

Homelessness Law

A brief overview



LEGAL FRAMEWORK

Part 6- Allocations- Part 7 Homelessness

Council must provide accommodation to those who are ;-

- Eligible
- In priority need
- Homeless (or threatened with homelessness)
- Unintentionally homeless;-
- And if the above 4 are satisfied, those who also have a local connection to the borough

Applications and Enquires

1. A Low Threshold (S188 of the 1996 Housing Act)
2. Gate-keeping
3. Enquiries
4. Notification of decision (S184)

ELIGIBILITY



ELIGIBILITY

1. Persons not subject **to** immigration control (PSIC)- Those who do not need leave to enter or remain in the UK
2. Persons subject to immigration control but re-included-Refugees and those with Leave to Remain without condition.
3. Persons not subject to immigration control but without a “right to reside”

Homelessness (S175)

A person is homeless if

- He has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he is lawfully entitled to occupy —
- He has accommodation but he cannot secure entry to it or if it is mobile he has no place where he is lawfully entitled to place it
- Even though he has accommodation which he is lawfully entitled to occupy it would not be reasonable for him to continue to occupy.
- A person is threatened with homelessness if it is likely that he will become homeless within 28 days.
- He cannot occupy it because of threats of violence

Homelessness – Violence

- It is not reasonable for a person to continue to occupy accommodation if “it is probable that this will lead to domestic violence or other violence against him or her or against any person who normally resides with him/her as a member of his or her family, or any person who might reasonably be expected to reside with him or her. (s177 Housing Act 1996)
- Violence means violence from another person or threats of violence from another person which are likely to be carried out. Domestic violence is not limited to physical contact but includes threatening or intimidating behaviour and any other forms of abuse which directly or indirectly may give rise to a risk of harm: *Yemshaw v Hounslow LBC* [2011] UKSC 3

PRIORITY NEED

- The following have a priority need for accommodation—
- - a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
 - a person with whom dependent children reside or might reasonably be expected to reside;
 - a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
 - a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
- (Section 189 Housing Act 1996)

SINGLE PEOPLE WITHOUT DEPENDENT CHILDREN

- Single people or people without dependent children are not in priority need unless they are **vulnerable** as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside.

What is vulnerable?

Hotak/Kanu v London Borough of Southwark 2015 UKSC

Previous case law- now overruled

New test-

- Vulnerability refers to vulnerability when homeless (Para 37)
- The assessment must take into account all the applicant's circumstances (38)
- In assessing vulnerability, the authority must disregard their resources and the burden of homeless peoples (39)
- Authorities should not use the words “street homeless”, “ fend for oneself” in decisions and neither should they rely on statistics for definitions of the “ordinary homeless person” not refer to statistics
- An Applicant is vulnerable for the purposes of priority need if they are “significantly more vulnerable than the ordinary person who is in need of accommodation as a result of being rendered homeless either viewed nationally or in the context of the local authority's area (53-60)

Vulnerability -Continued

- An applicant who would otherwise be vulnerable might not be vulnerable if when homeless, he would be provided with support and care by a third party, but this principle must be applied with considerable circumspection.(Para 61) The question is case specific and the fact that they may be substantial third party support does not necessarily mean that the applicant will not be vulnerable.
- At each stage of the decision making process, the local authority must bear in mind its obligations under the public sector Equality Duty (PSED) and must therefore focus on
 - Whether the applicant is under a disability (or other relevant protected characteristic)
 - The extent of the disability
 - The likely effect of the disability when taken together with other features on the applicant when homeless
 - Whether the applicant is as a result “vulnerable” (79)

Post Hotak

- Need to define vulnerability in decision letter
- What does significant mean- More than minor or trivial or of real and significant extent? (*Butt v Hackney*)
- Need to have regard to all protected characteristics (*SS v Waltham Forest*)
- Third Party Support- proper enquiries needed (*Hossieni v Westminster, Barrett v Westminster*)

Intentionally Homeless

- A person becomes homeless intentionally if he
- a. deliberately does or fails to do anything
 - b. in consequence of which
 - c. he ceases to occupy accommodation
 - d. which is available for his occupation and
 - e. which it would have been reasonable for him to continue to occupy.

(S191)

All 5 elements need to be made out

Intentionality

1. Rent/Mortgage Arrears- Enquiries to be made into affordability- but see *Samuels*; other benefits apart from Housing Benefit can be taken into account
2. Relationship Breakdown
3. Applications by innocent party
4. Settled accommodation- important to establish what last settled accommodation was as can only be intentionally homeless from that accommodation.
5. Breaking the chain of causation
6. A person is not intentionally homeless if they make a stupid but honest mistake- Nelsonian blindness is required.

Local Connection

Only to be invoked if duty accepted

No connection if risk of violence in other district

Person has a local connection with the district of a local housing authority if he has a connection with it—

- because he is, or in the past was, normally resident there, and that residence is or was of his own choice,
- because he is employed there,
- because of family associations, or
- because of special circumstances.

