Response to the Communities, Equality and Local Government Committee consultation on the Housing (Wales) Bill

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Response from: Dr Peter Mackie, Cardiff University

Preamble
The Housing (Wales) Bill provides a once in a generation opportunity to progress housing law in Wales in a manner that will help to achieve the social and economic goals of the Government and the people of Wales. The potential importance of this legislation cannot be understated. I was fortunate enough to lead the team commissioned to review homelessness legislation in Wales and our recommendations have clearly informed the direction of travel set out in the Bill. I allocated every moment available to me to deliver a piece of research and subsequent recommendations which, if taken forward fully, would have achieved the sort of once in a generation changes that this Bill could have delivered. Whilst there are many positive and progressive developments set out in the Bill there are many shortcomings.

Given my role in the development of the legislation I hope some of the thoughts I offer will be of use. I focus my response on Chapter/Part 2 – help for people who are homeless or threatened with homelessness.

Key strengths of the Bill
I will begin on a positive note. The Bill makes positive progress in the following ways:

- The duty to help to prevent an applicant from becoming homeless (Section 52) marks a significant forward step in Wales. This duty applies to all applicants who are threatened with homelessness and are eligible for assistance. This duty will significantly improve the potential outcomes for the very many people who previously failed to seek assistance or sought assistance and received only basic advice. Under the existing legislation too many people, largely those who would be categorised as non priority need, would get no meaningful assistance.

  Enhancing this duty is the welcome extension of the definition of threatened with homelessness to 56 days. However, one might question why the definition of threatened with homelessness needs a time limit at all. Whether there is a time limit or not, the same evidence would be required to show that a person is likely to become homeless. Moreover, being owed the Section 52 duty would not entitle the individual to a home so there is almost no incentive in constructing a threatened with homelessness scenario. Therefore, I see no reason why the 56 day definition should not be removed. The benefit of doing so would ensure no local authorities inappropriately delay taking action to support an applicant.

- The duty to help to secure suitable accommodation for a homeless applicant (Section 56) also marks a significant forward step in Wales. It applies to *almost* all applicants who are homeless and are eligible for assistance. I state 'almost' all applicants because those with no local connection could potentially be denied this entitlement – I will discuss this under the limitations of the bill. With the exception of the local connection anomaly, the vast majority of homeless applicants will now be owed a duty whereby the local authority must take reasonable steps to help to secure accommodation.

Under the existing legislation the sort of help outlined in Section 50 is often used to support only those in priority need and in some local authorities very few prevention/relief interventions are available at all, even for those in priority need. Therefore, this development, whereby nearly all applicants are owed reasonable steps, must be welcomed and indeed praised as it has the potential to ensure nearly everyone who is homeless and eligible receives assistance, potentially ending their homelessness. However, the legislation does not make requirements on local authorities to ensure that they have an improved range of interventions (e.g. those listed in Section 50); hence reasonable steps within the resources available to the authority might not achieve a great improvement for homeless applicants. I believe the legislation must stipulate a minimum set of interventions to be commissioned in each authority (the list in Section 50 would provide a good starting point).

- The duty to assess (Section 48) sets out an important requirement on local authorities to assess the causes of homelessness and the housing needs of the applicant. This is vitally important if we wish to prevent homelessness repeating. Of course, it is widely known that the causes of homelessness are both structural (expensive housing markets, loss of employment etc) and individual (i.e. resulting from particular actions or behaviours). It will be important to assess all causes and not to fall into the trap of assuming homelessness is the fault of the individual. I also welcome the fact that the assessment requires local authorities to identify the outcome desired by the applicant and that the authority must assess whether it can help to achieve the outcome. If implemented appropriately and monitored effectively, this could significantly shift homelessness services towards a more citizen-centred approach. I welcome it. However, I am concerned that local authorities are only required to asses causes and housing needs. With no requirement to act on these causes and the applicant's housing needs the assessment could prove to be meaningless. Surely there must be a duty to refer to a support provider – in Scotland a duty **to provide** support is being implemented.

Limitations and weaknesses of the Bill

The bill sets out legislation that will undoubtedly improve the lives of many people who are threatened with homelessness or are indeed already homeless. I do not wish to deny the achievements of the bill as it currently stands, particularly in austere times, and I commend the efforts of those involved in its development but there are limitations and missed opportunities. We must not forget, this is a once in a generation opportunity to make unquantifiable positive impacts on the lives of vulnerable people in Wales. I discuss some of the key limitations below.

- The duty to help to secure suitable accommodation for a homeless applicant (Section 56) permits local authorities to test for priority need and local connection. In the proposals submitted by Mackie et al (2012) priority need, local connection and intentionality would not have been considered at this stage. This would have resulted in a system more focussed on finding solutions rather than bureaucracy and exclusion. However, the present bill appears to have introduced these 'tests' for two primary reasons; 1] to enable a referral where no local connection exists; and 2] to restrict access to interim accommodation. I wish to raise four observations/ concerns:

  1] I believe **all local authorities will consider the likely priority need status** of applicants at this stage. This is despite the fact that the Section 56 duty to help to secure accommodation is intended to apply equally to nearly all applicants. Local authorities will consider priority need status because they are under a duty to provide interim accommodation where they believe the applicant may be in priority need (Section 54).

  2] One of the consequences of all local authorities considering priority need at this stage is that it **undermines the principles of the legislation**. Local authorities will not simply assess an applicant's need and seek to find a solution (i.e. an inclusive problem solving approach); they will first assess perceived vulnerability and priority status in order to ration interim accommodation before eventually seeking to find a solution (a bureaucratic and exclusionary approach). Mackie et al (2012) identified a clear desire in the homelessness sector to move towards a problem solving/solutions focussed approach.

