

Waveney District Council

Homelessness Process

Level One.

About This Manual.

Who is it for?

Any staff or officers needing guidance on the processing of homelessness applications within the area of Waveney District Council.

How does it work?

The manual is made up of 3 levels of access, based on the required complexity of detail and knowledge. The 3 levels are:-

Level One: The Quick Access Guide.

A broad overview of legislation suitable for people wanting to understand what the unit has to take into account when dealing with an application for homelessness assistance, and how they go about investigating claims and discharging their duties.

Level Two: Guide To Working With Applications.

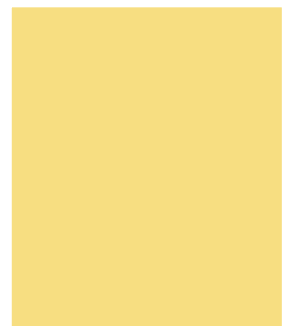
Detailed information on homelessness law, relevant case law and housing duties, as set down in the Homelessness Act 2002 and the Housing Act 1996. This level is specifically aimed at Housing Options staff and others wanting detailed knowledge of how an application is processed.

A Brief Word On The Layout.

Throughout this manual clarity and ease of use is of paramount importance. Although it cannot be completely avoided, jargon is kept to an absolute minimum. References to sections within the legislation and relevant case law is contained in yellow coloured boxes to the right of the text, and for ease of navigation, page numbers will also be shown where appropriate.

LEVEL ONE. THE QUICK ACCESS GUIDE.

This level provides an overview of the homelessness process as it operates within Waveney District Council.



It covers the legislative process from the point of application and through to the final discharge of the Authority's duty.

There are 3 factors which have to be taken into account when dealing with homelessness applications:-

- **Government Statutes.**
- **The Code of Guidance.**
- **Case Law.**

The two main statutes that must be considered in all homelessness case are:-

The Housing Act 1996; which sets out the main outlines, in terms of which persons are to be given assistance and which groups of persons aren't. It also sets out rules for making investigations, which Waveney DC have to follow. The Act defines things such as the legal definition of homelessness and what housing duties are owed to which types of claimant.

The Homelessness Act 2002; adds to the Housing Act 96 by setting out requirements for dealing with homelessness in the area through a strategic partnership with organisations like Waveney's. It also amends certain conditions from the old Acts in relation to how duties can be discharged, because the big picture thinking behind this legislation is concerned with homelessness prevention through different options than were offered under old laws, where the only route for an applicant was to end up in a council or housing association property.

In addition to these statutes an investigating authority also needs to apply:-

The Code of Guidance; which is a legal instrument that you need to be aware of. It has been around for several years now and does what it says on the tin. It's a 'Guide' which investigating authorities need to have regard to when interpreting an individual's circumstances against the Acts. The key phrase here is 'Have regard to'. This means an authority doesn't have to follow it slavishly and decisions can be made that contradicts the guide. However an authority will

have to show why they have come up with a decision or course of action that differs from the code.

The third factor that all investigating authorities need to take into account when making their decisions is:-

Case Law; which is a vast and ever-changing area of law, whereby a judge will consider an individual's circumstances in relation to specific sections within a statute, and decide how these circumstances should be regarded. These interpretations then become 'case law', and the judge's decision is then utilised by an authority as another level of guidance in making their own decisions. Case law can easily be identified, because they consist of 2 names with the letter 'v' in between, such as Smith v. Jones or Waveney D.C. v. Brown.

How An Investigation Is Conducted.

When a person approaches a local authority claiming to be homeless the authority have to decide whether they consider that person to be homeless within the definition contained in the Housing Act 1996. If they do, then a duty to investigate the claim arises.

When their duty to investigate is triggered, an authority have to apply 5 tests to the person's circumstances, to determine what, if any duties may be owed to the applicant.

The tests are written down in Part VII of the Housing Act 1996, although there are additions which have been added by the 2002 Priority Need Order, which is part of the Homelessness Act 2002.

Different duties arise at different points in the investigation and these will be referenced in the yellow coloured boxes to the right of the text.

THE 5 TESTS.

Test Number One; Is the Applicant Homeless?

**Definition of
homelessness
Section 175
H.A. 1996
+
Chapter 8
Code of
Guidance**

Homelessness has a legal definition, it is not necessary for a person to be sleeping on the street for them to be considered homeless. If an authority decides that an applicant is homeless then they must investigate further.

There are a number of ways in which a person can be considered to be 'Homeless' within the meaning of the law:-

- Having no right to occupy a residential property anywhere in the world.
- A person has a property but for some reason cannot secure entry to it.
- A person is threatened with homelessness within the next 28 days.
- Has a home which consists of a moveable structure and they have nowhere that they can put it.
- Has a home but it is not reasonable for them to remain in it.