Discharge of Duty

- The full duty
- Ambiguity of the word “discharge”.
- How the duty comes to an end
 - If the applicant accept an offer of permanent accommodation: either a secure tenancy provided through the council’s lettings scheme or an assured tenancy from a Housing Association
 - In certain circumstances, the council can discharge its duty by an offer of an assured shorthold tenancy in the private sector, providing certain conditions are met. These are dealt with below.
 - If the applicant refuse an offer of suitable temporary accommodation
 - If the applicant loses the temporary accommodation provided by the council as a result of your own fault (i.e., ‘intentionally’)
 - If the applicant voluntarily ceases to occupy the temporary accommodation provided by the council as your main home
 - If the applicant refuses a final offer of suitable permanent accommodation, where they had been warned in advance in writing that this was to be your final offer

Discharge (Cont)

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Discharge into the private sector

- Before 9 November 2012, the local authority could only discharge its duty by an offer of accommodation in the private sector if that offer was a "qualifying" offer and met certain conditions. Essentially it had to be made explicit to the applicant that they did not have to accept the offer and that if they did it was clear that it had been explained that the duty was coming to an end.
- The old rules still apply to anyone accepted for the main duty before 9 November 2012.

Discharge into the Private sector- new rules

- Since 9 November 2012, the applicant has to accept an offer in the private sector if it meets certain conditions. These are
 - a. The tenancy must be for a period of at least 12 months.
 - b. The applicant must be informed of the consequences of refusal
 - c. The applicant must be informed of their right to a review
 - d. The accommodation must be suitable for the needs of the applicant and their family.
 - e. As well as the general rules regarding suitability there are rules specific to offers of private accommodation. These are set out below,
- If an applicant accepts an offer in the private sector and then becomes homeless again within 2 years he can reapply.

Suitability

- The location of the property; the location of medical and social support networks are relevant
- The duration of The Applicant's likely occupation
- The space and arrangement of the property
- The standard of accommodation: while the Council are allowed to take into account the large demand for Council housing, and that the temporary accommodation may not be of a high standard as a result, there is a minimal standard below which the accommodation must not fall
- Medical needs

Offers in the Private Sector

- *"For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996, accommodation shall not be regarded as suitable where one or more of the following apply--*
- *(a) the local housing authority are of the view that the accommodation is not in a reasonable physical condition;*
- *(b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994;*
- *(c) the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;*
- *(d) the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;*

Private sector Offers (2)

- *(e) the local housing authority are of the view that the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has:*
 - *(i) committed any offence involving fraud or other dishonesty, or violence or illegal drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);*
 - *(ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying on of any business;*
 - *(iii) contravened any provision of the law relating to housing (including landlord or tenant law); or*
 - *(iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004;*

Private Sector Offers- (3)

-) *the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;*
- (g) *the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;*
- (h) *the accommodation is or forms part of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;*
- (i) *the accommodation is or forms part of relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998; or*
- (j) *the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate."*

Suitability - Out of London placements

- Duty under Section 206; provide accommodation in their own area “so far as reasonably practicable”
- Nzolameso (SC2015)- Onus is on local authority to provide evidence accommodation not available in own area. See also R v Islington ota E (2017) EWHC 1440 (Admin) on the need to carry out a proper evaluation of the impact on the move on the children’s education.

Suitability Reviews

- The Applicant is entitled to request a review of any decision that the accommodation offered to them is unsuitable. **If The Applicant is made an offer of accommodation- permanent or temporary- They should accept it, move in and ask for a review.**
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- If they win the review the council will move them. If they lose they will still have the temporary accommodation.
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- If they refuse and do not move, they will not be made an offer. The Local authority will discharge their duty and take steps to evict them. So not only will they not be made another offer they will become homeless again.
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- The Applicant must ask for a review within 21 days of the offer being made. Acceptance does not indicate agreement that the property is suitable,

Review and Appeal Rights

- **Review of Homelessness Decisions**
- An applicant has the right to request a review of any negative homelessness decision. A review must be made within 21 days of receipt of the decision. The Local Authority then must refer the review to a more senior officer to the original decision maker. The Local Authority has 56 days to conclude the review unless an extension is agreed. The right to review covers all Part 7 decisions except those relating to accommodation pending review or appeal (which can only be challenged by way of Judicial Review Proceedings).

Accommodation pending review

- The Local Authority has a power rather than a duty to continue to provide accommodation pending review – discretion needs to be exercised lawfully and negative decisions can be subject to Judicial Review. ***R v Camden ex p Mohammed [1997]*** - The Local Authority must properly consider the strength of the review, the circumstances of the applicant and whether there is any new information when considering whether to extend temporary accommodation pending review. A refusal to provide accommodation is challengeable by way of Judicial Review but courts are often reluctant to grant relief often for fear of pre-empting the decision on review.

Appeal to the County Court

- There is a right of appeal against negative review decision to the County Court. Appeals must be issued within 21 days of receipt of the decision and are only on a matter of law. Appeals are heard in the County Court but are on the basis of Judicial Review.

FRESH APPLICATIONS

- Low Threshold- need to show only a fairly minor change of circumstances
- Change in medical condition can trigger duty

Legal Aid

- Available for homelessness assistance and appeals in County Court
- Available for possession and eviction
- In restricted cases for disrepair

Changes

- The Homelessness Reduction Act 2017 comes into force in April 2018 . It preserves the main homelessness duty but adds a number of obligations to those who are not in priority need. These are dealt with separately