

## Issue 127 December 2018

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### Housing matters

*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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

### National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is 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](http://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 in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://www.nhas.org.uk)
- **housing debt 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. 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**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- **support** in the implementation of new homeless prevention initiatives.

#### Contact details

For more information about NHAS training, please email [JoanneK@shelter.org.uk](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

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

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



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# What's new?

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## **New allocations guidance**

On 10 November 2018, MHCLG published new statutory guidance, '[Improving access to social housing for victims of domestic abuse in refuges or other types of temporary accommodation](#)'. Local authorities are 'strongly encouraged' to exempt victims of domestic abuse from residency or local connection criteria under their allocations policies where the applicant has fled their home to temporary accommodation (such as a refuge) in another local authority's area. Statistical data on domestic abuse in England and Wales is published annually by the [Office for National Statistics](#).

## **Eligibility: 'Calais leave'**

From 1 November 2018, the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No. 2) Regulations 2018 SI 2018/1056 adds another class of persons who are eligible for an allocation of housing or homelessness assistance under the Housing Act 1996. New class I comprises persons who are habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland and who have 'Calais leave to remain' under paragraph 352J of the Immigration Rules. 'Calais leave' is granted to certain children who don't qualify for refugee status or discretionary leave to remain but have been reunited with family members in the UK.

## **Homelessness Code of Guidance**

From 1 November 2018, the following paragraphs have been added to the [Homelessness Code of Guidance](#):

- 7.12(h) – covers the eligibility of persons with Calais leave
- 8.40 – advises that effective coordination between housing, social services and health services will be essential where a person is terminally ill or receiving palliative care. Such persons will 'almost certainly' have a priority need
- 17.10 – advises regular reviews of the suitability of accommodation where a person is terminally ill.

## **Ombudsman reports**

The Local Government and Social Care Ombudsman (LGSCO) found maladministration in the following two cases:

- Hounslow LBC ([17 018 631](#)) for not taking a homelessness application and providing interim accommodation to a woman who was forced to sofa surf while seven months' pregnant and after her baby was born
- Cornwall Council ([17 005 652](#)) for accommodating a vulnerable 17-year-old homeless applicant, assessed as a child in need, in a tent and in a caravan for several weeks. As with bed and breakfast accommodation, a tent and/or caravan can never be suitable accommodation for a homeless young person.

Both councils accepted all of the LGSCO's recommendations.

## **Housing costs for 18 to 21 year olds**

From 31 December 2018, the Universal Credit and Jobseeker's Allowance (Miscellaneous Amendments) Regulations 2018 SI 2018/1129 will revoke the Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017 SI 2017/252 and restore eligibility for the housing costs element of universal credit for single claimants in a full (digital) service area who are aged at least 18 but under 22.

## **Consumer law guidance on care homes**

On 16 November 2018, the Competition and Markets Authority published '[Care homes: consumer law advice for providers](#)'. The guidance explains consumer law obligations such as ensuring that information provided about a care home is not misleading so as to allow informed decisions about moving into the home, avoiding unfair contract terms (including those around terminating the contract) and having an effective and easy to use complaints procedure.

## **EHRC toolkit**

The Equality and Human Rights Commission has published a [toolkit for local authorities](#) on housing and disabled people. The toolkit includes five downloadable guides:

- providing/managing housing adaptations
- allocation of housing
- planning for accessible homes
- strategic planning
- supporting tenants.

# Test Valley BC: rethinking homelessness prevention

**In this article, Phil Turner explains how changing the way you understand homelessness changes how you respond to it.**

**Phil Turner is Head of Housing and Environmental Health at Test Valley Borough Council.**

Preventing homelessness is a priority for Test Valley BC. We have an ambitious agenda that goes beyond the statutory requirements of the Housing Act 1996. We're undertaking a 12-month pilot, an iterative process, which will allow us to try out and evaluate new ideas.

