

Housing matters

Issue 123 April 2018

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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

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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.

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

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National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, 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:

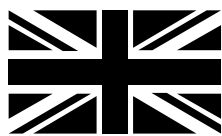
- a national telephone housing advice consultancy service for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk
- 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



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What's new?

Homelessness Reduction Act 2017

The Homelessness Reduction Act 2017 (HRA) came into force on 3 April 2018, making significant changes to Part 7 of the Housing Act 1996.

The principal new duties to applicants who are eligible for assistance and homeless (or threatened with homelessness) are to:

- assess her/his housing needs
- draw up a personalised housing plan
- take steps based on the assessment and plan to prevent or relieve homelessness.

Under the HRA, an applicant is threatened with homelessness if s/he is likely to become homeless in 56 days - previously it was 28 days. An applicant is also threatened with homelessness if s/he has been given a valid section 21 notice that will expire within 56 days.

The HRA also introduces a power to refer an applicant to another local authority at an earlier stage. When the conditions for referral are met, an authority may refer at the relief duty stage, as well as at the main duty stage as before.

The HRA expands the grounds for local connection to certain care leavers.

Note that most of the Housing Act 1996 remains unchanged and that the changes under the HRA will not apply to an applicant who applied as homeless before 3 April 2018.

Further information about the law governing homelessness can be found on the [Shelter Legal website](#), which is now free to use.

Homelessness code of guidance

The Ministry of Housing, Communities and Local Government has published a new [Homelessness code of guidance for local authorities](#). The new code supersedes the 2006 code and the supplementary codes of guidance for applications made on or after 3 April 2018.

The 2006 code of guidance should continue to apply to applications made before 3 April 2018.

Banning orders

With effect from 6 April 2018, a local authority can apply to the First-tier Tribunal for a banning order against a landlord or agent who has been convicted of a banning order offence. If granted, the order must last for at least 12 months.

A banning order prohibits a landlord or letting agent from:

- letting or managing residential properties
- holding a HMO licence or a licence granted under a selective licensing scheme.

The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216 set out the 41 separate offences that are banning order offences.

Rogue landlord database

Also with effect from 6 April 2018, in accordance with the Housing and Planning Act 2018 (Database of Rogue Landlords and Property Agents) Regulations 2018 SI 2018/258, landlords and agents subject to a banning order must be entered onto the national 'Database of Rogue Landlords and Property Agents'. Those guilty of two or more banning order offences may also be entered onto the database. An article about the database is published in this issue of *Housing matters*.

Support for mortgage interest

With effect from 6 April 2018, the Loans for Mortgage Interest Regulations 2017 SI 2017/725 (as amended by the Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018 SI 2018/307), provide that support for mortgage interest (SMI) is offered as a loan to a claimant in receipt of universal credit, income support, income-based jobseeker's allowance, income-related employment and support allowance, or pension credit.

Existing claimants of SMI benefit as well as potential new claimants will have to decide whether to accept the loan.

Energy performance certificates

Under regulation 23 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI 2015/962, from 6 April 2018, it is an offence for a non-exempt private landlord to grant a new tenancy in a property that does not have an Energy Performance Certificate (EPC) of at least band E. Exemptions must be registered on the National PRS Exemptions Register. Enforcement is by local authorities, and a landlord can be fined for breaching the regulations. A tenancy granted in breach of the regulations will still be valid.

Rogue landlord databases

In this article, Ben Reeve Lewis examines how two new databases will make it more difficult for rogue landlords to operate.

Ben Reeve Lewis is a tenancy relations officer and founder member of Safer Renting, an independent tenants' rights advice and advocacy service.

Over the years there have been many calls for a register of rogue landlords and agents.

In 2015, the Ministry of Justice released details of over two thousand individuals and companies prosecuted for Housing Act offences between 2006 and 2014. But it was of limited use because half of the landlords were not actually named. It also contained only prosecutions under the Housing Act 2004, brought principally by environmental health teams, for breaching licensing requirements (for example, in houses in multiple occupation) and for allowing hazards in the property. As we know, rogue landlords do more than breach licensing and property standards.

The government first began planning a national database of rogue landlords in 2015. The broad idea was that it would be maintained by local authorities and include a wide range of offences for which a rogue landlord may find themselves prosecuted.

Housing and Planning Act 2016

The Housing and Planning Act 2016 (HPA) introduced banning orders for 'rogue' landlords and agents convicted of 'banning order offences'.¹ Alongside this, the government committed to introducing a national rogue landlord database.² The two are inextricably linked – a local authority must include a person subject to a banning order on the database.

Both banning orders and the rogue landlord database came into force on 6 April 2018.

