

# A brand new start: homelessness and the Housing (Wales) Act

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Shelter  
Cymru

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## Introduction

This report looks at how homelessness services have changed in the six months since Wales' first piece of housing legislation – the Housing (Wales) Act 2014 – came into force.

Although it's still early days, we believe it is vitally important to get services off on the right foot. Since Part two of the Act was implemented in April we have been closely monitoring how services have been responding.

It's an incredibly varied picture. There are inspiring examples of good practice, and some worrying weak spots. There are households being helped way above and beyond the requirements of the Act – and there are others left out, literally, in the cold.

We're worried that some authorities are still assisting people 'unofficially' outside the legislation. We're also concerned about the numbers of people who are falling out of the system and not getting their homelessness successfully dealt with, either because they were found intentionally homeless, not priority need, 'failed to cooperate' or other such reasons.

But despite some problems, the overall picture is of an encouraging start with homelessness being successfully prevented for the majority of households.

The aim of this report is to spread good practice and nip problems in the bud before they become habits that are harder to break.

Part two of the Housing Act created multiple changes in the way homelessness is dealt with in Wales.

These changes include:

- new duties for local authorities to help prevent homelessness for anyone who asks for help
- involving people in designing their own solutions, by jointly developing a Personal Housing Plan looking not just at immediate housing problems but also at any underlying issues
- intervening early – within 56 days of homelessness – to prevent people's situations escalating out of hand
- removing automatic priority need for prison leavers
- placing new duties on housing associations to cooperate in homelessness prevention; and
- allowing local authorities to discharge homelessness duties with an offer of private rented accommodation without the consent of the applicant.

## How's that for joint working?

A positive story to begin with... one of our caseworkers had a call from Housing Options to ask for help staving off a last-minute possession. The housing association tenant had turned up at the office less than 24 hours before she was due to be evicted.

Our caseworker was busy in surgery at the time, so she talked to the client over the phone and drafted the application to suspend the warrant right there and then. She faxed it over to Housing Options staff who then physically took the application, and the client, to court.

After making the application, and paying the £50 fee, Housing Options staff then took the client from the court straight to Housing Benefit, where staff processed her application immediately. The client was awarded a massive backdate of more than £2,000 which cleared all her rent arrears.

Our caseworker met the client in court the following day, when the judge suspended the warrant. This is a great example of Housing Options, Housing Benefit and Shelter Cymru caseworkers all working together and going the extra mile to keep someone in their home. It is really challenging to prevent homelessness this late in the day, which makes it important that social landlords notify Housing Options at an early stage – to avoid crisis situations like this.

## A new statutory right to prevention services... or is it?

Before the Housing Act, the law didn't require local authorities to do in-depth prevention work. They did it anyway because it makes sense to prevent homelessness early on, rather than cope with the consequences once it's too late to save someone's home.

The trouble with this situation was that service users had no legal rights to those prevention services, and no access to redress. It made authorities vulnerable to accusations of 'gatekeeping', and crucially it meant that a lot of local authority work was going unrecorded.

Enter the Housing (Wales) Act, with new duties on local authorities to carry out prevention work with all eligible households. The rationale was to bring prevention work within the statutory framework, attach some legal rights to it, ensure some minimum standards, and record all of that important activity. Although we haven't always agreed with Welsh Government about every aspect of the Housing Act we were always clear – along with pretty much every other housing organisation in Wales – that prevention had to become statutory.

So imagine our disappointment when we learned that some Welsh authorities are still persisting in assisting people outside the law.

The statistics for the first quarter since the legislation came into force reveal that just under a third (32 per cent) of the outcomes of local authority work in the first three months resulted in households being found 'not homeless or threatened with homelessness'.

Amazingly, in some authorities this figure was as high as 86 per cent of all outcomes.

In other words, some authorities are taking such a long time over the initial assessment that by the time the assessment is complete, the prevention work is done and the household isn't homeless any more.

