Housing Law Update: Homelessness and Allocations

1 Homelessness

A Statutory homelessness

Capacity to make a homeless application
WB v W District Council
Court of Appeal 24 May 2018
[2018] EWCA Civ 928

WB applied to the Council under Part VII of the HA 1996 in 2013 for accommodation on the basis that she had a priority need as a result of her mental disability. The Council considered that she was in priority need but she had become homeless intentionally. WB appealed against that decision to the county court. During that appeal she was found to lack capacity to litigate and to manage her property and affairs. The Official Solicitor was instructed to act as her litigation friend.

Subsequently, proceedings were issued in the Court of Protection, which resulted in a finding that WB lacked the capacity to make decisions about where she should live, her care needs, and to enter into a tenancy agreement.

Ultimately, WB's homelessness appeal was dismissed on the basis that the Court was bound by the decision of the House of Lords in ***R v Tower Hamlets LBC ex parte Ferdous Begum*** [1993] AC 509, to the effect that a person who lacked capacity was not able to make a homelessness application.

It was argued on behalf of WB that the Court of Appeal were not bound by the decision in ***Ferdous Begum***, on the grounds that (1) the exclusion of persons lacking mental capacity can be classed as an obsolete statutory provision, in the light of the Mental Capacity Act 2005; or (2) HA 1996, s 189(1) can be interpreted, applying s.3 Human Rights Act 1998, in a manner which puts applicants for priority housing with mental disability on the same footing as those by persons with no such disability; or (3) the effect of ***Ferdous Begum*** is to prevent a person from signing a tenancy agreement, but the decision does not prevent them from making a homeless application.

The Court of Appeal rejected the first two arguments on the basis of the doctrine of precedent and statutory interpretation (LJ Lewison dissenting). The Court noted that, under the Mental Capacity Act 2005 ss17–18, the Court of Protection could appoint a deputy for a person who lacked capacity and the powers vested in the deputy could include decision-making about where the disabled person should live. Arden LJ said "The deputy may be given power to make an application under HA 1996 Part 7, including power to make the various choices that an applicant may be required to make." A deputy had not been appointed to make the application for WB.

The Court accepted that a person may have capacity to make an application and consider an offer of housing, but not capacity to enter into a tenancy agreement carrying legal obligations over a period of time. This reflects the fact that capacity is issue specific.. However, it refused to consider the third ground of appeal in full, primarily because it had not been raised in the county court.

Lord Justice Lewison was prepared to go further, and addressed the question whether it is possible to interpret the Housing Act 1996 as enabling an application to be made by or on behalf of a person without mental capacity. He stated:

> Lady Justice Arden has adverted to the possibility of the appointment of a deputy or the execution of a lasting power of attorney. A deputy may make decisions on behalf of the person without capacity to the extent that his or her appointment allows. As Lady Justice Arden points out those powers may include a power to decide where a person is to live … and a power to acquire property on his or her behalf…. If authorised to do so by his or her appointment a deputy could make the application, decide whether to accept offered accommodation, and enter into a tenancy on behalf of the person without capacity.

However, there was no-one in this case who had the power to make such decisions on WB's behalf. The mere fact that the Court of Protection authorised a council official to sign a tenancy agreement was not enough.

It was not reasonable for a severely disabled woman to remain in her accommodation: guidance as to the correct approach in fulfilling the public sector equality duty
Lomax v Gosport BC
[2018] EWCA Civ 1846 1 Aug 2018

Ms Lomax was severely disabled and wheelchair bound. She was unable to live independently and required 24 hour care. She lived in a rural area in Dorset 70 miles from her family in Gosport. She was housebound, isolated and unable to alleviate her increasingly deteriorating physical and mental health conditions. Her current care provision was unsustainable and her needs were not capable of being met in her present home. The medical evidence pointed to a move to Gosport as essential for her wellbeing.

L applied to Gosport Borough Council for assistance as a homeless person, on the basis that it was not reasonable for her to continue to occupy her accommodation. She needed to be near her family who could provide her with the necessary support.

However, the Council refused her application and upheld the refusal on review. The reviewing officer considered that it was reasonable for L to continue to occupy her current accommodation having regard to the general housing circumstances prevailing in the Gosport area. It was stated that there were a number of people in the Gosport area who lived in accommodation that was "not ideal for them".

L's appeal was dismissed by the county court judge. The judge drew a distinction between "disability" and "illness" for the purposes of the Equality Act and referred to L as having a "social desire" to move, rather than a mental health disability.

L's appeal to the Court of Appeal was allowed. The Court held that:

- The public sector equality duty (PSED) applies at all stages of the decision making process. It is not a matter which can be compartmentalised and must permeate the entire decision-making process.

- Any consideration of the general housing conditions in the Council's area must identify appropriate comparators and take account of the needs of the particular applicant and the needs of others without such disabilities in order to have the sharp focus needed to properly comply with the PSED.

- The reviewing officer had failed to comply with the PSED which requires that a disabled person may be treated more favourably than a person who is not disabled.

It was not enough for the reviewing officer merely to acknowledge L's health concerns. The reviewer had failed to account for the impact which the location of the property was having on L, regardless of its physical adaptation, and that it was in fact positively causing a deterioration in her health. She was not therefore simply in the "same unfortunate boat" as everyone else.

Section 149 Equality Act 2010 (the PSED) required the local authority to have regard to the duty to take steps to meet the different needs of a disabled person as compared to those who were not disabled. The Court approved a structured approach to considering whether accommodation is reasonable to occupy for a disabled person, following a similar approach to the Supreme Court in ***Hotak v Southwark LBC***. This requires the decision-maker to focus sharply on (1) the fact (2) extent and (3) likely effect of disability for as long as the applicant continues to occupy the current accommodation; (4) the accommodation needs arising from those disabilities and the extent to which current accommodation meets those needs; (5) a comparison between those needs and the needs of others without the disabilities; and (6) a recognition that a disabled applicant might need to be treated more favourably than others without the disability.

Applicant's claim for damages for breach of article 8 ECHR failed
R (on the application of McDonagh) v Enfield LBC
[2018] EWHC 1287 (Admin)

Ms M had had fled her home in Ireland as a result of domestic violence. She had three children, one of whom had spastic quadriplegic cerebral palsy and relied on a wheelchair. The family eventually found a two-storey house, but the two bedrooms and bathroom were on the first floor and inaccessible to her disabled son. Accordingly, the son had to be washed in the living-room where there was also a portable commode for him.

In March 2015, M requested housing assistance from the Council. The Council accepted that the accommodation was unsuitable for the family but treated the application as one under Part 6, Housing Act 1996 (*i.e.* for an allocation), rather than Part 7, 1996 Act and the family were placed in the housing allocation waiting list.

In July 2017, M's solicitors asked the Council to deal with the case as a homeless application under Part 7. Subsequently, M brought proceedings for judicial review. No interim accommodation was provided but, in February 2018, the Council accepted that M was owed the full housing duty.. Suitable accommodation was provided in March 2018.

The judicial review continued as a damages only claim. M sought damages for the Council's failure to accept and process a homelessness application between March 2015 and July 2017, and the corresponding failure to provide interim accommodation, on the basis that this amounted to a breach of article 8 ECHR.

The Judge acknowledged that the Claimant had to look after her son and her other children "in extremely difficult circumstances" and considered it "a testament to her devotion and character that she has managed to do so." He was satisfied that the Council had breached its duty under s.188 Housing Act 1996. Although the Claimant had made her application under Part 6, rather than Part 7, and described herself as "not homeless', the Council had reason to believe that she was homeless because the evidence suggested that the property she and her children were living in was not reasonable to continue to occupy. That should have that triggered Part 7 duties.

However, breaches of statutory duty under Part 7 of the Housing Act 1996 do not, by themselves, constitute a contravention of article 8. The article 8 right to a private life might be infringed if they do not have access a toilet or washing facilities at home for a prolonged period or, potentially, if their private and family life is grossly undermined by

having to look after a family member because they do not have such access.