## Local housing market

Despite relative affluence, there are pockets of significant deprivation in Test Valley. The housing market is expensive and excludes an increasing number of people. Local challenges include finding ways to support people in need of housing in both semi-rural and rural communities.

We try to influence the housing market to better fit our customers, by challenging developers to meet our local plan for affordable housing, and encouraging local communities and parish councils to support affordable housing through community-led development and rural exception sites.

## What's the problem, really?

The council has a positive track record of tackling homelessness and delivering new affordable housing. Getting things right, yet continuing to experience high demand.

We found, when we really looked, that housing crises were the symptom of underlying causes. The issues were financial capacity, relationships, redundancy, health, addictions, and more. Whenever we scratched the surface, it wasn't 'housing' in any pure sense.

Demand for our service is high, but compared to the total number of households in Test Valley, the number of households:

- on the housing register represents less than 4%
- applying as homeless represents just over 3%
- accepted under the main homelessness duty in 2017/18 is only 0.1% (compared to 0.2% nationally).

So why does a relatively small proportion of residents need our support? And what sets them apart from the vast majority of people

sustaining themselves in the housing market? If we can understand this we should be able to improve our ability to prevent and relieve homelessness.

Accepting that the housing market is problematic for many, and that a local borough council alone cannot fix that market, we recognised that as long as our service treated only symptoms (by focusing on housing supply), it would fail to promote the self-reliance our customers hoped to achieve. We started asking housing officers to focus less on housing and more on what was causing homelessness.

## How did we change?

We decided to become 'advantaged thinkers'<sup>1</sup> as part of the wider cultural transition associated with the new ways of working. This means we don't view people, who are sometimes at their lowest ebb, as being as good as they could ever be. We aspire to help our customers become self-reliant and for homelessness to be a transitional concept, not an inescapable destination or defining label. The importance of language formed part of our thought process, alongside rejecting the view that our role in people's lives was solely to help manage risk, problems and support needs.

Customers come in thinking they need a house, but if we don't help them to address the other problems they have, the provision of bricks and mortar does little to abate the factors that led to the housing crisis they are experiencing. The solution to their housing crisis may relate to them, not housing.

Motivational interview techniques<sup>2</sup> were identified as a training need for our customer-facing staff, along with coaching skills and behaviour management. The aim was to equip staff to focus on people's assets, aspirations, interests and skills, instead of solely on their problems.<sup>3</sup> It remains a work in progress.

Changes have been made to our operating model, including rewriting our initial assessments and abolishing appointments so that customers are usually seen when they first approach us.

We also go out to local hotspots for specific issues. For example, together with the police, community safety, drug and alcohol teams, local support services and adult social services we have been going regularly into the town centre to try to engage with and help people who are sleeping rough.

#### *Case study: Mr A*

Mr A (aged 19) suffered with type 1 diabetes, suspected Asperger's syndrome, and poor mental health including thoughts of suicide. He had a chaotic lifestyle. In April 2018 he applied as homeless to another council (where he had no local connection). He was placed in a mental health project where he engaged sporadically with the local community mental health team.

The other council referred Mr A to us at relief duty stage on the basis of a local connection with his father. Instead of placing him in B&B accommodation as we probably would have done pre-HRA, we funded him to remain in supported housing where he was while we sought to find the best housing option for him. This ensured a period of stability, during which we spoke to him and his father regularly.

Using asset-based assessment (drawing out Mr A's strengths) and motivational interviewing techniques (focusing on the advantages of change for him), we helped Mr A to move from ambivalence about change through to optimism.

We were able to offer Mr A an independent tenancy (which can become permanent if he continues to manage well), in which he is supported by his father and a local mental health support service. He says this is the happiest he's been in four years. We hope our approach will help Mr A to sustain his tenancy, and prevent future incidences of homelessness.

#### **From half empty to half full**

Had our service been 'half empty'? Were we tackling problems in a way that reinforced low self-esteem, low self-confidence, and feelings of helplessness and despair?