Great result for the household – except there’s no duty to ensure that housing is suitable, or that the solution is likely to last six months, and so far it’s still unclear whether they would have a right to review. We know that in many authorities the prevention work is still high quality, even if it’s done outside the legal framework. But if this is the case, there should be no problem making it all official and giving service users the assurance that the requirements of the Act have been met.

Preventing homelessness quickly is really important. There is no reason why the assessment should hold that up.

This problem needs to be dealt with, as it is in danger of undermining the whole purpose of the Act. What needs to happen, in our view, is the following:

- Local authorities need to ensure they aren’t taking longer than necessary to do the section 62 assessment. In most cases it should take place the same day as the initial meeting. Vale of Glamorgan Council asks their customers to fill in the form themselves while they’re waiting to be seen – other authorities could adopt this approach too.
- Welsh Government is planning a revision of the statutory Code of Guidance. We hope that they will be advising authorities against this approach.

#### Rough guide to the new homelessness duties

Section 66	Duty to help prevent a household from becoming homeless – this is the prevention duty that applies to households who are not yet homeless.
Section 73	Duty to help to secure accommodation for homeless applicants – this is the first duty that applies to households who are already homeless.
Section 75	Duty to secure accommodation for applicants who are priority need and intentionally homeless – applies once the section 73 duty has ended.

## What else do the stats tell us?

The statistics from the first quarter April-June suggest that up to two-thirds of local authority activity is taking place under prevention. Ten authorities apparently had no applicants reach the section 75 ‘final’ duty during the entire quarter. The figures also suggest a good success rate for prevention work.

