The housing advice bulletin from Shelter for the National Homelessness Advice Service

# Housing matters

Issue 121 December 2017



NHAS National Homelessness Advice Service

Specialist support on housing advice

Shelter helps over a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place.

We're here so no-one has to fight bad housing or homelessness on their own.

Please support us at shelter.org.uk

**Until there's a home for everyone**

Shelter
88 Old Street
London
EC1V 9HU

Telephone **0300 330 1234**
shelter.org.uk



**Housing matters**
*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

**Published by:**
Shelter, 88 Old Street, London EC1V 9HU
Tel: 0344 515 2148
shelter.org.uk

**Edited by:** Jackie Lees
**Contributors:** Rose Arnall, Nadeem Hussein, Katherine Martin, John Gallagher

*Housing matters* welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email JackieL@shelter.org.uk

NHAS
National Homelessness Advice Service

Funded by
UK Government

**National Homelessness Advice Service**
The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

**The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:**

- **a national telephone housing advice consultancy service** for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk
- **housing debt casework** - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- **free basic housing advice training courses** to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- **written briefings**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- **support** in the implementation of new homeless prevention initiatives.

**Contact details**
For more information about NHAS training, please email JoanneK@shelter.org.uk or call **0344 515 1676**.

For general enquiries about the NHAS service, please email nhas@shelter.org.uk or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at www.nhas.org.uk

Shelter

Registered charity in England and Wales (263710) and in Scotland (SC002327).

citizens advice

Registered charity number 279057.

# What's new?

### Homelessness Reduction Act 2017

Alongside the implementation of the Homelessness Reduction Act 2017 in April 2018, the homelessness code of guidance for local authorities will be revised. The Department for Communities and Local Government (DCLG) is seeking views on its draft of the revised guidance. The consultation closes on 11 December 2017.

Details of free NHAS webinars on the Act are available on the NHAS website.

### Universal credit – waiting times

The government has announced that it will abolish the seven-day waiting period for universal credit (UC). In his Autumn Budget 2017, the Chancellor announced that, with effect from February 2018, a UC claimant will be entitled to benefit from the date of claim.

### Universal credit – other changes

Other changes affecting UC were also announced in the Autumn Budget 2017. With effect from:

- January 2018, an interest-free advance payment of up to one month's UC will be available to new claimants within five days of their claim. The advance will be repayable over 12 months (a period of six months currently applies). Anyone making a new claim in December 2017 can request an advance of up to 50% of their monthly entitlement, and an additional payment in January 2018
- April 2018, a person who was receiving housing benefit (HB) who claims UC (eg following a change of circumstances) will continue to receive their HB award for the first two weeks of their UC claim.

From the end of December 2017, it will not be possible to make a new claim for UC in a 'live service' area - legacy benefits and tax credits will be claimed instead. The government expects the roll-out of UC for new claimants to have reached all jobcentres by December 2018.

### Universal credit – free helpline

From 29 November 2017, there is no charge to ring the Department for Work and Pensions' (DWP) universal credit customer telephone lines (**0800 328 9344** for claimants in live service areas, **0800 328 5644** for full service areas).

### Local housing allowance cap

The government has stated that it will not apply local housing allowance (LHA) caps to supported housing, or to the social housing sector as a whole. Many providers had expressed concerns regarding funding implications if LHA caps are applied to supported housing. DCLG is consulting on a proposed new 'flexible funding model' to come into force from 2020. The consultation closes on 23 January 2018.

### Accelerated possession procedure

HMCTS have updated Claim Form N5B which is used by a landlord who is applying for possession of an assured shorthold tenancy using the accelerated possession procedure. The updated claim form complies with the requirements of the Deregulation Act 2015 relating to the validity of a section 21 notice for a tenancy granted or renewed on or after 1 October 2015, including that the landlord has to have provided a gas certificate and a copy of the 'How to Rent Booklet'. The related Defence Form N11B has also been updated.

### A8s and the worker registration scheme

The Worker Registration Scheme (WRS) required workers from 'A8' countries to register their employment with the Home Office, unless they were exempt. The Court of Appeal in *Secretary of State for Work and Pensions v Gubeladze [2017] EWCA Civ 1751* held that the extension of the WRS for A8 nationals from 1 May 2009 to 30 April 2011 by the Accession (Immigration and Worker Registration) (Amendment) Regulations 2009 SI 2009/892 was unlawful. Therefore, A8 nationals cannot be refused a right to reside on the basis they did not comply with the WRS during the extension period.

