

Practice briefing

Maximising the use and effectiveness of Section 5 homelessness referrals

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Executive summary

Section 5 referrals are the formal means by which local authorities (LAs) can ensure that homeless people are housed by registered social landlords (RSLs). Shelter has prepared a practice briefing to bring together examples of current ways of working in this new and emerging area of policy.

The number of homes let by RSLs has grown hugely in recent years, now comprising 40 per cent of all the social housing stock. However, while LAs let 28 per cent of all homes to homeless people, the comparable figure for RSLs is only 14 per cent, albeit a share of lets which has been rising.

Good practice on Section 5 referrals is not widely shared. There are some excellent examples of good working arrangements between RSLs and LAs but also examples where roles are confused.

Scottish Executive guidance makes clear that when a Section 5 referral is made the only reason an RSL can reject the referral is if appropriate accommodation will not be available within a reasonable period, usually six weeks. Where LAs and RSLs cannot agree a referral then the decision can go to an arbiter.

Many LAs and RSLs have developed protocols which govern the referral process. At best these protocols offer a clear steer to LA and RSL staff on both the housing context and the specific ways in which referrals should work. However, there is also confusion as to how Section 5 referrals sit alongside existing nomination arrangements, which are used to house people from mainstream housing registers. In Shelter's view all homelessness referrals should be made through Section 5 while nominations should be used only for mainstream housing applicants. Nomination arrangements and quotas can take account of, but should not constrain, the number of Section 5 referrals made to any one RSL. We also found examples of where RSLs were only being considered for referrals after all LA stock options had been exhausted.

There is also a great deal of variation in how the referral process works. Some LAs and RSLs have developed 'pre-referral' discussions which allow the LA to weigh up possibilities before a formal referral is made. While it is possible to introduce pre-referral dialogue with adequate monitoring, the danger is that the referral process is less transparent. It is also important to distinguish between relevant information which may be taken into account in considering how suitable a let may be from that which can be a formal reason for an RSL rejecting a referral.

In determining whether a referral should be made or accepted, the availability of support is often key. It is important that LA 'floating support' teams can provide as full a service to RSL tenancies as to LA ones.

Maximising the use and effectiveness of Section 5 homelessness referrals

Overall, the briefing highlights some encouraging areas of practice which can be built on. Where Section 5 referrals are working well they are based on clear working relationships between RSLs and LAs and on effective tracking and monitoring systems.

1. Introduction

Scotland has embarked on an ambitious programme of action on homelessness which has been acclaimed as being at the leading edge of international efforts to tackle social injustice.

Shelter recognises the enormous commitment made by LAs, RSLs and others to deliver on that programme of reform. We are committed to working with others to ensure that the reforms make a difference to the lives of homeless and badly housed people.

Consequently, we have been developing a number of ways of enhancing the contribution we can make to good practice and ensuring that frontline staff have the tools they need to do the job. For example:

- through our expanded training function
- through our web-based policy and practice pages: these include a regular e-newsletter targeted at practitioners and online discussion forums
- through our seminar programme
- through a series of practice briefings of which this is one.

This briefing looks at Section 5 referrals in practice: that is, the mechanism by which LAs can request the assistance of RSLs to house homeless people.

Background

When homelessness legislation was first introduced in the 1970s the housing association sector was very small and played a complementary role to that of LAs, mainly focused on inner city regeneration or housing people with particular needs. Almost all homeless people, it was assumed, would be housed directly by LAs.

Historically, there were quite modest legislative requirements that required RSLs and other bodies to assist LAs in meeting the needs of homeless people.

As the housing association movement grew and the LA sector shrank, the existing legislative framework appeared out of date. Shelter has been involved in the development of Section 5 referrals since the late 1990s when initial discussions were held with the New Housing Partnership (NHP) Group - the group set up to oversee plans for large scale housing transfer. Shelter raised concerns about the arrangements for housing homeless people as transfer of council housing to RSLs became more commonplace. In particular, Shelter queried whether existing arrangements, developed for a quite different context, were robust enough to cope with a situation where an LA had no homes.

LA stock transfer was not the sole change in circumstances. Before 2002 the growth of the RSL sector was mainly through being virtually the sole providers of new affordable housing and through a major programme of transfer from Scottish Homes and, to a lesser extent, new

town development corporations. By 2005 RSLs owned 40 per cent of the stock in the social rented sector. Just as importantly, that stock was increasingly mainstream stock and, because of new development, comprised many of the best homes in the social rented sector.

Up until 2002, LAs could access RSL stock through nomination arrangements. These applied both to referrals from council waiting lists and homeless people. Nominations are voluntary agreements by which an RSL agrees to consider applicants put forward by an LA but is not obliged to house them. Agreements varied widely throughout Scotland.

Through the NHP group, Communities Scotland, the Scottish Federation of Housing Associations (SFHA), Shelter and COSLA made suggestions for the proposed Housing Bill. Early discussions included a specific measure to ensure that homeless people were not disadvantaged in the processing of their application and subsequent provision of accommodation. Such a measure was intended to give comfort to LAs and RSLs by clearly stating the extent of their responsibilities towards homeless people.

By 2001 these ideas had been developed and Section 5 of the Housing (Scotland) Act 2001 introduced new duties for RSLs to provide accommodation for homeless people. The duty was commenced in 2002.

Section 5 referrals in practice

Since 2002 and the introduction of Section 5 referrals, there has been an active discussion about how they operate alongside the nomination process. Chartered Institute of Housing¹ (CIH) research, and evidence from SFHA² has suggested that Section 5 referrals are underused. Section 5 referrals are intended to maximise the choice of homes available to homeless applicants and provide better opportunities to meet homeless households' needs. The CIH research showed that despite having protocols in place, some local authorities were not using Section 5, and continued to exclusively use the nominations process. Furthermore, some councils would only seek access to RSL property for a homeless applicant when potential housing options from their own stock had been exhausted.

Section 5 referrals are often seen as a response to stock transfer. However, Section 5 referrals are required where stock transfer has not taken place, in order to ensure that statutory homeless households are both housed in sufficient numbers and are allocated suitable homes by RSLs. All RSLs should consider with LAs how they will process Section 5 referrals even where their accommodation is primarily of a specialist nature as there will be circumstances in which homeless households themselves will require adapted, supported or sheltered housing.

¹ 'Section Five Referrals - statistical examination of the use of the statutory referral process and an evaluation of its effectiveness' CIH February 2005

² SFHA Information Note, July 2004, Section 5 Homelessness Referrals in Practice

Communities Scotland³ found that during 2003/04 there were 5,520 Section 5 referrals made by local authorities to RSLs. These referrals resulted in 3,437 homeless households (62 per cent of those referrals) being housed. The majority of these referrals were to the three RSLs created through whole stock transfer (Dumfries and Galloway Housing Partnership, Glasgow Housing Association (GHA) and Scottish Borders Housing Association). When these RSLs are excluded 1,711 Section 5 referrals were made resulting in 61 per cent of these being housed.

