



# Intentionality in the homelessness system across Great Britain

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The concept of intentionality is unique to the UK homelessness system. In law it is defined as someone satisfying all three of the following conditions:

- i) deliberately doing or failing to do anything which leads to them ceasing to occupy their accommodation
- ii) the accommodation is available for their occupations and;
- iii) it would have been reasonable for them to continue to occupy the accommodation.

Whilst it is widely viewed that the UK has some of the most effective and forward-thinking homelessness legislation in the world, the intentionality test still remains in place. Some examples of its application include being evicted for antisocial behaviour, rent arrears or refusing an offer of accommodation given by the local authority. There is little evidence on the impact of intentionality, but the studies that do exist show it disproportionately affects people with high support needs who are often the most excluded.

## How is intentionality applied across Great Britain?

Since it was introduced in the Housing (Homeless Persons) Act (1977) there have been some modifications of how the intentionality test is applied across Great Britain. In Scotland The Homelessness Etc. (Scotland) Act (2003) gave local authorities discretion to investigate whether a household had brought about their own homelessness. It also ensured that some form of accommodation and housing support was available to those found to be intentionally homeless. Although neither of these powers have been implemented, the removal of the intentionality test is currently under consultation by the Scottish Government.

In Wales the success of introducing a homelessness prevention and relief duty since 2014 means the intentionality test has become far less significant than was

previously the case. This is because it is only applied to an applicant who is in priority need - the very last stage of the homelessness process – and where relief efforts to help them find their own accommodation have been unsuccessful. Local authorities can also choose whether to apply the intentionality test, and, if so, to apply it to all priority need groups or only to some of those groups. However, analysis<sup>2</sup> of the implementation of the Housing (Wales) Act 2014 showed that most local authorities had chosen to make no change to the way they treat intentionality, even for specific groups of priority need, such as 16-17 years olds or care leavers, indicating that changing the duty to investigate intentionality may have little impact on the ground.

In England, similar to Wales, the new prevention and relief duties introduced under the Homelessness Reduction Act (HRA) in April 2018 also means the intentionality test has less importance. Again, there is now no consideration of intentionality until a full duty assessment is made. It is too early to fully understand if this is having any impact on the ground, but initial statistics indicate that around 9% of full duty cases<sup>3</sup> are being assessed as intentionally homeless, although lower in absolute numbers, is a similar proportion prior to the HRA being introduced. This is still relatively high as we would expect more steps to be taken at the prevention and relief stage to resolve homelessness.

Levels and proportion of intentionality vary across the three statutory systems in Great Britain. In England, proportionally levels have remained around 8 to 9% for the past five years and last year 8,700 households were assessed as eligible for assistance, intentionally homeless and in priority need. In Scotland levels have also remained fairly static at around 4 to 5% for the past five years. In absolute numbers there was a slight increase last year in Scotland with 1,435 households found to be eligible for assistance but intentionally homeless.<sup>4</sup> In Wales in 2017-18 only 159 households were found to be eligible, homeless but intentionally so, accounting for around 4% of households who were assessed under the full duty.<sup>5</sup>

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2 Ahmed, A, Wilding, M, Gibbons, A, Jones, K, Rogers, M, MadocJones, I (2018) Post-implementation evaluation of Part 2 of the Housing Act (wales) 2014: Final report. Cardiff: Welsh Government

3 Ministry for Communities and Local Government (MHCLG) Main duty tables: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

4 Scottish Government, Homelessness in Scotland: 2017 to 2018: <https://www.gov.scot/publications/homelessness-scotland-2017-18/>

5 Welsh Government, statutory homelessness: prevention and relief statistics: <https://stats.wales.gov.wales/Catalogue/Housing/Homelessness/Statutory-Homelessness-Prevention-and-Relief/householdsforwhichassistancehasbeenprovided-by-outcome-householdtype>



## What is the impact of intentionality on homeless people?

There are very few studies which have examined the impact of the intentionality test. The research which has been done in this area shows that intentionality decisions primarily affect people with high levels of support needs or chaotic lifestyles. Research from Shelter Cymru intentionality decisions “resulted ultimately in the continuation and, in many cases, exacerbation of a cycle of unmet support needs with the long-term resource burden that this implies”<sup>6</sup>. The *Aye We Can* consultation<sup>7</sup> conducted with people with lived experience of homelessness in Scotland found that young people who identify as LGBT reported being classed as intentionally homeless because of lack of understanding of the realities of family breakdown when ‘coming out’. Others stated that intentionally homeless decisions were being given based on poor understanding of mental ill health and addictions.

A study on hidden homelessness in England<sup>8</sup> (including people staying in squats, sofa surfing or sleeping rough) in 2011 found that a 45% of people surveyed did meet the priority need criteria when they made a homeless application. However, nearly half of these (46%) were found to be intentionally homeless and so not entitled to accommodation. This again indicates that intentionality decisions leave people with very few or no accommodation options and perpetuates and prolongs their homelessness. Further evidence under the new prevention duties in Wales show that some members of staff were working in a process-driven way, placing too much emphasis on intentionality, priority need and not enough emphasis on support.<sup>9</sup>

Recorded outcomes for households with intentionality decisions in Scotland also show that contact is consistently lost or outcomes are unknown for a third of applicants. In 2017/18 a further 15% moved in with relatives or friends. Along with uncategorised known outcomes, these account for two thirds (65%) of outcomes for intentionally homeless households.

