

Criminal Justice and Homelessness: Introductory briefing for Prevention Review Group

Only a minority of homeless people will become involved in offending, but spending time in prison increases the risk of homelessness and then a 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. Prior to the point of prison, however, every part of the justice system will be interacting with people at risk of homelessness and, therefore can play a part in prevention.

Severe and Multiple Disadvantage

The Hard Edges Scotland research 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 disadvantages¹. 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 misuse². Those with complex needs are at serious risk of falling through the cracks in mainstream service provision, including accessing normal housing options/ homelessness services³. An evaluation of the implementation of the Welsh homelessness prevention duty identified people with complex needs as one of the groups whose needs have been least met by the legislative changes there⁴. However, the positive role played by Criminal Justice Social Workers in Scotland has been found to play a positive role, offering assertive, holistic, tailored, 'sticky' support, which is a highly appropriate model for people with complex needs⁵.

Arrest and Remand

For many offenders, being arrested by the police is the moment in time that triggers a sequence of events that then eventually lead to homelessness. As such, it may be helpful at this early juncture in to raise the question of current or potential future housing concerns for some people. This should be treated with caution, however, as an arrest does not equal a conviction. In addition, for many emotions are likely to be running high at this point and, as at the point of entering prison, this may be a barrier to someone being able to think about wider, non-immediate concerns.

¹ Bramley et al. (2019) Hard Edges Scotland: New conversations about severe and multiple disadvantage

² MacRae R, Mclvor G, Malloch M et al (2006) Evaluation of the Scottish prison service transitional care initiative, Edinburgh: Scottish Executive Social Research

³ E.g. McDonagh, T (2011) Tackling Homelessness and Exclusion: Understanding Complex Lives, York: Joseph Rowntree Foundation

⁴ A. Ahmed, M. Wilding, A. Gibbons, K. Jones, M. Rogers, I. Madoc-Jones (2018). Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report, Cardiff: Welsh Government, GSR report number 46/2018.

⁵ Bramley et al. (2019)

People being held on remand are at particularly high risk of becoming homeless⁶. The average time spent on remand in Scottish prisons is 25 days⁷, although individuals can be held for far longer periods. Being remanded in custody can cause significant disruption and uncertainty regarding housing, even though someone may be later acquitted. It is advisable for a tenant to inform their landlord that they are being held in custody⁸. However, particularly with a private sector tenancy there is the risk that they may be put under pressure to relinquish the tenancy even if they have pleaded not guilty and are hoping to return home. If someone was claiming Universal Credit prior to going into custody people can continue to get assistance with housing costs for up to six months, as long as the time in custody is expected to be six months or less, including time on remand⁹.

Court

The Scottish Courts and Tribunals Service could also play a role in preventing homelessness. At the point of sentencing there can be consequences for someone's housing situation. Many people will maintain their tenancy whilst on remand but once the length of a custodial sentence is known will decide to relinquish their tenancy. Non-custodial sentences may also have an impact on housing. Many people will be immediately moved from the court to prison, where there should be housing advice, but the courts could provide an important thread in the net of services working together to prevent homelessness. For example, in certain circumstances referral to a housing options team could be automatically triggered, or the presence of housing advisers in the court building itself may be helpful for those awaiting trial.

The court may provide a particularly appropriate place for the families of people who have been given a custodial sentence to seek housing advice. A family home may become at risk when someone goes into prison, particularly in cases where that person has been the tenancy holder or the main claimant of housing benefit/ Universal Credit¹⁰. Homelessness prevention measures, then are equally as important for the wider household. It is also important to note the important role that families can play in preventing homelessness¹¹. Some people want to pay rent on behalf of their relative, temporarily take over a tenancy or help to store belongings, but are unsure of how to do so. As family members will often be present at a hearing this is a good opportunity for homelessness prevention agencies to make contact at the earliest opportunity.

Although not directly related to offending, the role of the courts in eviction proceedings is also relevant to preventing homelessness. If eviction proceedings are being heard in court then there is a clear risk of homelessness, and therefore a need for homelessness prevention or relief

⁶ Loucks N (2007) Housing needs of offenders and ex-offenders, Glasgow: The Robertson Trust.

