# Homelessness—the meaning of the terms ‘homelessness’ and ‘threatened homelessness’

**Jump to section**

The LHA’s duty | The meaning of homelessness | Threatened with homelessness

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Where a local housing authority (LHA) believes that a person is homeless or may be threatened with homelessness, it has a duty to make inquiries into their eligibility for homelessness assistance and into what housing duty (if any) is owed to them under the Housing Act 1996 (HA 1996). For more information on the types of inquiries the LHA has to make, see Practice Note: Homelessness—planning services, strategies and reviews.

This Practice Note considers the definitions of the terms 'homelessness' and 'threatened with homelessness’ as set out in HA 1996, s 175.

**References:**

Housing Act 1996, s 175

HA 1996 was amended by the Homelessness Reduction Act 2017 (HRA 2017). Pursuant to the Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018, SI 2018/167, which were made on 8 February 2018, HRA 2017 came into force on 3 April 2018. Among other things, HRA 2017 amended the definition of ‘threatened with homelessness’ (see below).

**References:**

Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018, SI 2018/167

**The LHA’s duty**

Under HA 1996, s 184 an LHA has a duty to make inquiries into a person’s circumstances in order to determine whether they are eligible for assistance and, if so, to determine what homelessness duty (if any) they are owed by the LHA. That duty only arises where the person concerned is either homeless or threatened with homelessness, as defined by HA 1996, s 175.

**References:**

HA 1996, ss 175, 184

**The meaning of homelessness**

HA 1996, s 175(1) provides that a person is considered to be homeless if they have no accommodation available for their occupation in the UK or elsewhere which they:

**References:**

HA 1996, s 175(1)

Hemans & Anr v Royal Borough of Windsor & Maidenhead [2011] EWCA Civ 374

Hanniff v Robinson [1993] QB 419

* are entitled to occupy by virtue of an interest in it or by virtue of a court order, eg via a tenancy of a property
1. have an express or implied licence to occupy, eg the spouse of a tenant is considered to have an implied licence to occupy the same property, or
2. occupy as a residence by virtue of any enactment or rule of law giving them the right to remain in occupation or restricting the right of another person to recover possession of that occupation. For example, under section 3 of the Protection from Eviction Act 1977 (PEA 1977) a former tenant or licensee whose right to occupy has been terminated cannot be evicted other than by court proceedings except in the case of certain excluded tenants and licensees. Therefore, a former tenant or licensee is considered to have accommodation available for their occupation up until they are evicted by a bailiff’s warrant

HA 1996, s 175(2) provides that a person is also considered to be homeless if they:

**References:**

HA 1996, s 175(2)

* have accommodation, but they cannot secure entry to it, eg a person who has been unlawfully evicted from their accommodation, or
1. have accommodation which consists of a moveable structure, vehicle or vessel which is designed or adapted for human habitation, but there is no place where they are entitled or permitted to place it and reside in it, eg a mobile home or houseboat which has nowhere to be parked or moored

HA 1996, s 175(3) provides that a person shall not be treated as having accommodation available for their occupation unless it is accommodation which it would be reasonable for them to continue to occupy.

**References:**

HA 1996, s 175(3)

The various elements of homelessness are considered below.

**Accommodation in the UK or elsewhere**

Prior to HA 1996, a person was considered homeless if they had no accommodation in England, Scotland or Wales. This was explicitly stated in the Housing Act 1985 (HA 1985).

However, pursuant to HA 1996, s 175(1), a person will not be considered to be homeless if they have accommodation which is available for their occupation in any country in the world.

**The type of accommodation**

Not every type of property amounts to ‘accommodation’ within the meaning of HA 1996, s 175.

The word accommodation means a place which can fairly be described as accommodation. For instance, a night shelter would not fit that description.

**References:**

R v Brent London Borough Council, ex parte Awua [1996] AC 55

Further, the accommodation in question must be ‘habitable’.

**References:**

Gloucester City Council v Miles [1985] FLR 1043

A person who is occupying temporary accommodation provided by an LHA acting under its homelessness obligations under HA 1996, Part VII is considered to be homeless notwithstanding the fact that they have been provided with some accommodation. That has to be the case, since otherwise it would lead to the perverse outcome that once a homeless person is given interim accommodation, they would cease to be considered homeless and therefore would cease to qualify for assistance.