The Court noted that it is not possible to claim damages for breach of statutory duty against a local housing authority which has failed to provide accommodation as required by the Housing Act (***O'Rourke v Camden London Borough Council*** [1998] AC 188). However, if there are special circumstances which interfere with private or family life, a homeless person can rely upon Article 8 of the European Convention on Human Rights in conjunction with Part 7 of the Housing Act 1996 in order to found a damages claim for failure to provide accommodation.

However, having considered all the circumstances of the case, it was held that the Council had not acted incompatibly with article 8 and M was therefore not entitled to damages under the Human Rights Act. It was not obvious that the measures sought, if implemented, would have contributed positively to the development of her personality and integrity to a substantially greater extent. (There was no claim on behalf of the disabled son.) In M's case, the additional burden she faced in caring for her son in unsuitable accommodation did not amount to denial of *her* article 8 rights. Family life had continued, although under significant strain.

B Eligibility for assistance

Council not entitled to revisit decision on eligibility
R (Sambotin) v LB Brent
Court of Appeal 31 July 2018
[2018] EWCA Civ 1826

S was a 31-year-old Romanian citizen who came to the UK for work in October 2013. In September 2015, while on holiday in Romania, he was involved in a serious car accident which left him wheelchair-bound and unable to work. In August 2016, he applied as homeless to Waltham Forest LBC who decided that he was not eligible for assistance. In December 2016, S made a fresh application to Brent LBC.

Brent accepted that S was homeless, eligible for assistance, in priority need and not intentionally homeless but found that he did not have a local connection with its area but did have a local connection with Waltham Forest. Brent referred S's application to Waltham Forest LBC. However, Waltham Forest refused to accept the referral on the basis that S was not eligible for assistance. Brent therefore withdrew the referral. Subsequently, however, Brent issued S with a fresh s.184 decision letter, notifying him that he was not eligible for assistance. S applied for judicial review.

S's application was upheld in the Administrative Court. Brent appealed, on the basis that it had made no final decision as to the nature of the duty.

The Court of Appeal dismissed Brent's appeal. It accepted that a local authority is entitled to revisit a decision which it has already made under Part 7 HA 1996 in circumstances where there has been fraud or deception (***R v Southwark LBC ex p Dagou*** (1995) 28 HLR 72) or a fundamental mistake of fact (***Porteous v West Dorset DC*** [2004] EWCA Civ 244).

However, in this case it was clear that the Council had completed its enquiries and that had accepted a full housing duty under the Act before it had made the local connection referral. There was no fraud or fundamental mistake of fact which could justify revising its decision on eligibility.

Additional classes of persons subject to immigration control now eligible for homeless assistance

The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018 (SI 2018/730) amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 with effect from 9th July 2018 to add an additional class of persons subject to immigration control who are eligible under Part VI and Part VII.

The new category comprises people granted leave because they were transferred to the UK under section 67 of the Immigration Act 2016. S.67 requires the UK to take in up to 480 unaccompanied children from Europe and provide support for them. A new form of limited leave to remain has been created by s.35AZH of the Immigration Rules to cover young people transferred on this basis who have not been granted refugee status or humanitarian protection.

An accompanying letter from the Secretary of State explains that the Government anticipates that such unaccompanied children will primarily be the responsibility of social services departments, rather than housing departments, and that these amendments have been made so as to facilitate planned and sustainable accommodation for such children once they have turned 16 and begin to make plans to leave the care of social services.

Persons with 'Calais Leave'

The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No. 2) Regulations 2018 come into force on 1 November 2018, amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2018/1056) and prescribe an additional class of persons who are eligible for an allocation of housing or homelessness assistance under the 1996 Act. These persons are those who are habitually resident and who have 'Calais leave' to remain. The expression 'Calais leave' is defined in the Immigration Rules at rule 352J. See also the letter to Local Authorities from MHCLG dated 11 October 2018. This extension is expected to benefit approximately 115 children.

Retained status for self-employed EEA nationals

Reg 6 of the Immigration (European Economic Area) Regulations 2016/1056 was amended on 24 July 2018 so that the rights of self-employed EEA nationals mirror those of workers. A person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person:

- is temporarily unable to engage in activities as a self-employed person as a result of an illness or accident;

- is in duly recorded involuntary unemployment after having worked in the UK for at least one year and has registered as a jobseeker, is seeking employment/self-employment and has a genuine prospect of being engaged;

- is in duly recorded involuntary unemployment after having worked as a self-employment person for less than a year and has registered as a jobseeker, is seeking employment/self-employment and has a genuine prospect of being engaged. Where an EEA national has been self-employed for less than a year, they can only retain the status as a self-employed person for six months;

- is involuntarily no longer in self-employment and has embarked on vocational training; or
- has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation.

.C Priority need

Updated statutory guidance on LA duties to homeless 16/17 year olds.

The guidance, published in April 2018, contains a useful outline of the respective duties of Children's Services under s.20 and s.17 Children Act 1989 and Housing's duties under the Homelessness Reduction Act 2017 and Housing Act 1996. It confirms the primary responsibility as that of Children's Services, but also covers Housing's prevention and relief duties and Personal Housing Plans under the HRA 2017. It emphasises the duty to co-operate.

The Guidance can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712467/Provision_of_accommodation_for_16_and_17_year_olds_who_may_be_homeless.pdf .

MHCLG have also produced an update to the Homelessness Code of Guidance. In Chapter 8 'Priority need', there is a new para 8.40:

> **8.40** Any person who may reasonably be expected to die of a progressive illness within the next 6 months, or is in receipt of treatment that is reasonably considered to be palliative care, will almost certainly have a priority need. Effective arrangements for liaison and co-ordination of support and palliative care between housing, social services and health services will be essential in such cases. These services will want to take account of good practice guides and toolkits for providing effective co-ordinated care for such cases.

Council had been entitled to conclude that applicant was not vulnerable
Rother District Council v Freeman-Roach
[2018] EWCA Civ 368

On 9 June 2016 Mr FR made a homelessness application to Rother District Council ("the Council"). He stated in his application form that he suffered from osteoarthritis, had had strokes in 2006 and 2013, and had communication difficulties due to the strokes.

The Council provided him with interim accommodation. On 15 July 2016 the Council issued their decision that he was not in priority need. Although the Council found that FR suffered from anxiety and depression, expressive dysphasia, numbness to his right hand, high blood pressure, osteoarthritis/joint pain, and asthma, it concluded that he was not significantly more vulnerable than the ordinary person when homeless as his conditions were being treated and controlled by medication or were not so serious as to have a significant impact. That decision was upheld on a review.

FR asked the Council to continue to secure interim accommodation pending his appeal to the county court. The Council refused to to continue to provide him with temporary accommodation pending the appeal.

On appeal in the county court, FR obtained an injunction which ordered the Council to provide accommodation until the outcome of the county court appeal. His appeal was allowed. The Council appealed.

The Court of Appeal allowed the Council's appeal in respect of both the review decision and the decision not to continue temporary accommodation.

The Court held that there was no error of law in the review decision. The reviewing officer had applied the right test and had correctly set out his reasons for finding that FR was not significantly more vulnerable than the ordinary person when homeless. The Court of Appeal referred to ***Holmes-Moorhouse v Richmond upon Thames LBC*** [2009] UKHL 7, where Lord Neuberger had stated that courts must not adopt a "nit-picking" approach when dealing with appeals against review decisions.

The burden of proof of showing that the reviewing officer had failed to apply the correct test lay with the applicant. It is not for the reviewing officer to demonstrate positively that he has correctly understood the law; it is for the applicant to show that he has not. Therefore, it was for FR to show that the review decision contained an error of law.

The Court of Appeal also held that there was no error of law in the decision not to provide temporary accommodation. The county court judge had been satisfied that FR would be forced to live in his car pending the appeal and would find it difficult to engage in the appeal process so as to be substantially prejudiced. However, the Court of Appeal held that no reasons had been given for rejecting the reviewing officer's conclusion that FR could approach shelters or stay with relatives in the intervening period. Nor had the county court judge paid attention to the point raised by the reviewer about the demands of other homeless applicants, and nor did it explain how FR would be prejudiced given that the appeal was on a point of law.

