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

Housing matters

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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 JackieL@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 to local authorities, local citizens advice and around 100 other advice agencies in England:

- **a national telephone housing advice consultancy service**. Call **0300 330 0517** from 9am–6pm, Monday to Friday, or send an online enquiry using the form on the members' areas of www.nhas.org.uk
- **housing debt advice:** within our consultancy team we also have specialist housing debt and welfare benefits advisers who can advise where clients are struggling to pay their housing costs. We can support you to work through your client's housing debt case.
- **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** 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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National Homelessness Advice Service

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What's new?

New Housing Minister

The new Minister of State for Housing is Kit Malthouse. He replaced Dominic Raab on 9 July 2018.

Latest homelessness statistics

Quarterly statistics published by Ministry of Housing, Communities and Local Government (MHCLG) show that between January and March 2018 statutorily homeless acceptances were down two per cent on the previous quarter and down nine per cent on the same quarter of 2017. On 31 March 2018 the number of households in temporary accommodation was up three per cent on 31 March 2017, and up 66 per cent on the low of 31 December 2010.

New 'How to rent' guide

On 26 June 2018 the government updated its How to rent guide, renaming it 'A guide for current and prospective tenants in the private rented sector in England'. But on 9 July the original title 'The checklist for renting in England' was restored in order to mirror the precise wording in the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646.

For assured shorthold tenancies granted (or renewed) on or after 1 October 2015, a private sector landlord cannot serve a valid section 21 notice before s/he gives the tenant a copy of the How to rent guide.

Immigration regulations amended

From 24 July 2018, the Immigration (European Economic Area) (Amendment) Regulations 2018 SI 2018/801 amend the Immigration (European Economic Area) Regulations 2016 SI 2016/1052, primarily to take account of a number of decisions of the European Court of Justice, as detailed in the explanatory memorandum to the regulations.

'Dubs amendment': eligibility

From 9 July 2018, the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018 SI 2018/730 add those people granted leave under section 67 of the Immigration Act 2016 (the 'Dubs Amendment') to the classes of persons eligible for an allocation of housing or homelessness assistance under the Housing Act 1996.

The new 'Class FA' covers those who sought asylum elsewhere in the European Union as children, and who, after being resettled in the UK, were refused refugee status or humanitarian protection but were given leave to remain under the Immigration Rules.

Working Together to Safeguard Children

The Department for Education has issued a new version of 'Working Together to Safeguard Children'. It incorporates requirements under the Children Act 2004, as amended by the Children and Social Work Act 2017, for the police, clinical commissioning groups and local authorities to work together, (and with other partners locally) to safeguard and promote the welfare of all children in their area.

Full roll-out of universal credit

The Welfare Reform Act 2012 (Commencement No. 17, 19, 22, 23 and 24 and Transitional and Transitory Provisions (Modification)) (No.2) Order 2018 SI 2018/881 provides for a further roll-out of the universal credit full service between 5 September and 12 December 2018. This will complete the roll-out of the full service across Great Britain. New claims for housing benefit from working age claimants will only be allowed in specified circumstances.

Extending mandatory HMO licensing

With effect from 1 October 2018, the mandatory licensing of houses in multiple occupation (HMOs) will be extended to HMOs that are one or two storeys high and have five or more occupants in two or more separate households. New mandatory licence conditions will also be introduced. MHCLG has issued guidance to help local housing authorities understand how to implement the changes.

Consultation on 3-year minimum tenancy

The government has launched a consultation on proposals to introduce a three-year minimum tenancy for the private rented sector. The deadline for responses is 26 August 2018.

Court Duty Schemes

On 22 June 2018 the High Court ruled that the Ministry of Justice's decision to contract for fewer and larger housing solicitor duty desk schemes was unlawful It ordered that new contracts, already tendered for, be quashed.

