

5. APPLICATIONS

5.1 Introduction

5.1.1 The acceptance of a homeless application is the gateway to Part 7 assistance. A council's acceptance of the s.184 inquiry duty is therefore a critical part of the Part 7 process.

5.2 Threshold test – what is a homeless application?

5.2.1 A duty to make inquiries arises where:

- A person applies to a local housing authority for:
 - for accommodation, *or*
 - for assistance in obtaining accommodation,

and

- The council have reason to believe that:
 - The applicant may be threatened with homelessness, *or*
 - The may be homeless, *or*
 - The applicant is threatened with homelessness, *or*
 - The applicant is homeless.

(s.183(1) and s.184(1)).

5.2.2 It is for the council to decide whether the facts give them the requisite reason to believe; a decision which can only be challenged on *Wednesbury* grounds (*Cocks v Thanet DC* [1983] 2 AC 285).

Deemed versus actual application

5.2.3 The wording of section 183 includes the following:

"...where a person applies to a local housing authority in England for accommodation, or for assistance in obtaining accommodation..."

"“applicant” means a person making such an application..."

5.2.4 It is therefore doubtful that a council can lawfully deem an application to have been made in the absence of an actual request.

5.3 Method of applying

5.3.1 Councils cannot require applications to be made in any particular form (*R v Chiltern DC ex p Roberts* (1991) 23 HLR 387, QBD; *R (Aweys) v Birmingham CC* [2007] EWHC 52 (Admin)).

5.3.2 An application for social housing via the housing register may disclose facts giving the council the requisite reason to believe (*Gibbons v Bury MBC* [2010] EWCA Civ 327).

5.3.3 In *Aweys* Collins J stated:

"If it is apparent from what is said by an applicant (for there is no requirement that an application be in writing) or from anything in writing that he may be homeless or threatened with homelessness, the duty is triggered. Thus if a person complains to the council that the conditions in his existing accommodation are so bad that he wants a transfer or need to find somewhere else, it is likely that the duty will arise because of s.175(3) even if there is no application based specifically on homelessness."

(*R (Aweys) v Birmingham CC* [2007] EWHC 52 (Admin) at [8]).

5.3.4 The guidance suggests that applications can be made to any department of the local housing authority (Code, 18.5).

5.3.5 In *Ferdous Begum* Lord Donaldson MR stated:

"Whether he applies to the right or wrong department or authority should not matter. That department or authority should either itself deal with the application or pass it on to to what it considers to be the correct department or authority and should tell the homeless person what it has done. It

should not tell that person to apply elsewhere. The game of 'pass the parcel' has no place in this field."

*(R v Tower Hamlets LBC ex p Ferdous Begum [1993] QB 447 at [460]).*¹⁸³

- 5.3.6 In *Edwards* the question of whether, for example, an application could be 'made' to a library assistance or park keeper was left open (*R (Edwards) v Birmingham CC [2016] EWHC 173 (Admin)*).
- 5.3.7 There is no requirement that homelessness is explicitly mentioned (*R (Aweys) v Birmingham CC [2007] EWHC 52 (Admin)*; Code, 18.5).
- 5.3.8 However, it needs to be sufficiently clear from the communication that assistance with obtaining accommodation is being requested (*R v Cherwell DC ex p Howkins* (unreported) 14 May 1984, QBD).¹⁸⁴
- 5.3.9 An application may be made on the applicant's behalf by a third party, providing the third party has the applicant's permission to do so.

'Out of hours' provision

- 5.3.10 Councils should make reasonable arrangements for receiving applications. In urban areas this might require 24-hour cover (*R v Camden LBC ex p Gillan* (1988) 21 HLR 114, QBD; Code, paras 4.19, 18.2, 18.4).

Receipt of s.213B referral by public authority

¹⁸³ This was in the context of councils administering allocations and homelessness functions via different departments.

¹⁸⁴ In *Howkins* the court held, on the facts, that a telephone call from the purported applicant's solicitor shortly after eviction was an inquiry as to whether the council intended to provide temporary accommodation. The council accepted, during the application for judicial review, that Mr Howkins could apply should he choose to do so.

5.3.11 See the section 'Is receipt of a referral a homeless application?' in the chapter 'Duty on public authorities to refer'.

