

Meeting of:	<b>Homes and Safe Communities Scrutiny Committee</b>
Date of Meeting:	<b>Wednesday, 15 January 2020</b>
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Housing (Wales) Act 2014 Commencement of Section 75(3) - Homeless Intentionality Decisions
Purpose of Report:	To notify Members of the commencement from 2nd December 2019 of Section (75) 3 of the Housing (Wales) Act 2014 and the potential impact.
Report Owner:	Miles Punter, Director of Environment and Housing
Responsible Officer:	Ian Jones, Housing Solutions Manager
Elected Member and Officer Consultation:	Carys Lord, Accountant, Resource Management; Committee Reports Legal Services; Mike Ingram, Head of Housing; Pam Toms, Operational Manager, Housing; Cllr Margaret Wilkinson
Policy Framework:	This report is consistent with the Policy Framework
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>On Monday 2nd December 2019 Welsh Government commenced Section 75(3) of the Housing (Wales) Act 2014. This provides additional help for specific households who in the past may have received a decision that they were intentionally homeless and therefore not owed the final duty to secure accommodation for them by the Council.</li> <li>Local authorities will now be required to secure accommodation for households with children and certain young people who are in priority need. This new duty will apply regardless of whether they have been found 'intentionally homeless' and where the duty to relieve homelessness has been unsuccessful.</li> <li>However, this legal duty will only apply should it be the first time they have been found intentionally homeless in the past 5 years.</li> <li>The aim of the new duty is to provide greater security for children in vulnerable households and additional help for some young people and care leavers, in line with the aims of the United Nations Convention on the Rights of a Child.</li> </ul>	

## **Recommendations**

1. That Scrutiny Members note the commencement of Section 75 (3) of the Housing (Wales) Act 2014 and consider the potential impact on the Council.

## **Reasons for Recommendations**

1. For information and consideration.

### **1. Background**

- 1.1 The Housing (Wales) Act 2014 ('The Act') took effect on 27th April 2015 and placed a number of new duties on local authorities in respect of homelessness, which included:
  - To provide assistance to anyone threatened with homelessness.
  - To provide appropriate help and support to any homeless person to help secure a suitable home.
- 1.2 The Act was the biggest change in tackling homelessness in Wales since the first Homeless Person's Act commenced in 1977 and its aim was to transform homelessness by creating a modern safety net where no one is turned away without help.
- 1.3 Prior to the commencement of Section 75 (3) of The Act on 2nd December 2019, local authorities could deem a household with children and vulnerable young person households 'intentionally homeless'. This meant that they were denied the final statutory homelessness duty, if following a homelessness investigation, it was considered that the household 'did' or 'did not' do something, which led to the loss of their accommodation. For example; where a household without appropriate and relevant reason chose not to pay their rent.
- 1.4 However, Section 78 of The Act also required each local authority to specify a category/categories of applicant that the authority had decided to disregard if the applicant had become homeless intentionally.
- 1.5 As a result, Housing Services agreed to disregard the 'intentionality' test for all 16/17yr olds and care leavers and therefore since the introduction of The Act the Council has not made an intentional decision for any vulnerable young people.
- 1.6 Since 2016 the Housing Solutions Service has also not found any household with children intentionally homeless because of the adverse impact it would have had on the vulnerable children and the household. For these cases, the Housing Solutions Service has ensured that a wide range of both statutory and

commissioned support services were available to ensure that the families future tenancies were sustainable.

## **2. Key Issues for Consideration**

- 2.1** Whilst it is acknowledged that statutory intentionality decisions for the households with children and young people as stipulated within Section 75(3) have not been made since 2016 by the Council, there is concern that by not having the option to make an intentionality decision, it will have a detrimental impact on homelessness prevention. Some clients who wish to move home could choose to withhold rent payments in order to be evicted so that they could be assisted to move to alternative accommodation.
- 2.2** The impact of this could be extremely challenging for the Council, and have a significant impact on revenue through unpaid rent, as well as increasing the pressure on temporary accommodation resources due to increased demand.
- 2.3** The commencement of Section 75 (3) of The Act could also have a detrimental impact on the private rented sector through increased rent arrears and evictions which may lead some landlords to withdraw from the market. Due to the shortage of social rented homes in the Vale of Glamorgan, the Council is heavily reliant on the private rented sector to provide permanent homes for many homeless clients. A reduction in the availability of privately rented properties would therefore also put further pressure on temporary accommodation and lead to households waiting longer to be suitably rehoused.

