



● ● ● cornerstone

● ● ● barristers

# Homelessness & COVID-19

Catherine Rowlands, Andy Lane and Tara O'Leary

# Programme



1. Investigations
2. Rough sleeper initiative
3. Priority Need
4. People made homeless/threatened with homelessness
5. Prevention & Relief duties
6. Suitability
7. Q&A



cornerstone



barristers

# Investigations

Catherine Rowlands

# The rule



- The ordinary rule is that it is for the local authority to be satisfied as to the investigations it has to make to be able to verify that the applicant is homeless, in priority need, eligible for assistance and not intentionally homeless
- They must be “sufficient” to satisfy the LA
- Where the local authority has “reason to believe” that the applicant is homeless (threatened with homelessness) – a low hurdle
- Enquiries should be carried out sympathetically and there is no onus on the applicant to prove their case (or on the local authority to prove the opposite)

# What triggers the duty to make inquiries?



- Reason to believe is a low hurdle
- New notification duties under section 213B - when someone notifies the local authority that a person is homeless – potentially triggers the duty to inquire
- What about those referred as rough sleepers?

# Issues arising out of coronavirus



- Making inquiries remotely
- It is possible to take an application without meeting A
  - Online forms?
  - Telephone call?
- It is possible to interview someone remotely
- Whether an interview is needed at all is a matter for the local authority – although as there is a duty to assess it's almost inevitable that there will be one

# Issues arising out of coronavirus



- Making inquiries remotely
- When will it be appropriate to interview remotely?
  - Is A particularly vulnerable (shielding?)
  - What stage is your organisation at?
  - Interview by Skype?
    - Does A have the technology?
    - Can A use the technology?
    - How can A be assisted to use the technology?

# Issues arising out of coronavirus



- Making inquiries remotely
  - Interview by phone?
    - Does A have a phone?
    - Can A speak clearly enough? Language, ability to express self
    - What about body language?
- How will you get documents?
- Compare to CoP caselaw – clear direction that capacity can be assessed remotely
- May need more planning in advance



# Issues arising out of coronavirus



- Inquiries into the PSED
- Mental health issue exacerbated/caused/brought to light by the pandemic
- Do not wait for A to self-report; do not assume that no previous history of MH problems means that they are not relevant
  - Relevant to intentionality – taking decisions during stress of pandemic?
  - Relevant to priority need – vulnerable to the stresses of being street homeless

# Issues arising out of coronavirus



- Inquiries into the PSED
- Doctors overrun and failing to respond
- Does not absolve from the need to carry out inquiries
- Refer to social services?
- This may be first contact from A to range of local authority services

# Issues arising out of coronavirus



- Inquiries into homelessness
- Financial situation changed
  - Furlough often segueing into redundancy
  - What may have been reasonable to continue to occupy at one time may not be later
- Intervening act – *Haile v Waltham Forest*
- Domestic abuse
- Working with landlords
- Current situation – in your area



cornerstone



barristers

# Rough sleeper initiative

Tara O'Leary

# Rough Sleeper Initiatives



- January 2020: £112m allocation for Rough Sleeping Initiatives
- 26 March 2020: LAs asked by Government to accommodate all rough sleepers – additional £3.2m funding provided
- MHCLG: 5,400 rough sleepers accommodated “safely” at the peak of the pandemic – apparently 90% of those known to LHAs at the start of the outbreak  
(Later updated 24.06.20 to refer to 15,000 accommodated)
- 2 May 2020: creation of Rough Sleeping COVID-19 Response Taskforce to “lead next phase of support for rough sleepers”
- 24 May 2020: £160m brought forward to provide 3,300 homes within next 12 months. Aiming for 6,000 in total

# Rough Sleeper Initiatives



- BREAKING NEWS 24 June 2020
- £105 million additional funding to be provided immediately, to extend the “Everyone In” initiative to 31 March 2021
- “Will be used to support rough sleepers and those at risk of homelessness into tenancies of their own, including through help with deposits for accommodation, and securing thousands of alternative rooms already available and ready for use, such as student accommodation”
- Press release available on [gov.uk](https://www.gov.uk)

