

## **SCOTTISH CONSUMER COUNCIL**

### **THE SCC'S RESPONSE TO THE SCOTTISH OFFICE'S DRAFT CONSULTATION ON A CODE OF GUIDANCE ON HOMELESSNESS**

#### **1. INTRODUCTION**

The Scottish Consumer Council (SCC) welcomes the opportunity to comment on the draft Code of Guidance on Homelessness. The revisions to the draft follow the 1994 consultation on "*Tackling Homelessness*", which contained research evidence of improvements that could be made to the good practice advice contained in the Code, and which suggested changes to the duties of local authorities in housing homeless people.

The SCC has a particular remit for disadvantaged consumers, and we remain deeply concerned about the implications for homeless people of particular changes introduced in the draft code. These changes are the new emphasis that local authorities need not provide permanent accommodation for unintentionally homeless people in priority need; the guidance on allocating accommodation to homeless people through waiting lists; and a new section on dealing with collusive removals. These three issues were raised in *Tackling Homelessness*, originating in the Department of Environment's consultation paper on accessing local authority tenancies. The SCC finds it regrettable that the draft Code now contains this guidance, disregarding the overwhelming response in 1994 that it should not. Worse than this, there is ample research evidence to demonstrate the harmful effects of temporary accommodation and that these measures provide no solution to the homelessness problem in Scotland.

For many reasons, some people are unable to secure their own accommodation. Some of these reasons are preventable and avoidable, and some are not. Prior to 1977, local authorities had discretionary powers to assist homeless people. But the needs of homeless people were not being met by these discretionary powers. This lay behind the introduction of the homelessness legislation in 1977. It is, therefore, not unrealistic to suspect that homeless people's needs might not be met by local authorities — particularly in the face of significant budget cuts — unless strong guidance is given about good practice. A safe, affordable home cannot be regarded as a luxury. People's ability to access health services, take up employment opportunities, and maintain family and social links, depends upon their having settled accommodation. The Homeless Persons' Charter for Scotland, written by homeless people, emphasises the problems of accessing basic services, such as GP services, without settled accommodation.

This is why the SCC welcomed the parts of *Tackling Homelessness* that emphasised improving the operation of the Code of Guidance. We took the opportunity to commend the Scottish Office decision to base part of its consultation on the findings of research. However, we were disturbed by a number of issues that were raised in the consultation without a research basis, and we had particular concerns relating to proposals for providing accommodation, allocations, and collusive removals.

#### **2. THE DRAFT CODE OF GUIDANCE**

The SCC is disappointed that some of the flaws we identified in *Tackling Homelessness* are now contained in the draft Code, despite overwhelming advice from respondents that they should not be.

There are some improvements in the draft Code, such as guidance on the use of information and advice to prevent homelessness (sections 3.9 to 3.12), and helping people maintain their tenancies to prevent recurring homelessness (3.39-3.45). Also, we welcome the inclusion of chapter four, on co-operation with other agencies when this would be helpful to homeless applicants.

However, this response will not cover all of the changes made in the draft Code. It will concentrate on three of the changes to the Code — regarding the provision of accommodation, allocations, and collusive removals — since these, more than any other changes to the Code, pose a fundamental threat to the rights of homeless people.

### **3. PROVIDING ACCOMMODATION**

Chapter 10 of the Code deals with duties to provide accommodation to homeless households. The advice contained in the draft Code differs significantly from the existing advice. In particular, while pointing out that the provision of permanent accommodation is good practice, the draft Code emphasises that local authorities need not provide permanent or settled accommodation to unintentionally homeless people in priority need (sections 2.9, 10.1, 10.6, 10.20).

The SCC finds this advice unacceptable for a number of reasons, primarily because it is contradictory and fundamentally weakens the position of the most vulnerable people in housing need.

By definition, unintentionally homeless people in priority need are those whose homelessness was not preventable, and who face the severest difficulties in securing their own accommodation. For example, people made homeless after a traumatic event such as a fire or flood, or people with children who cannot remain in their current home, people fleeing from violence, or people discharged from long term care establishments. To discourage the provision of permanent accommodation in these instances is to condemn people to a lifetime of repeat homelessness. In response to the suggested removal of the duty to provide permanent accommodation in *Tackling Homelessness*, 97% of respondents disagreed. The draft Code has disregarded these responses.

There are a number of problems with the use of temporary accommodation, not least its availability. If it were to be used to house unintentionally homeless people in priority need until they were allocated a house through the council waiting list (which could be a matter of years), demand for temporary accommodation would greatly increase. Local authorities most frequently use furnished property from their own stock to house people temporarily. Bed and breakfast hostels are the next most frequently used, even though it is increasingly thought by government and local authorities alike to be inappropriate to meeting the needs of homeless people.

The extra demand for temporary accommodation would inevitably fall upon the private rented sector. Private renting is already in short supply, and there is a danger that those for whom private renting is the preferable option could be displaced. If prospective tenants cannot access rented accommodation, they may well be forced into home ownership, leading to debt problems. Scottish Homes research in 1993 found evidence of this happening to households from the ethnic minorities<sup>1</sup>. Furthermore, there is evidence that landlords prefer not to rent out to people who are unemployed<sup>2</sup>.

Rents in the private sector are higher than local authority rents. Housing homeless people in this sector would increase their reliance on welfare benefits, and make it harder for them to escape from the poverty trap.

