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

Housing matters

Issue 131 August 2019

NHAS
National Homelessness Advice Service

Specialist support on housing advice

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

Published by:
Shelter, 88 Old Street, London EC1V 9HU
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shelter.org.uk

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

National Homelessness Advice Service
The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, Communities and Local Government.

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

The NHAS provides the following 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
- **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 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

Funded by
UK Government

Shelter

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

What's new?

Robert Jenrick MP has been appointed the new Secretary of State for Housing, Communities and Local Government.

Intentionality and affordability

In Samuels v Birmingham City Council [2019] UKSC 28, the Supreme Court held that where the applicant whose income after paying their housing cost was insufficient to meet their basic needs lost their accommodation due to rent arrears, there could be no finding of intentionality. For a case brief, see page 7.

EU law: WRS extension unlawful

In Secretary of State for Work and Pensions v Gubeladze [2019] UKSC 31, the Supreme Court has confirmed that extending the Worker Registration Scheme from 1 May 2009 to 30 April 2011 was unlawful. Unregistered employment of A8 nationals after 1 May 2009 can be taken into consideration when determining periods of lawful residence.

Government consultations:

- on barriers tenants face in relation to providing a second deposit for a new property when moving house and on what can be done to remove barriers to moving. The consultation closes on 5 September 2019.
- on how section 21 of the Housing Act 1988 (enabling no fault evictions) has been used in the past and on what grounds landlords should be able to seek possession in the future. Views are also sought on the repossession process. The consultation closes on 12 October 2019.
- on opening up access to the rogue landlord database to (prospective) tenants. The consultation closes on 12 October 2019.
- on the impact and the implementation process of the Homelessness Reduction Act. The consultation closes on 15 October 2019.

Positive action and lawful discrimination

In R (Z and Another) v (1)Hackney LBC (2) Agudas Israel Housing Association Ltd [2019] EWCA Civ 1099, the Court of Appeal held that the practice of allocating AIHA's properties only to members of the Orthodox Jewish community was lawful. AIHA operated as a charity set up to assist members of the Orthodox Jewish community that were among the most socially disadvantaged households in the area.

'How to rent' guide

The government has updated the 'How to rent: the checklist for renting in England' guide to reflect the changes introduced by the Tenant Fees Act 2019.

'Bedroom tax'

In Secretary of State for Work and Pensions v Rachel Hockley, Nuneaton and Bedworth Borough Council [2019] EWCA Civ 1080, the Court of Appeal has held that in order to determine the claimant's bedroom entitlement for the purpose of regulation B13 of the Housing Benefit Regulations 2006 SI 2006/213 (the 'bedroom tax'), the local authority must apply an objective test and assess whether a room is capable of being used as a bedroom by any of the depersonalised categories of persons listed in the regulations.

Benefit cap

In R (on the application of DA and Ors) v Secretary of State for Work and Pensions [2019] UKSC 21, the Supreme Court confirmed that applying the benefit cap to lone parents with children below school age is not unlawfully discriminatory, as it is not manifestly without reasonable foundation.

UC for mixed-age couples

From 15 May 2019, new benefits claimants who are mixed-age couples (where only one member of the couple has reached state pension age) must claim help with their housing costs through universal credit (UC). The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions (Amendment)) Order 2019 SI 2019/935 introduces two exceptions. The DWP Guidance A9/2019 and the LA Welfare Direct Bulletin 6/2019 provide further information.

Windrush compensation and HB

The HB Circular A8/19 confirms that compensation awarded under the Windrush Compensation Scheme (WCS) is to be disregarded indefinitely for the purpose of calculating entitlement to housing benefit.

Duty to refer and prisoners

The MHCLG has published guidance on how to develop prison release protocols that complements the duty to refer guidance and provides practical suggestions in relation to reducing the risk of homelessness upon release.

How to support NRPF families?

In this article, Amy Murtagh describes challenges faced by families with no recourse to public funds (NRPF) and outlines practical steps advisers can take to support them.

Amy Murtagh is the Interim Director of the charity Project 17.