Reasonable To Remain.

There are a number of reasons why a property would be considered unreasonable for a person to occupy:-

- Physical conditions, i.e. overcrowding.
- Type of accommodation, i.e. women's refuge, hostel etc.
- Security of tenure (Assured Shortholds coming to an end)
- Domestic and non-domestic violence.
- Affordability.

An investigating authority also has the power to decide that a person may be homeless for any other reason not specified in Section 175.

It is for the authority to satisfy themselves that a prospective applicant may be homeless. This is the role of Housing Options team.

Test Number Two; Is the applicant eligible for assistance?

The eligibility test is largely, although not entirely, one of nationality. Nationals of countries other than the UK are on a list provided by the government, which also contains sub-categories of personal circumstances which will either include or exclude people from housing assistance.

**Eligibility
rules, S. 185
H.A. 1996
+
Chapter 9
Code of
Guidance.**

Immigration rights are notoriously complex and the government recommends that if an applicant has circumstance that are beyond the scope of the list they should be referred to a specialist agency or licensed legal practice for partnership work.

UK citizens can still be ineligible for assistance if they have been living abroad for a considerable period of time. To become eligible they would have to pass what is called the 'Habitual Residence Test', which is often carried out by the benefit agencies. However, if an applicant states an intention to permanently reside in the UK, or if they have been resident for 2 years prior to making the homelessness application, they would usually be eligible.

The list.

For the purposes of Level One of this manual, the following list sets out simply who is eligible:-

- A British Citizen
- A commonwealth citizen with right of abode, or
- An EEA national.

EEA countries other than the U.K. are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden. With effect from 1 May 2004, Malta and Cyprus are added, as are the so-called A8 states of Slovenia, Slovakia, Poland, Lithuania, Latvia, Hungary, Estonia, and the Czech Republic.

Eligibility list contd;

The following groups of person are described as 'Persons Subject to Immigration Control' or PSICs for short. Normally a PSIC is not eligible unless they are in the categories listed below;

Class A: Persons with refugee status.

**Eligibility
rules, Section
185 H.A. 1996**

Class B: Persons with exceptional leave to remain, (now on the basis of humanitarian protection and discretionary leave), and is not subject to the 'No recourse to public funds' ruling.

Class C: A person who has unconditional leave to remain (settled status) and who is habitually resident in the common travel area, other than a person who has been given leave on the basis of a sponsorship undertaking and who has been resident for less than 5 years (unless the sponsor has died)

Class D: A person who left Montserrat after the 1st of November 1995 because of the volcanic eruption.

Class E: An Asylum seeker who made their claim for asylum before the 3rd April 2000 (unless the claim has been refused) and either

1. The asylum application was made in arrival in the UK, or
2. The claim for asylum was made following a declaration that the secretary of state would not normally order the return of a person to the country of which the asylum seeker is a national (provided that the claim is made within 3 months of the date of the declaration), or
3. An asylum seeker who, on or before the 4th of February 1996, was awaiting a decision on their claim for asylum or an appeal and who was entitled to housing benefit on that date (provided they had not received an adverse decision).

NB: if an applicant's household is comprised of persons who are eligible, and others who are ineligible, then the investigating authority will generally disregard the person who is not eligible.

Test Number Three; Is the Applicant In Priority Need?

Just as 'homelessness' has a legal definition, and 'eligibility' can be defined through a proscribed list, 'Priority Need' can be determined in the same, combined way. There are certain

**Priority Need,
Section 189 of
the H.A. 1996
+
Chapter 10
Code of
Guidance**

circumstances that would arise in a person's life that would qualify them to be accepted as being in priority need by an investigating authority.

The categories of Priority need are as follows:-

- Pregnant women, or those with whom a pregnant woman resides.
- A person with dependant children.
- A person who has been made homeless because of a fire, flood or similar disaster.
- A person who is vulnerable as a result of age, illness, disability or some other special reason. Or a person with whom such a vulnerable person may reside.

General Additions.

In 2002 the government added the following categories of priority need:-

- 16 and 17 year olds.
- 18 and 19 year olds leaving care.

Vulnerability Additions

- Persons vulnerable as a result of serving in the armed forces.
- Persons vulnerable as result of time spent in Prison.
- Persons vulnerable as a result of being made homeless following violence.

How is vulnerability assessed?