### Right to buy pilot

It was announced in the Autumn Budget 2017 (at paragraph 5.32) that a large-scale pilot of the voluntary right to buy scheme will proceed in the Midlands.

### Report into health and safety legislation

In 'Closing the Gaps: Health and Safety at Home', a report commissioned by Shelter following the Grenfell Tower fire, gaps in the law that may have contributed to that tragedy are revealed and discussed. The authors argue that the law needs to evolve if it is to protect the health and safety of residential occupiers.

Article

# Casework: the initial meeting

**In the first of two articles on the role of the caseworker, Rose Arnall looks at the initial meeting with a client. The second article will look at ongoing casework.**

**Rose Arnall is a solicitor with Shelter Legal Services.**

Underlying the problem that a client brings to an advice agency is often that their story has not yet been fully told or understood. The caseworker's job is to understand what the client needs and to accurately assess their position within a system or legal framework. Then s/he can act as an effective communicator between the client and that system to advocate for and achieve the best possible outcome for them.[1]

Two 'guiding principles' to keep in mind are:

- a friendly, kind and non-judgmental approach is not just desirable but essential to building an effective working relationship with a client
- detailed information about a person and their story is what distinguishes their case from another person's.

### The initial meeting

First and foremost, frame the initial meeting with your client to set the foundation of a good professional relationship by:

- introducing yourself and your role
- explaining your agency's general function or purpose, how you are funded and in what circumstances you can provide ongoing casework.

Let the client know what to expect from the meeting and its purpose. Tell the client:

- how long you can spend with them
- the rough plan for the meeting
- any limits to your work from funding restrictions or your area of expertise
- about data protection and confidentiality in relation to their case.

### Client's key aims – in a nutshell

Before diving in to the detailed information gathering and form filling, it is useful to ask the client to describe 'in a nutshell' why they are here today and what they hope to achieve. Listen without interrupting for at least five minutes and make a highlighted record of the main headline, for example 'I want to stay in my home but I want my landlord to fix the damp'.

Note the key aim prominently on the file to help keep it in mind to direct the rest of the initial meeting.

### Gathering key details

It can be frustratingly time-consuming to gather the level of detail required to set the foundations for the case. However, encourage a client to be full and frank by explaining that it is important to get full details to work out how to help them. Consider the client's documents to clarify what they have said, or if they prefer, do it the other way around. Don't assume that any one source contains the full picture, and record as much detail as possible.

### Checklists

A checklist or prompt sheet on the following lines may be useful:

- household members' full name, date of birth, immigration status, contact information, national insurance number
- employment details – wages/hours/location/work/employer contact details
- education details – school/college/courses/hours/additional needs
- health needs – for any household member, including contact details for any health professional/any medication/treatments
- how do health needs or a caring role affect them day-to-day (instead of asking 'are you disabled/are you a carer', ask how is your health?/do you help anyone out/look after them?)
- income and key expenditure, any benefit application reference numbers.

### The problem – and what led to it

Ask questions that look to the underlying issues. This can provide crucial insight or context, eg, is there a history of similar issues, has there been any involvement by social care, institutionalisation (within armed forces, mental health or criminal justice systems), or any past immigration or domestic violence issues, does the person have a long-term stable support network?

### Shields and swords

Many clients will come to you needing to defend or justify themselves, for example, a tenant accused of antisocial behaviour who is being evicted by their landlord.

Going to court is usually the last thing a client wants. They usually just want their problem to go away and to have peace and stability to enjoy their life. It is right in this context to channel questions towards informing defensive arguments that act as 'shields' to protect the person from the problem, for example, by seeking an explanation as to whether or not (and if so why/to what extent) the person behaved in the way alleged.

But keep in mind that there may also be proactive 'swords' that a client could use in negotiation or litigation. Has their opponent done all that they should have? For example, has their landlord fulfilled repairing obligations or protected the deposit? Did the landlord know the client was disabled?

### Making it easy for the client

It can sometimes take a long time for clients to disclose full details. Retelling the details of past traumatic events can itself be re-traumatizing, so try to suggest alternative ways to gather the detail you need, perhaps by obtaining medical records or past immigration files or asking if there is someone else you can speak to.

Ask your client to tell you their preferred way and times to communicate with you. Provide tools to assist them to record and relay accurate information to you. For example, you could provide a blank spreadsheet to help your client record their searches for private rented accommodation.