Project 17 is an organisation working to end destitution among migrant children. We work with families with 'no recourse to public funds' (NRPF) who are experiencing exceptional poverty, to improve their access to local authority support.

We believe that all children have the right to a home and enough to eat, regardless of their parents' immigration status. To achieve our vision, we provide advice, advocacy and support for individuals. We also build capacity in other organisations, undertake campaigns and lobby for the improved implementation of statutory support.

'No recourse to public funds'

Under immigration law,[1] most people 'subject to immigration control' are excluded from claiming most welfare benefits and homelessness assistance. This is commonly referred to as having 'no recourse to public funds'. Breaching this condition puts that person's current or future right to be in the UK at risk.

The category of persons 'subject to immigration control' includes those, who:

- need leave to enter or remain in the UK, but do not have it; or
- have leave to enter or remain, which is subject to a NRPF restriction; or
- have leave to remain given as a result of a maintenance undertaking.[2]

This mainly includes non-EEA nationals, however EEA nationals without a right to reside are considered 'subject to immigration control' for the purposes of homelessness assistance and allocation of social housing.[3]

In addition, some people who do have a 'right to reside' in the UK are specifically excluded from access to homeless assistance and benefits by separate regulations. For example, a non-EEA national who has a right to reside as a 'Zambrano carer', because they are the only person caring for a British child, is not allowed to claim mainstream support.[4]

What support is available?

Section 17 of the Children Act 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children in need in their area. To fulfil this duty, section 17 gives local authorities the power to provide support, including accommodation and financial support, to families with 'children in need',[5] even if they have NRPF. The power under section 17 can be used to support the family as a whole and to promote the upbringing of the child within the family unit.[6]

Local authorities have discretion whether or not to provide support to an individual family and can take other factors, such as own resources, into account when making this decision. However, in serious situations, where a family is destitute and without enough money to provide for essential things like accommodation, food, travel or clothes, the local authority *must* provide support in order to safeguard and promote the welfare of an individual child.[7] If a child or vulnerable person is destitute, the local authority's failure to provide support is likely to constitute a breach of Article 3 of the European Convention on Human Rights,[8] i.e. that they would be at risk of serious harm if they were to be street homeless and their essential needs were not met.

Some categories of adults are excluded from accessing section 17 support due to their immigration status.[9] In these cases, the local authority must conduct an assessment to determine if a failure to provide support would constitute a breach of human rights. Where providing support under section 17 is the only way of avoiding a breach of human rights, the authority will be compelled to provide it. At this point, the authority may consider advising or assisting the family to return to their country of origin as a way of avoiding breaching their human rights.

Problems with accessing support

Through the course of our work, Project 17 has been dealing with instances of poor practice and unlawful decision making. On occasions, local authorities have refused to assess our clients and have used tactics which may deter them from seeking support, such as threatening to take children into care and wrongly informing families that they are not

eligible for support due to their immigration status. Families that manage to access a section 17 assessment despite these barriers can face an intense, intrusive and sometimes gruelling process, seemingly focused on the credibility of the parents rather than the welfare of the children.

Families in urgent need often face difficulties in accessing interim support pending assessment and may be wrongly informed that they have to wait until the assessment is completed. This is contrary to statutory guidance, which states that 'where particular needs are identified at any stage of the assessment, social workers should not wait until the assessment reaches a conclusion before commissioning services to support the child and their family'.[10]

Suport throughout the assessment

Below is a list of practical steps advisers can take to better assist families with NRPF.

Signposting for immigration advice

Immigration is a complex area of law. NRPF families, especially those who have no outstanding application for leave, may benefit from specialist advice by a certified immigration adviser or a solicitor. This is especially important where the local authority are considering sending the family back to their country of origin.

