Homelessness -Assistance for those who are or are threatened with homelessness.

The Homelessness Tests

Where an applicant has an accommodation anywhere in the world, he or she is not considered homeless.

The key is that the accommodation must be available to him and his family, if not, then he can be considered homeless.

Other issues connected to the family, health and physical security will also be considered in determining whether the accommodation is available.

A spouse in a civil partnership is entitled to occupy the place owned or rented so long as it has been the matrimonial or civil partnership home. This right last until the partnership or marriage lasts. Where there is a break-up, the authority will consider whether it's feasible for the spouse to continue to occupy the place. Certain relevant factors will be looked at, like for instance the size of the resident.

Not reasonable to continue to occupy

Two parts are included in this category: the risk to violence because it's not reasonable to occupy the resident and if violence is probable the authority finds the applicant a residence. Where reasons are considered the authority has a substantial amount of discretion. *Housing Act 1996* stipulates, 'it's not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to violence against him or her or a member of the household.' *Sometimes the premises may not be reasonable occupy.* The term violence encompasses not only physical harm but emotional harm which is also as damaging as physical harm.

General housing needs in the area

An authority must take into account of the overall housing needs in the local neighbourhood when deciding whether it is reasonable for a person to continue to occupy the accommodation. The authority was also, under *EA 2010 s 149 (3) and (4)*, under a duty to have due regard to the need to take steps to meet the different needs of disabled person as compared to those who are not disabled. This may mean treating applicant more favourably than a non-disabled person...

Overcrowding - Unreasonableness

Overcrowding is a factor relevant to whether it is reasonable to remain in occupation of accommodation. The legal definition of overcrowding which is a legal standard of overcrowding that can lead to prosecution of owners or occupiers. The threshold for statutory overcrowding is very high, but even if met this does not necessarily mean it is not reasonable to continue to occupy for the purpose of homeless law.

Being Threatened with Homelessness

A person is threatened with homelessness if it is likely that he or she will become homeless within 56 days. Additionally, any assured shorthold tenant served with a valid section of 21 notice that expires within 56 days is threatened with homelessness. If that's case, then the duties arise under “Homelessness Reduction Act” *HRA 2017*.

Priority Need

Before the *HRA 2017*, the only duties owed to a person who did not have a 'priority need' was a duty to provide advice and assistance.

Priority encompasses several categories. Some are easily established others depend on a judgment by an authority. *HA 1996 s189 (1)* the following has priority needs

a) pregnant woman...No minimum period of pregnancy is required.
b) a person with whom dependent children reside... The children need not be the natural children of the applicant, but there must be some form of parent/child relationship.
c) a person who is vulnerable as a result of old age...
d) a person who is homeless...

Further categories of priority needs were added in 2002.

Challenging the vulnerability decisions

The authority needs to weigh up the relevant factors in deciding whether someone is vulnerable. After having considered all the relevant factors and applied the correct tests, it may be that the decision can only be challenged on the grounds it is irrational or perverse:

- Considering the person's physical or mental health at a time when interim accommodation is being provided.
- Considering potential categories of vulnerability, including 'other special reasons,' in isolation.
- Delegating decision-making to a medical expert.
- *Institutional background*: a person who is vulnerable as a result of being a care leaver, having been in the armed forces or in custody, or having become homeless because of violence is in priority need.
- *Fleeing violence*: in relation to those who have left accommodation because of violence, the Code also provides that authority may wish to take account of the nature of violence or threats of violence

Intentional Homelessness

Intentionally homeless simply means that a person's homelessness was caused by something he or she has (or did not do) done deliberately.

Once the authority has established intentionality then the duty to secure accommodation is available to the individual will be limited. If the authority is satisfied the person is intentionally

homeless it must provide advice and assistance and accommodation for a reasonable period to give the person an opportunity to find his or her own accommodation. *HA 1996 s191* sets out the definition of intentional homelessness. A third leg exists to the test of intentional homelessness: 'contrived homelessness.' Several elements to this definition exist.

Ceasing to occupy (intentionality)

To be intentionally homeless a person must cease to occupy accommodation. A failure to take up accommodation does not, in most cases, make a person intentionally homeless. However, where a final accommodation is offered, or a final Part 6 offer is refused, the main housing duty under *HA 1996 s193 (2)* will not arise.

Rent and mortgages arrears (intentionality)

Where a person loses his accommodation due to unpaid rent or mortgages arrears, a local authority must consider if the action was deliberate. Affordability must be considered in all cases even if not directly raised by the applicant. The local authority takes into account a number of factors such as whether accommodation is reasonable to occupy and so on. The central issue of contention is usually the assessment of a person's 'reasonable living expenses'.

