



**Nacro's response to the DCLG
Homelessness Code of Guidance
for Local Authorities consultation
paper**

11 December 2017

About Nacro

We are a [national social justice charity](#) with more than 50 years' experience of changing lives, building stronger communities and reducing crime. We house, we educate, we support, we advise, and we speak out for and with disadvantaged young people and adults. We are passionate about changing lives. We never give up.

Introduction

Nacro welcomes the new Homelessness Code of Guidance for Local Authorities (the Guidance), particularly the helpfulness of creating a standalone chapter on 'people with an offending history', and the important emphasis on referring to this client group as people first rather than identifying them as "offenders" or "ex-offenders". At Nacro, we understand the power that language has on behaviour including the adverse impact that negative labels can have on an individual's ability to reintegrate into society, move away from crime and build a better future.¹ We are also pleased to see an emphasis on a person's access to accommodation and, in addition, its appropriateness.

In our response we have focused on Chapter 23 as we can provide the Department for Communities and Local Government (DCLG) with our expertise as a service delivery partner within the supply chain of four Community Rehabilitation Companies (CRCs). In addition, we can provide the experience of Nacro's Legal Advocacy Service (LAS),² which challenges negative housing authority decisions on homelessness applications where the law or housing authority guidance has not been applied correctly or fairly. In some cases, where we are not able to successfully reverse decisions at housing authority level, we refer these cases to our legal partners for Judicial Review. To illustrate the type of issues LAS experiences, we have provided the following case study:

Anna is in her late 60s and was previously imprisoned for a historic offence. Anna is in bad health and extremely vulnerable – she is disabled and wheelchair bound. She has a number of health complaints including diabetes, chronic back pain, chronic kidney disease, heart disease and heart failure. Her physical health is deteriorating rapidly and medical professionals gave her a prognosis of less than five years to live. Anna also has mental health problems including depression and anxiety, and has learning difficulties including low IQ, dyslexia and the ability to read and write at a primary school level. She left school at 14-years-old with no formal qualifications. As a child Anna was raped and as an adult she experienced domestic abuse.

After spending four years in prison, she was due to be released with nowhere to go. Anna's case was referred to one of Nacro's AAA (Accommodation, Aid and Advice) Services by the National Probation Service (NPS). Via video conference from the NPS office to the women's prison, one of Nacro's RAS Legal Officers was able to advise Anna on her housing options and it was agreed that the Legal Advocacy Officer would submit a 28 day notice to her local council informing them that she would be released within 28 days, would be homeless and in "priority need" of housing.

On release she presented to her local council and was temporarily accommodated in a hotel while a decision on her homelessness application was being made. The council paid for significant changes to

¹ Beyond Youth Custody (2017) *Now all I care about is my future' – supporting the shift: research report* London: Nacro

² LAS is part of Nacro's [Resettlement Advice Service](#).

her hotel room to accommodate her wheelchair. Despite Nacro and NPS submitting substantive evidence to the local council to enable it to assess her housing need, the council found Anna had become homeless intentionally by committing a deliberate act almost 20 years ago. The letter stated, "You ceased to occupy your last settled accommodation due to being incarcerated. This was a direct result of crimes that had been committed prior to you moving into this accommodation ... In my consideration, the deliberate act was criminal acts between 1975 and 1989 ... There is no ambiguity in this matter. you [sic] clearly lost your accommodation as a result of criminal acts committed."

After receiving the letter, Anna was distraught as she did not know where she would go and her health deteriorated. We asked for an internal review of the decision by a senior officer, however, the original decision was confirmed and she was given notice to vacate her temporary accommodation. An application for Legal Aid was made and accepted, and Nacro's Legal Officer was able to identify a solicitors' firm which agreed to Judicially Review the council's decision. An interim injunction was granted which allowed Anna to stay in her temporary accommodation until the matter was heard in court. Before the court hearing, the council withdrew its decision and agreed to appropriately house Anna.

Given the importance that this document has on influencing housing authority practice and developing new case law, we believe that the Guidance can be improved further. Despite the new Homelessness Reduction Act 2017(HRA) prevention and relief duties, we are concerned that practices such as that set out above may continue. The Guidance offers us an opportunity to comprehensively address these issues and create a more transparent housing allocation system for people with an offending history. We look forward to discussing these issues with you. We are more than happy to expand or clarify our comments. If you have further questions, please contact Rachel Annison at: rachel.annison@nacro.org.uk or on 020 7902 5437.

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?