It may help the client to feel comfortable if they can bring a friend or family member with them. But be careful to ascertain your client's own desires and instructions, not those of their louder son or their pressuring aunt. In such cases, arrange to speak or meet with the client alone at a later point once trust has been built.

### Keeping informed

Let your clients know that you will keep a detailed record of how matters unfold to build their case.

Encourage them to send you information with as much detail as possible by explaining how important good evidence gathering can be to winning a case. For example, if they make a call to their landlord, they should take a note of the number they called, what time and day it was, the name of the person they spoke to and what was said. Similarly, they should record details of any calls they receive and inform you promptly of developments.

### Acting on your client's behalf

After establishing the best way to communicate with your client, it is important to explain how you might want to communicate or act on their behalf to progress their case. Reassure them that you would always obtain their instructions or permission before doing so. This is a good point to complete a form of authority and to explain its purpose, for example, that it will help you access missing information.

### Documents

When facilities allow, take copies of documents and return the originals to the client before the end of the meeting so that they can retain responsibility for them. If you can't read all of the documentation, at least briefly look through it so you can think about what may be missing.

### Plan of action

Before giving any advice, think again about the key aims of your client, their options, the advice you are able to give at this stage.

When giving advice, try to do so as briefly and simply as you can at this stage. Avoid jargon and remember that there is nothing wrong with telling a client that you need time to further consider their documents, check case law or examine other aspects of the case.

Diarize any upcoming key dates or deadlines. Limit your plan of action to three key steps, both for yourself and for your client. Write them down and text or email the steps and key dates/deadlines to your client straight away or as soon as possible after the meeting to clarify what is happening next.

### Ongoing contact

Before ending the meeting, let the client know your availability and how they can contact you, for example, can they drop in or call whenever suits them, or should they book an appointment? This provides the person with clear expectations and trust in what you say as well as establishing your own boundaries to enable effective work management.

**Footnotes**

[1] for a detailed guide to best practice, skills and tactics for caseworkers, see 'Giving Legal Advice' by Elaine Heslop, LAG 2014.

# Leasehold service charges

**The second of three articles on leasehold property by Nadeem Hussain looks at service charges and when they can be challenged.**

**Nadeem Hussain is a solicitor with the Leasehold Advisory Service (LEASE).**

In this article, we introduce some of the main arguments which can be used to challenge the imposition and level of service charges. We also outline the important documents that an adviser will need to obtain.

### What is a service charge?

A service charge is payable by the leaseholder to the landlord for the services the landlord is obliged to provide under the terms of the lease. The lease will set out when they should be paid.

Service charges are defined by section 18 of the Landlord and Tenant Act 1985 as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent:

- which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management
- the whole or part of which varies or may vary according to the relevant costs.'

As explained in the previous article, leases vary and other costs may be recovered as service charges. This could include the cost of legal action taken by the landlord against other leaseholders for breach of the terms of their lease.

Service charges will be a variable amount from year to year depending on the costs the landlord incurs.

There are also fixed service charges but these are less common and are outside the scope of this article.[1]

Service charges are regulated by sections 19 to 22 of the Landlord and Tenant Act 1985.

### Documents required

Advisers will always need to see:

- a copy of the lease
- the landlord's service charge demands
- all documents and notices accompanying the demands.

### Challenging service charges

There are two issues to be addressed - what the lease allows and what the law allows.

1) **What does the lease allow?**

Careful scrutiny of the client's lease could provide a defence to a service charge demand or allow further time to pay:

- is a service charge payable?
- what is it for?
- when is it payable?
- is it to be paid in arrears or advance?
- how is the leaseholder's share of the costs to be calculated?
- must the landlord's costs be certified (eg by a surveyor or accountant)?
- in what circumstances can the landlord claim a 'balancing charge' (most leases require the leaseholder to pay an interim (estimated) service charge in advance, and a balancing charge to account for actual expenditure in excess of this)?

These points are collectively referred to as the 'service charge machinery' in the lease.

2) **What is allowed under leasehold law?**

Service charges are regulated by statute. There are a number of different arguments which may apply.

*Lack of adequate accompanying information*

Each demand for service charges must contain the name of the landlord and an address in England and Wales. Further, any new landlord must provide a leaseholder with their name and an address in England and Wales where notices can be served on them.

