



SCOTTISH EXECUTIVE

Development Department
Homelessness Team

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To Local Authority Chief Executives and Directors of Housing
Homelessness Task Force member organisations
Other interested parties

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Your ref:
Our ref:

23 May 2002

Dear Sir/Madam

PROPOSALS FOR HOMELESSNESS ARBITRATION – GUIDANCE FOR RSLs AND COUNCILS

I attach a consultation paper prepared by Communities Scotland which sets out proposals for the operation of a homelessness arbitration scheme under Section 6 of the Housing (Scotland) Act 2001. It should be read in conjunction with the Scottish Executive's "Guidance on Local Authority Requests to RSLs: reasonable period and good reason for non-compliance". This will be issued shortly under separate cover.

I would be grateful for any views on the proposals contained in the paper to be sent to:

Karen Watt
Head of Policy and Support
Regulation and Inspection Division
Communities Scotland
Rosebery House
9 Haymarket Terrace
Edinburgh
EH12 5YA

It would be helpful if comments could be submitted as soon as possible and by no later than Monday 8 July.

ISABEL DRUMMOND-MURRAY
Homelessness Team

Proposals for Homelessness Arbitration - guidance for RSLs and councils

Introduction

- 1.1 The Housing (Scotland) Act 2001 places a new duty on registered social landlords (RSLs) to provide accommodation for homeless persons where requested to do so by local authorities, within a reasonable period, unless there is a good reason for not complying. Where an RSL does not, within a reasonable period, comply with a request made by a local authority (under Section 5 of the Housing (Scotland) Act 2001), or has no good reason for not complying with the request, and the RSL and the local authority are unable to reach agreement, the local authority and the RSL must appoint an arbiter to determine the issue. If there is no agreement as to who is to be the appointed arbiter, the Regulation & Inspection division of Communities Scotland (R&I) (on behalf of Scottish Ministers) will on request of the local authority, appoint an arbiter.
- 1.2 This consultation paper sets out our (R&I on behalf of Scottish Ministers) proposals for the operation of a homelessness arbitration scheme (under Sections 5 and 6 of the Housing (Scotland) Act 2001 - see Annex 1). It should be read in conjunction with the Scottish Executive's Guidance on Local Authority Requests to RSLs: reasonable period and good reason for non-compliance. [This will be issued shortly under separate cover]
- 1.3 The over-riding purpose of this arbitration process is to address homelessness and to provide a means for homeless people to get settled in accommodation as quickly as possible. As homeless people are in acute housing need, these proposals have been designed to allow arbitration to take place quickly and efficiently.

Homelessness arbitration

- 2.1 We are proposing the following definition of homelessness arbitration:

Arbitration is a procedure whereby two parties in dispute agree to be bound by the decisions of a third party acting as an arbiter. The function of an arbiter is similar to that of a judge, though the procedures can be less formal. An arbiter will come to a final decision based on evidence and arguments submitted by the parties (i.e. the local authority and the RSL); including information about the local housing conditions. Arbitration is generally much quicker and cheaper than going to court. Under Section 6(6) of the Housing (Scotland) Act 2001, any determination of an arbiter in these circumstances is final.

- 2.2 In the case of homelessness arbitration, under Section 6(1) of the Housing (Scotland) Act 2001, the local authority and the RSL **must** appoint an arbiter if they are unable to reach agreement within such period as Scottish Ministers may specify by order¹ as to whether there is good reason² for the RSL not complying with the local authority's request to provide accommodation for a homeless person.

- 2.3 We specifically invite comments on the following issues:

- Is our proposed definition of homelessness arbitration appropriate? (see paragraph 2.1)

¹ Guidance on local authority requests to RSLs: reasonable period and good reason for non-compliance (Scottish Executive)

² Guidance on local authority requests to RSLs: reasonable period and good reason for non-compliance (Scottish Executive)

