Homelessness Law

A Brief Overview

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LEGAL FRAMEWORK

1. Part 6 of the Housing Act sets out the rules for housing Allocations – “permanent” accommodation- (or more colloquially the “waiting list”). Part 7 sets out the rules for the homelessness applications- emergency and “temporary” accommodation. Both parts were substantially amended by the Homelessness Act 2002 and the Localism Act 2011.

2. The homelessness provisions are contained in part 7 Housing Act 1996. In addition to the Act there is statutory guidance: The Homelessness Code of Guidance for Councils - July 2006.

3. In brief, local authorities must provide suitable temporary 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 ENQUIRIES

Applications – a low threshold

4. If the Local Housing Authority has reason to believe that an applicant may be homeless, eligible for assistance and in priority need they are under a statutory obligation to secure suitable interim accommodation pending a decision on the application.

5. The relevant statute is s188 (1) of the Housing Act 1996

   "Interim duty to accommodate in case of apparent priority need.

   (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 shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part"

6. The words used in the statute (underlined) indicate that the threshold for the duty to be triggered is a low one: *Gibbons v Bury MBC [2010] EWCA Civ 327, Mohammed v Manek and another (1995) 27 HLR 439.*

7. A blanket policy that required a decision on an applicant's homelessness application and request for interim temporary accommodation to be made the same day would be unlawful: *R (Khazia, Ibrahim, Azizi and Mirghani) v Birmingham CC* [2010] EWHC 2576 (Admin) QBD

   Gate-keeping

8. The duty cannot be postponed. If the local authority have reason to believe that an applicant is homeless, eligible and in priority need they must accept an application and they must *immediately* provide accommodation pending decision.

9. Many local authorities indulge in “gate keeping”- they either do not accept an application in the first place (and will often direct applicants to private letting schemes) or ask for further evidence- typically of homelessness or residence in the borough. This is unlawful.

10. They will often refuse to accept an application and tell an applicant that they need to apply to another local authority where they have a stronger local connection – this is also unlawful. The Local Connection provisions apply at the **end** of the application and are only applicable where a full duty has been accepted.

11. All these practices can be challenged by way of Judicial Review

Enquiries

12. Once a homelessness application has been made the Local Authority is under a duty to make sufficient enquiries to establish whether a duty is owed to the applicant. A decision must be made in writing and give the applicant together with information in regard to his/her right to request a review.

13. Section 184 Housing Act 1996:

“(3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.

(4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.

(5 A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).

(6)Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf."

14. It should be noted that while an authority can defer the homelessness interview it cannot defer the duty to make enquiries or to provide interim accommodation. Similarly the date of the application is the date of the approach not the date of the interview.

15. The Code of Guidance states that enquiries should be completed within 33 working days, but in practice this can be extended if more investigation is required. Enforcement of this time limit by way of Judicial Review is difficult

ELIGIBILTY

16. This is an immigration test.[1] Applicants fall into three classes

16.1. Persons who are not subject to immigration control (that is do not require leave to enter or remain in the UK) who are fully eligible.

These are

a. British Citizens,
b. Commonwealth Citizens with right of abode in the UK,
c. EU or EEA nationals who have a right to reside.
d. Certain classes of people exempt from immigration control (Diplomats and military personnel
e. Irish citizens with Common Travel Area entitlement

16.2. People who are subject to immigration control but who are re-included

These include refugees and those with leave to remain which is not subject to any condition prohibiting them from recourse to public funds. In practice recognition of this group does not cause significant problems.

16.3. Those who are not subject to immigration control but are excluded.

These are British and EU/EEA citizens who are not habitually resident and EU/EEA citizens without a right to reside. The "right to reside" in the UK and what constitutes the exercise of treaty rights are subject to regulations and dispute. Eligibility for EU nationals is a hugely complex and changing issue and specialist advice would be required to assist an applicant who has been refused as assistance on the basis of eligibility.

