



THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

# INVESTIGATING TENANCY SUSTAINMENT PROGRAMS AND APPROACHES IN RELATION TO CLIENTS AT RISK OF HOMELESSNESS

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## INTRODUCTION

### John's case

This Churchill Fellowship was motivated by John's case.

John was a 21 year old man evicted from his public housing flat for low level drug trafficking; he had been selling marijuana to friends in order to support his own drug habit.

John's story was similar to many. He had been homeless – sleeping rough and couch surfing – since before he was 15. In addition to substance misuse, this young man had developed a serious mental illness and had twice attempted suicide.

In addition to his particular vulnerabilities, John's homelessness also had other subtle implications. He did not have any stable, caring relationships during critical years of adolescent development. He did not attend school. He did not get a part time job.

Furthermore, it is worth noting that John was evicted from a resource as precious as it is rare: public housing. His landlord had extensive documentation about his special needs and this material was ignored in the rush to evict. As I prepared the matter for litigation it became apparent the decision to evict was a knee jerk reaction: drugs = eviction.

Clearly, drug trafficking in public housing is unacceptable. The PILCH Homeless Persons' Legal Clinic (the Clinic) has spoken with numerous public housing tenants who have been affected by drugs and drug trafficking in close proximity to their home. Drugs can be associated with violence and together these issues can undermine the housing security of people who are themselves vulnerable.

Yet the connections between substance misuse, homelessness and mental health persist. If John's issues are not resolved, his vulnerabilities and disadvantage will multiply. He will be given priority housing then he will be evicted and be a "frequent flyer" or regular face in hospitals and emergency rooms in relation to an expanding list of health complaints. And our courts – including judges, registry staff, prosecutors and legal aid – will probably be seeing him on a regular basis.

If we don't support people like John, if we rush to eviction, we won't be solving anything.

### Churchill Fellowship: Sustaining tenancies of "high risk" and vulnerable tenants

From the moment he was housed, John was at risk of eviction.

His long period of chronic homelessness, limited social contacts and supports, mental health and substance misuse issues all created a significant risk that he would be either unable to pay his rent or would be involved in behaviour that would lead to his removal from the premises.

The Clinic assists numerous clients like John who are at risk of eviction due to complex circumstances. Such tenants are sometimes grouped together as "high risk" tenants in reference to the likelihood of eviction.

The "high risk" classification refers to people who have complex needs (mental health, substance misuse, trauma, financial hardship) which can create a significant risk of eviction<sup>1</sup>. Research supports the common sense proposition that "at risk" tenants are more likely to be evicted from public housing and more likely to end up homeless<sup>2</sup>. Whilst experiencing homelessness these tenants are also more likely to be isolated from family and community and "[i]n addition to higher rates of mental illness, people who are homeless experience poor dental health, eye problems, podiatry issues, infectious diseases, sexually transmitted disease, pneumonia, lack of preventive and routine health care and inappropriate use of medication<sup>3</sup>.

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<sup>1</sup> Research by the Department of Human Services indicates that by far the main support issues of high risk tenancies are nuisance behaviour, mental health issues, aggressive behaviour, addiction and financial issues: Department of Human Services, *Support for High-Risk Tenancies Strategic Project* (October 2006) 17.

<sup>2</sup> Daphne Habibis, Rowland Aitkinson, Terry Dunbar, Daniel Goss, Hazel Easthorpe and Paul Maginn, Australian Housing and Urban Research Institute, *A Sustaining Tenancies Approach to Managing Demanding Behaviour in Public Housing: A Good Practice Guide* (July 2007) 3.

<sup>3</sup> Commonwealth Government White Paper on Homelessness, *The Road Home: A National Approach to Reducing Homelessness* (2008) 10.

Improving outcomes for people like John and other vulnerable tenants was the motivating force behind this Churchill Fellowship.

### Local housing and homelessness

The issues facing John were not unique and to some extent his circumstances represented the growing complexity of public housing tenants. This increasing complexity is sometimes referred to as "residualisation". Housing residualisation refers to a process by which the "residents of social housing are increasingly drawn from vulnerable populations characterized by disadvantage and complex needs rather than just low income"<sup>4</sup>. A particularly instructive example of this process is that in 1966 over 80% of public housing tenants were in paid employment and by contrast, currently 90% of public housing residents are in receipt of government pensions and benefits<sup>5</sup>. In Victoria, the targeting of housing assistance is reflected by the "segmented" waiting list for public housing where priority is given to people with a recurring history of homelessness, disabilities or long term health problems and people in housing crisis<sup>6</sup>.

The drivers of housing residualisation are in part a result of government efforts to target housing assistance to the areas of greatest need. There other reasons why disadvantaged and vulnerable people are reliant on public housing. The Commonwealth Government has provided significant financial incentives to encourage private home ownership to both investors and first home buyers, but have done nothing to generate housing affordability. There are currently over 38,000 people on the public housing waiting list<sup>7</sup> and the vacancy rate has been dangerously low for years. According to according to the Real Estate Institute of Victoria (**REIV**) the vacancy rate increased to 2.5%<sup>8</sup> in July 2011 although noted the "availability of rental homes has been very poor for the past six years ... The fact that the vacancy rate is still below three per cent indicates that there are still too few rental homes"<sup>9</sup>. REIV also refers to Victorian Government figures showing that rents rose 7.9% in the year to December 2010 in regional Victoria and 4.9% in Melbourne<sup>10</sup>. Furthermore, tenant advocates have noted that although median rents rose 41% from 1995 to 2009, the rent assistance paid to low income renters remains unchanged<sup>11</sup>. As for home affordability, recent reports suggest that Victoria has the "least affordable communities of anywhere in Australia, with the median price of ... [a] Melbourne house reaching \$625,000, or 10.2 times a median income in 2011"<sup>12</sup>.

It is therefore no surprise that vulnerable and disadvantaged people with complex needs wind up in public housing. It is also equally unsurprising that within this vulnerable group there are some people who will have extraordinary difficulty in managing their tenancy due to their support issues. Research by the Department of Human Services indicates that by far the main support issues of high risk tenancies are nuisance behaviour, mental health issues, aggressive behaviour, addiction and financial issues<sup>13</sup>.

Victoria has a significant homeless population. On the most recent census night approximately 20,500 Victorians were homeless and this number included approximately 6,800 children<sup>14</sup>. It must be kept in mind that where there is insufficient affordable rental premises and insufficient public housing, eviction can lead to homelessness for a wider margin of society, not simply vulnerable or disadvantaged tenants. Furthermore, it should also be acknowledged that those exiting public housing or affordable private rental premises are faced with sleeping rough, rooming houses, sleeping in cars or couch surfing.

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<sup>4</sup> Habibis et al, above n 2, viii.

<sup>5</sup> Keith Jacobs, Rowland Aitkinson, Val Colic Peisker, Mike Berry and Tony Dalton, Australian Housing and Urban Research Institute, *What Future for Public Housing? A Critical Analysis* (September 2010) 25.

<sup>6</sup> Segment 1: people with a history of recurring homelessness and have underlying personal factors which contribute to the clients inability to maintain housing; Segment 2: people with disabilities or long term health problems; Segment 3: people in housing crisis due to insured, unsafe or inappropriate housing; Segment 4: "Wait turn" housing for people on a low income.

<sup>7</sup> Minister for Housing, *June Quarter Public Housing Waiting List Data* (12 August 2011) <http://premier.vic.gov.au/media-centre/media-releases/1689-june-quarter-public-housing-waiting-list-data-html> at 19 September 2011.

<sup>8</sup> Real Estate Institute of Victoria, *Availability of rental homes continues to improve in Melbourne* (31 August 2011) [http://www.reiv.com.au/News%20Archive.aspx?newsID={57BC5DB9-3AC6-4B79-ABB5-4C3020F0C34E}&title=Availability of rental homes continues to improve in Melbourne](http://www.reiv.com.au/News%20Archive.aspx?newsID={57BC5DB9-3AC6-4B79-ABB5-4C3020F0C34E}&title=Availability%20of%20rental%20homes%20continues%20to%20improve%20in%20Melbourne) at 19 September 2011.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> See Chris Zappone, "Renters face squeeze as aid falls short", *The Age* (22 July 2011).

<sup>12</sup> Chris Zappone, "Melbourne homes cheaper but still out of reach: reports", *The Age* (28 July 2011).

<sup>13</sup> Department of Human Services, above n 1, 17.

<sup>14</sup> Chris Chamberlain and David MacKenzie, Australian Bureau of Statistics, *Australian Census Analytic Program: Counting the Homeless* (2006) [www.abs.gov.au](http://www.abs.gov.au); Chris Chamberlain and David Mackenzie, Australian Institute of Health and Welfare, *Counting the Homeless 2006: Victoria* (2006).

## Homelessness prevention in Victoria

A recent Court of Appeal decision provides an interesting comment on the significance of homelessness prevention in Victoria. This decision held that the Victorian Civil and Administrative Tribunal (**Tribunal**) did not have the power to consider whether the Director of Housing had acted compatibly with human rights or had given proper consideration to relevant human rights (**Sudi decision**)<sup>15</sup>. This was a significant blow for homelessness advocacy groups such as the Clinic who had relied on human rights to prevent the eviction of 42 people from public housing including 21 children<sup>16</sup>. Concerns about the declining role of human rights in Victoria have also been amplified by the recent report of the Scrutiny of Acts and Regulations Committee which recommends removing the role of Victorian courts in relation to human rights issues<sup>17</sup>.

Leaving aside consideration of the legal merits of the decision, it was – with respect – disappointing to see comments from Justice Weinberg that human rights should not be "used to thwart the process laid down for eviction"<sup>18</sup>. Further, this decision also warned that human rights might undermine tenancy matters that should be dealt with "quickly, efficiently and sensibly"<sup>19</sup>.

The Sudi decision referred repeatedly to the need for efficiency by the Residential Tenancies List of the Tribunal. It cannot be denied that the need for efficiency and speed exists by necessity in order to address the massive number of applications heard by the Tribunal every very year<sup>20</sup>. But the Tribunal is not only about efficiency and speed. It is also about evicting people from housing. In 2010 there was a 5% increase in possession proceedings, meaning that they now make up 52% of all applications listed in the Residential Tenancies List<sup>21</sup>.

Logic which supports speed and efficiency in eviction proceedings must be questioned. Indeed, when 38,000 people sweat on the public housing register, when rents are increasing and vacancies are low, when we have over 20,000 Victorian homeless men, women and children – we should not be evicting people quickly and efficiently.

## Churchill Fellowship: Best practice and the issues to be considered

I was keen to hear from the experts about the issues raised by John's case, including the sensitive dynamic between support and enforcement. I asked the experts to comment on the key aspects of John's case, as someone who had:

- none of the experiences needed to prepare him to "fit in" or "act normally" in order to escape homelessness;
- none of the connections or skills needed to help him escape homelessness;
- extremely limited support both in duration and in the nature of the support provided; and
- mainstream public housing with extremely limited resources for support and limited ability to understand, or take into consideration, special circumstances.

Discussions did not simply focus on individual factors and included structural factors raised by the case study including the availability and affordability of private rental housing.

There are clear limits to this report. Despite reading extensively and transcribing the recordings of my numerous conversations, this report should be read in light of the broad scope of my inquiries and the time provided to digest this information.

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<sup>15</sup> *Director of Housing v Sudi* [2001] VSCA 266.

<sup>16</sup> See Lucy Adams and James Farrell, PILCH Homeless Persons' Legal Clinic, *Charting the right Course: Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (6 June 2011) 1 (**HPLC Charter Report**).

<sup>17</sup> Scrutiny of Acts and Regulations Committee, *Review of Charter of Human Rights and Responsibilities Act 2006* [686].

<sup>18</sup> *Director of Housing v Sudi* [2011] VSCA 266 [291].

<sup>19</sup> *Ibid* [294].

<sup>20</sup> See Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2009/10*, 18, which states "Each year approximately 60,000 applications are received representing 15 per cent of all residential tenancies in Victoria".

<sup>21</sup> *Ibid* 29.



Notwithstanding this caveat, I hope this report provides a useful resource. I have attempted to identify initiatives of interest together with commentary and evaluations which assess the effectiveness and value of these approaches. I recorded and transcribed my Fellowship interviews and even where not reproduced or quoted, these conversations and the insights of the subjects of these interviews have guided the creation of this report. The benefit of this approach is that hopefully I have managed to capture the insights of the experts, the people working to keep vulnerable people housed.

## EXECUTIVE SUMMARY

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### Executive Summary – Churchill

It is often said that "eviction is only used as a last resort."

In practice, the challenges of dealing with high needs tenants and the pressures of administering massive demand for limited resources can often lead to evictions that could have been avoided.

### What's the key message?

In trying to understand how to avoid eviction for people like John<sup>22</sup>, I travelled to England, Scotland, the United States and Canada. I spoke with a range of academics, landlord peak organisations, supportive housing experts and providers, consumers and tenants, tenant participation initiatives, mental health workers, housing workers, police, government, lawyers, anti-social behaviour experts and social workers. Ultimately the key finding from all this material was extremely simple: we must prevent homelessness.

**Key message: We must prioritise homelessness prevention.**

### What's new?

The need to prevent homelessness is not an earth shattering recommendation. Of course we must prevent homelessness! Such an observation is made even more prosaic by the realisation that everybody is already trying to do it. Clearly the value in such a statement exists in the practical realisation of such aspirations.

There is a chasm between talking about preventing homelessness and actually doing it. If everyone is working towards (and spending money on) preventing homelessness, why isn't it working? The answer to this question is equally simple: because it is hard work. The best explanation of the challenges involved in such an undertaking is encapsulated in Scottish Government policy which states: "developing and operating a prevention centred service is widely seen as requiring a distinct break with the traditional reactive and legalistic culture of homelessness work"<sup>23</sup>.

### Key messages:

We must acknowledge that a broad commitment to "homelessness prevention" is insufficient to achieve change.

We must implement a plan to prevent homelessness. The plan must:

- be developed and implemented in consultation with "affected groups"; and
- include timetables, reporting and monitoring regimes, outcome measurements and complaints mechanisms<sup>24</sup>.

### How do we make homelessness prevention a reality?

Homelessness prevention is a balancing act. It needs to build tenant rights, train workers to understand vulnerability and build a framework for making good decisions. It is not sufficient to do any of these activities in isolation. One of the key findings is that homelessness prevention cannot be reduced to a single response and must include a range of initiatives.

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<sup>22</sup> See introduction

<sup>23</sup> Hal Pawson, Emma Davidson and Gina Netta, *Evaluation of Homelessness Prevention Activities in Scotland* (2007) Scottish Executive Social Research, iii.

<sup>24</sup> Adapted from Toronto application to the Ontario Superior Court of Justice which calls on Canada and Ontario to reduce and eliminate homelessness. See page 74.

While in England I visited Family Intervention Projects (**FIP**)s that provide intensive, long term support to those at risk of eviction/homelessness due to behavioural issues. I spoke with workers and academics alike who did not deny that many tenants involved in FIPs had been engaged in problematic and concerning behaviour. That said, these workers also identified that the projects work with families that suffer multiple and complex disadvantage and that in many ways FIPs provide extremely marginalised people with a pathway back into society. These projects have achieved significant success in reducing challenging behaviours and increasing tenancy sustainment statistics. The workers I spoke with identified a number of reasons for this success including low worker-client ratios, long term support and worker values (for example, being non-judgmental, developing relationships of trust).

I visited a number of housing support programs that were achieving outstanding results: the Section 11 Partnership in Glasgow; Houselink in Toronto; and Pathways to Housing in Washington DC. Each of these organisations were committed to building relationships of trust with vulnerable clients. This is not an easy process. Some of the crucial "values" held to contribute to the success of these projects include low client/worker casework ratios and support that is not time limited.

#### Key messages:

- Homeless prevention requires a range of initiatives
- A high level of support is required for vulnerable tenants.
- Support must not be time limited.
- Worker values and client trust are important.

The issue of regulating behaviour is relevant to clients at risk of eviction. In England there has been considerable effort to create tools to respond to behavioural issues. The evidence suggests that regulating non-criminal behaviour is challenging. Much of the difficulty arises from the fact that "anti-social behaviour" is a vague term that time has failed to clarify. It also appears that disproportionate numbers of young people and those with a disability are increasingly subject to these interventions, which often fail to resolve the underlying issues. One academic told me, "don't go down this path."

Despite the issues with anti-social behaviour; law and policy has a role in homelessness prevention. Indeed, we need to increase tenant rights. In 2010 following legislative reform to increase tenant protections, Shelter Scotland released an eviction report which demonstrated a startling change: evictions had fallen by 33% and court orders of possession had fallen by 20%<sup>25</sup>.

Strengthened legislative protections of tenants do not simply lower eviction rates – such provisions remove eviction as a "quick and efficient" way of resolving housing difficulties and make homelessness prevention real. Furthermore, legislative protections are vital to ensuring that the rights of vulnerable and disadvantaged tenants are considered and addressed. This is entirely appropriate for countries experiencing housing crises. It is also entirely appropriate for countries with thousands of people who are homeless.

#### Key messages:

- Regulating behaviour is difficult and struggles to address underlying issues.
- Legislative and policy support is needed to drive homelessness prevention.

The circumstances giving rise to this research and the conditions witnessed overseas demonstrate that public housing shortages are widespread. The United States has attempted to deal with this by increasing access to private rental. I was told by the National Alliance to End Homelessness in Washington DC that private landlords can be more willing to rent to tenants where there is a caseworker: "If the landlord has a problem with the tenant they can call that caseworker instead of having to work it out with the tenant. The caseworker mediates the problem and most problems that you have with tenants are resolvable but landlords just don't want to have to deal with it ..."

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<sup>25</sup> Shelter Scotland, *Research report: evictions by social landlords in Scotland 2009-10*( December 2010) 8.

Despite such positive private rental initiatives, there continues to be a major need for public housing stock to provide housing for large numbers of disadvantaged tenants. The challenges facing public housing landlords are epitomised by the eviction Al Gosling from public housing in Toronto. Al Gosling was evicted for arrears from Toronto Community Housing (TCH) one month before his 82nd birthday. He had been a tenant for 21 years. After his eviction, it is believed that Mr Gosling lived in the stairwell of his former public housing premises before becoming unwell and moving to hospital. From the date of his eviction until the time of his death approximately 5 months later, Al Gosling moved between chronic homelessness, emergency housing and hospital.

The death of Mr Gosling resulted in an inquiry into the incident and the "eviction prevention policy" of TCH. This inquiry by Justice Le Sage identified pressures that are lamentably familiar: limited resources, stretched housing workers, long housing waiting lists and extremely vulnerable tenants. The investigation found that in order to achieve individualised supports for tenants in need, TCH would need an additional 300 staff. Not going to happen. Ultimately the inquiry identified that "direct personal contact with tenants is perhaps the most important element of a successful eviction prevention program."

#### Key messages:

- We need to increase access to private rental.
- Public landlords must have direct personal contact with tenants.

For large public housing providers such as Toronto Community Housing and the Office of Housing in Victoria, there is a very real need to understand vulnerability. Furthermore, workers need to be trained about the way in which vulnerability should be balanced against tenancy enforcement action such as eviction. It is an obvious comment, but one that bears repeating, that vulnerability has a significant bearing on client proximity to homelessness. Furthermore, where possible, identification of disadvantage enables services to tailor and scale support appropriately depending on the level of disadvantage.

The Housing Help Program in New York City embeds social workers with lawyers. Both social worker and lawyer are present during the client interviews. At the same time as the social worker identifies support needs, the lawyer assists the client to respond to eviction proceedings. Such projects reflect that the presence of a staff member with specific skills in working with vulnerable and disadvantaged people can provide support, training and reassurance for other workers. Furthermore, the lawyers I spoke with referred to an increasing awareness of non-legal support issues that results from this process.

#### Key messages:

- Identifying and understanding vulnerability is essential to sustaining tenancies.
- Vulnerability is also important in order to appropriately scale support.
- Embedding support workers within housing teams and mental health training assists housing workers to identify vulnerability and disadvantage.

Finally, it is important not to forget the person at the centre of homelessness prevention activity. I was reminded of this when I spoke with a young man, Joe (not his real name) at the Fab Pad project in Glasgow, Scotland. I spoke to Joe about his move from transitional housing and into his own flat. He explained to me that his experience had been of homelessness and that he had no connections and no skills with which to build a "home."

On a simple level, Fab Pad helped Joe design furnishings for his new apartment. But this initiative provided other fundamental skills and connections necessary for tenancy sustainment. Joe attended weekly classes and worked with other young people from the local community. The project shows people how to make a "home." For people without a lived experience of homelessness, it is easy to take these skills for granted. Furthermore, Fab Pad helped Joe build positive relationships with staff and students and these relationships assisted him to move from the homelessness subculture in which he had previously lived.

When talking about a number of homelessness prevention initiatives, the individual at the centre of all these approaches can be forgotten. I was fortunate to speak with other initiatives that developed IT, cooking, relationships, interview skills in a positive and interactive way (Move On, Keys To Learn, Houselink). In order

to prevent homelessness and sustain tenancies, it is critical that we provide programs that assist people to develop the skills to escape homelessness.

**Key messages:**

- We must develop personal skills and connections in order to prevent homelessness and sustain tenancies.
- We should implement initiatives such as Fab Pad, Move On, Keys to Learn and Houselink that provide tenants with opportunities in order to improve tenant outcomes.

I hope to use this report as the basis for further written responses on the issues of homelessness prevention, housing support and anti social behaviour. Further, I intend compress this report into short presentations about these issues. I hope to speak with the Victorian Civil and Administrative Tribunal and the Victorian Government and I hope these presentations will prompt further thinking about these matters, as well as legislative and policy responses.



## NORTHERN ENGLAND AND COVENTRY – PERSPECTIVES ON ANTI SOCIAL BEHAVIOUR

### Anti Social Behaviour – An Introduction

Anti social behaviour is an important issue for vulnerable and disadvantaged tenants in England. It provides both the force by which people can be removed from housing and the trigger by which vulnerable people can receive necessary support in order to remain housed.

Aside from the international creep of "anti social behaviour" regulation, responses to this issue in England are relevant for the ways in which vulnerable people may be subject to eviction for adverse behaviour. The increasing use of a "catch all" term such as anti social behaviour potentially expands the categories which lead to the eviction of vulnerable tenants. Further, the English response is of interest for the ways in which people accused of anti social behaviour have also been eligible for innovative intensive support projects.

### Eviction for "behaviour" in Victoria

In Victoria, it is broadly possible to say that the concept of "anti social behaviour" has not yet taken hold. But perhaps things are changing. The Victorian Director of Housing has undertaken an "anti social behaviour pilot" and legislative amendments have been made that make it easier to evict people alleged to have committed drug offences<sup>26</sup>.

These developments expand the grounds for eviction under Victorian tenancy legislation (ie the Residential Tenancies Act 1997 (Vic) (**RTA**)), which provides that tenants can be evicted for rental arrears, illegally using premises, damaging premises or for endangering the safety of neighbouring occupiers<sup>27</sup>.

The "duty provisions" of the Act provide another procedure by which tenants can be evicted for causing nuisance or interference with the reasonable peace, comfort or privacy of a neighbour.

In referring to "nuisance", the Victorian legislation makes explicit reference to the common law concept of nuisance which requires a substantial or unreasonable interference with a neighbour. The second part of this definition refers to interference with peace, comfort or privacy. It is important to note the limits on this duty: (1) it is owed to neighbours; and (2) it must be (objectively) unreasonable.

### What is Anti Social Behaviour?<sup>28</sup>

In the England, the definition of "anti social behaviour" is stated in the *Crime and Disorder Act* 1998 (UK) (**Crime and Disorder Act**) which defines a person as behaving anti socially if they have acted "in a manner that caused or was likely to cause harassment, alarm and distress to one or more persons not of the same household"<sup>29</sup>. The test of behaviour said to be "anti social," is therefore the subjective effect of that behaviour on the victim, not whether this behaviour was unreasonable. The Home Office states that "[a]nti-social behaviour encompasses a broad range of behaviours"<sup>30</sup> and it is concerned with acts that "impact adversely on people's quality of life"<sup>31</sup>.

### Categories of anti social behaviour<sup>32</sup>

The types of behaviour that may be classified as "anti social" are almost infinite. In broad terms, the Home Office has divided anti social behaviour into four groups – misuse of public space, disregard for the community/personal wellbeing, acts directed at people and environmental damage. Within these categories, the "typology" of behaviour refers to drug/substance misuse and dealing, "loitering", inconvenient/illegal parking, inappropriate sexual acts, rowdy behaviour (shouting and swearing, hooliganism, loutish behaviour), nuisance behaviour (urinating in public, letting down tyres, throwing missiles, climbing on buildings), hoax calls, cycling/skateboarding in pedestrian areas, intimidation/harassment, litter/rubbish.

<sup>26</sup> See *Residential Tenancies Act* 1997 (Vic) ss 250A and 250B.

<sup>27</sup> *Residential Tenancies Act* 1997 (Vic) ss 250, 243 and 244

<sup>28</sup> Note that "anti social behaviour" and its acronym "ASB" are used interchangeably in this report.

<sup>29</sup> *Crime and Disorderly Act* 1998 (UK).

<sup>30</sup> Comptroller and Auditor General, National Audit Office, *Home Office: Tackling Anti-Social Behaviour* (7 December 2006) 4 (**Home Office ASB Report**).

<sup>31</sup> *Ibid* 8.

<sup>32</sup> *Ibid* 38.

**Despite the apparent breadth of activity governed by anti social behaviour regulations, a 2006 Home Office report considered the case files of 893 individuals and discovered that – by a significant margin – action was most often taken in relation to "nuisance" behaviour<sup>33</sup>.**

### **Anti Social Behaviour – how does it work?**

The definition of anti social behaviour in the Crime and Disorder Act formed the basis of a legal tool introduced by the Act – the Anti Social Behaviour Order (also known as the ASBO) The ASBO is an enforcement tool used against people who are involved in adverse behaviour defined as "anti social behaviour."

Section 1 of the *Crime and Disorder Act* provides that an application for an ASBO may be made if it appears to the "authority" (see below) that:

- (a) the person has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; [emphasis added] and
- (b) that such an order is necessary to protect relevant persons from further anti-social acts by him.

According to official guidance, an Anti Social Behaviour Order is a civil order that sets out specific terms and conditions which prohibit an individual from conducting certain behaviour ASBOs can be made by a number of authorities (including, local authorities, registered social landlords, police) against any person aged over 10 years of age<sup>34</sup>.

The standard of proof of the evidence required to establish grounds for an ASBO has also been open to consideration In general terms, orders are a minimum of two years in duration and although the order is civil in nature, to breach the order is a criminal offence In November 2004 the Commissioner for Human Rights, Mr Alvaro Gil-Robles visited the United Kingdom and expressed unease about this "hybrid jurisdiction", noting "I find the combination of a criminal burden of proof with civil rules of evidence rather hard to square; hearsay evidence and the testimony of police officers or "professional witnesses" do not seem to me to be capable of proving alleged behaviour beyond a reasonable doubt"<sup>35</sup>.

