

Policy: briefing

Homelessness prevention and mediation

A discussion of the issues around mediation as a tool for preventing homelessness

Summary

- Shelter believes that mediation can be a useful tool in assisting parties to communicate more effectively and resolve differences that could lead to homelessness.
- Shelter feels strongly that mediation services offered to homeless households should adhere to the generally agreed principles of any mediation service, namely that the service should be confidential and voluntary, and that the mediator must be an impartial third party with no stake in the outcome of the process.
- Many local authority housing departments are now offering mediation to people who approach them as homeless having been asked to leave their accommodation by family or friends. In particular, mediation is being targeted at young homeless people who have left home because of a breakdown in their relationship with their parents.
- Shelter believes that no additional hurdles should be placed before those wishing to apply as homeless. Although some people who approach the local authority for assistance may willingly opt for mediation, others will not wish to do so and should not be discouraged from submitting a homelessness application.
- Equally, where an individual does opt for mediation, they should not be prevented from accessing temporary accommodation, where necessary, while mediation takes place.
- Mediation can be a useful tool for preventing homelessness where intervention occurs early. It can also be instrumental in facilitating resolutions between parties after homelessness has occurred. However, local authorities must not use mediation as a means of delaying or avoiding their statutory duties under homelessness legislation.

Introduction

In recent years, homelessness prevention has become a central component of the Government's strategy for tackling homelessness. One of the key policies towards achieving this goal has been the promotion of mediation services to people who have become homeless because of relationship breakdown or having been asked to leave their accommodation by family or friends.

This briefing considers the use of mediation as a means of preventing homelessness and sets out the principles upon which Shelter believes mediation services should be based.¹

Mediation as prevention

The Homelessness Act 2002 marked a shift in local authority homelessness services. In addition to their statutory duties to respond to homelessness, local authorities acquired a new obligation to develop strategies to prevent homelessness from occurring in the first place.² In particular, local authorities are now encouraged to provide a wider range of advice and services to people seeking homelessness assistance, and to develop schemes to address the problems that most commonly result in homelessness applications. To assist authorities in implementing this approach, the Government published a good practice guide to homelessness prevention in 2006.³

Official statistics reveal that 57 per cent of people accepted as homeless by local authorities in England became homeless because of relationship breakdown or having been asked to leave their accommodation by family or friends.⁴ The Government's five-year strategy for tackling homelessness emphasises the need to reduce the impact of relationship breakdown as a driver of homelessness.⁵ As a result, mediation services have been promoted as a key strand of the new homelessness prevention approach. By 2005, 79 per cent of local authorities in England were using or planning to use mediation to prevent homelessness.⁶

Government policy has emphasised the role of mediation as a means of tackling youth homelessness.

The Homelessness Code of Guidance encourages local authorities to consider attempting reconciliation with the family for 16- and 17-year-olds who approach them as homeless.⁷ Further to this, in November 2006, Ruth Kelly, the then Secretary of State for Communities and Local Government, called for the universal provision of mediation services across England as part of the Government's work to tackle youth homelessness.⁸ Shelter has helped to promote the effective use of homelessness mediation through the publication of two good practice guides focusing in particular on homelessness mediation services for young people.⁹

To complement mediation services for young people, the Government is also promoting supported lodging schemes. These involve people offering a room in their home to a young homeless person on a short-term basis to provide support and a safe environment in which to consider their options and link in with services such as family mediation.

Principles of mediation

Mediation is the process through which a third party helps two parties in a dispute try to resolve the issues that are causing difficulty between them. Undertaken in the right way, mediation can be a useful tool to assist communication and thus resolve issues or disputes that can contribute to homelessness. Mediation UK and the UK College of Mediators have developed a set of principles for mediation services that are widely acknowledged as the industry standard. The three main principles are that services should be voluntary, confidential, and impartial. Shelter believes that mediation services offered to homeless applicants should adhere to these principles.

