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

Housing matters

Issue 132 October 2019

NHAS National Homelessness Advice Service

Specialist support on housing advice

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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 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

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.
- **housing debt 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 enquiries about NHAS services, please email nhas@shelter.org.uk or call **0344 515 2268**.

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National Homelessness Advice Service

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What's new?

Tenant Fees Act 2019 – guidance
HM Courts & Tribunal Service has published Guidance on applications and appeals under the Tenant Fees Act 2019 (TFA3). The guidance offers advice on the processes (e.g. where a tenant wishes to recover a prohibited payment from a landlord/agent), the forms and the associated fees.

Right to rent checks – non-EEA eGate users
On 2 August 2019, the Home Office updated its right to rent guide to include information on how to conduct checks on visitors from Australia, Canada, Hong Kong, Japan, Singapore, South Korea and the United States who are visiting the UK for up to six months and have entered the UK via an eGate.

Self-employed EEA nationals
In HMRC v Henrika Dakneviciute [2019] CJEU C-544/18, the Court of Justice of the European Union confirmed that a self-employed EEA national who gives up self-employment due to the physical constraints of the late stages of pregnancy and childbirth will retain her right to reside, provided she returns to being economically active within a reasonable period after the child is born.

Family members of EEA nationals
With effect from 15 August 2019, the Immigration (European Economic Area) (Amendment) Regulations 2019 SI 2019/1155 amend the Immigration (European Economic Area) Regulations 2016 SI 2016/1052 to implement the judgment in SM v Entry Clearance Officer, UK Visa Section C-129/18 (non-adoptive legal guardianship orders and extended family member status) and clarify the practical application of the EU law in relation to the rights of relatives of EEA nationals' spouses/civil partners.

Possession against a successor
In Yildiz v London Borough of Hackney [2019] EWCA Civ 1331, it was held that the landlord could not rely on ground 15A Sch. 2 of the Housing Act 1985 (under-occupation following succession) where the date specified in the notice of proceedings had expired and possession proceedings had commenced more than 12 months of the 'relevant date' – the date of the previous tenant's death or the date on which the landlord became aware of it. Possession proceedings had to be issued either while the notice of proceedings served under section 83 of the Act remained current or within 12 months of the 'relevant date'.

Universal credit – managed migration
In force from 24 July 2019, regulations 2 and 3 of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 SI 2019/1152 create the universal credit (UC) managed migration 'pilot' and amend the Universal Credit (Transitional Provisions) Regulations 2014/1230 to introduce the managed migration process for moving 'legacy' benefits claimants to UC. The number of 'notices to claim' issued under the UC 'pilot' scheme is restricted to 10,000.

Universal credit and prisoners
DWP has published a new guide for staff supporting prisoners and prison leavers with making and managing claims for Universal Credit (UC). The 'Supporting prison leavers: a guide to Universal Credit' publication offers information on how to prepare for making a claim for UC, how to submit it, what help with housing cost is available when in prison and how to access support from DWP and other organisations. The guide is part of a collection of resources available on the Universal credit and prison leavers Gov.uk web site.

Benefits for EEA nationals
(1) The DWP has issued two memos: ADM 14/19 - Right to reside: UC, and DMG 11/19 - Right to reside: IS, JSA, ESA & SPC in which it advises that decision makers should not refuse A8 EEA workers the right to reside on the grounds of not having complied with the Worker Registration Scheme between 1 May 2009 and 30 April 2011. The memos implement the Supreme Court's decision in SSWP v Gubeladze [2019] UKSC 31.

(2) MHCLG has published a guide for local authorities on the rights of EEA citizens in relation to accessing benefits, social housing and homelessness assistance if the UK departs from the EU without a deal.

(3) The House of Commons Library has published a briefing outlining EEA nationals' entitlement to benefits in the context of Brexit.

Shared ownership – open consultation
The government is consulting on reforming the shared ownership model. The deadline for responses is 29 September 2019.

Charging orders – an overview

In this article, Alexa Walker discusses circumstances in which a charging order might be granted, the procedure for granting such an order and avoidance tactics for clients. It is the first article in a series of articles on charging orders and orders for sale.

Alexa Walker is a Specialist Debt Adviser on the Specialist Debt Advice Team at Shelter.

Charging orders allow creditors to secure debts on the borrower's home. Unless repaid, the debt is satisfied when the property is sold, remortgaged or when the borrower dies. According to Debt Camel, in 2018 more than 26,000 charging orders were made.[1] Once a charging order is granted, the creditor may attempt to force the sale of the property to redeem the charge rather than wait for the client to sell or remortgage.