With regards to intentional homelessness, it should be noted that the rent or mortgage may be unaffordable, but an applicant can be intentionally homeless based on the decision to take on the liability.

Contrived Homelessness

An additional definition of intentional homelessness was introduced by the *HA 1996. Section 191 (3)* provides that:

A person shall be treated as becoming homeless intentionally if:

a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and

b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part, and there is no other good reason why he is homeless.

Referral to another authority

A person who is homeless or threatened with homelessness may apply for assistance to any local authority, regardless of whether he or she ever lived in that authority's area. Prior to HA 2017, referral to another authority could only be considered after a decision had been made that the main housing duty was owed i.e. after the completion of enquiries into eligibility, priority need and intentional homelessness.

Local Connections (Considering Homelessness applications)

This is defined under the *HA 1996 s 199 (1)* as
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 is 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 connection, or
d) because if special circumstances.

Relevant date for establishing local connection

Generally, the homelessness decision is that the person's circumstances are assessed as at the date of the decision, not the date of the application. This means that an applicant with no local connection at the date of application may have established one by the time the final decision is made. Local authority can refer applicants to another English authority at the relief stage, i.e. having decided that the applicant is homeless and eligible.

If the authority has reason to believe the applicant is within the priority needs, the HA 1996 s 188 duty ends under s 199A (2) duty arises. This is a duty to continue to provide accommodation until the applicant is notified of the second decision. The procedure for applicants with no priority needs differs slightly. The notifying authority's relief duty ends at the date of the first notification, and any HA 1996 s 188 interim accommodation duty also ends.

Refusal of Part 6 and Part 7 offers

Disputes often arise about the ending of the HA 1996 s193 housing duty where an applicant has refused an offer arguing that the accommodation is unsuitable. Part 6 must be made in writing and must state that is a ‘final offer’. An applicant must also be informed of the possible consequences of refusal or acceptance of a Part 7 offer and of the right to request a review of the suitability of the accommodation.

If the authority maintains that the accommodation is suitable, then a review should be requested. A local authority’s duties under the *Equality Act 2010* may mean what where disabled applicant’s require a particular type of accommodation the authority may be in breach of the public sector equality duty (PSED) if it has made no, or insufficient, efforts to procure accessible, adapted properties and simply responds to challenges by stating that it has no suitability adapted accommodation.

Issues about the condition of the accommodation

Most authorities use private landlords to discharge the *HA 1996 s 193 (2)* main accommodation duty. The authority decides what’s suitable and what’s not.

The duties owed by the public authorities under the Children Act 2004 mean that challenges to suitability on the grounds of locations are more likely to succeed if the move would involve disruption to education and/or if the children are vulnerable and social services are already involved.

An applicant who is found to be homeless, eligible, in priority need and not intentionally homeless, HA 1996 s193 (2) main accommodation duty will not arise if the authority has given notice under section 193 B that the person has deliberately and unreasonably refused to take a step agreed or required in the housing plan.

HOMELESSNESS DECISIONS, REVIEWS AND APPEALS

The applicant must be notified of the authority's decision in writing, providing reasons and information about the right of review. The letter is referred to as a section 184 decision letter, pursuant to s184 of the Housing Act 1996, which deals with enquiries into cases of homelessness or threatened homelessness.

An explanation as to why the decision was made must be given to the applicant. It is not enough simply to recite the legal test it must list the matters taken into consideration and state the conclusion.

The decision must be proper, adequate, and intelligible and enable the person affected to know why the decision has resulted in their favour or not. If the decision is in the individual's favour, then they are automatically added onto the main housing register.

Decisions may be challenged solely because of a failure to give reasons or sufficient reasons.

Matters arising after a decision accepting the main housing duty

Generally, after a decision accepting a housing duty under *HA 1996 s193* and in the absence of fraud or a mistake of fact, an authority has no power to make further inquiries or re-open the decision unless the applicant seeks a review or makes a fresh application.

The decision pre-dates the HA 1996, and section 193 now sets out the specific circumstances in which the duty to accommodate ends.

The situation differs where a fraudulent behaviour has occurred, or false information given to the authority is untrue. Where an application was decided against the applicant, an authority may re-open the application receiving new information. If the applicant wishes the authority to consider new information, the applicant must request a review by submitting the new information in support of the review. An authority is also entitled to re-open an application where its decision was based on a fundamental mistake of fact. However, the situation is different where the mistake is not one of fact but of law.

