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Avoiding (Successful) Homelessness Appeals

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Introduction

What are we covering?

- Housing Act 1996 decisions:
  - Legal framework
  - Common issues that arise
  - Practical tips, pitfalls and limiting successful challenges
  - Other duties and powers alongside section 184/202
  - Key pointers on appeal
  - Recent case law

All references to sections in these slides are to the Housing Act 1996 unless otherwise stated

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01

Legal Framework

Housing Act 1996

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Housing Act 1996

- Part 7 provides the principal statutory underpinning for action to prevent homelessness and provide assistance to people threatened with or actually homeless.
- Amendments / supplementary legislation (e.g., Homelessness Reduction Act 2017, Domestic Abuse Act 2021).
- Question of who gets what help – tends to fall to Local Housing Authorities to provide an answer – "the Local Housing Authority is satisfied that..."
- LHA must give proper consideration to all applications for housing assistance.
- If reason to believe applicant may be homeless / threatened with homelessness, must make enquiries re: whether owe any duty. **Going to look at that provision in more detail.**

Housing Act 1996

1996 CHAPTER 52

PART VII

HOMELESSNESS: ENGLAND

Supplementary provisions

[F1 213B Duty of public authority to refer cases in England to local housing authority

(1) This section applies if the specified public authority considers that a person in England in relation to whom the authority exercises functions or may be brought into threatened with homelessness.

(2) The specified public authority must ask the person to agree to the authority notifying a local housing authority in England of—

(a) the opinion mentioned in subsection (1), and

(b) how the person may be contacted by the local housing authority.

(3) If the person—

(a) agrees to the specified public authority making the notification, and

(b) identifies a local housing authority in England to which the person would like the notification to be made,

the specified public authority must notify that local housing authority of the matters mentioned in subsection (2) (as amended).

(4) In this section "specified public authority" means a public authority specified, or of a description specified, in regulations made by the Secretary of State.

(5) In subsection (4) "public authority" means a person (other than a local housing authority) who has functions of a public nature.]

Section 184 (1)

Where the authority has reason to believe that a person ("the applicant") may be homeless or threatened with homelessness, they are under a duty to make such inquiries as are necessary to satisfy themselves whether or not he is eligible for assistance and what, if any, duty is owed to him: s.184(1).

- S.183(1) – applied
- No requirement for specific form / application
- Homelessness code of guidance for local authorities ("Code of Guidance"), para. 18.5
- Low threshold (see *e.g. R (Aweys v Birmingham CC* [2007] EWHC 52 (Admin); [2007] HLR 27 *per* Collins J at [8]) subject to a very limited exception

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Section 184 (2)

BEWARE – the "joint application"

- S.183(1) – "a person"
- What have the courts have said about joint applications?

  MacLeod (aka Hynds) v Midlothian DC (1986) SLT 54 *per* Lord Ross
  R v Wandsworth LBC ex p Lord (unreported) 8 July 1985, QBD *per* Woolf J.
  Lewis v Brent LBC [2005] EWCA Civ 605.
  Hemans v Windsor and Maidenhead RBC [2011] EWCA Civ 374; [2011] HLR 25, CA at [23].

- Lead applicants?
- Safest course? Treat joint applications with a degree of separation

- In addition: (a) separate applications from the same household; (b) multiple applications; (c) consecutive applications; (d) repeat applications

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Section 184 (3)

Where the authority has reason to believe that a person ("the applicant") may be homeless or threatened with homelessness, they are under a duty to make such inquiries as are necessary to satisfy themselves whether or not he is eligible for assistance and what, if any, duty is owed to him: s.184(1).

- The duty can not be deferred: see *e.g. Robinson v Hammersmith & Fulham LBC* [2006] EWCA Civ 1122; [2007] HLR 7, CA

- Can be taken in stages
  - Reason to believe applicant may be in priority need (s.188(1))?
  - Prevention duty?
  - Relief duty?
  - Matters for the s.184 decision – eligibility, homeless or threatened with homelessness, priority need, intentional homelessness, conditions for referral

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Section 202

- An applicant may challenge the section 184 decision by review under section 202, Housing Act 1996.
- Section 188(3), HA 1996 provides the authority with a power to provide accommodation pending review. The power is discretionary.
- Homelessness (Review Procedure etc) Regulations 2018 (SI 2018/223): s.203(1).

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Procedure on review

- Regulation 7(2) of the Review Procedure Regulations provides:

  "If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of A on one or more issues, the reviewer must notify A -
  (a) that the reviewer is so minded and the reasons why; and
  (b) that A, or someone acting on A's behalf, may make representations to the reviewer orally or in writing or both orally and in writing."