A charging order on a property converts a previously unsecured debt into a secured debt by way of securing the outstanding amount against the client's home.

Identifying the debt

When supporting a client who is at risk of a charging order or has had one secured on their property already, the first step is to identify the type of debt the charging order relates to. Debts that can be secured by way of a charging order include:

- county court judgments (CCJs)
- council tax arrears subject to a liability order
- bankruptcy liabilities
- statutory charges in respect of legal aid.

CCJs are the most common type of debt secured by way of a charging order.

Identifying the debt allows advisers to consider whether the client can challenge their liability for the original debt or argue against the charging order securing that liability. In most cases, it is possible to attach conditions to a charging order to prevent enforcement by sale, for example by asking the court to specify that as long as the client complies with the money judgment (i.e. makes payments as ordered by the court), an order for sale cannot be granted.

It is worth bearing in mind that in any proceedings that relate solely to the charging order, the court will not consider submissions disputing the client's liability for the debt itself. The client would have to make a successful application to set aside the original money judgment/liability order for the charging order application to fail on this ground.

Interim orders

Usually, when applying for a charging order, creditors will ask the court for an interim order to register a restriction immediately, so that the property cannot be disposed of before the court considers their claim.[2] The restriction is visible as a notification at the Land Registry, warning potential purchasers that there may be another party with an interest in the land. At this stage the court will not consider any substantive issues, i.e. the client's defence to the charging order itself. However, if a final charging order is successfully opposed at the later stage, the interim restriction will be lifted.

Where the charging order is made in respect of a judgment debt or council tax arrears,[3] the application will be made to the County Court Money Claims Centre (CCMCC). Applications are made under Part 73 of the Civil Procedure Rules (CPR) and Practice Direction (PD) 73.

The initial procedure:
(1) The creditor makes an application to CCMCC on form N379. Subject to certain exceptions,[4] it is initially dealt with by a court officer without a hearing.

(2) The court officer makes an interim charging order or refers the matter to a judge for consideration.

(3) An interim charging order is granted.

The client will usually first hear about a charging order when the Land Registry notifies them that one has been made in the county court.

The creditor must serve copies of the interim order, application notice and supporting evidence on the client, their spouse/civil partner, co-owners, and any other creditors as directed by the court within 21 days of the interim charging order, supported by certificates of service within 28 days.

A written request for a reconsideration can be made within 14 days of service of the interim order. The deemed date of the service of the order is 5 days from when it was posted.[5] There is no fee and reconsideration will take place without a hearing.

Final orders

If no objections are filed after the interim order is made, the final order will be made in CCMCC without a hearing. Therefore, if the client or any person with an interest in the property wishes to object to the charging order being made final, they must file written evidence stating the grounds of objection within 28 days after receiving the creditor's application notice and the interim order.[6] A copy of the defence must also be served on the creditor. The matter will then be transferred to the client's home court for a hearing.

Where a creditor is successful in applying for a charging order, fixed costs of £110 will be added to the debt,[7] although the court retains the discretion 'to order otherwise' i.e. to pay the actual reasonable costs of the creditor.[8] It is possible for the creditor to apply for interest to be added to the debt alongside any cost.[9]

Objecting to the final order

Grounds for objecting to the final order can be broadly classified as follows:

Disputing liability for the original debt

The client will need to make an application to set aside the order that relates to the debt itself and request that the court adjourns the charging order proceedings in the meantime. If the original judgment was entered in default (without a defence or admission having been filed), the court may set aside the judgment if the client:[10]

- has a good reason for not defending the claim in the first place (e.g. they were in hospital and unable to file a defence/ attend a hearing at the time), and
- has acted promptly once discovered a money judgment had been made, and
- has a defence with good prospects of success.

The fee to make this application is £255 subject to the usual **exemptions**.

Insolvency

Where the client has been made bankrupt or has entered into an Individual Voluntary Arrangement (IVA), the court can refuse to make the charging order final, since it has been determined by the House of Lords that where a borrower has been adjudged bankrupt, creditors should act under the appropriate legal framework for insolvency.[11] The court may also exercise discretion to refuse a final charging order where the bankruptcy or IVA is not yet in force, but this will depend on the facts of the case.

