

RECENT DEVELOPMENTS IN HOMELESSNESS LAW



Introduction

1. The big bang: Homelessness Reduction Act 2017 (HRA 2017) came into force 3 April 2018. The list of specified public authorities who have a duty to refer (with consent) anyone who appears to be homeless comes into force on 1 October 2018.

2. Implications for HRA:
 - a. Prevention & relief apply regardless of priority need & 'becoming homeless intentionally'. If they work, then less need to determine priority need &/or 'becoming homeless intentionally'. Fewer tough decisions & fewer challenges.

 - b. Culture change: use of private rented sector accommodation if suitable ie affordable, & all other aspects of suitability eg location.

 - c. Worries: is there a ready supply? Is private rented accommodation affordable for those on benefits? And will there just be a revolving door with local housing authorities functioning as lettings agents?

Materials

3. Part 7 Housing Act 1996 (HA 1996) as amended, most recently & significantly by HRA 2017.

4. New *Homelessness Code of Guidance for Local Housing Authorities* (MHCLG, February 2018) available from <https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities>.

5. New *Procedures for Referral of Homeless Applicants to another Local Authority, Guidelines for invoking the Disputes Procedure*, agreed by LGA, CoSLA & WLGA (2018), available from: <https://www.local.gov.uk/>.

6. New guidance on joint working between homelessness and children's services for 16 and 17 year olds: *Prevention of Homelessness Provision of Accommodation for 16 and 17 year olds*

olds who may be homeless and/or require accommodation (MHCLG & Department for Education, April 2018).

7. Two new publications: *Homelessness and Allocations* (Arden et al, LAG, 2018) and *Housing Allocation & Homelessness: Law and Practice* (Luba, Davies, Johnston & Buchanan, LexisNexis, 5th edition forthcoming).

8. *Homelessness Monitor: England 2018* (Fitzpatrick, Pawson, Bramley, Wilcox, Watts & Wood), published by Crisis, paints a devastating picture. In 2016/17, annual homelessness accepted were 59,000, 19,000 & 48% higher across England than in 2009/10 and 2% higher than the previous year. Further, these statistics understate the true increase in homelessness expressed demand over recent years. The vast bulk of the recently recorded increase is attributable to the sharply rising numbers made homeless from the private rented sector, with relevant cases having quadruped since 2009/10: from less than 5,000 per year to over 18,000. All available evidence points to local housing allowance reforms as a major driver of this association between loss of private tenancies and homelessness. These reforms have also demonstrably restricted lower-income households' access to the private rented sector. There are marked differences in regional trends, with acceptances in the North of England still below the 2009/2010 national nadir, while in London acceptances have almost doubled (91% increase) since then. However, 2016/2017 saw the first annual drop in London acceptances for seven years and there are indications that local homelessness pressures are now bearing down most heavily on the South of England and to a lesser extent in the Midlands. Temporary accommodation is up 61% since 2009/2010. Although bed and breakfast accounts for only 9% of the national total, bed and breakfast placements have been rising particularly quickly and now stand 250% higher than in 2009. Virtually all respondents to the local authority survey anticipated that a range of prospective and ongoing welfare benefit freezes and restrictions, particularly removal of housing benefit for young adults and full roll-out of universal credit, would exacerbate homelessness in their areas. There are acute and growing concerns about the many difficulties that the administrative arrangements for universal credits pose for vulnerable households. Prospective reforms include the coming into force of the HRA and funding for Housing First pilots (although the authors question why Housing First needs to continue to be piloted given well-established evidence supporting the model).

Applications for homelessness assistance

Capacity to make an application for homelessness assistance

9. It was established 25 years ago that an application for homelessness assistance could not be made by someone who lacked capacity to make such an application, usually a minor & dependent child or an adult who could not comprehend or evaluate the offer of accommodation or undertake the responsibilities involved in being a tenant: R v Tower Hamlets LBD ex parte Ferdous Begum, R v Oldham MBC ex parte Garlick [1993] AC 509, HL.