There is more up to date information on Section 5 referrals from 2004-05, although the way the data was collected is different. 14.45 per cent of all re-lets by RSLs were made to Section 5 referrals during 2004/05.⁴ In comparison 28 per cent of all re-lets made by LAs were made under the homeless legislation.⁵

Of all parts of Scotland, Glasgow is the area which has loomed largest over debates about stock transfer and a new role for RSLs. The Glasgow Homelessness Partnership statistics show that during 2004-05, 75.2 per cent of permanent lets to homeless households made through the Homelessness Duty Protocol were housed by GHA.⁶ This showed a decrease from 84.7 per cent during 2003-04. Scottish Registered Social Landlord Statistics for 2003-04 show that of the 122,853 social housing units in the City of Glasgow, GHA has 78,487 units which equates to 63.9 per cent of the stock.⁷ GHA houses a considerably larger share of homeless applicants than other RSLs in the city. This may indicate that stock transfer RSLs are still treated like LAs in terms of housing homeless applicants and are expected to fulfil the statutory duty of the LA.

This report

In the production of this document we have drawn on the findings of Communities Scotland, the CIH, the SFHA, as well as key stakeholder interviews with the Scottish Executive, the SFHA, the Glasgow Homelessness Partnership, Shelter Housing Aid Centres, local authorities and RSLs. A total of ten local authority representatives were interviewed by telephone; these interviews were primarily with strategic officers and the remainder with operational staff. Six RSLs were interviewed.

In many of the LAs and RSLs interviewed it was felt that, while there were protocols and procedures in place, systems were not fully evolved into practice with many of the organisations revising and reconsidering their current approach. This has to be borne in mind

³ Key Themes from Inspections – Homelessness, Communities Scotland, June 2005

⁴ 2004/05 Percentage of All Lets to Homeless Referrals, Communities Scotland, 2005. Once the three big housing transfer RSLs are removed the proportion of lets going to homeless people is just over eleven per cent.

⁵ Statistical Bulletin Housing Series:

HSG/2005/4<http://www.scotland.gov.uk/Publications/2005/08/3085434/54370>

⁶ Operation of Homelessness Duty Protocol including Section Five Referrals – 2004/05, Glasgow Homelessness Partnership

⁷ Scottish Registered Social Landlord Statistics 2003/04, Regulation and Inspection Communities Scotland

when reading the specific examples throughout the briefing. The relative paucity of good practice examples is a reflection of the fact that it is a relatively new area of practice.

In the context of good practice for Section 5 referrals it is worthwhile considering current practice when LAs allocate their own housing stock. Essentially the process of Section 5 referrals and allocations should be no different to the process followed by the LA. The considerations that will be made are much the same: Is the property suitable? Is there sufficient turnover in the areas where housing is sought? Section 5 referrals simply amplify those questions because two or more different organisations with different cultures and information systems are seeking to address them.

The second and third sections of this document set out the legislation relating to Section 5 referrals and the Guidance issued by the Scottish Executive respectively.

The remainder of the document describes current LA and RSL practice in respect of the particular features of Section 5 referrals. We have highlighted examples of current practice and at the end of each section set out a summary of our practice recommendations, recognising that the processes designed by each LA and its partner RSLs should be customised to suit their specific circumstances. The final section brings together our recommendations. This guidance considers the operation of Section 5 referrals in the present legislative and practice context. Over the following months various developments are anticipated which will require LAs and RSLs to adapt their processes. It is beyond the scope of this guidance to evaluate how organisations should respond but we would encourage them to include these topics in their routine review of Section 5 referrals. The developments we suggest need to be considered are:

- The introduction of choice based lettings (CBL) systems. These have already been set up in Edinburgh and some RSLs. A number of other organisations are also evaluating whether or not to replace their current allocations systems.
- The ongoing development of Common Housing Registers.
- The impact of changes in legislation that will remove categories of priority need and new duties towards intentionally homeless people. It will be important in the latter to ensure that RSLs are part of the solution to housing a very small number of intentionally homeless people who present challenging behaviour.
- Changes to landlord organisation including further LA stock transfers and RSL mergers and take-overs⁸.
- The publication of the SFHA/ COSLA revision of the Model Protocol for Section 5 referrals.

⁸ This briefing was largely prepared before the result of the Edinburgh transfer ballot was known. The 'No' vote in Edinburgh may have implications for the future scale of transfer in Scotland but it is hard at this stage to assess what they might be.

2. Legal context⁹

Under the Housing (Scotland) Act 2001, Section 5 introduces the duty of the RSL to provide accommodation to homeless households.

Where an LA has a duty under Section 31(2) (duty to persons found to be homeless) of the 1987 Act in relation to a homeless person, it may request an RSL in its area to provide accommodation for the person.

In deciding whether to make such a request an LA must have regard to the availability of appropriate accommodation in the area.

An RSL of whom such a request is made must comply with the request unless it has a good reason for not doing so.

An RSL with housing in an LA area must comply with any reasonable request for information in relation to that housing made to it by the LA in connection with Section 5.

Scottish Ministers have issued Guidance as to what constitutes:

- A reasonable period in which an RSL must comply with a request for accommodation;
- A good reason for refusal of such a request;
- A 'reasonable request' for information in relation to the housing.

Guidance issued by Scottish Ministers in this respect is detailed in the next section below.

Where an RSL does not, within a reasonable period, comply with a request made by an LA under Section 5, and the LA considers that the RSL has no 'good reason' for not complying with the request, and the two parties are unable to reach agreement on whether there was 'good reason' then the LA and RSL must appoint an arbiter to determine the issue. This is covered in Section 6 of the 2001 Act. If the LA and RSL cannot agree on an arbiter, then the LA can approach Communities Scotland to appoint one from a pool of people who have been trained for this purpose.

⁹ Housing (Scotland) Act 2001

3. Scottish Executive Guidance¹⁰

Under the Housing (Scotland) Act 2001 Ministers were enabled to issue Guidance to LAs and RSLs regarding the duty of the RSL to provide accommodation for the purposes of housing homeless applicants. The Guidance issued by the Scottish Executive is detailed below.

Where a request is made to an RSL to house a homeless applicant it is expected that the RSL should comply by providing accommodation within six weeks unless it offers a good reason for not doing so.

The LA should take into account any written agreements or protocols between it and the RSL (the terms of which should not be contrary to any legal provision). The views of the applicant should also be taken into account.