Procedure for appointing an arbiter

- 3.1 In the case of homelessness arbitration the local authority and the RSL in dispute should aim to agree on whom to appoint as an arbiter. Under Section 6(6) of the Housing (Scotland) Act 2001, any determination by the arbiter in these circumstances will be final.
- 3.2 Where the local authority and the RSL can agree on an arbiter, that person should be appointed based on locally agreed criteria. Local authorities and RSLs must ensure that any locally agreed arbitration procedures take full account of Section 6(1) of the Housing (Scotland) Act 2001. It is proposed that R&I (on behalf of Scottish Ministers) will work with those that represent the interests of RSLs, local authorities and homeless people (e.g. SFHA, CoSLA, Shelter, SCSH) to develop good practice guidance for landlords on local criteria/procedures for appointing homelessness arbiters (as per Section 6(5) of the Housing Scotland Act 2001).
- 3.3 Where the local authority and the RSL cannot reach agreement on the appointment of an arbiter R&I (on behalf of Scottish Ministers), on the request of the local authority, will appoint an arbiter. R&I will appoint the person they consider to be right for the job and the decision of the R&I division will be final.
- 3.4 Applications to R&I, by local authorities, for the appointment of a suitably qualified arbiter should be made in writing using the form provided at Annex 2. Although the legislation states that it is the local authority who can request the appointment of an arbiter, in the interests of time and costs, local authorities should liaise with RSLs to ensure that applications are fully completed and signed by both parties. However, where local authorities cannot reach agreement with RSLs, R&I will accept requests to appoint an arbiter submitted from the local authority alone (under Section 6(3) of the Housing (Scotland) Act 2001). It is proposed that R&I will charge the local authority and the RSL an administration fee (of £200) for each application.
- 3.5 On receipt of an application, R&I will appoint someone from their panel of arbiters.
- 3.6 It is proposed that R&I will develop and maintain a list of suitably qualified arbiters. The R&I division will have responsibility for recruiting, training and quality control of arbiters; for developing a code of conduct for arbiters that ensures (amongst other things) independence; and for preparing guidance for arbiters.
- 3.7 R&I will ensure that arbiters recruited to the list are impartial, suitably qualified, have a good understanding of homelessness issues and the ability to quickly assimilate knowledge of local housing contexts. Based on these criteria, arbiters may be private consultants or academics with homelessness expertise, lawyers, local authority or RSL staff, or other suitably qualified persons.
- 3.8 The list of arbiters, as proposed, is for the appointment of arbiters by R&I. However, it may be possible to extend our list of arbiters to become a national register that could be used in local agreements on the appointment of arbiters.
- 3.9 Where R&I is unable to identify a suitable arbiter from the list, within the required timescales, it is proposed that an appropriate member of R&I staff may be appointed as arbiter. R&I will ensure that appropriate staff receive training in the arbitration process and that members of staff (involved in the inspection of the particular RSL or local authority in question) will not be appointed as arbiter.

3.10 In all cases, an arbiter must be appointed within 5 working days of the case being referred to arbitration.

3.11 We specifically invite comments on the following issues:

- Should R&I (on behalf of Scottish Ministers) develop further good practice guidance on homelessness arbitration for local authorities and RSLs; and are the proposed stakeholders the right ones? (see paragraph 3.2)
- Is the application process outlined in Annex 2 the right one and is the proposed administration fee (of £200 per party) appropriate? (see Annex 2 and paragraph 3.4)
- Should R&I develop and maintain a list of arbiters and should R&I have responsibility for training and issuing guidance on arbitration – or should some other party deliver this under contract to R&I? Should we seek some form of accreditation for arbiters? (see paragraph 3.6)
- Should the list of arbiters be extended to become a national register? What issues might this raise?
- Is the proposed timescale of appointing an arbiter within 5 working days, of the case being referred to arbitration, appropriate? (see paragraph 3.9)
- Where R&I is unable to appoint an external arbiter from its list, is it appropriate that an appropriate member of R&I staff is appointed? (see paragraph 3.8)
- Are our suggestions for potential arbiters appropriate – or are there other groups we should be considering? (see paragraph 3.7)

Procedure to be followed at arbitration

4.1 Regardless of whether the arbiter is appointed by R&I or through agreement between local authorities and RSLs, the procedure to be followed at arbitration will be the same, under Section 6(5) of the Housing (Scotland) Act 2001.