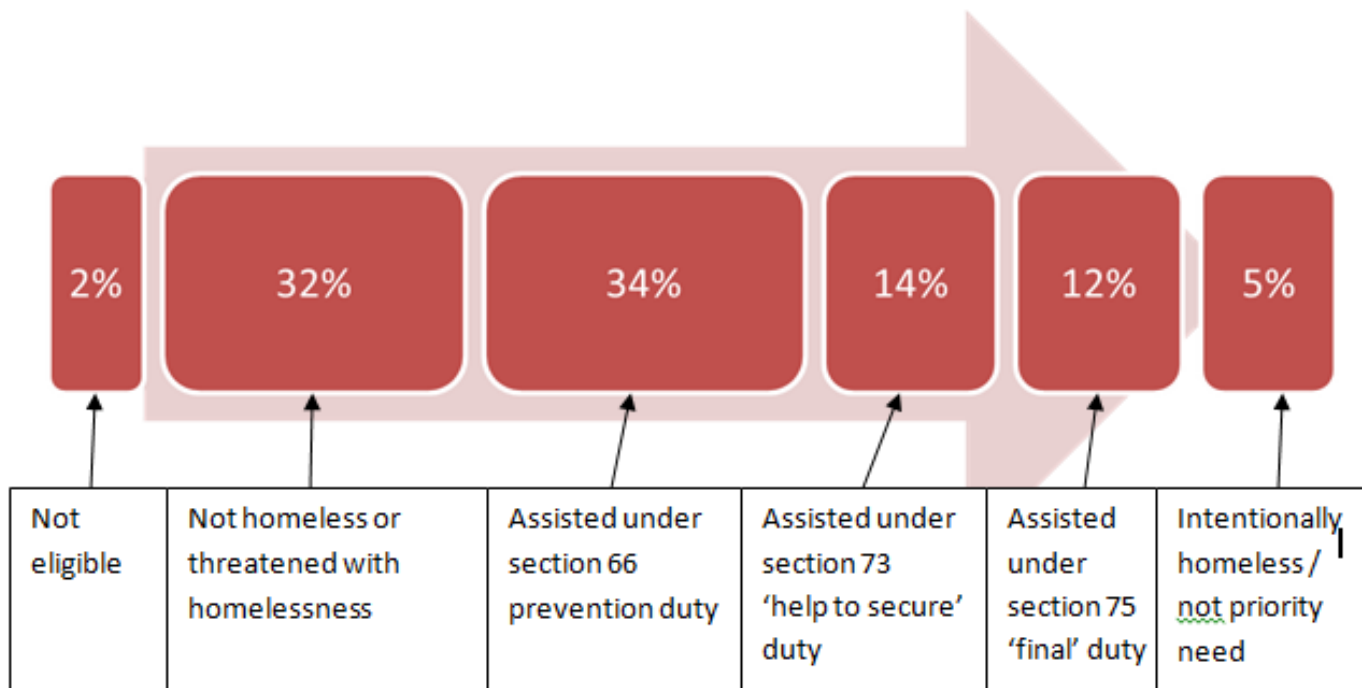


Figure 1: Outcomes of homelessness applications in Wales, April-June 2015  
**Total outcomes: 3,925**

Out of the different stages of the application process, prevention interventions had the highest success rate at 83 per cent of outcomes, while interventions under section 73 'help to secure' had the lowest success rate at 56 per cent of outcomes. For the households who were considered for a section 75 'final' duty, a higher success rate of 69 per cent was achieved.

We can also get a sense of who wasn't helped, and for what reason. A total of 90 households failed the eligibility test. A further 80 households had their duties come to an end because of 'failure to cooperate'. A further 60 refused assistance at one of the three stages, and had the duties brought to an end as a result. And a relatively high number of households – 200 – were refused a section 75 duty: around half of these were found intentionally homeless, and half not in priority need.

The new approach is already having an impact on numbers of households being owed a final accommodation duty – by the end of June, numbers in temporary accommodation had dropped below the 2,000 mark for the first time in more than ten years.

It would be unwise to draw too many conclusions from the stats, as it's the first time it's been collected. Authorities are still getting used to the system and are bound to be doing things differently from each other and recording their work differently too.

Early indications are that the new prevention duty is working well in many cases – an encouraging start.

There may be additional barriers to success for households who are homeless, as opposed to threatened with homelessness, and more work is needed to understand these.

But we're concerned about the households who may not be getting their homelessness successfully dealt with – either because they 'failed to cooperate', because they refused an offer, were found ineligible, or fell foul of the priority need and intentionality tests. Together they account for more than 10 per cent of all outcomes.

There's an urgent need to understand what's happening to households who fall out of the system for these reasons. We know from our casework that some were assisted to access accommodation and support, even though they'd been found intentionally homeless. It's good to know that some authorities are taking a progressive approach to intentionality. But how consistently is this happening?

## Impacts on our services

It was a busy six months for Shelter Cymru too... between the end of April and the end of October we saw 6,932 households, 70 per cent of whom were homeless or threatened with homelessness. That's 11,100 people facing homelessness across Wales, 15 per cent more people than the same period in 2014.

Our Advice Online pages had 50,574 visitors during those six months. And our Shelter Cymru Live telephone advice service was launched in May, dealing with 1,700 calls by the end of October.

But despite the increased workload our caseworkers are achieving better prevention rates than ever before.

We successfully prevented homelessness in 93 per cent of the cases where it was faced – a record for our charity. It's fantastic that the new Act is helping us achieve even better outcomes for our clients.

## Culture change: a work in progress

Our caseworkers in many parts of Wales are happy with the working relationships that are developing between themselves and Housing Options. In many areas things are going smoothly and there are few legal challenges because of the good communication that's happening between our staff and Housing Options.

Some Housing Options teams are getting good at using our caseworkers as a sounding board – ringing them up and finding out in advance whether a particular decision is likely to result in legal challenge. Four authorities actually have Shelter Cymru caseworkers embedded in their teams, which makes the process even easier.

Some authorities are also using our debt advisors to help ensure that offers of accommodation are affordable. We are able to look at a client's financial circumstances in the round and identify sources of help such as utility grants – which can turn an unaffordable housing offer into an affordable one.

But while some service cultures are clearly changing for the better, in others communication seems to have slowed to a trickle. A few of our caseworkers are finding it difficult to get Housing Options to respond to requests for information – which is vital to help us assist our clients.

