

Allocations in practice

HLPA - 13th March 2018

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Legal Aid, Sentencing and Punishment of Offenders Act 2012 Schedule 1 Part 1

Para 34 - Homelessness

(1) Civil legal services provided to an individual who is homeless, or threatened with homelessness, in relation to the provision of accommodation and assistance for the individual under—

- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
- (b) Part 7 of that Act (homelessness).

Exclusions

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

Definitions

(3) In this paragraph “homeless” and “threatened with homelessness” [have the same meaning—

- (a) as in section 175 of the Housing Act 1996 in cases where sub-paragraph (1) applies in relation to the provision of accommodation and assistance under—
 - (i) Part 6 of that Act as it relates to England;
 - (ii) Part 7 of that Act;

“What about Part 6?”

Objectives of this talk:-

- ▶ To consider when Part 6 Housing Act 1996 might be relevant to our work. Could we do better for our clients by considering allocations more often?
- ▶ To look at how we can improve the advice we give to our clients about Part 6 from the outset
- ▶ Some thoughts about possible ways of challenging allocations policies and the decisions made under those policies
- ▶ Practical tips on running allocations challenges

Housing Act 1996 s175

(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—

- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
- (b) has an express or implied licence to occupy, or
- (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but—

- (a) he cannot secure entry to it, or
- (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

[NB from April 3 2018 s175(4) will specify 56 days: new s175(5) will provide that a person is threatened with homelessness if valid section 21 notice served which expires within 56 days]

Legal aid for allocations cases

- ▶ Legal aid is available for allocations cases wherever client is homeless
- ▶ Includes where client has accommodation, but it is not reasonable to continue to occupy
- ▶ Legal aid may also be available under a public law contract

Obtaining legal aid

Legal Help

- ▶ For initial advice
- ▶ For letter before claim (may also need to use for internal review of decision/request for re-assessment of priority)

Legal aid certificate

- ▶ In order to prepare and issue judicial review claim
- ▶ May need to obtain urgently - client's circumstances/ time limit for issuing judicial review proceedings
- ▶ Emergency legal aid certificate: application to LAA required as delegated functions NOT available for Part 6 challenge

What are Part 6 cases about?

- ▶ Not about an instant solution
- ▶ More about putting your client as near to the front of the housing "queue" as possible
- ▶ The outcome will still depend on the availability of housing stock (of the particular type that your client needs) and the number of people ahead of them in the queue.
- ▶ To be able to advise well you'll need instructions about your client's needs but also a knowledge of the relevant allocations scheme and an understanding of how you might go about challenging it



Getting to know the allocations policy

- ▶ Need to read each scheme carefully: don't make assumptions
- ▶ Even if you are familiar with the scheme - there is no substitute for looking at it again when you are considering a new client's case: there may be something else there that would assist your client
- ▶ Don't assume that the local authority/their lawyers accurately understand their scheme
- ▶ Many schemes follow a similar pattern - but not all

At the outset of the case

- ▶ Understand what your client wants to achieve
- ▶ Take instructions on your client (and their family's) circumstances and any particular needs/disabilities
- ▶ Look ahead - are there potential problems which the client can steps to deal with now? (eg, past/current housing debt which could reduce preference)
- ▶ Manage expectations - is the client's objective realistic? What might they expect to obtain?



Common features of allocations schemes

- ▶ Points? Or bands? - eg A to D, or 1 to 4, or "Emergency" to "General". Or both?
- ▶ Priority stars?? (Southwark)
- ▶ Under many schemes, highest priority goes to those with highest band/points - but exceptions, (eg Enfield: points, demand groups and target allocations)
- ▶ Waiting time is important - priority date often determines exact position within the band (asking for priority date to be backdated can be effective)
- ▶ Provisions for increased priority or exclusion/ reduced priority for certain groups
- ▶ Even with choice-based lettings scheme, there may be something allowing direct offers in certain cases: discuss with your client if it is a possibility!
- ▶ Escape valve provisions - allowing authority to disapply sections of the scheme in exceptional circumstances



Build up knowledge of your local area

- ▶ Get to know your local allocations schemes
- ▶ Save local authority policies in a central place where they can be easily accessed
- ▶ Keep abreast of changes and share knowledge with your colleagues
- ▶ Login to CBL schemes with your clients - understand how they work



Types of challenge

- ▶ Challenge to the individual decision in client's case (or the failure to make one)
- ▶ Challenge to the lawfulness of the allocations policy itself

Lady Hale in *R. (Ahmad) v Newham London BC* [2009] UKHL 14

"no-one suggests that Mr Ahmad has a right to a house. At most, he has a right to have his application for a house properly considered in accordance with a lawful allocation policy" (para 12)

but: "such a policy must comply with the statutory requirements and with the general public law requirement of rationality. It must, of course, be lawfully and fairly operated, for example without unlawful discrimination" (para 14)

What might make an allocations policy unlawful?