4.2 It is proposed that appointed arbiters will operate in accordance with the procedure outlined in this section.

i) Commencement of arbitration proceedings

The arbitration begins once an arbiter has been appointed by R&I or by the local authority/RSL in agreement. Following appointment, the arbiter will contact the local authority and the RSL to fix a date for a preliminary meeting. The purpose of this preliminary meeting is to allow everyone to agree how the arbitration will be conducted.

ii) Information to be provided

Where an arbiter is appointed by R&I or by the local authority/RSL in agreement they should be provided with details of the original request by the local authority, the response from the RSL and any other supporting information provided by either the local authority or the RSL as part of the application. Local authorities and RSLs are free to provide more information, and indeed may be asked to do so at the preliminary meeting. Arbiters appointed by R&I will be provided with a copy of the completed application form (Annex 2).

The arbiter will consider the local authority and RSL arguments and evidence; act fairly and impartially; and act according to the law. There should be some mechanism for taking account of the views of the homeless person, where required. However, it is worth bearing in mind that the arbiter:

- will decide the case purely on the arguments and evidence presented by the local authority and the RSL. It is therefore in the interests of both parties that the case is stated clearly and that all relevant supporting documents are provided;
- will not receive information about the case from anybody else. Therefore both parties must ensure that the arbiter has all relevant evidence; and
- is not an investigator. The homeless person may be invited as a witness to support the case (see 4.2(iv)). However, this must be disclosed by the local authority and the RSL at the preliminary meeting, and agreement reached on how they will give their evidence. It will be up to the local authority and the RSL to make any necessary arrangements with witnesses.

iii) Matters for decision by the arbiter

The arbiter will only be able to deal with matters referred to in the original request. (S)he will not be able to arbitrate on any additional requests. However, both parties may decide with the arbiter at the preliminary meeting to alter the matters that will be arbitrated, particularly if agreement on any of them has been reached.

iv) Conduct of arbitration

In the interests of both time and costs, homelessness arbitration will normally occur on the basis of documents provided by the local authority and the RSL. However, if either party or the arbiter considers it necessary, the arbitration may involve a hearing to provide both parties (and the homeless person where appropriate) with an opportunity to explain points of view in person. R&I's application form (Annex 2) asks parties to state their preferences on this matter. Normally the hearing will be limited to half a day.

• **documents-only arbitration**

On a specified date agreed at the preliminary meeting, the arbiter will consider all the documents and other evidence that has been given. (S)he will liaise with both parties to ensure that (s)he has an accurate understanding of the case. This may be done verbally or by exchange of correspondence.

• **hearings**

At the preliminary meeting the arbiter should agree a time and place convenient to both parties, and should also propose a time limit for each part of the hearing. Both parties will present their case, the local authority first. The arbiter may ask questions to clarify understanding. Each party will then have the right of reply and may be questioned by the other party and the arbiter. Following a brief interval, during which both parties will be free to negotiate if they wish, the arbiter will summarise the facts of the case. Both parties should be able to record any disagreement with the summary.

Where the reasons for refusal directly relate to the personal circumstances of the homeless person, in the interests of natural justice, the arbitration should take into account the personal circumstances in question and the arbiter should seek the

homeless person's views. If either party or the arbiter considers it necessary, the homeless person may be involved in the hearing.

v) **Stopping the arbitration**

Arbitration can only be stopped with the written consent of both parties. Should an agreement be reached before the arbiter has reached a decision, both parties must inform the arbiter immediately, otherwise the arbitration will continue to a decision.

vi) **Requirements during arbitration**

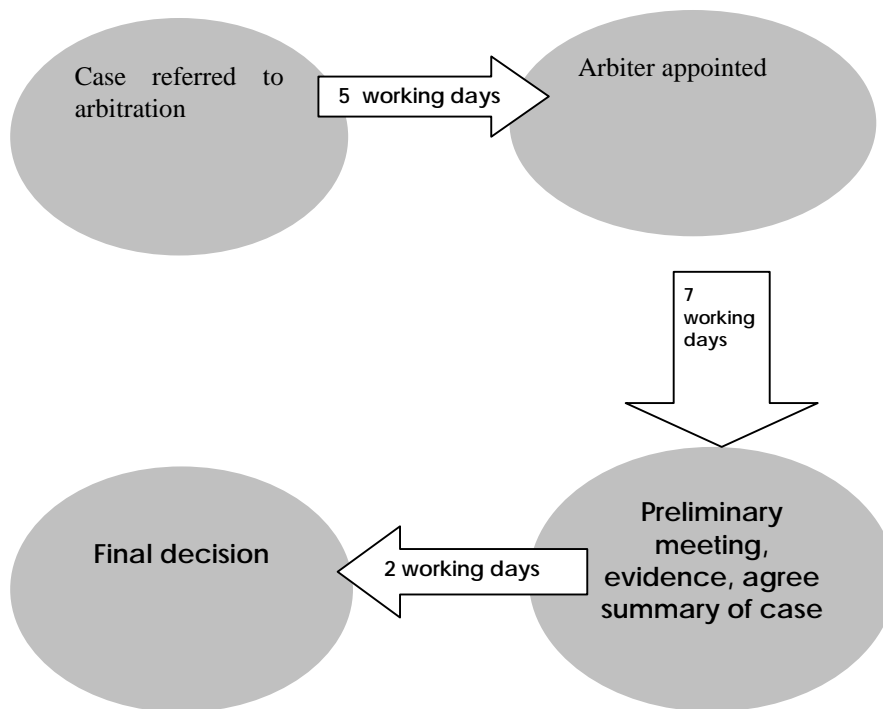
Where an RSL void property is the subject of arbitration, the RSL should keep that void property available until the arbitration process is complete and a final decision has been received. However, where an arbiter finds in favour of the RSL, then the local authority should be instructed to pay the RSL's lost rental income (see 5.2).

