



Locked Down and Shut Out: Evictions and rough sleeping this winter

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GARDEN COURT CHAMBERS



19 November 2020



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Evictions

- Applications at the warrant stage
- Procedural issues; including permission to issue a warrant, notice, transfer to High Court
- Suspending
- After eviction
- Covid measures



Applications at the warrant stage

- Appeal
- Application to set aside the possession order
- Accelerated procedure application to set aside
- Application to vary the possession order
- Permission to make a counterclaim



Procedural Issues

- CPR Part 83
- Permission to issue warrant: CPR Part 83.2
- Notice of eviction: new CPR Part 83.8A
- Transfer to High Court: County Courts Act 1984, s42
- Enforcement of High Court writ: CPR 83.13; CPR 83.8A also applies



Suspending (1)

- *Haringey LBC v Powell* (1996) 28 HLR 798: up to date arrears position
- *Lambeth LBC v Henry* (2000) 32 HLR 874: realistic opportunity to pay off arrears even if considerable period of time; but also *Taj v Ali* (No.1) (2001) 33 HLR 26: (private landlord case) period should not stretch into the ‘mists of time’
- *Plymouth CC v Hoskin* [2002] EWCA Civ 684: discretion continues up to execution
- *Sheffield CC v Hopkins* [2002] HLR 12: landlord relying on new allegations unrelated to reasons for possession order; but note *Midland Heart Ltd v Burns and CA*, County Court at Birmingham, 3 May 2019, Nearly Legal blogpost 22.9.2019
- Guidance on suspending in ASB cases: *Manchester CC v Higgins* [2005] EWCA Civ 1423; *Sandwell v Hensley* [2007] EWCA Civ 1425; *City West Housing Trust Ltd v Massey* [2016] EWCA Civ 704



Suspending (2)

- Human rights arguments at the warrant stage: *R(JL) v Secretary of State for Defence* [2013] EWCA Civ 449
- Equality Act arguments at the warrant stage: *Paragon Asra Housing v Neville* [2018] EWCA Civ 1712



After Eviction

- Set aside possession order itself
- Oppression in the execution of the warrant: *Southwark LBC v Sarfo* (2000) 32 HLR 602
- *Barking & Dagenham v Saint* (1998) 31 HLR 620
- *Hammersmith & Fulham LBC v Lemeh* [2001] 33 HLR 231
- *Lambeth LBC v Hughes* (2001) 33 HLR 350



Covid measures (1)

- Amendments to CPR Part 83 especially CPR 83.8A
- MHCLG press release 10.9.2020: no bailiff enforcement if local restrictions include a restriction on gathering in homes; winter truce
- MHCLG press release 5.11.2020: pause on evictions from December; should be no enforcement until 11.1.2021 at the earliest, except in the ‘most egregious cases’
- Lord Chancellor’s letter to HCEO association 5.11.2020: request that HCEOs not attend residential premises except in limited circumstances as set out. See Nearly Legal blogpost ‘Lockdown 2 Evictions’ 5.11.2020
- House of Commons briefing paper HCo8867: ‘Coronavirus: a ban on evictions and help for rough sleepers’
- MHCLG guides: ‘Understanding the possession action process’, updated 5.11.2020



Covid measures (2)

- The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 SI No. 1290
- Reg 2(1):

Subject to paragraphs (2), (3) and (5), no person may attend at a dwelling house for the purpose of –

 - (a) executing a writ or warrant of possession;
 - (b) executing a writ or warrant of restitution; or
 - (c) delivering a notice of eviction
- Reg 2(2): list of grounds on which possession order made
- Reg 2(3): ‘substantial rent arrears’; defined in reg 2(4)
- Reg 2(5): Ground 7 Sch 2 Housing Act 1988



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Coronavirus Homelessness Response

- The “Everyone In” scheme
- Announced in letter from Luke Hall MP to local authority leaders 26 March 2020.
- Universal approach: “it is now imperative that **rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week**”.
- Emphasis on provision of accommodation which enables compliance with Public Health Guidance, ideally single room facilities.
- According to the MHCLG “by September it had supported over 29,000 vulnerable people, with two-thirds now moved into settled accommodation”.



Coronavirus Homelessness Response (continued)

- Luke Hall letter 28 May 2020 “Moving onto the next phase of accommodating rough sleepers”
- Precursor to the Next Steps Accommodation Scheme, requesting local authorities to increase supply of long term “move-on accommodation” for their COVID-19 responses, and to continue short-term accommodation to prevent return to the streets.
- £433 million pledged for 6,000 new supported homes.
- Local authorities to put in place initial local plans by 11 June 2020 in a co-production process with government “expert Rough Sleeping and Homelessness Advisers”.



