

## Issue 134 February 2020

---

<b>What's new?</b>	<b>1</b>
<b>Article</b> Allocations - avoiding unlawful decisions	<b>2</b>
<b>Article</b> Orders for sale	<b>5</b>
<b>Feature</b> How to prove EU settled status	<b>8</b>
<b>Factsheet</b> Brexit: EEA nationals	<b>12</b>

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](https://www.shelter.org.uk)

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

Shelter  
88 Old Street  
London  
EC1V 9HU

Telephone 0300 330 1234

[shelter.org.uk](https://www.shelter.org.uk)

© Shelter. All rights reserved.

The National Campaign for Homeless People Limited.  
Registered charity in England and Wales (263710) and  
in Scotland (SC002327). RH 465.56

### 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 2049

[shelter.org.uk](https://www.shelter.org.uk)

**Edited by:** Ewa Brem

**Contributors:** Sarah Durrant, Alexa Walker, Ewa Brem

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

[Ewa\\_Brem@shelter.org.uk](mailto:Ewa_Brem@shelter.org.uk)

### 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](https://www.nhas.org.uk)

**The NHAS provides the following services to local authorities, public authorities (such as the NHS, DWP and prisons/probation staff), local citizens advice and other voluntary agencies in England:**

- **housing advice consultancy by phone or webchat:** call 0300 330 0517 Monday to Friday from 9am–6pm, access webchat or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](https://www.nhas.org.uk).
- **housing debt and welfare benefits advice:** within our consultancy team we have specialist housing debt and welfare benefits advisers who can advise where clients are struggling to pay their housing costs.
- **free housing advice training courses** to develop housing advice skills, covering the main housing and homelessness issues.
- **resources:** written briefings, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials.

If you are unsure whether you can use our services, click [here](#) or contact us at 0344 515 2268.

#### Contact details

For general enquiries about NHAS services, 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](https://www.nhas.org.uk)



Funded by  
UK Government

# Shelter

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

# What's new?

## The UK has left the EU

On 31 January 2020 the UK left the EU. The [European Union \(Withdrawal\) Act 2018](#), as amended by the [European Union \(Withdrawal Agreement\) Act 2020](#) provides for a transition (implementation) period until 31 December 2020, during which EU free movement law will apply in the UK and EEA nationals and their family members will continue to be eligible for homelessness assistance, social housing and benefits under the existing EU rules. In addition, those with settled status granted under the [EU Settlement Scheme](#) will be eligible under domestic law, irrespective of whether they are exercising EU Treaty rights in the UK. The UK Visas and Immigration has published a [guide for local authorities](#) on supporting EEA citizens with applications under EU Settlement Scheme, including an overview of statutory obligations in relation to applications on behalf of looked after children in local authorities' care.

## 'Zambrano' test is a simple one

In [Patel and Shah v Secretary of State for the Home Department \[2019\] UKSC 59](#), the Supreme Court held that the 'compelled to leave the EEA' test for establishing a right to reside as a 'Zambrano' carer under Article 20 Treaty on the Functioning of the European Union is usually a simple one, and it should be applied to actual facts of each case, not to theoretical sets of facts. Where a British mother indicated she would follow her non-EEA husband, who was their British child's primary carer, if he was expelled to his non-EEA country of origin, it was irrelevant whether the mother could or should stay in the UK to look after the child.

## Severe weather guidance

Homeless Link has published [guidance](#) for local authorities on measures to minimise the risk of deaths among rough sleepers during periods of severely adverse weather.

## Out of time homelessness appeals

In [Al-Ahmed v Tower Hamlets LBC \[2020\] EWCA Civ 51](#), the Court of Appeal overturned the High Court decision in London Borough of Hamlets v Al Ahmed (2019) EWHC 749 (QB) and found that difficulties in obtaining legal representation may constitute a good reason under section 204(2A) of the Housing Act 1996 for a delay in appealing a homelessness review decision. The 'good reason' is a statutory test under the Housing Act 1996, independent of the Civil Procedure Rules, and has to be applied to the individual facts of each case. Where a homeless applicant acts diligently but encounters difficulties beyond their control in obtaining timely legal advice or representation, it may constitute a 'good reason' for exceeding the 21-day time limit. The judge observed that, while the discretion whether to allow a late appeal would always remain with the court, 'it would be

both surprising and unfair if difficulties of that kind could not be taken fully into account and given appropriate weight'. Shelter intervened in the appeal by way of written and oral submissions.

## Facts on review

In [Waltham Forest LBC v Saleh \[2019\] EWCA Civ 1944](#), the Court of Appeal held that when an applicant had requested a review of suitability of accommodation under section 202 of the Housing Act 1996, the authority should have taken into account the circumstances on the date of the review, including the availability of suitable accommodation in the locality.

## New guidance for RSL and LA tenants

The Regulator of Social Housing has updated its [guidance](#) on complaints about registered providers of social housing and clarified it is concerned with significant and widespread failures. Tenants with individual complaints should contact the [Housing Ombudsman Service](#).

## Repeat applications

In [Bukartyk v Welwyn Hatfield BC \[2019\] EWHC 3480 \(Admin\)](#), the High Court held that the authority's conclusion that the applicant's new medical evidence had not introduced new facts had been irrational. The correct test was whether the new facts were trivial or fanciful, not what impact they had on the original priority need decision.

## End of LHA rates freeze

[The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2020 SI 2020/27](#) came into force on 30 January 2020. As a result, from 1 April 2020 the maximum LHA rates will increase by 1.7% CPI.

