



The Coronavirus Pandemic and Homelessness

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1. The impact of Coronavirus Covid-19 Pandemic is severe and wide-ranging. As well as the significant changes to the law, judicial and governmental guidance has had an effect on the day-to-day practicalities of undertaking work in this field. This article considers these matters as they affect homelessness law.
2. [Coronavirus \(COVID-19\): guidance for local government](#) provides a list of the guidance for [Homelessness and rough sleeping services](#), including a [letter to Local Authorities 26th March 2020](#) in which the Government said they had appointed Dame Louise Casey to co-ordinate the response to homelessness, known as “Everyone In”. The basic principles are to:

- focus on people who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres
 - make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities
 - utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic
 - mitigate their own risk of infection, and transmission to others, by ensuring they are able to self-isolate as appropriate in line with public health guidance.
3. This should be done by taking the following programme of actions:
1. Convening a local coordination cell to plan and manage the response to COVID and rough sleeping involving the local authority (housing, social care and public health) and local NHS partners together. This would then report in to wider local COVID structures.
 2. Seeking to stop homeless people from congregating in facilities such as day centres and street encampments where there is a higher risk of transmission.
 3. Urgently procuring accommodation for people on the streets – MHCLG will supposedly support councils to do so if they are struggling to procure sufficient units.
 4. Triaging people where possible into 3 cohorts driven by medical advice:
 - those with symptoms of COVID19
 - those with pre-existing conditions but without symptoms; and
 - those without any of the above.
 5. Getting the social care basics such as food, and clinician care to people who need it in the self-contained accommodation.
 6. If possible, separating people who have significant drug and alcohol needs from those who do not.
4. [Dame Casey wrote to local authorities on 22nd April 2020](#) to say that 90% of the 5,400 rough sleepers had been accommodated. [A specialist taskforce has been created](#) to lead the next phase of the government's support for rough sleepers during the pandemic.

5. Crisis [welcomed the Government's initiative but stated](#) that, foremost amongst the issues to be resolved are:
- Legal barriers: Councils are denying help to people on the basis of 'local connection' criteria, alongside on-going confusion and denial because people are deemed to have no recourse to public funds.
 - Funding is still a concern for local authorities.
 - Discretionary Housing Payments (DHP) are useful but funding has yet to be increased (unlike for Council Tax Support).
 - People without recourse to public funds still cannot access housing benefit and the right to rent scheme is still limiting private sector landlords in offering accommodation.
 - Once in hotel or other self-contained accommodation, the medical needs of those who are symptomatic need to be addressed. In a number of hotels people have been 'cohorted' and it is known who is symptomatic, yet no Covid-care plan is available, and nor is personal protective equipment (PPE) for those supporting individuals.
 - The wait for UC payments is still a problem.
 - The approach to benefit sanctions has been made more flexible but they still present a risk of causing homelessness.
6. The Housing Minister, Robert Jenrick, has announced that the Government will make 3,300 homes available within 12 months to prevent rough sleepers housed in emergency pandemic accommodation in England returning to the streets. The MHCLG will bring forward £160m of its £381m, 4-year rough sleeping services budget to be spent this year. 6,000 "housing units" will be built using the money and rough sleepers housed through the scheme will be provided support for mental health or substance abuse issues.
7. [COVID-19 advice for accommodation providers](#) advises all businesses providing holiday accommodation should close for commercial use but hostel and other accommodation providers should remain open for key workers, vulnerable groups, emergency accommodation, the homeless or primary residences (similar advice has been sent in a [letter to Caravan Park Owners](#)). This was followed up by a [letter to Hotel Chief Executives 24th March 2020](#):

where hotels, hostels, and B&Bs are providing rooms to support homeless people, through arrangements with local authorities and other public bodies, they should remain open. ... If you have closed services for homeless people today as a result of the measures announced this week, I would be very grateful if you could reverse these decisions as soon as possible.

