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Shelter
88 Old Street
London
EC1V 9HU

Telephone **0300 330 1234**
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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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Shelter, 88 Old Street, London EC1V 9HU
Tel: 0344 515 2148
shelter.org.uk

Edited by: Jackie Lees

Contributors: Sam Madge-Wyld, Karen Rickwood, Steve White.

Additional thanks to Gudrun Burnet and Maggie Williams

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

National Homelessness Advice Service

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

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

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

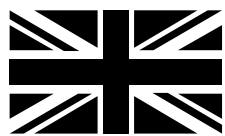
- a national telephone housing advice consultancy service for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk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

Contact details

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

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

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



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What's new?

Housing benefit - temporary absence rules

With effect from 28 July 2016, the Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 SI 2016/624 amend the Housing Benefit Regulations 2006 to change the period of temporary absence for which housing benefit (HB) can be paid when the claimant leaves Great Britain (GB). The regulations also restrict the payment of HB on the claimant's original home when they move into residential care on a trial basis to situations where the care home is in GB.

GB only comprises England, Wales and Scotland; it does not include Northern Ireland, the Channel Islands or Isle of Man.

Under the HB regulations, a claimant (or household member) who is temporarily absent from their home can be treated as occupying it and thus remain eligible for HB so long as there is both an intention to return and an actual return within the applicable time limit. The temporary absence 'clock' can be re-set by genuinely re-occupying the home.

Depending on the reason for absence, a claimant can be treated as occupying their home if they are temporarily absent from it for four, eight, 13, 26 or 52 weeks:

- HB will normally cease if the absence is *outside* GB for over four weeks, but it can be extended to eight weeks where absence is due to the death of a close family member
- the existing general 13 week rule continues to apply to temporary absence *within* GB.
- where a claimant is absent *outside* GB because s/he is fleeing violence, receiving medical treatment or care abroad, has been posted abroad as a member of the armed forces, or is working as a mariner or continental shelf worker, s/he can continue to receive HB for 26 weeks
- HB can continue to be paid for up to 52 weeks if the claimant is absent *within* GB and is, for example, fleeing violence, bailed to live away from home, or in hospital.

The 13 (or 52) week period continues to run for any period spent outside GB between absences from home within GB. For example, under the 13 week rule, a claimant may be absent from home within GB for five weeks, then outside GB for four weeks, and then within GB for a further four weeks before HB entitlement ends.

There is transitional protection for anyone who is temporarily absent from GB on 28 July 2016 until they return to GB. See the regulations at tinyurl.com/HBtempab

Residence test and legal aid eligibility

In *R (on the application of the Public Law Project) v Lord Chancellor [2016] UKSC 39*, the Supreme Court held that the government does not have the power to introduce a residence test for legal aid via secondary legislation (ie regulations). The government's intention was to restrict civil legal aid to people living in the UK, Crown Dependencies or British Overseas Territories at the time of their application for legal aid, and who had lived there lawfully for a continuous period of at least 12 months. The Lord Chancellor did not have power to exclude a class of people by reference to their residence.

Landlord's repairing duty: common parts

Under section 11 of the Landlord and Tenant Act 1985, a landlord must keep in repair the structure and exterior of any part of a building in which s/he has an interest. The Supreme Court, in *Edwards v Kumarasamy [2016] UKSC 40*, held that a paved pathway leading from a car park to the entrance hall of a block of flats did not form part of the 'exterior' of a building, so the landlord was not liable under section 11 for an injury sustained on that pathway by his tenant.

Trafficking and labour exploitation:

Homeless Link has produced guidance for frontline services relating to human trafficking. It gives practical suggestions on spotting the signs, reporting suspicions, and supporting and protecting potential victims. Human trafficking is the fastest growing international crime, and research shows a clear link between trafficking, forced labour and homelessness. See the report at tinyurl.com/HLtraffick

Letting agencies redress schemes

The National Approved Letting Scheme (NALS) has produced an 'Effective Enforcement Toolkit' to guide local authorities on taking enforcement action against letting agencies for non-compliance with their duties to belong to a government-approved redress scheme and/or to publicise their fees. The toolkit is available at tinyurl.com/nals-agents

Allocation schemes and unlawful discrimination

In this article, Sam Madge-Wyld considers some recent challenges to the lawfulness of allocation schemes.

