

MAKING A HOMELESS APPLICATION: THE FACTS

Given out at Session 2 of the PCAN volunteer training led by Hannah Barton of Barnardo's 10th March 2011

The Housing Act 1996 part VII is the legislation used by the local authority when someone makes a homeless application. It is concerned with defining which homeless people the local authority has a duty to help and what the obligations are.

The “code of guidance” is produced by the Secretary of State as a guide to how the Housing Act should be interpreted. This not a legally binding document but the local authority must have regard to it in their decision making and must be able to justify any decision which is contrary to it.(a web address to this document can be found in the useful links section of these notes)

The Housing Act 1996 part VII states what have become known as “*The Five Hurdles*” which a homeless person must be able to get over in order for a full duty to be owed.

Where the local authority has reason to believe that a householder may be homeless it has a duty to make enquiries to determine what, if any, duty is owed. The burden of proof lies with the local authority not the applicant. It is also requires that the local authority recognise that someone may be homeless without that individual stating that they want to make a homeless application.

The 5 “Hurdles”

The Housing Act 1996 VII (as amended by The Homelessness Act 2002)

- 1 HOMELESS or threatened with homelessness within 28 days?
- 2 ELIGIBLE FOR ASSISTANCE?
- 3 PRIORITY NEED?
- 4 INTENTIONALLY HOMELESS?
- 5 LOCAL CONNECTION?

Breaking down the 5 “Hurdles”

1. Homelessness

Are you legally classed as homeless?

In deciding whether you are homeless the council will ask 2 questions;

- Do you have anywhere you can live?
- Is it reasonable for you to live there?

In asking these questions the council has to look at any accommodation you have access to. You should be considered homeless if:

- you have no home in the UK or anywhere else in the world
- you have no home where you can live together with your immediate family
- You can only stay where you are on a very temporary basis-includes Hostels and temporary placements with family.
- you don't have permission to live where you are-includes Squatting
- you have been locked out of home and you aren't allowed back
- you can't live at home because of violence or abuse or threats of violence or abuse, which are likely to be carried out against you or someone else in your household
- it isn't reasonable for you to stay in your home for any reason (for example, if your home is in very poor condition)
- you can't afford to stay where you are, putting you at risk (not being able to afford basic rights such as food and heating)
- You live in a vehicle or boat and you have nowhere to put it.

NB. The council has to look at your situation as a whole before deciding whether you are homeless. For example, even if you have accommodation that you have a legal right to live in and no one is trying to get you out, it may not be reasonable for you to stay there. This would be the case if you are experiencing violence or abuse or harrasment, or if the condition of your home is damaging your health.

If it is found that you are homeless or at threat of homelessness you will progress to the 2nd hurdle within the homeless assessment.

2. Eligibility

Am I eligible?

The rules on this depend on a number of things including:

- your immigration status

- whether you are ‘habitually resident’ in the UK
- your country of origin
- whether you are classed as a ‘worker’.

British Citizen- If you are a British Citizen living in the UK you are eligible for assistance. (This does not mean to say you will get it there are still 3 more hurdles to go!!) If you have spent time living abroad recently this may mean you are not eligible for assistance you will now have to undergo a habitual residents test.

Habitual Residence test

This test is used for British and non British Citizens that spend time outside of the UK but as seeking assistance for accommodation within the UK on the grounds that Britain is where they live. The test is used to determine where your normal place of residence is.

If you are found not to be a habitual resident in the UK, you will not be eligible for assistance.

The council should check:

- where you live
- where you work
- where you have family or other social connections
- where your belongings are
- the reasons why you have come to live in the UK
- what your intentions for the future are.

NB If you fail the habitual residence test this may also affect your entitlement to benefits.

In most cases, people will become habitually resident in the UK once they have lived here for a few months. If you make a new homelessness application at this point, the council may decide that you are eligible for assistance, even if you were not eligible before.

EU and EEA Nationals (Not including A2 and A8 nationals)

- Definition : **European Union**

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

- Definition: **European Economic Area**

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Irish Republic, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom. Iceland, Liechtenstein and Norway are not members of the European Union (EU) but citizens of these countries have the same rights to enter, live in and work in the United Kingdom as EU citizens.

As an EU or EEA nationals you will only be eligible for assistance if you are:

- a worker - ie a person who has actually worked (periods of illness, unemployment and vocational training are still treated as work). Work does not need to be full-time – if you are doing genuine part-time work but you need to top up your income with state benefits you are still classed as a worker, or
- a worker who has had to stop work because of permanent incapacity and you have lived in the UK for more than 2 years, or
- a worker who has had to stop work because of permanent incapacity for work resulting from an industrial illness or disease that entitled you to a full pension from a UK institution, or
- self-employed, or
- a worker or a self-employed person who has retired after having worked in the UK for at least 12 months and you have lived in the UK for at least 3 years, or
- self-sufficient, or
- a student with comprehensive insurance who is self-sufficient, or
- someone who has been here lawfully, exercising EU rights for 5 years continuously.

