

ANGUS COUNCIL

COMMUNITIES COMMITTEE – 25 FEBRUARY 2020

POLICY POSITION – INVESTIGATION OF INTENTIONALITY

REPORT BY DIRECTOR OF COMMUNITIES

ABSTRACT

This report sets out Angus Council's proposed policy position regarding the investigation of intentionality when making enquiries into a person's homeless application.

1. RECOMMENDATION

It is recommended that the Committee:

- (i) approves the policy position set out in Appendix 1.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcomes contained within Angus Local Outcomes Improvement Plan 2017-2030:

- More opportunities for people to achieve success
- Safe, secure, vibrant and sustainable communities
- Improved physical, mental and emotional health and well being

3. BACKGROUND

3.1 In April 2019, the Scottish Government consulted on taking forward their commitment to address barriers for people facing homelessness by implementing the Homeless and Rough Sleeping Action Group's (HARSAG) recommendations. This included commencing changes to the Intentionality provisions in the Homelessness etc. (Scotland) Act 2003. [Report No 108/19](#) set out Angus Council's response to the consultation.

3.2 Subsequently, the provisions to change the duty for a local authority to investigate intentionality to a discretionary power came into force on 7 November 2019.

4. CURRENT POSITION

4.1 If a person makes a homeless application, a three-part investigation is currently carried out against all applications to establish whether we have a duty to offer that person accommodation. The investigation must answer the following questions and must do so in this specific order:

- Is the person homeless or threatened with homelessness?
- Is the person intentionally homeless?
- Does the person have a local connection with that local authority area?

4.2 The Housing (Scotland) Act 1987, as amended by the Homelessness etc. (Scotland) 2003 Act, describes when a person is intentionally homeless. This is the case if they deliberately did, or failed to do something leading to the loss of accommodation that was reasonable for them to occupy.

4.3 If a person is found to be intentionally homeless or intentionally threatened with homelessness the local authority does not have a duty to provide them with permanent

accommodation. The local authority must, however, provide advice and assistance as prescribed by The Homeless Persons Advice and Assistance (Scotland) Regulations 2002.

5. PROPOSALS

- 5.1 It is proposed that from 1 April 2020 Angus Council will implement its discretionary power not to investigate intentionality when assessing a homeless application, except in cases where there is clear evidence the person is deliberately trying to manipulate the homeless system. When considering deliberate manipulation we will consider whether someone with an understanding of the homeless system has made themselves homeless or threatened with homelessness with the aim to gain priority in social housing.
- 5.2 If there is clear evidence that someone is deliberately trying to manipulate the homeless system, the three requirements in which a person is to be regarded as having become intentionally homeless or threatened with homelessness must still be satisfied:
- The person must deliberately have done, or failed to do, something which has led to the loss or potential loss of accommodation which was or is available to them.
 - It must have been reasonable for the person to have continued to occupy the accommodation.
 - The person must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above. An act or omission in good faith on the part of a person is not to be regarded as deliberate.
- 5.3 In implementing the discretionary powers, Angus Council is aiming to minimise the number of people assessed as intentionally homeless or intentionally threatened with homelessness.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications as a result of this policy proposal. The impact of restricting the grounds of intentionality will be considered by monitoring the numbers of homeless applications alongside rent arrears, abandonments and tenancy sustainment.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report No 347/18:
https://www.angus.gov.uk/media/agenda_item_no_12_report_34718_rapid_rehousing_transition_plan

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List of Appendices:

Appendix 1 – Policy Statement - New Provisions for the Investigation of Intentionality

New Provisions for the Investigation of Intentionality

1. Introduction

The Programme for Government announced by the First Minister on 5 September 2017 set out a new commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness. Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG) to make recommendations on how these transformational changes can be achieved.

In June 2018, the HARSAG completed their work, producing a comprehensive set of 70 recommendations aiming to secure strategic changes at both the national and local level to help support delivery on the front-line. All 70 recommendations have been translated into the Ending Homelessness Together High Level Action Plan which was published by the Scottish Government and COSLA on 27 November 2018. This plan sets out the actions required to end rough sleeping and homelessness.

One of the barriers to accessing homelessness services – priority need – was abolished in 2012. However, if a person is homeless, the local authority must still carry out a three-part investigation to establish whether they have a duty to offer that person accommodation.

