

MAKING OUT OF BOROUGH PLACEMENTS AFTER NZOLAMESO – THE ROLE OF YOUR TEMPORARY ACCOMMODATION ALLOCATION POLICY

It will be no news at all to readers that London authorities are experiencing a huge increase in demand for temporary accommodation and considerable difficulties in securing that accommodation in or even near borough.

The London Councils' evidence to the Communities and Local Government Committee's (CLGC) ongoing inquiry into homelessness states that the rate of homeless acceptances has increased by 80% in the four years since to 2013/14. In September 2015 the number of households living in temporary accommodation (TA) exceeded 50,000 for the first time since 2008. This figure represents a 10% increase from the same period in 2014.

The causes are not difficult to find and have all been placed before the CLGC: the major cause of homelessness is currently the ending of an assured short hold tenancy (AST) due to unaffordability; in the current housing market landlords can obtain higher rents privately; there is a large discrepancy between Local Housing Allowance (LHA) and rents in the PRS rendering many properties unaffordable; landlords are increasingly prone to evict tenants on housing benefit (HB); landlords are less likely to work with local authorities to house homeless households due to fears of the cessation of direct payments to landlords under universal credit; the benefit cap reduction to £23,000 in London will severely affect the ability to find affordable housing, particularly when taken alongside the four-year freeze on local housing allowance; and there is competition from other boroughs for scarce placements.

What to do?

A number of authorities have asked the CLGC to consider legislative or policy changes to make it easier for authorities to place homeless applicants

in affordable out of borough accommodation. For example Kingston stated, *'It would help if Government review the Suitability of Accommodation Order and guidance, in order to reduce the burden on Kingston and other expensive areas in London & the South East. Many parts of London are already unaffordable and more parts of the country will become unaffordable under the lowered benefit caps and we need Government to enable us to place affected households in the few remaining affordable areas. The basis of suitability should be that accommodation is affordable for the household from their usual income and/or benefits (without the Council having to top up the rent). Location should be a secondary consideration.'*

Similarly Westminster informed the CLGC, *'we aim to place homeless households in private rented accommodation which they can afford. However the law requires local authorities to offer housing 'in borough' where it is 'reasonably practicable'. While every effort is made to do this, we simply cannot procure enough affordable TA or PRS accommodation in-borough (or even very close to the borough)...Many of our out of borough placements are challenged. While we acknowledge that some households need to be able to remain in Westminster – we suggest that the law or code of guidance should be changed so that affordability is a key issue when making placements and offers, so that people can live in good quality private rented homes which they can afford in areas where they can set down roots.'*

Councilor Astaire, Westminster's Cabinet Minister for Housing, Regeneration, Business and Economic Development told the CLGC in oral evidence, on 18 April requested, *'allow us greater flexibility to include sustainability, ie affordability of ongoing*

rent, as one of the key criteria in providing someone with accommodation and discharging our duty.'

The answer?

Homelessness Minister Marcus Jones, at a conference in London on 21 April 2016 run by charity Crisis, said: "*We still want local authorities to place people in accommodation within their own borough where that is achievable...What we don't want is people forced to move a significant way away from their home from where the children go to school against their will.*" Mr Jones added that the government was not looking at changing legislation that would increase councils' powers to house homeless people in cheaper boroughs.

What to do now?

Lady Hale in *Nzolameso v City of Westminster* [2015] UKSC 22, the leading case on out of borough placements, gave guidance that each local authority should have and keep up to date policies for procuring and allocating temporary accommodation.

A number of local authorities have TA allocation policies that prioritise affordability. For example Lambeth's policy states that homeless '*households who would otherwise be in Group A [i.e. prioritized for accommodation in the local area due to factors such as education, social care needs, SEN needs, and caring obligations] but who are unable to afford accommodation in Lambeth or the Local Area, for instance due to benefit restrictions*' will be offered accommodation wherever the borough is able to procure it including outside in London.

Similarly Waltham Forest's policy states, '*Households in receipt of welfare benefits may be subject to restrictions on the amount of benefit they can receive, which may affect their ability to pay rent. Placement in Waltham Forest or nearby boroughs is subject to suitable accommodation being available and the applicant being able to afford accommodation in these areas.*'

Affordability is, as we all know, an element of suitability; a local authority needs to provide suitable accommodation to homeless applicants. Accommodation will not be suitable unless it is affordable. If a local authority has a robust and detailed evidence based procurement policy that concludes that it is not reasonably practicable to secure all its TA in or close to borough then it can look to robustly defend a TA allocation policy that provides for affordability as a material factor.

The key is in Mr Jones' phrase '*where that is achievable*' but to show that it is not achievable (for all TA) local authorities will require a robust and up-to-date evidential base to underpin their policies.

Take heart from the oral evidence given by Kate Webb, Head of Homelessness Policy, Shelter, and Giles Peaker, Chair, Housing Law Practitioners Association on 14 March 2016 to the CLGC. Both accepted that as long as local authorities have followed the process correctly, and if there is simply no accommodation and the local authority has tried to procure accommodation within its area, have looked at the support needs of that family, and there is no alternative, then, regrettably, yes, it may be appropriate to move them out of area.

Peggy Etiebet

Barrister

Cornerstone Barristers