10. Since then, the Mental Capacity Act 2005 (MCA 2005) has established a comprehensive code for assessment of whether or not an individual lacks capacity to make decisions. That

code emphasises that the issue of capacity must be assessed separately in respect of each separate decision.

11. In WB v W District Council & Equality & Human Rights Commission [2018] EWCA Civ 928, CA, the appellant argued that Begum was no longer good law and/or that the prohibition on making an application for homelessness assistance was incompatible with the Human Rights Act 1998. The Court of Appeal dismissed the appeal. It remains the case that a person who does not have capacity cannot make an application. Importantly, the issue of whether or not someone has capacity must be assessed applying the principles at ss.1 – 5 MCA. Most importantly:

Section 1: '(1) The following principles apply for the purposes of this Act.

(2) A person must be assumed to have capacity unless it is established that he lacks capacity.

(3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

(4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision' and

Section 3: 'a person is unable to make a decision for himself if he is unable–

(a) to understand the information relevant to the decision,

(b) to retain that information,

(c) to use or weigh that information as part of the process of making the decision, or

(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of–

(a) deciding one way or another, or

(b) failing to make the decision.'

Making an application

12. Section 183(1) HA 1996 provides: *'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.'

13. There have been numerous cases and complaints to the Local Government & Social Care Ombudsman when local housing authorities have failed to recognise that the requirements of s.183 have been met.
14. It should be noted that the new Code advises that where a public authority refers a person who appears to be homeless to a local housing authority, under the new duty to refer which will be effective from 1 October 2018 (s.213B HA 1996): "*A referral made by a public authority to the housing authority under section 213B will not in itself constitute an application for assistance under Part 7, but housing authorities should always respond to any referral received. The housing authority may wish to contact the individual via a phone-call, email or letter using the contact details provided in the referral*" (para 4.19). Arguably, this is wrong and the very receipt of a referral is sufficient for the conditions at s.183(1) HA 1996 to be triggered.
15. In Complaint against Maidstone BC (16 004 303, 1 November 2017), the Ombudsman upheld the applicants' complaint. Mr and Mrs A were asylum seekers, who were accommodated in Home Office accommodation and subsequently given indefinite leave to remain. As a result they had to leave the accommodation on 9 March 2015. They had applied for housing in February 2015 and emailed the council to say they had to leave on 9 March 2015. The council did not arrange an appointment for them, nor did it contact the applicants to say that they should arrange an appointment. They attended the council's offices at 2pm 9 March 2015 with their two small children. They had to wait until the council's offices told, they were then told to leave and wait in a car park and given the out of hours number. They were eventually provided with bed and breakfast accommodation at 7.30pm. The Ombudsman found that the failure of the council to arrange an appointment or provide accommodation promptly on 9 March was maladministration. The approach in February 2015 had constituted an application and the council should have started making inquiries. Requiring them to wait outside until accommodation was found for them for two and a half hours after the close of business showed a lack of compassion, given that the council had had adequate notice of their homelessness on 9 March and could have contacted Mr and Mrs A in advance to check whether they would need emergency accommodation or whether they had made other arrangements, and could have started to source accommodation before 9 March.
16. In Complaint against Rother DC (16 011 157, 12 February 2018), the Ombudsman upheld Ms B's complaint. She had approached the local housing authority when she had been served with a Housing Act 1988 s 21 notice. Contrary to the guidance in the then Code, the council had recommended that she wait until she was evicted by bailiffs. She suffered unnecessary distress arising from uncertainty, not knowing if or how the council might help her, for three months, after receiving the s.21 notice. Further, by telling her to wait for a possession order and then an eviction warrant, the council exposed her to unnecessary court costs, as she had no defence to the landlord's claim. The Ombudsman recommended £250 should be paid in recognition of the injustice suffered. There were further recommendations in respect of the quality of the interim accommodation she was subsequently placed in (see below). Note that if Ms B had made her approach on or after 3 April 2018, as a matter of law, she would have been threatened with homelessness and the

council would have had a duty to help her prevent her homelessness (s.175(5) as inserted by HRA 2017).

