

Bail and release from custody consultation Response from Crisis

Crisis in Scotland

Crisis is the national charity for people facing homelessness. We know that homelessness is not inevitable, and we know that together, we can end it. Crisis is dedicated to ending homelessness by delivering life-changing services and campaigning for change.

Every year we work directly with thousands of people experiencing homelessness in 11 areas across England, Scotland and Wales. We provide vital help so that people can rebuild their lives and are supported out of homelessness for good. We offer one to one support, advice and courses according to individual needs. We use research to find out how best to improve our services, but also to find wider solutions to end homelessness.

There is a strong relationship between release from custody, homelessness and re-offending. Crisis therefore welcomes the opportunity to respond to this consultation. In it we highlight some of the key relationships between custody and homelessness, and note the relevant work and recommendations of Homelessness Prevention Review Group. It finishes with responses to some of the specific questions within the consultation.

Key points

- Spending time in prison increases the risk of homelessness, and lack of stable accommodation can increase the risk of (re-)offending. This can lead to a self-perpetuating negative cycle, with repeated episodes of homelessness and imprisonment.
- Scottish Government is currently consulting on proposals for significantly increasing the focus on preventing homelessness. This includes for people on remand and leaving prison. It also includes recommendations for people with complex needs requiring interventions from multiple public services, including those involved with justice services. For these people a co-ordinated case management approach should be taken.
- Proposals for homelessness prevention, assistance for complex needs and reforms to arrangements for bail and release from custody need to join up to ensure the system does not destabilise housing and ensures people being released from custody are rapidly supported into suitable and stable accommodation.

Release from prison and homelessness

The average daily population in Scottish Prison Service (SPS) establishments in 2018/19 was 7,789¹. The most recent available figures showed 9,775 liberations from prison sentences in a year, with an additional 8,033 released from remand². With these figures in mind, it is concerning that a survey showed that 49% of prisoners reported losing their accommodation while in prison³. This is

¹ Scottish Prison Service (2019) Annual Report and Accounts 2018 -19, online:SPS. This figure includes the populations of HMP Addiewell and HMP Kilmarnock, which are privately managed under contract to SPS.

² Scottish Prison Service (2014) Prison Statistics and population projections: 2013- 14, Edinburgh:SPS. Due to 'technical difficulties' the last available annual liberation rate available is for 2013 - 14.

³ Scottish Prison Service (2017) Prisoner Survey 2017, Edinburgh: SPS

consistent with other research, finding both pre- and post-release support for prisoners to be far from perfect, with many people still being released straight into homelessness⁴.

1,822 homeless applications were recorded as having been from people leaving prison in 2018/19⁵. This represents 5.0% of total applications⁶. However, put alongside the above information from SPS, it is likely that this figure does not represent the full scale of the problem.

On the other hand, research has established that securing adequate housing for prison leavers can significantly reduce re-offending⁷.

While finding and sustaining accommodation can be problematic for anyone leaving prison, evidence has highlighted four groups that face particular barriers⁸: remand prisoners and those on very short-term sentences⁹, women¹⁰, young people¹¹, and those who were homeless on entering prison¹².

People being held on remand are at particularly high risk of becoming homeless¹³. Being remanded in custody can cause significant disruption and uncertainty regarding housing, and in some cases may lead to people losing their housing, even though someone may be later acquitted. In general benefits covering the costs of housing will only be available for up to six months for those in prison, meaning people on remand for longer than this are at much greater risk of losing their homes, although some landlords will continue to make a tenancy available in certain circumstances and absorb the rental loss.

As noted in the consultation document, the Hard Edges Scotland research¹⁴ found evidence of around 5,700 people in Scotland experiencing a combination of offending, substance misuse and homelessness within one year, while another 28,800 experience a combination of two of these disadvantages. The offending 'domain' involved the smallest numbers of people but also the highest proportion of cases with 'overlapping' forms of current Severe and Multiple Disadvantage. That is to say, those who are involved with justice services are likely to be facing multiple challenges, of which homelessness is just one. For example, in a study of transitional support services for prisoners in Scotland, housing was identified as one of the main challenges encountered by those with drug problems on release, and the lack of stable housing also made it more likely that they would resume drug misuse¹⁵.