This letter was drafted in response to largescale closures of accommodation used to house homeless individual including Travelodge hotels. For details as to events around 24th March please see <https://nearlylegal.co.uk/2020/03/throwing-out-the-homeless-hotels-and-coronavirus/>. It is unclear whether this situation has improved much since the letter. In London, more than 1,000 rough sleepers had been given emergency accommodation by 15th April 2020 according to Inside Housing, with hotel chains such as Travelodge, Best Western, Accor and InterContinental taking part in the scheme ([Housing Rights April 2020](#)).

8. The page entitled "[COVID-19: guidance for hostel or day centre providers of services for people experiencing rough sleeping](#)" just states, "Public Health England will be issuing updated guidance for those working with people who are experiencing rough sleeping and living in hostel environments as soon as possible."
9. Despite these measures, those assisted remain statutorily homeless so that any duties under Part VII of the Housing Act 1996, including duties to inquire and make decisions, ought to be triggered, albeit any accommodation provision duty is likely to be satisfied, in the short term at least, by the accommodation provided in response to Covid-19 ([R \(Aweys\) v Birmingham CC](#) [2009] UKHL 2009; [2009] 1 WLR 1506).
10. It is likely that social distancing and public health requirements will have created additional statutorily homeless individuals:
 - a. The most obvious category would be those working in keyworker roles but who also have vulnerable, at risk or symptomatic individuals at their home address. In advising individuals it may be that there is funding and provision available through their employer to be accommodated elsewhere, not least because this could avoid the individual becoming unavailable for work due to household isolation. As far as we are aware, there is not wholesale provision across the NHS. It is advisable to review any employer's guidance, directives and policies when advising such clients as there are circumstances where accommodation provision should be funded by employers such as the NHS. For example, those who have symptomatic

households ought to be provided with NHS-reimbursed hotel accommodation ([Letter from NHS Chief Executive 17th March 2020](#)).

- b. For those keyworkers who are not able to secure accommodation from their employer but who also have vulnerable, at risk or symptomatic individuals at their home address it is certainly arguable that both they and the other household member are statutorily homeless as it is not reasonable for them to continue to occupy their accommodation.
 - c. If the keyworker is seeking to be accommodated elsewhere it is unlikely that they will be priority need. However, public authorities will still be subject to the relief duty (s.189B Housing Act 1996) and the power to accommodate non-priority need individuals (s.205(3) Housing Act 1996). Given that, "*Housing authorities will wish to consider local priorities, needs and resources when considering how the power might best be utilised in their district*" (§15.35 [Homelessness Code of Guidance for Local Authorities](#)), it is well worth putting a detailed letter to the Local Authority that they ought to exercise this power in favour of a keyworker and, if refused, there could well be a solid foundation for a public law challenge.
11. It is possible that Local Authorities will rely on PD51Z to avoid considering applications from individuals who are entitled to a court order before being evicted from their homes. Such Local Authorities should note the following:
- a. It is arguable that any tenant is threatened with homelessness if any notice is due to expire within 56 days as it is not reasonable to expect a tenant to be subjected to possession proceeding (particularly if there is a degree of inevitability to the outcome of those proceedings).
 - b. If a valid notice under section 21 of the Housing Act 1988 has been issued in respect of the only accommodation available for their occupation, and the notice will expire within 56 days then an applicant is statutorily threatened with homelessness (s.175(5) *Housing Act 1996*).
12. One of the circumstances in which a council may give notice that the relief duty under section 189B(2) of the Housing Act 1996 has come to an end is the expiry of a period of 56 days after they decided the applicant was homeless and eligible for assistance. Given the difficulties securing alternative accommodation during the Pandemic, we are expecting a lot of discharge without much homelessness being resolved (indeed we have already heard of Local Authorities engaging in this practice). However, the service of the notice is discretionary so it is open to the council simply not to serve it and such a decision needs to be reached consistent with principles of public law.

Considerations will include the needs of the applicant, the risk of the applicant sleeping rough, the prospects of securing accommodation within a reasonable period and any wider implications of bringing the duty to end (§14.19 [Homelessness Code of Guidance for Local Authorities](#)). Given the exceptional circumstances posed to those seeking accommodation during the Pandemic it is likely any such decision to discharge duties in this manner will be subject to challenge.