It is clear that an LA should not make a request that, for example, would place a victim of domestic abuse near the perpetrator unless the victim has specifically requested to stay in the area, for example because of children in local schools or family and friends nearby. It should be noted that in most cases the applicant (if they disagreed with the position) would be able to request a review of the decision by the local authority.

There may also be circumstances where the LA and the RSL agree to the withdrawal of a request to provide housing for a homeless person. These include cases where the LA is provided with new information that leads it to review its decision to request that particular accommodation. For example if an authority is made aware that the applicant has committed an act of domestic abuse against a victim residing in the area then the authority should generally withdraw its request to the RSL to provide housing in that area.

Where an RSL has agreed to house a homeless person, but subsequently cannot do so in a reasonable period **and** the LA is satisfied that it can source appropriate accommodation from another provider in a reasonable period an LA may also agree to withdraw the request.

It is difficult to be prescriptive about times for compliance with Section 5 referrals, the imposition of a short timescale could lead to hurried re-housing or inappropriate allocation, however, a long time period may become the norm and unnecessarily lengthen the time within which a person is housed.

The key objective must be to minimise the time spent by applicants in temporary accommodation whilst at the same time assessing their needs and identifying appropriate solutions – taking into account those needs and the availability of suitable accommodation. The priority is to ensure that the applicant is housed appropriately and as speedily as practicable.

¹⁰ Housing (Scotland) Act 2001, Homelessness, Section Five: Guidance on Good Reason, Scottish Executive Development Department , September 2002

Where a request is made to an RSL to house a homeless applicant it is expected that the RSL should comply by providing accommodation within six weeks unless it offers a good reason for not doing so.

As a matter of good practice the RSL should respond to a request from a local authority as quickly as possible. This is particularly important where an RSL considers that it will not be in a position to comply with a request; in such circumstances it should reply to the LA immediately, setting out the grounds for non-compliance.

Where the RSL is unable to make appropriate accommodation available (i.e. comply with the request) within six weeks of the request then it must have good reason for non-compliance. However, when the RSL can identify a property which may be made available in a longer time period; and is able to make a definite arrangement for that accommodation to be made available to the homeless applicant and can provide assurances to the local authority that it will be able to comply with the request by an agreed date, then the authority may accept its initial response of good reason for non-compliance as a preliminary response, but should resubmit its request to the RSL for the accommodation at an appropriate time.

Non-compliance in any timescale is appropriate where the only accommodation the RSL has available is of a particular nature and this type of accommodation is not appropriate for the applicant. Examples may include sheltered housing for older people, specialist supported accommodation, individual property specifically designed or significantly adapted for occupation by people with a disability.

However, it is important that the views of the applicant and the nature of local demand are considered in reaching a decision on appropriateness. The special characteristics of the accommodation should not be used as the sole reason for not complying with a request but regard should be had to the sustainability of the accommodation as a specialist resource.

The LA must decide within five working days whether the reason for non-compliance constitutes 'good reason'.

4. Protocols

There is no uniformity of approach to protocols by LAs and RSLs. Some have written, formalised agreements, others have an unwritten agreement, some are still in draft form, while others continue to work to agreements made under stock transfer.

Communities Scotland¹¹ evidence from the Annual Performance and Statistical Returns (APSR) shows that many local authorities and RSLs are still developing protocols, it was estimated that as at March 2004, 128 protocols had been agreed out of a possible number of 430 (this number is higher than the total number of RSLs because some RSLs operate in more than one LA area).

LAs and RSLs should develop formal written protocols to ensure transparency and clarity on the required roles of both. This will make the use of Section 5 referrals more straightforward and ultimately ensure appropriate accommodation for the homeless applicant.

The SFHA and COSLA devised a Model Protocol for Section 5, which was intended to be discussed, amended and agreed between councils and RSLs. The Protocol does not have statutory status, and was intended to be read in conjunction with the Scottish Executive Guidance. The majority of protocols which are in place have been developed using the Model Protocol. Most LAs found this a useful basis from which to develop their protocols, however, the Model Protocol is now a couple of years old and LAs and RSLs have adapted protocols to incorporate lessons learned from practical experience. There is recognition that the Model Protocol should be updated and strengthened to reflect these experiences. Suggestions on the content of the Model Protocol are contained in the recommendations section at the end of this document.

Our research revealed that organisations had taken a variety of approaches to the development of protocols but that most had realised benefits from doing so:

This was as typified by the statement from RSL A 'a good set of rules leads to good working relationships' referring to the protocol developed with the LA.

RSLs B, C and D operated in the same geographical areas and have developed a standard Section 5 Protocol in conjunction with a group of neighbouring LAs. The areas face similar issues in terms of demand for housing and numbers of homeless applications. It was thought to be easier for the RSLs to follow the same protocol across all areas of operation.

Some national RSLs have taken different localised approaches working on an individual basis with LAs to meet local circumstances.

¹¹ Key Themes from Inspections – Homelessness, Communities Scotland, June 2005

Recommendations

LAs and RSLs should develop written local protocols tailored to the needs of the area. Local steering groups should be set up to devise the protocols and review these, regularly making changes where practice indicates. These steering groups should not act alone, but should consult with key stakeholders in the area.

While the protocol may be devised and agreed with a number of RSLs, all should sign individual documents to agree to the protocol.

The protocol should be based on an understanding of the operational context including:

- the nature of homelessness in the area; its current level, future trends, household type, composition, and circumstances, and housing needs and preferences.
- the future housing supply; numbers, new developments, breakdown in terms of size and location and the impact of other factors e.g. the Right to Buy, the need to decant areas prior to modernisation.
- the different characteristics of each landlord (including the LA), e.g. their stock type, location, turnover, management priorities.

Where landlords have developed lettings plans setting out the aims and objectives of their allocations policies (and where these plans are underpinned by a thorough analysis of housing demand and supply) these could be used as a basis for preparing the protocols. Where such plans do not already exist, landlords should be encouraged to prepare these.

The protocol should cover the following topics:

- a description of the operational context – to demonstrate that signatories have understood and share the objectives of the protocol.
- the aims and objectives of both the Section 5 referral process and the specific protocol.
- information sharing and recording, e.g. on stock turnover, applicant circumstances, and feedback on the success or otherwise of referrals.
- how the Section 5 referral process fits with nomination agreements for general allocations.
- the procedures relating to the referral process – we suggest that named posts responsible for particular functions are clearly set out.
- access to and allocation of support services to enable households to sustain tenancies.
- dealing with problems and the arbitration process.
- mechanisms for both routine monitoring and more in-depth review of the operation, and listing the information that will be collected and at what stage.