## Housing benefit – LGSCO report

The Local Government and Social Care Ombudsman has published a [report](#) on the consequences of local authorities' mishandling of housing benefit payments and the lessons local authorities could learn from the cases investigated by the LGSCO.

## New pre-action protocols from 13 January 2020

(1) the [Pre-Action Protocol for Possession Claims by Social Landlords](#) has been revised to include, apart from a number of minor changes, a clarification that Part 3 applies to all cases in which the occupier may rely on human rights, public law or equality law defence, including but not limited to, claims brought on mandatory grounds for possession.  
(2) the [Pre-Action Protocol for Housing Disrepair Cases](#) has been revised to include claims for breach of an implied term relating to fitness for human habitation, pursuant to section 9A of the Landlord and Tenant Act 1985, as amended by Homes (Fitness for Human Habitation) Act 2018. The scope of the new Protocol is limited to England.

# Allocations - avoiding unlawful decisions

In this article, Sarah Durrant examines recent developments in case law in relation to allocations of social housing in England under Part 6 of the Housing Act 1996.

Sarah Durrant is a Consultancy Line Adviser at the NHAS Consultancy Service.

Due to a serious shortage of social housing, striking the balance between allowing housing authorities freedom to manage their stock according to the specific needs of local communities and ensuring that the system is fair and accommodates government expectations, poses a challenging task. Local authorities' discretion in managing their housing stock has been significantly widened by the Localism Act 2011, which amended the underpinning statutory framework contained in Part 7 of the Housing Act 1996. As long as local authorities make their decisions in line with the relatively broad statutory provisions, they are free to decide which applicants qualify for social housing and decide how to prioritise applications. However, their decisions may be challenged not only on the grounds of breaching the statutory provisions in the 1996 Act, but also on the grounds of unlawful discrimination and contravention of public law principles.

## 'Eligible' and 'qualifying' persons

It is helpful to bear in mind the distinction between 'being eligible for' and 'qualifying for' an allocation of social housing. Both are issues which must be considered in relation to all applications, but decisions by a local authority on eligibility are much more tightly controlled by the statutory scheme,<sup>1</sup> with the primary focus being the applicant's immigration status and habitual residence in the Common Travel Area (CTA).<sup>2</sup> By contrast, it is largely open to each local authority to devise its own categories of 'qualifying persons' within an allocations scheme.<sup>3</sup> The most common factors taken into account are:

- length of residence in the area
- history of anti-social behaviour or rent arrears
- home ownership
- high value of earnings and/or assets as evidence of being able to satisfy own housing needs.

In short, being 'eligible' for an allocation of social housing does not mean that the applicant will be able to join the housing

register – the latter will depend on whether they or are a 'qualifying person'. For example, British nationals and foreign nationals with settled status who are habitually resident in the CTA satisfy the eligibility criteria, however if the local allocation scheme states that applicants with a high level of assets are not qualifying persons, it may be lawful to exclude those with sizeable income or capital from the register.<sup>4</sup>

## Preference on the housing register

Choosing which categories of qualifying persons should be awarded preference on the housing register allows a local authority to further manage how its stock is allocated.

### *Reasonable preference*

Statutory provisions set out the following categories of persons to whom the authority must give reasonable preference within its allocations scheme:<sup>5</sup>

- people who are homeless within the meaning of Part 7 of the 1996 Act (even where no statutory duty has been formally accepted)<sup>6</sup>
- homeless people to whom the authority has accepted a duty under Part 7 of the 1996 Act<sup>7</sup>
- people occupying insanitary or overcrowded housing, or otherwise living in unsatisfactory housing conditions
- people with a need to move on medical or welfare grounds
- people who need to move to a particular area to avoid hardship to themselves or others.

### *Additional preference*

The authority has a further power to give additional preference to prioritise between applicants in the reasonable preference category above who are in urgent housing need.<sup>8</sup> The Allocations Code of Guidance sets out examples of circumstances in which additional preference may be awarded, such as when the need to move urgently occurs due to a life-threatening illness or a severe overcrowding that poses a health hazard.<sup>9</sup>

The following categories of applicants in urgent housing need must be awarded additional preference:<sup>10</sup>

- current and former members of the regular armed forces suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service
- former members of the regular armed forces
- spouses and civil partners of members of the regular armed forces whose entitlement to occupy the Ministry of Defence accommodation has ceased or will cease following their spouse or civil partner's death in service.

To sum up, local authorities can prioritise between applicants in both the reasonable and additional preference categories, and in doing so may take into account factors such as the applicant's financial resources, behaviour and local connection to the area.<sup>11</sup>

In practice, the two-tier system requiring the applicant to be a qualifying person in order to be allowed on the housing register and the reasonable and additional preference categories used to decide priority between qualifying persons, may lead to a situation in which an applicant in the reasonable preference category is excluded from the waiting list for not meeting the qualifying person criteria, for example an individual homeless applicant may be excluded if they have a history of anti-social behaviour or capital above a certain threshold and the scheme allows for such exclusions.<sup>12</sup>

### **Avoiding unlawful decisions**

Wide discretion means that a decision may be unlawful in many circumstances. However, the basis of any challenge will nearly always be that either:

- the allocation policy is unlawful; or
- the policy is lawful, but the local authority has not followed it.

