

## **Funding for Supported Housing:**

### **Consultation Response by the Housing Law Practitioners Association (HPLA)**

#### ***HPLA***

1. The Housing Law Practitioners Association (HPLA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics, and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants, and other occupiers of housing. It has members throughout England and Wales. HPLA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. The Association is regularly consulted on proposed changes in housing law or in legal changes which may impact on housing law (whether by primary or subordinate legislation or statutory guidance). HPLA's responses are available at [www.hpla.org.uk](http://www.hpla.org.uk). Membership of HPLA is on the basis of a commitment to HPLA's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants, and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

#### ***The author***

2. Tessa Buchanan is the vice-chair of HPLA and a barrister at Garden Court Chambers.

### *Ambit of response*

3. HLPAs limits itself to issues of housing law and will not comment on matters such as local authority administration which fall outside its area of expertise. In consequence, HLPAs will not respond to questions 1, 2, 5, 6, 7, and 10.

### *Preliminary points*

4. HLPAs welcomes the government's commitment to supported housing and supports its recognition of the vital role played by such housing in supporting some of the country's most vulnerable people. HLPAs invites the government to place this commitment on a statutory footing.
5. However, HLPAs is concerned that the effect of the reforms will be to decrease the funding available for supported housing, leading to reduced provision and, ultimately, an increase in the number of vulnerable people living in unsuitable housing or without any housing at all. HLPAs considers that the proposals will increase uncertainty for supported housing providers, which is likely to deter them from investing in and developing further supported housing. In particular:
  - i. Whilst any deferment in the application of Local Housing Allowance ("LHA") rates to supported housing is to be welcomed, HLPAs notes that this extends the uncertainty for at least another 2.5 years.
  - ii. The splitting of costs between Universal Credit and other sources of funding will lead to the fragmentation of funding for supported housing, thus increasing the complexity of the system and the possibility for matters to go wrong.
  - iii. Devolving funding to local authorities to provide a "top-up" means that, rather than supported housing occupiers' liabilities being guaranteed by way of their rent, much will depend on the discretion of the individual local authority. This could lead to unpredictable and arbitrary decision-making.
6. HLPAs considers that any reduction in the provision of supported housing is against the interests of taxpayers who are likely to pick up the bill by way of increased pressure on the NHS and other emergency services.

***Q3. How can we ensure that local allocation of funding by local authorities matches local need for supported housing across all client groups?***

***Q4. Do you think other funding protections for vulnerable groups, beyond the ring-fence, are needed to provide fair access to funding for all client groups, including those without existing statutory duties (including for example the case for any new statutory duties or any other sort of statutory provision)?***

7. HLPAs respond to questions 3 and 4 together.
8. HLPAs share the concerns expressed by stakeholders that some vulnerable groups could be overlooked or that particular groups could be prioritised at the expense of others.
9. HLPAs note the applicability of the public sector equality duty under section 149 of the Equality Act 2010 (“EA 2010”). However, HLPAs are not confident that this will be sufficient to meet these concerns. Firstly, the duty is only to “*have due regard to the need*” to achieve certain outcomes: the duty is not actually to achieve those outcomes. Secondly, addiction to non-prescribed drugs and alcohol does not constitute an impairment for the purposes of the EA 2010, meaning that people with drug and alcohol addictions – who are amongst the most vulnerable in society - will not be protected by this.
10. HLPAs recommend that:
  - i. A duty is created which requires local authorities to take into account the needs of all potential and actual users of supported housing when making decisions on the allocation of funding. It should be expressly stated that this includes the needs of people suffering from substance abuse difficulties.
  - ii. A duty is created which requires local authorities, when allocating funding for supported housing, to ensure (or, at least, to take steps to ensure) that the funding is sufficient to make the supported housing affordable for the occupier and sustainable for the provider. This would be akin to the obligations on local housing authorities to ensure that accommodation provided in discharge of the homelessness duties under Part 7 of the Housing Act 1996 is suitable, which includes a requirement that it is affordable.<sup>1</sup>

