

# Housing rights guide

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# Shelter

# Sample Chapter

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## What's in this Chapter

The type of home which is most suitable for you will depend on a range of different factors including where you want to live, how long you want to stay there, what you can afford and whether you qualify for a council or housing association home, known together as social housing. This chapter looks first at the advantages and disadvantages of buying or renting. It explains who qualifies for social housing and how to apply for it. It gives advice on looking for private rented accommodation and finally explains the options for temporary accommodation.

## Rent or buy?

Buying a home is only an option for people who can afford the prices in the areas where they want to live. However, even if you can afford to consider buying, it may not always be the best option. The advantages of buying are:

- You may have a choice of properties and areas, depending on the price range you can afford.
- You have a higher degree of control over your home, subject to building and planning regulations.
- You can only normally lose your home if you fail to keep up mortgage payments.
- In the longer term, usually after several years of paying off a mortgage, it can be cheaper than renting.

The disadvantages of buying are:

- The costs in the first few years are usually higher than renting from the local council or a housing association, although they may be lower than renting a similar property from a private landlord.
- The initial cost of buying a home (such as solicitor's and surveyor's fees) can run to several thousands of pounds, in addition to mortgage repayments.
- You are responsible for all repair and maintenance costs, which can run to hundreds or thousands of pounds a year.
- There is limited, or no help available with your housing costs if your income drops.

The advantages of renting from a local council or housing association are:

- Costs are usually lower than renting in the private sector.
- If your income drops, help is available through housing benefit to pay the rent.
- Most of the repairs and maintenance, apart from minor items, will be carried out by the landlord.
- You will normally only be at risk of losing your home if you fail to pay the rent, cause considerable damage to the property, or cause serious annoyance to your neighbours.
- Local authorities and housing associations are non-profit making and aim to provide a good service to tenants, although this may not always be achieved.

The disadvantages of renting from a local council or housing association are:

- In some areas you may have to wait for months or years before you are offered a home, particularly if you want one of the more popular areas or types of home, for example a house rather than a flat.
- You may have limited or no choice over the area or type of home you are offered.

- You will have less control over your home, for example over making improvements to the property.
- The rent you pay will increase over time and you may end up, after several years, paying more than someone who has bought their home.

The advantages of renting from a private landlord are:

- There may be a wider choice of area and type of property, if you can afford the rent.
- There is unlikely to be a waiting list.
- If your income drops, help is available through housing benefit to pay the rent, although the full rent may not be met.
- Most of the repairs and maintenance, apart from minor items, should be carried out by the landlord, although some private landlords can be bad at carrying out repairs.

The disadvantages of renting from a private landlord are:

- Rents can be very high.
- The rent you pay will increase over time and you may end up, after several years, paying more than someone who has bought their home.
- New tenants only have limited protection from eviction and the landlord can ask for the property back when they want it, although you rarely have to leave immediately.
- You will have less control over your home, for example over making improvements to the property.

By looking in the other sections of the *Housing rights guide* you can find out more about the different rights of owners and tenants.

Different types of homes will suit different people. People with stable incomes and who do not want to move for at least three or four years, may be best buying a home, if they can afford it. Local authority or housing association homes are more suitable for families, or people on fixed or low incomes. People who want a home immediately and who only want to stay for a limited time, may be best renting privately.

The following sections give advice on how to go about renting or buying.

## Renting from the council

Although the number of council homes to rent has been declining, they are still the main source of affordable rented housing in many areas. This section tells you how to apply for a home. In some areas, some or all of the council housing stock has been passed over to housing associations, but this section also applies to those areas. To avoid repetition it refers to 'the council' throughout.

It is often thought that to get a council house, applicants have to join a long queue. In reality, some people's need for a home is greater, or more urgent, than others', and councils have to take this into account when deciding who should be offered a home first.

In many areas there is a shortage of council housing and there are many more people applying than can be offered a home. In other areas, there are more homes, but they may not be the type or in the areas you would prefer.

This section describes how councils decide on their priorities and who has a legal right to housing. Councils must, by law, publish details of how they make these decisions. This is known as their allocation scheme and you have a right to see a copy.

You can find out how to make a housing application from the town hall or local council offices. Their number will be in the telephone directory, or you can find it in a local library. Normally you will receive a form from the council's housing department and will have to give details of yourself, your family, if any, and your present housing conditions.

An increasing number of councils run a **Housing Options Service**. This means that, rather than just assessing whether you qualify for council housing, they look at all the different ways you may be helped, including staying in your present home if you are in danger of losing it, improving conditions where you are,

renting from a private landlord or buying your own home, perhaps through a low-cost home ownership scheme. All these other options are explained later in the guide.

