

Submission

DCLG consultation on the homelessness code of guidance for local authorities

Unlock welcomes the opportunity to provide a short written submission to the Department for Communities and Local Government's consultation on the homelessness code of guidance for local authorities.

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

Our submission focuses on chapter 23 of the guidance, titled "People with an offending history".

Our response

Advice provision

The advice provision provided by housing authorities to people with convictions has historically varied significantly. We recommend that, to fulfil their obligations under section 179 of the 1996 act, housing authorities should publish on their website what advice they provide to people leaving prison and those with convictions in the community. This might include details of the dedicated advice services that they run, including any specific advice in prisons, given this is recommended in the guidance (see 23.9).

The guidance should make it clear that provision in prison should be sufficiently resourced to ensure that this is provided 56 days before release, where a release date is known for an individual.

Who are "people with an offending history"?

It is important for the guidance to recognise that the majority of "people with an offending history" will have not been to prison and no longer be on probation, but will have a criminal record and will struggle as a result.

Although the majority of these criminal records will now be "spent" (under the ROA) and so do not need to be disclosed, those that have unspent convictions will often not have contact with probation or other statutory agencies. There is substantial quantitative data that demonstrates this, and we would be happy to provide more detail on this if that would be helpful.

Assessing priority need

We believe that it is important that housing authorities consider the specific circumstances of an individual's criminal record as part of determining whether they have a priority need for accommodation. In addition to the factors listed in 23.18, we recommend that consideration be given to the specific details of a person's criminal record. This may mean that an individual is determined to be a priority need because of their past criminal record, even if they have not recently been released from prison or even if they are no longer on probation.

Intentional homelessness

The guidance needs to be more helpful in reconciling the "intentionally homelessness" status with the "assessing priority need" process, because on the one hand people leaving custody and on probation can be regarded as "vulnerable" and therefore deemed a priority need, but then their past criminal record can mean that they are deemed intentionally homeless.

In particular, the following section (which when met, means someone will be deemed intentionally homeless) is far too vague and difficult to give practical meaning to: *"there was a likelihood that ceasing to occupy the accommodation could reasonably have been regarded at the time as a likely consequence of committing the offence"*

We regularly see housing authorities with blanket policies towards people leaving prison, deeming them "intentionally homeless". We recommend that people leaving prison should not be deemed intentionally homeless as a result of having occupied accommodation prior to prison.

Should some form of "intentionally homeless" status remain, it is important to give clear guidance as to how housing authorities should arrive at this type of decision, and the current wording is too vague and open to interpretation.

Taking into account spent conviction

Chapter 23.28 makes reference to the Rehabilitation of Offenders Act 1974 (ROA). This needs to be strengthened and improved. Although the guidance makes it clear that spent convictions should not be taken into account, it does not cover the steps that housing authorities may take in obtaining details about convictions.

We recommend that the guidance makes it clear that, to ensure that spent convictions are not taken into account, housing authorities only ask applicants to disclose unspent convictions. It should be made clear that spent convictions do not need to be disclosed. We recommend that the guidance provides suggested wording for housing authorities to use when asking applicants about their criminal record, including helpful text and links to useful resources. Unlock runs a disclosure tool, www.disclosurecalculator.org.uk, which is linked to by many employers, insurers and housing providers to help individuals work out if their convictions are spent (and so do not need to be disclosed).

The guidance states that *"For some serious and public protection offences, a conviction will never be considered spent"*. This is misleading. Convictions that can never become spent are determined by the ROA as a result of the sentence, not the offence. Instead of *"serious and public protection offences"*, the guidance should state: *"Sentences of over 4 years in prison, and other specific public protection sentences, cannot become spent"*.

The guidance goes on to state that *“but for most offences young people convicted before they reached the age of 18 will see their convictions spent sooner.”* Although this is technically accurate, it is misleading in isolation as it suggests that the convictions of adults cannot become spent. We recommend that the guidance includes some examples to illustrate the way the ROA works. For example, it could say that *“prison sentences of over 4 years cannot become spent, and prison sentences of less than or equal to 6 months can become spent 2 years after the end of the full sentence (for adults) and 18 months after (for those under 18 at the time of conviction).”*

Given the limitations of guidance of this type, the guidance should provide links to guidance on the Rehabilitation of Offenders Act 1974.

Consultation questions

Q8: Are there any other relevant caselaw updates that you think should be considered for inclusion in the revised guidance? If so, detail the case and which chapter of the Homelessness Code of Guidance the update should be included within.

YA v London Borough of Hammersmith And Fulham [2016] EWHC 1850 (Admin) (27 July 2016)

This case made it clear that spent convictions should not be taken into account. This should be considered for chapter 23.28, to strengthen the guidance to ensure that housing authorities take appropriate steps to ensure that spent convictions are not taken into account.

Q16: Taking chapters 21-25 of the Homelessness Code of Guidance which focus on particular client groups consider the following questions:

a) Having read these chapters are you clear what local authorities' responsibilities are?

No.

If no please provide further information: We have set out three areas where this is not clear – Assessing priority need, intentional homelessness and taking into account spent convictions.

b) Would you suggest any additions, deletions or changes to these chapters?

Yes. See our substantive response above.

More information

Contact [Christopher Stacey](#) | Co-director, Unlock
07557 676433 | christopher.stacey@unlock.org.uk

Address Maidstone Community Support Centre, 39-48 Marsham Street, Maidstone, Kent, ME14 1HH

Web www.unlock.org.uk | [@unlockcharity](https://twitter.com/unlockcharity)

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