

Statement on behalf of Shelter
Witness: Polly Neate
First Statement
Exhibits: PN1
Dated: 8 November 2019

Case number: C1 /2019/0894

IN THE COURT OF APPEAL, CIVIL DIVISION
ON APPEAL FROM MR JUSTICE DOVE
QUEENS BENCH DIVISION Case No. QB/2018/0238

BETWEEN:

ABDULLAH AL AHMED

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

and

SHELTER

Intervener

FIRST STATEMENT OF POLLY NEATE

I, Polly Neate of 88 Old Street, London, EC1V 9HU, will say as follows:

1. I am the Chief Executive of Shelter. I took up this post in August 2017. Prior to this, I was Chief Executive of the charity Women's Aid.
2. Shelter is a national campaigning charity that provides legal and practical advice, support and services to over five million people a year struggling with inadequate housing and homelessness. Shelter seeks to influence national and local government policies and legislation to tackle the root causes of homelessness and poor housing. Shelter also carries out training, research, policy scrutiny and campaigning, including work related to the supply and standards of private sector rented accommodation.
3. Unless otherwise stated, this statement is based on information held by Shelter. In compiling this statement, I have consulted with Shelter's employees,

particularly in the Legal, Research and Policy departments. Shelter's Legal Team comprises a total of around 40 solicitors working across twelve locations in England, delivering specialist legal casework including court representation and consultancy work. The legal team works very closely with around 200 Shelter housing advisers across each location as well as advisers working on our national telephone advice line and our online advice services. Both the legal team and the caseworkers have extensive experience of providing advice and representation to homeless applicants at all stages of their homeless application.

4. I make this statement in support of Shelter's intervention in this appeal. Shelter, through its role as a major housing charity, has specialist knowledge of and insight into the challenges faced by families and individuals in circumstances similar to those of the Appellant. This includes, in particular, the upheaval, stress and trauma associated with making a homeless application as well as the challenges facing homeless applicants in identifying and taking the steps necessary to issue a county court appeal against a council's decision on a homeless application, including the difficulties faced by homeless applicants in finding a legal aid housing solicitor.

SUMMARY OF SHELTER'S EVIDENCE

5. This statement will focus on how difficult it is to issue a county court appeal, both because of the complexities of homelessness law and decision letters and because of the myriad of other difficulties also faced by those who find themselves homeless. This statement also outlines how hard it is to find a legal aid housing solicitor and why. This statement includes a summary of the responses Shelter has received to three Freedom of Information Act requests and a high-level summary of the limited conclusions Shelter is able to draw from them.
6. I will cover the following matters in this statement, and include supporting evidence in the accompanying exhibit "PN 1":
 - i. **Practical difficulties in bringing an appeal** (paragraphs 7 – 59) – the practical difficulties involved in a homeless applicant issuing a notice of appeal in person;
 - ii. **More general difficulties faced by those who are homeless** (paragraphs 60 – 100) – the wider difficulties and circumstances that homeless applicants often have to contend with;
 - iii. **Finding a legal aid housing solicitor** (paragraphs 101 - 112) – the difficulties that homeless applicants face in finding solicitors who are able

to advise and represent them in homeless appeals and the lack of capacity in the housing advice sector;

- iv. **Freedom of Information request results** (paragraphs 113 - 122) – the results of requests for information made by Shelter under the Freedom of Information Act 2000 and the limited, high-level conclusions Shelter is able to draw from those responses in respect of the advantages to homeless applicants of being legally represented when bringing a section 204 appeal, and the impacts on court time and cost.

I. PRACTICAL DIFFICULTIES IN BRINGING AN APPEAL AS A HOMELESS APPLICANT

A. The review decision letter

7. I set out below the most common examples of the many challenges facing homeless applicants in identifying what action is necessary in order for them to issue a county court appeal against a council's review decision on their homeless application, that arise from the decision letter itself. In particular:
 - the limited information provided regarding rights to bring an appeal and how to go about doing so; and
 - the legalistic and complex content of the review decision letter, which contains no clear indication of which elements of the letter may be open to appeal.

Limited information provided to homeless applicants regarding their rights to appeal

8. A review decision letter is required by section 203 Housing Act 1996 ("HA 96") to inform homeless applicants that they have the right to appeal in respect of the review decision to the county court on a point of law and the time limit within which any appeal must be brought. That is the only required information about an appeal that must be put into the letter, as set out in the HA 96. The required information is minimal and its inclusion does not provide much practical information which would help the applicant understand the decision letter or get the appeal to court.
9. The only other required information for the review decision letter is set out in section 213A HA 96, which requires the local authority to invite a homeless applicant to consent to their details being passed to social services where they are unlikely to be owed the main housing duty and there are children in the applicant's household. Although there is no requirement for the invitation to be issued in writing, in Shelter's casework experience it is usual practice for this to be outlined towards the end of the section 203 HA 96 review decision letter. It

is our experience that this request can cause confusion and alarm to applicants, especially those who have had no prior relationship with social services. They often become fearful that a social services assessment may conclude that the parents are unable to properly care for their children whilst without a home and that the family may be forcibly separated by the children being taken into care to be looked after by the state.

10. There is no requirement to provide any further information in the review decision letter as to what an appeal on a point of law might be, what it might cost, how to appeal, whether legal advice is necessary and / or how to find legal advice. There is no information about which court the appeal should be lodged at (beyond that the appeal is to the county court), how to find that out or how to contact that court.
11. In Shelter's experience, the paragraph from Tower Hamlet's 23.03.18 review decision letter to the Appellant in this case (Bundle / tab / page: C / 20 / 233) is reflected in typical examples from Shelter's casework. To illustrate this, I set out below the relevant paragraph from the letter to the Appellant (in paragraph 11 a), together with a selection of examples from Shelter's recent casework (paragraph 11 b-f):
 - a. *"Should you believe that the Council has been wrong on a point of law in relation to the matters covered by this review, you have the right of appeal to the County Court. Section 204(2) of the Housing Act 1996 states that an appeal must be brought within 21 days of the date on which you are notified of this decision".¹*
 - b. *"Under section 204 of the Housing Act 1996 as amended by the Homelessness Act 2002 if you are dissatisfied with the decision contained within this letter you can appeal to the County Court on a point of law. Any such appeal must be lodged within twenty-one days of the receipt of this letter."²*
 - c. *"I must advise your client that she has no further right of review of my decision but should she be dissatisfied with my decision then she may appeal to the County Court on a point of law provided that such appeal is lodged within 21 days of receipt of my decision".³*
 - d. *"If you disagree with this decision – If you believe that this decision is wrong in law, you have the right to appeal to the County Court under section 204 of the Act on a point of law. Any such appeal must be lodged within 21 days of*