'Frontloading' referrals

Careful preparation of a referral to the local authority asking for support is key. Where possible, advisers should provide a detailed account of their client's immigration, housing and financial situation. The burden is on the client to prove that they are destitute, and advisers should support clients in collecting as much supporting evidence as possible. Examples of useful documents include proof of homelessness, annotated bank statements from all accounts, as the local authority may want to conduct a credit check, letters from friends or family who have supported the family.[11]

If possible, advisers should check the client's evidence for consistency and anticipate issues that may be problematic, e.g. explaining any payments in or out of bank accounts.

Focusing on credibility

Advisers should emphasise the importance of being completely open when undergoing assessment by the local authority. Inconsistencies, however small, may be used to undermine their credibility and can be very difficult to challenge at a later stage.

Preparing clients for the possibility that the local authority may be looking for inconsistencies and checking their evidence is crucial. There is often a credible explanation of apparent inconsistencies in the client's story. If credibility is questioned through the course of the assessment, advisers should discuss this with the client, understand their explanation and feed it back to the local authority.

Advisers should also check if their clients were given a meaningful opportunity to respond to any negative credibility findings. If not, it may be possible to challenge the assessment on the basis that it was not conducted fairly, or that the local authority failed to undertake reasonable enquiries.

Keeping a written record

There may be discrepancies between what is written in the assessment and what the client reports happened. Advisers should assist clients to provide information or evidence in writing, so that this can be referred to later if needed. Advisers can confirm verbal discussions with the local authority in writing and request that social workers acknowledge in writing if there are any inaccuracies, or if further information is required to complete their enquiries.

It is helpful if a professional or a volunteer advocate accompanies the client to assessment appointments and takes notes. Apart from reassurance, this can provide a useful written record. However, advisers should be careful not to interfere with the assessment or put words into the client's mouth.

Legal challenges

In some cases, even with the most effective advocacy, clients may be refused support. There is no statutory right of appeal against a refusal of section 17 support. Clients in this situation should be referred to community care, public law or housing solicitors (e.g. Shelter) to bring a claim for judicial review.[12] By following the steps above, advisers will have helped set up the case well for litigation.

Further advice and support

Project 17 provides free training to frontline organisations on supporting NRPF families to access local authority support. Advisers can also contact our second-tier advice line for specialist advice on particular cases (07701330016, Mon-Fri) and access online resources, including a guide on supporting NRPF families, at www.project17.org.uk.

Shelter Legal

Help for ineligible children and families in England

Footnotes

[1] ss. 115(9 -(10) Immigration and Asylum Act 1999; s.7(1) Immigration Act 1988; Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 2006/1294.

[2] For a complete list, see section 115(9) and (10) of the Immigration and Asylum Act 1999.

[3] s.7(1) Immigration Act 1988; regs 4 and 6 The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 2006/1294; Barnet LBC v Ismail and Abdi [2006] EWCA Civ 383.

[4] Social Security (Habitual Residence)(Amendment) Regulations 2012 SI 2012/2587; Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 2006/1294, as amended by reg 2 Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 SI 2012/2588.

[5] s. 17(3) Children Act 1989.

[6] s. 17(1)(b) Children Act 1989.

[7] para 3 Sch 3 Nationality, Immigration and Asylum Act 2002; R(MN) v Hackney LBC [2013] EWHC 1205; R (on the application of F) v Barking and Dagenham LBC [2015] EWHC 2838 (Admin).

[8] See R (on the application of Limbuela) v Secretary of State for the Home Department (2005) UKHL 66, (2006) 1 AC 396.

[9] Schedule 3 Nationality, Immigration and Asylum Act 2002.

[10] Chapter 1 para 76, **Working Together to Safeguard Children**, Department for Education, 2018.

[11] For a full list visit: **https://www.project17.org.uk/resources/**.

[12] In 2018, 39% of Project 17's cases were referred to a community care solicitors for support to challenge a negative decision. However, the majority of these cases settled in the family's favour before legal action commenced.

Intentionality and accommodation duties

In this article Richard Harmer explains accommodation duties under the Housing Act 1996 towards eligible applicants in priority need who have become homeless intentionally.

Richard Harmer is a Senior Solicitor at Shelter.