Making inquiries into an application for homelessness assistance

17. There is no statutory time limit for the making of inquiries and notification of s.184 decision. From 3 April 2018, there are likely to be a number of s.184 decisions:

- a. whether an applicant is threatened with homelessness and entitled to the prevention duty or whether an applicant is homeless and entitled to the relief duty;
- b. whether an applicant is homeless and the relief duty is to be referred to another local housing authority; and subsequently
- c. whether an applicant in respect of whom the relief duty was owed and has come to an end is homeless, has a priority need and/or has become homeless intentionally; or
- d. Whether an applicant in respect of whom the relief duty was owed and has come to an end is homeless, has a priority need and has not become homeless intentionally should be referred to another local housing authority for the s.193 main housing duty.

18. The new Code of Guidance advises: *'There will be circumstances in which more than one notification will be required at the same time and it will be more practicable to combine the necessary information within one notification letter'* (chapter 18).

19. Complaint against Ealing LBC (17 007 432, 17 April 2018), Miss X made an application in June 2017 and was placed in interim accommodation. The council decided that she had become homeless intentionally in December 2017. The council accepted that there was a two month delay before it started investigating the application. There was a further two month delay, one month of which was due to Miss X not keeping appointments. The Ombudsman held the council liable for a delay of three months in the investigation. The council agreed to pay Miss £100 for the avoidable frustration caused as a result of the delays. There were also issues with the standard of interim accommodation (see below).

Homelessness

20. As is well known, the definition of 'threatened with homelessness' has been extended. Section 175 now reads:

'(4) A person is threatened with homelessness if it is likely that he will become homeless within 56 days.

(5) A person is also threatened with homelessness if—

- (a) a valid notice has been given to the person under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) in respect of the only accommodation the person has that is available for the person's occupation, and
- (b) that notice will expire within 56 days.'

Eligibility for assistance

21. *R (Gureckis) v Secretary of State for the Home Department* [2017] EWHC 3298 (Admin): The claimants sought judicial review of the Home Office policy entitled 'European Economic Area (EEA) administrative removal' (version 3.0, 1 February 2017). This policy contained guidance for immigration officers setting out the circumstances in which rough sleeping would be treated as an 'abuse' of EU Treaty rights, rendering any EEA national found sleeping rough liable to administrative removal, were it was judged proportionate. The policy worked by means of planned operations which specifically targeted EEA nationals who had been sleeping rough and dealt with them by a combination of detaining them, removing them and asking them to leave the UK voluntarily. The claimants were all EEA nationals who had been adversely affected by the policy having been found sleeping rough by the Home Office, setting in train the removal process. The background to the policy, as explained by the Home Office in their evidence, was the 'increase in rough sleeping' between 2010 and 2015 and the perception that there had been an opportunistic 'surge' in the number of EEA nationals entering the UK from less economically prosperous areas 'intent on rough sleeping' which the effect, among other things, of damaging the 'reputation of central London as a tourist destination'. Mrs Justice Lang DBE found that the policy was unlawful on the following grounds:
- a. Rough sleeping was not an 'abuse of rights' within the meaning of article 35 of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (as embodied in domestic law in regulation 26 of the Immigration (European Economic Area) Regulations 2016).
 - b. The policy discriminated unlawfully against EEA nationals and rough sleepers. This flowed from ground 1. The policy treated rough sleeping EEA nationals less favourably than British nationals, without any justification.
 - c. The application of the policy involved unlawful 'systematic verification' in breach of the express terms of Article 14(2) of the Directive.
- An order was made quashing the policy.

