

Housing: Homeless Persons and Review of Accommodation Needs

1. This paper considers some selected topics in the broad (and full of case law) topic of homeless persons, together with a brief mention of the duty of local housing authorities to carry out a review of accommodation needs.

A. Duties to Homeless Persons

2. The Housing Act 1996 Pt VII contains the relevant provisions relating to homeless persons. The main obligation is to secure that suitable accommodation is available for an applicant who is: (1) homeless; (2) eligible for assistance; (3) in priority need of accommodation; and (4) who did not become homeless intentionally. Certain asylum-seekers and persons from abroad are excluded from this duty. Lesser obligations apply to applicants who do not fulfil one or more of these criteria,

Who is homeless?

3. S 175 of the 1996 Act defines homelessness and threatened homelessness as:

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

(c) 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—

(a) 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 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.

4. Subsection (3) should be read with s177.¹ It covers such matters as domestic violence and the physical condition of the property. It may be hard proving the latter. For example in R. v South Herefordshire DC ex p. Miles,² the Miles family were living in a hut which was approximately 20 feet by 10 feet and which undisputedly constituted poor accommodation. It had two rooms, was infested with rats, and no mains services, although services were available in a nearby caravan. Woolf J held that, although the accommodation was on the borderline of that which could be in any circumstances regarded as being capable of being suitable for human habitation, it was not of such a bad standard that any reasonable authority, having the information available to them, would have had to disregard it. However, the addition of a baby third child meant that it was not reasonable of the authority to regard the hut as any longer capable of being accommodation for the family of which there were by then five members, one of whom was a newly born baby.

Preliminary duties: The obligation to enquire

¹ (1) *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 against—*

(a) a person who normally resides with him as a member of his family, or

(b) any other person who might reasonably be expected to reside with him.

(1A) For this purpose “violence” means—

(a) violence from another person; or

(b) threats of violence from another person which are likely to be carried out;

and violence is “domestic violence” if it is from a person who is associated with the victim.

(2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.

² 17 HLR 82.

5. S184(1) of the 1996 Act imposes an obligation to enquire into cases of homelessness or threatened homelessness, providing.

(1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves—

(a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

6. An LHA that has reason to believe that an applicant may be homeless or threatened with homelessness must investigate the matter and must accept and process an application from that applicant. In R (Aweys) v Birmingham City Council, Collins J stated:

It is apparent that the threshold for the duty of Councils to act under s184 is a low one ... since it arises if they have reason to believe the applicant may be homeless or threatened with homelessness. In the vast majority of cases, the making of the application will mean that it is difficult if not impossible for the Council not to believe that the applicant may be homeless or threatened with homelessness. Furthermore, no particular form of application is prescribed. This is not surprising since the provisions are dealing with people who are likely to be vulnerable and who cannot be expected to have obtained legal advice or to have an acquaintance with the statutory provisions. If it is apparent from what is said by an applicant (for there is no requirement that an application be in writing) or from anything in writing that he may be homeless or threatened with homelessness, the duty is triggered.³

7. If there is a question of an applicant being at risk of suffering psychiatric harm, it might well be that the local authority should take that consideration into account, specifically in deciding what, or what further, enquiries they should make.⁴

Priority need for accommodation.

8. S189(1) and (2) of the 1996 Act provides:

(1) The following have a priority need for accommodation—

³ [2007] EWHC 52 Admin at §8, [2007] HLR 27 – the judgment was overruled, but not in respect of this point, in Birmingham City Council v Ali [2009] UKHL 36, [2009] 1 WLR 1506.

⁴ Lee v Rhondda Cynon Taf County Borough Council [2008] EWCA Civ 1013, Longmore LJ, § 17.

(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.

(2) The Secretary of State may by order—⁵

(a) specify further descriptions of persons as having a priority need for accommodation, and

(b) amend or repeal any part of subsection (1).

9. In considering s 189(1)(c) “The Council must ask itself whether the applicant 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 person would be able to cope without harmful effects...”⁶

Duty to persons with priority need who are not homeless intentionally

10. The most substantial duty applies to homeless persons with priority need who are not homeless intentionally. Section 193 of the 1996 Act provides (*inter alia*):

(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

(2) Unless the authority refer the application to another local housing authority..., they shall secure that accommodation is available for occupation by the applicant.

(3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.

(3B) In this section “a restricted case” means a case where the local housing authority would not be satisfied as mentioned in subsection (1) without having had regard to a restricted person.

(5) The local housing authority shall cease to be subject to the duty under this section if—

⁵ There are different SIs in England and in Wales.

⁶ *R v Camden LBC ex p Pereira* 31 HLR 317 Hobhouse LJ, 330.

- (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,*
- (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and*
- (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.*

(6) The local housing authority shall cease to be subject to the duty under this section if the applicant—

- (a) ceases to be eligible for assistance,*
- (b) becomes homeless intentionally from the accommodation made available for his occupation,*
- (c) accepts an offer of accommodation under Part VI (allocation of housing), or*
- (cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord,*
- (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.*

(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal or acceptance and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).

(7AA) The authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)—

- (a) accepts a private rented sector offer, or*
- (b) refuses such an offer.*

(7AB) The matters are—

- (a) the possible consequence of refusal or acceptance of the offer, and*
- (b) that the applicant has the right to request a review of the suitability of the accommodation, and*
- (c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.*

...

(7F) The local housing authority shall not—

- (a) make a final offer of accommodation under Part 6 for the purposes of subsection (7); or*
- (ab) approve a private rented sector offer;*

unless they are satisfied that the accommodation is suitable for the applicant and that subsection (8) does not apply to the applicant.

(8) This subsection applies to an applicant if—

(a) the applicant is under contractual or other obligations in respect of the applicant's existing accommodation, and

(b) the applicant is not able to bring those obligations to an end before being required to take up the offer.

(9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation...

11. The 1996 Act s.206 deals with the discharge of functions by LHAs. Its subsection (1) provides:

(1) A local housing authority may discharge their housing functions under this Part only in the following ways—

(a) by securing that suitable accommodation provided by them is available,

(b) by securing that he obtains suitable accommodation from some other person, or

(c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person.

12. This raises the question what is suitable accommodation. Suitability is not an absolute concept. There can be different standards of suitability. There may be suitable accommodation on the spectrum between ideal accommodation or accommodation which is just adequate to meet housing needs; but it must be recognised that there was a minimum standard or line which has to be drawn below which the standard of accommodation could not fall and remain suitable.

If the accommodation falls below that line, and is accommodation which no reasonable authority could consider to be suitable to the needs of the applicant, then the decision will be struck down, and an appeal to the resources argument will be of no avail.⁷

Although the resources and availability of accommodation are relevant factors in determining suitability, there is always a minimum standard in every case below which the duty is not discharged. If the only accommodation available falls below this line then a lack of resources or inability to provide more suitable accommodation is

⁷ *R v Newham London Borough Council ex p Sacupima* (2001) 33 HLR 1.

*no answer. The housing authority will not discharge its s.193 duty unless and until suitable accommodation is actually provided.*⁸

13. 'Suitability' for the purpose of section 193(2) does not imply permanence or security of tenure and an authority could satisfy its full housing duty under section 193(2) by providing temporary accommodation. Sections 175(3), 191(1) and 193(2) were looking to the future as well as to the present and accommodation that might be unreasonable for a person to occupy for a long period might be reasonable for him to occupy for a short period.⁹

14. Accommodation has to be suitable for the person or persons to whom the duty is owed. So in R. v Brent LBC ex p Omar¹⁰ accommodation in a filthy, cockroach-infested basement flat with high windows and soaking walls of a Somali refugee who had been imprisoned and tortured in her own country was not suitable. A similar approach was recently followed in two cases in the Central London County Court. In Qoraishi v City of Westminster,¹¹ where a review decision was quashed because the reviewing officer had failed to take into account medical evidence as to likely deterioration of mental health if the Claimant was rendered street homeless. In Faulkner v City of Westminster,¹² a review decision was quashed because failing to follow a GP's view as to suicide risk was unfair.

15. Suitability for a person in need of a carer may require an additional bedroom for that carer. Where a council has a policy in respect of this, the reviewing officer should engage properly with it and not simply list it.¹³

⁸ Sheridan v Basildon BC (formerly Basildon DC) [2012] EWCA Civ 335, Patten LJ, §32.

⁹ Birmingham City Council v Ali [2009] UKHL 36, [2009] 1 WLR 1506.

¹⁰ [1986] AC 484.

¹¹ HHJ Hornby, 10th June 2014, *Legal Action* July/August 2014 55.

¹² Recorder Talbot QC, 12th November 2013, *Legal Action* June 2014 38-39.

¹³ Walsh v Haringey LBC, HHJ Cochrane, Clerkenwell & Shoreditch County Court, 31st March 2014, *Legal Action* July/August 2014 56.

16. An offer of accommodation visible from a bus route often used by the perpetrator of domestic violence against an application was held to be unsuitable in Byrne v Solihull MBC.¹⁴

17. In deciding whether accommodation provided under Pt 7 of the Housing Act 1996, is suitable for an applicant who is a Gypsy, an LHA must give special consideration to securing accommodation that will facilitate his traditional way of life, but this does not necessarily mean that it must find a caravan pitch for the Gypsy concerned.¹⁵ On the other hand:

*... a caravan pitch offered to a caravan owner and dweller who is homeless, as a result of eviction from another pitch or simply unable to find a pitch, may be a discharge of an authority's duty under s.193, that is, the offered pitch may be treated as suitable alternative "accommodation" for this purpose.*¹⁶

*... if an authority chooses, with the applicant's agreement, to "accommodate" him by providing him with a pitch for his caravan, it would, in my view, serve as a discharge of its duty under that provision.*¹⁷

Legal Aid

18. Legal Aid can be granted in 'Homelessness' cases.¹⁸

B. Periodical review of housing needs

19. Section 8 (1) of the Housing Act 1985 provides for a periodical review of housing needs. Since 2006 it has provided:

Every local housing authority shall consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation.

20. Certain legal requirements in respect of this section may be wrongly missed:

¹⁴ HHJ Worster, Birmingham County Court, 12th March 2014, *Legal Action* June 2014 40.

¹⁵ Codona v Mid-Bedfordshire DC [2004] EWCA Civ 925.

¹⁶ *Ibid.* paragraph 22.

¹⁷ *Ibid.* paragraph 31.

¹⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 1 Part 1 §34)

(1) The needs of the district are not confined to the needs of persons living in it at the time. It is not outside the purview of a housing authority, in considering the provision of housing accommodation, to have regard to the fact that, in part, they will be making provision for persons who are then living in an adjoining district but who desire, or will more easily obtain, accommodation in the district of the acquiring authority.¹⁹

(2) When discharging its duty under this section a housing authority “*shall have regard to the special needs of chronically sick or disabled persons*”.²⁰

(3) For that purpose of discharging this duty “*the authority shall review any information which has been brought to their notice, including in particular information brought to their notice as a result of the consideration of the housing conditions in their district under section 3 of the Housing Act 2004*”.²¹

(4) When undertaking a s8(1) review local housing authorities “*must carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district*”.²² Accommodation needs “*includes needs with respect to the provision of sites on which caravans can be stationed*”.²³ Gypsies and Travellers in this subsection means:

- (a) *persons with a cultural tradition of nomadism or of living in a caravan; and*
- (b) *all other persons of a nomadic habit of life, whatever their race or origin, including—*
 - (i) *such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and*

¹⁹ Watson v Minister of Local Government and Planning [1951] 2 KB 779, Devlin J., 783.

²⁰ Chronically Sick and Disabled Persons Act 1970 s3(1).

²¹ Housing Act 1985 s 8(2).

²² Housing Act 2004 s205(1).

²³ Housing Act 2004 s225(5)(b).

*(ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).*²⁴

21. The Homelessness Act 2002 s1 imposes a duty on LHAs to carry out a homelessness review and to formulate and publish a homelessness strategy based on the results of that review. Research by Lord Avebury has shown that the majority of local authorities that had recorded unauthorised encampments in their district had failed to mention Gypsies and Travellers in their review and strategy. Of 152 local authorities whose strategies were checked, 107 (70.4 %) did not mention Gypsies or Travellers.

22. A failure to comply with these requirements may lead to an application for judicial review.

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²⁴ Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006 reg. 2; Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (Wales) Regulations 2007 reg. 2. The Secretary of State is considering amending this definition.