By working in partnership with social services, community mental health, criminal justice agencies, the voluntary sector, drug and alcohol services (and more), we try to actively help people fully engage in social opportunity. Better prospects, income, relationships, satisfaction and more self-reliance. From coping to thriving.

Working together, we set about delivering a 'half full' service,<sup>4</sup> by focusing on and preparing for positive outcomes. For example, if the problem is financial capability, how can we work with that customer to avoid them requiring another rent deposit in 12 months' time? If the issue is an untreated health condition, how can we link the individual to the right services so that they will be able to cope better in the future?

#### **Assessment and PHPs**

Since the Homelessness Reduction Act 2017 (HRA) came into force last April, we've been undertaking 'asset (or 'strengths') based assessments'<sup>5</sup> to provide the framework for our personal housing plans (PHPs). We use open questions, starting with 'how are you today?', to discuss personal circumstances, skills, strengths, finance, support networks, health and wellbeing. This way we're gaining the information we need to fulfil our statutory duties and establish support needs and risks.<sup>6</sup> For the majority of customers, housing and homelessness are discussed later.

Of course, this approach isn't always appropriate. There's a need to be flexible, agile, and exercise common sense. People fleeing domestic abuse, those who are intoxicated or acutely unwell, are not expected to discuss their aspirations at an initial assessment. Sometimes we must solely respond to urgent need, for example by securing emergency accommodation and continuing the asset-based assessment later.

But by speaking to people differently, collaboratively, and by reframing our relationships, new information is being shared. Officers don't always have the answer, but our new approach contributes to the way we prevent and relieve homelessness. Inevitably, this approach takes time (around 90 minutes) but we are getting quicker.

We are persistent too. We keep going back to people who say no to the help offered. One rough sleeper who would run away when our officers approached, now speaks to us and we hope it is only a matter of time before we can help him.

It can be hard for staff to 'unlearn' previous ways of working, as the housing officer role has become one of 'engagement and support'. But staff feedback is generally positive – the new approach taps into their enthusiasm and desire to help our customers.



## Footnotes

<sup>1</sup> See the [Foyer Federation](#) website for a discussion of the philosophy of advantaged thinking.

<sup>2</sup> Motivational interviewing looks to spark motivation and initiate change through a non-confrontational, collaborative approach. See the [Royal College of Nursing](#) website for example.

<sup>3</sup> See also para 6.2 [Care and support statutory guidance](#), updated October 2018.

<sup>4</sup> See '[A glass half-full: how an asset based approach can improve community health and well-being](#)', Improvement and development agency, 2010.

<sup>5</sup> See the Social care institute for excellence (SCIE) website: [Strengths-based approaches](#)

<sup>6</sup> Our approach builds on and goes further than that outlined in the [Homelessness Code of Guidance chapter 11](#), paragraphs 11.7 to 11.16.

<sup>7</sup> Place-based work means working with relevant agencies to address specific issue trends with people in identifiable hotspots. See [Institute for Research and Innovation in Social Services](#) (IRISS) website for a feature on place-based working.

<sup>8</sup> see *Housing matters Issue 118* for an article on Housing First.

## Funding

This brave new world is supported by additional investment. Council members approved funding for two new members of the team and a new prevention fund. In addition, a multi-agency task and targeting fund and a prototyping fund engage the wider system and unblock obstacles. Significantly, we have also created a 'single homelessness fund'. Council leader Phil North has said publicly:

*'I see this Act [HRA] not just as something we... have to fulfil by law but an opportunity to go even further... no individual who presents themselves as homeless will have to leave the council offices and sleep rough...'*

By preventing people sleeping rough, we will reduce harm, save money and create savings for wider public services. This is a bold, potentially risky step, particularly if it's a step Test Valley takes on its own. For our new way of working to be embedded and sustainable we need other councils to follow suit.

