



Homelessness:

How councils can ensure justice
for homeless people

Focus Report: learning the lessons from complaints

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Introduction

Complaints to the Local Government Ombudsman suggest that people who face homelessness do not always receive the help that they are entitled to from councils. Other organisations have coined the phrase 'gatekeeping' to describe where councils refuse to accept a homelessness application or to provide interim accommodation where there is no legitimate reason.

Councils have a statutory duty to secure housing for people who are unintentionally homeless and in priority need. There is an extensive body of law and clear, comprehensive guidance.

We know that councils are currently under pressure with limited resources and increasing numbers of people presenting as homeless. To avoid more people suffering personal injustice councils should always properly apply the law in practice.

Based on an analysis of recent complaints, we have produced this Focus Report. It demonstrates both good practice and what can go wrong. It shows just how serious injustice can be for those affected and suggests how councils can avoid others suffering in a similar way.

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The growing problem of homelessness

Homelessness is beginning to rise. The precise number of people suffering is hard to work out, partly because homeless people tend to be transient. Recent figures show that:

- > in Autumn 2010, around 1,700 people were sleeping rough, about one in four of them in London, according to annual street counts and estimates by local authorities¹
- > over 44,000 households were accepted as homeless in 2010/11² and placed in temporary accommodation by their council because of being in priority need – for example, because of having children, and
- > in 2009/10 more than 165,000 households went through homeless prevention schemes³, run by councils to tackle issues such as young people who have been asked to leave home or help those who are victims of domestic violence.

The figures also suggest that:

- > more people are sleeping on the streets than previously
- > more people are being accepted by councils as both homeless and a priority for temporary housing, and
- > more people are seeking advice on housing problems, including actual or threatened homelessness and rental arrears to private landlords.

People can be homeless if their own housing is not reasonable for them to live in – for example, because of overcrowding, unhealthy conditions or threats of violence.

Homelessness is often caused by combinations of personal and social factors, ranging from family problems to unemployment. A study commissioned by Shelter found the reasons most frequently given for being on the streets were:

- > relationship breakdown
- > being asked to leave the family home
- > drug and alcohol problems
- > debt
- > leaving prison, and
- > mental health problems.

Homeless people's rights

People are legally entitled to help from a council if they are homeless or threatened with homelessness within 28 days. If this is the case, the council has a duty to accept an application for help but the amount of assistance it gives will depend on individual circumstances.

While the council makes its enquiries and decides what duty it has, if any, it must arrange housing for someone if it has reason to believe that they may be homeless, eligible for help and in priority need. Someone would be in priority need if they have dependent children, are pregnant, are under 18 years old or if they are vulnerable – for example, being ill, disabled or a victim of domestic violence.

If someone is not in priority need the council is obliged to offer advice on avoiding homelessness and to help the person with their search for somewhere to live.

Justice for homeless people: the role of the Ombudsman

For over 35 years the Ombudsmen have independently and impartially investigated complaints about local authorities and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we can ask the council to take action to put the matter right. What we ask the council to do will depend on the particular complaint, how serious the fault was, and how the complainant was affected. We have no legal power to force councils to follow our recommendations, but they almost always do.

Some of the things we might ask a council to do are:

- > apologise
- > pay compensation
- > take action or make a decision that it should have done before
- > reconsider a decision that it did not take properly in the first place, and
- > improve its procedures so that similar problems do not happen again.

Each year we investigate around 300 complaints from people affected by homelessness and claiming injustice as a result of councils not complying with the law.

Serious personal injustice can be caused when someone is refused their rights by a council wrongly deciding that it:

- > should not accept that a valid homelessness application has been made, and/or
- > is not obliged to arrange interim housing.

This report highlights some of the landmark legal judgements on homelessness. The role of the courts is to determine what is lawful, while we have wide discretion to decide what constitutes administrative fault.

We do not normally take up a complaint where a complainant has a potential alternative remedy through the courts. Through judicial review, an individual can seek an order to compel an authority to take a homelessness application or provide interim accommodation.

But it is often not reasonable to expect homeless people to resort to this because of their financial and personal circumstances.