- The procedural safeguards in the Review Procedures Regulations are of the highest importance and any significant departure from the procedural rules prejudicial to the applicant would afford him a ground of appeal: *Runa Begum v Tower Hamlets* [2003] UKHL 5; [2003] 2AC 430, per Lord Bingham of Cornhill at [9].

- Relevant principles are conveniently summarised by Lewison L.J. in *J v Wandsworth LBC* [2013] EWCA Civ 1373; [2014] H.L.R. 6 at [70]. Where new facts emerge that relate to an important issue in the case, the authority must consider whether those new facts expose a deficiency in the original decision: *J* at [71].

- Where an applicant puts forward new information for the purposes of a review which was not before the original decision-maker, the reviewer must serve a minded to find notice if the new information could plausibly make a difference to the review decision: *Mohamoud v Birmingham CC* [2014] EWCA Civ 227; [2015] PTSR 17.

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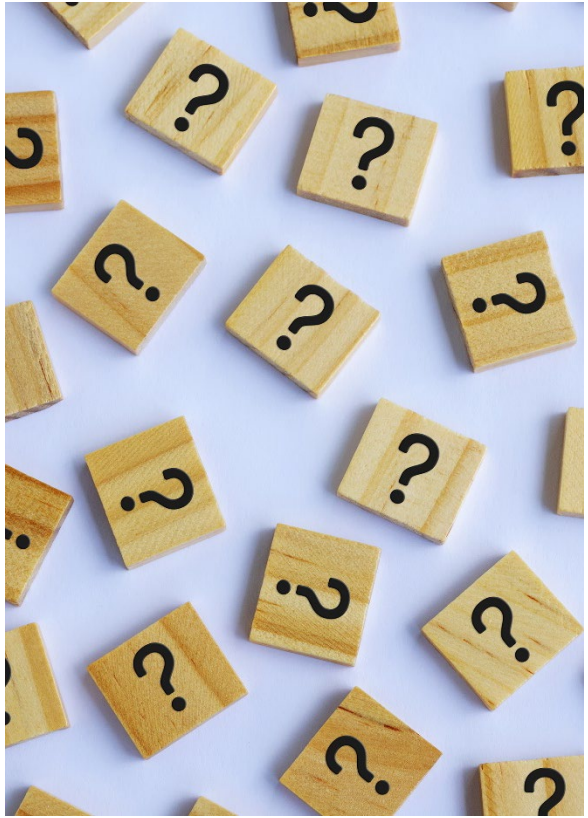

Inquiries

Application received

Next: make inquiries to determine what (if any) duty is owed

When? Duty arises if authority:

- receives application for accommodation / assistance in obtaining accommodation; and
- has "reason to believe" applicant may be homeless / threatened with homelessness.

No statutory requirement for enquiries to be carried out within any specific time.

Failure to undertake necessary inquiries does not give rise to action in damages: ***R v Northavon DC ex p Palmer*** (1995) 27 HLR 576

Where no "reason to believe", duty not triggered and authority cannot make decision whether applicant threatened with homelessness intentionally: ***R v Rugby BC ex p Hunt*** (1992) 26 HLR 1

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Inquiries

- The burden rests on the local authority (no need for applicant to "prove" case)
- Final decision by the officer who has all the information (see *e.g. R v Lewisham LBC ex p Dolan* (1993) 25 HLR 68, QBD)
- Necessary (see *e.g. Cramp v Hastings BC* [2005] HLR 48)
- Must cover all relevant matters and must be sufficient to determine the application

"The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable housing authority could have been satisfied on the basis of the inquiries made."

R v Kensington & Chelsea RLBC ex p Bayani (1990) 29 HLR 406 (CA)

Section 184 inquiries

Additional considerations as to scope

Code of Guidance

Public sector equality duty (PSED)*

Safeguarding children and promoting welfare

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Inquires and the PSED

- A local housing authority must comply with PSED (section 149, Equality Act 2010 ("EA 2010"))

- Aims - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; and, (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it: section 149(3), EA 2010.

- Compliance with these duties may involve treating some persons more favourably than others: section 149(6), EA 2010.

- *Biden v Waverley BC* [2022] EWCA Civ 442; [2022] H.L.R. 32 (disability and gender reassignment)
  - "heightened duty" due to the PSED? [54]
  - no statutory basis for such a contention: at [55] (see also [58]-[60]).