- Yes
 No

If no, please provide further information:

Responsibilities placed on housing authorities are discussed simultaneously with the responsibilities placed on probation providers without a clear divide on who should do what and when. Where guidance is unclear and resources are limited, gaps can develop in service delivery which may impact on service users. We recommend that the Guidance should include more detailed information on the responsibilities of each organisation. In the table below, we have suggested additions/changes in italics and deletions are struck through.

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

- Yes
 No

If yes, please use the form below to detail the chapter and paragraph number of the Homelessness Code of Guidance where relevant. Please expand this table as required

Page, chapter and paragraph number	Changes, additions and removals	Comments
161/23.2	People with an offending history are over represented amongst single people who are homeless and sleep rough. <i>They are one of the most socially excluded and often experience cumulative and interlocking needs particularly in relation to health inequalities.</i>	It is important for housing authorities to understand that evidence indicates that, as a group, people with an offending history are vulnerable. For example, as many as nine out of every 10 prisoners in the UK display evidence of one or more mental disorders (Steel, 2007).
161/23.2	<i>Stable and appropriate housing is vital for people with an offending history to be able to move away from crime. Evidence demonstrating the importance of housing as a critical component within a suite of rehabilitative interventions is well established. Where housing is provided alongside other interventions, research shows that rehabilitative models with a housing component are more effective than ones that do not. Therefore a</i> A lack of accommodation is likely to have a negative impact on prospects for successful resettlement and rehabilitation.	Our experience of working with housing authorities indicates that housing options teams are often unaware of the importance of housing in reducing crime in their local community. For housing authorities to prioritise housing for people with an offending history, we believe that they must understand this link. Therefore, paragraph 23.2 should include information on why housing is important to effective rehabilitation and moving away from crime.
161/23.3	Housing authorities will need to work in collaboration with HM Prisons (<i>particularly the prison housing reception team</i>), providers of probation services - National Probation Service (NPS) and Community Rehabilitation Companies (CRCs), Youth Offending Services, as well as other relevant partners <i>such as the voluntary and charity sector and Police and Crime Commissioners</i> , to prevent people leaving custody, or living in the community, from becoming homeless.	We are pleased to see the reference to collaboration between criminal justice partners, however, we believe that a reference to the voluntary sector and Police and Crime Commissioners (PCC) should be included. The voluntary sector is uniquely placed to support people with an offending history and has a long track record of finding innovative and cost-effective solutions which reduce reoffending as well as joining up local and national good practice. Therefore, we believe that collaborating with the voluntary sector is key to the success of preventing people leaving custody, or those serving community sentences, from becoming homeless. In addition, PCCs are becoming increasingly involved in preventing and relieving homelessness by investing in rent deposit schemes as a way of reducing reoffending. Nacro is working with a number of PCCs to administer these schemes so that people being supervised by CRCs are able to access private rented accommodation which they otherwise would not have. Therefore, we recommend that they should be included in this section.

161/23.5	<p>Providers of probation services (particularly CRCs) have responsibilities to provide support to rehabilitate <i>people with an offending background</i> offenders and reduce reoffending which go beyond making a referral., and se Housing authorities should <i>develop strong working partnerships with probation providers</i> expect to and continue <i>to working</i> with these agencies to help and support their clients to access suitable accommodation</p>	<p>Both CRCs and the NPS have the same responsibility to rehabilitate people with offending histories. CRCs have responsibility for securing accommodation for at least three months. People under level two and three of multi-agency public protection arrangements (MAPPA), who are supervised by the NPS, are also required to secure housing for their clients before they can be released. This may be through finding a place within Approved Premises as well as social or private housing where this has been assessed as meeting public protection standards.</p> <p>We have removed the reference to probation providers having to provide rehabilitation “which goes beyond making a referral” as this may be interpreted by housing authorities to mean that probation providers are required to provide housing stock. They are required to make referrals and follow them up but not to own or lease housing stock. While this may be a reference to the section 213B duty on public bodies to refer cases in England to housing authorities, this should be stated as so within this section. The duty to refer needs to be clarified within this chapter including who can make a referral under this duty.</p> <p>We have removed “offenders” to maintain consistency of language within this chapter.</p>
161/23.6	<p>People with an offending history generally face additional barriers in accessing housing <i>for example:</i></p> <ul style="list-style-type: none"> • <i>Some landlords do not want to rent to people with an offending history (particularly those who rent their properties out through letting agencies)</i> • <i>Issues around determining a local connection if they have served long sentences</i> • <i>Only having access to unsuitable housing which contributes to likelihood of reoffending</i> • <i>Although priority need includes people with children – parents leaving prison are often not eligible for housing under priority need if they do not have their children with them, and are unlikely to get them back if they do not have suitable housing</i> <p><i>Therefore, they will need targeted advice and information to overcome these barriers and help them to secure accommodation.</i></p>	<p>We think that it is important to explicitly list some of the additional barriers which people with an offending history experience. As housing authorities have not previously been responsible for securing private rented accommodation outside of their duties under priority need, we believe that they may require information on barriers to accessing private rented accommodation. In addition, to ensure that information and advice is consistent, it may be helpful to include them so that every housing authority addresses these issues within their targeted advice and information.</p>