We recommend that similar internal arrangements are developed by the LA for allocations to its own stock. Apart from perhaps addressing what are sometimes similar concerns amongst housing management staff about allocations to homeless households it would ensure that

there was more openness, transparency and comparability about the process and a greater likelihood that homeless households were given fair opportunities for securing the housing and support they need.

While protocols agreed with specific LAs are likely to be similar we recommend that there is some customisation to suit the particular circumstances of each landlord.

5. Section 5 referrals and nomination agreements

Section 5 referrals function alongside pre-existing nominations agreements. These agreements still need to exist in order to ensure housing applicants from the local authority waiting list who are not homeless also have access to RSL accommodation.

Nomination agreements should not, however, constrain Section 5 referrals. As stated in the Scottish Executive Guidance there should be no quota attributed to the levels of Section 5 referrals. Even in circumstances where an RSL has fulfilled its agreed percentage of lets through the nomination arrangements Section 5 referrals could still be made. Local authorities and RSLs must recognise that Section 5 referrals are in addition to nomination arrangements but need not be wholly additional. That is some of the Section 5 referrals could be included as 'counting' towards targets set within nomination agreements. The key is for LAs and RSLs to adopt a partnership approach to meeting the needs of homeless people.

In the case of whole stock transfer the local authority will often no longer maintain a housing waiting list. All homeless allocations would then be processed through Section 5 referrals.

There is some confusion in practice about when, and to what extent, Section 5 referrals should be used. The law is silent on whether homelessness referrals should **only** be made through Section 5 or whether it is permissible to make homelessness referrals through a nominations route, with Section 5 only being used where RSLs are less inclined to accept referrals. At least one LA openly claims that it never uses Section 5. To date the regulator has taken a pragmatic approach to this, focusing on the outcome for the homeless applicant rather than the process.

Notwithstanding the importance of outcome over process, Shelter believes that Section 5 referrals should be the norm for homelessness referrals and that nomination arrangements should only be used for general waiting list applicants. There are two main advantages to this:

- From the local authority perspective it ensures that partner organisations are brought into a framework which is clear and consistent between different RSLs.
- For RSLs it ensures that they are being fully and transparently credited for the contribution that they are making to addressing homelessness and that this contribution is being fairly compared with that of their peers.

It seems that some of the hesitation about using Section 5 comes from feelings that it is too formal, bureaucratic or might even imply some tension in the relationship between RSLs and LAs. There is no reason for this to be so. Section 5 referrals can readily be part of a smoothly operating and constructive relationship between LAs and RSLs.

When we looked at actual practice, we found that LA and RSL interpretation of the guidance varies; many thought that Section 5 referrals were intended to be used as an integral part of nomination agreements while others thought that Section 5 was intended to operate over and above the nomination agreement. The Scottish Executive has left this open to interpretation by the LAs. Shelter believes that the Scottish Executive should clarify this because it appears to lead to an occasional tendency for Section 5 referrals to be seen as a replacement to nominations. It also seems that some referrals which are being labelled as 'Section 5' are actually working like more informal nomination referrals, that is without the attendant requirements on 'good reason' and time limits.

At present LAs have devised two main types of Section 5 referral, the first being those where Section 5 referrals are contained within the existing nominations agreements. Some have developed the approach that where an RSL nominates 50 per cent of net lets to the LA, 50 per cent of those nominations (or 25 per cent of net lets) will be allocated for Section 5 referrals. This means that no additional accommodation is being made available to house homeless applicants. In these circumstances homeless households must either wait much longer for accommodation or will be offered LA accommodation and so denied access to the often better quality accommodation of the RSLs. In this example, a target is, in effect, becoming a quota and constraining the number of Section 5 referrals, which is quite contrary to how the system should work.

The second approach is where LAs have developed systems in which the Section 5 referrals are over and above the properties made available through nomination agreements. This ensures that additional accommodation is available for homeless applicants.

Both LAs and RSLs have a responsibility to ensure that homeless applicants in their area can access permanent housing. Our research has found that LAs often only make Section 5 referrals when they have exhausted all the LA stock options available. The main responsibility of the LA is to appropriately house the individual whether this is in LA or RSL owned housing:

LA E has an agreed protocol which states that they may use at least 50 per cent of RSL lets as Section 5 referrals. The LA has never exceeded this amount and works with the RSL to ensure that a balance of household types nominated is retained. If, however, the LA ever required additional nominations over the 50 per cent, the protocol allows for this.

Applicant-led approaches

The intention in the development of the policy was that Section 5 referrals should be applicant-led. This ensures that the RSL ensures accommodation provision that is suitable for the specific needs of the individual. LAs should work with RSLs in their area to develop an applicant-led process.

Under an applicant-led system the LA will identify a homeless applicant and request that the RSL house an individual through the Section 5 process. The applicant-led system allows the LA, where necessary, to require an RSL to house a specific individual as soon as they have suitable accommodation.

A void-led approach is one where an RSL property becomes vacant and the RSL requests that the LA provide an applicant who is suitable for that property. This is more akin to nomination processes and provides no greater priority or opportunities to those homeless households who are referred under Section 5.

The SFHA Model Protocol describes an applicant-led rather than void-led process, as it is thought likely that in most cases the referral process will relate to a specific homeless household. The SFHA does state that

'Where both parties wish to adopt a void-led approach – i.e. the RSL advising the council of all its voids – then alternative procedures would need to be agreed'.

LAs are divided between those which adopt applicant-led or void-led processes. Of the LAs consulted, half had developed void-led processes:

In our research we found LAs F and G have established target figures. An assessment was made in terms of the proportion of the stock in the area held by the LA and each RSL. This assessment informed the establishment of guideline figures which will enable each RSL to anticipate the proportion of allocations that are likely to be made through Section 5 referrals. These figures are not fixed targets and do not have to be reached in all circumstances and may be exceeded in others. Under no circumstances will an RSL reject a referral on the grounds that its figure has been reached.

LA H has linked the target figures to the protocol for the supply of temporary accommodation. Those people who live in leased temporary accommodation, who then become permanent tenants of that property and the RSL, are counted against the target figure of that RSL.

Recommendations

Protocols should explicitly state the rationale for the approach being taken to secure accommodation under the Section 5 referral process.

We recommend that LAs and RSLs should adopt an applicant-led approach to ensure that Section 5 referrals are serving to meet the needs of the homeless applicant.

Protocols should explain how the Section 5 referral process fits with pre-existing nomination agreements.

We believe there should be an explicit recognition that Section 5 referrals do not automatically replace RSL's nomination obligations. Nevertheless we also recognise that in some circumstances, and in particular where the demand from homeless households is large, accommodation allocated via referrals may reduce the proportion let under nomination agreements. Protocols must explain the circumstances (perhaps the triggers) in which nomination obligations would be reduced.