### How has it gone so far?

Nothing has been plain sailing. Since April 2018 the service has experienced a 44% increase in footfall. Despite best efforts we have seen increasing numbers of single people, including rough sleepers, presenting with complex needs.

Homelessness approaches have increased by 16%.

We have established experimental performance indicators against which we can measure progress. We're proud that between April and June:

- strengths-based assessments were undertaken for 79% of customers,
- people's issues were resolved in 64% of cases under the prevention duty
- people's issues were resolved in 89% of cases under the relief duty
- main duty homelessness acceptances reduced by 83%
- households in temporary accommodation dropped by 12%.

To date, our decision making hasn't been challenged by a single section 202 review.

It feels like we're on the right track. If we can demonstrate this performance with huge increases in frontline demand, something must be working.

## Case study: Mrs C

Environmental health referred Mrs C to Housing as being at risk of homelessness because her hoarding was creating significant safety issues in her social housing tenancy, where she has lived with her family for 15 years. The landlord was considering legal proceedings to evict the family as they could not carry out electrical inspections as they were legally required to do.

Mrs C's hoarding behaviour had led to a number of issues over the years, but previous attempts at clearing the home had not led to permanent change.

We attended multi-agency meetings to discuss Mrs C's situation. She was provided with ongoing mental health support by a local agency, and we used motivational interviewing techniques to help her find the motivation to change her situation. Following initial resistance, Mrs C agreed to a plan for a specialist agency to support her to clear her home. We agreed to pay for this support for six months.

The landlord applied for an injunction to prevent Mrs C from hoarding and to clear the property within three months. The court took our work with the family into consideration and gave Mrs C until late spring 2019 to clear her home. So far she has substantially cleared the kitchen and the living room. We have discharged our prevention duty but will monitor the situation.

### Next steps and conclusion

Next steps include more 'place-based work',<sup>7</sup> a 'Housing First' pilot<sup>8</sup>, and working with voluntary sector partners on new initiatives.

The HRA required radical change but we have gone further. The system has a tendency to view people through the lens of statutory and resource constraints. Test Valley is trying to break that mould.

For our customers to achieve the positive outcomes we and they aspire to, we need the active participation of the wider system. That requires us all to stop seeing housing problems as only 'housing's problem'. We can't tackle underlying causes of homelessness by ourselves. Influencing the wider system may be our biggest challenge. Working together, with open minds, in the interests of preventing crises will result in better demand management, better outcomes and a better deal for taxpayers.

# Section 21: defences from 1 October 2018

**In this article, and in the flowchart on page 7, Ewa Brem summarises the rules that apply when a landlord seeks possession after serving a section 21 notice.**

**Ewa Brem is a Training and Support Officer at Shelter.**

A landlord does not need to prove a ground for possession when using a section 21 notice to terminate an assured shorthold tenancy (AST). This is often referred to as a 'no fault' ground for eviction. If the landlord follows the correct procedure they will be granted possession by the court in an overwhelming majority of cases (rarely, there may be a public law, disability discrimination or human rights defence).

The rules around section 21 notices have become increasingly complex over the years, with the most recent changes coming into effect on 1 October 2018.

This article looks at how the rules stand now, explaining which rules apply to all ASTs and which only to those that started after a particular date. The chart on page 7 provides a summary of the position.

## All ASTs

Regardless of when the AST was granted, a section 21 notice will be invalid if it is not in writing, or in the following situations:

### Deposit protection rules

The landlord failed to:<sup>1</sup>

- protect the tenant's deposit within the prescribed time limit (currently 30 days), or
- provide the prescribed information about the tenancy deposit protection before serving the section 21 notice.

It should be noted that where a deposit was not protected in time, or the prescribed information was not given, but the AST was replaced with a statutory periodic tenancy or a new fixed term, the landlord can serve a valid section 21 notice if they comply with the requirements in relation to the new tenancy. See *Housing matters Issue 106: 'The deregulation of Superstrike'*.