Failure to meet either of these requirements means that any service charges demanded are not lawfully due. Once the landlord has provided the required information any unpaid service charges become due.[2]

In addition, each demand for service charges must be accompanied by a Tenants' Summary of Rights and Obligations for Service Charges.[3] The wording is set out in regulations, with a different version for administration charges. Failure to attach the appropriately worded document means that payment of the service charge can be withheld.

*The demand is too old*

Costs must be demanded from the leaseholder within 18 months of them being incurred by the landlord else they become unenforceable. The Court of Appeal has held that costs are not incurred until they are made concrete in an invoice supplied to the landlord, even if there is a significant delay in the contractor providing their invoice.[4]

The extent to which action in respect of service charges is limited under the Limitation Act 1980 is uncertain. It is arguable that a service charge which has been demanded will not be enforceable if the court action is started more than 12 years after the service charge is validly demanded.

*Is the service charge reasonable?*

The most useful statutory grounds for challenging service charges are those that concern whether or not the charge has been 'reasonably incurred'.[5] A service charge may not be reasonable if:

- it is considerably more than the average cost of the same work or service – for example, the new roof was too expensive. LEASE suggests 20% more expensive as a rough indicator. To prove a charge is unreasonable, the leaseholder will need to obtain 'like for like' comparables from other contractors. It is important to note that a landlord does not have to obtain the lowest market price[6]
- there was no need for the costs to be incurred – for example, the roof could be repaired and did not need to be replaced
- the work they relate to were not to a reasonable standard – for example, the new roof was built poorly.

In all the examples above, the leaseholder should obtain evidence, ideally from an independent third party, that the service charge is not reasonable.

To avoid liability for additional administration costs, it could be advisable for a leaseholder to pay a disputed service charge and then to challenge the validity of the amount charged in the First-tier Tribunal (Property Chamber).[7]

*Compliance with consultation requirements*

The landlord must supply further information to a leaseholder and invite written observations where the service charge is for qualifying works or a qualifying long-term agreement:[8]

- qualifying work is work carried out under the lease where the charge for any individual leaseholder is more than £250. These are sometimes referred to as **major works**. The £250 trigger refers to the cost of individual or 'sets' of works and not to the aggregated costs of all works (however minor) carried out in a particular service charge year[9]
- a qualifying long term agreement is an agreement for the supply of services for more than 12 months where the charge for any individual leaseholder is more than £100 per service charge year.

The procedure the landlord must follow before appointing a contractor is commonly referred to as the section 20 consultation process. There are five versions of the process, each varying slightly with regard to requirements on the landlord.[10] The landlord must use the correct one.

Tenants should take an active part in the consultation process as any failure to do so may affect the outcome of a challenge.

If the landlord fails to comply with the requirements under the consultation process, and a leaseholder can show that they were prejudiced by the failure, a tribunal can limit the amount of service charges recoverable. There is no clear guidance on what it means to be 'prejudiced' by the failure to consult properly.

A landlord can avoid the consultation process by applying for dispensation from the First-tier Tribunal (Property Chamber). The Supreme Court has provided guidance as to when it could be reasonable for the tribunal to dispense with service.[11] Dispensation may be on terms, such as the landlord having to pay the tenants' legal costs in responding to the application.

## Forum for challenge

The county court and the First-tier Tribunal (Property Chamber) share jurisdiction to deal with service charge disputes. The county court is often the choice of forum for the landlord when enforcing service charge arrears. The Tribunal may be a better option for leaseholders due to its specialist role in dealing with leasehold disputes, Either forum may refer to the other depending on the precise nature of the matter to be decided.

Further advice and information on challenging service charges is available on the LEASE website, www.lease-advice.org.

**AdviserNet**

11.5.16.0 Leasehold.

**Footnotes**

[1] note that fixed service charges are not covered by the requirement to be 'reasonably incurred' under s.19(1)(a) Landlord and Tenant Act 1985.

[2] s.48 Landlord and Tenant Act 1987.

[3] s.21B Landlord and Tenant Act 1985 inserted by s153 Commonhold and Leasehold Reform Act 2002 and Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 SI 2007/1257.

[4] OM Property Management Ltd v Burr [2013] EWCA Civ 479.

[5] s.19(1)(a) Landlord and Tenant Act 1985.

[6] Forcelux v Sweetman [2001] 2 EGLR 173.

[7] administration charges may be added where a leaseholder fails to pay a disputed service charge. See for example 87 St George's Square Management Ltd v Whiteside [2016] UKUT 438 (LC).

