

**PRACTITIONER FORUM REPORT
HOMELESS RIGHTS ADVOCACY PROJECT**

March 2023

**SYSTEM
FAILURES
IN TEMPORARY
HOMELESS
ACCOMMODATION**



CONTENTS

3 INTRODUCTION

4 WHAT THE LAW SAYS

7 CASE STUDIES

8 Laura's story

9 Michael & Dawn's story

10 Samantha's Story

11 Sarah's story

11 John's story

12 Faith's story

13 Tom's story

15 Simon's story

16 ANALYSIS OF EVIDENCE

19 RECOMMENDATIONS

23 CONCLUSION

INTRODUCTION

This report sets out the key findings of The Homeless Rights Advocacy Project Practitioner Forum. The Homeless Rights Advocacy Project is a training programme on homelessness law which has been delivered by Shelter Scotland throughout 2021–2023. The project is funded by the Legal Education Foundation through their Stronger Sector grant which supports training programmes that address systemic gaps in knowledge and practice. A practitioner forum, consisting of members from the project’s partner organisations has been running in tandem to the lawyer led workshops and other activities. That forum has created a space for frontline practitioners to share their experiences of practice and reflect on how practice differs to the law. This project has a national remit, and partner organisations from across Scotland have attended both the training courses and the practitioner forum. It became clear through the sharing of knowledge and practice that unsuitable temporary homeless accommodation and its impact on homeless people is of concern throughout Scotland.

Based on our experience as frontline case workers, we decided to gather the stories of some of the people we have supported in asserting their rights to temporary homeless accommodation, to see if there were any patterns and areas of practice which could be improved. The focus of this report are those stories and the recommendations which follow.

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WHAT THE LAW SAYS

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014¹

In 2004 legislation was introduced to regulate the standards of temporary homeless accommodation in Scotland. This created an important legal remedy for those stuck in unsuitable temporary accommodation. However, this legislation only applied to homeless households with children or a pregnant woman. It was only in May 2020 that this legislation was amended to apply to all homeless households.

1

First introduced as The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 before being replaced by a new Order in 2014. The 2014 order was substantially amended in 2017, 2020 and 2021

2

Article 4(b) The homeless persons (unsuitable accommodation) (Scotland) Order 2014, as amended

3

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order: guidance, 31 January 2021

The law defines what is unsuitable by describing a set of circumstances. For example, homes affected by dampness and mould are unsuitable, as is B&B style accommodation where bathrooms and kitchens are shared with other persons. There are exceptions to the use of B&B style accommodation which allow for the use of this type of accommodation up to a period of not more than seven days. This recognises that in emergency situations local authorities might not be able to immediately secure suitable temporary accommodation. Since 2021 the law has specifically required that temporary accommodation meets the accessibility needs of the household.

In January 2021, the law was also amended to introduce a requirement to 'take into account the needs of the household'². The statutory Guidance issued alongside the legislative changes introduced in 2021 explained that the purpose of the amendment was to 'ensure that the needs of vulnerable people are met'³.

The guidance provides:

3.4 *In assessing whether accommodation is unsuitable for a homeless household, a local authority must take account of the needs of each member of the household, including any protected characteristics, equality considerations or vulnerabilities around psychological informed service delivery and childhood trauma. In the case of children, a local authority must be satisfied that overall, the accommodation does not pose significant risk to the safety of children and ensure that the best interests of the child is met. In May 2011, guidance was published to help local authorities co-ordinate and carry out their duties in relation to children facing homelessness or threatened with homelessness to ensure that the best interests of such children are met fully and equitably across the country.*

Local authorities must have regard to any statutory guidance issued in the performance of their homeless duties⁴. Whilst not specific to temporary accommodation the following paragraphs of the 2019 Interim Code of Guidance are also relevant to the findings of this report⁵.

