

Legal advisor to council
Judicial review pre-claim letter
Failure to provide interim s.188 accommodation and carry out s.189A assessment

**URGENT
LETTER BEFORE CLAIM FOR JUDICIAL REVIEW**

By first class post & email to [email address]

[Date]

To:
Head of Legal Services
[Address of Council's legal department]

Dear Sirs

Proposed claim for judicial review
Our client: [Name] of [address]
Application for accommodation under Part 7 of the Housing Act 1996

1. We are instructed by [Name] to act in this matter, and to issue judicial review proceedings.
2. The Council has failed to secure interim accommodation for our client, in accordance with section 188(1) of the 1996 Act.
3. The Council has failed to undertake and notify an assessment of our client's circumstances, in accordance with section 189A(1) to (3) of the 1996 Act.
4. The only appropriate and lawful course is to immediately secure interim accommodation and make immediate arrangements for the assessment of our client's circumstances.

Background

5. Please refer to the previous correspondence from us in this matter dated [date], to which we have not received any substantive response, and which we enclose for your convenience.

Facts

6. [Name] was, until [date], staying at the home of a friend [Name of licensor] at [address]. On [date] [Name of licensor] asked our client to vacate. On [date] he was excluded.
7. On [date] [Name] visited the authority's offices at [address], whereupon he was spoke with a member of the authority's Housing Options Team. [Name] provided a copy of his UK passport as evidence of his identity and nationality. He was asked to provide a letter from his friend confirming that he was required to vacate the accommodation at



[address]. He was also advised that he did not have a local connection and that on this basis he should apply as homeless to [Name of Council].

8. On [date] we forwarded a letter on [Name]'s behalf, together with a letter from his general practitioner dated [date].
9. Our client is presently without any accommodation and homeless. He has spent the last two nights sleeping rough.
10. Our client visited your offices again this morning and was informed that no housing options appointment was available until [date]. His request for accommodation was refused. He was informed this was because [state reasons, e.g. he must first be interviewed and there were no appointment available until the aforementioned date].
11. At no time has [Name] been provided with any written confirmation of how his request for assistance is being dealt with. It is unclear whether the authority has commenced inquiries under section 184(1) to determine what duty is owed to him under Part 7.
12. It is however clear that [Name] has requested accommodation or assistance in obtaining accommodation within the meaning of section 183(1) and section 184(1) of the 1996 Act, notwithstanding any view on the authority's part that a homeless application has not been 'taken' or 'accepted'.
13. At no time has [Name] been notified of the outcome of any assessment of his circumstances. Nor has he been asked to agree steps which the authority will take or agree steps that he must take, for the purpose of securing accommodation.

Law

14. Section 183(1) provides:

"The following provisions of this Part apply where a person applies to a local housing authority in England for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness."

15. Section 184(1) provides:

"If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves –

(a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part."

16. In *R v Chiltern DC ex p Roberts* (1991) 23 HLR 389, QBD it was held that the legislation does not require homeless applications to be made in any particular form.

17. Paragraph 18.5 of the statutory guidance ("the Code"), to which authorities must have regard under section 182 of the 1996 Act, states:

"Applications...need not be expressed as explicitly seeking assistance under Part 7. As long as the communication seeks accommodation or assistance in seeking



accommodation and includes details that give the authority reason to believe that they might be homeless or threatened with homelessness, this will constitute an application.”

18. Section 175(1) provides that person is homeless if he has no accommodation available for his occupation which he:
 - a) is entitled to occupy by virtue of an interest or by virtue of a court order,
 - b) has an express or implied licence to occupy, or
 - c) occupies as a residence by virtue of any enactment or rule of law.
19. A licensor is not bound by the statutory restrictions on the termination of licenses provided by the Protection from Eviction Act 1977 in the case of a bare licence where the licensee shares accommodation with the licensor (PEA 1977, s.3A). As such, no written notice to quit is required to terminate the licence. Rather, the licence can be terminated by the licensor verbally giving reasonable notice.
20. As paragraph 8.11 of the Welsh statutory guidance observes, in the context of persons being required to vacate accommodation provided by family or friends:

“Local authorities would be acting unlawfully if they insisted that the applicant obtain a letter confirming that they have been asked to leave before they entertain offering homeless assistance.”
21. Section 188(1) provides:

“If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant’s occupation.”
22. Section 188(2) provides:

“The duty under this section arises irrespective of any possibility of the referral of the applicant’s case to another local housing authority [...]”
23. Paragraph 15.5 of the Code states:

*“The threshold for triggering the section 188(1) duty is low as the housing authority only has to have a **reason to believe** (rather than being satisfied) that the applicant **may** be homeless, eligible for assistance and have priority need.”* (emphasis in original).
24. The low nature of the threshold was confirmed by the Administrative Court in *R (Aweys) v Birmingham CC* [2007] EWHC 3240 (Admin) and *R (Kelly & Mehari) v Birmingham CC* [2009] EWHC 3240 (Admin).
25. Section 189(1) of the 1996 Act provides, so far as relevant for present purposes:

“The following have a priority need for accommodation –
[...]
(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;



[...]"

26. In *Hotak v Southwark LBC ; Kanu v Southwark LBC & Johnson v Solihull MBC* [2015] UKSC 30 the Supreme Court held that a person is vulnerable if he is significantly more vulnerable, as a result of his personal circumstances taken together, than the ordinary person, when becoming homeless. It was further held that this requires, for the purpose of a decision under section 184(3), careful consideration of the person's personal circumstances, taken together, and their effect if the applicant were homeless.
27. In *Panayiotou v Waltham LBC; Smith v Haringey LBC* [2017] EWCA Civ 1624 the Court of Appeal held that the word 'significant' in *Hotak* (at [53]; "significantly more vulnerable than ordinarily vulnerable") denoted a qualitative rather than quantitative test. The decision in *Smith* demonstrates that requiring a person to be a great deal more vulnerable than the ordinary person becoming homeless or adopting a "more harm plus" approach is to apply the wrong test.
28. Accordingly, it is clear that a person will have a priority need on grounds of vulnerability if, as in [Name]'s case, he has a mental illness that will deteriorate when homeless and will impair his ability to cope with the consequences of being homeless.
29. Paragraph 8.25 of the Code states that "housing authorities should have regard to any advice from medical professionals, social services or current providers of care and support."
30. Upon being satisfied that a homeless applicant is eligible for assistance and homeless the authority must carry out an assessment under section 189A(1) of the 1996 Act.
31. Section 189A(2) provides:

"The authority's assessment of the applicant's case must include an assessment of –

 - (a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
 - (b) the housing needs of the applicant, including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ('other relevant persons'), and
 - (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation."
32. The authority must notify the applicant of the assessment in writing (s.189A(3)).
33. After the assessment has been made the authority must try and agree with the applicant a housing plan, that confirms the steps that the applicant is to be required to take for the purpose (if homeless) of securing accommodation and any steps the authority are to take under Part 7 of the 1996 Act for the same purpose (s.189A(4)). The plan must be notified to the applicant in writing (s.189A(8)).
34. The rest of this letter follows the format set out by Annex A to the Pre-Action Protocol for Judicial Review.

Proposed defendant



35. [Name of local housing authority], [address].

Proposed claimant

36. [Title] [First name] [Surname] of no fixed abode.

Your reference

37. Your reference is [...].

Legal advisors dealing with the claim

38. [Name of firm] at the above address.

39. [Name] is currently dealing with this matter. His direct telephone line is [tel no].

Details of matter being challenged

40. The failure of the authority to secure interim temporary accommodation under section 188(1).

41. The failure of the authority to undertake an assessment of our client's circumstances, under section 189A(1) and (2).

Interested parties

42. None.

Issues and proposed grounds of challenge

43. We consider the authority's actions to be unlawful for the reasons set out below.

Failure to secure interim s.188(1) accommodation

Misdirection of law

44. The authority has acted unlawfully when requiring [Name] to obtain written notice (or confirmation of the same) from [Name of licensor], since the burden was on the authority to consider whether it had reason to believe the applicant may be homeless, eligible for assistance and have a priority need.

45. Further, since the licensor was not required to provide written notice, the authority misconstrued the test to be applied when determining [Name] must provide written notice in order for the authority to determine whether he may be homeless.

Relevant considerations

46. The authority has failed to properly consider, or at all, the relevant matters. The decisions as to whether to secure accommodation under section 188(1) must be reached having had regard to the applicant's circumstances.

47. The authority has failed to take account of relevant matters, namely:

- a) Our client's evidenced medical conditions.
- b) The explicit opinion of his general practitioner that:



- i. His schizophrenia will deteriorate if he is homeless, specifically because the inevitable stress and anxiety will exacerbate his paranoia and delusions, and he is likely to suffer a psychotic episode.
- ii. He is less able than an ordinary person to cope with the consequences of homelessness, such that, in addition to suffering harm, he will most likely experienced a prolonged period of homelessness.