Interim accommodation after the Homelessness Reduction Act 2017

In this article, John Gallagher considers a local authority's duty to provide interim accommodation following the Homelessness Reduction Act 2017.

John Gallagher is principal solicitor at Shelter.

A local authority's duty to provide interim (emergency) accommodation to a homeless person pending its inquiries into her/his application is governed by section 188 of the Housing Act 1996. As amended by the Homelessness Reduction Act 2017, section 188(1) now reads:

> *'If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.'*

Triggering the interim duty

The Homelessness Code of Guidance stresses that the threshold for triggering the section 188(1) duty is low.[1] Having a 'reason to believe' (rather than being satisfied) means nothing more than that the applicant presents with circumstances that indicate s/he may be homeless, eligible and in priority need.[2]

An authority is not entitled to refuse to provide interim accommodation unless it has definite evidence to set against the applicant's version. The Local Government and Social Care Ombudsman criticised one council for demanding 'verifiable proof' that the applicant was homeless before offering interim accommodation.[3]

It is important to note that the 'interim duty' arises exactly as it did before the commencement of the Homelessness Reduction Act on 3 April 2018. So, where a person presents to the authority as apparently homeless, eligible and in priority need, the authority must provide (or secure the provision of) interim accommodation.

Although the 2017 Act has had no effect on when the duty begins, it has made significant changes to when the duty ends.

Overlapping duties – interim and relief

The authority's duty to relieve homelessness (for a period of 56 days[4]) will often overlap with its duty to provide interim accommodation. The interim duty may start first because it is triggered at a low threshold, whereas the relief duty does not start until the authority is 'satisfied' that the applicant is homeless and eligible for assistance. Where the authority is satisfied immediately on presentation that the applicant is homeless and eligible, interim and relief duties may start on the same day. Alternatively, the authority may need to carry out further inquiries in order to satisfy itself of these conditions, in which case the relief duty will not start until it is satisfied.

Section199A(2) 'interim' duty on referral

Where an authority (A1) decides at relief duty stage to refer an applicant in apparent priority need to another authority on grounds of local connection,[5] A1's interim duty under section 188 applies until the applicant is notified of the referral. At that stage, A1 falls under a different interim duty (under section 199A(2)) which continues until it has been decided whether the local connection conditions are met.

From the date that the applicant is notified that the second authority (A2) accepts the referral, s/he will be treated as if s/he has applied to that authority. A2 will fall under a new section188 duty and A1's duties will end.

Referral conditions not met

If the conditions for referral are not met, then the first authority will have to continue securing that accommodation is available until a decision is made on the case and relief work has been carried out.

End of interim duty: no priority need

Where the authority notifies an applicant that it is not satisfied that s/he is homeless, eligible or has a priority need, the interim duty comes to an end. This may occur within or after the 56-day period of the relief duty. Where the authority notifies the applicant that s/he is not in priority need during the relief period, the interim accommodation duty ends but the relief duty continues.

End of interim duty: priority need

Where the authority is satisfied that the applicant is homeless, eligible and in priority need, the interim duty comes to an end when the authority notifies her/him of its decision on the homeless application, ie whether it owes the main housing duty under section 193 or the date when the relief duty ceases, whichever is the later date.[6] As an example, supposing the authority makes a section 184 decision to accept the main housing duty (under section 193) or of intentional homelessness, within the first 28 days of the relief period, the interim duty will continue for the rest of the 56 days, because in those circumstances the end of the relief duty is the later date.