4.24 *Recording systems should also allow for the recording of case notes and follow up notes so that applicants can have enquiries dealt with effectively even when their case officer is not available.*

4.25 *All housing advice that is provided to applicants should be noted as a matter of record.*

4.4 *Local authorities have a duty to provide good quality objective housing advice on a range of housing options of which accessing local authority or housing association accommodation via a homelessness application is one...Staff should ensure that applicants are aware of their legal rights or where they may receive information on these. Staff should also be able to advise applicants on how to contact independent advocates or advisors.*

4
Section 37(1) Housing
(Scotland) Act 1987,
as amended

5
Code of Guidance on
Homelessness, 7 Nov 2019

Case law

Scotland's highest court has recently ruled that 'taking into account the needs of the household' is not the same as 'meeting the special needs' of the household⁶. This means that the law will allow for situations where, notwithstanding a particular need, accommodation which does not meet that need can lawfully be provided by the local authority, unless and until that situation can be said to be intolerable.

The Equality Act 2010

The Equality Act 2010 (the Act) was introduced to challenge discrimination. Different parts of the Act may apply to temporary homeless accommodation, including s.149 (the Public Sector Equality Duty / PSED). The Act applies to the delivery of homeless services by local authorities and requires local authorities to consider equality in all of their functions, including the policies they make, how their services are delivered and, in their decision-making. The PSED includes local authorities, in the exercise of its functions, having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who don't. The protected characteristics include: age; disability; gender reassignment; race; religion or belief; sex; sexual orientation. The PSED includes having due regard to the need to remove or minimise disadvantages as well as taking steps to meet the needs of disabled people. In addition, local authorities have the duty to assess the impact of applying a proposed new or revised policy or practice against such needs. This is often referred to as an Equality Impact Assessment (EqIA).

It is a reasonable expectation that local authorities would put in place new policies and practices or review existing policies and practices to comply with the amendments to the Unsuited Accommodation Order and therefore be required under their equality duties to assess the impact of these.

⁶
X v Glasgow City Council
[2023] SLT 163 para 38

CASE STUDIES

The practitioners participating in the Homeless Rights Advocacy Project Forum support and advocate on behalf of some of the most vulnerable homeless people in Scotland. The impact of mental illness, addictions and domestic abuse were recurring themes in our meetings. The introduction of a requirement to 'take into account the needs of the household' in 2021 gave some hope that people who are homeless, who have needs arising from these issues would have a remedy available.

The names in most of our case studies have been changed to protect the individual's identity. We decided not to name the relevant local authorities as the report seeks to present a national picture and provide recommendations to Scottish Government or local authorities across the board.

Laura's story

I presented as homeless due to domestic abuse. It was not safe for me and my kids to stay in the home. I was put into a hotel, late at night. There are six of us in the household and I am pregnant. We were put in two different hotel rooms. I was given no advice about what my rights were as a homeless person or what options I had in relation to temporary homeless accommodation. I was told that I could be placed anywhere in that local authority area. The council did not ask me about what my housing needs were.

We spent more than three weeks in those two hotel rooms. My support worker had put me in touch with a homeless charity. It was them that gave me advice about my rights. The council then offered us a temporary furnished flat. One of my children is autistic. This flat was not big enough. There wasn't space for my autistic child. She had meltdowns. Sometimes daily. It wasn't safe enough either. The shared garden was not secure. My neighbours complained about the noise.

Both the hotel and this flat caused me a lot of stress and anxiety. It was not good for my mental health. I had to share a room with two of my kids. There wasn't space for the kids.



The council did not ask me about what my housing needs were. Both the hotel and this flat caused me a lot of stress and anxiety. It was not good for my mental health.”

Michael & Dawn's story

We had been removed from our home by the police for our safety. We had been placed in various accommodation across the UK for over two months. The police had stated to the local authority that we urgently needed temporary accommodation in this local authority area.

We have regularly been presenting to the local authority but have mainly been told there is no accommodation available for us. We have had to sleep in our car.

We have been given some hotel accommodation, but this was only for a few days before we would be asked to present to the local authority again, only to be told nothing was available.