6. The referral process

The concept of pre-referrals

Pre-referral is the term used to describe the initial contact made between an LA and RSL to discuss the appropriateness of putting forward a particular household under the Section 5 process. This process is not encouraged in the Scottish Executive Guidance.

In our research we found that a number of local authorities operating an applicant-led system were using such a 'pre-referral' or 'screening' process. Essentially initial calls were made to the RSL in order to discuss whether accommodation would be available. But this often means that the LA and RSL also discussed the needs of the applicant and the suitability of the property. This gave the RSL the opportunity to reject the Section 5 referral at this informal stage, without a formal Section 5 referral ever being made. This leads to the under reporting of rejections of Section 5 referrals. In no circumstances did we find that LAs were recording the number of pre-referrals made or the outcome of the contact including the reasons for not proceeding with a formal referral. We were also concerned that there appeared to be no monitoring of whether the reasons provided for not proceeding were supported by subsequent events, e.g. whether or not suitable accommodation had indeed become available:

There are signs that LAs are becoming concerned about pre-referrals. LA I has recently withdrawn its practice of screening applicants as this has been viewed as contrary to good practice. The LA has increased the information available to the RSL when a formal referral is made – the RSL may now consider the support needs and medical requirements of an applicant when determining whether it has a property that is suitable to meet their housing needs.

Other LAs, however, continue to argue their usefulness as the following examples illustrate. LA J operates an informal pre-referral stage, which involves a telephone call to all the RSLs to see if they can accommodate the referral. The intention is to minimise the possibility that an offer which is made will be rejected by the RSL. This does not involve information sharing about the applicant, only about the size, type, location, etc of the required property. This enables the RSL to make the referral to the RSL which can best accommodate the households needs and avoids any future delays if an RSL has turned down the referral due to lack of suitable stock.

LA K operates a similar pre-referral process and where it appears likely that the referral is likely to raise significant community safety or health and welfare issues for the existing community, the RSL would be informed at this stage. The arrangements for this ensure that such information sharing is only entered into with relevant bodies and data protection legislation is followed.

LA L will also take into consideration at the pre-referral stage any concerns that the RSL may have about the referral. While outwith the specified 'good reason' LA L may take into account, without being bound by any specific rejection, certain issues when considering the RSLs reluctance to comply with a request. Issues which the Council says it may consider include:

- sensitive allocations
- lack of connection or no desire to live in the area
- adherence to overcrowding/ underoccupancy policies
- where the applicant has recently been evicted from or the tenant has recently abandoned a property of the RSL
- where the ability to meet identified support needs raise concern
- where the applicant has been the perpetrator of violence or abuse towards a person living in the vicinity.

The arguments used for taking this approach are that the process can maximise tenancy sustainability for the benefit of both the applicant and the community where the vacancy has arisen.

Shelter can see the merit in systems that allow for some early dialogue to ensure that a Section 5 referral is not completely wasted. However, this must be related to objective facts and recorded in some way (see *section 11* for some suggestions as to how this might be monitored). It is critical to make a clear distinction between facts that might be **discussed** as relevant to an appropriate allocation and the **reasons** that an RSL can formally use to reject a referral. Some protocols which we have seen, as well as CIH research, cited in *section 9*, seem to imply reasons for rejection that go well beyond the statutory limits of 'good reason'.

As the LA L's list above shows, some issues can be highly subjective or not backed by evidence. On balance, Shelter thinks that pre-referrals discussions should be limited to issues around stock and turnover. Issues related to the client, at least at the level at which they would be material to the allocation decision, would be relatively infrequent and so should only be part of a discussion after a referral is made.

Recommendations

The clearest process is for LAs to make the referral under Section 5 with no prior RSL screening of applicants. If an applicant requires to be housed under Section 5 then such a referral should be made. This will ensure that those in most need are offered access to the accommodation they require.

The protocol can be used to explain the approach taken to the types of circumstances in which it is believed that pre-referrals are considered useful. If the protocol has been developed in the way we suggest in *Section 4* (i.e. is underpinned by an appreciation of the housing context) there should be little need for pre-referrals.

In circumstances where LAs and RSLs decide to use a pre-referral process a pro-forma should be completed. This should serve to record that initial discussions were carried out and what the outcomes of these were. This will allow for an initial approach to be made without the process being totally informal and unstructured. This will enable monitoring of the frequency with which these pre-referrals are accepted or rejected by the RSL.

7. Tenancy sustainability

Both LAs and RSLs believe that a significant proportion of homeless households require at least initial support in order to successfully sustain their tenancies. This support includes specialist 'social work' support and more basic housing support funded through the Supporting People programme.

LAs and RSLs report difficulties in accessing support for vulnerable people who are being housed under Section 5. This is because services funded by Supporting People tend to be restricted to in-house LA teams who are focused on providing support to LA tenants. This accounts for some LAs preferring to house individuals with support needs in LA accommodation because they believe there is more chance of securing that support.

However there is evidence that progress is being made. Some LAs and RSLs work together to provide additional support to enable those applicants housed through Section 5 referrals to increase the chances of tenancy success and examples are given below:

LA M has developed a set of communication stages that are outlined in each of the pro-formas that they have developed for the referral process. The referral pro-forma will include information about contact details for the homeless person as well as any advocate or advisor that needs to be involved. It will also specify any particular needs relating to literacy, sensory impairment or particular language requirements.

LA N has introduced tenancy support workers to work specifically with those referrals who have displayed anti-social behaviour in previous tenancies, in order to improve the sustainability of the tenancy awarded through the Section 5 referral. Tenancy support workers work with the household to develop greater understanding of the causes and outcomes of anti-social behaviour. This involves explaining tenancy conditions and raising awareness of the effect of types of behaviour on neighbours and the community.

LA O has set up a system whereby applicants who are in temporary accommodation which is leased from the LA or an RSL that suits their permanent housing requirements can have that temporary accommodation used as a housing option. The accommodation then ceases to be part of the pool of temporary accommodation and serves as a normal tenancy for the applicant. This system benefits the applicant who no longer has the upheaval of moving from temporary accommodation that suits their requirements and enables the LA to rotate the provision of temporary accommodation. Additional funding is required to enable the applicant to acquire the furniture and white goods which are supplied with the temporary accommodation.

LA P has developed support systems which take into account the current support needs of the applicant and develop personal support plans to meet their needs. These support systems include alcohol and drug rehabilitation and counselling which can be made available prior to the applicant receiving an offer of a house. This helps to provide support to applicants who may spend a considerable time in temporary accommodation.

Recommendations

LAs and RSLs should work together to ensure that the use of Section 5 referrals is not hampered due to the lack of availability of support. Homeless applicants should have equal access to both LA and RSL accommodation.