The only exception to this rule is where the applicant requests a section 202 review of the suitability of a final accommodation offer or a final Part 6 offer made to him/her at relief stage. In those circumstances, both the interim and relief duties continue until the decision on the review has been notified to the applicant.[7] Where the applicant requests a review of any other decision, such as intentional homelessness, the interim duty ends, although the authority has a discretion to provide temporary accommodation pending review.[8]

Terminating interim accommodation

The courts have decided that interim accommodation is not let or occupied 'as a dwelling' for the purposes of the Protection from Eviction Act 1977. This means that it can be terminated without a formal notice to quit and without the need for a court order.[9] However, the Code sets out that reasonable notice must always be given to vacate the accommodation:[10]

'…authorities are public bodies and so must act reasonably by giving the applicant at least some opportunity to find alternative accommodation before the interim accommodation is terminated. What is considered 'reasonable notice' would depend on the facts of the case, taking into account the circumstances of the applicant and allowing time for them to consider whether to request a review of the decision.'

In the context of applicants who are found to be not eligible for assistance, the Code advises that the notice period should take account of the needs of the applicant and the time required for her/him to obtain assistance. Many of these households will have no recourse to public funds and may be at risk of destitution. Authorities should consider making arrangements to assist these households to apply to social services, for assistance where appropriate,[11] so there is no break in the provision of accommodation.[12]

The Code also makes clear that an applicant's refusal of interim accommodation does not affect other homelessness duties (including the main housing duty):[13]

'Where an applicant rejects an offer of interim accommodation… this will bring the housing authority's interim accommodation duty to an end – unless it is reactivated by any change of circumstances. Note… an applicant's rejection of interim accommodation does not end other duties that the housing authority may owe under Part 7.'

Losing interim accommodation – intentional homelessness?

An applicant in interim accommodation remains homeless pending a decision on her/his application. S/he cannot be considered intentionally homelessness if s/he loses that accommodation, even as a result of non-payment of rent or misbehaviour.[14] The interim accommodation will end, but the authority will still be subject to the relief duty and will have to make a decision on whether the main duty is owed.

But could the authority count the interim accommodation as accommodation provided under the relief duty? And find the applicant intentionally homeless under section 189B(7)(d) if s/he loses it, which would have the effect of closing off the main housing duty? The answer must be no. It is essential to distinguish accommodation provided on an interim basis from accommodation which may be provided under the relief duty.

An offer of accommodation will only be treated as made under the relief duty if it has been provided under the 'reasonable steps' provisions of that duty and there is a reasonable prospect that it will continue to be available to the applicant for at least six months.[15] Interim accommodation, on the other hand, is invariably of a more transitory kind and is usually provided urgently following the applicant becoming homeless. Therefore, the same accommodation could not be both interim accommodation and accommodation provided under the relief duty at the same time.

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Interim duty to accommodate

Footnotes

[1] Para 15.5 Homelessness Code of Guidance, MHCLG, Feb 2018.

[2] R (Kelly and Mehari) v Birmingham City Council [2009] EWHC 3240 (Admin) and R (Khazai) v Birmingham CC [2010] EWHC 2576 (Admin).

[3] LGCSO Complaint no. 16 014 568:10 October 2017.

[4] s.189B Housing Act 96 as amended by Homelessness Reduction Act 2017.

[5] under s.198(A1) Housing Act 1996.

[6] s.188(1ZB) Housing Act 1996.

[7] s.188(2A) Housing Act 1996.

[8] s.188(3) Housing Act 1996.

[9] R (CN) v Lewisham LBC [2014] UKSC 62.

[10] Para 15.20 Homelessness Code of Guidance, MHCLG, Feb 2018.

[11] under the Care Act 2014 or the Children Act 1989.

[12] Para 15.12 Homelessness Code of Guidance, MHCLG, Feb 2018.

[13] Para 15.22 Homelessness Code of Guidance, MHCLG, Feb 2018.

[14] Moran v Manchester City Council [2009] UKHL 36.

[15] Para 14.30 Homelessness Code of Guidance, MHCLG, Feb 2018.

Notice is served

In this article Richard Lee examines the question of when a notice is validly served.

Richard Lee is an NHAS trainer.

A notice is a precursor to action that allows its contents to be 'communicated to, and become known by' the recipient prior to the contemplated action being taken.[1] Where a notice is not validly 'served' or given,[2] it is treated as not served at all and no further action can be based on it.