  3] The Welsh homelessness legislation will continue to be **characterised by dramatic inequalities** between the apparently deserving and undeserving poor, driven by understandable concerns over resource implications. Whilst nearly all homeless applicants will get help to secure suitable accommodation, those not in priority need will be in precarious housing circumstances and therefore very difficult to find and hard to assist –

potentially more likely to disengage as a result of the structural inequalities of the system. By contrast those in priority need will be offered interim accommodation from where they can be assisted.

4] Section 63 allows for the referral of a homeless case to another local authority where the applicant is in priority need and unintentionally homeless. Consequently, homeless applicants who apply for assistance in a given local authority can be **referred to another authority before any help is given** to secure suitable accommodation. Surely this disadvantages homeless people relative to the 'free-to-move' wider population and increases the likelihood that they will disengage from assistance. Why is this provision necessary at this stage?

The section 56 duty is not an entitlement to accommodation, only help to secure it. Households affected by Section 63 will either be entitled to similar help to secure accommodation in another Welsh local authority, or they would be entitled to settled accommodation (arguably more desirable) in England. Given these conditions, surely it would be fair to assume that applicants seeking assistance in a local authority are not 'playing the system'. Moreover, even if they were to be 'playing the system' in some way, their entitlements and the duties owed to them would be limited. Of course this argument does not even consider the concern that local authority boundaries are politically drawn, are subject to change and do not necessarily reflect the spatial boundaries/movements of people's everyday lives.

In short, I would recommend that at this stage local authorities cannot utilise Section 63 powers to refer to another local authority.

- I am concerned that the consequences for local authorities where reasonable steps are not taken (Section 70) are limited to a duty to once again take reasonable steps. It is highly likely that these applicants will either become homeless or they may disengage from assistance before the reasonable steps are actually taken. I believe two main alternative options exist; 1] the individual would be owed a priority need where reasonable steps are not taken (this is not desirable as priority should be based on vulnerability not local authority failings); or 2] the system needs to be monitored and regulated closely to ensure good practice is the norm and poor practice is limited. The Mackie et al (2012) review called for a regulator and identified the considerable positive impact that this had in Scotland during the implementation of their much lauded and immensely progressive homelessness legislation.

- The bill deals with intentionality in a rather confusing manner, albeit confusion should not deter the implementation of good policy ideas. However, there appear to be some limits to the proposed intentional homelessness legislation. It is a positive step that households containing children will still be owed a duty to secure accommodation (Section 58) where they are intentionally homeless. Unfortunately the clause which states they cannot have been intentionally homeless within the preceding five years (Section 58.3.d) appears to entirely undermine the principles of this part of the legislation. If the aim is to ensure intentionally homeless households with children are still assisted then it will fail. I do not have statistics on this issue but a conversation with any front-line worker engaging with intentionally homeless households would reveal that these applicants are highly likely to have been intentionally homeless on far more than one occasion – this is the nature of the trajectory people often take from homelessness. I would recommend removing this clause or if it must remain, applicants should be permitted to have been intentionally homeless on more than one occasion.

- My personal position is that the intentionality test should be removed in its entirety. It was introduced to prevent people from taking advantage of a system which essentially offered a council house for life. The new legislation offers help to prevent homelessness and help to secure suitable accommodation where the applicant is already homeless. Moreover, where there is a duty to secure suitable accommodation, this can now be a six month private rented sector tenancy. Clearly the incentive to take advantage of the system has been largely removed so the need for such a punitive power is removed.

- The bill has generally made only minor amendments to the priority need groups (Section 55). The major revision has been to reduce the status of prison leavers, bringing it in line with the situation in England. The Mackie et al (2012) review recommended a gradual move towards the abolition of priority need. The more households given priority need status, the greater the incentive there is for local authorities to innovate and develop homelessness

prevention interventions. Demoting the status of prison leavers would appear to be a backwards step in this regard. I believe that the priority need status given to prison leavers in Wales has not been effective but this is due to the way the legislation has been implemented and monitored. We might consider whether prison leavers are more likely to spend longer in unsuitable B&B accommodation and therefore disengage and potentially reoffend. I fear that without a well regulated duty to assist prison leavers their outcomes will be poor and this has considerable consequences for society.

- Various assistance duties can be discharged due to the failure of applicants to co-operate. Some provision should be made to reflect that fact that many applicants will be vulnerable and unlikely to co-operate with authority figures and indeed they may not be used to engaging in formal settings. This should not deter from the fact that the applicant is in need of assistance.

- The duty on bodies to co-operate with local authorities (Section 78) clearly follows promising principles, of the sort recommended in the Mackie et al (2012) review but there are several shortcomings. Firstly, it would have been much more beneficial to homeless people if local authorities were in a stronger position to require cooperation from health and other bodies who are key to the prevention and alleviation of homelessness. The list of bodies should be extended, albeit I understand this will be exceptionally challenging. Secondly, I am concerned that bodies might too easily claim that demands from local authorities would have an adverse effect on their own functions etc, therefore rendering this co-operation duty impotent. Indeed, when the DALO homelessness legislation was introduced in France it encountered this exact barrier with social housing providers who claimed requirements were incompatible with their own policies. This duty should be strengthened and widened to include more bodies.

- In addition to the duties set out in the bill it would be worth considering the possible introduction of a duty on landlords and creditors (or the courts) to notify local authorities when a household is being evicted. Moreover, the local authority should then be required to act, perhaps by contacting the individual and where appropriate taking a Section 52 application. This would go beyond any existing notification duty a far as I understand it. A similar system exists in Germany.