### **"They must be punished" – The Origins of Anti Social Behaviour**

The United Kingdom response to anti social behaviour has been comprehensive and can seem to be all encompassing Indeed, anti social behaviour has been such a focus that Andrew Millie notes that the "ASB agenda was one of the things that defined Labour's approach to crime and disorder in the first decade of the 21st Century"<sup>36</sup>.

Elizabeth Burney argues that much of the interest in anti social behaviour arose following several "horror stories" of Family X and the Finnie Brothers which arose in Labour constituencies<sup>37</sup>. The Finnie case involved public housing tenants who had been allegedly responsible for a series of crimes on the estate including burglary, harassment, intimidation and fire bombing and it was said that the harassment had resulted in victims refusing to testify against the brothers<sup>38</sup>. In relation to Family X, the five members of this family had been arrested a total of 54 times for offences including attempted robbery, burglary, theft, criminal damage and public disorder<sup>39</sup>.

Burney suggests that such case studies "created the paradigm of the neighbourhood blighted and terrorized by the outrageous behaviour of one or two families, groups or individuals, apparently beyond the reach of the law"<sup>40</sup>. Similarly, Nixon et al refer to this issue and comment that "[s]uch discourses are based on an appeal

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<sup>33</sup> Ibid 8.

<sup>34</sup> Department of Communities and Local Government, *Tackling Anti-Social Behaviour: Tools and Powers – Toolkit for Social Landlords* (March 2010), 54 (ASB Toolkit).

<sup>35</sup> Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4th-12th November 2004, 8 June 2005, CommDH(2005)6, 35.

<sup>36</sup> Andrew Millie, "Moral Politics, Moral Decline and Anti Social Behaviour" (2010) 4(1) *People, Place and Policy Online* 6, 7.

<sup>37</sup> Elizabeth Burney, "Talking Tough, Acting Coy: What Happened to the Anti-Social Behaviour Order?" (2002) 41(5) *The Howard Journal of Criminal Justice* 469.

<sup>38</sup> Stuart McDonald, "A Suicidal Woman, Roaming Pigs and a Noisy Trampolinist: Refining the ASBO's Definition of Anti-Social Behaviour" (2006) 69(2) *Modern Law Review* 183, 196.

<sup>39</sup> Ibid.

<sup>40</sup> Burney, above n 37, 470.

to consensus that individuals are responsible for their behaviour and if perpetrators “choose” to transgress strict rules and norms of behaviour they must be punished”<sup>41</sup>.

Since the mid 1990s and despite wave after wave of legislative reform and tools to address problematic behaviour, these media stories do not seem to have abated.

### The death of David Askew

Early in 2010 the case of David Askew made news after he collapsed and died outside his home. The Sun newspaper reported that Mr Askew experienced learning difficulties had experienced 20 years of intimidation and “was pelted with bricks and hounded for cash and cigs by the thugs on his estate”<sup>42</sup>. The Telegraph reported how neighbours “criticized the local council and police for failing to solve the repeated anti social behaviour which blighted Mr Askew’s life” while the chief inspector of constabulary said “police were failing to properly tackle anti-social behaviour, which he called ‘chronic illness that causes corrosive harm in communities’”<sup>43</sup>.

### The death of Garry Newlove

In 2008 three teenagers were convicted of beating Garry Newlove to death outside his home<sup>44</sup>. It was reported the assault had occurred after Mr Newlove had confronted the young people about vandalism of his wife’s car. Following the murder, there were reports of how Mr Newlove had been making efforts to stop teenage drinking and vandalism in the streets near his home and that he had met with police to discuss youth disorder and the potential to set up a home watch group<sup>45</sup>.

### The deaths of Fiona and Francesca Pilkington

In about the same period as the Newlove death, the bodies of Fiona Pilkington and her 18 year old disabled daughter, Francesca, were found. An inquest returned a verdict of suicide in relation to Fiona Pilkington and unlawful killing in relation to Francesca following evidence in which the “jury heard Pilkington contacted police on no fewer than 33 occasions in seven years in which youths throwing stones and shouting abuse had kept her a virtual prisoner in her home in Barwell”<sup>46</sup>. The coroner raised concerns about the process for gathering and recording information about victims of anti social behaviour while the jury identified the sharing of information between the police and councils as a contributory factor<sup>47</sup>. Following the announcement of an investigation by the Independent Police Complaints Commission into the police response, the local Chief Constable issued an apology and stated “[t]he vulnerability of the family was not picked up. We recognize the need to have a better response to low-level anti social behaviour”<sup>48</sup>.

The stories of Askew, Newlove and Pilkington are undoubtedly horror stories but it is unclear to what extent these stories should be used to encapsulate “anti social behaviour.” Following my Fellowship I was reminded of these cases as I read the case of a 47 year old Melbourne woman who was killed following a dispute with some young people who were later accused of the murder. Media reported that the woman had been killed after she followed a group of young people who had been throwing eggs at her house and car<sup>49</sup>. Following the event, Detective Senior Constable Matthew Tuininga was reported in The Australian newspaper telling

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<sup>41</sup> Judy Nixon, Nick Hodge, Sadie Parr, Ben Willis and Caroline Hunter, “Anti Social Behaviour and Disability in the UK” (2007) 2(1) *People Place and Policy Online* 37, 39.

<sup>42</sup> Stewart Whittingham, “Yobs on film taunting tragic neighbour”, *The Sun* (UK), 13 March 2010.

<sup>43</sup> Richard Edwards and Nigel Bunyan, “Vulnerable pensioner David Askew ‘tormented to death’ by yobs despite daily contact with police”, *The Telegraph*, 12 March 2010.

<sup>44</sup> Mark Hughes, “Teenagers who beat ‘courageous’ father to death outside his home jailed for life”, *The Independent*, 12 February 2008.

<sup>45</sup> Becky Kelly, “Murder victim’s anti-yob campaign”, *BBC News*, 16 January 2008.

<sup>46</sup> Peter Walker, “Police errors contributed to suicide of tormented mother Fiona Pilkington”, *The Guardian*, 28 September 2009 <<http://www.guardian.com.uk/uk/2009/sep/28/Fiona-pilkington-suicide-mother-police?intcmp=239>>

<sup>47</sup> Ibid.

<sup>48</sup> Steve Bird, Russell Jenkins and Richard Ford, “Pilkington inquest: police failings blamed in car blaze deaths”, *The Times*, 29 September 2009.

<sup>49</sup> “Boy charged over fatal stabbing”, *ABC News*, 4 July 2011.

"the court the egg throwing incident resulted from a 'very minor dispute' between two groups of males"<sup>50</sup>. By comparison with England, there was no mention of "neighbourhood blight" or corrosive community harm. In Australia this incident was reported as a criminal act arising from a very minor dispute. In light of some of the commentary surrounding anti social behaviour, the Australian resistance to this concept is fortunate.

## The Vagaries of Anti Social Behaviour

### What's anti social?

Stuart MacDonald notes that the original intention of the ASBO was directed at "persistent criminal acts in a particular area" but argues the "imprecision of the term gave way to a gradual form of mission creep"<sup>51</sup>. Such concerns are supported by news reports of ever more bizarre ASBOs, many of which feature in the BBC News "ASBO Watch Chronicles". Although the full list of absurd ASBOs cannot be repeated here, some interesting examples include:

#### Bizarre ASBOs

- The man who was banned from owning a stereo, radio or television;
- The man who was banned from dressing as a schoolgirl;
- The man who was banned from claiming he was a legally qualified professional (although this was later overturned); and
- The homeless man who was given a criminal ASBO after repeatedly faking illness so he could stay in hospital<sup>52</sup>.

Such orders do not reflect the cases of the Finnie brothers or Family X, nor do they reflect the subsequent high profile cases of Askew, Newlove and Pilkington. Instead, such orders surely work to expose the breadth of the concept of "anti social behaviour" together with the breadth of potential orders which may be made to stop this behaviour.

Indeed, the ASBO has drawn considerable criticism about the unintended consequences of such broad powers. Alison Brown notes that "[a]nti-social behaviour is both a vague term that can mean anything while also being a strongly symbolic and evocative term (like, say, "community")"<sup>53</sup>. Burney writes about the issue in similar terms noting that "[l]egislation passed in response to anecdotal and unspecific social threats is never likely to produce the anticipated impact, and so it is with that emblem of punitive populism, the anti-social behaviour order (ASBO)"<sup>54</sup>. Furthermore, Brown cites Cohen<sup>55</sup> and notes that anti social behaviour can be compared with "deviancy control" which avoids the question of whether a rule has been broken and "highlights the dominance of behaviourism and a lack of concern with causes and states of mind"<sup>56</sup>.

And there are yet more arguments about the inappropriateness of the ASBO. Following on from objections about the vagueness of the concept of anti social behaviour, MacDonald cites the work of Ashworth in expressing concerns about:

- the ability of defendants to understand whether behaviour could be classified as "anti social";
- the focus on the subjective effect of the behaviour on the victim; and
- the transfer of power to criminalise certain forms of conduct to local authorities<sup>57</sup>.

<sup>50</sup> "Minor dispute" led to mother's stabbing death, *AAP* (online) 4 July 2011.

<sup>51</sup> MacDonald, above n 38, 186.

<sup>52</sup> For these examples and more see "Britain's most unusual ASBOs", *BBC News* (online) 29 July 2010 <<http://www.bbc.co.uk/news/uk-10790872>> and "ASBO watch 2004-2005", *BBC Magazine* (online) 22 September 2004 <[http://news.bbc.co.uk/2/hi/uk\\_news/magazine/3674430.stm](http://news.bbc.co.uk/2/hi/uk_news/magazine/3674430.stm)>.

<sup>53</sup> Alison Brown, "Anti-Social Behaviour, Crime Control and Social Control" (2004) 43 *Howard Journal of Criminal Justice* 203, 204.

<sup>54</sup> Burney, above n 37 469.

<sup>55</sup> See Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (1985).

<sup>56</sup> Brown, above n 53, 204.

<sup>57</sup> MacDonald, above n 38 citing Ashworth et al, "Overtaking on the Right" (1995) *New Law Journal* 1501.

Further, MacDonald also refers to the use of ASBOs contributing to the displacement<sup>58</sup> and incarceration of sex workers together with the further marginalisation of homeless people reliant on begging<sup>59</sup>.

### Young people and disability

Concerns have also been raised about the prevalence and operation of ASBOs issued to young people. The Commissioner for Human Rights identified concerns with the consequences of breach of an ASBO (up to five years in prison), referred to the significant percentage of orders that are breached and noted particular concerns that these orders will "more likely exacerbate anti social behaviour and crime amongst youths than prevent it" and "risk alienating and stigmatizing children"<sup>60</sup>.

An analysis of case files by the Home Office in 2006 indicated that 46% of all those involved in anti social behaviour interventions were aged 18 or under.<sup>61</sup> It is interesting to note research that considers the role of the courts in issuing an ASBO. The Youth Justice Board considered ASBOs issued to young people aged between 10–17 from 2000 to 2004 and noted that "[m]ost sentencers did not have a good grasp of what other options were available" and that nearly half of the young people involved in the case review had breached their ASBO on more than one occasion<sup>62</sup>.

In addition to the numerous criticisms of anti social behaviour regulation, concerns about the application of such regulation to vulnerable people have been prevalent:

*... vulnerable households are seen as having been targeted by anti-social behaviour interventions. This has the effect of punishing and stigmatizing those affected, undermining their housing rights, and pushing families to the margins of society. There are therefore increasing doubts as to whether enforcement can be an effective strategy for achieving sustainable solutions for anti social behaviour, and concerns about the negative impact that it has on households made homeless as a result.*<sup>63</sup>

On the issue of enforcement and disabled individuals, Nixon et al observe evidence which supports the suggestion that people with a disability are a significant proportion of those who are subject to anti social behaviour interventions<sup>64</sup>.

### "Tools in the Toolbox" – Anti Social Behaviour enforcement tools

During my time in the United Kingdom I discussed anti social behaviour with housing academics, tenant support workers, police, local authority staff and landlord support organisations. During these meetings it quickly became apparent that it would be extremely difficult to comprehend all aspects of anti social behaviour regulation. Since 1996 the government has introduced an avalanche of regulation<sup>65</sup> which has included a series of tools to address ASB, including housing injunctions, noise penalties, anti social behaviour orders, parenting orders, dispersal orders, parenting contracts, housing closure orders, demoted tenancies, introductory tenancies and acceptable behaviour contracts.

It is beyond the scope of this report to consider all aspects of the ASB response in the United Kingdom. I have instead chosen to focus on several tools and consider the ways in which ASB impacts on housing and vulnerable tenants. In considering all of these issues, one thing is paramount: the definition of anti social behaviour.

I spoke about the proliferation of "tools" and regulation with the anti social behaviour team of the Chartered Institute of Housing. I was told by a Senior Policy and Practice Officer that the pace of legislative change had

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<sup>58</sup> MacDonald refers to the work of Jones and Sager which notes that research suggests exclusion will not prevent sex workers but will simply relocate the problem and often place women out of health and welfare agency reach. See, H Jones and T Sager, "Crimes and Disorder Act 1998: Prostitution and the Anti-Social Behaviour Order" (2001) *Criminal Law Review*, 873, 881.

<sup>59</sup> MacDonald, above n 38, 201.

<sup>60</sup> Gil-Robles, above n 35, 35.

<sup>61</sup> Home Office ASB Report, above n 30, 11.

<sup>62</sup> Youth Justice Board, *Anti Social Behaviour Orders* (2006).

<sup>63</sup> Simon Hoffman, Peter Mackie and John Pritchard, "Anti-social behaviour law and policy in the United Kingdom: Assessing the impact of enforcement action in the management of social housing" (2010) 2(1) *International Journal of Law in the Built Environment* 26.

<sup>64</sup> This article emphasises the discrimination effect of the orders and compared the potential conflicting objectives of the *Crime and Disorder Act 1988* (UK) and objectives of the *Disability Discrimination Act 1995* (UK) (DDA) to eliminate harassment of disabled people that is related to their disability, promote positive attitudes towards disabled people and encourage participation by disabled people in public life. See Nixon et al, above n 41.

<sup>65</sup> Legislation includes: *The Housing Act 1996* (UK), *Noise Act 1996* (UK), *Crime and Disorder Act 1998* (UK), *Criminal Justice and Police Act 2001* (UK), *Anti Social Behaviour Act 2003* (UK), *Criminal Justice Act 2003* (UK), *Housing Act 2003* (UK), *Clean Neighbourhoods and Environment Act 2005* (UK), *Serious and Organised Crime Act 2005* (UK) and the *Drugs Act 2005* (UK).



gotten out of control: "50 different legal tools and powers that were added in to the point where it was so confusing that nobody quite knew which tools to use in which circumstances." Another comment was that "legislation builds on previous legislation ... It was kind of amendments of amending legislation so it became virtually impossible to follow, which is why you need organisations like the CIH to offer advice and guidance to say where the law is and how to find it." The Social Landlords Crime and Nuisance Group provided another perspective on the proliferation of legal tools, suggesting that social landlords understood the provisions and generally elected to use the tool(s) best suited to resolve the case before them. Some of the key tools currently being used to deal with ASB are discussed below.

### Removing tenure security: demoted tenancies, introductory and starter tenancies

Introductory and starter tenancies are essentially a fixed term tenancy agreement during which tenants "must satisfy the landlord that they are able to abide by all conditions of tenancy, including those regarding acceptable standards of behaviour"<sup>66</sup>. If tenants are able to demonstrate the ability to abide by these conditions, their tenure will convert to a more secure form of tenancy.

Demoted tenancies place a similar emphasis on tenure security as a means of enforcing compliance with tenancy conditions. Where tenants have been found to be involved in anti social behaviour, if satisfied that demotion is reasonable, the Court may replace a secure tenancy with a "demoted" tenancy.

Demoted tenancy legislation was considered in the UK Supreme Court decision of *Manchester City Council v Pinnock (Pinnock)*<sup>67</sup>. In Pinnock, a demotion order had been granted and the tenant was subsequently at risk of eviction largely due to the actions of his children who had appeared before criminal courts a total of 32 times between 1992 and 2006 for a variety of offences.

In 2007 the tenant's son, Clive Pinnock, resisted arrest and was subsequently convicted of resisting/obstructing police. In 2008, another son, Devon Pinnock, pleaded guilty to causing death by dangerous driving while disqualified. This incident occurred within two miles of the rented premises. Also in 2008, there was an incident with another son, Orreon Pinnock, who was convicted of burglary and assault which occurred in the vicinity of the rented premises.

These facts are recited here to give some understanding of the general application of the relationship between anti social behaviour and housing. While accepting the numerous acts had all occurred within the vicinity of the rented premises, it should also be noted that:

- 1 the majority of the behaviour did not occur either at the premises or in any common area;
- 2 the behaviour did not directly involve the tenant's neighbour; and
- 3 the behaviour was not committed by the tenant.

Ultimately the eviction of the tenant in Pinnock was upheld, with the Supreme Court noting:

*The fact that some (or even all) of the grounds justifying the rationality and proportionality of the Council's decision to seek possession may not have involved any breach of the tenancy agreement does not give rise to a problem ... The fact there may be other remedies to deal with the children is also of little force: rather than seeking ASBOs or ASBIs to keep them out of the vicinity, it is scarcely irrational or disproportionate to decide to remove their parents, whom they undoubtedly visit, even if (which is an unresolved issue) they do not live with them*<sup>68</sup>.

During my conversation with the Chartered Institute of Housing, I spoke with one of the ASB Advisors who had actually been involved with the Pinnock case and this tenant. She explained that the community was living in fear of the tenant's children and that it was extremely difficult to build evidence which addressed the direct impact of this tenancy on the neighbours, "because nobody would stand up to them." Further, in relation to the eviction of a tenant for the actions of children who did not live at the premises, she said:

*Mr Pinnock was obviously still allowing his children to come back to his property and what we were saying is, "If you know that your sons are coming to your property and causing anti social behaviour,*

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<sup>66</sup> ASB Toolkit, above n 34, 100.

<sup>67</sup> [2001] UKSC 45 (3 November 2010).

<sup>68</sup> *Pinnock* [2010] UKSC 45 (3 November 2010) [130].

*then you are in breach of your tenancy agreement. If you are serious about keeping your adult children away from your property, then why do you keep accepting them into your house?" And he didn't have an answer, all he kept saying was, "They don't live here, they don't live here," and what we were saying was, "Yes, but they are always at your property".*

### Injunctions: the "bread and butter" of housing enforcement

The *Housing Act* 1996 (UK) provides that an anti social behaviour injunction can be applied for by a relevant landlord<sup>69</sup> in order to either prohibit someone from acting in a certain way or to require them to take action<sup>70</sup>. Injunctions may be obtained on an interim basis without the presence of the alleged perpetrator, may contain a power of arrest<sup>71</sup> exercisable by the police and may be obtained for anti social behaviour, illegal use of premises or breach of the tenancy agreement. Breach of an injunction is regarded as "contempt of court" and if proved beyond a reasonable doubt, is punishable by an unlimited fine and up to two years imprisonment.

Tess Ash from the CIH ASB Action Team told me that people mistakenly think that ASBOs are the standard landlord enforcement response. Instead, she noted "injunctions are the bread and butter and always have been the bread and butter in terms of legal enforcement action. They are the most effective tool that a landlord can use because its action being taken in relation to the tenancy. If a tenant breaches the legal injunction they are at risk of losing their tenancy and the risk of losing your home is a much stronger threat than facing a fine from a magistrate."

### Acceptable Behaviour Contracts: voluntary and of no legal effect?

An Acceptable Behaviour Contract (**ABC**) is a "voluntary" written agreement between a young person, the police and the local housing office. An evaluation report on ABCs in the London Borough of Islington describes the process of drawing up a contract as follows:

*Young people, who are identified as having been engaged in persistent antisocial behaviour, are invited along with their parents or legal guardian, to an interview with the housing department and the police. The aim is to discuss the problem and to identify a series of behaviours that the young person would agree not to engage in over the coming six months. The young person is under no obligation to sign the contract. The family are informed at the interview that if the contract is broken and they hold a council or RSL tenancy the housing department or RSL may initiate possession action against their tenancy. The young person may also become subject to an ASBO if they breach the contract<sup>72</sup>.*

For housing workers, the fact that ABCs are not legally binding enables them to be potentially both quicker and less expensive than building a case to establish an ASBO. On this point the evaluation of the Borough of Islington commented, "officers (housing and police) reported that they did not feel that they had the capacity to respond to anti-social behaviour using ASBOs. They felt that the systems were not in place for systematically gathering evidence and that the expertise or resources were not available to take cases to court"<sup>73</sup>. In addition to procedural benefits, case file analysis by the Home Office in 2006 indicates that of those who received an ABC only 35% were involved in further anti social behaviour and compares this with 55% of people who received an ASBO and committed further ASB anti social behaviour<sup>74</sup>.

### Ambiguous ABCs

The benefits of ABCs should however be considered in light of the consequences of breaching an agreement. To suggest that the idea that ABCs are voluntary and have no legal effect is misleading. While ABCs may not – of themselves – have direct consequences for breach, it is clear they are intimately connected with more tangible enforcement measures such as ASBOs or, worse, eviction of an entire family. Furthermore, the suggestion that young people may "voluntarily" engage with this process is perhaps undermined by guidance

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<sup>69</sup> "Relevant landlord" includes: local authority, housing action trust, registered social landlord.

<sup>70</sup> Injunctions cannot be obtained against a person under 18 years of age.

<sup>71</sup> Guidance indicates a power of arrest will often only cover circumstances in which threats / violence or issues involving witnesses are involved. See ASB Toolkit, above n 34, 97.

<sup>72</sup> Karen Bullock and Bethan Jones, "Acceptable Behaviour Contracts addressing antisocial behaviour in the London Borough of Islington" *Home Office Online Report* 02/04, 15.

<sup>73</sup> Ibid 20.

<sup>74</sup> Note the research indicates that when these matters are broken down by age group the picture changes and the proportion of young people involved in anti social behaviour is higher than for other groups: 61% of people under 18 committed ASB following an ABC as compared with 27% of those over 18. See Home Office ASB Report, above n 30, 20.

indicates that *failure to reach an agreement* may also give rise to an application for an ASBO, an ASB injunction or a tenancy demotion<sup>75</sup>.

In broad terms, an analogy can be drawn between an ABC and compliance proceedings in Victoria. Compliance proceedings are similar because the first step involves a written warning to tenants about problematic behaviour (notice of breach) which may then form the basis for subsequent eviction proceedings if this behaviour continues. As with ABCs, the concern is that often tenants do not have the ability to respond to compliance procedures and there is very little ability to challenge the evidence of anti social behaviour.

### ABC appeal

In writing of such concerns, Elizabeth Burney notes, "the process, with no legal status but engaging the agreement of the youths concerned and their parents, seems to achieve improved behaviour more effectively than the ASBO. Its use has spread across local authorities and appears to be the instrument of choice for many"<sup>76</sup>.

A number of the people I spoke with confirm Burney's remarks about the appeal of ABCs. Some of these benefits may relate to the process of creating an agreement which involves gathering of evidence, holding a meeting with the stakeholders (including the young person, their parent/guardian, housing staff and the police), sharing the evidence or information about the behaviour with the young person and clearly setting out written expectations of the young person. It is worth noting that guidance on ABCs indicates that written agreements should set out the type of behaviour (including criminal damage, graffiti/vandalism, noise nuisance, underage smoking/drinking, verbal abuse/harassment) that will not be tolerated and warns the perpetrator of the consequences of breaching the agreement<sup>77</sup>.

If functioning correctly, such a process may have a number of positive outcomes which address the ambiguity surrounding the definition of anti social behaviour and enable young people to understand what behaviour is problematic and what may be done to avoid offending activity. It should also be noted, however, that there are challenges involved in achieving the full benefit of an Acceptable Behaviour Contract. By way of example, the London Borough of Islington identified:

- a significant percentage of ABCs were breached;
- breaches were not enforced;
- interviews should be improved (including the provision of evidence, discussion of the terms of contract, awareness of the consequences of breach);
- the need to ensure that there be sufficient monitoring and feedback (including engagement of parents, home visits), and
- the need for a mechanism for acting on breaches<sup>78</sup>.

### Anti Social Behaviour and the Housing Profession

Housing work has become increasingly complex. Some of the factors contributing to this complexity include the range of enforcement tools, the increasing proportion of disadvantaged tenants, the human rights issues that govern decision making and increasing joint work between housing and a range of different agencies such as policy, local authorities, health and schools.

In addition to recognising the increasing complexity of housing work, it should be remembered that any decision which affects someone's home must be carried out in a procedurally fair and just way.

In such circumstances I was fortunate to speak with expert teams from both the Chartered Institute of Housing (CIH) and the Social Landlord Crime and Nuisance Group (**SLCNG**). CIH is a professional body for people working in housing in the United Kingdom and its website states "[o]ur passion is to see that everyone has a decent, affordable home in a thriving, safe community"<sup>79</sup>. I spoke with the ASB Action Team who offer

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<sup>75</sup> ASB Toolkit, above n 34, 51.

<sup>76</sup> Burney, above n 37, 481.

<sup>77</sup> ASB Toolkit, above n 34, 50/

<sup>78</sup> Bullock and Jones, above n 72, 6-7.

<sup>79</sup> Chartered Institute of Housing, *About Us* (2011) <http://www.cih.org/about/index.php> at 19 September 2011.

support to landlords in order to tackle and resolve ASB at the same time as building capacity and disseminating "best practice".

The ASB Action Team operates within the broader housing support functions of the CIH whereas SLCNG is an organisation focused on anti social behaviour. The organisation formed in 1995, as debates about anti social behaviour were beginning to take hold. The SLCNG website states its mission as follows: "We are committed to keeping crime and nuisance as a high profile issue and promoting good practice to tackle it" and explains that the organisation represents over three million tenancies throughout the UK. In addition to landlords, SLCNG works with police, social care agencies, ASB teams, lawyers and universities and colleges. It describes its purpose as sharing best practice in tackling anti social behaviour, influencing national policy and practice and promoting effective partnership working.

### Social housing tensions

Increasingly there are real tensions between government guidance and legislation with regard to supporting people in the community and protecting the community from crime and anti social behaviour. This becomes especially problematic for social landlords and their partner welfare agencies when getting tough on perpetrators of crime conflicts with providing support for vulnerable tenants. It is also a very real issue when balancing the needs of homeless people who may have multiple social and health problems, with the needs of existing residents<sup>80</sup>.

