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11 December 2017

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By email

## **Howard League for Penal Reform's response to the consultation on the Homelessness Code of Guidance for local authorities**

We welcome this opportunity to respond to the draft Code.

### **About us**

Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 12,000 members, including lawyers, politicians, practitioners, prisoners and their families and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

The Howard League works for less crime, safer communities and fewer people in prison. We aim to achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern.

The Howard League provides administrative support to the All Party Parliamentary Group on Women in the Penal System.

Since 2002 the Howard League has provided the only legal service dedicated to representing children and young people in custody. Our legal team provides casework on a wide range of issues, from parole, recall and criminal appeals against sentence, to help with resettlement into the community and treatment while in prison.

Many of our cases have shaped the law on the duties owed to children and young people leaving prison by local authorities, clarifying where provision ought to be provided by Children's Services. For example, we represented the young woman in *R (M) v Hammersmith and Fulham LBC* [2008] 1 WLR 535).

We have developed public legal education materials for professionals and young people on resettlement rights for children and young adults leaving custody. These are available on our web site.

Through our legal work, we regularly advise and assist children and young adults in need of accommodation and support.

In 2013, the Howard League published a report entitled '*No Fixed Abode: The implications for homeless people in the criminal justice system*'. The study, undertaken by Dr Vickie Cooper of Liverpool John Moores University, highlighted the dire housing needs of many prisoners and the central role that suitable accommodation plays in preventing reoffending.

We have drawn upon our lawyers' experience in practice, our direct work with children and young adults, and our research and policy expertise in this response.

## Key points

- The enhanced preventative duties are a welcome and real opportunity to deal with the dire need for better housing for people caught up in the criminal justice system, both to help them avoid lives of crime and prison altogether and to ensure that those who do go to prison can make a fresh start on release.
- **Stronger guidance to prevent homelessness for people in or at risk of criminal justice contact:** The need for local authorities to be proactive in supporting people in and at risk of contact with the criminal justice system needs to be stronger and to recognise that people who are homeless are at increased risk of criminal justice contact. The prevention duties at 23.10 of the code are an opportunity to do this. At present this section is couched in tentative terms and there is too much emphasis on working with criminal justice agencies rather than actively identifying support needs that will solve the underlying problem. The duties to those in custody at risk of homelessness will never be resolved unless clear systems are put in place to ensure that the relevant assessments take place while the person is in prison. The guidance should acknowledge that where this cannot be achieved by other means, housing authorities should consider going into custody to conduct the appropriate assessments in order to fulfil these duties.
- **The duty to refer should explicitly include all statutory agencies involved in the criminal justice system:** the Code cannot deal with the new duties in detail as the parent statutory instrument has not yet been laid. However, we take this opportunity to urge the government to ensure that when this duty is rolled out it, all relevant agencies involved in the criminal justice system, including social care, youth offending teams, probation, prisons and other detaining authorities, are included.
- **Specific reference to the distinct needs of young adults, especially those caught up in the criminal justice system:** There needs to be specific reference in the code to the particular developmental needs of young adults, including young adults who have been in contact with the criminal justice system.
- **Clearer messaging as to the duties towards children and care leavers:** The revised guidance on 16 and 17 year olds will be crucial. The reference to this group in the Code needs to be clearer as to the role of children's services, the reasons for that and how housing authorities can be satisfied that a child aged 16 or over has made an informed choice. The Code should highlight the need to identify care leavers how have slipped through the net.
- **Stronger guidance on the need to support people who cannot reside in their local area:** The Code helpfully acknowledges that many people involved with the criminal justice system are prevented in some way from living in certain areas. But it needs to provide stronger guidance as to the importance of proactively taking steps to ensure people affected by this can source appropriate housing.

## **General observations on the new duties and the spirit of the code in the context of the housing needs of people involved in the criminal justice system.**

We welcome the new duty on local authorities to proactively prevent homelessness. We are pleased that the guidance will be revised to reflect this important new duty, which will be particularly important for groups such as prisoners who have often not been able to benefit from housing provision and duties aimed at those in the community. Prisoners and people at risk of being caught up in the criminal justice system are all too often in this category precisely because of the lack of appropriate housing provision. Therefore, the preventative duty is crucial for this group.

Her Majesty's Inspectorate for Prisons has also expressed concern about the housing needs for people in prison, especially for those on short term sentences:

*"In the Between April and June 2016, we worked with HM Inspectorate of Probation on a joint thematic inspection to examine the effectiveness of through-the-gate resettlement services.<sup>22</sup> We examined the cases of 61 prisoners in custody and after their release into the community, and a further 25 prisoners who had been in custody but which were reviewed by us only after release. All prisoners had served short sentences of less than 12 months.*

...