Challenging an unfavourable decision

To challenge most homelessness decision is by way of an internal review, referred to as a section 202 review.

The request for the review must be made within 21 days of day on which the applicant is notified in the decision letter. The time limit runs from the receipt of the letter, not the date of the letter. An authority must ensure that its procedure for serving notices under HA 1996 s 193 B (2) comply with Regulations, and that the procedure must be in writing, be kept under review.

The authority should complete the review in accordance with the procedure set out in the regulations within a specified time; currently this is eight weeks from the day the request is made. An authority has the time to extend the time of a review and must exercise this discretion lawfully. When making submissions in support of a review it is important to identify the alleged flaws in the original decision. If not, it may not be possible to rely on these flaws in any subsequent county court appeal

Where the local authority does obtain a new medical evidence or advice, it will usually have to disclose it to the applicant. The requirement to consider the information and evidence at the date of review means that the review decision must take into account of any change of circumstances since the original decision.

An exception to this rule may be applicable where minor under the age of 18 is considered. The review decision must be in writing. If it is not received, it is treated as having been given if it is made available at the authority's office for a reasonable period for collection.

If the original decision is confirmed, reasons must be given, and the applicant must be informed of the right to appeal to the county court on appoint of law and the time of bringing such an appeal. This is 21 days from the date of notification. If reason is not provided, or if the applicant is not informed of the right to appeal to the county court, the notice of the decision is treated as not having been given.

The best outcome for the applicant will be an acceptance of the full housing duty. Often, however, the review decision will be that the HA 1996 s184 decision should be withdrawn and further inquiry carried out. If this the outcome, the authority will have a duty to provide interim accommodation pending further decision (provided there is reason to believe the applicant may be homeless, eligible and in priority need.

Applicant can request a review of he or she is dissatisfied of the decision. Appeal must be within 21 days of the applicant.

If the s202 review is unsuccessful, then the only further redress is a county court appeal on a point of law under section 204 of the HA 1996.

Judicial review remains available for homelessness decisions that do not carry the right of review. Reviews of decisions are not allowed in many situations

HOMELESSNESS: ACCOMMODATION DUTIES

If a person is homeless and eligible, the relief duty under *HA 1996 s189 B (2)* is to take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least 6 months.

Interim accommodation Duties: Accommodation Pending Decision

The main features of the duty to provide interim accommodation pending a decision are:

- The duty is triggered whenever the authority has reason to believe the applicant may be eligible, homeless and in priority need;
- The accommodation
- The duty ends when a decision is made on the homeless application;

Accommodation pending review

The duty to provide interim accommodation ends when the authority makes a substantive decision that brings their accommodation duties to an end. If the applicant seeks a review of the decision, the authority has power but not a duty to continue to provide interim accommodation pending the review. An exception to this is when the applicant seeks a review as to the suitability of accommodation offered as a final accommodation offer or a final Part 6 offer.

The 'Mohammed' Criteria (interim accommodation)

Judicial review was used where a refusal to provide interim accommodation pending a review was seen. An authority must apply these criteria when providing interim accommodation as found in the case of *Mohammed. R v Camden LBC ex p Mohammed (1997)* In carrying out the balancing exercise certain matters need to be considered:

- The merits of the case
- Whether there is new material
- The personal circumstances of the applicant and the consequences of a refusal to provide interim accommodation.

Accommodation pending appeal

Authorities have the power to provide interim accommodation pending a county court appeal. The court, further to an application by the applicant to the court for an order requesting the LA provide interim accommodation, may order an authority to secure that accommodation is available until the determination of the main appeal, or an earlier time, as specified, and must confirm or quash the decision not to provide interim accommodation beyond the final determination of the homeless appeal.

The court has the power to order an authority to provide interim accommodation if satisfied that a failure to do so would substantially prejudice the applicant's ability to pursue the main appeal.

If a local authority fails to carry out a s202 review within the statutory time period or fails to secure an agreement to extend the period of the review, then the applicant may bring a county court s204 appeal against the original section 184 decision.

Refusal of Part 6 and Part 7 offers

Disputes often arise about the ending of the HA 1996 s193 housing duty where an applicant has refused an offer arguing that the accommodation is unsuitable. Part 6 must be made in writing and must state that is a 'final offer'. An applicant must also be informed of the possible consequences of refusal or acceptance of a Part 7 offer and of the right to request a review of the suitability of the accommodation.