The test that is currently applied is known as the “**Pereira test**”, following a decision made by a judge in a case of the same name. In all cases where vulnerability is being considered, an investigating authority must ask itself:-

**Regina v.
London
Borough of
Camden, ex
parte Pereira
(1998)**

- “The local authority should consider whether, when homeless, the applicant would be less able to fend for themselves than a ordinary homeless person so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects”

The authority must apply the Pereira test to all applicants at this stage.

NB: an investigating authority is allowed to take into account any other special reason not proscribed in the legislation, although it is a power to do so, not a duty.

If an applicant has passed the first three tests, then a duty to provide temporary accommodation arises, whether or not the receiving authority has any property to place an applicant in.

Test Number Four; Is the Applicant Intentionally Homeless?

Having considered whether an applicant is homeless, eligible and in priority need, the authority must then look at the applicant’s circumstances and determine whether or not the homelessness arose through no fault of the applicant.

**Intentionality,
Section 191
H.A. 1996
+
Chapter 11
Code of
Guidance.**

The Act defines intentionality in the following way:-

An Applicant becomes homeless intentionality if they,

- Deliberately do or fail to do something;
- In consequence of which,
- They cease to occupy accommodation,
- Which is available for the occupation,
- And which it would have been reasonable for them to continue to occupy.

There is a huge raft of case law relating to intentionality rulings, and it crucial for an authority to keep abreast of any changes.

It is good practice for an investigating authority to apply a methodical test of intentionality in the manner laid out above, when making all decisions, but put basically, the question is really one of whether or not the applicant did something deliberately, that directly resulted in the loss of their home, as opposed to doing something in good faith, or, that has been described by one judge as, "Honest Blundering".

Settled Accommodation.

If an authority find that the applicant is not intentionally homeless from the property that they are actually applying as homeless from, and that property is not considered to be 'Settled Accommodation', for instance a friend temporarily putting someone up, then the authority is allowed to apply the same test to the property that the applicant occupied immediately before, to see of they lost that accommodation intentionally.

If that property was not 'Settled' then the authority can keep applying the test until they find what is called the 'Causal Link' of the present homelessness. However, when a property is identified as settled accommodation and it was not lost intentionally, further investigations into this matter would cease.

Test Number 5; Does the applicant have a local connection?

Perhaps the simplest of the 5 tests to assess. As with the eligibility rules, there is a list of categories to compare with an applicant's personal circumstances. They will either be on the list or they wont.

**Local
Connection,
Section 199 (1)
H.A. 1996.
+
Chapter 18
Code of
Guidance.**

It is often apparent at the first contact that the applicant, although homeless, may not actually have a local connection with the investigating authority. In such cases they must still investigate fully and even temporarily accommodate if necessary, but after completing enquiries the authority would then refer the applicant to the area where they do have a local connection. The other (Receiving) authority would then become liable for the full housing duty.

An authority cannot refer an applicant to another area because they have a greater connection. Any connection within the area of the investigating authority would count.

NB: If an applicant is fleeing violence, either domestic or from outside the home, then an investigating authority cannot refer them back to an area where the violence or threat of violence originated.

Local connection rules.

A person has a local connection with the district of local housing authority in the following circumstances:-

- Because they are, or in the past were, normally resident there, and that residence is or was of their own choice.
- Because they are employed there.
- Because of family associations.
- Because of special circumstances.

For the residence test the applicant would have to have lived in the area for either 6 months out of the last 12 or 3 years out of the last 5.

For the employment tests the applicant would have to show proof of any employment other than casual work.

For the family association test the applicant would have to have parents, or adult brothers and sisters to qualify, although the family rules are more flexible.

Local Connection for Asylum Seekers.

Since the 4th of January 2005 there has been another local connection category in operation. This is where Asylum

**Local
Connection,
Section 199 (1)
H.A. 1996.**

Seekers have been placed in the area of a local authority under the National Asylum Seekers Support arrangements (NASS Provisions), provided that they were not accommodated in an accommodation centre. If an applicant was not placed there under NASS Provisions, or if they made their claim before the 4th of January then they would not have a local connection.

The Housing Duties.

In addition to the 5 tests, a local authority is also legally obliged to provide other services to those claiming homelessness within their area.

Duties to Non-Priority Homeless.

NPH cases will not be able to make use of the full housing services but they are still owed certain duties under the law. Where an applicant is eligible, homelessness and not homeless intentionally, an authority must “provide advice and assistance with any attempts they may make to secure that accommodation becomes available for their occupation”

Duties to Those Found Intentionally Homeless.

Where an applicant is found intentionally homeless, the authority have a duty to make sure that accommodation will remain available for a reasonable time, until they find accommodation of their own, and to provide advice and assistance with any efforts they make to find their own accommodation.

Duties to Protect Belongings.