In housing law, notices are called for in a several situations. For example, a landlord will normally need to serve notice and wait for it to expire before applying to court to gain possession of a property. A tenant may wish to give notice to quit to end a tenancy, or to put a landlord on notice of disrepair. The specific requirements which must be met by the notice (for example, the length of the notice period) will depend on why it is being served, and often the type of occupation.

Although seemingly straightforward, the question of what it means to serve notice can prove problematic. Because of the importance of a notice to further action a landlord or tenant may deny that a notice has been served. This article considers:

- how to serve notice
- where notice can be served
- proving that notice was served.

The common law position

The basic position, established under common law (ie the rules established by the courts over the years) is that a notice is served when it has come 'to the hands of' the intended recipient.[3]

Merely putting a notice in the post is not enough to constitute service, it must be received by the landlord or tenant.[4]

A valid notice sent or delivered to the wrong address but which ultimately reaches the tenant or landlord in the correct time will be considered properly served.[5]

Service on an agent

If notice is served on a tenant's spouse or partner s/he can be taken as the tenant's agent and service will be valid.[6] In this case, service must take place at the premises.[7] Service occurs at the point the agent receives the notice, even if the tenant only receives it later.

If the tenant (or her/his spouse or partner) denies having received a notice in these cases, the burden of proving that notice was served will be on the landlord.

Service can be on a landlord's agent where the landlord has granted the agent authority to receive notices on her/his behalf.[8] A landlord's spouse or partner will not be her/his agent unless given express authority.[9]

'Deemed' service

Whereas under the common law it is necessary to show that a notice has come to a landlord or tenant's attention, in some situations service may be 'deemed'. This means it is not necessary to show that it has actually been received by the other party. The server of the notice will need to show only that s/he has complied with the requirements of service.

Deemed service is only accepted where the tenancy agreement sets this out. As such, the tenancy agreement should be the starting point when advising a tenant (or landlord) about service of notices.

Under the Law of Property Act 1925

Service may be deemed where notice is served in accordance with the methods given under section 196 of the Law of Property Act 1925 (LPA).

This provides that a notice may be validly served – even if the recipient does not receive it – where it is:[10]

- left at the last known home or workplace of the intended recipient
- sent by registered post or by recorded delivery.

The deemed service provisions in section 196 of the LPA only apply where the tenancy agreement specifically allows service under that section or expressly sets out the methods that the section allows.[11]

In practice, where deemed service under the LPA is disputed in the course of possession proceedings, a recorded delivery slip will usually be accepted by the court as evidence that the required notice has been served.

Under the contract

A tenancy agreement may specify other forms of deemed service apart from those set out in section 196 of the LPA. Service will be deemed if notice is given in the format expressly allowed by the agreement.[12] For example, if an agreement states that notices are served if sent by (standard) post to the tenant's address, then even if the notice is sent but lost in the post it will still be deemed served. Proof of postage may be required.

Notice sent by fax, email or text

Can notice be validly served if sent by fax, email or text message? Unsurprisingly, the law has not kept up with technological developments and there are very few cases that can help answer this question. However, the Court of Appeal set out the general rule (in a case where notice was served by fax): 'What is required is that a legible copy of the document should be in the possession of the party to be served'.[13] It went on to conclude: 'This fax achieves'. Since nothing in statute prevents service by fax, if it can be proved that a notice was received by fax in a 'complete and legible' form, then it will be validly served.

The same logic applies to notices sent by email and text message: where it can be proved that they have been received by the recipient, they may be valid.[14] Where notice in a prescribed form is required, the landlord will have to ensure that this is either attached to or in the body of the message.

The general rule means that service will not be valid where a message is not delivered, for example because the wrong email address is used or there is a problem with the computer system. However, the tenancy agreement may allow for deemed service of notices by email or fax. It may, for example state that notice is deemed served on the date that an email containing that notice is sent. In this instance, the notice may be valid even if the email was never opened by the tenant.