[8] ss 20 and 20ZA Landlord and Tenant Act 1985.

[9] Philips v Francis [2014] EWCA Civ 1395.

[10] Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987.

[11] Daejan Investments Ltd v Benson [2013] UKSC 14.

# The Housing Ombudsman

**Katharine Martin explains what the Housing Ombudsman Service offers.**

**Katharine Martin is legal and public policy lead at the Housing Ombudsman Service.**

The Housing Ombudsman is an independent person appointed by the Secretary of State to administer the Housing Ombudsman Scheme ('the Scheme'). The Ombudsman and her/his staff collectively form the Housing Ombudsman Service, originally established by the Housing Act 1996. The current Scheme took effect on 1 April 2013.

The Ombudsman's role is to:

- resolve disputes involving members of the scheme, and make awards of compensation where appropriate
- support effective landlord-resident dispute resolution by others.

### Assessment and jurisdiction

The Housing Ombudsman can only consider complaints against:

- local authorities (in respect of their landlord functions)
- housing associations
- arm's length management organisations (ALMOs)
- private landlords/managing agents who have agreed to be bound by the Scheme.

We will assess all complaints we receive to determine whether or not they fall within the jurisdiction of the Housing Ombudsman. Some complaints are always outside our jurisdiction – eg, complaints from residents who are not in a landlord/tenant relationship with a member landlord[1].

We will then consider the complaint against the discretionary criteria in paragraph 23 of the Scheme. The Housing Ombudsman will not consider, for example, complaints that, in the Ombudsman's opinion, do not cause 'significant adverse effect' to the complainant, or concern matters where it might be more effective for the complainant to seek an alternative remedy, eg through the courts. It's important to remember that this is not a checklist – each complaint will be considered on the facts of that case. So, for example, we cannot consider the appropriateness of the level of a service charge, but we may be able to consider a complaint about how a service charge increase was communicated.

The Local Government and Social Care Ombudsman (LGSCO) considers complaints about local authorities' wider activities, for example, in discharging their homelessness duties under the Housing Act 1996.

Our factsheet provides more detail on the areas each Ombudsman covers. We can conduct joint investigations where there is an overlap in the jurisdiction of the two Ombudsmen.

### Types of complaint

The subject matter of complaints has been fairly consistent over the years. In the last year, the largest category of complaints concerned repairs (34%), followed by:

- tenants' behaviour[2] (10%)
- customer advice[3] (9%)
- moving to a property (7%)
- charges and property condition (6% each)
- estate management, complaints handling and governance (5% each)
- occupancy rights (4%)
- staff, home ownership issues and compensation (3% each).

### Dispute resolution process

It is commonly assumed that all Ombudsmen are solely a final-tier redress route, and that a dissatisfied customer can only go to an Ombudsman after s/he has exhausted any complaints procedure that applies. While this is true of most Ombudsmen, the Housing Ombudsman is different. We are heavily involved in supporting landlords and residents to resolve disputes between themselves at the earliest possible opportunity. We call this 'local resolution'. At this stage, we have the power to promote the local resolution of disputes.[4]

*Local resolution*

If a complainant comes to us before their landlord's procedure is complete we can't investigate, but we can provide guidance to help the complainant navigate the complaints procedure or assistance with articulating their complaint clearly.

A clear complaint – ie, one that identifies the source of the problem and the steps which would put that problem right – is a more effective complaint because it makes clear to the landlord what they need to do to resolve the situation. This is all part of our local resolution process.

*Taking the complaint further*

If a resident remains dissatisfied once their landlord's complaints procedure is finished, they can ask for their complaint to be considered by a 'designated person'.

A designated person can be an MP, a local councillor or a designated tenant panel. Any one of those people can bring a complaint to the Housing Ombudsman on the person's behalf.

It is not compulsory for a complainant to make their complaint through a designated person, they are welcome to come to the Ombudsman directly. However, residents must wait ***eight weeks*** after the landlord's complaint procedure has been completed before they can bring a complaint to the Housing Ombudsman.

The second limb of our role should not be forgotten here– ie, helping effective landlord-resident dispute resolution.

Our approach is inquisitorial rather than adversarial, and complainants who want an alternative to the formality, expense or combative approach of a court can bring their disputes to us at any stage of the process.

*Early resolution*

Once a complaint has been through our assessment and jurisdiction process, we will work with the landlord and resident to attempt to resolve the dispute fairly and to the satisfaction of all parties. This is the early resolution stage of our process.

