

Out of area placements: LGA protocol

Purpose of report

For direction.

Summary

This report updates the board on the LGA's development of, and planned consultation on, a local authority protocol relating to out of area placements. In addition it outlines options for a process to increase councils' accountability in relation to the protocol.

Recommendation

That members note and comment on the LGA's progress in developing the protocol, and give direction on options for improving accountability.

Action

Officers to action any matters arising from the discussion as appropriate.

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Out of area placements: LGA protocol

Background

Initial work

1. As a result of increasing concerns being raised by its member councils, the LGA commissioned work in October 2018 into the issues relating to out of area moves, i.e. placements of homeless families by councils into other local authority areas.
2. The number of such placements has been rising over the last few years due to pressures outside local authorities' control – i.e. the severe unavailability of affordable housing, particularly within London boroughs - and councils make such placements reluctantly.

However, local authorities have a crucial role to play in addressing the problem by both making the coherent case to central government for policy and funding change, and by working together to ensure that the out of area moves which do take place are appropriate and handled well by both placing and receiving authorities.

3. The aim of the LGA's work was therefore to develop a better understanding of what is happening and to make suggestions for what the LGA in particular could do to mitigate some of the concerns and improve the position for both councils and the households being moved away from their home area.
4. From our work with councils the current situation can be summarised as:
 - 4.1 The number of long distance out of area placements is growing but is still less than 4,000 per year - for homelessness moves at least. However, numbers are unknown for Children in Need moves, and for some councils in London there is a concentration of moves into their areas.
 - 4.2 The notification arrangements to receiving councils do not work as well as they could, and receiving councils therefore feel unable to quantify or deal with the issue.
 - 4.3 Where dialogue has taken place and rules have been agreed between councils, they are not always followed and there isn't a resolution mechanism.
 - 4.4 The rules which have been agreed between councils need updating and aligning better with the Homelessness Code of Guidance, where this applies, and potentially as a matter of good practice for some placements where it does not apply.
 - 4.5 There is sometimes a cost shunt from placing to receiving councils associated with moving families out of area due to increased demand on Education and Children's

Services in particular.

4.6 Families moved out of area can sometimes face real difficulties, especially if they need to travel long distances to school.

4.7 Arrangements within London to cope with the much greater number of out of area placements there are more sophisticated than elsewhere in terms of monitoring and in terms of controlling prices paid. However, problems still occur.

5. From the work with councils some potential options have emerged for sector-led improvement:

5.1. A National Protocol for Out of Area Homelessness and Children's Services Placements

5.2. A disputes resolution process

5.3. An online system for consistent and comprehensive notifications and information sharing

5.4. Support for groups of councils to work together to monitor placements and avoid competing with each other for accommodation with the risk of pushing up prices.

Development of a protocol

6. Based on our work, in March 2019 EEHT lead members supported a recommendation that the LGA seek to develop a sector-led protocol, accompanied by a dispute resolution process.

7. This protocol would seek to add value to local authorities at a strategic and operational level, and it would work with or build on existing law and guidance rather than duplicate it. The output would be similar to what the LGA currently has in place to mitigate disagreement between councils on issues of local connection¹.

8. Our proposal outlined the following process, with the option for flexibility should it become clear that another option would add more value:

8.1. Appoint an independent homelessness and temporary accommodation expert to develop a draft protocol in discussion with partners, reporting into the Local Government Association and a partnership working group (see below)

¹ <https://www.local.gov.uk/procedures-referrals-homeless-applicants-another-local-authority-0>

- 8.2. Establish a working group from across local government to shape the development of the protocol, in particular:
- 8.2.1 homelessness representatives from both councils that are placing and receiving households;
 - 8.2.2 children's services representatives from both councils that are placing and receiving households;
 - 8.2.3 London Councils;
 - 8.2.4 Association of Directors of Children 's Services; and
 - 8.2.5 Ministry of Housing, Communities and Local Government Homeless Support and Advice Team.
- 8.3. Hold a series of consultation events around the country open to all staff from all councils, and to partner organisations such as homelessness providers and charities
- 8.4. Engage legal advice on the final protocol to ensure compatibility with the existing legislative framework and the Homelessness Code of Guidance
- 8.5. Publish a draft protocol for full consultation with the sector, in line with the process for refreshing the local connection protocol referred to above.
- 8.6. Launch a protocol and dispute resolution process.