5.4 Level of certainty

5.4.1 The test provides a very low threshold (*R (Aweys) v Birmingham CC* [2007] EWHC 52 (Admin)).

5.4.2 In the vast majority of case it will be difficult, if not impossible, for the council not to believe that the applicant may be homeless or threatened with homelessness upon receiving an application (*R (Aweys) v Birmingham CC* [2007] EWHC 52 (Admin)).

5.4.3 However, notwithstanding the low threshold, not every housing-related complaint will necessarily give the council 'reason to believe' (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).

5.4.4 The council may in some cases be able to lawfully decide there is no reason to believe, as occurred in *Pattison*. The applicant submitted a Part 6 application. She may have wanted smaller accommodation away from where she lived, but it could not be said the current accommodation was unreasonable to continue to occupy (*R v Lambeth LBC ex p Pattinson* (1996) 28 HLR 214, QBD).

5.4.5 Where the request concerns poor housing conditions a council might lawfully be able to conclude that it is not unreasonable to expect the household to continue to occupy until remedial works are completed (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).

5.5 What questions may be asked before the inquiry duty is owed?

5.5.1 The council are entitled to ask questions to establish whether they have the requisite 'reason to believe'. This is the case whether the purported homelessness is because of rooflessness

or a 'homeless at home' situation (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).¹⁸⁵

- 5.5.2 In many cases the question of whether the s.184(1) threshold has been crossed will fall to be judged on the basis of what the applicant says and any previous history known to the council (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).

5.6 Deferring inquiries

- 5.6.1 The council cannot defer consideration of whether the s.184(1) 'reason to believe' test is met. The Act does not provide for non-statutory inquiries (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396; *R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).¹⁸⁶
- 5.6.2 It is difficult to envisage circumstances in which the 'reason to believe' decision can properly be avoided on the day of the application (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).
- 5.6.3 The manner in which the inquiry duty is performed is primarily for the council to determine. What is reasonable depends on all the circumstances, including the urgency and vulnerability of the applicant (*R (Edwards) v Birmingham CC* [2016] EWHC 173 (Admin)).
- 5.6.4 In cases of imminent homelessness even short delays in initiating applications and offering assistance are likely to constitute maladministration. See for example *Complaint against Folkestone and Hythe*. A lodger in a single room with family facing eviction was advised that his application "was waiting to

¹⁸⁵ See the chapter 'Homelessness' for the statutory definition of homelessness.

¹⁸⁶ See, also, in relation to defeating the purpose of the legislation, *Robinson v Hammersmith and Fulham LBC* [2006] EWCA Civ 1122.

be looked at”, and that the council was working on “information provided in date order” (18 018 663, 2 January 2020).

5.7 Gatekeeping

- 5.7.1 ‘Gatekeeping’ is a term commonly used to describe practices which result in the unlawful failure to accept a homelessness application and perform associated duties, e.g. the initial duty to accommodate.¹⁸⁷
- 5.7.2 Gatekeeping denies people the help to which they are entitled, and prevents the timely alleviation of homelessness.
- 5.7.3 A person has the right to apply for assistance, irrespective of:
- Whether they have a local connection with the council’s district (or indeed with the area of any other council in the UK (*R v Hillingdon LBC ex p Streeting (No 2)* [1980] 1 WLR 1425, CA).
 - Whether they have a priority need.
 - Whether their homelessness is likely to be considered intentional.
- 5.7.4 In *Aweys* the council accepted that its practice of requiring persons to first attend a ‘home options interview’ before a request was treated as a Part 7 application was unlawful (*R (Aweys) Birmingham CC* [2007] EWHC 52 (Admin)).
- 5.7.5 In *Khazai* the Interim Head of Housing Needs unlawfully instructed 40 staff by email that “*all single homeless who are presenting as homeless/roofless and domestic violence victims requiring refuge must be referred to the appropriate funded support service. We should not be completing a homelessness application*” (*R (Khazai v Birmingham CC* [2010] EWHC 2576 (Admin)).

¹⁸⁷ See the chapter ‘Interim accommodation duty’.

5.7.6 It is likely to be an applicant's interests to record their request for assistance in writing and keep a copy. This may prevent disputes arising about whether a request for assistance was in fact received, and what facts were brought to the council's attention.

5.8 'Joint' applications

5.8.1 The language of the Act suggests a homelessness application is made by an individual not a family unit (see *MacLeod (aka Hynds) v Midlothian DC* (1986) SLT 54).