### The business case for early intervention

Although SLCNG have extensive experience in supporting housing professionals to understand and apply the various legislative tools at their disposal, they have also come to acknowledge (1) the limits on landlords in controlling anti social behaviour and (2) the importance of early intervention. Intervening early is about getting good outcomes for tenants, but as one worker suggested during our discussion, housing providers:

*... stand and fall on their budgets. And one of the big things, and something that's said frequently, is empty houses don't do us any favours, they cost us money but they're not bringing in an income so it's not in our interest to empty our properties without seriously trying to find a way of doing something else, so when you come to the ASB field, they do begin with the idea of sustaining the tenancy ... So, that's why the early intervention stuff is now in its interest because in the scheme of things it's financially a better viability prospect for them. So there is a will to sustain tenancies and it's not centred around, necessarily, the Human Rights Act. It is centred more around the viability of their business.*

I was told that the landlords who get the best results are generally those who set up "specialist anti social behaviour" teams that may not necessarily focus only on enforcement, "although that does send out a strong message." According to the Chartered Institute of Housing workers, some of the other benefits of specialisation include that landlords develop expertise:

*... working on the community development side and prevention, getting strong partnerships with the key stakeholders, working with schools, educating so you are preventing those generational cycles of behaviour and what these officers become is multi-skilled in a number of areas, not just necessarily specific to housing.*

### Housing and prevention: sustainable solutions

Given research which establishes a connection between people with a disability and anti social behaviour enforcement, the need to prevent enforcement and intervene early is paramount. During our conversation, both CIH and SLCNG referred to HouseMark<sup>81</sup> research which indicates the importance of housing management in resolving anti social behaviour, noting that approximately 80% of matters were resolved through "good, solid housing management without the need for formal intervention by the Police."

<sup>80</sup> Judy Nixon and Caroline Hunter, Chartered Institute of Housing and Joseph Rowntree Foundation, "Tackling anti social behaviour, Action Framework for: Governing bodies/housing committee members/residents and social housing practitioners (2006) 20.

<sup>81</sup> HouseMark provides "performance improvement services" and is "dedicated to improving housing standards", for more information see <http://www.housemark.com.uk/hm.nsf/all/About?opendocument> at 19 September 2001.

During my conversation with SLCNG and Community Safety Officers, a number of comments referred to the need to understand the source of problems, rather than simply approaching problems as a matter of enforcement:

- A police officer who explained that enforcement tools simply won't achieve the necessary change said, "for me it's about biting that bullet and saying, well actually yes I've got certain powers but sometimes I'm not going to use them and sometimes I'm going to temper what I ask my officers to do because ultimately the long term approach around behaviour change is more worthwhile. And when you're looking at kids living in families that have been in turmoil for generations and who am I to try and change them? What I'd much rather do is get experts in that can maybe influence their behaviour in the long term and let that take precedence."
- A stakeholder at the SLCNG provided an example of a young person not attending school and causing problems on the housing estate. This worker noted that the young person might receive an Acceptable Behaviour Contract but "[t]he fact is he can't get to school because his mum or dad are not getting up, they're drunk, they've got alcohol issues etc, they cannot parent and therefore the end point is he's not going to school and he's causing havoc on the state. Now by putting an ABC in place, it's not going to do anything for him in the long run, we haven't really tackled the issue because the schooling is never going to be sorted out until you go in there and actually look at it from a holistic point of view, what's happening with that family? Getting the right people in and putting a support package in place, that's the intervention and prevention agenda, that's where it all begins, right from the start. But as soon as you look at a case, even if a case comes through you're thinking about those issues straight away, that's what we're encouraging people to do."
- On this issue, the Community Safety Manager commented, "for me the issue is work around what is going on that might be causing that behaviour, rather than dealing with the behaviour in isolation. You know, if we've got noise nuisance we'd have dealt with it as noise nuisance, we'd have warned them, we'd have taken their music equipment off them, and then eventually we might have taken them to court or whatever else. But actually if there's a reason – say mental health or whatever else and we're not dealing with it then it's going to happen again and it will go backwards and forwards so that's key."

### Connecting landlords with prevention and intervention

It is critical that institutions such as public landlords and police appreciate the benefits of eviction prevention. But understanding the need to prevent eviction, of itself, is not enough. Landlords and police also need to have the skills to identify and connect tenants with supports and other "non enforcement" options.

Obviously joint working, of itself, is a critical aspect of skill exchange between housing, police, support and other stakeholders. In addition to the importance of cross sector relationships, there is also a need for formalised, structural support delivered to workers through training and policy resources. One example of such an initiative is a training package (**ASB Action Framework**), prepared by academics Judy Nixon and Caroline Hunter<sup>82</sup> on behalf of CIH and the Joseph Rowntree Foundation. The ASB Action Framework notes that there are ways in which to intervene and prevent the escalation of anti social behaviour. These initiatives include:

- Floating support for tenants alleged to have committed anti social behaviour;
- Intensive family support projects;
- Diversionary activities for children and young people;
- Action that can be taken by residents and community groups including recording ASB and advocating with government;
- Youth shelters and dedicated youth workers;
- Incentive schemes for positive behaviour;
- Security patrols and neighbourhood warden schemes, and

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<sup>82</sup> With whom I spoke with during my time in Sheffield.



- Designing out crime and ASB through use of tenancy allocation processes, and through the use of introductory, starter and demoted tenancies<sup>83</sup>.

### The importance of complaint handling

My discussions with both CIH and SLCNG emphasised the importance of all elements of appropriate complaint handling mechanisms and solid case management and review. Such procedures not only facilitate enforcement proceedings but also enable landlords to say when behaviour does not constitute anti social behaviour or is not something that can be addressed by landlords.

A lawyer who has worked with SLCNG partners considered the need to engage with the complainant:

*... as lawyers we have seen a reduction in the number of cases that come through and I think that's because people have the confidence to say, right, okay, I know what to do. If somebody makes a complaint to me, I know what to do, I know I should go out and see that person and discuss the issue with them and see if there are any problems, lifestyle issues that can be resolved or supported and so on. So I think that's the key thing because historically people would just send out – for example – diary sheets and say "Okay keep a record for me, I need at least 3 months records before any action can be taken.*

CIH ASB expert Chris Gross noted that IT systems also form an important aspect of appropriate anti social behaviour responses and that this issue was highlighted by limitations of police complaints procedures in the Pilkington matter. In particular, the Independent Police Complaints Commission report into police conduct prior to the Pilkington deaths noted, "there was nothing in place to ensure the Pilkington family were considered as vulnerable or as repeat victims"<sup>84</sup>. A key part of this inability to understand vulnerability and repeat offending was the failure of IT systems. According to Mr Gross:

*... what you find is a good IT system ensures that consistent approach and transparent approach as well, so we're going back to the fundamental basics of ASB around when the case comes in, you were able to categorise it, date, time, specific area, some now have mapping systems so you'd be very specific around the area and also then you've got the bigger holistic approach to hotspot areas and also then what you'll be doing is developing an action plan with those components too. Again, it's that prompt of consistent good practice ...*

But as Mr Gross says, "an IT system is only as good as people who have put the information in."

These comments touch on aspects of responding to a complaint of anti social behaviour. It is important to acknowledge the huge range of considerations involved in responding to adverse behaviour in housing. The ASB Action Framework addresses these many elements including:

- understanding anti social behaviour;
- monitoring and recording systems;
- preventative measures;
- multi-agency partnerships;
- investigations, early intervention and witness support; and
- taking effective legal action<sup>85</sup>.

The ASB Action Framework is significant for the way in which it provides practical support for social housing providers who face the difficult task of navigating a complex array of situations, laws and policy agendas.

### Partnership working

Partnership working is a central element of anti social behaviour responses in England.

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<sup>83</sup> Nixon and Hunter, above n 80, 20-26.

<sup>84</sup> Independent Police Complaints Commission, *IPCC Report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004 – 2007* (IPCC Reference: 2009/016872) 127.

<sup>85</sup> See Nixon and Hunter, above n 80.

Indeed, the same piece of legislation that introduced ASBOs and the definition of anti social behaviour, also required certain agencies to work together. Specifically, the Crime and Disorder Act specified that "the "responsible authorities" within a Community Safety Partnership (including the local authority, police, fire and rescue together with registered social landlords as cooperating agencies) must work together and with other agencies to develop and implement strategies to reduce crime, anti social behaviour and reduce re-offending"<sup>86</sup>. Further, section 17 of the Crime and Disorder Act refers to the duty of authorities to exercise functions and do all it can reasonably do to prevent crime and disorder in its area.

By way of example, the Reading Borough Council website notes that this section:

### Section 17 of the Crime and Disorder Act

... promotes the practice of partnership working to reduce crime, disorder and anti-social behaviour. It places a statutory duty on the council and its partners such as the police fire services, probation and health to develop and implement a strategy to tackle problems in their area. In doing so, the responsible authorities are required to work in partnership with a range of other local private, community and voluntary groups and with the community itself.

This approach recognises that both the causes of crime, disorder and anti-social behaviour and the interventions required to deliver safer, more secure communities lies with a range of organisations, groups and individuals working in partnership. Crime reduction is a shared responsibility<sup>87</sup>.

It can be a little difficult to understand exactly how partnership working operates in England. In general terms, it is clear that there is a legislative requirement for a range of agencies to work together. Guidance prepared by the Chartered Institute of Housing separates these categories of joint working into three categories: partnerships for individual support; operational partnerships; and strategic partnerships<sup>88</sup>.

According to organisations like CIH and SLCNG, collaboration between different agencies can improve decision making and generate resource efficiencies. Furthermore, it became apparent that the relationship between agencies such as the police and support workers (for example) contributes to cultural change.

While speaking with CIH, I was told:

*I think the police have recognised, particularly in terms of partnerships with housing, that social landlords also have a range of sanctions and legislation that they can use. So it's not just about the crime aspect of enforcement, landlords see the bigger picture and the impact of the behaviour on the wider community and neighbourhood. But there are still some problems, especially in terms of cuts to general patrol type police officers, and neighbourhood teams, who also see the bigger picture stuff. Where there's a stable community worker – they get involved with and talk and liaise with the tenants, the communities themselves and also the variety of partners involved. However, where the police response is from the rapid response team, that's often where it breaks down ...*

### Supporting Disadvantaged Tenants in Anti Social Times

The debates surrounding anti social behaviour and ASBOs provide important context to an innovative support mechanism to intervene and prevent ASB enforcement: the Family Intervention Project<sup>89</sup>.

This section discusses examples of Family Intervention Projects, their key elements and why they are important.

### The Projects

#### Rochdale Shelter Inclusion Project

On 28 April 2011, I travelled from Manchester to the small town of Rochdale to meet with the local Family Intervention Project, known as the Shelter Inclusion Project. As I walked from the station to the centre of

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<sup>86</sup> ASB Toolkit, above n 34, 24.

<sup>87</sup> Reading Borough Council, Community Safety, *Crime and Disorder Act 1988 (UK)* s 17.

<sup>88</sup> ASB Toolkit, above n 34, 22-23.

<sup>89</sup> Family intervention project and its acronym FIP are used interchangeably in this report.

Rochdale I passed queues outside the local employment office and houses with broken and boarded windows. Although it was a beautiful town, it did not appear to be thriving.

Anita Birchall is the service manager of the Shelter Inclusion Project. She provided me with a summary of a report which notes that the Rochdale borough has "among the worst health outcomes in the country" and systemic issues with housing, access to employment together with the health and wellbeing of children<sup>90</sup>.

Anita's colleague, Catherine Ormerod, is a Team Leader of the Shelter Inclusion Project and adds that:

*I think a key thing in Rochdale is that certain significant areas have big intergenerational worklessness. We work with children, whose parents and grandparents have been welfare dependent for their entire lives and that's their experience. It creates lots of low motivation and resistance.*

A progress report from 2010 notes that the project works with an average of 44 households at any one time (with staff ratios of 1 worker to 11 clients) and support lasts on average 12 months<sup>91</sup>. The support provided involves assistance with improving school attendance, appropriate behaviour, peer mentoring, anti-bullying and referral to specialist mental health services.

### **"It's about distance travelled" – The Core Unit**

In addition to the Rochdale project, I also visited a "Core Unit"<sup>92</sup> FIP in Bolton. An evaluation of six Family Intervention Projects undertaken in 2006 described Core Units as follows: "Core residential support involves the family leaving their existing home and moving into flats located within the project's premises and managed by the project. Families living in core accommodation are required to adhere to a set of rules and regulations and have daily supervision sessions with project workers"<sup>93</sup>.

Although Core Units have been subject to criticism<sup>94</sup> for what were arguably authoritarian overtones, on the day I visited the Bolton Core Unit the atmosphere seemed relaxed; a number of children played soccer in a communal courtyard while their parents chatted quietly.

The Service Manager of the Bolton Core Unit referred to some of the more modest goals of the project in the following way:

*All these people we work with are at different starting points and it's about distance travelled rather than this expectation that we're actually going to solve everything. It's about getting to the point where they can manage and cope, that sort of thing. That might not be how other people would expect to live but actually for that household, they've come so far. Because they started much further back from maybe another family.*

*I had a discussion with one of the families here yesterday, exactly on that line, I said "you need to move on, we've come to a complete impasse, you're not doing any of the work you need to, you're just using it as a tenancy," that client said "What are you talking about, I don't know what you mean, where'll I go now?" and when they describe where they've been I was thinking actually from their point of view they've actually come a mile ... She came from a place where she said she didn't care any more, she didn't care about herself, she didn't care about her kids, and was fairly suicidal, really. So she's in a situation where she doesn't care so she doesn't bother paying rent, she's not getting any food into the kids, so her kids are behaving in a feral sort of way ... she just didn't care. Whereas what she's got now is a nice secure place, she knows where the kids are, she describes herself as "interested". She's talked to me about "I was really cross with the school, and I wanted to punch the woman" this, that and the other, and that was great for her ... She actually cared about this stuff.*

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<sup>90</sup> Joint Strategic Needs Assessment: The Health and Wellbeing of the 3% most deprived Lower Super Output Areas in Rochdale Borough (March 2009) 5-11.

<sup>91</sup> Shelter, *Shelter Inclusion* Nixon et al, Evaluation Report, above n 93, 11 *Progress Report 2010* (2011), 5.

<sup>92</sup> ASB Toolkit, above n 34, 80.

<sup>93</sup> Judy Nixon, Caroline Hunter, Sadie Parr, Stephen Myers, Sue Whittle and Diana Sanderson, *Anti Social Behaviour Intensive Family Support Projects: An evaluation of six pioneering projects* (October 2006) 23. (**Evaluation Report**).

<sup>94</sup> See, eg. Paul Garrett, "Sinbin" Solutions: The "Pioneer" Projects for "Problem Families" and the Forgetfulness of Social Policy Research" (2007) 27(2) *Critical Social Policy*, 203.

## "Mr Messy": the client group

"Do you remember that Roger Hargreaves character, Mr Messy?," asks Ms Birchall from the Shelter Inclusion Project, "Mr Messy is a pink scruffy squiggle."

In some ways, she explains, FIP clients may resemble Mr Messy when they come to the project: "People come to us feeling utterly overwhelmed and they are at the point where somebody else has taken control of their life and they are at risk of losing their home, their children, all sorts of things, their liberty in many cases, and at that point it is utterly overwhelming and I think what we do for people is we kind of pick out the strands of that and – not take over, we might take over for a period of time initially – but when it's handed back it's much tidier and easier for them to manage."

Following the comments of the workers involved in Family Intervention Projects, it is worth noting that evaluation reports confirm that the projects work with people who are often extremely disadvantaged individuals:

- A 2006 report noted "[f]amilies referred to the projects were characterized as having high multiple support needs, which in many cases had not been adequately addressed by other agencies. A wide range of health-related difficulties was prevalent amongst family members, with poor mental or physical health and/or substance misuse affecting 80% of adults. Depression was the most widespread problem affecting 59% of adults ..."95
- A 2008 report noted the families involved with the project were experiencing a range of difficulties which included "education and learning difficulties (68%), poor parenting (67%), physical and mental health problems (63%)" together with peer group issues, family breakdown, domestic violence and child protection issues96.
- A 2010 report evaluating intensive intervention projects directed at young people referred to detailed case studies of 15 young people where it was found that the "young people had often been the victims of domestic violence or threats to their personal safety ... and at least two of the young people had been the victims of sexual abuse or sexual assault as well. Several of the young people (and, in some cases, other family members) were known to misuse drugs or alcohol ... All young people had issues of low self-esteem and self-confidence and, in some cases depression or other mental health problems"97.

In particular, the research reflects an often overlooked element of ASB debates, that alleged perpetrators of adverse behaviour are often also the victims of such behaviour<sup>98</sup>. On this issue the Team Leader of the Shelter Inclusion Project told me there "needs to be some recognition that people aren't clearly perpetrators or victims, we get a really significant number of referrals through to us where there's allegations, counter allegations, often it may be the case that there are issues around somebody's behaviour but they may also be subject to harassment themselves and there's not necessarily a clear line between perpetrator and victim and that's not always recognised in tools around enforcement."

## The case for support

Much of the appeal of Family Intervention Projects comes from one main benefit – they work. An early review of six FIPs indicated that for more than eight out of 10 (85%) families, the complaints about anti social behaviour had reduced and the risk of eviction had been eliminated. Further, project workers considered that in 92% of cases the risk to communities had either reduced or ceased by the time families exited the project<sup>99</sup>.

A subsequent report relating to the introduction of intensive support projects for young people considered a number of evaluation reports and noted the research indicated FIPs had resulted in:

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<sup>95</sup> Nixon et al, Evaluation Report, above n 93, 11

<sup>96</sup> White, Warrener, Reeves and La Valle, National Centre for Social Research, *Family Intervention Projects An Evaluation of their Design, Set-up and Early Outcomes* (2008) 124.

<sup>97</sup> John Flint, Elaine Batty, Sadie Parr, Deborah Platts Fowler, Judy Nixon and Diana Saunderson, Department of Education, *Evaluation of Intensive Intervention Projects* (2010) 74.

<sup>98</sup> A review of 6 FIPs found that up to 60% of participants had been victims of anti social behaviour: see Nixon et al, Evaluation Report, above n 93, 37.

<sup>99</sup> Ibid 16.

- 65% of families experiencing a decrease in the number of functioning problems (poor parenting, relationship/family breakdown, domestic violence, child protection);
- 56% of families reporting a reduction in health issues/risks; and
- 48% of families experiencing a reduction in education/employment problems<sup>100</sup>.

Such results provide significant short and long term cost savings outlined in the 2006 report:

*Potential costs prevented in the short-term include those associated with tenancy termination, the costs of foster care or residential care for children, and costs relating to criminal justice (such as those of being in a young offenders' institute). Costs due to ASB and domestic violence will also be reduced. A family evicted for ASB with three or four children requiring custodial care, residential care and foster care can easily cost the Exchequer £250,000 – 330,000 in a year<sup>101</sup>.*

## Partnership working

In Rochdale, Ms Birchall explained that police, schools, youth services and housing providers work together to respond to anti social behaviour. In particular, I was interested to note that a joint working group involving different stakeholders may discuss particular families at a monthly forum. On this issue, Ms Ormerod notes, "we are very well established, and in that forum it's been really clear where there needs to be more than a single agency response, it needs to be a very coordinated ability to address whole family needs and link in and coordinate with other agencies working with the family."

## FIP case study

Despite being firmly committed to the benefits of partnerships, Ms Ormerod also provided an example which serves to highlight some of the potential risks involved in joint working:

### The risks of partnership working (Shelter case study part 1 of 3)

We had a case referred through to an ASB FIP where there was a very strong perception of the family through all the enforcement agencies and the young mum was subject to child protection proceedings, the partner was a prolific offender, she was on an introductory tenancy, so the borough could end that tenancy relatively easily, she herself was also pending a court hearing for assaulting one of the neighbours and a huge catalogue of ASB and offending behaviour tied into that tenancy and a very strong feeling that the borough wanted her to be evicted ...

They [the landlord] served notice on her introductory tenancy and the borough was intent on possession proceedings but they did give her the last chance opportunity to engage with the FIP. Now when this was discussed in the multi agency forums there was lots of cynicism around the agencies really because lots of people had already tried to engage this young woman. She'd had lots of parenting support, she'd had a family support workers, health services, children and social care, all the professionals really saying this young woman isn't prepared to work with us and huge concerns around a partner in particular who was abusive to various agencies and lots of people found the risk was too high to be able to work in the property ...

In this case the partners around the table had tried and failed to assist a family demonstrating problematic behaviours. Hearing this story, I wondered the extent to which partnership working might – at worst – not stop families falling through the gaps but might instead act as an "echo chamber" where adverse or negative feelings about disadvantaged clients are shared by different agencies.

In this example, a wide range of agencies had formed an opinion that a vulnerable tenant could not be assisted. Leaving aside the issue of whether joint working reinforced assumptions about this family, my discussion with the Shelter Inclusion Project demonstrated why these initiatives are able to achieve such great outcomes.

Ms Ormerod described the approach of the project workers to the vulnerable client as follows:

<sup>100</sup> Flint et al, above n 97, 18.

<sup>101</sup> Nixon et al, Evaluation Report, above n 93, 16 citing H Ward et al, Centre for Child and Family Research, *Costs and Consequences of Different Types of Child Care Provisions* (2004).



### FIP case work approach (Shelter case study part 2 of 3)

And the key thing for me, often in these cases, is that our workers, and our philosophy is that despite all those deceptions we will go in and start fresh with somebody. A lot of it comes down to the skills of the workers, actually, the support worker in this case was very very non judgmental, she was very able to talk with someone, engage someone and really make them aware that their side of the story is something we are prepared to hear. What came out was that there had been a huge history of domestic violence in this case from the partner that she hadn't felt able to disclose to other agencies because that relationship hadn't been there and our intervention had meant that she was able to access special support around the domestic violence.

As a result of the intervention, significant changes were made in the life of this client:

### Better outcomes (Shelter case study part 3 of 3)

She got support removing him from the tenancy, seeking an injunction. The authority, to be honest were still not entirely convinced for quite some time, it took us quite a long time to turn that around because there was such a perception of this young woman in a particular way but we got to the point where we were able to negotiate around that and she started a college course in which she was successful, accepted parenting support which meant that the negative parenting was resolved to a large extent, we also mediated in terms of relationships with her wider family which were actually quite negative and also impacting on the tenancy and then she was ultimately offered a move to another area with a secure tenancy so I think that situation was turned around particularly once our worker was able to engage, get the relationship to where she was able to disclose the domestic violence and we could actually demonstrate that she wasn't able to control the behaviour of her partner, and it wasn't a situation.

### Important values

Some of the key concepts or values underpinning the operation of Family Intervention Projects arise from Ms Ormerod's example. Above all, the case points to the importance of a strong relationship between worker and client. In this case – the absence of such a relationship had inhibited the client's ability to explain her circumstances and obtain the support needed. Yet this is not an easy task. Of the client group, Ms Birchall noted, "some people because of all the various coping strategies they've put in place over the years, an awful lot of these people were abused or neglected children who grow up with walls and barriers and mechanisms and coping strategies around them, and build a whole life around that, ducking under statutory agencies. And so by the time they get to 20s and 30s they're very skilled and resourceful individuals, at living on nothing, ducking and diving, slipping under the radar if you like, very good at disengaging with statutory agencies."

The case study provided by Ms Ormerod is helpful because it demonstrates how a relationship arises from the skill and approach of FIP workers who "start fresh;" how trust can be built by people who are able to listen while being "very non judgmental".

An early evaluation of six Family Intervention Projects noted that although there were differences between the projects there were a number of common values that underpinned the successful outcomes achieved by the projects. These values included being listened to, not being judged, accessibility and consistency, honesty and being able to "challenge" clients about behaviours and choices. The evaluation report stated: "[a]lthough there was no overarching theoretical model of working, across the six projects it was apparent that there were a number of underpinning values which informed the success of the interventions"<sup>102</sup>. A more recent evaluation report considers a range of different FIPs and adds to the list created by Nixon et al. This report argues that critical elements of successful intervention projects include:

- independence from other statutory agencies;
- the ability to apply resources effectively;
- multi agency, partnership working;
- the recruitment and retention of high quality staff;

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<sup>102</sup> Nixon et al, Evaluation Report, above n 93, 87-91.

- the allocation of key workers with low case loads to work with families;
- the focus on entire families; and
- long term commitment, persistence and consistency<sup>103</sup>.

The importance of low caseloads and the flexibility to work with clients for longer periods of time was seen by many of the people I spoke with as critical in (1) engaging clients and (2) achieving sustainable changes to behaviour. During discussions with Bolton Family Intervention workers and staff from the Blackburn Council, a number of comments touched on these issues:

- "The caseload is a key thing because the worker would work with between three and four families at any one time ... protected caseloads are absolutely vital, if you haven't got that, what you get is, you have a situation like social services have with social workers running around like headless chickens because they have too many cases."
- "[P]eople generally measure outputs and successes by numbers and so we're trying to move away from that a little bit, we're particularly interested in measuring outcomes ... If we get one child back in school then they're immediately improving their chances of succeeding in exams, there's immediately less chance of getting in trouble with police so we start saving money, less chance of them signing up for benefits so we start saving money ..."
- "[T]he other key thing about the FIPs as well as the low caseload, was the fact that there's no end to them, you don't work with someone for 12 weeks and then if it doesn't work say, "Oh well, we're moving on." You know we've worked with some families in Blackburn for a couple of years because that's how long it takes. So there's no limit to how long you can work with a family whereas with some projects you just get 6 weeks."

### ... being open, being able to talk, listen – the art of social work

When speaking about the ability to communicate with disadvantaged clients, to form relationships of trust and to understand motivations, the need for skilled workers is obvious. On this issue, the Service Manager of the Bolton Family Intervention Project told me:

*What it all comes down to – manager as well as staff – is their individual skills as a person. And it's all about going into the family without judgments, being open, being able to talk, listen, picture where the families are coming from, being able to respond to what the family wants at that point in time but link it into what the problems are and eventually get to the point where you are addressing the real issues. So the staff skills are about being able to get to the point in 3 months where you are actually working with a mother on her parenting, putting boundaries and routines in, without making that person feel that their parenting is rubbish.*

It is argued by academic Sadie Parr that Family Intervention Projects perhaps announce a return to more traditional social work practice. Parr notes that recently social workers have become constricted by "risk analysis" that has contributed to increasing levels of caution amongst the profession together with, "limited and formal client contact, excessive managerialism, regulation and insufficient resources, the transfer of social work tasks to other sectors and the move towards "scientific" and "medical model" approaches characterized by risk assessment"<sup>104</sup>. Ultimately Parr observes that Family Intervention Project workers present a stark contrast with common social work services.

During the course of the Fellowship, I asked a number of people about the ideal qualities for a housing support worker. I was told that workers need to be highly qualified but also need to be able to build a relationship of trust in order to address complex personal circumstances. One of the caseworkers provided a general example of the persistence and skills required to build relationships with marginalised clients:

*one of the most common things is, you've got to get over feeling threatened, so that involves a little bit of persistence. Social services are used to doing a visit and then leaving. Coming back – nobody's in, nobody's in, nobody's in ... then giving up. They are used to police coming in as a one off to deal with minor nuisance and then disappearing off, they are used to housing workers saying "if you don't*

<sup>103</sup> Note the report also refers to the "combination of the threat or actual use of sanctions and enforcement mechanisms with supportive interventions" and this issue is discussed below: Flint et al, above n 97, 21.

