

HOMELESSNESS

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1. DEFINITION OF HOMELESSNESS
SECTION 175 OF THE HOUSING ACT 1996

A person is homeless if she/he has no accommodation available for his/her occupation in the UK or elsewhere which he

- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court;
- (b) has an express or implied licence to occupy of
- (c) occupies as a residence by virtue of an enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession e.g. occupation order under the Family Law Act 1996.

A person is also homeless if s/he has accommodation but

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

A person shall not be treated as having accommodation unless it is accommodation that it would be reasonable for him/her to continue to occupy.

A person is threatened with homelessness if it is likely that s/he will become homeless within 28 days.

TIP: it is sometimes hard to think of yourself/your client as homeless if they have a roof over their heads. Ask if it is a roof that is available for their occupation and it is reasonable for them to continue to occupy.

Available for Occupation

Accommodation is only regarded as available for occupation if it is available for occupation by him/her together with

- (a) Any other person who normally resides with him/her as a member of his/her family, or
- (b) Any other person who might reasonably be expected to reside with him/her.

“Reasonable to continue to Occupy”

In deciding whether it is reasonable for a person to continue to occupy accommodation, a Local Authority may have regard to the “general circumstances prevailing in relation to housing” within its area (s177). All of the circumstances should be considered but particularly the following factors:

AFFORDABILITY - test set out in Homelessness (Suitability of Accommodation) Order 1996. Must take into account applicant’s financial resources, cost of accommodation and the applicant’s other reasonable living expenses. See **R v Hillingdon BC ex parte Tinn (1988) 20 HLR 305**.

PHYSICAL CONDITIONS – See **R v Sefton MBC ex parte Healiss (1994) 27 HLR 34 QBD** – note reference to the HHSRS may be relevant. Possibly obtain expert evidence at an early stage?

OVERCROWDING - local authority will normally have its own definition as well as the statutory definition in Part X of the Housing Act 1985

TYPE OF ACCOMMODATION- Crisis accommodation not to be regarded as suitable in long term. Also see **R v Royal Borough of Kensington and Chelsea ex parte Kassam (1994)**

VIOLENCE (INCLUDING THREATS OF VIOLENCE)- It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic OR OTHER violence against him/her or a person who normally resides with him/her or any other person who might reasonably be expected to reside with him/her (s177). Domestic violence means violence from a person from with whom s/he is “associated” with or threats of violence from such a person which are likely to be carried out. Associated person is defined in s178. See **Bond v Leicester CC [2002] HLR 6**.

TIP: local authorities are reluctant to accept violence (other than domestic violence) as a reason to leave accommodation. They may say that their anti-social behaviour processes will deal with it. There must be reason to believe that this will solve the problem. Practical steps include providing Police records (eg letters about being a witness in Court) and if there is a friendly officer, a letter from the Police will go a long way.

SECURITY OF TENURE – see **R v LB of Croydon ex parte Jarvis (1994) 26 HLR 194 QBD** and **R v LB Newham ex parte Ugbo (1994) 26 HLR 263 QBD**

2. APPLICATIONS AND INQUIRIES

Homelessness applications made to Local Housing Authority - can be to any authority the Applicant chooses, although would normally be to local authority.

There is no set format for a homelessness application. Most authorities will have prescribed forms which they prefer to use for applications although an application does not have to be in writing- can be a transfer application. Provided a conversation puts the authority on notice that accommodation is sought and gives, or ought to give, the authority reason to believe the applicant is homeless or threatened with homeless then it should be considered to be valid: *R v Chiltern DC ex p Roberts* (1990)

TIP: a homeless application can be a letter written by solicitors or CAB on the applicant's behalf.

Applications can only be made by individuals, not by couples and families.

There is no bar on repeat applications being made. If the authority has reason to believe the applicant may be homeless or threatened with being homeless the application must be accepted. Duty to take application even if there has been an earlier one - local authority cannot refuse unless the new application is based on *exactly* the same facts (earlier case of *Fabia* that there must be a material change of circumstances watered down). If there has been no factual change in circumstances however, the authority need not re-investigate and can rely on its previous decision: *Rikha Begum v Tower Hamlets* [2005] HLR 34

As soon as the application is received the authority must make inquiries as to whether the applicant is eligible for assistance and if so, whether any duty is owed.

Local authority cannot defer making decision to obtain an advantage: *Robinson v Brent LBC*.

