

## Factsheet 89

# Homelessness

July 2019

### About this factsheet

This factsheet explains what help is available if you are homeless or at risk of homelessness, for example because of a tenancy ending or relationship breakdown.

It looks at common causes of homelessness and what to do in each case, what to do if you urgently need a place to stay, and the criteria you have to meet to get help from the local authority (council).

Information on how to join the waiting list for council and housing association housing in your area is in factsheet 8, *Council and housing association housing*. Information about private rented housing is in factsheet 63, *Finding private rented accommodation*.

The information in this factsheet is applicable in England. Please contact Age Cymru, Age Scotland or Age NI for information applicable to those nations. Contact details can be found under Age UK at the back of the factsheet.

Contact details for any organisations mentioned in the factsheet can be found in the *Useful organisations* section.

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# 1 Recent developments

Significant changes were made to homelessness law from 3 April 2018. If you make a homelessness application to a local authority, then:

- you are considered '*threatened with homelessness*' if it is likely you will become homeless within 56 days
- the authority have a duty to help you so long as you are homeless or threatened and '*eligible for assistance*', regardless of whether you are considered a priority case or the reasons for your homelessness
- it must carry out an assessment of your case and draw up a plan for resolving or preventing your homelessness, ideally with your agreement
- it must take '*reasonable steps*' to help you, informed by this assessment – it may give advice and support, or, in some cases, an offer of housing
- you are likely to have to take certain steps yourself and help may be withdrawn if you '*deliberately and unreasonably*' refuse to cooperate
- if the duty ends (for example because you refuse to cooperate), you may not get any further help, even if you are still homeless or threatened.

These changes apply to applications made on or after 3<sup>rd</sup> April 2018. If you made an application before that date, different rules apply. Speak to an advice agency or law centre about your position.

# 2 Introduction

Homelessness has a wider meaning than rough sleeping. By law, you are homeless if you have no available accommodation or if you have accommodation but it is not reasonable for you to live there anymore.

This means you can be considered homeless if you are temporarily staying with friends or family, if your home is in a very poor condition, or if it is no longer suitable for you because of disability or illness.

You are considered '*threatened with homelessness*' if it is likely you will become homeless within 56 days, or if you are an assured shorthold tenant and have received a valid '*section 21*' notice expiring within 56 days (see section 3.1).

## Local authority duties

Local authorities have a range of duties under homelessness law. They have a general duty to ensure information and advice on homelessness, including preventing homelessness and the help you can get, is available free of charge in the area.

This service must be designed to meet the needs of certain groups in particular, including domestic abuse survivors and people leaving prison or hospital.

Authorities have specific duties towards households who are experiencing, or at risk of, homelessness. If this applies, provided you are '*eligible for assistance*' on the basis of your immigration status, the local authority must do the following:

- carry out an assessment of your circumstances and needs
- draw up a plan of action for resolving ('*relieving*') or preventing your homelessness, ideally with your agreement
- take '*reasonable steps*' to help you for around 56 days (you may get help for a longer or shorter period).

This is called the '*relief*' duty if you are homeless or the '*prevention*' duty if you are threatened. It is a duty to work with you, not provide accommodation for you (we use the term '*secure*' accommodation in this factsheet), although the authority may choose to make you an offer of housing. This can be private rented housing.

When the duty ends (because 56 days have passed or because of a specific event), you may not get further help, even if you are still homeless or threatened. If you are homeless, you get some further help if you are considered a priority case and the authority may have a duty to rehouse you if you are also '*unintentionally homeless*'. This can be in private rented accommodation.

The plan of action for relieving or preventing your homelessness is likely to set out certain steps you are required to take. If you fail to take a required step, the authority may say you have '*deliberately and unreasonably refused to cooperate*'. If it does, you get no further help, unless you are considered a priority case. You get more help if you are also considered unintentionally homeless.

If you are homeless or threatened with homelessness, seek advice immediately. It may be possible to prevent homelessness, for example by challenging eviction or by exploring other housing options such as joining the waiting list for council and housing association housing.

Shelter has a free advice helpline, open 365 days of the year. Or contact a local advice agency like your local Age UK or Citizens Advice.

Legal aid is available for defending evictions, challenging local authority decisions on homelessness, and establishing your rights to the family home if you have experienced domestic violence. This means you can get free legal advice and representation if you are on a low income and your case is strong enough. You may have a law centre in your area. Check the Law Centres Network website to find a legal aid adviser.

## **The relevant legislation**

The law governing homelessness help from local authorities is Part VII of the *Housing Act 1996* ('*the Act*'). This is supplemented by official guidance, the *Homelessness Code of Guidance for Local Authorities* ('*the guidance*').

### 3 Common causes of homelessness

Common causes of homelessness include a tenancy ending, relationship breakdown, or friends or family asking you to leave.

In all cases, seek advice as soon as possible. You should not leave a property or terminate a tenancy without first seeking advice. If you later approach the local authority for help, they may say you made yourself '*intentionally homeless*' (see section 4.1). This is also a risk if you are threatened with homelessness because of something you did or failed to do, or if you are homeless after leaving prison.

#### 3.1 Tenancy ending

A tenancy ending is the most common cause of homelessness.

In most cases, it is unlawful for a landlord to evict a tenant without a court order. Depending on the type of tenancy you have and the reason why the landlord is seeking to end it, the court may have discretion over whether or not it grants an order. This means you can argue it is not reasonable for the landlord to evict you. You may be able to challenge the reason why they want to evict you, for example if you are being unfairly accused of anti-social behaviour.

Some tenants have limited '*security of tenure*', meaning they can be evicted more easily. Assured shorthold tenancies, the most common form of private tenancy, can be ended on a '*no fault*' basis after six months or after a longer fixed term has elapsed. The landlord does not have to satisfy the court they have a good reason for the eviction, but they must follow the correct procedure and meet certain other requirements.

Some tenants have even less protection. For example, if you live with your landlord and share a kitchen, living room or bathroom, you are likely to be an '*excluded occupier*'. This means the landlord does not have to get a court order to evict you.

In all cases, seek advice as soon as possible. You may be able to delay or even prevent the eviction. Legal aid is available for challenging evictions, so you may be able to get free legal advice and representation if you are on a low income and your case is strong enough.

It is unlawful for your landlord to harass you or withdraw services from you with the intention of forcing you to leave your home. Acts of harassment include threats or physical violence, disconnecting the energy supply, or refusing to carry out vital repairs. If you are harassed or threatened with illegal eviction, contact your local authority, an advice agency or the police.

For more information about tenancy rights and challenging evictions, see factsheet 68, *Preventing evictions*.

## Assured shorthold tenants

Assured shorthold tenants can be subject to ‘*no fault*’ eviction after six months or the end of a longer fixed term. This means the landlord does not have to have a good reason to evict and the courts will generally allow eviction to proceed if the correct procedure has been followed.

No fault eviction begins with the service of a ‘*section 21*’ notice. The Act says that an assured shorthold tenant is ‘*threatened with homelessness*’ from the point a section 21 notice is served, so long as this is:

- valid
- due to expire within 56 days, and
- relates to the only accommodation available for them.

If you are threatened with homelessness and eligible, you generally get help from the local authority for 56 days. However, if threatened due to a section 21 notice meeting the above conditions, the authority cannot stop helping you simply because 56 days have passed. It must continue to help until its duty ends for another reason, for example you become homeless.

It is important to note you can be treated as homeless before an eviction is actually carried out. This is because you are homeless if you have accommodation but it is not reasonable for you to live there.

Being treated as homeless means the authority must help you to ‘*relieve*’ your homelessness – the focus will be on helping you to find a new property rather than stay where you are. This means you may be able to avoid the expense and distress of court and eviction proceedings, particularly if the duty to provide ‘*interim*’ accommodation is triggered (see section 8).

**You should not be required to remain in the property until a date and time for the eviction has been set.** Unless the local authority is asking your landlord to delay eviction while you pursue other options, it is ‘*unlikely*’ to be reasonable for you to remain beyond the expiry of your section 21 notice if:

- the authority is satisfied that the landlord intends to evict
- further efforts to resolve the situation are unlikely to be successful, and
- there would be no defence to eviction.

Speak to your local authority if your section 21 notice has expired. They are required to assess at what point you become homeless and are owed the relief duty. The guidance states your preference ‘*may be relevant*’ here – for example, you may wish to remain in the property until you can move into alternative settled accommodation if there is the prospect of a timely move, or alternatively to leave the property to avoid incurring court costs. Seek advice if the authority tell you to wait until the date of eviction.

## 3.2 Mortgage repossession

Mortgage repossession is subject to a pre-action protocol setting out steps the lender and borrower should take to avoid court action. It states court action should be a last resort and happen only if all other reasonable attempts to resolve the situation have failed.