If you are being actively considered for an offer of housing, you will probably be visited by someone from the council to check on your details.

It is often necessary to re-register each year and when you put your name on the list, you should check when you have to renew your application.

## How allocation schemes work

The council cannot prevent you from applying simply because you may not be from the local area, although they can give priority to local residents. It has to decide whether you fall into one or more of the categories of applicants who must be given reasonable preference, taking into account your housing need. The categories are:

- people who are homeless
- people who are owed a duty by any housing authority under homelessness legislation
- people occupying insanitary or overcrowded housing, or living in other unsatisfactory housing conditions
- people with a need to move on medical or welfare grounds
- people with a need to move to a particular area to avoid hardship to themselves or to others.

If you fall into one or more of these categories, the council's scheme must give you preference over applicants not within these categories. The council can add in extra factors, as long as they do not override the categories set out above. How councils do this is their decision.

From 2010, all councils should have a **Choice-based lettings scheme**, where all available properties are advertised and

applicants are invited to apply for the homes of their choice. Some properties may be limited to certain types of applicant, for example older people or people with a disability. In some schemes, applicants are placed in bands that reflect their preference and housing need. Properties are usually offered to applicants within the highest band first. Within each band applicants can also be ranked, which can be based on how long they have been on the list, local connection with the area, and any outstanding rent arrears.

Some local authorities operate **Points-based schemes**, in these, applicants are awarded points based upon their preference and housing need; those with the most points are offered suitable housing as it becomes available.

The council should explain how the local scheme works and if you are unsuccessful, they should give you feedback to help you assess your chances of success in future applications.

The council can decide that you are not eligible for housing if you have been guilty of unacceptable behaviour that would entitle it to evict you if you were a council tenant. The council must notify you in writing that it has decided you are not eligible, giving reasons for its decision. If you believe you should no longer be treated as ineligible, you can make a fresh housing application.

If you do not agree with any decision about the facts of your application, or a decision that you are not eligible because of your behaviour, you are entitled to ask for a review of the council's decision.

## People from abroad

Some people from abroad will not be eligible for housing. This includes many people who are subject to immigration control, asylum seekers, people who are allowed to stay provided they do not claim from public funds, sponsored immigrants who have been in the UK for less than five years, people who fail the habitual residence test for welfare benefits, or many people from the EU who are not working or not family members of EU workers.

If the council informs you that you are ineligible for housing because you are a person from abroad, you have the right to ask it to review the decision. In addition, if your immigration status changes, you can reapply to the council at any time. There are now special arrangements for asylum seekers, who will be directed to accommodation in limited areas of the country provided by the UK Border Agency (formerly the National Asylum Support Service (NASS)).

## **If you are homeless**

Local councils have a legal duty to help people who are homeless, or threatened with homelessness. This section describes the legal rights of homeless people.

People count as homeless if:

- they have no accommodation available for them to occupy, including any accommodation in another country
- they have a home but are in danger of violence or threats of violence, making it unreasonable for them to continue to occupy it
- they are a family who are normally together, but are now living in separate homes because they have nowhere to live together
- their accommodation is moveable (for example a caravan or houseboat) and they have nowhere to place it
- they have accommodation but it is not reasonable to continue to occupy it.

People are considered as being threatened with homelessness if they are likely to become homeless within 28 days.

## **Who the council will help with accommodation**

Not all people who are homeless, or threatened with homelessness, are provided with a home by the council. The council is, however, under a legal obligation to ensure that homeless people have somewhere to live if:

- they are 'eligible for assistance' (this excludes many people from abroad, see page 20)
- they are in 'priority need'
- they did not make themselves 'intentionally homeless'.

## Who is in priority need?

The following groups of people are counted as being in priority need in England (see below for some differences in Wales):

- people who live with dependent children aged either under 16, or under 19 if they are receiving full-time education or training
- all pregnant women, or someone who lives with a pregnant woman
- 16- and 17-year-olds, unless they have left care, (in which case social services are already responsible for ensuring they have accommodation) or social services owe them a duty to provide accommodation under childcare legislation
- 18- to 20-year-olds who were looked after, or accommodated by social services for any time when aged 16 or 17
- people who are homeless because of a fire, flood or a similar emergency
- people who are either vulnerable, or who live with someone who is vulnerable as a result of:
  - old age
  - mental illness
  - physical disability
  - being in care
  - having served in the armed forces
  - having been in prison or custody
  - becoming homeless because of violence or threats of violence that are likely to be carried out
  - other special reasons.

