

# Charges for temporary homeless accommodation in Scotland: law and reality

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## Executive summary

This report examines the practice of charging for temporary homeless accommodation in Scotland and whether Scottish local authorities comply with the law on charging. It finds that:

- All Scottish local authorities issue some charges for the provision of temporary accommodation. The law requires that these charges must be 'reasonable'.
- Local authorities employ varied methods to calculate charges, resulting in a postcode lottery for homeless people. Most local authorities do not currently take individual circumstances into account but do consider affordability when setting their charges.
- Local authorities which do not take individual circumstances into account may be acting unlawfully.
- High temporary accommodation charges can violate the human right to adequate housing and lead to high levels of personal debt which can cause significant hardship for homeless people.
- The total level of debt owed by individuals to local authorities in Scotland in respect of temporary accommodation is upwards of £33.3 million.
- Attempts to mitigate debt after the charges have been issued, such as by writing off arrears, are an inadequate solution to unaffordable temporary accommodation.

It recommends that the following steps are taken to improve this situation:

- All local authorities should review and update their policies on charging for temporary accommodation to ensure that they are acting lawfully.
- Longer term, it recommends that the Housing (Scotland) Act 1987 should be changed to prohibit local authorities from charging individuals for the provision of temporary accommodation. In the event that there is no political support for this proposal, it recommends that the ability of local authorities to charge individuals for temporary accommodation should be much more tightly regulated and that charges should only be made following an affordability assessment and where the local authority is satisfied that the charges are affordable.

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## 1. Introduction

### 1.1 Affordability and the right to adequate housing

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) recognises the human right to adequate housing. The right has been summarised as “the right to live somewhere in security, peace and dignity”.<sup>2</sup> It applies to everyone but is particularly important in the context of homelessness, which the UN Special Rapporteur on the right to adequate housing has described as, “perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing.”<sup>3</sup>

The UN Committee on Economic, Social and Cultural Rights, the body which monitors the implementation of the ICESCR, has issued guidance on the interpretation of the right to adequate housing. ‘Adequate’ housing should contain several key elements, including security of tenure, habitability, accessibility – and most importantly for the purposes of this report - affordability.<sup>4</sup>

Affordability has been defined by the Committee as follows:

*Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases...<sup>5</sup>*

### 1.2 Charging for temporary accommodation in Scotland

One of the ways in which the right to adequate housing is guaranteed in Scotland, is through the provision of temporary accommodation to homeless people. Local authorities accommodate homeless people in temporary accommodation while a homelessness claim is being assessed or until permanent accommodation becomes available.

Temporary accommodation is a costly form of accommodation for both local authorities and individuals, making the provision of affordable temporary accommodation a particular challenge to central and local government. There have been year on year increases in the number and length of

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<sup>2</sup> UN CESCR, ‘General Comment No. 4. The Human Right to Adequate Housing’ (1991), para 7.

<sup>3</sup> Miloon Kothari, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’ (2005), page 2.

<sup>4</sup> UN CESCR, ‘General Comment No. 4. The Human Right to Adequate Housing’ (1991), para 8(c).

<sup>5</sup> Ibid.

temporary accommodation tenancies since 2015 and 2017 respectively,<sup>6</sup> trends exacerbated by the COVID-19 pandemic.<sup>7</sup>

Under the Housing (Scotland) Act 1987, where a person ('an applicant') applies to a local authority for accommodation, that local authority has a duty to provide temporary accommodation to the applicant if they have reason to believe that the applicant may be homeless.<sup>8</sup>

A local authority can make 'reasonable' charges for the provision of temporary accommodation.<sup>9</sup> There is no definition of 'reasonable' in the legislation or guidance, and methods for calculating charges, as well as the cost of temporary accommodation itself, varies greatly across Scotland. As a result, homeless applicants face a 'postcode lottery'<sup>10</sup> and can end up in considerable debt as the result of a stay in temporary accommodation.

When calculating temporary accommodation charges, local authorities are bound to consider the Code of Guidance on Homelessness.<sup>11</sup> The Code requires that local authorities consider the affordability of temporary accommodation to the individual applicant. Although there is a lack of caselaw in this area in Scotland, English caselaw suggests that the failure to do so may be unlawful.

In order to assess the practices and reality of charging for temporary accommodation across Scotland, the Legal Services Agency submitted freedom of information requests to all local authorities in Scotland.<sup>12</sup> Responses revealed varying levels of detail in local authority policies and varying regard for, and definition of, the affordability of temporary accommodation.

Only four<sup>13</sup> local authorities confirmed that they take individual circumstances into account when deciding how much to charge, while ten<sup>14</sup> stated that they do not. While figures vary greatly across Scotland, and some local authorities claimed to mitigate the impact of arrears on individuals by writing off or declining to pursue debt, the high cost of temporary accommodation is leading to high levels of debt nationwide.

Our view is that the adoption of such policies is not a solution, but rather evidence of the unaffordability of temporary accommodation in much of Scotland. We make recommendations for several steps that should be taken to address the problem of unaffordable charges for temporary accommodation.

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<sup>6</sup> Aggregated data from Scottish Government 'Homelessness in Scotland' annual reports 2015-2021, available at <https://www.gov.scot/collections/homelessness-statistics/>

<sup>7</sup> Scottish Government, 'Homelessness in Scotland: 2020 to 2021', 19-20.

<sup>8</sup> Section 29(1).

<sup>9</sup> Housing (Scotland) Act 1987, Section 35(2).

<sup>10</sup> Watts, Littlewood, Blenkinsopp and Jackson, *Temporary Accommodation in Scotland: Final Report*, (Herriott-Watt University, SocialBite and ISphere, 2018), 9.

<sup>11</sup> Housing (Scotland) Act 1987, s37(1).

<sup>12</sup> See Appendix 1 for the terms of those FOI requests.

<sup>13</sup> Argyll and Bute, East Lothian, Highland, West Dunbartonshire. The Highland Council indicated that individual circumstances are only taken into account when setting charges for B&B accommodation, but not other types of temporary accommodation.

<sup>14</sup> Angus, East Dunbartonshire, East Renfrewshire, Falkirk, Fife, Moray, North Lanarkshire, South Lanarkshire, Stirling, Comhairle nan Eilean (Western Isles).