Please Note there are exceptions to these rules.

You may not be eligible for assistance if you are an EU national and:

- you are a lone parent and are not a worker (ie you are bringing up children and your children are not the children of a worker or former worker), or
- you are incapable of work and have never worked. There may be an exception, however, if you can show that you are a family member of a worker, or
- your children are not of school age.

If someone is found ineligible but gets work or is self employed for some time and returns to be reassessed this decision may be reversed.

A2 and A8 States

- **Definition:** EU Accession States-The 10 states that have recently acceded to the European Union. These are the A8 states (the Czech republic, Estonia, Hungary,

Latvia, Lithuania, Poland, Slovakia and Slovenia) in 2004 and the A2 states (Bulgaria and Romania) in 2007

In order to qualify as workers, A2 and A8 nationals must register under the workers registration scheme. However, in other aspects you are treated the same as other EU nationals.

After a full year of continuous registered work you will have the same status as any other EU national – and this includes eligibility for assistance. After a year you will no longer need to register, and while working under the workers registration scheme you will be eligible for assistance.

However, during that first year, any break due to unemployment, or illness of one month or more, will affect your worker status, and the one-year period starts again.

If you are an A8 worker, and self-employed, or financially self-supporting you will not need to register.

Other people from abroad

If you require permission to enter or remain in the UK, you may be classed as a person from abroad who is not eligible for assistance. People who are not British citizens or who are not from an EU/ or EEA country are not normally eligible for assistance. However, there are exceptions to this.

You will probably be eligible if, for example:

- you have been granted exceptional leave to remain in the UK
- you have indefinite leave to enter or remain ('settled status')
- you are a refugee who has been granted asylum – prior to the 3rd April 2000

You may be entitled to help from the UK Border Agency (UKBA) while your claim for asylum is being decided. Depending on your circumstances, social services may be able to help. In addition to this, the [National Asylum Support Service \(NASS\)](#) provides housing and other support to people who are seeking asylum

If you are found to be homeless or at threat of homelessness and are eligible for assistance you will now progress to the 3rd hurdle.

3. Priority Need

What is Priority need?

The Council will assess whether the person presenting as homeless as a result of their circumstances will be less able to fend for themselves when homeless in comparison to an “ordinary” homeless person. This will look at whether the person is more likely to suffer injury or less able to cope with the adverse effects of homelessness as opposed to a less vulnerable person.

There are some automatic categories that will make a person priority need but if a person doesn't fit into these categories the key question in relation to Priority need is regarding their vulnerability.

Automatic categories of priority need

- they are 16- or 17-years-old, unless they are owed an accommodation duty by social services
- they are 18-, 19-, or 20-years old, and have been in care at some point after their 16th birthday, unless they are a 'relevant student'
- they are pregnant
- they have a dependant child
- they have lost their home as a result of fire, flood, or other disaster.

In the case of a 16- and 17-year-old, if there is any doubt as to whether they may be a 'relevant child' or 'child in need', the council should provide interim accommodation pending clarification. It should also have a joint assessment procedure with social services

Definitions

- **Relevant student-** A care leaver under the age of 24 who is in full-time higher education or residential further education. When term-time accommodation is not available to a relevant student during the holidays, housing them remains the responsibility of social services.
- **Relevant Child-** A young person aged 16 or 17 who has left care, and who was looked after for (a total of) at least 13 weeks from the age of 14, and has been looked after at some time while they were 16 or 17.

Other reasons for priority need-Vulnerability

If a person does not fit into any of automatic categories of priority need, they will only have a priority need if they are classed as 'vulnerable'. In 1998 a Case was brought to court where the judge ruled that when assessing priority need for a person that does not meet the automatic criteria for Priority need the council will need to undertake a vulnerability test this is named after this case and is known as the Pereira test. A person may be classed as vulnerable if they have:

- mental health problems or a learning disability
- a physical disability or serious health problem

- been in care, the armed forces, or custody and have become institutionalized
- left accommodation due to violence or threats of violence.
- Drug and alcohol use is not classed as a reason for vulnerability but relapse may be. Evidence of engaging with treatment may strengthen this case.
- A person that has been granted leave to remain.

