



## Homelessness & Covid-19

This briefing note has been prepared by [Andy](#) Lane, [Matt](#) Lewin & [Tara](#) O’Leary of the Cornerstone Barristers’ [Housing](#) and [Public](#) Law Teams in response to the particular issues raised for local housing authorities (LHAs) by Covid-19 insofar as concerns their Part 7 homelessness duties and powers. It covers 4 broad areas:

1. Homelessness Presentations
2. Priority Need.
3. Intentionality.
4. Accommodation discharge.

### **Homelessness Presentations**

Current government advice, with a view to containing and “reducing the peak” Covid-19, includes self-isolation and the avoiding of unnecessary social contact. This, alongside an increase in the number of detected cases, has 3 obvious initial and immediate implications for a LHA’s homelessness service:

#### **Immediate impact of Covid-19**

1. Individuals and households may be asked/have to leave their accommodation because of a possible positive diagnosis (see the “Priority Need” section below), leading to an increase in numbers seeking housing assistance.
2. A would-be applicant’s current accommodation may be unsuitable as a result of Covid-19 and its fall-out (e.g. hostel/B+B accommodation – guidance to [hostel](#) and day care providers has been provided by the government).
3. Approaching LHAs for assistance may be impeded at both ends – the availability of officers to give appropriate advice/access to public buildings, and the ability of would-be applicants to make the approach because of their health concerns.

In terms of that initial presentation, the (statutory) Homelessness Code of Guidance for Local Authorities (“[COG](#)”) provides:

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“18.2 A need for accommodation, or assistance in obtaining accommodation, can arise at anytime. Housing authorities will therefore need to provide access to advice and assistance at all times during normal office hours, and have arrangements in place for 24 hour emergency cover, e.g. by enabling telephone access to an appropriate duty officer. The police and other relevant services should be provided with details of how to access the service outside normal office hours.

18.5 Applications can be made to any department of the local authority and expressed in any particular form; they need not be expressed as explicitly seeking assistance under Part 7. As long as the communication seeks accommodation or assistance in obtaining accommodation and includes details that give the housing authority reason to believe that they might be homeless or threatened with homelessness, this will constitute an application.” (Emphasis added)

It follows that the key factor at this opening stage is that the LHA is aware and able to identify, whether in writing - **including e-mail, text, on-line, etc** - orally or in person, that (a) accommodation/assistance to secure accommodation is being sought, and (b) they have reason to believe (section [184\(1\)](#) - which is a **low** threshold<sup>1</sup>) that the person may be homeless or threatened with homelessness.

If that is the case then the LHA must proceed to accept the application and go on to consider its duties – the production of a personalised housing plan (section [189A](#)) and the potential operation of prevention (section [195](#)) and/or relief (section [189B](#)) duties before, if required, determining the substantive application.

What must a LHA then do, and how?

1. “Interview” the applicant (and this may not in current circumstances be by means of a face to face interview) and reach a decision on eligibility and whether they are homelessness/threatened with homelessness within 56 days: COG 11.3. Issue a section 184 decision, with a right to statutory review, if the conclusion is negative to the applicant.
2. **Be aware of the Government’s ongoing [plans](#) with regard to preventing the issue of new (rent arrears) possession claims and any evictions of the same for at least a 3 months period**

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<sup>1</sup> The local authority's duty of inquiry, whether under s.184 of the 1996 Act or under general principles of public law, was an obligation to take reasonable steps to inform itself of matters relevant to the carrying out of its tasks in assessing the respondent's housing application, and doing so in a manner compatible with its equality duty under s.149 of the Equality Act 2010: [Birmingham City Council v Wilson](#) [2017] H.L.R.4



as this could impact upon questions of homelessness/threatened with homelessness/intentionality:

- Emergency legislation to suspend new evictions from social or private rented accommodation while this national emergency is taking place
- No new possession proceedings through applications to the court to start during the crisis
- Landlords will also be protected as 3 month mortgage payment holiday is extended to Buy to Let mortgages

3. If the LHA is not making a negative section 184 decision then they must proceed to carry out a section 189A assessment. In the current climate this may not, as indicated at 1. above, be possible to do face to face, as would normally be preferable at least once as part of the process (see COG 11.14), and arrangements should be made to do by telephone and/or on-line.

The aforementioned temporary stop on (at least rent arrears) possession claims and evictions will inevitably reduce the pressure on LHAs insofar as concerns their homelessness duties. But there will equally certainly be those cases where tenants are unlawfully evicted, or threatened with the same, which will require strong LHA intervention to prevent/reverse such action.

### Priority need

There are four categories of people who are treated as having a “priority need” for accommodation (section 189):

- (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.