## 2. Law on charges for temporary accommodation

### 2.1 Law in Scotland

Where a local authority is subject to a duty to accommodate a person who is homeless ('a homeless applicant'), they may charge the applicant for the provision of temporary accommodation. Any such charges are subject to the following terms of Section 35(2) of the Housing (Scotland) Act 1987:

*(2) Without prejudice to section 210(1), a local authority may require a person to whom they were subject to a duty under section 29, 31 or 34 (interim duty to accommodate pending inquiries and duties to persons found to be homeless)—*

*(a) to pay such reasonable charges as they may determine in respect of accommodation which they secure for his occupation (either by making it available themselves or otherwise), or*

*(b) to pay such reasonable amount as they may determine in respect of sums payable by them for accommodation made available by another person.*

The use of the wording 'may require' in Section 35(2) makes clear that a local authority has discretion as to whether to charge for accommodation or not. It is also clear that, if a local authority decides to charge for temporary accommodation, then any charges must be 'reasonable'. That term is not defined in the 1987 Act and there does not appear to be any accessible Scottish caselaw on what constitutes a 'reasonable' charge in this context.<sup>15</sup>

Reasonableness in this context requires an exercise of discretion by the local authority. Local authorities should take all relevant circumstances into account in this exercise, including consideration of the individual financial circumstances of the particular applicant and whether any such charges are reasonable with reference to prevailing market rental rates for similar accommodation. Charges which would be unaffordable for an individual, or significantly above the rent for similar accommodation may not be reasonable, and may therefore be unlawful.<sup>16</sup>

### 2.2 Law in England and Wales

There is a similar statutory provision in the legal framework relating to homelessness in England and Wales, which also requires that any charges for accommodation must be 'reasonable'.<sup>17</sup> Unlike in Scotland, that requirement has been the subject of some litigation. The courts in England and Wales

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<sup>15</sup> We note that reference is made in P Robson and M Poustie, *Homeless people and the law* (3rd ed.) to a case on this point involving Argyll and Bute Council (reported at 1986 SCOLAG 100). The authors were unable to access this case report.

<sup>16</sup> Robson and Poustie (*ibid*), note at pages 303-304 that "...any housing authority which has failed to exercise their discretionary powers to determine what is a reasonable charge by adopting a blanket policy, such as charging all homeless persons the full cost or a fixed charge for accommodation, or by refusing to consider the individual charge in each case, would be subject to challenge".

<sup>17</sup> Housing Act 1996, Section 206(2).

have found that local authorities can charge a nil or ‘peppercorn’ rent<sup>18</sup> and that any accommodation offered to an individual will not be suitable “unless it is at a rent which the applicant can afford, either from his own resources or with the benefit of such public assistance as is likely to be available to him”.<sup>19</sup>

While there are some similarities between the different statutory regimes that apply in the respective jurisdictions on this topic and decisions from England and Wales will be persuasive in Scots law, those decisions are non-binding. There are also some significant differences between the two legal regimes which caution against any direct application of English and Welsh judgements into Scots law.<sup>20</sup>

### 2.3 Code of Guidance on Homelessness

The Scottish Government has published guidance on charges for temporary accommodation, which is useful when considering whether any charges are ‘reasonable’. When carrying out their functions under the 1987 Act with respect to homeless persons and persons threatened with homelessness, Scottish local authorities are required to have regard to this guidance.<sup>21</sup>

The relevant guidance which local authorities are required to have regard to is the Scottish Government’s 2019 ‘Code of Guidance on Homelessness’ (‘the Guidance’).<sup>22</sup> Paragraph 8.84 of the Guidance provides as follows:

*An applicant can be asked to pay a reasonable charge for any accommodation provided directly by the local authority; or a reasonable amount for accommodation supplied by another housing provider but paid for by the local authority (Section 35(2) of the 1987 Act). In deciding what is reasonable, the local authority should take account of what the applicant can pay in the longer term. If an applicant is being asked to pay for accommodation provided by or paid for by the local authority then the applicant should be informed in advance of the cost of the accommodation. They should also be assisted when applying for benefit to cover the cost of such accommodation. The local authority should take account of, and advise of, the likely level of benefit when considering charges.*

Additionally, there is a list of ‘advisory standards’ in the Guidance relating to the standards of temporary accommodation. The advisory standards require that any temporary accommodation should, “Include a household assessment to consider whether the temporary accommodation being offered is affordable by the household”.<sup>23</sup>

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<sup>18</sup> *R (on the application of Yekini) v Southwark LBC* [2014] EWHC 2096 (Admin), at paragraph 54.

<sup>19</sup> *R. v London Borough of Tower Hamlets* (1994) 26 H.L.R. 597, at page 601.

<sup>20</sup> For example, The Homelessness (Suitability of Accommodation) Order 1996 imposes extensive requirements of local authorities in England and Wales to assess the affordability of accommodation – the 1996 Order has no direct equivalent in Scots law. Similarly, there are differences in the relevant sections of the codes of guidance on homelessness that apply in each jurisdiction.

<sup>21</sup> Housing (Scotland) Act 1987, Section 37(1).

<sup>22</sup> Scottish Government, ‘Code of Guidance on Homelessness: Guidance on legislation, policies and practices to prevent and resolve homelessness (Interim Update) November 2019’ (Scottish Government, 2019).

<sup>23</sup> Code of Guidance on Homelessness, page 113.

According to the Guidance, local authorities should take the following steps vis-à-vis charging for temporary accommodation:

- Carry out a household assessment to consider whether accommodation would be affordable for a household;
- Consider the ability of any individual to pay charges in the longer term;
- Give advance notice to an individual of any charges;
- Assist an individual to apply for benefits to pay any charges;
- Take account of the likely level of benefit when considering charges.

Although the Guidance makes reference to the need for temporary accommodation to be ‘affordable’ (and the closely related concept of the ability of an individual to pay any charges in the longer term), this term is left undefined in the Guidance.

The boundaries of the requirement in Section 35(2) of the 1987 Act to only issue ‘reasonable’ charges (referred to above) are unclear. The Guidance on the other hand, is relatively prescriptive in the approach that should be taken by local authorities where they charge for temporary accommodation.