If you fall into arrears, the lender must advise you to make contact with your local authority or a debt advice agency such as StepChange or National Debtline. You should do this as soon as possible.

Your lender should treat you fairly, act reasonably and communicate with you clearly. If they are aware you may have difficulties with reading or comprehension, they should take reasonable steps to communicate in a way that works for you.

The lender must discuss the reasons for your arrears and consider if you would be able to pay them off in a reasonable time frame. They should consider other possibilities, such as changing the type of mortgage, extending the mortgage term or capitalising the arrears. If you fail to comply with a payment agreement, the lender must not start a possession claim without giving you the opportunity to remedy the breach within fifteen working days.

There are other circumstances in which a possession claim must not be started, for example if you have claimed interest relief payments. These are payments made by the Department for Work and Pensions towards the interest due on your mortgage. They are based on a standard rate of interest, not your actual interest rate. They are paid if you receive certain means-tested benefits, but in most cases only if you make your benefit claim after taking out the mortgage. They are a loan, not a benefit.

The lender must not start a possession claim if you can demonstrate you are in financial or other difficulty and need time to seek debt advice or have an appointment booked with a debt adviser. A debt adviser should be able to help you with options such as applying for interest relief.

If your lender has already started a possession claim, seek advice immediately. If the equity in your property is low enough, you may be able to obtain free legal advice and representation through legal aid. If you are over 60 and on certain benefits or on a low income, the legal aid means test is more generous, meaning you can have more equity in your home and still qualify.

### Note

Under the pre-action protocol, you have certain obligations as well as rights. You may be required to explain to the court how you have complied with these. For more information, see:  
[www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_mha](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha).

### 3.3 Relationship breakdown

The law on the housing rights of separating couples is complicated. It is based on a mix of housing and family law. The broad principles are outlined here, but it is important to seek advice as every case is different.

If you and your partner cannot agree on your housing arrangements then, in the short term, there are a range of '*occupation orders*' the court can make allowing or restricting access to the home. You may have rights you are not aware of and may need to act fast to enforce them. A specialist housing organisation like Shelter is a good place to start.

In the long term, properties and tenancies can be transferred from one partner to the other as part of divorce or dissolution proceedings or for the benefit of children. Seek advice if you are not planning on getting a divorce or dissolution, or if you were never married or in a civil partnership, as your options are more limited.

#### Mediation

It is best to try and resolve issues informally with your partner, as court action is time consuming and costly. If appropriate, you can try mediation. An independent mediator tries to help you reach agreement without taking sides. Legal aid is available for family mediation. The Family Mediation Council can help you find a local service.

It is a good idea to seek advice about your rights before trying mediation, so you have a clearer sense of what a fair settlement might look like.

It is important you and your partner continue to ensure that rent and mortgage payments are made while a settlement is worked out. A local authority can say you made yourself '*intentionally homeless*' if you lose your home because of preventable arrears (see section 4.1).

However, you may not be able to reach agreement with your partner or may be at risk of violence from them. If so, seek specialist housing advice as soon as possible.

#### I am a named tenant or owner

If a property or tenancy is in your sole name or jointly owned or rented with your partner, you have rights under housing law. You cannot be excluded by your partner except by court order. An order excluding you from your home is one of the occupation orders the court make. They are usually made on a short-term basis.

A court is unlikely to make an order unless one of the following applies:

- the applicant is your spouse or civil partner
- the applicant can prove they have a material stake in the property, usually because they have made financial commitments
- there are exceptional circumstances, such as domestic violence.

## **I live in my spouse or civil partner's property**

If the property or tenancy is in your partner's sole name, you have no rights under housing law. However, if you are married or in a civil -- partnership, you have '*home rights*' under family law. This means you can live in the property as if you were the owner or tenant.

With home rights, you can pay the mortgage or rent and cannot be excluded from the property except by court order. You can ask the court to make an occupation order giving you access to the property or requiring your partner to leave.

Home rights do not guarantee long-term rights to a property. They do not necessarily prevent the owner or tenant from selling the property or giving notice to the landlord. To do this, you must take further steps, such as registering your home rights as a charge on your property, or seeking a court injunction to prevent your partner from giving notice.

## **Not married or in a civil partnership**

If the property or tenancy is in your partner's sole name and you are not married or in a civil partnership, you do not have home rights and can be excluded by the owner or tenant after reasonable notice has been given. What is reasonable depends on the circumstances of the case.

Cohabiting partners can ask the court to make an occupation order, but the court's powers are limited if they cannot prove they have a material stake in the property.

## **Joint tenants**

A joint '*periodic*' tenancy can be ended by one tenant serving a valid notice on the landlord. This is a tenancy that is not a fixed-term tenancy or where the original fixed term has elapsed.

The tenant serving the notice does not have to obtain the other's consent and the person left in the property can be evicted without difficulty. It may be possible for the person who wishes to stay in the property to have the tenancy transferred to their sole name or a new sole tenancy created for them. See factsheet 68, *Preventing evictions*, for more information.

Some local authorities are reluctant to accept a homelessness application from a joint tenant unless they first take steps to terminate the tenancy. This can cause difficulties for the person left behind, so arrangements should ideally be made to guarantee their security before a notice is served.

Under the Act, a person can be treated as homeless by the local authority if it is no longer reasonable for them to continue living in their home, so an outstanding joint tenancy should not be an automatic barrier to a homelessness application being accepted.

### 3.4 Domestic violence and abuse

Domestic violence is not only about physical violence and is not confined to instances within the home or between intimate partners. The homelessness guidance states:

*The term 'violence' should not be given a restrictive meaning, and 'domestic violence' should be understood to include physical violence, threatening or intimidating behaviour, and any other form of abuse which directly or indirectly may give rise to harm; between persons who are, or have been, intimate partners, family members or members of the same household, regardless of gender identity or sexual orientation.*

There is also a cross-government definition of domestic violence and abuse, which includes psychological, physical, sexual, financial and emotional abuse. Authorities must take account of this when determining if a person is homeless.

If you experience domestic violence or abuse, you have a range of housing options. It may be possible to stay in your home with certain safety measures in place. You may prefer to leave the home or this may be the safest option for you.

If you are a woman experiencing domestic violence, call the free National Domestic Violence Helpline on 0808 2000 247 to have a confidential discussion about your options. If you are a man, call the free Men's Advice Line on 0808 801 0327. In an emergency, for example if your safety is threatened or you are at risk of assault or injury, call the police on 999.

#### Options for staying

In addition to occupation orders, there are other legal remedies survivors of domestic violence can access. These include non-molestation orders, domestic violence protection orders and restraining orders.

They do not guarantee protection and may make a situation worse. Even if an order is made, you may need to take further steps to protect or establish long-term rights to a property.

Contact a domestic violence helpline to discuss whether an order would be appropriate in your case. Ask them about other steps you can take to make your home safer, for example changing locks, putting locks on the windows or installing security equipment.

You may be able to create a sanctuary room, with safety features such as a panic alarm and reinforced door. Local authorities have been encouraged to run Sanctuary Schemes to deliver safety measures in survivors' homes.

## Options for leaving

Contact one of the helplines to discuss how you can make preparations to leave your home safely. They may be able to find you a place in a refuge, a safe house for domestic violence survivors. One option is to make a homelessness application to a local authority.

Under the Act, you can be treated as being homeless if it is probable that returning to your property would lead to domestic violence against you, someone living with you, or someone who could be reasonably expected to live with you. The Act makes it clear that violence includes threats of violence which are likely to be carried out.

If you need to make a homelessness application, you can approach any local authority for help. The authority you approach cannot refuse to accept your application because you have not been living in their area. They must not refer your case to your old local authority if you would be at risk in that area. They must not impose a high standard of proof when assessing risk. They are advised to offer you the same support as someone already living in the area.

The local authority should accept you have a '*priority need*' for accommodation if you are vulnerable as a result of leaving a property because of domestic violence (see section 4.1). Its assessments must be based on the facts of your case and devoid of any value judgements about what you should or should not do, or should or should not have done, to mitigate the risk of violence or abuse. Homelessness is not intentional if it is not reasonable for you to remain in your property.

## Evidence

When making inquiries into cases where violence is alleged, authorities are advised not to approach the alleged perpetrator. The guidance states they may wish to seek information from friends and relatives, social services, health professionals, domestic violence professionals, or the police.

The guidance is clear that, in some cases, corroborative evidence of actual or threatened violence may not be available, for example if there were no adult witnesses or you did not feel able to report incidents. It states '*authorities should not have a blanket approach toward domestic abuse which requires corroborative or police evidence to be provided*'.