⁷ <https://www.theyworkforyou.com/sp/?id=2018-10-03.15.0&s=speaker%3A13982>

⁸ <http://www.prisonreformtrust.org.uk/ForPrisonersFamilies/PrisonerInformationPages/Howtosortoutthingsoutsidetheprison>
https://england.shelter.org.uk/housing_advice/eviction/eviction_if_you_are_sent_to_prison

⁹ <https://www.turn2us.org.uk/Benefit-guides/Prisoners-on-remand/Help-with-housing-costs-when-on-remand#guide-content>;
<https://www.turn2us.org.uk/Your-Situation/A-prisoner/Prisoners-serving-a-sentence/Help-with-housing-costs-Serving-a-sentence#guide-content>

¹⁰ Loucks, N. (2015) Prison Without Bars: The Experience of Families Affected By Imprisonment, Online: Tayside Criminal Justice Partnership and Families Outside

¹¹ Dore, E., (2015) Preventing Homelessness and Reducing Reoffending, Edinburgh: Shelter Scotland

measures to be available. Good practice would be for local authority housing departments/ Registered Social Landlords to have tried to prevent homelessness and for processes to be in place linking with the homelessness team by the time eviction proceedings reach court. However, this cannot be relied upon and the court hearing provides an additional opportunity to ensure that a suitable plan is in place. In the event of eviction proceedings for a private sector tenancy, the landlord has a duty to send a Section 11 notice to the homelessness team regarding a possible eviction, which should trigger at least the offer of a prevention response. Evictions from the private sector are processed through the First-Tier Tribunal, which presents parallel opportunities to the courts for prevention/ relief interventions.

A commitment has been made to develop the Sustainable Housing On Release for Everyone standards (see section below) to include sections including preventing homelessness on arrest and in court. These were forecasted to be complete by the end of 2019 but are not yet publicly available.

Community Policing

The police will often be aware of individuals prior to an arrest being made, for example through reports of high-level or persistent anti-social behaviour. The recent Homeless Monitor in Scotland commented on the challenge of successfully rehousing people with previous convictions due to them being saddled with a problematic and well-known reputation¹². The police may become aware of them through complaints/ accusations being made by neighbours. The police, then, can be well placed to spot where a tenancy is not sustainable at an early stage.

It is important to note that homeless people are more likely to be victims of crime than perpetrators. 13% of people who became homeless in Scotland in 2018/19 cited a violent or abusive dispute within the household as their main reason for homelessness, with another 4% pointing to fleeing non-domestic violence. In total, this represents 5,895 households¹³. It is reasonable to assume that the police will have been involved in a proportion of these cases prior to their making an application for homelessness. Outside of statutory homelessness, one study found that within the last 12 months, 77% of rough sleepers had been the victims of some form of violence or anti-social behaviour¹⁴. Some temporary accommodation units, particularly bed and breakfasts and hostels, can also be the sites of people becoming victims, for example to theft and drug-related crime¹⁵. Where the police are made aware of such incidents, they have the opportunity to support people who are homeless.

Outwith their core criminal justice functions, Police Scotland provides a broader community wellbeing function¹⁶. This can include making contact with people who are visibly homeless

¹² Fitzpatrick, S., Pawson, H. Bramley, G., Watts, B., Stephens, M. and Blenkinsop, J. (2019) The Homeless Monitor: Scotland 2019, Isphere and The Urban Institute, Heriot Watt University, and City Futures Research Centre, University of New South Wales.

¹³ Scottish Government (2019) Homelessness in Scotland: Annual publication 2018-19, online.

¹⁴ Sanders, B. and Albanese, F. (2017) An Examination of the Scale and Impact of Enforcement Interventions on Street Homeless People in England and Wales, London: Crisis

¹⁵ Dore (2015) Shelter

¹⁶ Police and Fire (Scotland) Reform Act 2012

in the form of rough sleeping, or through regular interaction with temporary accommodation units. In addition, every day frontline officers also come into contact with a wide cross-section of society: through being on the streets, being called out to properties by concerned neighbours or their response to missing persons. In addition to offending, there are other areas that make the police likely to come into contact with people at risk of homelessness. For example, 20-40% of police time in the UK involves a mental health concern¹⁷. As such, with increased knowledge of the factors/ triggers that can increase the risk of homelessness and awareness of the issues at play, the broad reach of the police makes them a valuable resource for assisting in preventing homelessness.