Local authorities are not required to slavishly follow every letter of the Code of Guidance (as stated above, the statutory duty on a local authority is only that it must ‘have regard’ to the Guidance). However, a local authority which departs from the terms of the Guidance should give clear reasons for doing so.<sup>24</sup>

### **3. Findings on local authority charges**

Freedom of information requests (and follow-up requests where necessary) were made to each local authority in Scotland. Each local authority was asked to confirm whether they had a policy on charging for temporary accommodation (and if so, to provide details), details of the charges they made in the last year and any outstanding debts owed to them in respect of charges.<sup>25</sup> Their responses are discussed below and summarised in the table in Appendix 2.

#### **3.1 Policies on charging**

22 local authorities<sup>26</sup> explained that they have no specific written policy on charging for temporary accommodation, however most local authorities gave some explanation as to how their charges are calculated.<sup>27</sup> This indicates that most local authorities do in fact have policies in this area, with greater

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<sup>24</sup> *R. v Islington LBC Ex p. Rixon* [1996] 3 WLUK 251.

<sup>25</sup> The full terms of the FOI request are set out in Appendix 1.

<sup>26</sup> Aberdeen, Aberdeenshire, Angus, Argyll and Bute, Clackmannanshire, Dumfries and Galloway, Dundee, East Ayrshire, East Dunbartonshire, East Lothian, East Renfrewshire, Edinburgh, Fife, Inverclyde, North Ayrshire, North Lanarkshire, Perth and Kinross, Renfrewshire, Scottish Borders, South Ayrshire, South Lanarkshire, Stirling.

<sup>27</sup> Little or no explanation was provided by Clackmannanshire, Dundee, Edinburgh, Inverclyde, North Ayrshire, North Lanarkshire, and West Dunbartonshire Councils.

or lesser degrees of formality depending on whether they are contained in a specific written policy document or not.

As examples of this, Glasgow City Council published a document setting out their charges for temporary accommodation and reasoning for this for 2020/2021;<sup>28</sup> whereas Dumfries & Galloway Council does not have a specific written policy document on charges but confirmed that they charge the Local Housing Allowance<sup>29</sup> rates plus a 25% management fee.

Of the local authorities which indicated that they have some form of policy, they used several methods to set their charges. The main trends and factors used for setting charges were:

- To set the charges on a cost recovery basis (i.e. the local authority charges an applicant the full costs of the provision of their accommodation);
- To set the charges in line with the relevant local housing allowance rates,
- To set the charges according to the size of the accommodation;
- To set the charges according to whether the accommodation was furnished;
- To set the charges with reference to registered social landlord or private rental market rates.

Of the local authorities which indicated their position vis-à-vis whether they consider the particular financial circumstances of individuals, ten local authorities stated expressly that they do not take individual circumstances into account,<sup>30</sup> whereas only four indicated that they would take individual circumstances into account.<sup>31</sup>

The Guidance states that local authorities “should take account of what the applicant can pay in the longer term” when deciding what is reasonable, and that local authorities should also conduct a “household assessment to consider whether the temporary accommodation being offered is affordable by the household”. A policy whereby charges are set with reference to criteria external to the circumstances of the applicant (e.g. cost of the accommodation, LHA rates or prevailing market rental rates), and where the individual circumstances of an applicant are not taken into account, would not appear to comply with either the requirements or the spirit of the Code of Guidance.

Where charges have been set without reference to an individual homeless applicant’s circumstances, a local authority should give clear reasons for why they have chosen to depart from the terms of the Guidance. In the absence of any such clear reasoning for departing from the Guidance, any such charges could be unlawful. Even where clear reasons were given for departing from Guidance, such a

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<sup>28</sup> Glasgow City Council, ‘HOMELESSNESS SERVICES: TEMPORARY HOMELESSNESS ACCOMMODATION CHARGES FOR 2020/21’ (2020), available at [https://glasgowcity.hsc.scot/sites/default/files/publications/ITEM%20No%2014%20-%20Homelessness%20Temporary%20Accommodation%20Rent%20Charges\\_0.pdf](https://glasgowcity.hsc.scot/sites/default/files/publications/ITEM%20No%2014%20-%20Homelessness%20Temporary%20Accommodation%20Rent%20Charges_0.pdf).

<sup>29</sup> Local Housing Allowance are the rates used to calculate housing benefit for tenants renting from private landlords. See <https://www.gov.uk/guidance/local-housing-allowance>.

<sup>30</sup> Angus, East Dunbartonshire, East Renfrewshire, Falkirk, Fife, Moray, North Lanarkshire, South Lanarkshire, Stirling, Comhairle nan Eilean (Western Isles).

<sup>31</sup> Argyll and Bute, East Lothian, Highland, West Dunbartonshire. The Highland Council indicated that individual circumstances are only taken into account when setting charges for B&B accommodation, but not other types of temporary accommodation.

policy may be unlawful in that the charges may not be reasonable as the local authority has failed to consider the affordability of any such charge for a particular individual.

### **3.2 Charges in practice and outstanding debts**

The cost of temporary accommodation varies greatly across Scotland. Research commissioned by Social Bite from 2018 found that rent for temporary accommodation ranged from £40 per week to £1300 per week across all forms of accommodation.<sup>32</sup> For a furnished flat, rent ranged from £65 to £400 per week.<sup>33</sup> In some local authority areas, charges for temporary accommodation can be as high as three times the Local Housing Allowance rate.<sup>34</sup> In over half of the 22 local authority areas surveyed by the Social Bite-commissioned research, the rent for temporary accommodation was higher than the Local Housing Allowance rate.<sup>35</sup> We note that the variation in costs can be partially explained by the provision in some areas of specialist support services and the use of more expensive private sector or housing association accommodation,<sup>36</sup> as well as the vastly different methods of calculating charges noted above.

The high cost of temporary accommodation in some areas can result in high levels of debt. Our freedom of information requests revealed that the total level of debt owed in respect of temporary accommodation in Scotland is upwards of £33,302,315.99. This is a conservative figure; the correct figure is likely to be higher as three local authorities did not provide information on debt owed<sup>37</sup> and some only provided a figure for a single calendar year or for current tenants, rather than the total outstanding debt.<sup>38</sup>

On the individual local authority level, the FOI responses showed a great degree of variation. The reported outstanding debt ranged from £0 in East Lothian to £12,711,641 in Edinburgh.<sup>39</sup> The mean debt owed to the 30 local authorities who provided data was £1,286,067.