We have substance misuse issues, mental health issues and physical health issues. Hotel accommodation was not suitable.

The impact of the lack of suitable accommodation offered has affected both our physical and mental health. Around three months have passed since we first asked for temporary homeless accommodation.



We have substance misuse issues, mental health issues and physical health issues. Hotel accommodation was not suitable."

Samantha's Story

We have been supporting Samantha and her family. She has three children all under 12 years old who have been moved by the council and Police Scotland from their home into a hotel room for their own safety. They have been staying in the hotel for more than three weeks. It was the primary school teacher who referred the family on for specialist housing support with us.

Samantha was wrongly advised by the council that they had no legal obligation to provide suitable accommodation. Samantha did not receive any further information from the council with regards to her rights as a homeless person.

The family is sharing one room equipped with: one double and two single beds, a small table and a kettle. The family has no access to any cooking facilities or a fridge. Samantha has type 1 diabetes, a heart condition and mobility issues. She needs access to a fridge to store her medication. She also requires a balanced diet rich in nutrients and low in fat as part of her diabetes management.

The oldest daughter struggles with mental health problems and emotional difficulties – she is currently receiving support from Mental Health Services. She needs more space and should have her own bedroom. The family have now been living in one hotel room with no cooking or laundry facilities for three weeks.



The oldest daughter struggles with mental health problems. She needs more space and should have her own bedroom.”

Sarah's story

Sarah who is a teenager was thrown out of her boyfriend's family home. She has suffered from severe anxiety since childhood and has a long history of self-harm. She presented to our service in a very emotionally fragile state.

There was no accommodation available in her local area. She was offered a bedsit 40 miles away, she felt, as did her GP, that being that far away would be seriously detrimental to her. She decided to sofa surf with other family and friends until something local became available.

John's story

I provided direct advocacy for John. John was in temporary accommodation, placed in a B & B. John had been residing at this B & B for three years. Due to an issue between staff at this establishment and John he was told to leave this place, without explanation. John presented to the homeless team and was placed in another B & B elsewhere. John has COPD, and had had knee replacement surgery. He is waiting on physiotherapy referral. The B&B that he was placed in had four flights of stairs with the only toilet and bathroom facilities on the top floor. His health began to suffer and deteriorate due to the toll of the stairs. I assisted him in his communications with his housing officer and the homeless prevention team, but these communications resulted in no change in his placement for housing. John spoke of drinking less liquids so he could make less trips to the bathroom. This in turn hurt his legs, knees and lungs. John said he got close to collapsing a number of times attempting to climb the stairs.

I assisted in taking John to the council's offices to assist him express his needs and requirements. He was subsequently placed in a different location by the duty housing officer. The facility John was placed in had an elevator and ensuite bathroom. This facility was an improvement.



John spoke of drinking less liquids so he could make less trips to the bathroom, this in turn hurt his legs, knees and lungs."

Faith's story

My family and I presented as homeless a number of years ago, before the law on suitable temporary homeless accommodation was changed. I understand that the council didn't legally need to assess my needs, but it would really have helped if they did.

We were living in private rented accommodation. We had been served with a notice to quit. We told the council as soon as we received that notice. It was about six weeks before the planned eviction. We had to chase the council for an update on temporary accommodation two days before as we hadn't heard anything. We were given a bedsit in a hostel in an old building. We had to climb several steep flights of stairs to get to our room. I was with my husband and our two teenage children. We were all sleeping in the one room. We had our own bathroom but a shared kitchen area.

I had chronic pain. I was off sick and being investigated for back pain. I had told the council this. But they seemed to ignore this. We weren't given any advice about our rights as homeless people. We weren't asked about our needs – but I had told them about my pain. We got independent advice about our homeless rights. We were reminding the council regularly that they were breaking the law. We spent around six weeks in that accommodation. It caused me a lot of pain to climb those stairs. The doors were really heavy. I was constantly exhausted.

I think if the council had listened to me, they would not have put me there. We were eventually offered a scatter flat on the ground floor. This was a big improvement.