¹ Tower Hamlet's 23.03.18 s.202 review decision letter to the Appellant

² 24.06.14 Letter LA to Shelter client SP s.203 decision

³ 18.11.14 Letter LA to Shelter client HC s.203 decision

the date of being notified of this decision, which has been sent by email today and a copy sent to [anonymised] to hold at their offices for you to collect".⁴

e. *"I must advise you that your client have [sic] no further right of review of my decision but should she be dissatisfied with my decision then she may appeal to the County Court on a point of law provided that such appeal is lodged within 21 days of receipt of my decision. The [anonymised local authority] would welcome advance notice of anticipated appeal from any solicitors instructed by you."⁵*

f. *"If you believe that our decision is wrong in law, you have the right of appeal to the County Court. The Court has the power to change our decision. If you wish to appeal to the Court, you must do so within 21 days of the date you receive this letter. The [anonymised local authority] would welcome advance notice of any anticipated appeal from you".⁶*

12. Review decision letters will often provide the contact details for the local authority's Housing Options Unit (generally for the purposes of advice and assistance with obtaining accommodation within the private rented sector) and the Social Services department. Although not required by the HA 96, in Shelter's experience, review decisions will sometimes contain encouragement to the applicant to seek independent legal advice. If this is included, there will not usually be any specific indications as to how the applicant should set about finding local legal advice but usually a simple sentence which is often along the lines of:

"If your client requires assistance with an appeal your client should seek legal advice from an appropriate agency such as the Citizen's Advice Bureau, a Law Centre, Shelter, or your client's own Solicitor."⁷

13. The limited advice and guidance typically provided in a section 203 HA 96 review decision letter is thrown into stark relief when compared, for example, with a claim for possession issued in the county court. A tenant subject to such a claim should receive a copy of the claim form (which will have details of the hearing date on it), the particulars of claim, a standard form of defence (Form N119), and guidance notes ("Notes for defendant - rented residential premises claim" form N7A) which state: *"You should get help and advice immediately from a solicitor or an advice agency. This is particularly important whether or*

⁴ 21.12.16 Letter LA to Shelter client SL s.203 decision

⁵ 13.06.17 Letter from LA to Shelter client KR s.203 decision

⁶ 21.11.18 Letter from LA to Shelter client MG s.203 decision

⁷ Extract from 18.03.19 Letter from LA to Shelter client MK

*not you disagree with the claim since these notes cannot cover every different type of tenancy”.*⁸

The content of the review decision

14. Review decision letters are often lengthy and complex. In Shelter’s recent casework experience they have ranged from six pages (with 24 paragraphs) to 30 pages (with over 200 paragraphs)⁹. The letters commonly set out the tests set down by statute and case law, in legal language, and then apply the facts before the reviewing officer to those legal tests. The letters do not clearly indicate what issues might be open to appeal and in Shelter’s experience, homeless applicants find it hard to understand the letters sufficiently.
15. Examples, from Tower Hamlet’s 23.03.18 section 202 review decision letter to the Appellant and from Shelter’s casework, include:

Vulnerability –

“In deciding whether a person is “vulnerable as a result of old age, mental illness of handicap or physical disability or other special reason” for the purposes of s.189(1)(c) of the above Act the authority is required to consider your special circumstances and compare you with an “ordinary person who is homeless” as in the Supreme court judgements of Hotak v LB of Southwark: Kanu v LB Southwark and Johnson v Solihull Metropolitan Borough Council (2015), and whether you are ‘significantly more vulnerable than an ordinary person who is homeless’ as in the Supreme Court judgment of Hotak v LB of Southwark.

In Panayiotou v Waltham Forest, Smith v LB Haringey [2017] EWCA Civ 1624 it was determined that in considering the meaning of “significantly more vulnerable” it was for the decision make to apply a qualitative test rather than a quantitative test of the clients vulnerability. It is to decide whether the client would come to more harm in a significant way than an ordinary person if homeless.

In the recent judgment of the case of Panayiotou it was agreed that the correct legal test had been applied, that being whether as a result of a characteristic within section 189(1)(c) Mr Panayiotou would suffer “more harm” than an ordinary person in consequence of being without accommodation. As the reviewing office in this case considered that Mr

⁸ N7A Notes for Defendant – rented residential premises claim
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700805/n7a-eng.pdf

⁹ Anonymised letter from Shelter Bristol solicitor GO

Panayiotou would not suffer more harm and due to the correct legal test being applied the appeal was dismissed.”¹⁰

Homelessness –

“Having considered the relevant case of R (Sacupima) v Newham London Borough Council (2001) 33 HLR 2 CA, it was confirmed in the Court of Appeal that a tenant remaining in possession of a premises after the date when a possession order became effective but before the warrant for possession had been executed was occupying a residence by virtue of the enactment restricting the landlord to recover possession with the meaning of s.175(1).”¹¹

Public sector equality duty –

“The Council is obliged to show due regard for the Equality Act 2010. There are particular characteristics that include age, race, religion, beliefs and disability. I can confirm that I have considered your circumstances with the equality duty well in mind and carried out this exercise in substance, with rigour, and with an open mind. I have focused very sharply on (i) whether you have a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other. Having considered the Equality Act guidance 2010, It appears to me that you may fall within the definition of disability as set out in s6 (1) of the Equality Act. Whether you do or do not, I have treated you as such. In addition to this you have other protected characteristics such as age, gender, race that I have shown due regard for and these factors have been taken into account in this letter.”¹²

Regulation 8(2) minded to procedure¹³–

“I have considered if there was any deficiency or irregularity in the original decision or the manner in which it was made in line with 8(2) of the above Regulations. The original decision maker did not fail to take into account any relevant matters, and made the decision in light of all the relevant available facts. The decision did not involve any bad faith, dishonesty or procedural irregularity. Neither do I believe that there was any mistake on a point of law; the decision was not contrary to the legislation and was not ‘Wednesbury’ unreasonable. However, I have decided to activate the special procedure, notifying you of my minded intentions.”¹⁴

¹⁰ From Tower Hamlet’s 23.03.18 s.202 review decision letter to the Appellant

¹¹ 31.01.17 letter from LA to KR s.184 decision

¹² Letter from LA to MG of 24.09.18 discharge of s.194 duty

¹³ Now Reg 7(2) Homelessness (Review Procedure etc) Regulations 2018, SI 2018/223.

¹⁴ Letter from LA to JQ of 26.07.17

Intentionality –

“Section 191 of the Housing Act 1996 states that you can become homeless intentionally, if you have become homeless as a result of something you have deliberately done, or failed to do. Such an act or omission must have been committed with an awareness of any relevant fact and knowledge that the consequences of such an act would lead to homelessness or threat of such.

Having given careful consideration to the information available against the background of homelessness case papers, I have concluded that you are homeless intentionally. This is because the circumstances in which you lost your last settled accommodation at [address anonymised] fulfil the definition of intentional homelessness, set out a Section 191(1) of the Act. In addition I am not satisfied that the deliberate act which led to the loss of this accommodation was an act made in good faith as a result of being unaware of any relevant fact that allows you to voluntarily leave your accommodation without making alternative housing arrangements, so as to allow you to benefit from Section 191(2).

It is accepted that there are five elements to be met before a decision of intentional homelessness can be made, namely;

you must have committed a deliberate act or omission;

this must have led to the loss of your home;

you must have ceased to occupy your home;

the accommodation must have been available for your continued occupation;

it must have been reasonable for you to continue to occupy.

It is clear from the available information that conditions c) & d) have unarguably been met. I am also satisfied that the other condition have been met.”¹⁵

16. Although some review decision letters are more lengthy and complex than others, the examples paragraphs above, in Shelter’s experience, are typical.