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Section 184 inquiries

Investigations*

- Information from the applicant
- Caring & sympathetic
- Interviews
- Third parties

*May be additional inquiries where there is a “restricted person”

Challenges to inquiries - examples

Successful

- Affidavit evidence in earlier proceedings considered to be material, even though not referenced in further application: ***R v Eastleigh BC ex p Beattie*** (No 2) (1984) 17 HLR 168
- Outburst re: husband's drinking in interview – "astonishing" officer had not made further inquiries (e.g., social services): ***R v West Dorset DC ex p Phillips*** (1984) 17 HLR 336
- Failure to inquire re: social history / national status led to conclusion that applicant was immigrant when born in UK: ***R v Newham LBC ex p Ajayi*** (1994) 28 HLR 25

Unsuccessful

- Failure to enquire into applicant's British nationality could not be criticised when applicant informed authority that a large Irish travelling family just arrived from Dublin, and later claimed to be British after IH decision made: ***R (McDonagh) v Hounslow LBC*** [2004] EWHC 511 (Admin)

Decisions on applications (1)

Once the authority has concluded their inquiries, it must inform the applicant of its decision ("the s.184 decision") in writing and, so far as any issue is decided against his interests, inform him of the reasons for their decision: s.184(3).

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Decisions on applications(2)

In reality, notification of a series of decisions, such as:

- Ineligible for assistance
- Eligible for assistance and threatened with homelessness or is homeless, so that prevention or relief duty owed
- Eligible for assistance, homeless and conditions for referral met for referral of relief duty (s.189B(2)) to another LHA
- Danger of loss of, or damage to, applicant's personal possessions and so LHA under duty to protect
- Prevention or relief duty has come to an end
- Decision as to what duty, if any, subsequently owed*
- Interim accommodation duty ended
- Conditions for referral met for referral of s.193(2) main housing duty
- Accommodation secured for applicant in performance of any accommodation duties is suitable
- Main housing duty (s.193(2)) ended
- S.193C(4) duty owed to applicants who have deliberately and unreasonably refused to cooperate has come to an end.

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Decisions on applications (3)

***Decisions on what duty, if any, is owed**

Eligibility

Effect of the Withdrawal Agreement

- *Fertre v Vale of White Horse DC* [2024] EWHC 1754 (KB); [2024] H.L.R. 46 (appeal outstanding)
- *C v Oldham Council* (2024) EWCC 1
- *Hynek v LB Islington*, Central London County Court 24 May 2024

Intentional homelessness

What is accommodation?

- *Hodge v Folkestone and Hythe District Council* (2023) EWCA Civ 896 (SC refused permission)

Half-way house

- *Kyle v Coventry City Council* (2023) EWCA Civ 1360

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Notification of decision

- **Reasons:** Once the authority has reached its decision, it must notify the applicant.
- **Local connection:** A decision to refer an application to another authority under the local connection provisions and the reasons for doing so, must be notified.
- **Review:** Notifications must inform applicants of the right to request to a review of a decision / time within which request to be made.
- **Relationship of notification duty and substantive duty:** Duties to notify and to give reasons arise independently of substantive duties to which they refer: ***R v Beverley BC ex p. McPhee*** (1978) Times 27 October.
- **Notification and reasons must be in writing.**
- **Oral explanation:** In circumstances where the applicant may have difficulty understanding, authorities may need to arrange for member of staff to provide and explain notification in person.

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Common issues: inquiries & decision-making

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What issue has arisen?

- **Abuse, including domestic abuse:** See English Code, Ch.21.
- **Affordability:** In inquiring whether accommodation reasonable for applicant to occupy, LHA must make inquiries as to whether accommodation affordable. What are the applicant's reasonable living expenses, apart from rent? See ***Samuels v Birmingham CC*** [2019] UKSC 28.
- **Overcrowding:** Whether overcrowded and if so to what extent.
- **Section 21:** Where A approaches LHA with notice and seeks accommodation/assistance, application for homelessness assistance made. NB. – reasonableness to continue to occupy when notice running / expired.
- **Children:** Have regard to need to safeguard and promote best interests of children and consider issue as part of inquiries. Not for applicant to specifically raise duty.

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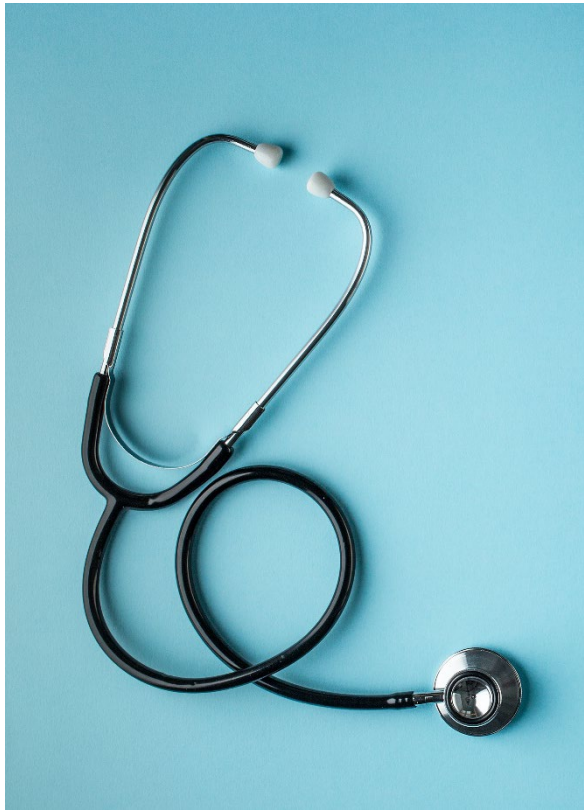

