

APPLICATIONS, REVIEWS AND COSTS

1. APPLICATIONS

If the local housing authority have **reason to believe** that an applicant may be homeless or threatened with homelessness, they **shall** make such inquiries as are necessary to satisfy themselves (a) whether he is eligible for assistance and (b) if so whether any duty and if so what duty is owed under Part 7 Housing Act 1996

(Section 184(1))

A: GATEKEEPING

Recent examples:

Complaint against Newham LBC 11 000 383, 8 March 2012 (Legal Action May 2012)

Complaint against Southwark LBC 10 000 207, 22 May 2012 (Legal Action August 2012)

In both cases the Ombudsman found extensive maladministration in relation to the handling of the respective applicants' homelessness applications including in relation to the investigation of homelessness, the provision of temporary accommodation and the recording of advice.

Practical Steps

- Take sufficient client details to establish that the threshold test is met and that eligible for public funding;
- Have to hand all relevant contact details (local authority Housing Team, fax and telephone numbers and out of hours contact details);
- Obtain the client instructions in sufficient detail to prepare letter of claim (if sufficient time);
- Check Counsel availability;
- Send pre-action letter giving notice to reflect the straight forward nature of the duty engaged, the urgency of the matter and the need to act quickly;

- If no appropriate response grant ELA;
- Retain client for further instructions as necessary;
- Instruct Counsel in relation to making a telephone application;
- Duty of candour;
- Contact duty Housing Officer asap;
- Discuss with Counsel as necessary and agree the terms of the Order required;
- Keep records of all events and times;
- Communicate the terms of the order to the Local Authority;

Next day...

- Prepare the substantive Judicial Review application.

Send to the court:

- Bundle incorporating Bundle A documents (Claim Form and evidence) and Bundle B documents (relevant statutory provisions in duplicate).
- Two further copies of the Claim Form.
- N463 and draft Order.
- Undertaking to file Funding Certificate.
- Cheque for £50.00;
- Submit the funding application;
- Serve opponent with Bundle A and B and sealed N461;
- File Certificate of Service.

B: REPEAT APPLICATIONS

There is no limit prescribed by statute as to the number of applications that may be made.

All applicants to whom the main duty has been accepted can make a fresh application on cessation of that duty (**Section 193(9)**).

The authority must accept further applications where not identical or based on exactly the same facts:

R v Harrow LBC ex p Fahia [1998] 1WLR 1396 HL

LB Tower Hamlets v- Rikha Begum (2005) 1WLR 2013 CA

R (G) –v- LB Haringey [2009] EWHC 2699 (Admin)

R (May) –v- Birmingham City Council [2012] EWHC 1399 (Admin)

Code of Guidance 6.27

R (May) –v- Birmingham City Council [CO/6905/2011]

The Claimant fled domestic violence in Slough in 2009 and came to her grandma's accommodation in Birmingham. She applied as homeless and the Council accepted the full duty. She refused an offer of accommodation and the authority notified her that its duty had ceased. The Claimant's review was unsuccessful and she did not appeal. She continued to live with her grandmother until 2010 when there was an unexpected breakdown in the relationship and she was asked to leave. The Defendant authority refused to accept a new application on the grounds that it was based on exactly the same facts as the first application in 2009. Judicial Review proceedings were issued in which the Claimant argued that the facts were not identical: she was originally homeless due to domestic violence and was now homeless due to the breakdown in the relationship with her grandmother. The Council argued that the relevant fact (which had not changed) was that she was homeless throughout. In quashing the Council's decision Singh J held that the two applications were not identical and the Council had acted irrationally in deciding that they were.

Relevant considerations

- Consider how the first application was disposed of

- Consider the test as per *Begum* and explore the present factual position
- Check whether still possible to challenge first application and if so whether appropriate

Factual checklist

- Chain of causation broken?
- Effluxion of time
- Composition of family
- Family circumstances
- Accommodation situation
- Developmental milestones passed?

- Health situation
- Environmental changes

Letter of introduction:

- Factual background and relevant current circumstances
- Relevant legal framework
- Warning re Judicial Review and costs.

2. REVIEW PROCEDURE

The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 govern the procedure on statutory review.