Section 184 Duty to make Enquiries

If a Local Authority has reason to believe that a person may be homeless or threatened with homelessness, they shall make enquiries as to whether s/he is eligible for assistance and if so, what duty (if any) is owed to him/her. They may also enquire if the Applicant has a local connection with any other district of another authority in England, Scotland or Wales.

The authority has to carry out sufficient inquiries to satisfy itself as to whether the applicant is eligible and then as to whether any duty is owed. The applicant does not have to prove his case. The burden lies on the authority to make appropriate inquiries which should be pursued "rigorously and fairly" but there is no duty to conduct "CID type inquiries". Matters which may weigh against the applicant ought to be put to him/her in order that they may have an opportunity to explain: *R v Gravesham BC. ex p Winchester* (1986).

On completion of their enquiries, the Local Authority must notify the Applicant of their decision and reasons (including reason for referral to another authority if applicable).

If any matter is decided against the applicant, reasons must be given: section 184. Reasons must be proper, intelligible and adequate and relate to the substantive issues raised by the applicant. The applicant should clearly be able to understand why s/he has been unsuccessful on an issue and enable him/her to decide whether to request a review and on what basis.

NOTE: the decision letter must state that the Applicant has a right to request a review and the time limit for doing so.

TIP: when making representations on behalf of an applicant try to ensure that all relevant facts are before the decision maker as soon as possible; try to carry out the analysis that s/he will be doing. For example, if medical evidence is likely to be useful, put this in hand as soon as possible. At this stage, the procedure is inquisitorial not adversarial.

Local Connection: Referral Of Case To Another Authority – Sections 198 -201

If a Local Authority are satisfied that they are subject to a full housing duty under section 193 but consider that the conditions are met for referral to another authority, they may notify that authority accordingly. The conditions for referral are:

- (a) Neither the applicant nor any person who might reasonably be expected to reside with the applicant has a local connection with the district of the authority to whom his/her application was made
- (b) the applicant or person who might reasonably be expected to reside with him/her has a local connection with the district of that other authority, and
- (c) neither the applicant nor any person who might reasonably be expected to reside with her/him will run the risk of domestic violence in that other district.

A local connection is established by past residence (eg six out of the previous twelve months or three out of the previous five years), employment (not casual though), family associations or special circumstances (eg seeking to return to area where grew up). See Local Authority Association Joint Local Connection Agreement for further assistance on interpretation of local connection.

A referral can also be made if an applicant has made a homelessness application to the other authority within the past five years and that authority placed them in accommodation in the district of the authority to whom they were now making an application (s198(4)).

Interim duty to accommodate –section 188

If a Local Authority has reason to believe that an applicant may be homeless, eligible for assistance and in priority need, they shall secure that accommodation is available for his/her occupation pending a decision on his/her application. The interim duty ceases once notification of the decision is communicated to the applicant even if they request a review. The Local Authority has a discretion under s188(3) to continue to provide accommodation pending the Review but note it is not mandatory. See **R v Camden LBC ex parte Mohammed (1998) 30 HLR 315**. The decision may be challenged by way of judicial review.

3. ELIGIBILITY FOR ASSISTANCE

SECTION 185

The biggest nightmare in homelessness. Regulations are perpetually changing so check! Presently see Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, SI 2006 No 1294.

The rule is that a person is eligible for assistance unless excluded. Section 185 defines who is NOT eligible for assistance. They are “persons subject to immigration control” and other “persons from abroad” prescribed by the Secretary of State as ineligible. They are ineligible unless included back in by the exemptions to section 185; see section 118 of the Immigration and Asylum Act 1999.

Since the 2006 Regulations it is generally the case that those who are not ordinarily resident in the UK are not eligible for assistance. Importantly, any asylum seeker who claimed asylum after 3 April 2000 is NOT eligible for assistance and neither are those who claimed asylum between 5 February 1996 and 2 April 2000 and who did not claim on arrival.

Again, the Local Authority is under a duty to make enquiries satisfy itself as to whether an applicant is eligible or not. Enquiries should be made of the Immigration and Nationality Department of the Home Office. Inquiries with the DWP may also be helpful as economic status may be relevant.

If a person is found to be ineligible for assistance, there may be assistance under the Immigration and Asylum Act 1999 or through the Social Services dept.

Note the Race Relations Act 1976, section 71. In screening for eligibility questions must be asked of all applicants regardless of race, colour, nationality and ethnic or national origins. Further questions should only be asked where the applicant has indicated that they may be ineligible.