Coronavirus Homelessness Response (continued)

- Next Steps Accommodation Programme announced 18 July 2020
- Aims - two aspects:
 - Long-term accommodation and support for rough sleepers; and
 - Interim accommodation and support for those accommodated during the pandemic.
- Funding:
 - £105 million funding to councils for “immediate support”
 - £161 million to deliver 3,300 units of move-on accommodation
- “Alongside this funding we are also making available the expertise from MHCLG’s Rough Sleeping Initiative (RSI) and Homelessness Advice and Support (HAST) Adviser Teams to help coproduce accommodation provision and related support services, under the oversight of the Dame Louise Casey led COVID-19 Rough Sleeping Taskforce.”



Coronavirus Homelessness Response (continued)

- The Protect Programme announced on 5 November 2020
- £15 million allocation “to support efforts to provide accommodation for rough sleepers”.
- To run alongside “Everyone In”.
- Targeted in areas which need the most support.
- **All councils will have to update their rough sleeping plans by the end of the year, providing an overview of their support for those sleeping rough.**
- They will also be asked to **carry out a rapid assessment of need for everyone they accommodate and to consider time limited interventions for those rough sleeping now or new to rough sleeping.**



Coronavirus Homelessness Response (continued)

- Protect Programme targeted areas:
 - London
 - City of Bristol
 - Brighton and Hove
 - Cornwall
 - Bournemouth, Christchurch and Poole
 - Manchester
 - Salford
 - Oxford
 - Leicester
 - Birmingham



£700 million in homelessness funding this year

- **£262.9 million** in Flexible Homelessness Support Grants and Homelessness Reduction Grants to Local Authorities for 2020-2021 (announced 23 December 2019).
- **£112 million** Rough Sleeping Initiative Fund (announced 28 January 2020).
- **£3.2 million** to councils to help rough sleepers self-isolate (13 March 2020).
- **£6 million** Homelessness response fund – to frontline homelessness charitable organisations directly affected by COVID-19 (announced 14 May 2020, allocated 7 June 2020).
- Next Steps Accommodation Programme:
 - **£105 million** for interim accommodation (announced 30 June 2020); and
 - **£161 million** for 3,300 new supported homes for those in emergency accommodation.
- **£10 million** Cold Weather Fund to councils “to keep rough sleepers safe this winter”.



£700 million in homelessness funding this year (continued)

- **£2 million** Homelessness Winter Transformation Fund for faith and community groups “to help them get rough sleepers into accommodation (announced 13 October 2020).
- **£15 million** Protect Programme.
- **TOTAL: £671.1 million**



Night Shelters

- 13 October 2020 MHCLG issued guidance COVID-19: provision of night shelters: <https://www.gov.uk/guidance/covid-19-provision-of-night-shelters>
- “decisions to reopen shelters must be balanced on a detailed COVID-19 risk assessment.”
- “last resort to protect against the risk to health and life of individuals remaining on the streets when other alternative options are unavailable, for example in very cold weather.”
- Exempt from regulations on gatherings – “reasonably necessary for work purposes or for the provision of charitable or voluntary services.”



Homeless Link Policy Briefing: Bring Everyone In Again

- Homeless Link Policy Briefing: Bring Everyone in Again, 12 November 2020, <https://www.homeless.org.uk/connect/blogs/2020/nov/02/everyone-in-2-essential-to-protect-people-sleeping-rough-during-lockdown> .
- October survey of local authority homelessness professionals involved in SWEP provision. 81 responses from local authorities.
- Findings:
 - Current funding levels not enough for local authorities to support homeless persons,
 - 44% not confident that plans are in place to avoid the need for night shelters,
 - Rising rough sleeping and lack of options for people with NRPF.
- National Streetlink data shows 82% increase in requests for help from individuals rough sleeping.



Severe Weather Emergency Protocol

From [Homeless Link SWEP Guidance 2020-2021](https://www.homeless.org.uk/sites/default/files/site-attachments/SWEP%20and%20cold%20weather%202020%20guidance.pdf)
(<https://www.homeless.org.uk/sites/default/files/site-attachments/SWEP%20and%20cold%20weather%202020%20guidance.pdf>) :

- B&Bs, hotels and hostels (including block booking units funded through Next Steps Accommodation Programme (NSAP))
- Hostels and supported accommodation including ‘crash pads’
- Placements across the supported housing pathway
- Emergency provision which already exists due to Covid-19
- Self-contained temporary accommodation
- Vacant council buildings
- Council owned self-contained units
- Student accommodation
- Houses in Multiple Occupation (HMOs)
- Nightstop for 16-24 year olds
- Innovative temporary housing models such as ‘pods’



Housing Act 1996

- Where clients are (or may be) eligible for assistance.
- Priority need:
 - COVID-19 vulnerability is now highly relevant. See 8.44 and 8.45 of the Homelessness Code of Guidance for Local Authorities.
 - Potential arguments under section 189(1)(d) “homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster”.
- Suitability of accommodation – applicants’ need to comply with Public Health Guidance. Impact of lockdown?