[1] Allocation of Housing and Homelessness (Eligibility) Regulations 2006/1294

HOMELESSNESS AND THREATENED WITH HOMELESSNESS

Homelessness is defined in S175 of the Housing Act 1996

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

i. is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, has an express or implied licence to occupy, or

ii. occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

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

i. he cannot secure entry to it, or

ii. It consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

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

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

Not reasonable to continue to occupy

18. A person is considered homeless if they have accommodation but that it is not reasonable to continue to occupy the accommodation. This may be due to the condition or overcrowding or other reason.

Violence

19. 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)

20. 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

21. The following have a priority need for accommodation—

a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
b) a person with whom dependent children reside or might reasonably be expected to reside;
c) 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;
d) 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)

In practice the group who face the greatest obstacles are single people without dependent children.

Single People/People without dependent children

22. 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.

23. The Act gives no further guidance to what vulnerable means and does not have any comparator.

Vulnerability

24. On 13 May 2015, the Supreme Court gave its judgment in **Hotak and Kanu v LB Southwark (2015) UKSC** on the meaning of vulnerability.

Previously Case law has led to the Pereira test from the Court of Appeal decision: ***R v Camden ex p Pereira*** **[1998]**

"...The council must ask itself whether Mr Pereira is, when homeless, less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable would be able to cope without harmful effects."

This test is included in the current Homelessness Code of Guidance for Local Authorities. A later Court of Appeal case *Osmani v Camden* [2004] added "when street homeless".

As a result of the judgment in Hotak, Lord Neuberger held that this was no longer good law and that: -

a. Vulnerability refers to vulnerability when homeless (Para 37)

b. The assessment must take into account all the applicant's circumstances (38)
c. In assessing vulnerability, the authority must disregard their resources and the burden of homeless peoples (39)
d. 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
e. 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)
f. 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.
g. 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
    i. Whether the applicant is under a disability (or other relevant protected characteristic)
    ii. The extent of the disability
    iii. The likely effect of the disability when taken together with other features on the applicant when homeless
    iv. Whether the applicant is as a result "vulnerable" (79)

Post Hotak

25. Hotak was intended to definitively clarify the law. Unfortunately, it has failed to do so. Local authorities continue to refuse virtually all applications from the single

homeless usually on the basis that they are not *significantly* more vulnerable than the ordinary person when homeless.

26. Since the judgment, there have been a number of cases in the County Courts (but not in the Court of Appeal). In every single one, the Appellant has won.

27. In **HB v Haringey (Dec 2015- Jan 2016 Legal Action**), the court quashed the decision because the review officer did not define vulnerability or significantly, or indeed even consider whether the appellant had any vulnerability at all.

28. In **Mohammed v Southwark (LAG Sep 2016),** the Appellant suffered from moderate to severe depression exacerbated by the murder of his brother. The local authority held that he was not significantly more vulnerable without making enquiries of his therapist or obtaining its own medical evidence. The court held by analogy with the Equality Act that significantly meant in a way that is more than minor or trivial (a formulation also used by Lord Neuberger) and that any reasonable authority complying with the PSED would have made further enquiries.

29. In **SS v Waltham Forest (LAG Nov 2016**), the appellant was a victim of domestic violence who suffered from severe mental and physical health problems. The court quashed the decision not only on the basis that the council had not taken into account the likely effect of the withdrawal of specialist accommodation but also that it had only considered the protected characteristic of disability and not of gender.

30. In **Butt v Hackney**[2] the appeal succeeded because the local authority had done no more than repeat the requirements of the PSED as a "high minded mantra" and that in quoting the requirements of S149 " t*he reviewing officer has taken*

[2] http://431bj62hscf91kqmgj258yg6-wpengine.netdna-ssl.com/wp-content/uploads/2016/09/B40CL369-BUTT-LB-OF-HACKNEY.pdf

himself to the well but there is no indication that he has drunk from it. In my judgment that is sufficient to demonstrate error of law" (Para 59).

31. The judgment also distinguishes between two meanings of significant

"The word significantly is a word with at least two potential meanings or shades of meaning. It could mean, as I have indicated, 'something more than trifling' or 'more than insignificant', or it could mean 'something of real importance' or 'of real and significant extent'."