4. PRIORITY NEED – SECTION 189
The Homelessness (Priority Need for Accommodation) Order 2002

The following persons 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;
- (e) a person 18 years old or older but under 21, who was looked after accommodated or fostered whilst still a child, or who is at particular risk of sexual or financial exploitation;
- (f) a person who is 16 or 17 years old;
- (g) a person without dependant children who has been subject to domestic violence or is at risk of such violence, or if he or she returns home is at risk of domestic violence;
- (h) a person formerly serving in the regular armed forces of the crown who has been homeless since leaving those forces;
- (i) a former prisoner who has been homeless since leaving custody and who has a local connection with the area of the local housing authority.

Most of these are self-explanatory and unarguable. “Vulnerability” is the main area of dispute. See

R v Camden LBC ex parte Pereira (1999) + Code of Guidance 10.13: "less able to fend for him/herself than an ordinary homeless person so that he or she would suffer injury or detriment". This is a matter of fact for the authority to determine, not a matter of expert opinion although inquiries will need to be made.

See further

Osmani v London Borough of Camden (2005) HLR 22

Bellouti v Wandsworth LBC (2005) HLR 45

Crossley v Westminster CC (2006) HLR 26

Griffin v Westminster CC (2004) HLR 32

Shala v Birmingham City Council

5. INTENTIONAL HOMELESSNESS
SECTION 191

A person becomes homeless intentionally if s/he deliberately does or fails to do anything in consequence of which s/he ceases to occupy accommodation which is available for his/her occupation and which it would have been reasonable for him/her to continue to occupy.

An act or omission in good faith on the part of the person who was unaware of any relevant fact shall not be treated as deliberate.

See

R v LB Hammersmith and Fulham ex parte P (1989) 22 HLR 21 QBD

R v Wirral BC ex parte Bell (1994) 27 HLR 234 QBD

R v LB Wandsworth ex parte Hawthorne (1994) 27 HLR 59 CA

R v Hillingdon BC ex parte Tinn (1988) 20 HLR 305 QBD

R v LB Wandsworth ex parte Rose (1984) 11 HLR 107

R v Westminster CC ex parte Obeid (1996) The Times 16th July QBD

R v LB Hammersmith & Fulham ex parte Lusi (1991) 23 HLR 260

R v LB Wandsworth ex parte Onwudiwe (1994) 26 HLR 302)

R v Northamptonshire DC ex parte Spruce (1988) 20 HLR 508 QBD

R v London Borough of Brent ex parte Awua (1995)

R v Harrow LBC ex parte Fahia (1996) 29 HLR 94 QBD

A person shall also be treated as intentionally homeless if:

- (a) S/he enters into an arrangement under which s/he is required to cease to occupy accommodation which it would have been reasonable to continue to occupy and
- (b) the purpose of the arrangement is to enable him/her to become entitled to housing assistance and
- (c) there is no other good reason why s/he is homeless.

Query: How does the local you prove such collusion? Hearsay or mere suspicion is unlikely to be acceptable. Home visits are likely to provide the best evidence; a strained atmosphere is difficult to fake! Applicants should co-operate.

Rent/mortgage arrears: Authority needs to look at reasons for inability to pay. Consider affordability, NB if able to pay mortgage at first but then took on a re-mortgage which was unaffordable this is likely to be considered a deliberate act and therefore intentional. An applicant who fails to apply for benefits is likely to be considered intentionally homeless unless can establish that genuinely unaware that entitled to them.

TIP: put forward an income/expenses chart. Highlight any change for the worse in circumstances and explain it.

Possession proceedings: Where a section 21 notice is given and there is no defence then it is unlikely to be reasonable for an applicant to continue to occupy the premises and force the landlord to obtain a court order. Where proceedings are in relation to rent arrears, anti-social behaviour, damage to property, then a finding of intentionality may well follow.

Violence/threats of violence/harassment: Where applicant responsible for violence, normally will be a deliberate act and therefore intentional.

6. THE FULL HOUSING DUTY
SECTION 193 OF THE HOUSING ACT 1996

Where a Local Authority is satisfied that an applicant is

1. Homeless
2. Eligible for Assistance
3. In priority Need
4. Not intentionally homeless
5. Not subject to a Local Connection referral to another authority

the Local Authority is under a duty to secure that accommodation is available for occupation by the Applicant. However, there is no duty to accommodate if the Local Authority is satisfied that

6. Other suitable accommodation is available for the applicant in the district (the Local Authority is then only under a duty to advise and assist under section 197).

Duties to the Intentionally Homeless – Section 190

Something that local authorities quite often forget is that they also owe a duty to the intentionally homeless.