Housing Act 1996

- Assessment and planning under section 189A Housing Act 1996 – mandatory assessment of circumstances causing homelessness/threatened homelessness, housing needs, and support necessary to have and retain accommodation.
- Relief duty under section 189B Housing Act 1996 to “take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least 6 months”. See assessment considerations at section 189A(2).
- Section 190(2) Housing Act 1996 to “secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation” (and advice and assistance). Again regard must be had to assessment under section 189A.
- Limited relevance to interim accommodation duty section 188(1) Housing Act 1996 – *R (Nnaji) v Spelthorne Borough Council* [2020] EWHC 2610 (Admin).



Housing Act 1996

- Points to highlight:
 - the ongoing applicability of the Everyone In scheme;
 - the renewed commitment to accommodating rough sleepers in the Protect Programme;
 - the significant additional funding which has been made available to combat rough-sleeping during COVID (the £700 million), some of which is earmarked for temporary accommodation;
 - The likely limited availability of winter night shelters and other resources for homeless persons.

- Ask local authorities provide you with their Covid-19 rough sleeping plans, if not published.



No Recourse to Public Funds

- Luke Hall letter of 26 March 2020:

“**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”

- Luke Hall letter of 28 May 2020:

“I do recognise that these are challenging times and that you may have accommodated people who would normally and otherwise be ineligible for support, **making judgements based on risk to life**. I wanted to take this opportunity to restate the government’s position on eligibility relating to immigration status, including for those with No Recourse to Public Funds (NRPF). The law regarding that status remains in place. Local authorities must **use their judgment in assessing what support they may lawfully give to each person on an individual basis, considering that person’s specific circumstances and support needs**. You will already be used to making such judgements on accommodating individuals who might otherwise be ineligible, **during extreme weather for example, where there is a risk to life.**”



No Recourse to Public Funds (continued)

- [Government Response to HCLG Select Committee Interim Report \(https://www.gov.uk/government/publications/protecting-rough-sleepers-and-renters-government-response-to-the-select-committee-report\)](https://www.gov.uk/government/publications/protecting-rough-sleepers-and-renters-government-response-to-the-select-committee-report):

“Local authorities have powers to use their judgment in assessing what support they may lawfully give to each person on an individual basis, considering that person’s specific circumstances and support needs. Local authorities will already be used to making such judgements on accommodating individuals who might otherwise be ineligible, **during extreme weather for example, where there is a risk to life.**

Local authorities also have powers to provide basic safety net support, regardless of immigration status, if it is established that there is a genuine care need that does not arise solely from destitution, for example, where there are community care needs, migrants with serious health problems or family cases.

[...]



No Recourse to Public Funds (continued)

[...]

The Committee has recommended that the Government clarify what people are able to claim when they have a ‘no recourse to public funds’ condition. The Government published guidance in April and a factsheet in May which explains the support individuals can receive if they do not have access to public funds. These pieces of guidance are available on the Government’s gov.uk website and provides information on the support available in a range of different circumstance, including for those in need of medical treatment, that cannot afford housing costs, asylum seekers, victims of domestic abuse and those that are either employed or studying.”



No Recourse to Public Funds (Continued)

- Families with children - Section 17 Children Act 1989.
- Needs for care and support - Sections 18 and 19 Care Act 2014.
- Home Office accommodation - asylum support under sections 95 and 4 Immigration and Asylum Act 1999; immigration bail accommodation schedule 10 Immigration Act 2016.
- Accommodation under section 1 Localism Act 2011 at present not available: *R (AR) v Hammersmith and Fulham London Borough Council* [2018] EWHC 3453 (Admin). Potentially open to challenge.
- Permission granted on issue of entitlement of people with NRPF to assistance from local authorities under Everyone In scheme: <https://www.localgovernmentlawyer.co.uk/housing-law/397-housing-news/45302-high-court-judge-grants-permission-for-judicial-review-challenge-over-refusal-to-accommodate-asylum-seeker-during-covid-19>



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- <https://www.gov.uk/government/news/6-000-new-supported-homes-as-part-of-landmark-commitment-to-end-rough-sleeping>



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- <https://www.gov.uk/government/publications/next-steps-accommodation-programme-guidance-and-proposal-templates>

Slide 8

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Thank you

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