### Notice period

The notice period is shorter than the statutory minimum. This is two months for fixed term, or weekly or monthly periodic tenancies. It is one period of the tenancy if the tenancy period is three or six months, and six months where the period is yearly.<sup>2</sup>

### Licensing rules

A property subject to licensing is unlicensed when the section 21 notice is served, the landlord has not applied for a licence, and no temporary exemption is in place. This applies to mandatory, additional and selective licensing schemes.<sup>3</sup>

### No notice in first four months

A section 21 notice cannot be given to the tenant in the first four months of the AST. This applies to the first four months after the tenancy start date, not to any subsequent renewals.

If the original AST is of less than four months and is replaced by a contractual periodic or new fixed term tenancy, the four months is calculated from the beginning of the original tenancy. If it is replaced by a statutory periodic tenancy, the restriction ceases to exist.<sup>4</sup>

### ASTs from 1st October 2015

The Deregulation Act 2015 introduced extra rules for tenancies that started (or where a new fixed term was granted) on or after 1 October 2015. For a section 21 to be valid:

### Prescribed requirements/information

The landlord must have provided a:

- current gas safety certificate and an energy performance certificate (EPC).<sup>5</sup> It is not yet clear whether the gas certificate or the EPC should be provided before the tenancy begins or at any time before the section 21 notice.<sup>6</sup> Two county court cases have held that a gas safety certificate must be given before the start of the tenancy.<sup>7</sup> However these decisions are not binding.
- current copy of the government's '[How to rent guide](#)' before serving the section 21 notice.<sup>8</sup> It remains unclear whether the 'current copy' means the version published at the time when the tenancy started or at the time it is provided to the tenant if later. This requirement does not apply to housing association landlords.<sup>9</sup>

## Footnotes

<sup>1</sup> ss.215 and 215A Housing Act 2004; Charalambous and anor v NG and anor [2014] EWCA Civ 1604.

<sup>2</sup> ss.21(1) and 21(4) Housing Act 1988; Doe d Peacock v Raffan [1806] 170 ER 812; Parker d Walker v Constable [1769] 95 ER 913.

<sup>3</sup> ss.75 and s.98 Housing Act 2004.

<sup>4</sup> ss.21(4B) and 21(4C) Housing Act 1988.

<sup>5</sup> s.21A Housing Act 1988; reg 2 Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646.

<sup>6</sup> reg 2(2) SI 2015/1646; reg 6(5) Energy Performance of Buildings (England and Wales) Regulations 2012 SI 2012/3118.

<sup>7</sup> [Caridon Property Ltd v Monty Shooltz](#), Central London CC, Feb 2018; [Assured Property Services v Ooo](#), Edmonton CC, June 2017.

<sup>8</sup> s.21B Housing Act 1988; reg 3, SI 2015/1646.

<sup>9</sup> reg 3(5) SI 2015/1646.

<sup>10</sup> s.21(8) Housing Act 1988; reg 3(fa) and Sch.1 Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI 2015/620.

<sup>11</sup> reg 1(3) and reg 1(4) SI 2015/1646.

<sup>12</sup> reg 1(3); reg 1(4) and Schedule 1 SI 2015/1646.

<sup>13</sup> s.21(4ZA) Housing Act 1988; s.41(3) Deregulation Act 2015.

<sup>14</sup> s.33 Deregulation Act 2015.

<sup>15</sup> s.33 Deregulation Act 2015.

<sup>16</sup> ss.33(8)-(9) and 34 Deregulation Act 2015.

<sup>17</sup> s.21(4D)-s.21(4E) Housing Act 1988; s.41(3) Deregulation Act 2015. NB, where more than 2 months notice is required, landlord must start possession proceedings within four months of expiry of the s.21 notice.