Many authorities, in a 1994 survey<sup>3</sup>, pointed out that the use of temporary accommodation would simply result in repeat applications from households as homeless. The SCC is concerned that families would be unable to plan with any certainty for such provision as health care, education, social and employment networks. This places a strain on families, and the devastating effects of temporary accommodation on children's development was highlighted in recent research carried out for the Nuffield Foundation<sup>4</sup>. The research found widespread mental health problems among children living in hostels, and that attendance of mainstream education fell from 75% of the children in the study to 29% after they became homeless. The researchers expressed concern that these children did not have access to the services they needed, a problem also highlighted in the Homeless Person's Charter for Scotland.

There is clearly a consensus of opinion that the use of temporary accommodation to house unintentionally homeless people in priority need is bad practice. The Code of Guidance should consistently emphasise good practice.

The SCC is concerned that the draft Code is going beyond its intended purpose in making an interpretation of the Awua case as a judgement concerning duties to provide accommodation, and we are not convinced that the Scottish Office is entitled to do so. There are dangers in interpreting case law, as it can be challenged and can change. We are aware of the uncertainty expressed by some organisations over the Scottish Office's interpretation of the Awua judgement.

Furthermore, we repeat the warnings about discretionary procedures failing to meet the needs of homeless people, and urge the Scottish Office to provide clear, unambiguous guidance on good practice. The Code, therefore, should underline the duty of local authorities to provide accommodation for unintentionally homeless people in priority need, and should emphasise in

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<sup>1</sup> Scottish Homes *Ethnic Minority Housing* Consultation paper 1993

<sup>2</sup> Report of a 1993 Conference of Private Renting, research commissioned by Scottish Homes.

<sup>3</sup> *Reform or Reaction? Reviewing Homelessness Law in Scotland* Shelter and the Chartered Institute of Housing in Scotland, April 1994.

<sup>4</sup> Reported in the Times Educational Supplement, 7 June 1996.

the Code the importance of this being permanent accommodation. As it stands, such advice is not clear.

#### 4. ALLOCATIONS

*Tackling Homelessness* raised the question of using the normal waiting list to house homeless people. This was in response to fears that homeless applicants might be displacing those on the waiting list who are in greater housing need.

The SCC asked, in response, what constituted a greater housing need than homelessness. No explanation has been given, and we repeat that homelessness is the greatest housing need. If there are people on housing waiting lists whose circumstances are such that their housing need is more urgent than those statutorily defined as homeless, then the case is made for including their circumstances into the definition of priority need, and bringing them within the homelessness legislation. The case is not made for allocating all homelessness applicants through the waiting list.

As to the evidence, none exists to suggest that the needs of waiting list applicants is being displaced in Scotland by homeless households. On the contrary, over 80% of secure lets of council property go to those on the waiting list and transfer list<sup>5</sup>.

Clear needs-based allocations policies should be developed, because housing authorities must be able to meet the needs of those on their waiting lists. However, it is unlikely that these could be flexible enough to meet the urgent needs of those applying as homeless. There is evidence that, even when they do not have to cope with homelessness, allocation policies often reflect factors other than housing need. For example, a 1991 Shelter survey and 1993 Scottish Office research found waiting lists to be not good indicators of need.

To leave the priority of homelessness to the discretion of local authorities will not ensure that this discretion will be used to the advantage of those most in need. The homelessness legislation was introduced partly because many authorities were failing to do this. The draft Code appears to give the misleading impression that homeless people should not be given a priority over those on the waiting list, eg section 6.5. Instead, the Code should emphasise that, in accordance with the Housing (Scotland) Act 1987, local authorities must give a priority to homeless households.

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<sup>5</sup>Reform or Reaction? Reviewing Homelessness Law in Scotland. Shelter and the Chartered Institute of Housing in Scotland, April 1994.

## 5. COLLUSIVE REMOVALS

*Tackling Homelessness* asked about the problem of “collusive removals”, whereby applicants give false information in order to obtain local authority accommodation.

No local authorities in a 1994 survey thought that collusive removals was a problem<sup>6</sup>. This is despite the fact that two-fifths of applicants are made homeless from accommodation shared with friends and relatives<sup>7</sup> — the main suspect group. In *Tackling Homelessness*, it was conceded that many people becoming homeless in this way have simply come to the end of a conveyor belt of housing need.

The emphasis given in the draft Code to collusive removals, in sections 8.3 and 8.4, is potentially offensive, and appears to continue the derogatory tone of that part of *Tackling Homelessness* which came from the Department of the Environment. The dangers of mistakenly assuming collusive removal are hinted at in section 8.5.

The Code should give clear guidance on good practice in dealing sensitively and quickly with urgent housing needs. Local authorities already have the power to prosecute those who knowingly give false information, and the new emphasis in the draft Code will do nothing to alter the position. Rather, it endangers the rights of every genuine homeless applicant.

Therefore, the Code should emphasise the dangers as in section 8.5, rather than placing suspicion routinely on applicants.

## 6. CONCLUSION

**The SCC is disappointed at the changes proposed to the draft Code of Guidance on Homelessness. Homelessness is the greatest housing need, and the draft guidance threatens to further undermine the position of the most vulnerable people in our society. We believe the Code of Guidance should be a tool for extending good practice. It is not a mechanism for tackling homelessness — this can only be achieved by policy development and investment — as it relates only to the handling of those who have already applied for assistance under the homelessness legislation. It therefore should promote best practice in handling these applications. The SCC is deeply concerned that the draft Code, if adopted, will undermine good practice and lead to further severe disadvantage for homeless people.**

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<sup>6</sup> Reform or Reaction? Reviewing Homelessness Law in Scotland. Shelter and the Chartered Institute of Housing in Scotland, April 1994.

<sup>7</sup> Scottish Office research into the operation of the Code of Guidance