Where a person has been accepted as homeless there is a **duty** to protect an applicant’s personal possessions, where there is a danger of loss or damage and no other suitable arrangements can be made.

Duties to Those Threatened With Homelessness.

Where an applicant may be threatened with homelessness (within the next 28 days) the authority must “Take reasonable steps to secure that accommodation does not cease to become available”

The Full Housing Duty.

When an applicant’s circumstances comply with all 5 of the tests, the full housing duty comes into force. It remains a duty until it is discharged.

The duty is discharged when:-

- Applicant ceases to be eligible.
- Applicant accepts an offer of permanent accommodation under Part vi.

Homelessness Procedures Manual Level One.

- Applicant accepts a 'Non-Shorthold tenancy' from a private landlord or RSL.
- Applicant accepts and Assured Shorthold Tenancy from a private landlord or RSL, that is a qualifying offer. (see relevant section below).
- Applicant becomes intentionally homeless from accommodation provided under S.193.
- Applicant voluntarily ceases to occupy accommodation as their only or principal home, accommodation made available for their occupation
- Applicant refuses an offer of long term, temporary accommodation under S.193.
- Applicant refuses a final offer of accommodation having been given notification in writing that the property is:-
 - I. Suitable,
 - II. Reasonable to occupy,
 - III. Possible consequences of refusal.
Right to review suitability.

Reviews and Appeals.

Internal Reviews.

If an applicant is unhappy with either the decision of the investigating authority, or the way that investigations were carried out, then they have a right of appeal to the authority.

The review application must be lodged with the authority within 21 days of receiving official notification of the

**Section 202
Housing Act
1996**

authority's decision, (although this can be extended).
Reviews are carried out on the following grounds:-

- That they are ineligible.
- What duties are owed under various sections, including priority need but not intentional.
- Local connection referral.
- Suitability of accommodation offered (excluding temporary accommodation)
- Any other material or argument.

Decisions must be given in writing, and the authority has **56 days** in which to come to a decision.

Appeals to Court.

If an applicant is not happy with the review decision, then they have a right to appeal to the county courts, where the judge will consider the decision making process of the local authority.

The application for an appeal must be lodged no later than 21 days after receiving the written notice of the internal review decision, or the date on which the internal review should have been completed.

If successful, the judge will order that the original decision be quashed and that the investigating authority reach a new decision.

NB. Neither during the internal review or court appeal process is there a duty to provide temporary accommodation, but there is a power.

Suitability of Accommodation.

Any accommodation provided by a local authority, at any stage in an applicant's case must be suitable, whether or not the accommodation is provided as a temporary arrangement or through the full housing duty.

**Section 206(1)
Housing Act
1996
+
Chapter 17
Code of
Guidance**

Conditions for suitability must relate to both the applicant and any members of their family. The code states that consideration of suitability is largely one of 'Space and Arrangement' and set out the following conditions that need to be considered:-

- Physical needs of the applicant or family.
- Standards of accommodation.
- Fitness for habitation.
- Overcrowding.
- Bed and breakfast accommodation.
- Affordability.
- Location of accommodation.
- Households with pets.
- Asylum seekers.

Bed & Breakfast accommodation

B&B accommodation is considered unsuitable where non-self contained accommodation is used to house an applicant with family commitments for more than 6 weeks. This includes pregnancy cases as well as dependents. The code states that even in such cases they should only be used as a last resort.

B&Bs are not to be considered as Section 193 (full duty) accommodation but can be used in the following circumstances:-

- Temporary accommodation pending investigation
- Sheltering those found intentionally homeless
- Priority need and not intentionally homeless
- Applicant being considered for referral
- Where applicant is threatened with homelessness

The code also discourages the use of B&B for 16 and 17 year olds but acknowledges that it may not be possible to avoid, in which case it should only be used for the shortest time possible

Location of accommodation

Suitability here is determined by nearness to places of work or education, particularly at times of GCSE examinations. In addition authorities must consider proximity of other support structures, including doctors, social services and other key services and not place applicants in accommodation that is isolation, away from public transport, a difficult thing to do in some rural communities.

Households with pets

Sensitivity is urged and consideration should be given to an applicant's wishes to keep a pet but it is also acknowledged that this may not be possible.

Asylum seekers

There are provisions for providing accommodation for asylum seekers who may be destitute without assistance. Authorities should consider it as a temporary expedient where a person's asylum claim is being considered and shall disregard any preference that an applicant may have when providing accommodation.

NB: The suitability requirements have to be complied with but both the courts and central government, acknowledge that because of the emergency nature of homelessness assistance it simply may not be possible to fit the accommodation to an applicant's personal circumstances.