Our independent status, combined with our experience and expertise in investigating and resolving complaints, means that we are well placed to encourage complainants and landlords to take a fresh look at the issue and explore possible options that can lead to a satisfactory and amicable outcome.

If we can resolve a case through this process, then we will. If agreement is reached, the Ombudsman will issue a determination reflecting the terms of that agreement. In 2016–17, 81% of complaints were closed without the need for a formal investigation.

*Formal investigation*

There will always be some cases where a dispute cannot be resolved without detailed and considered examination of all the evidence, for example, due to complexity of the issues or a breakdown in the landlord and resident relationship. In such cases, we will carry out a formal investigation and a caseworker will assess whether the actions taken by the landlord were fair given all the circumstances of the case.

The purpose of the formal investigation is to establish whether the landlord has been responsible for 'maladministration'.

Maladministration is a formal decision by the Ombudsman that a landlord has failed to do something, done something it shouldn't have or, in the Ombudsman's opinion, has delayed unnecessarily.

## The impact of a decision

The Housing Ombudsman Service is not a court and we do not have the power to issue legally binding decisions. That said, whenever a case is resolved – whether through our early resolution process or through formal investigation – the Ombudsman will issue a 'determination' which reflects the outcome of that case and makes appropriate recommendations and orders.[5]

A determination letter will be sent to the complainant and/or their representative, the landlord and any designated person.

We monitor all orders for compliance, and can say that the Ombudsman's decisions are effective. In 2016–17, 99.6% of our orders were implemented in year, exceeding our target of 95%.

These orders may:

- provide individual redress for complainants, eg ensuring that repairs are done or providing compensation, and/or
- require the implementation of changes to a landlord's policy or procedure to improve services and avoid future disputes – particularly where a complaint has highlighted issues which impact on more than one resident.

## Contacting the ombudsman

Our website provides information and advice on **how to get help from us**, including through using our online **complaints form**. Also on our website are **case studies** illustrating the work that we do.

**AdviserNet**

11.1.35.20 Complaints to the Ombudsman about social housing landlords

**Footnotes**

[1] we prefer to talk about 'residents' rather than 'tenants', since our jurisdiction also covers leasehold.

[2] this category generally concerns how a landlord responds to reports about another tenant's behaviour, such as noise nuisance or harassment.

[3] this category is where we give general advice on complaints and complaint handling.

[4] see paragraph 10 of Schedule 2 to the Housing Act 1996 and paragraphs 33 and 34 of the Housing Ombudsman Scheme.

[5] between April and September 2017, the average time to reach a determination was 8.3 months from the date the complaint was made to us.

# A matter of significance

**In this case brief, John Gallagher considers the Court of Appeal case of Panayiotou v Waltham Forest LBC; Smith v Haringey LBC, in which the Court clarified the vulnerability test for priority need under Part 7 of the Housing Act 1996.**

**John Gallagher is Principal Solicitor at Shelter.**

In order to qualify for the 'full' housing duty under Part 7 of the Housing Act 1996, a homeless person must satisfy the local authority that s/he is in priority need.[1] A single homeless person without children will usually only be in priority need if s/he can show that s/he is 'vulnerable'.[2]

### Supreme Court ruling

In 2015, in *Hotak v Southwark LBC; Johnson v Solihull MBC; Kanu v Southwark LBC*[3], the Supreme Court was – for the first time since the homelessness legislation was first introduced in 1977 – asked to consider the meaning of the term 'vulnerable'.

Among the questions the Supreme Court considered were:

- does the assessment of 'vulnerability' involve a comparison with someone else?
- if so, is the correct comparison with an 'ordinary (actual) homeless person', or with an 'ordinary person who becomes homeless'?

The Court accepted that defining vulnerability involves a comparison. But the correct comparison is with the ordinary person facing homelessness; not with an actual homeless person, who is already likely to be suffering from a number of problems. The authority must conduct a composite assessment of the applicant's difficulties.

The Court took the view that certain expressions which had been used in previous case law, such as 'less able to fend for oneself' or 'when street homeless' were unhelpful and should be avoided in favour of the plain wording of the 1996 Act. However, Lord Neuberger, who gave the main judgment, stated that a person will be 'vulnerable' in the context of priority need if s/he is 'significantly more vulnerable than ordinarily vulnerable' as a result of being rendered homeless.

