



## COVID-19 and rough sleepers: where next?

 **doughty street**  
chambers

 **crisis** Together  
we will end  
homelessness

Bex Pritchard, Director of Services, Crisis

Dominic Preston and Daniel Clarke, Doughty Street Chambers

# Chronology

Daniel Clarke, Doughty Street Chambers



# March 2020: “Everyone In” letter

- 19 March: [Announcement](#) of £1.6bn general funding for LAs, inc “for services helping the most vulnerable, including homeless people”
- 26 March: [Letter](#) from Luke Hall MP to LAs (“bring everyone in” by end of week):

*The basic principles are to:*

- *focus on people who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres*
- *make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities*
- *utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic*
- *mitigate their own risk of infection, and transmission to others, by ensuring they are able to self-isolate as appropriate in line with public health guidance*

...

*In the longer term it will of course be necessary to identifying step-down arrangements for the future, including the re-opening of shelter-type accommodation.*

# April-May 2020

- 18 April: [Announcement](#) of further £1.6bn general funding for LAs
- 22 April: [Email](#) from Dame Louise Casey to LAs: over 5,400 (90% of known rough sleepers) accommodated
- 2 May: [Announcement](#) that Dame Louise Casey to spearhead taskforce “to ensure rough sleepers can move into long-term, safe accommodation once the immediate crisis is over”
- 14 May: [Announcement](#) of £6m fund for homelessness charities
- 23 May: [Announcement](#) that £433m funding for 6,000 supported homes to be brought forward, with 3,300 available in next 12 months
- 26 May: [Announcement](#) of partnerships with “businesses, faith groups and local communities” to help house nearly 15,000 rough sleepers provided with emergency accommodation

## 28 May 2020: “Moving on” letter (1)

- 28 May: [Letter](#) from Luke Hall MP to LAs (“Moving onto the next phase of accommodating rough sleepers”):

*...It remains important to continue to help and support vulnerable people as the virus continues to pose a risk. As the risk reduces and we look towards easing the lockdown restrictions, we begin to enter the next phase of this endeavour and need to make plans for the future. We must continue to focus on ensuring accommodation and support arrangements can be managed safely to protect the most vulnerable, including those with complex needs. At the same time we **need now to start planning the next steps for accommodating and supporting people to move on from emergency accommodation...***

## 28 May 2020: “Moving on” letter (2)

- *In particular, I ask that you consider the following points closely:*
  - You should carry out **individual assessments** and take decisions on **who you can provide support to**, which would include providing accommodation to **vulnerable people sleeping rough**.
  - *In terms of move-on accommodation **all options need to be considered**, we ask:*
    - That you seek to encourage people, where appropriate and possible, to **return to friends and family**.
    - That you seek to find **as many sustainable move-on options for people as possible**. This should begin with an **assessment of the availability of stock locally** followed, where applicable, by **work in partnership with Housing Associations** to increase the supply of move-on accommodation available for your COVID-19 response, whether through acquisitions, repair and refurbishment or long-term leasing arrangements. Where appropriate, individuals should be supported to move into the **private rented sector**.
    - That, where sustainable move-on options aren't available, you put in place **short term accommodation to ensure that people do not have to return to the streets whilst you work to find longer term options for them**.
- ...
- *For some people a **voluntary return to their country of origin** may be the best outcome for them. Where an individual wants to return home, you can support them to do so.*

## 28 May 2020: “Moving on” letter (3): NRPF

*I do recognise that these are challenging times and that you **may have accommodated people who would normally and otherwise be ineligible for support, making judgements based on risk to life.** I wanted to take this opportunity to restate the government’s position on eligibility relating to immigration status, including for those with No Recourse to Public Funds (NRPF). **The law regarding that status remains in place.** Local authorities **must use their judgment in assessing what support they may lawfully give to each person on an individual basis,** considering that person’s specific circumstances and support needs. You will already be used to making such judgements on accommodating individuals who might otherwise be ineligible, during extreme weather for example, where there is a risk to life.*

## 24 June 2020: £105m

- 24 June: [Announcement](#) of £105m additional funding “to support rough sleepers and those at risk of homelessness into tenancies of their own, including through help with deposits for accommodation, and securing thousands of alternative rooms already available and ready for use, such as student accommodation”



# 24 June 2020: EEA rough sleepers letter

- 24 June: [Letter](#) from Luke Hall MP to Local authorities:

*We also understand that some of the individuals currently accommodated across the England under this initial emergency approach are EEA nationals who are not in employment, some of whom may have limited move on options. I know from my contact with various local authorities that this is a significant concern.*

*It is for this reason the Government is now taking unprecedented action in temporarily, **nationally suspending an EU derogation** (normally applied through Article 24(2) of the EU Free Movement Directive) **to enable you to accommodate and support a specific group of rough sleeping EEA nationals for up to 12 weeks.***

...