Issues (continued)

- **Medical conditions:** inquiries to establish whether priority need / reasonableness / suitability etc.
  - Liaise with adult care services / health authorities where necessary.
  - DWP entitlement assessment different from priority need.
  - Prejudice, first impressions and hidden vulnerability.
  - Use of advisers

- **Reasons:** Where medical issues, DL should give adequate reasons for rejecting any medical opinions.

- **Modern slavery / trafficking:** Distress; appropriate training; interview options. See English Code, Ch.25.

- **PSED:**
  - s.149 EqA 2010
  - if feature of evidence raises possibility A/another has a protected characteristic, may be relevant to issue under consideration and must take account of protected characteristic.
  - See *Pieretti v Enfield* LBC[[2010] EWCA Civ 1104, *Hackney LBC v Haque* [2017] EWCA Civ 4, and English Code 1.10-1.18.

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Practical issues - decision letters

- Clarity and plain English, with necessary legal references.
- Comprehensive explanation of findings
  - Clearly outline evidence considered / how it supports decision
  - Explain reasons for conclusions.
- Refer to relevant legislation and case law.
- Tailor letter to individual – avoid generic / template approach and acknowledge specific vulnerabilities / issues raised.
- Highlight evidence relied upon and justify why certain evidence accepted or discounted.
- Address all elements / issues required.
- Right to review.
- On review, think about reg.7 and providing a minded to find letter to prevent a challenge on this procedural ground.
- Where necessary, seek legal input.

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Other powers & duties alongside s.184

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Other powers and duties alongside s.184/s.202

You will all know that section 184 is one provision within a wider statutory framework to address homelessness and housing needs:

- Interim duty to accommodate (s.188, see s.189 for 'priority need')
- Duty to assess eligible applicant's case and agree personalised plan (s.189A)
- Initial duty owed to all eligible persons who are homeless (s.189B)
- Duties to persons becoming homeless intentionally (ss.190-191)
- Prevention duty (s.195)
- Duty to prevent homelessness and relief duty (Homelessness Reduction Act 2017)
- Among others!

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Key pointers on appeal

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Key pointers on appeal

- Time limits: Is the appeal out of time?
  - 21 days (s.204(2) HA 1996)
  - Extension available (s.204(2A) HA 1996) – but not carte blanche for delay.
  - 56 days to reach most review decisions (s.203(7); s.204(1)(b) HA 1996).
- What is A trying to do? Essentially JR in the county court (***Begum v Tower Hamlets*** [2003] 2 AC 430, [7]). No permission required but strike out possible.
- Assess the grounds. Early merits review; settlement options; clarification required?
- Directions for disclosure, sequential skeletons, any witness statements, listing and time estimates.
- Skeleton argument essential to inform, clarify and persuade.

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Recent s.204 case law

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Recent case law

Substantive

- Intentional homelessness and reasonableness of occupation: ***Kyle v Coventry City Council*** [2024] HLR 7
- Suitability v reasonableness: ***R (Ahamed) v Haringey LBC*** [2024] PTSR 205
- Discrimination and suitability in light of disability: ***R (AB) v Westminster City Council*** [2024] HLR 30
- Review officers are not required to embark on comprehensive re-thinking of entire process in respect of matters or duties that they had not been asked to review: ***Oforio-Addo v Haringey LBC*** [2025] EWCA Civ 277
- Duties to assess housing needs apply to pre-2018 homeless applications: ***R (TW) v L.B. Hillingdon*** AC-2024-LON-004114 (EWHC)
- Local connection: ***Hussaini v London Borough of Islington*** **[2025] EWCA Civ 22**

Procedural

- Procedural flexibility and amendments in s.204 appeals: ***South Oxfordshire DC v Fertre*** **[2024] HLR 21**
- Extension of time and access to legal support – a further warning to appellants: ***Idara v Southwark LBC*** **[2024] EWHC 3556 (KB)**
- Dual-listing s.204 HA 1996 appeals and s.114 EqA claims: ***R (RZH and DTU) v London Borough of Sutton*** **[2025] EWHC 713 (Admin), at [65]**
- Fresh homelessness applications and new information: ***R (Ivory) v Welwyn Hatfield BC*** **[2025] EWCA Civ 21**

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