Wales) Act 2014, after paragraph (j) insert - “(k) a person -
(i) who is street homeless (within the meaning of section 71(2)), or
(ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.”

Amendment of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015

In regulation 2 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015(1), after paragraph (j) insert -

- “(k) a person -
(i) who is street homeless (within the meaning of section 71(2)), or
(ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.”

3.7 The 2022 Regulations have the effect of adding a new description of a person who has a priority need i.e., a person who is ‘street homeless’ as defined by section 71(2) of the 2014 Act. That definition defines ‘street homeless’ as follows:

*“in relation to a person, means that the person has no accommodation available for the person’s occupation in the United Kingdom or elsewhere, which the person -
a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
b) has an express or implied licence to occupy, or
c) occupies as a residence by virtue of an enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession.”*

3.8 The 2022 Regulations also state that a person who might reasonably be expected to reside with a person who is street homeless (as defined by section 71(2) of the Housing (Wales) Act 2014) has a priority need.

3.9 An applicant will not be ‘street homeless’ just because their living conditions are not satisfactory, for example, they are currently residing in accommodation which is unsuitable e.g. sofa surfing, or short-term accommodation which necessitates frequent moves between family and friends.

Intentionality – Meaning and Purpose

4.0 The following are the prescribed categories of applicants that the Local Authority will have regard to when considering intentionality:

The following persons have a priority need for accommodation:

1. A pregnant woman or a person with whom she resides or might reasonably be expected to reside.
2. A person with whom a dependent child resides or might reasonably be expected to reside.
3. A person -
 - (i) Who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability), or
 - (ii) With whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside

4. A person -
 - (i) Who is homeless or threatened with homelessness as a result of an emergency such as flood, fire, or other disaster, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside

5. A person -
 - (i) Who is homeless as a result of being subject to domestic abuse, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides (other than the abuser) or might reasonably be expected to reside

6. A person -
 - (i) Who is aged 16 or 17 when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside

7. A person -
 - (i) Who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who is at particular risk of sexual or financial exploitation, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides (other than an exploiter or potential exploiter) or might reasonably be expected to reside

8. A person –
 - (i) Who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who was looked after, accommodated or fostered at any time while under the age of 18, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside

9. A person -
 - (i) Who has served in the regular armed forces of the Crown who has been homeless since leaving those forces, or
 - (ii) With whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside

10. A person who has a local connection with the area of the local housing authority and who is vulnerable as a result of one of the following reasons:-
 - (i) Having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (ii) Having been remanded in or committed to custody by an order of a court, or
 - (iii) Having been remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or a person with whom such a person resides or might reasonably be expected to reside.

11. A person -

- (i) who is street homeless (within the meaning of section 71(2)), or
- (ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.”

- 4.1 Intentionality is a key measure used by the Housing Hwb Team to determine a homeless application and assists in ensuring that those applicants who have not caused their own homelessness, receive the service that they are entitled to. The new legislation however provides for authorities to have discretion as to which categories of Priority Need the test of intentionality may or may not be applied.
- 4.2 The Housing (Wales) Act 2014 came into force on 27th April 2015, replacing the Housing Act 1996. The Welsh Government introduced the new Act and its provisions to ensure that people have access to a decent affordable home and that those who are at risk of becoming homeless receive appropriate help, with an emphasis on the prevention of homelessness.
- 4.3 Authorities apply the legislation to consider whether or not a person presenting as homeless has done, or failed to do, something which could be considered to have caused the loss of their last settled accommodation and could, therefore, be deemed to have caused their homelessness ‘intentionally’. Where a person has become homeless intentionally, the Council does not have a statutory duty to secure permanent accommodation for that person.
- 4.4 The Housing (Wales) Act 2014 states:

“A person is intentionally homeless.... If the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation which is available for the person’s occupation and which it would have been reasonable for the person to continue to occupy”.

Under sections 191(1) and 196(1) of the 1996 Housing Act, a person becomes homeless intentionally, if:

- i) The person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation (or the likely result of which is that the person will be forced to leave accommodation).
- ii) The accommodation is available for the person’s occupation; and it would have been reasonable for the person to continue to occupy the accommodation. However, an act or omission made in good faith by someone who was unaware of any relevant fact must not be treated as deliberate. In addition, the new legislation makes specific provision for consideration to be given to whether a property is affordable to continue to occupy.