It is not uncommon for homeless applicants to say to advisers that there is no point in approaching the local authority's homelessness department, because they have been already told they will be found intentionally homeless and the authority will not help them.

Alternatively, an adviser may be contacted by a worried client who has been found intentionally homeless and has been told to leave their accommodation within 14 to 28 days. Applicants with dependent children may have been told that they have to approach the social services' children's team, which they may be reluctant to do.

This article seeks to address the duties of housing authorities towards applicants who have been found to be eligible for assistance and in priority need but homeless intentionally and to outline the main steps for advisers supporting clients in this situation.

Intentionality

By law, a person becomes homeless intentionally if s/he deliberately does or fails to do something that results in her/him ceasing to occupy accommodation, which was:

- available for his or her occupation, and
- reasonable for him or her to continue to occupy.[1]

Acts and omissions committed in good faith or in ignorance of a relevant fact should not be considered deliberate.

The Homelessness Code of Guidance (the Code) provides examples of circumstances in which there should be no finding of intentionality.[2]

The applicant will also become homeless intentionally if s/he colluded with the accommodation provider and agreed to leave her/his accommodation in order to gain entitlement to homelessness assistance. There can be no finding of intentionality unless the accommodation lost was available and would have been reasonable for the applicant to continue to occupy.[3]

Duties under the Housing Act 1996

Homeless applicants often seek help and advice after they have been found intentionally homeless and received a notice to leave the accommodation provided by the housing authority. While they will not qualify for the main housing duty under section 193 of the Housing Act 1996, the Act compels local authorities to provide applicants in this situation with a degree of support.

The relevant duties are:

- interim duty to accommodate[4]
- relief duty[5]
- duty to assess the applicant and devise personalised plan of steps the authority and the applicant are to take to find suitable accommodation[6]
- section 190 duty to accommodate the applicant for a reasonable period of time.[7]

Interim duty to accommodate arises as soon as there is a reason to believe that the applicant may be eligible, homeless and in priority need, irrespective of any potential intentionality issues. It continues alongside the relief duty.

The relief duty arises where the authority are satisfied the applicant is homeless and eligible for assistance. It compels the local authority to 'take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation' for at least six months.[8]

Duties under section 190 apply to applicants who are:

- homeless
- eligible for assistance
- in priority need
- homeless intentionally

Under section 190, the authority must:[9]

(a) secure that accommodation is available for the applicant's occupation for such a period as they consider will give the applicant a reasonable opportunity to secure alternative accommodation, and

(b) provide the applicant with, or secure that the applicant is provided with, assistance in

securing alternative accommodation.

Duties under section 190 arise once the relief duty has been brought to an end.[10]

Has the relief duty ended?

Advisers should check if the relief duty has come to an end. This is important for two reasons:

- duties under section 190 cannot arise before the relief duty comes to an end, and
- applicants in priority need, including those who might have become homeless intentionally, are entitled to interim accommodation[11] that comes to an end on the *later* of either the relief duty ending or the duty under section 190 arising.[12]

Actions the housing authority can take to comply with the relief duty include:

- securing accommodation for the applicant
- arranging for suitable accommodation to be secured by a third party
- providing assistance to help secure suitable accommodation.

The relief duty lasts 56 days and can, in certain circumstances, be either extended or ended early.[13]

In *R (Harris) v Islington LBC*,[14] it was established that where the local authority had satisfied themselves that the applicant was in priority need but intentionally homeless, the relief duty did not end simply by virtue of the 56-day period lapsing. In addition to carrying out the assessment of the applicant circumstances and needs, and devising a personalised housing plan, the authority should have made a decision to end the relief duty, served a notice to that effect and set out the right to a review.

Therefore, if the local authority fails to end the relief duty correctly, the applicant can challenge this by way of judicial review and argue that the local authority should fulfil their obligations as per the relief duty and continue to provide interim accommodation until the relief duty is lawfully brought to an end and the section 190 duty arises.

Section 190 - reasonable opportunity

Where a duty under section 190 is being brought to an end, the adviser should check whether the period of the notice issued by the housing authority can be challenged.

