

## Issue 105 April 2015

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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 [JackieL@shelter.org.uk](mailto:JackieL@shelter.org.uk)

#### **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](http://www.nhas.org.uk)

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

- **a national telephone housing advice consultancy service** for local authorities, CABx and around 100 other advice agencies in England. Call **0300 330 0517** 9am–8pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://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](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

For general enquiries about the NHAS service, please email [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at [www.nhas.org.uk](http://www.nhas.org.uk)

# What's new?

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## **Rough sleeping statistics**

The latest annual statistics, published by the Department for Communities and Local Government (DCLG) show a 14 per cent increase in the number of rough sleepers between Autumn 2013 and Autumn 2014. This equates to an additional 330 people sleeping rough in that period. London saw an increase of 37 per cent over the year compared to 7 per cent in the rest of England. For a copy of the statistics, go to [tinyurl.com/rough2014](http://tinyurl.com/rough2014)

## **Eligibility for social care**

With effect from 1 April 2015, the Care and Support (Eligibility Criteria) Regulations 2015 SI 2015/313 set out the eligibility criteria that a local authority must apply where an adult is assessed as having care and support needs under the Care Act 2014. For more information, see the [article on page 2](#).

## **Guidance on dealing with rogue landlords**

DCLG has issued guidance to help local authorities tackle poor and illegal practices by landlords and letting agents. It provides advice on the identification of criminal landlords, and how to gather local knowledge of the private rented sector. The guide is available on Gov.UK at [tinyurl.com/badpractice](http://tinyurl.com/badpractice)

## **Renting a safe home: a guide for tenants**

A new guide from DCLG provides information for private rented sector tenants on how to rent a safe home. For a copy of the guide, go to [tinyurl.com/safehome-guide](http://tinyurl.com/safehome-guide)

## **Extension of A8 WRS was unlawful**

In *TG v Secretary of State for Work and Pensions (PC) (European Union law : free movement) [2015] UKUT 50 (AAC)*, the Upper Tribunal ruled that the UK Government acted unlawfully in extending the Workers Registration Scheme ['WRS'] from 2009 to 2011. Under the WRS, 'A8' nationals from eight eastern European countries which joined the European Union (EU) in 2004 did not have a right to reside as a worker unless they were registered with the scheme. The *TG* decision arguably affects the past and future social security, housing and immigration law rights of many workers from the A8 countries. Subject to any appeal, the decision is binding on the Secretary of State and on all first-tier social security tribunal judges. For the full transcript see [tinyurl.com/TG-WRS](http://tinyurl.com/TG-WRS)

## **New antisocial behaviour injunctions**

With effect from 23 March 2015, the Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 8, Saving and Transitional Provisions) Order 2015 SI 2015/373 brings into force the injunction (IPNA) provisions in Part 1 of the Antisocial Behaviour, Crime and Policing Act 2014. Breach of an IPNA may trigger the mandatory ground of eviction for secure and assured tenants. IPNAs replace ASBOs granted under civil proceedings, and ASBIs. Statutory guidance on the new anti-social behaviour powers has been issued by the Home Office and can be found at [tinyurl.com/IPNA-possession](http://tinyurl.com/IPNA-possession)

## **New forms for assured tenancies**

From 6 April 2015, the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI 2015/620 replace certain prescribed forms for notices relating to assured tenancies and assured agricultural occupancies.

## **Deregulation Act 2015 - tenancy deposits**

With effect from 26 March 2015, sections 30 to 32 of the Deregulation Act 2015 amend sections 214 and 215 of the Housing Act 2004 and associated regulations to provide that:

- landlords/agents no longer need to re-protect a deposit or re-serve prescribed information when a tenancy is renewed or becomes a statutory periodic tenancy
- deposits received before 6 April 2007 where the tenancy became statutory periodic on or after that date must be protected, and prescribed information served, by 24 June 2015
- a deposit protection certificate that shows the details of the landlords's initial agent, and not the landlord, is valid.

## **New 'right to move'**

With effect from 20 April 2015, the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 SI 2015/967 provide that a local authority may not apply local connection criteria when deciding whether to make an allocation of housing to an existing secure/introductory or assured tenant of a social landlord if the tenant 'needs to move' in order to work or take up an offer of work in the area of the authority applied to, and where failure to meet that need would cause hardship.