- 4.5 Under Section 78 of the Housing Act (Wales) 2014, the Local Authority must consider the priority categories outlined in Section 70 of the Act (see 3.1). Authorities may decide whether to apply the test of intentionality and determine whether it wishes to apply the test of intentionality to all, some or none of these categories. Where it wishes to continue to apply the test of intentionality to all or some of these categories of person, it must give written notice of its decision to have regard to intentionality to the Welsh Ministers at least 14 days before it takes effect (Regulation 3). This Notice must also contain reasons for deciding to have regard to the category or categories specified. It must also, under Regulations 4 & 5, make provision to publicise a notice to this effect on the Council's website and by posting a notice at the offices where applicants for help with homelessness are received. Further Regulation 6 provides that the decision may not be revised more than twice a year.
- 4.6 There are some exceptions to the intentionality test. Section 75(3) ensures that the following categories of applicants will continue to be eligible for the section 75 duty even where a local authority is satisfied that they have been found intentionally homeless:
- A pregnant woman;
 - A person with whom a dependent child resides;
 - A person who had not attained the age of 21 when the application for help was made;
 - A person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18

However, section 75(3)(f)(i) limits this provision so that where someone has been found intentionally homeless twice in a five-year period, they would not be subject to the section 75 duty.

Reasons for Keeping Intentionality

- 5.0 The use of intentionality is intended to discourage households from giving up accommodation which is suitable for their needs and available to them. It recognises the expectation that, where possible, people ought to take responsibility for their actions and ensures they do not behave in a way which could cause them to lose accommodation.
- 5.1 Where an intentional homeless decision is made the Local Authority's housing duties to that household are significantly reduced. In Carmarthenshire in 2019-20, 3% of homelessness decisions made, concluded that the applicant was intentionally homeless. Stats from 2020-22 would not provide an accurate reflection of this test, due to exceptions that were introduced in response to the Covid 19 pandemic.
- 5.2 Intentionality remains a key issue in deciding whether or not an applicant is entitled to receive a service and potentially being accommodated in permanent or temporary accommodation, which has a significant resource implication.

- 5.3 By not retaining the test of intentionality, the Local Authority would have a duty to accommodate those who have carried out deliberate acts, the consequence of which has resulted in the loss of their home. This will have a significant resource implication for the local authority. Not retaining the test may also actually promote behaviour which leads to homelessness as shortcut for citizens to access alternative housing.
- 5.4 If intentionality were not to be considered by the authority for the 11th priority need category, this may also encourage people to sleep rough for the occasional night (as there is no time limit within the definition of street homeless) in order to be able to access temporary accommodation more easily and be owed a full homelessness duty under section 75 of the HWA where the authority must secure permanent accommodation. This could result in unintended consequences for the authority, in light of the unprecedented demand for social housing.
- 5.5 Whilst WG continue to support an “all in” approach and offer guidance to authorities to disregard the intentionality test, this has not been defined under legislation. By disregarding the intentionality test, the same homeless duty would apply to all homeless cases and no additional priority would be awarded to those who are assessed as being unintentionally homeless. This would create a level of unfairness.
- 5.6 Where individuals are in priority need, but found to be intentionally homeless, the authority still has a duty to provide temporary accommodation for up to 56 days during which time there is a statutory duty to continue to provide help and assistance to secure permanent accommodation. Unfortunately, due to the behaviour of some applicants we are unable to fulfil this duty as there is no suitable accommodation for them to be placed into. This may impact the number of judicial reviews being made by third parties which would be at a significant cost to the local authority.

Financial Implications

- 6.0 If the intentionality rule is not applied to all categories of priority need, the Local Authority will have a duty to a higher proportion of applicants.
- 6.1 If the intentionality rule is not applied to all categories of priority need, a statutory duty to provide temporary accommodation will apply beyond 56 days, until such time that suitable, permanent accommodation is secured. Given the current pressures on the sector, particularly in regard to the shortage of affordable single person accommodation, this may be a considerable time.
- 6.2 This will mean that the authority’s costs for temporary accommodation will continue to increase.
- 6.3 Increase in legal fees where we receive judicial review challenges when we are unable to meet our statutory obligations.

BACKGROUND PAPERS

Title of Document(s)	Document(s) Date	Document Location
Housing (Wales) Act 2014	Various implementation dates	Housing (Wales) Act 2014 (legislation.gov.uk)
Code of Guidance for Local Authorities on the Allocation of Accommodation & Homelessness	March 2016	allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf (gov.wales)
Code of Guidance - addendum	October 2022	code-of-guidance-addendum.pdf (gov.wales) https://gov.wales/sites/default/files/publications/2019-12/additional-guidance.pdf