Protocols should include reference to how support is accessed and allocated to households under Section 5 referrals. We recommend that there should be no discrimination between households offered tenancies in LA or RSL accommodation and that where services are presently targeted at LA tenancies, this decision should be reviewed.

Where support is considered necessary to enable a homeless household to sustain a tenancy, whether it is specialist or general, the RSL should be involved in any decision making process e.g. case conference in the same way that LA housing staff would be.

LAs and RSLs should include, in their monitoring, information that would enable them to assess the success of tenancies allocated under Section 5 referrals in order to review whether the support provided is sufficient and of suitable quality.

LAs and RSLs should consider whether housing management officers could provide some limited housing support to resettle homeless households. If the circumstances of a household are communicated it may be possible for more sensitive housing management to address these needs.

8. Relationships between LAs and RSLs

Section 5 referrals are still a new area of practice. At the moment it seems that some LAs are still seeing them much like nomination arrangements, without recognising the additional leverage that they provide. This starting point leads to some unnecessary timidity about their use. On the other hand, some RSLs can be seen to be pushing at or beyond the boundary of what is permissible, trying to insert additional 'buffers', as one observer put it.

These might be no more than the inevitable birth pangs of a new policy. The best arrangements are those which allow a robust dialogue on both sides when making referrals, but this need not be belligerent. In fact, the greater consistency which the Section 5 framework offers might promote much greater partnership approaches, simply because it allows both parties to be much clearer about expectations.

Good working relationships between LAs and RSLs are crucial to the successful working of the Section 5 referrals process. It is also crucial that RSL governing bodies and committees appreciate the obligations placed on them by the recent changes in legislation.

LAs and RSLs must work towards good working relationships characterised by openness and co-operation with the understanding that the ultimate goal of the Section 5 referral is to ensure that homeless people have access to appropriate accommodation. The issues that we found were:

- Day-to-day liaison
- Information sharing
- Training and governance issues
- Monitoring and reporting arrangements
- Lack of support arrangements

Day-to-day liaison

There is evidence that organisations are recognising the need to improve liaison as illustrated by the following examples:

LA Q facilitates monthly homelessness discussions with RSL representatives and LA staff to ensure a common approach both operationally and strategically. A specific Section 5 workshop was developed from this approach, which enabled the various parties to pinpoint and discuss local difficulties. Section 5 referrals are now reported to the group on a monthly basis.

LA R has established a protocol with RSLs where a named officer or 'caseworker' with day-to-day responsibility and authority for dealing with homeless requests is identified. In the LA this is the person with responsibility

for making homeless assessments and referrals in the area in question. In the RSLs it is expected that there will be a second named officer to cover for absences. Liaison arrangements are entered into to ensure key personnel are aware of their opposite number and regular reviews are held to consider how the arrangements are progressing.

Information sharing

LAs and RSLs must also have good information sharing systems so that the LA has up to date knowledge of, for example, the type, size and location of the RSL stock. This should serve to minimise the mismatch of applicant and property type:

LA S collates detailed stock information about all the RSLs in operation in the area on an intranet site and supplements this information with the most up-to-date APSR for the RSLs, to ensure staff understand the likely availability of stock.

LA T is developing an information sharing system and regular meetings between frontline officers that will mean that LA staff will have a good understanding of the usual turnover rates within the RSLs. This will enable them to indicate to applicants the likely timescales for properties becoming available for re-let. The information provided includes; stock numbers, stock size, estimated, projected, and actual historical turnover rates for the stock and further information on the number and type of specially designed properties with any other special characteristics. Larger RSLs are requested to break down stock information by area.

Training and governance issues

LA and RSL allocations and homelessness staff in LA U received joint training on the Section 5 Protocol, outlining the role of each organisation. This allowed concerns to be aired and addressed and meant that each officer had been given the same information at the same time. The training also offered a good 'ice breaker' and 'get to know you' opportunity to smooth the progress of building good relationships in day-to-day contact.

Recommendations

The protocol should identify potential 'flash points' and set out how these will be addressed.

RSL governing bodies should be made aware of the obligations towards homeless households and should receive reports on the performance of RSLs.

LAs and RSLs must work towards good working relationships characterised by openness and co-operation with the understanding that the ultimate goal of the Section 5 referral is to ensure that homeless people have access to appropriate accommodation.

LAs and RSLs should develop good information sharing systems.

9. Refusals and rejections¹²

LAs and RSLs reported that the majority of refusals of Section 5 referrals usually come from the applicant rather than the RSL. However it needs to be acknowledged that a significant number of potential referrals are being 'stopped' by the prevalence of pre-referrals. Refusals are often due to the applicant not responding to an offer of accommodation, or the applicant refusing the offer on grounds of location or property mismatch (this is also true for LA offers). RSLs also report difficulties in contacting applicants, especially those living in temporary accommodation.

Concerns have been raised that applicants are often unaware that an offer of a property by an RSL (who they may not have directly applied to) is in fact a formal offer under the legislation and if they refuse this property, the LA may be seen to have fulfilled its duty to them. As stated in the Code of Guidance homeless applicants should receive the same number of offers as other applicants.¹³

Our research has shown that organisations have developed ways to understand and address high refusal rates:

LA V provided the RSL with a 'reserve Section 5 referral' to combat the problem of loss of contact with the applicant. It is made clear to the RSL that their duty and priority is to house the 'Section 5 referral'. If the RSL is unable to contact the applicant, or the applicant does not respond to the offer or there is a mismatch between applicant requirements and the property available, the RSL can contact and offer the property to the 'reserve Section 5 referral'. This usually ensures that the vacancy is filled by a homeless applicant, through the Section 5 route, rather than reverting to the RSL waiting list.

LA W has expanded the number of rejection codes (not the technical reasons for refusal) by setting out why a Section 5 referral does not proceed. RSLs may only use the reasons in the Scottish Executive Guidance but the coding is more detailed to enable the LA to have greater insight into why referral was rejected. The RSLs in the area are keen to co-operate with Section 5 referrals and are in

¹² Refusal has been used to indicate where an applicant has refused the offer of accommodation made under Section Five. Rejection has been used where an RSL has declined to accept the Section Five Referral.

¹³ Code of Guidance on Homelessness, Scottish Executive, 2005

favour of more in- depth information, as this should also assist their own allocations.

