

Committees:	Dates:
Homelessness and Rough Sleeping Sub-Committee Department of Community and Children's Services Committee Policy and Resources Committee	28/06/2021 24/09/2021 14/10/2021
Subject: Homeless Link Immigration Pledge Appeal	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1,2,3,4,10
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Andrew Carter, Director of Community and Children's Services	For Decision
Report author: Will Norman, Head of Homelessness Prevention and Rough Sleeping	

Summary

This report provides Members with an overview of the new Homeless Link Pledge Campaign. The campaign is a response to changes made to the Immigration Act in October 2020 and the subsequent code of guidance published by the Home Office. Homeless Link is asking the voluntary sector, local authorities and public sector bodies to sign up to a 'pledge campaign' in opposition to these changes and the operational implications.

Recommendation

Members are asked to consider whether or not to sign up to the Pledge Appeal, noting the implications as set out in the report.

Main Report

Background

1. Changes to immigration rules pursuant to section 3(2) of the Immigration Act 1971 were published by the Government on 22 October 2020. Of the changes included in this document, the most pertinent are the changes related to rough sleeping as grounds for refusal.
2. New guidance titled '*Grounds for refusal – rough sleeping in the UK*' was published by the Home Office on 15 April 2021.

3. The guidance explains when an application for permission to stay may be refused, or any permission held may be cancelled on the grounds of rough sleeping in the UK. The guidance does not apply to:
 - those granted or eligible for pre-settled or settled status under the EU Settlement Scheme
 - those granted indefinite leave
 - those granted leave under a protection route (for example, as a refugee or on the grounds of human rights or for humanitarian protection).
4. The guidance explains that the new immigration rules set out a discretionary basis for the refusal of permission to stay, where the application was made on or after 1 December 2020, and for any permission held to be cancelled on the grounds of rough sleeping in the UK.
5. The rule was amended on 6 April 2021 to clarify that permission may only be refused or cancelled where a person has repeatedly refused suitable offers of support and engaged in persistent anti-social behaviour. This has become commonly referred to as the 'rough sleeping rule'.
6. Furthermore, the guidance states *that "The bar is set at 'unreasonably refusing to co-operate' so that it does not penalise those who have difficulty co-operating, for example because of poor mental health."* In reality, therefore, these provisions will apply to a very small proportion of the homeless population.
7. The Rough Sleeping Support Service (RSSS) was launched in 2018 as part of the Government's Rough Sleeping Strategy. The RSSS sits within the Immigration Enforcement Service. In the code of guidance, the Home Office explains that the RSSS has been '*... refreshed to provide clarity to organisations and individual rough sleepers as to how their data will be used*'. The RSSS can also support people to resolve their immigration status if they are sleeping rough.
8. The Home Office would like local authorities and police forces to be proactive in referring to the RSSS where individuals qualify under the rough sleeping rule criteria. This means someone would need to be:
 - a. rough sleeping
 - b. rejecting offers of support and assistance
 - c. perpetrating anti-social behaviour or crime.
9. Evidence would be required to determine all three criteria have been met. Where a police force is the source of a referral, the Home Office will consult with the applicable local authority to confirm the support and rough sleeping elements. It should be noted that, in Greater London, the Combined Homelessness and Information Network (CHAIN) is the source of rough sleeping records and rough sleeping status validation. Presently the Greater London Authority (GLA), who commission St Mungo's to deliver CHAIN, have not given permission for the CHAIN team to share data which will knowingly be used for this purpose.

10. It can be reasonably expected that individuals who come to the attention of the Home Office through this referral route might have any existing permission cancelled, should this fall within the limitations of the guidance.
11. The code of guidance gives due regard to considering cases on their individual merits and taking reasonable and proportionate action. A link to the guidance can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978197/rough-sleeping-v1.0ext.pdf
12. Homeless Link are a member organisation and umbrella body which represent the homelessness and rough sleeping sectors. They develop best practice, provide training, advise on policy/law changes and lobby Government.
13. On 21 April 2021, Homeless Link published a response to the Immigration Act changes. This was followed by a pledge appeal asking charities and local authorities to sign a statement in opposition to the Immigration Act changes and to pledge to not use the referral mechanism to RSSS. A link to the pledge can be found here: <https://www.homeless.org.uk/stand-against-rough-sleeping-immigration-rules>

Current Position

14. This is a new change to legislation and a new code of guidance. Presently, all rough sleepers willing to engage with our commissioned services are assessed and a credible and safe offer which constitutes a route away from rough sleeping is developed with them.
15. Currently, service offers may include a safe return to a country of origin. To complete this process, we require the consent of the individual and a willingness to engage with the offer to its conclusion.
16. We do not require our commissioned providers to refer to the RSSS. City of London offers do not use or refer to the RSSS.
17. The Homeless Link pledge has been widely adopted by the voluntary sector. Presently, 7 London local authorities (Southwark, Islington, Hackney, Lewisham, Lambeth, Haringey, Greenwich) have signed, as well as the GLA.
18. Although we enjoy close partnership arrangements with colleagues in City of London Police and the Community Safety Team, crime and anti-social behaviour are handled separately to offers of accommodation and support – that is, one is not dependent on the other. Where persistent anti-social behaviour is perpetrated by a rough sleeper, we may support enforcement actions in parallel to offering assistance and accommodation. Decisions about how and when to take enforcement actions forward are always taken through multi-agency consensus.
19. The number of individuals affected is difficult to quantify, however, allowing for the fact that some cases carry over from the previous year, we anticipate three to five cases meeting all three criteria in any given year.