B. Practical difficulties in getting an appeal issued at court

Tendency of applicants to focus on the facts of their cases rather than law or vice versa

¹⁵ Letter from LA to ZD of 24.02.15 s.203 decision

17. In Shelter’s casework experience, applicants who lack any legal advice, support or guidance and who are themselves without knowledge or experience of housing law, are more likely to focus on the facts of their case rather than the law when faced with a negative decision from a local authority about their homeless application. They tend to focus on issues they perceive as “unfair” rather than matters that might be unlawful. Examples from Shelter’s casework include:

a. *“I was a Happy Independent gainfully employed citizen with a future until I made the wrong choice of partner. I suffered DV over a number of years both physically and mentally. I had the Police involved on several occasions. This resulted in my young daughter waking up at night with panic attacks and anytime she heard noise as in heard people shouting, she panicked. I also tried to deal with it myself and in order not to loose my little girl because I was quite fragile myself, I sent her back home to my parents for a while for some stability and for both of us to heal.*

I am now on my own with my daughter who has been back in the UK since 2009 attending [anonymised] School at [anonymised address]. Since she has been back we have both suffered DV again with my ex - partner - my daughter's father. I am trying to rebuild my life and also working on my daughter's confidence and she has just about settled in her new school. I was invited to view a property on the 14th of August by [anonymised] and [anonymised] on the [anonymised address]. On arrival, I saw my ex and his cousin and as I left I saw them again this time with some friends who watched me as I left the estate. As I refused the accommodation, my appeal was rejected by [anonymised]. I am now being asked to leave

I believe this decision is unfair and I am writing to seek your help and intervention. I am an honest peaceful conscientious citizen in the Constituent. I look forward to your urgent response.”¹⁶

And:

b. *“I have many emails, which I have sent to your Principal Lawyer Civil Litigation Team and TTH housing officers regarding the above mention. Proof of this I will provide at Court. Discrimination...!!!! Unfair and prejudice or is because of my disability, this sort of behaviour is illegal. I am a disable man, with terminal health conditions.”¹⁷*

18. In our experience, even those who are able to grasp some legal issues are more likely to copy and paste large passages of law from the internet while remaining

¹⁶ Letter from LiP SP to LA of 09.09.11 in response to receiving discharge of duty letter

¹⁷ Letter from LiP CY to LA of 26.06.19 re disrepair in TA

unable to carry out much relevant analysis on the specific “points of law” that could form the basis of an appeal. Examples from Shelter’s casework include:

- a. *“I also suggest your reliance upon the licences agreement as a basis for your cancelling said accommodation is misplaced for reasons stated in my said letter filed with your office and therefore said license agreement is unenforceable for the following: I signed it under duress because I was homeless and desperate for shelter physically ill suffering from Depression and as evidence supports suffering PTSD and in no mental condition to understand its legal implication.”¹⁸*
- b. *“Dyslexia is Court [sic] by the Equality Act 2010 requiring suppliers of services to the public to make adequate adjustments for disability which Dyslexia is and which is caught by the Mental Health Act 1983. The point is your office has failed to make the required adequate adjustments under said acts and therefore your office is culpable in negligence rendering yourselves to a possible claim for damages which offsets the amount of your £1664.89 demand.”¹⁹*
- c. *“This matter will be subject to a further complaint to Hackney Council and will also be going to the UK Equalities and Human Rights Commission and to the UN Convention on the Rights for Persons with Disabilities for investigation. The UN's assessment in 2014 cited the UK as being the worst member county for the 'gross and systematic violation of the rights of disabled people. The UN ambassador has also just completed a 12 day UK Tour, the shocking results of which he presented at a press conference last Friday November 16th.”²⁰*

19. It is, in our experience, very rare to find a homeless applicant who is without legal advice or assistance but who is able to focus appropriately on how housing law and public law principles apply to the facts of their case in order to properly assess and formulate a point of law for the purpose of bringing a section 204 HA 1996 appeal.

Tendency of applicants to focus on loss of accommodation rather than the need to issue an appeal

20. The more fortunate applicants will have been provided with temporary accommodation until they have received the review decision letter. In such cases, the review decision will be the first notification received by the applicant

¹⁸ Letter from LiP KM to LA of 08.05.17 in response to s.184 discharge of duty letter

¹⁹ Letter from LiP KM to LA of 08.05,17 in response to s.184 discharge of duty letter

²⁰ Letter from LiP MG to LA of 21.11.18 in response to termination of temporary accommodation

that his or her temporary accommodation is due to end shortly. Examples from review decision letters from Shelter’s casework include:

a. *“In view of the above decision, this authority has no duty to secure accommodation for your client. However, she is eligible for assistance; we must assist her in her search for accommodation. This is stated in section 190 of the above Act. Your client is strongly advised to contact the following services to help resolve her housing issues. The Housing Advice & Options Team can assist in seeking accommodation in the private rented sector or refer your client to other organisations that may be able to assist further. This service is available to your client under s190 of the above housing act. Your client can contact the following services, for further assistance; If she wishes to make an appointment with the Housing Advice & Options Team for help with finding alternative accommodation – please call (anonymised phone number). We are not required to find your client a home. However, because she is homeless and eligible for assistance, we must help her in her search for accommodation. To meet our responsibilities, we must give your client advice about her housing options and about other organisation that may be able to help her such as hostels, night shelters and housing association if your client would like more advice, please phone our Housing Advice and Options section on (anonymised number). Alternatively, I am able to arrange a section 190 interview with our Housing Options and Advice Team for your client if she wishes me to do so. As a result of my decision, your client’s current accommodation will cease on 10th July 2017”²¹*

b. *“As explained at the start of this letter the role of this review is to decide what obligations or duties [anonymised local authority] have towards you as a result of the decision that you are intentionally homeless. [Anonymised local authority] exercised discretion and provided you with accommodation pending the review. I have advised [anonymised local authority] that you should be provided with accommodation until 17 January 2017. If you wish for further advice in any attempts you may make to secure that accommodation becomes available for his occupation please contact [anonymised local authority] using the details at the bottom of page 1.”²²*

21. In these circumstances it is our experience that the review decision letter will precipitate a period of intense stress for the applicant during which, for understandable reasons, the primary focus of the applicant is typically upon the imminent ending of their accommodation.

