

## **LLG's Position Statement on Vulnerability; Duties and Responsibilities in the event of a No Deal Brexit.**

**This policy position note has been prepared by Lawyers in Local Government (LLG) in consultation with and supported by its membership and Corporate Partners as credited below. It does not constitute legal advice and should not be relied upon in that capacity. It sets out the position of LLG as a membership organisation representing lawyers in local government in relation to the main duties and responsibilities held towards vulnerable persons, together with consideration of the effects on others caused by a no deal Brexit.**

### **1. Vulnerability**

1.1 Local Authorities define vulnerability by reference to criteria set out within statute obligating a duty towards a specific person, group or sector.

For example, a person is in priority need<sup>1</sup> for assistance under homelessness legislation if they are vulnerable by virtue of: -

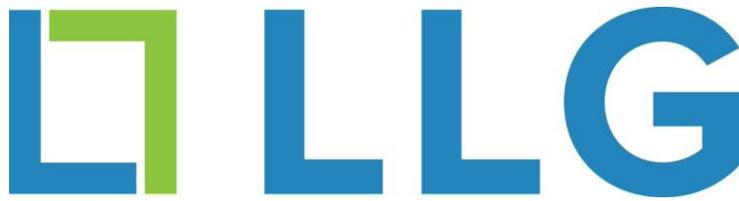
- old age
- mental illness or learning disability
- physical disability
- having been in care and aged over 21
- having been in the armed forces
- having been in custody
- fleeing violence or threats of violence
- some other special reason.

1.2 The Homelessness Code of Guidance states that: 'It is a matter of evaluative judgement whether the applicant's circumstances make them vulnerable'.

1.3 Likewise, social services have a statutory obligation to safeguard and promote the welfare of vulnerable children and adults. An adult at risk (and in consequence

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<sup>1</sup> s.189(1)(c) Housing Act 1996



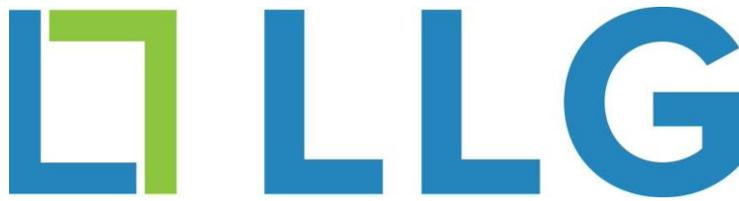
vulnerable) is defined as aged 18 years or over; who may need community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation. In respect of Children, whilst the word vulnerable did not appear in the original Children Act 1989, it was inserted by the Safeguarding Vulnerable Groups Act 2006. The Children Act 1989 states child protection is provided when a local authority has “reasonable cause to suspect that a child who lives, or is found in their area is suffering, or is likely to suffer, significant harm”. A child in need are those who are either disabled or are unlikely to achieve a reasonable standard of health and development in the future without the provision of additional support. It is worth noting that there is no mention of a vulnerable group with issues that fall below such a threshold.

1.4 Other duties arise in respect of duties to care leavers in the form of council’s corporate parenting responsibilities and children with statements of educational need and/or disabilities. Support is also provided to children and families who need early help and interventions or who are being supported on the edge of care in order to avoid statutory intervention.

## **2. Other Duties**

2.1 There are many duties embedded within a variety of statutory provision which could fall within a definition of those directed toward vulnerable groups or designed to support vulnerable groups. These include but are not limited to: -

- Armed Forces Covenant 2011 (enshrined in law by the Armed Forces Act 2011)
- Council Tax Reduction Scheme (The Local Government Finance Act 1992)
- S117 Mental Health Act after care responsibility alongside Clinical Commissioning Groups
- The duty to co-operate in Continuing Health Care Assessments
- A general duty to co-operate with NHS bodies (within the NHS Act but restricted to the exercise of functions)
- Concessionary Travel Schemes



- Improvement of the Health of the People ‘in its area’ (Section 12 of the Health and Social Care Act) The Secretary of State of course retains the responsibility for health protection.

2.2 The majority of local authority public health services are included in either the DPH/LA statutory functions or within the public health grant statutory ring-fence. These services include:

- Open access sexual health and contraception services;
- Drug and alcohol prevention and treatment services;
- Behaviour change (integrated lifestyle) services;
- Health checks;
- Healthy child programme 0 – 19 including school health services, health visiting and early years services;
- Assurance of health protection system;
- Public health emergency planning and response;
- Public health advice and analysis services.