### The question raised by *Hotak*

In the two years since the *Hotak* decision, applicants and local authorities have had to grapple with the meaning of the phrase 'significantly more vulnerable'.

Is this effectively a new test of vulnerability? Does it imply a spectrum of vulnerability from 'low-level' rising to 'extreme'? If so, how far along that spectrum must an individual be in order to be 'significantly' more vulnerable? Does this mean any vulnerability which is more than trivial, or does it mean something different altogether?

The issue has arisen in a number of county court appeals, and the uncertainty about whether the term 'significantly more vulnerable' is to be treated as the new test of vulnerability, and if so how it should be applied, has been reflected in the different approaches taken by the judges hearing those appeals.

### *Panayiotou* and *Smith:* background

In the conjoined cases of *Panayiotou v Waltham Forest LBC; Smith v Haringey LBC*,[4] Mr Panayiotou (P) and Mr Smith (S) were young single men. P suffered from depression and anxiety and lived in fear of reprisals from gangs and from his father. S suffered from mental health problems and chronic leg pain. Both applied as homeless to their respective local authorities, and in each case the authority decided that he was not vulnerable, and hence not in priority need.

The question facing the Court of Appeal in each case was what the Supreme Court meant by its reference to a person being 'significantly more vulnerable' than the ordinary person if rendered homeless.

### Judgment

Lord Justice Lewison, giving the Court's judgment, suggested that after *Hotak*, it was perhaps easier to say what the law is not rather than what it is.

The Court noted that, in assessing whether a person is vulnerable, the local authority's focus will be on whether there is an impairment of that person's ability to find accommodation or to deal with the lack of accommodation. The impairment may have the effect of causing the person's physical or mental health to deteriorate, or it may result in exposure to some external risk such as the risk of exploitation by others.

***Qualitative not quantitative test***

After reviewing earlier cases concerning vulnerability, LJ Lewison held that the Supreme Court had not intended by the use of the word 'significantly' to introduce a quantitative test– that is, it did not require a person to show that s/he is **substantially** more vulnerable than the average person.

The Court's intention had been to use the term 'significantly' in a qualitative sense. In other words, the question to be asked is whether, when compared with an ordinary person if made homeless, the applicant would be at risk of suffering:

- harm which the ordinary person would not suffer, or
- such harm as would make a noticeable difference to her/his ability to deal with the consequences of homelessness.

To put it another way, an applicant will be vulnerable if s/he is 'at risk of more harm in a significant way'. Whether the test is met is for the authority to decide on a case by case basis.

***The review decision in P***

In P's case, the reviewing officer had expressed her conclusion as follows:

'*I am not satisfied that, as a result of your condition, you would be at more risk of harm from being without accommodation than an ordinary person would be*.'

The reviewing officer had not applied a quantitative threshold. She had simply asked herself whether P would suffer 'more harm' than an ordinary person in consequence of being without accommodation. The right test was applied. P's appeal was dismissed.

***The review decision in S***

However, in S's case, the reviewing officer had concluded:

'*It may very well be the case that you are more vulnerable than ordinarily vulnerable but I am not satisfied that you are significantly more vulnerable or even [more] vulnerable than ordinarily vulnerable.*'

Once the officer was satisfied that S might well be 'more vulnerable than ordinarily vulnerable', this was the comparative exercise required by *Hotak*. At that point, he ought to have concluded that S had priority need. But he seemed to have interpreted 'significantly' as importing a quantitative threshold or what might be called 'more harm plus'. This was the wrong test.

**Implications of the decision**

The Court of Appeal's analysis of the vulnerability test is helpful.

The starting point, as explained in *Hotak*, is that an ordinary person suffers harm by being made homeless. The 'ordinary person' is someone who is healthy and robust, and who does not suffer from mental or physical disability. The important factor is whether the applicant would suffer **even more** harm than that ordinary person if rendered homeless. Or, in the Court's words, whether the applicant would be at risk of suffering harm of a kind that 'would make a noticeable difference to his ability to deal with the consequences of homelessness'.

What then are we to make of the Court's explanation that the term 'significantly more vulnerable' is to be applied in a qualitative, and not quantitative, sense? Surely the very notion of being 'more vulnerable' implies a quantitative test? It is clear that the applicant must be more vulnerable than an ordinary person if rendered homeless, but beyond that, there is no need for the applicant to be 'significantly more vulnerable' in a measurable sense, somewhere along a spectrum from the moderately vulnerable to the extremely vulnerable.