²¹ 13.06.19 Letter LA to KR s.203 decision

²² 21.12.16 Letter from LA to SL s.203 decision

22. An applicant may need to take a number of stressful and time / resource heavy tasks relating to securing accommodation in a short period of time. Our experience of such steps that might need to be taken by applicants, include but are not limited to:

- contacting the local authority to ask for more time in temporary accommodation;
- contacting the local authority to ask for an appointment with the housing options service for further assistance and then attending that appointment(s);
- contacting the local authority to ask for an appointment with social services and requesting and dealing with a face to face assessment of need;
- contacting and trying to persuade the temporary accommodation provider / hostel manager to allow him / her to remain for longer;
- contacting the temporary accommodation provider / hostel manager to request help with storage of possessions;
- contacting friends / family / any other support networks e.g. church or mosque to inform them of the situation and requesting their assistance to search for and find short term emergency accommodation for the applicant and / or their dependents and / or their pets or possessions;
- considering their financial position to see whether they can afford to pay for any alternative accommodation and / or storage of possessions as needed;
- researching local housing allowance, school places, employment opportunities and / or commuter distances in new areas;
- seeking advice and assistance and making appointments for financial, welfare benefit and / or debt advice;
- seeking advice and assistance from their bank for extension of credit or loans to assist with emergency costs / in search for alternative accommodation;
- making applications and appointments to apply for emergency assistance charitable funds to assist in search for alternative accommodation;
- searching online or in paper advertisements or shop windows for alternative accommodation;
- making calls to potential accommodation providers including hostels;
- travelling to and from and attending appointments to view and apply for alternative accommodation;
- searching for potential storage possession options;
- if employed, informing employers of their circumstances and requesting time off work to try to search for alternative accommodation or organise storage of possessions;
- if unemployed, searching for work as part of a benefit commitment and / or to boost finances;
- informing children's school to request understanding, assistance and support;
- informing medical health professionals;
- seeking medical treatment / prescriptions;

- in cases of domestic violence – informing police and requesting information to help in search for safe alternative accommodation;
 - in cases of ex-offenders - informing probation services; and
 - informing all relevant organisations of a change of address and rerouting paper bills and important correspondence.
23. An applicant who needs to complete any number of the above steps will need to do so whilst also seeking advice related to, or alternatively attempting themselves to bring, an appeal against the negative decision.

C. The typical homeless applicant

24. Whilst “[t]here is no typical litigant in person, and they will come from a diverse range of social and educational backgrounds”²³, as detailed further in Part II of this statement (“Wider difficulties faced by those who are homeless”), there are, in our experience, a number of common difficulties or shared characteristics of those experiencing homelessness. These include but are not limited to:

- poverty;
- stress and / or mental ill health;
- physical ill health;
- experience of trauma or domestic abuse;
- illiteracy;
- learning difficulties;
- disability and / or caring responsibilities;
- bereavement;
- relationship breakdown;
- experience of institutionalised living environments (in prison, social services care, hospital or armed services);
- substance dependency;
- extreme social isolation;
- displacement from known areas or previous support networks;
- experience of violence;
- experience as victim or witness to crime;
- living without any accommodation (“sofa surfing” or “rough sleeping”);
- living in temporary accommodation (which is often in stressful, noisy, cramped and otherwise poor conditions);
- precarious employment, such as working under a zero hours contract;

²³ Para 12 Equal Treatment Bench Book <https://www.judiciary.uk/wp-content/uploads/2018/02/equal-treatment-bench-book-february2018-v5-02mar18.pdf>

- living without easy access to facilities for managing every-day life such as cooking, laundry, administration and correspondence.
25. These issues may be pre-existing and exacerbated by the stress and trauma of having no home, or they may be caused by the experience of homelessness. They rarely occur in isolation and are more likely to be experienced simultaneously in multiple, overlapping and interconnected ways, compounding into a network of barriers delaying or preventing a person from being able to cope with life events and manage their affairs.
26. In 2018, Shelter submitted detailed evidence to the Ministry of Justice (“Moj”) review into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”). As part of that evidence we considered the unusually difficult circumstances of those attempting to engage with civil law, procedure and litigation whilst concurrently experiencing homelessness:

“Housing law is complex and often impenetrable, as is obvious from the five-volume Encyclopaedia of Housing Law. Even those who are well-educated and articulate find it difficult to present their case effectively when so much is at stake. Ultimately, this involves engaging with the Civil Procedure Rules and drafting court documents in the way the court expects.

If this were not enough, people are attempting to cope in circumstances which are among the most traumatic and stressful imaginable, facing the threat or reality of homelessness or living in poor housing conditions, (often with dependent children in the household), where there is a palpable imbalance of power. Landlords are invariably in a stronger position because of the lack of security of tenure, and are likely to be represented by solicitor and/or barrister.

Local authorities are both providers and decision-makers under the homelessness legislation, and any challenge to their decisions or to the refusal to provide temporary accommodation is in the nature of a public law challenge, whether by judicial review or county court appeal. To suggest that most people can take it upon themselves to assert their legal rights in these circumstances is patently a fallacy.

The reality is that if people are to avoid a housing crisis, they need face-to-face advice, casework and representation. The personal interview enables the adviser to take comprehensive instructions and form a rounded view of the case, to show empathy and generate the client’s trust. The task of probing and questioning the client’s account can be more effectively accomplished in person. The more supportive relationship which develops from face-to-face contact makes clients more willing to accept advice, even when it is unwelcome.

Techniques of persuasion and explanation can be deployed to ensure that the client follows advice and takes the steps necessary to advance their case. The meeting also enables the adviser to view the documents in the client's possession and to assess what other documents may be required. All this is necessary before the adviser can assess the merits of the case, prepare the court documentation and arrange for the client to be represented in court.

Vulnerable clients, often with multiple and complex needs, have a particular need for face-to-face contact, but in our experience virtually all clients need the personal engagement. It is self-evident that clients who have to go to court unrepresented are at a severe disadvantage. The court is an adversarial forum, and the judge can only adjudicate on the evidence and arguments before him or her. It is only legal aid that enables residents and homeless people to have the semblance of an equality of arms. Legal capability is a dangerous and damaging concept when applied to housing law, where a person's or a family home is at stake.”²⁴

D. Finding information online

27. There is limited information freely available which might assist applicants in working out (a) how to issue an appeal and (b) how to formulate their grounds of appeal.
28. Accessing information on the internet for applicants who are without accommodation or are living in temporary accommodation and with very limited financial resources can be incredibly difficult. Applicants may be trying to make numerous phone calls and carry out numerous searches with limited mobile phone credit, data or internet. Many temporary accommodation properties do not have internet access so occupants must use free WiFi in local libraries and public spaces.
29. A 2015 research report from Lemos & Crane titled “Trends and Friends - Access, use and benefits of digital technology for homeless and ex-homeless people” provides this example which is familiar in much of Shelter’s casework:

“I have a smart phone (iPhone) with 3G access – but it costs me to use internet - it is not wifi. I usually use my phone to access the internet, either on 3G or using public wifi at railway stations and McDonalds. There is limited internet access at my accommodation- internet is too slow for use to stream media and I have to

²⁴ Shelter Evidence to the Statutory Review of LASPO - “The impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012” (September 2018) http://england.shelter.org.uk/data/assets/pdf_file/0009/1596528/Shelter_response_LASPO_review_Sept_2018_final.pdf

share one computer with everyone else (16 others live in the accommodation) which means I just prefer to use my phone but am limited here as the screen is small. It slows me down. My main internet use is my Job Seekers Allowance requirement. I also use the internet for contacting friends, finding activities, music, watching films, playing online games such as poker and some phone games such as Temple Run. I use it to help myself not think about my situation, to keep in touch with important people in my life that can support me and to move forward with my goals. The internet is very important to me - it is how I do most things. It is quicker than having to go places in person and helps me to move forward with my life. I have problems using the internet where I live because it is too slow to stream movies and a lot of websites that I want to use are blocked. Having to use communal space means no privacy when using computer.”²⁵