Council's medical adviser had been wrong to dismiss concerns of applicant's own pscychiatrist

Cherry v LB Tower Hamlets

County Court at Central London 11th January 2018

Nearly Legal, 22 January 2018

C was a 40-year-old single man. Six years ago he was the victim of a serious assault by a gang of youths. He has been homeless for 4 years. A consultant psychiatrist stated C had developed a severe episode of PTSD which had a significant and enduring impact on all areas of his life. He had developed a moderately severe episode of depression. He also had a cannabis dependence but the psychiatrist was of the opinion that the PTSD and depression had arisen solely as a result of the assault, not his cannabis use.

C approached the Council for housing assistance as a homeless person. As part of their enquiries, the Council sent a questionnaire to the psychiatrist and to C's GP which asked no questions about the possible impact of homelessness but instead whether he could live independently. NowMedical provided three opinions, all concluding that C was not vulnerable. None of them mentioned the psychiatrist's report. The Council decided that C was not in priority need.

C's solicitors obtained a further report from the psychiatrist who stated that C's mental health would remain unchanged or deteriorate without treatment coupled with the added severe stress of his homelessness. She was concerned about his suicidal ideation and hopelessness, and stated that in her view his risk of suicide had increased.

Now Medical's Dr Wilson stated:

> *… it is not evident that the applicant is so disabled that he is unable to cope with the effects of homelessness or seek and maintain alternative forms*

accommodation. The applicant has been able to attend appointments and access support, and on this basis, I would not consider him vulnerable as defined

Allowing C's appeal, the judge held:

- The psychiatrist had several advantages over Dr Wilson of NowMedical:
  - She had examined C twice whereas Dr Wilson had not.
  - She was aware of his medical records whereas Dr Wilson was not.
  - It was apparent from their respective CVs that the psychiatrist had considerably greater experience of personal and direct treatment of individual patients. The psychiatrist had had a settled position as consultant since 2007, whereas since 2012 Dr Wilson has pursued a career which is more remote from the treatment of individual patients and more concerned with assessment or treatment of persons as an expert.

- Dr Wilson had applied too high a test: the test is not whether C is "unable to cope" but whether he is "less able than an ordinary person to cope with homelessness".

- The Council and Dr Wilson relied on C's ability to attend appointments and access support but that was "a manifestly inadequate foundation for Dr Wilson, without further enquiry, to dismiss (the psychiatrist's) conclusions".

- Dr Wilson had signally failed to engage with the great majority of the reasoning and conclusions carefully expressed by the psychiatrist in both her reports which provided strong prima facie support for her view that C was vulnerable.

- There is no indication that the Council took seriously the psychiatrist's concerns about suicide.

Taking proper account of the evidence, particularly the psychiatrist's reports, and applying the correct test, any reasonable decision-maker would have reached the decision that C was vulnerable and therefore in priority need. The judge therefore varied the decision to one that C was in priority need.

D Intentional homelessness

Samuels v Birmingham City Council
Supreme Court Case ref UKSC 2017 / 0172

An appeal panel has granted Ms Samuels permission to appeal against the decision of the Court of Appeal ([2015] EWCA Civ 1051) upholding a finding that she had become homeless intentionally because she could have made up the shortfall between her rent and her housing benefit, but failed to do so.

The case has been listed for hearing in the Supreme Courtr on 31 January 2019. Shelter and Child Poverty Action Group have applied jointly for permission to intervene.

Affordability

Para 17.45 of the new Homelessness Code of Guidance (Feb 2018) contains the revised formulation of the guidance on affordability, in the context of suitability of accommodation:

> ***17.45*** *Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to their circumstances. Housing costs should not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet these essential needs. Housing authorities may be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but should ensure that the wishes, needs and circumstances of the applicant and their household are taken into account.*

The above paragraph takes the place of para 17.40 in the 2006 Code. The following text in that paragraph is missing from the new 17.45: "In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit."

This was a critically important provision in relation to rent shortfalls and other accommodation costs. Its purpose was to lay down a marker that accommodation cannot be regarded as affordable if, in order to pay housing costs, a person has to draw on money which the state has provided for basic subsistence. But it remains arguable that the references to residual income and Universal Credit standard allowances are to be understood in the same way as the old 17.40, ie that accommodation costs which can only be paid out of subsistence level income are not affordable.

Occupation for finite period was not enough to break chain of causation
Doka v LB Southwark
Court of Appeal 17 October 2017
[2017] EWCA Civ 1532

Mr Doka (D) was a secure tenant who fell into rent arrears and was evicted from his home in November 2010. As a result he was found intentionally homeless as a result. In December 2010, D was offered a room at the home of his former employer, Mr Theobold. They entered into an arrangement whereby Mr Theobold allowed D to live in his son's room at a rent of £500 per month for two to three years whilst his son was at university. D agreed to stay elsewhere on occasional nights when Mr Theobold's son returned home and needed to use his room.

In December 2012 Mr Theobold's son returned home from university and D was asked to leave. He stayed with friends for nearly two years and then applied to the Council for housing assistance. The Council decided that D was still intentionally homeless as a result of his earlier eviction in November 2010. D appealed to the county court,. His appeal was dismissed and he appealed to the Court of Appeal.

D argued that two years was a significant period of time and that living with Mr Theobold constituted settled accommodation which broke the chain of causation between his present state of homelessness and his earlier eviction from his secure tenancy.

Dismissing D's appeal, the Court of Appeal held that the length of the period of accommodation relied on is not conclusive as to whether it should be treated as settled. What an applicant needs to establish is a period of occupation under either a licence or tenancy which has at its outset or during its term a real prospect of continuation for a significant or indefinite period of time so that the applicant's transition from his earlier accommodation cannot be said to have put him into a more precarious position than he previously enjoyed.

In the present case, the reviewing officer was entitled to conclude that the arrangement with Mr Theobold was at all times a precarious one in that it had a finite duration and priority was given to Mr Theobold's son's need for the room. D was required to vacate the room for the days when Mr Theobold's son came home and when he ended his studies at university. This was an intermittent licence under which the prospect of continuation was always uncertain.

Postscript

Mr Doka sought permission to appeal from the Supreme Court, but permission has been refused. The appeal panel stated:

> *Permission to appeal be refused because the application does not raise an arguable point of law of general public importance which ought to be considered at this time and, because the applicable principles were authoritatively laid down in the cases of **Din** and **Haile**, this is not a case in which they should be reviewed even through there may be errors in the reasoning in the Court of Appeal, which should not be treated as authoritative.*

See ***Nearly Legal***, 11 July 2018, for the implications of the above passage.

Failure to provide financial information in support of HB claim justified a finding of intentional homelessness
Odeneye v Brent LBC
[2018] EWCA Civ 1595 5 July 2018
Legal Action, Sept 2018, p.45

Ms O was a private tenant. Her claim for housing benefit was suspended because of a suspicion that she was running a business. She was asked to provide proof of income and other financial information, but she failed to do so. Consequently, she was notified that her HB claim was terminated, but she did not appeal. She subsequently made two further claims for HB, but again did not provide financial evidence, and the claims did not proceed. She accrued rent arears of over £11,000. Her landlord obtained a possession order, and she was evicted.

On the day of her eviction, O submitted financial information, with a request that her HB claim be backdated. The Council determined tthat a sum of about £8,500 was due, and this was paid directly to her former landlord. Subsequently, the Council decided that this payment had been made in error, but accepted that it would not seek to recover the money.

On O's application as homeless, the Council decided that she had made herself homeless intentionally. Her appeal to the county court was dismissed. The Court of Appeal held that the Council was entitled to reach the decision it had. The cause of her eviction was ultimately her failure to provide the Council with the information it needed to process her claim for HB, and to pay the shortfall between her rent and her HB entitlement.

E Local connection

Updated guidance for local connection referrals to another local authority

The joint local authority agreement on Procedures for referrals of homeless applicants to another local authority and Guidelines for local authorities on procedures for referral has been revised and now takes into account the changes introduced by the HRA 2017. See https://www.local.gov.uk/procedures-referrals-homeless-applicants-another-local-authority

F Suitability of accommodation

Council had failed to consider the effect on the children of the long journey from the family's temporary acommodatiion to school
Anon v LB Lewisham,
Central London County Court 5 July 2018
HHJ Parfitt

A was the mother of three children aged 10, 5 and 2. She applied as homeless to the Council and was placed in interim accommodation, which subsequently became temporary accommodation under s.193. The accommodation was alleged to suffer from damp and mould, and was situated a considerable distance from the older children's school. The Council, on review, decided that the accommodation was suitable for the family's needs.

