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SIGNED FOR
Ms. Susanne Miller,
GCIJB,
Interim Chief Officer,
Glasgow Health & Social Care Partnership,
City Chambers,
Glasgow G2 1DU

Our Ref: SM/PH SHE/346/1

Your Ref:

16 August 2019

Dear Sirs,

**Shelter Scotland
Glasgow City Council and Glasgow City Integration Joint Board
Part II of the Housing (Scotland) Act 1987
Pre-action letter – Judicial Review**

We have been instructed by Shelter Scotland in relation to proceedings for judicial review against Glasgow City Council and Glasgow City Integration Joint Board (providing services as “the Glasgow City Health and Social Care Partnership”), in respect of the Council’s delivery of services to homeless persons applying to it for accommodation and assistance under section 28 of the Housing (Scotland) Act 1987. In particular, our clients intend to ask the Court to exercise its supervisory jurisdiction in respect of the systematic failure of the Council to comply with its duty to make interim accommodation available to applicants under section 29 of the Act.

Legal basis for proceedings

Under section 28 of the 1987 Act, if a person applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they must make inquiries as specified in that section. Under section 29(1)(a) (“Interim duty to accommodate”), if the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation pending any decision which they may make as a result of their inquiries under section 28. The duties under sections 28 and 29 cannot be deferred.

Factual basis for proceedings

In June 2018, the Scottish Government published its annual statistics “Homelessness in Scotland: 2017 to 2018”. In order for the statistics to be compiled, local authorities submit various documents to the Scottish Government, including HL3 returns. An HL3 return is completed when a local authority has a statutory duty to provide temporary

accommodation to an applicant under section 29 of the 1987 Act. The authority is also required to indicate when they do not offer any temporary accommodation to an applicant and thus, are acting unlawfully. For the year 2017/18, the Council submitted 3,025 HL3 returns indicating that an applicant for assistance under the Act was not offered temporary accommodation. In June 2019, the Scottish Government published "Homelessness in Scotland: 2018 to 2019". For that year, the Council submitted 3,365 HL3 returns indicating that an applicant for assistance under the Act was not offered temporary accommodation.

We appreciate that the Council has since maintained that it has incorrectly submitted too many HL3 returns, and that the approach taken by other local authorities to submission of HL3s leads to their lower figures. Nevertheless, the statistics still demonstrate that, in thousands of instances every year, the Council is failing to comply with its duty under section 29(1)(a).

This is a long-standing problem. Since around 2014, the Scottish Housing Regulator has engaged with the Council in respect of its delivery of services to homeless applicants. In March 2018, it published a report: "Housing People Who are Homeless in Glasgow". The report found that in 2016/7 the Council had a duty to make an offer of temporary or emergency accommodation (i.e. accommodation under section 29 of the 1987 Act) to households on 10,350 occasions, but made an offer in only 60% of those cases. Since then, the Regulator has published an "Engagement Plan" which stated that the council "continues to fail to meet its duties to provide temporary accommodation and emergency accommodation to a significant number of people", and that it "must demonstrate to us that it is discharging its statutory duties to all of those people who approach it for assistance."

The statistics published in "Homelessness in Scotland: 2018 to 2019" indicate that the engagement of the Regulator has not assisted in addressing the Council's failure to meet its section 29(1)(a) duty.

The Council and Glasgow City Integration Joint Board ("GCIJB") are not currently taking action to address that failure. Instead, their current plans indicate that the situation will continue to get worse.

In 2014, the Council and GCIJB carried out a review of homelessness services, and in 2015 produced: "Glasgow Health & Social Care Partnership Homelessness Strategy 2015 – 2020", being a homelessness strategy under section 1 of the Housing (Scotland) Act 2001. The Strategy identifies two "key outcomes", the second of which is "Alleviate Homelessness where it does occur". At page 27, the description of that outcome states: "At the point of homelessness no one should have to sleep rough..." The Strategy goes on to describe certain "priority actions" in advancing that key outcome. The first is: "2A Increase the supply of temporary & settled accommodation for homeless households", under which heading is stated: "Our priority is to provide access to temporary and settled accommodation for homeless households in line with our statutory duties." However, under this heading, the Strategy contains no concrete and specific proposals to increase the supply of temporary accommodation, to enable the first respondents to comply with their duty under section 29 of the Act.