Priority Need

Children aged 16 or 17

22. New guidance on joint working between homelessness and children's services for 16 and 17 year olds: *Prevention of Homelessness Provision of Accommodation for 16 and 17 year olds who may be homeless and/or require accommodation* (MHCLG & Department for Education, April 2018).

Vulnerable

23. Hotak v Southwark LBC [2015] UKSC 30, [2016] AC 811, SC, Lord Neuberger approved of 'the approach consistently adopted by the Court of Appeal that 'vulnerable' in section 189(1)(c) connotes 'significantly more vulnerable than ordinarily vulnerable' as a result of being rendered homeless' [53]. What does 'significantly more vulnerable' mean?

24. The Court of Appeal in Panayiotou v Waltham Forest London Borough Council, Smith v Haringey London Borough Council [2017] EWCA Civ 1624, [2017] HLR 48, CA, held:

"I do not, therefore consider that Lord Neuberger can have used "significantly" in such a way as to introduce for the first time a quantitative threshold, particularly in the light of his warning about glossing the statute. Rather, in my opinion, he was using the adverb in a qualitative sense. In other words, the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within section 189(1)(c), would suffer or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering such that the harm or detriment would make a noticeable difference to his ability to deal with the consequences of homelessness. To put it another way, what Lord Neuberger must have meant was that an applicant would be vulnerable if he were at risk of more harm in a significant way. Whether the test is met in relation to any given set of facts is a question of evaluative judgment for the reviewer' Lewison LJ [64].

25. In Freeman-Roach v Rother DC [2018] EWCA Civ 368, CA, the local authority appealed against a County Court Judge's decision that a review decision should be quashed. Allowed his appeal. Mr Freeman-Roach was aged 54, he had suffered two strokes and spoke with a significant speech impediment. He had osteoarthritis, asthma and high blood pressure. The council decided that he was not vulnerable. He appealed against that review decision and the Judge allowed his appeal. On appeal against the Judge's decision, the Court of Appeal held that a review decision cannot be faulted because it failed to define 'vulnerable' or 'significantly' or failed to list the attributes of the ordinary person if made homeless. The review officer had accepted that Mr Freeman-Roach suffered from mental illness and physical disability but had also found that his several conditions were either controlled by medication or did not cause him any particular functional impairment, and he had decided that none of the applicant's problems would make a noticeable difference to his ability to deal with the consequence of homelessness. Lewison LJ also said '*it is not for the reviewing officer to demonstrate positively that he has correctly understood the law, it is for the applicant to show that he has not. The reviewing officer is not writing an examination paper in housing law. Nor is he required to expound on the finer points of a decision of the Supreme Court*' [52].

26. Interestingly there is some consideration by the Welsh Government of the possibility of abolishing the priority need test.

Becoming homeless intentionally

27. Permission has been granted for the applicant in Samuels v Birmingham City Council [2015] EWC Civ 1051, [2015] HLR 47, CA, to appeal to the Supreme Court. The issue is

the council's decision that Ms Samuels had become homeless intentionally because she could have made up the shortfall between her rent and housing benefit, but failed to do so.

Referral to another local housing authority

28. Note the new additional deemed local connection criteria for care-leavers:

- a. A former relevant child (looked after for a period of 13 weeks or more) aged between 18 and 21, or 25 if pursuing a programme of education in his or her pathway plan has a local connection with the local authority which has a duty to him or her under Children Act 1989, s 23C; and
- b. A young person under the age of 21 has a local connection with a local authority in whose district he or she was normally resident by virtue of Children Act 1989, s22A, for a period of at least two years, of which some was before his or her 16th birthday (s.199(8) – (11) HA 1996).

29. The deemed local connection ceases at the age of 21 although the person may still have a local connection with that district for another reason (s.199(11) HA 1996). Guidance is at paras 10.17 – 10.20 and Chapter 22 of the Code.