32. HHJ Luba indicated (without fully committing to do so), that he favoured the wider definition, that is more than insignificant but found against the local authority on the more basic ground that the reviewing officer had failed to indicate what interpretation he favoured. [3]

33. In relation to third party support, the local authority lost the appeal in **Hosseini v Westminster (LAG Oct 2015**) because they had failed to make enquiries in relation to the extent of support offered by the appellant's son. In **Barrett v Westminster CC (LAG Feb 2016)**, the same authority decided that that a 58 year old woman suffering from various conditions including anorexia, severe IBS and panic attacks and who had spent two years sleeping on buses and living in hostels was not vulnerable because the condition could be minimized by the use of toilet and laundry facilities at day centres. The court upheld the appeal because the council had not considered whether the facilities would be private or of her difficulties as a single woman at night and no decision as to whether she was disabled.

34. There is likely to be much more litigation on this point.

[3] Para 68-69

Other Categories of Priority Need

35. This definition of priority need was expanded in England by the **2002 Homelessness (Priority Need for Accommodation) (England) Order** to include those:
    a. aged 16 and 17 years old
    b. aged under 21 years old who were in local authority care between the ages of 16 and 18
    c. aged 21 and over who are vulnerable as a result of leaving local authority care
    d. vulnerable as a result of leaving the armed forces
    e. vulnerable as a result of leaving prison
    f. vulnerable as a result of fleeing domestic violence or the threat of domestic violence

36. The intention is regard to those leaving prison was to assist them to find accommodation and so help in their rehabilitation. The Order however made little difference for ex-prisoners as there was no change in the intentionality rules for those leaving prison and as a result many homeless ex-prisoners are found to be intentionally homeless (on the basis that they undertook a deliberate act – the crime – which led to them losing their accommodation) by Local Authorities.

INTENTIONALLY HOMELESS

37. 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.

For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate. (Section 191 Housing Act 1996)

For a finding of intentional homelessness, all elements of the test need to be made out

<u>Eviction due to Rent or Mortgage Arrears</u>

38. As a result of the intentional homelessness provision Authorities will look closely at why the applicant lost their last settled accommodation.

39. If the loss of accommodation was caused by arrears then the review officer will look at whether the property was affordable. If property is not affordable it would not be reasonable to continue to occupy it and therefore The Applicant cannot be found to be intentionally homeless for having lost the accommodation. The decision however is up to the review officer – subject to the normal Judicial Review grounds within an appeal. The Local Authority should look at income and expenditure and rights to benefits and seek an explanation as to why the property was or became unaffordable. Local Authorities tend to consider circumstances where if the income available after housing costs was equal to or above benefit levels then they consider the accommodation affordable.

40. In *Farah v Hillingdon* [2014] CoA – Ms Farah was an assured shorthold tenant with three children. She was physically disabled and much of her expenditure related to her disability and to her children. She was evicted from her home having been unable to keep up with the rent. Hillingdon analysed her income and expenditure and considered that her property had been affordable for her. The decision maker accepted that on the figures the property was unaffordable but that some of the figures for expenditure had been exaggerated. It decided that the property would have been affordable had she prioritised her rent payments over non-essential and secondary financial liabilities – but gave no specific details. Ms Farah's appeal to the County Court was dismissed. Her appeal to the Court of Appeal was allowed as the review decision "had failed to specify what expenditure should have postponed and it was not a case where sums spent on food clothing and taxis were so large or excessive as to require no explanation for being treated as excessive. The decision failed to give adequate reasons and was quashed.

41. In **Samuels v Birmingham City Council (2015) EWCA 1051**, the Appellant lost her accommodation because Housing Benefit was insufficient to pay the rent. She argued that the property was unaffordable because her other benefits were intended for purposes other than Housing Costs. The court held that in making a decision as to affordability benefits other than Housing Benefit can be taken into account

<u>Relationship breakdown</u>

42. In the absence of violence applications will often be rejected on the basis that it was reasonable to have continued to live at the property after the relationship ended and that leaving is a deliberate act leading to intentional homelessness.

<u>Applications by the "innocent party"</u>

43. Where the partner of an applicant has gambled or spent the income on drink rather than on rent the Local Authority will consider whether the applicant had acquiesced is the deliberate act of the partner in considering intentionality.