See also: [Shelter Legal - Notices: Assured shorthold tenancies](#)

## Prescribed form

A section 21 must be served in a prescribed form ([form 6A](#)).<sup>10</sup>

## ASTs started before 1 October 2015 and not renewed since then

Unless the government passes new regulations, the restrictions above concerning prescribed requirements and information do not apply and will not invalidate a section 21 notice served on an AST granted before 1 October 2015 and not renewed since then.<sup>11</sup>

MHCLG has confirmed there are no plans to extend the requirements for a landlord to provide a gas certificate, EPC or the 'How to rent guide' to these ASTs.

## Prescribed form

Form 6A does not need to be used for ASTs granted before 1 October 2015 which have not been renewed since then.<sup>12</sup> Landlords can choose to use this form.

## Contractual periodic ASTs

For a section 21 notice served before 1 October 2018 on a contractual periodic AST that started before 1 October 2015, the notice period must expire on the last day of a period of the tenancy. This does not apply to a section 21 served on or after 1 October 2018.<sup>13</sup>

## Retaliatory eviction defence

A 'relevant notice' served by a local authority under the Housing Health and Safety Rating System can invalidate a section 21 notice in two circumstances.<sup>14</sup>

Where the local authority:

- has served a relevant notice, a section 21 notice cannot be served for six months
- served a relevant notice subsequent to the tenant complaining in writing to the landlord about the condition of the property and making a follow-up complaint to the local authority, any section 21 notice served after the complaint to the landlord will become invalid (even if it was valid at the time of service).

## What is a relevant notice?

A relevant notice is defined in section 33 of the Deregulation Act 2015 as an improvement notice or an emergency remedial action notice.

## Relevant notice and s.21 both served on or after 1 October 2018

If both a relevant notice from the local authority and a section 21 notice were served on or after 1 October 2018, the retaliatory eviction defence will apply irrespective of the tenancy commencement/renewal date.<sup>15</sup>

## AST started before 1 October 2015 and s.21 served before 1 October 2018

It is unclear whether the retaliatory eviction defence is available at a possession hearing on or after 1 October 2018 to tenants whose ASTs started before 1 October 2015 (and not renewed since), if:

- the tenant made a complaint about repairs to the landlord and the landlord retaliated with a section 21 notice before 1 October 2018, and
- as a result of the tenant's complaint to the local authority, a relevant notice was served before or after 1 October 2018.

## No retaliatory eviction defence

This defence will not apply where:<sup>16</sup>

- a property is genuinely on the market to be sold (unless the prospective purchaser is a person associated with the landlord)
- a mortgage lender has repossessed the property where the mortgage predates the AST and the lender intends to sell the property with vacant possession
- the landlord is a housing association
- living conditions deteriorated as a result of the tenant's behaviour
- the section 21 notice was served after a relevant notice which has been reversed, quashed or revoked.

## Time limit for issuing possession claim

Normally, a landlord must start possession proceedings within six months of the date the section 21 notice was served.<sup>17</sup> The effect of this rule is that a section 21 notice becomes invalid if proceedings start after six months have elapsed.

It is unclear whether the six-month time limit applies to ASTs that started before 1 October 2015. However, a county court (in Manchester) recently dismissed a claim for possession where a landlord started possession proceedings more than six months after serving a section 21 notice to terminate an AST that started before 1 October 2015.



# Section 21: defences from 1 October 2018

## Defences: all ASTs:

- notice not in writing
- notice period less than the statutory minimum
- notice served within the first 4 months of the original tenancy start date<sup>1</sup>
- non-compliance with tenancy deposit legislation
- the property is subject to licensing and at the time the notice is served, no licence, no application and no temporary exemption in place
- claim for possession not started within 6 months of date of service<sup>2</sup> of section 21 notice.<sup>3</sup>

### Footnotes

<sup>1</sup> where original fixed term was for fewer than 4 months and has been replaced by a statutory periodic tenancy, s.21 can be served at any point.

<sup>2</sup> or within 4 months of date of expiry of the s.21 notice for quarterly or annual periodic ASTs.

