



Temporary accommodation and welfare reform in Scotland

Briefing from CIH Scotland

December 2013

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1 Introduction

This briefing aims to describe how temporary accommodation for homeless households in Scotland is affected by both the current welfare reform changes under the Housing Benefit regime and future changes proposed under a new Universal Credit system. It also outlines some of the approaches councils are exploring to mitigate the current and likely future impact.

The primary focus of the briefing is temporary accommodation owned and managed by local authorities, rather than accommodation leased from other bodies. This is because the impact of the welfare reforms is much greater on the former.

It is also the case that the impact is much greater in Scotland than elsewhere because a much greater proportion of temporary accommodation in Scotland – around 56% – is owned and managed by councils, with leasing arrangements in the private rented sector being the norm in England and Wales.

2 Temporary accommodation which is leased *from* another body

Temporary accommodation (TA) which is being provided in accommodation leased from a private landlord has been subject to subsidy caps since April 2010, and from April 2011 in the case of accommodation leased from a housing association.

Where the accommodation is self contained, the Housing Benefit subsidy payable to the local authority is restricted to one of the following, whichever is the lower figure:

- (i) HB up to the full eligible charge (i.e. excluding ineligible service charges), or
- (ii) 90% of the appropriately sized Local Housing Allowance rate for the household, subject to the normal four bedroom maximum, plus £60 per week in respect of management charges, or
- (iii) an upper limit outside London of £375 per week.

It should be noted that for the purposes of (ii) above, the Shared Accommodation Rate does not apply and the LHA rates are those that applied as at January 2011, before the various LHA cuts started to come into effect.

The impact of these changes was generally a move to lower rents in leased TA. This had a particular impact in England and Wales, where the great majority of TA is provided in accommodation which councils lease from private landlords or housing associations. Feedback from both Scotland and south of the border indicates that some local authorities effectively subsidise the cost of TA in leased property because the full cost is not covered by the '90% LHA plus £60' subsidy.

The subsidy changes in Scotland too would have brought significant challenges for leased provision, including private sector leasing schemes such as that operated by the City of Edinburgh Council involving around 1,700 properties.

3 Temporary accommodation which is leased to another body

Property which is owned by a local authority or housing association but leased to another body for the purposes of providing supported accommodation will normally be deemed to be 'support exempt accommodation' and so currently sits outwith the mainstream Housing Benefit scheme. This means that neither bedroom tax nor the benefit cap apply.

In some quarters there appears to have been some doubt as to whether a local authority supported accommodation project leased to another body can be classed as SEA. CIH Scotland's understanding is that as long as the tenant's relationship is with the lessee body and not with the local authority, there should not normally be a problem designating the project as SEA.

This situation is expected to continue under Universal Credit.

4 Temporary accommodation owned and managed by a housing association

Most, if not all, temporary accommodation owned and managed by housing associations is specialist supported accommodation. Although such accommodation will usually have been treated as 'support exempt accommodation', it may never have been formally identified as such and therefore may inadvertently have been affected by both the bedroom tax and benefit cap. The DWP is aware of this situation and, we understand, is urging local authorities to identify such projects and formally accord SEA status to them.

[Supported accommodation owned and managed by a voluntary organisation will not face the same problem as the rent in such projects will have been referred to the Rent Officer and so the project will normally have formal SEA status.]

5 Temporary accommodation owned and managed by a local authority

It remains the case that no subsidy limit applies to temporary accommodation owned and managed by local authorities (as opposed to accommodation leased from the private or housing association sector), and as a result, there continues to be a wide divergence of costs in local authority TA provision across Scotland. However, since April 2013, both the bedroom tax and weekly benefit cap apply. This means that the tenant is liable for 14% of the rent if the property is deemed to be under occupied by one bedroom, and 25% in the case of under occupation by two or more bedrooms. The benefit cap is £350 per week for single people and £500 for couples (with or without children).

Local authorities in Scotland have had varying approaches to the challenges thrown up by the application of the bedroom tax and benefit cap and these are considered below. How councils are facing current challenges is likely to be influenced by the prospect of radical change under Universal Credit, and so this briefing first considers these longer term changes.

6 The treatment of temporary accommodation under Universal Credit

Note: At the time of writing (December 2013), the DWP was expected to be issuing further advice about the treatment of temporary accommodation under Universal Credit. As and when this happens, this CIH Scotland note will be revised and reissued accordingly.