Focus on the causes of injustice

Councils can cause serious injustice to homeless people by making mistakes in four areas:

- > homelessness prevention
- > the duty to make enquiries
- > making applications
- > provision of interim accommodation.

We have included examples of cases we have investigated to illustrate these faults and the injustices that can result.

Homelessness prevention

Councils must produce plans for tackling homelessness, including measures for preventing people from becoming homeless in the first place. They must provide information free of charge.

Typical measures for homelessness prevention include:

- > interviewing people who ask for help and advising on their options
- > liaising with landlords to resolve problems that threaten a tenancy
- > helping persuade landlords to accept vulnerable people as tenants
- > advising tenants at risk of eviction on issues like benefits or debt management
- > targeted advice for specific groups of people at risk of homelessness
- > offering rent deposit schemes to assist people with the initial costs of a private tenancy
- > using discretionary payments to prevent rental arrears by making up a shortfall between a tenant's housing benefit and their rent
- > offering family mediation to help a young person remain at home or return home, or to allow time for a planned move
- > assisting people facing domestic violence by, for example, helping those who want to remain in their homes or by facilitating a move, and
- > advising people who are about to leave prison.

Where a person is potentially homeless, councils can legitimately suggest solutions other than making a formal homelessness application. But these must be appropriate and acceptable to the individual. Councils must not try to avoid their obligations to people who are, or may be, homeless. So people must be made aware of their right to make an application if they wish to.

Case study one: Homelessness prevention blocks family's application

John lived with his partner Sarah and their young son Stephen. John suffered mental health problems.

The family approached the council when they had mortgage arrears and their property was about to be repossessed. After moving into a private property they had difficulty paying the rent and approached the council again.

But, both times, the council failed to treat the family as homeless when they were within 28 days of losing their home. They were clearly under threat of homelessness and in priority need.

The council said it had taken action and tried to prevent homelessness by liaising with the owner over the rent and providing housing advice.

We found that John and his family had suffered injustice. They did ultimately find alternative, more affordable accommodation, and were never actually homeless. But they might have had a better outcome had they had the support to which they were entitled.

At our recommendation, the council apologised to John and paid him compensation. It also reviewed its procedures for ensuring homelessness applications are taken at the appropriate time.

In the past, councils argued that they should only accept homelessness applications after homeless prevention measures had failed. But in a landmark legal case in 2007⁴, the judge held that homeless prevention measures could not lawfully be used to defer an application. So they could not, for instance, insist on interviewing people and advising them on their housing options before processing an application.

In another legal case, a council avoided delays when it simultaneously took a homelessness application and also used a Homefinder's Payment Scheme – where the council helps fund a private tenancy – to successfully secure accommodation. It then resolved the homelessness application, by which time the person was no longer homeless⁵.

Case study two: Homelessness prevention gets in the way of application

Tara was a single mum living with her young son in a privately rented flat. The owner of her home announced that it was to be repossessed because he had not been keeping up the mortgage payments.

Tara told the council that she and her son would soon have nowhere to live. Two weeks before she was due to be evicted she was interviewed by a council officer. But the advice she was given was never confirmed in writing because the interviewing officer went on sick leave.

The council did try to delay the eviction, although this was not successful. The day before the planned eviction Tara returned to the council to say she was moving in with a friend's family. This was an emergency measure and she would soon have to move on. The officer she spoke to incorrectly assumed that Tara's homelessness had been prevented.

Several weeks later, when Tara went back to the council, a manager realised the mistake and the council took a homelessness application. Tara and her son moved into a homeless hostel.

The council accepted that it had failed to take a homelessness application from Tara at the outset. The officer who interviewed her had a homelessness prevention role and was not a homelessness officer. He made a mistake and failed to take a homelessness application even though it was clear that Tara had wanted to make one and she was in priority need.

Because of the mistake, Tara had to wait longer than necessary for her bidding priority to be increased and she and her son spent more time in temporary accommodation than was necessary.

The council paid compensation to Tara in recognition of the unnecessary stress and inconvenience caused. She eventually moved into a two-bedroom flat.

The council also took action to avoid the same thing happening again by making arrangements to deal with employee absence, improve training and ensure homelessness prevention staff can deal with homelessness applications.

