

**Response to ‘Local decisions: a fairer
future for social housing’**

January 2011

About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 51 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system. The CJA's current member organisations are: Action for Prisoners' Families; Adullam Homes Housing Association; the Apex Charitable Trust; the Association of Black Probation Officers; the Association of Members of Independent Monitoring Boards; Bindman and Partners; Birth Companions; Catch22; the Centre for Crime and Justice Studies; the Centre for Mental Health; Chance UK; the Children's Society; the Churches' Criminal Justice Forum; Clean Break; Clinks; DrugScope; the Fawcett Society; the Griffins Society; INQUEST; the Institute for Criminal Policy Research; JUSTICE; Leap; Nacro; the National Appropriate Adult Network; the New Bridge Foundation; Pact; Penal Reform International; the Police Foundation; the Prison Officers' Association; the Prison Reform Trust; Prisoners Abroad; Prisoners' Advice Service; the Prisoners' Education Trust; the Prisoners Families and Friends Service; the Public and Commercial Services Union; the Quaker Crime, Community and Justice Group; RAPT; Release; the Restorative Justice Council; Rethink; Revolving Doors Agency; the RSA Prison Learning Network; SOVA; the St Giles Trust; Transform Drug Policy Foundation; UNLOCK; Women in Prison; the Womens' Centre Forum; Working Chance; the Young Foundation; and Young Minds.¹ The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

Introduction

The Criminal Justice Alliance welcomes the opportunity to participate in this consultation. The CJA recognises that the current social housing system is failing to help many vulnerable individuals and households and that the size of social housing waiting lists is a considerable problem. The CJA has particular concerns about the availability of housing for offenders and ex-offenders, a high proportion of whom come from troubled, chaotic backgrounds, and have a complex set of needs which make them extremely vulnerable. Amongst prisoners, there are much higher levels of poor physical and mental health, alcohol and drug dependency, poor educational attainment, unemployment and homelessness than in the general population.² For such a marginalised group, access to secure, stable accommodation is of great importance; indeed, research has shown that stable accommodation plays a significant role in reducing re-offending.³ However, the CJA is concerned that, rather than improving the availability of social housing, many of the proposals set out in the consultation will, in fact, vastly reduce access to secure, stable accommodation for those who need it. The CJA is worried that the changes to the social housing system put forward in the consultation could, therefore, have a very damaging effect on the life chances of individual offenders and ex-offenders, as well as on local communities.

Response to the consultation questions

We have responded to the consultation questions on which we have a view below.

Question 9

Is two years an appropriate minimum fixed term for a general needs social tenancy, or should the minimum fixed term be longer? If so, how long should it be? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between

¹ Although the CJA works closely with its members, this submission should not be seen to represent the views or policy positions of each individual member organisation.

² Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

³ *Ibid.*

tenancies on social and affordable rents? If so, what should this be? Should the minimum fixed term include any probationary period?

The CJA believes that introducing fixed term 'flexible' tenancies will have a damaging effect on many vulnerable individuals and households by reducing their access to secure, stable accommodation, and as such, we believe that the current system of offering secure lifetime tenancies and assured tenancies should be the preferred approach. Should flexible tenancies be introduced, however, we believe that the minimum fixed term for social tenancies should be at least five years; this would more accurately reflect the needs of those in social housing.

The CJA is particularly concerned about the impact of shorter, fixed-term tenancies on offenders and ex-offenders. As outlined earlier, many offenders are extremely vulnerable individuals, with complex sets of needs. For such individuals, the security provided by stable, affordable accommodation is a crucial part of the support needed to enable them to address deeply-rooted problems, and research has pointed to the positive effect secure housing can have in helping individuals to turn away from offending behaviour. A 2002 report by the Social Exclusion Unit, 'Reducing re-offending by ex-prisoners', found that stable accommodation can make a difference of over 20% in terms of reduction in reconviction.⁴ Indeed, the links between an insecure housing situation and re-offending are clear. Figures released by the Ministry of Justice in November 2010, for instance, showed that 79% of offenders who had been homeless prior to custody were reconvicted within a year compared with 47% of those who had accommodation.⁵ Data published by NOMS in 2008 showed that 75% of those classified as 'prolific and other priority offenders' had a housing need, compared with 30% for the general offender population.⁶ Ministry of Justice research has also shown that 74% of prisoners with problems with both employment and accommodation reoffend during the year after custody, compared to 43% of those with no problem with employment or accommodation.⁷ Yet on release from prison, many offenders face problems in obtaining accommodation, with around 30% of prisoners reporting that they have no accommodation.⁸ This is likely to be a significant underestimate, with many ex-prisoners only having access to temporary accommodation.