162/23.7	<p>Housing authorities may <i>should</i> also wish to consult with prisoners or people with an offending history before developing resources tailored to their particular needs.</p>	<p>Evidence shows that it is essential to consult and co-create “with” people with lived experience rather doing something “to” them. This ensures that they can express their views, share decision-making and influence the development of products aimed at them to ensure that provision is fit for purpose and reflects their interests and needs. People with lived experience have unique knowledge of how services should be commissioned and what information is needed to ensure effective engagement and communication. You may wish to include a section on why co-creation is beneficial to housing authorities.</p>
162/23.9	<p>It is recommended that housing advice be made available to people whilst in custody, and that housing authorities collaborate with prisons from which offenders are released to their districts, together with probation providers, to provide accessible advice on housing options available to them.</p> <p><i>If not already established, you may wish to introduce a housing officer within local prisons to provide a mobile housing advice surgery. Advising prisoners over the phone can be difficult due to restrictions on telephone numbers which have to be preauthorised. Housing officers can provide housing advice over video link between local prisons and probation offices where they have this facility.</i></p>	<p>We welcome the recommendation for housing advice from housing authorities to be made available to people while in custody. However, we are concerned about how this will work in practice as CRCs are currently contracted by the Ministry of Justice (MoJ) to provide information, advice and guidance on housing. To fulfil this contractual duty, many CRCs have invested in upskilling staff with the knowledge they need to be able to advise and support service users with housing needs. We believe that this recommendation may lead to duplication of advice or conflicting advice without clear guidance on who should lead in providing it.</p> <p>You may wish to make housing authorities aware of caretaking or housekeeping arrangement whilst people are in prison. In addition you may wish to highlight that providing advice on their website will be of limited use for this group as access to IT is limited in many prisons. Also, for prisoners to speak to a housing authority, the housing authority’s telephone number needs to be included on the global prison phone list which has not always been established.</p> <p>We have suggested further text which gives examples of how housing advice may be delivered in this context. Also it may be helpful to suggest to housing authorities that they establish a single point of contact (SPOC) within each housing authority who has expertise and knowledge in supporting people with offending histories and overcoming some of the additional barriers this group faces. Enquiries from colleagues within housing authorities should be filtered to the SPOC so that they can provide specialist support and advise them in relation to preventing and relieving homelessness among people with an offending history.</p>

163/23.13	<p>Prison services and probation providers carry out assessments to identify resettlement needs, including the need for accommodation, at the start of a prisoner's period in custody. Sentence planning arrangements <i>These assessments are used to develop a require-Resettlement-Plan for resettlement which is reviewed 12 weeks before someone is released from prison. Within these 12 weeks reviewed throughout the sentence and appropriate support is arranged to meet a person's needs on leaving custody.</i></p>	<p>Resettlement needs (including housing needs) are currently assessed in two stages by prisons and probation providers. Within three days of reception to prison, prison staff complete the Basic Custody Screening Tool Part 1 (BCST 1). Probation providers carry out the BCST 2 within five days of the BCST 1 being completed by prison staff. From the BCST 2, a Resettlement Plan is created, which forms part of the Sentence Plan developed by prisons. However, prisons often mistakenly believe that as the housing outcome currently sits with CRCs (before Transforming Rehabilitation the housing outcome sat with prisons), they are not responsible for helping prisoners to find accommodation on release. In practice, the Resettlement Plan is reviewed by CRCs in the last 12 weeks in line with contractual requirements, and is the time when action on housing needs is taken. It is important to note that housing need may change in between the BCST assessments and the delivery of the Resettlement Plan.</p> <p>BCST assessments are currently not completed to the standard required for the purposes of a housing authority homelessness application. In some cases, relying on the BCST assessment may not fully meet the duty within section 189A. Furthermore, it is unclear if, in principle, a prisoner could also apply for assistance from a housing authority if they are able to prove that they will be homelessness or threatened with homelessness within 56 days under section 189A. The Guidance should clarify the correct assessment approach so that quality assessments materialise, duplication is avoided and potential gaps in provision are bridged.</p> <p>The Guidance provides us with an opportunity for probation and housing authorities to jointly develop a better assessment process which clarifies both parties' responsibilities. We recommend that this opportunity should be highlighted within the Guidance.</p>
23.11-23.14	<p>Section missing in between "preventing loss of accommodation due to offending behaviour" and "prevention of loss of accommodation whilst in prison".</p>	<p>We are concerned that people who are serving community sentences are not mentioned in the Guidance. Within our CRCs, some of our service users have a housing need which is not connected to a "loss of accommodation due to serving a custodial sentence". We believe that this group's housing needs, and how they relate to the HRA, should be considered within this chapter.</p>