The law sets out that where an applicant has a priority need and is intentionally homeless, the housing authority must secure accommodation for a period of time and provide a reasonable opportunity for the applicant to find their own accommodation.[15]

Local authorities must act reasonably, irrespective of whether there is a legal requirement to obtain a court order to evict the applicant. A question arises, what is 'a period of time' that will give the applicant a 'reasonable opportunity of securing accommodation for his or her occupation'?

The Code sets out that local authorities have to consider each individual case on its merit. For example, a few weeks may provide one applicant with a reasonable opportunity to secure accommodation, but other applicants might require longer, while others may require less time.[16] Therefore, the reasonableness of the notice will depend on the personal circumstances of the applicant.

Section 190 only applies to those in priority need, so it is likely that the applicant may have dependent children or there may be disability issues that affect the applicant's ability to find accommodation. A referral to social services for a community care assessment may also be of assistance, because it could provide evidence of the household's care needs.

The housing authority may be asked to extend the period of accommodation where the applicant has been advised to keep a detailed journal of any efforts to secure private sector accommodation and it can be argued that the notice period is unreasonably short. The local authority should always be asked to demonstrate what advice and assistance they have provided and to disclose a copy of the applicant's personalised housing plan and assessment.[17]

The local authority are under a duty to look at the housing needs of the applicant, in particular at what accommodation would be suitable and what support would be necessary to be able to secure and retain it.[18] This involves carrying out an personalised assessment of the circumstances and needs of the applicant and the resources available to her/him, which may highlight health or support needs that make it more difficult for the applicant to secure accommodation.

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Duty to intentionally homeless

Footnotes

[1] ss.191(1)-(2) Housing Act 1996.

[2] paras 9.16-9.19 Homelessness Code of Guidance, MHCLG, February 2018 (April 2019).

[3] s.191(3) Housing Act 1996.

[4] s.188(1) Housing Act 1996.

[5] s.189B Housing Act 1996.

[6] s.189A Housing Act 1996.

[7] s.190 Housing Act 1996.

[8] s.189B(2) Housing Act 1996.

[9] s.190 Housing Act 1996

[10] s.190(1)(c) Housing Act 1996.

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

[12] See paras15.10-15.11 Homelessness Code of Guidance, MHCLG, Feb 2018.

[13] See: s.189B(4), s.189B(7), s.193A(2), s.193C(2) Housing Act 1996; para 13.8 Homelessness Code of Guidance, MHCLG, Feb 2018 (April 2019).

[14] R (Harris) v London Borough of Islington, High Court (Admin) CO/1282/2019 (unreported; settled in March 2019).

[15] s. 190 housing Act 1996; para 9.4 Homelessness Code of Guidance for Local Authorities, MHCLG 22 February 2018. s.189A Housing Act 1996.

[16] para 15.14 Homelessness Code of Guidance for Local Authorities, MHCLG February 2018 (April 2019).

[17] s.189A Housing Act 1996.

[18] s.189A(2) Housing Act 1996.

An adviser should study the assessment to check if the local authority has set out any circumstances applying to the applicant. For example, does the applicant have children in local schools, does s/he have local employment, or does s/he require local support services because of a disability?

The duration of the period of time has rarely been raised in case law and it is submitted the local authority should be put to strict proof when arguing the length of time to give the applicant a reasonable opportunity to find their own place to live.

In *R (Conville) v Richmond upon Thames LBC*,[19] the applicant had been found intentionally homeless and the Court of Appeal held that while the authorities can decide, subject to the supervision of the court, what amounts to a reasonable opportunity, the expression does not permit them to have regard to considerations peculiar to them, such as the extent of their resources and other demands upon them.

'Reasonable opportunity' means what is reasonable *from the applicant's standpoint*, having regard to her/his circumstances and in the context of the accommodation potentially available.[20]

Case study

Mary has made a homeless application to the housing authority and, following a review, it has been upheld that she is intentionally homeless. The finding of intentionality is not being contested, however the relief duty has now come to an end and the local authority have given Mary six weeks' notice to leave her accommodation. Mary seeks advice and obtains legal representation.