They can also be vulnerable for an 'other special reason'. This may be simply that they are a young person under the age of 25 and have no existing support networks (for example, they are estranged from their family) that could help them cope with the practicalities and costs of finding and keeping accommodation. In such a situation it would be about providing evidence that the person would struggle to with 'Coping', in this context this could include that the young person would have difficulty in finding and keeping accommodation.

When assessing vulnerability there are 3 questions to ask;

1. What is special in this case?
2. How will this affect them should they become homeless?
3. How is this different to the effect of homelessness on the average homeless person- will they suffer more harm/ be more affected?

What next?

If a person is found to meet the criteria to be classed as Priority need the council should provide interim accommodation for them whilst the rest of the homelessness assessment is undertaken. This accommodation should be made available until the council provides the person with a letter detailing the outcome of the assessment and a decision regarding if the council will be providing them with further accommodation.

There are 2 further hurdles and it is important to remember that even at this stage if a person is found to be homeless, eligible for assistance and priority need this does not automatically mean the council owes them a full housing duty.

What can we do?

Advocacy-When working with someone that you feel meets the criteria for Priority need it is important that we actively advocate on their behalf to ensure this is recognized.

Evidence- It will be the council's responsibility to do the assessment but if we can support the person to provide evidence detailing their vulnerability this will increase their chances of receiving the support they are entitled to. Evidence is anything that will back the persons reason for being considered as priority need such as;

- evidence of age
- evidence confirming that the young person has a dependent child (for example, a Child Benefit award letter)

- doctor's letter (for example, confirming health or mental health problems or pregnancy)
- letter from social services (for example, confirming care background, disability or mental health problems)
- evidence of violence or threats of violence (for example, police incident numbers). If appropriate- In the case of violence evidence is not always required particularly if it is to the detriment of the victim.

4. Intentional homelessness.

During the council's assessment of this hurdle they will make enquiries into the reasons the person presenting became homeless. If they are to make a decision that a person is **intentionally homeless** they must be satisfied that all four of the following points apply:

- you deliberately did (or didn't do) something
- that caused you to leave accommodation
- which you could otherwise have stayed in
- it would have been reasonable for you to stay there.

In the case of this hurdle it is the Local Authorities responsibility to prove that a person has made themselves intentionally homeless rather than the individual proving that they have not.

Deliberate act or omission resulting in homelessness

- Selling home when under no threat of losing it
- Wilful and persistent refusal to pay rent or mortgage (no financial difficulty)
- Significant neglect of affairs and having disregarded sound advice from professionals
- Voluntarily surrendering accommodation in the UK or abroad that would have been reasonable for them to continue to reside within
- Eviction due to anti social behaviour
- Leaves a job with tied accommodation where by it is deemed that it would have been reasonable for them to have continued employment and occupy the accommodation

What caused you to leave the accommodation?

In some circumstances it can be argued that a person was unaware of the act or unaware of the consequences if this is found to be the case they may not be assessed as being intentionally homeless. This can be argued in the following cases;

- You gave up your home because you weren't aware you could stay
- You were given bad/misleading advice resulting in you leaving your home when you didn't need to
- Someone you lived with did something resulting in you losing your accommodation that you were unaware of

When determining the latter the general rules are:

- Parents are held responsible for the action of their children so if a person was evicted as a result of the anti social behaviour caused by their children the family may be found to be intentionally homeless. The younger the child the greater the chance that the parents will be implicated although evidence of actions taken to deter the behaviour will be taken into consideration.
- Adults are not responsible for the actions of another adult so if an adult member of the household did something resulting in the family being evicted if it can be proved that you were unaware of what was going on or took steps to avoid a negative outcome whilst that individual may be assessed as making themselves intentionally homeless others in the house hole would not. A new homeless application can be submitted that includes this individual. If it is found that other adults within the household were part of the act or omission the whole household will be assessed as intentionally homeless.

Could you have stayed in the accommodation?

When determining this the accommodation should be available for yourself and others that usually reside with you.

It would not be considered reasonable for a person to occupy accommodation if;

- you (or someone in your household) was experiencing violence or threats that were likely to be carried out
- it was of a very poor standard compared with other housing in the area
- you couldn't afford to live there unless you went without basic necessities such as food or heating
- it was seriously affecting your health.

This is not an exhaustive list there are a number of other factors that could be taken into consideration.

Intentional decision made...what next?

If a person is found to have made themselves intentionally homeless a person is still eligible for advice and information and if they meet all the other criteria they may be eligible for temporary accommodation whilst they find a more permanent housing solution. Generally Local authorities will deem 28 days to be a reasonable amount of time.

In cases where a family have been found to be intentionally homeless and there are dependant children a referral to social care may be made, they may assist with;

- providing accommodation
- helping you to raise money for a deposit
- offering you a range of services such as practical support, relationship counseling or help with drug or alcohol problems.