All temporary accommodation will be treated the same under Universal Credit, regardless of who owns and manages it (unless it is 'support exempt accommodation (see below)). For TA which is not SEA, there will be a rental element and a management element. The rental element will be based on the full Local Housing Allowance for the household size. The benefit cap will apply, but the bedroom tax is not applicable as the LHA rate already relates to the household size. However, the shared accommodation rate *will* apply, so where people under 35 are placed in TA, their Universal Credit will cover only the cost of a room in a shared property, not the cost of a self contained one bedroom property.

Current LHA rates in Scotland can be seen at <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/tenants/Local-Housing-Allowance/figures>

Payment of the management element

The management element will be separated out and paid directly to local authorities so as to protect this funding stream. A single, flat rate national fee – currently indicated as being £45 per week – is proposed.

It was originally proposed that, as an interim solution, the management costs element would be provided to local authorities via Discretionary Housing Payments, but the slower roll out of Universal Credit means that the DWP now has time to work on a longer term solution. Some early alternative options emerging are for councils to make a periodic claim to DWP for their total expenditure on management charges or for the allocation of a fixed budget to the local authority based on most recent council expenditure on such claims.

Direct payment to tenants

Originally, it was proposed that unless an individual was subject to an exception, the rental element would be paid directly to them as the claimant. However, it would appear that the DWP has listened to concerns about paying the housing element to homeless claimants monthly in arrears as part of Universal Credit, particularly when some claimants may stay only a short while in temporary accommodation before moving on. Ministers have now agreed that for Universal Credit claimants living in TA

the housing element will be paid direct to the landlord for the *first four months*, after which a decision will be taken as to ongoing vulnerability. The 'Managed Payment' arrangements for mainstream Universal Credit cases (i.e. the circumstances in which direct payment to the tenant will cease) are still under consideration by DWP and so further developments are expected in the coming months.

Transitional arrangements

As a result of the slower than expected roll out of Universal Credit, it seems unlikely that there will be any Universal Credit claimants moving into temporary accommodation before April 2015. Thereafter, depending on the speed at which Universal Credit is rolled out, it is likely that there will be a transitional period when TA is occupied by a mixture of claimants – some on Housing Benefit and some on Universal Credit. This is because initially, the new arrangements outlined above will apply only where an existing Universal Credit recipient is newly placed in TA or where someone already living in TA newly becomes a benefit claimant. Existing claimants will stay on Housing Benefit plus other current benefits (Jobseekers Allowance, ESA, Income Support etc.) where applicable.

Temporary accommodation which is 'support exempt accommodation' under Universal Credit

Whilst no final decision has been made on the definition of 'support exempt accommodation' under Universal Credit, it is expected that temporary accommodation which is supported accommodation but is owned and managed by a local authority will be excluded from the definition.

However, it is expected that, as now, local authority and housing association accommodation which is leased to another body for the provision of supported accommodation will be included in the definition of SEA under Universal Credit.

7 How are providers responding to the challenges?

Where temporary accommodation is being provided in leased accommodation, providers have already had to take steps to ensure that costs reflect the LHA-based subsidy formula introduced in 2010/2011. Whilst running TA within these limits will remain challenging, the task of initially reducing costs has been undertaken.

The greatest outstanding challenges are therefore faced by local authorities in relation to the TA which they directly own and manage. The scale and nature of the challenges will vary from one council to another, but might generally be summarised as follows:

- How are the immediate challenges of the benefit cap and bedroom tax being addressed and what are the options for dealing with these?
- If costs need to be reduced, how can this be done without threatening the quality of accommodation and service provided? Will the proposed subsidy under Universal Credit even cover the costs of providing TA?

- At what pace should costs be reduced, given the unclear timescales for the Universal Credit roll out?

7(a) Dealing with the benefit cap and bedroom tax

Subdividing into shared housing

One approach CIH Scotland is aware of is subdividing two-bedroom temporary accommodation into two bedsit rooms. This is in response not purely to the welfare reforms but to the general short supply of temporary accommodation in many parts of Scotland and the fact that many homeless applicants waiting to be housed are single person households.

Obviously the management of shared properties may require a different kind of input, given that two unrelated people have been housed in the same accommodation. There are no significant tenancy-related implications: a short Scottish secure tenancy cannot be given for a room in shared housing but our understanding is that most councils in any event use a form of occupancy agreement for their temporary accommodation.