30. A 2017 “investigation into access to digital inclusion for healthcare for the homeless population” commissioned by NHS Digital found that:

“Despite 90% of participants report access [sic] to a mobile phone, almost a third of mobile phone users do not access to the Internet [sic]. The most significant barriers reported are a lack of skill and confidence in using technology, followed by difficulties in accessing a device. Cost was also cited as a barrier along with a lack of correlation to everyday life”.²⁶

31. If a homeless applicant is able to access the internet and searches via Google for “section 203 Housing Act 1996 – appeal”, they will find this initial page of links to legislation:

²⁵ Lemos & Crane “Trends and Friends - Access, use and benefits of digital technology for homeless and ex-homeless people” (2015) <https://lankellychase.org.uk/wp-content/uploads/2015/01/Trends-and-Friends-2015.pdf>

²⁶ Seaview, “An investigation into access to digital inclusion for healthcare for the homeless population” (April 2017) <https://amhp.org.uk/app/uploads/2018/11/Digital-Inclusion-and-Homeless-People.pdf>

https://www.google.co.uk/search?hl=en&q=section+203+of+the+Housing+Act+1996+appeal&meta=&gws_
 Our helpline Action: Information: A2207195 ... Shelter Legal England - Right t... section 20...
 File Edit View Favourites Tools Help

Housing Act 1996 - Legislation.gov.uk
<https://www.legislation.gov.uk/ukpga/1996/section/203>
 Changes to legislation: Housing Act 1996, Section 203 is up to date with all changes known to be in force on or before 04 September 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

Housing Act 1996 - Legislation.gov.uk
www.legislation.gov.uk/ukpga/1996/section/203
 Changes over time for: Section 203 ... county court] on a point of law, and of the period within which such an appeal must ... 11S. 203 wholly in force 20.1.1997: s.

Housing Act 1996 - Legislation.gov.uk
<https://www.legislation.gov.uk/VII/right-to-request-review-of-decision>
 Housing Act 1996, Cross Heading: Right to request review of decision is up (b)is not notified of the decision on the review within the time prescribed under section 203., he may appeal to the county court on any point of law arising from the ...

Housing Act 1996 - Legislation.gov.uk
<https://www.legislation.gov.uk/ukpga/1996/section/>
 Housing Act 1996, Section 202 is up to date with all changes known to be in force on or before 30 August 2019. There are changes that may be brought into ...

Chapter 19: Review of decisions and appeals to the county ...
https://www.gov.uk/Housing,_local_and_community/Housing
 22 Feb 2018 - If the request is made in accordance with section 202 the housing authority, (e) decisions that run contrary to the policy of Part 7 of the 1996 Act; 19.29 Section 203 requires a housing authority to notify the applicant in ...



The second page is:

https://www.google.co.uk/search?hl=en&q=section+203+of+the+Housing+Act+1996+appeal&meta=&gws_
 Our helpline Action: Information: A2207195 ... Shelter Legal England - Right t... section 20...
 File Edit View Favourites Tools Help

Google section 203 of the Housing Act 1996 appeal 🔍


County court appeal time limits - Shelter Legal England
https://england.shelter.org.uk/legal/challenging_la_decisions/county_...
 12 Jul 2019 - The time limits for bringing a county court appeal ... [3] s.203(8) Housing Act 1996. [4] Aadan v Brent LBC (1999) 32 HLR 848, CA. [5] Van Aken ...

^{PDF} **Guide to the new homelessness duties - Mark Prichard**
<https://markprichard.co.uk/content/documents/190812-Guide-to-the-ne...>
 12 Aug 2017 - Section 218 of the Housing Act 1996 provides an ... ss.202 & 203 (3) pending the determination of a county court appeal or a further appeal ...

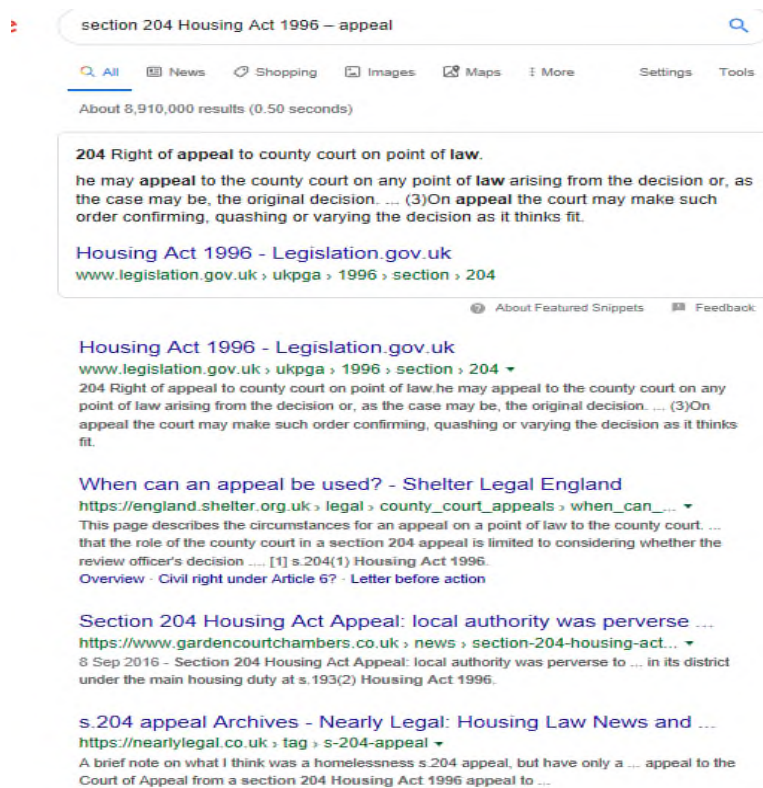
^{PDF} **Housing Act 1996 Part 7 - Mark Prichard**
<https://markprichard.co.uk/content/documents/Housing-Act-1996-Par...>
 Part 7 of the Housing Act 1996 will shortly be amended by the Homelessness 203. - Procedure on a review. [...] [No amendments]. 204. - Right of appeal to ...

Late review decisions and homeless appeals - Nearly Legal ...
<https://nearlylegal.co.uk/2018/06/late-review-decisions-and-homeless-a...>
 13 Jun 2018 - Where a s.204(1)(b) appeal of the original section 184 Housing Act 1996 ... in time (s.203(7) and Allocation of Housing and Homeless (Review ...

^{PDF} **RIGHTS OF LIGHT and SECTION 203 of the HOUSING AND ...**
<https://www.landmarkchambers.co.uk/wp-content/uploads/2018/07/S...>
 25 Oct 2017 - SECTION 203 of the HOUSING AND PLANNING ACT 2016 ... R v City of London Corporation ex parte Mystery of the Barbers of London (1997) 73 P&CR 4 [2006] EWHC 1961 (Ch) at paragraph 57, upheld on appeal [2007] ...