Banning Orders

A banning order prohibits a person from renting out property or engaging in letting agency or property management work. An order must last for at least 12 months, but there are two exceptions: firstly, where a tenancy cannot be ended, and secondly, where time is needed to allow an agent to wind down their business.

Breaching the order can either:

- be punished by the local authority with a financial penalty of up to £30,000, or
- lead to a criminal prosecution.

Applying for a banning order

It is up to a local authority to apply for a banning order when a banning order offence has occurred. Government guidance recommends what local authorities should consider when deciding whether to apply.³

The local authority must first notify the landlord or agent informing her/him of the reasons and giving them 28 days to object. The authority can then apply to the First-tier Tribunal who will decide whether to make an order, and its duration.

Banning order offences

There are 41 possible offences, straddling 14 different pieces of legislation, including harassment and illegal eviction, breaches of fire safety notices, prosecutions for no gas safety certificates, and breaches of the 'right to rent' requirements.⁴

Offences not relating to the condition or management of the property, including stalking, burglary, fraud and handling stolen goods, can result in a banning order but only where the offence was committed 'at or in relation to that housing' or 'against or in collusion with a tenant occupying any housing'.⁵ These offences must:⁶

- result from a Crown Court conviction
- have been committed when the offender was a landlord or property agent of the property in question.

The full list of banning order offences can be found in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.⁷

National rogue landlord database

Only local authorities can make entries on the national database. Inclusion is:

- mandatory, if a landlord or agent has a banning order made against them, in which case the entry will remain on the database for the life of the order,⁸
- or
- discretionary, if s/he has been convicted of a banning order offence, or received a civil penalty in relation to a banning order offence at least twice in a 12-month

period, and the offence was committed (or the penalties incurred) at a time when the person was a landlord or agent.⁹

Where the landlord or agent is to be placed on the database because the authority is using its discretionary powers, they must be notified in writing of the intention to list them, given a warning period of 21 days and offered the opportunity to lodge an appeal with the First-tier Tribunal.¹⁰ An entry may not be made until after the warning period and the conclusion of any appeal. The authority can decide for how long an entry will remain on the database, but it must be for a minimum of two years.¹¹

Government guidance explains what factors a local authority should consider when deciding whether to make an entry on the database.¹²

Information to include on the database

The database must include:¹³

- landlord or agent's full name and address
- details of properties that s/he owns, lets or manages
- details of banning order offences and banned activities
- duration of entry on the register
- national insurance number and date of birth of the landlord or agent (if s/he is an individual).

Access to the database

A major criticism of the database is that only local authorities can view it. A tenant cannot check the names of an agent or landlord they are considering signing up with, neither can a housing adviser or solicitor acting on a tenant's behalf. The issue of public access was raised by myself and by Shelter at a consultation with the Home office in August 2015 but was not taken forward.

London Checker

In contrast, whilst government spent a couple of years drafting what turned out to be 26 separate sections covering the database and banning orders, London Mayor Sadiq Khan eschewed this complex approach and effectively said that any landlord or agent prosecuted for housing offences would go on a list created and maintained by the Mayor's office.

In December 2017, the London Assembly launched the '[Rogue Landlord and Agent Checker](#)'. This database is accessible to all.

This list is maintained by local authorities but also contains details of prosecutions brought by the London Fire Brigade for safety offences and names of agents expelled by property redress schemes.

Currently, the London Checker contains information provided by 19 London authorities, with other councils going through the process of signing up.

The database displays:

- landlord/agent's name and address (usually without building number)
- property address
- enforcement action type and enforcing authority
- details of the offence
- enforcement date and fine imposed
- date of expiry.

The Checker is easy to use and searches are performed simply by typing in the landlord/agent name, property address or authority.

Landlords and agents remain on the Checker for 12 months. Note that it covers only prosecutions. Where a landlord or agent has been given two civil penalties within 12 months, they can appear on the national database, but not on the London Checker.

Evading the databases

As any enforcement officer will tell you, the seriously committed rogue operator is often a past master at creating confusion for those tasked with pursuing enforcement.

The use of aliases is rife and where an offender is a company it is common for them to periodically close up shop and re-open under a new name. This happens even if the company isn't subject to impending legal action, regular name changes being a convenience to produce smoke screens and evade detection. No database can get around the workings of committed fraudsters.

Conclusion

Overall, the introduction of the national database and the London Checker are welcomed. Although the national database can allow enforcement officers to track landlords from other districts, arguably of far greater importance is the potential ability to protect the public from exploitation by criminals. This would be easier if potential victims could access the information. The lack of public access seems unduly restrictive.

Footnotes

¹ s.14 Housing and Planning Act 2016.

² s.28 Housing and Planning Act 2016.

³ Non-statutory guidance on [Banning order Offences under the HPA 2016](#).

⁴ reg 3 Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216.