When drawing up a '*personalised plan*' to '*relieve*' or prevent your homelessness, the authority should be particularly sensitive to your wishes and respectful of your judgement about the risk of abuse, unless there is evidence to the contrary.

**In any decision as to whether or not you remain in your home, your safety should be their primary consideration.**

### 3.5 Asked to leave by friends or family

If you live with friends or family, you are likely to have a '*licence*' to occupy the property. This could be an '*express*' licence, meaning you made an agreement with them orally or in writing, or an '*implied*' licence, meaning there was an informal understanding that you could stay.

Licensees do not have very strong rights. You may be entitled to a court order before you are evicted, but in many cases you can be excluded from the home once reasonable notice is given. This applies, for example, if you:

- share a kitchen, bathroom or living room with your friends or family, or
- are not paying rent or carrying out other services.

If you agreed a notice period with your friend or relative when you moved in, they must give you this notice.

If you cannot find alternative accommodation after being asked to leave, you can approach the local authority for help. They may interview your friend or relative to determine if your licence has actually been revoked. The guidance encourages authorities to be sensitive to situations where friends or family can no longer continue to accommodate a person with support needs, but are reluctant to formally revoke a licence before alternative accommodation has been secured.

In some cases, the local authority may ask your family if you can stay while they assist you in pursuing other housing options. This can include joining the waiting list for social housing and bidding for suitable properties. For more information, see factsheet 8, *Council and housing association housing*.

The local authority may suggest you try mediation to resolve a family dispute. However, they must be sensitive to the possibility that you may be at risk of violence or abuse in your friend or relative's home.

### 3.6 No right to succeed to a tenancy

If a tenant dies, it is sometimes possible for the tenancy to be taken over ('*succeeded to*') by their spouse, civil partner, live-in partner or a member of their family. The rules are complicated and depend on factors such as the tenancy type, the relationship between the tenant and the person wishing to take it over and whether it has been passed on before.

In most cases, there is no right of succession to a tenancy that has been passed on previously, including tenancies that have been passed from joint to sole names.

If you hope to take over a tenancy, seek advice about your rights immediately. Even if you have no right of succession, the landlord of the property may have a policy of granting a new tenancy in certain circumstances, for example if your parents were joint tenants.

### 3.7 Unsuitable or unaffordable housing

You can be treated as being homeless if it is no longer reasonable for you to continue living in your property. This may be because the property is in a poor condition, overcrowded or unaffordable. The local authority can use knowledge of the general housing circumstances in the area, for example levels of overcrowding and standards of maintenance, to decide if it is reasonable for you to stay.

The guidance states it would not be reasonable for someone to continue to occupy accommodation if its physical characteristics make it unsuitable, for example, you are a wheelchair user and access is limited.

You can be treated as homeless if you are experiencing severe harassment at home or in the local area, for example from a neighbour. Think carefully about your security of tenure and what you hope to achieve by making a homelessness application. You may be rehoused, but this could be in private rented accommodation or another area.

For information on anti-social behaviour, see factsheet 9, *Anti-social behaviour in housing*. For information on home improvements, see factsheet 67, *Home improvements and repairs*. If struggling to pay your housing costs, see information guide 43, *More money in your pocket*.

### 3.8 Leaving prison

If you are homeless or threatened with homelessness after leaving prison, a local authority should take 'reasonable steps' to help you, as long as you are 'eligible for assistance'. This means they cannot turn you away simply because you lost your home while in prison, or because you are a single person with no vulnerabilities.

If you need a place to stay while they look into your case ('interim' accommodation – see section 8), the question of whether you are in 'priority need' is relevant. You are in priority need if you are vulnerable as a result of leaving prison.

The reason you lost your home is relevant if the authority takes reasonable steps to help you for 56 days without success, and in other circumstances such as if you refuse an offer of accommodation. If they decide you made yourself 'intentionally homeless', you may only get limited further help. They may decide this if you lost your home because of criminal or anti-social behaviour or while you were in prison.

The authority should not have a blanket policy of finding all ex-offenders intentionally homeless. They should consider whether losing your accommodation was a likely consequence of committing the offence, whether the accommodation would otherwise have been available to you now and other factors including your age. You do not establish a local connection to the area where you were in prison.

Contact Shelter or the St Giles Trust, a charity offering advice and assistance for ex-offenders.

## 4 Asking the local authority for help

If you make a homelessness application to a local authority, it applies a number of ‘tests’ to determine what help you are entitled to, if any. You may not be entitled to any help other than general advice.

There are four tests in total. In the past, you were unlikely to get substantive help unless you met all four. However, meeting all four tests meant being ‘rehoused’ by the authority. Rehousing means the authority has a duty to secure accommodation for you, although this can be in the private rented sector.

Now, you do not need to meet all four tests to get substantive help. As long as you meet the first two tests (being homeless or threatened with homelessness, and eligible for assistance), you get substantive help. The authority must take ‘reasonable steps’ to help you, for a period of roughly 56 days (it can be longer or shorter).

This is a duty to provide assistance, not housing, although the authority may make you an offer of accommodation if it decides this would be a reasonable step to take. If you are homeless and the authority is unable to help you find a new home within 56 days, it may owe a duty to rehouse you after that point. This depends on whether you meet the remaining tests of being in ‘priority need’ and not ‘intentionally homeless’.

This means these tests are still relevant, although you should get help for roughly 56 days regardless of whether you are considered a priority case or the reasons for your homelessness. The test of being in ‘priority need’ is relevant if you are homeless and need accommodation while the authority looks into your case, see section 8.

Note, if you do not have a ‘local connection’ to the area where you make your application, the authority can sometimes choose to refer your case to an area where you do have a connection. They can only do this at certain stages and must formally refer your case on themselves. They cannot simply tell you to go elsewhere. See section 7 for more information.

### 4.1 The four ‘tests’

#### 1 - Homeless or threatened with homelessness

The first thing a local authority should look at is whether you are homeless or threatened with homelessness. Homeless means you have no available accommodation in the UK or elsewhere which you can:

- occupy by virtue of a legal ‘interest’ (e.g. you are a freeholder, leaseholder or tenant) or a court order
- occupy under an express or implied licence
- occupy because an Act of Parliament or law gives you the right to stay there (e.g. a regulated tenant whose contractual tenancy has ended).

You are also homeless if you have accommodation but:

- you cannot secure entry to it (e.g. you have been illegally evicted)
- it is a moveable structure (e.g. caravan or houseboat) and you do not have a pitch or mooring where you are entitled or permitted to place it and live in it
- it is not reasonable for you to continue to live there.

You are threatened with homelessness if it is likely you will become homeless within 56 days.

If you have accommodation outside of the UK, for example you recently returned from living abroad but have been unable to sell your property there, you must show it was not reasonable for you to continue living in that property or country.

Reasons can include needing medical treatment that was not available there or needing to move back home to receive support from family or friends. Seek advice if you are in this position.

## 2 - Eligible for assistance

This means eligible by virtue of your immigration status. The rules are complicated and vary depending on whether you are a British Citizen, an European Economic Area (EEA) national (European Union countries and Iceland, Liechtenstein, Norway and Switzerland) or a non-EEA national.

You are eligible if you are a British Citizen, unless you recently returned from abroad and fail to satisfy the requirements of the '*Habitual Residence Test*'. This test decides if you normally live in the UK, the Channel Islands, the Republic of Ireland or the Isle of Man.

There is no legal definition of what habitual residence actually is, nor how long you need to have been in the UK to establish habitual residence. For more information, see factsheet 25, *Returning from abroad*.

Other groups who are ineligible for assistance include:

- EEA nationals who are not workers, self-employed, or a family member of an EEA worker/self-employed person
- EEA nationals whose only right to stay in the UK is based on their status as a jobseeker
- non-EEA nationals whose leave to remain is time limited or subject to a condition that they do not claim '*public funds*' including local authority housing assistance.

In addition, there are rules for households with both eligible and ineligible members, setting out when the needs and circumstances of the ineligible members can be taken into account.

### 3 - In '*priority need*'

You are in priority need if:

- there are dependent children in your household
- you or a member of your household are pregnant
- you or a member of your household are vulnerable.

The Act states a person may be vulnerable as a result of age, a physical or mental health condition, or another '*special reason*'. Special reasons include leaving an institutional setting such as prison or the army, or leaving a property because you suffered violence from another person or threats of violence likely to be carried out.

You are not automatically vulnerable if you fit one of these categories. The local authority decides whether your circumstances mean you are vulnerable. In doing so, they should consider your ability to cope if you were made homeless, comparing you to a hypothetical ordinary person who has also been made homeless, not a '*typical*' homeless person.

Your ability to cope means both your ability to find and keep accommodation and the likelihood of you suffering injury or detriment. To be found vulnerable, you must be significantly more vulnerable than the hypothetical ordinary person and likely to suffer greater harm than them when homeless. All your difficulties should be considered together.