Special circumstances

In deciding whether to make a charging order final, the court will consider the client's personal circumstances and whether any other creditor would be 'unduly prejudiced by the making of the order'.[12]

The first consideration will generally be given limited attention and only the most unusual personal circumstances would prevent a charging order being made. For example, if the client is in the process of a divorce, this may be sufficient to deny the creditor a charging order, or to adjourn the proceedings until the financial affairs are settled. A spouse in occupation of the matrimonial home is entitled to make representations under this section as to 'all the circumstances of the case', whatever the position as to ownership.[13]

The position of other creditors will normally only be taken into account if they object following notification by the creditor who applied for the charging order.[14]

Note that, unlike an order for sale, it is not possible to object to a charging order on the basis that more than six years have passed since the money judgment was obtained or that the client's property is in negative equity.[15]

Instalment orders

An instalment order imposes and obligation on the client to repay the debt in instalments. If an instalment order was made before 1 October 2012 and the payments are up to date, this will prevent the creditor from obtaining a charging order. After this date, new provisions were introduced that allow the creditor to apply for a charging order even where there has been no breach. Maintaining an instalment order made on or after 1 October 2012 will not in itself prevent a charging order from being made but will prevent enforcement by sale.[16]

It is not unusual for clients not to seek help until some time after the creditor has commenced proceedings to enforce the debt. Many clients present at a point when a charging order has already been made and they are threatened with an order for sale. The next two articles in this series will discuss different types of interests in land and how to prevent an order for sale.

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Orders for sale and charging orders

Footnotes

[1] Sara Williams, **Are you worried about a charging order?** Debt Camel, 16 April 2019.

[2] s. 41 Land Registration Act 2002, standard Form K.

[3] It is worth noting that even though CPR 73 allows an application for a charging order in respect of council tax arrears to be made in the CCMCC, reg 50(3)(d) of the Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 specifies that an application should be made in the county court where the dwelling is situated.

[4] CPR 73.4(4) – exceptions are if application relates to certain trust property or business partnership property, or if there was an instalment order in place before 1 October 2012.

[5] CPR PD 7E 5.7.

[6] CPR 73.10.

[7] CPR 45.8.

[8] See CPR 45.1.

[9] Generally, for judgments in a sum exceeding £5000, where the original debt was not regulated by the Consumer Credit Act 1974, the charging order will also secure any statutory interest accruing on the debt – see s.74 County Courts Act 1984 and s.2 County Court (Interest on Judgment Debts) Order 1991. Statutory interest will not run where the judgment debt is subject to an instalment order that is up to date - see s.3 County Court (Interest on Judgment Debts) Order 1991. Where a creditor is claiming contractual interest under the judgment, specialist advice should be sought.

[10] CPR 13.3.

[11] Roberts Petroleum v Bernard Kenny [1983] 1 All E.R. 564 HL.

[12] s. 1(5) Charging Orders Act 1979.

[13] Harman v Glencross [1986] 1 All E.R. 545 CA.

[14] p. 2461, Civil Court Practice, Butterworths, 2019.

[15] Fraenkl-Rietti v Cheltenham & Gloucester PLC [2011] EWCA 524.

[16] ss. 93(1) and 93(3) Tribunals, Courts and Enforcement Act 2007.

Instalment order obtained by the creditor before 1 October 2012

↓

The client defaults (e.g. misses a payment) – otherwise no application possible.

↓

The creditor applies for a charging order.

If a charging order cannot be opposed, it is advisable to ask for conditions to be attached, e.g. no order for sale possible as long as the instalment order is complied with.

↓

The creditor applies for an order for sale.

Instalment order obtained by the creditor on/after 1 October 2012

↓

The creditor applies for a charging order (no default on the client's part is necessary).

If a charging order cannot be opposed, it is advisable to ask for conditions to be attached, e.g. no order for sale possible as long as the instalment order is complied with.

↓

The client defaults (e.g. misses a payment) – depends on the wording of the charging order.

↓

The creditor applies for an order for sale.

HRA – one year on

In this article, Daniel Ferlance explains how the Homelessness Reduction Act 2017 has influenced the way in which Southwark Council delivers its housing and homelessness services.

Daniel Ferlance is a Housing Solutions Manager at Southwark Council.

The Homelessness Reduction Act 2017 (HRA) is arguably the biggest shift in homelessness legislation since the Homeless Persons Act 1977. Among those in the housing needs field who have gone through the 1985 and 1996 Housing Acts and all the subsequent amendments, the views appear to be mixed. The common agreement seems to be that something had to change – the 1996 Act and the subsequent amendments, however well intended, appeared to result in undesirable outcomes for many applicants.