163/23.14	In most cases, but particularly with young people, contact should be made with family to try and support a return home (where safe to do so) if only on a temporary basis.	Without specialist training it may be difficult for housing authorities to carry out this role appropriately. Young people leaving custody can have complex familial relationships which can influence or even contribute to their offending. If housing authorities are to take on this role, they should equip their staff with the specialist skills, including mediation training, to ensure that the young person returns to the most appropriate housing to help them to desist from crime.
163/23.15	Where a person preparing to leave custody cannot return to family or another safe address, housing authorities should work with the applicant and liaise with offender manager and support services to agree and to deliver reasonable steps to prevent them from becoming homeless on release.	With reference to our comments on paragraph 23.12, we believe that this section should clarify how housing authorities and probation providers should agree and deliver reasonable steps to prevent homelessness. This should consider the potential conflict between what is contractually required of probation providers (delivery of the Resettlement Plan within the last 12 weeks) and the duty on housing authorities (delivery of a personalised housing plan within 56 days of homelessness). Without clear guidance this may cause confusion in practice.
163/23.17	<i>In addition to the applicant priority need categories set out in paragraph 8.3, A a person can be who is vulnerable as a result of having served a custodial sentence, been committed for contempt of court or remanded in custody. has a priority need for accommodation.</i>	We are pleased to see the Guidance highlighting the Housing Act 1996 (as revised by the Homelessness (Priority need for accommodation) (England) Order 2002) priority need category on vulnerability and prisoners. However, this passage could be interpreted as vulnerability which only arises from/is connected to being in custody. People with an offending history often have pre-existing vulnerabilities before they enter the criminal justice system — some of which contribute to their offending. To avoid a narrow interpretation which solely focuses on the custodial experience, we think that it is important to highlight that people with an offending history can experience vulnerability like other groups. This will also ensure that vulnerable people serving community sentences are not overlooked as being in priority need for accommodation.
164/23.18	In determining whether applicants who fall within these this categories are vulnerable, as a result of their period in custody a housing authority will need to take into account all of the relevant <i>factors and their relationship with stable and appropriate housing including health; benefits finance and debt; family, children and relationships; drugs and alcohol issues; and education, training and employment. In addition, experiences of abuse, neglect and trauma should also be considered.</i>	In determining vulnerability, criminal justice organisations often use the reducing reoffending pathway framework which is used to understand what needs to be done to rehabilitate people with an offending history and ultimately reduce reoffending on release. We believe that these pathways are all interconnected and interdependent; it is, therefore, important to consider them in relation to housing to fully understand a person's vulnerability.

