

**Advocate to council**

**Requesting confirmation of whether relief duty accepted upon expiry of s.21 notice or issuing of possession claim and (if not) request for documentation, reasons and review**

Homelessness Department

[Address of local housing authority]

By first class post & email to [email address]

[Date]

Dear Sirs

**Our client: [Name] of [address]**

**Homeless application**

We write on [Name]'s behalf [whom we are advising under the Legal Help Scheme].

You will be aware that our client applied for homelessness assistance because their private landlord had served a notice requiring possession under section 21 of the Housing Act 1988.

On [date] you notified our client that the authority had accepted the 'prevention duty' under section 195(2) of the Housing Act 1996. This was on the basis that a s.21 notice was within 56 days of expiring and our client had no alternative accommodation.

The s.21 notice [expires / expired] on [date].

However, our client instructs that they have not received any communication or written notification from the authority since they were interviewed on [date].

[If applicable: Our client has now received a copy of a possession claim from the county court, which was issued on [date]].

**Request for confirmation of acceptance of relief duty**

We therefore ask you, by return, to confirm in writing:

- That the authority accepts that the 'relief' duty is now owed under section 189B(2) of the 1996 Act.
- The date on which you were first satisfied that our client was homeless.
- Details of the accommodation being secured to meet the authority's duty under section 188(1) of the 1996 Act.

Please also forward:

- A copy of the Council's notification of its decision that the relief duty is owed.

**Request for information, documentation and review**

In the event that the authority does not accept that the relief duty is owed, please:



- Confirm in writing your reasons for the adverse decision (that the relief duty is not owed) in full in writing, including your decision as to how long in the short term it is reasonable for our client to continue to occupy her present accommodation.
- Confirm in writing what steps the authority has taken to review the steps it is to take under Part 7 of the 1996 Act.
- Accept this letter as a request for a review of:
  - The Council's decision not to end the prevention duty and accept the relief duty.
  - The authority's decision as to the steps they are to take under Part 7 of the 1996 Act.
- Confirm in writing what steps (if any) the Council has taken to review its assessment of the applicant's case (under section 189A(10)).

Please also forward to us in writing:

- A copy of the Council's notification of its decision as to the duty owed to [Name], in light of the fact that the s.21 notice has expired.
- A full copy of [Name]'s homelessness and housing file records, including those held electronically and in writing.
- A copy of the Council's notification of its revised housing plan under section 189A.
- A copy of the Council's notification of its revised assessment under section 189A (if any).

### Circumstances

*[Summarise your client's circumstances. The following section provides an illustrative example. Amend the text according to the particular facts]*

In what follows I have summarised our understanding of [Name]'s current circumstances.

[Name] is [#]-years-old. [He/She] is single. [OR] [His/Her] household consists of the following persons:

[Name]	[Relationship, eg Wife / Son etc]	DOB: [...]
[Name]	[Relationship]	DOB: [...]

[Name] relies on welfare benefits and tax credits. We enclose a summary of her current income and expenditure. It will be seen that their essential expenditure exceeds their income by a sum of £[...] per calendar month.

On [date] our client's landlord [Name of landlord] served a notice of requiring possession under section 21 of the 1996 Act. Our client was informed this is because they wish to sell the property with vacant possession.

[Name]'s attempts to obtain suitable alternative housing have been unsuccessful. Many of the landlords and letting agents they have approached have refused to consider [him/her] as a prospective tenant because of their reliance on [housing benefit / universal credit].

The landlord has informed our client that if they are unable to deliver up possession of their home when the s.21 notice expires they intend to submit an immediate application to the county court for a possession order.



[OR]

Clearly the landlord has now applied to the county court for a possession order.

*[Set out facts that support your contention that the applicant falls into one or more of the relevant priority need categories. If necessary refer to the priority need definitions set out in section 189(1) of the Housing Act 1996 and The Homelessness (Priority Need for Accommodation)(England) Order 2002]*

[e.g.]

Our client's partner [Name] has a three-year-old child [Name], date of birth [DOB], who resides with and is dependent on her and our client.

*[For suggested inserts addressing other priority need categories you can refer to the letter available at: <https://markprichard.co.uk/documents/homeless-app-interim-accommodation-request-by-representative>]*

## The law

We draw your attention to the following legal provisions:

- The duty to make inquiries under section 184(1) of the 1996 Act. Specifically those inquiries are for the purpose of, *inter alia*, determining “whether any duty, and if so what duty, is owed to him under the following provisions of [Part 7 of the Housing Act 1996]” (s.183(1)).
- The duty, on completing those inquiries, to “to notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.” (s.184(3)).
- A person who has accommodation which they have a legal right to occupy and which is available for them is nonetheless homeless if it would not be reasonable for them to continue to occupy that accommodation (s.175(3)).
- When applying the s.175(3) test the authority must not only look at the present (“for another night”) but also look to the future. An applicant is homeless if it is not reasonable to continue to occupy the accommodation indefinitely, even if it is reasonable to occupy that accommodation for a little while longer (*Birmingham CC v Ali* [2009] UKHL 36).
- Where there is a future event that will impact upon whether it is reasonable for the applicant to continue to occupy, the authority must consider that future event when determining whether the applicant is homeless. If it is not reasonable to continue to occupy, the authority must consider how long in the short term it would be reasonable for the applicant to continue to occupy (*Safi v Sandwell MBC* [2018] EWCA Civ 2876).
- *[If affordability is an issue]* Assessment of the affordability of housing costs and the applicant's reasonable living expenses requires an objective assessment. It cannot depend simply on the subjective view of the decision-maker (*Samuels v Birmingham CC* [2019] UKSC 28).
- *[If affordability is an issue]* Benefits are not generally designed to provide a surplus above subsistence needs. In the absence of an alternative objective comparator