Voluntary participation

While some households seeking homelessness assistance may opt for mediation willingly, others will not wish to do so. The courts have recognised that mediation is not suitable for every case: applicants should not be forced into it and there should be no presumption either for or against it.¹⁰ Shelter strongly

1 This briefing should be read in conjunction with the related Shelter policy briefings: *Homelessness prevention; Homelessness prevention and sanctuary schemes; Homelessness prevention and the private rented sector*, August 2007.

2 ss.1–4 Homelessness Act 2002.

3 Department for Communities and Local Government (DCLG), *Homelessness prevention: a guide to good practice*, June 2006

4 Communities and Local Government (CLG), *Statutory homelessness: 1st quarter 2007, England*, CLG statistical release 2007/0109 June 2007; 37 per cent of those accepted as homeless were asked to leave their home by family and friends and 20 per cent became homeless because of relationship breakdown, including domestic violence.

5 ODPM, *Sustainable communities: settled homes; changing lives*, March 2005, para 3.7.

6 ODPM, *Survey of English local authorities about homelessness – policy briefing 13*, December 2005, page 14.

7 DCLG, *Homelessness Code of Guidance for Local Authorities*, July 2006, paras 12.7–12.8.

8 Speech by Ruth Kelly at the Andy Ludlow Awards Ceremony, 14 November 2006: www.communities.gov.uk/index.asp?id=1504466

9 Shelter, *Mediation for young homeless people: a good practice guide*, 2004; *Briefing: Developing a youth homeless mediation scheme in Scotland: a good practice guide*, 2005.

10 *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576.

believes that homelessness mediation should be voluntary and that there should be no sanctions against people unwilling to participate.

Shelter is particularly concerned that there may be an expectation among some local authorities that all young people should participate in mediation as a matter of course. Although the Homelessness Code of Guidance recommends that authorities consider mediation, it makes it clear that reconciliation may not be always be appropriate, especially in cases where it may not be safe for the person to remain in their home.

Many local authorities state that they only offer mediation where appropriate and some specify that they would not refer applicants for mediation in cases of abuse or violence. However, Shelter is concerned that some authorities lack clear guidelines to help front-line staff decide whether or not a referral to mediation is appropriate.

Confidentiality

Confidentiality is essential if mediation is to establish the cause of a dispute and provide a safe environment in which grievances can be aired. However, the Government's good practice guide suggests that a range of mediation models are acceptable, including ones in which mediation becomes entwined with homelessness assessment. The guide even notes that information gleaned during mediation may form key evidence in shaping local authorities' homelessness decisions.¹¹ It identifies good practice in such cases simply as sharing the mediator's report with the client before it is submitted to the local authority.

Shelter's view is that genuine good practice should involve confidentiality by the mediator and clear separation of the mediation and homelessness assessment processes.

Impartiality

For mediation to be effective, it is important that the mediator has no vested interest in the outcome of the process. The homelessness context should not interfere with this principle of impartiality. In practice, however, homelessness mediation can sometimes be highly prescriptive, with local authorities seeking specific outcomes such as the young person returning home. London Councils reviewed the mediation schemes of seven London boroughs. The study stated that schemes should 'facilitate the return home of young people wherever possible'.¹² It determined the success of schemes by the number of 16- and 17-year-olds who returned home after undergoing mediation.

Shelter does not consider a return home the only successful outcome of mediation. Mediation could also be a success where, for example, it reduces the level of conflict between the parties or enables a more satisfactory move elsewhere for the young person.

Government policy often assumes that the future well-being of a young person is enhanced if they remain within the family home.¹³ When applied to homeless young people, however, research shows this premise to be highly questionable. Compared to their peers, homeless 16- and 17-year-olds are more likely to come from highly deprived areas, be poor, and to experience household friction. They are also more likely to be excluded from school and to have parents exhibiting 'high-risk' behaviour, such as verbal or physical abuse, substance use, and mental health problems.¹⁴

The presumption that the parental home is the best place for such young people is misguided. Among those who approach local authorities as homeless, there will be a disproportionate number of young people for whom the parental home is not a suitable environment. Shelter believes that an assumption that a return home is necessary for a successful mediation outcome will lead to incorrect and damaging decisions being made in relation to young homeless people.