The decisions around what 'vulnerability' meant and who had a vulnerability-related priority need for accommodation became the focal point of housing need assessments. If a local authority was not satisfied that the applicant had it, advice and assistance was provided, which was, at best, well intended but often limited to sheets of paper with information about night shelters or, at worst, a way of gatekeeping limited resources, with budget cuts and austerity listed as some of the reasons.

Amongst other matters, the HRA intention was to change the service delivery culture. This included:

- providing greater access for all
- developing collaborative approaches to addressing housing needs
- improving the experience of people in difficult housing situations
- preventing homelessness at every opportunity
- reducing crisis intervention.

Southwark's operational context

The Southwark Council's Housing Solutions Service (HSS) is primarily based in the centre of Southwark, in Peckham, London. The Homesearch Centre (HC) is divided into the First Contact Service (FCS) and the Prevention Hub (PH).[1]

The FCS is made up of the Customer Services, Homelessness Assessments, Private Sector Tenancy Relations, Supported Housing for Singles and Temporary Placements. The PH delivers the following services: Financial Inclusion, No First Night Out, Housing First along with Housing Choice and Supply Services, such as tenancy workshops and property finding. The HSS co-locates with Shelter, who provide independent housing advice, Solace Women's Aid and the Department for Work and Pensions. We also deliver outreach work and surgeries at our probation offices and local hospitals, along with delivering homelessness reviews and training services to authorities across the country.

The HSS had started its journey towards changing the experience of customers before the HRA, nevertheless it is fair to say that we saw the HRA as an enabler to support a new way of thinking and create an environment that was inclusive, receptive and outcome focused.

As an early adopter of the principles of the Act, we had the benefit of testing out and developing practices, however it also resulted in constant change, misunderstandings, and challenges around managing expectations both internally and externally.

As the HRA was being implemented, we asked ourselves seven questions:

- Who are our customers?
- Where are they or where are they likely to come from?
- What services are they linked into or likely to access?
- Who are the stakeholders?
- Is there funding or other resources?
- What is the perspective of others on the services that we deliver?
- What is the current profile of our staff and management and is this fit for our new purpose?

We found three overarching cohorts within our customer base:

- living somewhere and need support to stay (Prevention)
- living somewhere and need support to find somewhere else (Prevention or Relief)
- not living somewhere and need support to find somewhere to live (Relief).

As a result, we have improved our approach by taking the following steps:

(1) Utilising the roles of visiting officers and capturing trends such as what areas

customers have approached us from and would be likely to approach from in the future, as well as the reasons for approaching.

(2) Recording information on customers who had approached the service multiple times, leading to an improved insight into customers' needs and experiences.

(3) Increasing our online presence and utilising technology to deliver information, including improving our website and providing visual information on key services and issues (e.g. on the local housing allowance).

(4) Opening out the referral duty beyond the list of prescribed public bodies by providing presentations to community groups, inviting interested parties to discuss the service with HSS staff and tell us of their experience of accessing it.

(5) 'Growing our own' and development from within. We have launched the Apprenticeship Programme and trained all staff in key areas, such as mental health and resilience, customer care, active listening and motivational interviewing.

(6) Developing strong leadership and encouraging managers to become professionally qualified.

The challenges	What we did?
Increase in demand for services necessitating a strategic assessment of what was important to our customers and us.	We undertook a study of the customer journey and application handling upon approach.
The structure and size of the service required reshaping due to financial pressures.	We achieved a flatter and more accountable structure by reorganising our services.
The need for further changes to the service culture and a shift in mindset towards collaborative working and customer centred approach.	We trained our staff in the techniques needed to be effective in the new way of working. For some staff this resulted in seeking opportunities elsewhere.
Homelessness Case Level Information Collection.	We continued to develop our IT system and a pool of officers to provide key data for the Government.
Promoting the private sector (PRS) as a viable option.	We created tenancy workshops and first contact property finding services.

Outcomes in our first year of the HRA

Demand increased by 20%. In 2017/18, 22,000 people visited the HSS Homesearch Centre and in 2018/19 this increased to 26,000. Our partners Shelter and Solace saw over a thousand households in the same period. Customer satisfaction has increased to 89% and the staff morale is high. The Customer Service Excellence award has been renewed and 39% of positive feedback across the Council came from the HSS. There has been a reduction in waiting times for customers approaching the service and a 40% increase in decision making productivity. We have reduced the number of intentional homelessness decisions from 12% to 5% of all negative decisions. There has also been an improvement in the speed and quality of review decisions, resulting in reduced litigation.

We have observed a 25% increase in PRS preventions and housed over 160 single households with no priority need. We make a full use of Discretionary Housing Payments to prevent homelessness.