Mary is employed in the area and has an adult disabled daughter living with her. Mary's daughter attends a local day centre.

Mary has been keeping a detailed record of her efforts to find somewhere to live but she has not been successful.

The local authority are asked to carry out a further assessment of their duties towards Mary and update the early assessment carried out under section 189A of the Act in the initial stages of Mary's homeless application.

In the assessment, the authority set out that Mary is in receipt of welfare benefits and they provide a list of local letting agencies who may accept tenants reliant upon housing benefit.

Mary's legal representative intervenes, because the local authority's assessment of Mary's circumstances has failed to address the specific difficulties Mary faces, such as:

- the fact that any accommodation found will likely require adaptations to make it suitable for her disabled daughter
- Mary's employment in the locality
- difficulty in finding private sector accommodation due to high rents and benefit restrictions.

After further threats of legal action, the local authority recognises that in this case section 190 accommodation must be extended. It is extended for further 18 months until Mary is able to find her own place to live.

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Duty to intentionally homeless

Footnotes

[19] R (Conville) v Richmond upon Thames LBC [2006] EWCA Civ 718.

[20] para 36 R (Conville) v Richmond upon Thames LBC [2006] EWCA Civ 718.

Case brief

Samuels v Birmingham

In this case brief Jo Underwood looks at a recent decision of the Supreme Court on intentionality where rent arrears were caused by a shortfall in benefits.

Jo Underwood is a Managing Solicitor at Shelter.

In **Samuels v Birmingham City Council [2019] UKSC 28**, the Supreme Court considered whether a property was affordable in circumstances where the housing benefit award did not meet the full rent.

The case

Ms Samuels (S) applied to Birmingham City Council as homeless after eviction from private rented accommodation due to rent arrears. Her monthly rent was £700 and her housing benefit award left her with a shortfall of just over £150 per month. The council found that S had become 'intentionally homeless' as she could have used her non-housing benefits to pay the shortfall. At that time, S was receiving income support, child benefit and child tax credit – benefits that are intended to cover only essential living costs for families.

The council found that S could have used her non-housing benefits to pay the shortfall in rent, therefore the accommodation she lost was affordable and reasonable to continue to occupy. S was found intentionally homeless.

Shelter and the Child Poverty Action Group jointly intervened in the case. Along with S, they asked the Supreme Court to consider the issues in this case against the wider background 'in which shortfalls between contractual rent and maximum levels of housing benefit have become common for a number of reasons… because of developments in social security policy' (para 20). These include the bedroom tax, the benefit cap and the freeze on local housing allowance. Rising rents combined with these welfare policies mean an increase in the number of claimants experiencing rent shortfalls – as happened to S.

The practice of assessing whether accommodation lost by homeless applicants in similar circumstances was affordable and therefore reasonable to continue to occupy varies between local authorities. Many look at the household's income and expenditure, but this involves taking a view on what a household's 'reasonable living expenses' are and there is no generally accepted guidance available to assist (para 29).

The judgment

S succeeded. The intentionality finding was quashed and the Court expressed the hope that the council would now be able to accept the full housing duty towards S (para 37). The Court noted that the version of the Homelessness Code of Guidance for Local Authorities (2006) that was in place when S applied as homeless recommended that authorities should regard accommodation as unaffordable if the applicant's residual income – after paying housing costs – would be less than the level of income support or income-based jobseekers allowance they are entitled to. This was in place at the time S applied to the council as homeless. However, the reviewing officer took a different approach and considered that she had 'enough flexibility in her overall household income' to meet the shortfall in rent.

The Supreme Court noted that her living expenses fell well within the amount regarded as appropriate by way of welfare benefits for her and her family, so it was 'difficult to see by what standard that level of expenses could be regarded as other than reasonable' (para 36).