If the authority maintains that the accommodation is suitable, then a review should be requested. A local authority's duties under the *Equality Act 2010* may mean what where disabled applicant's require a particular type of accommodation the authority may be in breach of the public sector equality duty (PSED) if it has made no, or insufficient, efforts to procure accessible, adapted properties and simply responds to challenges by stating that it has no suitability adapted accommodation.

Issues about the condition of the accommodation

Most authorities use private landlords to discharge the *HA 1996 s 193 (2)* main accommodation duty. The authority decides what's suitable and what's not.

The duties owed by the public authorities under the Children Act 2004 mean that challenges to suitability on the grounds of locations are more likely to succeed if the move would involve disruption to education and/or if the children are vulnerable and social services are already involved.

An applicant who is found to be homeless, eligible, in priority need and not intentionally homeless, HA 1996 s193 (2) main accommodation duty will not arise if the authority has given notice under section 193 B that the person has deliberately and unreasonably refused to take a step agreed or required in the housing plan.

HOMELESSNESS: THE NEW ASSESSMENT, PREVENTION AND RELIEF DUTIES - *Introduced by Homelessness Reduction Act 2017*

HA 1996 Part 7 give rise of various duties. Part 7 arise where a person 'applies …for a accommodation, or for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless `or threatened with homelessness. Dependents children cannot however apply. An adult who applied for housing must have the mental capacity to apply and understand the responsibility of being a tenant.

The assessment duty (HA 1996 s 189A)

The new 's189A duty' (introduced into HA 1996 by the HRA 2017) is a duty to carry out individual assessment and produce personalised housing plans. The duty applies to all homeless of priority need or intentional homelessness. Where the authority is satisfied that the applicant is homeless or threatened with homelessness and is eligible, they must assess the applicant. Where the authority is satisfied that the person is eligible, the assessment duty is triggered. The applicant should be notified in writing of the assessment.

The prevention duty

The HRA 2017 makes provision for assured shorthold tenants. This duty arises where the authority is satisfied than an applicant is threatened with homelessness and eligible for assistance. A person is threatened with homelessness if it is likely he will become homeless with 56 days and a s21 has been given under HRA 1988 and it expires within 56 days. The duty is to take reasonable steps to help the applicant secure that accommodation does not cease to be available for the applicant's occupation. The authority must take into consideration of their personalised housing assessment in which the authority must identity both the steps the applicant will take and the steps the authority will take to prevent actual homelessness.

The relief duty

The relief duty applies where an authority is satisfied that the applicant is homeless and eligible for assistance, unless the authority sends the application to another housing authority in England. The duty is to take reasonable steps to help an applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least six months. There are however, seven situations where the relief could end.

Assured shorthold tenants served with section 21 notice

The prevention duty applies to any eligible assured shorthold tenants served with a valid section 21 notice if the notice expires, i.e. requires possession, within 56 days. Where that is the case, the duty cannot end after 56 days. Such tenant may not face actual homelessness for many months, because after the notice expires a landlord must apply to the court for a possession order and enforce the order by applying to the court for enforcement officers to carry out an eviction. The duty must not be stopped until the threatened homelessness has ended.

Interim accommodation pending inquiries (HA 1996 s188)

Applicant with or without priority needs can take advantage of the relief duty. The interim accommodation duty should be triggered at a low level. The authority only needs to have reason to believe that the applicant may be homeless, eligible and in

priority need. Whist the authority investigates the situation, the applicant should be in the meantime be accommodated. If a person disputes the suitability of the accommodation offered as a final offer, the duty does not end until after the decision on the review has been notified to the applicant.

Avoiding the section 188 duty

The duty under HA 1996 is clear and usually the Local Authority seeks to avoid discharging the responsibility. It is important to ensure that the local authority have enough evidence to establish that the duty to inquire and to provide interim accommodation arises. Where the authority is not satisfied that the person is homeless or in priority need, a decision letter should be requested. If a letter is not provided, this means the interim duty is owed, unless the authority maintains there is no reason to believe that the applicant may be homeless or in priority need. Where the authority refuses to provide interim accommodation, a claim for judicial review can be made.

Ending of the section 188 duty

Where an applicant refuses an offer of interim accommodation, a decision must be made as to whether the decision on suitability can be challenged. Accommodation may be suitable for very short-term occupation but not suitable in the long term. There is no express provision that the duty ends if the offer is refused.

An authority should not find an applicant to be intentionally homeless by virtue of refusing or losing section 188 accommodation, as this will not be the cause of the homelessness.