**References:**

R (on the application of Alam) v Mayor and Burgesses of the London Borough of Tower Hamlets [2009] EWHC 44 (Admin)

HA 1996, s 188

**Available for occupation**

Accommodation is only considered to be available for a person’s occupation if it is available for their occupation, together with:

**References:**

HA 1996, s 176

* any other person who normally resides with them as a member of their family, or
1. any other person who might reasonably be expected to reside with them

This does not mean that a household necessarily has to be occupying one single unit of accommodation. It may be spread out into different units, but still be capable of being a single household.

**References:**

Sharif v London Borough of Camden [2013] UKSC 10

The provisions of HA 1996, s 176 are elaborated upon in the Homelessness Code of Guidance for Local Authorities  (the 2018 Code) published in February 2018. Paragraph 6.7 of the 2018 Code states that, in terms of the first group of people in HA 1996, s 176, a member of the family includes people in close blood or marital relationships and cohabiting partners.

**References:**

2018 Homelessness Code of Guidance for Local Authorities, Paragraph 6.7 

The second group covering ‘any other person’ includes those whom it would be reasonable to expect to live with the homeless applicant, even if they were not living as part of the household at the time the application is made. This might include a companion for a disabled or elderly person, or children being fostered by either the applicant or a member of their family.

**References:**

2018 Code, Paragraph 6.8 

However, a child who has not yet been born is not classed as a person who normally resides with the mother.

**References:**

R v Newham London Borough Council, ex parte Dada [1995] 2 All ER 522

Under section 314 and Schedule 15, Part 1 of the Housing and Regeneration Act 2008 (HRA 2008), if a person is subject to immigration control (eg they have refugee status) and makes a homeless application, any members of their family who are ineligible for homeless assistance by virtue of their own nationality and immigration status, must be disregarded when the LHA is deciding whether there is accommodation available for their occupation. However, if the applicant themselves is not subject to immigration control, other household members can be taken into account, regardless of their own eligibility for homeless assistance. In other words, it is the status of the *applicant* which dictates whether other members of the family, who may themselves be ineligible for homelessness assistance, can be taken into account.

**References:**

Housing and Regeneration Act 2008, s 314, Sch 15 Pt 1

The LHA’s decision as to whether a person falls within the definitions set out in HA 1996, s 176 may only be challenged on traditional public law grounds—ie there is no statutory right of appeal against an LHA’s decision. See: *R v Lambeth LBC ex parte Ly*.

**Reasonableness of occupation**

Where a person has accommodation, but it is not reasonable for them to continue to occupy it, they will be classified as homeless.

**References:**

HA 1996, s 175

**Reasonableness generally**

In terms of general reasonableness, the principles are the same as those applied in relation to whether accommodation offered by an LHA is suitable. See Practice Note: Homelessness—suitability of accommodation.

**References:**

Harouki v Royal Borough of Kensington and Chelsea [2007] EWCA Civ 1000

However, in terms of when the question of reasonableness is determined, this is with reference to the time before the deliberate act or omission which led to the applicant losing that accommodation. The fact that an applicant’s existing accommodation is not permanent is not relevant to the question of whether or not it is reasonable for them to continue to occupy it.

**References:**

Denton v Southwark London Borough Council [2007] EWCA Civ 623

Accommodation will generally have to be in a very poor physical condition before it is classified as no longer reasonable for the applicant to occupy it (except in particular circumstances, such as where the applicant has a disability which means that the accommodation’s physical condition is unsuitable for them). See News Analyses: Homeless applicants, local authority duty to provide suitable accommodation (R (Elkundi) v Birmingham City Council) and Suitability of homelessness accommodation and mandatory orders (R (on the application of Bell) v Lambeth London Borough Council).

**References:**

R (on the application of Elkundi) v Birmingham City Council, R (on the application of Imam) v Croydon London Borough Council [2022] EWCA Civ 601

R (on the application of Bell) v Lambeth London Borough Council [2022] EWHC 2008 (Admin)

The fact that existing accommodation is overcrowded as defined in HA 1985, ss 325 and 326 is a relevant factor for an LHA to take into account when considering if it is reasonable to continue to occupy. However, the fact that it may be overcrowded does not necessarily mean that it is no longer reasonable to occupy it but each case will depend on its facts and a significant change in the applicant’s circumstances requires consideration of whether it remains reasonable to continue occupy the property. See News Analysis: Changes of circumstance and proper procedure for statutory homelessness reviews (Safi v Sandwell Borough Council).