*In too many cases, resettlement planning consisted of no more than referrals to other agencies, recorded as completed once an email had been sent.*

*Furthermore, this inspection found that of the prisoners reviewed:*

*... not enough assistance was given to prisoners to resolve debts. Too many prisoners were released without any accommodation." (HMIP, Annual report 2016 – 17 page 51)*

In a debate in the House of Commons on prison on 7 December 2017, Ellie Reeves MP said:

*"Long-term cuts to mental health services, addiction support and housing have all played a part and had an impact on our prison population through reoffending rates. The Ministry of Justice's latest figures show that 29.6% of offenders in the October to December 2015 cohort reoffended within a year. Cuts mean less support when these individuals require more than most. The Howard League's "No Fixed Abode" study from 2016 estimated that a third of released prisoners have no accommodation to go to on leaving prison. The Combined Homelessness and Information Network's annual report on rough sleeping in London showed that 33% of people seen sleeping rough had some experience of being in prison."<sup>1</sup>*

Our report, No Fixed Abode, highlighted the extent to which homelessness is a precursor to custody. In our experience, homelessness can increase the risk of criminalisation. A young adult who contacted the Howard League for legal advice some years ago illustrates how misfortune can lead to criminalisation. He was homeless. On one occasion, he urinated in the street. He was arrested for indecent exposure. He ended up in prison.

We hope that the new preventative duties and the accompanying Code will provide an opportunity to reduce the criminalisation of people without homes.

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<sup>1</sup> Available at <https://hansard.parliament.uk/commons/2017-12-07/debates/7CB43379-F694-4496-8DC0-D4BC13C94371/PrisonReformAndSafety>

## **Particular issues faced by young people leaving custody.**

Young people leaving custody are particularly vulnerable. The majority of young people in prison come from the most deprived and disadvantaged families and communities (Harris Review, 2015).

Many have experienced:

- loss or bereavement
- mental health problems
- drug or alcohol misuse problems
- exclusion from school
- learning difficulties
- neglect or abuse

Young adult women in prison ‘have higher rates of trauma, victimisation, substance misuse and mental health issues’ (Harris review 2015). They are more likely to have experienced domestic abuse than the general population.

Given the vulnerabilities that are prevalent among older teenagers and young adults leaving prison, it is not surprising that many struggle to maintain tenancies. This may be due to gaps in life experience and their stage of development.

The Justice Committee’s inquiry on young adults in the criminal justice system concluded that:

*“Research from a range of disciplines strongly supports the view that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25, underpinned by the developmental maturation process that takes place in this age group. In the context of the criminal justice system this is important as young people who commit crime typically stop doing so by their mid- 20s. Those who decide no longer to commit crime can have their efforts to achieve this frustrated both by their previous involvement in the criminal justice system due to the consequences of having criminal records, and limitations in achieving financial independence due to lack of access to affordable accommodation or well-paid employment as wages and benefits are typically lower for this age group.”* (Justice Committee, 2016a, paragraph 14, p.9)

## **Recommendations for revisions to the guidance**

### **1. Stronger guidance to prevent homelessness for people in or at risk of criminal justice contact**

The need for local authorities to be proactive in supporting people in and at risk of contact with the criminal justice system needs to be stronger and to recognise that people who are homeless are at increased risk of criminal justice contact.

The prevention duties at 23.10 of the code are an opportunity to do this.

At present this section is couched in tentative terms and there is too much emphasis on working with criminal justice agencies rather than actively identifying support needs that will solve the underlying problem or working with people to avoid homelessness and criminalisation. For example, the very first heading, “*Preventing loss of accommodation due to offending behaviour*” presumes an element of criminal behaviour as a causal factor in loss

of accommodation. However, there is an opportunity here to provide particular help those who may be at risk of criminalisation or further criminalisation by losing accommodation.

With the increase of preventative orders and longer supervision periods, there should be an increased duty to ensure people at risk of criminal justice system contact are better supported and assisted. As it stands, the current section is not sufficiently directive to ensure that something is actually done to prevent homelessness “*Where offender management services continue to be involved with the person they should be alerted of any risk of homelessness so that, joint plans may be put in place to try and prevent homelessness, and provide support where appropriate.*” Housing authorities will need to be urged to make efforts to ensure that alternative provision is sourced in consultation with offender managers.

This section also deals with the need for people who are in custody and requiring accommodation to be supported by the local authority. However, in our experience, the duties to those in custody at risk of homelessness will never be resolved unless clear systems are put in place to ensure that the relevant assessments take place while the person is in prison. The guidance should acknowledge that where this cannot be achieved by other means, housing authorities should consider going into custody to conduct the appropriate assessments in order to fulfil these duties. The Code should explicitly refer to this possibility at 23.15.