Duties under HA 1996

30. Duties owed to all eligible applicants:

- a. Duty to make an assessment of the applicant's case and agree a personalised housing plan (s.189A) owed to all applicants who are eligible and either threatened with homelessness or homeless;
- b. Duty to help an applicant prevent his or her homelessness, owed to all applicants who are eligible and threatened with homelessness (s.195);
- c. Duty to help an applicant secure his or her accommodation, owed to all applicants who are eligible and homeless (s.189B).

Accommodation duties

Interim accommodation

31. Duty to secure accommodation owed to all applicants in respect of whom the local housing authority has reason to believe may be eligible, may be homeless and may have a priority need (s.188(1)). Duty ends on one of these events:

- a. When the local housing authority notifies the applicant of a decision that the duty is not owed, because the applicant is not eligible or is not homeless;
- b. When the local housing authority notifies the applicant of a decision that he or she does not have a priority need; or

- c. When the local housing authority notifies the applicant of what duty, if any, is owed to him or her when the relief duty comes to an end.
32. Note that if the relief duty comes to an end because the applicant has refused a private accommodation offer or a final Part 6 offer (ss.189B(9) and 193A) and the applicant has requested a review of the suitability of the accommodation, the duty to secure interim accommodation will continue until the review decision is notified.
33. Interim accommodation must be suitable for the needs of the applicant and of his or her household. The Ombudsman has been so concerned about councils' continuing use of bed and breakfast accommodation for families that he published *Still no place like home?* in December 2017. In his foreword, the Ombudsman said: '*In October 2013, we published a report entitled No Place Like Home, about councils' use of bed and breakfast accommodation to house homeless families and young people. We were routinely finding councils exceeding the maximum time limits for placing families and young people in bed and breakfasts, and we highlighted the devastating impact this had on individual lives. Since that time, some things have changed – but many have remained disappointingly familiar....we highlight more stories of families left in unsuitable accommodation who are too often hidden behind the statistics. We also show the common things councils are getting wrong about those cases*'.
34. In Complaint against Maidstone BC (16 004 303, 1 November 2017), the Ombudsman upheld the applicants' complaint. On 13 March 2015 the council accepted the main housing duty and provided new accommodation, in the form of a flat owned by a private landlady and managed by her son, on 30 March 2015. A purported licence agreement was signed. The following day they complained that the flat was not suitable, and that they needed a cot. In July 2015 the landlady required them to leave and said that they had drawn on the walls and moved furniture around and had moved a computer table into the property (in breach of the rules). They had to leave that day, and either the landlady's son packed up their belongings or he required Mrs A to do so. The council provided bed and breakfast accommodation and then notified them that the main housing duty was discharged because they had become homeless intentionally from the accommodation. The council was also at fault in permitting the landlady to require Mr and Mrs A to leave, rather than requiring her to serve a 28 day notice to quit. Further, the reasons for being required to leave were minor: marks to the walls (which the applicants repainted), small stains to the carpet and a missing plinth. Further the council had failed to make Mr and Mrs A aware of the rules and had failed to investigate the landlady's harsh behaviour (and that of her son). The council also failed to respond to the applicants' complaints and delayed in considering their request for a review of the decision that the duty had been discharged. Finally the council had told Mr and Mrs A that they were lucky to have temporary accommodation, and this was humiliating and disrespectful in circumstances where they had a legal right to accommodation. The Ombudsman recommended that the council apologise, pay Mr and Mrs A £500 for lost and broken receipts, £500 for bed and breakfast costs (which they had paid for), £370 for removal and storage costs, £750 for the cost of takeaway food whilst they were in bed and breakfast accommodation after the eviction and £2,000 to reflect the distress of the eviction and the attitude displayed by the council. The council accepted the recommendations to pay for the cost of bed and breakfast accommodation and the removal and storage costs but not the other recommendations.