#### *Reasonable preference duty*

Whilst certain individual applicants who are within a reasonable preference category may be lawfully excluded from the housing register on the grounds of not meeting the qualifying person criteria, an authority cannot lawfully adopt a policy which excludes applicants from being 'qualifying persons' for the very reason of being in the reasonable preference category. For example, a policy stating that all homeless applicants in long-term suitable temporary accommodation are not qualifying

persons would be unlawful.<sup>13</sup> In addition, local authorities should not adopt a blanket policy and should use discretion where applicable.<sup>14</sup>

#### *Discrimination*

The Equality Act 2010 prohibits unlawful discrimination<sup>15</sup> against those who have a protected characteristic, including: age, disability, gender reassignment, marriage and civil partnership, race (including colour, nationality, ethnic/national origin, but not immigration status), religion or belief, sex and sexual orientation.<sup>16</sup> Discrimination can be either direct or indirect. Indirect discrimination occurs where a provision, criterion or practice which is apparently neutral, nonetheless puts a person with protected characteristics at a particular disadvantage.<sup>17</sup>

Furthermore, local authorities must comply with the public sector equality duty,<sup>18</sup> meaning they must have due regard to the need to eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act) and to advance equality of opportunity between people who share a protected characteristic and people who do not.

#### *How to avoid unlawful discrimination?*

Where direct or indirect discrimination is a resulting effect of an allocations policy, in order to act lawfully, the local authority must be able to justify it as proportional in achieving a legitimate aim.<sup>19</sup> This requires considering the impact of the discriminatory provisions of its allocation scheme on applicants with protected characteristics, balancing the need to achieve a legitimate aim (fair distribution of limited social housing) with the needs of groups with protected characteristics, as well as clear and cohesive justification of the measures as proportionate. A failure in doing so has led to a number of successful legal challenges (see 'Examples of unlawful discrimination' below).

Another necessary requirement is a provision for exercising discretion within the policy to provide for exceptional circumstances which would warrant waiving the usual requirements, for example a local connection requirement should not be applied in cases of applicants fleeing domestic violence from another area.<sup>20</sup>

#### **Examples of unlawful discrimination**

*R (Gullu) v Hillingdon LBC & R (Teresa Ward & Others) v Hillingdon LBC [2019] EWCA Civ 692*

In the absence of any justification, rewarding ten-year residence by way of additional

### **Shelter Legal**

#### [Allocation of housing by local authorities](#)

#### **Footnotes**

<sup>1</sup> s.160ZA Housing Act 1996, as inserted by s.146 Localism Act 2011.

<sup>2</sup> Common Travel Area (CTA) comprises United Kingdom, Ireland, the Isle of Man, and the Channel Islands.

<sup>3</sup> s.160ZA(6), s.160ZA(7) and s.160ZA(8) Housing Act 1996, as inserted by s.146 Localism Act 2011.

<sup>4</sup> R (Kuznetsov) v Camden LBC [2019] EWHC 1154 (Admin).

<sup>5</sup> s.166A(3) Housing Act 1996, as inserted by s.147(4) Localism Act 2011.

<sup>6</sup> see ss.175 and 176 Housing Act 1996.

<sup>7</sup> This includes those owed a full housing duty, as well as applicants in priority need found intentionally homeless and owed a duty under s.190(2) and those owed a prevention duty under section 195(2).

<sup>8</sup> s.166A(3) Housing Act 1996, as inserted by s.147 Localism Act 2011.

<sup>9</sup> para 4.13 Allocation of accommodation: Guidance for local housing authorities in England, MHCLG, June 2012.

<sup>10</sup> s.166A(3) Housing Act 1996, as inserted by s.147 Localism Act 2011; para 4.13 Allocation of accommodation: Guidance for local housing authorities in England, MHCLG, June 2012.

<sup>11</sup> s.166A(5) Housing Act 1996, as inserted by s.147(4) Localism Act 2011.

<sup>12</sup> para 3.21 Allocation of accommodation: Guidance for local housing authorities in England, MHCLG, June 2012; para 45, R (Jakimaviciute) v Hammersmith and Fulham LBC [2014] EWCA Civ 1438; R (Kuznetsov) v Camden LBC [2019] EWHC 1154 (Admin).

<sup>13</sup> R (Jakimaviciute) v Hammersmith and Fulham LBC [2014] EWCA Civ 1438.

<sup>14</sup> Leicester CC v Shearer [2013] EWCA Civ 1467; R (KS & Ors) v Haringey LBC [2018] EWHC 587 (Admin).

preference amounted to unlawful direct discrimination against Irish Travellers and refugees, the impact on whom had not been considered by the authority in their assessments. The key principle was the 'equality of outcome' and the local authority presented no evidence that the 'safety valves' it had devised (since 2016 it was not an absolute requirement to have 10 years' residence) eliminated the initial disadvantage those two groups suffered as a result of the scheme provisions.

#### *R (H) v Ealing LBC [2017] EWCA 1127*

Ealing council operated an allocations policy which reserved 20 per cent of all available properties for 'model tenants' and for working households. The Court of Appeal found that the authority had failed to consider the effect of the policy on protected groups, who were less likely to be able to undertake employment due to parental responsibilities, old age or a disability and that this omission rendered the discriminatory impact unjustifiable. Encouraging tenants to work and behave properly were legitimate aims but there might have been other, more proportionate, means of achieving them.

#### *R (HA) v Ealing LBC [2015] EWHC 2375 (Admin)*

In this case the court agreed that an inflexible five-year residence requirement in relation to qualifying for an allocation discriminated indirectly against a female applicant from another borough who had fled domestic violence and to whom Ealing LBC had accepted a full duty under Part 7 of the Act. It was held that it was indirect discrimination against women, who were more likely to become victims of domestic violence.