The most common reason for RSLs rejecting a Section 5 referral are because there is no suitable stock available within six weeks. There is evidence, however, of RSLs rejecting Section 5 referrals on grounds other than those permitted by legislation and guidance. CIH Scotland research reported that, in a survey of RSLs, reasons given for rejecting Section 5 referrals included anti-social behaviour, former tenancy arrears and the inability to provide a support package in order to assist the household sustain their tenancy.¹⁴

In one case an RSL was found not to have accommodated a referred person within the required six weeks as it was waiting to see if the tenant maintained an agreement to pay off former tenancy arrears. When challenged by the regulator the RSL acknowledged that this should not have happened and subsequently clarified its procedures for dealing with Section 5 referrals:

LA X will refer an applicant under Section 5 and if this is rejected by the RSL will continually re-refer the applicant until suitable accommodation is found by the RSL. During this time the applicant remains in unsuitable housing.

LA Y operates a system where if a rejection of a Section 5 referral is seen as non- compliance with the legislation the RSL and LA will meet within three days to discuss the case. The outcomes from this discussion will either be:

- compliance by the RSL
- alteration of the request by the LA
- support or other measures used to enable the request
- RSL agree to house the referral in the next suitable vacancy
- referral to non compliance arbiter.

Recommendations

Failure to respond and refusal rates should be part of routine monitoring and where these are higher than anticipated LAs and RSLs should analyse the reasons for this (e.g. whether about location, property size, etc) and set out how they will address them.

LA homelessness services personnel should discuss accommodation requirements with individual households and explain what may be available. Households should receive confirmation about what has been agreed as suitable. A copy of this should be provided to an RSL where a referral is being made.

¹⁴ 'Section Five Referrals - statistical examination of the use of the statutory referral process and an evaluation of its effectiveness' CIH February 2005

RSLs and LAs should make it clear in a formal offer letter and verbally (in plain English) that the offer is being made on behalf of the LA in its duty as the statutory body under Section 5 of the 2001 Housing (Scotland) Act.

RSLs and LAs should review methods of contacting applicants in respect of offers of accommodation in addition to the formal letters. For example text messaging has the potential to serve as a more accessible means of maintaining contact. LAs should actively assist in maintaining contact by hand delivering offers to the temporary accommodation caseworker. Service providers would need to put adequate systems and procedures in place to facilitate such measures.

10. Arbitration

Few LAs or RSLs have yet taken a refusal of a Section 5 referral to arbitration. The SFHA was aware of one such case which a council brought against an RSL; the complaint was not upheld. Anecdotal evidence suggests that where disputes have occurred LAs and RSLs quickly meet to discuss the issues, which are resolved without the need for external intervention.

While arbitration may be cumbersome and potentially upset good working relationships it should not be seen as a tool which is never used. Where rejection of Section 5 referrals are deemed to be inappropriate and the two parties are unable to reach an agreement on whether there was 'good reason' the LA and RSL must appoint an arbiter.

Recommendations

Protocols should set out how disputes will be addressed and where these are not satisfactorily resolved where the arbitration process will be used. In acknowledging that arbitration is potentially cumbersome there may be scope for an initial more informal resolution process that can be subsequently escalated.

While LAs and RSLs should strive to resolve the issue, in the event of a dispute being unable to reach a satisfactory resolution between the LA and the RSL the two parties should agree to the appointment of an arbiter who will determine the issue. Procedures for the appointment of an arbiter should be contained within the Section 5 protocols between LA and RSL.

11. Tracking and monitoring

RSLs and LAs tend not to have any comprehensive monitoring or tracking systems for Section 5 referrals. This is the case for both applicants who are considered for Section 5 referral and are housed, as well as for those who are not housed through the system. RSLs do not know where applicants rejected for Section 5 referral are ultimately housed – the majority assume that the LA houses them, although this information is not recorded.

Organisations should track the areas in which Section 5 referrals are housed and the impact, if any, this has on the sustainability of the tenancy and the area. Anecdotal evidence suggests that there are no distinctive issues of lack of sustainability due to Section 5 referrals. This should be clearly evidenced and used to inform future letting decisions.

The monitoring process should incorporate the following elements:

- consideration of contextual factors e.g. the nature of the homelessness problem, general housing supply, policy and legislative changes etc
- overall performance against the objectives for Section 5 referrals and the protocol
- qualitative performance e.g. the views and opinions of stakeholders
- a periodic more in-depth assessment.

Consideration should also be given to who receives the information and to what use it is put.

Applicants put forward for Section 5 referral that have the referral rejected should also be tracked to gain an understanding of what the housing outcomes for them are. This should include long term monitoring to ascertain whether they become repeat homeless presentations.

Other suggested outcomes to monitor include:

- House type allocated under Section 5
- House size allocated under Section 5
- Location of properties allocated under Section 5
- Timescales for allocation under Section 5
- Number of abandonments within one year
- Reasons for applicant refusal
- Reasons for RSL rejections
- Household type – referred, and allocated
- Satisfaction with the process – staff, representative agencies and applicants.

Organisations may want to consider a periodic independent assessment of how the referral process is working. We understand the Scottish Housing Best Value Network is introducing a

peer review for homelessness services and we would encourage them to consider including this process in the review.

Monitoring pre-referral processes

As discussed in *section 6*, if there is to be a pre-referral discussion, it still needs to be recorded. The LA officer should record the following information:

- The name of the RSL contacted and the position and name of the staff member with whom the discussion took place.
- Content of the discussion that took place and the response from the RSL.
- The decision that was made. This will be either that a Section 5 referral was made or that the referral did not go ahead. In instances where the referral did not go ahead the reasons for this will also be recorded.

As the reason for rejection of a Section 5 referral will typically be due to the RSL in question not having suitable accommodation available, a further system will have to be in place to ensure that this is the case. Subsequent lettings data from that RSL should be checked in order to ensure that the reasons provided for not accepting the Section 5 referral are shown to be accurate. We would recommend that Communities Scotland incorporate this monitoring function into its programme of RSL inspections.

Recommendations

Organisations should track the areas in which Section 5 referral applicants are housed and the impact, if any this has on the sustainability of the tenancy and the area.

Applicants put forward for Section 5 referral who have the referral rejected should also be tracked to gain an understanding of what the housing outcomes for them are. This should include long term monitoring to ascertain whether they become repeat homeless presentations.

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- House size allocated under Section 5
- Location of properties allocated under Section 5
- Timescales for allocation under Section 5
- Number of abandonments within one year
- Reasons for applicant refusal
- Reasons for RSL rejection.

LAs should record the details and outcomes of any pre-referral discussions that take place and the information contained within these records should be made available to Communities Scotland as part of their inspections process to ensure that the reasons for any rejections are consistent with legislation and guidance.

12. Conclusions and recommendations

Section 5 referrals are intended to maximise the availability of accommodation for homeless applicants.

14 per cent of all re-lets by RSLs were made to Section 5 referrals, in comparison 28 per cent of all re-lets made by LAs were made under the homeless legislation.