vii) **Timescales**

In both documents-only arbitration and arbitration involving a hearing, the arbiter is required to arrange the preliminary meeting, consider the evidence and invite comments from both parties within 7 working days. The arbiter is then required to make a final decision within 2 working days of agreeing his(her) summary of the facts (in a documents-only arbitration); or the date of the hearing. This final decision may be notified to both parties verbally and will be confirmed in writing. The **maximum** length of the arbitration procedure should be no longer than 14 working days. However, where possible the arbitration process should be conducted as quickly as possible. The shorter the timescale, the less time that a homeless household is kept waiting and the less time that a void is being held open awaiting the outcome of the arbitration.

The following summarises the homelessness arbitration process:

Homelessness Arbitration Process



viii) Use of advisors

Homelessness arbitration is intended to allow both parties to present their case without the need for a lawyer to be present to speak for them. In the interests of time, cost and fairness the arbiter will only allow parties to be legally represented at a hearing if (s)he feels that there are compelling reasons e.g. complex legal issues to be resolved. However, either party may be accompanied by an adviser who can speak if the arbiter agrees.

ix) Confidentiality

It is proposed that arbitration decisions will be confidential to both parties, the arbiter and R&I. R&I may publish a summary of arbitration cases without either party being named.

4.3 We specifically invite comments on the following issues:

- Have we set out a suitable procedure for homelessness arbitration? (see paragraph 4.2)
- Is it appropriate that RSLs are required to keep void properties available until a final arbitration decision is received? Should the local authority be instructed to pay the RSL's lost rental income where an arbiter finds in favour of the RSL? (see paragraph 4.2(vi))
- Are the proposed timescales for the arbitration process appropriate? (see paragraph 4.2(vii))
- Would an adviser contribute anything additional to the process? (see paragraph see paragraph 4.2(viii))
- Should arbitration cases and decisions be confidential? (see paragraph 4.2(ix))

- How should we track arbitration outcomes? Should we require arbiters to inform R&I of arbitration outcomes?

Remuneration and other expenses

5.1 Fees for arbiters need to reflect the market cost of professionals, while being affordable for RSLs and local authorities. Fees should not be seen as a way for professionals to profit from homelessness. It is proposed that:

- arbiters who normally work in the public sector or in an RSL will be paid their basic salary rate plus travelling expenses
- arbiters who normally work for a private firm or are self-employed will be paid a fee of £500 per day (or £75 per hour for part days worked) plus travelling expenses. This is to be compared with the current legal aid rates, which are around £80-£90 per hour
- these fees and expenses will apply for attending training sessions run by R&I and for arbitration casework.

5.2 The R&I division will pay arbiters for attending training events. Under Section 6(4) of the Housing (Scotland) Act 2001, the cost of any arbitration is to be shared equally between the local authority and the RSL unless the arbiter determines otherwise. This legislation gives the arbiter discretion as to costs and views are sought on when and how this discretion should be brought into play. For example, paragraph 4.2(vi) proposes that where an arbiter finds in favour of the RSL, then the local authority should be instructed to pay the RSLs lost rental income.