If you receive support from a third party, such as a family member, doctor or social worker, the local authority can take this into account when considering whether you would be able to cope. They can only do this if they are satisfied support will be provided on a consistent and predictable basis. As stated above, '*priority need*' status is extended to the whole household if one household member is found to be vulnerable.

The local authority decides what inquiries are necessary to determine whether you are vulnerable, but they should consider and properly evaluate any evidence you submit.

Try and demonstrate why you find it hard to obtain and keep housing, why you would be at particular risk of harm if homeless and why any support you receive could not be provided, or would not be effective in such circumstances. Expert evidence, such as letters from doctors or social workers, is helpful if you have it.

### 4 - Not '*intentionally homeless*'

The local authority can say you made yourself '*intentionally homeless*' if all of the following apply:

- you are homeless because of something you deliberately did or failed to do (a '*deliberate act or omission*')
- the accommodation was available for your occupation, and
- it would have been reasonable for you to continue to live there.

The guidance gives examples of acts or omissions that could be regarded as deliberate:

- you chose to sell your home when you were not at risk of losing it
- you lost your home because of a '*wilful and persistent*' refusal to pay your rent or mortgage
- you disregarded sound advice from qualified persons and '*significantly neglected*' your affairs
- you voluntarily gave up a suitable property in the UK or abroad when it would have been reasonable to continue living there
- you were evicted due to anti-social behaviour, violence or threats of violence
- you left a job with tied accommodation when it would have been reasonable to continue in that role and property, unless you left the armed forces in which case different rules apply.

However, an act or omission is generally not considered deliberate if:

- it was the result of limited mental capacity or a temporary lapse in capacity caused by mental illness, frailty or an assessed substance abuse problem
- you were under duress
- you failed to pay rent as a result of housing benefit delays or financial difficulties beyond your control
- the local authority has reason to believe you are incapable of managing your affairs, for example because of your age
- you acted with imprudence or lack of foresight, but in good faith.

Investigations into intentional homelessness must be carried out on a case-by-case basis. The local authority cannot adopt general policies, such as declaring all applicants who are homeless after leaving prison '*intentionally homeless*'. Local authorities can, however, look beyond the immediate cause of homelessness to determine whether a deliberate act or omission in the past started a '*chain of causation*'.

If you have occupied accommodation that is not '*settled*' in nature, for example you have been sofa surfing or staying in a series of hostels, the authority can trace your movements back to your last settled property and consider the reasons why you lost that accommodation.

The chain of causation can only be broken if there is a material change in your circumstances, or you start to occupy settled accommodation. There is no legal definition of what constitutes settled accommodation, but a private rented tenancy is generally settled.

A temporary arrangement with family or friends can become settled if it persists for a number of years, whatever the intention of the parties at the outset. However, the passage of time alone does not make a property settled.

If there is uncertainty over whether you became homeless intentionally, for example you became homeless a number of years ago and the facts of your case are unclear, the local authority should give you the benefit of the doubt.

There can be no finding of intentionality if a property is, or was not, reasonable for you to continue to occupy.

## 5 Making a homelessness application

If you are homeless or threatened with homelessness and want help from the local authority, contact them and say you wish to make a homelessness application. You do not have to make an application in writing, although it is often good to have a paper trail.

Advice and assistance should be available at all times during normal office hours and authorities should have arrangements in place for 24-hour emergency cover, for example telephone access to an appropriate duty officer. The police and other relevant local services should have details of how you can make an application outside normal office hours.

If the local authority has '*reason to believe*' you may be homeless or threatened with homelessness, it must carry out inquiries to determine whether you are eligible for assistance. If it decides you are eligible, it must carry out inquiries to determine whether it has a duty to help you.

If the authority has '*reason to believe*' you may be homeless, eligible for assistance and in priority need, it must offer you '*interim*' accommodation while it looks into your case. There are complicated rules on how long you get this accommodation for, see section 8.

Reason to believe is a very low threshold for taking action. If your local authority refuses to make inquiries or refuses to accommodate you while it does so, seek urgent advice from Shelter, an advice agency like a local Age UK, or a law centre.

### Initial interview and further inquiries

The guidance states that every person applying for homelessness assistance will require an initial interview. Further inquiries may then be necessary to establish whether a duty is owed. The guidance states that, in most cases, further inquiries will be necessary before deciding that a duty is *not* owed.

If the authority decides a duty is owed, it must carry out a full assessment of your needs and circumstances (see section 6.1).

## 5.1 What information you need

When you first contact the local authority, explain why you are homeless or threatened with homelessness. If you need a place to stay while the authority looks into your case, you should also explain how you satisfy the tests of being eligible for assistance and in priority need. That way, the '*reason to believe*' thresholds should be met.

Your application will be dealt with quicker and have a greater chance of success if you bring the following documents to the initial interview:

- proof of identity and immigration status for all household members, e.g. birth certificates, passports, residence permits
- evidence of where you live or were living, e.g. your tenancy or licence agreement, utility or Council Tax bills in your name, a letter from an official source addressed to you or saying where you have been living
- evidence of why you are homeless or threatened with homelessness, e.g. correspondence from your landlord, mortgage lender, or the court, or a letter from friends or family saying they want you to leave
- proof of income, e.g. benefit letters and wage slips
- proof of pregnancy, if relevant
- letters from professionals involved in your care, e.g. a doctor, social worker or domestic violence advocate
- crime reference numbers and copies of police reports.

This list is not exhaustive, so bring any information or documents you think may help your case. Try to ensure these are relevant and tailored to the requirements of the tests.

Do not worry if you cannot provide all supporting evidence immediately. The obligation to make inquiries rests with the authority - you do not have to prove your case. However, you must be given an opportunity to explain your circumstances fully, particularly on matters that could lead to a negative decision.

## 5.2 Additional support

You may need additional support to make a homelessness application or during the application process. The application can be made by a person acting on your behalf, such as a social worker, solicitor, friend or relative.

If you have a disability under the *Equality Act 2010*, make the local authority aware of this. Here, disability means a physical or mental impairment that has a '*substantial*' and '*long-term*' negative effect on your ability to do normal daily activities.

If you are disabled, the authority may have a duty to make '*reasonable adjustments*' to the way its homelessness service is normally delivered. This applies if you are being put at a '*substantial disadvantage*' by a policy or a physical feature, or if you are not being given enough support.

In addition, the '*Public Sector Equality Duty*' applies to all decisions made on your case. This is a duty to consider the need to eliminate discrimination, harassment or victimisation and advance equality of opportunity between people who share a '*protected characteristic*' and people who do not. Disability is a protected characteristic, as are age, race and sex. If you have a protected characteristic, the authority's inquiries must be even more careful.

When making decisions on your case, it must consider any relevant aspects of the characteristic. This includes decisions about the suitability of accommodation offered. It is expected to give fuller reasons to justify a negative decision. For more information, see factsheet 79, *Equality, discrimination and the Public Sector Equality Duty*.

An application can only be made by a person who has the mental capacity to do so. It is unclear whether a deputy can be authorised by the Court of Protection to make a homeless application on behalf of a person who lacks capacity. If an adult lacks capacity, they may qualify for services (potentially including accommodation) under the *Care Act 2014*.

## 6 Local authority duties to help

### 6.1 Will I get help?

To get any homelessness help from a local authority, you must meet the first two '*tests*' in section 4.1. This means they must be satisfied you are:

- homeless or threatened with homelessness, and
- eligible for assistance.

Being '*satisfied*' is a stricter requirement than having '*reason to believe*', which is the threshold for looking into your application and, if you appear to be in priority need, providing you with '*interim*' accommodation. It means the local authority agrees you meet the above tests.

If satisfied, the authority has a duty to assess your needs and the circumstances surrounding your application. It must draw up, ideally with your agreement, a '*personalised plan*' for resolving ('*relieving*') or preventing your homelessness. This sets out steps the authority will take to help you. You are likely to have to take certain steps too.

Broadly speaking, this help lasts for 56 days, although the authority can choose to help you for longer. In some circumstances, it must help you for longer, for example if homelessness has not been successfully relieved within 56 days and you meet all the tests in section 4.1. However, you may get help for a shorter period, for example if you accept or reject a suitable offer of housing.

The following sections describe the assessment and planning process and the main duties that apply if you are homeless or threatened with homelessness.

## Assessment and personalised plan

If you are homeless or threatened with homelessness and eligible, the local authority must assess and give you a written notification of:

- the circumstances that caused you to be homeless or threatened,
- your housing needs, in particular what housing would be suitable for you and your household, and
- what support you and your household need to find and keep suitable housing.