<sup>104</sup> Sadie Parr, "Family Intervention Projects: A Site of Social Work Practice" (2009) 39 *British Journal of Social Work* 1256, 1268.

*do that you're going to be evicted" then disappearing off. So a part of it is a technique of being able to say "you really need to speak to me about this, I'll come back, I'll come back tomorrow, I'll come back ... a bit of persistence. A bit of that approach but understanding it's completely voluntary. You don't have to talk to me, you don't have to have me in your house. It's non threatening.*

Out of all the insights offered to this question, perhaps the best answer is contained in Parr's article in which she considers the operation of the "Signpost" project. Parr describes the work undertaken by caseworkers as follows:

*Support Workers require particular types of knowledge and skills in order to make sense of and respond appropriately to emotionally sensitive and complex situations. Furthermore, it was felt that Support Workers, while not necessarily being qualified social workers, nevertheless embrace a value base and associated professional practices that are comparable to those that underpin social work. These might be summarized as consisting of a belief that all individuals should be treated as equal citizens within society, with rights, and are worthy of being treated with dignity, care and respect<sup>105</sup>.*

### "Your call, really, are you going to engage?" – FIPS and enforcement

*In recent years the crime control function has become explicitly part of the role and processes of housing management. Crucially there is an armoury of legislative powers now in the grasp of managers to deal with the real and perceived behaviour of the occupants of their property. Not only can landlords threaten eviction and subsequent exclusion from social housing, they can also threaten to prosecute for criminal offences relating to the locality<sup>106</sup>.*

As we drove towards the Bolton Family Intervention Project, the Community Safety Manager told me that in her view, the options for vulnerable or disadvantaged people had improved as a result of the proliferation of "tools" and options such as Family Intervention Projects: "Quite often eviction was your only option, you had a number of warning letters but actually, ultimately the families were being evicted ... eviction's very rarely used these days." Although Family Intervention Projects are correctly classified as "supportive" initiatives, the expansion of this initiative has seen increasing emphasis placed on "enforcement."

In January 2006 the Government released the Respect Action Plan and announced a national network of FIPs involving 53 projects working initially with about 500 families and growing to work with 1000 families. As part of this national roll out, the Respect Action Plan established that participants in the project would be subjected to a "twin track" of support to change behaviour and enforcement action where appropriate.

### Twin tracks and projects that "grip"

As part of the national expansion of Family Intervention Projects, the Respect Task Force designed a toolkit to assist in the production of projects. On the topic of "How do family intervention projects work?", the toolkit notes that case workers must "grip" families and provides a number of instructive comments that relate to enforcement:

- "If families are allowed to refuse offers of support or even entry to the family home, behaviour will not change and children's life chances will be affected."
- In relation to the "twin track" approach, "it is not a question of offering either support or enforcement in isolation. The proven success of FIPs is based on systematically linking enforcement and support to provide families with the motivation and opportunities to change ... **support is conditional on families accepting responsibility for their own actions, engaging with the FIP and changing their behaviour** [emphasis added] ."
- "A behaviour contract is agreed between the family and the key worker. This should set out both the changes in behaviour that are expected and the support that will be provided to facilitate that change ... To ensure that failure to comply has consequences for families, contracts should identify sanctions that will apply if families do not adhere to the terms ... A sense that personal behaviour – good and bad – has consequences should underpin all FIPs work with families."

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<sup>105</sup> Ibid 1266.

<sup>106</sup> Cowan, Pantazis and Gilroy, "Social Housing as Crime Control: An Examination of the Role of Housing Management in Policing Sex Offenders" (2001) 10 *Social and Legal Studies*, 435.

Support cannot be refused. Support is conditional. A behaviour contract sets expectations and consequences. Without commenting on whether such an approach is either fair or reasonable for what is often a very disadvantaged client group, it may be observed that these objects seem to conflict with values held to be of critical importance to the success of Family Intervention Projects.

### Changes in policy

Judy Nixon has written extensively about anti social behaviour and has also authored detailed evaluations of Family Intervention Projects and is someone well placed to comment on the increasing role of enforcement in Family Intervention Projects.

During our conversation at the University of Sheffield she told me that the subsequent emphasis on enforcement did not reflect the ideology of the initial projects, "the FIP initiative came out at a local level really from resistance by local actors of what had been imposed from the centre which was a very heavy, enforcement led approach ... the key stakeholders who'd set them up were part of organisations who needed to deal with anti social behaviour ...". Further, the initial projects were called "Intensive Family Support Projects" (without reference to "intervention") and she argues that "the main impetus was a recognition that all these punitive enforcement measures like eviction and ASBOs simply displaced the problem and that for individual practitioners at a local level it was a complete waste of their time taking possession because the problem would be displaced."

### Does enforcement have a place?

Understanding the weight given to support and enforcement in Family Intervention Projects can be a challenge. The reason for this difficulty may be explained by an evaluation of FIPs which identified that the projects demonstrated considerable variation in how "twin track" FIP ideology of support and enforcement was understood and implemented<sup>107</sup>. The evaluation identified four groups of practitioners ranging from those who "did not see it as part of their role to pass on information about the family to other agencies, to give evidence against the family; or to initiate enforcement action against the family," to circumstances where "FIP staff were prepared to initiate, or ask others to initiate enforcement action if necessary"<sup>108</sup>.

It may be, therefore, that "whether FIPs represent a criminalization of social policy is perhaps dependent on the organizational settings in which they are enacted"<sup>109</sup>. Either way, it is important to acknowledge there was always a "challenge" aspect to the projects. On this point, Nixon says "[w]hile the interventions involve a coercive element, with the threat of disciplinary consequences if subjects fail to participate, equally they aim to promote social inclusion for families, to assist in providing better outcomes in relation to health, education and well-being and to increase community stability by enabling and supporting families to live peacefully and fully participate in their communities"<sup>110</sup>.

The Family Intervention Project workers I spoke with were clearly aware of the "twin track" ideology underpinning projects but seemed to adopt a less enforcement heavy approach. Ms Birchall from the Shelter Intervention Project in Rochdale referred to "challenging" clients and noted, "what we're trying to do, I think, is support people, teach people in some instances how to manage, how to engage ... I used to say to people, "You know I don't make the laws, I don't make the rules, but what I can do is teach you how to live within them," all that rights and responsibilities stuff around tenancies." In discussing this issue, Ms Birchall notes that the ability to "engage" or follow the rules may have a significant impact for this client group, "What we're really saying is "our endgame is to prevent homelessness, to get you to keep your children and there maybe some hard lessons you need to learn, some big changes you need to make to get there but you will keep your home, you will keep your children, your call really – are you going to engage?""

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<sup>107</sup> White et al, above 96, 124.

<sup>108</sup> Brown, above n 53.

<sup>109</sup> Parr, above n 104, 1269.

<sup>110</sup> Judy Nixon, "Deconstructing 'Problem' Researchers and 'Problem' Families: A Rejoinder to Garrett" (2007) 27 *Critical Social Policy* 546.

## GLASGOW AND EDINBURGH – FOCUSING ON HOMELESSNESS PREVENTION

### Goodbye to priority – The Policy Context

The Scottish response to homelessness is simple: house all homeless applicants by 2012. The means of achieving this goal is equally elegant: remove "priority criteria" from homelessness legislation.

Prior to 2012, local authorities (Councils) had a duty to house "priority" homeless applicants including young people at risk, people who have been discharged from institutions, victims of domestic violence and refugees<sup>111</sup>.

The result of the priority housing policy was that "most single people or couples of working age who did not have evident and serious physical or mental health problems were deemed to be "non-priority" and entitled only to advice and assistance not to access council housing"<sup>112</sup>.

Despite the simplicity of the objects of the Scottish response to homelessness, the immensity of challenge cannot be underestimated. By 2012, the Scottish Government will be expected to house all homeless people.

Furthermore, the ability to provide housing to all those in need is complicated by the process of stock transfer. Stock transfer refers to the process by which housing ownership is transferred from government to Registered Social Landlords, also referred to as RSLs. So while the duty to house homeless applicants rests on the Council, the actual housing is generally held by Registered Social Landlords. Further, Councils seek to place applicants with social housing providers who are under an obligation to give "reasonable preference" to homeless applicants<sup>113</sup>. There is, therefore, a potentially challenging separation between responsibility for the duty to house and social housing itself.

In November 2003 Scotland was recognised for this bold commitment and received an award from the Centre on Housing Rights and Evictions (COHRE) for its contribution to "protecting human rights and safeguarding human dignity".

### The Homelessness Task Force

One of the remarkable things about the Scottish response to homelessness is the way in which the decision was developed and then implemented. As a first step, the Scottish Government appointed a Homelessness Task Force (HTF):

*To review the causes and nature of homelessness in Scotland; to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively*<sup>114</sup>.

A government press release announcing the HTF refers to the broad range of stakeholder organisations involved and quotes Deputy Minister for Communities Jackie Baillie: "Our work will be guided by the real experts – those with direct experience of homelessness"<sup>115</sup>.

The opening of the HTF Final Report makes explicit reference to the importance of housing:

*We take as our starting point the principle that everyone in Scotland should have dry, warm, affordable and secure housing. Not only is this desirable in itself, but good housing is crucial to family life, physical and mental health, child development, employability, and the creation of sustainable communities*<sup>116</sup> ...

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<sup>111</sup> See Code of Guidance on Homelessness (Scotland, 1998).

<sup>112</sup> Isobel Anderson, "Sustainable Solutions to Homelessness: the Scottish Case" (2007) 1 *European Journal of Homelessness* 166.

<sup>113</sup> Section 5(1) of the *Housing Act* 2001 (Scotland) states that a local authority with a duty to house a homeless applicant may request a registered social landlord to provide accommodation for that person. Section 5(3) of that Act states a "registered social landlord must, with a reasonable period, comply with such a request unless it has good reason for not doing so".

<sup>114</sup> Scottish Government, Press Release, "Task force to turn tide of homelessness", 25 August 1999.

<sup>115</sup> Ibid.

<sup>116</sup> "Helping Homeless People: An Action Plan for Prevention and Effective Response", Homelessness Task Force Final Report, 6 March 2002, 1 (**HTF Final Report**)



## Political change

Ultimately the recommendation to house all homeless households was made by a wide range of local authorities, homelessness advocates, housing associations, housing advocates and academics.

Not only did such a diverse group make such a bold recommendation, the Government endorsed and adopted it. It is worth noting the decision to endorse the recommendations of the HTF arose during a time of Scottish political change. In 1999 the UK Parliament program of "devolution" gave rise to a new Scottish Parliament which had control over matters such as housing, education and social work. Despite these new opportunities, the residual control of Westminster remained over significant areas such as the national economy, together with taxation and benefits. The new Scottish Parliament therefore exercised its new found liberty within clear legislative and resource constraints.

Furthermore, in the subsequent years political change has been constant in Scotland. In May 2007 the Scottish National Party took power from the Labour party and initially formed minority government. During my time in Scotland in May 2011 the Scottish National Party consolidated and expanded its hold on government and I spoke about this with the Chair in Housing Studies at the University of Stirling. In reference to both the achievements of the Homelessness Task Force and Scottish political change, Professor Anderson noted: "I think that what the taskforce achieved was extremely significant ... the Scottish National Party government, could have said: "We're changing it, we don't like that law, we're changing it," but they haven't done that."

## The Rise and Rise of Homelessness Prevention

The HTF Final Report did a lot more than simply recommend the removal of "priority need"; it considered a broad range of issues including improvements to housing legislation, housing policy, benefits and homelessness responses.

My discussions in Glasgow and Edinburgh demonstrated how in the years following the release of the HTF Final Report, one aspect of the HTF recommendations has been particularly prominent: homelessness prevention. It is clear that in Scotland the need to prevent homelessness is given dramatically higher emphasis as a result of the increasing pressure on the government to house all homeless applicants.

The HTF Final Report indicates that local Councils should review and potentially improve:

- 1 the arrangements for early identification of those getting into housing difficulties, across the full range of tenures and landlords;
- 2 the advice and support available for those getting into difficulties;
- 3 the advice and support available for those known to be at particular risk of homelessness<sup>117</sup> ...

An evaluation of homelessness prevention activities in Scotland undertaken in 2007 noted that "developing and operating a prevention centred service is widely seen as requiring a distinct break with the traditional reactive and legalistic culture of homelessness work but is consistent with HTF recommendations"<sup>118</sup>. In considering aspects of homelessness prevention, evictions take prominence. The HTF Final Report notes:

*Eviction invariably deepens a household's problems and should always be a last resort. It is often an indication of failure on the part of the landlord as well as the tenant. We recommend that homelessness strategies should provide for specific, concentrated support programmes for those threatened with eviction across all tenures. These programmes should include the provision of access to independent advice and representation<sup>119</sup>.*

In 2009 the increased emphasis on homelessness prevention was marked by the release of the Prevention of Homelessness Guidance by the Scottish Government and the Convention of Scottish Local Authorities (**Homelessness Guidance**). In the introduction, the Homelessness Guidance acknowledges the increased pressure facing Councils, "[i]n many respects the duty to prevent homelessness as 2012 approaches has become more important than ever"<sup>120</sup>. In addition to the political imperative and the personal and social costs

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<sup>117</sup> Ibid 55.

<sup>118</sup> Pawson, Davidson and Netto, above n [ ]

<sup>119</sup> HTF Final Report, above n 116, 57.

<sup>120</sup> Scottish Government and the Convention of Scottish Local Authorities, *Prevention of Homelessness Guidance* (June 2009) 6 (**Homelessness Guidance**)



of homelessness, the Homelessness Guidance also refers to research which demonstrates a typical "homeless case" can cost the Scottish Government between £15,000 to £85,000<sup>121</sup>. Essentially, in Scotland preventing homelessness makes political, humanitarian and economic sense.

The Homelessness Guidance refers to homelessness prevention research and notes that it can be reduced to "crisis response" or "precautionary activity" or can be expanded to a three part definition:

#### Homelessness prevention definition

- Early intervention: where those potentially at risk are identified and services provided to support the person and their environment before incipient problems or disputes escalate beyond repair;
- Pre-crisis intervention: which can take the form of advice services, mediation services, negotiation with landlords to avoid imminent loss of a home and targeted services at known risk points ...; and
- Preventing recurring homelessness: tenancy sustainment is seen as key to preventing recurring homelessness where there are problems that cannot be resolved by re-housing alone<sup>122</sup>.

#### Evictions as the last resort

Evictions for rental arrears are statistically far more likely to result in someone being removed from premises than evictions for adverse behaviour. This is supported by an analysis of eviction statistics from the Scottish Social Housing Regulator which indicates that arrears resulted in 93% of evictions by Registered Social Landlords in 2008–2009 with anti social behaviour accounting for only 6.5%<sup>123</sup>.

#### Arrears legislation: Victoria and Scotland compared

It is interesting to compare the way in which arrears applications work in Scotland and Australia. In Victoria, a landlord may apply to evict a tenant who is 14 days in arrears. In hearing a possession application, the Tribunal may dismiss or adjourn the matter if satisfactory arrangements can be made to avoid financial loss to the landlord<sup>124</sup>. By comparison, in Scotland an application for possession is subject to a "reasonableness test" in all cases, not only arrears matters. Such a test incorporates consideration of the nature, frequency and duration of action by the tenant leading to the application to evict, the degree to which the tenant is responsible for the eviction proceedings (for example, whether their housing benefit has been paid on time), the effect of the tenant's conduct on others and whether the landlord has considered other possible courses of conduct<sup>125</sup>.

**In addition to the regulation surrounding eviction for arrears, Councils and social landlords are also subject to the Homelessness Guidance<sup>126</sup> which states that eviction should be used as a "last resort"<sup>127</sup>. By comparison with the situation of Victorian tenants facing eviction for arrears, the stronger protection of Scottish tenants is evident.**

Despite the arguably stronger protections of Scottish tenants, in December 2008 Shelter released research which suggested that evictions were not in fact being used as a last resort<sup>128</sup>. The research report stated:

*We do not suggest that social landlords are cavalier with their use of legal action, but nor is it conceivable that this level of evictions are all a last resort. If we are serious about prevention of*

<sup>121</sup> Ibid 11: The costs make up money lost as a result of tenancy failure (uncollected rent, vacant housing) and the costs of alternative accommodation, support and other services (housing, health, criminal justice).

<sup>122</sup> Ibid 11.

<sup>123</sup> See Scottish Government, *Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears* (2003) 3 (**Scottish Arrears Report**). I note that during discussions with a number of other stakeholders in England and Scotland, there was general agreement that evictions for arrears may mask situations in which a landlord applies for possession using arrears provisions but is motivated by adverse behaviour.

<sup>124</sup> *Residential Tenancies Act* 1997 (Vic) s 331.

<sup>125</sup> *Housing (Scotland) Act* 2001 (UK) s 16.

<sup>126</sup> Local authorities must have regard to Guidance in accordance with Part II of the *Housing (Scotland) Act* 1987 (UK) and Registered Social Landlords are subject to evaluation on compliance with the Guidance by Communities Scotland in accordance with the *Housing (Scotland) Act* 2001 (UK).

<sup>127</sup> Homelessness Guidance, above, n 120, 12./

<sup>128</sup> Shelter, *Research: Evictions by Social Landlords in Scotland* (December 2008).

*homelessness being crucial to reaching Scotland's landmark 2012 commitment then we will need to be dramatically reducing homelessness resulting from social landlords' own actions*<sup>129</sup>.

In response to such issues the Scottish Government established a Repossessions Group in 2009 to consider options to improve the "consistency and rigour of pre-eviction processes and procedures"<sup>130</sup>. One of the key options under consideration was whether prior to taking eviction proceedings, there should be a pre-action protocol (non-binding on landlords) or requirement (binding on landlords) to take certain steps before proceeding to eviction for arrears<sup>131</sup>.

In the subsequent consultation process 93 responses were made in relation to this issue including the views of 32 local authorities, 27 Registered Social Landlords, 13 Tenant and Resident Groups and eight Information and Advice Services<sup>132</sup>. The consultation process found that 54% of people agreed to a pre-action requirement to protect tenants from eviction. A further 20% of respondents favoured the proposal but considered some conditions should be applied<sup>133</sup>. According to the consultation report:

*Supporters of the pre-action requirement frequently cited the need to ensure that landlords take all necessary steps to avoid evicting a tenant because of rent arrears. Some of the other advantages and benefits of adopting a requirement identified by respondents included acting as a robust safeguard for children, young people and families who are facing problems with their tenancy and carrying weight in court and satisfy Sheriffs that the landlord has taken the necessary steps to prevent the action*<sup>134</sup>.

In response to the consultation process the Scottish Government introduced the Pre-Action Requirement checklist in the *Housing (Scotland) Act 2010* which inserts a new section into the *Housing (Scotland) Act 2001*:

#### **Pre-action requirements for rental arrears**

The landlord must:

- Provide the tenant with clear information about the terms of the tenancy agreement and outstanding rent and other financial obligations relating to the tenancy;
- Make reasonable efforts to provide the tenant with advice and assistance on the tenant's eligibility to receive housing benefits and other types of financial assistance;
- Provide the tenant with information about sources of advice and assistance in relation to debt management;
- Make reasonable efforts to agree with the tenant a reasonable plan for future payments of rent;
- Not serve a notice seeking possession where a housing benefit application has been made and is likely to result in payment allowing the tenant to reduce the arrears;
- Not serve a notice seeking possession where the tenant is taking steps which in the opinion of the landlord are likely to result in payment to the landlord in a reasonable time of outstanding rent; and
- Encourage the tenant to contact the local authority.

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<sup>129</sup> Ibid 3.

<sup>130</sup> Scottish Arrears Report, above n 123, 3.

<sup>131</sup> Ibid 8-9: It is important to note that pre-action protocols/requirements were not the only aspect of the consultation process which included consideration of a Social Housing Charter and sharing good practice.

<sup>132</sup> Scottish Government, *Eviction of Tenants in the Social Rental Sector: Protection of Tenants with Rent Arrears an Analysis of Consultation Responses* (2010), 7.

<sup>133</sup> Scottish Arrears Report, above n 123.

<sup>134</sup> Ibid 1.17.

In 2010, following the recommendation and implementation of pre-action requirements for rental arrears matters, Shelter released another eviction report which demonstrated a startling change: evictions had fallen by 33% and court orders of possession had fallen by 20%<sup>135</sup>. By any measure, this is an outstanding result.

### Reaching tenants at risk of eviction – notifications under section 11

Amongst the numerous aspects of the homelessness response required to tackle and prevent homelessness, the HTF Final Report contained a potentially powerful tool to reduce evictions. This recommendation was expressed in the report as requiring a landlord who is applying for possession of premises to "notify the relevant local authority of the application" as this "would enable the local authority to consider what assistance could be provided to prevent the eviction and avoid homelessness"<sup>136</sup>.

Although this recommendation was made in 2002, it was not made law until April 2009. In effect, section 11 of the *Homelessness etc (Scotland) Act* 2003 requires landlords and creditors to notify the relevant local authority when they raise proceedings for possession.

I spoke Claire Frew from the Glasgow Homelessness Network<sup>137</sup> about the section 11 initiative and she explained that once local authorities receive a notification they send out an information pack to the household and also raise the matter at a "joint work" meeting attended by a variety of different agencies.

In addition to sending out an information pack, local authority coordinators "check health and social work systems to find out if they're [the tenant] on there ... if they're not known to social work or health, they'll try and piece together the information to see if they've got addiction issues or mental health issues and make the relevant referrals. It's not easy."

Ms Frew also identified other potential shortfalls of the section 11 notification process: "there wasn't any follow-up from that and people still didn't actually know how many of them [tenants with section 11 notifications] had been evicted. You know, things like that so we're still at the early stage of implementation and we're still at the early stage of monitoring. So we're collecting numbers but it's not yet telling us what we really need to know, I don't think. I think you should be able to tell quite quickly if that resulted in an eviction. If it resulted in an eviction, did it result in homelessness? Because it's not necessarily the same thing"<sup>138</sup>.

### The S11 Partnership Project

A pilot project operated by the Glasgow Homeless Partnership (**GHP**) may address some of the identified limitations of the section 11 process (**S11 Partnership Project**).

The S11 Partnership Project involves a range of partners providing complementary services including legal advice and advocacy from the Govan Law Centre and money advice to maximise income, repay arrears and manage debt from the Money Advice Centre. The project commenced prior to the implementation of the section 11 provisions and from the start was fundamentally an exercise in "homelessness prevention."

I spoke with the Service Coordinator of the s11 Partnership Project, Alistair Sharp, about the operation of the project. Alistair explained that although he is a lawyer working for the Govan Law Centre, for the purposes of this project he is seconded to the social work department of the local council "[t]hat is the key part, that you're still independent. I'm independent from social work because I'm seconded ...".

As soon as the council receives a notification of possession proceedings, Alistair is able to try and make contact with the client and offer assistance. He explains that in his view, local authorities have a duty, "not just to give advice and assistance and to tell people where to get assistance but to actually find that assistance and make sure people actually get that assistance."

Alistair explains that the project focuses on and dedicates extra resources to clients most at risk of homelessness, "we link in with social work to deal with vulnerable and hard to reach clients and we get a homelessness trigger system. If one of their clients is coming in, they'll be coming in for definite reasons."

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<sup>135</sup> Shelter, *Research Report: Evictions by Social Landlords in Scotland 2009* – 10 (December 2010) 8.

<sup>136</sup> HTF Final Report, above n 116, [61(ii)].

<sup>137</sup> The Glasgow Homelessness Network was originally known as the Glasgow Council for Single Homeless (GCSH) and was established in 1980 to bring together people working in homelessness who understood that "housing and social care are both needed to prevent and alleviate homelessness". See also [www.ghn.org.uk](http://www.ghn.org.uk).

<sup>138</sup> In subsequent discussions Ms Frew mentioned that there have been improvements in monitoring evictions arising out of the section 11 notification process.

There may be addictions, mental health, children and families, disabilities. And the answer to certain questions, financial worries and such things may affect the tenancy ...".

Some of these clients receive – and ignore – a huge amount of correspondence, "we don't operate that way. We would physically go. And what we've got here is the ability to take a solicitor out with us and get instructions from them ..." In addition to outreach in client homes, Alistair explained he conducts at least one home visit per week and the duration of the support can be extensive, "it's not a couple of weeks" worth with somebody. It's probably about a year or 18 months ...".

### The S11 Partnership Project – joint working (again)

The s11 Partnership is not a mere legal response and it recognises the complexity of homelessness and acknowledges the need for a range of services to prevent adverse outcomes.

Joint working is therefore a critical part of the S11 Partnership Project and this approach rests on the notification procedures established by section 11. The project evaluation report explains this process as follows, "[c]o-ordination that was not simply administration but a human being who could focus on the needs of each client; pulling together not just legal, money advice, welfare benefits services, but wider social care and support services for another human being. In short, whatever was needed to resolve the root cause of threatened homelessness"<sup>139</sup>. Clearly the lynchpin of such a project is a person like Mr Sharp, the "coordinator" who "is responsible for chasing up" urgent cases who do not engage, carrying out needs assessments and also coordinating services to provide the client with the relevant and necessary support needed to maintain their tenancy or owner occupied home"<sup>140</sup>.

It might be observed, however, that the involvement of the s11 Partnership Project relies on tenants being "known" to social work<sup>141</sup>. For clients who are "unknown" to the local council system, they may not be flagged as requiring assistance and may receive only the information pack rather than more intensive assistance. In such circumstances there is clearly the opportunity to improve systems to identify and accept "unknown" disadvantaged or vulnerable tenants for support by the project.

### The need for a vulnerability assessment tool

During my discussions with Claire Frew of the Glasgow Homelessness Network the issue of vulnerability assessments was raised repeatedly.

Although homelessness prevention has increasingly become a focus in Scotland as a result of the need to eliminate "priority need", Ms Frew explained that Glasgow statistics suggest that this exercise may not have been entirely successful. At the initial stage when the Homelessness Task Force was making recommendations and mobilising bipartisan support in relation to the issue of homelessness, there were approximately 14,000 homelessness presentations in Glasgow every year, with between 20–25% of those presentations involving "repeat homeless" applications. Ms Frew notes that the Glasgow hostel closure program eliminated a significant element of repeat homeless applications and refers to the view that the hostel system "created support needs that might not have been there before."

According to the Scottish Housing Regulator's review of the Glasgow City Council, at one point homeless applications dropped to approximately 9,000 applications per year however application figures have crept back up to 11,000 per year<sup>142</sup>.