⁵ reg 3(c)(i) Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216.

⁶ reg 3(c)(ii) and (iii) Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216.

⁷ Sch. to Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216.

⁸ s.29 Housing and Planning Act 2016.

⁹ s.30 Housing and Planning Act 2016.

¹⁰ s.32 Housing and Planning Act 2016.

¹¹ s.31(2)(b) Housing and Planning Act 2016.

¹² [Statutory guidance on the rogue landlord database](#).

¹³ reg 3 Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018 SI 2018/258.

Case work: after the initial meeting

In the second part of her exploration of the role of the caseworker, Rose Arnall looks at ongoing case work with a client.

Rose Arnall is a solicitor with Shelter Legal Services.

After the initial meeting with your client (see HOMAT 121), you should have:

- established and recorded her/his key aims
- recorded the key facts about the client and her/his household
- created a plan of action
- obtained a form of authority
- asked your client to keep you informed of anything that might affect her/his case
- told the client what will happen next
- given your contact details and preferences regarding getting in touch.

Once the initial meeting with a client has ended, the adviser's role is to provide ongoing casework.

Establishing a chronology

Following on from recording the main aim and initial action plan, it is useful to prepare a detailed chronology in a simple format such as a table formatted in Word. An example is as follows:

Date	Event
1/1/79	Client born in Montserrat
Dec 1988	Client enters UK - resides with grandmother Gladys Brown in her privately rented flat at 1 Anystreet, Anytown
Sep 1998	Client starts 3-year college course
?	Client receives first diagnosis of ill health, exits training and starts claiming health related benefits including DLA
18/12/18	Gladys Brown passes away
20/01/17	Landlord serves notice to quit
23/03/17	Landlord lodges claim for possession
18/04/17	Court issues outright possession order
06/05/17	Warrant of possession executed. Client becomes homeless
06/05/17	Client approaches local authority for assistance and is placed in interim accommodation at Sunrise Hostel

11/09/17	Local authority issues negative s.184 decision, copy on client file / stored on case management system
18/09/17	Client visits advice agency for first time. Adviser writes to and emails housingreviewsofficer@londonauthority.gov.uk to request review of decision and copy of housing file
2/10/17	Deadline for requesting review of s.184 decision (diarised in adviser's outlook calendar)

This format is easy to read, quickly captures a client's story, collates the information you already have and shows any gaps that need filling. It can be used to organise other material such as the section 184 decision referred to above and can be changed/added to as the case develops. It is also useful to refer to when creating advice letters, witness statements, and referral letters to experts.

Time recording

A great tip for time recording and effective casework is, when you pick up a file, don't put it down until you have done everything you need to do on it. Treat ongoing casework and picking up a file in the same way as you would treat a meeting or appointment – don't return calls, or deal with emails or any other distractions until you've finished with that file. You may choose to block out time on your calendar for ongoing casework tasks, such as preparing a letter. This helps you to keep matters moving forward.

Before putting the file down, schedule a reminder alert on your phone or laptop, or book a slot in your diary for when you next need to pick it up.

When to refer on

Your client may ask you about issues that are outside your remit or your level of expertise. You may do your client a disservice – as well as impossibly increasingly your workload – if you were to attempt to take on these issues yourself. Refer to another agency where the issue is outside your remit. In some cases, you may refer to a solicitor.

Cases which could be referred to a solicitor include:

- gatekeeping following a homelessness application or application for social care assistance
- possession proceedings or court paper work that requires a response
- an internally reviewable decision for which legal help/aid is available.

You are not 'passing the buck' when you make a referral. You are doing the best thing for your client, and any person to whom you refer the case will be grateful for your prompt action and detailed record keeping.

Vulnerable clients

As advisers we must identify needs and take reasonable steps to adapt our communication styles so that our most vulnerable clients can exercise their rights. Steps that you could take include:

- spending more time with clients who need it
- communicating with third parties such as support workers and carers
- visiting a client at home.

Vulnerable clients with certain mental health issues may present as angry and aggressive. Caseworkers should provide clear boundaries and stay calm and professional. These are skills that must be learned and practised.¹

Endings – for better and worse

As a case develops, you can review and update the note of your client's main aims. Eventually, you will have achieved the main aim for your client or, decided to refer, or will have done all you can to assist and can close the case.

Managing your caseload

It is essential to prioritise to maintain control over your caseload. Make time to review your case list, next steps and key dates on a regular basis. It can help to use an electronic 'to do' list, with aims for the day at the top and underneath a list of all your current cases in bullet point form with the next steps and any key deadlines.

Allow yourself the first 15 minutes of every day to review your case list and make a plan for the day. Of course, interruptions occur, emergencies happen and you won't always achieve what you set out to do. Give yourself 15 minutes to review your list at the end of every day before planning for the next day.