Anecdotal evidence from LSA's clients indicates that a single household or individual may owe thousands of pounds to a local authority – and that charges can be issued with little reference to their affordability for any given individual.

Several local authorities indicated that they mitigate the potential for tenants to accrue significant arrears through their debt collection policy. South Lanarkshire Council, for example, nominally charges the same amount to all individual applicants but allows individuals to make alternative payment plans. The Council claims that, in practice, this results in their paying lower weekly amounts and having the arrears written off at the end of the tenancy. Similarly, in Moray, the Council claims that if certain minimum payments are made, individuals are not pursued for the remaining debt.

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<sup>32</sup> Watts et al, 9.

<sup>33</sup> Ibid

<sup>34</sup> Watts et al, 62.

<sup>35</sup> Ibid

<sup>36</sup> Watts et al p145

<sup>37</sup> Clackmannanshire, Perth and Kinross, Scottish Borders

<sup>38</sup> Aberdeen, Dundee, Edinburgh, Inverclyde, Moray, Scottish Borders, Shetland, South Ayrshire, South Lanarkshire provided information for a single year. Stirling provided information for current tenants only.

<sup>39</sup> For a single calendar year.

While this approach may protect some individuals from debt recovery action in practice, it does little to tackle the underlying problem of charges which are unaffordable to the individual and potentially unlawful. The accrual of debts is understood to be a potential cause of harm to individuals, as summarised by the mental health charity MIND:

*Research studies indicate that debt can be both a consequence and catalyst of mental health problems, including:*

- *anxiety and stress*
- *depression*
- *self-harm and suicidal thoughts*
- *strain on personal relationships, social inclusion and self-esteem.*<sup>40</sup>

#### **4. Conclusion and recommendations**

Our freedom of information requests revealed that there are problems with the affordability of temporary accommodation throughout Scotland. There are differences in approach across Scotland, but few local authorities take into account the ability of an individual to pay the charges, as per the terms of the Scottish Government's Code of Guidance on Homelessness.

Although Scots caselaw is silent on the matter, English caselaw in combination with the Scottish legislation, Code of Guidance and Advisory Standards, suggests that this may be unlawful. One effect of the failure to take individual circumstances into account is high levels of personal debt, which may or may not be enforced depending on where an individual lives. The result is a patchy policy landscape, a lack of clear reasoning behind charges in many local authorities and a failure to protect the human right to adequate housing in Scotland.

In order to resolve this problem, we make a small set of recommendations categorised into urgent steps which can be taken now, and longer-term changes.

##### **4.1 Urgent steps**

As a matter of urgency all local authorities should review and update their policies on charging for temporary accommodation to ensure that they are acting lawfully and consistent with the Code of Guidance on Homelessness and the human right to adequate housing.

Housing advisers should proactively identify cases where individuals may have been subject to unaffordable charges, and challenge such charges with legal action where necessary.

##### **4.2 Long-term changes**

To provide a more long-term resolution, we propose two changes to the law (they are proposed in the alternative).

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<sup>40</sup> MIND, 'Still in the red: Update on debt and mental health' (MIND, 2012), p1.

Homelessness is often a very difficult experience. In the first instance, the question of whether it is appropriate in principle to charge individuals in these circumstances for the provision of a public service must be examined.<sup>41</sup> The problems identified in this report could be avoided if individuals were not charged for the provision of temporary accommodation and if temporary accommodation was instead funded from general taxation.<sup>42</sup> We recommend that the Housing (Scotland) Act 1987 should be changed to prohibit local authorities from charging individuals for the provision of temporary accommodation.

If our first long-term proposal is not supported and there is continuing political support for the principle of charging individual homeless applicants, then our secondary long-term recommendation is that the ability of local authorities to charge individuals for temporary accommodation should be much more tightly regulated.

The law governing the ability of local authorities to charge for temporary accommodation should be changed so that charges can only be made where the local authority has:

- First carried out an individual (ideally standardised) assessment of a homeless applicant's financial circumstances, and;
- Then, using the results of that individual assessment, the local authority is fully satisfied that any charges levied are either (i) capable of being paid directly and in full through social security payments made on behalf of the individual applicant (e.g. by the payment of direct housing costs through universal credit) with no adverse financial consequences for the applicant, or (ii) the charges are affordable for the individual applicant – meaning that they are at a level which does not threaten or compromise the attainment and satisfaction of their other basic needs – and will not cause the individual to accrue debt.

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<sup>41</sup> The Homelessness and Rough Sleeping Action Group similarly noted that, “as a matter of principle... the financial responsibility of providing good quality temporary accommodation should not fall solely on the shoulders of the homeless household”, in ‘Transforming the use of Temporary Accommodation in Scotland’ (2018), at page 18.

<sup>42</sup> *Gray v University of Edinburgh* 1962 SC 15 is authority for the proposition that rent is one of the essential components of a lease, meaning that consideration would need to be given to the implications the proposal would have for security of tenure in homeless accommodation and whether any further legal changes would be needed to avoid any adverse unintended consequences in this regard.

## Appendix 1 – Freedom of Information Request

Local authorities were asked four questions:

1. Does the Council use the power under s35(2) of the Housing (Scotland) Act 1987 to charge homeless people for temporary accommodation?
2. Does the Council hold any policies or internal guidance documents relating to charges for temporary accommodation, including on what constitutes a 'reasonable' charge in relation to s35(2) and para 8.84 of the Scottish Government's Code of Guidance on homelessness? If so, what is the content of the policies or guidance?
3. If the Council has charged homeless people for temporary accommodation, please provide information on the following for the past calendar year:
  - How many people were charged.
  - The total income received by the Council from any charges.
  - How many people paid such charges directly to the Council, rather than via charges taken directly from Universal Credit or other social security entitlements.
4. What, if any, is the total outstanding debt owed to the Council for temporary accommodation charges currently owed?