5.3 We specifically invite comments on the following issues:

- Is our proposed rate of fees and expenses appropriate? (see paragraph 5.1)
- This legislation gives the arbiter discretion as to costs and views are sought on when and how this discretion should be brought into play? (see paragraph 5.2)

Rights of review and appeal

6.1 The arbiter's award will set out his(her) decision with reasons. Under Section 6(6) of the Housing (Scotland) Act 2001, the arbiter's decision is final and binding; having referred a dispute to arbitration, a party cannot thereafter refer the matter to the courts. If an RSL refuses to abide by the arbiter's decision, R&I (on behalf of Scottish Ministers) will consider appointing a manager to enforce it (under Section 71 of the Housing (Scotland) Act 2001).

6.2 We specifically invite comments on the following issues:

- Is our proposed approach to review and appeal the right one? (see paragraph 6.1)

Consultation and next steps

7.1 We welcome written comments on our proposals which should be sent, by 8 July, to:

Karen Watt
Head of Policy and Support
Regulation and Inspection Division
Communities Scotland
Rosebery House
9 Haymarket Terrace
Edinburgh EH12 5YA

Tel: 0131 479 5705

Fax: 0131 479 5750

E-mail: wattk@communitiesscotland.gov.uk

7.2 You can get more copies of this paper by writing to Rosemary Brown at the address above, or by calling her on 0131 479 5767. This paper will also be available on our website at: www.communitiesscotland.gov.uk.

7.3 We may make your comments available to the public, unless you ask to keep them confidential.

7.4 We aim to have our approach to homelessness arbitration developed by summer 2002; to issue guidance to local authorities and RSLs by 30 September 2002; and to pilot the approach for one year.

Annex 1

Extract from the Housing (Scotland) Act 2001 Part 1 – Homelessness and allocation of housing

6 Duty of registered social landlord: further provision

- (1) Where –
- (a) a registered social landlord does not, within a reasonable period, comply with a request made by a local authority under section 5,
 - (b) the local authority considers, having regard to any guidance issued under subsection (7) of that section, that the landlord had no good reason for not complying with the request, and
 - (c) the local authority and the landlord are unable, within such a period as the Scottish Ministers may specify by order, to reach agreement as to whether there is such a good reason,

the local authority and the landlord must appoint an arbiter to determine the issue.

- (2) In determining for the purposes of subsection (1) (a) what is a reasonable period, regard must be had to any guidance issued under section 5 (7).
- (3) If there is no agreement as to who is to be appointed as arbiter, the Scottish Ministers must, on the request of the local authority, appoint an arbiter.
- (4) The cost of any arbitration under this section is to be shared equally between the local authority and the landlord unless the arbiter determines otherwise.
- (5) The Scottish Ministers may issue guidance as to –
- (a) the period within which an arbiter is to be appointed under subsection (1),
 - (b) the procedure for appointing an arbiter under that subsection,
 - (c) the remuneration and other expenses which may be paid to an arbiter appointed under subsection (1) or (3), and any other expenses which may be paid in respect of arbitration,
 - (d) the procedure to be followed at arbitration,
 - (e) the maximum length of time of the arbitration procedure.
- (6) Any determination of an arbiter by virtue of this section is final.

Annex 2

**Homelessness Arbitration Scheme
Application for appointment of an arbiter
by the Registration & Inspection division of Communities Scotland**

This form should be completed in black ink.

To: Communities Scotland
Regulation & Inspection division
Rosebery House
9 Haymarket Terrace
Edinburgh EH12 5YA

1. -----(name of local authority requesting arbiter)
of-----
-----Tel-----Email-----Fax-----

represented by (if applicable) -----

and

----- (name of RSL)
of-----
-----Tel-----Email-----Fax-----

represented by (if applicable) _____

hereby apply to the regulator to request the appointment of an arbiter following a dispute to be resolved under Section 6(3) of the Housing (Scotland) Act 2001.

2. The dispute concerns the following issues _____

(please note: where possible the local authority (as claimant) should agree a brief description of the dispute with the RSL (as respondent). Give only brief details above and do not attach any documentation in relation to your request; you will have the opportunity to present your full case once the arbitration procedure begins).

3. We, the Parties to this application, have read the guidance on homelessness arbitration and agree to be bound by them and by the decision of the appointed arbiter.

4. Following discussion, we note that our requirements for conduct of the arbitration are as follows:

