UPDATE ON HOMELESSNESS

5 JUNE 2019

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Homelessness Reduction Act 2017

1. In force for applications for homelessness assistance to local housing authorities in England on or after 3 April 2018.

Materials

2. Amended text Housing Act 1996 ("HA 1996") at http://www.legislation.gov.uk/ukpga/1996/52/contents.

3. Statutory instruments:

    a. Art 3 Homelessness (Suitability of Accommodation) (England) Order 2012 SI 2012/2601 amended;
    b. Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018 SI 2018/167;
    c. Homelessness (Review Procedure etc) Regulations 2018, SI 2018/223:
        i. Applicable to all requests to review made on or after 3 April 2018;
        ii. Reg 10 & Schedule 1 contains public authorities subject to the s.213B duty to refer, in force from 1 October 2018;
    d. Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, SI 2006/1294 amended by:
        i. Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018, SI 2018/730, adds Class H from 9 July 2018 to Reg 5 (categories of persons who are subject to immigration control & are eligible). They are Unaccompanied Asylum Seeking Children who have been given limited leave:

            "*Class H – a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who has*

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been transferred to the United Kingdom under section 67 of the Immigration Act 2016 and has limited leave to remain under paragraph 352ZH of the Immigration Rules.";

ii. Allocation of Housing and Homelessness (Eligibility) (England) (Amendment No 2) Regulations 2018, SI 2018/1056, adds Class I from 1 November 2018 to Reg 5 (categories of persons who are subject to immigration control & are eligible). They are people who were granted Calais leave, leave given to unaccompanied children who were reunited with family members in the UK and were not given another form of leave:
"*Class I – a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and has Calais leave to remain under paragraph 352J of the Immigration Rules*.";

iii. Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019, SI 2019/861 adds to Reg 6 (other persons from abroad who are ineligible for housing assistance):
(1A) For the purposes of determining whether the only right to reside that a person has is of the kind mentioned in paragraph (1)(b) or (c), a right to reside by virtue of having been granted limited leave to enter or remain in the UK under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3 of that Act is to be disregarded". In force for applications made on or after 7 May 2019. The intention is that the status quo remains, and that EEA nationals who have a right to reside under EU Treaties now have pre-settled or settled status and are eligible.

4. Homelessness Code of Guidance for Local Authorities published by MHCLG in February 2018 and since updated in June 2018, October 2018, February 2019 and April 2019: https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities.

5. No case-law as yet.

Homelessness statistics

6. Statutory homelessness in England, MHCLG Statistics, July – September 2018 and October – December 2018 available at: https://www.gov.uk/government/collections/homelessness-statistics.

7. They show:
   a. Around 91% of applications result in either prevention or relief duty being owed;
   b. 65% of applicants owed one of those duties were adults without children;

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c. 43% of those were assessed as having support needs;
d. 2,750 referrals made between 1 October – 31 December 2018 from other public authorities, 18.9% from Jobcentre Plus and 15.6% from National Probation Service;
e. 1,880 referrals made from public authorities not subject to duty to refer.

8. Outcome of prevention duty:
    a. 58% of applicants (17,950) helped to secure accommodation: around one-third helped to stay in existing accommodation and remaining two-thirds helped to find alternative accommodation;
    b. 0.6% of applicants (200) refused alternative accommodation;
    c. 17% applicants became homeless and owed the relief duty;
    d. 0.4% of applicants (120) deliberately and unreasonably refused to co-operate.

9. Outcome of relief duty:
    a. 42% of applicants (12,380) accepted accommodation;
    b. 1.6% of applicants (360) refused accommodation;
    c. 33% of applicants had relief duty end after 56 days: not known how many were subsequently owed accommodation duties;
    d. 0.4% of applicants (120) deliberately and unreasonably refused to co-operate.

10. Temporary accommodation December 2018:
    a. 83,700 households including 124,490 in temporary accommodation, 5% higher than in December 2017 and 74.3% higher than 2010;
    b. 6,980 households in B&B accommodation;
    c. 2,460 applicants in B&B had dependent children;
    d. 810 applicants with dependent children in B&B had been there longer than six weeks.

11. No data on:
    a. What happened to applicants who deliberately & unreasonably refused to co-operate;
    b. What happened to applicants at the end of 56 days;
    c. How many applicants accommodated under s.190(2) duty to those who had become homeless intentionally;
    d. How many applicants accommodated under s.193C (deliberately and unreasonably refused to co-operate).

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Crisis *The Homelessness Monitor: England 2019*

12. Crisis's annual publication, available at https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/england/the-homelessness-monitor-england-2019/ contains the first analysis of the effectiveness of the HRA. It contains analysis of the homelessness statistics, and other statistics (labour market, poverty etc) and a survey of local housing authorities ("LHAs").

13. Most LHAs thought that personal housing plans ("PHPs") were beneficial in assessing how to help individuals, although some thought it was hard to engage individuals in self-help.

14. The problem of homelessness is broader than that contained in the statistics. Besides those accommodated by LHAs (83,700 households) and rough sleepers (approximately 4,700 on any single night), there are thought to be 3.74 million adults who are "*concealed homeless*" ie living with family or friends when they would prefer to be living separately.

Developments in case-law

15. All cases & Ombudsman decisions below relate to applications for homelessness assistance made before 3 April 2018, and before the HRA amendments came into force.

Applications for homelessness assistance

16. HA 1996, s 183(1): "*The following provisions of this Part apply where a person applies to a local housing authority in England 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*."

17. An applicant must have capacity to make an application. In R (Uddin) v Southwark LBC[1], an applicant was discharged from hospital having had treatment for a serious brain injury. He refused a hostel place and brought a claim in judicial review in which he sought an order for the provision of ordinary housing accommodation with a package of care and support. His consultant neurologist had written that he did not have mental capacity to make general decision regarding discharge, did not understand that he would need care and support but did have capacity to make more limited and specific decisions such as whether to say yes or no to a placement. Dingemans J declined to make the order sought and said that the consultant "*had drawn a distinction between evaluating the obligations of a tenancy and evaluating a single offer on the one hand and making a distinction between, for example,*

[1] [2019] EWHC 180 (Admin)

hostel accommodation, residential accommodation or ordinary housing accommodation on the other hand. It is not apparent to me from the materials that he does have that capacity and therefore the applicant cannot be made by him acting alone."

18. Local Government & Social Care Ombudsman ("LGSCO") decisions:

    a. Complaint against Oadby & Wigston Borough Council, 18 005 307, 4 April 2019: Ms X and her children left accommodation because of domestic violence. She approached Oadby & Wigston, which was in a different area to where she had been living, although she had previously lived and worked there. She told the council she was at risk of domestic violence if she stayed in the other area. Oadby & Wigston did not take an application for him and placed the responsibility on the other authority to assess and accommodate the family in B&B accommodation. The LGSCO found fault with Oadby & Wigston and recommended that it apologise to her and pay £500. The council has not, as yet, accepted the LGSCO's recommendations.

Making inquiries

19. The cases relate to applications made prior to 3 April 2018 and therefore prior to the amendments brought in by HRA. HRA amendments require a much more detailed process of assessment (s.189A). However, there is still an obligation to make inquiries and to notify decisions under s.184(1) and (3):

    "(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….

    (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."

20. LGSCO decisions:
    a. Complaint against Ealing LBC, 17 007 432, 17 April 2018: Ms X applied on 22 June 2017. She was not notified of the decision until December 2017, 125 working days later. The council did not start to make inquiries until the end of August 2017 and that investigated her address history over a significant period, adding to the time it took to make a decision. Some of the delay was due to Ms X but the council was

liable for three months' delay. The Ombudsman recommended that the council apologise to Ms X and pay £100 for the avoidable frustration caused.

Duty to secure interim accommodation

21. The duty is at s.188(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 must secure that accommodation is available for the applicant's occupation.*"

22. For applications made on or after 3 April 2018, the duty ends on one of these events occurring:

    a. Notification that no duty is owed to the applicant (because he or she is not homeless or threatened with homelessness or is not eligible for assistance): s.188(1ZA)(a) and (1ZB)(a); or
    b. Notification that the local housing authority is satisfied that the applicant does not have a priority need: s.188(1ZA)(b); or
    c. The relief duty coming to an end and notification as to what duty will be owed to applicant upon the ending of the relief duty: s.188(1ZA)(a) and (b).

23. Note that where the relief duty has come to an end because the applicant has refused a final accommodation offer (as defined at s.193A(4)) or final Part 6 offer (as defined at s.193A(5)), the main housing duty does not apply (ss. 189B(9) and 193A(2)). However, if the applicant has requested a review of that decision, any interim accommodation duty owed to the applicant will continue until the review is notified: s.188(2A).

24. In R (Al-Ali) v Brent LBC[2], Mr Al-Ali made an application for homelessness assistance. He said that he, his wife, son and uncle (who was part of his household) had medical needs and he produced doctors' letters. The council became suspicious that the woman mentioned was not his wife and that the medical evidence had been fabricated. It decided that no duty was owed. He applied for review and accommodation pending review. The request for accommodation pending review was declined. Mr Al-Ali was refused permission to bring a judicial review claim. The decision refusing accommodation pending review had identified the relevant legal principles, had referred to the Mohammed factors and set out the various matters that should be considered so there was no arguable error of law. The council was entitled to form the view that there was a very strong case that he had been

[2] [2018] EWHC 3634 (Admin)

seeking housing on the basis of fraudulent information. The Judge said it was "*frankly shocking"* that Mr Al-Ali had altered doctors' letters.

25. LGSCO decisions:

    a. Complaint against Ealing LBC, 17 007 432, 17 April 2018: B&B accommodation provided for pregnant applicant with four children. Accommodation was one bedroom, containing three beds on third floor, with bathroom and cooking facilities. Cost was £345 per week and Ealing assumed that Ms X would obtain discretionary housing payments ("DHP") to meet the shortfall. The council's suitability assessment, completed on the day of the application, had said the family needed three bedrooms. The Ombudsman found that the accommodation was unsuitable due to overcrowding, mould and wet walls. DHP had not been paid and rent arrears accrued. The decision that she would be paid DHP was not based on any evidence of entitlement. The Ombudsman found that the council did not have an adequate supply of suitable accommodation to meet its statutory duties and it was likely that there were other households in unsuitable accommodation. The council should ensure that any households in accommodation that it knows is unsuitable should be told about their right to complain. The council agreed to apologise and pay £1,500 (£300 per month) for five of the months that the family lived in unsuitable accommodation, and to write off the arears;
    b. Complaint against Newham LBC 17 017 876, 19 September 2018: Ms B was a heavily pregnant single mother of three young children. She made an application for homelessness assistance having been asked to leave her mother-in-law's house. A caseworker called the mother-in-law and asked if she would let the family back in until there had been a home visit. The mother-in-law refused. The council told Ms B to stay with a friend, and she managed to stay with a neighbour for 13 days. She re-approached the council having been told to leave and was told that interim accommodation could not be provided until a "home visit" had been carried out. She re-approached four days, saying that the neighbour could no longer accommodate the family as her son was returning in three days' time. The council again said that interim accommodation would not be provided under a home visit had been carried out. She stayed with the neighbour for three more days. The LGSCO said that when Ms B first approached the council it had reason to believe that she may be eligible, may be homeless and may have a priority need and there was a duty to ensure that suitable accommodation was available. That duty could not be postponed in order to carry out a home visit. The council agreed to apologise to Ms B, make a payment to her of £100 to reflect the distress caused by the failure to provide interim accommodation for 20 days and to provide written guidance to its caseworkers;

c. Complaint against Newham LBC 17 016 415, 27 September 2018: Mr B suffered from schizophrenia. He made an application for homelessness assistance when he was sleeping in a relative's car. He told the council he had schizophrenia and produced a doctor's certificate saying he was not fit for work for three months. The caseworker refused to provide interim accommodation pending further medical information. He completed a form which noted that he was supported by a mental health, provided details of his medication and stated that he had been sectioned two years previously, and provided a letter from his consultant psychiatrist. The council still refused to provide interim accommodation. He re-approached Newham two and a half months later with another doctor's certificate and the council still failed to provide interim accommodation. The LGSCO found maladministration for failing to provide interim accommodation. The council agreed to apologise to Mr B, make a payment of £700 to remedy the distress caused by failure to provide interim accommodation for 110 days (during which time he slept in a car) and provide written guidance to its case workers;
d. Complaint against Cornwall Council 17 005 652, 31 August 2018: Mr B was a teenager who lived with his father. He had a history of cannabis use and involvement with mental health services. He was subject to bail conditions preventing him from returning home. The council placed him in supported accommodation in another town. He was evicted from that and became homeless again. He refused an offer of supported accommodation that was 30 miles away from the area he was familiar with. A council social worker bought him a tent and helped him pitch it on the campsite. The council said no other options were available because he did not want to be received into care. It bought him a new tent after the first one started leaking. Five weeks later, the council moved him to a caravan on a different campsite having decided that he was at risk. He then reported being sexually assaulted. A month later, the council planned to move him to B&B accommodation. Afterwards he was moved to appropriate supported accommodation. Two weeks later he was detained under the Mental Health Act 1983 & remained in a psychiatric hospital for 11 months. The LGSCO identified a catalogue of failings. He recommended that the council apologised and pay £1,000 for the effect on his mental health in placing him in unsuitable accommodation, £1,000 for lost opportunity and £500 for placing him at risk without a proper assessment, total £2,500. He also recommended that the council reviewed its policies and procedures for accommodating homes 16 and 17 year olds and ensured that B&B accommodation, caravans and tents were never considered suitable accommodation for young people.

Decisions

26. In R (Sambotin) v Brent LBC[3], the applicant, a Romanian national, had initially applied to Waltham Forest who had decided that he was not eligible. He made a subsequent application to Brent, having moved into Brent's area. In January 2017, Brent decided that he was homeless, eligible for assistance, had a priority need, had not become homeless intentionally and referred him to Waltham Forest under local connection. Waltham Forest rejected the referral as it did not consider that there had been a material change of circumstances. Brent issued a new decision that the applicant was not eligible for assistance. He sought a judicial review, contending that it was not open to the council to make a new adverse decision in favour of an earlier favourable one. The claim for judicial review was allowed. The council appealed to the Court of Appeal which dismissed the appeal. The Judge's conclusion that the decision in January 2017 was a final decision in relation to the housing duty owed to the applicant was right. Absent fraud or some similarly compelling feature, it was not open to a council simply to change its mind and reverse an earlier favourable decision notified to the applicant.

Homeless

27. Section 175(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*."

28. Section 177(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*."

29. In Lomax v Gosport Borough Council[4]: Ms Lomax was a severely disabled woman with complex physical and mental health conditions. She was wheelchair-bound and required 24-hour care, including intimate care, provided by an ex-partner. She lived in adapted accommodation in a rural area in Dorset, a significant distance from her family in Gosport, was extremely isolated, had no visitors and was medically unable to engage with her local community. There was no public transport and no voluntary transport with wheelchair access. She made an application for homelessness assistance to Gosport Borough Council. The medical evidence was unequivocal that a move to Gosport was essential for her mental and physical health. Gosport decided on review that she was not homeless. "*I have considered the housing situation in Gosport in general, and the prevalent negative imbalance between supply and demand of housing. There are many people living in housing that is not ideal for their needs in the Gosport area. I provide some data around the Council's housing register by way of example and in order to provide some context to this*

[3] [2018] EWCA Civ 1826, [2019] HLR 5, CA

[4] [2018] EWCA Civ 1846, [2018] HLR 40, CA

statement, but households seeking accommodation in the private sector also face similar barriers to them obtaining ideal accommodation. There are currently 639 households registered for housing that better suits their needs. 259 of those households require a 1 bedroom property like you do. 221 of the households on the waiting list are assessed as needing to move because their current accommodation is having a medical or social impact on them." The Court of Appeal quashed that decision. It noted that, in respect of all applicants, consideration of whether it is reasonable to continue to occupy accommodation requires the decision-maker to have regard to their personal characteristics. Locality is always a relevant factor. The public sector equality duty applied to all stages of the decision-making process, including whether to compare an applicant to the general housing circumstances prevailing in the authority's district. A generalised reference to the situation of people on the council's housing list who may or may not have disabilities, let alone disabilities as severe as the applicant's, did not have the required sharp focus on her particular disabilities and the consequences for her of remaining in her current accommodation. The comparative exercise undertaken by the reviewing officer did not have regard to the duty to take steps to meet the different needs of a disabled person as compared to those who are not disabled, including steps which may involve treating a disabled person more favourably than a person who is not disabled.

Becoming homeless intentionally

30. Section 191(1) and (2) HA 1996:

> *"(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.*
> *(2) 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.*"

31. Samuels v Birmingham City Council: appeal against Court of Appeal decision[5] heard in Supreme Court in February 2019. Judgment awaited. The issue is to what extent subsistence benefits could be assessed as providing sufficient resources to meet a shortfall between housing benefit and contractual rent.

[5] [2015] EWCA Civ 1051, CA

32. Oduneye v Brent LBC[6]: reviewing officer entitled to find that Ms Oduneye accrued rent arrears because she had failed to provide the council with the information it needed to process her housing benefit and because she failed to pay the shortfall between rent and housing benefit. Reviewing officer entitled to find that property was affordable and that she had become homeless intentionally because she deliberately failed to pay her rent.

33. Radbourne v Peterborough County Council[7]: Mr Radbourne had been provided with a room, occupied under a licence, pursuant to the s.193(2) duty. An inspection was carried out which found drug paraphernalia and the licence was determined by the council the owner of the hostel). At the same time, the council decided he had become homeless intentionally. He sought a review of the decision, denying the allegation. The council sought a possession order in any event. He was evicted and made a fresh application for homelessness assistance. The council then made its review decision, upholding the original decision. He appealed successfully against the review decision. The County Court Judge found that it was not logically possible to find that an applicant had become homeless intentionally and that the s.193 duty had ended at the same time as serving the notice to terminate the licence. During the notice period, when he continued to occupy the accommodation, he was not homeless and so could not have become homeless intentionally. Despite this manifest flaw, the reviewing officer had not given a minded to notice. The reviewing officer had also drawn an adverse inference from a matter not put to the applicant for comment.

34. In Godson v Enfield LBC[8], Mr Godson refused an offer of s.193(2) accommodation and the s.193(2) main housing duty can to an end (s.193(5)). He requested a review which upheld the decision and did not appeal. He was evicted from his accommodation and made a fresh application for homelessness assistance. The council decided that he had become homeless intentionally as a result of losing the accommodation that he had occupied, under s.193(2) main housing duty, due to his refusal of the alternative accommodation offered. That decision was upheld on review. The County Court Judge dismissed a s.204 appeal and so did the Court of Appeal. It was not open to him to argue that the earlier offer had been unlawful (because – he said – it was suitable). It had been subject to a review and could have been subject to appeal. It could not be reviewed a second time. The reviewing officer could not be faulted in concluding that the operative reason why he was homeless was his refusal of the tenancy offered. That refusal was a deliberate act so he had become homeless intentionally.

[6] [2018] EWCA Civ 1595, [2018] HLR 45, CA

[7] County Court at Cambridge, 3 December 2018, Legal Action, April 2019 p42

[8] [2019] EWCA Civ 486, CA

Suitable accommodation

Accommodation provided under s.193(2) main housing duty

35. A v Lewisham LBC[9]: Ms A was the mother of two school aged children and a pre-school child. The council provided accommodation that involved an 80 minute commute each way to the schools. It decided that the accommodation was suitable although the journey was "*not ideal*". The County Court Judge quashed the decision and held that the council had not have due regard to the interests of the children (s.11 Children Act 2004). The reviewing officer had needed to identify what the children's needs were and how to safeguard and promote them. It was a failing to do that without regard to the younger child and the influence on him and the difficulties that there would be, both for the mother and her relationship with her son, in having to undertake the journey four times a day. That should have been expressly considered and the reviewer had said nothing about the younger child. The reviewer also did not give sufficient regard to the interests of the older children. It was not just about whether or not they had been late on a few occasions. The issue was the interests and needs of the children as they developed and that had to be seen in the context of the accommodation being potentially available for years. The journey was difficult, going into the centre of London during very busy times for the transport system, and that out of the centre again. As time goes on, the journey becomes progressively less manageable and less appropriate. There needed to have been express consideration of those difficulties and there had not been.

36. In Kannan v Newham LBC[10], the council provided s.193(2) accommodation on the first floor, only accessible by an external metal staircase of 14 steps. It had a bathroom but no shower. Mr Kannan had a number of medical conditions that inhibited his mobility and rendered him disabled. He complained that he could not manage the stairs or go without a shower. He applied for an allocation and was assessed as having reasonable preference on medical grounds, needing a ground floor property if unlifted and accessible bathing facilities. The council notified him that his home was unsuitable and he needed accommodation on medical grounds but not did not provide alternative s.193(2) accommodation. A reviewing officer decided that the flat remained suitable accommodation. The Court of Appeal allowed a second appeal. The reviewing officer had failed to understand that the medical opinion that been that a ground floor flat, or a flat accessible by lift, was not a matter of convenience but a housing need. He had also failed to take account the passage of time (nine months) since the medical advice and the review decision. The reviewing officer had failed to deal with the issue of the lack of a shower, despite it being one of the complaints on review. The reviewing officer's treatment of the public sector equality duty was highly unsatisfactory. He had recorded Mr Kannan's

[9] County Court at Central London, 5 July 2018, Legal Action, December 2018 p46

[10] [2019] EWCA Civ 57, [2019] HLR 22, CA

description of "*severe*" pain after climbing the stairs, but then downgraded it to "*uncomfortable and inconvenient*". That could not be described as a sharp focus on Mr Kannan's disability, its extent or likely effect.

37. In Alibkhiet v Brent LBC[11], the council made Mr Alibkhiet a private rented sector offer of accommodation in Smethwick. He contended that the accommodation was unsuitable, because he had a support network and that the council was required to give reasons in its offer letter for why it considered the offer to be suitable. The Court of Appeal dismissed both appeals. In each case, the council had applied its policy and considered the issue of suitability lawfully. There was no obligation to explain why the council had decided to make an out of district offer at the time of the offer

38. LGSCO decisions:
    a. Complaint against Brighton & Hove Council, 16 017 200, 10 May 2018: on viewing downstairs flat, complainant heard a lot of noise from flat above and son's autistic condition was aggravated by noise. The housing officer who viewed the property with her supported her account. Complainant later said tenant in flat above swore frequently and made a lot of noise. The flat did not have enough room for the son's sensory equipment. The council told her the only alternative was B&B accommodation, so she accepted the offer. On review, the council decided the property was not suitable but failed to offer alternative accommodation. She remained in the property for two and a half months, during which time she reported that the neighbour was threatening to stab her and her son. The authority for the area in which the flat was located reported a 9 year history of anti-social behaviour against the neighbour and 3 ASBOs. The Ombudsman recommended an apology, £750 to recognise the injustice caused to her and her son by leaving them in unsuitable accommodation, £100 for a six month delay in reimbursing storage charges and £150 for the time and trouble caused by delay and poor handling of the complaint.
    b. Complaint against Basingstoke & Deane District Council 17 012 432, 8 February 2019: Mr X was owed the s.193(2) main housing duty but was not notified of that decision in writing. He signed a six month assured shorthold tenancy of unfurnished accommodation. He complained about the condition and that it was unaffordable. The council failed to treat that as a request for a review of the suitability or to do arrange for other accommodation. The mistakes made in the handling of the homelessness application led, in turn, to errors in dealing with an application under the allocation scheme. He remained in the property for many years. The council spend thousands of pounds on discretionary housing payments to make up the rent

[11] [2018] EWCA Civ 2742, [2019] H.L.R. 15, CA

shortfall but rent arrears accrued and possession proceedings were commenced. The LGSCO found multiple faults and recommended that the council apologised to Mr X, make him top of the list for each eligible property he bid for until he made a successful bid and pay him £4,500.

Ending the s.193(2) main housing duty

39. See Radbourne v Peterborough County Council[12] above.

Reviews and appeals

40. Kamara v Southwark LBC[13]: a minded to letter had set out that the applicant could make oral, or written representations, or both oral and written representations, to the reviewing officer. The appellant submitted that the letter should specify that she was entitled to insist on a face to face meeting with the reviewing officer. The Court of Appeal held that the rights set out in Reg 8(2)[14] had been set out in the letter and that was sufficient notification in accordance with the Regulations.

41. In R (B) v Redbridge LBC[15], Ms B had requested a review of the suitability of her accommodation secured under s.193(2). The review had upheld the decision that the accommodation was suitable and an appeal to the County Court failed. She then applied for a further or second review of the original decision on suitability, contending that her receipt of an actual electricity bill amounted to fresh material relevant to the affordability of the accommodation so as to justify a second review. The council declined to carry out a further review. Her claim for judicial review of that refusal was dismissed. The application for a second review had been made out of time in that it was later than 21 days (and the council had not agreed to extend time). The better course might have been to seek a fresh decision on suitability which would have given rise to a fresh right of review, or to request an extension of time in which to submit a second request for review of the original decision, or to make a fresh application for homelessness assistance.

[12] County Court at Cambridge, 3 December 2018, Legal Action, April 2019 p42

[13] [2018] EWCA Civ 1616, [2018] HLR 37, CA

[14] Now Reg 7(2) Homelessness (Review Procedure etc) Regulations 2018, SI 2018/223

[15] [2109] EWHC 250 (Admin).

42. In Adesotu v Lewisham LBC[16], Ms Adesotu had refused s.193 accommodation and the council had decided that its duty had come to an end. The grounds of her appeal included an argument that she was disabled and that the council's policies or practices in relation to a acceptance and/or refusal of offers amounted to unlawful indirect discrimination against her, contrary to the Equality Act 2010, or alternatively that the polices or practices adopted and applied were unlawful and contrary to public law principles. HHJ Luba QC struck out those grounds of appeal and held that the discrimination issues could only be pursued by a claim, not a s.204 appeal. The public law challenges were not addressed to the review decision and went beyond the jurisdiction of s.204. The Court of Appeal is due to hear her appeal on 9 – 10 July 2019. Note that the issues of direct and indirect discrimination in this appeal are very different to the public sector equality duty at s.149 Equality Act 2010, in respect of which there is clear authority that the duty can be raised in a s.204 appeal.

43. In Tower Hamlets LBC v Al Ahmed[17], Mr Al Ahmed was 28 days late in issuing a s.204 appeal because he had lost confidence in the solicitors who had assisted him with he review, sought new solicitors with the help of Crisis but most could not take his case because of their existing workload, he found new solicitors 25 days late, they secured legal aid and the appeal was issued the following day. The County Court Judge allowed him to extend time. The council appealed and the appeal was allowed. Initiating the appeal was a fairly simple process and so waiting for legal aid was not a good reason for the delay.

[16] County Court at Central London, [2019] EW Mis 3 (CC), Legal Action, March 2019 p44

[17] [2019] EWHC 749 (QB)