A appealed to the county court on the grounds that:

- the reviewing officer had proceeded on the basis that a lower standard of suitability was required for temporary accommodation than for other accommodation made available under the s.193 duty; and

- the reviewing officer had failed to have due regard to the children's welfare in relation to the travel time to two of the children's schools and specifically the impact on the youngest child who had to accompany the mother on these journeys.

HHJ Parfitt held that for the purposes of fulfilling the section 193 duty, there is no separate category of temporary accommodation which might lead to a different and less rigorous suitability requirement. Any argument from a council that it was 'just temporary accommodation, so to be expected to be of a lower suitability standard' would not be right.

While the suitability standard for all s.193 accommodation was the same, it was relevant to consider the period of time for which the accommodation was to be made available. Thus, when considering suitability, the Council was entitled to consider whether it "would have been reasonable for you and your family to have continued to occupy for the period during which you can have expected to have lived there". On the facts, the first ground of appeal was not made out.

A's second ground of appeal was upheld. This was in relation to A's daily journey to take the children to and from school. The reviewing office plotted the journey as follows:

> *The journey to your children's school from your temporary accommodation, should you leave at 6.57 a.m., would generally have taken you around eighty minutes. In summary, this would have required a two-minute walk from the temporary accommodation to the 314 or 233 bus stop, a six-minute bus journey to Eltham and then a six-minute walk to take a South Eastern train to London Bridge, which would generally have taken you a further twenty-two minutes. You would then have needed to take a Northern Line train to Clapham Junction (twelve minutes) and then a twenty-minute walk to your children's school. You would have arrived at approximately 8.17 and in time for your children's schooling.*

In ***Nzolameso v City of Westminster*** (2015) UKSC 22, the Supreme Court held that

> *"The question of whether the accommodation offered is 'suitable' for the applicant and each member of her household clearly requires the local authority to have*

regard to the need to safeguard and promote the welfare of any children in her household. Its suitability to meet their needs is a key component in its suitability generally."

This regard requires an identification of the children's needs and then express consideration of the duty to safeguard and promote those needs. The reviewing officer had failed to satisfy that requirement in relation to the children's education requirements and the interests of and impact on the youngest child who was also affected by the distance between his sisters' primary school and the family's accommodation.

Location of accommodation and children's journeys to school

For guidance on the principles of Sustainable school travel, see the Department of Education publication ***Home to school travel and transport guidance* : *Statutory guidance for local authorities*** (July 2014).

2 Children Act 1989

It was reasonable for social services to look for accommodation within a 60 minute journey of the family's support network
R (on the application of AE) v Brent LBC
[2018] EWHC 2574 (Admin) 5 October 2018

AE was a single parent of two sons aged 9 and 5. In 2014, she was sentenced to a term of imprisonment in respect of a terrorist related offence. During her imprisonment, the children lived with their maternal grandparents. On her release, AE made a homelessness application to the Council, but was found intentionally homeless.

Following the referral of her case to Children's Services, a Child and Family Assessment (CFA) was carried out. The CFA recorded AE's concerns about the lack of stability for her children and her desire that they be housed together, near her own parents, the Council considered she was unlikely to find suitable, affordable accommodation in the Brent area (noting that she was dependent upon state benefits). Although the Claimant's support network in Brent was acknowledged to be important, the CFA concluded that it was reasonable to offer accommodation outside London, with AE staying in regular contact with her family by telephone, messaging or social media. It was recommended that she should be made "one final offer of suitable and affordable accommodation anywhere outside of London under section 17 Children Act 1989 to end the cycle of homelessness". Subsequently, the Council made offers of private rented accommodation in Staffordshire and Wolverhampton.

Medical reports stressed the importance of the role of the maternal grandparents in safeguarding the emotional social and psychological welfare of the children. Every effort should be undertaken to maintain and strengthen the system of support which was considered integral to the children's welfare. The children's system of attachment extended to the school where they were well grounded and integrated.

AE applied for judicial review. The Court ordered the Council to provide the family with temporary accommodation. They were subsequently housed in a hotel in Harlesden. At the date of hearing, they had been in the hotel for 16 months.

The Council then changed its position, with a recommendation that its social care department should continue to assist the Claimant to look for "*suitable, affordable and sustainable property within a reasonable commute of 60 minutes distance journey time from maternal grandparents' home within London*".

AE contended (1) that the Council's revised position was *Wednesbury* unreasonable and in breach of her family's article 8 rights, or alternatively (2) that, in any event, the Council has continued to act unreasonably by failing to make any accommodation offers within its revised criteria. She argued that allowing for a journey time of up to 60 minutes might involve multiple changes, using different forms of transport, and may be unaffordable. Given the need for her children to remain at the same school, and to maintain the same doctors and support network, she could face 4 hours of travel each day.

The application was dismissed. The Council had a broad discretion in how it complied with its general duty under section 17. It had taken proper account of the particular needs of the family. The conclusion that properties within a reasonable 60-minute commute might – if otherwise suitable and affordable – be offered to AE was not unreasonable in any public law sense. The Court had sympathy with AE's contention that it was unreasonable for the Council to have limited its efforts to looking outside London. However, there was no evidence to suggest that the Council had failed to look for accommodation that met the revised criteria. Such properties were simply not readily available.

The importance of section 11 Children Act 2004 in housing cases
R (J and L) v Hillingdon LBC
[2017] EWHC 3411 (Admin) 21 December 2017

In this case, L was an 8 year old boy who suffered from a range of disabilities including autism, global development delay, learning difficulties, long-standing ataxia and uncontrolled epilepsy. He received DLA at the higher rate both for care and mobility. He had no fear of danger.and required constant supervision. The family lived in a private rented bungalow in area due for major redevelopment. The numerous problems with the accommodation included disrepair, lack of adaptation for L's needs and the dangers associated with the proximity of a busy road and unfenced industrial car park next door.

J, the mother of L, was refused access to the Council's housing register because she was deemed to have '*no housing need'* despite OT and Child & Family assessments identifying at least two serious risks: the risk of L drowning in the bath (through having a fit whilst in the bath) and the risk of his being knocked over on the busy road outside his house. Following their assessment Children's Services handed the case back to Housing for action and closed their file as did not consider that any duty lay with them. A homeless application was also refused.

In July 2017, after extensive pre-action correspondence failed to address L's housing needs, judicial review proceedings were issued challenging the s17 assessment and/or the finding that J had' no housing need' and did not therefore qualify for the housing register. The grounds relied on the authority's duty in s11 Children Act 2004 to take steps to safeguard and promote the welfare of the child.

The Court comprehensively set out the duties arising out of s11 Children Act 2004 and the accompanying statutory Working Together guidance. Such assessments should be holistic in approach, addressing the child's needs within their family and wider community, integrated in approach; are a continuing process not an event; and should lead to action, including the provision of services.

The Council's decision-making is flawed by the failure properly to consider the issue. The medical assessment was very unimpressive. The decision letter was wholly superficial and failed to engage adequately (or at all) with the risks to L arising from his housing that had been identified in the Child and Family assessment.

The judgment provides a helpful summary of the section 11 CA 2004 duties which arise not just for social services but also for the housing department:

At its heart, a s.17 assessment requires an analysis of what (if anything) requires to be done, when and by whom… The housing issue was the source of the risks that were identified as threatening the welfare of L.

… the stark reality is that the Defendant had no plan in place for addressing and meeting L's identified needs. Given that social services had closed their file, it also appears to have had no internal mechanism even to recognise that this was the position. Had the process been properly integrated and holistic, the negative housing decision would have been picked up as important – because it left L's identified needs unaddressed - and referred back to social services for further consideration. The Defendant failed to provide a mechanism allowing the situation to "be reviewed regularly to analyse whether sufficient progress [had] been made to meet [L's] needs and the level of risk faced by [L]" (paragraph 55 in the Working Together Guidance). (para 68)

3 Allocations

10 year residence requirement constituted unlawful discrimination against traveller families
R (on the application of TW, SW and EM) v London Borough of Hillingdon
Administrative Court13 July 2018
[2018] EWHC 1791 (Admin)

In this case the Claimants challenged two elements of Hillingdon Council's allocation scheme on the basis of discrimination: (1) the 10 year residency condition; and (2) the additional priority given to working households.