## Appendix 2 – summary of FOI responses

| Local Authority       | Link to policy | Details   |
|-----------------------|----------------|---|
| Aberdeen City Council | None           | <p>The Council sets temporary accommodation charges as part of its annual budgeting process. The charge reflects the cost to the Council of providing temporary accommodation.</p> <p>The council said that, ‘Officers take into account the Scottish Government guidance on the matter’ and that ‘staff members are asked to take into account each individual situation when allocating [temporary accommodation]’. This includes whether the person is eligible for Housing Benefit. All applicants are supported to make a Housing Benefit application and may be referred to a support service if there is concern about the individual’s ability to pay.</p> <p>For the 1516 temporary tenancies live in 2020, the Council is currently owed £744,453 and received £3,261,822.29 in charges in 2020. Of the 1516 tenancies, 282 did not pay via Universal Credit or Housing Benefit.</p>  |
| Aberdeenshire Council | None           | <p>The Council said that rates for all accommodation are set ‘on the basis of recovering the cost of providing the accommodation’. A committee report was supplied from 2018 and outlined the following approach to charging for shared temporary accommodation:</p> <p><i>“Rent was charged at the Local Housing Allowance Shared Accommodation Rate of £75.63 per week, per room. This charge included all costs relating to the tenancy and included £13.64 per week for heating and lighting and £3.22 per week for water and sewerage. If a tenant is claiming benefit, they will be responsible for paying for the heating &amp; lighting and water &amp; sewerage costs (total £16.86) per week as this is not eligible for housing benefit.”</i></p> <p>At December 2020, the Council was owed a total of £1,479,422 in temporary accommodation charges, including all outstanding arrears. In 2020 it received £1,609,510 in payment for temporary accommodation. Of the 1070 households who lived in TA during 2020, 395 paid at least part directly rather than via social assistance.</p> |
| Angus Council         | None           | <p>Rents are set in accordance with the rent for ‘mainstream properties.’ There are also service and utility charges which are set based on the actual cost of furnishings and fuel from the previous year.</p> <p>The Council said that “There is no formal process [for considering individual circumstances] although housing officers will help</p>   |

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|                          |      | <p>prospective tenants claim benefits...Rent and service charge rates are the same for all tenants regardless of income.” Fuel charges are, however, based on household size which reflects some adjustment based on the individual case.</p> <p>Of the £616,969 received by the Council in charges, £144,027 was paid directly by cash or direct debit. 356 people were charged for temporary accommodation in 2020, up until December 23. The total outstanding debt is £135,732.87.</p>  |
| Argyll and Bute Council  | None | <p>In a recent policy review, the Council claimed to have reviewed the affordability of its temporary accommodation. Charges range from £90 to £124 per week, depending on the type of accommodation up to a four-bedroom property.</p> <p>In exceptional circumstances, the Council said that they may take individual circumstances into account. For example, where a tenant had to live in a property too large for their needs, they were charged for a smaller property and the Council made up the shortfall.</p> <p>Of the 252 households charged, 69 paid an element of rent directly. In total, the Council received £452,222 in TA charges in 2020. The Council is currently owed £36,125, although it was noted that this is in part due to Housing Benefit arrears and the inability of tenants to pay using swipe cards during the COVID-19 pandemic.</p> |
| Clackmannanshire Council | None | <p>The Council does not hold a policy for setting temporary accommodation charges and at the time of writing had not responded to a follow up question enquiring about how charges are set.</p> <p>The Council received £2,665,110 from 407 households in the calendar December 2019 – November 2020. Of these, 78 households paid charges directly and not via Universal Credit or Housing Benefit. The Council does not record the debt it is owed for temporary accommodation.</p>   |
| Dumfries and Galloway    | None | <p>Rents are set “in accordance with the Local Housing Allowance plus a 25% management fee” and are reviewed annually. The Council seeks to recover the cost of the provision of temporary accommodation through the charges: “The management fee seeks to recover the proportion of the costs of administering and maintaining homeless temporary accommodation.”</p> <p>Of the 474 households placed in temporary accommodation in 2019, 65 were reported to have made a direct payment. It was noted that this does not include “those households who were liable for a rent charge who did not make any payment directly to the Council”, so the number of households who did pay for the</p>   |

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|                             |      | <p>accommodation through social assistance is likely to be higher. The Council received £480,197.21 in 2019. The total outstanding debt to date for temporary accommodation is £158,776.95.</p>  |
| Dundee City Council         | None | <p>The Council said that it “does not hold any policies or internal guidance documents relating to charges for temporary accommodation, including on what is a reasonable charge.”</p> <p>For the period 6<sup>th</sup> April 2020 – 24<sup>th</sup> January 2021, the Council charged 725 people, 70 of whom paid directly without Housing Benefit. The Council received £3,007,531.53 and was owed £93,051.34.</p>   |
| East Ayrshire Council       | None | <p>Tenants are charged rent plus a management fee for temporary accommodation. This approach is due to be reviewed in the near future. In relation to the Code of Guidance, the Council said:</p> <p><i>“We do consider Section 8.84 of the Code of Guidance for Homelessness. People are advised at the point of contact of the rental cost and are assisted to maximise their income and benefit entitlement to help with meeting the costs of the accommodation”</i></p> <p>The Council reported charging 533 households in a calendar year, although it is not recorded whether charges are paid directly or through social assistance. The Council reported receiving £607,069.66 in temporary accommodation charges. It is currently owed £121,280.84 in respect of temporary accommodation charges.</p> |
| East Dunbartonshire Council | None | <p>Rents are set based on the size of the property and whether it is furnished.</p> <p>When asked about individual circumstances the Council said: “We do not change rental amount due to individual circumstances, but housing benefit would take the individual applicant’s financial circumstance into account when making an award.”</p> <p>214 tenants were charged rent in the last year, for which the Council received £162,112.36. Three tenants were not entitled to housing benefit or other housing assistance and therefore paid directly. The total outstanding debt was £110,111.40 at 23 December 2020.</p>  |
| East Lothian Council        | None | <p>The Council provided information about B&amp;B accommodation. Although no written policy is held there was some indication that the Council adjusts rents depending on individual circumstances:</p>  |