**References:**

Harouki v Royal Borough of Kensington and Chelsea [2007] EWCA Civ 1000

R v Eastleigh Borough Council ex parte Beattie [1984]

Safi v Sandwell Borough Council [2018] EWCA Civ 2876

When an LHA is considering whether it is reasonable for a person to continue to occupy particular accommodation, it may have regard to the general housing circumstances in its district. However, regardless of where the applicant’s current accommodation is located, the LHA may only have regard to the general housing circumstances in its own district. (See: R v Tower Hamlets LBC ex parte Monaf (1988) Times, 28 April

**References:**

HA 1996, s 177(2)

In the past it has not been unusual for LHAs to advise tenants in respect of whose home a possession order has been made to remain in the property until the last possible moment when they have to leave ie the date of eviction by a court bailiff. It has, however, been held to be unlawful for an LHA to decline to carry out any inquiries under HA 1996, Pt VII until the person concerned is actually homeless rather than merely threatened with homelessness.

**References:**

R v Newham London Borough Council, ex parte Khan [2000], [2000] All ER (D) 580

In any event the 2018 Code now makes clear that the Secretary of State considers that it is ‘highly unlikely’ to be reasonable for a person to continue to occupy accommodation beyond the date when a court has ordered them to leave (2018 Code, Ch 6.36) and that LHAs should not consider it reasonable for a person to remain in occupation until the point at which a court issues a warrant or writ to enforce a possession order (2018 Code, Para 6.37).

**References:**

2018 Code, Para 6.36–6.37 

The 2018 Code states that whether it will be reasonable for a tenant to remain in their accommodation after the expiry of a valid section 21 notice will depend upon the specific facts of each case and that LHAs should not adopt a blanket policy as to when it will be reasonable for a tenant to remain in occupation following the expiry of a valid section 21 notice (2018 Code, Para 6.32–6.34). The 2018 Code states that where a valid section 21 notice has been served, where the LHA is satisfied that the landlord intends to seek possession and efforts by the LHA to dissuade the landlord from doing so are unlikely to succeed, and where the tenant would have no defence to a possession claim, it is unlikely to be reasonable for the tenant to continue to occupy beyond the expiry of the section 21 notice unless the LHA is taking steps to persuade the landlord to allow the tenant more time in occupation while they look for alternative accommodation (2018 Code, Para 6.35).

**References:**

2018 Code, Para 6.32–6.35 

However, in *R v City of Bradford, ex parte Parveen* the court upheld the LHA's decision that an applicant was not homeless where they had moved into a property pursuant to an oral agreement that they would vacate it upon the landlord's family returning to the country and had subsequently been asked to move out upon that event occurring. In that case, the landlord had not served the requisite notice and, as a consequence, the LHA had been entitled to rely upon the fact that it did not believe that the landlord would have had a certain prospect of success in any subsequent possession proceedings and therefore, it was entitled to conclude that the applicant was not homeless.

**References:**

R v City of Bradford, ex parte Parveen [1996]

**Reasonableness—factors that must be taken into account**

There are certain factors which must be taken into account when considering reasonableness.

**Domestic abuse**

It is not reasonable for a person to continue to occupy accommodation if it is probable that their doing so will lead to violence or domestic abuse against:

**References:**

HA 1996, s 177

* them personally
1. a person who normally resides with them as a member of their family, or
2. another person who might reasonably be expected to reside with them

Domestic abuse is defined by section 1 of the Domestic Abuse Act 2021 (DAA 2021) which came into force on 5 July 2021 and provided a cross government definition of domestic abuse. See Practice Note: The definition of domestic abuse under the Domestic Abuse Act 2021.

**References:**

Domestic Abuse Act 2021, s 1

The statutory guidance recommends specialist training on understanding domestic abuse to ensure that applicant are provided with housing options which are safe and appropriate to their needs. The DAA 2021, also places a duty on an LHA to take an active role in identifying victims of domestic abuse and referring them for help and support. LHAs are recommended to utilise existing statements if available when assessing whether domestic abuse is a factor to avoid asking the victim reliving their experiences unnecessarily.

**Affordability**

Affordability of existing accommodation must also be taken into account in terms of both the financial resources available to the applicant and the costs of the accommodation. If the existing accommodation is not affordable, it would not be reasonable for the applicant to continue to occupy it, meaning they would be classified as homeless.

**References:**

Homelessness (Suitability of Accommodation) Order 1996, SI 1996/3204, reg 2

The 2018 Code provides guidance on the amount of money a person needs to live on, which should take account not just of rent, but also of food and other necessary expenses (2018 Code, paragraph 17.45). The 2018 Code provides that an LHA may wish to be guided by Universal Credit standard allowance (2018 Code, Ch 17.46).

**References:**

2018 Code, Para 17.45 

R v Islington London Borough Council, ex parte Bibi [1996]

Guidance on how LHA’s must assess the affordability of accommodation was given by the Supreme Court in *Samuels v Birmingham City Council*.