# Introduction to the Care Act 2014

**The first of two articles by John Macklin looking at the Care Act 2014. This article looks at the history of care and support provision, the context and drivers for change, and looks at the Act in outline.**

**The next article will consider how the Act may be used to assist in the prevention and relief of homelessness and in accessing 'suitable' housing.**

**John Macklin is a freelance trainer.**

Uniquely, pre-Care Act community care legislation spans nearly 70 years, running from the birth of the welfare state up until 1 April 2015. As a consequence it has often reflected apparently contradictory philosophies and approaches.

Many elements of community care have been introduced by directions, regulations and guidance and hence subjected to little or no parliamentary scrutiny. The courts have expressed their dismay at the 'complexity and labyrinthine nature of the relevant legislation and guidance, as well as (in some respects) its obscurity.'<sup>1</sup>

In 2008, the government asked the Law Commission to review existing community care legislation and make recommendations for change. The Law Commission made a series of recommendations in May 2011. In addition, concerns over individuals meeting the costs of long term care by selling their homes triggered the Dilnot Commission which recommended a lifetime cap on care costs.

The government's response is the Care Act 2014, one discrete Act to govern care and support for adults that replaces many existing pieces of legislation (see below).

## Implementation timetable

The majority of the adult care elements contained in the Act became law on 1 April 2015. The cap on care costs and the new complaints procedure are timetabled for April 2016.

## New legal framework

The Act consists of five Parts and eight Schedules. Part 1 contains the legal framework for adult social care. The Act is available at [www.legislation.gov.uk](http://www.legislation.gov.uk).

The 506 page long statutory guidance, produced by the Department of Health, is available at [tinyurl.com/CA14guide](http://tinyurl.com/CA14guide)

A number of regulations have been made under the Act, eg the Care and Support (Assessment) Regulations 2014. At the beginning of each chapter of the guidance is a list of relevant regulations.

## Legislation disapplied in England

The following legislation is wholly or partially disapplied in England as a result of the Act:<sup>2</sup>

- NHS Act 2006
- Carers (Equal Opportunities) Act 2004
- Community Care (Delayed Discharges etc.) Act 2003
- Health and Social Care Act 2001
- Carers and Disabled Children Act 2000
- Carers (Recognition and Services) Act 1995
- NHS and Community Care Act 1990
- Disabled Persons (Services, Consultation and Representation) Act 1986
- Health and Social Services and Social Security Adjudications Act 1983
- Chronically Sick and Disabled Persons Act 1970 (but not in respect of under 18s)
- Local Authority Social Services Act 1970
- Health Services and Public Health Act 1968
- National Assistance Act 1948.

## What the Care Act 2014 does

The Act imposes duties and powers on social services authorities to meet eligible care and support needs of adults who suffer from physical or mental illness or disability. It moves away from clear duties and rights to specific services, to a generalised obligation to 'meet needs' through the provision of:<sup>3</sup>

- accommodation
- care and support at home
- counselling or social work
- goods and facilities
- information, advice and advocacy.

The basic process of assessment, decisions on eligibility (with a duty to meet eligible needs), care planning and review remains unchanged. However, there are significant amendments to eligibility and care planning within the process. The Department of Health has produced factsheets on different areas of the Care Act; they can be found at [tinyurl.com/Care-factsheets](http://tinyurl.com/Care-factsheets)

## Key areas

Key areas of the new legislation are highlighted below.

### *Principle of well-being*

The guiding principle of the Act is that all actions made under it should be aimed at increasing 'well-being'. This is defined by a number of indicators, such as personal dignity and protection from abuse.<sup>4</sup> See Box 3 of the flowchart on page 5 for the full list. The 'suitability of living accommodation' indicator was inserted following lobbying by the National Housing Federation.

### *Prevention duty*

Section 2 of the Act introduces a statutory duty to 'prevent' the development of care and support needs, or the worsening of existing needs.