We weren't asked about our needs – but I had told them about my pain."

Tom's story

Tom had been sofa surfing with friends and family and had applied as homeless in his hometown. He was getting support from his GP for addiction, anxiety, and sleep disorder.

He was told he would not be able to be accommodated in the local homeless accommodation as the RSL who provides some of the temp accommodation in the local town had refused to accommodate him. Although he had never lived within the accommodation projects he was known as being a visitor to others who were accommodated. The only accommodation would be out of his local area.

He continued to sofa surf and after a further six months the relationship with his family had completely broken down and he had exhausted options staying with friends.

His support worker supported him to contact housing services to see if local accommodation could be sourced however was told again that the only option was a room in a hotel 80 miles from his home town. Concerns were raised that his support network was far away. His support network included his housing support worker, his addiction worker, the GP who knows him well and his mother who provided good support to him. Tom had also expressed concerns that shared accommodation, with a reputation of easily available drugs due to the mix of people accommodated there would pose a risk to him.



The only option was a room in a hotel 80 miles from his home town. Concerns were raised that his support network was far away."

Tom's story (continued)

Tom was told that he would lose the hotel room if he didn't take it up that same day. He moved in without having anything set up for him to be able to receive his methadone. Within days he was involved in an incident in the hostel and was subsequently not allowed back. He was informed he had overdosed and also had been abusive to staff and that police had found him to have possession of a controlled drug. Tom has no recollection of the incident.

He was then transferred to another town in the authority 95 miles from his hometown. He arrived in the evening after a five hour bus journey to a partially furnished flat and with no access to prescribing for his medication. He made contact over the weekend to his housing support provider stating he was suicidal and in a bad way. He was advised to attend A&E as there were no other local services available.

Tom ended up abandoning this accommodation as he felt isolated and his mental health had declined significantly. He returned to his hometown to continue to rough sleep and sofa surf.



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Simon's story

I accompanied a couple who were seeking temporary accommodation. Simon had previously had a Housing First tenancy. When issues arose with neighbours he was told that he would be moved away and housed elsewhere, but that he had to end his current tenancy before they could offer him another tenancy.

Simon has been waiting over 18 months in temporary accommodation since then. During this time, his physical and mental health has deteriorated. He started suffering blackouts during this period. Simon suffered a broken wrist during one of these blackouts while being temporarily housed on the top floor of a hostel. He fell down the stairs of this hostel, resulting in injuries that required surgery, and is now waiting on receiving physiotherapy on his severely injured hand which he has no movement in. Both he and his partner are still being housed in the same hostel.

On the day I accompanied Simon and his partner to the council the manager of the service told us that there was no suitable accommodation available. The manager suggested that Simon and his partner should seek legal advice to challenge the council itself. The manager stated that he was aware that he was in breach of the legislation, and that the best way to bring attention to this breach was for the breach to be challenged in the courts.

The manager conceded that they were not taking Simon and his partner's mental and physical health conditions into consideration when providing temporary housing. The temporary housing team manager admitted they were not assessing Simon's needs, so could not provide the requirements of that assessment.



Simon has been waiting over 18 months in temporary accommodation since then. During this time, his physical and mental health has deteriorated."

ANALYSIS OF EVIDENCE

UNASSESSED NEEDS

The above case studies present evidence that not all homeless households' needs are assessed by the local authority when securing temporary homeless accommodation. **If a household's needs are not assessed, they cannot be taken into account.**

LACK OF CONSISTENCY

It is also **not clear how needs are being assessed by local authorities**. Applicants, or their support workers, often require to repeatedly raise concerns about the conditions of the temporary accommodation before a local authority will listen.

FAILURE TO ADVISE

None of the homeless applicants we have spoken to were given advice by the local authority as to their rights as a person who is homeless, and in particular their rights to suitable temporary homeless accommodation. They were **only able to learn of their rights by seeking independent advice and advocacy**. This is despite the requirement in the statutory guidance that local authorities ensure people are aware of their legal rights.