High and complex need former long-term rough sleepers are now housed and sustain tenancies for over 12 months. We have also developed a PRS accommodation offers programme for single people fleeing domestic abuse. Southwark has become the first council to obtain the **Domestic Abuse Housing Alliance (DAHA)** accreditation and has recently received the **White Ribbon** accreditation.

The demand for training and conducting other local authorities' reviews has increased. We have coordinated and supported the delivery of the London Training Academy for over a thousand officers and 80% of our apprentices are in full time employment with Housing Solutions in a variety of roles.

On top of the above, we have successfully delivered a homelessness strategy and the HSS has become a front facing, first contact service with customers at the heart of everything we do.

The HRA has provided increased opportunities and enhanced our ability to make a difference to people's lives. We believe that this is just the start of the journey and that homelessness is everyone's responsibility. Our aims are to further increase our supply, outreach work and the number of agencies to work in partnership with to prevent and/or relieve homelessness, as well as continue to make a positive difference to as many lives as we can.

If you would like to visit the HSS Centre, please email **Daniel.Ferlance@southwark.gov.uk**.

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Homelessness applications

Footnotes

[1] Both located on Bournemouth Road SE15 4UJ.

Cross-border referrals

In this article, Daniel Norton outlines the basic processes of making and receiving cross-border referrals within the territory of the United Kingdom and the Isle of Man from the perspective of an English authority.

Daniel Norton is an adviser on the NHAS 2nd tier Consultancy Service.

Referrals of homelessness duties between English, Scottish and Welsh authorities are relatively rare. For guidance on the processes for disputing cross-border referrals, authorities should refer to chapter 10 of the Homelessness Code of Guidance for Local Authorities[1] ('the Code') and chapter 11 of the Local Government Association Procedures[2] ('the Procedures').

Referrals from England to Scotland or Wales

Referrals at the relief stage

Cross-border referrals cannot be made at the relief stage, meaning that an English authority will always owe the relief duty to a homeless and eligible applicant whose only local connection is to a Scottish or Welsh authority.[3] This is because at this point in the course of a homeless application, the Housing Act 1996 ('the 1996 Act') allows for a referral to another local authority in England only.[4]

Referrals at the main housing duty stage

A cross-border referral from a housing authority in England to a Scottish or Welsh authority can be made at the point after the relief duty has come to an end if:

- the applicant has no local connection to the English local authority's area, and
- the applicant would be otherwise owed the main housing duty, and
- the applicant has not otherwise forfeited the main housing duty owed to them (e.g. by refusing a final private rented sector offer at the relief stage[5]).

Referrals after duty under Part 7 discharged

English law allows for a referral to another local authority where:[6]

- an application is made within two years of the date that the applicant accepted a PRS offer made to discharge the main housing duty and neither the applicant nor anyone who would reasonably be expected to reside with them is at risk of violence in the area of the authority to which they are being referred, or
- an application is made within five years of the applicant being placed into the notifying authority's area by the notified authority under one of their Part 7 Housing Act 1996 functions.

There are no similar provisions in the Scottish law and no cross-border referrals between England and Scotland are possible in these circumstances, meaning that an English authority would not be able to refer an applicant back to Scotland.

Likewise, where an application is made within two years of the date that the applicant accepted a PRS offer made to discharge the main housing duty, the English authority would not be able to refer the applicant back to Wales.[7] This is because the relevant amendments to the 1996 Act introduced by the Localism Act 2011 do not apply in Wales and Welsh authorities have never had the power to end a main housing duty this way.

Referrals from Scotland to England

Where an English authority is notified by a Scottish authority of their intention to make a referral under Scotland's homelessness procedures,[8] it is to be treated as if this was a referral from an English authority made under Part 7 of the 1996 Act at the main housing duty stage.[9] From the perspective of the English authority, the procedure is similar (but not the same) as taking a referral from an English authority.

As noted in the Procedures, where there is a dispute over whether the conditions for referral are met, it is the law of the *notified* authority that is applied.[10] If the notifying and the notified authorities cannot agree on whether the conditions for referral are met, the dispute must be referred for arbitration. If the notifying authority is in Scotland, a referee is appointed through the Convention of Scottish Local Authorities.[11]

The preference for the law of the notified authority applies only when disputing if the conditions for referral are met. It does not apply to differences in the law that determine whether a housing duty is owed in the first place. For example, the priority need test has been abolished in Scotland[12] and since the presence or absence of priority need is not actually part of the 'conditions for referral',[13] an English authority could not refuse a referral from a Scottish authority and a subsequent duty under section 193 of the 1996 Act on the basis of a lack of priority need.

