Rights, remedies and resources – a mixed story about homelessness in Scotland

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Abstract

Since the passage of the Housing (Homeless Persons) Act 1977, Scottish local authorities (municipalities) have had a duty to cater for the homeless or those threatened with homelessness in various circumstances. This duty existed on an application from someone who was unintentionally homeless, had a priority need, and where no other local authority was more suited to cater for them. Whilst this Great British legislation may have come to Scotland in an unexpected way (Gibson, 1979), the Scottish Parliament has been active in strengthening the rights of applicants. Reforms have removed the "priority need" criterion, leading Serpa and Anderson (2013) to describe Scotland as having "possibly the strongest legal framework in the world in relation to protecting people from homelessness." In 2019, another reform changed the duty to investigate intentional homelessness into a power. Now, the local connection referral opportunity is being removed. There are also rules around provision of temporary accommodation.

Yet all is not rosy. There are concerns around resourcing, as laid bare in the case of *X v Glasgow City Council*, coupled with apparent "gatekeeping" (i.e. steering eligible applicants away). There is a difficulty around remedies, with disgruntled applicants forced to rely on the relatively inaccessible backstop of judicial review (Kiddie, 2020). Lastly, whilst Scotland's homelessness figures may be relatively favourable compared to other UK jurisdictions (Crisis, 2021), there have been reports of spikes in applications and an inability to process applicants locally. This paper will analyse what Scotland needs to do beyond legislating for stronger rights.

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