Sam Madge-Wyld is a barrister at Arden Chambers.

Every local authority must have an allocation scheme which sets out how that authority will prioritise applicants for social housing. The scheme must give 'reasonable preference' to certain categories of applicant, including people who are homeless, and people who need to move on medical/welfare grounds.¹

A number of recent court cases since the landmark case of *R (Ahmad) v Newham LBC*,² in which the House of Lords held that councils had great flexibility in determining the operation of their allocation scheme, illustrate the court's re-found willingness to intervene where an allocation scheme is considered not to provide sufficient priority to the more vulnerable groups in society.

Eligible and qualifying persons

An allocation must be made only to an 'eligible' person.³ Eligibility is determined by an applicant's immigration status and largely mirrors the homelessness provisions, ie a person who is eligible for homelessness assistance will also be eligible for an allocation.

In order to enable authorities to tailor their allocation schemes to 'meet the needs of local communities',⁴ each local authority has the power to determine who is a 'qualifying person' for its scheme. The Localism Act 2011 gave authorities wide discretion to determine the criteria for qualification.⁵ Non-qualifying persons are excluded from the scheme.

Guidance on allocations

Guidance urges local authorities to:

- use their allocation policies to support 'those households who want to work' or people who are 'contributing to their community in other ways'.⁶
- include a residence test of at least two years as part of their qualification criteria.⁷

Retaining flexibility

Authorities have a large degree of flexibility as to who can be a qualifying person. However, the Guidance reminds authorities that when framing their scheme they must 'consider the position of people who are

moving into the district to take up work or to escape violence, or homeless applicants or children in care who are placed out of borough'.⁸ Authorities also need 'to have regard to their duties under the equalities legislation, as well as the requirement to give overall priority for an allocation to people in the reasonable preference categories'.⁹

Challenging allocations decisions

Allocations decisions may be challenged where, for example:

- in making its decision in a particular case, the authority has not correctly applied the terms of its own allocation scheme; or
- the scheme itself is unlawful.

Ahmad, together with the Localism Act 2011 and statutory guidance effectively shut the door on successful challenges to allocation schemes. For example, in *R (Hillsden) v Epping Forest DC*,¹⁰ a scheme which excluded all applicants who had not been resident in the authority's district for more than three years was held to be lawful.

However, the three cases looked at below indicate that a 'hands off' approach is not the same as giving authorities carte blanche to frame schemes in any way they see fit.

Excluding 'reasonable preference' groups

In *R (Jakimaviciute) v Hammersmith and Fulham LBC*,¹¹ the Council's allocation scheme stated that, with some exceptions, 'homeless applicants placed in long-term suitable temporary accommodation under the main homelessness duty' would not qualify for the scheme.

The Court of Appeal held that this was a breach of the Council's duty¹² under which it had to give a "reasonable preference" to certain classes of persons in housing need, including people who had been accepted as homeless. This was because the duty to give reasonable preference to those in the specified groups applied to the framing of the allocation scheme as a whole, not just to those who the Council had decided would be qualifying persons.

The Court explained, however, that authorities could still exclude people with a reasonable preference from applying for accommodation provided that the reason for the exclusion was unrelated to the circumstances that gave rise to their reasonable preference. An example given by the Court was where a scheme had a residency requirement, although there may be circumstances where excluding an applicant who has not lived in the borough will still be unlawful. Another would be those that have committed anti-social behaviour.

Use of quotas

In *R (H & others) v Ealing LBC*¹³, the Council's allocation scheme provided that 20% of allocations would be made to people who did not necessarily have a reasonable preference but who were either working at least 24 hours a week or who were an existing council tenant who had complied with their terms of tenancy. Apparently the sort of scheme that the government had encouraged authorities to adopt in its statutory guidance.

The scheme was challenged on the basis that it indirectly discriminated¹⁴ against women, the disabled and the elderly, who were much less likely to be able to satisfy the qualifying criterion of working 24 hours per week.

Ealing contended that the fact that persons in those protected groups were still entitled to apply for the remaining 80% of council properties meant that the scheme as a whole did not discriminate against them or, if it did, such discrimination could be justified.