# Rough sleepers – problems



- 28 May 2020: Ministerial letter to LHAs recommends individual assessments and “move on” plans for rough sleepers by 11 June 2020, to consider all options
  - ... Including “returning to friends and family”
  - ... Offering migrants “voluntary return” to country of origin
  - ... Move to PRS or short-term housing “where appropriate”
- Housing Minister confirms that NRPF households will remain ineligible – no legislative reform planned
- 12 June 2020: “Everyone In” (100 charities) estimate that 50% of rough sleepers in some areas are NRPF

# Powers to accommodate rough sleepers



For homeless persons who **may** be eligible and in priority need:

- Interim accommodation pending investigation of main duty and/or during relief duty period of 56 days: s.188(1)

For homeless persons who **are** eligible:

- Relief duty ss.189B & 205(3) - reasonable steps to help A to secure that suitable accommodation becomes available for A's occupation for at least 6 months

For homeless persons whose relief duty has expired and to whom main housing duty has been accepted:

- Temporary accommodation pursuant to s.193(2)



# Ineligible applicants



1. Duty to provide interim accommodation if there is reason to believe A **may** be eligible, homeless and in PN - pending investigation and s.184 decision: s.188(1)
  - A “low threshold”: para. 15.5 Code Guidance
  - *R (Kelly) v Birmingham CC* [2009] EWHC 3240 (Admin) [§7(iv)]
2. Discretionary power to accommodate pending review of decision on eligibility: ss202(1)(a) & 188(3)
3. Terminating interim accommodation: “notice periods should take account of the needs of the applicant and the time required for them to access assistance”: CG para. 15.1

# Ineligible applicants



4. Duty to provide information and advice regarding homelessness and securing accommodation: s.179(1)
5. Limited duty to households with “restricted cases”: s.193(3B) & (7AD) – discharge of main housing duty by PRS offer only
  - Applicant is eligible but only in PN due to the presence of a “restricted” person in household who is ineligible
6. NRPF households which contain children in need: Children’s Services under s.17 Children Act 1989
  - *R (A) v Lambeth LBC* [2003] UKHL 57; *Sanneh v SoSWP* [2015] EWCA Civ 49; *R (AC) v Lewisham LBC* [2017] EWHC 1796 (Admin)

# Ineligible applicants



7. Adults with certain care & support needs, in some circumstances: s.18 Care Act 2014. May theoretically include accommodation, but v limited in practice.
8. S.1 Localism Act 2011 – power to take any steps “for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.” BUT:
  - *R (KM) v Barking & Dagenham LBC* [2013] EWHC 3486 (Admin): s.1 did not permit accommodating an illegal over-stayer – would be a clear circumvention of statutory rules which excluded A from access to social welfare and housing
  - Would this differ under HRA 2017 & COVID-19?

# Useful resources



- [COVID-19: Housing, planning and homelessness](#) – LGA webpage compiling govt and third sector resources and guidance
- LGA & Local Partnerships - Local Authority Briefing: [Housing People who were rough sleeping and those at risk who have been accommodated due to COVID-19](#)
- Crisis: [Open Access Toolkit](#) for local authorities



cornerstone



barristers

## Priority Need

Tara O'Leary

# Priority need categories



1. 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/reas. expected to reside: s.189(1)(c)
2. A person homeless or threatened with homelessness as a result of **emergency** e.g. fire, flood or other disaster: s.189(1)(d)
3. A person homeless as a result of “*ceasing to occupy accommodation by reason of **violence** from another person or threats of violence from another person which are likely to be carried out*”: Art. 6 PNO 2002/2051

# Priority need and vulnerability



- *Hotak v LB Southwark* [2015] UKSC 30
  - Test = would A be **significantly more vulnerable** than an ordinary person when made homeless?
  - Support available to A can be taken into account
- *Panayiotou v LB Waltham Forest* [2017] EWCA Civ 1624
  - ‘Significantly’ is an evaluative judgement: qualitative not quantitative
- Would A suffer or be at risk of suffering harm or detriment which (a) the ordinary person would not suffer; and (b) would make a noticeable difference to A’s ability to deal with the consequences of homelessness? Code Guidance para. 8.15