TW was a single parent of Irish Traveller descent, who had three children aged 7, 4 and 2. SW (the Second Claimant) is the 2 year old daughter. The family had become homeless, and had been placed in temporary accommodation by the Council. Having spent a significant part of her life travelling, she now wished to settle, to give her children better educational opportunities. Having applied to join the Council's housing register, she was placed in the lowest band, Band D, because she had not lived continuously in the borough for 10 years.

EM, aged, 60, was a carer for his three disabled adult children who lived with him. He too was disabled. They also lived in temporary accommodation. EM was also on the housing register, and his case had been referred to the Hardship Panel, but the Panel had decided that he did not meet the criteria for social housing.

The Claimants challenged the `residency criterion' in the Council's allocation policy. This effect of this condition is that an applicant will only be able to join the three welfare-based bands A to C on the housing register if s/he has lived in the borough of Hillingdon for 10 years continuously; and that those who do have 10 years' residence are entitled to additional priority in the banding scheme.

The Claimants also challenged the `working households uplift', whereby households who are working but on a low income are also given additional priority under the allocation scheme.

Shelter provided a witness statement in support of the Claimants, to the effect that lengthy residence requirements are increasingly likely to prevent large numbers of families from ever achieving stability or settling in any area.

The adult Claimants argued that these rules were discriminatory, because their circumstances meant that they were unable to meet the criteria. Both had the protected characteristic (under the Equality Act 2010) of race on account of their Traveller background; TW also had the protected characteristic of sex (gender); and EM and his adult children had the protected characteristic of disability. The claimants also argued that the Council had failed to comply with its duty under section 11 of the Children Act 2004 to safeguard and promote the welfare of children.

The judgment

In the Administrative Court, Mr Justice Supperstone held that:

- The 10 year residence requirement was not justified, on the basis that it was likely to have a significant and adverse impact on Irish Travellers. There was no evidence that the Council had sought to assess the extent of the disadvantage caused to this group.

- The `working households' uplift was not unlawful. The class of person given additional priority was narrowly worded, aimed at a specific problem and did not dominate the scheme. The measure had a legitimate aim, and the discrimination was justified when the allocation scheme was considered as a whole.

- In relation to the 10 year residence condition, the Council had failed to take steps to consider the impact of the condition on the children of Irish Travellers.

…but the 10 year residence requirement did not discriminate against refugees
R (on the application of Gullu) v L.B. Hillingdon
[2018] EWHC 1937 26 July 2018

YG was a Kurdish refugee of Turkish nationality. He applied for judicial review of Hillingdon's decision not to register him on its allocation scheme. He argued that the ten year residence requirement unlawfully discriminated against him as a refugee and a foreign national.

However, his application was refused. Mostyn J. held that YG was not being discriminated against as a refugee in favour of long term residents. He was being treated no differently from other short term residents. That was the correct comparison to use in deciding whether discrimination was at play. The judge did not accept the argument that refugees did not move for choice, but had been fleeing persecution, and should be treated differently from those who moved voluntarily into the local area.

Mostyn J. said that he could understand the recent decision in *R (on the application of TW, SW and EM) v L.B. Hillingdon* (above), In which it was held that the circumstances of Irish travellers were so different to other short-term residents as to make the uniform application of the rule to them unjustified. However, it was much more likely that an Irish traveller would not complete the 10-year journey than a comparable applicant. But the same could not be said when comparing a recently arrived refugee to another applicant:

"In my opinion, for the purposes of assessing the impact of the 10-year rule, when it comes to starting the clock and counting the days their situations are the same. I therefore do not find that there is any actual discrimination here."

In the event that there was discrimination, the judge went on to consider the question of justification. He considered that the rule was justified by its objective of seeking to allocate housing fairly when the demand for social housing vastly exceeded supply. Parliament

had expressly authorised local authorities to use residence qualifications as a criterion for access to the housing register.

If there was actual discrimination, the judge considered that it was amply justified. There was no failure to give due regard to any of the public sector equality duty matters.

Council had failed to exercise discretion to meet the needs of family with disabled child
KS and others v London Borough of Haringey
[2018] EWHC 587 (Admin)

Ms KS was a 32 year old mother with two young children, AM and JM. KS had considerable physical and mental health issues, including anxiety and panic attacks. Her daughter, AM, had autism, which caused her to have significant sensory issues, behavioural problems, problems sleeping and self-harming.

The family lived in a two bedroom council property. AM's sleep problems were so severe that she required her own bedroom, causing her mother and brother to have to share a room. The flat was on the first floor with two balconies, and was therefore dangerous for AM who is at risk of falling from the balconies. Owing to the unsuitability of the property, in October 2016 KS made an application to the Council for alternative housing.

In February 2017 the Council's Children's Services department completed a Child and Family assessment which concluded that the property was a safety risk for the family and that they needed three bedroom low or ground floor accommodation. The assessment requested that Haringey's housing department assist with this need. The case was duly referred to the housing department in April 2017 and in May 2017 Children's Services closed the case because there were no safeguarding concerns about the children.

A housing assessment was carried out which concluded that the family, who had been in Band C for housing, would remain in Band C. The Council acknowledged that this meant that they would be highly unlikely to have sufficient priority to bid successfully for alternative social housing.

KS and AM applied for judicial review of the housing panel's decision not to rehouse the family. They contended that the Council should not have relied solely on its housing allocations policy and should have come up with a plan between Housing and Children's Services to solve the family's problem. It was argued that the Council had failed to comply with section 11 of the Children Act 2004 (which specifies that regard should be had to the need to safeguard and promote children's welfare) and that the Housing department had failed to comply with the request from Children's Services.

The Court noted that where there is a risk to a child, the courts should exercise intense scrutiny. As in any case, the courts should not simply assume that a local authority has exercised its functions conscientiously. It also noted that the Council's housing allocations policy includes a discretionary power allowing them to award additional priority and approve offers of housing which do not fall within the provisions of the policy.

The Court allowed the application for judicial review. It did not accept the Council's assertion that the risks to AM of accessing the balcony could be avoided by her mother exercising normal parental control. It criticised Children's Services for simply referring the case to the housing department and then closing its file; the fact that there were no safeguarding concerns about a child did not mean that Children's Services could end their involvement while the child's safety and welfare remained at risk.

The Court held that the Council had acted irrationally by keeping the family in priority Band C rather than exercising the discretionary power to allocate them a higher priority. It had failed to give any, or sufficient, weight to the opinion of the social worker from

children's services about the unsuitability of the property and the need for a larger ground-floor property. The Council's decisions had failed to comply with its obligations under section 11 of the Children Act 2004. Simply stating that regard had been had to the section 11 duty was insufficient, it had to be clear that the duty had in fact and in substance been adhered to.

The Court therefore ordered that the Council put in place a plan to meet the unaddressed needs of the family and that it reassess and reconsider the need to rehouse the family, as requested by Children's Services.

4 The Homelessness Reduction Act 2017

Introduction

The Homelessness Reduction Act came into force on **3 April 2018**, with the exception of section 10 (duty of public authorities to refer cases to local housing authority), which came into effect on **1 October 2018**.

The **Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018** S.I. 2018/167 provide that the new duties under the 2017 Act do not apply to an application for assistance made under Part VII of the Housing Act 1996 before 3 April 2018, or to a section 202 review requested before the same date.

The new Homelessness Code of Guidance was published, after a consultation period, in February 2018.

The Act has made the most substantial changes to the homelessness legislation since the original Housing (Homeless Persons) Act was enacted in 1977. It places duties on local housing authorities to intervene at earlier stages in order to prevent homelessness and to take reasonable steps to help those who become homeless to secure accommodation. Its main purpose is to ensure that everyone who approaches a local authority because they are either facing homelessness or actually homeless should receive some assistance, whether they are in priority need or not, and irrespective of whether they may be considered intentionally homeless.

