

The Everyone Collective  
Homeless Network Scotland  
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*By email: [hello@homelessnetwork.scot](mailto:hello@homelessnetwork.scot)*

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Dear Everyone Home Collective,

## **Rough Sleeping - call for investigation**

Thank you for your letter dated 24th October in which you called on the Scottish Human Rights Commission (SHRC) to investigate the human rights of people forced to sleep rough this winter due to the lack of suitable temporary accommodation.

## **Human rights framework**

Homelessness and rough sleeping present a number of significant human rights concerns. As you have highlighted, homelessness and rough sleeping could conceivably engage the most fundamental human rights protected by the European Convention on Human Rights ("ECHR") such as Article 2, which protects the right to life, and Article 3 which prohibits torture and inhuman or degrading treatment or punishment. Article 8 ECHR, which protects the right to privacy, home and correspondence, is also likely to be engaged, and there is the potential for Article 14 ECHR, which guards against discrimination, to be relevant. As the ECHR is incorporated directly into Scots law through the Human Rights Act 1998 and the Scotland Act 1998, public authorities in Scotland have a duty to comply with the ECHR at all times.

Additional to the rights protected by the ECHR, the international human rights framework is also highly relevant in this area. Although these rights are not directly enforceable in the Scottish courts, the UK is a party to a number of international human rights treaties that create legally binding obligations. The International Covenant on Economic, Social and Cultural Rights ("ICESCR") contains provisions relevant to homelessness and rough sleeping; among them is Article 11, which protects the right to an adequate standard of living, including to food, clothing and housing and to the continuous improvement of living conditions. Article 12 states that everyone has the right to the highest attainable standard of health, and Article 9 protects the right to social security. Article 2(2) provides that the rights protected by ICESCR must be exercised without discrimination of any kind.

Preventing and eliminating homelessness is a minimum core obligation of states to ensure minimum essential levels of each of the rights under ICESCR. In its General Comment No. 3, the Committee on Economic, Social and Cultural Rights has clarified that a state party in which any significant number of people are deprived of basic shelter and housing is failing to discharge its obligations under the Covenant. Further, states must use "maximum available resources" to satisfy that people within their country have access to essential levels of housing and other social, economic and cultural rights. Importantly, unless for very good reason, conditions in a state must not worsen.

Other international human rights treaties, such as the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, which has recently been incorporated into Scots law, are also relevant.

## **SHRC work on homelessness**

The SHRC has identified the impact of poverty on human rights in Scotland as a key priority in our strategic plan for 2024-28, and we have committed to use our mandate to explore the impact of poverty in relation to housing and homelessness specifically. We have identified poverty and homelessness as key human rights challenges for Scotland in the UN's ongoing review of the UK's performance of its ICESCR obligations. Our Research officer, Dr Alison Hosie, recently gave evidence to the Scottish Parliament on the importance of human rights budgeting as a tool for tackling homelessness and poverty and we are currently in the process of scoping out further work in this area, which we would like to engage with you on.

In your letter, you asked us to use our powers and resources to investigate the human rights of individuals forced to sleep rough this winter and make recommendations to government and local authorities as to the steps required to

fulfil their obligations under international human rights treaties in this area. Under our enabling Act, the SHRC is limited in the formal legal actions we can take. We do not have the power to undertake investigations. While we do have a power of Inquiry, we cannot conduct an Inquiry into the policies or practices of an individual public body, and would be required to investigate generally across all public bodies with responsibilities as regards a particular issue. In the case of rough sleeping, this means that we could not investigate any potential disparities in conduct between certain local authorities or the particular issues facing individual local authorities without looking at the activities of all local authorities across Scotland. Given the number of activities we are already committed to under our current operational plan, we do not have the required resources to service such an Inquiry at this time.

However, as a result of your letter, the SHRC has begun to draft a comprehensive human rights framework as it relates to rough sleeping, encompassing the ECHR and international human rights treaties, together with a description of relevant human rights caselaw on the topic. We are prioritising this piece of work and will send you a copy of the framework, when it is complete. It will be published on our website, and we will also send a copy directly to the Scottish Government, highlighting human rights concerns around rough sleeping this winter.

We would, of course, be happy to meet to discuss the very real human rights concerns you have raised and to work together in future.

Yours sincerely,



**Prof Angela O'Hagan**  
**Chair, Scottish Human Rights Commission**