The guidance recommends that in assessing your housing needs, the authority should consider issues such as the size, type and location of the accommodation required, and specific requirements linked to disability or health.

The assessment process should be flexible to your needs, individual and interactive. The authority should not require you to complete the assessment online and in most circumstances, should carry out at least one face-to-face interview.

If this is not possible, for example because you are in hospital or prison, or would find it difficult to attend an appointment, other options should be explored, such as completing the assessment via video link or with the help of an advice agency.

Following on from the assessment, the authority must work with you to develop a personalised plan for '*relieving*' or '*preventing*' your homelessness. It must try to agree with you:

- any steps you are to take in order to find and keep suitable housing, and
- the steps it is to take for the same purposes.

The authority must provide a written record of what you have agreed. This is known as your '*personalised plan*'.

If you cannot reach agreement, the authority must still produce a written record, setting out why you could not agree, the steps it will take to help you, and any steps it thinks you should take.

The personalised plan is very important – speak to an adviser if you do not understand any aspect of it. The steps the local authority records for itself are likely to be the '*reasonable steps*' it takes to help you (see section 6.2). They may stop helping you if they think you have '*deliberately and unreasonably*' refused to cooperate by not taking a step set out in your plan, even if you disagreed with this step.

The authority must keep its assessment of your case and the appropriateness of your plan under review for as long as it owes you a duty. The guidance suggests that new information or a '*relevant*' change in circumstances should trigger a review, for example if you were threatened with homelessness and then become homeless.

The authority should also arrange a review if they believe you are not cooperating with your personalised plan for whatever reason. See section 6.3.1 for more on non-cooperation.

### Note

If your case is urgent, the need to carry out an assessment and issue written notifications should not prevent your local authority from intervening at an early stage. They can take steps to help you while assessing your case and drawing up a plan, for example making urgent contact with your landlord if eviction is imminent.

### If you are homeless – the ‘relief’ duty

If the local authority is satisfied you are homeless and eligible, it has a duty to help you ‘relieve’ your homelessness. However, if you do not have any connection to the area, it may refer you to another area where you do have a local connection (see section 7). Otherwise, the authority must take ‘reasonable steps’ to help you find suitable accommodation available for at least six months.

Reasonable steps can include making you an offer of housing, but the authority does not have to do this in every case. It is required to work with you, by providing appropriate advice and support, not to directly find and secure accommodation for you. If the authority does make you an offer of housing, it may be in the private rented sector.

Broadly speaking, the authority must work with you for 56 days. It may stop helping you after this point, even if you are still homeless. It cannot do this if you meet the remaining homelessness ‘tests’ of being in priority need and unintentionally homeless.

The duty can be brought to an end before the end of the 56-day period, for example if you accept or reject an offer of housing. If you are still homeless, you only get further help in very limited circumstances.

### If you are threatened with homelessness – the ‘prevention’ duty

If the authority is satisfied you are threatened with homelessness and eligible, it has a duty to help you prevent homelessness. The guidance encourages authorities to take a ‘flexible approach’ where there is an evidenced risk of homelessness but the applicant does not yet meet the legal definition of being threatened (likely to become homeless within 56 days). Rather than telling you to come back when homelessness is more imminent, they should consider accepting the prevention duty early.

If the authority accepts the prevention duty, it must take ‘reasonable steps’ to help you ensure that accommodation does not stop being available. This means working with you to help you stay where you are or find alternative housing. It must do this even if you do not have a local connection to the area – you cannot be referred elsewhere at this stage.

The guidance states the authority should start by exploring ways to help you remain in your current home, where this is suitable. If this is not possible, it should help you to secure alternative accommodation that you can move into in a planned way. This may involve taking steps to extend your stay in your current accommodation, for example asking your landlord to delay eviction until you have found another property.

The authority is required to work with you, by providing appropriate advice and support, not to directly find and secure accommodation for you. However, it may make you an offer of housing if this would be a '*reasonable step*'. This can be in the private rented sector.

Broadly speaking, the authority must work with you for 56 days. Once 56 days have passed, it can choose to end the duty, even if you are still threatened with homelessness. It cannot do this if you are an assured shorthold tenant subject to '*no fault*' eviction, see section 3.1.

In certain circumstances, the duty can be brought to an end before the end of the 56-day period. This generally means you will stop getting help, even if you are still threatened with homelessness. The exception is if you become homeless, for whatever reason, either during the 56-day period or at a later stage. In this case, the relief duty should be owed. See section 6.5.1 for more information.

## 6.2 What help exactly?

If you are owed the '*relief*' or '*prevention*' duty, the local authority must take '*reasonable steps*' to help you. In deciding what steps it is to take, the authority must consider its assessment of your circumstances and needs. This means the help given varies from case to case. In practice, the steps taken by the authority are likely to be those it agreed in your personalised plan, although the law does not say this exactly.

Although there is no definitive list of reasonable steps, the homelessness guidance makes some suggestions:

- attempting mediation if your family have asked you to leave
- if you are in rent arrears, assessing whether you might be entitled to a Discretionary Housing Payment
- providing financial or other support to help you secure private rented accommodation
- providing sanctuary or other measures if you are at risk of violence or abuse and wish to stay safely in your home (see section 3.4)
- if you are sleeping rough or at high risk of doing so, helping you to secure or securing an immediate safe place for you to stay.

In addition, the authority can choose to directly find and secure long-term accommodation for you. This means making you an offer of housing or ensuring an offer is made by another landlord. The guidance suggests authorities should do this '*where appropriate*'.

Tell the local authority if you think you will have difficulty securing a property yourself, even with advice and support. However, be aware that offers of housing made or arranged by the authority may be in the private rented sector and you may have less choice over property type/location.

If the authority is proposing to secure housing for you, let them know if the private rented sector would not meet your needs. When deciding what accommodation to secure, the authority should consider whether you have support needs, as identified in your personalised plan, and any additional information provided by doctors, carers, or other agencies providing services to you.

Offers of accommodation made or arranged by the local authority must meet certain suitability standards, see section 10 for more information.

As your personalised plan must be kept under review, the reasonable steps taken by the authority may change. You can ask for your plan to be reviewed if your circumstances change. Or you can request an '*internal review*' of the reasonable steps the authority takes (see section 11).

### 6.3 Do I have to do anything?

Your personalised plan is likely to include steps you should take to relieve or prevent homelessness. These may be mandatory, meaning you must take the step, or recommended, meaning it is up to you. The plan must set out clearly which steps are mandatory and which are recommended.

The guidance suggests a step should only be mandatory if the local authority thinks it is necessary to relieve or prevent homelessness. It gives little guidance on what form mandatory steps might take, but implies they could include carrying out a property search and engaging with other support services.

You can potentially be required to look for accommodation outside your preferred area if there is little prospect of finding affordable housing there. You should not be required to engage with a service that does not exist in the local area.

The authority must try to agree mandatory steps with you before recording them in your plan. If you cannot agree, the authority can record the step anyway, but it must be satisfied the step is reasonable. Steps you agree to take do not have to be reasonable to be recorded.

Recommended steps are those the authority '*considers advisable*'. It may, for example, recommend that you engage with services to address your wider needs or increase your future housing options. This can include employment support.

### 6.3.1 **'Deliberate and unreasonable' refusal to cooperate**

The local authority can bring the relief or prevention duty to an end if it considers you have '*deliberately and unreasonably*' refused to cooperate with a mandatory step. This is the case even if you did not agree to take the step. It cannot do this if you fail to take a recommended step.

The consequences of refusing to cooperate can be severe. If you are at the relief stage (i.e. if you are homeless and eligible), you will not get further help unless you are in priority need. Even then, you may get less help than if you had cooperated. See section 6.5 for more information.

For this reason, it is important to try and negotiate with the local authority if it is suggesting a mandatory step that you do not think you can or should comply with. Seek advice if you are in this position.

#### **What is a 'deliberate and unreasonable' refusal?**

Neither '*deliberate*' nor '*unreasonable*' is defined in the homelessness legislation. The guidance suggests that '*persistently failing to attend property viewings or appointments without good reason*' or '*actively refusing to engage with activity required to help you secure accommodation*' might be considered deliberate and unreasonable.

However, authorities should be satisfied of the following before ending a duty on these grounds:

- the steps in your plan are reasonable - a requirement for you to search for accommodation in a particular area may no longer be reasonable if you have exhausted all options there.
- you understand what you are required to do, meaning your refusal can be considered deliberate.
- refusal is not linked to an unmet health need or communication difficulty. Communication difficulties can arise, for example, if you have a disability, no fixed address or limited access to technology.
- refusal is deliberate and unreasonable in the context of your particular circumstances and needs.