The investigation must answer the following questions and must do so in this specific order:

- Is the person homeless or threatened with homelessness?
- Is the person intentionally homeless?
- Does the person have a local connection with that local authority area?

The Housing (Scotland) Act 1987, as amended by the Homelessness etc. (Scotland) 2003 Act, describes when a person is intentionally homeless. This is the case if they deliberately did, or failed to do, anything leading to the loss of accommodation that was reasonable for them to occupy. Local authorities previously had a legal duty to investigate whether an applicant has become homeless intentionally.

The provisions to change the duty for the local authority to investigate intentionality to a discretionary power came into force on 7 November 2019. This paper sets out Angus Council's policy response to the new provisions for the investigation of intentionality.

2. Current Position

Homeless data reported to the Scottish Government shows we are seeing reducing trends of applications assessed as intentionally homeless or intentionally threatened with homelessness in Angus. 105 households were assessed as intentionally homeless or intentionally threatened with homelessness in 2010/11, reducing by 60% to 42 in 2018/19.

The age profile is fairly young with 68% of those found intentionally homeless or intentionally threatened with homelessness in 2018/19 being under 35. 4 of the households found intentionally homeless or threatened with homelessness in 2018/19 included at least 1 child.

For those found intentionally homeless or intentionally threatened with homelessness in 2018/19 the reason for homelessness varied. The most common reason recorded was homelessness resulting from action taken by the person's landlord or lender (51% of applications assessed as intentionally homeless or threatened with homelessness). Of those assessed as intentionally homeless or intentionally threatened with homelessness 25 (68%) applications had no recorded support needs. Of those with support needs, 6 had recorded mental health issues, 2 had drug and alcohol issues and 7 were recorded as having general housing support needs.

The majority of those assessed as intentionally homeless or threatened with homelessness in 2018/19 had unknown outcomes (26), 3 secured a social housing tenancy, 1 secured a private rented tenancy and 13 moved in with friends / family.

3. Policy Position

It is the Council's position that removing the statutory requirement to examine whether a person applying as homeless has made themselves intentionally homeless can enable a more holistic view of their circumstances. Assessing intentionality prolongs people's time in the homeless system and the level of resources used to investigate and support an intentionality decision could be better utilised supporting people into suitable accommodation or preventing homelessness arising in the first place. However having the power to find someone intentionally homeless or intentionally threatened with homelessness may act as a deterrent for those who are trying to manipulate the housing system.

Therefore a balanced approach is required which considers the impact and potential outcomes of an intentionality decision, particularly for people with children, or those with mental health or other support needs, or who are in financial difficulties and who would find it difficult to source alternative suitable housing.

From 1st April 2020 Angus Council will implement its discretionary power not to consider intentionality when assessing a homeless application, except in cases where there is clear evidence which would leave any reasonable person to believe that there has been an attempt to manipulate the system. The test of deliberate manipulation will consider whether someone with an understanding of the homeless system has made themselves homeless or threatened with homelessness with the aim to gain priority in social housing.

Where there is clear evidence which would leave any reasonable person to believe that there has been an attempt to manipulate the system, the three requirements in which a person is to be regarded as having become intentionally homeless or threatened with homelessness must still be satisfied:

- The person must deliberately have done, or failed to do, something which has led to the loss or potential loss of accommodation which was or is available to them.
- It must have been reasonable for the person to have continued to occupy the accommodation.
- The person must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above. An act or omission in good faith on the part of a person is not to be regarded as deliberate.

If a person is found to be intentionally homeless or intentionally threatened with homelessness the local authority does not have a duty to provide them with permanent accommodation. They will, however, be entitled to adequate advice and assistance as prescribed by The Homeless Persons Advice and Assistance (Scotland) Regulations 2002.

4. Implementation & Monitoring of Policy Position

In implementing the discretionary powers, Angus Council is aiming to minimise the number of people assessed as intentionally homeless or intentionally threatened with homelessness. When considering using the intentionality grounds, housing officers must discuss the assessment with their manager.

The impact of removing the grounds of intentionality will be considered by monitoring the numbers of homeless applications alongside rent arrears, abandonments and tenancy sustainment.

As part of our transition to rapid rehousing in Angus, we will also continue to work with partner organisations and stakeholders to increase the focus on prevention to stop homelessness happening in the first place.