Settled accommodation

44. The Authority will look back to the last settled accommodation when considering the issue of intentionality. Settled accommodation is a matter of intention and degree. A licence can be settled if the intention of the parties was for the accommodation to be long term.

Breaking the chain of causation

45. If an applicant has been intentionally homeless that will continue until the applicant has new settled accommodation. If the applicant has had no settled accommodation, then an act many years earlier may lead to an intentionality decision where as new settled accommodation that is lost in circumstances where the applicant cannot be found to be intentionally homeless will break the chain.

46. A person is not intentionally homeless if they make a stupid but honest mistake- "Nelsonian" blindness is required. See *Trindade v LB Hackney* (2017 EWCA Civ 942) for a more extensive discussion on the definition of an act or omission in good faith on the part of a person who was unaware of any relevant fact". The applicant has to have an active belief in a specific state of affairs (not just an aspiration) and good faith refers to housing prospects not to an applicant's actions in general.

LOCAL CONNECTION

47. Once a Local Authority has considered a homelessness application and accepted that a full housing duty is owed to the applicant the Local Authority can refer the application to another Local Authority where the conditions for referral set out in s198 Housing Act 1996 are met. They are:

    ```*'Neither the applicant nor any person who might reasonably be expected to live with the applicant has a local connection with the district of the authority to which the application was made, and the applicant or any person who might reasonably be expected to live with the applicant has a local connection with the other district"*

48. A referral should not be made where there has been violence or is a risk of violence in the other district.

49. A person has a local connection with the district of a local housing authority if he has a connection with it—

    a. because he is, or in the past was, normally resident there, and that residence is or was of his own choice,
    b. because he is employed there,
    c. because of family associations, or
    d. because of special circumstances.
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DISCHARGE OF DUTY

50. An applicant who satisfies the 5 tests above will be owed the "full" or "main "homelessness duty under S193 (2) of the Act. (Other more limited duties are owed to applicants who do not meet all the criteria) This means that the authority has a duty to secure suitable accommodation for the Applicant and their household. That accommodation can be in the private or public sector, providing that it is suitable.

Confusingly, the word "discharge" is used in this context to mean two different things; the performance of the duty and also its cessation.

The end of the duty

51. The duty to secure accommodation will only come to an end in one of the following circumstances:

a. 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
b. 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.
c. If the applicant refuse an offer of suitable temporary accommodation
d. If the applicant loses the temporary accommodation provided by the council as a result of your own fault (i.e., 'intentionally')
e. If the applicant voluntarily ceases to occupy the temporary accommodation provided by the council as your main home
f. 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 into the private sector

52. 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.

53. The old rules still apply to anyone accepted for the main duty before 9 November 2012.

54. 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,

55. If an applicant accepts an offer in the private sector and then becomes homeless again within 2 years he can reapply.

SUITABILITY

50. Any accommodation (permanent or temporary) offered to The Applicant must be *suitable*. The Council has to consider whether the accommodation offered is affordable. They should also consider a number of other factors. These include:

a. The location of the property; the location of medical and social support networks are relevant
b. The duration of The Applicant's likely occupation
c. The space and arrangement of the property
d. 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
e. Medical needs

57. On the question of whether the applicant's objections to the property need to be objectively as well as subjectively justifiable see *Poshteh v Royal Borough of Kensington and Chelsea* [2017] UKSC 36 which indicates that it should

58. In addition there are specific requirements to an offer of accommodation in the private rented sector. These are set out in Article 3 of the Homelessness (suitability of accommodation (England) Order 2012 as follows; -

> "*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;

(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;

(f) 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

58. Once a full homelessness duty is accepted. Local Authorities are under a statutory duty to provide accommodation in their own area "so far as reasonably practicable" - s208 Housing Act 1996 - and that where it is not reasonably practicable where possible to try to secure accommodation as close as possible to where the applicant was previously living.

59. The Supreme Court decided in the case of ***Westminster v Nzolameso*** **[2015]** that the placement of a homeless family from Westminster to near Milton Keynes was unlawful because the Authority had failed to take seriously their duties under s208 Housing Act 1996 and had failed to show what steps they had made to procure suitable local provision or to look for more local accommodation. The decision against Westminster was expressed in very clear terms.