### *Carers*

There are estimated to be over five million carers in the England. The Act provides a duty to assess carers' needs and to meet their eligible needs for support.<sup>5</sup>

### *Prisoners*

Residents of prisons and 'approved premises' are entitled to community care services.<sup>6</sup>

### *Safeguarding*

The Act puts safeguarding, ie measures to protect adults from abuse and neglect, on a statutory basis.<sup>7</sup>

### *Eligibility*

Eligibility is put on a statutory footing with the introduction of the National Minimum Eligibility Criteria.<sup>8</sup> These replace the previous eligibility framework in which care needs were graded into four bands: low, moderate, substantial, and critical.<sup>9</sup> The government's intention is that the new minimum eligibility criteria equate to meeting critical and substantial needs under the previous criteria.

### *Information and advice*

A duty to ensure access to information and advice (with particular emphasis on financial advice) is introduced.<sup>10</sup> This must include housing advice. The statutory guidance suggests that independent advice is more likely to be trusted. Access to advice is also seen as an important element of preventing the development of care needs, and assisting those whose needs are not eligible.

### *Integration of housing and care*

The Act promotes better integration of health/social care and co-operation between departments. Housing is to be treated as a 'health-related' service.<sup>11</sup>

### *Decisions in writing*

The Act obliges the authority to provide, in writing to the adult being assessed, and anyone else at her/his request, a copy of the:

- assessment<sup>13</sup>
- eligibility decision with reasons<sup>13</sup>
- care/support plan<sup>14</sup>

Each element will be invaluable for advisers.

### *Delegation of service provision*

Section 79 of the Care Act introduces the potential for the delegation of services, from minor to almost total. Local authorities must ensure that there is a range of service providers in the care and support market, and that there is diversity and quality within that market.<sup>15</sup> In the light of the high-profile collapse of certain providers, such as the care home provider Southern Cross in 2011, the authority must also manage 'market failure'.

### *Paying for care*

Personalisation, direct payments and individual budgets are put on a statutory basis.<sup>16</sup> This furthers the policy intention to put the adult in control of their own services.

### *Cap on care costs*

From 1 April 2016, there will be a limit of £72,000 on the amount an adult over pension age will be expected to pay over her/his lifetime towards the cost of meeting her/his eligible care needs. Once this cap is reached, social services will not be able to charge for meeting needs, apart from an amount to cover 'daily living'. Anyone who may have eligible care needs, including people who have arranged their own care, should ask for a needs assessment as soon as possible so that the process of accruing costs towards the cap can begin in April 2016.

### **Assessment**

Entry to adult care and support other than in an emergency is determined by a 'needs assessment'. A 'carer's assessment' is the equivalent for a carer who needs support.

The duty to carry out a needs assessment is triggered by the appearance of a need for care and support rather than a request by an individual,<sup>17</sup> and remains largely unchanged from the previous assessment duty under section 47 of the NHS and Community Care Act 1990. The legislation, regulations and guidance are more prescriptive on the content of the assessment than previously, but repeat the historical problem of not giving timescales.

## Footnotes

<sup>1</sup> Crofton v NHS Litigation Authority [2007] EWCA Civ 71.

<sup>2</sup> Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 SI 2015/914

<sup>3</sup> s.8 Care Act 2014.

<sup>4</sup> s.1 Care Act 2014; Ch 1 Care and Support Statutory Guidance October 2014.

<sup>5</sup> s.10 Care Act 2014; Ch 6 Care and Support Statutory Guidance October 2014.

<sup>6</sup> s.76 Care Act; Ch 17 Care and Support Statutory Guidance October 2014.

<sup>7</sup> ss.42-47 Care Act 2014; Care and Support Statutory Guidance October 2014.

<sup>8</sup> s.13 Care Act 2014; Ch 6 Care and Support Statutory Guidance October 2014.

<sup>9</sup> 'Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care', Department of Health, 2010.

<sup>10</sup> s.4 Care Act 2014; Ch 3 Care and Support Statutory Guidance October 2014.

<sup>11</sup> ss.3,6,7,22,23 and 74 and Sch 3 Care Act 2014; Ch 15 Care and Support Statutory Guidance October 2014.

<sup>12</sup> s.12(3) Care Act 2014.

<sup>13</sup> s.13(2) Care Act 2014.

<sup>14</sup> s.25(9)(10) Care Act 2014.

<sup>15</sup> s.5 Care Act 2014.

<sup>16</sup> ss.8, 26, 31-3 Care Act 2014; Chs 10-12 Care and Support Statutory Guidance October 2014.