5. Local Connection

The local authority where you present should undertake the homeless assessment however if they decide you meet the criteria for the first 4 hurdles but you do not have a local connection to the authority where you presented they may send you to another authority to get support with your accommodation.

The council will look at 4 factors when deciding whether a person has a local connection;

- have you lived in the area and for how long
- have you got family connections in the area
- work in the area
- have you got a connection with the area for another special reason.

I live in the area

The council will usually consider that you have a local connection if you have lived in the area for a total of six months out of the last 12 months, or three years out of the last five years. If you live in the area or you lived there in the past because you were posted there by the armed forces and you make a homelessness application, the council should accept that you have a local connection.

You must have lived in the area by choice in order to have a local connection. You may not have a local connection if you have only lived in an area because you have been in prison or in a hospital.

I have family in the area

Councils will usually consider you to have a local connection with an area if you have close family who have lived in the area for at least five years. Close family includes parents, children, brothers or sisters. It may also include other family members if you have a very close relationship (for example, if you were brought up by an aunt, uncle or grandparent).

I work in the area

If you work in the area you should automatically be considered to have a local connection with that area. However, if your employment is of a casual nature, it may not be enough to establish a local connection. Employment doesn't have to be full-time and self-employed people can have a local connection if they mainly work in the council's area.

If you live in the area or you lived there in the past because you were posted there by the armed forces and you make a homelessness application, the council should accept that you have a local connection.

I have a connection for another reason

You may be able to show you have a local connection for other special reasons. For example, you may need to live in an area to receive specialist health care, or for religious reasons. If you think this is the case, get advice to see whether you could argue that you have a local connection.

If you have a connection with more than one local authority you should get to choose which assists you with finding accommodation. If there is any reason it would be unsafe for you to return to an area that has been identified as owing a duty for you to be rehoused this should be explained to the assessor.

After the assessment...

What happens if I'm told I don't meet the criteria?

The letter

If the council decides that you're not homeless or threatened with homelessness or do not meet the criteria of any of the other 4 hurdles they have to inform you in writing. The decision letter must explain the reasons why the council has come to that decision

What can they do for me?

If you are not homeless or threatened with homelessness, the council only has to give you advice and assistance about finding somewhere else to live.

What happens to my accommodation if I was given interim accommodation whilst they assessed me?

If you are already in emergency accommodation provided by the council, you will probably be asked to leave.

Your right to appeal

You can appeal this decision but you will need to do so within 21 days of receiving the letter detailing their decision of your assessment.

Useful Links

<http://www.communities.gov.uk/documents/housing/pdf/152056.pdf>- Code of guidance

www.shelter.org.uk

Quiz

Decide if these cases should be accepted as homeless and on what grounds.

1. Assured short hold tenant has a valid Section 21 Notice that expires next week. The Landlord has stated he will take this to court proceedings.

2. Woman threatened with violence by partner, does not want to get an injunction

3. Couple, owner-occupiers: took on mortgage when both working. He has lost his job and she is on reduced hours. 2 months arrears on Mortgage and can't pay this month

4. Woman lives in supported accommodation scheme she has 2 children under interim care orders, social services have agreed that they can return to her but children are not allowed in the current address.

Are the below Homeless applicants eligible for assistance?

5. Sudanese asylum seeker, Claimed asylum last week-
6. Somali with humanitarian protection-
7. German national, had a job for 15 months, lost that job 1 month ago but is looking for another job
8. Polish national, has been working under workers registration scheme for 6 months, has just lost job-

Would the below Homeless applicants be considered to be priority need. Please state whether they would always/sometimes/never be classed as priority.

9. A rough sleeper
10. He person has just left prison
11. A person on a methadone programme
12. A person that is depressed

Have these applicants made themselves intentionally homeless?

13. A person that has asked their landlord to give them a notice to quit
14. A victim of domestic violence that did not get an injunction on the perpetrator
15. A family where the mother was using the rent money unknown to the others to play bingo
16. A family that are leaving due to the 8 year old child's anti social behavior

Have these applicants got a local connection?

17. A 20 year old woman that has been abroad working for 18 months she has returned to home town. This trip was her first trip away other than short holidays.
18. A young man has been working cash in hand for the same company for nearly 3 years he doesn't have any family in the area but has loads of friends that can vouch for him. He has worked for other companies in towns close by as well when work has been short in Preston.
19. A 21 year old that has recently moved to live nearer their family. She has never lived in Preston before.
20. A family that have moved to Preston from Birmingham to be near friends because the mother's of the families say they are like sisters.