The High Court held that:

- there was evidence of disadvantage to disabled persons. Data showed that, since the scheme had been amended, allocations to disabled persons had fallen by 3%. The discrimination could not be justified. A less intrusive measure (as used by other authorities), allowing people who were unable to work to bid for the same properties as those working 24 hours a week, could have been adopted.
- Ealing had failed to have due regard to the public sector equality duty,¹⁵ because it had not made any real inquiry into the potential discriminatory effects of excluding people who were not working at least 24 hours a week. Ealing had not been entitled to consider the scheme as a whole when assessing the impact the change would have.

- Ealing had failed to have regard to the need to safeguard and promote the welfare of children under section 11 of the Children Act 2004.

Exclusion through a residency test

In *R (HA) v Ealing LBC*,¹⁶ the High Court held that a scheme that excluded, other than in exceptional circumstances, people who had not been resident in the borough for more than five years from the allocation scheme was unlawful.

HA had applied to Ealing as a homeless person after suffering domestic violence at an address in Hounslow. Ealing decided that it owed her the full homelessness duty, but rejected her application to join its housing register because she did not meet the residence requirement. HA argued that the scheme breached the Equality Act 2010, article 14 ECHR (prohibition of discrimination) and section 11 of the Children Act 2004 on the basis that women are more likely to be victims of domestic violence than men and so are significantly less likely to be able to satisfy the residency qualifying criteria.

The High Court agreed that the scheme was unlawful.¹⁷ Its effect was to discriminate against women and the discrimination could not be justified. The Court rejected the argument that the 'exceptional circumstances' provision in the scheme prevented any discriminatory conduct. If there was no justification for the difference in treatment, the residual discretion permitted by the policy could not save it.¹⁸

Presumably, this means that an authority will have to identify all the potential ways its scheme may unlawfully discriminate and prevent it - unless the discrimination can be justified, eg, a specific provision could exempt a person moving to escape domestic violence from the residency requirement.

Conclusion

Whilst it is undoubtedly the case that local authorities have great flexibility in terms of allocating social housing, recent case law indicates that such flexibility is not unlimited. Applicants for social housing may be able to challenge policies which exclude them from the allocation scheme in circumstances where they would be entitled to a reasonable preference, or where this would involve discrimination or have an adverse effect on the welfare of children.

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11.1.2.5 Housing allocation in England

Footnotes

- ¹ s.166A(3) Housing Act 1996.
- ² *Ahmad v Newham LBC* [2009] UKHL 14.
- ³ s.160ZA Housing Act 1996.
- ⁴ Providing social housing for local people, DCLG December 2013.
- ⁵ ss.145-147 Localism Act 2011.
- ⁶ para 4.27 Allocation of accommodation: Guidance for local housing authorities in England, DCLG, June 2012.
- ⁷ para 13, Providing social housing for local people, DCLG December 2013.
- ⁸ para 3.22 Allocation of accommodation: Guidance for local housing authorities in England, DCLG, June 2012.
- ⁹ para 3.20 Allocation of accommodation: Guidance for local housing authorities in England, DCLG, June 2012.
- ¹⁰ [2015] EWHC 98 (Admin).
- ¹¹ [2014] EWCA Civ 1438.
- ¹² s.166A Housing Act 1996.
- ¹³ *R (H & others) v Ealing LBC* [2016] EWHC 841 (Admin).
- ¹⁴ under s.19, Equality Act 2010 and Art. 14, ECHR.
- ¹⁵ s.149 Equality Act 2010.
- ¹⁶ *R (HA) v Ealing LBC* [2015] EWHC 2375 (Admin).
- ¹⁷ *R (HA) v Ealing LBC* [2015] EWHC 2375 (Admin).
- ¹⁸ para 30, *R (HA) v Ealing LBC* [2015] EWHC 2375 (Admin).

End of term: interest-only mortgages

When an interest-only mortgage reaches the end of its term, lenders will usually require the outstanding balance to be paid off. If a borrower cannot pay, the lender may take steps to repossess.

In this article Karen Rickwood, team leader for the NHAS Housing Debt casework team, looks at the options for homeowners approaching the end of their mortgage term.

An interest-only mortgage is a type of mortgage where the amount borrowed (the capital) stays the same throughout the mortgage term, and only interest is paid in monthly instalments. The borrower needs to repay the capital at the end of the mortgage term. The mortgage agreement may require the borrower to sign up to an endowment policy or other capital repayment product.

What's the problem?