The duty to make enquiries

In each case they deal with, councils must decide whether:

- > an application for accommodation has been made, and
- > there is reason to believe the person is or may be homeless or threatened with homelessness.

If the answer to these questions is yes, local authorities have a duty to make enquiries to establish if the person is homeless, eligible for assistance and in priority need. They must give a decision in writing.

Case study three: Delayed and inadequate enquiries

Steve was a single man who arrived at the council saying he was immediately homeless and needed help.

He suffered from mental health problems but it was not obvious that he may have been in priority need. Because of this, the council failed to deal with Steve as homeless on the day he came in.

Instead, he was given advice and invited back for a formal homelessness interview two weeks later.

After taking an application, the council then delayed unreasonably in making enquiries about Steve's position. It eventually decided that Steve was not in priority need.

But after a second application, the council decided that he was in priority need, largely because of new information about his medical condition provided by a GP.

We decided that Steve suffered avoidable distress, uncertainty and inconvenience because of a two-month delay in accepting and processing his application. He also had an unnecessarily prolonged stay in substandard accommodation.

The council said that it had a large caseload and limited staff. It could not guarantee homelessness interviews on the day to people likely to be non-priority cases.

But it did pay Steve some compensation. And it reorganised its staff to comply with the duty to take this kind of application without delay.

Making applications

Government guidance⁶ says homelessness applications can be made to any council department and do not need to be in a particular form. It says councils should:

- > provide access to advice and assistance during office hours and have arrangements in place for 24-hour emergency cover, and
- > publicise the details of homelessness services and provide clear explanations of their procedures.

A council cannot refuse to deal with someone as homeless because they have not applied in writing or any other prescribed manner. The person just needs to make it clear that they are seeking accommodation or help with obtaining accommodation.

Case study four: Council fails to accept pregnant woman's application

Karen, a single young woman in her 20s, was asked to leave her parents' home after she became pregnant. She went to stay with her sister and niece in a one-bedroom flat in London. This arrangement could only be temporary but Karen wanted to stay near her sister so that she could help her with the baby.

So she went to the local council and told them that she was about to become homeless and was in priority need. But the council refused to take a homeless application and told her to go to another London borough. It did not offer any other advice or assistance.

Karen eventually did find accommodation elsewhere in the city.

We said: "the handling of this case was careless and there seems to have been a deliberate attempt to prevent access to housing assistance."

The council accepted it was at fault. It agreed to nominate Karen for housing in its area and to pay her removal expenses. It also paid compensation in recognition of the distress and inconvenience caused.

The guidance also makes clear that the legal test for having 'reason to believe' someone is or may be homeless or threatened with homelessness is lower than would be the test for 'being satisfied' that this was so.

In the landmark legal case previously mentioned⁴, the judge held that: "In the vast majority of cases, the making of the application will mean that it is difficult if not impossible for the council not to believe that the applicant may be homeless or threatened with homelessness."

Even if someone has housing available, there may be factors such as domestic violence or harassment that make it unreasonable to expect them to remain there.

Case study five: Council fails to recognise woman's homelessness application

Jenny was a victim of domestic violence, who had mental health problems and had previously suffered from drug and alcohol addiction.

She applied for council housing from a women's refuge, reporting that her previous tenancy had ended.

Although Jenny was in a refuge, the council did not consider whether this might be a 'reason to believe' that she may be homeless or would be homeless within 28 days. It wrongly relied on the refuge to let it know when it considered that a resident was ready to move on and failed to make its own enquiries.

The council had clear reason to believe that Jenny was homeless, eligible and in priority need.

A year later, Jenny completed a change-of-circumstances form. She used a relative's home as a care-of address and said three times that she had no fixed abode.

But again the council failed to recognise this was a homelessness situation and failed to follow up.

In the end, Jenny complained about the council, saying she had been homeless for three years, staying with friends and sometimes sleeping on the streets.

We concluded that the actions of the council deprived Jenny of the opportunity to have her case properly assessed on two occasions.

The council apologised and paid Jenny compensation. It also took steps to ensure there were appropriate links between staff dealing with the housing register and those dealing with homelessness.