Section 5 referrals should not only be seen as a response to stock transfer but also should be approached in partnership by all LAs and RSLs.

Protocols

LAs and RSLs should develop written, local protocols tailored to the needs of the area. Local Steering Groups should be set up to devise the protocols and review these, regularly making changes where practice indicates. These steering groups should not act alone, but should consult with key stakeholders in the area.

While the protocol may be devised and agreed with a number of RSLs, all should sign individual documents to agree to the protocol.

The protocol should be based on an understanding of the operational context including:

- the nature of homelessness in the area; its level, future trends, household type, composition, and circumstances, and housing needs and preferences.
- the future housing supply; numbers, new developments, breakdown in terms of size and location and the impact of other factors e.g. the RTB, the need to decant areas prior to modernisation.
- the different characteristics of each landlord (including the LA), e.g. their stock type, location, turnover, management priorities.

Where landlords have developed lettings plans setting out the aims and objectives of their allocations policies (and where these plans are underpinned by a thorough analysis of housing demand and supply) these could be used as a basis for preparing the protocols. Where such plans do not already exist, landlords should be encouraged to prepare these.

The protocol should cover the following topics:

- a description of the operational context to demonstrate that signatories have understood and share the objectives of the protocol.
- the aims and objectives both of the Section 5 referral process and the specific protocol.
- information sharing and recording, e.g. on stock turnover, applicant circumstances, and feedback on the success or otherwise of referrals.
- how the Section 5 referral process fits with nomination agreements for general allocations.
- the procedures relating to the referral process; we suggest that named posts responsible for particular functions are clearly set out.
- access to and allocation of support services to enable households to sustain tenancies.
- dealing with problems and the arbitration process.
- mechanisms for both routine monitoring and more in-depth review of the operation, and listing the information that will be collected and at what stage.

We recommend that similar internal arrangements be developed by the LA for allocations to its own stock. Apart from perhaps addressing what are sometimes similar concerns amongst housing management staff about allocations to homeless households, it would ensure that there was more openness, transparency and comparability about the process and a greater likelihood that homeless households were given fair opportunities for securing the housing and support they need.

While protocols agreed with specific LAs are likely to be similar we recommend that there is some customisation to suit the particular circumstances of each landlord.

Section 5 referrals and nominations

Protocols should explicitly state the rationale for the approach being taken to securing accommodation under the Section 5 referral process.

We recommend that LAs and RSLs should adopt an applicant-led approach to ensure that Section 5 referrals are serving to meet the needs of the homeless applicant.

Protocols should explain how the Section 5 referral process fits with pre-existing nomination agreements.

We believe there should be an explicit recognition that Section 5 referrals do not automatically replace RSL's nomination obligations. Nevertheless we also recognise that in some circumstances, and in particular where the demand from homeless households is large, accommodation allocated via referrals may reduce the proportion let under nominations agreements. Protocols must explain the circumstances (perhaps the triggers) in which nomination obligations would be reduced.

Referrals

The clearest process is for LAs to make the referral under Section 5 with no prior RSL screening of applicants. If an applicant requires to be housed under Section 5 then such a referral should be made. This will ensure that those in most need are offered access to the accommodation they require.

The protocol can be used to explain the approach taken to the types of circumstances in which it is believed that pre-referrals are considered useful. If the protocol has been developed in the way we suggest in *section 4* (i.e. is underpinned by an appreciation of the housing context) there should be little need for pre-referrals.

In circumstances where LAs and RSLs decide to use a pre-referral process a pro-forma should be completed. This should serve to record that initial discussions were carried out and what the outcomes of these were. This will allow for an initial approach to be made without the process being totally informal and unstructured. This will enable monitoring of the frequency with which these pre-referrals are accepted or rejected by the RSL.

Tenancy sustainability

LAs and RSLs should work together to ensure that the use of Section 5 referrals is not hampered due to the lack of availability of support. Homeless applicants should have equal access to both LA and RSL accommodation.

Protocols should include reference to how support is accessed and allocated to households under Section 5 referrals. We recommend that there should be no discrimination between households offered tenancies in LA or RSL accommodation and that where services are presently targeted at LA tenancies, this decision should be reviewed.

Where support is considered necessary to enable a homeless household to sustain a tenancy (whether it is specialist or general) the RSL should be involved in any decision making process e.g. case conference in the same way that LA housing staff would be.

LAs and RSLs should include, in their monitoring, information that would enable them to assess the success of tenancies allocated under Section 5 referrals in order to review whether the support provided is sufficient and of suitable quality.

LAs and RSLs should consider whether housing management officers could provide some limited housing support to resettle homeless households. If the circumstances of a household are communicated it may be possible for more sensitive housing management to address these needs.

Information sharing

The protocol should identify potential 'flash points' and set out how these will be addressed.

RSL governing bodies should be made aware of the obligations towards homeless households and should receive reports on the RSL's performance.

LAs and RSLs must work towards good working relationships characterised by openness and co-operation with the understanding that the ultimate goal of the Section 5 referral is to ensure that homeless people have access to appropriate accommodation.

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Refusals and rejections

Failure to respond and refusal rates should be part of routine monitoring and where these are higher than anticipated LAs and RSLs should analyse the reasons for this (e.g. whether about location, property size, etc) and set out how they will address them.

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Protocols should set out how disputes will be addressed and where these are not satisfactorily resolved where the arbitration process will be used. In acknowledging that arbitration is potentially cumbersome there may be scope for an initial more informal resolution process that can be subsequently escalated.

While LAs and RSLs should strive to resolve the issue, in the event of a dispute being unable to reach a satisfactory resolution between the LA and the RSL, the two parties should agree

to the appointment of an arbiter who will determine the issue. Procedures for appointment of an arbiter should be contained within the Section 5 protocols between LA and RSL.

Tracking and monitoring

Organisations should track the areas in which Section 5 referral applicants are housed and the impact, if any this has on the sustainability of the tenancy and the area.

Applicants put forward for Section 5 referral who have the referral rejected should also be tracked to gain an understanding of what the housing outcomes for them are. This should include long term monitoring to ascertain whether they become repeat homeless presentations.

Other suggested outcomes to monitor include:

- House type allocated under Section 5
- House size allocated under Section 5
- Location of properties allocated under Section 5
- Timescales for allocation under Section 5
- Number of abandonments within one year
- Reasons for applicant refusal
- Reasons for RSL rejection.

LAs should record the details and outcomes of any pre-referral discussions that take place and the information contained within these records should be made available to Communities Scotland as part of their inspections process to ensure that the reasons for any rejections are consistent with legislation and guidance.

As part of the process of developing practice in this area Shelter welcomes feedback on any of the recommendations or observations made in this briefing. Contact our Policy Team on 0131 473 7170.