Scale of homelessness for prison leavers

The average daily population in Scottish Prison Service (SPS) establishments in 2018/19 was 7,789¹⁸. The most recent available figures showed 9,775 liberations from prison sentences in a year, with an additional 8,033 released from remand¹⁹. With these figures in mind, it is concerning that a survey showed 49% of prisoners reporting losing their accommodation while they are in prison²⁰. The Hard Edges study is consistent with this, finding both pre- and post-release support for prisoners to be far from perfect, with many people still being released straight into homelessness²¹.

1,822 homeless applications were recorded as having been from people leaving prison in 2018/19²². This represents 5.0% of total applications²³. However, put alongside the above information from SPS, it is likely that this figure does not represent the full scale of the problem. There are several potential reasons for this. Individuals may choose not to cite leaving prison as their reason for homelessness, fearing discrimination or worrying that this could weaken their homelessness application. They may, instead, cite another factor such as relationship breakdown. For others, living arrangements may break down within a few weeks of release, leading to a delayed homeless presentation. Furthermore, not all those who are homeless will approach a local authority or be offered a homelessness assessment²⁴.

While finding and sustaining accommodation can be problematic for anyone leaving prison, evidence has highlighted four groups that face particular barriers²⁵: remand prisoners and those

¹⁷ College of Policing (2015) Estimating Demand on the Police Service

¹⁸ 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.

¹⁹ 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.

²⁰ Scottish Prison Service (2017) Prisoner Survey 2017, Edinburgh: SPS

²¹ Bramley et al. (2019)

²² Scottish Government (2019)

²³ There were 36,465 applications in 2018-19 in total. Scottish Government (2019) Homelessness in Scotland: Annual publication 2018-19

²⁴ Scottish Housing Regulator (2014) Housing options in Scotland: A thematic inquiry, Glasgow: Scottish Housing Regulator

²⁵ Dore, E (2015) Insight: Prison Leavers and Homelessness, online: IRISS.

on very short-term sentences²⁶, women²⁷, young people²⁸, and those who were homeless on entering prison²⁹.

Cyclical Homelessness and Offending

Research has established that securing adequate housing for prison leavers can significantly reduce re-offending. For example, the Social Exclusion Unit found a reduction in relapses into criminal behaviour of 20% when people were given a tenancy, compared to when they were released into homelessness³⁰. Prisoners themselves can recognise that having a place to live could help them stop offending and even that prison leavers feel driven to re-offend in order to return to the secure 'accommodation' of prison³¹. The cyclical nature of homelessness and re-offending was also demonstrated by a longitudinal cohort study of 1,435 adult prisoners sentenced to between one month and four years in prison in England and Wales. The survey found that 11% who had served a previous custodial sentence were sleeping rough prior to custody, compared to 3% of those who had not been in prison before³².

Not all prison leavers will have high levels of need, but some will have poor basic skills and require support, which can impact on their ability to sustain accommodation³³. For all prisoner leavers, not just those with complex needs, the right type and location of accommodation and level of support must be in place if repeat homelessness and offending is to be prevented. Holistic assessment processes that identify the full range of housing-related and wider support needs are a key component in this³⁴. Multiple studies suggest that providing temporary accommodation in hostel-type accommodation is rarely appropriate and increases the likelihood of reoffending³⁵.

As well as being able to access appropriate support services, the location of accommodation is of significant concern for people leaving prison. It is important for them to be away from negative influences and being close to positive influences³⁶. Prison housing advisors often only have links with the local area of the prison, which presents a challenge as prisoners are often in custody far away from the local authority that they would wish to be rehoused in³⁷. In the English Homeless Reduction Act 2017, the duty to refer is specified as being to a local housing authority

²⁶ 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

²⁷ Commission on Women Offenders (2012) Final report, Edinburgh: Scottish Government

²⁸ 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).