If a person is homeless, in priority need, eligible for assistance but intentionally homeless, the Local Authority is under a duty to

- (a) Secure that accommodation is available for his/her occupation for such period as they consider will give him/her a reasonable opportunity of securing accommodation for his/her occupation; and
- (b) provide advice and such assistance as they consider appropriate in any attempts s/he may make to secure that accommodation becomes available for his/her occupation.

If they are not in priority need, the duty is merely to advise and assist (section 192).

A failure to carry out this duty is subject to challenge by way of judicial review.

7. DISCHARGE OF THE DUTIES

(I) DISCHARGE

A Local Authority discharges their housing functions by

- (a) Securing that suitable accommodation provided by them is available to the applicant or
- (b) Securing that the Applicant obtains suitable accommodation from some other person or
- (c) Giving the Applicant such advice and assistance as will secure that suitable accommodation is available from some other person.

If an applicant having been informed of the possible consequences of refusal of an offer of suitable accommodation, refuses such accommodation and the Local Authority inform him/her that they regard themselves as having discharged their duty, the authority shall cease to be subject to the duty (s193(5) and 193(7)). There is no real difference now between the two sub-sections of the Act: *Omar v Birmingham City Council* [2007] EWCA Civ 610.

A single offer of suitable accommodation discharges the local authority's responsibility. However, suitability is the main argument raised once the duty has been established. The factors to be taken into account are identified in the Homelessness (Suitability of Accommodation) Order 1996:

- Financial resources available to that person
- Costs of the accommodation
- That persons other reasonable living expenses

Other factors taken may be taken into account e.g. location (particularly if the person is in paid employment).

See

R v LB Tower Hamlets ex parte Kaur (1994) 26 HLR 597 QBD

R v Southwark LBC ex parte Anderson QBD 11 February 1999

R v LB Brent ex parte Omar (1991) 23 HLR 446 QBD

R v Kensington and Chelsea RBC ex parte Grillo (1995) 28 HLR 94, CA

One incident of racial harassment does not render a property unsuitable: *R v London Borough of Tower Hamlets ex parte Subhan* [1992] 24 HLR 541; *Abmed v Leicester City Council* [2007] EWCA Civ 843. However, evidence of a high incidence of racial incidents may. Local authority should normally make inquiries with Police.

Q: must the local authority still be satisfied that it would have been reasonable for the applicant to accept the accommodation – see *Slater v London Borough of Lewisham* [2006] EWCA Civ 394 and cf *Omar v Birmingham City Council*.

(II) CESSATION

In addition, the duty ceases if the applicant:

 Ceases to be eligible for assistance;

 Becomes intentionally homeless from the accommodation made available for his/her occupation;

 Accepts an offer of accommodation under Part VI (allocation from housing register)

 Otherwise voluntarily ceases to occupy as his/her only or principal home the accommodation made available for his/her occupation.

They can however make a fresh application.

8. THE RIGHT TO A REVIEW AND APPEAL

The Right to Request a Review applies to the following decisions made by a Local Authority:

1. Eligibility for Assistance
2. On what duty is owed under
 - s190 –191(intentional homelessness)
 - s192 (No priority need and not intentionally homeless)
 - s193 (the full Housing duty)
 - s195 (threatened with homelessness)
 - s196 (threatened with homelessness intentionally)
 - s197 (other suitable accommodation)
3. To notify another authority that the Local Connection conditions for Referral are met
4. On whether the Local Connection conditions are met;
5. On the suitability of accommodation offered.

The Request for a Review must be made within 21 days of the date when the Applicant is notified of the authority's decision.

The Allocation of Housing and Homelessness (Review Procedures and Amendment) Regulations 1996 set out the procedures to be followed. The officer reviewing must not have been involved in the original decision. The review decision must be notified within 8 weeks. The applicant should be notified that they have the right to make written representations in connection with the review.

TIP: the review stage is the stage at which you can be of most assistance to the applicant. It is essential to identify the elements of the decision you disagree with, and why, and then try to change the local authority's mind. Ask what material would be useful and either suggest the local authority obtains it or obtain it yourself.

Consider procedure: has local authority complied with regulation 8(2) of the Review Procedures Regulations? Has it complied with its own procedures? Should you seek oral hearing?