<sup>17</sup> s.9(1) Care Act 2014; Ch 15 Care and Support Statutory Guidance October 2014.

## Footnotes

<sup>18</sup> ss.9-12 Care Act 2014; Chs 1 and 6 Care and Support Statutory Guidance October 2014.

<sup>19</sup> reg 2 Care and Support (Assessment) Regulations 2014 SI 2014/2827. Ch 6 Care and Support Statutory Guidance October 2014.

<sup>20</sup> ss.67 and 68 Care Act 2014; Ch 7 Care and Support Statutory Guidance October 2014.

<sup>21</sup> Care and Support (Eligibility Criteria) Regulations 2015 SI 2015/313.

<sup>22</sup> s.21 Care Act 2014.

<sup>23</sup> s.18 Care Act 2014.

<sup>24</sup> s.19 Care Act 2014.

<sup>25</sup> ss.24,25 and 27 Care Act 2014.

<sup>26</sup> United Nations Convention on the Rights of Persons with Disabilities 2006, ratified by the UK June 2009.

Assessments must be 'person-centred' and clarify how the individual's needs impact on their well-being.<sup>18</sup> An assessment must be carried out in a manner that is 'appropriate and proportionate'. The legislation proffers a range of ways this might be achieved:

- face-to-face
- on-line or by telephone
- jointly with other agencies
- combined assessment with for example a carer's assessment
- supported self-assessment (see below).

There are concerns that on-line or telephone assessment may fail to identify a need for specialist input, with autism, for example.

### *Supported self-assessment*

Supported self-assessment must be offered to all adults.<sup>19</sup> This is where the individual and the local authority will carry out a joint assessment. Whilst supported self-assessment ensures that appropriate emphasis can be given to the priorities and preferences of the adult, it also raises the question of who would be in a position to challenge a deficient assessment.

### *Independent advocacy*

Local authorities will be required to arrange an independent advocate for a person the authority considers would experience 'substantial difficulty' in participating in their assessment and/or the preparation of their care and support plan.<sup>20</sup>

## Eligibility criteria

The National Minimum Eligibility Criteria (NMEC) apply from 1 April 2015. The NMEC means that decisions on entitlement should be made on the same basis in every authority, which should in turn ensure portability of entitlement. The flowchart on page 5 explains how the NMEC is to be applied.

Care and support needs are eligible if they:<sup>21</sup>

- arise from or are related to a physical or mental illness or impairment
- result in the adult being unable to achieve two or more specified outcomes (see Box 2 of the flowchart on page 5 for the meaning of 'unable' to meet an outcome) and, as a result, there is a significant impact on her/his well-being.

### *Persons subject to immigration control (PSIC)*

A PSIC who is ineligible for benefits and whose need for care and support is a result of destitution, or the physical effects of

destitution, cannot be assisted under the Act unless this would cause a breach of her/his human rights.<sup>22</sup> This replicates the 'destitution plus' test that operated under the previous legislation.

## Meeting care and support needs

In line with its prevention duties, a local authority can initially provide some form of short-term service free of charge. If this is not appropriate, or if further care and support is needed, the authority must:<sup>23</sup>

- provide a service or arrange for a person other than itself to provide a service
- make direct payments (subject to the adult's ability to manage them).

There are residual duties to provide written information, advice and guidance to those whose needs are below the eligibility threshold. Alternatively, social services have a general power to meet non-eligible needs.<sup>24</sup>

## Care planning

Where a local authority has decided to meet care and support needs, it must prepare a written care plan, including a personal budget, and keep it under review.<sup>25</sup>

## Conclusion

The combination of a steady increase in life expectancy in tandem with increased economic mobility of family members has dramatically increased the demand for care and support. That this has occurred at a time of shrinking resources (with government funding to councils falling by 19.6 per cent from 2010/11 to 2013/14) has had a significant impact with 896,000 receiving services in 2012/13, compared with 1,231,000 in 2005/6. Despite this (or maybe in part as a result of this), the number of older people in care homes rose by 21 per cent from 135,000 to 164,000, and those using nursing care rose by 22 per cent from 65,000 to 79,000 over the same period.