²⁹ 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

³⁰ Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners, London: Social Exclusion Unit

³¹ Dore (2015) IRISS

³² Williams et al. (2012)

³³ Scottish Prisons Commission (2008) Scotland's Choice, Edinburgh: Scottish Government

³⁴ Audit Scotland (2011) An overview of Scotland's criminal justice system, Auditor General and Accounts Commission, Edinburgh: Audit Scotland

³⁵ E.g. McHardy F (2010) Out of jail but still not free: Experiences of temporary accommodation on leaving prison, Glasgow: EPIC/The Poverty Alliance. Dore (2015) Shelter.

³⁶ Dore (2015) IRISS

³⁷ Audit Scotland (2012) Approaches to reducing reoffending, Edinburgh: Audit Scotland

of the individual's choice. This is one process element that could add to the effectiveness of recovery prevention for people with experience of being in prison. Connectedly, the Scottish Government's intention to revise the legislative arrangements on local connection in the assessment of a homeless application is very relevant to this group³⁸.

Regulatory Framework

The reciprocal relationship between offending and homelessness has long been recognised at a strategic level by both the Criminal Justice and Housing sectors. The ability to access and sustain suitable accommodation is one of the Scottish Prison Service nine key 'offender outcomes'³⁹. Indeed, 'As prisoners near release all reasonable steps are taken to ensure that accommodation will be available' is a quality indicator within the HMIPS Standards for Inspecting and Monitoring Prisons. This is also reflected in the National Strategy for Community Justice (2016), which makes it clear that 'Housing should be safe, timely and appropriate to the person's needs as well as taking the victim's safety into account'.

On the housing side, in addition to the general statutory duties owed by a local authority to anybody threatened with homelessness, prisoner leavers are recognised as a particularly vulnerable group. Both the Code of Guidance on Homelessness 2005 and the Prevention of Homelessness Guidance 2009 mention this as a specific area for attention, recommending developing specialist staff knowledge about the issue, close joint working and building communication between prisons and local authorities.

Despite strategic aims and measures, prisoners becoming homeless on release has remained a significant problem. Following Audit Scotland's report on Reducing Reoffending in Scotland (2012) there became increased public policy interest in the issue, culminating in the publishing of the 'Sustainable Housing On Release for Everyone' (SHORE) standards in December 2017⁴⁰. These were co-signed by the Cabinet Secretary for Justice and the Minister for Local Government and Housing. The standards were developed over the course of 18 months by a joint Housing and Prisons Task and Finish Group, involving intensive engagement with a range of partners and stakeholders, including people in and leaving prison. This follows the research that highlights how vital co-operation and multi-agency shared commitment is in the effective prevention of homelessness when leaving prison⁴¹. The standards follow the stages that individuals follow through the justice system - On Imprisonment, During Sentence, Prior to Release and Following Release. They provide a comprehensive, practical set of standards, building on the extensive cumulative experience of those that contributed to them. The Ending Homelessness Together: High Level Action Plan points to the SHORE standards as being 'an example of a powerful collaboration between the Scottish Prison Services and local authorities

³⁸ COSLA and Scottish Government (2018) Ending Homelessness Together

³⁹ Scottish Executive (2006) National strategy for the management of offenders, Edinburgh: Scottish Executive

⁴⁰ Scottish Prison Service (2017) Scottish Quality Standards: Housing Advice, Information and Support for People In and Leaving Prison. Online: Scottish Prison Service. <https://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

⁴¹ Homeless Link (2011) Better Together, London: Homeless Link. Communities and Local Government (CLG) (2009) Homelessness prevention and meeting housing need for (ex) offenders, London: Communities and Local Government. Gojkovic D, Mills A and Meek R (2012) Accommodation for ex-offenders: Third sector housing advice and provision, Southampton: Third Sector Research Centre

to develop joined up responses to solve homelessness', and to the new partnerships that are developing on a local level⁴².

However, the consensus amongst key informants for the Homeless Monitor Scotland in 2019 was that the SHORE standards presented positive principles but there was a long way to go on implementation: "I think there is an ambition for SHORE to be rolled out to all local authority areas and all prison areas. So I think we're at the early stages of that"⁴³. Within prisons, the implementation of the SHORE standards was initially primarily designated to SPS Throughcare Support Officers (TSOs). In summer 2019 all TSOs were re-assigned to Prison Officer roles to meet the needs of the increasing prison population. This is a temporary suspension of the TSO roles and will be kept under review. A wide range of other roles within the prison establishment, and in particular wider throughcare services, will have a role in putting in place elements of the SHORE standards. However, it is fair to say that the temporary suspension of the TSOs equates to the removal of a key part of the implementation picture. The Scottish Government is currently conducting a review of the implementation of the SHORE standards, due to report later this year.