The importance of housing has recently been recognised in 'Breaking the Cycle', the Government's green paper on sentencing and rehabilitation, which highlights suitable accommodation as a "critical factor in rehabilitating offenders", and sets out proposals to help offenders secure and maintain accommodation.⁹ The CJA welcomes these proposals, and is pleased that the Ministry of Justice has acknowledged the importance of appropriate housing provision as a way of reducing re-offending. However, we are concerned that the introduction of flexible tenancies runs counter to this recognition. Shorter fixed-term tenancies would open the way to offenders and ex-offenders being required to leave social housing before they have time to address their problems properly, which could contribute to further offending behaviour.

⁴ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

⁵ Ministry of Justice (2010) *Compendium of reoffending statistics and analysis* - <http://www.justice.gov.uk/compendium-of-reoffending-statistics-and-analysis.pdf>

⁶ Homeless Link (2009) *Criminal justice policy briefing* - http://www.homeless.org.uk/sites/default/files/Criminal_Justice_briefing_FINAL_0.pdf

⁷ p.6: May, C. Sharma, N. and Stewart, D. (2008) *Factors linked to reoffending: A one-year follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004*, London: Ministry of Justice.

⁸ p.1: Niven, S. and Stewart, D. (2005) *Resettlement outcomes on release from prison in 2003*, Home Office Findings 248, London: Home Office.

⁹ Ministry of Justice (2010) *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, London: The Stationery Office.

Although the consultation states that local authorities and other social housing providers would be able to offer longer fixed term tenancies than the two-year minimum that would be prescribed in legislation, the CJA is concerned that a shortage of social housing will, in many areas, mean that shorter term tenancies become the norm. Moreover, although flexible tenancies will be open to reissue, we are concerned that the pressure for social housing in some areas will mean that this is not, in practice, an option that is available, even for the most vulnerable tenants who demonstrate a continuing high level of need. It is, additionally, questionable how robust a safeguard the right to internal review for local authority tenants will provide against inappropriate decisions to terminate a tenancy. The very vulnerability of many of those affected by such decisions will make it unlikely that they seek a review in the first instance.

The CJA is also concerned that, for offenders and ex-offenders leaving social housing when their tenancy comes to an end, the options for alternative accommodation may be extremely limited. As documented by the Social Exclusion Unit, many private landlords require a deposit and a month's rent in advance, which is beyond the financial means of many ex-prisoners;¹⁰ whilst rent deposit schemes may offer a way out of this difficulty for some, not all local authorities offer such assistance, and as Nacro, which is a member of the CJA, has reported, ex-offenders can find such schemes difficult to access.¹¹ The higher cost of private rentals will also prove an obstacle for many, a problem that will be exacerbated when the basis for setting Local Housing Allowance (LHA) rates is changed, and the LHA caps are introduced.

The CJA acknowledges that the consultation proposes a requirement on all social landlords, where they are minded not to reissue a tenancy, to provide advice and assistance to help the tenant find suitable alternative accommodation. However, we are concerned that, for many offenders and ex-offenders, advice and assistance in the face of so many barriers will, quite simply, prove inadequate. For those who are unable to secure private accommodation, the safety net put forward by the consultation document - that they would be considered to have become homeless unintentionally - may be considered a weak remedy: they will, nonetheless, suffer the disruption of losing their home, and have to go through the stressful process of securing a social tenancy once more.

Question 10

Should we require a longer minimum fixed term for some groups? If so, who should those groups be and what minimum fixed terms would be appropriate? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be?

As stated above, the CJA believes that the introduction of flexible tenancies could have a damaging effect on those who are vulnerable, including offenders and ex-offenders, and feels that the current system of offering secure lifetime tenancies and assured tenancies should be the preferred approach. However, should fixed-term tenancies be introduced, the CJA would recommend a minimum term that more fully reflects the needs of social tenants, and would, additionally, urge an approach that fully takes into account the complex needs and vulnerabilities of offenders and ex-offenders.

Question 20

Do you agree that the current statutory reasonable preference categories should remain unchanged? Or do you consider that there is scope to clarify the current categories?

The CJA believes that, in the current system where there is a high level of demand but a shortage of social housing available, the reasonable preference categories play an important

¹⁰ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

¹¹ Hughes, A. (2010) *Accessing the private rented sector*, London: Nacro.

role in providing access to housing for the most vulnerable individuals and households. However, we are concerned that, if the requirement to maintain open waiting lists is removed and local authorities are allowed to determine which categories of applicants qualify for social housing, the statutory requirement to give reasonable preference to certain groups will not prove a sufficient safeguard to ensure that all those who are in need of social housing are able to register for it.

