

# Covid-19 and local authority homelessness duties

## Part 1 – Procurement of additional accommodation

*Although there have been no legislative changes to Part VII, many homelessness departments have been shaken by the Covid-19 pandemic. This is the first in a series of updates on legal issues arising from Covid-19 in the context of homelessness.*

Authorities (often already hard-pressed) have, as a result of the Covid-19 outbreak, found themselves rapidly having to procure or find ways to access additional accommodation.

The main reasons for this new pressure are diverse:

- On 26 March 2020 the Minister for Local Government and Homelessness wrote to all “local leaders” asking them to protect health and stop wider transmission of Covid-19 by, amongst other measures, urgently procuring accommodation for rough sleepers and other vulnerable homeless persons within days. The letter does not make it clear under what legal power or duty accommodation is to be provided but an indication is given: “It is likely that you will need to utilise your commissioned homeless services to provide support to people in this accommodation.”
- The request to triage people, where possible, into cohorts driven by medical advice: those with symptoms, those with pre-existing conditions and everyone else.
- Many night shelters and street encampments have had to close on public health grounds.
- Individuals being forced to leave accommodation because they have Covid-19, or for other reasons related to the disease; perhaps because the accommodation is occupied by someone who is on the shielded patients list and required to minimise contact with members of their household.
- The requirement to self-isolate within accommodation has had an effect on suitability, particularly in relation to those in hostel, bed and breakfast or other shared accommodation, who may now find themselves in unsuitable accommodation. This might lead to a wider need to procure more units of a particular character such as one bedroom or self-contained properties.
- Pressures on interim accommodation are likely to increase, for instance, as a result of authorities taking the decision to accommodate under s188(3) in circumstances where the discretionary power might – pre-Covid-19 – have been refused.
- Pressures are also likely to grow as incidence rates of violence within the home potentially increase. This means that local authorities will need to provide accommodation for individuals leaving properties because of domestic violence.

Conversely, there are factors which will limit, in the short term at least, demand for Part VII accommodation. The government’s suspension of evictions for the three-month period commencing 26 March 2020 ought to mean that fewer households find themselves in need of homelessness

assistance. Moreover, the Home Office has confirmed that those without recourse to public funds would not, in that period, be required to leave their NASS accommodation once their asylum claim has been determined.

While the precise increase in demand remains uncertain, it is clear that authorities have taken great strides to finding homes for the street homeless with Crisis estimating that an astonishing 4,200 had been rehoused in England over a period of weeks.

The letter from the Minister for Local Government and Homelessness states that the Ministry of Housing will support local authorities who are struggling to procure sufficient units. It does not, however, give further details of how this will be done, what this support will entail, or how to access such support.

In our view, as underlined by the Supreme Court in *Nzolaemso v City of Westminster* [2015] UKSC 22 (in relation to out of borough accommodation), authorities can best protect themselves from challenge during this period by ensuring they have well thought-out policy.

Such policy could supplement existing procurement and/ or allocation policies or those policies could be amended to provide for the challenges generated by Covid-19.

The policy should address the following:

- An assessment of what additional accommodation might be needed (numbers/ nature of units) and how that might change over time.
- Sources of additional accommodation. It is possible there is sufficient flexibility in current letting arrangements to meet some increased demand. In addition to the usual sources (voids, direct purchase, private sector) authorities are also making use of hotels and similar facilities which have been closed temporarily because of the crisis.
- How quality standards of any new accommodation will be met.
- The request to house persons who are street homeless is wide-reaching and arguably encompasses those who have no recourse to public funds and who are, accordingly, not normally eligible for support under Part VII. It is not yet clear where the funding will come from to accommodate those individuals. Critically for authorities, consideration will need to be given as to the duty and/ or power under which assistance is provided. This is a complex issue which will depend on immigration status and a number of other factors. Accommodation may be provided to families without recourse to public funds under the Children Act 1989, ss 17 or 20 (bearing in mind, amongst other matters, the Immigration and Asylum Act 1999, ss4 and 95). Social services departments may have alternative powers to assist under the Care Act 2014 and/ or Mental Health Acts. Alternatively, the authority may choose to refer to charities (*eg*, in relation to failed asylum seekers, the Salvation Army).
- If housing stock is insufficient to meet need, an outline of how such stock will be allocated (*ie* where will priority lie).
- What is the plan when the current restrictions are lifted? There is likely to be a spike in evictions due to a possession claims backlog. Consideration will need to be given to and what happens to those who have been accommodated who would not ordinarily have been caught by Part VII. Moreover, while £1.6bn has been provided by the government to authorities in relation to

the current phase of addressing the Covid-19 crisis, it is not yet known whether additional funding will be forthcoming.

- The Equality Act 2010, Children Act 1989 and Article 8 duties must be considered when making policies. It is prudent to make express reference in the policy to those duties.
- Amendment of the policy in accordance with changing law and government advice.

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Five Paper has unrivalled experience in assisting local authorities in respect of homelessness and allocations legal issues. We are available for advice, drafting and court representation. Members are always available to have an informal chat – particularly in these uncommon times. If you have any queries, please contact the clerks on 0207 815 3200 or [clerks@fivepaper.com](mailto:clerks@fivepaper.com).