### **Examples of lawful discrimination**

#### *YA v Hammersmith & Fulham LBC [2016] EWHC 1850 (Admin)*

The Court made a finding of indirect discrimination in relation to the disqualifying applicants guilty of 'unacceptable behaviour' on the basis that care leavers are statistically likely to be overrepresented in this category. However, it also held that the discrimination was justified on the basis that preventing people from accessing social housing where they had exhibited negative behaviour was of benefit to the community as a whole and that the local authority had considered the needs of care leavers as it operated a Care Leavers Scheme.

#### *R (XC) v Southwark LBC [2017] EWHC 736*

This case focused on the policy of the local authority to award additional priority to those who were making a 'community contribution' and whether this amounted to unlawful discrimination against women and the disabled. Both groups are more likely to find it difficult to enter paid employment or voluntary work in order to meet the community contribution criterion. The court accepted that there was indirect discrimination, but then had to determine whether it could be justified as a proportionate means of achieving a legitimate aim. In order for this to be the case, the local authority needed to show that they had adopted the least intrusive measure possible in achieving the aim of building community, and the court found that in this case it had.

#### *R (on the application of Z and Another) v (1) Hackney LBC (2) Agudas Israel Housing Association [2019] EWCA Civ 1099*

It is important to note that this was not a direct challenge to the local authority's allocations policy, but rather to the lettings policy of a housing association, which falls outside the statutory scheme within Part 6 of the 1996 Act. Whilst not strictly related to unlawful discrimination in allocations, it may provide useful guidance to local authorities. The case concerned the policy of a housing association to allocate its properties only to Orthodox Jews, and whether or not this was unlawful discrimination. On an application for judicial review, it was held that the court had been entitled to find that the policy was a proportionate means of achieving a legitimate aim. The disadvantage to those who did not share the protected characteristic of being a member of the Orthodox Jewish community was minuscule given the association's housing represented only 1 per cent of the social housing in the area. Furthermore, the actions of the housing association fell within the 'positive action' justification<sup>21</sup> and the statutory exception for charities.<sup>22</sup>

### **Summary**

From the examples above, it may come as no surprise to learn that the central issue for local authorities in making a lawful decision is not only about whether or not there has been discrimination, but also on how a particular decision has been reached and whether the impact of any allocations policy on groups with protected characteristics has been properly considered and discretion exercised where appropriate.

### **Footnotes**

<sup>15</sup> Where the authority cannot prove that discriminatory measures constitute proportionate means to achieve a legitimate aim, discrimination will be unlawful.

<sup>16</sup> ss.4-12 Equality Act 2010.

<sup>17</sup> s.19(2) Equality Act 2010.

<sup>18</sup> s.149(1) Equality Act 2010.

<sup>19</sup> ss.15(1)(b) and 19(2)(d) Equality Act 2010.

<sup>20</sup> *R (HA) v Ealing LBC [2015] EWHC 2375 (Admin)*.

<sup>21</sup> s.158 Equality Act 2010.

<sup>22</sup> s.193 Equality Act 2010.

# Orders for sale

Article

So far, we have considered the court process and rules creditors must follow when applying for a charging order and the impact of charging orders on land ownership.<sup>1</sup>

In this article we will look at enforcement of charging orders by sale and what to look out for when assisting clients in this situation.

## When can a creditor apply for an order for sale?

The most common scenario is where a creditor has obtained a charging order following the client's default on a county court judgment (CCJ), and the client has defaulted on the charging order.

Many charging orders contain a provision that they are to be paid by installments and an order for sale will not be granted unless there has been a default in payments.<sup>2</sup>

Charging orders cannot be granted on debts below a certain threshold. From 6 April 2013, a creditor cannot apply for a charging order where the debt:<sup>3</sup>

- relates to an agreement regulated by the Consumer Credit Act 1974,<sup>4</sup> and
- the amount owed is less than £1,000.

In order to obtain an order for sale, a creditor must issue a fresh claim under Part 8 Civil Procedure Rules (CPR).<sup>5</sup> It means that clients who have defaulted on a charging order may not be aware of the creditor's application until they receive court papers.<sup>6</sup>

Practice Direction 73 requires the creditor to provide information in relation to:

- the charging order itself (a copy) and the property to be sold
- the amount secured by the charging order at the outset and the date of the claim
- the client's title to the property (for example, freehold or leasehold)
- the names and addresses of other charge holders and the amount owed to each
- an estimate of the price to be obtained on sale of the property
- details of every person who lives in the property (to the best of the creditor's knowledge)

- third parties who have registered beneficial interest or rights to occupy the property under family law,<sup>7</sup> including a written undertaking to serve a claim on them.

## Defending orders for sale

### *Order for sale against sole/ all joint owners*

Where the property is owned by the client alone or the original charging order has been granted against all joint owners, the court is likely to order a sale, unless:<sup>8</sup>

- the debt can be paid within a reasonable time, or
- the hardship caused is disproportionate to the size of the debt and the circumstances of the creditor.

While the court is not required to consider the welfare of children living in the property,<sup>9</sup> a right of occupation by a spouse or civil partner may have priority. This applies only in circumstances where the spouse or civil partner had resided in the property before the original charging order was granted. If this is the case, a creditor will have to ask the court to end any matrimonial rights to the property first.<sup>10</sup> In most circumstances, the creditor's application is likely to be granted.

### *Order for sale against one joint owner*

If the property is jointly owned and the original charging order has not been made against all joint owners, the court should consider additional provisions that apply to enforcement of equitable charges. These are:<sup>11</sup>

- the circumstances in which the charging order was created
- the circumstances of the people living in the property
- the welfare of any children
- the interests of other secured creditors or beneficiaries, for example a partner with a beneficial interest.