Regulation 6(2) provides that the authority shall:

- (a) *notify the applicant that he, or someone acting on his behalf, may make representations in writing to the authority in connection with the review; and*
- (b) *if they have not already done so, notify the applicant of the procedure to be followed in connection with the review.*

Regulation 8(2) provides

If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded none the less to make a decision which is against the interests of the applicant on one of more issues, the reviewer shall notify the applicant –

- (a) *that the reviewer is so minded and the reasons why;*

- (b) *that the applicant or someone acting on his behalf, may make representations to the reviewer orally or in writing or both orally and in writing.*

“Deficiency” simply means that there is “something lacking” in the original decision (Hall –v- Wandsworth LBC [2005] 2 All ER 192).

Maswaku –v- Westminster City Council [2012] EWCA Civ 669

The Court held that there had been no breach Regulation 6(2) in circumstances where the “substance” of the information about the right of the Appellant to make representations had been communicated and where the Appellant had solicitors acting for her. The underlying purpose of the Regulation had been achieved. Similarly, the matters complained of in relation to the Council’s inquiry process did not amount to a deficiency and there had been no breach of Regulation 8(2).

Similarly, in circumstances where an authority had informed solicitors that a housing file would be despatched and that a reasonable opportunity would be given to make representations in connection with the review the Court of Appeal held that this was sufficient to discharge the duty under Regulation 6(2) (**Said El Goure –v- RB Kensington and Chelsea [2012] EWCA Civ 670**).

Makisi, Yosief and Nagi –v- Birmingham City Council CC [2011] EWCA Civ 355

An applicant has a right to be heard orally in person under 8(2) of the Review Regulations.

In the case of Mr Nagi an entitlement to an oral hearing did not arise as it was held that there was no deficiency in the original decision.

Oral Hearings – Practical Considerations

When relevant/appropriate?

- Preparation
- Evidence
- Witnesses?
- Format/arrangements
- Record of proceedings
- Factual –v- legal submissions

- Supplementary submissions

3. **COSTS**

R (Bahta and Others) –v- S of S for Home Department and Others [2011] EWCA Civ 895

The Court of Appeal considered whether the Appellants should be granted their costs in circumstances where, during the course of proceedings they were granted what they sought and their applications were withdrawn by consent. The Court of Appeal held that they were entitled to their costs because:

- (a) The starting point was that a successful Claimant was entitled to costs;
- (b) It was unacceptable for the Defendant not to address issues once an adequately formulated letter of claim had been received, any concession should usually be made at this stage;
- (c) In the absence of a response, a Claimant was entitled to issue proceedings;
- (d) If the Claimant then obtained the relief sought, he could expect to be awarded his costs;

- (e) There was no special rule for Government Departments;
- (f) It was not a good reason to decline costs against publicly funded parties on the ground that those acting for them would obtain some remuneration even if no Order for costs was made;
- (g) The device of a concession on “pragmatic reasons” was not sufficient to avoid a Costs Order. A clear explanation was required which could expect to be analysed;
- (h) There was a heavy burden on the Defendant to persuade the Court to make no Order for costs where it had conceded and had not complied with the pre-action protocol.

Harripaul –v- LB of Lewisham [2012] EWCA Civ 266

The authority was successful in resisting an appeal in the County Court. Permission was given for a second appeal at which stage the authority withdrew its review decision. The reason for this was an economic one based on the costs of resisting the appeal.

It was agreed that there should be no Order for costs in respect of the County Court Appeal. The costs of the second appeal were in issue. Rimer LJ held:

- (a) The starting point was that the Appellant was entitled to her costs and it was for the Respondent to show otherwise;
- (b) It was irrelevant that the Appellant was publicly funded;
- (c) The Respondent could have taken the view at a far earlier stage of the County Court Appeal that the soundness of the Reviewing Officer's decision did not merit incurring legal costs arguing about it;
- (d) It was not obvious that the Appellant would have won but she had a good arguable case that could well have resulted in success;
- (e) Overall the Appellant should be regarded as the successful party and was entitled to her costs and there was no reason to depart from the standard rule.

The Queen on the application of John Broome –v- Secretary of State for Justice [2012] EWCA Civ 275

Rimer LJ held: *"Whilst I accept that the outcome of a contested appeal would have been uncertain, I am not persuaded by the reasons advanced...that this is a case in which the Appellant should not have his costs of the appeal. I hold that he should."*

Practical Considerations

- Letter before claim
- Offers to settle
- Settlement discussions
- Hearing as to costs
- Written submissions

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19 September 2012