Some examples:-

- ▶ Failure to give reasonable preference to a relevant group
- ▶ Does s11 Children Act 2004 assist? eg there is an urgent need to move because of a child's welfare needs, and there is nothing under the scheme which allows priority to be given
- ▶ Unjustified discrimination/ failure to have regard to Public Sector Equality Duty; still worth considering where your client is disadvantaged by a feature of the scheme and the disadvantage relates to a protected characteristic
- ▶ Unlawful residence requirements - eg excluding applicants who have fled domestic violence; excluding those with a reasonable preference - HA v Ealing



Interaction with Part 7

At outset:

- ▶ likely Part 6 position relevant to choices about where to make Part 7 application?
- ▶ make Part 6 application alongside Part 7 application
- ▶ don't assume that Part 7 has to be resolved before Part 6 is addressed
- ▶ particular benefit to addressing Part 6 early: single homeless clients where priority need will be in question; intentionally homeless cases

After acceptance of a s193 duty:

- ▶ if TA is due to end - check if scheme gives additional priority
- ▶ PRSOs: can PRSO be prevented/challenged to avoid reduced preference/removal from list?
- ▶ consider when seeking referral to different authority under s213 HA 1996 (eg where client unsafe in borough or has particular need to be rehoused out-of-borough).

Reasonable preference

s166A(3) Housing Act 1996

As regards priorities, the scheme shall, subject to subsection (4), be framed so as to secure that reasonable preference is given to—

- people who are homeless (within the meaning of Part 7);
- people who are owed a duty by any local housing authority under section 190(2), 193(2), or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
- people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
- people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

[...]

s213 Housing Act 1996 (Part 7)

Co-operation between relevant housing authorities and bodies.

(1) Where a local housing authority [in England]¹—

- request another relevant housing authority or body, in England, Wales or Scotland, to assist them in the discharge of their functions under this Part, or
- request a social services authority, in England, Wales or Scotland, to exercise any of their functions in relation to a case which the local housing authority are dealing with under this Part,

the authority or body to whom the request is made shall co-operate in rendering such assistance in the discharge of the functions to which the request relates as is reasonable in the circumstances.

Reasonable preference

- ▶ If your client is homeless then they are entitled to reasonable preference - whether or not a homelessness duty has been accepted.
- ▶ Is there a need to move on medical or welfare grounds that isn't properly covered in the scheme?

Other things to look out for

Authority making allocations otherwise than in accordance with their published scheme - eg *R (C) v Islington LBC* [2017] HLR 32

Authority failing to publish all the information required to understand how scheme operates - eg scheme says allocations target will be published for each "demand group"

Provisions under allocations scheme for certain groups

These may be relevant when dealing with other areas of housing law:

- ▶ Client left in occupation after death of tenant - discretionary policy in allocations scheme, if no right to succeed?
 - ▶ Poor housing conditions - look at relevant provisions for priority under the allocations scheme, especially if there is a statutory nuisance or hazards under Housing Act 2004. Need to consider interaction with remedies for disrepair/ remedies against LA for failing to take action available under Environmental Protection Act 1990 or HA 2004
- Be aware of other groups who may benefit from provisions under the scheme:
- ▶ Quotas for particular groups in some schemes eg former care leavers, over 55s/60s seeking sheltered accommodation, move-on accommodation for those in supported accommodation, etc
 - ▶ Other groups who may benefit from provisions under scheme eg ex-army members (or bereaved spouses), foster carers, ex council employees with tied home, key workers, New Generation schemes, relationship breakdown provisions, etc...

Interaction between social services and housing

- Children in need: s27 Children Act 1989. A request from a social services department to a housing authority can be effective in getting priority on that authority's housing register (in addition to any provision under the scheme)
- Where it is a unitary authority - look at *M and A v London Borough of Islington* [2016] EWHC 332 (Admin) re: duty of co-operation

s27 Children Act 1989 – Co-operation between authorities.

- Where it appears to a local authority that any authority [...] mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority [...], specifying the action in question.
- An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.
- The [authorities] are –
 - any local authority; [...]
 - any local housing authority; [...]