OVERLOOKED NEEDS

There are concerns that **certain needs arising from a person's neurodiversity, addiction or mental illness are overlooked both in practice and in law**. Many of the circumstances prescribed as unsuitable in law relate to the physical standards of the accommodation and the need to ensure that accommodation is accessible to those with physical disabilities. Subsequent to the recent decision in *X v GCC* we know that even where someone's non-physical needs are identified, the local authority do not need to meet those needs when securing temporary accommodation. The consequences of that decision are that where the sole need arises from mental health disability, domestic abuse or addiction issues for example, they will have to accept what appears to be unsuitable accommodation until such time as it becomes 'intolerable'.

STUCK IN TEMP

It is clear from the case studies that even a relatively short period of time in unsuitable temporary accommodation can have a detrimental impact on the health and well-being of the applicant and their family, including children. That homelessness has a detrimental impact on children is well recognised⁷. We know from the official Scottish Government statistics that over 1,000 households with children spent more than one year in temporary accommodation and over 2,600 households without children spent more than one year in temporary accommodation⁸. In John's case he had spent three years in a B&B. Simon and his partner have spent 18 months in a hostel.

Temporary accommodation isn't always temporary.

7
NHS Lanarkshire, Rebecca Campbell (2019) [A health Needs Assessment of children experiencing homelessness](#).

8
For all cases closed between April 2021 and March 2022. Homelessness in Scotland statistics, ending 31 March 2022

DISABILITY OVERLOOKED

Most of the case studies included at least one disabled person in the household, highlighting the significance of local authority equality duties. In a Freedom of Information request made to all 32 local authorities in August 2022, 20 local authorities responded that they had carried out no Equality Impact Assessments since May 2020 in relation to their practices and policies for their duty under s29 of the 1987 Act. It would appear that either those local authorities have not made any changes to their practices or policies in performing their temporary accommodation duty or there has been a change to their practices or policies, but they have not complied with the duty to carry out an Equality Impact Assessment. Either way, this raises concerns that **local authorities are failing disabled people in the homeless system**. If policies and practices are not adapted to assess needs then their needs are at risk of being disregarded.



Our service users tell us that their housing situation can severely exacerbate their mental, physical and addiction issues.

They just want somewhere to call home which is a safe place that many others in society take for granted, but the reality is that every day is a struggle for them just to feel safe."

Support worker

RECOMMENDATIONS

Whilst independent advice agencies play a crucial role in empowering people with knowledge of their rights and often secure improved outcomes for the individuals concerned on a case-by-case basis, there are more fundamental issues at play which, if resolved, would go some way to improving homelessness. As noted above, temporary homeless accommodation is not 'always temporary' and even when shorter term, can have a negative impact on the health and development of those affected. These systems issues can be broadly categorised under the following headings: **lack of consistency; lack of transparency; lack of accountability** and **lack of supply**.

RECOMMENDATION 1**Amend Article 4(b) the Homeless Persons (Unsuitable accommodation)(Scotland) Order 2014**

The Scottish Ministers should replace 'taking into account the needs of the household' with 'meeting the special needs of the household' By doing so they would be ensuring that the needs of vulnerable people are protected in law.

RECOMMENDATION 2**Statutory Guidance on how to assess needs for the purposes of Article 4(b)**

The Scottish Government should issue statutory guidance for local authorities, clarifying (a) what needs ought to be taken into account for the purposes of Article 4(b); (b) when these needs ought to be assessed and (c) how a local authority should assess these needs. There is presently great inconsistency across local authority areas, to the detriment of both local authorities and some of Scotland's most vulnerable homeless people. This could be new statutory guidance or an update to the existing statutory guidance.

RECOMMENDATION 3**Publishing of local authority practices, policies & procedures**

Local authorities should review their practices, policies, and procedures in light of the substantial changes in law introduced in 2020 and 2021. These practices, policies and procedures should outline how the local authority complies with its statutory obligations. In the interests of transparency and improving accountability, these should be published on local authority websites.

