Homelessness Reduction Bill update 2016/17

In the last edition of the Cornerstone Housing newsletter, I discussed the Homelessness Reduction Bill which is set to make the most significant reforms to homelessness law for several decades. The Bill, although introduced by Bob Blackman MP as a private member's bill, had quickly attracted government support, so it will almost certainly become law.

At the time of writing my previous article, the Bill had just passed its second reading in the House of Commons. Since then, the Bill has passed all stages of scrutiny in the Commons and has had its first reading in the House of Lords. This article looks at the progress of the Bill since last October.

A new definition of "threatened with homelessness": clause 1

Significant changes have been made to this clause since October, as a result of government amendments.

The Bill introduced to Parliament inserted a new definition of "homelessness" into section 175 of the Housing Act 1996, such that a person will be homeless if they have received a valid section 8 or section 21 notice on the day the notice expires. This measure was one of the most important reforms contained in the Bill and was intended to address the controversial practice of gatekeeping or deferring Part VII applications until the last possible moment.

In its earliest form, the Bill allowed fairly broad exceptions to this rule, where the local authority had cause to "ask" the recipient of the notice to remain in occupation, even after receipt of the notice.

However, in the version of the Bill which emerged following scrutiny in the House of Commons, the exception has been removed. Now, clause 1 the Bill inserts a new section 175(4), such that a person will be "threatened with homelessness" if they have received a section 21 notice (references to section 8 notices have also been removed) and the notice is due to expire within 56 days.

The result is that duties owed to a private sector tenant facing a “no fault” eviction will now need to take place at a much earlier stage than has been the practice in many local authorities. The content of that duty is the set out in clause 4 (the “prevention duty”).

Support for all eligible persons who are homeless - regardless of priority need or intentional homelessness: clauses 3, 4 and 5

This was another significant reform introduced by the Bill: the creation of important new duties owed to all eligible applicants, regardless of priority need or intentional homelessness.

The duty to assess and produce a housing needs plan for all eligible applicants under clause 3 (new section 189A) has survived in more or less the same form. The plan that is produced at the end of the assessment has important ramifications, because it will inform how various other duties owed to the applicant will be performed and discharged.

Similarly, the “prevention duty” under clause 4 (replacement section 195) – owed to all eligible applicants who are threatened with homelessness – survives in more or less the same form: the local authority must "*take reasonable steps to help the applicant secure that accommodation does not cease to be available for the applicant's occupation"*. The LGA has estimated that the prevention duty might result in an average increase in workload for London boroughs of 266%.

Again, the "initial duty" under clause 5 (new section 189B) – owed to all eligible homeless applicants – survives: the local authority "*take reasonable steps to help the applicant secure that suitable accommodation becomes available for the applicant's occupation"* for a period of between 6-12 months.

It will be seen that neither the prevention duty nor the initial duty oblige the local authority to *secure* that accommodation is available for the applicant; the duty is take reasonable steps to *help the applicant secure* accommodation. “Reasonable steps” are not defined and is left to the discretion of the local authority. Examples given by Bob Blackman MP included: providing a rent deposit; helping with family mediation; and entering into discussions with the landlord.

Discharge of duty for deliberate and unreasonable refusal to co-operate: clause 7

The latest version of the Bill continues to provide for two additional circumstances in which the local authority may discharge a duty to the applicant, on grounds of failure to co-operate.

Firstly, by a new section 193A, duty may be discharged where an eligible homeless applicant is owed an initial duty under section 189B and refuses a "final accommodation offer" (i.e. an assured shorthold tenancy in the private rented sector for a minimum period of 6 months) or a "final Part 6 offer" (i.e. an allocation under Part 6). In these circumstances, the main housing duty under section 193 does not arise.

Secondly, by a new sections 193B-C, the local authority may discharge either (a) an initial duty owed to an eligible homeless applicant or (b) a section 195(2) duty owed to an eligible applicant who is threatened with homelessness where the authority is satisfied that the applicant has deliberately and unreasonably refused to to take any step agreed or recorded in their housing needs plan. Again, in these circumstances, the main housing duty under section 193 does not arise.

DCLG has stated that it intends to set out its view of what constitutes a “deliberate and unreasonable refusal to co-operate” in statutory guidance.

Further thoughts

The single most important change to the Bill, not only in terms of its passage through Parliament but also in terms of homelessness law and practice, is to set out in explicit terms that receipt of a valid section 21 notice is sufficient to trigger duties under Part VII.

DCLG announced, in a written statement to Parliament on 17 January 2017, that £48m additional funding would be provided to local authorities to manage the transition from the current legislative scheme to the new one – but only for 2 years, after which authorities are expected to have absorbed the additional workload within existing budgets.

As I reflected in my last article, the reforms brought about by the Bill ought largely to be welcomed by everyone with an interest in this area of the law, although there is room for debate about whether the Bill could have gone further. The crucial detail is whether the government is prepared to provide sufficient funding for local authorities to perform these duties properly. The government's announcement is a welcome first step, but many authorities will be legitimately concerned by the prospect of funding being cut off by 2019, as the true impacts of the Bill can only be guessed at for now.

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February 2017