Some examples of feedback from CBL websites

Property Ref	Property Type	Area	Address	No of Bedrooms	Price	SQFT	No of Bath	No of Car Parks	Contact Details
154453	Flat	Camden	57, WOODSIDE GARDENS, W11 2PW	1	24	760	14	0	020 7410 0107
154457	Flat	Stratford	14, COCKFIELD, W11 1JH	1	26	760	14	0	020 7410 0107
154475	House	Parish	CAROLINE GARDENS, W11 2PS	1	28	760	12	0	020 7410 0107
154476	Flat	Northolt	150, LITTLETON ROAD, W11 2JL	1	28	760	12	0	020 7410 0107
154478	Flat	Northolt	150, LITTLETON ROAD, W11 2JL	1	28	760	12	0	020 7410 0107

Bidding and results information

- Considering feedback available on council's website may enable you to advise clients about their prospects of success and likely timescale
- Results information often generally available on council's website. Information may also be available to the client logging in (and they may be able to see their current placing when they bid)
- Clients needing assistance to bid - duties under Equality Act 2010?
- Advise client about bidding regularly - and realistically!
- Consider requesting information under s166A(9)(a) HA 1996

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View all properties on map

Malesherbes - 14 BOWDIT CLO, LITTHORNE ESTATE, HILLINGDON
 Bedroom: Bedrooms: 35
 No Image Found
 Bid on property: 231

Flat - 70 Westend Way, POKESDOP ST, ECTYV BDR
 Bedroom: Bedrooms: 35
 No Image Found
 Bid on property: 126

Housing Act 1996 s166A

- The scheme must be framed so as to secure that an applicant for an allocation of housing accommodation –
 - has the right to request such general information as will enable him to assess –
 - how his application is likely to be treated under the scheme (including in particular whether he is likely to be regarded as a member of a group of people who are to be given preference by virtue of subsection (3)); and
 - whether housing accommodation appropriate to his needs is likely to be made available to him and, if so, how long it is likely to be before such accommodation becomes available for allocation to him;

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London Borough of Ealing Feedback Report

Annual Date	Area	Property Type	Location	Price	Priority Band	Priority Date	Member List
15 January 2018	12	1bed	Flat	North Road, Southall	58	C	14 July 2015
15 January 2018	13	1bed	Flat	Widdoway Road, Southall	57	C	31 March 2015
15 January 2018	122	4bed	House	Widdoway Street, Acton	28	B	30 October 2017
15 January 2018	124	1bed	Flat	Garden Court, Rothwell Road, Chiswick	14	B	15 November 2017
15 January 2018	133	1bed	Flat	Conroy Road, Northolt	238	B	04 December 2017
15 January 2018	162	1bed	Flat	Spencer Road, London	138	A	21 August 2017
23 December 2017	607	1bed	Flat	Ladbroke Grove, Ladbroke Grove, Park Road, Northolt	13	A	22 June 2017
21 December 2017	672	1bed	Flat	Bricklay Court, 27-31 Bricklay Road, Acton	9	C	24 August 2017
04 January 2018	689	1bed	Flat	Gyde House, Gyde Court, Central Drive, Northolt	207	C	21 May 2013
18 January 2018	585	1bed	Flat	Shiloh Court, Stoughton Avenue, Acton	16	C	11 December 2017

London Borough of Ealing Feedback Report

Annual Date	Area	Property Type	Location	Price	Priority Band	Priority Date	Member List
15 January 2018	586	1bed	Flat	Bank House, The Drive, Ealing	22	A	19 June 2017
15 January 2018	581	1bed	Flat	Bank House, The Drive, Ealing	23	C	07 November 2017

Obtaining evidence

- ▶ Often crucial to obtaining a good outcome
- ▶ Try to obtain supporting evidence from professionals working with the client who can give evidence about their circumstances and the family's need to move
- ▶ GP/ consultant / health visitor/ school (teacher or SENCO) / midwife / support worker / therapist / nursery / social worker / physiotherapist/ other professionals?
- ▶ Consider obtaining expert evidence, eg:
 - ▶ Environmental health expert
 - ▶ Occupational therapist
 - ▶ Psychologist
- ▶ Take care when requesting evidence/preparing instructions: **always** make sure the evidence addresses the relevant provision in the particular allocations scheme!

The council's medical advice

- ▶ Councils often obtain advice from NowMedical and rely on it in refusing to grant additional priority
- ▶ The medical adviser might be straying into areas outside their expertise, or inappropriate reliance may be placed on the advice (look at *R (J & L) v Hillingdon LBC* [2017] EWHC 3411)
- ▶ Often used as a reason for delay - but NowMedical's website says they can turn around advice within 2 working days!
- ▶ Reliance on NowMedical advice also criticised in homelessness context in recent County Court cases of *Cherry v LB Tower Hamlets*, County Court at Central London, 11th January 2018 (see [Nearby Legal report](#)) and *Thomas v Lambeth LBC*, County Court at Central London, 16 March 2017 (see [Nearby Legal report](#) for link to judgment)

And finally - what about allocation of temporary accommodation?

- ▶ Many local authorities have devised temporary accommodation placement policies following the Supreme Court decision in *Nzolameso v Westminster City Council* [2015] UKSC 22
- ▶ Plenty of scope for thinking about challenges of the policies and their application...