Once the relevant factors have been considered, the court will decide how much weight to give to each factor and how to balance the interests of the parties.<sup>12</sup> If the equity value significantly exceeds the debt and there are children in the property, the court may postpone the sale.<sup>13</sup>

**In this article Alexa Walker explains enforcement of charging orders by way of orders for sale and outlines what defences may be available to clients facing an order for sale.**

**Alexa Walker is a Specialist Debt Adviser at the Specialist Debt Advice Service and a Senior Legal Writer in the Central Legal Team at Shelter.**

## Human rights

Where a charge is sought to be enforced against one of the joint owners, the court's consideration of the factors above will ensure that the proportionality of an order for sale, required by human rights law,<sup>14</sup> has been taken into account. In cases where the court is asked to enforce a charge against a sole owner or all joint owners, additional consideration will have to be given to proportionality.<sup>15</sup>

## Insufficient equity

In some circumstances, there may not be enough equity in the property for the creditor to recover the sums secured by the original charging order. This may be used to negotiate with the creditor to discontinue with their claim or, if the creditor does not agree,

to persuade the judge that it would be disproportionate to make the client homeless as the main purpose of obtaining an order for sale would not be achieved.

## Court costs

In most circumstances, claims for an order for sale are allocated to the multi-track.<sup>16</sup> This is significant for two reasons: First of all, the rules are strict. For example, there may be pre-trial hearings and case management directions to comply with, and the court can impose costs sanctions if directions are not followed.<sup>17</sup> The second consideration is cost – if the client's defence is not successful and no legal aid is available, they will likely have to cover the creditor's court costs as well as their own.

### Practical steps

In the author's experience, unless the debt is very large, District Judges are reluctant to order the sale of property where it is the home of the borrower and/or their family, particularly where there are children living there.

Because of the strict procedural rules, clients will benefit from legal representation. If this is not possible, advisers can assist by ensuring the creditor has followed the correct procedure outlined in this article.

It is good practice to submit written evidence in the form of a witness statement that outlines the following:

- the circumstances of the debt (if it was a loan, what was it for and what happened to make it unaffordable)
- who lives in the house and whether any resident is under 18, disabled or vulnerable
- how much equity is in the property and whether this would be enough to secure suitable alternative accommodation
- the financial circumstances of the client and any steps that have been taken to negotiate repayment (include a financial statement where appropriate)

If there are children in the property, the court may be willing to postpone the sale until they reach the age of eighteen.<sup>18</sup> Offering payments in the meantime may help persuade the court that this will not cause undue prejudice to the creditor, so preparing a financial statement as evidence is an important step.

## Filing a defence

There is no separate defence form for Part 8 claims. Instead, the client would be required to complete an acknowledgement of service (received with the claim) within 14 days of the date of service of the claim.<sup>19</sup>

Clients wishing to contest the claim should complete section B of the acknowledgement

of service and send it, along with written evidence, to the court and the creditor. Further evidence may then be filed within 14 days. The court will give directions to the parties for how the claim and defence will be heard. If no acknowledgment of service is filed, the client may still attend the court hearing, but they will need the court's permission to take part in it.<sup>20</sup>

## Shelter Legal

### [Orders for sale and charging orders](#)

#### Footnotes

<sup>1</sup> See A. Walker, 'Charging orders – an overview' Housing matters 132 October 2019 and A. Walker, 'Charging orders and different types of ownership' Housing matters 133 December 2019.

<sup>2</sup> s.3(4C) Charging Orders Act 1979.

<sup>3</sup> Charging Orders (Orders for Sale: Financial Thresholds) Regulations 2013 (SI 2013/491).

<sup>4</sup> Consumer Credit Act 1974 regulates most credit and hire agreements, such as credit cards, personal loans, catalogues, hire purchase, overdrafts, etc.

<sup>5</sup> CPR 73.10C(4). See [Section 1 Part 73 CPR](#).

<sup>6</sup> If the sum secured by the charging order is less than £350,000, the claim will be made in the County Court hearing centre that made the charging order (CPR 73.10C(3); s. 23 County Courts Act 1984).

If the charging order was made in the County Court Money Claims Centre (CCMCC), the claim will be issued in the client's home court (CPR 73.10C(2)). Where the judgment debt exceeds £350,000, the claim is made to a Chancery district registry of the High Court, who has discretion to transfer the matter to the client's local court to allow the claim to be defended (*National Westminster Bank v King* [2008] EWHC 280 (Ch)).

<sup>7</sup> see s.31(10) Family Law Act 1996.

<sup>8</sup> *Packman Lucas v Mentmore Towers* [2010] EWHC 1037 (TCC).

<sup>9</sup> *Pickering v Wells* [2002] All ER (D) 281.

<sup>10</sup> *Fred Perry Holdings v Genis* [2014] EWHC 1365 (Ch).

<sup>11</sup> s.15 Trusts of Land and Appointment of Trustees Act 1996.

<sup>12</sup> *Mortgage Corporation v Shaire* [2001] 4 All ER 364.

## Defending an order for sale in bankruptcy proceedings

When a bankruptcy order is made, the property of the bankrupt (with certain exceptions for basic household needs and tools of the trade), vests in the trustee, who will seek to sell the assets to pay the costs of the bankruptcy.<sup>21</sup> Any remaining sums will be distributed amongst the bankruptcy creditors entitled to receive a dividend.