A full analysis of how Scottish and English legislations differ on local connection is beyond the scope of this article, however one example is that Scottish law specifically provides for uncles, aunts and grandparents to be considered family members for the purposes of demonstrating a local connection through family associations.[14] The equivalent English legislation does not contain similar provisions.[15] The Code recommends considering aunts and uncles if there are 'sufficiently close links',[16] while the Procedures suggest a more restrictive approach but note that all situations must be decided on their individual circumstances.[17]

Former asylum seekers accommodated in Scotland

Unlike homelessness legislation in England,[18] Scottish law does not allow asylum seekers to acquire a local connection to an area where they were housed by the Home Office under certain immigration duties.[19] As a result, where an asylum seeker previously accommodated in Scotland under section 95 of the Immigration and Asylum Act 1999 makes a homeless application to an English local authority, they cannot be referred back to Scotland.[20]

However, the English authority will not owe the main housing duty to a former asylum seeker who would otherwise qualify for it, if the authority is satisfied that the applicant has no local connection anywhere in England, Wales or Scotland.[20]

Instead, the authority will have a power to:

- secure that accommodation is made available for a period that will give the applicant reasonable opportunity to secure accommodation, and
- provide advice and assistance to help them do it.[21]

The Code of Guidance recommends that authorities consider providing advice and assistance on the applicant's rights to approach a Scottish authority.[22]

Note, that while this provision prevents a main housing duty from arising, it does not prevent:

- a relief duty from being owed, and
- an interim duty to accommodate, if there is reason to believe the applicant may be eligible, homeless and priority need, lasting for the duration of the relief duty.

Referrals from Wales to England

As noted above, an English authority cannot make a referral to a Welsh authority at the relief stage. However, a Welsh authority may refer applicants to an authority in England at the point where they would have a 'help to secure' duty (which has parallels to the relief duty), though they must be satisfied the applicant is eligible, homeless, priority need and not homeless intentionally, and that the conditions for referral are met.[23]

Where the conditions for a referral from a Welsh authority are met, the applicant will be owed the main duty under section 193 of the 1996 Act, rather than the relief duty.[24] In other words, a Welsh authority may make a referral to an English authority at the Welsh equivalent of the relief stage, but because the Welsh authority has already pronounced on priority need and unintentional homelessness, the English authority will take it up as if it was a referral made at the main housing duty stage.

As with referrals between English authorities, the arbitration process only handles disputes over whether the conditions for referral are fulfilled. Where the Welsh authority is satisfied that an applicant is priority need under Welsh law, it would not be open to the English authority to refuse the referral, even if the applicant is not in priority need under English law.

Welsh authorities cannot make referrals to English authorities based on past offers of PRS accommodation made by an English authority to end a main housing duty within the past two years,[25] or prior placements in the Welsh notifying authority's area under a Part 7 function within the past five years. This is because the Housing (Wales) Act 2014 does not contain such provisions.

However, where the Welsh authority placed the applicant in the English authority's area in pursuance of its housing functions under Part 2 of the Housing (Wales) Act 2014 within five years of the application, the English authority could refer the applicant back to the Welsh authority. This is because the 1996 Act allows for duties under the Welsh Act to be considered as if they were duties under Part 7[26] and the Housing (Wales) Act 2014 allows for Welsh authorities to accept such referrals.[27]

Northern Ireland and the Isle of Man

The 1996 Act allows an English housing authority to make referrals to another 'local housing authority'.[28] While the term may seem self-explanatory, it is important to clarify exactly what counts as a 'local housing authority'. The Housing Act 1985[29] describes a 'local housing authority' as:[30]

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Footnotes

[1] The Homelessness Code of Guidance for Local Authorities, MHCLG, February 2018 (April 2019).

[2] Procedures for Referrals of Homeless Applicants to Another Local Authority, Local Government Association, 2018.

[3] For an exhaustive overview of local connection and referrals at the relief stage, see John Gallagher, 'Local Connection and the Relief Duty', *Housing matters* issue 122.

[4] s. 198(A1) Housing Act 1996; the 'relief duty' is the duty under s. 189B Housing Act 1996.

[5] s.193A(4) and s.193C(7) Housing Act 1996.

[6] ss.198(2ZA) and 198(4) Housing Act 1996.

[7] s.193(7AA)-(7AC) Housing Act 1996.

[8] ss.33 and 34 of the Housing (Scotland) Act 1987.

