



Consultation on local connection and intentionality provisions in homelessness legislation

Response from Crisis

April 2019

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. Our eleven Skylight Centres across Great Britain offer holistic support across a range of issues, including support to secure access to adequate and affordable housing and employment support to help people prepare for, find, sustain and progress in work.

Last summer, Crisis published a plan: *Everybody In: How to end homelessness in Great Britain*. The plan sets out the policies needed to ensure that everyone who is currently homeless has a stable home and calls for each government in Great Britain to publish an action plan setting out how homelessness will be ended in that nation. In the Plan we set out ten ideal principles of a legal framework for ending homelessness, based on a paper prepared by Professor Suzanne Fitzpatrick and barrister Liz Davies. These principles include:

- a) That intentionality in its current form should be abolished
- b) That local connection should cease to be a bar to assistance

We therefore warmly welcome the Scottish Government and CoSLA Ending Homelessness Together Action Plan, the first such plan in Great Britain to commit to ending homelessness. We also strongly welcome the opportunity to respond to this consultation. It is a critical step in enacting these two key principles, and would place Scotland ahead of the rest of Great Britain in addressing these two areas of reform. In this response we answer the consultation questions separately for local connection and for intentionality.

Local connection

Commencing the local connection provisions (Q1)

Crisis believes that the Scottish Government should suspend all local connection referrals.

Potential impact (Q2)

Given the very small numbers of people formally assessed as having no local connection each year (495 across Scotland in 2017/18), and an even smaller number of official local connection referrals each year (117 last year), we do not believe that this will have a significant impact on local authorities.

However, this does not mean that suspending local connection will have no impact. According to data from Glasgow City Mission, 5% of those who used the out of hours council homelessness service based at their City Centre Project were found to have no local connection to the area. Additionally, at least 70 (10%) of the 690 people using the Glasgow Winter Night Shelter came from other local authority areas.

Crisis believes that local connection is often used in more informal ways. In some cases it is used as a means of gatekeeping. The extent of this is unclear, but in our service working in parts of the Lothians, we often hear of people who have been told at the homelessness department reception that they will not receive support because they do not have a local connection. Suspending local connection referrals needs to be part of a wider culture change which ensures people who are homeless get help to resolve it, no matter where they are from.

We are also aware of cases of local authorities sending people to a different area without taking a homelessness application, including people using the winter night shelter in Edinburgh who have been directed there and given a one-way bus ticket by a neighbouring local authority.

We hope and expect that the suspension of local connection referrals would remove the culture of using local connection as an informal means of gatekeeping. However, there need to be active safeguards in place against bad practice, so that a local authority cannot informally direct potential homeless applicants to present to another local authority (particularly those with specialist services or night shelters), leaving the receiving authority with no power to refer back even if that was not the applicant's home or preferred area.

Monitoring (Q3) and potential costs (Q6)

We therefore welcome the proposal to monitor the impact of any changes. We note that HL1 data may not provide enough information to monitor informal local connection referrals, and we recommend that Scottish Government work with Scottish local authorities to identify ways of monitoring informal referrals.

We would like to see more details of what options would be considered if monitoring shows particular pressures falling on certain local authorities. Should it be found that pressure is being placed on particular local authorities, options should be considered on how to make this work more effectively. For example, consideration should be given to ways that money or resources can follow an individual, so that local authorities can reclaim costs from each other where they accept applicants whose local connection lies elsewhere, as recommended in our Plan and by the Homelessness and Rough Sleeping Action Group. There are international examples that may provide useful guidance in this respect¹.

¹ Mackie, P. and Thomas, I. (2016) *Transitory Single Homelessness in Wales*. Cardiff: Cardiff University.

Ultimately the impact of the change to local connection will need to be assessed within the context of the wider reforms happening through the Ending Homelessness Together Action Plan. For example, an effective duty to prevent homelessness, improved case management and the adoption of personal housing plans, should all help reduce the pressures on the homelessness system, including from people moving between different areas of the country.

Intentionality

Removing the duty to assess intentionality (Q4) and timing of changes (Q8)

Crisis strongly supports the principle of removing the duty to assess intentionality. However we do not believe that this should be a phased approach, but should be completed in one step.

We set out our reasoning for this below. The case for reforming intentionality is very clear to protect people with support needs from being excluded from full homelessness assistance and prevent some local authorities from gatekeeping access to assistance and to fit with a more psychologically informed approach to addressing homelessness. Research from Shelter Cymru has shown that intentionality decisions in Wales primarily affect people with high levels of support needs or chaotic lifestyles. It concluded that intentionality decisions “resulted ultimately in the continuation and, in many cases, exacerbation of a cycle of unmet support needs with the long-term resource burden that this implies”². The Aye We Can consultation³ last year found that young people who identify as LGBT reported being classed as intentionally homeless because of lack of understanding of the realities of family breakdown when ‘coming out’. Others stated that intentionally homeless decisions were being given based on poor understanding of mental ill health and addictions. Likewise, the experience of Crisis Skylight operating in the Lothians is that we have not worked with anyone found to be intentionally homeless who has not had underlying support needs.

