

Social Services Duties to Provide Housing (ref 19)

- 1.** The *National Assistance Act* and *Mental Health Act 1983* have been held to require the provision of accommodation by social services departments, where necessary, to meet an assessed community care need.
- 2.** If the housing need springs from a situation of vulnerability (eg. clearly unsuitable housing circumstances for a disabled adult) then the assessment duty under s47 of the *National Health Service and Community Care Act 1990* is triggered.
- 3.** It can be a social services department's legal duty to provide accommodation. *National Assistance Act* residential care is not confined to registered homes - it can also include ordinary housing.
 - The *Tammadge* case (1998 1 CCLR 581) established that departments cannot quote a lack of resources as a reason for not providing a service. Case law also holds that an authority under such a duty, must provide 'appropriate' accommodation to the client;
 - The *Help the Aged* case (1997 4 All ER 523) held that a duty arises once the authority decides that care and attention are needed and are not otherwise available to the client and;
 - The *Batantu* case (2001 33 HLR 76) held that the assessed need for an urgent move to different accommodation triggered the social services duty, and that the couple's earlier rejection of a short let in private sector accommodation, because of the lack of security of tenure and the rent level, and the man's pressing mental health needs for security, did not even arguably make the care and attention 'otherwise available'.
- 4.** Housing law is clear that a person can be 'homeless' (thus potentially triggering a full housing duty) when living in 'unsuitable' accommodation, given particular needs. The definition of 'homeless' includes being somewhere that it is not 'reasonable' to continue to occupy. If an application for housing as a homeless person is made, the housing authority has a duty to make enquiries to ascertain whether the person is eligible, and if so, the extent of the duty owed. Pending the decision, housing authorities are under a duty to accommodate suitably, those who may be not only eligible, but also have a 'priority need'.
- 5.** Once a housing duty to a homeless person has been triggered, there is no such word as 'can't' in terms of the lawful discharge of that duty. The duty may take a very, very long time to fulfill, without that making the delay unlawful, but ultimately, the duty must be discharged. Lack of resources is not an excuse.
- 6.** If a person makes themselves homeless the local housing authority does not have a duty to house them. But a person only becomes homeless intentionally if he or she 'deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy'. The government's *Housing Code of Practice* recommends that a finding of intentional homelessness should be a rare event, in relation to a mentally ill or learning disabled applicant.
- 7.** Not every person who is awaiting housing will be so much in urgent need of accommodation, that social services will have to provide it for them - the department can have tight criteria. This has been established by the case of *Abdul Wahid* (2001 EWHC Admin 641), in which the man's situation was needy, but not desperate. He needed different accommodation to minimise the risk of deterioration in his fragile mental state, but not so urgently as to make it unreasonable to refuse to conclude that he had a need for that re-housing, via s21 of the *National Assistance Act*.
- 8.** The criteria must be reasonable, however, and the most likely scenario which they would have to cover is, where (always assuming it would be unreasonable to expect that person to accept private sector accommodation, were he to be helped to find it), someone has, for a lawful reason, despite

technical or actual homelessness, been found to be intentionally homeless, but has pressing problems to do with age, illness or disability, exacerbated by the current housing situation, to a point of 'severe risk'. All the more so, if providing extra domiciliary care would not manage that risk. Another situation would be where there is fairly unsuitable housing, no question of intentional homelessness, but a very long likely wait for housing as homeless, due to local pressures, and insoluble problems of risk in the meantime, despite the possibility of extra homecare.

Acknowledgement: This *Quick Brief* is based on an article by Belinda Schwehr (website: www.careandhealthlaw.com), a specialist in health and social care law at the Public Law Group in the firm of Mayer, Brown, Rowe & Maw.

If you require further information or have other queries contact Housing Options.

Housing Options, Stanelaw House, Sutton Lane, Sutton, Witney, Oxfordshire, OX29 5RY, United Kingdom
Telephone: +44 (0)845 4561497 E-mail: enquiries@housingoptions.org.uk

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