As of 5pm on 17 March 2020, the official advice on [www.nhs.uk/coronavirus](http://www.nhs.uk/coronavirus) provides that anyone with symptoms of COVID-19 (a high temperature or a new, continuous cough) should

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remain at home for 7 days (if they live alone) or 14 days (if they live with other people). However, the guidance acknowledges that, for many households, self-quarantine will put members at risk:

*“If you live with someone who is 70 or over, has a long-term condition, is pregnant or has a weakened immune system, try to find somewhere else for them to stay for 14 days.”*

It follows that potentially any of the following people may be in priority need if they live in the same household as anyone with symptoms of coronavirus:

- pregnant women;
- anyone over the age of 70;
- anyone in the “at risk” categories, that is people who –
  - have had an organ transplant and are taking immunosuppressant medicine
  - are having chemotherapy or radiotherapy
  - have blood or bone marrow cancer (e.g. leukaemia)
  - have a severe chest condition (e.g. cystic fibrosis or severe asthma)
  - have another serious health condition or weakened immune system

These people are either vulnerable themselves (section 189(1)(c)) or homeless as a result of a (public health) emergency (in the sense that it is not reasonable for them to continue to occupy accommodation with someone with coronavirus) (section 189(1)(d)).

However, this advice assumes that you actually have a home. For anyone who is “street homeless”, it is practically impossible to follow official advice to maintain high levels of personal hygiene or socially distance themselves from others let alone to self-isolate at home if they display symptoms of coronavirus. People with no “home” in which to protect themselves are acutely vulnerable to the risk of infection and of passing it onto others.

A recent letter to *The Guardian* lamented, “[t]hese citizens, with equal rights to dignity and social welfare, are quite literally left out in the cold.” Fortunately, on the afternoon of 17 March, the Secretary of State for Communities announced on Twitter that there would be funding available to all local authorities to provide emergency accommodation for street homeless people – presumably with symptoms – to self-isolate.

However, that does not necessarily provide a solution to the desperate situation of street homeless people being unable to practice social distancing and therefore mitigate the risk of infection. The



problem arises because it is not clear that such individuals – otherwise in good health and without symptoms – would fall within the definition of “vulnerable”. All other things being equal, in the language of *Hotak*, they are no more vulnerable to harm than an ordinary person if made homeless. The statutory test was simply not designed with this kind of public health emergency in mind: even after the Homelessness Reduction Act [2017](#), the law has never guaranteed support to anyone who happens to find themselves homeless.

### Intentionality

**191(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.

Has the applicant left accommodation, that was reasonable for them to continue to occupy, because of concerns as to Covid-19 but in contravention of government guidelines? The key question in such circumstances is whether they acted in good faith. Or to put it more clearly:

**Q.** Did they know they were acting in contravention of such guidance, but went ahead nonetheless – in which case they did not act in good faith.

**Q.** Or weren't they aware of the guidance or its detail, and moved out because of their genuine concerns as to the potential spread of the virus – when it would be good faith<sup>2</sup>.

### Accommodation discharge

In terms of interim or other accommodation, and the overwhelming need for it to be ‘[suitable](#)’, then this question may arise at a number of different stages pre-substantive duty:

- (a) Rough sleepers – on 17 March 2020 the Communities Secretary of State (Robert Jenrick) announced £3.2 million emergency [funding](#) to help rough sleepers to self-isolate, with LHAs in England being reimbursed for the cost of providing accommodation and services to rough sleepers, and those at risk of rough sleeping, who are suffering from or at risk of Covid-19. And so, for example, Islington Council, along with other authorities, shortly afterwards committed to

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<sup>2</sup> *Ugiagbe v LB Southwark* [2009] H.L.R. 35



providing temporary accommodation where homeless people can self-isolate during the Covid-19 pandemic (and the London Mayor's [office](#) has been working to make available hotel accommodation, 300 rooms at the last count, for this group of people in severe housing need).

- (b) As part of the prevention duty – e.g. are there any means by which the applicant can be safely allowed to remain at the existing accommodation bearing in mind their and others health security?
- (c) If not, can the applicant be helped to find (even 'temporary' – that is for between 6 and 12 months - accommodation) under the relief duty, or indeed the interim accommodation required by section [188](#) if “the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need” when “they must secure that accommodation is available for the applicant's occupation”. Again, in respect of the latter duty it is important to consider the 'Priority Need' section below.

As has been noted in the first section, there are additional issues raised as to the suitability of accommodation presently being offered under a LHAs Part 7 (homelessness) powers and duties by Covid-19. That is particular with regard to short-term B+B and hostel accommodation.

'Main messages' set by the Government in the aforementioned guidance include:

- hostels and day centres do not need to close at the current time unless directed to do so by Public Health England (PHE) or the government.
- frequently clean and disinfect regularly touched objects and surfaces using your standard cleaning products.
- if a resident in a hostel becomes unwell, they should stay in their room.
- if someone becomes unwell in a day centre, and they do not have a home or room in which to self-isolate, they should be isolated temporarily in an area of the day centre and staff are advised to contact the local authority.
- local authority public health, housing and social care teams are encouraged to work closely together to identify appropriate local solutions for people who don't have anywhere to self-isolate. The Ministry for Housing, Communities and Local Government (MHCLG) intends to issue a further communication to local authorities on this in due course.



The Housing Team at Cornerstone Barristers will be available for informal telephone conversations, and are well set-up to take on formal Instructions whether that be with regard to Advices or court hearings. Contact can be made on 020 7242 4986 / 0333 240 0591 or by e-mail to [clerks@cornerstonebarristers.com](mailto:clerks@cornerstonebarristers.com)