35. In Complaint against Rother DC (16 011 157, 12 February 2018), the Ombudsman upheld Ms B's complaint. The interim accommodation provided on her eviction was in a neighbouring borough. Ms B was told that there was no temporary accommodation in Rother. Council officers told the Ombudsman this was because the council had no temporary accommodation in its area and regularly placed people in Hastings, Eastbourne, and further afield in Kent. Ms B said that the hotel room was squalid, filthy and damp, the toilet was caked in faeces and the room was infested with bedbugs and cockroaches. She struggled to climb the four flights of stairs needed to get to her room. When the council told her that it had accepted the main housing duty to her, it did not tell her that she had a right to request a review of the suitability of the accommodation. The Ombudsman found that the council should have visited the hotel to check the condition of the room, or at least checked whether the local council had done so. The council was at fault for failing to ensure adequate inspection of the room until she was permanently rehoused in September 2016. The Ombudsman recommended that the council provide an unreserved apology and pay £500 for potentially placing her in unsuitable accommodation without giving rights of review or appeal and not being able to offer temporary accommodation within its area. The Ombudsman said: *'the issues we have seen with councils' capacity to cope with the growing homelessness problem are spreading from London to the wider south east and beyond. This case is an example of what can happen when councils fail to ply, and the impact this has on local people'*.

36. In Complaint against Windsor and Maidenhead RBC (16 003 062, 15 February 2018), Mr X was a man with impaired mobility and in priority need. His marriage broke down and his wife asked him to leave. The council offered interim accommodation outside of its district and he did not feel able to accept it. He stayed with his parents for a couple of nights over Christmas and then spent several weeks 'sofa surfing'. The council accepted that it owed him the main housing duty on 10 February 2016 but did not make him any offers of accommodation until late March 2016. None of the accommodation provided was suitable until he was offered permanent housing a year later, in March 2017. The Ombudsman found that the council had not kept proper records of some of its decisions and contact with Mr X, that it had offered him unsuitable interim accommodation, it had taken too long to provide main housing duty accommodation and the accommodation it eventually offered was unsuitable, it had used a standard letter when it offered accommodation and that letter failed to notify applicants of their right to request a review of the suitability of accommodation, it failed to delay with his complaint and had failed to deal properly with the Ombudsman. He recommended that the council should apologise, pay £1,005 for the three and a half months that Mr X was without any accommodation, pay £2,875 for 11 and a half months in unsuitable accommodation and pay £250 for Mr X's time and trouble pursuing his complaint. The Ombudsman said: *'this is another example of a council on the outskirts of the capital struggling to cope with homelessness within its boundaries. And whilst I appreciate the difficulties council have in finding suitable accommodation, it is unacceptable that this man was placed in unsuitable accommodation for nearly a year, having been left for three months to fend for himself on the streets'*.

37. In Complaint against Ealing LBC (17 007 432, 17 April 2018), Miss X made an application in June 2017 and was placed in interim accommodation. The council decided that she had become homeless intentionally in December 2017 (see above). The interim accommodation was described as bed and breakfast, although the family, consisting of Miss X who was pregnant and her four children, did not have to share facilities. The room consisted of one bedroom, containing two beds. In July, Miss X said the accommodation was unaffordable because there was a shortfall of £38.75 per week. The council advised

her to apply for DHP. She also said that it was damp and that some of the lights were not working and it was overcrowded. The Ombudsman did not criticise the accommodation provided for the day Miss X had presented as homeless. Due to the shortage of suitable accommodation, the council had no alternative than to place Miss X and her family there. However it should have been clear to the Council that it was placing her in unsuitable accommodation due to the overcrowding. The Ombudsman would have expected the council to keep looking for accommodation. The council had accepted, during the investigation, that the accommodation had been overcrowded. The Ombudsman was also satisfied that the accommodation that accommodation was unsuitable because of repair issues including mould and wet walls. Further there was no evidence that Miss X would be awarded a DHP. In response to the Council telling Miss X 'we have a significant number of families that are waiting to be moved. We are trying to facilitate a move as quickly as possible, however, a lack of suitable affordable local accommodation does mean that moving families to alternative accommodation is taking some time', the Ombudsman concluded that there are many others affected by the Council's lack of suitable accommodation. He recommended that the Council should have moved the family to more appropriate interim accommodation as soon as possible. He recommended compensation for the period starting six weeks from when the accommodation was first provided, agreed at £300 per month (total £1,500) and that the Council apologise to Miss X and write to people already in accommodation identified as unsuitable, advising them of their right to complain.