32. Carrying out a similar search on Google for “section 204 Housing Act 1996 – appeal” brings up similar results:



33. If they navigate through to legislation.gov.uk, it is not always clear whether the legislation online is the most up to date. A box entitled “Changes to legislation” indicates that *“Revised legislation carried on this site may not be fully up to date. Changes and effects are recorded by our editorial team in lists which can be found in the ‘Changes to Legislation’ area. Where those effects have yet to be applied to the text of the legislation by the editorial team they are also listed alongside the legislation in the affected provisions”*. At the top of the page for “Housing Act 1996” a box indicates *“changes that may be brought into force at a future date”* and *“changes that have been made appear in the content”*. However, where information is out of date, no information or links are provided to navigate you to the up to date legislation. In addition, there is no explanation as to how the legislation is applied.

34. If someone navigates through to Shelter’s website (https://england.shelter.org.uk/legal/homelessness_applications/challenging_la_decisions/county_court_appeals/county_court_appeal_time_limits) and then to a page on Shelter’s legal advice pages for housing professionals, it states:

“Appeal preparation - Specialist advice will be needed to draft the grounds of appeal, the skeleton argument and to represent the client. Time to prepare the

case will be very short so a speedy referral to a solicitor is essential. Often there is insufficient time to complete all of the above steps. A great deal is likely to depend on when the client approaches an adviser and whether the adviser has been involved in the review stage. In practical terms the most important steps are probably to: establish the relevant time limit; establish whether the case has legal merit (ie whether there is a point of law); work out whether the client is entitled to public funding, and if so; refer the client to a solicitor who is able to assist.”

35. Further information on Shelter’s legal advice pages regarding appeals states:

“Filing an appeal - Appeals are dealt with under Part 52 of the Civil Procedure Rules. An appeal should be filed with the court and the applicant (appellant) should use Court Service form N161. The application to the court should contain: the notice of the appeal on form N161; a copy of the decision subject to the appeal; proposed case management directions. As soon as possible and within 35 days of the filing of the notice, an appeal bundle should be filed. This should include all information relevant to the appeal including among other documents: a copy of the notice and skeleton argument; a copy of any relevant court orders. If time is short then the client or adviser should (if there is merit to an appeal) complete the court form with very brief details of the parties and the decision to be appealed against. The grounds should be completed briefly with bullet points covering whatever points of law are thought appropriate. On the form or in a covering letter, the applicant could ask for the appeal to be stayed pending the filing of fuller or amended grounds and / or a skeleton argument. It should be stated that the form is likely to be amended once the client has taken legal advice. The appeal documents should be served on the local authority within seven days of them being filed with the court.”

36. Unrepresented applicants are likely to struggle, even having read this. This information is intended to assist housing professionals who have at the very least a basic understanding of housing law and procedure.

37. Instead of “section 203 of the Housing Act 1996 – appeal” an applicant might make an online search for something like “homeless court appeal help advice” which will lead them to:

http://england.shelter.org.uk/housing_advice/homelessness/guide/homeless_get_help_from_the_council/challenge_a_council_decision which states:

“Appeal to court You can appeal to court if the council's review decision is legally wrong or if the council doesn't give you a final decision within the time limit. You must start a court appeal within 21 days of getting your review decision or the time limit for a review ending. It can take months for a case to be heard in court. A solicitor can check if you have a case and provide

representation...You may qualify for free legal help if you're on a low income: Contact Civil Legal Advice on 0345 345 4 345 to see if you qualify”.

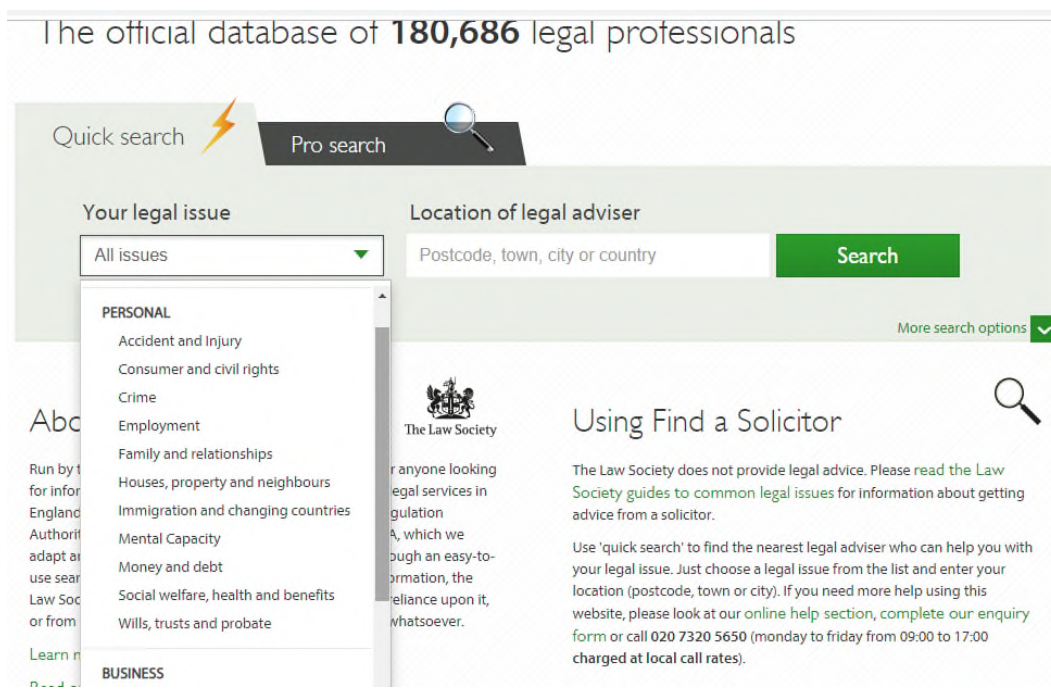
38. The advice on these pages is not meant to be a substitute for individually tailored legal advice which is why it encourages the reader to contact Civil Legal Advice.
39. If an applicant manages to find the above advice pages then an applicant could carry out an online search for “use Court Service form N161” to navigate here: <https://www.gov.uk/government/publications/form-n161-appellants-notice-all-appeals-except-small-claims-track-appeals-and-appeals-to-the-family-division-of-the-high-court> and to this 17 page guidance leaflet https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/688445/n161a-eng.pdf which does not refer to housing / homelessness appeals but does refer to several other forms. (See Section F below, paragraphs 46 – 54 for further detail on completing form N161).
40. Although Part 52 of the Civil Procedure Rules is also available online, the first few sections relate to application for permission to appeal. The rules are helpful if someone knows what they are and that they apply to homelessness appeals, but they don't say how they relate to homelessness law and that they don't say anything about the substantive law on homelessness or explain what a “point of law” is.

E. Difficulties in finding a solicitor

41. In Shelter's experience, it can come as a surprise to an applicant to learn that their application for homelessness assistance has progressed to becoming a formal legal matter and that their only remaining option is to consider bringing court action against their local authority, necessitating the seeking out and obtaining of the services of a lawyer. As outlined above, not all review decision letters will advise an applicant to seek legal advice or the assistance of a lawyer in order to bring an appeal; many will simply state that an appeal on a point of law to the county court is possible and this must be undertaken within 21 days. People are not always aware of who can help. As many section 202 decision letters advise the applicant to re-contact their housing options and advice teams for advice and assistance, the applicant is likely to first contact their local authority to ask for advice on what to do next. The other common first step is for an applicant to ask family or friends for advice.
42. Without prior experience, knowledge or confidence in finding or using a lawyer, it is difficult for a homeless applicant to know where to start; understanding the difference between a solicitor and a barrister; or between a court, tribunal, alternative dispute resolution service and an ombudsman can be difficult. If the

applicant is in an area that is served by a law centre, citizens advice bureau, other advice charity or agency or local high street law firm, they may seek assistance through them. However, these organisations are often faced with high demand and severely limited capacity for providing specialist legal aid funded housing advice, as outlined further in Part III below.