We know that some authorities are experiencing staffing issues at the moment. Some authorities are having to rely on agency staff and of course this is going to make the process of culture change more difficult.

We're continuing to develop local protocols together with individual authorities to improve working arrangements.

Five authorities in North Wales have jointly employed a Regional Review Officer to carry out all reviews under the new legislation, a move that will improve practice on a regional basis. The new post is ensuring that reviews are carried out in a consistent way, so that all applicants are getting the same service regardless of where they live. The officer is also examining trends in reviews and identifying training needs to ensure that authorities learn from reviews and don't make the same error over and over again.

## Other issues in our casework

Many of the issues we're currently seeing in our casework relate to local authorities being too hasty to make decisions on the tests of priority need and intentionality. Both these tests are only supposed to apply at quite a late stage in the process – after prevention work has been tried and failed.

For example, in three different authorities we have mounted legal challenges because authorities made decisions about intentionality at the section 62 assessment stage. It's fine to discuss intentionality with clients at this stage, and let them know that they might be at risk of being found intentionally homeless further down the line – but that's very different from actually making the decision.

Similarly, we've challenged a few cases where authorities have made a decision about priority need too early. In order to decide whether someone is eligible for emergency accommodation, the authority only has to have 'reason to believe' that they might be in priority need – a much lower legal test. Some authorities were making the final decision at this early stage, when it's not supposed to happen unless the section 73 stage has failed.

We've dealt with these few instances but we do have concerns that it may raise its head again.

## Preventing homelessness with cold hard cash

Local authorities are reporting that while the numbers of households applying as homeless haven't gone up, the complexity and intensity of the work they're doing with each household has increased.

Luckily, they are in a good financial position to get this work done – at least this year – because the Welsh Government has provided an extra £5.6 million in funding.

The money is meant to be spent at the authorities' discretion. Welsh Government has given authorities plenty of flexibility in how the money is used, provided it prevents or relieves homelessness.

As expected, there are a range of approaches. Our caseworkers and clients have been delighted with the willingness of many authorities to help with rent in advance, bonds, court fees, and rent and mortgage arrears.

In a few authorities, though, we've found that prevention funds can be difficult to access, and some officers seem unaware of its existence.

In our view, Flintshire Council has the right idea. They are on target to spend their whole fund by the end of the year, having invested in a Shelter Cymru caseworker post; an Environmental Health Officer post; and support workers for every household that goes into temporary accommodation.

They've been willing to pay for a wide range of important prevention measures including:



- Deposits for people who want to move out of the county and therefore can't use the bond scheme
- Rent in advance and letting agent fees
- Debt Relief Order fees
- Bankruptcy fees
- Fees for court applications when the client cannot obtain proof of income or £50 for the fee in time
- Mortgage arrears
- Energy Performance Certificate fees, so one client could sell her home rather than face repossession
- Clearing rent arrears, while also negotiating new fixed term tenancies or rent reductions.

Flintshire have also set up excellent referral arrangements so that all council tenants who are at risk of homelessness are referred to the Housing Options team.

This means that there are currently very few rent arrears cases going to court from Flintshire, thanks to their proactive use of the prevention fund.

We strongly welcome that the Welsh Government has provided additional financial help for local authorities this year. Our hope is that the extra resources will be used to help as many people as possible. Authorities are currently in a good position to assist people found intentionally homeless and people coming out of prison with nowhere to live. It's not known whether the additional funding will be available in future years.

It's important to make the most of it while it lasts.

## Homeless prison leavers

In our last report on the new homelessness legislation<sup>1</sup> we reported that there was a certain amount of upheaval among services responsible for meeting the housing needs of prison leavers.

Unfortunately, at the six month point many agencies were still setting up procedures and overcoming teething problems. As a result, we are still aware of delays and failures in communication which mean that many prisoners are not getting access to prevention services when they need them.

In theory, the new prevention service has the potential to be more effective than the old system, which relied heavily on dealing with homelessness post-release. The new system should ensure that prison leavers have their housing needs assessed during their sentence, so that prevention can be done quickly and accommodation arranged ready for release. This should mean that local authorities have fewer prison leavers turning up at Housing Options without a roof over their heads.