Interest-only mortgages were sold heavily between the late 1990s and the 'credit crunch' in 2008. As these mortgages reach the end of their terms, advisers are likely to see a number of borrowers without a specific plan in place to repay the capital sum. The Financial Conduct Authority (FCA), which regulates mortgage lenders, anticipates two 'spikes' in this happening – the first in 2017/18 and the second in 2027/28.¹

If the borrower cannot pay the outstanding balance in full at the end of the term, the lender may seek possession through the county court. Judges' discretion to delay possession to allow the borrower time to pay off all sums due, or to sell, is limited.²

Reasons for end of term problems

A borrower may be unable to pay off the balance at the end of an interest-only mortgage term because s/he:

- did not understand the agreement when the mortgage was taken out, and is unaware that they have been paying only the mortgage interest
- has not put aside any (or enough) money for the end of mortgage term
- was relying on an increase in the value of the property and this has not materialised as anticipated
- built up arrears and charges during the term due to ill health or job loss etc
- has a shortfall because an endowment plan or savings has not grown sufficiently.

Regulatory guidance

In 2013 the regulator, the Financial Conduct Authority (FCA), issued guidance to all lenders about dealing with interest-only borrowers.³

The guidance advises lenders to:

- consider what options can be offered to the borrower
- have a written strategy on managing mortgage loans that might not be repaid at the end of term
- train frontline staff on dealing with borrowers in line with their strategy
- encourage consumer engagement
- assess affordability if changes to an existing mortgage will create difficulties
- give customers sufficient time to consider their options.

A failure to follow the FCA guidance is not a defence to a possession claim.

According to the Council of Mortgage Lenders (CML), lenders have proactively contacted all interest-only borrowers whose mortgage term will end before 2020 to explore options.⁴ The CML has produced an overview of the options for lenders and borrowers in an interest-only toolkit.⁵

From April 2014, new interest-only mortgages should only be sold where the borrower has a credible repayment strategy that has the potential to repay the capital and interest under the mortgage.⁶

Getting advice

A housing debt adviser can:

- draw up a financial statement to assess affordability
- calculate a repayment plan
- advise on maximising income
- assist with a complaint if there was mis-selling of either the interest-only mortgage itself, or an endowment policy that was intended to ensure the borrower could pay of the final balance
- negotiate with the lender for a term extension if this is a viable and realistic option, and make a complaint where this is refused unfairly, eg where refusal is based entirely on the borrower's age
- signpost to an independent financial advice service⁷ for advice on other financial products, where appropriate.

Remaining in the home

The key options for a borrower who could potentially remain in their home are:

Extend the mortgage term

A mortgage term may only be extended if the lender agrees. Some lenders have a policy on when they will agree to a term extension. They are most likely to refuse if, for example, the client has poor credit history, or if it is clear that the client is unable to afford the repayments.

An extension gives the borrower more time to put a plan in place to pay off the current and final debt. This may cost the client more in the long run, through additional interest and costs accruing over the term agreed.

Alternatively, lenders may agree to continue to accept ongoing interest payments on a month-to-month basis, rather than agreeing to a specific mortgage term extension.⁸

Where an adviser finds that a lender refuses to extend the mortgage term despite there being good reasons to do so, it may help to advise the borrower on making a complaint against the lender. Details of the complaints process can be found in the NHAS Are you worried about your mortgage? guide⁹.

Get financial advice

A borrower may benefit from independent financial advice to help them assess the usefulness of:

- a different mortgage 'product' from the existing lender, for example, a 'lifetime' mortgage
- equity release - chapters 8 and 9 of the Mortgage Conduct of Business (MCOB) rules apply where a lender is advising on equity release¹⁰
- making more effective use of assets or investments, including under new 'pension freedoms'.

Leaving the home

For a borrower who cannot remain in their home, the key options are:

Sell and buy a cheaper/smaller home

A borrower may be willing to sell their home and buy a cheaper property. This option depends on whether there is any equity in the property, and whether the borrower wants to downsize or move to a cheaper area. Giving up a family home could be a difficult and upsetting experience.

Sell and rent privately

If a borrower is thinking of selling and renting a future home, they need to be aware of the lack of security of tenure in the private rented sector. Additionally, the long-term affordability of the option needs to be considered, as rents in some areas are very high and housing benefit may not cover the full rent. Borrowers also need to be aware that they will need a deposit and rent in advance, as well as references.