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|                           |   | <p><i>"[T]he Council charges a minimum of £15 per week for B&amp;B accommodation, rising to a maximum of £81 per week for individuals in full time employment."</i></p> <p>The Council also noted that its Homelessness Operations Policy, including policies surrounding B&amp;B charges, is under review.</p> <p>In 2018/19, 295 households were charged for B&amp;B accommodation. Because the accommodation is provided by third parties, the Council did not receive any income from the charges. Therefore, data was not available as to whether charges were paid directly and there is no outstanding debt owed to the Council.</p>  |
| East Renfrewshire Council | None  | <p>The council charges a standard rate and encourages people to apply for housing benefit. If the tenant does not receive benefits, they are charged the same rate. The charge is £20/night. Charges are monitored to ensure they are in line with benefits rates.</p> <p>In 2019, the total housing stock of the Council was 45 properties with a total rent charged of £192,200.81. The Council did not hold reliable data on how rent was paid. It is currently owed a total of £428,186.58 in arrears for temporary accommodation.</p>   |
| Edinburgh City Council    | None  | <p>When asked about affordability for the individual, the Council gave the following explanation about temporary accommodation charges:</p> <p><i>"The Council assists people to apply for Housing Benefit (HB) when they access Temporary Accommodation (TA). If in receipt of full benefits that covers costs; if someone is working, the amount of service user contribution, and, how much HB is received, is determined by an individual's circumstances."</i></p> <p>From 1 January to 6 December 2020, 4,855 households stayed in temporary accommodation for at least one night. Of these, 1701 people made a payment contribution towards their stay, although data provided by the Council suggests that a total of 2,248 were liable to make a direct payment. For the same period, the Council received £22,997,570 from Housing Benefit and £2,384,739 from direct charges. Arrears arising from that period amounted to £12,711,641. The cost of providing the accommodation was £38,093,950.76l</p> |
| Falkirk Council           | <a href="#"><u>Rapid Rehousing Transition Plan Exec Summary</u></a> | <p>Rents are set in accordance with Local Housing Allowance. The policy also makes some reference to consideration of employment status of a tenant. When asked about considering individual circumstances, the Council said:</p>  |

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|              |      | <p><i>“Falkirk Council do take into account individual circumstances...in line with the [guidance]...we consider what welfare benefits assistance or Discretionary Housing Payments might be required where households are unable to afford temporary accommodation costs.”</i></p> <p>For the 2019/20 financial year, 623 people were charged rent, 161 of whom paid the charges directly. The total income received by the Council was £100,544 and the outstanding debt at the end of the financial year was £132,984.</p>  |
| Fife Council | None | <p>The Council said that:</p> <p><i>“Temporary accommodation rents are set as part of the Council’s wider Rent Setting Policy and reviewed annually through the Committee Structure with reference to a range of industry benchmarks and local housing information.”</i></p> <p>In response to a follow up question, the Council stated:</p> <p><i>“The Council applies a harmonised rent structure across all temporary accommodation properties. This is reviewed on an annual basis and agree by full Fife Council Committee [...] The Council sets rents with regard to a range of affordability and other criteria contained in the report. There is no scope to charge differential rents but in all circumstances we will support applicants through the following process:</i></p> <ul style="list-style-type: none"> <li>• <i>“Apply for Housing Benefit, help to submit the form and all verification required</i></li> <li>• <i>An Income &amp; Expenditure form should be submitted to Temporary Accommodation Income Management (TAIM) Team</i></li> <li>• <i>Once HB calculated, if customer liability exceeds £70 then letter issued by TAIM authorising payments of £70 per week</i></li> <li>• <i>When the customer leaves accommodation, TAIM calculate rent liability based on £70 per week (may be periods had full HB or to pay less than £70)</i></li> <li>• <i>If customer has paid full rental liability - remaining balance written off</i></li> <li>• <i>If customer has made payments but still has outstanding liability - excess written off and letter issued for remaining balance</i></li> <li>• <i>If customer failed to make any payments or regular payments ie paid once - nothing written off and letter issued for full balance.”</i></li> </ul> <p>In the period November 2019 – November 2020, 3710 people were charged. The council received a total of £12,489,291 in income while the total outstanding debt stood at £1,304,377.22</p> |

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|                      |   | at the date of response (December 18 2020). The Council did not hold data on whether charges were paid directly or via social assistance.  |
| Glasgow City Council | <u>Temporary Homelessness Accommodation Charges 2020/2021</u> | <p>The Council's policy on temporary accommodation charges is contained in the document 'Temporary Homelessness Accommodation Charges 2020/21' available of the Glasgow City Council website. The policy acknowledges and outlines the legislative basis for charges and the Scottish government Code of Guidance on Homelessness. With regard to individual affordability, the policy states:</p> <p><i>"In exceptional circumstances, consideration will be given to the charges applied."</i> (para 3.9)</p> <p>In 2020, 5,735 people were charged for temporary accommodation, of whom 510 made payments direct to the Council. The Council received £21,358,553 in income and at 31 December 2020 was owed a total of £5,163,685 in arrears.</p>  |
| The Highland Council | <u>Temporary Homeless Accommodation Rent Setting</u>          | <p>Temporary accommodation is a combination of Council owned units, rented housing association properties and units rented from private landlords. The rent for Council properties is the Council rent for the size and type of property, while the rent for other types of properties is based on "the full cost recovery of the charge levied" by the landlord or housing association. For ad hoc B&amp;B accommodation, the Area Housing Manager and Housing &amp; Homeless Service Manager decide on a reasonable charge based on "the length of the stay and the affordability of the charge. The Local Housing Allowance rates will be used as a guide."</p> <p>In its FOI response, the Council said that it tries to keep rents "as affordable as possible" and that "officers are encouraged to discuss affordability with homeless clients."</p> <p>The Council's policy includes a differentiated approach to tenants entitled to full Housing Benefit and those who are not. For tenants entitled to partial or no Housing Benefit, tenants pay up to the Local Housing Allowance plus a service charge, with the any difference between the LHA and the actual rent being remitted.</p> <p>During the 2019/20 financial year, 1399 households were placed in temporary accommodation. Of 585 live tenancies at 29 March 2020, 221 households were not in receipt of Housing Benefit. The Council received £3,711,693 in income from charges and was owed a total of £4,417,123.</p> |
| Inverclyde Council   | None  | The Council's policy on charges is currently under review but has previously been guided by local registered social landlord (RSL)   |