When considering the final point, the authority should consider a wider range of factors than those identified in its assessment of your case. For example, you may have prioritised attending a Jobcentre or medical appointment or fulfilling a caring responsibility above attending a property viewing. The guidance suggests this is unlikely to constitute a deliberate or unreasonable refusal to cooperate.

If you struggle to take a step due to an unmet health need, remember your personalised plan may require or advise you to engage with support services. Failing to do so may make it more difficult to challenge a decision that you are refusing to cooperate. However, there may be good reasons why you cannot access support or it may not be adequate to enable you to take the required steps. Ask the authority to review your personalised plan if this is the case.

## Procedure in cases of non-cooperation

Authorities should make '*reasonable efforts*' to obtain cooperation, including seeking to understand reasons for non-cooperation, before taking formal action. If you appear not to be cooperating, the authority should review its assessment of your case and the appropriateness of the steps in your plan. You should be advised of the consequences of non-cooperation before formal action is taken.

If you receive support from elsewhere, such as social services or the probation service, the authority should seek to involve them as soon as possible. If the authority wishes to take formal action, it must do the following:

- give you a written warning explaining the consequences if you do not take the required step
- allow you a '*reasonable period*' in which to take the step – what is reasonable should depend on your needs and circumstances
- if you do not take the step in this period, serve you a formal notice of non-cooperation.

Authorities must have a written policy on when and how formal non-cooperation notices are served. Notices should be served by a housing officer and approved by another local authority employee.

The person approving the notice must have at least equal seniority to the person making the decision to serve it and must not have been involved in that decision. This can be someone from another department, for example social services. If a formal notice is served and not successfully challenged, the relief or prevention duty comes to an end.

## How to challenge a non-cooperation decision

You can ask the local authority to carry out an internal review of the decision to serve a formal non-cooperation notice. There is no legal right to a review of the decision to serve a written warning. You can challenge the '*reasonable period*' given to rectify the problem via judicial review.

## 6.4 How long do I get help for?

### 56 days

Broadly speaking, both the '*relief*' duty owed to eligible homeless people and the '*prevention*' duty owed to those who are threatened with homelessness last for 56 days.

This means the local authority should take '*reasonable steps*' to help you for a 56-day period. However, in practice, you may get help for a longer or shorter period. This is explained in more detail overleaf.

## Longer period

In most cases, the authority can choose to end its duty after 56 days, even if you are still homeless or threatened with homelessness. However, it is not obliged to do so. If efforts to help you relieve or prevent homelessness have been unsuccessful, it may continue helping you until you manage to find or keep a property.

It should not have a blanket policy of ending relief or prevention work after 56 days and should take your circumstances into account when deciding whether to extend. You have a right to a review if it decides not to extend, see section 11.

If you are an assured shorthold tenant subject to '*no fault*' eviction, the authority cannot end the prevention duty just because 56 days have passed (see section 3.1). If you are homeless and meet the three remaining '*tests*' in section 4.1, the duty ends automatically after 56 days, but the authority is then under a duty to rehouse you (section 9).

## Shorter period

You may get less than 56 days' help. This is because a local authority can bring the relief or prevention duty to an end early in certain circumstances, including where they are satisfied you have:

- suitable accommodation available for at least six months – for example, you have accepted an offer of or found a property, issues at your current property have been resolved, or your landlord is letting you stay.
- refused an offer of suitable accommodation that would have been available for at least six months – note that suitability can be challenged.
- '*deliberately and unreasonably*' refused to carry out a step set out in the plan drawn up by the authority.
- become homeless intentionally from accommodation you have been provided with since making your application.
- stopped being '*eligible for assistance*'.
- withdrawn your application.

In most cases, the local authority must give you a formal written notice if it wants to end the relief or prevention duty early. This must tell you why and inform you of your right to a review of the decision. The exception is if the authority makes you a '*final offer*' of housing, see section 6.5.3.

## What happens next?

If the relief or prevention duty ends, either because 56 days have passed or for one of the reasons set out above, you may not get further help.

Section 6.5 sets out the main scenarios where you will get further help and those where support may, or will be, withdrawn, even if you are still homeless or threatened.

## 6.5 What happens if...

This section looks at what happens if the relief or prevention duty ends and whether you can expect further help after that point. Whether you get help and, if so, what kind, depends on the duty you were owed, why it was brought to an end, and which of the four tests you meet.

These are complex issues and the factsheet cannot cover every scenario and eventuality. Make sure you understand the consequences of any decision you make, such as refusing to take a step set out in your personalised plan or refusing an offer of accommodation. You may get no further help, or less help than you might otherwise have received.

If your local authority is refusing to provide further help, seek advice immediately. It may be possible to challenge this decision.

### 6.5.1 I was threatened with homelessness and become homeless?

If you were threatened with homelessness and become homeless, the prevention duty can be brought to an end, but the relief duty is owed. This means the local authority must take '*reasonable steps*' to help you find suitable accommodation available for at least six months.

This is the case even if you became homeless because of something you did or failed to do ('*intentionally homeless*'). It is the case even if the prevention duty ended because of something you did or failed to do, for example if you '*deliberately and unreasonably*' refused to cooperate with the local authority or refused an offer of accommodation.

### 6.5.2 56 days pass and I am still homeless?

If you are owed the relief duty, but are still homeless after 56 days, whether you get further help depends on your circumstances. If you meet all four '*tests*' – you are homeless, eligible for assistance, in '*priority need*' and not '*intentionally homeless*' – the relief duty ends automatically and a new duty is owed. This is the '*full*' rehousing duty in section 9.

It is stronger than the relief duty – the authority is required to rehouse you and anyone you might reasonably be expected to live with, unless they refer you to another authority for rehousing. This can be in the private rented sector, although the tenancy must be for at least a year.

If you do not meet all four tests, the authority can choose to end the relief duty after 56 days. Note this is a choice, not an obligation – the authority can extend the duty if it wishes.

It should not have a blanket policy of ending relief work after 56 days and should instead consider factors such as your needs, risk of rough sleeping, prospects of securing accommodation soon, its resources and whether you are likely to seek help from social services if it stops helping you. You can request a review if it decides to end the duty.

If the *'full'* rehousing duty is not owed when the relief duty ends, you get no further help, unless you are in priority need. If you are in priority need, your *'interim'* placement should continue for a reasonable period and you should get some advice and assistance, see section 8.

### Note

If you are owed the relief duty, the local authority must provide genuine help for the 56-day period even if you are unlikely to be entitled to help after that point. The guidance states they *'must not limit or reduce the assistance they provide during the relief duty for this reason'*.

### 6.5.3 I refuse to cooperate?

If you are homeless, whether you get further help depends on your circumstances. If you meet all four tests, the authority has a duty to rehouse you, but this is less advantageous than the *'full'* rehousing duty. You are likely to be offered a six-month tenancy in the private rented sector. The offer must be suitable and suitability can be challenged.

If you do not meet all four tests, you get no further help, unless you are in priority need. If you are, your *'interim'* placement should continue for a reasonable period and you should get advice and assistance, see section 8.

If you are threatened with homelessness, refusing to cooperate means the authority can end the prevention duty, but, if you then become homeless, the relief duty applies.

Section 6.3.1 explains the procedure a local authority must follow if it wants to end the prevention or relief duty on the grounds of your *'deliberate and unreasonable'* refusal to cooperate.

### 6.5.4 I refuse an offer of accommodation?

If you are homeless (and therefore owed the relief duty), make sure you understand whether any offer of accommodation is a *'final'* offer. You may receive a final offer of social housing (a *'final Part 6 offer'*) or of private rented housing (a *'final accommodation offer'*).

If an offer is a final offer, the consequences of turning it down are more severe. The relief duty ends automatically and you will not get any further help, except an extension of your interim placement and some advice and assistance if you are in *'priority need'* (see section 8).

You must be informed of the consequences of refusal and your right to request a review of the suitability of the offer. You can request a review whether you accept the offer or not, so in most cases it is advisable to accept and then seek to challenge suitability (see section 10).

If you refuse an offer that is not a final offer, the authority has discretion over whether it ends the relief duty. If it does, you only get further help if you are in priority need. If you are intentionally homeless, you get an extension of your interim placement and some advice and assistance. If you are unintentionally homeless, the authority has a duty to rehouse you (see section 9).

If you are threatened with homelessness (and therefore owed the prevention duty), the information on final offers does not apply. If you refuse an offer, the authority may choose to end its duty towards you, but if you then become homeless, the relief duty applies.

### 6.5.5 Homelessness is prevented or relieved, but I need further help?

The relief or prevention duty may end because the local authority is satisfied you have suitable accommodation available for at least six months. However, you may need ongoing support to help you maintain a tenancy or other living arrangement.