In most cases, where the trustee is seeking to sell the home, the bankrupt will be a sole or joint legal owner.<sup>22</sup>

The trustee's claim for an order for sale of a family home must be made within three years of the bankruptcy. After this point, the interest in the property will no longer form part of the bankruptcy estate.<sup>23</sup>

### *Sale within 12 months*

If the trustee issues a claim for an order for sale in the 12 months following the bankruptcy order, the court can take into account the circumstances of the bankrupt and anyone else living in the family home.<sup>24</sup>

### *Sale after 12 months*

Where the application is made after the end of one year, the court must assume that the interests of the creditors outweigh those of the bankrupt and their family.<sup>25</sup>

The court can only postpone the sale where there are exceptional circumstances beyond the 'melancholy consequences of debt and improvidence' leading to eviction and relocation to less suitable accommodation.<sup>26</sup> Exceptional circumstances are not defined in law. One example of circumstances that have been deemed exceptional is where the local authority required extra time to provide suitable accommodation for the bankrupt's wife with a serious mental illness.<sup>27</sup>

### *Insufficient interest*

The court must dismiss the application for an order for sale if:<sup>28</sup>

- the property is the sole or principal residence of the bankrupt or their family, and
- the bankrupt's interest has a value of less than £1,000.<sup>29</sup>

In practice, where the bankrupt's interest is less than £10,000, the Official Receiver will normally seek to obtain a charging order instead of an order for sale.<sup>30</sup>

## Legal aid

Where a client is at risk of losing their home, legal aid may be available,<sup>31</sup> however it will be means tested. The Legal Aid Agency's online eligibility calculator can be used to assess whether the client is financially eligible.

### After an order for sale is made

If the creditor obtains an order for sale and the client does not move out by the date specified on the order, the creditor will have to apply for a warrant.

Clients in this situation who have not been able to secure suitable alternative accommodation would be advised to make a homeless application to their local authority.

## Footnotes

<sup>13</sup> *Edwards v Lloyds TSB Bank* [2004] EWHC 1745 (Ch).

<sup>14</sup> Art. 8(2) European Convention on Human Rights

<sup>15</sup> *Close Invoice v Pile* [2008] EWHC 1580 (Ch).

<sup>16</sup> CPR 26.6(6).

<sup>17</sup> The rules for multi-track claims are contained in CPR 29.

<sup>18</sup> *Austin-Fell v Austin-Fell & Midland Bank plc* [1990] 2 All ER 455.

<sup>19</sup> Date of service: (1) claims issued in a County Court hearing centre – two business days after the date of posting (CPR 6.14); (2) claims issued in the CCMCC – five calendar days after the claim was issued (CPR PD 7E 5.7).

<sup>20</sup> CPR 8.4(2).

<sup>21</sup> s.283 Insolvency Act 1986.

<sup>22</sup> Where the owner has been subject to a bankruptcy order, a trustee will be appointed to deal with the bankrupt's interest. If the bankrupt has an equitable interest only, the application is made to enforce a trust of land, with the court having regard to the factors set out above in relation to an equitable charge (see s.335A(1) Insolvency Act 1986).

<sup>23</sup> s.283A Insolvency Act 1986.

<sup>24</sup> s.335A(2) Insolvency Act 1986.

<sup>25</sup> s.335A(3) Insolvency Act 1986.

<sup>26</sup> *Re Citro* [1991] Ch 142.

<sup>27</sup> *Re Raval* [1998] 2 FLR 718.

<sup>28</sup> s.313 Insolvency Proceedings (Monetary Limits) Order 1986 (SI 1986/1996), art 3 and schedule.

<sup>29</sup> Meaning that after legal charges are paid off, there would be less than £1,000 available to cover the cost of bankruptcy proceedings and pay dividends to the bankruptcy creditors.

<sup>30</sup> Insolvency Service Technical Manual (archive) Ch 31.3.246.

<sup>31</sup> see s. 33 Sch 1, Part 1 Legal Aid, Sentencing and Punishment of Offenders Act 2012.

# How to prove EU settled status?

Feature

In preparation for UK's departure from the EU, the Home Office has launched EU Settlement Scheme ('the Scheme') aimed at EU citizens and their family members who wish to continue living in the UK after the departure process is completed. Under the scheme, applicants can apply for two types of status:

- settled status
- pre-settled status

The difference between the two should not be underestimated; settled status, also known as 'settlement' or 'indefinite leave to remain' (ILR) conveys eligibility for public funds, including social housing and homelessness assistance. Pre-settled status does not. In order to access public funds, pre-settled status holders would have to demonstrate some other basis for entitlement to public funds.

Until EU law no longer applies in the UK,<sup>1</sup> applicants can access public funds (including homelessness assistance) by:

- proving they have settled status under the Scheme, or
- demonstrating they have a qualifying right to reside under EU law.

In other words, applicants who have been granted settled status under the Scheme are eligible for public funds even if they are not exercising EU Treaty rights at the time of their application for assistance. This is especially relevant in the case of applicants who do not have a qualifying right to reside under EU law or whose right to reside does not convey eligibility,<sup>2</sup> but who have successfully obtained settled status under the Scheme.

## Digital by default

The Scheme is digital by default, meaning that applicants can only prove their status on-line. No other correspondence is sent out by the Home Office and no stamps in passports or biometric documents are issued. Once the application has been considered,

the applicant will receive an email from the Home Office with a copy of the 'status outcome' letter attached as a pdf document (see page 9). The letter is the only tangible evidence of settled status. While the letter states it is not proof of settled status (see the sections marked 1 and 3 in the letter on page 9), it should be accepted by local authorities as 'reason to believe' the applicant may be eligible for the purpose of securing interim accommodation under section 188(1) of the Housing Act 1996.