Main housing duty accommodation

38. In Complaint against Haringey LBC (16 014 926, 31 January 2018), the Ombudsman upheld a complaint that the accommodation was not suitable. The temporary accommodation that the family had originally been placed in was infested with mice. In October 2016, the family was moved to a ninth-floor one-bedroom flat in an ageing tower block due for demolition. It had no cold running water in the kitchen. The lift was often broken, leaving the family to climb flights of stairs with a pram and large bottles of water. There was no heating because the gas meter had been disconnected. The applicant's request for a review in respect of the suitability of accommodation explained that her prematurely-born baby was at risk of respiratory problems from damp and mould on the bedroom ceiling. In November 2016 a surveyor visited and said that the stains on the bedroom ceiling were not mould, but smoke damage. The review decision should have been notified no later than the final week of December 2016 but this did not happen. By February 2017 there had been no progress with the repairs and there was still no cold water in the kitchen, so the washing machine could not be used. The family was spending £20 per week on bottled water and a further £15 per week on laundry costs. The lift often remained out of order for days or weeks at a time. The council promised to issue the review decision in March 2017 but did not do so. In July 2017 a manager wrote to the family accepting that the flat was unsuitable and apologising for the council's poor communication. During a meeting the council agreed to provide bottled water but this never materialised. The family were finally moved to two bedroom accommodation at the end of August 2017. The Ombudsman found the council at fault for placing the family in the flat when officers knew that there were problems with the water supply. It also criticised the council's response to the family's request for a review of the accommodation's suitability and to their complaints. The council agreed to apologise and to pay £300 per month (over 10 months, £3,000) plus £20 per week for the bottled water and £15 per week for the laundry costs. The Ombudsman said; *'this is yet another case of a council housing a family in which I have described in the past as Dickensian conditions'*.

Reviews and appeals

Accommodation pending appeal

39. In Freeman-Roach v Rother DC [2018] EWCA Civ 368, the Court of Appeal held that there had been no error of law in the council's decision not to secure accommodation pending appeal. The County Court Judge had been wrong when he had held that it was irrational for the council not to secure accommodation pending appeal given that it had secured interim accommodation pending review and that if the applicant was not accommodated, he would have to sleep in his car which would prejudice his ability to pursue his appeal. The Judge had ignored the key change in circumstances which was that, after the review decision, the applicant was someone whom the council had decided did not have a priority need, rather than a person whose status was under review. That was a sufficient difference to justify the council arriving at a different conclusion in the exercise of its discretion. Further, the Judge had not dealt with the council's case that the applicant could have stayed with relatives or in a homeless shelter rather than sleeping in his car, and the Judge had paid no attention to the point about the demands of other homeless applicants, and had not explained how the applicant would be prejudiced in pursuing his appeal which was on a point of law.
40. In Davis v Watford Borough Council [2018] EWCA Civ 529, CA, the Court of Appeal held that where the applicant is appealing against an original review decision, because the council has failed to notify the applicant of its decision on review (HA 1996, s 204(1)(b)), and the council has decided not to secure accommodation pending appeal, the correct route for the applicant to try to challenge that refusal is by judicial review, not by an appeal under HA 1996, s 204A.

NAME OF BARRISTER
WHICHEVER Team
Garden Court Chambers
DATE 2011