Assisted voluntary sale (AVS)

Some lenders offer an assisted voluntary sale (AVS) scheme to a borrower who is struggling financially. The scheme gives the client time (between three and 12 months depending on the lender) to sell their property, and provides extra help with the costs involved. The lender may agree to accept reduced mortgage payments until the property is sold.

The NHAS AVS guide¹¹ provides advice for borrowers who want to exit homeownership.

Await repossession

If the borrower takes no action and waits until the lender repossesses their home, they will need to have somewhere to go following repossession. The borrower may end up with an outstanding debt still owed if the lender sells the property at a loss. In most cases, the costs of any court proceedings required to repossess a property will be added to the borrower's mortgage account.

Apply as homeless

If the present property is unaffordable, ie if paying the mortgage and any arrears and charges leaves the borrower without the basics of life, they can apply as homeless. The council may have a duty to provide temporary accommodation if the borrower is eligible and in priority need, pending the sale of the property. However, if the lack of affordability is due to something the borrower 'brought upon themselves', they may be found to be intentionally homeless and the duty will be reduced.

Apply to go on the housing register

Anyone can apply to the local authority for council or housing association housing, but most local authorities will not accept owner occupiers onto their housing register unless they can't live in their property, for example, an elderly homeowner who needs to move into sheltered housing.

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11.8.36.10 Mortgage arrears

Footnotes

¹ details can be found in FCA research published in 2013. See tinyurl.com/FCAnews

² s.36 Administration of Justice Act 1970; s.8 Administration of Justice Act 1973.

³ Dealing fairly with interest-only mortgage customers at risk of being unable to repay, FCA, FG13/7. Find it at tinyurl.com/FCA-dealingfairly

⁴ tinyurl.com/CMLdata

⁵ tinyurl.com/CML-toolkit

⁶ tinyurl.com/MCOB11-6-41

⁷ tinyurl.com/choose-advice

⁸ See tinyurl.com/CMLdata2

⁹ See the guide at tinyurl.com/nhas-AVS

¹⁰ tinyurl.com/FCAequity

¹¹ See the guide at tinyurl.com/nhas-AVS

Assessing housing need: non-priority homeless

In this case brief, Steve White looks at a recent case that examines the requirement to carry out a 'housing needs' assessment before a local authority provides advice and assistance to a homeless applicant who is not in priority need.

Steve White is a trainer with the NHAS.

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11.1.1.44 The housing authority's decision on priority need

Footnotes

¹ [2016] EWHC 1240 (Admin), note that the case may also be found with the same citation as *R (S (Albania)) v Waltham Forest LBC*.

² S was supported by the Helen Bamber Foundation.

³ [2016] EWHC 1240 para 92.

⁴ [2016] EWHC 1240 para 76; see also para 14.4 Homelessness Code of Guidance, DCLG, July 2006.

⁵ See tinyurl.com/s-192template

⁶ [2016] EWHC 1240 paras 127 and 128.

⁷ [2016] EWHC 1240 paras 131 and 132.

⁸ [2016] EWHC 1240 para 143.

Where a homeless applicant does not have a priority need but is eligible, homeless and not intentionally homeless under Part 7 of the Housing Act 1996, the local authority has a duty under section 192 of the Act to:

- assess the applicant's housing needs, and then
- provide advice and assistance and consider providing accommodation.

Background to the case

In *R (Smajlaj) v Waltham Forest LBC*,¹ Ms Smajlaj (S), a victim of human trafficking, applied to the council as homeless. The council decided she was not in priority need, and decided not to exercise its discretion to provide S with accommodation under section 192(3).

The council purported to discharge its duty to provide advice and assistance by giving S a letter explaining how to get a place in a long-term hostel, a leaflet on local housing options and the phone number of its advice team if she needed more information.

S requested a judicial review of the failure of the council to assess her housing needs before offering her advice and assistance.²

Information about S's situation, including her fear of meeting those who had arranged her trafficking, her fear of losing contact with the agency providing support if she had to leave the borough, and the risk to her mental health if not housed in suitable, self-contained accommodation with adequate support had all been put to the council as part of her homeless application.