Progress to date

9. The LGA commissioned Tim Gray, who led the LGA's initial work into out of area placements, to establish and lead a working group with representatives from across the sector, alongside London Councils and MHCLG officials.
10. The working group has met twice to date; meetings have also taken place with a series of task and finish groups focusing on particular issues, and with the Association of Directors of Children's services.
11. As a result of input from these groups, the protocol has now been drafted, and is attached to these papers for comment. We have also developed options for increasing accountability, on which we are seeking members' steer.

Increasing accountability

Consultation process

12. To date, councils have led the development of the protocol via the working group and task and finish groups. To maximise buy-in from the wider sector, we will take forward our commitment to holding a series of consultation events around the country open to all

staff from all councils, and to partner organisations such as homelessness providers and charities.

13. Following legal advice on the final protocol to ensure it is compatible with the legislative framework, we will formally consult all local authorities through a written consultation.
14. Securing an active and visible commitment to the protocol from senior decision-makers in councils is particularly important as the protocol is voluntary, and goes beyond current statutory requirements.

Online notifications system

15. Councils participating in the cross-sector working group have highlighted the need for transparency when placements are made, as a pre-requisite for open communication between councils. Securing initial buy-in from senior decision-makers is one aspect of achieving this transparency. As a way of achieving longer-term transparency, the LGA has also begun to explore the option of an online system for consistent and comprehensive notifications and information-sharing.
16. This website would provide all councils with a simple form with which to make Section 208 notifications to other councils that a placement is being made in their area; this notification is already a statutory requirement. It would also ensure that notifications reach the correct point of contact, as nominated by each council. Councils would receive near-real-time information about placements being made in their area, which would facilitate better support for households being placed.
17. The LGA may wish to facilitate the development of this website by procuring an IT provider. This could be funded by councils. However, the protocol and website would both be voluntary, and we need to ensure that the funding arrangements do not act as a barrier to participation. The role of the LGA is supporting the funding of this web system should also be considered. We will consult with councils on what the best approach to funding might be.
18. The website would also support greater accountability around the protocol, as it would allow councils to compare real-time information about placements being made in their areas with quarterly statutory homelessness statistics. This would support open conversations between councils about placements and notifications, and the process could be led by councils themselves.
19. **We are seeking members' views on the value of a website, as described, and on approaches to funding and maintaining this infrastructure.**

Dispute resolution process

20. A dispute resolution process would be an additional means of supporting sector-led accountability, by allowing councils to refer disputes to an independent referee.
21. A similar process is already in place in relation to the LGA's protocol on issues of local connection. Councils wishing to use this service are supported by the LGA to appoint an independent referee, who then leads the mediation process. If a decision is taken against a council by the referee, they are required to pay the referee's costs which currently amount to £1000 plus reasonable expenses.
22. The LGA could build on this process in relation to placements made out of area. The aim of the process would be to ensure that councils responded to the mediation by taking any required remedial actions, but also to provide an incentive for councils to act differently in future cases. In doing so a balance needs to be struck such that councils are willing to voluntarily participate. Options include:
- 22.1. Replicating exactly the process outlined in paragraph 21.
 - 22.2. Replicating this process, but with further measures included to incentivise changed practices.
 - 22.3. Making senior managers/Chief Executive aware of the outcome of the mediation, in cases where their council has been found not to have followed the protocol.
23. It should be stressed that all of these measures would be voluntary and that the processes and subsequent resolution would be led by councils themselves. However, if changes in practice are to be encouraged then the process of mediation should have a material impact. Councils participating in the working group have told us that the protocol should include provisions around the escalation of disputes to chief executives, as a vital way to improve accountability.
- 24. We are seeking members' steer on options for the dispute resolution.**

Implications for Wales

25. Homelessness is a devolved responsibility of the Welsh Assembly Government, and main implications of the protocol are for English local authorities.

Financial Implications

26. There are no financial implications at this stage. However, depending on the LGA's position on supporting the funding of any web based systems, future costs might be incurred.

Next steps

27. Members are asked to note and comment on the LGA's work to date, and provide further direction on work to be carried out.