---

<sup>1</sup> Homelessness (Suitability of Accommodation) Order 1996

***Q8. We are interested in your views on how to strike a balance between local flexibility and provider/developer certainty and simplicity. What features should the funding model have to provide greater certainty to providers and in particular, developers of new supply?***

***Q9. Should there be a national statement of expectations or national commissioning framework within which local areas tailor their funding? How should this work with existing commissioning arrangements, for example across health and social care, and how would we ensure it was followed?***

***Q11. Do you have any other views about how the local top-up model can be designed to ensure it works for tenants, commissioners, providers and developers?***

11. HLPAs respond to questions 8, 9, and 11 together.

12. HLPAs are concerned at the potential degree of discretion afforded to local authorities under the current proposals. HLPAs consider that this is a retrograde step. It creates uncertainty which is likely to deter providers from investing in and developing further supported housing, to the detriment of vulnerable members of society. This will, of course, be exacerbated by the decrease in social rents.

13. HLPAs therefore support the creation of a national framework to encourage consistency and thus certainty.

14. HLPAs also consider that there should be a right of appeal against funding decisions. This should encourage rigour in decision-making and also reduce pressure on the Courts by avoiding the need for judicial reviews.

***Q12. We welcome your views on how emergency and short term accommodation should be defined and how funding should be provided outside Universal Credit. How should funding be provided for tenants in these situations?***

15. HLPAs consider that emergency and short-term accommodation should be defined as supported housing:

- i. Which would not constitute “settled” accommodation for the purposes of section 191 of the Housing Act 1996 (“HA 1996”); or

- ii. To which the Protection from Eviction Act 1977 (“PEA 1977”) does not apply.
16. The feature which distinguishes emergency and short-term accommodation from other supported housing is that it is intended to be provided on a temporary basis. It is not accommodation in which a person would be expected to reside for the long term. This is reflected in the limited security of tenure usually inherent in such accommodation.
17. The concept of emergency or short-term accommodation is a familiar one in housing law. It is particularly relevant, firstly, in determining whether a person has become homeless intentionally. Becoming homeless intentionally is defined at section 191(1) HA 1996:
- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.<sup>2</sup>*
18. When deciding whether a person has become homeless intentionally, the local housing authority will “look back to the last period of settled accommodation and the reasons why the applicant left that accommodation”<sup>3</sup>. A period of settled accommodation can break the chain of causation between the deliberate act/omission and the present homelessness, as confirmed by Lord Reed in Haile v Waltham Forest London Borough Council [2015] EKSC 34 at paragraph 11:
- The current homelessness had to have been caused by the applicant's earlier intentional conduct. A causal connection would not exist where there had been an intervening period in settled accommodation...*
19. What constitutes “settled” accommodation is a question of fact and degree but is in essence accommodation which is not known from the outset to be only temporary accommodation.<sup>4</sup> Bed and breakfast or other short-term hostel-style accommodation will not constitute “settled” accommodation (R v Rushcliffe District Council ex p Summerson (1993) 25 HLR

---

<sup>2</sup> Section 77 of the Housing (Wales) Act 2014 adopts the same definition:

*(2) This subsection applies 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.*

<sup>3</sup> English *Homelessness Code of Guidance for Local Authorities* (DCLG, July 2006) paragraph 11.11.

<sup>4</sup> Din v Wandsworth London Borough Council (unreported) 23 June 1981, CA.

577, QBD). It is also likely that a women's refuge will not constitute "settled" accommodation: in Ali v Birmingham City Council [2009] UKHL 36, the (then) House of Lords held that it was not reasonable for a woman to continue to occupy a refuge indefinitely and therefore even if she was asked to leave the refuge because of her own deliberate act, she should not be found to have become homeless intentionally.