Why is this? According to Ms Frew, "because we have a lot to learn about homelessness prevention. Of course individual cases of homelessness are prevented all the time. We're just not in a place where we do it consistently and strategically." For workers, understanding vulnerability to homelessness is key, however, "I think people weren't recognising the situation in terms of recognising the homelessness risk ...". Ms Frew notes that when she speaks with both consumer groups and other public services and asks about the definition of homelessness, the answer she invariably gets from both groups is "rough sleeping."

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<sup>139</sup> Danny Phillips Associates, *Prevention of Homelessness Partnership Evaluation (Section 11 Homelessness etc. (Scotland) Act 2003 Pilot Project*, Foreword.

<sup>140</sup> Ibid.

<sup>141</sup> Social work is one strand of the early intervention work that the S11 Partnership Project is involved with. Not only do they receive referrals from social work, they have social work welfare rights officers working with them attending joint discussions representing the tenant with social providers. They also work other voluntary agencies and the project is well publicised; a significant number of people self refer.

<sup>142</sup> The Scottish Housing Regulator, *Glasgow City Council Inspection Report* (2009) 20.

## The limits of assessment

Aside from the level of understanding of homelessness, Ms Frew emphasises the issue of triggers and mechanisms by which people at risk are supported before they wind up homeless. Until recently, homeless applicants seeking assistance from the local council would have been subject to inquiries about homelessness, priority need, intentionality rather than any broader support need analysis. An attempt was made to develop a Homelessness Integrated Assessment but according to Ms Frew, "this didn't really work. It didn't work. For a number of reasons. One of which was that the staff who were doing it, they were not social care staff, they didn't feel adequately prepared for going through those processes." Analysis revealed that low percentages of people were receiving an assessment and of those who received an assessment there were subsequent problems with implementation.

Ms Frew notes that a huge amount of time had been spent by various agencies unsuccessfully attempting to develop a Homeless Integrated Assessment for both health and local authority staff, "in some ways what we've tried to do is make the assessment too broad."

## Health and homelessness assessments

Despite the challenges involved in council assessments of personal risk factors for homelessness, there is an assessment framework currently in operation under the Health and Homelessness Standards. Scottish Government guidance on the Health and Homelessness standards refers to the "wide range of health problems which are more prevalent amongst homeless people than the wider population. These include chronic conditions as well as anxiety, stress, self-harm, other mental health problems and infectious diseases. A significant minority of homeless people are dependent on drugs or alcohol often alongside mental health problems and other multiple needs"<sup>143</sup>. Guidance under the standards requires Health Boards to develop a Health and Homelessness Action Plan with partnership agencies and notes:

*The emphasis in this new culture is to move away from a "gate-keeping" role in relation to services, towards one of seeking to meet individuals' needs. It involves proactive involvement from whichever agency the homeless person first approaches to help ensure that all the needs are assessed and addressed as effectively as possible*<sup>144</sup>.

Of this assessment requirement, Claire Frew notes that this was the only requirement to consider individual support needs set out anywhere. Further, she notes it "wasn't a duty on the local authority, it was a duty on Health Boards. Which arguably then sat in the wrong place, because Health Boards aren't seeing everybody who is homeless, only local authorities see everybody who's homeless." This is essentially an issue about where the duty to assess vulnerability should rest. In relation to health and homelessness the duty to assess rests on health boards while the general assessment to assess homelessness rests on the local council. Ultimately all workers should be supported to identify vulnerability.

## The obligation to assess

Despite the challenges involved in assessing the support needs of homeless applicants, there have been further recent developments in relation to this issue. Shelter was a key advocate of the need for a mandated legislative support mechanism, noting there "is a strong financial case for early assessment and support for households. Once households reach crisis point and become homeless the support they will need to find and sustain another tenancy increases as do the financial costs to local authorities"<sup>145</sup>.

As a result of such advocacy the *Housing (Scotland) Act 2010* amended the *Housing (Scotland) Act 1987* to mandate both the assessment and provision of supports to homeless applicants.

The obligations on local authorities are conditional on a local authority having "reason to believe" that the applicant may be in need of prescribed housing support<sup>146</sup>. If there is reason to believe, the local authority must assess whether the applicant or people residing with the applicant have support needs and must conduct inquiries (as may be prescribed) and have regard to any prescribed matters<sup>147</sup>. The Act states that

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<sup>143</sup> Scottish Government, *Health and Homelessness Standard, Health and Homelessness: They Key Issues* (2005) <http://www.scotland.gov.uk/Publications/2005/03/20774/53766> at 19 September 2011.

<sup>144</sup> Ibid.

<sup>145</sup> Shelter, "Briefing – Access to Support to Prevent Homelessness: Proposal for the Housing Bill" (February 2010) 8.

<sup>146</sup> *Housing (Scotland) Act 2010* amended to *Housing (Scotland) Act 1987* s 32B(1)(b).

<sup>147</sup> *Housing (Scotland) Act 2010* amended to *Housing (Scotland) Act 1987* ss32B(2) and (3).



"[f]ollowing such an assessment, the local authority must ensure that prescribed housing support services are provided to any person assessed as being in need of them."

The new legislative obligation now places a duty to assess support needs on the agency most likely to assist homeless households – the local council. Despite this, the obligation to perform an assessment of support needs only arises in circumstances where the local authority has "reason to believe" the applicant may be in need of housing support. In light of the difficulties in implementing existing support assessment initiatives, the capacity of local authority staff to understand when a support assessment is necessary is arguably questionable and it will be interesting to see the development of this requirement in coming years.

### Trauma and Homelessness Team: Assessing Vulnerability in Practice

My conversation about the need to assess vulnerability with Claire Frew from the Glasgow Homelessness Network canvassed a number of issues confronting services who assist vulnerable people. How are vulnerable people identified? What tool is required to assess vulnerability and disadvantage? Who is responsible for the vulnerability assessment?

The answers to some of these issues came to light during my conversation with Dr Laura Barrie, clinical psychologist with the Glasgow Trauma and Homelessness Team (**T&H Team**). The T&H Team includes a consultant clinical psychologist, clinical psychologist, art therapist, mental health practitioner<sup>148</sup>, assistant clinical psychologist and administrative support in order to provide specialist services to homeless people who have experienced trauma. The service offers psychological assessment and treatment for trauma to address the impact of trauma and increase the ability of clients to manage their lives.

#### What is trauma?

In order to understand trauma, it is helpful to understand what trauma is not. According to Dr Barrie, the psychological impact of trauma can encompass more than post traumatic stress disorder (or PTSD). PTSD doesn't account for the way in which people who have experienced type 2 trauma have interpersonal difficulties, issues with trust, issues with self perception, issues with relationships, the dissociation felt by clients<sup>149</sup>. The distinction may be divided into type 1 (PTSD)<sup>150</sup> and type 2 (trauma):

*So type 1 trauma is you're walking down the street and out of nowhere you're mugged, or car cash, isolated incident, it's a shock to the brain, you didn't know it was going to happen ... A type 2 trauma however is not a shock, it's repeated, prolonged, and the person knows it's going to happen but doesn't have the ability or doesn't seem to be able to do anything about it, for example prolonged sexual abuse, physical or emotional abuse, domestic violence, torture, you know that repeated and multiple trauma.*

### "You're just repeating the pattern, aren't you?" Trauma and client engagement

While the T&H Team does provide treatment and assistance on an "outreach" basis, they do not see clients in their own home. The reason for this is that the evidence on treatment of trauma suggests trauma-focused work can only be carried out effectively when the client has established safety in their life (this includes physical, emotional and environmental safety) the "home" needs to be a sanctuary, a place in which people can close the door and be safe.

Is it possible to force these clients to engage? Dr Barrie notes that the T&H Team is unable to address trauma where people are under the influence of drugs or alcohol as this impacts on an adult's ability to engage in reprocessing work (evidence based treatment for trauma). As many clients continue to use substances, clinicians often have to assess if the client is psychologically safe to engage in trauma work. This may require that clients don't use substances on the day before or after a session. As to the issue of forcing people with a history of trauma to engage, Dr Barrie notes:

*A lot of our clients just suffer so much from learned helplessness and low self esteem and you know they believe that nothing is going to work for them because all their life they have tried and it has not worked, so I think it's very complicated. It is a lot about psychological factors that come with it basically and low self esteem it underlies everything. Many people who have experienced abuse,*

<sup>148</sup> A mental health practitioner is someone who holds a nationally recognised professional qualification in health or social work such as an occupational therapist or community psychiatric nurse and has completed further training in at least one evidence based therapy for mental health.

<sup>149</sup> Dr Barrie explains there are three types of PTSD symptoms: 1. Reliving the event (eg flashbacks, intrusive thoughts, nightmares); 2. Avoiding the situations that remind you of the event; 3. Hyperarousal.

<sup>150</sup> According to Dr Barrie a type 1 trauma does not always result in PTSD. Many people can experience a car crash and not go on to meet criteria for PTSD.



*have experienced difficulties with power and control, you know that's the thing I mean in an abusive relationship and therefore forcing people to do things, you're just repeating the pattern, aren't you?*

### **"If someone had been able to access them" – The importance of capacity building**

In addition to this vital work, the T&H Team "provides consultation, training and joint working opportunities to other service providers across the Homelessness Partnership organisations in their work with the homeless people who present with challenging and enduring difficulties relating to complex trauma."

Why is it important to build capacity in this area? According to Dr Barrie:

*Unfortunately what we see in our service is people disclosing for the first time when they're in their fifties. But by that time they have five volumes of mental health notes and they've been in and out of mental health services and they've now experienced more abuse e.g. their own children are now in care, they've experienced domestic violence. And you think, well, imagine if someone had been able to maybe access them, give them treatment for trauma in their twenties and teens.*

How can someone without professional mental health training assist someone with an experience of trauma? What if the client has a meltdown? What if the client has a relapse? These are common concerns raised by workers assisted by the T&H Team. According to Dr Barrie, the solution is to just ask the question sensitively. People may get upset, "because they're talking about something that's really, really painful, but there's no evidence to say that asking someone is actually going to cause severe harm." Indeed, the evidence suggests that *failing* to ask about trauma may actually cause harm as they are unable to access treatment.

What should a worker say to a person who has disclosed trauma? What if a worker says the wrong thing? Again, the training offered by the T&H Team attempts to dispel some of the myths and misconceptions, "taking the pressure off the worker is really what our training is all about," notes Dr Barrie. When someone is disclosing a history of trauma for the first time, workers are assisted to understand that "it's very much about being able to say, this person, for whatever reason, has found something that they want to sit and tell me about and it's about just being with that person at that time. It's not about trying to fix it. It's about listening, reflecting back to them, validating the whole journey, and saying "I'm really glad that you're able to tell me this."" After the disclosure, referral plays a part, "It is also equally important that the worker is aware of community services that specialise in trauma who can offer treatment for trauma following the initial disclosure and make a referral if this is what the client needs at that time."

Clearly, for workers who lack the skills or confidence to address trauma or vulnerability, an organisation such as the T&H Team is a valuable resource.

### **Housing Options – A Way Back Out**

In discussing attempts to develop a Homelessness Integrated Assessment tool, Claire Frew of the GHN noted a key aspect of any homelessness response – relationships between family and friends. Ms Frew notes that "social networks in one way or another are the biggest single factor contributing to homelessness. There was always that argument that has to be in your assessment somewhere because while it's a contributing factor; it is also a way back out."

I spoke to a representative from the Scottish Government about the efforts to prevent homelessness and she echoed the sentiments of Claire Frew about the importance of addressing support needs and the impact of social networks. The representative notes that people "often end up with a homelessness application when actually it's not the housing that's the issue; it's other aspects of that person's life. It's the mental health issue, potentially drugs and alcohol. That said, not everybody who's homeless has got an alcohol issue or mental health issue .... It is also important to consider whether personal relationships can be salvaged. Arbitration and family mediation can potentially come in and address these issues, it's an opportunity ..."

### **The Scottish approach to Housing Options**

The ability to think more broadly about homelessness prevention in Scotland has come to be referred to using an English initiative known as Housing Options. The utility of a Housing Options approach in preventing homelessness was canvassed in the Homelessness Guidance issued by the Scottish Government in 2009. The Homelessness Guidance describes Housing Options as matching possible housing solutions to personal circumstances:

## Housing Options

By utilising a "diagnostic" approach a personal housing plan can be developed and agreed with the applicant, which more clearly lays out how their housing needs can best be met. The most appropriate option may not be housing in the social rented sector but could include options in the private rented sector, home ownership (including low-cost options), adaptations or alterations to their existing home, mutual exchanges or actions to preserve existing living arrangements. Personal housing plans could be developed to suit the applicant household, regardless of their current tenure status<sup>151</sup>.

Such guidance indicates that there is a range of activity within the scope of a Housing Options approach including considerations of private rental, support options and "actions to preserve existing housing." On the issue of Housing Options, the representative from the Scottish Government notes that "what the local authorities stopped doing was challenging that first hurdle as to whether or not somebody was homeless or threatened with homelessness. If someone said I'm homeless, workers would automatically take that homelessness application and process it."

In reference to statistics which point to a high percentage of homeless applicants under 25 years of age who have been asked to leave either the parental/family home or friends' homes, the Scottish Government representative suggests: "it was about considering whether this group is actually homeless. They might have just been in an argument in the family home and asked to leave. Whether or not that should become a complete homelessness application or whether there is another option is something worth looking at. You are not saying that you should stop them making an application if they need to ...".

### Housing Options – An example

It is interesting to note that Housing Options does not only relate to local authorities who have a duty to house homeless applicants, but has extended to Registered Social Landlords such as Glasgow Housing Association (GHA).

During my time in Glasgow I spoke to the Housing Support and Accommodation Manager of GHA, Catherine Wilkie, about Housing Options. Ms Wilkie told me that as part of the homelessness assessment people were often being placed in temporary accommodation regardless of whether this was either required or appropriate.

GHA is currently attempting to understand and map out the process involved in homelessness applications. In order to do this, Ms Wilkie notes GHA are working closely with the local authority, the Glasgow City Council to develop a housing options model. GHA is looking at comprehensive family and young person mediation schemes together with potentially establishing a Real Estate Agency to broker affordable housing solutions together with other forms of tenure like shared equity and shared ownership.

Ms Wilkie anticipates that when someone arrives and says "I'm homeless," one of the first available services will be a financial assessment, "so we know in which route to direct that person. So if that person can afford to buy a house, if that person can afford to rent through the private rented sector, then we will look at these options first rather than sending them down a registered social housing route. We will also look at the reason they've approached us so if it's a young person that says "my mum and dad just kicked me out", rather than treating them as homeless, if it is safe to do so, we might well have you go back to mum and dad tonight and we'll set up an appointment for mediation tomorrow with you and your family to determine if you are truly homeless, we will look at it then. We're also looking at domestic abuse, we're planning to develop a sanctuary scheme. Currently many people present as homeless who are experiencing domestic abuse but who want to stay in the area where they currently reside, they've built up networks, they've maybe got family in the area .... It's about how we can help people to remain in their home when it's safe to do so and they're comfortable to do that with the innovative use of Telecare technology and increased security measures in their home."

### Housing Options – the challenges

I spoke about Housing Options with the Chair in Housing Studies at the University of Stirling. Professor Anderson told me that Housing Options is in theory, "the way to go." In Professor Anderson's view Housing Options is about "getting to the root of the problem. For some people the root of the problem will be there isn't any housing available that they could afford and social rented housing will be an ideal solution for them." Housing affordability is, of course, a central consideration in relation to whether a person actually has any housing options. On this point, Professor Anderson notes "I've stood up at several conferences in Scotland

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<sup>151</sup> Homelessness Guidance, above n 120, 51.

and asked "Are there sufficient houses to let in the privately rented sector, in which somebody can work earning the minimum wage and be able to pay the rent?" and nobody has been able to say yes. I am not convinced that the privately rented sector is sufficiently flexible to provide enough suitable housing for those on low incomes."

Another potential issue is that homelessness applicants may be prevented from making an application (sometimes referred to as "gatekeeping.") The Homelessness Guidance warns however that the use by Councils of an "options" approach must be balanced against the local authority duty towards homelessness applicants, "if the applicant is homeless at the time of interview or threatened with homelessness within 2 months, a homelessness application should also be completed"<sup>152</sup>. The Homelessness Guidance notes also that efforts to prevent homelessness together with advice and information for at risk households should also be provided. Such specific guidance about the relationship between Housing Options and homelessness obligations may in part respond to criticisms of this response in England where tenant advocates have suggested that "under the guise of "housing options" procedures, some local authorities may have been operating an unacceptable "gatekeeping" regime"<sup>153</sup>.

In considering the operation of Housing Options, I could see how fears of gatekeeping might develop but I could also see how such an approach could also potentially be an extremely effective homelessness prevention tool. Housing Options acknowledges the costs of accommodating homelessness households, emphasises the benefits of avoiding homelessness and deploys resources for this purpose. If appropriate guidance and monitoring can prevent "gatekeeping", such an approach can only be a good thing.

### Looking Beyond Housing and Support – Early Intervention

When thinking about vulnerability it can be easy to think that housing and support is all that matters. Yet such thinking ignores key issues that affect homelessness and tenancy sustainability including individual hopes, aspirations, relationships and connectedness.

You can place a person in a house. You can provide intensive supports and outreach. But then what?

Scotland has a number of projects that answer these questions and provide vulnerable people with skills and a sense of community and connection. These projects demonstrate that there is more to homelessness than support needs and housing.

It can be easy to get caught up in "pre crisis interventions" in order to prevent homelessness. But significant work to prevent tenancy failure can, should and is being done in Scotland. Early intervention homeless prevention involves identification of people who are potentially at risk and providing support services before problems or disputes escalate.

### Keys to Learn

It was a privilege to attend the Keys to Learn celebration in Govan, Glasgow and witness the outcome of a skills training course undertaken by people with a history of homelessness.

Keys to Learn is a course for people over 16 who have experienced homelessness, are currently homeless or who are experiencing housing stress. The course is held three days per week over 12 weeks and includes numerous components including tenancy sustainment, cookery, literacy and numeracy, confidence building, photography and – as I was to witness – presentation skills. Participants of the program receive travel expenses, lunch and refreshments, help with childcare if required, a certificate and qualification on graduation, and support to continue with further studies if required.

For the celebration I attended, the Keys to Lean participants had prepared a PowerPoint presentation about an issue that interested them. Each person stood before friends and family and talked through a series of slides they had prepared, complete with photographs and images. A couple of people spoke about their dogs, one older man spoke about his passion for boats, someone else discussed his experience of homelessness from bereavement to addiction and another person delivered his presentation about a professional wrestler, The Undertaker.

It was extremely impressive. The different elements of the program are numerous. Skills. Confidence. Social inclusion. Empowerment.

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<sup>152</sup> Ibid 52.

<sup>153</sup> Pawson, Davidson and Netto, above n 23, 26.

## Fab Pad: the project

Impact Arts "Fab Pad" provides an excellent example of an early intervention initiative that engages service users at the same time as preventing homelessness. Fab Pad works with people who are in the process of taking on a tenancy and engages participants in a program of arts, design and practical skills training and implementation in order to conceptualise, design and build furnishings for their new home. It involves the tenant taking an empty shell and literally building their home. The project involves development of creative skills required to design and build home-ware, the skills necessary to collaborate with others.

I spoke with the Project Manager of the initiative in Glasgow, Allison Sommerville, who explained the target group of the project:

*The criteria is "has experienced homelessness or is at risk of homelessness", and that risk is a really wide category and the reason for that category is to stipulate that we are not really an arts and crafts class we are actually about working with the person to achieve a change in their own home and they must kind of sign up for that if they want to join the program. So when we say risk of homelessness it could be as simple as they are a single parent, they have had a change of economic circumstances from losing their job, they have had a change of health circumstances, mental health, they are a new tenancy, they have never had a tenancy before, it could be their tenth tenancy so they are obviously are having difficulty maintaining a home. So it's a pretty wide criteria.*

I spoke to Ms Sommerville during a workshop in which participants worked on individual aspects of their home design program. One young person was finalising bed coverings while another person worked on designs for a clock. At the table where we spoke, a young man measured and cut fabric for cushions. Ms Sommerville explained that participants work to a "mood board" which they develop with the Fab Pad qualified interior designer, Sharon. The mood board is a series of associations, colours, fabrics, shapes and objects which helps Fab Pad staff understand if you are a "Laura Ashley person or a chrome and steel person."

In addition to the "mood board," Fab Pad project workers also perform a home visit in order to develop an "action plan" setting out the individual elements required to transform the house into a home. Allison notes the idea of a home visit can be an overwhelming idea for some participants, "the usual thing that would apply to my house when people are coming out, so I say to them all the time, you know, "I'd be the same." They are worried about the fact that they have nothing, they are worried about the fact that the house is not clean, they are worried about the fact that ... it's a personal thing. It's kind of risky to have someone in but in some way once you cross that boundary there is an automatic bond." In addition to the home building activities, the Fab Pad opportunities coordinator provides participants with information and opportunities relating to education, volunteering and employment together with assistance to prepare work documentation such as resumes.

### Empty houses and engagement

While speaking with Ms Sommerville I was fortunate to meet Joe (not his real name). Joe's case indicates the very real need to develop initiatives such as Fab Pad in addition to "traditional" tenancy supports and sustainment initiatives which tend to focus on health and social work type responses.

At the time Joe came into contact with the project he was living in one of the few remaining hostels in Glasgow. As Joe sought to transition out of the hostel and into a small flat it became apparent that he had no means to move his small amount of possessions to his new home. And when he arrived at the flat, things deteriorated further, described Ms Sommerville, "there was nothing in it, absolutely nothing. No cooker, nothing. No carpet." Since starting work at Fab Pad approximately four years ago Ms Sommerville notes that "more and more houses I have been to don't have anything. Nothing. And it's just not right. So I was getting angry about this because I started saying to people that they'd be better off in jail because at least in jail they'd get a bed and something to eat."

Moving into vacant shells is not the only problem facing participants of Fab Pad. Ms Sommerville notes that quite often the process of designing and building objects for a home is about modelling different ways of life, "some people haven't had the example of living in what I would consider to be a mainstream home so therefore they don't really know for example what the living room is for. Because most people's families might have slept in the living room. Or they may have never eaten in the kitchen, or the bedroom was just used for storage. So there are all kinds of examples of how to occupy a room and what you need for each room, what you would like to use each room for and for many people they haven't had the opportunity to think about it."

### **Client engagement: Ms Sommerville describes the Fab Pad approach to engagement as follows:**

If someone doesn't turn up, they don't turn up. If they don't turn up the next week ... it depends on who they are; I might text them, I might phone them to see if everything is alright or I might send them a postcard, so we do kind of track people. Some people are good and will let us know that they are not coming and other people will not. It's just their personality. Some people disappear for a long time and they've gone off the rails and then they come back and I mean sometimes years later and they're in another house and they're ready to try again and remember the benefits they got when they engaged with us and for whatever reason, they are overwhelmed by those circumstances that didn't work, but they remember that there was a kernel or something here that they could maybe tap into.

### **"The bulb is a house thing; the lamp shade is a home thing"**

Speaking to Ms Sommerville assisted me to understand the way in which Fab Pad assists participants to plan and build a "home": "there is something about getting the home that you deserve, that you are worth spending on, so you deserve to have nice things in your home and although a lamp shade is not completely functional, it is actually crucial in making a home, and that is the difference isn't it? That is a home thing that is not a house thing. The bulb is a house thing; the lamp shade is a home thing."

In my view Fab Pad is particularly remarkable for the way in which it provides a non-coercive pathway for people to participate in society. It is easy to forget the way in which "home" provides a central site of socialisation and relationship building between friends and family. Further, Ms Sommerville explained how Fab Pad can help participants to demonstrate commitments to parenting and providing a safe and secure environment for children.

It's hard to know what is the most valuable aspect of Fab Pad: the social networks; the confidence and social connection; the attachment to home and resulting tenancy sustainment; or the development of transferable skills. My discussion with Ms Sommerville considered the numerous ways in which Fab Pad can assist people, either to forget about their concerns or difficulties, to develop a sense of pride and ownership in their home and simply to develop relationships.

### **Move On**

In addition to the home making exercise, it is interesting to note that although housing is central to Fab Pad, the project acknowledges the limits of housing to resolve homelessness. Such limits are an implicit aspect of a Scottish charity supporting young people affected by homelessness.

Move On is a project which trains young people to deliver training packages in schools. The project consists of a training program, mentoring from both staff and senior program participants together with program design and delivery. Move On works with two groups of young people including (1) those in care and at risk of homelessness and two young people who between 14–19 years of age who have fallen out of school, are not in education or employment and may "generally lack a bit of direction." Move On HES Manager, Pamela Paton, explained to me the aims of the project "moved closer and closer to an employability focus. The idea that people were going to eventually move on to employment, education, training and kind of using the skills and developing skills to move forward."

The project staff works with young people to become "peer educators" who develop and deliver workshops on topics relevant to them in schools in the Edinburgh area. Workshops cover topics relevant to young people such as budgeting, homelessness services and healthy relationships. Ms Paton describes the workshops as "short and snappy" in order to engage and encourage the participation of young people.

### **Homeless Hopscotch**

We have a game called Homeless Hopscotch. We've got this big massive dice and we have a big floor mat all about types of accommodation so it might be: staying at home with parents, got your own tenancy, been in jail, hostel, BNB. Different floor mats. Each category of homelessness, roll the dice, move around the mat to whatever position the dice lands on. You're given a scenario, so I might get I'm living at home with your parents, and your mum is nagging you to get a job. What do you do? Do you remain at home? Do you move in a tenancy with your friends? Or do you leave home and classify yourself as homeless? The young person then kind of picks what scenario, or the group decides though a vote, say you're in jail and you're up for parole, asked where do you go when you leave? It's all about identifying different routes, stepping up the way or stepping back.



Interestingly, the young people develop the learning workshops as part of their training. Ms Paton explained the involvement of "peer educators" in developing workshops has benefits which go beyond a sense of ownership and engagement with the subject material, "going through the training program and all that is all about how do you speak publicly? What is the message you are trying to convey? How do you convey the message? And we can learn a lot from them, in terms of the language, keep up to date, because they're delivering in the school they are very much involved."

### ***Vulnerable people in schools: the social work interview***

Given the national commitment to homelessness prevention it came as a surprise to me that Move On had difficulty in obtaining permission for young people to work in schools. Ms Paton explains, "in Edinburgh, we thought that schools would want us, with all the information that was going out to their pupils, but they didn't really like the idea of young vulnerable people coming into their class rooms so all our peer educators have to be interviewed by the social work department before they could go into schools." Ultimately, the hard work paid off, "although it took some time and a lot of work, 20 of the 23 high schools in Edinburgh now have Move On workshops as part of their annual time table for final year students."

Preparing "peer educators" enrolled in the Move On program for the social work interview has subsequently become a central element of the program. If a young person wishes to enrol they will need to disclose criminal convictions or adverse aspects of their history that may be relevant to the social work department. For young people with more detailed histories Ms Paton explains "there's a lot of people with skills that they've got through experiences maybe negative or difficult circumstances that they've been through, but then we need to make more effort with them and disclose that in light of legislative changes there is a risk that these young people may not be permitted in school".