Recorded outcomes for households with intentionality decisions show that contact is consistently lost or outcomes are unknown for a third of applicants. In 2017/18 a further 15% moved in with relatives or friends. Along with uncategorised known outcomes, these account for two thirds (65%) of outcomes for intentionally homeless households.

In 2002 the Homelessness Task Force wrote⁴: “in most cases the current arrangements provide only a trapdoor through which the intentionally homeless household descends into the equivalent of a no-man’s land. This is not sufficient in the 21st century if

² Campbell, JA (2011) The impact of intentional homelessness decisions on Welsh households’ lives. Swansea: Shelter Cymru, p7

³ Glasgow Homelessness Network (2018) Can we fix homelessness in Scotland? Aye We Can http://www.ghn.org.uk/shien/wp-content/uploads/sites/5/2017/11/Aye_We_Can_Final_Report_2018-1.pdf

⁴ Scottish Executive (2002) Helping Homeless People: An Action Plan for Prevention and Effective Response: Homelessness Task Force Final Report. Sourced at <https://www.clacks.gov.uk/document/272.pdf>

homelessness is to be addressed effectively... At present the legislative framework encourages a reactive approach to episodes of homelessness and makes it possible for difficult cases to be discarded." (paragraph 33)

Their original goal was a package of measures to reform intentionality and ensure people had access to accommodation and support, only one of which was reducing the test from a duty to a power. Some of these wider provisions were enacted and have subsequently been repealed, including measures to ensure that intentionally homeless households had access to accommodation and support through short Scottish secure tenancies. Commencing the unrepealed provisions without a wider package of reform will not fulfil the intention of the original recommendation.

Moreover, evidence from Wales suggests that giving local authorities discretion in applying intentionality may make little difference to practice. The Housing Act (Wales) 2014 allowed the disregard of intentionality under the section 75 duty to secure accommodation for applicants in priority need. However, analysis of the implementation of the Act⁵ shows that 18 out of 22 local authorities have chosen to make no change to the way they treat intentionality, even for specific groups of priority need, such as 16-17 years olds or care leavers. In fact, this is more than in the first wave of the evaluation, suggesting that one local authority has moved from disregarding intentionality, to taking it into account again. Although the Welsh legal framework is now very different from the Scottish one, it does suggest that changing the duty to investigate intentionality may have little impact on the ground.

Some local authorities have used the threat of an intentionality decision as a tool to negotiate with people at risk of homelessness in order to prevent them acting in a way which will mean they lose their home. This is not the purpose of the intentionality test, which removes people's right to settled housing if they are found intentionally homeless. Such negotiations should be done as part of a wider system focused in the first place on problem solving to prevent people's homelessness through a new statutory prevention duty, accompanied by personal housing plans and effective case management to ensure that service users are fully informed of how the system works and the implications of any decisions they take. This should be supported by a backstop of a homelessness application if it cannot be prevented.

Similarly, using intentionality as a means to ration the scarce resource of social housing is an inappropriate use of the test. Issues of social housing allocations should be dealt with in other parts of the system and must not be a reason for preventing people accessing accommodation and support.

Given the potential vulnerability of those often found to be intentionally homeless, the consistency of lost contact, and the limited likelihood of a widespread change in practice

⁵ Ahmed, A, Wilding, M, Gibbons, A, Jones, K, Rogers, M, MadocJones, I (2018) Post-implementation evaluation of Part 2 of the Housing Act (wales) 2014: Final report. Cardiff: Welsh Government

following a commencement of this provision, and a wider context of significant transformation for the homelessness system across Scotland as a result of the Ending Homelessness Together Action Plan, **we do not believe that a phased approach to the reform of intentionality is in the best interest of people experiencing homelessness. We want to see the changes to intentionality implemented as a complete package.** This would prevent homeless applicants potentially having different rights to homeless assistance in different parts of Scotland, would prevent confusion due to multiple systems changes, and would mean that local authorities who change the duty to a power do not have to retrain their staff twice.

We also believe that it is important to remove the intentionality test entirely and replace it, not simply to reform the current test. A new duty around “deliberate manipulation”, as described below, should provide a fresh start, to ensure that any unhelpful culture surrounding the current approach to intentionality does not get transferred onto the implementation of a new duty.

Potential impacts of commencing the intentionality provisions (Q5), including impact on people with protected characteristics (Q9)

As above, we do not believe that the intentionality provisions should be commenced separately from the reform of the intentionality test as a whole.