Excluding forms of service

If there are clear words specifying that service by a particular method is not acceptable, (for example a blanket ban on service by electronic means in the tenancy agreement), then service will not be effective if this method is used, even if the recipient provides confirmation of receipt.[15] Always check a tenancy agreement for any restrictions.

Verbal notice

Most notices in housing law must be in writing, and often in a prescribed form. In these cases, verbal notice, whether by telephone or face-to-face, would not be valid. But where written notice is not required (for example where a landlord or tenant gives notice to end an excluded tenancy or the tenant gives notice of disrepair) service could be made verbally.[16] It would, however, be unwise for a landlord or tenant to rely on oral notice in view of the obvious difficulties of proof.

Service of court documents

The service of court documents is governed by the Civil Procedure Rules (CPR). The CPR states that court documents will be deemed served (and at what time they will be deemed served in relation to each method) where notice is:[17]

- served personally
- posted first class or sent by another service which provides for delivery on the next business day
- left at a home address or, where the landlord is a company, a business address. Where no address has been given, the claim form can be served at the usual or last known address of the tenant or landlord
- faxed or emailed – but only where the landlord or tenant has specifically agreed to receive service in this way, and has given contact details[18]
- served in accordance with any method agreed in the contract.

The court may authorise service by alternative methods or at a different address. This can be done retrospectively so that claim forms and other documents can be counted as having already been served.[19]

Otherwise, the basic common law rule set out above applies to the service of court papers, namely that it is good service where they have ended up in the hands of the recipient.

Proving service

In court proceedings the claimant will need to state that notice has been served. In the event of a dispute, the claimant will have to provide evidence of service to meet the civil standard of proof (ie that it is more likely than not that service has taken place).

Footnotes

[1] Blunden v Frogmore Investments [2002] EWCA Civ 573.

[2] No distinction is to be drawn between serving and giving notice: see Sun Alliance and London Assurance Co Ltd v Hayman [1975] 1 WLR 177.

[3] Alford v Vickery (1842) 174 ER 507.

[4] Beanby Estates Limited v The Egg Stores (Stamford Hill) Limited [2003] EWHC 1252(Ch).

[5] See Townsend Carriers Ltd v Pfizer Ltd [1977] 33 P&CR 361.

[6] Smith v Clark, 9 Dowl. PC 202

[7] Roe d Blair v Street [1834] 2 AE 329.

[8] Doe d Prior v Ongley [1850] 10 CB 25;

[9] Pearse v Boulter [1860] 2 F& F 133.

[10] s.196 Law of Property Act 1925 and s.1(1) Recorded Service Delivery Act 1962; Galinski v McHugh [1989] EGLR 109.

[11] Wandsworth v Attwell [1995] 27 HLR 536; Enfield LBC v Devonish [1997] 29 HLR 691

[12] Blunden v Frogmore Investments [2002] EWCA Civ 573.

[13] Hastie & Jenkerson v McMahon [1990] 1 WLR 1575.

[14] Knight v Goulandris [2018] EWCA Civ 237.

[15] Ener-G Holdings plc v Philip Hormell [2012] EWCA Civ 1059.

[16] An example of where notice by telephone is envisaged is in para 124, Greenclose v National Westminster Bank plc [2014] EWHC 1156 (Ch).

[17] CPR 6.20 and 6.26.

[18] Para 4.1 Practice Direction 6A.

[19] CPR 6.15 and 6.27.