Ms Paton explains the support offered by Move On to prepare for a social work interview as follows:

*Part of the history is going to be discussed with the social worker, who will look at how far they have moved on beyond those experiences. So we have to share all the risk factors, and young people are made aware from the very start that this will happen. We support them through that interview, and sit down with them on how they are going to discuss things i.e. Last 18 months they were in a gang, and how they have moved on from those experiences and how it will benefit the work they will be doing. But we discuss with them where they have come since those experiences, and how is that going to impact on the later work they're going to do.*

The benefits of such support clearly extend beyond Move On. The ability to confidently articulate personal circumstances and place them in context would likely be of significant benefit to young people in employment interviews.

### ***Client engagement***

Ms Paton explained that in her view you cannot force someone to engage, you cannot enforce support. In her view engagement is about trust, understanding, empathy and flexibility and the way in which these elements work towards building a relationship with the client:

What we would do is never say to someone that they have to come along and have to meet with us, I think in a lot of ways, the people we work with have past negative experiences of that, and I don't see in the long run could be helpful. People have the opportunity to make choices as to what works best for them. We can support and encourage them to become involved, but we would never say, "if you don't come along to next appointment you're out".

Ms Paton explains that if a young person applies to participate and is particularly vulnerable, "we would prompt them to come in to do some maintenance work and become a mentee for a while, and to come do some work with the project worker and their mentor to get them to a level where they are ready to go into a group and become a peer educator."



## NEW YORK AND WASHINGTON – HOUSING FIRST AND RAPID RE-HOUSING

### Introduction: Preventing homelessness in the US

There is a very real need to prevent homelessness in the United States. To walk around New York City is to witness extensive chronic homelessness. To speak to homelessness advocates is to hear about the steady erosion of the social welfare safety net and the daily struggle to maintain access to affordable housing. To read the paper<sup>154</sup> and watch the steadily ticking "debt clock"<sup>155</sup> is to understand that the economic context is dire.

In such circumstances, the need to prevent homelessness is explicit. Once homeless, there are extremely limited prospects of people in this situation obtaining either public housing or government funded housing subsidy. There is an extreme shortage of affordable housing. There is a decimated and punitive public assistance system. And with six million Americans unemployed and bottom grazing minimum wages, people are simply unable to afford standard rents.

While I was in Washington, the President and CEO of the National Alliance to End Homelessness, Ms Nan Roman, described the state of homelessness in the United States to me as follows:

*We're particularly concerned homelessness is going to really go up, particularly because the Federal stimulus money that has been protecting states and local government budgets from tanking will soon be gone. States and localities here pretty much always have to balance budgets, and with decreased revenues due to the recession, that meant they had to cut spending and thus services. However, the Federal funds had been filling that gap. Now that those are ending, the projected state and local government deficits are around \$112 billion this year and probably projected about \$75 billion for next year and they will likely be addressed by cutting spending ... And now the Federal Government is also talking about addressing its own deficit by cutting its spending on things like housing and health care, without which people become homeless. Therefore you have vulnerable people who are not getting services that might've protected them from becoming homeless. So that should push the trend toward increased homelessness at the same time as we'll have less money to do anything about it.*

My discussions with homelessness advocates and supportive housing experts provided a fascinating insight as to the creativity, resilience and innovative homelessness prevention responses that have arisen as a result of the confluence of dire circumstances currently facing the United States. In general it is possible to say that the desperate emphasis on homelessness prevention in some ways reflects the interest in housing options and prevention in the United Kingdom. But for vulnerable and disadvantaged Americans, the need to avoid homelessness is even more pressing because of the void that awaits low income people without housing ...

### What safety net? Public assistance in New York City

#### ***Slipping through the cracks***

Homeless advocacy groups have also drawn attention to the debilitating effects of the New York City public assistance regime which makes it extremely difficult to (1) obtain benefits and (2) maintain benefits.

While in New York City I spoke with the Director, Denise Miranda, and specialist staff of the Urban Justice Homeless Outreach & Prevention Project (**HOPP**). Ms Miranda told me that she was a native of New York City, "born and raised" and that in recent years she had noticed an increase in disadvantage and exclusion, "now you're starting to see more and more homelessness and the subtleties that were common to life in the 80s and 90s – people begging and pan handling, petty crime is up, purse snatching is up – these are all tell-tale signs of a society and city that's having real economic issues".

HOPP advocates for low and no income New Yorkers and seeks to both ensure access to benefits and to hold government accountable for the provision of government assistance. The HOPP addresses these issues and considers the implications of poverty in its recently completed report "Case Closed: An Examination of Exclusion in New York City's Public Assistance Programs" (**Case Closed Report**). In discussing this report, Ms Miranda explained to me that:

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<sup>154</sup> On 13 September 2011 the *New York Times* reported that another 2.6 million people "slipped into poverty last year, making the total number of Americans living below the poverty line 46.2 million, the highest in 52 years since records have been published, Sabrina Tavernise, Soaring Poverty Casts Spotlight on Lost Decade, *New York Times*, 13 September 2011.

<sup>155</sup> United States Debt Clock <http://www.usdebtclock.org/> at 19 September 2011.

*What we're seeing is that there are lots of people who are on the fringes of poverty who've either lost a job or lost an income in a multiple income household or have had a long term emergency and are now at risk of homelessness. A lot of these folks may fall between the cracks as they do not qualify for public assistance, yet they have no resources, so what are the remedies and options out there? They're extremely limited.*

### Going nowhere, looking busy: work for welfare requirements

The Case Closed Report considers the implications of welfare changes arising from the Temporary Assistance to Needy Families (**TANF**) legislation that imposed a five year limit on receipt of benefits<sup>156</sup>. In addition to benefit time limits, TANF also introduced an increased emphasis on work placement in return for benefits and stipulates that single parents must engage in a minimum of 30 hours per week of approved work activity<sup>157</sup>. It is important to note that certain educational and other skills training activity are considered "secondary work activity" and may only be undertaken after 20 hours of primary work activity has been performed.

Ms Miranda discussed the way in which people with disabilities or substance misuse issues have been classified as able to work and are required to find work assignments. The problem is, there aren't work assignments, there aren't jobs, "so what's happening is that we're warehousing 1000s of people who basically everyday sit at these "job centres" doing nothing." Further Ms Miranda noted that when you have 150–300 people hunched around a single computer Googling jobs there is "a real disconnect between rhetoric and reality. When you map it out as "this person has this opportunity or that one," it looks good. But then when you go in and see what's actually happening there is a huge disconnect."

The Case Closed Report considers the attempts of individuals to obtain public assistance in New York City and evaluates 2,926 "full representation" case files of the HOPP, transcripts of public assistance hearings and short interviews with 52 fair hearing appellants. The Report concludes:

#### Public assistance in NYC

- Public assistance programs in NYC suffer from faulty practices and ineffective procedures, severely affecting the lives of applicants and recipients.
- Confusion and complexity in the NYC public assistance programs have produced barriers that severely limit benefit access.
- The most vulnerable public assistance recipients are those most likely to have their benefits discontinued.
- Acquiring and maintaining public assistance benefits in NYC is virtually a full time job<sup>158</sup>.

### Housing pain in the US

The United States is experiencing housing pain.

In 2009 the Special Rapporteur on adequate housing undertook an official visit to the United States. The Special Rapporteur's considerations included:

- in the past decade there has been a "net loss of approximately 170,000 public housing units due to deterioration and decay" and annual funding for public housing fell by 25% between 1996 and 2006<sup>159</sup>;

<sup>156</sup> Federal Legislation provides that States may provide for extensions in certain circumstances such as domestic violence.

<sup>157</sup> The minimum work requirement increases to 55 hours per week for two parent household.

<sup>158</sup> Urban Justice Homeless Outreach & Prevention Project, *Case Closed: An Examination of Exclusion in New York City's Public Assistance Programs* (May 2011) 1.

<sup>159</sup> Raquel Rolnik, Mission to the United States of America, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/HRC/13/20/Add 4 (12 February 2010) [21] (**Report of the Special Rapporteur**).

- the HOPE IV initiative – created to revitalise disadvantaged communities and reduce the concentration of low income families – has resulted in the loss of affordable units for poor families and has displaced many residents of demolished housing projects<sup>160</sup>;
- there has been a significant loss of affordable housing stock due to "expiring use" where subsidised private rental premises have reverted back to market rates. It is estimated that in addition to the thousands of units already lost, in the next five years an additional 300,000 units will be lost<sup>161</sup>;
- in response to rising numbers of people living on the streets there has been an increase in the criminalisation of homelessness and the prohibition of activities such as sleeping, camping, eating, setting and/or begging in a public space<sup>162</sup>; and
- the legislative amendments<sup>163</sup> by President Clinton in 1996, which required eviction of public housing tenants engaged in criminal activity on or near public housing premises, gave public housing authorities the power to collaborate with the National Crime Information Centre to obtain conviction records for the purpose of screening and eviction of tenants for criminal activity<sup>164</sup>.

### Special Rapporteur comments on the US housing crisis

The Special Rapporteur concluded her report by expressing "deep concern about the millions of people living in the United States today who face serious challenges in accessing affordable and adequate housing, issues long faced by the poorest people and today affecting a greater proportion of society<sup>165</sup>."

In addition to reduced access to public housing, it should be noted that rental housing in general has become less affordable. A recent report from the National Low Income Housing Coalition (**NLIHC**), "Out of Reach 2011" (**Out of Reach Report**), indicates a massive increase in people paying more than half of their incomes for housing<sup>166</sup>. It is worth noting that "affordable rent" is generally considered to be no more than 30% of personal income<sup>167</sup>. The Out of Reach Report notes that the FY11 federal budget included cuts of \$2.13 billion of Department of Housing and Urban Development line items and \$605 million worth of cuts to public housing<sup>168</sup>. Although the federal minimum wage is currently \$7.25 per hour, the report finds that a household must earn a "national housing wage" of at least \$18.46 per hour in order to afford housing under the national average<sup>169</sup>.

### Deconcentration Theory – A Losing Battle

The Special Rapporteur is not the only person to raise concerns with the drastic reductions in affordable housing in the United States which results from disinvestment in public housing and neighbourhood renewal processes. The Right to the City Alliance (**Alliance**) is a collaborative effort by grassroots organisations<sup>170</sup> and has prepared a report, "We Call These Projects Home", which raises specific issues with "deconcentration theory."

Deconcentration theory suggests that public housing is problematic because concentrations of poverty create problems of crime, drug use and violence. The Alliance report claims that such an ideology has led to the situation where, "[r]ather than invest in low-income communities and build opportunity for those that live there,

<sup>160</sup> Ibid [26].

<sup>161</sup> Ibid [34].

<sup>162</sup> Ibid [56].

<sup>163</sup> See, eg *Anti Drug Abuse Act 1988*; *Housing Opportunity Program Extension Act 1996*.

<sup>164</sup> Report of the Special Rapporteur, above n 159, [71].

<sup>165</sup> Ibid [79].

<sup>166</sup> See National Low Income Housing Coalition, *Out of Reach 2011* (June 2011) 1, stating that there are currently 7.1 million households spending more than 50% of their income on rent, a 42% increase from 2001.

<sup>167</sup> See, eg, ibid 2 (footnote 7).

<sup>168</sup> Ibid 3.

<sup>169</sup> Ibid 5.

<sup>170</sup> Including the Advancement Project – an organisation to advance those left behind in America; Community Voices Heard – a member organisation of low income working New Yorkers to improve the lives of families and communities; POWER – an organisation to unite low income residents in Bayview Hunters Point; Urban Justice Centre Community Development Project – a provider of assistance to community organising groups working in low income communities.

the government has prioritized the deconcentration of poverty and the displacement of low income people from their communities through programs such as Hope IV<sup>171</sup>.

It might be observed that deconcentration is not simply about ideas of crime, drug use and violence but is perhaps also a convenient way to re-brand low investment in public housing. This is perhaps also reflected by the change in emphasis from solving housing crisis to homelessness prevention.

### Down and Out in New York City – Homelessness in the US

Much has been said about the magnificence of New York City. The people, the parks, the food, the art and literature, the music, the history ... the life. Enough said. Sadly, New York City is also notable for a very visible presence of homelessness.

From the window of my hotel I could see all too clearly the numerous people who called the adjacent park their home. At night as I walked along Houston Street in Soho amongst the bars and tourists enjoying the glamour of New York City, I was regularly asked for change and often noticed a clutch of men settled for the night on a traffic island. The following morning I noticed many of the same people, I saw the men on the traffic island precariously balanced on office chairs repurposed for sleeping, I was again asked for change. This scene was repeated throughout the city.

It is remarkable that despite the high visibility of people living on the streets, during my discussions with the Corporation for Supportive Housing I learned that chronic homelessness in New York City had actually decreased by approximately 40%. The New York City website indicates that the 2011 Homeless Outreach Population (HOPE) Survey estimates the number of people living in NYC streets, parks and other public spaces. The press release notes that the 2011 survey indicated a 15% drop in street homeless individuals from 2010 and a 40% reduction since 2005<sup>172</sup>.

Although such results are admirable, it is worth noting that the survey took place during a "Code Blue night." Code Blue refers to particularly cold nights where "temperatures drop past a certain threshold, combined with wind chill and/or precipitation"<sup>173</sup>. Further, the Coalition for the Homeless raises a number of other concerns about the count and publishes a countervailing report titled "Undercounting the Homeless"<sup>174</sup>.

Such depressing observations are consistent with a report by the National Law Center on Homelessness and Poverty (NLCHP) which noted that prior to the foreclosure crisis up to 3.5 million people in America experienced homelessness including 1.35 million children and over one million people working full time who were unable to afford housing<sup>175</sup>. The report provides sobering reading:

- in 2010 American cities saw an average 9% increase in family homelessness;
- between 2008 and 2009 there was a 12% increase (to a total of 6 million) in people living in "doubled up" situations with family and friends out of economic necessity; and
- between 2008 and 2009 there was a massive 41% increase (to a total of nearly 1 million) in school children experiencing homelessness<sup>176</sup>.

In 2008 the New York City housing survey noted:

*... the availability of low-rent units in the City was further reduced in the years between 2005 and 2008. In 2008 there was a pervasive shortage of available vacant units for rents of less than \$1,000 in the City. Particularly the shortage of those available for less than \$700 was appallingly acute<sup>177</sup>.*

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<sup>171</sup> Right to the City Alliance, *We Call These Projects Home* (May 2010). 2.

<sup>172</sup> New York City Department of Homelessness Services, *Homeless Service Announce a 15% Decline in Street Homeless from 2010* <http://www.nyc.gov/html/dhs/html/press/pr042811.shtml> at 19 September 2011

<sup>173</sup> Ibid.

<sup>174</sup> See Coalition for the Homeless <http://www.coalitionforthehomeless.org/>.

<sup>175</sup> National Law Centre on Homelessness and Poverty, "Simply Unacceptable": Homelessness and the Human Right to Housing in the United States" (2011) 6

<sup>176</sup> Ibid.

<sup>177</sup> NYC Department of Housing Preservation & Development, "Housing New York City" (2008) 36.

## SRO Units: "affordable housing, permanently, for folks who need it"

Unsurprisingly, I spoke with organisations in New York City that confirmed the dire assessment of affordable housing, and obtained a fascinating insight into the housing struggles underway.

A project heavily engaged in the struggle to maintain housing is the Goddard Law Centre's Single Room Occupancy (SRO) Project (SRO Project). The SRO Project was founded in 1981 to assist low income residents of SRO buildings on Manhattan's West Side through provision of legal services and tenant organising assistance.

Guidance from the Corporation for Supportive Housing states that an SRO unit is a "one-room unit intended for occupancy by a single individual. It is distinct from a studio or efficiency unit, in that a studio is a one-room unit that must contain a kitchen and bathroom. An SRO unit is not required to have either one ..."<sup>178</sup>.

I spoke about SRO accommodation with the Project Director of the SRO Project, Marti Weithman, who explained that there are a number of different types of SRO owners, including hotels, smaller rooming houses and mid to large sized lodging houses, that provide housing of "last resort". According to Ms Weithman, the profile of tenants often include people who "are isolated, there are a lot of folks with mental illness who are living in SROs and elderly low income individuals as well as working poor and middle class people."

What is notable about the privately run SRO buildings, however, is the way in which owners have applied pressure to evict tenants and close these premises before reopening as a more profitable enterprise. It is far more profitable for SRO building owners to rent to tourists rather than tenants. Tourists are prepared to pay between \$100 – \$200 per night. There is pressure also from the homelessness sector because far more people can be more profitably accommodated in a shelter than in an SRO building.

## SRO buildings and the law

It is worth noting that SRO buildings are governed by a statutory scheme which is based on the vulnerability of SRO tenants. Accordingly, a New York City rent guidelines board establishes permissible rent increases and in some years it may be that no increase is permitted.

In addition to rent guidelines, legislation passed in the 1980s regulates the ability of building owners to convert SRO buildings to other uses. If SRO building owners are left with a vacant building they are able to apply to convert the building for non SRO use only where they have not harassed tenants in the past three years. According to Ms Weithman, the city:

*Sends out notifications to the tenants in the building and community groups like ours to inform us that, "this owner has applied for a Certificate of No Harassment, here is the enquiry period." We do our own research, we look at our own notes, we have our own experiences in the building having worked with tenants and we work with the tenants to prepare responses and we provide all this information to HPD and HPD do their own investigation, and if they determine that reasonable cause exists to believe that some harassment has occurred within the past three years, then they will oppose that application.*

## Struggling to retain affordable housing

The SRO Project is engaged in a desperate struggle to retain housing units. Ms Weithman explained that quite often if an SRO tenant is evicted, the underlying housing unit will not be available for rent by another tenant, "it's gone." She estimated that the number of SRO units in the city is approximately 30,000 units and that 100,000s of units have been lost:

*every day ... you have a client who you're fighting like hell for in court and the client's just like, "I don't want to do this any more, I want to move out" ... It's crushing. We have to do what they want to do and they just want a buy-out and we ask, "Where are you going to go?" A lot of people leave the city.*

SRO building owners may make an extremely compelling settlement offer to the remaining tenants. If these tenants move out and sign a "no harassment" clause they may be paid as much as \$150,000. In such circumstances the SRO Project seeks to help tenants make informed decisions about the financial settlement and the housing options in NYC:

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<sup>178</sup> Corporation for Supportive Housing, *Supportive Housing Financing Guide*.



*... because if you get \$50,000, 15% of that is taxes. And if you find a place for \$1,000 a month, that money is not going to last very long and if you're on a fixed income and you get \$787 a month, where are you going to go? And your rent is going to increase each year. If you're in your 50s, that's a really tough proposition.*

### **Rapid Re-Housing: "We have no choice but to focus on the private market"**

The need to prevent and limit homelessness was recognised and emphasised by the allocation of \$1.5 billion of stimulus funding under the Homelessness Prevention and Rapid Re-Housing Program (**HPRP**).

During our conversation, Steve Berg from the National Alliance to End Homelessness (**NAEH**) outlined the operation of a central aspect of the stimulus funded approach to homelessness – rapid re-housing. NAEH is a leading voice on the issue of homelessness in the United States. It has dedicated resources to understanding which US communities are involved in the best homelessness prevention and rapid re-housing practice and to attempting to build the capacity of others in relation to these initiatives<sup>179</sup>.

Simply put, rapid re-housing provides support to get people into private rental premises. Mr Berg explains the reason for the shift in focus to private rental premises as follows, "[w]e have no choice but to focus on the private market because there are just not enough social housing units or public housing units ... So we have to focus on the private market."

Guidance from the National Low Income Housing Coalition indicates that funding under HPRP was provided to city, county and state governments by flexible "block grants" for the purposes of eligible activities which include, "short or medium-term rental assistance; housing relocation and stabilization services; housing search assistance; mediation or outreach to property owners; security or utility assistance; and case management"<sup>180</sup>.

Despite this list of activities, it can be difficult to understand exactly what is meant by the term rapid re-housing. During my conversation with Steve Berg of NAEH, I came to understand that the term is ambiguous because of the flexibility of communities to develop their own responses to "rapid re-housing." Part of Mr Berg's job at NAEH is to identify "best practice" and disseminate this expertise amongst other communities.

### **"Because landlords just don't like dealing with messiness, problems, conflicts"**

A central aspect of rapid re-housing involves the relationship between tenants and private landlords. Mr Berg explains, "the primary response to homelessness for a long time was you provide services to people while they are homeless, but not that you help with the relationship between them and the landlords. So by working with landlords you can help get them out of homelessness and into permanent housing."

In Hennepin County, Minnesota, the County surveyed private landlords to discover why they would not rent to certain tenants. The results of the survey indicated that landlords were concerned about:

- damage to units;
- the cost of evicting tenants for arrears; and
- conflicts with tenants.

In response to this research, the County established a "damage fund" which could be relied upon in the event that premises were damaged and an "eviction fund" for landlords seeking to remove tenants<sup>181</sup>. Steve Berg notes that although an "eviction fund" is clearly a "counterintuitive measure" to resolve homelessness, the initiative is about "allaying the fears of the landlord" and in reality the fund has been used only twice.

Mr Berg notes that the County had the most success with a tenancy caseworker who could stand between the tenant and landlord:

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<sup>179</sup> See also <http://www.endhomelessness.org/section/aboutus>.

<sup>180</sup> See National Low Income Housing Coalition, *2001 Advocates' Guide to Housing & Community Development Policy* (2001) 105 (this Advocates' Guide was prepared by Norm Suchar of NAEH – I was fortunate to speak with Mr Suchar about rapid re-housing and US homelessness prevention initiatives).

<sup>181</sup> See Hennepin County and City of Minneapolis Commission to End Homelessness, *Heading Home Hennepin: The Ten Year Plan to End Homelessness in Minneapolis and Hennepin County* (September 2006) 33.

*if the landlord has a problem with the tenant they can call that caseworker instead of having to work it out with the tenant. The caseworker mediates the problem and most problems that you have with tenants are resolvable but landlords just don't want to have to deal with it and they're not very good at dealing with problems like that so they call in the caseworker and the caseworker fixes problems and everything goes on. So after you do this for a while, landlords realise there's actually kind of a benefit to working with this kind of program.*

Landlords start to appreciate the benefits of support and a steady stream of tenants that also means a steady income flow.

### **"The conventional wisdom has always been, "They'll be back""**

I spoke with NAEH President and CEO, Nan Roman, about people assisted by the rapid re-housing initiatives and she explained that very few people receiving assistance from these initiatives are receiving long-term housing subsidy support. Notwithstanding that these low income individuals are not receiving long-term housing subsidies, Ms Roman explained that supporting people to get back into housing works:

*they're getting this little bit of money and then they're moving back into housing and have no long-term subsidy. The conventional wisdom has always been, "They'll be back, they'll be homeless again because how can they survive? They have no income, they have no welfare, so how are they going to eat or pay six months" rent? The surprise is that they don't come back ... 80% don't come back. They're doing that on their own.*

### **Pathways to Housing (Washington) and Housing First**

Pathways to Housing is the originator of the Housing First model, which focuses on supporting homeless individuals or families to (1) move into housing as soon as possible and (2) connect with supports to prevent the recurrence of homelessness.

Christy Respress, Program Development Director of Pathways to Housing DC, explained the program as follows:

*The way Pathways has done it, when we started we said okay, we'll listen to people and this whole program is based on choice and it's housing first because when you ask people, adults what they want, they want housing first. And all of our housing is scattered site. Individual units integrated into the community because people say over and over again, "I just want to be normal like everybody else".*

A report from the US Department of Housing and Urban Development (**HUD**) summarises some of the key elements of Housing First as follows:

#### **Housing First**

- The direct, or nearly direct, placement of targeted homeless people into permanent housing. Even though the initial housing placement may be transitional in nature, the program commits to ensuring that the client is housed permanently.
- While supportive services are to be offered and made readily available, the program does not require participation in these services to remain in the housing.
- The use of assertive outreach to engage and offer housing to homeless people with mental illness who are reluctant to enter shelters or engage in services. Once in housing, a low demand approach accommodates client alcohol and substance use, so that "relapse" will not result in the client losing housing.
- The continued effort to provide case management and to hold housing for clients, even if they leave their program housing for short periods<sup>182</sup>.

<sup>182</sup> US Department of Housing and Urban Development, Office of Policy Development and Research, *The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness* (July 2007) XV (**HUD Housing First and Mental Illness Report**) (citing Marlatt and Tapert, *Harm Reduction: Reducing the Risks of Addictive Behaviours* (1993)).

## Pathways Support

Pathways to Housing tenant support is provided by housing specific Assertive Community Treatment (**ACT**) teams. Guidance from HUD details that the goals of the ACT teams are:

*to enhance the client's community adjustment, decrease time spent in institutions, and prevent the development of a chronic "patient" role. Key features include small caseloads with low staff-to-client ratios, neighbourhood proximity for client monitoring, and easy access for needed services or assistance with activities of daily living and community integration<sup>183</sup>.*

The Washington DC Pathways ACT team includes a psychiatrist, nurse and a social or addiction specialist. Other than the psychiatrist, one member of the team is on call 24 hours a day, seven days a week. Ms Respress explained, "mostly the clients are just anxious, "Can I come in tomorrow and get my money?" or, "You know, I'm having a bad day," or sometimes, "I'm tempted to use and need to call somebody," but the landlord can also use that number and say, "Something's going on." But usually they call our housing department."

### The Pathways client group

Ms Respress explained that people targeted by Pathways are often the people that "no one else has really been able to work with." She notes that people often say of this group that "they can't make it in housing, or they don't want housing, we hear that a lot – they want to be homeless." These people include those with serious mental illness such as schizophrenia and bi-polar disorder; and people with co-occurring disorders (mental illness and addictions). Indeed, the phrase "co-occurring disorder" has become somewhat limiting as Pathways now assists people with multiple numbers of issues:

*trauma and HIV/AIDS and all those really chronic concerns around heart failure and hyper tension, obesity, all those health factors, diabetes, so you'd add all that onto the addiction and the mental health and this is a group of people who don't fit into a lot of the housing programs ... and you add on that criminal history issues, people who have records of any kind, felonies, misdemeanours, etc.*

Pathways targets this group for assistance and Ms Respress noted the importance of "spending time with people on their terms and on their turf to find out what they want and establish a relationship and trust enough that someone's willing to share this with you."

### ""Why do landlords do the program?' We're asked that all the time""

From an Australian perspective, it is surprising that the quintuplet or high needs client group assisted by Pathways is ultimately housed in private rental premises. Essentially, the Pathways approach is a rapid re-housing method which emphasises positive landlord relationships together with casework and tenancy support for vulnerable tenants. Ms Respress noted that rapid re-housing is "what we've always done."

