



HOMELESSNESS LAW: CASE-LAW UPDATE

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England and Wales

England: **Housing Act 1996, Part 7:**

- amended by Homelessness Reduction Act 2017 in force for applications made on or after 3 April 2018 (duty on specified public authorities to refer 1 October 201*);

Wales: **Housing (Wales) Act 2014, Part 2**, in force for applications made on or after 27 April 2015..



Materials

Part 7 HA 1996 as amended;

Homelessness Code of Guidance MHCLG, February 2018;

Procedures for Referral of Homeless Applicants to another Local Authority;

Prevention of Homelessness Provision of Accommodation for 16 and 17 year olds who may be homeless and/or require accommodation;

Homelessness and Allocations (Arden et al, LAG);

Housing Allocation and Homelessness (Luba et al, LexisNexis);

Homelessness Monitor: England, Crisis, April 2018.

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Application for homelessness assistance

- WB v W District Council & Equality & Human Rights Commission [2018] EWCA Civ 928, CA: 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;
- Maladministration to fail to recognise when an approach has been made & fail to start making inquiries &/or arrange interim accommodation:
 - Maidstone BC;
 - Rother BC;
 - Ealing BC.

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Is the applicant homeless?

Section 175 HA 1996:

(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.

Is the applicant eligible?

R (Gureckis) v Secretary of State for the Home Department [2017] EWHC 3298 (Admin):

- rough sleeping is not an abuse of EEA/EU rights.

Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006 No. 1294) amended by the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018 (SI 2018/730)

- The 2018 Amendment Regulations come into force 9 July 2018
- Amend Regulations 3 and 5 (2006 Regs) so persons who qualify for leave under s67 of the Immigration Act 2016 and have limited LTR under paragraph 35ZH Immigration Rules and are habitually resident are now eligible.

Does the applicant have a priority need?

Definition of “vulnerable”: s.189(1)(c) HA 1996:

- ‘vulnerable’ in section 189(1)(c) connotes ‘*significantly more vulnerable than ordinarily vulnerable*’ as a result of being rendered homeless’ [53]: Hotak v Southwark LBC, Johnson v Solihull MBC, Kanu v Southwark LBC [2015] UKSC 30, [2015] 2 WLR 1341, SC;
- Panayiotou v Waltham Forest London Borough Council, Smith v Haringey London Borough Council [2017] EWCA Civ 1624, [2017] HLR 48, CA: *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. ...an applicant would be vulnerable if he were at risk of more harm in a significant way.* [64].



Has applicant become homeless intentionally?

Affordability & whether an applicant can afford shortfall between rent & HB: Samuels v Birmingham CC to be considered by Supreme Court.

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Local connection

HRA 2017: local connection for care-leavers:

- 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
- 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).

Duties owed to eligible applicants

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;

Duty to help an applicant prevent his or her homelessness, owed to all applicants who are eligible and threatened with homelessness (s.195);

Duty to help an applicant secure his or her accommodation, owed to all applicants who are eligible and homeless (s.189B).

Interim accommodation: s.188

Ombudsman:

- *Still no place like home?*, December 2017: bed and breakfast accommodation;
- Maidstone BC: failure to arrange interim accommodation in advance, failure to prevent unlawful eviction;
- Rother BC: squalid and filthy;
- Windsor & Maidenhead BC: three months without accommodation;
- Ealing BC: overcrowded & unaffordable.

Main housing duty: s.193(2)

Accommodation must be suitable:

- Windsor & Maidenhead: 11 and half months in unsuitable accommodation;
- Haringey: ninth floor of tower block where lift kept breaking down, no cold water in kitchen.

Reviews & appeal

- Freeman-Roach v Rother DC [2018] EWCA Civ 368, CA: *'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].
- Davis v Watford Borough Council [2018] EWCA Civ 529, CA: judicial review remedy where accommodation pending appeal refused in case of appeal against original s.184 decision.

Allocation implications of HRA 2017

- People owed the prevention duty are owed a duty under s.195 and so they will be entitled to reasonable preference: s.166A(3)(b);
- People owed the relief duty are homeless and so they will be entitled to a reasonable preference under s.166A(3)(a);
- When the relief duty comes to an end, if the person remains homeless and is accommodated under s.190(2) or s.193(2) duties, he or she will be entitled to a reasonable preference under s.166A(3)(b).