13. The requirement during the emergency period for no person to leave or be outside of the place where they are living without reasonable excuse does not apply to any person who is homeless (Reg. 6(4) [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020/350](#)). The regulation fails to define homelessness so it will be interesting to see how the police and Magistrates proceed to apply this provision.
14. For the foreseeable future it is likely that section 204 appeals will be heard remotely. Proposed directions sent with any grounds of appeal will need amending to reflect this. Please see attached that draft proposed directions that address issues relating to remote hearings therein (Albeit I'm sure that a certain circuit judge at Central London County Court will have already decided what these amended directions should look like).

ANNEX A – Draft Proposed Directions for remote s.204 Hearings

IN THE COUNTY COURT IN []
BETWEEN

The Appellant

and

The Respondent

PROPOSED CASE MANAGEMENT DIRECTIONS

UPON consideration of the appellant's notice, grounds of appeal and proposed case management directions.

IT IS ORDERED THAT:

Case Management Directions

1. The respondent shall disclose any documents relevant to the decision under appeal including but not limited to the appellant's housing file by 4pm on [14 days from order] (*Paragraph 28.1.(5)(c) Practice Direction 52D*).
2. The appellant shall have permission amend to its grounds of appeal, if so advised, by 4pm on [28 days from order] (*Paragraph 28.1.(5)(d) Practice Direction 52D*).
3. The appellant shall file and serve a skeleton argument by 4pm on [42 days from order].
4. The respondent shall file and serve a skeleton argument in response to the appellant's skeleton argument by 4pm on [56 days from order].
5. In the event that either party considers it necessary to serve evidence in relation to the Appeal, such evidence shall be served:
 - a. By the Appellant on the Respondent, by 4pm on [42 days from order].
 - b. By the Respondent on the Appellant, by 4pm on [56 days from order].

Remote hearing directions

6. Unless otherwise directed, the case shall be listed for remote hearing at the Central London County Court on the first available date after [70 days from order] for an appeal hearing pursuant to section 204 Housing Act 1996 (as amended) with a time estimate of [] day.
7. The method of conducting the remote hearing shall be Skype for Business / Teams.
8. To ensure the proper administration of justice the link to join the Skype for Business / Teams hearing shall be published on the Court Listing for this matter.
9. Within 5 working days of the date of this order:

- a. If either party disagrees with proposal for conducting the appeal in paragraph 6 to 8, they shall make submissions in writing by email, copies to all other parties, as to the basis of its objection and what other proposals would be more appropriate. The other party shall have 3 working days to respond before a binding decision is made by the judge presiding over the appeal
 - b. Each party shall provide to the court direct contact number(s) and email address(es) for the Court to contact (a) the solicitor or caseworker with ongoing conduct of the case and (b) counsel for the parties (if yet instructed).
10. No more than 14 days and no later than 7 days before the hearing, the Appellant shall file with the County Court at Central London an indexed and paginated electronic bundle of documents and an electronic bundle of authorities limited to relevant documents only to which it is intended to refer. The email address for filing of all documents or submissions relating to this appeal is Enquiries.centrlondon.countycourt@justice.gov.uk.
11. The content of the Appeal bundle shall be agreed as far as possible and copied to the Respondent when filed with the Court.
12. Authorities shall be from the best available report and the report shall appear as a PDF or other full copy of the report. Transcripts shall only be included of wholly unreported cases.
13. The advocates for the parties shall each serve upon each other and file with the court, no less than 1 clear working day before the hearing, a perfected version of their skeleton argument (containing if appropriate a chronology) with page references to the Appeal Bundle. Filing with the Court will be by sending a Word version to CentralLondonCJSKEL@justice.gov.uk.

General Provisions

14. This order has been made without any determination as to whether the appeal was filed in time or otherwise properly instated.

15. This order has having been made without a hearing under the Court's general case management powers, either party may apply to vary, suspend or set aside provided that such an application is made by email to Enquiries.centrlondon.countycourt@justice.gov.uk within 7 working days of the party being served with the Order and copied to the opposing party.
16. Should the parties settle the Appeal they are to promptly file a request for its disposal in terms complying with CPR PD52A Section 6.
17. Costs in the case.