43. If an applicant is able to access and use the internet, they may carry out an internet search. The Law Society has a website titled “Find A Solicitor” but this lists 180,686 legal professionals and none of the search criteria options refer to “homelessness”:



44. The government also has a website to assist in the search for legal advice, but again, none of the search criteria options refer to “homelessness”:

²⁷ <https://solicitors.lawsociety.org.uk/>

Organisation name

e.g. Winthorpes

Organisation type

- Charity or Voluntary Organisations
- Mediation Service
- Private Company
- Solicitor

Category

- Claims Against Public Authorities
- Clinical negligence
- Community care
- Crime
- Debt
- Discrimination
- Education
- Family
- Family mediation
- Housing
- Immigration or asylum
- Mental health
- Prison law
- Public law
- Welfare benefits

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45. Shelter’s “Get Help” webpage²⁹ provides information via web-pages and a webchat. It also provides an emergency helpline number and details for face to face local services in London, Birmingham, Blackburn, Bournemouth, Bristol, Liverpool, Manchester, Newcastle, Norwich, Oxford, Plymouth, Sheffield and Slough. However, the demand for our services is vast and far outstrips what we are able to provide; of the 4,625 unique callers in England who call our Helpline on average each week, we are only able to answer 768 (17%).

F. Completing Form N161

46. Form N161 is designed to be used for “all appeals except small claims track appeals and appeals to the Family Division of the High Court” (this description is underneath the title of the form). As a result of this wide-ranging catch-all design, there are parts of the form that are not at all suited to the specific circumstances of an appeal brought under section 204 HA 96 and this makes it difficult for homeless applicants to understand and complete the form. Even just the description under the title can leave homeless applicants unsure about whether they have located the correct form for what will usually have been described in their review decision letters as an “appeal to the county court on a point of law”.
47. Section 1 of form N161 asks for a claim or case number. This is of course suitable for matters in which proceedings are already before the court but at

²⁸ <https://find-legal-advice.justice.gov.uk/>

²⁹ https://england.shelter.org.uk/get_help

the stage of issuing an appeal under section 204 HA 96, there will be no claim or case number yet.

48. Section 2 of the form asks: “From which court is the appeal being brought?”, “What is the name of the Judge whose decision you want to appeal?” and “What is the status of the Judge whose decision you want to appeal?”. Whilst these are appropriate questions for appeals of court decisions, there is no court from which a section 204 appeal is being brought and there is no judge’s decision to appeal.
49. Section 2 also asks: “Is the decision you wish to appeal a previous appeal decision?”. Those with experience of homelessness procedure know that the internal process of a section 202 “review” of the initial section 184 decision on a homeless application can be described as a previous appeal decision. However, a homeless applicant is unlikely to know or understand the difference between a “review” and an “appeal” and so is likely to find this question difficult to answer.
50. Section 4 of the form asks: “Do you need permission to appeal?” and “Has permission to appeal been granted?”. There will be nothing in the section 202 decision letter that outlines to the applicant whether or not they need to seek permission to appeal. The guidance notes on completing form N161 state (page 6): “Unless the court or tribunal from which you are appealing has granted permission to appeal, you will need to apply for permission to appeal at the appeal court”. There is nothing in the guidance to clarify that this advice does not apply in the case of section 204 appeals.³⁰
51. Section 5 of the form states: “Please set out the order (or part of the order) you wish to appeal against”. Again, whilst this is an appropriate question for appeals of court decisions, there is no court order at this stage of a section 204 appeal.
52. Section 6 of the form refers confusingly once more to a previous decision made by a judge: “Please state, in numbered paragraphs, on a separate sheet attached to this notice and entitled ‘Grounds of Appeal’ (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong”.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/688445/n161a-eng.pdf

53. Section 7 of the form asks for details on the “arguments (known as Skeleton arguments) in support of grounds for appeal”. The guidance notes refer to “Grounds of appeal and arguments in support” in a singular heading. Relevant grounds are referred to as “reasons for appealing” but there is also guidance that states “skeleton arguments should contain a numbered list of points that you intend to argue”; (page nine of the guidance notes). There is no clarification provided on the distinction between “a ground” or “an argument”.
54. Section 8 of the form refers to “the Town and Country Planning Act 1990”, “Planning (Listed Buildings and Conservation Areas) Act 1990” and “the Aarhus Convention”, none of which can be said to be commonly known or easily understood. This section is likely to cause more confusion and doubt for a homeless applicant, regarding whether they have identified the correct form to use. Even if the applicant proceeds on the basis that this is the correct form, they are unlikely to have the experience or confidence to know what to do with sections such as this one, which do not suit their circumstances. They will not know which sections should be completed and which can be left blank. They will not, with any confidence, be able to feel that they have done all that is required. Shelter’s own trainee solicitors and paralegals require the close guidance and supervision of our more experienced solicitors the first few times they are required to assist with completing a form N161.

G. Communicating with and getting to court

55. Assuming the applicant is able to complete the N161, draft the grounds of appeal and navigate the court documents, they would then need to be able to find access to a computer and printer and draft, complete, print, photocopy and post (and pay for recorded delivery) or physically take the following into their local county court:
- cover letter to the court;
 - Appellant’s Notice N161 in triplicate;
 - Grounds of Appeal in triplicate; and
 - fee for application / fee exemption form with attached evidence of income (this is difficult when an applicant is on Universal Credit, as this system is all digital).
56. With many recent court closures (since 2010, 90 out of 240 county courts have closed)³¹, reaching or communicating with courts can be very difficult. In a recent response to the provision of court and tribunal estate in England and Wales, the Law Society gave an example of a return journey from one Aylesbury

³¹ House of Commons briefing paper, “Court Statistics for England and Wales” (November 2018) <https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf>

court which had been due to close and merge into the proposed alternative Milton Keynes, which it said would cost £71 and was a five-hour round trip.³² Shelter solicitors in Manchester report that Manchester County Court is now absorbing work from closed courts in Bury, Bolton, Altrincham, Tameside and Oldham.