## **2. The duty to refer should explicitly include all statutory agencies involved in the criminal justice system**

We appreciate that the Code cannot deal with the new duties in detail as the parent statutory instrument has not yet been laid. However, as it stands, Chapter 4 of the Code states the following in respect of the duty on prisons:

*“4.6 Local procedures should be tailored to each public authority. For example, arrangements with prisons should ensure that the referral is made well in advance of the release date and that, with the individual’s consent, appropriate information is supplied with the referral. When designing procedures it may be helpful to include consideration of information to be given to people being referred to help inform their decision on which housing authority they wish to be referred to. This might include information on how local connection arrangements might affect a person who is homeless and wishes to be referred to a district where they have no local connection,”*

In addition to noting that the final sentence of this paragraph is incomplete, we would like to take this opportunity to urge the government to ensure that when this duty is rolled out it, all relevant agencies that deal with those in contact with people involved in the criminal justice system are included –not just prisons. These agencies include social care, youth offending teams, probation and other detaining authorities. Local strategies will need to ensure that the duty to refer is not simply complied with by virtue of a “sent email” as highlighted in the HMIP report.

## **3. Specific reference to the distinct needs of young adults, especially those caught up in the criminal justice system**

There needs to be specific reference in the code to the particular developmental needs of young adults, including young adults who have been in contact with the criminal justice system. We note that at present maturation is only referred to in the context of care leavers and in assessing intentional homelessness at paragraph 23.21 where it is said that “*housing authorities must consider each case in the light of all the facts and circumstances, including*

*the age and maturity of the applicant and should discuss the matter with the relevant provider of probation services.”* This would be a good opportunity to refer to the growing body of evidence that young adults involved in the criminal justice system have very specific and distinct needs, as noted by the Justice Committee.

#### **4. Clearer messaging as to the duties towards children and care leavers**

The revised guidance on 16 and 17 year olds referred to at paragraph 8.18 will be crucial. The reference to this group in the Code needs to be clearer as to the role of children’s services, the reasons for that and how housing authorities can be satisfied that a child aged 16 or over has made an informed choice.

Point 2.2 states:

*“There remain circumstances when the housing authority will have duties towards a homeless 16 and 17 year olds, including when the young person, having been fully informed of the implications, and being judged to have capacity to make that decision, declines to become looked after under the Children Act and instead applies for assistance under homelessness legislation.”*

The Code should emphasise that children’s services have a primary duty to support 16 and 17 year olds facing homelessness following (R (G) v Southwark [2009] and that it should only be in **very exceptional** cases that Housing steps in to support 16 and 17 year olds. It would help if the Code set out exactly why the duties under the Children Act take precedence, setting out explicitly why such support is better placed to meet the welfare needs of children. The comment by Baroness Hale in the M case about the difference between the support a young person can expect from housing and children’s services may be a good starting point.

Sadly, it is still that case that some local authority children’s service departments are not accepting their responsibilities for children to be s.20 accommodated, despite their legal obligations.

It is our experience that children have not always been given the advice and support to make a fully informed decision about being given s.20 accommodated status. The guidance should set out how housing authorities can be satisfied that an informed choice has been made.

The Code is also a good opportunity to highlight the need to spot instances where care leavers have slipped through the net.

The following case study highlights both the issues concerning informed consent and care leavers that have slipped through the net:

#### **Case study**

Howard League lawyers represented an 18 year old young person who was going to be homeless when he was released from custody. His local authority children’s services department said that they did not owe him any duties. Upon further investigation it became clear that the young person had been provided with accommodation by the local authority when he was a child but the local authority said that this had been provided by the housing department rather than children’s services, and therefore he had not been looked after previously.

We challenged the failure of the local authority to make the young person aware of his right to voluntarily become a looked after child and the consequences of not being looked after. We argued that had the young person’s decision not to be looked after

was not make on an informed basis and that had he been provided with all of the relevant information he would have been looked after and would be entitled to leaving care rights. Following pre-action correspondence the local authority agreed that the young person was a care leaver and provided him with accommodation and support upon release from prison under s23C(4)(c) of the Children Act 1989.

## **5. Stronger guidance on the need to support people who cannot reside in their local area**

The Code helpfully acknowledges that many people involved with the criminal justice system are prevented in some way from living in certain areas. But it needs to provide stronger guidance as to the importance of proactively taking steps to ensure people affected by this can source appropriate housing. In our experience, the lack of clear direction for housing authorities when it comes to out of area requirements can cause huge difficulties in effective resettlement planning for people leaving prison.

We would be happy to meet with you to discuss any of these points further.

Yours



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