Ms Respress is regularly asked why private landlords would be interested in renting premises to such a group and – similar to comments of Steve Berg from NAEH – she notes that landlords are running a business and they generally want the same thing, 1% vacancy rates, good tenants and the rent paid on time. Further, landlord relations is a significant aspect of the work of Pathways staff:

*My direction to them is that they should be reaching out to landlords every month or once every other month to say, "How is this going, Joe Landlord, any concerns?" So instead of the landlord calling us to say, "Oh, Mr Smith hasn't paid his rent in three months and I've been meaning to send a letter and I'm going to evict him," we open up that dialogue. Most of our landlords call us because that's how we pitch the program from the beginning, we give them out on call number, 24/7.*

Pathways to Housing and rapid re-housing have created significant interest in Australia<sup>184</sup>. It is worth considering that the private rental environment in the United States often involves landlords who own large buildings and multiple rental units. A general observation would be that this is broadly different from the situation in Australia where it is often individuals who own rental units and potentially are far more intimately involved in tenancy management.

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<sup>183</sup> Ibid XVI.

<sup>184</sup> See, eg, the Street to Home edition of *Parity* (2011) 24(1).

## "I don't want to step on anybody's rights," Pathways to engagement

Obviously housing is at the heart of Housing First. The way in which prospective tenants access housing is different from homelessness responses which require people to demonstrate "housing readiness." Housing readiness is associated with the transitional approach to housing which "involves an initial crisis response, followed by a time-limited accommodation and support response and finally, the possibility of access to long-term housing, often contingent on the client's acceptance of case management, abstinence from drugs or other conditions"<sup>185</sup>.

By contrast, Housing First explicitly rejects housing conditionality and seeks to swiftly house homeless people on a permanent basis while assertively *offering* supports.

Can you force support? According to Ms Respress, it is important to consider individual dignity and the right to fail:

*It's not enough just to allow people's mistakes, you have to give them some dignity to not say, "I told you so," and make them feel bad. How do you help people learn from what they did and reflect, that's our job. Our job is reflection".*

As outlined above, the Pathways to Housing and Housing First approaches place no conditions on housing and are underpinned by a belief that housing is a right that should be available to all. Accordingly, Housing First tenants are not expected to be drug and alcohol free. This approach is a "low demand" model which operates as follows:

### The low demand approach

The [low demand] approach addresses the harms caused by risk-taking behaviour without forcing clients to eliminate the behaviour altogether ... For example, abstinence is a form of [low demand] for those who want to quit using drugs, but for those who are not ready, case managers must start with interventions that can help a substance user improve his or her life. Interventions might include reminding the client to eat, drink water, sleep, pay rent and other bills before spending money on drugs, and to educate users about the negative effects of drugs and encourage them to use less frequently, if not quit using entirely<sup>186</sup>.

## "Well isn't it ironic," Housing versus rights

Despite this emphasis on autonomy and dignity, Ms Respress explained to me that Pathways to Housing is the representative payee controlling the finances of many tenants.

It's a complicated issue. As Ms Respress explains, "... we hear people bring this up, they say "Well isn't it ironic that you're talking out both sides of your mouth, it's all about choice but then people come in the door and you become their representative payee," and I say, "Yes, it is, but I don't want someone to become homeless again because they have an active crack addiction and they're not paying their \$64 a month", the addiction is going to take precedent."

### Mary's case

Mary<sup>187</sup> was so addicted to crack she would sell whatever you gave her including of course all the furniture in the apartment including the food we would buy her ... she was really skinny, so sick ... so we would take the food and open it up and put it into individual portions. And if we didn't do that for her she would sell it – and yes, she would find a way to survive, she would eat out of a trashcan or she would eat somewhere, you know or sell herself ... it's that extreme.

Appointing a representative payee is about keeping people housed, above all else. Further, this emphasis on the importance of housing is not necessarily inconsistent with the way in which Housing First emphasises choice and individual autonomy.

<sup>185</sup> Dr Jane Bullen, "Where Does Street to Home Fit Within Past and Present Homelessness and Housing Policy Settings?" (2011) 24 *Parity* 9.

<sup>186</sup> HUD Housing First and Mental Illness Report, above n 182, v (citing Marlatt and Tapert), *Harm Reduction: Reducing the Risks of Addictive Behaviours* (1993)).

<sup>187</sup> Not her real name

Despite this, taking control of a person's finances is still a significant incursion into individual autonomy. In a recent decision of the Victorian Supreme Court, Justice Bell referred to our analogous system of "administration orders" and explained that:

*... appointing an administrator, particularly with unlimited powers, is a very serious step because it transfers complete and exclusive control of a person's estate to the administrator. Such a step engages the human rights, and the fundamental common law rights and freedoms, of persons*<sup>188</sup>.

In addition to the human rights implications of acting as representative payee, the position itself is a heavy organisational burden. It is a burden that is particularly apparent to Ms Respress, whose role as the Program and Development Director of Pathways to Housing DC means she is the first point of call for disgruntled clients, who often sit outside her office and voice complaints about their lack of funds.

### Housing Help Program – South Bronx

Although there has been increasing focus on partnerships with private landlords in order to create opportunities for vulnerable and disadvantaged tenants, some initiatives continue to focus on homelessness prevention through provision of services to people at risk of eviction.

For example, the South Bronx Housing Help Program (**HHP**) provides short term legal assistance regardless of legal merit (prospects of success), together with support services, in order to avoid eviction and homelessness. These services are provided by a multi disciplinary team which includes a supervisor/manager, social workers, lawyers, together with casework and administrative paralegals who prepare cases. Ultimately all tenants assisted by HHP come before a specially constituted "Housing Part" where the court and judge are always the same.

### Improving outcomes in challenging circumstances

The South Bronx is an area with high levels of disadvantage. Research indicates that in the Bronx:

- housing costs are a burden for almost 80% of residents;
- educational attainment is much lower than in the rest of New York City;
- in 2010 roughly one third of residents did not have enough money to buy food and yet the area is also associated with the highest rates of obesity in NYC;
- there are high rates of children placed in foster care and incidence of neglected and/or abused children; and
- black and Hispanic residents of the South Bronx exhibit high rates of severe poverty and are at risk of homelessness<sup>189</sup>.

In such an environment it is remarkable that an evaluation of HHP cases between January 2005 and November 2008 indicates that the program has prevented loss of housing for 91% of clients and eviction for 86% of clients<sup>190</sup>.

### Limitation of statistics

It should be noted that these excellent results – while outstanding – were only achieved for clients who attended court. The HHP Evaluation Report notes that during the period of evaluation a significant portion of tenants did not respond to petitions<sup>191</sup>. The Report comments that "failure to respond at Housing Court may be a sign of psychosocial issues, misunderstanding of the court process, illiteracy, or a general incapacity to comply with the rental laws and the legal process"<sup>192</sup>. Of this group the evaluation rejects the option of outreach to "defaulted" households on the basis that it is both "too inefficient and labor-intensive to incorporate"<sup>193</sup>.

<sup>188</sup> *PJB v Melbourne Health (Patrick's case)* [2011] VSC 327..

<sup>189</sup> Institute for Children, Poverty & Homelessness, *On the Brink: Homelessness a Reality in the South Bronx* (July 2011).

<sup>190</sup> Seedco, *Housing Help Program: Homelessness Prevention Pilot Final Report* (July 2010) 2 (**HHP Evaluation Report**).

<sup>191</sup> Ibid 28: of a total of 17,688 petitions, 8,549 petitions were answered and 9,139 defaulted (ie were not answered).

<sup>192</sup> Ibid.



## Efficient use of resources

HHP uses paralegals to provide different levels of service, depending on the circumstances. Where "full representation"<sup>194</sup> is not deemed appropriate, partial representation or "brief legal services" may be provided by a paralegal under supervision in order to assist a tenant to self represent. Although "brief legal services" sounds somewhat limited, there is a significant range of activity that can be performed under this category including negotiation with the landlord, mediation, preparation of documentation and support to self represented litigants<sup>195</sup>.

A central aspect of HHP is the mix of legal and non-legal services to disadvantaged people. I spoke with the supervisor of the program, Lauren Donnelly, who described the way in which a legal intake process can have social work implications, explaining that the social worker makes contact with all intakes:

*to see if they need any social service referrals. She'll also sit in on a lot of the intakes and try to test vulnerability and for a lot of things. And sometimes a lot of the things we're looking for the clients will self-identify, eg as substance abusers. We have some clients who are suspected substance abusers but who don't self identify.*

### "... because obviously you're coming from a different perspective": social work and law

The HHP Evaluation Report notes that tenants who receive "brief legal services" on average receive approximately 2.6 hours of social work assistance while those with full legal representation on average receive 5.1 hours of assistance<sup>196</sup>. I spoke with a program social worker who explained the relationship between lawyers and social workers as follows:

*Initially it took a lot of work, for us to really understand each other's role in complete detail, because obviously you're coming from a little bit of a different perspective, but the goal of the program, at the end of the day, was to find out about a person's court case, and then find out about the factors that led to the court case ... the goal was how can we stabilise them for not only the current case, but for future housing?*

The collaboration of social workers and lawyers has led to a holistic response which not only achieves better results for clients but involves an exchange of skills between lawyers and social workers. During my conversation with the social worker we discussed a practical example of the benefits of this joint working:

*Ideally a lawyer and a social worker conduct the intake together because there are a lot of overlapping question obviously, and then after the lawyer's finished with their part, then the social worker can continue and get a little bit more in depth. One case where I feel like it was really complementary and it worked out really wonderfully was where I was working with a client who had a domestic violence issue. If that intake hadn't been conducted with both the social worker and the lawyer it would have gone a different way, the lawyer was just talking about the housing and subsidy program ... but once I started to delve really deeply into the domestic violence issue, we realised that this client actually had to move immediately.*

Although the HHP social work team has developed a social work questionnaire of issues that need to be raised with clients, my discussions with HHP staff indicated it was the presence of a social worker on staff that influenced the ability of lawyers to engage in non-legal support discussions:

*I think that if they just asked that [support] question, and then had to refer the client out somewhere else in the community, I think it would be a lot harder. Knowing that there's internal support, someone within our staff, that is going to be able to follow up with that client probably makes the lawyers more comfortable to actually go ahead, because they know the person they're referring them to, and they trust them, and they feel good about that.*

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<sup>193</sup> Ibid 29.

<sup>194</sup> "Full representation" is where a HHP lawyer represents a tenant in court.

<sup>195</sup> HHP Evaluation Report, above n 190, 20.

<sup>196</sup> Ibid 24.

## TORONTO – RESPONDING TO DISADVANTAGE AND VULNERABILITY

### Toronto Homeless Memorial<sup>197</sup>

I was invited to the Toronto Homeless Memorial by prominent Canadian homelessness advocate, Cathy Crowe. Ms Crowe has worked as a "street nurse" for years and in 1998 she co-founded the Toronto Disaster Relief Committee (TDRC)<sup>198</sup>. The TDRC is not a response to flood or fire or natural disasters – it is about the disaster of homelessness.

Declaring "national disaster" is a bold demand for attention to the humanitarian crisis of homelessness. An equally bold gesture is the Toronto Homeless Memorial, held on the second Tuesday of each month.

I met Ms Crowe outside the Church of the Holy Trinity, a small church that lingers in the shadow of a large shopping centre in central Toronto. Workers on lunch break and shoppers walked past and from time to time looked at our sombre group with interest.

Someone handed me a candle, the Memorial began. It was early June and the sun was bright overhead as we bowed our heads to remember those who had died as a result of homelessness in Toronto. As we stood with our candles, friends, family and workers came forward with an anecdote about the recently deceased; a poem was read; music was played and we were silent for a minute.

While the direct cause of death for the people commemorated by the Memorial may involve a range of issues including violence, substance misuse, ill health; the group also demonstrates a common underlying experience of homelessness, poverty and disadvantage. It is not easy to identify people who have died in such circumstances. This task relies on the diligence of workers, agencies, advocates, family and friends and I was told by Ms Crowe that compiling this list is made all the more difficult by the fact that the Coroner does not look at "housing status" when investigating the causes of death.

In hearing friends, family and service workers talk about people who have died – often after lifetimes of hardship – the face and tragedy of homelessness is absolutely apparent. Too often it seems that people accept the relationship between ill health, homelessness and death. The Memorial puts a face to these people and repeatedly acknowledges – month in month out – that these people are more than merely statistics.

### Homelessness – Canada and Ontario on Trial

Toronto housing and homelessness advocates are not only commemorating and remembering the victims of homelessness, they are also taking action.

On 26 May 2010 an application was lodged in the Ontario Superior Court of Justice that draws attention to the human rights implications of homelessness in Ontario (and Canada generally). The application largely centres on the right under section 7 of the *Canadian Charter of Rights and Freedoms*<sup>199</sup> (**Canadian Charter**) that provides: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The application seeks declarations that:

- Canada and Ontario have created conditions that have led to, support and sustain conditions of homelessness and inadequate housing;
- Canada and Ontario have obligations to implement effective national and provincial strategies to reduce and eliminate homelessness; and
- the failures of Canada and Ontario to develop and implement effective strategies to reduce and eliminate homelessness violates the applicants' rights under section 7 of the Canadian Charter.

Ultimately, the application seeks an order that Canada and Ontario implement effective national and provincial strategies to reduce and eliminate homelessness. Furthermore, the application seeks that these strategies:

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<sup>197</sup> See Toronto Homeless Memorial <http://www.holytrinitytoronco.org/wp/justice-work/homeless-memorial/> at 19 September 2011.

<sup>198</sup> See Toronto Disaster Relief Committee <<http://www.tdrc.net/>> at 19 September 2011.

<sup>199</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act* 1982, being Schedule B to the *Canada Act* 1982 (UK) c 11.

- are developed and implemented in consultation with "affected groups"; and
- must include timetables, reporting and monitoring regimes, outcome measurements and complaints mechanisms.

This piece of strategic litigation is a bold demand for the government to pay attention to homelessness.

The application filed with the Ontario Superior Court of Justice outlines the circumstances of the applicants and in doing so highlights critical elements of housing crisis, policy failure and the inadequacy of existing social supports in Canada:

#### Jennifer Tanudjaja

"Jennifer Tanudjaja is a nineteen year old college student of Asian descent who is a single mother with two sons, aged one and three. She is in receipt of social assistance. Despite extensive efforts to find affordable housing in the private rental market, she has been unable to secure housing within the shelter allowance provided by social assistance. The rent for her two bedroom apartment is almost double the amount she receives as a shelter allowance. In fact, her rent is more than the entire monthly allowance she receives from social assistance. She has been on a waiting list for subsidized housing for over two years. She lives in fear of becoming homeless"<sup>200</sup>.

#### Janice Arsenault

"Janice Arsenault and her two young sons became homeless after her spouse died suddenly. After trying – and failing – to find affordable, adequate housing Ms Arsenault had no option but to place her sons in her parents' care. Ms Arsenault continued to struggle for many years with homelessness: living in shelters, in rooming houses, and on the street. Only in the last year has she been able to retain housing in a shared apartment. Ms Arsenault is in receipt of income support benefits through Ontario Works. Her modest rent consumes fully 64% of her monthly income making her housing situation precarious. She lives in fear of finding herself homeless, again"<sup>201</sup>.

#### "[T]he passing of former tenant Al Gosling changed everything" – Toronto Community Housing

One of the names on the Toronto Homeless Memorial Official List is Al Gosling<sup>202</sup>. The death of Al Gosling after his eviction for rental arrears not only reflects the human toll of homelessness, but also to some extent the failure of social housing to prevent homelessness.

Indeed, the opening lines of the 2009 Annual Review of Toronto Community Housing (TCH) explained that this one tenant had become the focus of the largest social housing provider in Canada: "the passing of former tenant Mr Al Gosling in October changed everything"<sup>203</sup>.

It was the death of Al Gosling that prompted Justice Patrick LeSage's Review of the TCH "Eviction Prevention Policy", that led to the May 2010: Report on the Eviction of Al Gosling and the Eviction Prevention Policy of Toronto Community Housing Corporation (**LeSage Report**)<sup>204</sup>. As with the Housing Help Program in the South Bronx, the S11 Partnership Project in Govan, Glasgow, and other initiatives, I saw how the need to prevent eviction and thereby homelessness was motivating responses in Toronto. Although an analogy may be drawn between the work being done in Scotland and in New York, there are also significant differences.

<sup>200</sup> Paragraph 1 of the application filed with the Ontario Superior Court of Justice.

<sup>201</sup> Ibid, paragraph 3.

<sup>202</sup> See Homeless Memorial Official List (31 January 2011).

<sup>203</sup> Toronto Community Housing, *2009 Annual Review* (2009) 1.

<sup>204</sup> The Honourable Patrick LeSage, Report on the Eviction of Al Gosling & the Eviction Prevention Policy of Toronto Community Housing Corporation (May 2010) (**LeSage Report**).

## TCH – social housing under siege

The struggle to respond to the death of Al Gosling forms part of a range of challenges facing Toronto Community Housing, not least of which is the increasing vulnerability and disadvantage experienced by its tenants. TCH houses over 164,000 tenants and faces some key challenges, including:

- management of 58,000 housing units, of which 2,000 are vacant and in disrepair due to insufficient funds<sup>205</sup>;
- management of the 77,000 households on the waiting list for social housing<sup>206</sup>;
- management of tenants with mental health issues<sup>207</sup>;
- management of crime and adverse behaviour on public housing estates<sup>208</sup>;
- the proposal by Toronto City Mayor to privatise 900 of the social housing "free standing" stock<sup>209</sup>; and
- restructuring management following the "scandal" in which \$200,000 of TCH money was found to have been misspent, leading to the dismissal of the TCH board and the resignation of the CEO<sup>210</sup>.

Although the Director of Housing in Victoria is not a supportive housing provider (and has not been mired in such controversy), the struggle in Toronto to prevent evictions of an increasingly complex tenant group in the face of an acute shortage of social housing, is relevant in the Victorian context.

### "The untimely death of Al Gosling" – the facts

Who was Al Gosling? How did he die? The LeSage Report into this death and the issues for Toronto Community Housing states:

#### Al Gosling

"Al Gosling was born in June 1927. At age 60, he became a tenant of [TCH]. He lived in a bachelor apartment at Arleta Manor from 1988 until his eviction 21 years later on May 28, 2009, one month before his 82nd birthday. It appears he may have lived in a stairwell at Arleta Manor for some short period between his eviction and being transported by paramedics on June 6, 2009 from Arleta Manor to Humber River Hospital. After Mr Gosling was released from the hospital, he resided at various times at the Good Shepherd Centre shelter. In September 2009, after apparently living in shelters for several months, Mr Gosling developed an infection. He was transferred to the Sherbourne Health Centre. [TCH] staff visited him there to arrange for his return to his bachelor apartment at Arleta Manor. Unfortunately, before he could return, Mr Gosling's health deteriorated, resulting in his transfer to Toronto General Hospital, where he died on October 11, 2009"<sup>211</sup>.

### How would Al Gosling be treated in Victoria, Australia?

It is interesting to reflect that the PILCH Homeless Persons' Legal Clinic in Victoria, Australia recently assisted a woman and her three young children to avoid eviction from public housing for rental arrears.

The explanations of the understandable reason for arrears were ignored by housing workers, who seemed committed to eviction. Similar to Al Gosling, this client had also lived in public housing for an extremely long time. She was not elderly, but experienced other indicators of vulnerability – she was a victim of domestic

<sup>205</sup> Sue-Ann Levi, Toronto Community Housing must stop the hoarding, Toronto Sun, 9 June 2011 <http://www.torontosun.com/2011/06/09/toronto-community-housing-must-stop-the-hoarding> > at 7 August 2011.

<sup>206</sup> Ibid.

<sup>207</sup> A 2009 TCH report notes that 7% of tenants have a mental health issue serious enough to make them eligible for housing: Joy Connelly and Adair Reports, Toronto Community Housing, *Toronto Community Housing's Mental Health Framework* (5 November 2009) (**Mental Health Framework**).

<sup>208</sup> Stephen Spencer Davis and Timothy Appleby, "Residents of Toronto :Public Housing Four Times More Likely to be Murder Victims, *Globe and Mail*, 3 June 2011.

<sup>209</sup> Daniel Dale, "Ford: Sell 928 TCHC Homes", *Toronto Star*, 9 June 2011.

<sup>210</sup> "TCHC Scandal Brings Down Former CEO", *CTV News*, 11 March 2011.

<sup>211</sup> LeSage Report, above n 204, 1.

violence, she was poor, she was from a non-English speaking background and she was a single mother of three young children. Despite the fact that she could explain the reasons for her arrears (which were undeniably tragic), she was able to pay a significant lump sum and could commit to regular payments to address the arrears, the Director of Housing rejected these arrangements and applied to have this client evicted.

The Tribunal ruled that the tenant should remain in the property, finding that her offers of repayment were reasonable and stating that the landlord should not have applied for possession in this case. According to the client's social supports, to have proceeded with eviction would definitely have made a woman and her young children homeless (and potentially exposed government to a range of social, health and justice costs).

### An extra 300 staff ...

In 2009, Toronto Community Housing released a Mental Health Framework (**Framework**) in response to recommendations from staff and tenants. The Framework addressed concerns about tenants who were unable to meet tenancy obligations because of mental illness or addiction and noted that 8,900 TCH tenants have a mental illness serious enough to entitle them to supportive housing<sup>212</sup>.

TCH faces significant challenges in dealing with this group:

#### The tension

"...Toronto Community Housing does not have – and can never have individualized supports for tenants who want and need it ... Supportive housing providers ... typically have one support staff person with a social work degree – for every 20 to 30 tenants. To achieve similar staff: tenant ratios, Toronto Community Housing would require 300 additional staff for the estimated 8,900 tenants with mental illness at a cost of approximately \$18 million per year. There is no realistic prospect that Toronto Community Housing could raise funding for this staff ... Nor does Toronto Community Housing have the partnerships with support agencies needed to support all tenants who need and want support ..."<sup>213</sup>

The LeSage Report refers to the Framework in considering the mandate of TCH to "provide quality housing for low and moderate income households and to create community conditions that minimize risk and promote stability." It asks the question – is TCH simply a commercial landlord or is it something more?

*The answer to both questions is "no". The written mandate of [TCH] speaks of "minimizing the risk and promoting resiliency," so it is not just a commercial landlord. However the current staffing and funding model under which [TCH] operates precludes it from providing services that are in the nature of social work or even supportive counselling<sup>214</sup>.*

### TCH and tenants with mental health issues: a towering inferno

There are other issues raised by people with mental health issues living without support in public housing.

In particular, when I spoke to Howard Akler from Toronto's Centre for Equality Rights in Accommodation (**CERA**), we discussed the issue of "compulsive hoarding" which refers to the process by which people steadily acquire large amounts of possessions that may be without value or dangerous. For compulsive hoarders, possessions may cause a range of problems with daily living including sleeping, cleaning, hygiene, movement and may pose a fire risk to other nearby residents.

Mr Akler explained that compulsive hoarding can pose difficulties for housing workers because of the secretive nature of the disorder:

*The simple fact is, not all these problems are being identified, let alone addressed. For hoarders, I can talk about that because I've been dealing quite intensively with this, hoarders don't want anyone to know about their business, they don't want people to come into their apartment, they don't want anyone to know there's a problem, they're guilty or ashamed, whatever it is, the difficulties they have*

<sup>212</sup> Mental Health Framework, above n 207, 4.

<sup>213</sup> Ibid 5. The Framework notes that, despite the high level of unsupported vulnerability, the eviction statistics are surprisingly low: "[i]n 2008 the TCH eviction rate for cause (non-arrears) was 0.13%. In 2007 it was 0.14%.

<sup>214</sup> LeSage Report, above n 204, 6.



*in their day to day lives have led them to this state and they don't want anyone to know. So they're not going to ask for help.*

Tenants who are ashamed, secretive and potentially unwell pose clear problems for landlords. These risks were realised on 24 September 2010 when the 24th floor of a TCH building caught fire at 200 Wellesley Street East and approximately 1200 public housing residents were evacuated. It took fire fighters about eight hours and 100 men to control the blaze that fire officials said had emanated from the premises of Stephen Vassilev. It was said that Vassilev was a hoarder who had "amassed staggering mountains of paper, computer monitors, and who knows what else – so much of it that he could barely open his front door"<sup>215</sup>.

### **"I suppose the challenge becomes: "What's the minimum?"" – Support in social housing**

For Mr Akler from CERA – as for many of the social workers and experts in supporting vulnerable and disadvantaged tenants – the way to achieve tenancy sustainability is to take time to build a relationship with tenants in order to develop the ability to communicate.

Time is something TCH does not have. The LeSage Report notes the pressures experienced by housing workers, known as Tenant Services Coordinators (or TSCs), in TCH. TSCs are responsible for completing rent calculations and managing tenant files. Of this role, Justice LeSage notes:

*One of the primary concerns expressed about TSCs is that they are overworked and their job responsibilities are too all encompassing, considering the number of tenants for whom they are responsible. A TSC may be responsible for more than a thousand tenants. There is confusion over precisely what responsibilities fall within the scope of a TSC<sup>216</sup>.*

Justice LeSage notes that housing workers also have to juggle potentially conflicting responsibilities such as the need to prevent evictions but also to reduce arrears.

Furthermore, the challenge facing TCH is not simply about people with mental illness or substance misuse issues. As Justice LeSage writes in his report, vulnerability is an "elastic concept" that should "clearly include those such as seniors and those with physical disabilities, mental health difficulties and disabling emotional problems. However there are a host of other risk factors, some of which can cause a person not otherwise considered vulnerable to quickly become vulnerable"<sup>217</sup>.

The challenge facing TCH and other large social housing providers was captured during my discussion with Katherine Chislett, Director of the City of Toronto Housing and Homelessness Supports and Initiatives. On this issue, Ms Chislett commented, "I suppose the challenge becomes what is the minimum? Or what kind of services can you offer people in social housing to try, as much as possible, to avoid bad outcomes? You're not going to get full supportive housing but what can you do?" It was interesting to me that this comment reflected comments made during my meeting with staff from the Director of Housing in Victoria, prior to my departure.

### **"These people need to be spoken to directly and preferably in person ..." – Recommendations of the LeSage Report**

The LeSage Report provides a large number of recommendations in relation to various stages of eviction proceedings, including: the need to clarify the roles and responsibilities of TSCs; the adoption of an eviction checklist; mandatory training on eviction prevention policies / guidelines / tenancy legislation; the need to carefully document contact with tenants; and the need to develop understanding of community agencies and encourage referrals.

The LeSage Report considers a number of aspects of tenant communication including lease signing processes, annual inspections, phone contact and written communication. Justice LeSage pays particular attention to the issue of "communication" and notes "[d]irect personal contact with tenants is perhaps the most important element of a successful eviction prevention program"<sup>218</sup>. Direct contact is defined to mean at least one face-to-face meeting. Justice LeSage's comments on communication capture the importance of this issue to vulnerable clients:

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<sup>215</sup> Donovan Vincent and Isabel Teotonia, "The Pack Rat at the Epicentre of the Wellesley Fire, *The Star* 22 January 2011.