Proposals

20. This report has been discussed at the Homelessness and Rough Sleeping Subcommittee and Department of Community and Children's Services Committee. Members of Policy and Resources Committee are now asked to review and decide upon a course of action.
21. A decision to sign the Pledge Appeal would represent a de-facto policy position. A Standard Motion recommended by Homeless Link can be found at Appendix 2.

Options

22. The City of London Corporation may wish to sign up to the Homeless Link pledge campaign. This would state our intention not to use the RSSS referral mechanism and confirm the City of London's position in opposition to the changes to the Immigration Act.
23. The City of London Corporation may elect to not sign the campaign. This would not indicate a policy position either way. Options to use or not use the RSSS referral mechanism remain a discretionary matter.

Corporate & Strategic Implications

24. *Strategic implications* – This proposal relates to national and central Government objectives to halve rough sleeping by 2022 and end it entirely by 2027. The City of London reports to the Department for Levelling Up, Communities and Housing (DLUCH) of our progress against this target and the impact we achieve through the provision of grant funding, such as the Rough Sleeping initiative (RSI) Fund. Official Street Count data is submitted to DLUCH and published annually. This data includes nationality where known.
25. Consideration should also be given to Corporate Plan objectives relating to contributing to a flourishing society and shaping outstanding environments.
26. *Financial implications* – this is difficult to quantify and depends largely on the number of individuals who might qualify for referral in future months and years, and who are, in turn, not referred if the pledge campaign is signed. Rough sleeping is known to harm physical and mental health; therefore, it might reasonably be assumed that a small number of individuals will live for longer periods of time on the street. Should their care and support needs cause concern, we may need to act with urgency. This group will have no recourse to public funds and costs will be met by local risk.
27. *Resource implications* – there are none directly linked with this report.
28. *Legal implications* – instructions were given to external counsel who have provided written advice. Some key points are as follows:
 - *any decision to sign up to the Pledge (or not) is a political decision and is likely to have considerably more political significance than legal consequences*

- *the primary purpose of the Pledge is not to create a legally enforceable ‘contract’ but to send out a message to re-assure potential clients that their status will not be jeopardised*
- *as a matter of law, the Pledge would not.... amount to a promise that would be legally enforceable in any meaningful way*
- *whereas there is no legal impediment to a local authority deciding not to refer in any individual case, adopting the Pledge would in effect create a policy that, irrespective of the facts of any particular case, no referral will be made*
- *there is always a danger in adopting a policy that places a blanket prohibition on what would otherwise be a discretion that it may amount to an unlawful ‘fettering’ of that discretion. Where a public body has a discretion, a policy as to how that discretion is to be exercised must not be followed so slavishly as to preclude the possibility of departing from the policy in any particular case*
- *it is conceivable that if there were a case where it was considered by the authority that a referral was necessary or preferable, it may be open to the person affected to try to challenge that decision on the basis that the policy was not followed*
- *a policy not to refer in any case must be implemented lawfully, using the proper procedure and taking into account the relevant considerations*
- *the pledge itself does not create a legally enforceable promise, however, the adoption of a policy not to refer in any case is something that could give rise to a potential public law challenge if it were not followed or, conversely, a challenge on the basis that in following the policy too slavishly, the local authority had fettered its discretion.*
- *In reality the chances of a successful challenge may not be particularly high, but, nevertheless, these implications are worth bearing in mind.*

29. *Risk implications* – there is a degree of reputational risk to each option. The measures outlined in the guidance and the referral mechanism to RSSS are linked to the Government’s Rough Sleeping Strategy. This states an intention to halve rough sleeping by 2022 and end it by 2027. These options are at the disposal of local authorities in support of this aim.

30. 7 local authorities and the GLA have already signed. It is possible there may be more, but they have elected not to advertise their logo on the Homeless Link website (an option).

31. *Equalities implications* – an equalities impact assessment has not been undertaken at this time. This report is primarily concerned with providing Members with the contextual information required relating to the decision as to whether or not to sign the Homeless Link Pledge Campaign. In the event our practice changes and we intend to use the RSSS service, it may be necessary to carry out such an assessment at that time.

32. *Climate implications* – there are none directly linked with this report.

33. *Security implications* – there are none directly linked with this report.

Conclusion

34. The Homeless Link Pledge Campaign asks local authorities to make a commitment to non-co-operation with the Home Office Immigration Service and RSSS. This commitment has already been made by a small number of councils.
35. The implication for the City of London in signing up to the campaign affects a small number of rough sleepers with no recourse to public funds, who are perpetrating anti-social behaviour and not engaging with outreach services.
36. Assistance for this group would be limited to emergency assistance should care and support needs escalate to the point where action is deemed necessary. The cost of assisting would fall to the City of London.
37. Legal advice points out that the decision to sign or not sign the Pledge Campaign is a political rather than legal one. Any legal implications are linked to the consequences of signing such a pledge due to the required change in operating practice.
38. Legal advice points out that there is no obligation to use the referral mechanism, therefore a policy of non-cooperation could be considered a fettering of this discretion.
39. Should the Pledge Campaign be signed, and a subsequent decision be made that a referral to RSSS is required, a legal challenge that policy has not been followed could result.

Appendices

- Appendix 1: Homeless Link Pledge Campaign: Legal opinion
- Appendix 2: Standard Motion on Homelessness and Immigration Rules

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