## How to prove settled status on-line?

The web site address cited in the letter above 'http://view-and-prove-your-rights.homeoffice.gov.uk/' (see the section marked 2 in the letter on page 9) does not work. This may present a problem if the applicant has a printed copy of the letter, because agencies will not be able to access the necessary information by typing this address into a browser.

However, when clicked on, the link redirects to <https://www.gov.uk/view-prove-immigration-status>. This is the right web address to use.

In order to access their account, the applicant will need:

- details (serial number, etc) of the ID they used to register with the Scheme, for example a passport on an EU national ID card. Note, that if the document has since expired but the applicant has not told the Home Office, they may have to submit the details of the expired ID.<sup>3</sup>
- access to either the mobile number or the email address the applicant used when they applied for settled status (a one-time pass code will be sent to it). This may prove a challenge if the applicant has used someone else's number to register or they have lost access to their mobile number and/or email address since they first registered.
- their date of birth.

**In this article Ewa Brem walks us through the process of proving settled status granted under the EU Settlement Scheme.**

**Ewa Brem is a Senior Legal Writer in the Central Legal Team at Shelter and the editor of Housing matters.**



Home Office

Tel 03001237379  
Web <http://www.gov.uk/ukvi>  
Our Ref [REDACTED]  
Date [REDACTED]

Dear [REDACTED]

I am pleased to inform you that your application to the EU Settlement Scheme has been successful and that you have been granted **Indefinite Leave in the United Kingdom**, under Appendix EU to the Immigration Rules. This is also referred to as **settled status**. If you were in the UK on the date of your application, that is Indefinite Leave to Remain. If you were outside the UK on the date of your application, that is Indefinite Leave to Enter.

1

Your status takes effect from the date of this letter, which can be found above.

Your settled status in the UK can be confirmed online through the GOV.UK service 'View your settled or pre-settled status': [view-and-prove-your-rights.homeoffice.gov.uk](http://view-and-prove-your-rights.homeoffice.gov.uk).

2

You will be able to use the online service to show your settled status in the UK. **This letter is not proof of your status.**

3

Read the section below titled **important information** to find out more about viewing your status online and about your status and rights including your right to work and to access benefits and services.

If you have any questions or would like to discuss this letter, details on contacting us can be found on our website: <https://eu-settled-status-enquiries.service.gov.uk>.

Yours sincerely,

UKVI European Casework

On behalf of the Secretary of State

**Important information**

**Your status**

As you now have settled status there is no time limit on how long you can stay in the UK.

**Your settled status gives you the right to stay in the UK under UK immigration law. At the same time, you can also continue to rely on any rights you have as an EEA or Swiss citizen or family member of an EEA or Swiss citizen under EU law for as long as it remains in force in the UK: [www.gov.uk/right-to-reside](http://www.gov.uk/right-to-reside).**

4

The front page of the status outcome letter sent by the Home Office as an electronic pdf attachment to applicants granted settled status under the EU Settlement Scheme.

Once the applicant logs in to their account, the 'Your status' information will be displayed with entitlement to public funds confirmed in the 'Details' section below:

**GOV.UK** View and prove your immigration status

**BETA** This is a new service - your [feedback](#) will help us to improve it.

## Your status

**Status**

**Applicant's photo**

**Applicant's name**

You have settled status, also known as indefinite leave to remain.

**Details**

You can live, work and study in the UK, and access public funds and services.

There is no limit on how long you can stay in the UK.

Read about [your rights with settled or pre-settled status](#).

Rotate ↻

If your name is spelt wrong or your photo is not correct, contact the [EU Settlement Resolution Centre](#).

**Update your details**

To access your online status, your contact details and identity document must be up-to-date.

If you get a new identity document, or change your name, phone number, or email, you must update these.

[Update your details](#)

**Prove your status**

If you need to prove your status, for example, to help you get hospital treatment, council housing, or for work in the UK, you can do this online.

[Prove your status to someone](#)

Until 31 December 2020, you can still show your identity documents to prove your rights in the UK.

**Finish and leave service**

The applicant can then acquire an access code to pass on to a third party (for example, a local authority or a benefits office). The code enables the third party to confirm the applicant's settled status. This can be done by clicking on the 'Prove your status to someone' option (circled in red above). The applicant will be then prompted to choose one of the following options:

- work in the UK
- get hospital treatment
- claim benefits or tax credits
- get homelessness assistance or council housing
- open a bank or building society account
- get a loan or credit card, or another reason.

**Why are you proving your status?**

I want to:

- work in the UK
- get hospital treatment
- claim benefits or tax credits
- get homelessness assistance or council housing
- open a bank or building society account
- get a loan or credit card

or

- another reason

**Continue**

Once the applicant selects an option and chooses 'continue', they will get a preview of what information the third party will see:

**Preview your information**

This is what they will see:

**Status**

**Applicant's photo**

**Applicant's name**

They have settled status, also known as indefinite leave to remain.  
There is no limit on how long they can stay in the UK.

Rotate ↻

Create a share code so they can see your status online.

**Continue**

Note that the preview of the page for third parties (above) does not mention entitlement to public funds. However, most agencies should be aware that applicants with settled status granted under the Scheme can access public funds without restrictions. By clicking 'continue' (circled in red above), the applicant will obtain the access code (a combination of

letters and numbers), which is valid for 30 days. There is no limit on the number of codes that can be issued.