You might want to allow yourself slightly longer on a Monday morning / Friday evening to do this. This helps to keep you on top of your work and means you can leave the office with peace of mind.

Looking after yourself

Burnout is not just a buzz word but a real risk for people working with traumatized and vulnerable clients and large caseloads. A burned-out adviser is no use to anyone. In working with clients, it is vital to demonstrate your commitment to their cases but also your limitations and boundaries.

Try to remain self-aware so that you will recognise symptoms of chronic stress such as fatigue, anxiety, trouble sleeping and increased use of drugs or alcohol.

Your employer may have an employee assistance programme, but if not there may be helplines or local groups to which you can turn to for support. For example, for junior lawyers there are monthly meet ups in London to help learn, share and reflect on practice with a focus on self care.² There is also the [LawCare helpline](#). Non-lawyers could try [SupportLine](#).

Best practice resources

A number of resources detail best practice and quality core adviser skills.

National Occupational Standards (NOS) have developed UK standards of performance, knowledge and skills for those working in the legal advice sector. There are different standards for those providing [first line housing legal advice](#) and those providing [specialist housing legal advice](#) and advice in other areas.

The Legal Aid Agency's (LAA) [Improving Your Quality in Housing](#) is available on Gov.uk for those carrying out LAA funded work. This identifies common problems with case work and suggests methods which could assist improvement. It also has helpful checklists for reviewing files which can be used by supervisors.

Peer review and good supervision are the bedrock of an adviser's ability to carry out good quality casework. If you identify any skills or areas of knowledge that you are not yet confident with, request training, support and supervision from your employer. No caseworker is, or should be, an island.

Footnotes

¹ Examples of helpful resources:

[Mental Health First Aid training](#)

[Resolution: Good practice guide to working with vulnerable clients](#)

[Solicitors Regulation Authority: Providing services to people who are vulnerable](#)

[Shelter: Managing aggressive and difficult behaviours seminar](#)

² For details of the free monthly meet ups in London, see the [Claiming Space](#) website.

Universal credit: help with your mortgage

This leaflet is the third in a series on universal credit.

In this leaflet we look at the support available to homeowners who are struggling to pay their mortgages.

You can get a government loan to help pay your mortgage if you are a homeowner and claim universal credit (UC). This help is called support for mortgage interest (SMI). As it is a loan and not a benefit, it must be repaid.

Get *independent financial advice* to help you decide whether this is a good idea for you. Contact the [Money Advice Service](#) for help finding an independent financial adviser.

You will have to sign a loan agreement to receive any payments.

You will not get any SMI loan payments until nine months after you claim UC.

What you can get a loan for

You can ask for SMI to help to pay:

- your mortgage (including an Islamic mortgage)
- loans secured against your home.

Restrictions on the loan

The government won't pay towards more than £200,000 of your mortgage. It will pay your lender at the rate of 2.61%, whatever your actual mortgage rate. This may change in future - check [Gov.uk](#) for the current rate.

The loan may also be restricted if you have adult family members living with you

How to claim help

You will be asked for information about your housing costs when you claim UC. You will be offered an SMI loan if you qualify.

Normally the home owner will apply for an SMI loan, but sometimes a partner or other person living in the property can claim. If you have a partner, s/he may be able to continue getting help if you die.

You can get UC if you are on a low income. But you will not get an SMI loan (or the payments will stop) if you or your partner have any income at all from a job or being self-employed. You will also have to wait another nine months after reclaiming.

How it is paid

Your SMI payments will usually be paid direct to your lender. If your lender does not accept direct payments, you will receive the SMI in your UC and will then have to pay the lender.

Paying back the money

You are charged interest on the SMI loan payments at the rate of 1.5%. This rate may change in the future. Go to [Gov.uk](#) to find the current rate of interest.

The interest you are charged is 'compound interest'. This means interest is always being added to what you owe. You can pay money back as a lump sum at any time, as long as it's a minimum of £100.

You don't have to repay the loan until you sell your property. The loan is secured against your property so the government will get paid automatically. If there is not enough money to repay all the SMI loan when you sell the government will write off the balance.

The loan may have to be repaid from your estate when you die. If you have a partner, the money will not have to be repaid while they are still alive.

Help with service charges

Your UC may contain an amount to cover any service charges you have to pay. This is payable as part of your monthly universal credit, even if you don't get a loan.

Other options

If you are struggling to pay your mortgage there may be other options apart from an SMI loan, such as increasing your income or negotiating a mortgage holiday with your lender.

It is very important to get advice before signing up for an SMI loan.

You can get free debt advice from:

- [National Debtline](#): 0808 808 4000
- [StepChange](#): 0800 138 1111
- [Debt Advice Foundation](#): 0800 434050

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
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