In Wales, unlike England, people who are homeless as a result of fleeing violence, leaving the armed forces or being released from prison, do not also have to be vulnerable. All 16- and 17-year-olds are in priority need. Young people aged 18 to 20 at risk of sexual or financial exploitation (as well as people formerly in care) are also considered to be in priority need.

The test of vulnerability is whether the homeless person would be less able to fend for themselves than an ordinary homeless person and more likely to suffer harm. Although councils have discretion in deciding who is 'vulnerable', they must act reasonably, and unreasonable decisions can be successfully challenged (see Challenging the council's decision on page 20).

### **Who is intentionally homeless?**

If the council decides you are intentionally homeless, this means it believes you have given up accommodation you could have continued to live in, or that it is your fault you have lost accommodation (for example, by not paying the rent). Events that happened some time in the past may be taken into account if the council decides that these are the main cause of your homelessness. However, councils must act reasonably and take all facts into account. For example, if rent arrears were not deliberate and arose because of circumstances beyond your control, you should not be treated as intentionally homeless. Councils' decisions can sometimes be successfully challenged and overturned. If you are intentionally homeless the council does not have to find you a long-term home, but if you are in priority need, it is still under a duty to find you somewhere to live temporarily and to give you advice and help with finding your own accommodation.

If you have a home but are about to lose it, it is very important that you stay there for as long as you are entitled to. If you leave earlier, the council may decide you are intentionally homeless. In some circumstances this may mean waiting until you receive a court order to evict you. If you are in danger of homelessness always seek advice before leaving your home.

## **If you are not in priority need**

If you are homeless but not in priority need, for example if you are a person without disabilities, under retirement age, without children, then the council does not have a legal duty to find you accommodation. It does, however, have a duty to provide you with advice and assistance. The council must first establish what your particular housing needs are and base its advice on those needs. In addition, the council has a power to provide you with accommodation if it is also satisfied that you are not homeless intentionally.

In practice this may not be much more than information on local hostels, cheap hotels and accommodation agencies; but some councils give more help than this and can offer a home even if you are not legally in priority need, so it is always worth applying to the council.

## **Where to go if you are homeless**

If you are homeless or likely to be homeless in the near future, you should go to the Homeless Persons Section of the council. This will often be in the housing department. If you do not know where to find it, ask at the town hall or local council offices. Some councils call it by a different name, for example, Homeless Families, Housing Emergency or Housing Welfare Section. It may also be part of the Housing Options Service. You may be seen by someone from the Housing Aid or Advice Section first. Tell the person you see that you are homeless or about to become homeless. Make it clear that you need help urgently and have not come just to put your name on the housing list. Ask for the name of the person you see as you may need to speak to them again.

Do not be put off if the council is unhelpful. Remember you have a legal right to be given help and the council has a legal duty to provide it.

### ***Which council to go to***

Usually you should go to the council in the area where you become homeless or are about to become homeless. However, you have the right to apply to any council in the country. This is particularly important if you are homeless as a result of having to leave your home because of violence. You are entitled to apply to a council that is far away from your home. Long-term help for people in priority need will normally be given by a council with which they have a 'local connection'. Generally, you should be considered as having a local connection with a council if you, or anybody who normally lives with you:

- has lived in the council's area for six months out of the past year, or three years out of the past five
- has work (including voluntary work) in the area
- has close family who have lived in the area for at least five years
- has any other special connections with the area, for example you were brought up there.

But being resident in a prison, hospital or other institution does not count as a local connection. A member of the armed forces can obtain a local connection in the area s/he was posted, if s/he made a homeless application on or after 1 December 2008 in England, or 30 March 2009 in Wales.

If you apply to a council with which you (or anybody who lives with you) have any of these local connections then that council should be responsible for helping you.

If you have no local connection with the council to which you apply, that council must investigate your application and decide whether you are homeless, eligible for assistance, in priority need, and whether you are intentionally homeless. If it decides you have a right to help, but that you have no local connection with that council, then it can contact another council with which you do have a local connection, to make sure that it will help you. If you have a local connection with more than one council and you would prefer to live in a particular area, then your wishes should

be taken into account, so it is important to make them clear. The council that you first apply to must make sure that the other council will help you; it must not simply send you along there. If you have nowhere to stay while these arrangements are being made, then the council that you first applied to must make sure that you have temporary accommodation.

If you have no local connection with any area, the council to which you first apply has the duty to help you. People in fear of violence cannot be sent back to the area from which they have fled unless the council is satisfied that there is no risk of violence if they return to that area. The council should take account of your own fears of violence. If you think that it has not, seek advice.