The High Court's decision

The High Court reminded the council about the importance of carrying out the housing needs assessment carefully before providing advice and assistance, and before deciding whether to exercise its discretion to provide accommodation.

The Court said that, where, through its history of frequent and prolonged contact with an applicant, the council is well aware of her/his housing needs, the housing needs assessment does not need to be spelled out before offering advice and assistance.

However, in S's case there had not been extensive contact. Given that the advice and assistance provided by the authority did not address S's housing needs as explained in her application and review request, the Court could find nothing to demonstrate that her housing needs had in fact been assessed.

Merely assessing an applicant's vulnerability, and deciding whether or not to provide emergency accommodation pending a review request did not, by themselves, mean the authority had assessed the applicant's housing needs. Although there may be some overlap, they were different matters.³

Content of housing needs assessment

A housing needs assessment should cover the 'nuts and bolts' of the applicant's practical housing issues, such as:⁴

- how many rooms are required
- what are the space and arrangement requirements of any accommodation
- affordability
- the applicant's ability to sustain a tenancy
- how likely it is that the applicant will obtain accommodation.

A useful template letter that can be used by local authorities to set out their advice and assistance is available on the Homeless Link website.⁵

Further matters decided

The duty to assess an applicant's housing needs is triggered as soon as the decision on the homelessness application is made,⁶ and the duty to assess still applies even if the applicant requests a review of the non-priority decision.⁷

Challenging discharge of duty

If an applicant is not satisfied with a housing needs' assessment or the advice and assistance offered by the council, or believes the council has wrongly exercised its discretion to provide accommodation, the appropriate remedy is to seek judicial review in the High Court.⁸

Right to unwind

For private assured shorthold tenancies that began on or after 1 October 2014, a tenant may have the right to 'unwind' the tenancy if a landlord's or letting agent's use of certain practices that are prohibited under consumer law led them to enter into it.¹ To 'unwind' a tenancy effectively means that the tenant can terminate the contract and be released from any obligations under it.²

The right to unwind only applies where the prohibited practice caused the tenant to enter into the tenancy in the first place.

Practices giving rise to right to unwind

A tenant may be able to unwind a tenancy if they entered into it because of:³

- misleading action by the landlord or agent (note, action, not an omission)
- aggressive trading practice.

Misleading action

An action is misleading if it:⁴

- contains false information or is presented in a way that is likely to deceive the average tenant, and
- causes the average tenant to sign up to a tenancy that they would not otherwise have signed up to.

Misleading information may be written, verbal or visual. It could be related to anything fundamental to the tenancy,⁵ eg, mis-stating the rent, wrongly telling the tenant when a property will be available, or giving false information in response to a specific question where the tenant says the answer is important, such as whether a piece of furniture will be provided.

The tenant does not need to show that s/he has suffered any loss, nor that the landlord (or agent) acted dishonestly or negligently.

Aggressive trading practice

A practice is aggressive if it restricts the average person's freedom to decide whether to sign a tenancy.⁶ This could be through things like coercion or harassment. For example, it could be aggressive practice to require a deposit from a prospective tenant before they have seen the property or the tenancy agreement.

Guidance from the Competition and Markets Authority (CMA) contains further examples of prohibited trading practices.⁷

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Asking to unwind the tenancy

The tenant must inform the landlord or agent (preferably in writing) that they want to unwind the tenancy within 90 days of whichever is the later - the day the contract was entered into, or the tenancy start date.⁸

The tenant should:

- explain what the misleading action or aggressive practice was, and why this led to them signing the agreement.
- say that they want to unwind under the Consumer Protection from Unfair Trading Regulations 2008
- request a refund of money paid under the contract, and, if losses or inconvenience have also been suffered, explain these and request compensation.

Refunds and damages

Under the right to unwind, the tenant may be entitled to a refund of money paid out.⁹ If the landlord is informed:

- within one month of the tenancy start date, the tenant is entitled to a full refund
- in less than 90 days but more than one month after the tenancy start date, the tenant is entitled to a refund that takes account of any benefit the tenant has had from the contract by living in the property.

If the tenant has suffered a financial loss, distress, inconvenience or alarm, they may have an additional right to damages.¹⁰

Going to court

If the landlord or agent does not agree to terminate the tenancy or compensate the tenant, the tenant must apply to the county court on claim form N1 for a declaration that the tenancy is unwound, and/or for a refund and/or damages.