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|                    |   | <p>charges. The Council did not respond to a follow up question asking specifically how the Council takes the affordability aspects of the Code of Guidance into account, although it is noted that the Council assists tenants to apply for Housing Benefit and Council Tax reduction.</p> <p>The Council did not provide information about how many people were charged. In 2019/20, the Council received £389,403.03 in Housing Benefit, with cash and Universal Credit payments amounting to a further £4,976.23. Two individuals were recorded as making cash payments, amounting to a total of £1,270. For the period 1 April 2019 to 31 March 2020, the council was owed £89,240.26 in arrears.</p>   |
| Midlothian Council | <p><u>Information about Homelessness Services</u></p> | <p>The Council provided information on services charges only. The Council stated that it holds a policy on reasonable charges but that it is currently subject to review; it was not provided. The Council stated that the policy, “mirrors good practice and scope of services provided (mainly staff support and furnishings)”.</p> <p>The Council website also states that in relation to temporary accommodation, ‘The cost will vary depending on where you are staying and what your income is’, but this may simply be referring to eligibility for benefits.</p> <p>Of 508 people charged for services, 14 paid money to the Council directly. The Council received “approximately £2 million” in income and the total outstanding debt was £149,992 at 24 December 2020.</p>  |
| Moray Council      | <p><u>Temporary Accommodation Charging Policy</u></p> | <p>The Council’s policy highlights the specific objective of making temporary accommodation “an affordable option for all” (para 3.2). The rent is the same for all households with the Council addressing tenants’ inability to pay through debt collection policy:</p> <p><i>“When setting the rent level for temporary accommodation, the Council will charge every household the same level of rent, regardless of income. However, in order to ensure that temporary accommodation is an affordable option to all, the Council will only seek to recover those costs that it can reasonably be expected to collect.”</i> (para 6.1)</p> <p><i>“The level of rent charged for temporary accommodation will be set in accordance with the Local Housing Allowance, plus a £45 management fee. The management fee seeks to recover the cost of decoration, voids, electric/gas check, deliberate damage, furnishings and floor-coverings.”</i> (para 6.2)</p> <p>The Council also appoints the Housing Needs Manager as the person responsible for “ensuring that rent charges for temporary</p> |

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|                           |  | <p>accommodation continue to reflect good practice and fairness to all.”</p> <p>Rents range from £119.79 (single room for under 35-year-olds) to £229.11 (4-bedroom property) per week.</p> <p>From 1 January 2020 to 15 January 2021, 291 rent accounts were created. This does not necessarily reflect the number of households charged. From 1 January 2020 to November 2020, the Council received £569,030.44 in income and was owed £22,199.99 at 16 December 2020. The Council was unable to provide information about how charges were paid in accordance with s17 of the Freedom of Information (Scotland) Act 2002.</p>   |
| North Ayrshire Council    | None   | <p>When asked about the individual affordability of temporary accommodation, the Council stated:</p> <p><i>“Each tenant makes a claim for Housing Benefit, and we assess affordability with any tenant in Temporary Accommodation to make sure charges are affordable. Where a tenant’s income/expenditure shows that any charges applied are not affordable we look at assistance with applications to the Discretionary Housing Benefit fund to make up any shortfalls.”</i></p> <p>It is noted that Discretionary Housing Payment is only available to those already claiming Housing Benefit or the housing element of Universal Credit.</p> <p>In the 2019/20 financial year, 541 tenancies were created. The total income received was £7,608,488. At the end of 2019/20, the cumulative arrears figure for temporary accommodation was £154,559.56.</p> |
| North Lanarkshire Council | None   | <p>Rents are the same for all tenants. The Council supports tenants to maximise their income and claim benefit entitlements:</p> <p><i>“All applicants are advised of the charges in advance of taking up an offer of accommodation, all applications are assisted to apply for benefits to cover the costs of accommodation, a full financial assessment is completed for all applicants.”</i></p> <p>In this financial year up to 13 December 2020, 1,553 households were charged rent, of which 144 made some form of direct payment. The Council received £7,688,302 in income and the total outstanding debt owed to the Council for temporary accommodation charges was £4,801,817 at 18 December 2020.</p>  |
| Orkney Islands Council    | Not provided but written policy referred to in FOI response. | <p>The Council holds a policy on charging for B&amp;B and self-catered accommodation, but no charges were made for this type of accommodation during the calendar year 23 December 2019 to 22 December 2020. There is no formal policy on charging for other temporary accommodation. Rents are charged according to the size of the property plus a standard charge for furnishing. The</p>   |

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|                           |      | <p>Council does not appear to have any formal or informal policies relating to the individual affordability of temporary accommodation.</p> <p>In the calendar year 23 December 2019 to 22 December 2020, 167 households were charged, of which 99 made direct payments to the Council. The Council received £391,526.95 in income, and it was noted that this does not cover the full cost to the Council of providing the accommodation. At 4 December 2020, the total outstanding debt to the Council was £244,371.16, of which £210,850.34 was owed by former tenants and £33,880.82 by households still occupying the accommodation on that date.</p>  |
| Perth and Kinross Council | None | <p>The rent is charged at the same rate as for permanent Council tenancies. During the 2019/20 financial year, 335 people were charged, of whom 51 people paid directly and did not receive Universal Credit, Housing Benefit, or other social security entitlements. A further 55 people made part payment while also in receipt of social assistance. During the year, the council received £160,560 in income from temporary accommodation. The total historic debt for temporary accommodation is £602,196.</p>   |
| Renfrewshire Council      | None | <p>In the absence of a written policy, the Council provided information about how rent is set for furnished temporary accommodation: "The rent [...] is set at the LHA rate, plus a service charge of £45 to cover furnishings and support. In response to a follow-up enquiry on whether the Council considers itself to follow para 8.84 of the Code of Guidance, the Council stated:</p> <p><i>"The approach we take to setting the charge for temporary accommodation, outlined in our original response, is currently the best and fairest way for us to administer the provision of good quality furnished accommodation. Our focus is on minimising the time anyone has to spend in temporary accommodation in line with the Scottish Government policy on implementing Rapid Rehousing Transition Plans."</i></p> <p>Over the course of the last calendar year, the Council charged 608 people for temporary accommodation, of whom 39 made some form of direct payment. The Council receive £480,305 in income from the charges. The total outstanding debt is £18,182, excluding housing benefit arrears.</p> |
| Scottish Borders Council  | None | <p>The majority of the Council's temporary accommodation is leased from housing associations (RSLs). The Council's established practice is to increase temporary accommodation charges each year by "a figure equivalent to an average of the RSL rent</p>  |