⁴ Bramley et al. (2019) Hard Edges Scotland: New conversations about severe and multiple disadvantage

⁵ Scottish Government (2019)

⁶ There were 36,465 applications in 2018-19 in total. Scottish Government (2019) Homelessness in Scotland: Annual publication 2018-19

⁷ Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners, London: Social Exclusion Unit; Dore, E (2015) Insight: Prison Leavers and Homelessness, online: IRISS; Williams K, Poyser J and Hopkins K (2012) Accommodation, homelessness and re-offending of prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice research summary 3/12, London: Ministry of Justice

⁸ Dore, E (2015)

⁹ Loucks (2007). Gojkovic D, Mills A and Meek R (2012) Accommodation for ex-offenders: Third sector housing advice and provision, Southampton: Third Sector Research Centre

¹⁰ Commission on Women Offenders (2012) Final report, Edinburgh: Scottish Government

¹¹ Glover J and Clewett N (2011) No fixed abode: The housing struggle for young people leaving custody in England, Essex: Barnardo's. Gojkovic et al. (2012).

¹² Williams K et al (2012)

¹³ Loucks N (2007) Housing needs of offenders and ex-offenders, Glasgow: The Robertson Trust.

¹⁴ Bramley et al. (2019)

¹⁵ MacRae R, McIvor G, Malloch M et al (2006) Evaluation of the Scottish prison service transitional care initiative, Edinburgh: Scottish Executive Social Research

Given the close link between offending and homelessness, there are two areas where Crisis believes relevant services can work together to reduce risk of people losing their homes.

The first is in designing the system to include consideration of people's housing situation. For example community sentences, where appropriate, will reduce risk to housing compared to imprisonment.

Secondly, those services working with offenders and those on bail have opportunities to identify any housing issues and ensure appropriate support is in place to deal with those issues, thus reducing the risk of homelessness.

Homelessness Prevention Review Group recommendations for changes to the law

The Homelessness Prevention Review Group (HPRG) was an independent expert group established by Scottish Government to make recommendations for changes to the law to ensure every opportunity is maximised to prevent homelessness, by strengthening legal responsibility across public services to prevent homelessness. Crisis provided the secretariat. It carried out extensive stakeholder consultation and published recommendations in February 2021, including on how to strengthen homelessness prevention for those in contact with the criminal justice system. The Group's final report was published in February 2021¹⁶.

In regard to the criminal justice system, the Group made recommendations for changes to the law relating to the following areas:

Prisons

- Prisoners should be asked about their housing situation as soon as reasonably possible on going into prison
- If a prisoner is likely to need assistance to find housing for when they leave prison, a referral is made as soon as possible in the final six months of the sentence to the local authority identified by the prisoner for homelessness assistance
- Where housing issues are identified, prisons work with partners including housing options and housing associations to address the issues.

Other partners

- Local authorities to be under a statutory duty to respond to referrals for homelessness assistance and assist anyone likely to be homeless within the next six months (including referrals from prisons and youth detention accommodation)
- By working with other partners, local authorities must ensure that the services for prevention and alleviation of homelessness is designed to meet the needs of people leaving prison or youth detention accommodation, and anyone at risk of homelessness due to impending court proceedings. Relevant partners should include the Scottish Prison Service and the Scottish Courts and Tribunal Service.
- Local Housing Options services should work with the Courts service to ensure housing options advice is easily accessible within a court setting.
- Social landlords should have in place protocols to address relevant circumstances and mitigate risk of homelessness at an early stage, including protocols relating to where tenants face court proceedings.

¹⁶ Reid, B (2021) Preventing Homelessness in Scotland: Recommendations for legal duties to prevent homelessness: A report from the Prevention Review Group
<https://www.crisis.org.uk/media/244558/preventing-homelessness-in-scotland.pdf>

People with complex needs

- For people with complex needs requiring input from two or more public services to support their health or wellbeing, or to facilitate community safety, a case co-ordination should be put in place.