The test does not involve a contest between one applicant and another, or between different degrees of vulnerability. All that the applicant needs to show is that s/he is likely to suffer more harm in an appreciable or noticeable (ie more than minimal) sense, or that (as the Court of Appeal put it) s/he is at risk of greater harm in a significant way. It is enough for the applicant to bring her/himself within the formulation adopted by the reviewing officer in P's case, ie that s/he is at more risk of harm from being without accommodation than an ordinary person would be.

It is easy to become lost in the linguistic twists and turns of the case law on vulnerability, and to despair of the way in which decisions tend to become an exercise in textual analysis. Despite the apparent complexity of its language, the *Panayiotou* judgment is welcome, because it appears to produce a simpler, more accessible comparative test of vulnerability based on the composite assessment of the applicant's circumstances. It may even signal an end to the culture of lengthy decision letters and a greater shared understanding of the reasoning process underlying decisions of this kind.

**AdviserNet**

11.1.1.36 Priority need - vulnerable people

**Footnotes**

[1] in addition to being homeless, eligible for assistance and not intentionally homeless.

[2] the vulnerability must be as a result of old age, mental illness, learning disability or physical disability; having been looked after, accommodated or fostered (for those over 21); having been a member of the armed forces; having been in custody; having experienced violence or threats of violence from another person; or any other special reason: s.189(1)(c) Housing Act 1996 and the Homelessness (Priority Need for Accommodation) (England) Order 2002.

[3] [2015] UKSC 30.

[4] [2017] EWCA Civ 1624.

Leaflet
1 of 3

# Universal credit

**This leaflet is the first in a series of three on universal credit.**

**In this leaflet we go through the basics of entitlement, claiming and being paid universal credit.**

Universal Credit(UC) is a welfare benefit to help you with your living costs. It replaces six other benefits including housing benefit, jobseeker's allowance and tax credits.

### Who can claim

You can claim UC whether you are working or not.

Check universalcreditinfo.net to find out if you are in a 'live' or a 'full service' area. In most 'live' areas, only single people without children can apply. In 'full service' areas, couples and those with children can also apply.

### Who can't claim

You can't normally claim UC if your income or savings are too high or you are:

- under 18
- a full-time student
- of pension credit age
- not usually resident in the UK
- have more than two children.

If you don't qualify for UC you may still be able to claim other benefits, such as child tax credit and housing benefit.

### How to claim

Claim online at Gov.uk. You will need the following details:

- bank, building society or other account
- national insurance number (for you and your partner)
- income and savings for your household
- your housing costs
- any childcare costs.

You only get 20 minutes to complete the form. You can't save what you've done and come back later to finish it.

If you need help making your online claim or can't access the internet, ring the free UC helpline on **0800 328 9344** (live service area) or **0800 328 5644** (full service area).

### How much you can get

How much UC you get depends on your circumstances, such as your income and your rent or mortgage. You can get more if you have dependent children, are disabled, or care for other adults.

The 'benefit cap' may limit the amount you receive. See the *Benefit cap* factsheet.

Go to Gov.uk for a benefits calculator that will tell you what benefits you could get and how to claim them.

### When you are paid

UC is normally paid one month in arrears.

You will have to wait at least six weeks for your first payment.

Ask for an advance of UC if you cannot afford to wait for a payment. Small amounts will then be taken from your UC for the next few months to repay the advance.

Most claimants are not entitled to any UC for the first week after they claim.

### How you are paid

UC is paid to you monthly. It is paid into your bank account.

If you have problems that make it difficult for you to manage your money, such as severe debt, addiction to drugs or alcohol, or mental illness, you can ask for:

- payment of the housing element direct to your landlord
- a payment every week or fortnight
- split payments between you and your partner.

### Claimant commitment

You have to agree to a 'claimant commitment' as a condition of getting UC.

This could include, for example, agreeing to:

- look for and apply for jobs
- attend training.

Your UC can be cut if you don't stick to your commitment. You can challenge a cut, and may be able to get hardship payments. Get advice if you can't stick to your commitment.

### Further advice

You can get further advice from Shelter's free* housing advice helpline (**0808 800 4444**), a local Shelter advice service or local Citizens Advice office, or by visiting shelter.org.uk/advice or adviceguide.org.uk

*Calls are free from UK landlines and main mobile networks.

**Note**
Information contained in this leaflet is correct at the time of publication. Please check details before use.