164/23.18	<p>b. whether the applicant is receiving supervision from a criminal justice agency e.g. the providers of probation services (National Probation Service (NPS) and Community Rehabilitation Companies (CRCs)), Youth Offending Team, or Drug Intervention Programme <i>and the voluntary sector</i>. Housing authorities <i>should give weight</i> have regard to any advice from criminal justice agency staff regarding their view of the applicant's general vulnerability, but the final decision on the question of vulnerability for the purposes of the homelessness legislation will rest with the housing authority;</p>	<p>We are pleased to see the Guidance placing emphasis on the advice provided by criminal justice agency staff. In LAS' advocacy cases, we use both CRC and NPS reports to strengthen our cases and outline a service user's vulnerability, but these reports are often disregarded in housing authority decisions. In one study it was found that "when conducting homelessness assessments, LHAs rarely factored in their clients' vulnerabilities and saw the vulnerability test as a rationing device that can lead to a negative homelessness decision" (Cooper, 2016) . We believe that the language could be reinforced further to highlight the expertise of probation providers, particularly in relation to MAPPA cases where there is a potentially higher risk of reoffending if these individuals are homeless.</p>
164/23.21	<p>Housing authorities must consider each case in the light of all the facts and circumstances, including the age, and maturity <i>and mental capacity</i> of the applicant, and should discuss the matter with the relevant provider of probation services. Authorities <i>should not adopt a blanket policy</i> which assumes that people who have lost accommodation whilst in custody will or will not be assessed as intentionally homeless. <i>Such policies are open to legal challenge.</i></p>	<p>Becoming homeless intentionally, due to a conviction being deemed as a deliberate act, is one of the main reasons that Nacro's LAS challenges housing authority decisions. In many of our cases, housing authorities make judgements on the person's mental capacity, and whether they would understand that their offence would lead to their homelessness, without obtaining expert medical evidence to inform their decision. Therefore, we think that it is important to highlight issues such as mental capacity within this paragraph.</p> <p>We welcome the line on blanket banning policies (which was also made in the past 2002 Guidance) which cautions housing authorities from operating policies which exclude people with an offending history from applying for housing. Despite past guidance stating that housing authorities should refrain from this, we have observed a number of housing authorities operating these policies in practice. We believe that by underlining this sentence, together with detailing the potential consequences, could create a stronger message.</p>

	Section missing on unacceptable behaviour and blanket policies	Housing authorities also have the power to disqualify homelessness applications (as well as giving reduced preference in housing allocation policies) based on an applicant's past behaviour that may be seen as unacceptable and/or antisocial. In our experience, a number of housing authorities are interpreting any offence as evidence of unacceptable behaviour and rejecting homelessness on this basis. While some offending behaviour may be deemed unacceptable to make them an unsuitable tenant (such as arson, drug dealing from their property and antisocial behaviour), not all offences can be interpreted in this way. We believe that the Guidance should address this issue and clarify the circumstances where housing authorities can fairly apply this reasoning.
165/23.22		We are finding a number of housing authorities which are encouraging applicants to make multiple homeless applications with other housing authorities. We think that this practice should be addressed within the Guidance.
165-166/23.28	<p>People with an offending history face barriers to accessing accommodation across <i>all</i> tenures. Housing authorities providing help to secure or securing accommodation should be aware of the provisions of the Rehabilitation of Offenders Act 1974 (as amended by the Legal Aid Sentencing and Punishing Offenders Act 2012). <i>The Act which sets out timescales for when convictions to become spent, after which it is unlawful for social and private landlords to take spent convictions into account when determining whether the person is suitable for housing. If housing authorities exclude they should not be used by a landlord (social or private) as a basis for excluding them from being offered a tenancy on the basis of a spent conviction, there decision may be open to Judicial Review. For some serious and public protection offences, a conviction will never be considered spent, but for most offences young people convicted before they reached the age of 18 will see their convictions spent</i></p>	<p>We are pleased to see a reference to the Rehabilitation of Offenders Act 1974 (ROA) within the Guidance in line with <i>YA v London Borough of Hammersmith and Fulham</i> [2016] EWHC 1850 (Admin). Our experience through RAS indicates that housing authorities often unlawfully request disclosure of spent as well as unspent convictions as part of their housing application process. We suggest strengthening the impact of this section by highlighting that it is unlawful to take into account a spent conviction and the consequences if this advice is ignored. In addition, it would be helpful to reiterate in paragraph 23.28 that an unspent conviction should not be grounds to reject an applicant's case on this basis alone and direct the reader to paragraph 23.18 on assessing vulnerability.</p> <p>In its current form, the reference to serious and public protection offences and the reduced rehabilitation periods for young people may be confusing. It may lead to practitioners conflating these two different elements of the criminal record system. If this information is to remain, we recommend discussing these issues separately. However, we recommend removing this and directing the reader to visit a resource which can answer any of their questions. We are happy for the DCLG to include Nacro's web page on the ROA within the Guidance to provide housing authorities with further information.</p>

Q17: Are there any other comments that you would like to make on the Homelessness Code of Guidance? Comments:

We welcome the chapters which focus on specific groups including victims of domestic abuse, care leavers, people with an offending history, former members of the armed forces, and victims of trafficking. However, we believe that people with other vulnerabilities such as drug and alcohol issues would benefit from having a standalone chapter.