Learning from Welsh and English Experiences

The Housing (Wales) Act 2014 implemented an extension of the period that housing can be applied for by prisoners from 56 to 66 days before release. This was to ensure enough time for the prison leaver to benefit from the full period of preventative activity that they would be entitled to under the Welsh system. There was also the introduction of the 'Prisoner Pathway', which might be seen as comparable to the SHORE standards. The 'duty to cooperate' introduced on other agencies by the Act did not extend to any justice services⁴⁴. A final evaluation of the Act found that only eight of 22 local authorities surveyed had increased partnership working with prisons/ youth detention centres. None of the service providers felt that their authority had succeeded in ensuring a smooth transition from prison into permanent accommodation. Communication between housing and prison services was cited as a core problem⁴⁵. There needs to be clear, timely communication between agencies about many different issues to prevent homelessness for people who are in prison. To pick a few examples; court dates, release date, benefit claims, rent arrears, what can happen regarding any tenancy, storage of possessions, practical arrangements for release must all be shared. As can be inferred from this short, non-exhaustive list, it is not only SPS and the homeless team that need to be in contact with each other but housing providers, the Department for Work and Pensions and family members often also play crucial roles. Research into the prevention of homelessness for prisoners in Wales summarises that the 'walls of prisons need to be far more permeable' to allow the partnership working that is necessary for successful prevention⁴⁶.

⁴² COSLA and Scottish Government (2018) High Level Action Plan: Ending Homelessness Together

⁴³ Fitzpatrick et al. (2019) Homeless Monitor: Scotland 2019

⁴⁴ Included were a) a local housing authority (b) a social services authority (c) a registered social landlord (d) a new town corporation (e) a private registered provider of social housing (f) a housing action trust.

⁴⁵ A. Ahmed et al. (2018)

⁴⁶ Madoc-Jones, I, Hughes, C, Gorden, C, Dubberley, S, Washington-Dyer, K, Ahmed, A, Lockwood, KA and Wilding, MA (2019) Rethinking Preventing Homelessness Among Prison Leavers, Manchester: University of Salford

The English Homeless Reduction Act 2017 placed a 'duty to refer' on the governors of prisons and their counterparts across the criminal justice sector. There has not yet been any published evaluation of the impact of this. However, it is worth noting that an inquiry by the Communities and Local Government Committee into the first draft of the Homelessness Reduction Bill cited people leaving prison as an example of why a duty to cooperate should be included⁴⁷. The duty to cooperate was dropped from later drafts of the legislation and replaced with the duty to refer.

Areas for potential consideration

This briefing has identified several bodies that each may play a part in preventing or assisting in preventing homelessness for people in contact with the criminal justice system. The interaction and communication between these, and other agencies, can be crucial in helping someone to keep their house, and to avoid a negative cycle of homelessness and offending to develop. The review group might discuss how best to promote communication and cooperation between these organisations and what the barriers are to this.

Many people who are in contact with the community and criminal justice systems face multiple disadvantages. The implementation of the Welsh Act has been criticised for not meeting the needs of those with particularly complex needs. The proposed wider scope of a Scottish prevention duty means there is potential for a more effective response to those with multiple and complex disadvantages. This may be through more effective multi agency co-operation or specific duties relating to particular groups of individuals or specific services.

Based on the evidence presented above, responses to the increased risk of repeat homelessness for this group might address the particular challenges of geography. This could be a helpful area for discussion.

The recently developed SHORE standards clearly and comprehensively set out actions and processes that need to be undertaken to effectively prevent homelessness for prisoners. There has not yet been time for these to be fully implemented. The group might consider whether/ how the shape of a new duty could support these standards.

Author:
Emma Dore (Adair Richards Associates), January 2019
Emma.dore@adairrichards.com

⁴⁷ House of Commons Communities and Local Government Committee, 'The draft Homelessness Reduction Bill fifth report of session 2016-17', 14 October 2016