relevant benefit levels are a starting point for assessing reasonable living expenses (*Samuels v Birmingham CC* [2019] UKSC 28).

- The duty to secure that suitable temporary accommodation is available for the applicant's occupation, together with anyone who might reasonably be expected to reside with them, where the authority has reason to believe the applicant may be eligible for assistance on immigration and nationality grounds, may be homeless and may have a priority need (s.188(1)).
- The interim duty threshold test is low (*R (Aweys) v Birmingham CC* [2007] EWHC 3240 (Admin); *R (Kelly & Mehari) v Birmingham CC* [2009] EWHC 3240 (Admin); Code of Guidance, para 15.5). As such the duty may be triggered by the applicant simply informing you of their circumstances.
- It is not for the applicant to 'prove his case' by, for example, providing documentary evidence of their homelessness and priority need status. Rather, the burden is on the authority to make such inquiries as are necessary to establish what duties are owed under Part 7 of the 1996 Act (*R v Woodspring DC ex p Walters* (1984) 16 HLR 73, QBD; *R v Reigate and Banstead DC ex p Paris* (1984) 17 HLR 103, QBD; *R v Barnet LBC ex p Babalola* (1995) 28 HLR 196, QBD; *R v Wandsworth LBC ex p Dodia* (1997) 30 HLR 562, QBD).
- The duty to keep both your assessment of the applicant's case and appropriateness of the steps in the applicant's housing plan under review (s.189A(10)).
- The duty to notify the applicant in writing if your assessment of their case has changed (s.189A(10)).
- The duty to notify the applicant in writing if the authority considers that any step recorded in their housing plan is no longer appropriate (s.189A(11)).
- The duty to have regard to any guidance issued by the Secretary of State (s.182(1)), which states:
  - It is unlikely to be reasonable to continue to occupy accommodation beyond the expiry of a valid section 21 notice in circumstances where the landlord intends to apply for and is entitled to a possession order (para 6.35).
  - Housing authorities are required to assess at what point a tenant served a s.21 notice becomes homeless and is owed the relief duty (para 6.31).
  - Authorities should keep the personal housing plan under review (para 6.34).
  - The authority should keep in contact with assured shorthold tenants if they remain in occupation and face a possession claim (para 6.34).
  - Homeless families and vulnerable persons should not be subjected to the eviction process (para 6.38).
- A person has a priority need for accommodation if they *[refer to those priority need categories that are relevant on the particular facts, e.g.] [will be significantly more vulnerable than the ordinary person when becoming homeless (*Hotak v Southwark LBC* [2015] UKSC 30 / are aged between 18 and 20 and at any time after reaching 16, but while still under 18, but are no longer, looked after, accommodated or fostered (Article 4(1) of The Homelessness (Priority Need for Accommodation)(England) Order 2002) /*



are aged over 20 and are vulnerable as a result of having been in care (Article 5(1) of The Homelessness (Priority Need for Accommodation)(England) Order 2002.)

- Upon receiving a request, the duty to review:
  - Any decision as to what duty is owed under sections 189B to 195 (s.202(1)(b)).
  - Any decision as to the steps the authority are to take under section 195(2) (s.202(1)(bc)(i)).

## Conclusion

In light of the above facts it appears clear that:

- The authority is obliged to make a decision as to what duty is now owed to our client, in light of the [expiry of the s.21 notice / possession claim] [and specify relevant matters].
- It is no longer reasonable for our client to continue to occupy their present accommodation indefinitely or in the long term, given that the landlord [intends to apply / has applied] for a possession order [and specify relevant matters, e.g. the fact that, once housing costs are paid, their essential expenditure exceeds their income, with the result that she cannot afford the necessities of life].
- Those steps in our client's housing plan dated [date] that were for the purpose of helping them secure that their accommodation did not cease to be available for their occupation, are now no longer appropriate. Specifically the requirement[s] that they [specify/describe specific steps].
- The interim duty to secure suitable accommodation is owed.
- The authority must notify our client:
  - Of any decision not accept the relief duty, including reasons for the decision.
  - Of any decision to accept the relief duty.
  - Of the procedure that will be followed in connection with the review.
  - That they may make representations in connection with the review.
  - The time limit for making representations in relation to the review of steps.

We enclose signed authority for us to act on our client's behalf and for the disclosure of confidential information.

We look forward to hearing from you shortly.

Yours faithfully

**[Name]**

**[Job title]**

Enc: *Income and expenditure summary dated [date]*

*Signed authority*