Relate's Standards Framework for Homelessness Mediation

In 2006, Relate, the national provider of counselling and mediation services, launched a new Government-sponsored Standards Framework for Homelessness Mediation.¹⁵ The framework outlines the future of homelessness mediation. Although it highlights that neutrality and impartiality are most consistent with the practice of mediation, it falls short of recommending that homelessness mediation services should be voluntary, confidential and impartial. Shelter remains convinced, however, that it is vital that homelessness mediation adheres to these three principles.

Mediation and access to statutory homelessness assistance

Government policy places a strong emphasis on mediation as a first response for households which have been forced to leave their accommodation by family or friends. However, local authorities also have a legal duty to assess and provide temporary accommodation to certain categories of homeless people, whether or not mediation is taking place.¹⁶

11 DCLG, *Homelessness prevention: a guide to good practice*, June 2006, paras 5.14–5.19.

12 Association of London Government, *Prevention works*, June 2005, page 14.

13 DCLG, *Homelessness Code of Guidance for Local Authorities*, July 2006, para 12.7.

14 Safe in the City, *Taking risks: an analysis of the risks of homelessness for young people in London*, February 1999.

15 For further information, see the Relate website: www.relate.org.uk

16 Part 7 Housing Act 1996; see also *Robinson v Hammersmith and Fulham LBC* [2006] EWCA 1122.

This ambiguity was addressed in part by the Government's good practice guide on homelessness prevention, which confirmed that a formal homelessness assessment should not be delayed until after mediation, where there is reason to believe that the household may be homeless.¹⁷

Nevertheless Shelter remains concerned that in some cases young people who are eligible for homelessness assistance are being told to return home or find their own alternative accommodation while undergoing mediation. Our concern is that this increases the number of people living in insecure or unsuitable housing without the safeguards provided by homelessness legislation.

Shelter believes that it is vital that mediation services do not prevent applicants from accessing their legal entitlement to homelessness assistance, including temporary accommodation. Temporary accommodation should always be offered to

homeless households entitled to it, including those attempting mediation. Individuals should not be pressured into mediation as a precondition to a homelessness application.

Since 2005 local authorities have been required to record the number of cases in which homelessness is prevented, as well as the number of statutory homelessness decisions made. This is to encourage authorities in their homelessness prevention work. However, the Best Value Performance Indicator used for identifying prevention (BVPI 213) excludes cases in which an applicant is provided with temporary accommodation, even if mediation ultimately results in the applicant no longer needing temporary accommodation.¹⁸ Shelter is concerned that the design of the Best Value Performance Indicator actively discourages local authorities from providing temporary accommodation and mediation alongside each other. We call on the Government to address this by revising BVPI 213.

Recommendations

- Homelessness mediation services should adhere to the accepted principles of mediation, namely that services are voluntary and confidential, and that the mediator has no vested interest in the outcome of the process.
- Mediation should be offered alongside a homelessness application to people seeking assistance, but it must remain completely separate from the homelessness assessment process. Information gathered through mediation must not be used by local authorities to inform their homelessness decisions.
- Temporary accommodation should be provided, where necessary, while mediation takes place.
- Mediation and the evaluation of its success should be disentangled from whether or not the household makes a homelessness application.
- Funding for mediation services should be transparent and not tied to any particular outcome, such as a return home.
- The Government should establish clear guidelines to assist front-line staff in local authorities in establishing whether or not referral to mediation is appropriate.
- The Best Value Performance Indicator for homeless prevention through housing advice (BVPI 213) should be revised so that it does not automatically exclude cases in which the individual is placed in temporary accommodation while mediation takes place, regardless of whether mediation ultimately resulted in the resolution of the person's housing problem.

¹⁷ DCLG, *Homelessness prevention: a guide to good practice*, June 2006, para 5.28

¹⁸ DCLG, *BVPI 213 on prevention of homelessness through housing advice*, July 2005.

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