A decision by a local authority to impose residency criteria, for instance, and exclude people for registering for social housing on the basis of how long they have lived in a borough may have a disproportionate effect on those who have been released from custodial sentences, and may not have lived in the community for some time. As is suggested in the consultation document, a local authority may also take the decision to exclude those with a poor tenancy record. Again, this may be particularly problematic for those who have served custodial sentences. As the 2002 Social Exclusion Unit report noted, the majority of prisoners depend on Housing Benefit to help pay their rent before they enter custody. However, convicted prisoners are unable to continue claiming housing benefit if they are expected to be in prison for more than 13 weeks; for many, this will mean that rent arrears will accrue whilst they are in custody, which could result in the loss of their accommodation.¹² As such, ex-prisoners can be seen to be particularly susceptible to poor tenancy records, which could disqualify them entirely from accessing social housing. The consultation states that a power will be reserved to prescribe by way of regulations that certain classes of people are qualifying persons, if there is evidence that people in housing need are being excluded from social housing without good cause. However, evidence of such exclusions and, accordingly, regulations to rectify them are likely to take some time to emerge, providing no protection in the meantime for those who are excluded by the policies of local authorities.

The CJA strongly recommends that the requirement for local authorities to maintain open waiting lists for social housing should be retained. Long waiting lists reflect the level of need for social housing. Addressing this level of need by building more social rented housing would provide a fairer and more sustainable solution than refusing large numbers of people access to the stable, affordable accommodation they need.

Question 27

Do you consider that 12 months is the right period to provide as a minimum fixed term where the homelessness duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed term assured shorthold tenancies for that longer period to new tenants?

The CJA does not believe that twelve months is a suitable minimum fixed-term for those owed the main homelessness duty. For offenders and ex-offenders owed the main homelessness duty - who are, by definition, particularly vulnerable - a short-term tenancy is unlikely to offer the stability they need to recover from a period of upheaval in their lives. We are also concerned that many will be unable to afford the accommodation they are offered. A recent report from Nacro has identified the shortfall between actual rent and Local Housing Allowance as a significant problem for ex-offenders, who have to make up the shortfall from other benefits they are in receipt of, such as Jobseeker's Allowance. As the same report points out, this will become even more problematic for many in the future, when the basis for setting LHA rates is changed - many claimants will receive a reduced level of LHA as a result - and when measures to cut housing benefit payments for those unemployed

¹² Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

for twelve months or more are introduced.¹³ The often significant shortfall between rent required and LHA will, for many offenders and ex-offenders, mean falling into rent arrears which may, in turn, lead to the loss of their accommodation, and homelessness.

The consultation suggests that deciding whether it is appropriate in a particular case to end the homelessness duty through an offer of private rented accommodation will depend largely on the circumstances of the particular applicant and his or her household. It also suggests that the pressure on social housing in the district will be a factor in the decision. The CJA is concerned, however, that the very real pressure on social housing in many areas will mean that this, in fact, becomes the dominant factor in many cases in deciding whether an offer of private sector accommodation is appropriate, even when the individual or household in question is extremely vulnerable. The consultation points to protective measures that are already in place through the current legislation, including applicants' right to request a local authority to review their decision that accommodation is suitable, which provide a safeguard against unsuitable offers. As with the proposed right to review for social tenants whose tenancies are not reissued at the end of a fixed period, however, we would question how effective such measures will be, given the vulnerability of those they apply to - how many of those who are made an unsuitable offer will, in practice, feel able to seek a review? We consider the other protective measure proposed, that legislation will be introduced to require that the private tenancy offered would need to be an assured shorthold tenancy for a minimum fixed term of twelve months, to be wholly inadequate. We have argued above that, if fixed term tenancies are to be introduced into the social housing system, five years should be the absolute minimum fixed term. For those who are owed the main homelessness duty, then, and are clearly vulnerable, this should also be the case.

The CJA welcomes the funding announced for private rented sector support schemes to help single homeless people, including ex-offenders, who are not classified as in priority need, to access private rented accommodation; at a time of high demand, but low availability of social housing, such schemes provide an important route out of homelessness. The CJA would, therefore, encourage further funding to be made available to broaden access to private sector support schemes and increase the level of support available.

**Criminal Justice Alliance
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¹³ Hughes, A. (2010) *Accessing the private rented sector*, London: Nacro.