It is apparent, from information obtained by Shelter Scotland from the Council under FOI requests, that the Council and GCIJB have no current plans to review or revise the 2015-2020 strategy, so as to set out a plan for addressing the Council's failure to comply with

section 29(1) in thousands of cases. On the contrary, the Council has stated an intention to cut, by £2,600,000, its funding for third sector organisations which provide supported accommodation for homeless persons, notwithstanding the fact that this will reduce the volume of accommodation available to meet the duty to provide interim accommodation. Whilst it is acknowledged that the Council has a Rapid Rehousing Transition Plan, there is no indication that this will remedy the consistent breach of the section 29 duty, particularly given that there is no recognition, in that plan, of the shortage of temporary accommodation. Indeed, it is expected that there will be a substantial reduction in the number of temporary accommodation units over the next five years.

Please note that this is brief summary of the factual background, which will be stated in further detail, in any proceedings to follow.

Shelter Scotland's reasons for taking this action

Shelter Scotland has, for many years, engaged with the Council in relation to its failure to provide interim accommodation to homeless persons through numerous discussions, meetings, and so on. It has come to the conclusion that this approach has not been successful in compelling the Council to address that failure.

On a daily basis, Shelter Scotland's advice workers are engaged in assisting homeless persons whom the Council has failed to accommodate. Shelter Scotland's Housing Law Service has also acted for many homeless persons whom the Council have failed to accommodate, under section 29(1)(a). It writes to the Council asking that accommodation is provided, failing which judicial review proceedings will be raised. In these cases, the Council almost always makes an offer of accommodation to the client, on receipt of the threat to initiate proceedings, or shortly thereafter. Other agencies, such as Brown & Co (the Legal Services Agency, Glasgow), and Govan Law Centre provide a similar service for clients, achieving the same outcome. However, the combined efforts of those agencies only serve a fraction of the homeless persons that the Council turns away. Therefore, those efforts have not been effective to compel it to address the systemic failure to provide interim accommodation to homeless applicants.

Shelter Scotland is also concerned that the Council adopts practices by which it avoids accepting applications under section 28, or postpones acceptance, or discourages applications from being made, where legitimate grounds for refusal of an application do not exist. It is believed that this is principally because the Council has no interim accommodation available to offer to the applicant, in the event that an application for assistance is accepted. Alternatively, in many cases the Council records that the application has been made, but informs the applicant that there is no interim accommodation available, and invites the applicant to return to its offices the following day, by which time interim accommodation may be available, thus deferring the discharge of its duty. Confirmation of these practices is available to Shelter Scotland through the casework of its advisers, and information obtained from other agencies.

The proposed respondents

The proposed respondents are Glasgow City Council and Glasgow City Integration Joint Board.

The petitioner

In the event that proceedings are required, the petitioner will be Shelter Scotland. It is a charity registered with Scottish Charity Regulator. Shelter Scotland provides advice, information and advocacy to people in housing need, and campaigns to end the housing crisis.

Shelter Scotland has a genuine interest in delivery of services to homeless persons applying for accommodation and assistance under section 28 of the Housing (Scotland) Act 1987. They have sufficient knowledge of the subject to qualify them to act in the public interest in a representative capacity giving them standing to take a judicial review before the Court of Session.

It is possible that there will be interested parties in the event that the proceedings are required.

Remedies sought

Shelter Scotland intends to seek:

(a) a declaration from the Court to the effect that the Council and GCJIB do not have in place policies and practices which enable the Council to comply with its duty under section 29, to secure that accommodation becomes available for the occupation of homeless persons who apply to it for accommodation or assistance under section 28, whom the Council has reason to believe may be homeless; and consequently, the Council has failed, and continues to fail, to perform its statutory duties under sections 28 and 29 of the Act in respect of many such homeless persons.

(b) an order from the Court requiring the Council and GCJIB, whether by a review of its Homelessness Strategy 2015 – 2020 or otherwise, to prepare and submit to the Court, a policy setting out the specific arrangements they intend to make, and the practices that they propose to adopt, to enable the Council to comply with its duty under section 29 to secure interim accommodation, in respect of applicants under section 28, whom it has reason to believe may be homeless, and to do so within such period as the Court may order.

Reply date

Shelter Scotland intends to instruct us to initiate proceedings in the week beginning 30 September, unless the Council and GCJIB: acknowledge that they do not have the policies and practices described in paragraph (a), and consequently the Council has failed, and is continuing to fail, in its duties under section 28 and 29 of the 1987 Act; (b) provide an undertaking that they will publish a policy as described in paragraph (b), by 1 December 2019.

The address to reply and service of court documents

Your reply to this letter should be sent to this office.

Yours faithfully,

Sindi Mules

Sindi Mules,
Partner

For and on behalf of Balfour+Manson LLP