If intentionality is scrapped, or if in the interim the provisions are commenced and local authorities do choose not to use the intentionality test, those who might previously have been deemed intentionally homeless would then be entitled to an assessment of support needs through the Housing Support Duty, currently only accessible to those found unintentionally homeless. As the evidence suggests that many people found intentionally homeless have high levels of support needs, this can only be a welcome step forward, both to enable people to move forward with their lives, and the costs to services of repeat homeless applications, and costs to other parts of the system such as health and criminal justice⁶.

Many homeless applicants may be considered to have a disability under equalities legislation. In the most recent year's figures, 23% of homeless applicants have support needs related to mental health, 3% had a learning disability, 5% a physical disability and 10% some kind of medical condition, which may be disabling. There is a clear link between support needs and intentionality decisions, so reforming intentionality will have a clear positive impact for disabled people who become homeless. Complete reform of intentionality is the best step to improve outcomes for disabled people.

26% of those found intentionally homeless have dependent children, and 18% are under the age of 25. While they are proportionately less likely to be found intentionally homeless, they are groups for whom settled housing is particularly important, and would therefore benefit from full access to homelessness assistance and support via a housing support assessment.

⁶ Crisis (2015) At What Cost

The Aye We Can consultation cited above suggests that young people who identify as LGBT feel that their situations may not be fully understood during a homeless assessment and they are more likely to get an intentional decision as a result, so it is likely that scrapping intentionality would benefit this group.

Narrowing the definition of intentionality to focus on instances of deliberate manipulation (Q7)

We believe that the concept of intentionality needs to be scrapped altogether to facilitate a full culture shift within local authorities. It should be replaced by a new test of deliberate manipulation of the homelessness system, where someone has **deliberately taken steps to make themselves homeless to use the homelessness system in order to secure social housing**. This is one aspect of much wider systems change, and will need to be accompanied by clear guidance.

Crisis developed the concept of a test of deliberate manipulation of the homelessness system as part of our Plan to End Homelessness, in conjunction with Professor Suzanne Fitzpatrick and barrister Liz Davies. In our view, the use of intentionality goes far beyond what is necessary to prevent abuse of the homelessness system.

As set out above, many of the people who are found to be intentionally homeless have wider support needs and the intentionality decision does not reflect the complexity of circumstances and wider factors affecting housing need. Too often the test is applied based on whether an act (or omission) led to homelessness, rather than whether the act was clearly foreseen by the applicant to have led to homelessness (the test of recklessness in criminal law).

The original recommendation from the Homelessness and Rough Sleeping Action Group describes "'deliberate manipulation' of the homelessness system where the applicant actually foresees that their actions would lead to them becoming homeless. Even in these cases, there must be a bottom-line accommodation offer (as already legislated for in 2003)."⁷

In our view, a test of deliberate manipulation would be a test of whether someone with an understanding of the homeless system is actively seeking to use it to gain priority in social housing. If found to be deliberately manipulating the system, they would receive no additional preference in social housing allocations because of their statutory homeless status. It would have no bearing on any other homelessness-related entitlements. We envisage this as operating within a wider context of statutory prevention-focused activity using a problem solving approach so that people do not need to get as far as making a homeless application before their situation is resolved.

⁷ HARSAG (2018) Ending Rough Sleeping in Scotland An interim report on the activity of the Homelessness and Rough Sleeping Action Group
<https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/03/ending-rough-sleeping-in-scotland-interim-report/documents/aa98bb99-2e2d-4905-9ac9-e434e8a4dc72/aa98bb99-2e2d-4905-9ac9-e434e8a4dc72/govscot%3Adocument>

Crucially, replacing the intentionality test with one focused on deliberate manipulation would mean that those with support needs, whether identified or not, would be much less likely to be refused homelessness assistance.

This vision is captured in the Aye We Can consultation⁸:

Rethinking the role of intentionality decisions within homelessness legislation can play an important role in finding solutions for vulnerable people. Staff who are respectful, approachable and adaptable are an important part of improving lives, and they should be trained and supported to fully understand and respond to trauma and multiple needs, working alongside people to build confidence, self-esteem and trusting relationships.

Final comments

Views on the most effective timing to commence the provisions (Q8)

As stated above, we do not believe that the intentionality provisions of the 2003 Act should be commenced separately from the wider reforms to intentionality proposed by Crisis and by HARSAG.

The commencement of the local connection provisions should be done as soon as reasonably possible, bearing in mind the context of other changes that local authorities are having to implement around rapid rehousing and other aspects of reform. The priority should be to ensure that homeless applicants receive effective assistance which allows them to be rehoused as quickly as possible.

Any other comments, including unintended consequences (Q10)

The experience of people who are or have been homeless is critical in informing the effective development of this policy. We would be happy to facilitate discussions with officials and people with lived experience in order to help shape how this work is taken forward.

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⁸ GHN (2018) Aye We Can