The claim may take months to be heard. If the claim is unsuccessful, the tenant will be liable for the rent for the contractual period agreed, even if they didn't move into the property. The tenant may also have to pay the landlord's court costs.

Alternative remedies

The right to unwind is new and relatively untested. In some situations it may be preferable to negotiate a satisfactory settlement, rather than enter into a dispute with an uncertain outcome.

Feature

Where a misleading action or aggressive trading practice on the part of a private landlord or agent caused a tenant to enter a tenancy, the tenant may be able to get out of the agreement by using the right to unwind.

We examine this right and explain the practical steps a tenant would need to take.

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11.1.8.8 Accommodation and letting agencies

Footnotes

¹ reg 27A Consumer Protection from Unfair Trading Regulations 2008 SI 2008/1277 as amended by the Consumer Protection (Amendment) Regulations 2014 SI 2014/870 ('CPRs 2008' - references below to CPRs 2008 are as amended).

² reg 27F CPRs 2008.

³ reg 27A(4) and 27B(1) CPRs 2008.

⁴ regulation 5 CPRs 2008.

⁵ reg 5(4) and 5(5) CPRs 2008.

⁶ reg 7 CPRs 2008.

⁷ Guidance for lettings professionals on consumer protection law, CMA31, June 2014.

⁸ reg 27E(3) CPRs 2008.

⁹ reg 27F CPRs 2008.

¹⁰ reg 27J CPRs 2008.

Domestic abuse: housing options

This leaflet looks at your housing options if you are a woman or man at risk of domestic abuse where you live.

Domestic abuse is not just physical violence. It happens where a family member, partner or ex-partner (including same-sex partner) controls you through things like bullying, verbal abuse, sexual violence, not letting you have any money, or keeping you isolated by stopping you seeing your friends or family.

Helplines

You can get confidential advice from:

- **National Domestic Violence (NDV) 24 hour Helpline** on 0808 2000 247*
- **Men's Advice Line** 0808 801 0327*
- **National lesbian, gay, bisexual and trans helpline (GALOP)** 0800 999 5428*

If your personal safety is threatened, you should call the police on 999.

Emergency accommodation

If you are a woman experiencing domestic abuse and you want a place in a refuge, call the NDV Helpline. A refuge is an emergency safe house for women and children, where you can get support until something longer term can be sorted out. You will probably be offered somewhere to stay immediately, but the refuge is likely to be away from your local area. See the second leaflet in *HOMAT 114* for more information about refuges.

There are a small number of refuge places for men - call the Men's Advice Line.

Apply as homeless

If you can't remain in your home because you are at risk of domestic abuse, you can apply as homeless to any local council (for more information, see factsheets 1-6 in the series *Applying as homeless*). If the council has to find you somewhere else to live, it will be in temporary accommodation. You might not get anywhere permanent for a long time. Even if the council does not have to house you, it must give you advice on other options.

Get an injunction

An 'injunction' is a court order that forbids your abuser coming to your home, or orders them to leave it. They can be arrested if they break the terms. Call the **National Centre for Domestic Violence** on 0800 970 2070 for free advice about getting an injunction.

Staying put

If you can't or don't want to leave your home and are at continued risk of abuse, the helplines can tell you about any local support groups or services. They can also advise on safety planning, eg you could leave an emergency bag and money with a friend in case you need to flee your home suddenly.

Make your home safer

To improve your safety at home, you could:

- change the locks, put locks on windows, install an outside light to come on when someone approaches
- create a 'sanctuary' room (with a panic alarm and reinforced doors) within your home. Contact your local council for advice as they might help you with this.

Get the home in your name

In some situations the courts will transfer the home into your name, even if your partner is currently the sole owner or tenant. This is more likely to be agreed if you have children. A family law solicitor can advise you on this. If you are on a low income call the Civil Legal Advice helpline on 0345 345 4 345 to find out if you qualify for legal aid.

Ask for a transfer or exchange

If you are a council or housing association tenant you can apply for a transfer or mutual exchange. Ask your landlord how to register for any schemes they offer. You should ask anyone moving into your home not to disclose where you have gone.

Find private rented housing

Private landlords usually ask for a deposit and rent in advance, as well as a reference. Shelter, local Citizens Advice or your council can advise you on finding a rented home.

Further advice

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

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



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