There are three major new duties in the Act, namely:

- duty to assess all eligible applicants' cases and agree a plan
- duty to take reasonable steps to prevent homelessness
- duty to relieve homelessness by helping the applicant to secure accommodation

A Duty to assess all eligible applicants' cases and agree a plan

The HRA 2017 inserts a new duty (section 189A) into the 1996 Act. If they are satisfied that an applicant is homeless or threatened with homelessness, and eligible for assistance, local housing authorities are required to carry out an assessment. The assessment must look at the circumstances that caused the applicant's homelessness or threatened homelessness, their housing needs and the support they need to be able to have and retain suitable accommodation.

Following the assessment, the authority must work with the applicant to agree the actions to be taken by both parties to ensure the applicant has and is able to retain suitable accommodation.

The assessment process

- Following the assessment, the authority must try to agree with the applicant—
    - any steps which s/he is to be required to take for the purposes of securing that s/he has and can retain suitable accommodation; and
    - the steps the authority are to take for those purposes.

  [s.189A(4), HA 1996]

- If the authority and the applicant cannot reach an agreement, the authority must record in writing—

- why they could not agree,
- any steps the authority consider it would be reasonable to require the applicant to take for the above purposes; and
- the steps the authority are to take for those purposes.

[s.189A(6), HA 1996]

- The authority may include in the written record any advice that the authority consider appropriate (including any steps the authority consider it would be a good idea for the applicant to take but which s/he should not be required to take).

[s.189A(7), HA 1996]

- While the prevention duty continues, the authority must keep under review—
  - their assessment of the applicant's case, and
  - the appropriateness of any agreement reached under s.189A(4) or steps recorded under s.189A(6) (above)

[s.189A(9), HA 1996]

B Duty to prevent homelessness

Section 4 HRA 2017 substitutes a new section 195, which requires authorities to take reasonable steps to help to prevent homelessness for any eligible household threatened with homelessness.

S.4(2) places local housing authorities under a duty to take reasonable steps to help the applicant to secure that accommodation does not stop being available for their occupation. The steps to be taken should be informed by the assessment and the personalised plan. Examples of the type of steps a local housing authority might take include advice on defending a claim for possession, where appropriate, or mediation to help keep families together. It may extend to providing a security deposit enabling the household to secure alternative accommodation.

Notice to end the prevention duty

If the authority consider that the prevention duty has come to an end, it may give notice to the applicant (s.195(5)). The notice must:

- specify which of the circumstances governing termination (below) apply, and
- inform the applicant of his/her right to request a review of the authority's decision to bring the duty to an end and of the time within which such a request must be made.

[s.195(7), HA 1996]

Termination of the prevention duty

The authority may bring the prevention duty to an end where it is satisfied that:

- the applicant has—
  (i) suitable accommodation available for occupation, and
  (ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months;

- 56 days have passed and the authority have complied with their prevention duty (whether or not the applicant is still threatened with homelessness);

- the applicant has become homeless;
- the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months;
- the applicant has become homeless intentionally from any accommodation that has been made available to him/her under this duty;
- the applicant is no longer eligible for assistance, or
- the applicant has withdrawn his/her application.

[s.195(8), HA 1996, inserted by s.4(2), HRA 2017]

The prevention duty can also be brought to an end on account of the applicant's deliberate and unreasonable refusal to co-operate: s.195(10), HA 1996..

If the applicant has no local connection with the authority, it can refer the relief duty to another authority with which the applicant does have a connection (unless he or she would run the risk of violence in the second authority's area): see section I below.

C Duty to relieve homelessnss

The relief duty takes the fom of a new s.189B, HA 1996:

189B Initial duty owed to all eligible persons who are homeless

(1) This section applies where the local housing authority are satisfied that an applicant is—

(a) homeless, and
(b) eligible for assistance.

(2) Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—

(a) 6 months, or
(b) such longer period not exceeding 12 months as may be prescribed.

(3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.

…

How long does the relief duty last?

Where the authority—
(a) are satisfied that the applicant has a priority need, and
(b) are not satisfied that the applicant became homeless intentionally,
(ie, where the applicant qualifies for the `main' housing duty under s.193), the duty comes to an end automatically after **56 days.**

[s.189B (4), HA 1996, inserted by s.5(2), HRA 2017]

Notice to end the relief duty

In addition to automatic termination after 56 days where the main s.193 duty is owed (as above), if the authority consider that the relief duty has come to an end, it may give notice to the applicant to terminate the duty. The notice must:

- specify which of the circumstances in s.189B(7) (below) applies, and
- inform the applicant of his/her right to request a review of the authority's decision to bring the duty to an end and of the time within which such a request must be made.

[s.189B(5), HA 1996]

Termination of the relief duty

The authority may bring the relief duty to an end where they are satisfied that:

- the authority have complied with the relief duty and the period of 56 days has ended (whether or not the applicant has secured accommodation),

- the applicant has—
  - suitable accommodation available for occupation, and
  - a reasonable prospect of having suitable accommodation available for occupation for at least 6 months;

- the applicant has refused an offer of suitable accommodation where there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months;

- the applicant has become homeless intentionally from any accommodation that has been made available to him/her under this duty;

- the applicant is no longer eligible for assistance, or

- the applicant has withdrawn his/her application.

[s.189B(7), HA 1996]

The relief duty may also be brought to an end under

> (a) section 193A (refusal of final accommodation offer or final Part 6 offer at the relief stage), or
> (b) sections 193B and 193C (deliberate and unreasonable refusal to co-operate)."
> [see section J below]

[s.189B(9), HA 1996; and see section 7, HRA 2017]

D Duty to provide interim accommodation

The duty to provide interim accommodation under section 188 remains broadly the same, although the section is amended by s.5(4) HRA 2017.

Section 188(1) now reads:

> *(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.*

No priority need

Where the authority conclude their inquiries under s.184 and decide that the applicant does not have a priority need, the s.188 duty comes to an end—

- when the authority notify the applicant of their decision that they do not owe him/her the relief duty, or
- otherwise, when the authority notify the applicant of their decision that, upon the relief duty coming to an end, they do not owe him/her any duty under section 190 or 193 [ie, that they have made an adverse s.184 decision]

[s.188(1ZA), HA 1996]

Priority need cases

In priority need cases, the s.188 duty comes to an end ***upon the later of***—

- the relief duty coming to an end or the authority notifying the applicant that they have decided that they do not owe him/her the relief duty, and
- the authority notifying the applicant of their decision as to what other duty (if any) they owe to him/her upon the relief duty coming to an end [ie their s.184 decision as to whether they owe the main housing duty or not].

[s.188(1ZB), HA 1996]

Continuation of the interim accommodation duty pending review of suitability

- Where the applicant requests a review under section 202 of the authority's decision as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (under s.193A: see below), the relief duty is not to be taken to have come to an end until the decision on the review has been notified to the applicant (and therefore the s.188 duty to provide interim accommodation continues until the review decision).

[s.188(2A), HA 1996]

- Otherwise, the s.188 duty under this section comes to an end as indicated above, regardless of any review requested by the applicant under section 202.

  But the authority **may** secure that accommodation is available for the applicant's occupation pending a decision on review.

[s.188(3), HA 1996]

E The main housing duty

Section 193 (the `main' or `full' homelessness duty owed to persons with priority need who are not homeless intentionally), is amended so that it will only apply if the relief duty under section 189B(2) has come to an end. (s.193(1), substituted by 5(7), HRA 2017).

F Duties to the intentionally homeless

Section 190(1) (duties to persons becoming homeless intentionally) is amended so that it will only apply if the authority's duty to the applicant under section 189B(2) has come to an end. (s.5(5), HRA 2017).