Check that the factual basis upon which local authority is acting is clear. Consistency - need to ensure any earlier statements are either explained expanded upon or withdrawn - seek copy of application form and any other relevant documents. Local authority should not take decision until you have had chance to review documents

Suitability

- Consider maps if location is issue; why is location unsuitable as opposed to not what A wanted? Bus time tables, school statistics, mosques, etc
- Medical evidence if stairs are the issue
- Advise clients to accept accommodation but seek review of its suitability

Vulnerability/priority need

- Ensure *Pereira* test is set out in correspondence
- Vulnerable “for any other reason”
- Why is applicant “less able to fend” so that *harm* will result?
- Medical evidence crucial. But other evidence useful as well - disability benefits, for example; A’s own evidence; family evidence; solicitor’s own observations

Eligibility

- Very complicated. So spell out what regulations apply and why,
- comment on any European rights

Intentionality

- If you argue that A acted in good faith and in ignorance of a relevant fact, say so, and identify the fact.

What if local authority fails to take decision in time?

Tactical decision - depends on whether the main challenge is on the facts or on the law.

If the former, extend time; seek an Order from the Admin Court forcing review;

If the latter appeal under section 204 on point of law.

Appeal

Section 204 of the Housing Act 1996 provides an Applicant with a Right of Appeal to a County Court on any point of law arising from a review decision of a Local Authority.

Note:

- (1) There has to have been a decision
- (2) The applicant must have requested a review of that decision under section 202 of the Housing Act 1996.
- (3) The applicant can appeal if he/she is dissatisfied with the decision OR
- (4) He/she has not been notified of the decision within the prescribed time (8 weeks from the date of the request for the review unless the applicant and local authority have agreed a longer period in writing)

TIME LIMIT

An appeal must be brought within 21 days of notification of the decision. If notification or proper notification is not given, time does not begin to run until such notification has been given.

TIP: if the applicant did not receive the notification in the normal course of events, specify

the date it was received and explain it.

The Court can extend the period for appealing if there is a good reason. What is a good reason has not been commented on by the Courts. See *Short v Birmingham City Council* [2005] HLR 6.

TIP: the Appellant can also apply to the Court for an extension of the period of time for appealing. This can be done before the 21 day period expires and can be done before the appeal is lodged.

POINT OF LAW

How is a decision wrong on a Point of Law? See **Begum v Tower Hamlets LBC** 32 HLR 445

- It contains a misdirection in law which had a bearing on the decision;
- It is not supported by any evidence;
- It is perverse/unreasonable, i.e. on the available evidence, no reasonable local authority properly directing itself could have made such a decision;
- It was made in breach of the requirements of natural justice e.g. a failure to follow the review procedures or to allow the applicant to respond to adverse evidence;
- There was a failure to give adequate reasons for the decision (the applicant must know why their application has been rejected).

The categories are not closed!!

The Court will not normally intervene on a failure to tackle issues that were not raised at review stage, such as inquiries that were not suggested at that time: *Cramp v Hastings LBC* (2005) AllER 1014, (2005) HLR 48.

The court has the power to confirm, quash or vary the decision as it thinks fit. It should only vary the decision if the outcome is more or less inevitable.

“The question for the judge was whether there was any real prospect that Tower Hamlets, acting rationally and with the benefit of further enquiry, might have been satisfied that Mrs Deugi was intentionally homeless”: **Tower Hamlets LBC v Deugi (2006) HLR 510.**

If the decision is quashed then the authority has to undertake a further review having carried out further inquiries, there is no guarantee that a different decision will be reached.

TIP: ensure that your clients do not have unrealistic expectations of the outcome of an appeal.

The local authority has the power to accommodate the applicant pending appeal: section 204A. A refusal to do so can be appealed to the County Court. However, the facility needs to be requested, and the County Court can only exercise the power to order the local authority to accommodate if it will prejudice the appeal otherwise: section 204A(6) so it is best made at an early stage.

9. CONCLUSION

This is a vast topic which has been covered within a limited timescale. Practitioners are advised to consult the Act itself and all relevant statutory instruments for guidance when dealing with cases. The Code of Guidance for Local Authorities is essential reading.

There are two textbooks on the topic:

- Arden, Hunter & Johnson, Homelessness and Allocations, 7th ed. Published by LAG Books.
- Luba and Davies, Housing Allocation and Homelessness. Published by Jordans.

More importantly, it is important to think around the topic. Homelessness is not the only route. Others include:

- A challenge to the local authority's allocations policy
- A complaint up the chain and eventually to the local government ombudsman if procedures are not being followed
- An approach to Social Services if children are involved – ask them to exercise the power under section 17 of the Children Act 1989