2.3 All services will include provision for vulnerable people and the definition of this will vary from service to service. Some of the services will deliver to a greater proportion of vulnerable people; such as the Healthy Child Programme and the drugs and alcohol treatment services.

### **3. Discretionary Provision**

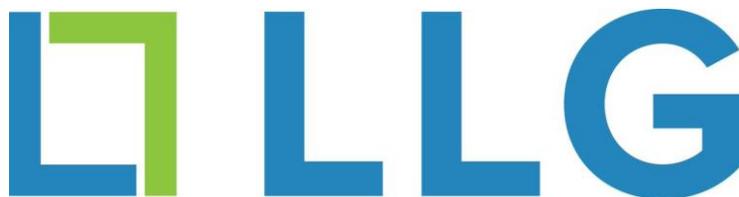
3.1 There are also examples of discretionary provision aimed at vulnerable persons.

3.2 The changes introduced by the Welfare Reform Act 2012 led the government to remove crisis loans and community care grant provision and instead place new duties on English councils to deliver local welfare provision. The DWP at the time advised this should be “flexible help to those in genuine need”. Crisis funds and prevention funds therefore exist in various forms with differing criteria across local authorities in England (the Welsh Government still retain a Discretionary Assistance Fund). Many schemes exist for those in crisis or emergency situations to provide food; payment of utility bills; provision toward rent or the purchase of white goods or furniture. Eligibility is normally restricted to those in receipt of qualifying benefits (or have left an institution or been released from prison) provided they have not made a claim in the preceding 12 months

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(but this is not always the case). Employed individuals may be referred to a credit union.

3.3 LLG would ask that the Government consider underwriting any additional burdens in crisis funding caused by Brexit.

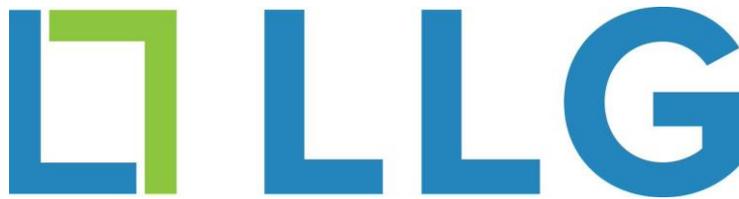
#### **4. Fluidity of Vulnerability following Brexit**

4.1 Small businesses whose income is significantly dependent on exports to EU countries will be disproportionately affected by any disruption at the ports or tariff changes or just confusion about these matters. They are less able to deal with such pressures even if they are of short duration, and this may result in the business failing or employees losing their jobs.

4.2 Some early indicators of impact may be through increases in rent arrears and/or Council Tax (see 2019 State of Local Government Finance Survey by the LGiU). Government will need to address how these should be handled; the process for flagging these in any no deal scenario and whether the approach should be business as usual or whether (as in the financial crisis) additional support and periods of grace are built in. Individuals and families with small disposable incomes will be hit much harder by any shortages of food or other necessary goods in the shops (and consequential price rises); whether these are caused by real difficulties in importing or distribution or by stockpiling 'just in case' by those who can afford to do so.

4.3 LLG would also advocate ensuring the third sector is properly funded to provide advice and guidance (e.g. Citizens Advice)

4.4 Similarly, people who aren't necessarily seen as vulnerable at the moment could become vulnerable if transport, which they rely upon, is disrupted as a result of Brexit. Older people may rely on public transport. People with special needs often rely on bespoke transport arrangements. Others may not be able to get to work putting their employment at risk. Not all of these are core vulnerable groups, but they illustrate that a period of widespread disruption would widen the number of people who are vulnerable.



## **5. Homelessness**

5.1 It is not entirely clear how local authorities will be accurately able to ascertain whether persons from the EEA are subject to immigration control and therefore not eligible for housing assistance in the event of a “no deal” Brexit. Also, private landlords may be more reluctant to offer tenancies to EEA nationals given the checks which they are required to make, with a possible consequent increase in demand for authority assistance.

## **6. Foodbanks**

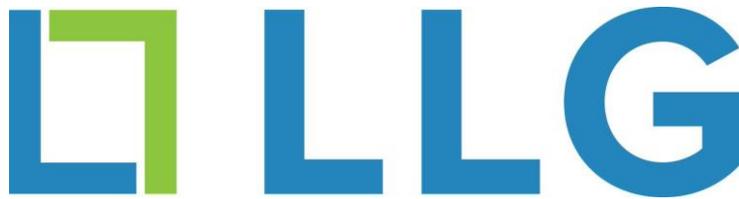
6.1 A food bank is a non-profit, charitable organisation. Access to a foodbank can vary across providers. It is common for access to be granted via a foodbank voucher provided by a GP, a social worker or jobcentre etc but independent foodbanks do not require a referral. The decision is mostly based upon whether a person is in a crisis situation and in need of emergency food.