Irrelevant considerations

48. The authority had regard to irrelevant considerations, namely:

- (a) The issue of whether he has a local connection with the authority's district.
- (b) The absence of available appointments.

Irrationality

49. If the authority did have regard to the aforementioned considerations and did not have regard to irrelevant matters in deciding not to secure interim accommodation, the decision was perverse in the *Wednesbury* sense.
50. It is irrational for the authority to not have secured interim accommodation, since it cannot reasonably be sustained that [Name] has not applied for homelessness assistance, or alternatively that in the circumstances there was not reason to believe that he may be homeless, eligible for assistance and have a priority need.
51. The information, including the diagnoses and effects of homelessness on [Name]'s mental illness, provided by Dr [Name] speaks for itself. It is simply not sustainable to suggest that, having received the same, the authority does not have reason to believe that [Name] may be vulnerable if homeless.

Failure to carry out and notify s.189A assessment

Relevant considerations

52. The authority has failed to properly consider, or at all, relevant matters, namely:
- a) That [Name] had provided his current UK passport.
 - b) The fact that he has not been absent from the United Kingdom for any significant period of time.
 - c) That [Name]'s permission to occupy his former accommodation expired on [date].
 - d) That, as a bare licensee, [Name] enjoyed no security of tenure and there was no lawful basis upon which he could continue occupying the accommodation once permission had been withdrawn.
 - e) The absence of any other accommodation which is available to [Name].

Irrelevant considerations

53. The authority had regard to irrelevant considerations, namely:

- (a) The issue of whether he has a local connection with the authority's district.
- (b) The absence of available appointments.

Irrationality



54. If the authority did have regard to the aforementioned considerations and did not have regard to irrelevant matters in deciding not to carry out or notify a s.189A assessment, the decision was perverse in the *Wednesbury* sense.
55. It is irrational for the authority to have not undertaken an assessment. No reasonable authority could conclude that [Name] may not have been eligible for assistance or not homeless in the circumstances that arose upon his visit to the authority's offices on [date].

Action you are expected to take

56. To secure accommodation, in accordance with the requirements of section 188(1), pending a decision on his application. The accommodation must be suitable for our client's needs, including being affordable given his financial circumstances, under section 206(1) of the 1996 Act.
57. To make immediate arrangements for the carrying out of an assessment under section 189A of the 1996 Act. Alternatively, if such an assessment has been undertaken, to notify [Name] of the assessment, in accordance with section 189A(3).

ADR proposals

58. It is unclear that alternative dispute resolution is appropriate. However, our client is willing to participate in a without prejudice meeting with the authority for the purpose of resolving the matter and avoiding litigation.

Information sought

59. A full copy of our client's homelessness and housing allocation files, including information held electronically.
60. A copy of any document the authority considers to constitute an assessment of our client's circumstances under section 189A(2).
61. A copy of any records or notes of [Name]'s contacts with the authority and visits to its offices.
62. A copy of any policies and procedures issued to employees of the authority in connection with the administration of homeless applications (including internal policies, procedures and guidance materials).

Documents considered relevant and necessary

63. Please refer to the previous section.

Address for reply and service of court documents

64. [Name of firm] at the above address.
65. Your response may be conveyed by fax, telephone or post.
66. Please forward a copy of your reply and documents by email to the following email addresses:



[email address]

[email address]

Proposed reply date

67. We require a substantive response to the matters raised no later than **12.00 noon / 4.00pm today/tomorrow, [date]**.
68. Please confirm that our client will be accommodated from **this/tomorrow** evening.
69. In the absence of such confirmation, we will proceed to instruct counsel and apply for an emergency injunction. An application for judicial review will be submitted to the duty judge of the Administrative Court without further recourse to you.
70. We have public funding to commence judicial review proceedings.
71. If it is necessary to issue proceedings we will refer to this letter when seeking to obtain an order for our costs.
72. Because of the urgency of this matter, the above deadline meets the purposes of the Judicial Review Pre-Action Protocol.

Yours faithfully

[Name of firm]

cc: *[Name]*
Head of Housing Services
[Name of Council]
[Address]

Encs: Copy of letter from *[Name of firm]* to authority dated *[date]*
Copy of letter from Dr *[Name]* dated *[date]*