<sup>3</sup> where AST started before 1 October 2015 (and not renewed since) it is unclear if this applies where the claim for possession was started before 1 October 2018 – see article.

<sup>4</sup> where there is a court hearing on or after 1 October 2018, it is unclear whether a retaliatory eviction defence is available in relation to relevant notices served before or after 1 October 2018 following a tenant complaint about repairs and a section 21 notice served before 1 October 2018.

<sup>5</sup> unless the court hearing was on or after 1 October 2018.

<sup>6</sup> see article for when this should be served.

## Additional defences:

### AST started before 1 October 2015 (and not replaced with a fixed term since)

#### Section 21 notice served before 1 October 2018

- retaliatory eviction where section 21 is served within 6 months of local authority relevant notice<sup>4</sup>
- (where contractual periodic tenancy), notice must end on last day of a period of tenancy<sup>5</sup>
- none of the other 'new' defences are available (see below).

#### Section 21 notice served on/after 1 October 2018

- retaliatory eviction where section 21 is served within 6 months of local authority's relevant notice
- retaliatory eviction where section 21 is served after a written complaint about disrepair and followed by a relevant notice
- none of the other 'new' defences are available (see below).

### AST started on/after 1 October 2015

#### 'New' defences

- no EPC<sup>6</sup>
- no gas safety certificate<sup>6</sup>
- no 'How to rent guide' (no time limit for compliance as long as provided before section 21 notice is served)
- notice not on form 6A
- retaliatory eviction defences (subject to exemptions – see article).

# Complaining to the Ombudsman

**This factsheet looks at when you can complain to the Ombudsman if you have a housing problem.**

You can complain to an Ombudsman if you have received a bad service from your local council or your housing association. The Ombudsman is independent and does not take sides. The service is free to use.

In most cases you must have made a formal complaint to the organisation first, and have been personally affected by the matter you are complaining about.

Complain to the Ombudsman if either you are unhappy with the final response to your complaint, or you haven't had a response within the complaints procedure deadline.

You must complain to the Ombudsman within 12 months of the end of the internal complaints procedure.

## What kind of complaint?

Examples of bad service include:

- the organisation you are complaining about hasn't followed its own policies
- rudeness from the organisation's staff
- giving you wrong information.

But if your complaint is going to court or a tribunal the ombudsman won't consider it.

## Which Ombudsman to complain to

There are two Ombudsman services that help with problems connected with housing:

- [Housing Ombudsman](#)
- [Local Government and Social Care Ombudsman](#) (LGSCO)

The Ombudsman you complain to depends on your problem:

### Housing Ombudsman

You can complain to the Housing Ombudsman if you are (or were) a licensee, tenant or leaseholder of a council or housing association. The Housing Ombudsman investigates complaints about, for example:

- repairs not being done
- antisocial behaviour
- safety in your home, including fire safety
- service charges for leaseholders
- ending your tenancy.

If you are complaining to the Housing Ombudsman you can complain:

- first to a 'designated person' (your MP, local councillor or tenant panel), or
- direct, but only after 8 weeks from the end the complaints process.

### Local Government Ombudsman

The LGSCO investigates complaints about council services generally, including how the council has handled your application for:

- housing via the housing register
- help if you become homeless
- housing benefit.

You can also complain to the LGSCO about organisations that provide care for adults.

## How to complain

You can complain by ringing the Ombudsman service, or via their website.

## What can the Ombudsman do?

The Ombudsman will write to you with its decision when the investigation is complete. If the Ombudsman upholds your complaint, they can, for example, ask the council or housing association to:

- apologise
- pay you compensation
- do what they should have done.

The organisation you have complained about does not have to do what the Ombudsman says, but usually does.

## How long will it take?

If your case is complicated it can take a long time to get an Ombudsman decision. This is because the investigation is very thorough. Expect anything up to around one year.

## 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 by visiting [england.shelter.org.uk/housing\\_advice](http://england.shelter.org.uk/housing_advice)

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



**Note**  
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