The guidance says if your needs put you at further risk of homelessness, the authority should work with '*relevant support and specialist services*' to help you promote sustainability. Speak to the authority if you think you need this help.

## 7 Referring your case on

You can apply to any local authority for homelessness help. The authority you apply to (the '*first authority*') cannot refuse to accept an application from you on the basis that you have no '*local connection*' with the area. However, in certain circumstances, it can refer your case to an area where you do have a local connection (the '*second authority*').

The first authority does not have to consider your connection to its area and referral is always discretionary – this is not another '*test*' you have to pass to get help. Local connection can be established in a variety of ways. You have a local connection to the first authority if you:

- are '*normally resident*' in the area or have been in the past (this must be your own choice and not, for example, due to imprisonment or detention)
- are employed there
- have family associations there
- have other special circumstances, such as a need to receive special medical or support services that are only available there.

Local Government Association guidance suggests '*normal residence*' should mean residence for at least six of the previous 12 months or three of the previous five years. The period taken into account should be up to the date of the authority's decision and include periods living in '*interim*' accommodation.

Family associations normally arise if you or a member of your household have parents, adult children, brothers or sisters who have been resident in the area for at least five years at the date of the decision. A referral can only be made on the basis of family associations if you indicate a wish to be near those family members.

For a referral to be made, your household must have a connection to the second authority area and no connection whatsoever to the first. This means if you are considered '*normally resident*' in the first authority area, it should accept responsibility for your case, even if your connection to the second authority area is stronger.

Your case cannot be referred if you or a member of your household would be at risk of violence or threats of violence likely to be carried out in the second authority area. This includes domestic and other forms of violence.

If you do not have a local connection anywhere, for example if you have spent many years in prison, you can get help from any local authority. If you are street homeless or sofa surfing, the guidance states a different type of inquiry is necessary to establish where you are normally resident. If an authority is satisfied you do reside in the area and have no settled accommodation elsewhere, you should be treated as normally resident.

If you have a local connection to a number of other authorities, the first authority should take your wishes into account when deciding where to refer your case.

The first authority must tell you it is planning to refer or has referred your case on. You have a right to a review of the final decision, see section 11. If you are being provided with '*interim*' accommodation (see section 8), this must continue until you are notified of the final decision. The authority has discretion to extend the placement while a review is carried out - ask an advice agency or law centre for help with this. When can the local authority do this?

An authority can make a referral at two distinct stages:

- the '*relief*' stage - when satisfied that you are homeless and eligible
- the '*full*' rehousing stage - when it has tried to relieve your homelessness for 56 days unsuccessfully and is now satisfied you meet all four tests.

At the full rehousing stage, if the second authority agrees the referral conditions are met, it must accept the first authority's decision on your case. This means accepting you are homeless, eligible, in priority need and unintentionally homeless – it cannot carry out its own investigations or refuse to rehouse you because you turned down an offer of accommodation in the past.

At the relief stage, the rules are different. The second authority can reach a different decision to the first on whether you are homeless, eligible for assistance or intentionally homeless, but only if your circumstances have changed or further significant information has come to light. Seek advice if you are in this position.

At the relief stage, the first authority can stop taking '*reasonable steps*' to help you once it tells you it is planning to refer or has referred your case. However, it should take steps to help you before this point, even if it thinks a referral is likely. It should assess your circumstances and needs and try to agree a personalised plan. If the second authority accepts the referral, the first authority must provide a copy of your assessment, and should provide a copy of your plan if made, as quickly as possible.

A referral cannot be made at the prevention stage - if the first authority is satisfied that you are threatened with homelessness and eligible, it must help you regardless of local connection.

### Note

Different rules may apply if you have been homeless before and were placed in the first local authority area by another authority. Seek advice if you are in this position.

## 8 Interim accommodation

If the local authority has '*reason to believe*' you may be homeless, eligible for assistance and in priority need, it must offer you '*interim*' accommodation while it looks into your case. Reason to believe is a very low threshold for taking action.

In areas of high demand, interim accommodation is likely to be a placement in a hostel or Bed and Breakfast with shared facilities (a '*shared facilities placement*'), although the guidance states this should be avoided wherever possible. Authorities should not routinely make shared facilities placements without considering the suitability of the accommodation in each individual case.

If one of the following apply, a shared facilities placement should be made only as a last resort and for a period not exceeding six weeks:

- you or a member of your household are pregnant
- there are dependent children in your household.

If such a placement must be made, the accommodation should be of a good standard. If a lengthy stay is likely, the authority should consider other accommodation more appropriate to your needs. There are complex rules on the length of time interim accommodation must be provided.

It may be provided until you receive a decision on your case, for example, a decision that the relief duty is not owed. However, it may be provided for longer, for example until the relief duty ends. Speak to an adviser if you are unsure.

If you receive a negative decision on your case, or the authority is seeking to withdraw help, you generally have the right to an internal review (see section 11).

In most cases, the authority has discretion to extend an interim placement pending the outcome of any review you request. It has a duty to extend the placement if you seek a review of the suitability of a '*final accommodation offer*' or '*final part 6 offer*' (see section 6.5.3). Ask an advice agency or law centre for help if you are asking the authority to extend your placement on a discretionary basis.

### If the relief duty has ended

If the relief duty has ended, but the '*full*' rehousing duty is not owed as you are '*intentionally homeless*', the local authority must:

- ensure suitable accommodation is available for a '*reasonable*' period while you look for other accommodation, and
- provide advice and assistance, based on the assessment of your needs, to support you in this.

Although the accommodation provided is not technically '*interim*' accommodation, in many cases it will be an extension of your interim placement. Although the guidance suggests '*a few weeks*' may be a reasonable period of extension, the authority must assess your case individually and take account of local circumstances such as the availability of accommodation.

The advice and assistance provided must include information about the likely availability of accommodation that is appropriate to your needs, including where to find and how to get such accommodation.

## 9 The '*full*' rehousing duty

The '*full*' rehousing duty is owed if the following apply:

- you are homeless and meet the other '*tests*' in section 4.1, and
- the local authority has tried to '*relieve*' your homelessness for 56 days, unsuccessfully.

Unless the authority refers your case on, it must rehouse you and anyone you might reasonably be expected to live with. The full rehousing duty can be brought to an end ('*discharged*') in a number of ways. The main one is if you accept an offer of suitable long-term accommodation. This includes an offer of a tenancy from a private landlord for a period of at least 12 months.

The authority may register you on its waiting list for council and housing association housing (the '*housing register*') and place you in temporary accommodation while you wait for a suitable property to become available. Or they may let you stay where you are currently living, for example with friends and family, while you wait.

If you were already on the waiting list, they should adjust your priority level to account for your new status as a homeless person. For more information, see factsheet 8, *Council and housing association housing*.

The duty also ends if you refuse an offer of suitable accommodation. This can be:

- temporary accommodation
- a '*final offer*' of council or housing association housing made through the waiting list
- a '*private rented sector offer*' – this means a fixed-term assured shorthold tenancy of at least one year with a private landlord.

The authority must inform you of the possible consequences of refusing or accepting the offer and of your right to request an internal review of the suitability of the accommodation. You can request a review whether you accept an offer or not, so in most cases it is advisable to accept and then seek to challenge suitability. This way you have a safety net if the review is unsuccessful.

The duty ends if your immigration status changes meaning you are no longer eligible for help. It ends if you become homeless intentionally from accommodation provided by the authority. It does not end if you lose your priority need status.

If the duty ends because you refuse a suitable offer, become ineligible or homeless intentionally, they have no obligation to provide further assistance. If you are in temporary accommodation, they usually take steps to terminate your placement. Seek advice immediately if so.

## 10 Suitable offers

All offers of accommodation made or arranged by the local authority must be suitable for you and all members of your household. This includes interim and temporary accommodation, as well as long-term offers of social or private rented housing.

It does not include accommodation you found yourself, even if the authority took '*reasonable steps*' to help you. However, the authority should provide you with information about housing standards and ensure the property is safe and in a reasonable condition.

Suitability must be re-assessed if your circumstances changes while under a duty to help, for example if you are placed in temporary accommodation while waiting for long-term housing to become available.

The criteria the authority must consider when assessing suitability include:

- your physical, medical and social needs (an offer of supported accommodation may be considered unsuitable if it provides more support than you require).
- the condition of the property and whether it is or would be overcrowded, which may require an assessment under the Housing Health and Safety Rating System (HHSRS). For more information on HHSRS see Factsheet 67, *Home improvements and repairs*
- affordability - the local authority should consider your financial resources, the costs of the accommodation, any maintenance and child support payments and reasonable living expenses
- location
- risk of violence, including racial violence.

An objectively suitable property may be unsuitable in your particular case. In reviewing suitability, the authority should consider subjective factors such as personal characteristics, needs, hopes and fears.