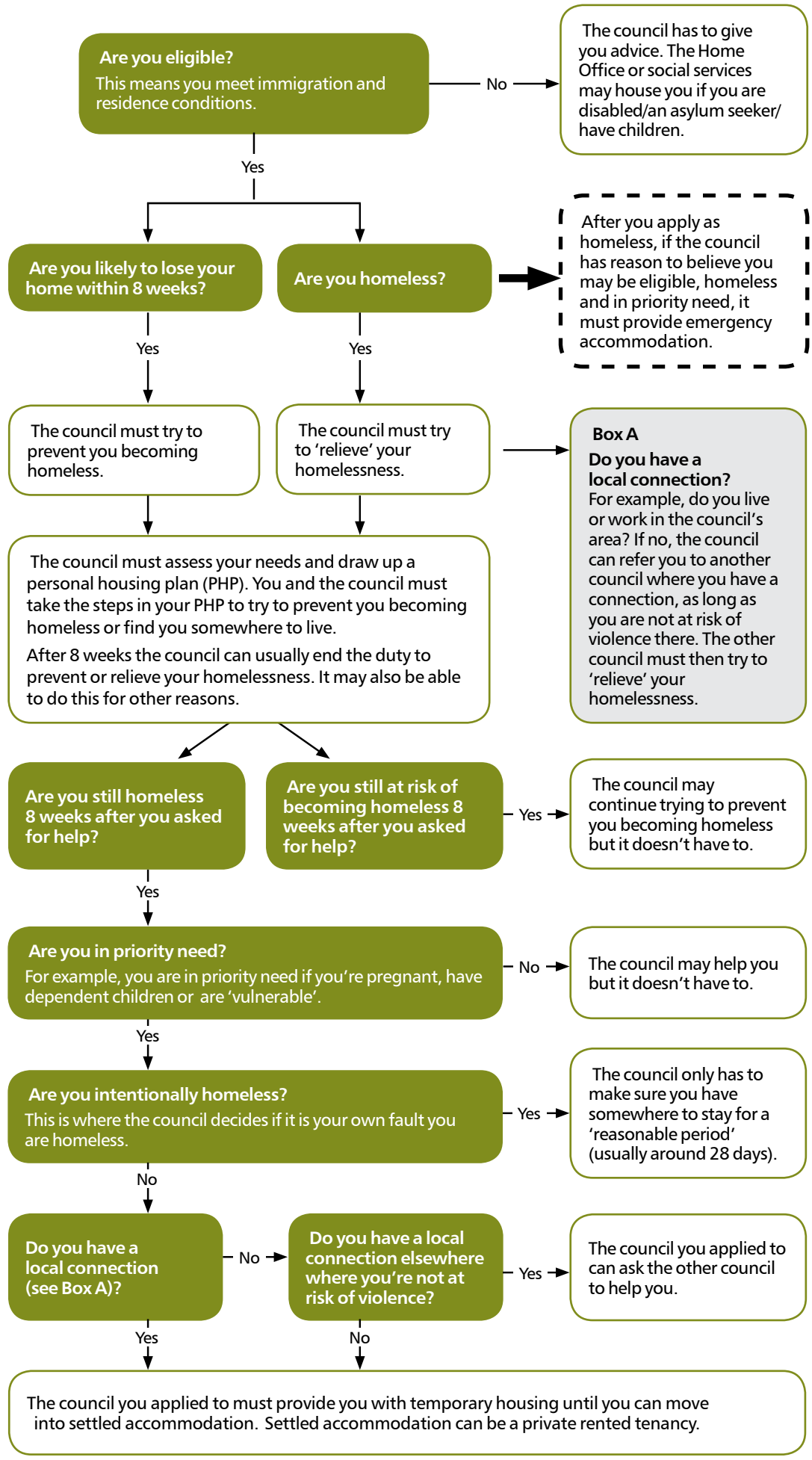
Flowchart

Applying as homeless

This flowchart provides an overview of the steps the council will follow if you apply for help as homeless.

You can get advice on homelessness and how to challenge a decision from Shelter's free* housing advice helpline **0808 800 4444**, a local Shelter advice service or local Citizens Advice office, or by visiting https://england.shelter.org.uk/housing_advice

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



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