## **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** Looking to the long term - the Vale of Glamorgan's statutory and non-statutory services support vulnerable people to attain the life skills required to maintain their home, integrate into the community and to live independently in the long term.
- 3.2** Taking an integrated approach - Homelessness Prevention processes are continually reviewed and joint working takes place with the Supporting People Planning Group, which includes both statutory and third sector partners to ensure that homelessness services remain appropriate and where required new services developed to support any emerging themes.
- 3.3** Involving the population in decisions - this is essential for a balanced and informed service. Service User's views are monitored to ensure that the correct services are delivered to meet their individual needs. Households are also

empowered through the advice and support that they receive to be able to live independently in the future and to reduce their dependency on services.

- 3.4** Working in a collaborative way - the Council's Homelessness Prevention Strategy places collaboration and coproduction at the core and these are monitored on a local, regional and national level through regular reviews.
- 3.5** Understanding the root causes of issues and preventing them - the Council has in place a Homelessness Prevention Strategy and Action Plan and along with needs data collected are monitored quarterly to inform service improvement, delivery and commissioning.

## **4. Resources and Legal Considerations**

### **Financial**

- 4.1** There are potential resource implications associated with this report in respect of a possible increase in rent arrears, more demand for temporary accommodation and longer waiting times to be rehoused. These will need to be financed through existing budgets.

### **Employment**

- 4.2** There is a statutory requirement on the Vale of Glamorgan to ensure appropriately experienced staff are employed to deliver the Council's statutory duties within the Housing (Wales) Act 2014.

### **Legal (Including Equalities)**

- 4.3** The Housing (Wales) Act 2014 (Commencement Order No. 10) Order 2019 commenced section 75(3) of the Housing (Wales) Act 2014 on 2nd December 2019.
- 4.4** 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.

- 4.5** 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.

## **5. Background Papers**

- (i) Section 75(3) Announcement letter from Minister for Housing and Local Government – Appendix A
- (ii) Section 75(3) of the Housing (Wales) Act 2014 – Appendix B



Eich cyf/Your ref  
Ein cyf/Our ref

Local Authority Chief Executive Officers;  
Heads of Services;  
Leaders; and  
Housing leads

16 October 2019

### **Housing (Wales) Act 2014 Commencement of section 75(3)**

Since the introduction of the Housing (Wales) Act 2014, the prevention of homelessness duties have resulted in many households avoiding the trauma of homelessness thanks to the work of your teams and partners and I would like to extend my thanks to them.

I recognise that the demand on services is increasing and that there are still too many people whose homelessness is not prevented; collectively, we therefore need to do more.

We committed during the Housing (Wales) Act's passage through the Assembly to introduce an additional safety net for particular households who may be found intentionally homeless.

You will wish to be aware therefore that on 2<sup>nd</sup> December 2019 we intend to commence section 75(3) of the Housing (Wales) Act 2014. This particular subsection will provide additional help for specified households who have received a decision they are intentionally homeless and are not owed the final duty to secure accommodation.

This will mean that local authorities will be required to secure accommodation for households with children and certain young people, who are in priority need. This new duty will apply regardless of if they have been found 'intentionally homeless' where the duty to relieve homelessness has been unsuccessful. This legal duty will only apply should it be the first time they have been found intentionally homeless in the past five years.

This will provide greater security for children in vulnerable households and additional help for some of our young people and care leavers, in line with the aims in the United Nations Charter on the Rights of the Child. We also expect local authorities to co-ordinate a plan of action and support these households to help prevent them becoming homeless in the future.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Whilst the number of cases who received intentional homeless decisions is not a significant number in comparison to those receiving help under the Act (201 cases recorded in 2018/19 across the whole of Wales), the threat of intentionality remains powerful and emotive.

It is of paramount importance that local authorities work to the spirit rather than the letter of the law. We need to ensure the focus of our efforts is on homelessness prevention, which starts far earlier than the statutory 56 days. Working with people before a crisis takes hold is essential to give ourselves the best opportunity to reduce and ultimately end homelessness in Wales. It is also the most effective, and cost effective, approach minimising trauma to families and individuals and maximising their ability to sustain their housing.