5.8.2 However, more than one person from the same household may request Part 7 assistance, e.g. where partners both visit the council's office to ask for accommodation.

5.8.3 Councils commonly administer applications as 'joint' applications.

5.8.4 Where two persons request assistance the council must consider the circumstances of both applicants (*Hemans v Windsor and Maidenhead RBC* [2011] EWCA Civ 374).

5.8.5 The question of whether a 'joint' application is a single application or "two applications in a single document" was left open in *Hemans v Windsor and Maidenhead RBC* [2011] EWCA Civ 374).

5.8.6 Administrative convenience may arguably permit a single decision notification letter (e.g. addressed to "Mr & Mrs...").

5.8.7 In the absence of information suggesting the contrary the council may be entitled to proceed on the basis that the factual circumstances of two applicants are the same.

5.8.8 However, the council may be required to consider the separate circumstances of each 'joint' applicant, where required on the facts, or upon receiving a request from one of the applicants

that their case be treated differently (*R v Wandsworth LBC ex p Lord* (unreported) 8 July 1985, QBD).¹⁸⁸

- 5.8.9 The latter interpretation appears to be supported by *Lewis*, in which a husband and wife were found intentionally homeless. Mr Lewis unsuccessfully requested a review. Ms Lewis then appealed to the county court. Ms Lewis unsuccessfully applied for permission to appeal to the Court of Appeal. In refusing permission it was held that:
- On a joint application different duties may be owed to the two applicants.
 - Mrs Lewis could not rely on her husband's more favourable circumstances, since he was not a party to the appeal (*Lewis v Brent LBC* [2005] EWCA Civ 605; (2005) July *Legal Action* 29).

- 5.8.10 The author suggests:
- The question of whether there are one or two applicants is a question of fact, depending on who requested assistance.
 - Councils should identify the identity of the applicant when two persons approach simultaneously.
 - Council should record any agreement by a person that another household member is to be treated as the applicant (rather than themselves).
 - Procedures and software should enable the identity of the applicant (or applicants) to be accurately recorded and ensure written notifications are sent to the appropriate person (or persons).
 - Decision notification letters should ideally be addressed and sent separately to each 'joint' applicant.

¹⁸⁸ See, in the context of intentionality, the section 'Acquiescence' in the chapter 'Intentional homelessness'.

- Where a s.202 review request is requested by only one of two applicants, records and notifications should accurately reflect the identity of the person who requested the review,

5.9 Persons who cannot benefit from Part 7 – generally

5.9.1 While anyone can request assistance on grounds of homelessness, not every person is entitled to benefit from Part 7 duties.

5.9.2 There are three situations in which a council may lawfully decide that no duty to make inquiries arises, notwithstanding the *prima facie* satisfaction of the statutory test:¹⁸⁹

- Dependent children.
- Lacking mental capacity.
- Unlawfully in UK.

5.9.3 In addition, a question may arise as to whether a request for assistance merely constitutes a repeat application.

5.10 Dependent child

A dependent child cannot apply as homeless (*R v Oldham MBC ex p Garlick* [1993] AC 509).

5.11 Mental capacity

5.11.1 An applicant must have sufficient capacity to understand and respond to an offer of accommodation and to undertake the responsibilities involved (*R v Bexley LBC ex p Begum; R v Oldham MC ex p Garlick* [1993] AC 509, HL).

5.11.2 It is for the council to determine whether a person has mental capacity. The question is not a precedent fact that the court may

¹⁸⁹ i.e even if a request for assistance has been received and there is reason to believe that the applicant is or may be homeless or threatened with homelessness.

determine for itself (*R v Tower Hamlets ex p Ferdous Begum; R v Oldham MBC ex p Garlick* [1993] AC 509, HL).¹⁹⁰

- 5.11.3 The Court of Protection can, under sections 17 and 18 of the Mental Capacity Act 2005, appoint a deputy for a person lacking capacity with powers about where the person should live. The deputy may be given power to make a homeless application, including power to make various choices the applicant may be required to make (*WB v W District Council* [2018] EWCA Civ 928 at [34]).