In this context of escalating demand and lower resources, we will be looking to see to what extent the Care Act:

- improves quality of life for people in need of care and support
- generates preventative work given the shortage of resources
- stands up to human rights and equalities challenges and marries with the UN Convention on the Rights of Persons with Disabilities.<sup>26</sup>

# Eligibility for adult care: decision making process

Reg 2(1) Care and Support (Eligibility criteria) Regulations 2015; Chapter 6 Care and Support Guidance 2014

## An adult's care and support needs are eligible if:

- (a) they arise from, or are related to, a **physical or mental impairment or illness**; and
- (b) as a result of her/his needs, the adult is **unable to achieve** (see box 2) at least two or more out of **ten outcomes** (see box 1); and
- (c) as a consequence of the above, there is, or is likely to be, a **significant impact on the adult's well-being** (see box 3)

If any of the answer to questions (a), (b) and (c) above is **no**, then the needs are **not eligible**. Information and advice on ways to meet or reduce needs, or on preventing the development of future needs, must be given by the authority where needs are assessed as 'not eligible'.

Alternatively, the authority may exercise its general power to meet ineligible needs under section 19 of the Care Act.

Reg 2(2) Care and Support (Eligibility criteria) Regulations 2015

### Box 1 – the 10 outcomes are:

- (a) managing and maintaining nutrition
- (b) maintaining personal hygiene
- (c) managing toilet needs
- (d) being appropriately clothed
- (e) being able to make use of the adult's home safely
- (f) maintaining a habitable home environment
- (g) developing and maintaining family/personal relationships
- (h) accessing and engaging in work, training, education or volunteering
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services
- (j) carrying out any caring responsibilities the adult has for a child.

**Statutory guidance gives examples of each outcome**

Reg 2(3) Care and Support (Eligibility criteria) Regulations 2015

### Box 2 – unable to achieve means:

- (a) unable to achieve the outcome without assistance
- (b) able to achieve it without assistance but doing so causes the adult significant pain distress or anxiety
- (c) able to achieve it without assistance but doing so endangers/is likely to endanger the health/safety of the adult or of others
- (d) able to achieve it without assistance but takes significantly longer than would normally be expected.

s.1 Care Act 2014

### Box 3 – indicators of the adult's well-being are:

- (a) personal dignity
- (b) physical/mental health/emotional well-being
- (c) protection from abuse and neglect
- (d) control by the individual over day-to-day life
- (e) participation in work, education, training or recreation
- (f) social and economic well-being
- (g) domestic, family and personal relationships
- (h) suitability of living accommodation
- (i) the individual's contribution to society

Chapters 1 and 6 of the statutory guidance to the Care Act 2014 gives detailed examples of outcomes and well-being indicators – see [tinyurl.com/CA14guide](http://tinyurl.com/CA14guide)

# Disability discrimination defence to possession

**In this case brief, Kathy Meade and Michelle Crabbe explain how a disabled tenant can use the provisions of the Equality Act 2010 to defend possession actions.**

**Kathy Meade is a professional support lawyer at Shelter. Michelle Crabbe is the solicitor at Shelter, who represented the appellant in this case.**

A ground-breaking Supreme Court judgment in *Akerman-Livingstone v Aster Communities Limited*<sup>1</sup> now means that a court must give detailed consideration to a disabled tenant's defence under the Equality Act 2010 to a landlord's claim for possession.

## **Definition of disability**

A person has a disability if s/he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on her/his ability to carry out normal day-to-day activities'.<sup>2</sup>

## **Discrimination under the Equality Act**

The Equality Act 2010 prohibits both direct and indirect discrimination against disabled persons in the same way that it prohibits discrimination against any persons with other characteristics protected by the Act, such as race or religion.

Under section 15 of the Equality Act:

(1) a person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

For the purpose of this section, eviction is unfavourable treatment.

## **Discrimination by residential landlords**

The management of residential premises comes within the orbit of the Act and both social and private landlords (and their agents) must not discriminate against a disabled person. In addition, there is a duty to make 'reasonable adjustments' to minimise or remove a disadvantage which prevents the disabled person from full enjoyment of the premises or the use of a benefit or facility.<sup>3</sup>

Under section 35(1) of the Equality Act, a landlord or agent (A) must not discriminate against a person (B) who occupies the premises—

(a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;

(b) by evicting B (or taking steps for the purpose of securing B's eviction);

(c) by subjecting B to any other detriment.