<sup>216</sup> LeSage Report, above n 204, 48.

<sup>217</sup> Ibid 4.

<sup>218</sup> Ibid 36.

## Personal contact with tenants

Personal contact will ... often provide an opportunity to rectify the situation or, at the very least, help both parties to move forward. As already mentioned, sending repeated letters to people, some of whom cannot read due to literacy, language, eyesight or other issues, seems to be fruitless. These people need to be spoken to directly and preferably in person ... These are tenants who must be seen. Personal contact provides an opportunity for negotiation and empowers a tenant, sometimes with assistance from an outside social agency, to participate in reaching a mutually agreeable solution. In my view, personal contacts will usually have the important outcome of strengthening the long-term relationship between [TCH] and its tenants<sup>219</sup>.

During my conversation with, Mary Boushel, one of the people responsible for implementing the LeSage Report's recommendations at Toronto Community Housing, it became clear that improving communication and getting Tenant Service Coordinators out of the office and knocking on tenant doors has been a significant challenge.

In relation to arrears matters, the LeSage Report has resulted in TSCs working with and notifying building superintendents who then knock on tenant doors and make personal contact in relation to this issue. Ms Boushel explained the revised TCH process for dealing with tenancy issues as follows:

*What the TSC will do is if it's a routine thing they'll just phone the tenant, they'll call the tenant in, send a letter or a notice, but if it's complex and they know that it is, if they see the person is disadvantaged in some way or if there's something like a disability preventing them from complying, what we're asking for is that they'll engage a team.*

It is worth noting that such a response depends to a significant extent on the ability of workers such as the TSCs being able to identify disadvantage or to identify circumstances which may be preventing people from complying with their tenancy responsibilities. As with attempts to develop vulnerability protocols in Scotland, this is not something that housing workers always feel supported or qualified to undertake. In this regard I was interested to note that TCH is also working to develop flags in order to understand when it may be necessary to intervene in relation to certain tenants.

## The Proposed Eviction of Mr P – Evictions Based on "Behaviour"

### Mr P – the Ombudsman's investigation

The LeSage Report dealt primarily with the eviction of a vulnerable tenant for arrears. As a result of the investigation, recommendations were made in relation to the "mechanics" of eviction and to improve communications between landlord and tenants<sup>220</sup>.

The "mechanics of eviction" and communication between landlord and tenant were also considerations in the investigation by the Toronto Ombudsman into the proposed eviction of another TCH tenant, Mr P. In this case the proposed eviction was based on "behaviour" and did not relate to rental arrears.

In 2009, Mr P received three eviction notices from TCH. One notice related to an allegation that the tenant had been abusive to a TCH staff member in 2003, another related to an allegation that the tenant had been abusive towards a contractor working at the rental premises; and the final notice related to another allegation of abuse (including racial vilification) by Mr P towards the building superintendent.

After receiving the notice, Mr P complained to the Toronto Ombudsman who conducted a thorough investigation, which included reviewing a number of senior staff in TCH, reviewing the tenant file, considering TCH policies and considering guidance on the relevant law relating to eviction.

### Mr P – the findings

The Ombudsman concluded that TCH had not fulfilled its duty of fairness in issuing the notices, notwithstanding the "indications that the tenant was "a very challenging individual""<sup>221</sup>.

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid 71. Interestingly, Justice LeSage noted roughly that every month 5000 tenants received eviction notices however less than 1% of this number ended up being evicted. The Report notes that the statistics do not record tenants who leave "voluntarily" prior to eviction or as a result of fear arising from the notice to vacate.

The Ombudsman's report focuses on the shortfalls of TCH record keeping and notes that despite the allegation that Mr P had been involved in a "pattern of behaviour" that could be characterised as "threatening and menacing", the landlord's records did not reflect such an allegation<sup>222</sup>.

Similar to the investigation into the eviction of Al Gosling, the Ombudsman's report into the proposed eviction of Mr P concentrated on communication with the tenant. In particular, the investigation emphasised the failure of the landlord to contact the tenant *prior* to the issue of eviction notices and found that, given the serious consequences, he should have been provided with "clear and unambiguous" information about the reasons for the notices<sup>223</sup>. Further, it was important for the landlord to attempt to understand the tenant's response to allegations:

### Procedural fairness for tenants

Procedural fairness in the eviction process requires, at a minimum, that affected tenants be given an opportunity to respond to allegations made against them and a fair investigation be conducted before eviction proceedings are commenced. This is especially true when the allegations made are so serious. The process must be transparent. The tenant must be provided with a clear explanation of the grounds on which the eviction proceedings are based<sup>224</sup>.

### Houselink Supportive Housing: "You can't do it without resources"

The death of Al Gosling raised some challenging questions for Justice LeSage and Toronto Community Housing, which ultimately helped to clarify the limitations of TCH and ways in which it could improve its responses to disadvantage and vulnerability. In response to the Gosling and Mr P matters, Justice LeSage and the Toronto Ombudsman have made recommendations about what is required as a minimum.

By contrast, the supportive housing provided by Houselink Supportive Housing (**Houselink**) in some ways might be understood as what might be provided as a *maximum*.

Houselink currently provides supportive housing for about 430 people and currently owns 22 buildings in Toronto, as well as providing support to tenants in another 20 buildings across the city. The housing provides support for people with "serious mental illness" and arose in the mid-70s as a result of concerns about the effects of deinstitutionalisation when people with mental health issues were being released from hospital and into the streets without support and often without housing. The ratio of support workers to tenants is about one worker to 18 tenants<sup>225</sup>.

### "Not just parachuting into the situation": Houselink support

During my conversation with Houselink workers I was told about the way in which support operates:

*The support workers are definitely attached to the tenants as long as the tenants are living here. They're not just parachuting into the situation. It's an ongoing long term permanent relationship between tenant and worker. When there is an incident, there is a relationship based on what we hope is trust and respect between the tenant and worker.*

A relationship. Trust. Communication. I repeatedly heard how tenancy sustainment depends on these elements.

At the same time – Houselink is a landlord. Is there a tension between support and housing enforcement? Does the role as "landlord" interfere with the therapeutic or supportive relationship with tenants? During my discussion with a number of Houselink workers I was told that intensive supports are offered to tenants as soon as adverse behaviour starts to affect the tenancy:

- We see eviction as a last resort, we try everything else, alternatives, dispute resolution. Usually that's why they are offered a meeting, to meet with the tenant and talk and then go and meet the other

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<sup>221</sup> Toronto Ombudsman, *Ombudsman's Report – Investigations into Proposed Eviction of a Tenant*(2010) [109].

<sup>222</sup> Ibid [59].

<sup>223</sup> Ibid [99].

<sup>224</sup> Ibid [112].

<sup>225</sup> See Houselink <http://www.houselink.on.ca/> at 19 September 2011.

tenants who are affected by the behaviour of the problem tenant. So we try to see if we can come up with a resolution.

- We offer support but if the tenant's behaviour has become outrageous and they're caught drug trafficking or engaged in criminal activity or being a nuisance to the other tenants or not paying their rent, then the support worker has to gather a lot of information about the incidents, what they were, what the support worker would do to assist them, like trying to get them into programmes, have meetings, on and on and on to try and help the individual ...

In the event the assertive offer of support fails, Houselink will apply for eviction<sup>226</sup>. In this situation procedural fairness is a critical issue:

*You're not jumping in and saying "You're out!" Usually in this process there's already a relationship and there are so many steps between that and "We're going to take you to the Tribunal," that usually even when I've had to take somebody to the Tribunal, I'm actually still supporting them.*

Of course, tenancy is not the only form of potential coercion facing clients with mental health issues, who may also be subject to hospital treatment while unwell. Although this is challenging for support providers, this is sometimes managed by role separation. Indeed, the person responsible for connecting a tenant with the hospital may not be the same person responsible for providing ongoing support. Either way, this issue is handled as sensitively as possible, "I literally have a person that I need to take to hospital hold my hand on the way there, it's not an antagonistic thing."

A recent survey of almost 50% of Houselink tenants provides interesting comment on the support / enforcement dynamic. The report both describes findings which suggest tenants feel "Houselink is an overwhelmingly positive environment filled with caring staff" but also that some members are unhappy with staff warmth. As a result of this finding, the report asks the question, "[i]s this related to the dual – and sometimes conflicting – role of supportive housing workers, in that they serve as both supporters and agents of the landlord?"<sup>227</sup>.

### **"These are the rules we want": Houselink tenant participation**

Importantly, it is not only workers who are delivering the message about tenant responsibility. Tenants are involved in regular meetings which serve to emphasise ownership of house rules:

*... with the house meetings, it's not just a staff thing, "Look these are the rules! Follow the rules!" There are house meetings with four or five people that live in the home having a meeting and there's the accountability to each other. They're saying, "These are the rules we want," and then often the support person is just going to support that decision.*

The level of tenant participation in Houselink operations is awe-inspiring. Houselink is based on a "community development" model and tenants are involved in a range of activities including:

### **Best practice: Houselink consumer participation**

Houselink tenants are members of the organization and are involved fully in its life and decisions. Another 70 consumer survivors who have joined Houselink to participate in its programs are also members. All members hold voting status, electing Houselink's Board of Directors and approving by-law changes. They are also able to run for seats on the Board of Directors, and indeed, half of Houselink's Board use Houselink's services. Many programs within Houselink have been developed in response to members' expressed needs, including social recreation, member employment, bursaries, a computer club, community kitchens, and a strong, though not formalised, culture of peer support<sup>228</sup>.

<sup>226</sup> See Houselink, *Annual Report 08-09: Recovery is ...* 13, which notes that the eviction rate in 2008 was 2.1%.

<sup>227</sup> Lindsay Kochen, *2010 Houselink Community Homes Recovery Survey* (March 2010) 35.

<sup>228</sup> Ibid 10.

It is no surprise that of the 198 respondents to the 2010 Houselink tenant survey, 86% of tenants had participated in some form of Houselink activity or service and that access to peer support and involvement in meaningful activities were listed as particular areas of service satisfaction<sup>229</sup>.

### **"Would you like an apartment if we can get you one?" – Streets to Homes**

In 2004 there was an increase in people sleeping rough in Toronto. Between 100 to 180 people were camped in Nathan Phillips Square in the heart of Toronto, while another similarly large group of people had commenced camping under the Bathurst Street Bridge (adjacent to a demolition site).

In this context, I spoke with the Director of Housing and Homelessness Supports and Initiatives, Katherine Chislett: she described the scene under the Bathurst Street Bridge in apocalyptic terms where people were living in filthy conditions, "all the addictions, tons of garbage and violence, everything you could imagine. It was horrible."

Ms Chislett spoke about the history of what became the City of Toronto "Streets to Homes" program. The program involves identifying and quantifying the needs of homeless people and then offering outreach services in order to try and house this population.

Ms Chislett spoke to me about the way in which Streets to Homes took hold in Toronto.

### **Getting people off the streets**

The way in which different stakeholders responded to this humanitarian crisis evident in Nathan Phillips Square and under the Bathurst Street Bridge provides an interesting example of the different approaches to homelessness. Some agencies understandably sought to ease the burden on people sleeping rough and sought to bring facilities including sanitation, food and health to the homeless settlement. During her involvement with attempting to resolve this issue, Ms Chislett describes a feeling of resignation, "there was this real feeling like there's nothing else. This has happened. They are poor. There is no affordable housing. Many gave up and focussed instead on helping people survive."

Ms Chislett had difficulty understanding why people were working to maintain the status quo and why there was less focus on actually resolving and ending the dangerous circumstances in which people were living:

*I just went down there and talked to the young people. They'd only been there a couple of months at this time and it was horrible. They'd been told they weren't eligible for welfare. I asked them "Would you like an apartment if we can get you one?" Well of course they would.*

In addition to the personal cost of the Bathurst Street Bridge settlement, the City of Toronto had building works planned for the site and very soon people would be living on a building site. Something had to give.

The City arranged for a housing worker to travel to the site (as opposed to the existing practice of people needing to find a housing worker service and attend there), and within three weeks everyone was housed. The assistance provided included support to arrange income support and negotiate rent, together with pragmatic assistance to obtain clean and presentable clothes to assist with the "power relationship" in negotiating a lease with a landlord.

### **The "push and pull" of reducing street homelessness**

There was resistance to the idea of the "push and pull" dynamic by which the City of Toronto worked to end street homelessness. Ms Chislett described that part of the "push" to end homelessness involved the enactment of a by-law to prevent people from sleeping on the streets. I was surprised by this response – laws that criminalise homelessness generally don't resolve homelessness. But according to Ms Chislett, "such by-laws can create a dynamic where people are willing to talk about changing their current (homeless) situation." She further explained that these by-laws have a symbolic value and serve to emphasise the City's commitment to resolving street homelessness, and to some extent calmed down requests for stronger legislation – although noting such requests do continue to surface from time to time.

Provisions which affect the ability of the homeless to sleep in public form part of an "Interdepartmental Protocol" which addressed the relationship between support and enforcement for people sleeping rough.

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<sup>229</sup> Ibid 17 and 34: High percentage of tenants were involved in community kitchens (59%), seasonal parties (53%), general members meetings (46%) and drop-ins (45%).



## **PUSH – Interdepartmental Protocol**

"This document sets out the interdepartmental protocol intended to guide City staff in providing outreach services to homeless individuals camping outside in public spaces to assist them to access permanent solutions, prior to the enforcement of City by-laws which may cause their displacement and the removal of their belongings ...

The goal of the City outreach initiative is to assist and encourage people currently camping in public spaces to access safer and healthier alternatives to living outside, including housing, support services and shelter. The initiative seeks to balance the need to provide appropriate supports to vulnerable individuals camping in public spaces with the civic responsibility of maintaining the use of public spaces for public use"<sup>230</sup>.

It is unclear how many people have come into contact with by-law enforcement officers as a result of these by-laws which Ms Chislett explained have "very little teeth" and can result in people being picked up by the police and "moved on"<sup>231</sup>.

The Interdepartmental Protocol clearly establishes the pathway of enforcement. It clearly sets out the number of steps that are required before any "coercive" activity can be undertaken, including assisting people to access services, using a coordinated approach to assist people sleeping rough and communication between a range of stakeholders so that enforcement is not undertaken unless support has been offered. This clarity is to be welcomed.

The Homeless Persons' Legal Clinic assists a large number of vulnerable and disadvantaged people with fines and infringement matters. In our experience, there is no coordination or collaboration between enforcement and support agencies. Further, people experiencing homelessness are rarely – if ever – offered support prior to receiving fines and infringements.

The priority of the Interdepartmental Protocol is to:

## **PULL – City of Toronto priorities**

"... assist homeless people access safer, sustainable and healthier alternatives than living outside, not enforcement. Enforcement will not occur until all support efforts have been completed and only after individuals have been formally notified that they are to vacate a public space"<sup>232</sup>.

Ms Chislett noted that she did not come from a social work background and was not therefore guided by ideas of "boundary violation." She explained the imperative to resolve street homelessness in compelling terms. On one level, assertive action to house the people sleeping under the bridge was justified on the basis that their safety was at risk. However the philosophy underpinning the response touches on the idea of civic responsibility towards those in need.

### **"If I were lying in the middle of the sidewalk, what would you do?"**

Ms Chislett refers to a question which influenced her response to street homelessness: "If you were walking along the street and I was lying in the middle of the sidewalk, what would you do?" This question makes the explicit analogy between physical injury and chronic homelessness and posits that the response to both situations should be the same:

*You'd realise something was wrong and you'd try to get help for me. Why is it okay when you have people who look really poor lying under a bridge that we don't run and get help for them? You don't stop me when I'm lying on the sidewalk and say, "Oh, what exact services should I provide you?"*

*... You have to start from a place when people are outside or living in extreme poverty, who are couch surfing, who are dealing with extreme addictions – they need help and it's not ethical to assume that*

<sup>230</sup> Policy and Finance Committee, "From Streets to Homes: A Strategy to Assist Homeless Persons Find Permanent Housing" (Report No 2, City of Toronto, 2005) Attachment 2 (emphasis added).

<sup>231</sup> Ms Chislett argues the power of by-laws are very limited and generally result in tickets/fines. To "move someone on: requires police involvement and provincial legislation which may result in a trespass order.

<sup>232</sup> Policy and Finance Committee, above n 230.

*they're in a place where they are not in crisis and are able to make good decisions. Their time horizon is the next 5 – 10 minutes. Their time horizon is, "where's my next meal, where am I going to go tonight." So how can you talk about future planning?*

It is interesting that in discussing people for whom assertive assistance is imperative, Ms Chislett included people experiencing extreme poverty and addictions together with those who are couch surfing. This is significant because of the way in which the Streets to Homes outreach program appears to define homelessness in the most recent Toronto Street Needs Assessment report:

*homelessness was defined as any individual sleeping outdoors on the night of the survey, in addition to those staying in emergency shelters, in Violence Against Women (VAW) shelters, individuals in health or treatment facilities with no permanent address, as well as those in correctional facilities who were registered in a Toronto court as having no fixed address. This excludes the "hidden" homeless (e.g. couch surfers) ...<sup>233</sup>*

Clearly this is a report directed towards understanding the needs of people experiencing chronic street homelessness and is arguably not intended to capture the spectrum of homelessness. Despite this, I spoke with some homelessness advocates in Toronto who raised concerns about the way in which Streets to Homes prioritises highly visible street homelessness and potentially "cleaning up the streets" over and above assisting all those in need who may be suffering in circumstances of lower visibility.

### **"When people are in crisis, they need a bit more handholding"**

In Toronto, Streets to Homes has expanded to provide significant supports to people sleeping rough. The assertive and persistent offer of support is achieved by outreach workers who aim to contact all people sleeping on the streets in Toronto at least twice a day. Similar to other support initiatives I contacted during my travels, the outreach workers prioritise relationship building with clients experiencing homelessness:

*For people out there, you just keep on working, "Hey what's going on today? Ready for housing today?" and you build, you keep building the relationship. There's always a moment where it twigs.*

Among other supports, the Toronto Streets to Home response involves:

- outreach workers, shelter access, assessment and referral services available 24 hours a day, seven days a week;
- private landlord support (68% of S2H clients choose private sector housing);
- specialised services for specific groups including post incarceration and young people; and
- employment supports and financial literacy training<sup>234</sup>.

Consistent with the Streets to Homes methodology, in 2009 a Street Needs Assessment (**SNA**) was undertaken in order to understand the services needed to house people experiencing homelessness sustainably. The survey identified that the City of Toronto had achieved significant progress in reducing street homelessness by 51% since the initial SNA in 2006<sup>235</sup>. The survey revealed that nine out of 10 people experiencing chronic homelessness wanted permanent housing. In terms of what was required to obtain housing, the top five responses of the SNA were all pragmatic and achievable:

- help finding an affordable place;
- more money;
- transportation to see apartments;
- help with housing applications; and

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<sup>233</sup> Toronto Shelter, Support and Housing Administration, *Street Needs Assessment Results 2009* 8.

<sup>234</sup> Toronto Shelter, Support and Housing Administration, *Streets to Home*, City of Toronto <http://www.toronto.ca/housing/about-streets-homes.htm> at 19 September 2011.

<sup>235</sup> Toronto Shelter, above n 233, 3.

➤ help getting identification<sup>236</sup>.

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<sup>236</sup> Ibid 5.

## APPENDIX A – PILCH AND THE HOMELESS PERSONS' LEGAL CLINIC

The Public Interest Law Clearing House (Vic) Inc (PILCH) is a leading Victorian, not-for-profit organisation. It is committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its work, PILCH seeks to:

- address disadvantage and marginalisation in the community;
- effect structural change to address injustice;
- foster a strong pro bono culture in Victoria; and
- increase the pro bono capacity of the legal profession.

The HPLC is a project of PILCH and was established in 2001 in response to the unmet need for targeted legal services for people experiencing homelessness. The HPLC has the following aims and objectives:

- to provide free legal services to people who are homeless or at risk of homelessness, in a professional, timely, respectful and accessible manner, that has regard to their human rights and human dignity;
- to use the law to promote, protect and realise the human rights of people experiencing homelessness;
- to use the law to redress unfair and unjust treatment of people experiencing homelessness;
- to reduce the degree and extent to which people experiencing homelessness are disadvantaged or marginalised by the law; and
- to use the law to construct viable and sustainable pathways out of homelessness.

Free legal services are offered by the HPLC on a weekly basis at 10 outreach locations that are already accessed by people experiencing homelessness, including crisis accommodation centres and social and family services.

In addition to providing legal services, the HPLC undertakes a range of law reform and public policy activities. These activities are intended to identify and seek to change laws and policies that impact in a disproportionate or discriminatory way on people experiencing homelessness. Since its establishment in 2001, the HPLC has assisted almost 5000 people at risk of, or experiencing, homelessness in Victoria.

The HPLC also conducts a range of capacity building activities, including community legal education and consumer participation activities.

In 2005, the HPLC received the national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights. In 2009 it received a Melbourne Award for contribution to community in the City of Melbourne.

## APPENDIX B – SCHEDULE OF INTERVIEWS

Person	Organisation	Location
Anita Birchall (Services Manager) Cath Ormerod (Team Leader)	Shelter Inclusion Program	Rochdale, UK
Vicky Clark (Community Safety Manager)	Blackburn Council	Blackburn, UK
Joanne Kent-Smith (Senior Policy & Practice Officer) Chris Grose (ASB Adviser) Tess Ash (ASB Adviser) Sam Liser (CIH Policy Officer) Richard Docker (CIH)	Chartered Institute of Housing, Anit Social Behaviour Action Team	Coventry, UK
Sharon Mackley (Operations Manager, SLCNG) Eamon Lynch(Managing Director SLCNG) Nick Mackley (Administrator, SLCNG) Kam Sidhu (Consortium Development Officer, Coventry Consortium of Social Landlords) Inspector Flo Floyd (Neighbourhood Policing Team, Coventry, West Midlands Police) Yetunde Dania (Partner, Trowers & Hamlins Solicitors, Birmingham Office)	Social Landlords Crime and Nuisance Group	Coventry, UK
Professor Judy Nixon	Sheffield Hallam University	Sheffield, UK
Jane Petrie	Sheffield Hallam University	Sheffield, UK
Tandi Francis (Information & Training Officer) & Colleagues	National Shelter Helpline	Sheffield, UK
Caroline Hunter	The University of York, York Law School	York, UK
Dr Anwen Jones	The University of York, Centre for Housing Studies	York, UK
Various	Essential Connections Forum	Glasgow, Scotland
Marion Gibbs (Scottish Government Homelessness Team Leader)	Scottish Government	Glasgow, Scotland
Claire Frew (Development Co-ordinator)	Glasgow Homelessness Network	Glasgow, Scotland
Martina Johnston Gray (Development Co-ordinator)	Glasgow Homelessness Network	Glasgow, Scotland



Person	Organisation	Location
Various	"Keys to Learn" graduation presentations and celebration	Glasgow, Scotland
Alison Sommerville (Programme Manager)	Fab Pad, Glasgow	Glasgow, Scotland
Emma Hamilton (Housing First Co-ordinator)	Housing First, Turning Point Scotland	Glasgow, Scotland
Alistair Sharp (Prevention of Homelessness Project Co-ordinator)	Govan Law Centre	Glasgow, Scotland
Dr Laura Barrie (Clinical Psychologist)	Glasgow Trauma and Homelessness Team	Glasgow, Scotland
Catherine Wilkie (Housing Solutions Manager)	Glasgow Housing Association	Glasgow, Scotland
Bryan Healy (Neighbour Relations Manager)	Glasgow Housing Association	Glasgow, Scotland
Heather Voisey (Partnership Manager)	Glasgow Housing Association	Glasgow, Scotland
Professor Isabel Anderson (Director, Housing Policy and Practice Unit)	University of Stirling	Stirling, Scotland
Daniel Coote (Policy Officer)	Scottish Council for Single Homeless	Edinburgh, Scotland
David Bookbinder (Head of Policy & Public Affairs) & Sue Shone (Policy & Practice Officer)	Chartered Institute of Housing, Scotland	Edinburgh, Scotland
Fiona King (Policy Officer)	Shelter Scotland	Edinburgh, Scotland
Pamela (HES Manager)	Move On	Edinburgh, Scotland
Gary Neil (Supported Accommodation Manager)	Rock Trust	Edinburgh, Scotland
Professor Hal Pawson	Heriot-Watt University, School of the Built Environment	Edinburgh, Scotland
Laure Donnelly (Director) & Colleagues	Housing Help Program, South Bronx	New York City, USA
Sara Zuiderveen (Assistant Commissioner, Prevention Division)	New York City Department of Homelessness Services	New York City, USA
Anna Demmler (Executive Assistant)	Common Ground National	New York City, USA
Denise Miranda (Director)	Homelessness Outreach & Prevention Project, Urban Justice	New York City, USA
Marika Dias (Supervising Attorney)	Make the Road	New York City, USA
Marti Weithmann (Director)	Goddard Riverside SRO Law Project	New York City, USA

Person	Organisation	Location
Erin Healy (Associate Director)	Corporation for Supportive Housing	New York City, USA
Maria Foscarinis (Executive Director) and Karen Cunningham (Legal Director)	National Law Centre on Homelessness and Poverty	Washington DC, USA
Various	National Forum on the Human Right to Housing	Washington DC, USA
Nan Roman (President & CEO)	National Alliance to End Homelessness	Washington DC, USA
Steve Berg (Vice President for Programs and Policy)	National Alliance to End Homelessness	Washington DC, USA
Norm Suchar (Director, Centre for Capacity Building)	National Alliance to End Homelessness	Washington DC, USA
Peggy Bailey (Senior Policy Advisor)	Corporation for Supportive Housing	Washington DC, USA
Scott McNeilly (Staff Attorney) & Amber Harding (Staff Attorney)	Washington Legal Clinic for the Homeless	Washington DC, USA
Danilo Pelletiere (Research Director)	National Low Income Housing Coalition	Washington DC, USA
Martha Burt	Urban Institute	Washington DC, USA
Katherine Chislett	Director, Housing and Homelessness Supports and Initiatives	Toronto, Canada
Michael Shapcott (Director, Housing and Innovation)	The Wellesley Institute	Toronto, Canada
Mary Boushel (Legal Counsel)	Toronto Community Housing	Toronto, Canada
Karen Andrews (Barrister & Solicitor)	Advocacy Centre for Tenants Ontario	Toronto, Canada
Jody Risdon (Interim Dream Team Co-ordinator)	Houselink	Toronto, Canada
The Dream Team	The Dream Team	Toronto, Canada
Howard Alker (Eviction Prevention Staff)	Centre for Equality Rights in Accommodation	Toronto, Canada
John Fraser (Program Director)	Centre for Equality Rights in Accommodation	Toronto, Canada
Cathy Crowe	Toronto Disaster Relief Committee	Toronto, Canada