Limiting this type of subdivision to situations where no more than two people are sharing means that the property does not become a House in Multiple Occupation.

Possible designation as 'support exempt accommodation'

Another approach being explored is the designation of temporary accommodation as 'support exempt accommodation' (SEA), which lies outside the mainstream Housing Benefit regime and is not therefore subject to the bedroom tax or benefit cap, and will not be part of the Universal Credit regime. In order to meet the definition in the relevant regulations¹, the accommodation – where it is in Scotland – must be owned by '*a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision*'.

Some local authorities have said it is exploring using an Arms Length Management Organisation (ALMO) or similar model to operate its temporary accommodation and that in this way it may be possible to fit its TA into the definition of SEA.

Any council exploring such options will of course obtain its own professional advice and proceed on that basis. CIH Scotland's initial observation is that the traditional ALMO model – developed primarily south of the border – transfers stock *management* out of the local authority's hands but sees stock *ownership* retained by the council. There may also be a question over whether an ALMO would meet the definition of 'a housing association, registered charity or voluntary organisation'. On its own, therefore, it is possible that the ALMO route may not meet the definition of SEA, but it is for each local authority to come to its own view on this.

¹ See Sub-paragraph 4.10 (b), Schedule 3 of the Housing Benefit and Council Tax Benefit (Consequential Provisions) 2006 <http://www.dwp.gov.uk/docs/a8-3301.pdf>

Even if the ALMO route did meet the first part of the aforementioned definition, the second test is that support would need to be being provided (or sub-contracted) by the body which owned the building, so (a) it would need to be clear that support was indeed being provided (something that arguably may not be the case for ALL of a council's *dispersed* temporary accommodation), and (b) the provider of the support would need to be the owning landlord.

A greater degree of clarity on this issue may emerge over the coming months, in which case CIH Scotland will revise and reissue this note accordingly.

Another option which some councils may choose to explore is whether it may be appropriate to lease any of their own supported accommodation to another body, thereby creating the potential for the project to be designated as 'support exempt accommodation'. Where another organisation is already involved in providing some or all of the support or care in that project, leasing may be a realistic option to consider as there would be an obvious potential lessee. However, leasing is not straightforward and would have implications for the council, the lessee and the tenants, requiring careful consideration by all parties.

Locking off rooms

Depending on particular local circumstances, councils may have a number of options and decisions to consider in their efforts to mitigate the specific impact of the bedroom tax on tenants who may be under occupying their TA.

An option being considered by some councils is locking off bedrooms which would be deemed to be 'spare', as technically this may be seen as a way of matching the property size to the size of household. In some cases this may also involve equalising rents across all affected properties. It is not possible for CIH Scotland to be authoritative about this or any other option being considered. As a minimum, though, we would suggest that the council's Housing Benefit function would need to be content with the approach, and also the council's auditors. It is more difficult to speculate on whether the DWP may seek to challenge such a practice.

One consideration is that if locking off rooms is seen by some councils as a way of getting round the bedroom tax in temporary accommodation, it might then be seen by some social landlords as a way of dealing with the problem in some of their *mainstream* housing. Whilst it is possible that some tenants in mainstream housing would not want rooms locked off, especially where the room(s) in question was in day to day use, some tenants might welcome this as a potential solution to a desperate situation and therefore be happy to agree to the landlord taking such a step. There would be a possibility of such practice being seen by the DWP as 'policy creep' and this could make it more likely that they would take action to prevent such practice in any type of housing.

Within temporary furnished accommodation, one consideration is whether it might be practical to make use of the 'spare' bedrooms to store the homeless tenant's personal possessions. This can be particularly helpful if a tenant needs to have access to their effects and can prevent more costly offsite storage charges from

accruing. A local authority contemplating this would need to satisfy itself that such a practice would not impact on the number of bedrooms deemed to be in active use.

A further consideration is the rent level. If what was previously rented out as, say, a two or three bedroom property has effectively been converted into a one bedroom property, it may be reasonable to expect the rent to be set or reduced accordingly.

Other mitigation options

Where no action is being taken by the council to reduce the number of bedrooms a property is deemed to have, and the bedroom tax therefore applies in cases of under occupation, a council will normally have a range of options to consider:

- Actively pursue the tenant for the bedroom tax
- Actively pursue the tenant but seek to use Discretionary Housing Payments to cover some or all of the liability
- Write off the loss

This guidance note does not seek to take a view on which option might be the most appropriate, not least as this will depend on a range of local variables. However, some observations on these options are offered below.