Roles and responsibilities between the different agencies have been clarified with a 'pathway' plan developed by the Welsh Government. While the plan is good, it does rely on a lot of partnership work and good communication which traditionally has been difficult due to competing agencies, data protection, privacy issues, IT issues and the blurring of responsibilities.

To weather the transition, the Welsh Government gave local authorities an additional £200,000 to accommodate prison leavers while the new system was being put in place. Authorities could also use their general allocation to fund prison leaver accommodation.

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1 <http://sheltercymru.org.uk/homelessness-snapshot/>

However, because the Welsh Government cannot require authorities to accommodate prison leavers, some authorities have decided not to do it, unless there is evidence of vulnerability.

For example, one north Wales authority is requiring all homeless prison leavers to provide evidence of existing medical conditions that they are already aware of, despite knowing that this information is difficult to obtain while the prisoner is in custody. Inevitably this ends up causing delays which means that any planning for post-release is difficult and often last-minute.

Many prison leavers are well known to their local authority already from previous presentations. Other authorities who have made the decision not to accommodate all prisoners are still being more reasonable about the level of proof required. For example, another north Wales authority is accepting prison leavers as priority need without question if they already know about existing mental health problems.

In our view, accommodating prison leavers while the new system beds in is an excellent way of spending prevention funds. But even if individual authorities don't want to accommodate all prison leavers, they should still ensure they are adopting a reasonable approach to evidencing priority need.

## Other worries

- Most local authorities have increased their recovery rate of Housing Benefit overpayments recently to a minimum of £5 per week. This seems illogical, as the minimum repayment for rent arrears is £3.70 and is supposedly a higher priority debt. One mid-Wales authority recently insisted on a £6 minimum repayment, when the year before this minimum was set at £3. This is making it more difficult for us to keep people in their homes, and we're sure that Housing Options staff will be feeling the same way.
- We're seeing evidence that Discretionary Housing Payments (DHPs) are starting to dry up. More applications are being turned down, and then granted on appeal – fine if you have a support worker who can assist you with the paperwork, not so great if you're vulnerable and alone. We're also seeing a return to shorter award periods. In one case, we supported a family with six children living in overcrowded private rented accommodation to claim a DHP. The family are waiting for suitable accommodation to become available, and are staying put in the meantime to remain close to the school. The Housing Options team is being supportive and liaising regularly. We helped the family apply for DHP to address rent arrears and this was turned down. We requested a review and a back date, and the award was granted after all – but only up to October. Back to square one we go...
- A man with Type 1 diabetes, mental health and substance misuse issues applied for Personal Independent Payments (PIP). He was offered a medical assessment in his home. The provider CAPITA cancelled the assessment and rearranged it for two days later – but then the assessor never turned up, despite our client and his carer waiting in all day. Our client had a message on his phone from the assessor saying that he couldn't find the property. The DWP then advised our client that he had failed his PIP as he 'failed to participate in the medical consultation'. The decision was upheld on review. When he became our client we assisted him to request an out-of-time review – and this time, the review was successful. Our client is now awaiting the results of a further assessment.

- As well as the case above, we are receiving regular requests from other clients to represent them with ESA and PIP benefit appeals. There's always a common theme: clients have completed the application forms well, stating in their own style the problems they experience – which would clearly gain them enough points on the descriptors. But all our clients' comments appear to be ignored at the initial claim stage and the claim refused. After this, at a medical for mandatory reconsideration, the medical assessment report does not reflect what the client said or was able to do at the assessment. We have supported numerous clients in this situation and we are achieving good success rates at appeal hearings. Again, lucky for people who know where to get that vital support – not so lucky for those who don't know where to turn.

If you'd like to discuss this report further, please contact Jennie Bibbings, Campaigns Manager, at [jennieb@sheltercymru.org.uk](mailto:jennieb@sheltercymru.org.uk).

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