RECOMMENDATION 4

Equality Impact Assessments

If we are to improve outcomes for those with protected characteristics in the homeless system, then policies and practices must ensure that needs are being assessed and taken into account in the provision of temporary accommodation. **Local authorities should carry out and publish their Equality Impact Assessments relating to local authority practice and policy concerning the provision and procurement of temporary accommodation.** This exercise should help local authorities identify what needs to be done to ensure they are able to provide accommodation which meets disabled person's needs. For example, the Scottish Housing Regulator could monitor compliance through the annual assurance statements provided by local authorities.

RECOMMENDATION 5

Provision of information on legal rights

Local authorities should review what steps they are taking to ensure that applicants are informed of their legal rights at every stage of the homeless process, advising them of their rights even where they are unable to assist.

RECOMMENDATION 6

Person Centred and Trauma Informed services

Not all homeless people will have complex needs or be particularly vulnerable, but for those who are, the complexity of the system and the pressures on local authority resources means their voices are not heard. In these cases, there is a higher likelihood of disengagement with services. Local authorities should ensure that their staff are trained and supported to provide person-centred and trauma informed services. This will require local authorities to ensure that their homeless services are adequately staffed.

RECOMMENDATION 7**Requirement to record written assessment of need**

There would be greater transparency and accountability if local authorities were to explain their decisions to place households in a certain type of accommodation with reference to a reasoned assessment of needs. The Interim Code of Guidance quoted earlier in this report requires that local authorities record case notes. Recording the needs of the household will enable local authorities to keep cases under review, avoiding the situation where households are left until such time as the situation becomes intolerable. Personal Housing Plans are used by some local authorities and provide a framework within which to capture the needs of the household.

RECOMMENDATION 8**Adequately funded homeless services & sufficient social housing**

It is recognised that without sufficient supply of accommodation and funding to deliver homeless services, local authorities are being set up to fail. Local authorities and Scottish Government working together should ensure that the necessary steps are taken to ensure that homeless services and social housebuilding are sufficiently resourced.

CONCLUSION

This report contains a small sample of the cases that we as frontline advice and support agencies see on a regular basis. As one support worker said: **'the impact of unsuitable accommodation on the people we support is additional trauma and making the mountains even bigger to climb for people to succeed in their recoveries.'**

Temporary accommodation is meant to be a short term stepping stone out of homelessness and into permanent accommodation. Yet for some of the most vulnerable homeless people it exacerbates health conditions; triggers relapse into addiction and results in people falling through the safety net homeless services ought to provide.

Scotland has strengthened the legal rights of people who are homeless through successive legislative amendments. We must now ensure that local authorities have sufficient resource to give effect to these rights.

We know that we are not alone in witnessing the devastating impact of a broken homeless system. We know that many local authorities will try their very best to assist people who are homeless but their efforts are often limited by a lack of accommodation and resource. In its recent thematic review into homeless services in Scotland the Scottish Housing Regulator found:

[Council's] face three major strategic challenges in providing homelessness services:

- dealing with the significant numbers of people currently in temporary accommodation
- maintaining a sufficient supply of appropriate temporary accommodation; and
- ensuring access to the number of permanent homes that are needed

Some councils are finding it increasingly difficult to meet these challenges, and so to fully meet their statutory duties. There is evidence of increasing, and more widespread, breaches of statutory duties around the provision of temporary accommodation, and that some households with particular equality characteristics do not always receive a service that meets their specific needs.

It is in this context that the Scottish Government may need to consider what further urgent measures it can take to support councils to respond to the immediate challenges they face in delivering services for people who are homeless.⁹

On behalf of the people who have shared their story with us, and the many others stuck in our homeless system, we do hope that urgent measures will be taken by Scottish Government to support local authorities to alleviate the pain and suffering unsuitable temporary accommodation causes.

**We exist to defend the right to a safe home and fight
the devastating impact the housing emergency has on
people and society.**

We believe that home is everything.



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