**References:**

Samuels v Birmingham City Council [2019] UKSC 28

The Supreme Court rejected the idea of LHAs taking a subjective approach to the question of affordability (eg by taking the view that an applicant’s finances left sufficient flexibility that they could meet their rental obligations by budgeting better).

Instead, the Supreme Court held that a more objective approach was called for:

* an LHA should ask itself what an applicant’s reasonable living expenses were, having regard to:
1. the needs and the welfare of an applicant
2. the needs and the welfare their dependents
3. and a comparison of the level of those expenses to their income

The Supreme Court held that subsistence benefit levels should be taken as a starting point and a base line in determining what reasonable living expenses would amount to. As subsistence benefits are designed to cover the costs of daily living and are not designed to leave recipients with a surplus income, it would be reasonable to work on the basis that subsistence benefit levels would indicate a base line of what a person’s reasonable living expenses should amount to. Accordingly if a person’s living expenses are less than, or equal to, the level of subsistence benefits which that person is entitled to, it would be difficult to see how their living expenses could be seen as anything other than reasonable.

Nevertheless the Supreme Court made clear that the level of subsistence benefits is only to be taken as a starting point; there may well be cases, therefore, where a person’s living expenses could exceed the subsistence benefit level but still be reasonable.

Given the lack of clarity on the question of what constitutes reasonable living expenses—and given the lack of consistency between different local authorities when making decisions as to affordability, the Supreme Court in *Samuels v Birmingham City Council* expressed its hope that the Government would produce clearer guidance in the future on this issue. See News Analysis: Supreme Court guidance on affordable rent and intentional homelessness (Samuels v Birmingham City Council) and LNB News 12/06/2019 112.

See also the later case of *Patel v Hackney LBC*, see News Analysis: Intentional homelessness, affordability and reasonable expenditure (Patel v London Borough of Hackney).

**References:**

Patel v Hackney London Borough Council [2021] EWCA Civ 897

**Threatened with homelessness**

As referred to above, an LHA’s duty to make inquiries into what duty (if any) is owed to a person under HA 1996 arises not just when that person is actually homeless, but also to when that person is threatened with homelessness. When an LHA is making inquiries in respect of a person who is threatened with homelessness as opposed to actually homeless, all of the guidance described above in respect of persons who are homeless applies just the same; the fact that the person is not yet homeless does not affect the inquiries which should be made, or the legal issues which arise for the LHA in making those inquiries.

**References:**

HA 1996, s 184

HA 1996, s 175(4) provides that a person is considered to be threatened with homelessness if it is likely that they will become homeless within 56 days. Prior to the coming into force of HRA 2017, the figure in HA 1996, s 175(4) was 28 days.

**References:**

HA 1996, s 175(4)

The period of 28 days was originally the usual period which the courts specified in possession orders before the defendant would have to give up possession of the property concerned. However, since the coming into force of section 89 of the Housing Act 1980, the period in which possession must be given is 14 days, with the courts having the power to grant up to six weeks in total in the event of exceptional hardship. However, in cases where the court has a discretion to suspend possession, a longer period can be specified.

**References:**

R v Newham London Borough Council, ex parte Sacupima [2001] 1 WLR 563

HRA 2017 introduced a new section—section 175(5) of HA 1996, which provides that a person is also to be considered to be ‘threatened with homelessness’ if:

**References:**

HA 1996, s 175(5)

* a valid section 21 notice has been given to that person in respect of accommodation which is that person’s only available accommodation, and
1. the section 21 notice will expire within 56 days

A person who falls within HA 1996, s 175(5) will thus remain ‘threatened with homelessness’ for as long as they meet those conditions and the LHA cannot give notice to end its ‘prevention duty’ (ie its duty under HA 1996, s 195(2) to take reasonable steps to prevent a person from losing accommodation which they currently occupy) while the person continues to fall within section 175(5). This is set out in Paragraph 6.30 of the 2018 Code.

**References:**

2018 Code, Para 6.30 

HA 1996, s 195(6)

HA 1996, s 184 provides that once a person is threatened with homelessness, an LHA has a duty to make inquiries as to whether they are eligible for homelessness assistance and, if so, what duty (if any) the LHA has towards them. If the LHA carries out any inquiries more than 56 days before the person is likely to become homeless, such inquiries are non-statutory. See: *R v Rugby Borough Council, ex parte Hunt* (1992) 26 HLR 1

**References:**

R v Newham London Borough Council, ex parte Khan [2000], [2000] All ER (D) 580

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