## The council's investigations

When you ask a council for help because you are homeless the council will check:

- whether you are homeless
- whether you are eligible for assistance
- whether you are in priority need
- whether you are homeless intentionally
- whether you have a 'local connection' with the area.

These investigations often involve detailed questions about your personal life. People who make false statements or withhold relevant information can be prosecuted and fined.

If you have nowhere to stay while the council is carrying out its inquiries and the council has reason to believe that you may be homeless, eligible for assistance, and in priority need, it must provide you with accommodation until it completes its inquiries and reaches a decision on your application. If the council decides that it does not have a duty to find you a home, it must provide you with its reasons in writing.

## The kind of housing the council will provide

Councils may put homeless people initially into emergency or temporary accommodation. This can be a room in a bed and breakfast hotel, a hostel, a house waiting to be improved or demolished, or a home rented from a private landlord.

However, in England, councils should not use bed and breakfast accommodation for homeless people who are pregnant or have children, unless there is no other accommodation available. Even then, a council can keep you in bed and breakfast for no longer than six weeks. The Government announced that from 2010, 16- or 17- year-olds should no longer be placed in bed and breakfast hotels by local authorities, except in an emergency. In Wales, local authorities should not use B&B for any priority need homeless person for longer than two weeks if it is of basic standard, or six weeks if it is of a higher standard.

Sometimes, for example in a bed and breakfast hotel or a hostel, you may not be able to take your furniture with you. If you cannot afford to store it and there is a risk of it being lost or damaged, the council must make sure it is stored in a safe place. It can make a reasonable charge for the temporary accommodation and for the furniture storage.

If, after completing its inquiries, the council is satisfied that you are homeless, eligible for assistance, in priority need, and not homeless intentionally, it must provide you with long-term accommodation (unless you have no local connection with it and have a local connection with another council, see above). This will usually, but not always, be a council house or flat. However, councils often offer their least popular types of homes to people who have been homeless and often make only one offer. You may be offered a housing association home (see page 27).

If you think the offer is unsuitable, you can ask the council to review it. If you turn down an offer of accommodation from the council, it may then decide it has discharged its duty and does not have to offer any further help. You can, however, accept and

ask the council to review the offer, so that you have somewhere to live if the review is unsuccessful.

You may also be offered a tenancy with a private landlord. This will usually be a shorthold tenancy with only limited security. This can happen if some members of your household are not eligible for assistance. The council can also offer a shorthold tenancy to other people accepted as homeless, but you do not have to accept it. If you decide to accept it, the council will have no further responsibility for you.

## Challenging the council's decision

If you do not agree with any decision made by the council, you have the right to ask it to review its decision. You must normally ask for the review within 21 days of being told about the decision. If the council does not change its decision it must give its reasons. If you disagree with the council's decision, you may be able to challenge it in the county court if you believe the council has:

- misinterpreted the law
- reached an unreasonable decision
- not taken proper account of all the facts.

If you want to challenge the decision, it is essential to seek advice as soon as possible. A specialist advice agency should be able to help you challenge the council's decision and, as a last resort, may be able to advise you how to seek legal help to take the council to court.

## Homeless people from abroad

Homeless people from abroad do not have any rights to help if they:

- are here in breach of the immigration laws
- were allowed into the country on the basis they would not claim any benefits

- fail the habitual residency test for welfare benefits
- are in breach of EU residency rules
- are asylum seekers who are excluded from claiming benefits.

Asylum seekers are covered by new arrangements (see page 13). People who may be excluded should seek advice, because they may still be entitled to some help with accommodation, food and other support.

## Homeless young people

Most young people aged under 18 have a right to help from social services. They may also be entitled to help under homelessness legislation. Social services have a duty to provide accommodation for any young person who is homeless and in need, and whose welfare is otherwise likely to be seriously prejudiced. After the young person has been provided with accommodation, social services should also provide the young person with support, such as education and training, employment, and financial support.

A young person is counted as in need if they are unlikely to be able to achieve or maintain a reasonable standard of health or development without the provision of services by the council, or if their health or development is likely to be impaired, or if they have a disability. Social services will often meet this duty by asking the housing authority to help. Social services and housing departments should work closely together.

Social services also have duties to provide accommodation and support for all 16- and 17-year-olds coming out of care. Care leavers aged 18 to 20 will normally be entitled to support from social services until they reach the age of 21 and in some circumstances, until they are 24. If they become homeless again before reaching 21 (even for one day), they will be in priority need (see page 14).

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