*This approach **does not extend to statutory services or welfare benefits.** It means that job seeking, EEA national rough sleepers who meet the criteria, will be eligible for your **non-statutory homelessness services, such as hostels, on the same basis as those who are currently eligible for these services** e.g. UK national rough sleepers and EEA national workers.. It does not provide them with priority over UK national rough sleepers and accommodation and support is **limited to a maximum of 3 months.***

# The picture on the ground

Bex Pritchard, Crisis



# Everyone In (1)

- C.15,000 in hotels and emergency temporary accommodation in England
- 5400 in London – half have NRPF
- Access into GLA hotels through commissioned outreach teams (StreetLink)
- Providers: St Mungo's, Thames Reach, Depaul UK, Look Ahead, SHP and Pathway (medical advice/ cohorts: Covid care - symptomatic; Covid secure – underlying health risks; Covid protect – others) plus drug and alcohol treatment providers (CGL)

# Everyone In (2)

- Crisis:

- Ongoing services and rehousing support for members maintained
- Support to hotel & ETA providers (PPE, clothes/ toiletries, entertainment, digital inclusion, Crisis at Christmas volunteers), direct involvement in hotel arrangements in Liverpool; work with Groundswell on disseminating health advice
- EUSS consortium – contracts now extended to 31<sup>st</sup> October
- Research, lobbying and feeding into strategy through Rough Sleeping Advisory Group, MHCLG, LGA, London Councils and GLA – seeking pan-London responses to securing PRS accommodation;
- Tools developed and best practice support provided for LAs;
- New and brought-forward housing-led services to support rapid rehousing from hotels & ETA

# Moving on (1)

- 5400 in hotels in London – resettlement work has commenced
- Most GLA hotels closing end July
- Three hotels being used for decants (contracts to 19<sup>th</sup> August) and people in the Covid-care hotel are being decanted into Mildmay hospital
- Priority to Clearing House units being given to hotel move-on; some PRS too – still very tight

## Moving on (2)

- However, around half of those placed in hotels (in London) have NRPF
- Temporary, national suspension of an EU derogation (normally applied through Article 24(2) of the EU Free Movement Directive) from 24<sup>th</sup> June for up to 7 months - to enable LAs to accommodate (in non statutory provision) and support a specific group of rough sleeping EEA nationals for up to 12 weeks and for one period only
- Support includes employment (as HB entitlement triggered if people are in work) plus links into EUSS scheme (extended to 31<sup>st</sup> Oct)
- If immigration status unresolved, options will be limited

# Legal issues: traditional routes

Daniel Clarke, Doughty Street Chambers



# Housing Act 1996

- Make application or ask for decision on existing application?
- Effect of COVID-19 on:
  - Eligibility? *No changes as a result of suspension of derogation*
  - Homelessness?
  - Priority need? *Code of Guidance para 8.44-8.45 (added 29 June 2020)*
  - Intentionality?
  - Relief duty? *Code of Guidance para 13.7*
  - Section 190 duty? *“Reasonable opportunity” during pandemic?*
  - Suitability?



# Outside the Housing Act 1996

- Care Act 2014
  - Accommodation-related needs? (*R (SG) v Hariney LBC* [2015] EWHC 2579 (Admin); *R (GS) v Camden LBC* [2016] EWHC 1762 (Admin))
- s17/20 Children Act 1989
- s1 Localism Act 2011?
  - Cannot provide accommodation if ineligible under HA 1996: *R (AR) v Hammersmith and Fulham LBC* [2018] EWHC 3453 (Admin) and *R (Aburas) v Southwark LBC* [2019] EWHC 2754 (Admin) (doubting GS)

# Legal issues: The new schemes

Dominic Preston, Doughty Street Chambers



# Recap: the three schemes

## The three stages/schemes:

- Everyone in scheme – 24/3/20 to June 2020
- Moving on scheme – interim accommodation (announced 24/6/20)
- Moving on scheme – longer term (announced 28/5/20)

## Delivered by whom:

- Local authorities (where non unitary – District Councils)
- Charities
- Landlords

# Local authority assistance – what power is being used?

- **Traditional powers to provide accommodation are limited and unchanged:**
  - applicant must be eligible (subject to some exceptions) for HA 96 Pt VII (s. 185 HA 1996);
  - Can't use 'catch all' of Localism Act, s. 1 if other statutes apply;
  - Children Act requires ... children;
  - Care Act only applies if accommodation is necessary to supply of 'Care and Support'.
- **Are authorities just providing money and assistance? Is this help under HA 1996 s, 180?**
  - Local authority can provide grants, loans, personnel, furniture, goods, staff
  - To any not for profit organization 'concerned with homelessness or matters relating to homelessness'
  - No stipulation preventing NFPs helping those without NRPF/not eligible.
- **VERY UNCLEAR** whether any power being exercised and what is happening: *may* be relevant if:
  - challenging schemes - e.g. 'We can't help your client as we have no power to do so'
  - Client needs to rely on 'traditional' statutory powers.