[9] s.201 Housing Act 1996.

[10] para11.2 Procedures for referrals of homeless applicants to another local authority, Local Government Association, 2018.

[11] Homelessness (Decisions on Referrals (Scotland) Order 1998 (SI 1998 No. 1603); para 11.4 Procedures for referrals of homeless applicants to another local authority, Local Government Association, 2018.

[12] Homelessness (Abolition of the Priority Need Test) (Scotland) Order 2012.

[13] See s.198 Housing Act 1996.

[14] s. 83 Housing (Scotland) Act 1987, as amended by s.108 Housing (Scotland) Act 2001; McMillan v Kyle and Carrick DC (1995) SCLR 365.

[15] s. 199(1)(c) Housing Act 1996.

'a district council, a London borough council, the Common Council of the City of London a Welsh county council or county borough council or the Council of the Isles of Scilly.'

The housing executive in Northern Ireland and the government of the Isle of Man are not classified as local housing authorities, therefore neither is a viable candidate for referrals, nor is there any mechanism for accepting referrals from them. This position is confirmed in the Code.[31]

Clients from those areas who wish to seek assistance in England would be advised to approach English authorities directly. Where an applicant applies to an English authority and their only local connection is to Northern Ireland or the Isle of Man, the English authority they approach will have to provide homelessness assistance under Part 7 of the 1996 Act.

Case study:

Maria has approached one of the local authorities in London for help with her housing situation. Maria previously lived with her parents in Wales, however she was made redundant from her job two months ago and has recently decided to move to London as a friend has told her there is a job offer waiting for her. Unfortunately, the job offer wasn't a genuine one and Maria's parents have told her they don't want her to live with them anymore. Maria has a chronic medical condition that affects her mobility and is at risk of being street homeless in London.

When Maria presents as homeless, the authority in London immediately recognises that there is a reason to believe she may be eligible, homeless and in priority need. Maria is booked into interim accommodation and enquiries are made into whether the relief duty is owed. The authority identifies that the only local connection Maria has is to a local authority in Wales, meaning it is not possible to make an early local connection referral. A relief duty is accepted, an assessment of Maria's needs is carried out and a personalised housing plan is devised.

Time passes. Maria is still homeless. Since it was not possible for the London authority to secure suitable accommodation before the end of the 56 days' period, the relief duty has come to an end. The authority considers Maria to be in priority need and not intentionally homeless – it is accepted she left Wales in good faith. The authority recognises that if Maria had a local connection to their area, she would be owed the main housing duty. Therefore, at this stage it is possible to make a local connection referral to the local authority in Wales where Maria has a local connection.

Note: If Maria had acquired a local connection to the London local authority during the relief phase, e.g. by securing employment in the area, a referral to Wales would not be possible.

Footnotes

[14] s. 83 Housing (Scotland) Act 1987, as amended by s.108 Housing (Scotland) Act 2001; McMillan v Kyle and Carrick DC (1995) SCLR 365.

[15] s. 199(1)(c) Housing Act 1996.

[16] para 10.9 Homelessness Code of Guidance for Local Authorities, MHCLG 22 February 2018.

[17] para 4.3(iii) Procedures for referrals of homeless applicants to another local authority, Local Government Association, 2018.

[18] ss. 199(6)-(7) Housing Act 1996.

[19] s. 27(2)(a)(iii) Housing Scotland Act 1987.

[20] s. 11(2)-(3) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

[21] s. 11(3) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

[22] paras. 10.26-29 Homelessness Code of Guidance for Local Authorities, MHCLG 22 February 2018.

[23] s. 80 Housing (Wales) Act 2014.

[24] s.201A(2) Housing Act 1996.

[25] s. 193(7AA) Housing Act 1996.

[26] s. 198(4a) Housing Act 1996.

[27] s. 83 Housing (Wales) Act 2014.

[28] ss. 198(A1) and (1) Housing Act 1996.

[29] s. 1 Housing Act 1985 as referenced in ss.200, 217(2)(a) and 230 Housing Act 1996.

[30] ss.198(A1) and (1) of the Housing Act 1996. The only exception is a local housing authority in Scotland, which uses the definition found in the Housing (Scotland) Act 1988.

[31] para 10.55 Homelessness Code of Guidance for Local Authorities, MHCLG 22 February 2018.

Flowchart

Is your home an HMO?