Section 190(4) HA 1996 now provides:

> *(4) In deciding what advice and assistance is to be provided under this section, the authority must have regard to their assessment of the applicant's case under section 189A.*

G Local connection and the relief duty

S.5(8) HRA 2017 inserts a new section 198(A1), as follows:

> *(A1) If the local housing authority would be subject to the duty under section 189B (initial duty owed to all eligible persons who are homeless) but consider that the conditions are met for referral of the case to another local housing authority in England, they may notify that other authority of their opinion.*

Referral of the relief duty to another authority on grounds of local connection

The procedure for referring an applicant to another authority at the relief stage is set out in new s.199A HA 1996, inserted by s.5(9), HRA 1996. This section provides:

> ***199A Duties to the applicant whose case is considered for referral or referred under section 198(A1)***
>
> *(1) Where a local housing authority ("the notifying authority") notify an applicant that they intend to notify or have notified another local housing authority in England ("the notified authority") under section 198(A1) of their opinion that the conditions are met for referral of the applicant's case to the notified authority, the notifying authority—*
>
> *(a) cease to be subject to any duty under section 188 (interim duty to accommodate in case of apparent priority need), and*
> *(b) are not subject to the duty under section 189B (initial duty owed to all eligible persons who are homeless).*
>
> *(1) But, if the notifying authority have reason to believe that the applicant may have a priority need, they must secure that accommodation is available for occupation by the applicant until the applicant is notified of the decision as to whether the conditions for referral of the applicant's case are met.*
> *…*

The procedure following the notification by Authority 1 to Authority 2 is as follows:

- When it has been decided whether the conditions for referral are met, the notifying authority must give notice of the decision and the reasons for it to the applicant. The notice must also inform the applicant of his/her right to request a review of the decision and of the time limit for making such a request.

[new s.199A(3), HA 1996]

- If it is decided that ***there are no grounds for a referral***, the original (notifying) authority are subject to the relief duty, and the 56 day period begins to run from the date of notification.

  In that event, where the authority have reason to believe that the applicant may have a priority need, they must provide interim accommodation until the relief duty comes to an end, or the authority decide what other duty (if any) they owe to the applicant, whichever is the later.

  [new s.199A(4), HA 1996]

- If it is decided that ***there are grounds for referral***, the applicant is to be treated as having made an application to the notified authority. In that event, the notifying authority will owe no duties to the applicant.

  The notifying authority must give to the notified authority copies of any assessment of the applicant's case which it has done. Where the notifying authority have made a decision as to whether the applicant is eligible for assistance, is homeless or became homeless intentionally, the notified authority may only come to a different decision if they are satisfied that—

  (i) the applicant's circumstances have changed, or further information has come to light, since the notifying authority made their decision, and
  (ii) that change in circumstances, or further information, justifies the notified authority coming to a different decision and

  [new s.199A(4), HA 1996]

- Where the notifying authority seeks to terminate its interim accommodation duty under s.199A(2) or (4), the duty ends even if even if the applicant requests a review of the authority's decision which has led to the interim duty being terminated . However, the authority may provide accommodation for the applicant pending the review decision.

  [new s.199A(5), HA 1996]

There is no right of review of the decision to make a local connection referral of the relief duty at initial notification stage. But there **is** a right of review of the decision at second notification stage as to whether the conditions for referral are met. See Code, para 10.56:

> ***10.56*** *Applicants have the right to request a review of various decisions relating to local connection and referrals. Under section 202(1)(c), an applicant is able to request a review of a housing authority's decision to notify another housing authority that the conditions for referral are met where the main housing duty is owed (notice a – see 10.39). Applicants cannot request a review of the equivalent section 198(A1) decision at the relief stage. Applicants have a right to request a review of the decision on whether the conditions for referral are met at both the stage of the relief duty or main housing duty under section 202(1)(e) (notice b – see 10.39).*

Authorities cannot refer the prevention duty on grounds of local connection, only the relief duty. Where the relief duty is referred, the authority must provide copies of the assessment. If there is a PHP (presumably from the prevention stage), the authority should also forward that, but it appears that this is subject to the applicant's consent.

> ***11.28*** *Housing authorities must take reasonable steps to prevent homelessness whether or not the applicant has a local connection with their area. If the applicant is actually homeless the authority may refer them to another authority where they have a local connection, and must provide copies of the assessment, and any revisions to it that have been notified to the applicant, as part of the referral arrangement. If the housing authority has agreed a personalised housing plan with the applicant they should also forward the plan to the notified authority if it has relevance, and with the applicant's consent.*

Referral of the main duty to another authority on grounds of local connection

Where an authority does not refer the relief duty to another authority, and goes on to accept the main homelessness duty under s.193(2), it may still refer the household at that stage to another authority under s.198(1). The procedure is still governed by s.200, but the referral may not be made until the relief duty has come to an end.

[s.200(1A) inserted by s.5(10), HRA 2017]

H Deliberate and unreasonable refusal to co-operate

Section 7 HRA 2017 inserts three new sections, 193A, 193B and 193C, into HA 1996. S.193A sets out the consequences if an applicant refuses, at the relief stage, a suitable final accommodation offer in the private rented sector or an allocation of social housing (a Part 6 offer). Ss.193B and 193C set out the consequences if an applicant deliberately and unreasonably refuses to take any steps set out in the personalised plan.

Section 193A: Consequences of refusal of final accommodation offer or final Part 6 offer at the relief stage

This section applies where an authority owe a duty to an applicant under section 189B(2) (the relief duty) and the applicant,

- having been informed of the consequences of refusal and of his/her right to request a review of the suitability of the accommodation,

refuses either a ***final accommodation offer*** or a ***final Part 6 offer***.

[s.193A(1), HA 1996]

- A "final accommodation offer" is—
  - an offer of an assured shorthold tenancy made by a private landlord to the applicant,
  - made, with the approval of the authority, in pursuance of arrangements made by the authority in the discharge of the relief duty, and
  - the tenancy being offered is a fixed term assured shorthold tenancy for a period of at least 6 months.

[s.193A(4), HA 1996]

- An offer is a "final Part 6 offer" if it is an offer of accommodation under Part 6 (ie, under the authority's allocation scheme) that—
  - is made in writing by the authority in the discharge of the relief duty, and
  - states that it is a final offer for the purposes of section 193A..

[s.193A(5), HA 1996]

- In these circumstances, the authority's duty to the applicant under section 189B(2) (relief duty) comes to an end, and the applicant does not qualify for the main housing duty under s.193.

[s.193A(2) and (3), HA 1996]

- See section M below for the enhanced suitability standard which applies to final accommodation offers.

Section 193B: Deliberate and unreasonable refusal to co-operate

Where an authority owe a duty to an applicant under section 189B(2) (relief) or 195(2) (prevention), they may give notice to the applicant under s.193B(2) that they consider that the applicant has deliberately and unreasonably refused to take any step—

- that the applicant agreed to take (under s.189A(4)), or
- that was recorded by the authority as being a reasonable step for the applicant to take (under s.189A(6)).

[s.193B(2), HA 1996]

- A s.193B(2) notice must—
  - explain why the authority are giving the notice and its effect, and
  - inform the applicant that s/he has a right to request a review of the authority's decision to give the notice and of the time limit for making the review request.

[s.193B(3), HA 1996]

- Before giving a s.193B notice to the applicant, the authority must ensure that
  - the authority have given a "relevant warning" to the applicant, and
  - a reasonable period has elapsed since the warning was given.

[s.193B(4), HA 1996]

- A "relevant warning" means a prior notice—
  - given by the authority to the applicant after the applicant has deliberately and unreasonably refused to take any of the steps mentioned above
  - that warns the applicant that, if s/he deliberately and unreasonably refuses to take any such step after receiving the notice, the authority intend to give the further notice under s.193B(2)
  - that explains the consequences of such a notice being given to the applicant.

[s.193B(5), HA 1996]

What amounts to a "deliberate and unreasonable refusal to co-operate"?

S.193B(6) provides that, in deciding whether a refusal by the applicant is unreasonable, the authority must have regard to the particular circumstances and needs of the applicant (whether identified in the authority's assessment of the applicant's case under section 189A or not).

Procedure for serving notices under s.193B

Reg 1 of the **Homelessness (Review Procedure etc.) Regulations 2018** requires every authority to determine their procedure to be followed in connection with notices under section 193B(2).

Reg 2 provides that a decision to give a notice under section 193B(2) must be —

(a) made by an officer of that local housing authority, and

(b) authorised by an "appropriate person", who must be a person of at least equivalent seniority to the first officer and who
- is of at least equivalent seniority to him/her;
- works for that local housing authority or another department of the same authority; and
- was not involved in the decision to give the notice.