5.12 Unlawfully present in UK

- 5.12.1 A person who is illegally present in the UK under section 14 of the Immigration Act 1971 may not apply as homeless (*R v Westminster CC ex p Castelli and Tristran-Garcia* (1996) 28 HLR 617, CA; *R v Secretary of State for the Environment ex p Tower Hamlets LBC* [1993] QBD 632; *R v Hillingdon LBC ex p Streeting (No 2)* [1980] 1 WLR 1425, CA).¹⁹¹
- 5.12.2 A decision as to whether a person is illegally present in the UK for the purpose of Part 7 is for the council to make, subject to the Home Office deciding otherwise (*Castelli and Tristran-Garcia; Tower Hamlets*).
- 5.12.3 The council is under a duty to inform the immigration authorities if, as a result of their inquiries, they suspect an applicant is an illegal entrant to the UK (*R v Secretary of State for the Environment ex p Tower Hamlets LBC* [1993] QBD 632).

5.13 Repeat application

- 5.13.1 A person whose previous Part 7 application has been determined may make a further request for assistance.

¹⁹⁰ See the section 'Precedent facts' in the chapter 'Sources of law and principles of decision-making.'

¹⁹¹ Note this is a different test than whether an applicant is eligible for assistance on immigration and nationality grounds.

- 5.13.2 However, no duty to make inquiries arises where a repeat application is made on exactly the same facts as the earlier application, or where new facts are trivial or fanciful (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396, HL; *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
- 5.13.3 The test is not whether the purported new facts constitute a 'material change in circumstances' (*Fahia*; *Rikha Begum*).
- 5.13.4 It is for the applicant to identify contended new facts and draw them to the council's attention (*Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
- 5.13.5 The purported new facts must be compared with the facts as they were when the previous application was determined, including any review (*Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
- 5.13.6 If no new facts are revealed (or the new facts are fanciful or trivial) the council may reject the application as incompetent (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396, HL; *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
- 5.13.7 It is not open to the council to investigate the accuracy of purported new facts via non-statutory inquiries before accepting the request as a valid application, even where the council suspects (but has not established) the facts are inaccurate (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396, HL; *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
- 5.13.8 The acceptance of a second application will not necessarily result in a substantive duty being accepted. For example if the council is not satisfied, upon completing inquiries, that the applicant is homeless or threatened with homelessness.

Examples of breach

5.13.9 Asserted facts which councils unlawfully decided did not give rise to a fresh application have included:

- A request to vacate unsettled guest house accommodation the applicant had occupied since her previous application. In *Fahia* the council placed the applicant in a guesthouse and decided she was intentionally homeless. The applicant then directly agreed a licence with the guest house and remained there for over a year. The licence fee was initially paid in full by housing benefit but a year later the benefit was halved (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396).

- Two brothers of the applicant taking up occupation at the accommodation she shared with her mother for two years, rendering it more overcrowded.

In *Rikha Begum* the applicant was residing at the accommodation in question when her previous application was determined because she refused a secure tenancy offered to discharge the main housing duty (*Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).

- New information concerning disabilities suffered by the applicant's daughter and support needs.

In *Gardiner* the applicant had accommodation available for her in Columbia. Her daughter was autistic. On her first application the council decided the Columbia accommodation was reasonable to occupy, notwithstanding a lack of educational support. After an unsuccessful review and appeal fresh expert evidence detailed dramatic improvements the daughter had made whilst benefitting from the special needs educational provision available in the UK. It was reported that the daughter would be unable to function positively without

the educational support and would suffer a profound adverse impact were she to reside in Columbia. This was different that the mere lessened quality of support that had been considered on review (*G v Haringey LBC* [2009] EWHC 2699 (Admin)).

- Exclusion by the applicant's grandmother, following a breakdown in their relationship.

In *May* the applicant was residing with her grandmother when, on her previous application, she refused a final offer to discharge of the main duty. The grandmother then agreed to accommodate the applicant until she was allocated social housing before an unexpected relationship breakdown (*R (May) v Birmingham CC* [2012] EWHC 1399 (Admin)).

- Change in household composition

In *Abdulrahman* the applicant and her husband had been found intentionally homeless on their previous application. Her husband, with whom the previous application had been made, had left the household, along with three of her nine children (*Abdulrahman) v Hillingdon LBC* [2016] EWHC 2647 (Admin)).

- Eviction from accommodation the applicant had occupied under threat of possession proceedings when her previous application was determined because she refused a final offer (*R (Kensington & Chelsea RLBC) v Ealing LBC* [2017] EWHC 24 (Admin)).

- Evidence of a deterioration in the applicant's mental health since a previous non-priority decision was made, where the previous decision cited an absence of medical evidence of vulnerability and was made on the basis that there were

no medical issues. (*R (Bukartyk) v Welwyn Hatfield BC* [2019] EWHC 3480 (Admin)).