We are currently undertaking a comprehensive review and revision of the Code of Guidance, in collaboration with stakeholders across the sector which will result in a very different document. Work is underway to re-develop the current Code of Guidance into a new, accessible, more policy driven document, set out in four parts:

- Part 1 – Policy and direction\*
- Part 2 – The statutory duty\*
- Part 3 – Delivering a quality service\*
- Part 4 – Measuring effectiveness\*

\*working titles

The new Code of Guidance will clearly set out, up front, the Welsh Government policy approach and the legal position. It will also provide practical guidance to support front line staff to deliver a quality service to households across Wales; supporting them to get the right support at the earliest opportunity. The new Code of Guidance will seek to bring together both statutory and non-statutory aspects of the agenda, based on a shared set of working principles and a collaborative, partnership driven, and more consistent approach.

A truly preventative approach puts the individual at the centre, assisting households at the earliest opportunity into accommodation and then ensuring they are supported to stay there. We need to move away from policies that seemingly use threats to ensure compliance and co-operation so that a more productive partnership between the authority and household can take place. This is far more likely to result in a positive outcome for all concerned. Under the legislation, local authorities have a general preventative duty to help individuals at the earliest stage when they seek support. Not only is this the right thing to do, but it is also a far more effective and cost effective intervention.

Let me be clear – the legislation sets the minimum requirements on local authorities and should be seen as such. It should be used as an enabler to support individuals and households. The legislation should not be used as a barrier to support and I expect local authorities to take a far more inclusive approach, be that in the application of local connection or interim accommodation duties. I expect local authorities to work to the spirit of the legislation in supporting individuals to prevent their homelessness and also in supporting those who are already homeless into accommodation.

This is a vitally important agenda and I value your continued commitment to jointly taking this forward.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

**Julie James AC/AM**

Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

## Additional provisions under section 75(3)

### Introduction

1. This section should be read in conjunction with Chapters 14, 16 and 17 of the Code of Guidance for Local Authorities on the Allocation and Accommodation and Homelessness (March 2016) prior to the publication of a new code of guidance in 2020.
2. The Housing (Wales) Act 2014 (Commencement Order No. 10) Order 2019 commenced section 75(3) of the Housing (Wales) Act 2014 on 2<sup>nd</sup> December 2019.
3. 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
4. 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.

### The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

- (3) This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—
- (a) the applicant became homeless intentionally in the circumstances which gave rise to the application,
  - (b) the applicant—
    - (i) does not have suitable accommodation available for occupation, or
    - (ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply,
  - (c) the applicant is eligible for help,
  - (d) the applicant has a priority need for accommodation,
  - (e) the applicant is—

- (i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,
- (ii) a person with whom a dependent child resides or might reasonably be expected to reside,
- (iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside, or
- (iv) 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, or a person with whom such a person resides or might reasonably be expected to reside, and
- (f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—
- (i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and
- (ii) on the basis that the applicant fell within this subsection.
- (4) For the purpose of subsections (2)(a)(ii) and (3)(b)(ii), the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

## Guidance

5. This section only applies where a local authority has notified Minister's whether they are having regard to intentionality and which categories. This is covered in more detail in Chapter 17. No further notifications to the Welsh Government is necessary.
6. Chapter 16 provides guidance for ending the duty at section 73 and picking up the section 75 duty. The provisions under this section only apply where someone has been assessed as in priority need.
7. Where an applicant meets a priority need category AND falls within one of the following categories of people, they will continue to be eligible to receive support under section 75 even where they have been found intentionally homelessness in the past five years:
  - 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

8. The legislation is blind to intentionality until the revised section 62 assessment which is owed when section 73 comes to an end. Where someone continues to receive support as a result of section 75(3), support must be continuous.

### **Five year time limit**

9. Where someone has been found intentionally homeless, the five years commences on the date that they received notification that they were owed a duty under section 75. For example, if a duty is owed under this section on 1<sup>st</sup> January 2020, then if no more than one intentionality decision has taken place since 1<sup>st</sup> January 2015, then the applicant would be eligible for support under section 75 as a result of section 75(3).
10. The date of the intentionality decision is the date of the letter notifying the applicant that they have been found intentionally homeless.
11. Authorities should not under any circumstances look to discharge section 73 early (via section 74.3) purely in order to ensure that an applicant would fail the five year test.

### **Notification**

12. Guidance in relation to notifying applicants is contained within Chapter 15. Local authorities will need to be aware that where an applicant has been provided accommodation following the section 75(3) provision, then the notification letter should ensure that this is outlined. Failure to do so, will result in the five year time limit not being enforceable.

### **Legacy**

13. There are no legacy considerations. Where an intentionality decision has been made prior to commencement of section 75(3) on 2<sup>nd</sup> December 2019, the new provisions are still relevant.