Section 193C: Consequences of a s.193B `refusal to co-operate' notice

Section 193C deals with the consequences of a notice stating that the applicant has "deliberately and unreasonably refused to co-operate" under section 193B(2). Those consequences are:

- The authority's prevention and/or relief duties under section 189B(2) or 195(2) come to an end.

[s.193C (2), HA 1996]

- Where the authority are satisfied that the applicant is homeless, eligible for assistance and has a priority need, and not homeless intentionally, section 193 (the main housing duty) will not apply, but the authority is subject to a limited duty under s.193C(4) to secure that accommodation is available for the applicant.

[s.193C(4), HA 1996]

- The limited duty under s.193C(4) is discharged if the applicant, having been informed of the possible consequences of refusal or acceptance and of his/her right to request a review of the suitability of the accommodation, refuses or accepts—
  - a final accommodation offer, or
  - a final Part 6 offer.

[s.193B(6), HA 1996]

- The authority will also cease to be subject to the s.193C(4) duty if the applicant—
  - ceases to be eligible for assistance;
  - becomes homeless intentionally from accommodation made available for his/her occupation;
  - accepts an offer of an assured tenancy from a private landlord; or
  - otherwise voluntarily ceases to occupy, as the applicant's only or principal home, the accommodation made available for his/her occupation.

[new s.193B(5), HA 1996]

- The authority may not approve a final accommodation offer, or make a final Part 6 offer, unless they are satisfied that the accommodation is suitable for the applicant.

[new s.193B(9), HA 1996]

- See Section K below for the enhanced suitability standard which applies to final accommodation offers.

I Reviews of decisions made under the new duties

S.9 HRA 2017 amends section 202 of the Housing Act 1996 to give a right of review of decisions made under the new prevention and relief duties, together with other decisions in relation to refusal of a final accommodation offer and deliberate and unreasonable refusal to co-operate.

In addition to the decisions already within the scope of section 202 reviews, the right of review will extend to the following decisions:

- any decision of an authority—
  - as to the steps they are to take under s.189B [relief duty], or
  - to give notice of discharge of the relief duty.

  [s.202(1)(ba), HA 1996]

- any decision of an authority to give notice to the applicant under section 193B(2) [notice given to those who deliberately and unreasonably refuse to cooperate].

  [s.202(1)(bb), HA 1996]

- any decision of an authority—
  - as to the steps they are to take under s.195(2) [prevention duty], or
  - to give notice of discharge of the prevention duty.

  [s.202(1)(bc), HA 1996]

- any decision of an authority as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A or 193C).

  [s.202(1)(h), HA 1996]

An applicant may request a review of the suitability of the accommodation offered whether or not s/he has accepted the offer.

[s.202(1B), HA 1996]

The **Homelessness (Review Procedure etc.) Regulations 2018** give effect to these changes. These regulations replace the existing Allocation of Housing and Homelessness (Review Procedures) Regulations 1999, which are revoked.

The procedure for carrying out a review remains the same as now, notably:

- The authority must notify the applicant that s/he, or someone acting on his/her behalf, may make representations in writing to the authority in connection with the review, and must inform him/her of the procedure to be followed in connection with the review.

- The officer making the decision on the review must be someone who was not involved in the original decision, and who is senior to the officer who made the original decision.

- The reviewer must consider any representations made by or on behalf of the applicant.

- Under regulation 7 (which replicates the former reg 8 in the 1999 Regulations), if the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer must notify the applicant—
  - that the reviewer is so minded and the reasons why, and
  - that A, or someone acting on A's behalf, may make representations to the reviewer orally or in writing, or both orally and in writing.

Time limits on a review

The periods within which notice of the decision on a review must be given to the applicant in respect of most decisions is still ***eight weeks***.

However, the period is shorter where the original decision which is the subject of the review concerns —

- the "reasonable steps" which the authority are to take under the Prevention duty or the Relief duty; or
- a decision to bring the Prevention duty to an end on any of the grounds specified in s.195(8); or
- a decision to give notice to the applicant under s.193B that s/he has deliberately and unreasonably refused to co-operate, and the effect of that notice is to bring the Prevention duty to an end.

In each of the above cases, the revew must be completed within ***three weeks*** from the day on which the request for the review was made, or where the applicant makes representations under regulation 7 (see above), from the date on which those representations are received

Where the review concerns whether the conditions for a local connection referral are met and the review is carried out by the notifying authority and the notified authority, the time limit for review is ten weeks from the day on which the request for the review is made,

The time limit for completion of the review may be extended in any case if the reviewer and the applicant agree in writing.

J Duty of public authority to refer cases to local housing authority (s.213B)

Specified public bodies such as prisons, job centres and social services, must notify the local housing authority if they believe that someone may be either homeless or at risk of homelessness, but only with the consent of that person.

Section 213B HA 1996 (inserted by s.10, HRA 2017 with effect from 1 October 2018) applies to all public authorities specified in regulations if they consider that a person in England in respect of whom they exercise functions may be homeless or at risk of becoming homeless. In those circumstances the public authority must ask that person to

agree to a local housing authority being notified and, provided the person agrees, notify that housing authority and provide them with the person's contact details.

- The duty applies if a specified public authority considers that a person in relation to whom the authority exercises functions is or may be homeless or threatened with homelessness.

  [s.213B(1), HA 1996]

- The specified public authority must ask the person to agree to the authority notifying a local housing authority of—
  - their opinion about his/her actual or threatened homelessness, and
  - how s/he may be contacted by the local housing authority.

  [s.213B(1), HA 1996]

- If the person concerned
  - agrees to the specified public authority making the notification, and
  - identifies a local housing authority in England to which the person would like the notification to be made,

  the specified public authority must notify that housing authority of the matters mentioned above.

  [s.213B(3), HA 1996]

A "public authority" means a person (other than a local housing authority) who has functions of a public nature.

A "specified public authority" means a public authority specified, or of a description specified, in regulations made by the Secretary of State.

The public authorities which are subject to the referral duty are set out in the Schedule to the **Homelessness (Review Procedure etc.) Regulations 2018**, as follows:

- prisons
- youth offender institutions
- secure training centres
- secure colleges
- youth offending teams
- probation services (including community rehabilitation companies)
- Jobcentre Plus
- social service authorities
- emergency departments
- urgent treatment centres
- hospitals in their function of providing inpatient care
- the regular armed forces.

Extracts from the Code of Guidance

4.7 It is recommended that housing authorities set up a single point of contact which public authorities can use for submitting referrals. This should be shared with all relevant local agencies and be clearly accessible on the housing authority website for referrals made by public authorities in different districts

4.19 A referral made by a public authority to the housing authority under section 213B will not in itself constitute an application for assistance under Part 7, but housing authorities should always respond to any referral received.

4.20 If the housing authority's subsequent contact with the individual following receipt of the referral reveals details that provide the housing authority with reason to believe that they might be homeless or threatened with homelessness and the individual indicates they would like assistance it will trigger an application for assistance under Part 7.

MHCLG has also published specific guidance on the duty to refer: https://www.gov.uk/government/publications/homelessness-duty-to-refer/a-guide-to-the-duty-to-refer .

K Suitability of private rented sector accommodation

Section 12 HRA 2017 amends regulation 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012. Reg.3 contains the enhanced suitability requirements for a private rented sector offer, following the amendments made by the Localism Act 2011.

Accordingly, the 2012 Suitability Order now provides that the suitability conditions in reg 3 (eg, accommodation in reasonable physical condition; gas safety certificate; landlord to be a fit and proper person; written tenancy agreement which the authority considers to be adequate, etc) now apply for the following purposes:

- determining, in accordance with section 193(7F), whether an authority may approve a private rented sector offer;
- determining whether an authority may approve a "final accommodation offer" made by a private landlord (offer made at relief stage or following refusal to co-operate);
- determining whether any accommodation secured from a private landlord for a person in priority need by an authority in discharge of their functions under section 195(2) [prevention duty] or section 189B(2) [relief duty] is suitable.

[s.12(4), HRA 2017]

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