● ● ● cornerstone

● ● ● barristers

# Homelessness duties and the Pandemic

Andy Lane



# Impact of Covid-19



- Can no longer stay in accommodation
- Unable to pay the rent/mortgage
- Cannot move into new accommodation
- Accommodation no longer suitable
- Domestic abuse
- **3 months notice served:** Coronavirus Act 2020, section 81, Schedule 29

# Duties impacted



- To make inquiries – section 184(1)
  - Low threshold
  - “reason to believe...may be homeless”
  - Consider what duty owed if eligible
- Assessment Duty – section 189A(1)
  - Satisfied that (1)homeless/threatened with homelessness, (2) eligible
- Prevention Duty – section 195
- Relief Duty – section 189B
- Accommodation duties/powers
  - Interim: section 188(1)(3)
  - Final: sections 190(2); 193(2)

# Homeless/Threatened with Homelessness

sections 175 - 178



**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.

**(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.

# Prevention Duty s195



**(1)** This section applies where the local housing authority are satisfied that an applicant is—

(a) threatened with homelessness, and

(b) eligible for assistance

**(2)** The authority must take reasonable steps to help the applicant to secure that accommodation does not cease to be available for the applicant's occupation

# Code of Guidance Part 11



**11.14** In most circumstances assessments will require at least one face to face interview. However, where that is not possible or does not meet the applicant's needs, assessments could be completed on the telephone or internet or with the assistance of a partner agency. For example, an applicant who is in prison, hospital or in other circumstances where they cannot attend an interview, could have an assessment completed through a video link or with the help of a partner agency able to complete an assessment form, provide information and assist with communication where needed.

**11.27** Wherever possible and appropriate, housing authorities should prioritise efforts to prevent homelessness so that households can remain in their accommodation or, helped to secure a new home rather than becoming homeless.

# Relief Duty (s189B)



**(1)** This section applies where the local housing authority are satisfied that an applicant is—

(a) homeless, and

(b) eligible for assistance

**(2)** Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—

**(a)** 6 months, or

**(b)** such longer period not exceeding 12 months as may be prescribed

# Code of Guidance

## Part 13



**13.2** The duty applies when the housing authority is satisfied that the applicant is both homeless and eligible for assistance. The housing authority is obliged to take reasonable steps to help the applicant secure suitable accommodation with a reasonable prospect that it will be available for their occupation for at least 6 months

- Section 188(1), Housing Act 1996
- *R(Mitchell) v LB Islington* [2020] EWHC 1478 (Admin)

# Suitability sections 206(1)/210



- Need for self-contained
- Travel out-of-borough: section 208
- PRSOs – sections 193(7AA)(7AC); 195A
- Guidance changed on 13 May 2020
  - Originally only where “reasonably necessary”: The Health Protection (Coronavirus) (England) Regulations 2020, reg 6(2)
  - Viewing/moving in now allowed: Amendment No.2 Regulations

Homelessness (Suitability of Accommodation) Order 1996 (SI 1996/3204)

Homelessness (Suitability of Accommodation) (England) Order 2003 (SI 2003/3326)

Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601)



# Cases



- *Kannan v LB Newham* [2019] H.L.R. 22

A local authority's review of its decision that accommodation provided to a disabled person was "suitable" within the meaning of the Housing Act 1996 s.206 was vitiated by flaws in the reviewing officer's assessment. The officer had failed to consider that accommodation which might be suitable in the short term might become unsuitable with the passage of time. He had also given inadequate consideration to the public sector equality duty when assessing the extent and likely effect of the applicant's disability on his housing needs.

- *Harouki v RBKC* [2008] 1 W.L.R. 797

Having properly had regard both to a family's personal circumstances and ill health and to the prevailing extent of overcrowding in the borough, a housing review officer was not acting illegally or irrationally in concluding that it was reasonable to require that family to continue to occupy their accommodation until it was their turn to be rehoused.



● ● ● cornerstone

● ● ● barristers

**Question and Answer session**



**Ask us more questions:**

**events@cornerstonebarristers.co**  
**m**

**For instructions and enquiries:**

**elliott@cornerstonebarristers.co**  
**m**

**dang@cornerstonebarristers.co**  
**m**

**samc@cornerstonebarristers.co**