Provision of interim accommodation

When a council has a duty to make enquiries, it may also have a duty to provide housing while those enquiries take place⁷. A council must provide interim housing if it has reason to believe someone may be homeless, eligible and in priority need.

A council only needs 'reason to believe' that these requirements are met. So if it does not have enough information to be satisfied that it should *not* provide interim housing, it has a duty to provide it and should act immediately.

Government guidance says applicants do not have to 'prove their case'. People will often approach councils to say they are homeless when they are in emergency situations and without documentation or supporting evidence. When this happens, councils should still make basic enquiries to establish whether the person may be homeless, eligible and in priority need.

Once a council is satisfied that an applicant is not homeless, eligible or in priority need, it should give the applicant a decision in writing straight away.

Case study six: Wheelchair user forced to prove priority need

Rebecca had severe mobility problems and used a wheelchair. She moved to a new area with her son who had learning disabilities.

She approached her new council with written information, stating that she was fleeing domestic violence. She said she was trying to escape from her former neighbours and members of her husband's family.

Rebecca told the council that she had contacted the police and that she was known to social services at her previous home.

The council says that it offered Rebecca a homeless assessment and that she rejected it. But there was nothing in the council's records to suggest that this was so.

The council told Rebecca that there was no evidence to support her claims. It did not speak with the police or social services. It placed the burden of proof onto Rebecca, asking her to provide details of police officers she had spoken to and their log numbers.

We found that Rebecca had provided the council with sufficient information for it to have reason to believe she might be homeless, eligible and in priority need. The council should have made enquiries and provided her with interim housing.

As a result of the council's failure, Rebecca was forced to sleep on a friend's sofa and endure a period of stress and uncertainty.

After Rebecca complained to the Ombudsman, the council agreed to take a homeless application and ultimately provided interim housing. It also reviewed the training needs of frontline staff in relation to people fleeing domestic abuse.

Priority areas for councils to improve

Drawing on our experience, we have identified good practice and are likely to criticise councils (ie find maladministration or service failure) if they fail to meet their responsibilities in these areas.

We recommend that councils:

- > make a decision on the same day about whether to offer interim accommodation whenever they take an application and decide to make enquiries
- > record the reasons clearly if in the above circumstances interim accommodation is not offered
- > convey in writing, not informally, decisions that carry rights of review or appeal
- > ensure arrangements are in place for referring vulnerable applicants to social services, sharing information as appropriate
- > have systems to identify actual or potential homelessness when new applicants join the housing register or when existing applicants provide new information

- > keep clear records of all interviews with homeless applicants, including details of advice given, and
- > consider whether an individual is homeless and eligible for assistance in cases where people need to move because of harassment or domestic violence.

We may criticise councils that:

- > use homelessness prevention activity to block or delay the consideration of a homelessness application
- > insist that applicants for help with homelessness must complete a specific form, or be interviewed by a specialist homelessness assessment officer
- > place the burden of proof on the applicant – authorities should make their own enquiries when considering applications, or
- > defer taking an application because the application appears to be a non-priority – any applicant claiming immediate homelessness should be assessed on the day.

Further information

Call the LGO Advice Team on **0300 061 0614**

Or text 'call back' on 0762 480 4299

E: advice@lgo.org.uk

All new complaints should be sent to:

PO Box 4771
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www.lgo.org.uk

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- 1 Rough Sleeping in England – Autumn 2010, DCLG, February 2011
 - 2 Statutory Homelessness: March Quarter 2011 England, DCLG, June 2011
 - 3 Homelessness Prevention and Relief: England 2009-10, DCLG, August 2010
 - 4 *(R (Aweys & Others) v Birmingham City Council [2007] EWHC52 (Admin))*
 - 5 *Hanton-Rhoulla v Westminster City Council [2010]*
 - 6 Homelessness Code of Guidance for Local Authorities
 - 7 Sometimes known as section 188 accommodation, this is not the same as temporary accommodation provided under section 193 of the Housing Act 1996. Section 193 accommodation is offered on a temporary basis to applicants for whom the authority has accepted a duty to provide permanent accommodation. There are rights of review in relation to the suitability of section 193 accommodation, but there are none in relation to the suitability of section 188 accommodation.

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