Eviction in this context includes the entire repossession process from the serving of notice to issuing court proceedings. An eviction will not be discriminatory if it is necessary and proportionate.

## **Background to the case**

Mr Akerman-Livingstone [A-L] suffers from serious mental health problems following sustained physical and emotional childhood abuse. There was no dispute that he was a disabled person under the Equality Act.

After becoming homeless in 2010, his local council accepted that they had a duty to house him under homelessness legislation. He was provided with accommodation by a housing association under its agreement with the council to house people to whom the council owed the temporary accommodation duty.

Attempts were made to find him a settled home under the council's choice-based lettings scheme, but A-L felt unable to bid for properties that became available in places associated with his abuse, or that were too far away from his GP.

The council eventually discharged (ended) its duty to rehouse him after he had refused a final offer which it said was suitable for him. A-L's housing association landlord said that his flat was needed so that it could be let to another homeless person.

When the housing association commenced possession action against him, A-L argued that he was being treated unfavourably in being evicted because his disability had played a major part in his being unable to



accept offers of accommodation and move out of his present home. In addition, he argued that, contrary to the Equality Act 2010, his eviction was not necessary or proportionate because the housing association had a less harmful option – they could have fulfilled their duty to another homeless person by letting A-L stay where he was and offering alternative accommodation to the other homeless person.

### Summary judgments

Until this judgment, courts could make a ‘summary judgment’ in cases of this kind, that is, hear an outline of the case and then make an immediate decision on whether the Equality Act defence was strong enough to proceed, without asking the tenant to give detailed evidence or asking the landlord to justify why they were seeking eviction.

This was the same approach the courts use to deal with ‘human rights’ defences to eviction under article 8.<sup>4</sup> The courts had held that a social landlord’s legitimate aims of asserting its right to possession of the property and enabling it to manage its own housing stock were overwhelming and could only in exceptional circumstances be defeated by a tenant claiming protection of their home under Article 8.<sup>5</sup> To decide otherwise would not be proportionate.

The Court of Appeal had held that the claim of a tenant raising discrimination issues against a landlord should be treated in the same way since both were subject to the same ‘proportionality’ test.

### Striking the balance

The Supreme Court’s judgment overturns this approach. A disability discrimination defence could not, except in rare cases, be summarily decided at an initial hearing in the county court without giving the disabled tenant and the landlord time to put their case fully. A balance had to be struck ‘between the seriousness of the impact on the tenant and the importance of the landlord’s aims’.<sup>6</sup>

In her judgment, Lady Hale explained that: ‘... no landlord, public or private can adopt a discriminatory policy towards eviction, for example, by evicting a black person where they would not evict a white. Thus also no landlord, public or private, can evict a disabled tenant ‘because of something arising in consequence of [his] disability’ unless the landlord can show that this is a proportionate means of achieving a legitimate aim’.<sup>6</sup>

### ‘Extra protection’ under Equality Act

Lady Hale went on to explain that through the Equality Act: ‘Parliament has expressly provided for an *extra* right to equal treatment – for people to be protected against direct or indirect discrimination in relation to eviction. Parliament has further expressly provided, in sections 15 and 35, for disabled people to have rights in respect of the accommodation which they occupy which are different from and extra to the rights of non-disabled people.’<sup>8</sup>

### Burden of proof

It is up to the landlord to prove that the eviction of a disabled tenant was a proportionate means of achieving a legitimate end. If the landlord can do so then s/he is entitled to a possession order, but not otherwise.

### Structured approach

A court considering a defence by a disabled tenant should take a ‘structured approach’. Lord Wilson set this out in detail in his judgment, stating that a court must give attention to:<sup>9</sup>

- the landlord’s aims in taking the step to evict the tenant/occupier
- whether or not there is a rational link between the landlord’s aim and the proposed eviction of the disabled tenant
- whether evicting the tenant is no more than is necessary to achieve that aim, and
- whether the eviction strikes a fair balance between the landlord’s aims and the disadvantages to the disabled person.