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|                           |   | <p>increases, although making sure that our rent increase is no higher than the Council's Charging Policy increases."</p> <p>Data was provided for 2020 up to 7 December. 233 people were charged, although the Council was unable to retrieve information on how many people made direct payments. The Council provided an estimated income figure for the current financial year of £926,000.</p> <p>In relation to debt, the Council said:</p> <p><i>"Shortfalls in income, including for temporary accommodation charges, are taken into account in the overall budgeting process of the Council. Debt continues to be pursued and unrecoverable debt will be written off when appropriate."</i></p>   |
| Shetland Islands Council  | <a href="#">Temporary Accommodation OP6</a> | <p>The Council has a policy which refers to the Code of Guidance but it does not set out how rents are calculated. The policy does, however, note that tenants are responsible for paying for electricity and heating, council tax, and cleaning services where these are provided (pp12-13). When asked about affordability, the Council stated that:</p> <p><i>"Rent levels are set using appropriate benchmarking information and evidence to support any proposals. This effectively captures affordability information although there is no specific guidance on the definition of 'reasonable.'"</i></p> <p>Between 1 December 2019 and 30 November 2020, 176 temporary tenancies were created. All such tenants paid at least some charges directly to the Council, as housing benefit is not available to pay service charges. The Council did not record the total income received in a way that could be reported. The outstanding debt relating to the same period was £68,058 at 14 December 2020.</p> |
| South Ayrshire Council    | None  | <p>There is no specific policy on temporary accommodation charges. Instead, the Council stated that:</p> <p><i>"[TA charges] are set as part of the council's decisions on rent setting for council owned and dispersed temporary accommodation and hostels. A separate charging structure exists for properties leased from the private sector."</i></p> <p>During the 2019/20 financial year, the Council received £2,595,591 in income. 686 people were charged, of whom 44 made some kind of direct payment. The outstanding debt for the year was £245,811.</p>   |
| South Lanarkshire Council | None  | <p>The Legal Services Agency spoke to a Council representative on the phone about their approach to setting rents. The Council informed LSA that the minimum charge for temporary</p>  |

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|   |                                | <p>accommodation in South Lanarkshire is set in line with Local Housing Allowance and mainstream rents, depending on the type of property. Tenants who cannot afford the rent are given a payment plan. If they keep up with the agreed regular payments, they will not be pursued for the arrears arising from the shortfall between the minimum charge and the payment plan.</p> <p>During the 2019/20 financial year, the Council placed 684 new households in temporary furnished accommodation for which they were charged. An addition 489 households were resident at the end of the previous financial year. During the same period, the Council collected £3,757,405 via Housing Benefit and a further £277,802 via direct payments. 353 households made direct payments. The total remaining outstanding debt from the 2019/20 financial year was £641,295 at 7 January 2021.</p>  |
| Stirling Council                                    | None                           | <p>In the absence of a specific policy on temporary accommodation charges, the Council was asked about how it took into account para 8.84 of the Code of Guidance. The Council stated that:</p> <p><i>“The Council charges every household the same level of rent, regardless of income. The rates of Stirling Council’s temporary accommodation have been unchanged for several years and there will be no increase in charges for 2021/22.</i></p> <p><i>The rent levels for temporary accommodation are higher than those for council housing due to the increased costs associated in relation to furnishings and the additional support provided to clients in temporary accommodation. Please note that Council Tax is also included in temporary accommodation rents.”</i></p> <p>In 2019, 341 households were charged for temporary accommodation. The Council was not able to retrieve information about direct payments. The total income received by the Council was £1,781,834.30, of which £155,024.97 was not paid through Housing Benefit. At 4 January 2020, £137,732 was owed by current temporary accommodation tenants.</p> |
| West Dunbartonshire                                 | Held but not provided in full. | <p>The Council stated that its policy “includes provision for those entitled to full Housing Benefit due to work or study to be charged a reduced rate based on a social rented home only.”</p> <p>Of 669 people charged within a one-year period, 26 made direct payments. The Council received £91,111 in income during that period. At 7 January 2021, the outstanding debt was £18,324.50.</p>   |
| Western Isles Council/<br>Comhairle nan Eilean Siar | None provided.                 | <p>The Council outlined its approach to setting rents as follows:</p> <p><i>“The baseline rent shall be the rent charged to the Comhairle by Hebridean Housing Partnership (HHP) for leased properties, or the Private Landlord for Private Sector Leases. Upon notification</i></p>   |

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|                      |  | <p><i>of an increase in rent charged by HHP or the Private Landlord, the Comhairle will adjust the baseline rent accordingly. At this time, the Comhairle will also review the overall budget for service and management charges and increase or decrease the charges accordingly. The new annual rent will therefore be the baseline rent plus the annual increase plus the reviewed service and management charges.”</i></p> <p>When asked specifically about individual affordability, the Council stated:</p> <p><i>“We charge the same to all tenants. However, almost all tenants are eligible to assistance from Housing Benefits, including those who are in employment. No one is therefore asked to pay more than what would be assessed as affordable, depending on their income, by Housing Benefits.”</i></p> <p>The Council charged 169 households and received a total income of £601,000. The total outstanding debt was £151,000. It was estimated that less than 5% of households paid charges directly.</p> |
| West Lothian Council | The Council provided a <a href="#">link</a> to its public document search, but LSA was unable to identify the relevant policy. | <p>The Council stated that:</p> <p><i>“Our temporary tenancy rents are in line with mainstream rents with the exception of a small furniture charge and utilities for those in shared accommodation.”</i></p> <p>In 2020,<sup>43</sup> charges were applied to 737 temporary tenancies. The Council received £456,005.94. The total outstanding debt was £96,750.88 at 18 December 2020. The Council could not provide data on how charges were paid.</p>  |

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<sup>43</sup> Up to 18 December 2020.