### **Location of the accommodation**

When deciding whether an offer is suitable for a household, the local authority must consider its location, including:

- significance of any disruption to work, caring responsibilities or education
- proximity and accessibility of medical or other support currently provided and essential to wellbeing
- proximity and accessibility of local services, amenities and transport.

The courts have confirmed location is relevant even where accommodation is provided as an interim measure.

As far as reasonably practicable, authorities must make offers of accommodation within their own areas. Under the guidance, accommodation should be provided as close as possible to where you were previously living. If an authority offers accommodation in another area (an 'out-of-area offer'), it must consider how far away it is.

The guidance states an out-of-area offer is unlikely to be appropriate if suitable and affordable accommodation is available closer to the area. It states that authorities should avoid placing households in isolated accommodation away from public transport, shops and other facilities.

If you or a member of your household needs medical or other support, the authority should consider whether this is available near the accommodation offered and, if so, whether you would have difficulties accessing it that you do not have now. Other support includes essential support from relatives or support groups.

If you have children in your household, the local authority must consider the need to safeguard and promote their welfare when making an offer. It is not enough for them to consider whether a child is approaching a significant school examination; they should make further enquiries to identify their wider needs.

If you are made an offer of accommodation outside your local authority area, seek advice from Shelter or a local advice agency.

### Offers of private rented housing

Certain offers of private rented housing must meet additional criteria to be considered suitable. These offers are:

- if you are in priority need, any offer made to end the relief or prevention duty
- regardless of your priority need status, a '*final accommodation offer*' made to end the relief duty
- if the authority has accepted the '*full*' rehousing duty, a '*private rented sector offer*' (see section 9).

The additional criteria include the following:

- the property must be in a reasonable physical condition
- any electrical equipment provided must be safe
- it must have a valid gas safety record and energy performance certificate
- it must be licensed if a '*house in multiple occupation*'
- the landlord must be a '*fit and proper person*' who has not committed certain offences or housing law breaches, or behaved discriminatorily.

### Challenging suitability

You have the right to an internal '*review*' of the suitability of most offers made under homelessness law, including offers of temporary accommodation. If the authority agrees an offer was unsuitable, it must make a new one. If it does not agree, it may not give you any more help.

The exception is offers of interim accommodation. Although interim accommodation must be suitable, in most cases you do not have the right to an internal suitability review. Suitability can be challenged via judicial review or a formal complaint, see section 11.

You have the right to an internal review of accommodation originally provided as an interim measure if the relief duty has ended and either of the following apply:

- the authority has accepted a duty to rehouse you as you meet all the four tests (the '*full*' rehousing duty – see section 9)
- you are in priority need, but intentionally homeless and they have agreed to provide accommodation for a '*reasonable period*' (see section 8).

You can request an internal review whether you accept the offer or not. In most cases, it is advisable to accept and then request a review. This way, you have a safety net if the review is unsuccessful. Seek advice from Shelter or a local advice agency before refusing an offer.

You have 21 days from the date you receive an offer letter to submit a review request. The first day of the period, i.e. the date of receipt, is included in the calculation. It is only the review request that must be made within the time limit; you can submit full representations and evidence at a later stage.

If you wish to request a review, seek advice as soon as possible from Shelter or a local advice agency or law centre. You may be able to get free legal advice and representation through legal aid if you have a low income and your case is strong enough.

Local authorities have discretion to extend the time limit for requesting reviews. If you miss the time limit, submit a request as soon as possible and give reasons for the delay. If unhappy with the outcome of a review, you may be able to appeal to the county court. Seek advice and check if you qualify for legal aid.

## 11 Challenging decisions

### Local authority internal reviews

In addition to the suitability reviews, you can ask the local authority to carry out an internal review of many decisions made under the Act.

You have the right to a review of the following decisions:

- which section 4.1 tests you meet and the duty the authority owes to you
- the '*reasonable steps*' the authority is proposing to take to relieve or prevent your homelessness
- to bring the relief or prevention duty to an end, for example because 56 days have passed or you refused an offer of housing
- you have '*deliberately and unreasonably*' refused to cooperate by failing to take a step you were required to take in your personalised plan
- your case is being referred to another authority on local connection grounds (you can do this at two separate stages)
- the '*full*' rehousing duty has been '*discharged*', for example because you accepted or refused a suitable offer.

If you request a review of the reasonable steps an authority proposes to take or of a decision that you have deliberately and unreasonably refused to cooperate, written representations must be received within two weeks of your review request (although you can agree a longer period with the authority). Otherwise, the procedure for requesting a review is the same as for suitability reviews.

## Other options

Decisions that do not carry a right of internal review by the local authority include refusals:

- to accept your homelessness application
- to provide interim accommodation
- to provide interim accommodation while a review is carried out, where the authority has discretion to do this
- to review a decision that has already been reviewed
- to extend the time limit within which a review should have been requested.

In addition, there is no right to an internal review of the findings of the authority's assessment of your case or contents of your personalised plan. This means there is no right to an internal review of the steps you are required to take under the plan, although steps you do not agree to take must be '*reasonable*' and you cannot be penalised for failing to take a step unless your failure is considered '*deliberate and unreasonable*'.

It may be possible to have a decision that does not carry a right of internal review scrutinised by a judge ('*judicial review*'), but the cost is likely to be prohibitive unless you qualify for legal aid. There are strict time limits for applying. Seek advice if you want to know more.

You can complain to the Local Government and Social Care Ombudsman (LGSCO) if you think the local authority has not followed the correct procedures or treated you fairly.

They cannot overturn a decision made on your case, for example that you are not homeless or not in priority need. They can act as an alternative to judicial review in certain circumstances, for example if the authority refuse to accept a homelessness application from you or fail to provide interim accommodation.

Other issues they can consider include where the authority has:

- failed to make proper inquiries or made unreasonable requests for you to provide evidence before it agrees to look at your application
- placed you in a hostel or B&B with shared facilities for longer than six weeks, if this legal limit should apply
- taken an unreasonable amount of time to deal with your application and reach a decision
- wrongly closed your application or treated it as having been withdrawn
- placed you in unsuitable interim accommodation or failed to deal with repair problems
- lost, damaged or destroyed your personal belongings while they were in storage or failed to help you protect your possessions.

The LGSCO do not normally consider a complaint about a local authority before you have completed its internal complaints procedure. If this takes too long, for example if you have not received a final decision within 12 weeks, you can go straight to the LGSCO. You should normally complain to them within 12 months of the problem coming to your attention.

## Useful organisations

### **Citizens Advice**

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Telephone 0344 411 1444

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

### **Equality Advisory Support Service**

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone 0808 800 0082

The Equality Advisory Support Service helpline provides information and advice about discrimination and human rights issues. Contact them if you want to know about the *Equality Act 2010* and homelessness.

### **Gov.uk**

[www.gov.uk](http://www.gov.uk)

Government website providing online information on variety of subjects and services. The *Homelessness code of guidance for local authorities* and other supplementary guidance can be downloaded here.

### **Law Centres Network**

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

Telephone 020 3637 1330

Supports a national network of community law centres. They can tell you if there is a community law centre in your area and signpost you to other legal advice providers if not.

### **Local Government and Social Care Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

Telephone 0300 061 0614

Investigates complaints of injustice arising due to maladministration by local authorities.

### **Men's Advice Line**

[www.mensadvice.org.uk/](http://www.mensadvice.org.uk/)

Telephone 0808 801 0327

Advice and support for men experiencing domestic violence and abuse.

### **National Debtline**

[www.nationaldebtline.org/](http://www.nationaldebtline.org/)

Telephone 0808 808 4000

A charity providing free, impartial and confidential debt advice.

**Shelter**

[www.shelter.org.uk](http://www.shelter.org.uk)

Telephone 0808 800 4444 (free call)

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

**StepChange Debt Charity**

[www.stepchange.org](http://www.stepchange.org)

Telephone 0800 138 1111

Offers free and independent debt advice and can help you explore your options including setting up a debt management (repayment) plan.

**St Giles Trust**

[www.stgilestrust.org.uk/](http://www.stgilestrust.org.uk/)

Telephone 0207 708 8000

A charity helping ex-offenders and disadvantaged people to move their lives forward. The website has region-specific information, including resettlement factsheets for some local authority areas giving contact details for key services.

**Women's Aid**

[www.womensaid.org.uk/](http://www.womensaid.org.uk/)

Telephone 0117 944 4411

Women's Aid is a national domestic violence charity that helps up to 250,000 women and children every year.

24-hour national domestic violence helpline is run in partnership with Refuge: 0808 2000 247 (Freephone).

## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice or Age Cymru Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru Advice

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 124 4222

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### Next update July 2020

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