The last page tells the applicant what information to provide to the third party they wish to share the confirmation of their settled status with and gives the option to send the access code by email:

**Details you need to share**

Share code

**Code displayed here**

This code lasts for 30 days - it is valid until 18 January 2020.

**What to do next**

- 1 Give this share code and your date of birth to the person you want to prove your status to.
- 2 To see your status, they must enter the share code and your date of birth at [www.gov.uk/check-settled-status](http://www.gov.uk/check-settled-status).
- 3 Contact them to make sure they have all the information they need.

To prove your status to someone else, you can re-use this code or create a new code - there is no limit to how many codes can be used at the same time.

[Print this page](#)

**Send code by email**

Finish and leave service

Since EU law allows for a right to reside to be acquired through conduct,<sup>4</sup> applicants who are exercising EU Treaty rights at the time of their application for public funds may choose to rely on them instead. However, applicants who do not possess any

other qualifying immigration status may have to present evidence of settled status granted under the Scheme in order to receive assistance from housing and benefits authorities. It is of paramount importance they and their advisers know how to do it.

**Footnotes**

<sup>1</sup> Until the end of transition/ implementation period (currently 31 December 2020).

<sup>2</sup> For example, primary carers of dependant British nationals, also known as 'Zambrano' carers.

<sup>3</sup> If this is the case, it may be advisable to update the Home Office asap (it can be done on-line [here](#)), because settled status is linked to the applicant's proof of ID.

<sup>4</sup> For example, and EEA national will become eligible as a result of securing employment and a non-EEA national will acquire entitlement to public funds as a result of marrying or entering into a civil partnership with an eligible EEA national. This is different to the domestic UK regime which requires a person to apply for and be granted an immigration status by the Home Office.

# Brexit: EEA nationals

**This factsheet explains the rights of EEA nationals and their family members in the UK after Brexit.**

**EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, plus Iceland, Norway, Liechtenstein and Switzerland.**



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

With the UK leaving the EU, the future rules around entitlement to homelessness assistance, social housing and benefits will change. For now, **EEA nationals and their family members** (irrespective of nationality) can still rely on rights under EU law, which will be retained in the UK until the end of implementation period. It means that until at least 31 December 2020, EU law will continue to apply in the UK. In addition, EEA nationals and their family members can rely on status granted under the EU Settlement Scheme, which is part of domestic UK law.

## Rights under EU law: free movement

Under EU law, EEA nationals are eligible if they have a qualifying right to reside, for example:

- are economically active as workers or self-employed
- have a permanent right to reside (PRTR) – usually acquired automatically after 5 years of exercising rights under EU law.

An EEA national who used to be economically active may continue to be eligible even if they are not working at the time they apply for help, for example, because they are sick, pregnant, in vocational training or they have lost their job but have registered with a job centre and are looking for another one.

Family members of eligible EEA nationals are eligible and, in certain circumstances, may retain their rights and continue to be eligible even if the EEA person dies or leaves the UK. Some family members, for example unmarried partners, need documents from the Home Office confirming their status. Others, for example children and spouses, don't need them. Family members can have their own PRTR, for example if they have lived in the UK as a family member of an EEA national for 5 years.

Some family members have a derivative right to reside which doesn't count towards the 5 years' PRTR. These are mainly:

- primary carers of any nationality of children in education in the UK, where the other parent was an EEA worker at some point when the child was resident in the UK, and
- non-EEA primary carers of British children or vulnerable British adults.

Only the former are eligible for help from the housing department; the other group should be assisted by social services.

EU law rules can be complicated and it may be necessary to seek further advice.

## Rights under UK law: EU Settlement Scheme

EEA nationals and their family members (including those with a derivative right to reside) who wish to continue living in the UK after 30 June 2021 should apply to the **EU Settlement Scheme** before that date. The Scheme grants status based on the length of residence in the UK either as an EEA national or a family member, including those with derivative or retained rights.

The Scheme grants two types of status:

- **settled status** – usually granted to those who have lived in the UK for 5 years
- **pre-settled status** – granted to those who have lived in the UK for less than 5 years.

Settled status is a form of **indefinite leave to remain**. People with settled status are **eligible** for help when homeless, social housing and benefits. They don't have to exercise EU Treaty rights.

People with pre-settled status aren't eligible, unless they have a qualifying right to reside under EU law (see above). They will be able to apply for settled status after they have lived in the UK for 5 years, even if that date is after 30 June 2021.

EU Settlement Scheme is UK immigration law. Those who are finding it difficult to apply, who have been refused status or granted an incorrect one, should seek advice from a **charity** funded by the government to help with applications under the Scheme or from a **certified immigration adviser**.

The EU Settlement Scheme is digital only. No biometric documents are issued and the Home Office does not stamp passports. The only way to prove status granted under the Scheme is to visit the gov.uk web site: [www.gov.uk/view-prove-immigration-status](https://www.gov.uk/view-prove-immigration-status).

## After the UK leaves the EU

In order to be allowed to stay in the UK, those who miss the EU Settlement Scheme deadline may have to apply under a new immigration system. We don't know yet what the new rules will be like.

## Further advice

You can get further advice from [england.shelter.org.uk/housing\\_advice](https://england.shelter.org.uk/housing_advice), local Shelter advice service or local Citizens Advice. If you have nowhere to sleep tonight, are at risk of harm or losing your home within the next 2 months, call Shelter Helpline on **0808 800 4444** for advice and information on your options.\*

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