Some local authorities have used the threat of an intentionality decision as a tool to negotiate with people at risk of homelessness in order to prevent them acting in a way which will mean they lose

their home. This is not the purpose of the intentionality test, which removes people’s right to settled housing if they are found intentionally homeless. Such negotiations should be done as part of a wider system focused in the first place on problem solving to prevent people’s homelessness through a new statutory prevention duty, accompanied by personal housing plans and effective case management to ensure that service users are fully informed of how the system works and the implications of any decisions they take. This should be supported by a backstop of a homelessness application if it cannot be prevented.

Two cases which have been taken to the Supreme Court over the past few years also demonstrate harsh use of the intentionality test in local authority practice. In 2015 the case of *Haile v London Borough of Waltham Forest*<sup>10</sup> ruled that housing officers should not base decisions on intentionality on the applicant’s circumstances at the time they became homeless. Instead the authority should consider the applicant’s circumstances at the time the decision is being made. In this case the applicant at the time surrendered a tenancy in hostel accommodation due to unpleasant smells. On leaving the hostel she then stayed temporarily for a month before asking the council for homelessness assistance. When eventually applying to the council, she was four months pregnant but was found intentionally homeless. The basis for the ruling was that she would not have been able to remain in the hostel accommodation now that she had a baby, regardless of her original reasons for leaving the accommodation, and so should not be regarded as being intentionally homeless.

A more recent case which has ruled against the applicant (*Samuels v Birmingham City Council*)<sup>11</sup> is one where the tenancy was terminated due to rent arrears as a result of her housing benefit not meeting her contractual rent. After trying to find another property for her family she approached the council for assistance but was refused help and treated as intentionally homeless. They considered that she could, in theory, have used some of her non-housing benefits to make up the shortfall between her housing benefit and her rent, an unsustainable solution for many households on low incomes at risk of homelessness who cannot access affordable housing.

6 Campbell, JA (2011) *The impact of intentional homelessness decisions on Welsh households’ lives*. Swansea: Shelter Cymru.

7 Glasgow Homelessness Network (2018) *Can we fix homelessness in Scotland? Aye We Can* [http://www.ghn.org.uk/shien/wp-content/uploads/sites/5/2017/11/Aye\\_We\\_Can\\_Final\\_Report\\_2018-1.pdf](http://www.ghn.org.uk/shien/wp-content/uploads/sites/5/2017/11/Aye_We_Can_Final_Report_2018-1.pdf)

8 Reeve, K. (2011) *The hidden truth about homelessness: Experiences of single homelessness in England*. London: Crisis.

9 Shelter Cymru (2016) *Reasonable steps: experiences of homelessness services under the Housing (Wales) Act 2014* <https://sheltercymru.org.uk/wp-content/uploads/2015/02/Reasonable-Steps.pdf>

10 <https://www.supremecourt.uk/cases/docs/uksc-2014-0185-judgment.pdf>

11 <https://www.supremecourt.uk/cases/uksc-2017-0172.html>



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## Is there a case for reforming intentionality?

Given the unintended consequences of the policy there is a case for reforming intentionality. This would protect people with support needs from being excluded from full homelessness assistance and prevent some local authorities from gatekeeping access to assistance and fit with a more psychologically informed approach to addressing homelessness.

Crisis has developed the concept of a test of deliberate manipulation of the homelessness system as part of our Plan to End Homelessness, in conjunction with Professor Suzanne Fitzpatrick and barrister Liz Davies. In our view, the use of intentionality goes far beyond what is necessary to prevent abuse of the homelessness system.

We instead propose a new test which focuses on deliberate manipulation of the homelessness system. For example, this could involve collusion between an applicant and parent or householder who has excluded them. It would ideally require local authori-

ties to demonstrate that the applicant had actually foreseen that their actions would lead to their becoming homeless. At present, all that must be shown is that the act that led to the loss of accommodation was deliberate, not that the link between this act and homelessness was foreseen or even foreseeable by the applicant.<sup>12</sup> The proposed consequence of this deliberate manipulation test would be restricted. Under this proposed scheme, households found to deliberately manipulate would receive no additional preference in social housing allocations because of their statutory homeless status. This test would have no bearing on any other homelessness-related entitlements.

The concept of intentionality is one which is outdated and does little to effectively prevent and resolve homelessness. Under a homelessness system which in many ways provides a strong safety net for individuals, it adds unnecessary conditionality and judgement on individuals who are often seeking help as a last resort. The evidence shows it can be applied inconsistently but above all has significant impacts on people who are the most marginalised. In Crisis' view it needs to be stopped.

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This article draws on content from an unpublished paper by Liz Davies and Suzanne Fitzpatrick, *A 'Perfect' Statutory Homelessness System for an Imperfect World: Principles, Priorities, Proposals and Possibilities* and Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

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<sup>12</sup> The statutory test contains the reverse of this approach. Where a local housing authority is satisfied that an applicant was actually unaware of the consequences of his or her actions, and he or she had acted in good faith, then an act or omission will not be considered to be deliberate: Housing Act (1996), s 191(2). Our formulation would turn this approach on its head: so that for an act or omission to be considered deliberate, a local housing authority would have to be satisfied that the applicant had foreseen the consequences.