20. Secondly, HPLA considers that supported accommodation which falls outside the protection of the PEA 1977 should also be considered as emergency or short-term accommodation. There are a number of bases on which accommodation (generally) may be excluded for the purposes of the PEA 1977 but most would not apply to supported housing, such as where the tenancy or licence confers only the right to occupy for a holiday. Supported accommodation which falls outside the protection of the PEA 1977 is likely to do so because of its precarious, short-term nature, such as where a licensee occupies a room in a hostel provided by (inter alia) a local authority, a development corporation, a housing trust, a private registered provider of social housing, or a registered social landlord (section 3A(8) PEA 1977) or where a homeless person has been placed in interim accommodation pending a decision on their application by the local housing authority (R (CN and ZH) v Newham LBC and Lewisham LBC [2014] UKSC 62).

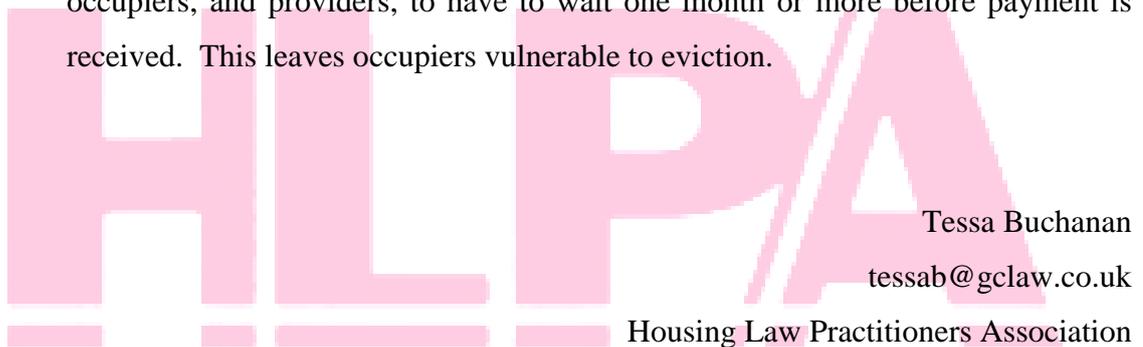
21. HPLA considers that defining emergency or short-term accommodation by reference to these pre-existing concepts is appropriate and beneficial because it avoids contradictions and inconsistencies, with accommodation being treated as short-term for some purposes but not others. It also gives certainty to decision-makers, who would be able to draw on a body of pre-existing case-law.

22. As to how funding should be provided in respect of emergency or short-term accommodation, HPLA would emphasise the fact the people in such accommodation will almost always be very vulnerable and at a point of crisis. They may well have learning disabilities, mental illness, or difficulties arising from drug or alcohol addiction. HPLA recommends that the following principles be followed:

- i. The system should be as simple as possible. Any system which requires them to fill out lengthy or complex forms, provide extensive documentation, has several stages, or is anything other than straight-forward, is likely to cause them serious

difficulty and may lead to rent/licence fee arrears accruing which would place them in danger of eviction and homelessness.

- ii. It is likely to be preferable for the rent/licence fee to be paid direct to the provider, in order to simplify matters and minimise the risk of the occupant falling into arrears.
- iii. The LHA should not apply. Such accommodation is likely to be required as emergency provision in a crisis. There will be limited time to “shop around” to find the cheapest option. If the accommodation is funded only up to the cut-off point of the LHA, a vulnerable person may find themselves at risk of eviction due to rent/licence fee arrears for reasons which are not their fault. Given that the person should only be occupying the accommodation for a short period in any event, a higher cost is sustainable than for more long-term accommodation.
- iv. It is important that the funding is made available quickly. It is not acceptable for occupiers, and providers, to have to wait one month or more before payment is received. This leaves occupiers vulnerable to eviction.



Tessa Buchanan  
tessab@gclaw.co.uk

Housing Law Practitioners Association

4 Garrett Street  
London EC1Y 0TY

13<sup>th</sup> December 2016