### Greater protection for disabled tenants

This judgment is likely to help disabled tenants in private or social housing who are threatened with eviction for a reason linked to their disability, where they have very limited security, for example an:

- assured shorthold tenant facing eviction under section 21 Housing Act 1988
- introductory or ‘starter’ tenant, or a demoted tenant
- an occupier of temporary homeless accommodation.

In such situations, if the landlord cannot justify the eviction as necessary and proportionate then the Court can decide that eviction should not go ahead. An Equality Act defence may rescue a tenant from what would otherwise be an inevitable eviction.

### AdviserNet

11.12.8.30 Possession proceedings for rented property

### Footnotes

<sup>1</sup> Akerman-Livingstone v Aster Communities Limited [2015] UKSC 15.

<sup>2</sup> s.6 (1) Equality Act 2010.

<sup>3</sup> ss.20 and 21 and Schedule 4 Equality Act 2010.

<sup>4</sup> Article 8 European Convention on Human Rights.

<sup>5</sup> Manchester CC v Pinnock [2010] UKSC 45; Hounslow LBC v Powell; Leeds CC v Hall; Birmingham CC v Frisby [2011] UKSC 8.

<sup>6</sup> Akerman-Livingstone v Aster Communities Limited [2015] UKSC 15, para 31.

<sup>7</sup> Akerman-Livingstone v Aster Communities Limited [2015] UKSC 15, para 24.

<sup>8</sup> Akerman-Livingstone v Aster Communities Limited [2015] UKSC 15, para 25.

<sup>9</sup> Akerman-Livingstone v Aster Communities Limited [2015] UKSC 15, paras 68-73.

# Homelessness: young people 18+

**The second of two leaflets on the help available for young homeless people.**

**This leaflet looks at the help you can get from your local council if you are a young person aged 18 or over.**

The council's homelessness department must find you somewhere to stay if you are:

- homeless
- eligible for assistance
- in priority need.

### Are you homeless?

You are homeless if you have nowhere to live, or if you have somewhere to live but it is not reasonable for you to stay there – maybe because you are at risk of being abused, or because it is a very temporary arrangement.

If the council thinks your homelessness is your own fault, this will affect the help it must give you. Get advice if you are told that you are 'intentionally homeless'.

### Are you eligible for help?

This depends on your nationality and immigration status. Most British nationals are eligible. Seek advice if the council says you are not eligible.

### Are you in priority need?

If you are a young person aged 18 or over, you are in priority need if you are:

- under 21 and were accommodated by social services for at least one day between the ages of 16 and 18
- pregnant
- responsible for a child
- homeless because your home has been damaged by a disaster like a fire or flood.

Also, you *might* be in priority need if you are 'vulnerable' because for example you:

- are 21 or over and were in care
- have a mental or physical illness or disability, or are fleeing violence or threats of violence
- have any other problem, such as being at risk of abuse or prostitution.

Being 'vulnerable' means that your problems are especially severe. Many factors can contribute to vulnerability, including having no family or friends to help you.

### Evidence that you are 'vulnerable'

The council should make proper inquiries to help it decide if you are 'vulnerable'. Get evidence about the effect being homeless is having on you from your doctor, psychiatrist, probation officer, or anyone else who knows you well. Get advice if the council doesn't accept that you are in priority need because you are vulnerable.

### Care leavers

If social services have arranged your accommodation (this includes being with foster carers) for at least 13 weeks between your 14th and 18th birthday, including at least one day since you turned 16, they must help you after you leave care. Support, including housing, should continue until your 21st birthday, or until the end of any education or training programme that social services has agreed to help you with.

### Which council?

You can go to any council for help if you are homeless. It's unlawful for a council to turn you away, but unless you have a 'connection' with it (eg you live, work or study there) you could later be referred back to your local council as long as it is safe to do so.

### Finding the right support

Being homeless is a traumatic experience and you could speak to someone who has experience of helping homeless young people.

Organisations that specialise in helping young people include:

- [www.centrepoin.org.uk](http://www.centrepoin.org.uk)
- [www.depauluk.org](http://www.depauluk.org)
- [www.barnardos.org.uk](http://www.barnardos.org.uk)
- [www.coramvoice.org.uk](http://www.coramvoice.org.uk)

### Further advice

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

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

A Shelter and Citizens Advice service. DCLG funded.



Registered charity number 279057.

# Shelter

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



### Note for advisers

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