The Court held that the assessment of reasonable expenses must be objective, 'cannot depend simply on the subjective view of the case officer' and that affordability has to be judged on the basis that the applicant is to occupy the accommodation indefinitely (para 34). Because benefit levels were 'not generally designed to provide a surplus above subsistence needs of the family', they could be considered ' at least a good starting point for assessing reasonable living expenses' (para 35).

The Court noted that since S applied as homeless, paragraph 17.40 of the Code of Guidance has been replaced with paragraph 17.46 of the new Code of Guidance (2018), which merely states that 'Housing Authorities may be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs' (para 40).

The judgment comments on the lack of consistency between housing authorities in the treatment of 'affordability' as well as a shortage of reliable guidance on reasonable levels of living expenses and calls on the government to address this issue (para 41).

In practical terms, until such guidance is produced, the use of welfare benefits as a starting point for assessing reasonable expenditure provides a consistent, workable objectively justifiable measure. If a household's housing costs take their income below subsistence benefit levels, the property should not be considered as affordable.

Factsheet

Tenant fees

This factsheet looks at the fees that private landlords can charge their tenants.

From 1 June 2019 most fees in the private rented sector are either banned or capped. This applies to assured shorthold tenancies (ASTs), licences, lodgers, and student lets.

If your agreement started before 1 June 2019 and has not been renewed since, you will be protected from 1 June 2020.

All references to a landlord in this factsheet include references to a letting agent, and references to a tenancy include references to licences and student lets.

Permitted payments and fees
Your landlord can lawfully charge you only the fees and payments listed on this factsheet. All other fees, such as for referencing, credit checks and professional cleaning, are prohibited.

Rent
Your landlord can ask you to pay rent. Rents in the private rented sector aren't capped but your landlord cannot make up for other fees by charging you more rent at the beginning of your tenancy than later. This is called 'frontloading' and is prohibited.

Tenancy deposit
Your landlord can ask you to pay a tenancy deposit of up to 5 weeks' worth of rent, or 6 weeks' if your yearly rent is £50 000 or more. If you are a joint tenant, the cap refers to how much you all pay. Any amount above the cap is unlawful.

Holding deposit
Before signing a tenancy agreement, your landlord can ask you for a holding deposit of up to 1 week's rent. If you are a joint tenant, the cap refers to the total amount of rent you all pay. Anything above that is unlawful.

You and your landlord have 15 days from when they receive your money to sign a tenancy agreement, but you can agree in writing on a different deadline.

If the tenancy goes ahead, the whole sum should be returned to you within 7 days of the tenancy start date, unless you agree to put it towards your tenancy deposit or rent. If the tenancy doesn't go ahead, it should be returned to you within 7 days of the deadline for signing the agreement.

Your landlord may be allowed to keep your holding deposit if:

- you failed a right to rent check
- you provided false or misleading information to get the tenancy
- you pulled out before the deadline or delayed signing the agreement beyond the deadline, unless the landlord acted unreasonably.

Your landlord must explain to you in writing why they are keeping your holding deposit. Seek advice if this happens.

Changes to your tenancy agreement
If you ask to change the terms of your tenancy, for example to keep a pet or take in a lodger, or pass your tenancy to someone else, your landlord can charge you for it. The fee cannot exceed £50 per change, unless your landlord's reasonable cost is greater.

Your landlord can also charge you a fee if you ask to leave the tenancy early.

Damages
If you lose the keys to the property, your landlord can charge you the reasonable cost of replacing them or the locks. They should tell you in writing how much it cost them.

If you are more than 14 days late with your rent, your landlord can charge a fee of up to a certain amount. Seek advice on how to calculate it.

If you cause damage to the property or owe rent, the landlord could make deductions from your tenancy deposit when your tenancy ends or apply to court for a money judgment against you.

Utilities
If your agreement says you should pay your landlord for utilities, council tax, broadband, landline, satellite/cable TV, TV licence, they can ask for a payment towards these.

Enforcement
Contact your local council if you have been charged an unlawful fee or if you didn't receive your holding deposit back. If you have an AST, your landlord will not be able to serve a section 21 notice to evict you until they give you your money back.

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

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