60. Recent cases have supported the hard line taken in Nzolameso. In ***Forsythe Young v Redbridge (LAG Feb 2016)***, the local authority's decision that the Appellant's 5 year old child could change schools and move to Grays was quashed because the local authority's failure to make enquiries into the effect of a move on her daughter's education and whether there were any other properties even outside the borough that would better suit her needs. An appeal on similar grounds was upheld in **Begum v Tower Hamlets (LAG September 2016)**. In that case the authority had stated that the accommodation was suitable and that the children should bear the consequences of the mother's decision to continue their education in the borough. The court said that there had been an alarming failure to apply ***Nzolameso***. The recent case of *E, R (on the application of) v London Borough of Islington* [2017] EWHC 1440 (Admin) emphasizes that the council must carry out a proper evaluation of the impact of the proposed move on the children's' education and in particular how the receiving authority will protect the children's welfare.

Reviews- Suitability

61. 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.**

62. If they win the review the council will move them. If they lose they will still have the temporary accommodation.

63. 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.

64. 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

65. 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

66. 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

67. 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

62. If a homeless person has in the past made a homelessness application which was either refused or failed for some reasons there is nothing to prevent the person making a fresh application.

63. So if an application had been made some time ago and refused, or no review was sought or if the applicant is unclear as to what had happened consideration can be made as to whether it would be worth making a fresh homelessness application.

64. If a fresh application is made a Local Authority will often refuse the application on the basis that, for example: "The Applicant applied last year and were found to be intentionally homeless and there have been no change of circumstances". The House of Lords has confirmed that this is the wrong approach. In *R v Harrow LBC ex p Fahia* [1998]. The House of Lords held that "where a person has been found intentionally homeless he or she cannot make a further application based on exactly the same facts as the earlier application" but that such applications would be "very special cases" where it can be said that there was in fact no application before the Authority. Unless the application was based on exactly the same facts the Authority was bound to take the application, provide interim accommodation and make enquiries. That is not to say that a new negative decision will not be made.

65. The Court of Appeal considered this further in *Rikha Begum v Tower Hamlets LBC* [2005]. Ms Begum had rejected a suitable offer of accommodation and had returned to live with her parents. Subsequently two of her brothers, one a heroin addict, returned to live with her parents. Two years after her previous application Ms Begum made a fresh application. The Authority refuse to consider a new application arguing that there had been no material change in her circumstances. The Court said no. The Authority must consider the facts at the time of the

previous application and the current facts. Only if there are no new facts or the new facts are fanciful or trivial can the Authority reject the application. If not the Authority must accept the application. The Authority cannot investigate the accuracy of the new facts before deciding whether to take the application.

66. Applying the above it would be open to single homelessness applicant who has been previously rejected on the basis of not being in “priority need” to make a fresh application on the basis of detailed medical evidence showing why he/she was vulnerable, or showing that his/her condition had worsened since the previous application. See for example **R (Hoyte) v Southwark LBC EWHC 1665 (2016) HLR 35** where it was held that having refused a previous application on the grounds that the applicant was not in priority need, it was wrong for the local authority to refuse an application where the applicant’s GP indicated that she had changed her views.

HOUSING OUTSIDE THE HOUSING ACT

Children and Young People

67. In addition to the Housing Act 1996 there are accommodation duties to certain people under the Children Act 1989.

68. There is a duty on the local Authority under the Children Act 1989 to assess the needs of any child who may be a “Child in Need”. If the child is a child in need the Local Authority is under a duty to meet those needs which can include accommodation for the child and the child’s family.

69. Section 17 is the duty to provide support services, which can include accommodation and section 20 is a separate accommodation duty (usually used where children are taken into care).

70. The cases in which it is most appropriate are families where the main applicant has leave to remain but subject to a prohibition on recourse to public funds. In that situation the client requires detailed immigration advice on how to lift the restriction.

71. Families who have been refused support under the Housing Act 1996 on the basis of being “intentionally homeless” may be able to access temporary accommodation and support such as a rent deposit to enable them to access private sector accommodation.

72. There has been a lot of case law in this area as Local Authorities have sometimes tried to avoid supporting families with accommodation under the Children Act.