6.2 Local Authorities do not have responsibility under statute for the provision of foodbanks. LLG commends charitable organisations that have moved to support those in crisis through foodbanks. However, whilst councillors and community leaders may sometimes sit on the boards of these organisations, they do not do so in their local authority or councillor capacity. Likewise, some local authorities provide discretionary funding to support food banks, but with budgetary constraints and the need to fund adult social care provision, such support is at risk.

6.3 LLG would urge the Government to give serious consideration to supporting food bank provision directly whilst acknowledging that it is not a local authority duty or function. Increasing food costs would lead to greater demand and likely reduced donations.

## **7. ASC Self Funders & Adult Social Care Provision**

7.1 ASC self-funders have a direct relationship with their care home or carers. A Local Authority may provide support around accesses to carers or obtaining equipment and



budget management but, either because an individual has chosen not to access social services; doesn't meet the criteria; meets the criteria but has too high savings or is here under sponsorship, adult social care obligations do not rest with the local authority. If a person's savings drop below the threshold or their circumstances change then a local authority would review the situation.

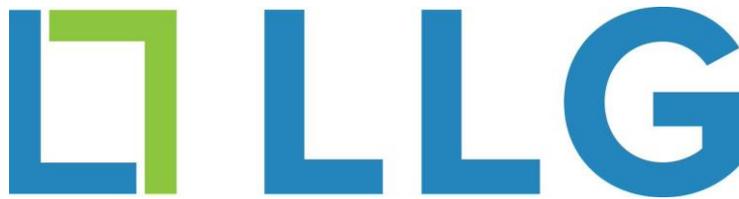
7.2 Where a local authority provides care to a person in their home, they have a full duty to attend and continue to provide that care. Whilst a third-party contractor may be in breach if they fail to perform their contractual terms, the statutory duty once accepted remains vested with the local authority. This extends to the provision of medical supply and meals.

## **8. School Meals**

8.1 The Education Act 1996 requires maintained schools and academies (including free schools) to provide free school meals to disadvantaged pupils who are aged between 5 and 16 years old. Further, all state funded schools must provide Universal Infant Free School Meals taking into account dietary requirements. This obligation continues regardless of disruption in food supplies and/or transport availability.

## **9. Emergency Planning**

9.1 The Local Resilience Forum has a Vulnerable People's Protocol (available on resilience direct) which uses the Civil Contingencies Act 2004 ("CCA") definition of vulnerable "people as those that are less able to help themselves in the circumstances of an emergency". The CCA states that category 1 responders are required to plan for and meet the needs of those who may be vulnerable in emergencies by: "making and maintaining plans for reducing, controlling or mitigating the effects of an emergency; warning and informing; and business continuity" Whilst steps are currently being taken to prepare for BREXIT, (including setting up tactical and strategic coordinating groups), it is not yet clear whether it will be classified as a major incident under the CCA. Clarity on this point would be welcome.



## **10. Summary Position**

10.1 Whilst we have defined 'vulnerable' in its widest sense, the Government is urged not to base its planning solely around those currently classified as vulnerable. Undoubtedly, the impact of Brexit will mean that the number of people falling into the category of 'vulnerable' will grow.

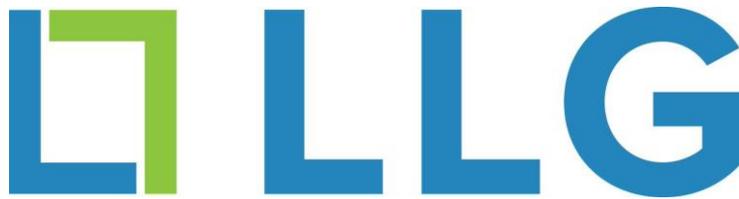
10.2 Provision for vulnerable people is cash limited. As demand increases, more money will be required if provision to adequate levels is to continue. As local authorities do not have sole responsibility for provision, the third sector is also likely to need additional financial support.

10.3 Contingency planning strongly indicates that the Government should put aside a provisional sum of money to underwrite the additional financial burden placed upon local authorities and the third sector as demand grows with increasing numbers of vulnerable people.

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A handwritten signature in black ink, appearing to read 'Deborah Evans', with a stylized, cursive script.

**Deborah Evans**  
**CEO**  
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**LLG would like to credit and thank the following individuals for their specific contribution to this statement.**

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