- An assessment that the applicant was having active suicidal thoughts, plan and intent, following an adverse priority need decision on review.

In *Hoyte* a review decision on the previous application had expressly rejected the applicant's assertion that she had suicidal thoughts and was at risk of suicide and self-harm. The reviewing officer relied on information from the GP and acknowledged the applicant's depression and self-neglect. However, after the review decision the applicant boarded a bus to Blackfriar's Bridge with the intention of committing suicide. The GP's view of risk had changed, and the applicant had taken steps to commit suicide (*R (Hoyte v Southwark LBC* [2016] EWHC 1665 (Admin)).

5.13.10 In *Bukartyk* the council erred by focusing on whether the new facts would establish the applicant was vulnerable and therefore in priority need. That question falls to be addressed when s.184 inquires are undertaken, not at the prior stage of deciding whether there is an effective application in the first place.

5.13.11 The council must take care not to 'cherry pick' by only focusing on favourable parts of the evidence whilst failing to have regard to evidence suggesting new facts (see, for example, *Bukartyk* and *Hoyte*).

No error – example

5.13.12 In *Griffin* the applicant jointly applied as homeless with her partner. The applicant and partner then separated before the applicant refused a final offer to end the main duty. Three months after the resulting eviction from temporary accommodation the applicant re-applied. The council were lawfully entitled to treat the second application as identical. The

relationship had ended before the final offer was made (*R (Griffin) v Southwark LBC* [2004] EWHC 2463 (Admin)).

5.14 Re-application within 2 years of PRSO

5.14.1 Special provisions apply where an applicant re-applies to a council within two years of them discharging the main duty via a 'private rented sector offer' (s.195A). See chapters 'Interim accommodation duty',¹⁹² 'Priority need',¹⁹³ and 'Main housing duty'.¹⁹⁴

5.15 Application by other household member

5.15.1 A person may apply for Part 7 assistance notwithstanding the fact that another member of their household has previously been found to have become homeless intentionality. Each household member is entitled to individual consideration (*R v North Devon DC ex p Lewis* [1981] 1 WLR 328).¹⁹⁵

5.15.2 However, an application by a family member cannot be used to circumvent a decision that a council has discharged the main duty in respect of the family (*R v Camden LBC ex p Hersi* (2001) 33 HLR 577).

5.15.3 In *Hersi* the council ended the main housing duty towards Mrs Hersi when she refused a final offer of accommodation. Mrs Hersi lived with her five sons and 19-year-old daughter. The daughter subsequently requested assistance, on the basis that she required accommodation for the whole household. The council made no error when declining to accept the application. The daughter's siblings were not dependent on her and she had 'no standing' to apply for the family. It was immaterial that she

¹⁹² See section 'Re-application within 2 years of PRSO' in that chapter.

¹⁹³ See section 'Purpose of priority need categories' in that chapter.

¹⁹⁴ See section 'Private rented sector offers – generally' in that chapter.

¹⁹⁵ See also however the section 'Acquiescence' in the chapter 'Intentional homelessness'.

may not have been a party to her mother's decision to refuse the accommodation.¹⁹⁶

5.16 Application to another council

- 5.16.1 The ability of applicants to apply to more than one council are often misunderstood and denied in practice.
- 5.16.2 A council will ordinarily ask the applicant whether they have applied to another council for housing or homelessness assistance.
- 5.16.3 Councils may, having obtained the applicant's consent, request information from another council to which the applicant has applied.
- 5.16.4 The other council owes a duty to cooperate with such a request (s.213).

Parallel applications

- 5.16.5 A person may make homeless applications to more than one council simultaneously.
- 5.16.6 The Code suggests that councils may wish to agree for one council to take responsibility for conducting inquiries (18.9).
- 5.16.7 Each council is required to make its own decision (Code, 18.9).¹⁹⁷
- 5.16.8 It may not be in an applicant's interest to apply to more than one council simultaneously since:
 - Applying to only one council enables a request to be considered for the area in which they wish to be accommodated.¹⁹⁸

¹⁹⁶ The council accepted it would have had to accept an application from an adult household member on whom the children were dependent.

¹⁹⁷ See the section 'Unlawful delegation and dictation' in the chapter 'Sources of law and principles of decision-making'.

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