Children Leaving Care

73. The Children (Leaving Care) Act 2000 places a duty on the relevant Social Services department to provide accommodation and support to certain people. This applies to children who have been in the care of the Local Authority for at least 13 weeks between the ages of 14 years and 16 years. A looked after child should be provided with a personal advisor and a pathway plan and can be supported with education or training by the Authority to 21 years of age or in some cases to 24 years of age. During this period the Local Authority will be under a duty to ensure that the person is provided with accommodation where that person's welfare is considered as requiring accommodation. Importantly if the person is a former looked after child there is no concept of "intentionality" allowing for a discharge of any duties.

74. A former looked after child who has not received the support that he/she should have received under the Children (leaving Care) Act 200 can ask for that support and the Authority can be challenged if support is refused by way of Judicial Review.

75. This is a brief summary of a complex area. The Applicant will need to take careful instructions and to check whether the person falls within the definitions within the act of "eligible child", "relevant child" or "former relevant child" to before The Applicant pursue the matter. The Act and guidance is intended to ensure that support continues to be provided for care leavers in much the same way as a parent would continue to provide support for a child after they reach 18. It however remains very common for care leavers to be provided with a private tenancy when they reach 18 and then receive little or no further support.

76. The intention of these notes is to flag up the fact that any young person who is homeless and was formerly in the care of Social Services may be able to seek accommodation and support from Social Services either on the basis that the Department should have prepared a Pathway Plan and failed to do so or should

now prepare one and provide the person with the support and accommodation services that the assisted person needs.

Mental Health – S117

77. Anyone who has been sectioned at any time in the past under section 3 Mental Health Act 1983 is entitled to aftercare services – which includes accommodation under section 117 Mental Health Act 1983. This is a very wide and long lasting duty and importantly has no element of "intentionality" to it.

78. The definition of section 117 "after care" services has recently been amended by section 75 Care Act 2014. The amendments more closely tie the after care services to meeting the needs arising from the patient's mental disorder. See Chapter 33 the new "Mental Health Act 1983: Code of Practice 2015". The duty continues as long as the patient needs the service.

79. It remains to be seen whether the changes will lead to a more restrictive definition of the duty to ensure that the person has accommodation.

HOUSING ALLOCATIONS

80. If the Local Authority accepts a full housing duty to an applicant under s193 Housing Act 1996 they have a duty to continue to provide accommodation to the applicant.

81. The applicant can then apply for permanent accommodation under the Local Authority's Housing Allocation Scheme. Allocations of Local Authority accommodation are dealt with under Part 6 Housing Act 1996,

82. It is a criminal offence for a Local Authority to allocate housing other than in accordance with its allocation policy.

83. All Local Authorities will have an allocations policy – but each Local Authority can have different policies – so long as they comply with the legal framework of the Housing Act 1996 and now the Localism Act 2011.

84. Authorities can only allocate to "eligible persons" (as defined by Section 160ZA of the 1996 Act). Essentially the rules are the same for allocation as they are for homelessness.

85. In addition, local authorities can only allocate to "qualifying persons". In general councils are free to decide what classes of persons are "qualifying persons" but all allocation schemes must be framed so as to give a reasonable preference to the following; - (S166A (3)).

    a. people who are homeless (within the meaning of Part 7 of the 1996 Act);
    b. (people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the

Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);

c. people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
d. people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
e. people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

86. Each scheme must also take into account local authority duties under the Equality Act 2010 and must also comply with public law requirements of fairness, rationality and so on, but inside these broad guidelines, local authorities are free to frame allocation schemes as they wish.

87. Most Local Authorities operate a Choice Based Lettings Scheme. Under the scheme all applicants are give a band and can bid for properties from either the Local Authority or from Registered Social Landlords that are advertised under the Local Authority scheme.

88. The Localism Act 2011 gave powers to Local Authorities to change their Allocations Schemes. The powers have allowed Local Authorities to reduce the priority given to homelessness households, to restrict access to accommodation on the basis of local connection and time on the register, to bring in new factors for priority such as community benefit and importantly to discharge the homelessness duty into the private sector when certain criteria are met. Unless the allocations policy has been changed Local Authorities can only discharge a homelessness household by way of an offer of private sector accommodation with the agreement of the applicant.