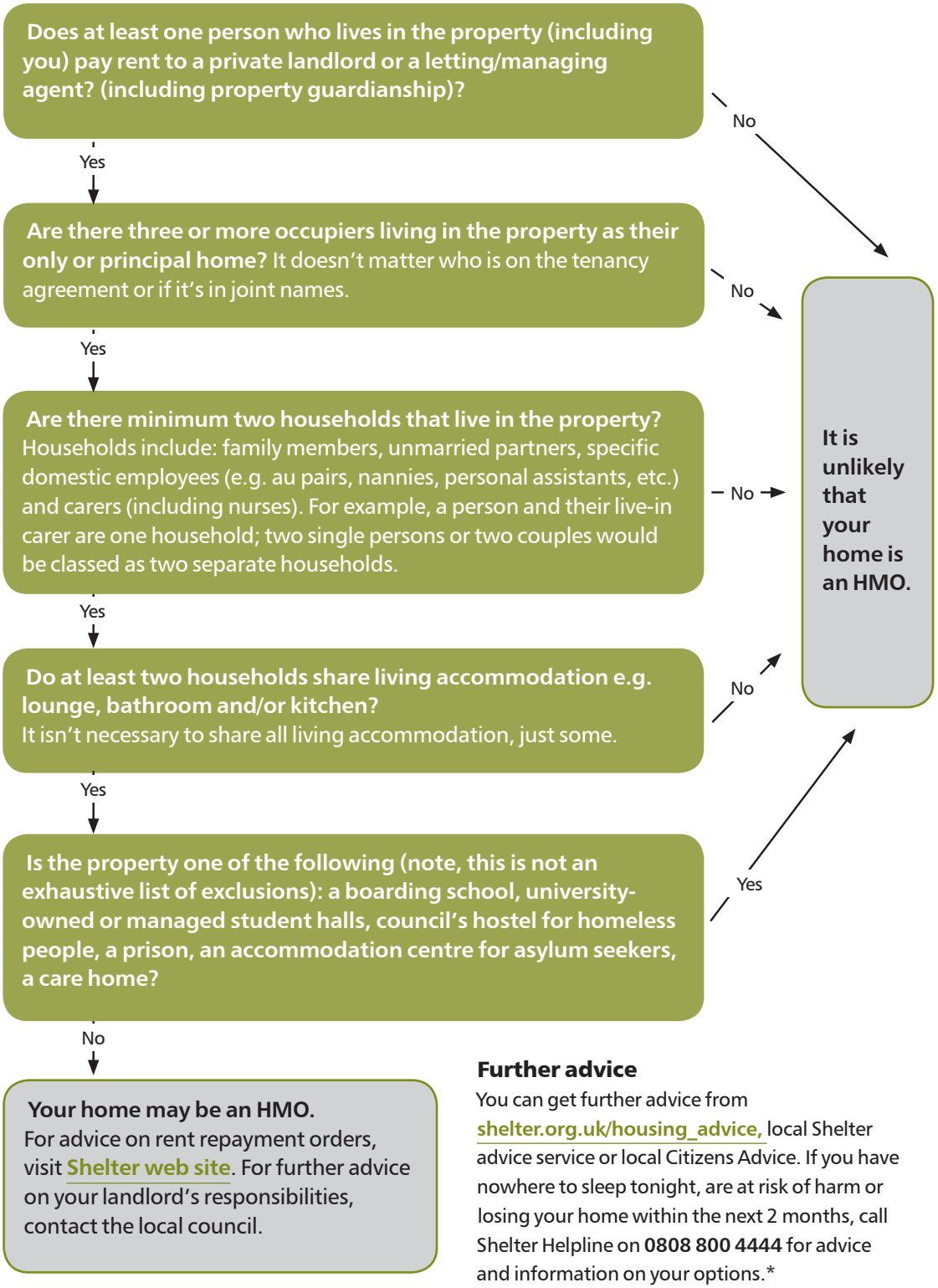
This flowchart helps you to check if your home could be classed as a house in multiple occupation (HMO).

If you home is an HMO, your landlord may have additional health and safety duties.

Landlords of houses in multiple occupation (HMOs) have more responsibilities when it comes to the safety of their tenants. Some have to get a licence from the council. HMOs occupied by 5 people must be licensed. Those occupied by fewer people may still need a licence, depending on the local council's rules.

If you live in an HMO that should be licensed but isn't, you may be able to get some of your rent back. If you are an assured shorthold tenant, your landlord may not be able to evict you using a 'no grounds' notice. The council could also fine the landlord.

This flowchart applies only if you don't live with your landlord. If you live in a purpose-built block of self-contained flats, the flow chart refers only to your flat.



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

Further advice

You can get further advice from 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