In addition to the above formal recommendations, the following points were identified during stakeholder consultation for the HPRG work:

- Arrest and custody are key points where there are opportunities for identifying risk of homelessness. There is a risk assessment process, which currently often focuses on addiction but not usually on housing. Requirements to check on the housing situation and refer to appropriate services could be beneficial.
- The police will send a report to the court, which will include information on whether they assess that it would be appropriate for someone to return home until a decision is made about a court hearing. This will therefore contain information about someone's housing situation, and there may be an opportunity to make a referral to housing services at this point, if one has not already been made.
- People on community-based sentences may have a particular risk of homelessness, for example due to debt, domestic abuse or tenancy management issues. Services delivering community-based sentences and community payback schemes have consistent contact with people which provides an opportunity to identify issues which can put people at risk of homelessness, and provide support or signpost elsewhere.
- Historically bail checks have provided an opportunity to check individuals' housing situations, and thus identify risk of homelessness. These have generally ceased due to lack of time or capacity, which represents a missed opportunity.
- Good housing advice is essential for people on remand, as there may be options available which are not immediately obvious, such as a family member paying rent and preventing arrears. It may be that people who are already homeless are more likely to be put on remand because the court feels that they are less likely to turn up to court or engage with criminal justice social work. Greater provision for supported bail might assist with this.
- It was noted that the Prisoners (Control of Release) (Scotland) Act 2015, which allows most prisoners to be released up to two days earlier to support reintegration, is underused. There may be opportunities for greater use of this to prevent homelessness, especially where there is improved co-ordination between prisons and local authorities.

Scottish Government committed to introducing homelessness prevention legislation in the 2021 Programme for Government, and a Scottish Government consultation based on the proposals of the HPRG is currently open, closing at the end of March 2022. It is expected that a bill taking forward these proposals will come to parliament in early 2023.

Responses to consultation questions

Question 1: Crisis welcomes an approach to bail which focuses on public safety. As the consultation identifies, housing issues, including lack of a fixed address, may impact on people's ability to comply with bail conditions, and mean that people who have already experienced the trauma and indignity of homelessness, may then face remand rather than bail because of their housing circumstances. Where housing problems are identified assistance should be put in place, for example through a referral to appropriate support, to address this, so that housing issues do not drive grounds for refusing bail. This is in line with the recommendations of the HPRG.

Question 5: Criminal justice social workers have been identified as having a key role in assisting individuals facing multiple disadvantage, and in carrying out risk assessments around vulnerability which may be used during sentencing. Housing information will often be gathered during this process, but we believe that it is not recorded or taken forward consistently. Therefore it would be valuable for information from criminal justice social workers to be considered by the court. Again there may be opportunities here to give consideration to housing issues both in relation to remand decisions and sentencing, and also to ensure relevant advice and assistance is available to the individual and, where appropriate, their family.

Question 23&24: In line with the recommendations of the HPRG there should be a specific requirement on those providing homelessness and housing assistance (in most cases local authorities) to engage with pre-release planning. This would be complementary to new requirements for such services to provide assistance to anyone likely to become homeless in the next six months. For those being released with housing needs who also have health and / or social care needs, relevant health and social care services such as the Health and Social Care Partnership should also be required to engage with pre-release planning.

Question 25: Crisis would strongly welcome additional support for those released direct from court, specifically in relation to housing. People on remand may have accumulated housing issues such as rent arrears, losing their benefits, or losing their housing while in prison. Assistance should be available for those released direct from court to address any issues that have arisen. This may be through having housing advisors or housing options advice connected with the court. This may be provided by the local authority or appropriate third sector organisations, similar to CAB in-court advisors.

Questions 26-30: Throughcare is a vital service for those leaving custody. It is particularly for those on short terms sentences and remand, who often do not access this support. Therefore we would welcome measures to strengthen access to throughcare support. It is also necessary that such services are effectively resourced to provide a service to all who need it.

Conclusion

Housing stability is core to reducing re-offending for those released from custody. It is necessary that reforms to bail and release from custody arrangements take into account the proposals to change the law in relation to prevention of homelessness, particularly in relation to those facing court and custody arrangements. These are currently being consulted on by the Scottish Government.

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