89. Those accepted for a homelessness duty under Part 7 will therefore also be given a preference in the allocation of long-term housing. . In practice demand for

social housing so far outstrips supply that the slight preference given to the statutorily homeless is largely useless. A successful homelessness applicant must therefore be advised that in most boroughs they have no chance of being allocated permanent housing and that contrary to tabloid misrepresentation, it is a myth that presenting as homeless is a quick route to permanent housing.

RENT AND HOUSING BENEFIT

90. It is important to realise that homelessness accommodation is not free.

91. Local Authorities charge for the provision of homelessness accommodation. The charges are paid for by the tenant either directly or with the help of Housing Benefit. Interestingly they have a discretion not to do so *R (OAO Yekini) v LB Southwark* [2014] EWHC 2096 (Admin). This may be of significance in terms of the benefit cap,

92. If the rent is not paid the person can be evicted and the homelessness duty can be discharged on the basis that the assisted person has made themselves "intentionally homeless". This can be a significant issue for people in temporary homelessness accommodation as such accommodation is excluded from the Protection from Eviction Act 1977. No court order is required to evict a tenant and there is no judicial scrutiny of the reasonableness of the decision to evict. There is a right of review of the decision to discharge the duty but many people find it difficult to exercise this right.

93. Rents for Local Authority and Housing Association properties are considerably cheaper than rents in the private sector. Southwark Council rents for a two bed property are around £500.00 pcm. Housing Association rents are usually higher – around £700.00 per month for a similar property.

94. Accommodation in the Private Sector is restricted both by the Local Housing Allowance and the Benefit Cap.

95. The previous brought in considerable changes to the housing benefit scheme from 1 April 2011.

96. In particular they:

a. Reduced the level of maximum housing benefit – known as the Local Housing Allowance from 50% of the notional local rents to 30% of the notional local rents.

b. Reduced the availability of housing benefit for single people under 35 to a notional amount for a room in a shared property. (The shared accommodation rate).

c. Introduced the “spare room subsidy” or “bedroom tax” – reducing the amount of housing benefit entitlement by 14% if The Applicant have one more room than is considered to be required or 25% if The Applicant have 2. Children up to the age of 10 are expected to share a room. So a couple with two children 8 and 9 years of age in a three bed property will be considered to have a spare room and will be subject to reduced housing benefit.

d. Introduced a benefit cap of £500.00 per week. This mainly affects homeless families with three or more children due to the costs of rented homelessness accommodation. As of 7 November 2016, the cap has been further reduced to £23,000 a year in total for all benefits

97. Organisations working with the homeless such as Shelter and Crisis have been highly critical of these housing benefit changes fearing that they will lead to an increase in homelessness.

Universal Credit

98. Universal Credit is a new benefit designed to replace the main benefit system and to introduce a new way of providing financial support to those unable to work, out of work or in receipt of low pay. When Universal Credit comes in it will abolish housing benefit and bring in to play a housing charge based on the

similar rules for housing benefit but paid as part of the recipient's benefit – rather than being paid separately by the Local Authority.

99. Universal Credit will be paid monthly and directly to the claimant – and not directly to the landlord. This is intended to make the claimant take on the responsibility for paying rent themselves. "Pilot" projects by both Housing Associations and by the DWP working with Local Authorities have shown that there is likely to be a sharp rise in rent arrears and there are concerns that more vulnerable people will fall into arrears and risk losing their home.

THE AVAILABILITY OF LEGAL AID

100. The scope and availability of Civil legal Aid was greatly reduced from 1 April 2013 as a result of the Legal Aid and Sentencing of Offenders Act 2012 ("LASPO").

101. Legal Aid does remain available to assist in homelessness applications and appeals to the Court in homelessness cases.

102. Legal Aid has been withdrawn from other housing advice. (Although it remains for possession and eviction matters)

103. The Legal Aid scheme is a means tested scheme allowing those on low income (essentially benefit level income or very slightly above) to access free advice from a Legal Aid contracted housing solicitor.

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