Where a council chooses to actively pursue tenants in TA for their bedroom tax liability, it would seem particularly relevant to consider what support can be offered to tenants, perhaps most obviously in the form of DHP assistance. Where TA rents are high in comparison with rents for mainstream accommodation, the bedroom tax liability will be correspondingly high, and it is likely to be especially difficult for tenants to find large sums of money from their existing income. Councils will know that being in TA can be a particularly unsettling time for tenants, and that the worry of having to find large sums of money would be adding further stress at an already difficult time.

Ideally, before pursuing the debt, staff will already have established with their revenues and benefits colleagues what level of DHP assistance may be available and for how long.

The option of writing off losses from non-collection of bedroom tax in TA can arguably be considered alongside the fact that the council may – for the time being – be continuing to charge significant levels of rent prior to any rationalisation of the system for covering TA costs in the run up to Universal Credit.

Dealing specifically with the benefit cap

The benefit cap is £350 per week for single people and £500 for couples. It is less easy to set out options open to councils for dealing with the impact of the benefit cap on people living in temporary accommodation. Short of councils reducing the rents across all its TA, it is difficult to see how a tenant with a high rent in TA could avoid the impact of the cap if their rent is effectively what takes them over the threshold.

At the time of writing, CIH Scotland is not aware of any indications of how many TA tenants may have been affected by the cap, but the level of rents being charged in some areas suggests that there must be an impact on at least some households. It is interesting to note that, although applying only to the London Borough of Haringey, CIH's recent report on the impact of the cap² found that 43% of households subject to the cap were living in temporary accommodation.

One obvious option is to consider using Discretionary Housing Payments to make up the shortfall in benefit income for those whose TA rent takes them above the cap. As with any use of DHPs, this may well be an interim option only, as awards are generally time limited. Councils may have taken some reassurance from the October 2013 announcement that the Scottish Government will make a £20m addition to councils' DHP budgets in 2014/15, as has happened in 2013/14, but this does not of course guarantee assistance in any individual cases or category of cases.

8 Impact of conditionality sanctions

CIH Scotland is aware of increasing reports of Job Seekers Allowance claimants being sanctioned, for example for missing JobCentre appointments. It may be that some people in temporary accommodation are particularly vulnerable to the imposition of sanctions because of the especially unsettling nature of their circumstances.

Conditionality sanctions do *not* extend to the withdrawal of Housing Benefit, although there may be a degree of misunderstanding about this among some local authorities.

Further information on sanctions is available from various sources, including the National Housing Federation³.

9 Looking ahead – reviewing the costs of providing temporary accommodation

A number of local authorities are already carrying out reviews of how they can re-provision the funding of temporary accommodation. To inform this process, under the auspices of the Scottish Government's homelessness team and COSLA, a small group of councils have been drawing up some initial ideas about the costs of providing different models of temporary accommodation, and the Scottish Government expects to be in a position to share this work more widely with councils shortly.

Independently from this, although linked, Shelter Scotland has instigated discussions with the Scottish Government's Homelessness Prevention and Strategy Group about

² http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Experiences_and_effects_of_the_benefit_cap_in_Haringey_October_2013

³ <http://www.housing.org.uk/publications/browse/sanctions-and-conditionality-briefing>

exploring what might be a reasonable physical standard of TA, partly based on the 2011 guidance produced by Shelter Scotland and CIH Scotland⁴.

Obviously it is a matter for each local authority to consider the pace at which the costs of TA are reviewed, not least as any reduction in costs is likely to have significant implications for the housing service and the council's finances as a whole.

The slower than expected roll out of Universal Credit arguably gives councils more time to work towards making changes. However, it seems appropriate to suggest that maintaining the status quo in the meantime would need to be accompanied by action to deal with the impact of both the bedroom tax and benefit cap on existing and prospective tenants, for whom current rent levels may be causing serious hardship. Where councils are able to mitigate the impact of the changes on these households – whether through the use of Discretionary Housing Payments or through some other means – they may effectively be 'buying time' to plan for longer term changes in how their temporary accommodation is funded and charged for.

CIH Scotland contact details: 0131 225 4544 or david.bookbinder@cih.org

www.cihscotland.org

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http://scotland.shelter.org.uk/data/assets/pdf_file/0009/322677/Temporary_Accommodation_Guidance.PDF