# 'Everyone In' scheme- Who is in scope?

- Covers Rough sleepers *and* those needing accommodation to self-isolate – particularly where not traditionally helped because:
  - Single person
  - No priority need – not vulnerable
  - Intentionally homeless – e.g. lost accommodation; refused offer of accommodation
- Covered those with no recourse to public funds – 'using alternative powers':
  - E.g. EU nationals not working
  - Those lawfully present but with no recourse to public funds ('NRPF')
- What of those illegally present – the immigration offender? the failed asylum seeker? Different approaches taken by different authorities.
- Should have covered everyone - POLICY INTENT – STOP THE VIRUS, SAVE THE NHS

# 'Moving On' scheme – who is in scope?

- **Rough sleepers *housed*** during pandemic (28/5 letter);
- **Rough Sleepers not yet housed:** 'vulnerable people sleeping rough' (28/5 letter);
- But not immigration offenders and NRPF – local authorities to use judgment on whether to help these groups having regard to circumstances and support needs.
- 24/6 Extension of cover for NRPF because they are **EU nationals *and* jobseekers:** Government derogation until 31/12/20: local authorities can use 'non-statutory powers' to accommodate rough sleeper but only for 12 weeks and only once.
- Categories of particular concern:
  - EU non-eligible after 31/12/20
  - Other lawfully present but NRPF
  - Immigration offenders
  - Successful asylum seekers not in priority need – Are they reliant on HA 96?
  - Others eligible but not in priority need, homeless intentionally or who refused accommodation – what happens when they become street homeless.

IF OLD LAW STAYS THE SAME, NEW CROP OF ROUGH SLEEPERS INEVITABLE ...

# Challenging failure to assist: look for the authority's policies

- Who to challenge - local authorities in public law; Landlords if private law
- Public law challenges:
  - Absence of policy and criteria for making decisions
  - If there is a policy, decisions must be in compliance with the policy (legitimate expectation; *Mandalia v SSHD* [2015] 1 WLR 4546
  - If policy is unlawful because it departs from directions and/or guidance
- PAP letters may be needed to get disclosure of policies and *reasons* for decision about your client.
- FOI disclosure

# 'Everyone In' policy – what should be in it?

- **Everyone In:**

- Guidance in 24/3 letter itself on who, when and *how*.
  - Attached to 24/3 letter was additional 'guidance' on triaging rough sleepers into groups.
  - Some ad hoc issues: e.g. separate addicts from non-addicts if possible – is that a suitability requirement
- 
- Everyone in policies are likely to exist but may now only be of historic value as funding going forwards is provided under 'Moving on' schemes.



# 'Moving on' policies – interim accommodation

- **Moving On – Part 1 – the immediate future (from 6/20):**
  - **'Next Steps Support Plans'** - Authorities must put in place '*a plan of support for all rough sleepers accommodated in hostels and other emergency accommodation during pandemic*'. (28/5 letter) Plan may change over time (28/5 letter)
  - **Next Steps Plans** have already been submitted to DCLG (24/6 Letter) – policies
  - Authorities must assess what stock is available in the locality (28/5 letter) including 'acquisitions, repair, refurbishment, long term leasing'
  - Options for moving on include families, friends, private sector, Youth hostels, YMCA, universities and student accommodation
  - 28/5 letter: decision must be health led; based on assessment of individual needs;
  - Local authorities to share 'good practice' to help 'most vulnerable' in society (as propagated by DCLG)

# 'Moving on' policies – Longer term

## Moving On – Part 2 – the long term:

- Aim - end rough sleeping for good by end of this parliament (24/6)
- Making available of 6,000 safe/sustainable homes long term; only 3,300 in next 12 months (23/5)
- Next step plan must include long term solutions:
  - Including housing association and local authority accommodation
  - Unclear whether for the 'vulnerable' rough sleeper only? (23/5)
  - Must include provision for supporting Individuals in their new homes

# Campaigns

Bex Pritchard, Crisis



# Home for All

In the immediate future, the changes the Westminster Government must prioritise are:

- The introduction of a new duty on local authorities in England, backed by funding, to provide emergency accommodation for people with nowhere safe to stay in the next 12 months.
- The national roll-out of Housing First in England.
- Changes to ensure no one across Britain is left without a safe place to stay because of their immigration status.
- Changes to the UK welfare system, and protections for private renters alongside increased investment in the provision of homes for social rent in England to ensure everyone can afford a home.

# Everybody In

- Ten year plan setting out the policy changes needed in England, Wales and Scotland to end homelessness
  - Scotland: HARSAG – Plan to End Homelessness (revised/ updated for CV19)
  - Wales: Homelessness Action Group – Plan to End Homelessness (plus guidance to LAs and providers during CV19)
  - England: commitment to end rough sleeping ...
- Scrap the Act
- Cover the Cost
- No-one Turned Away – HRA passed!
- Domestic abuse and priority need (APPG on Homelessness) – achieved!