57. Once at court there is no assurance that there will be staff available to assist. Of the courts that remain open, many do not have staffed counter services and instead provide “drop-boxes” with few or no instructions about when documents will be collected or deemed as served.
58. Attempts at emailing the court (if the applicant does not have access to a printer or copier or in order to save travel or postage costs) may not be successful, can cause delay, or may also generate confusion and doubt as to whether or not the application has actually been adequately filed, leaving the applicant unsure as to whether or not they have done all that is required in order to issue proceedings. In Shelter’s casework experience, typical auto-responses are:

“Dear Sir/Madam, Please find returned your email. The Civil Procedure Rules Practice Direction 5B states that “All Civil and Family process, applications and documents will be accepted by email as long as when the entire email is printed out it is not more than 50 pages.” This includes copies for service on parties. A page is one side, so 50 pages equals 25 pieces of paper printed on both sides. Your email has exceeded the maximum amount of pages, please amend or return to the Court in hard copy. Please note: Do not use more than one email to take any step in a case which requires a document or documents to be filed.”³³

“Unless the Court considers your query to be of an urgent nature, your e-mail will be responded to routinely within ten working days.”³⁴

“If you are filing a document by e-mail, it is your responsibility to ensure it complies with the Civil Procedure and the Family Procedure Rules. In particular, the total size of the e-mail must not exceed 10Mb. E-mails exceeding this limit will not be opened.”³⁵

³² “Proposal on the provision of court and tribunal estate in England and Wales - The Law Society response” (October 2015) <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/provision-of-court-and-tribunal-estate-in-england-and-wales/>

³³ 14.07.19 email auto-reply from Central London county court

³⁴ 07.07.09 Email auto-reply from Birmingham county court

³⁵ 20.05.19 email auto-reply from York county court

“Please note the Court is currently working on all orders 16 days old and correspondence 51 days old.”³⁶

59. The applicant would also need to draft, complete, print, photocopy and post (and pay for recorded delivery) or physically take a copy with a cover letter to their local authority. The usual experience of our clients is that if they can physically attend their local authority offices, they are likely to find one reception where documents can be dropped off and / or scanned in with varying degrees of accuracy for forwarding on to the right department. If the applicant is unable to travel in to the local authority then they may try to send their documents to a generic contactus@... [e-mail address of the local authority]. In our experience these will have similar auto-responses to limit or block the receipt of large files being sent and are monitored with a variable degree of frequency and quality. If the applicant responds to the address on the top of the s.203 decision letter then this will usually be to a generic local authority address or to “Benefits and Housing Needs (Reviews) Team”. It will not normally contain direct contact details for the legal department or Chief Executive. It will not tell recipients how to ensure the correct service of legal documents.

II. WIDER DIFFICULTIES FACED BY THOSE WHO ARE HOMELESS

60. There are a number of common difficulties or shared characteristics that are often faced by people who become homeless. These may be issues that were present before their homelessness but are exacerbated by the stress and trauma of having no home, or they may be issues that were caused by becoming homeless. Either way, they all impede people’s ability to cope with life events and manage their affairs.
61. These difficulties and shared characteristics, which are outlined further below, do not often occur in isolation. Many homeless people, for example, will be having to cope with multiple difficulties such as the impact of living in poverty as well as mental health issues and perhaps addictions, or managing care of dependent children.
62. So, it does not necessarily follow that because someone who is homeless is articulate and can express themselves verbally and on paper, that they therefore have the ability to take and implement a decision to issue a complex court appeal.
63. Many of those people who become homeless will not have problems so serious that they have a priority need, but they nevertheless have problems and need

³⁶ 21.12.18 email auto-reply from Peterborough county court

support to find accommodation. The most common problems or difficulties experienced by homeless people are set out in further detail below.

Poverty

64. Poverty is inextricably linked with homelessness. A major cause of homelessness is the inability to compete financially in the housing market, particularly with the unaffordability of market rents. With less and less social housing available for those on low incomes, the private rented sector is being heavily relied upon.

65. Reporting from the Joseph Rowntree Foundation (“JRF”) confirms the link with poverty. Their 2016 research “UK poverty: Causes, costs and solutions” states that:

“Housing is connected to poverty in a number of ways, including its influence on the costs driving poverty. The high cost of housing in the UK pushes an additional 3.4 million people into relative income poverty, a figure that has increased over the past two decades”³⁷

66. Shelter solicitors around the country see clients every day who are struggling to manage financially for various other reasons as well as the high costs of housing and the Local Housing Allowance freeze. Combined with these issues is the impact of welfare reform in recent years such as the bedroom tax (social sector size criteria), the benefit cap and the introduction of Universal Credit.

67. The effect of living in poverty is stark. Further JRF research “How Poverty Affects People’s Decision-Making Processes”³⁸ outlines how poverty influences key psychological, social and cultural mechanisms that underpin decision-making. It impedes the ability to think clearly, make good decisions and navigate life’s challenges. People living in poverty exhibit less effective coping styles in response to stress and difficult situations and this has negative consequences for physical health and quality of life. From the report’s Executive Summary:

‘Being in poverty means living without enough resources – both money and education – to meet one’s needs and to participate fully in society. It is also usually accompanied by unreliability in the availability of food, shelter and employment, and instability in one’s environment, both of which are

³⁷ Joseph Rowntree Foundation: “UK poverty: Causes, costs and solutions” (September 2016) <https://www.jrf.org.uk/report/uk-poverty-causes-costs-and-solutions>

³⁸ Joseph Rowntree Foundation: “How poverty affects people’s decision-making processes” (February 2017) <https://www.jrf.org.uk/report/how-poverty-affects-peoples-decision-making-processes>

experienced as stressful. Such a constrained decision-making context triggers changes in the functioning of key psychological, social and cultural processes’.

Complex personal problems

68. Research and government statistics show that many homeless people are experiencing complex personal problems.
69. The latest statistics on statutory homelessness collated by the Ministry for Housing, Communities and Local Government (“MHCLG”) from Q1, January – March, 2019,³⁹ show that:

“Of the 70,430 households who were owed a homelessness duty, 30,840 or 44% of households were identified as having support needs. There were 37,830 households, or 54% with no recorded support needs. Of the 30,840 households who had a support need, 15,590 households or 51% had 1 support need, 6,830 households or 22% had 2 support needs and 8,420 or 27% had 3 or more support needs.

The most common support need identified was a history of mental health problems which was reported by 14,880 households or 48% with support needs. The second largest group was those with physical ill health or disability, identified by 9,460 households or 31% of households with support needs. Other notable groups included those with experience of domestic abuse, 6,020 households or 20%, those with drug dependency, 3,750 households or 12%, and alcohol dependency needs, 2,890 households or 9%.”

Priority need

70. Many of those facing adverse review decisions will be people who have a priority need for housing, so they will have other conditions (both diagnosed and undiagnosed). The local authority may have decided that they do not have a priority need (such as in the Appellant’s case) and the applicant will want to challenge that decision. So if a homeless applicant has, or might have, a priority need, they will face additional problems when it comes to challenging an adverse review decision.
71. Section 189(1) HA 96 states that the following have a priority need for accommodation:

³⁹ MCHLG “Statutory homelessness statistics, January to March (Q1) 2019: England” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831246/Statutory_Homelessness_Statistical_Release_Jan_to_March_2019.pdf

- a) *a pregnant woman or a person with whom she resides or might reasonably be expected to reside;*
- b) *a person with whom dependent children reside or might reasonably be expected to reside;*
- c) *a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;*
- d) *a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.*

Additional categories of people who have a priority need are at Homelessness (Priority Need for Accommodation) (England) Order 2002, SI 2002/ 2051.

- 72. Many of the different reasons for having a priority need are not experienced as single issues but as overlapping and multiple complex needs. For example, many homeless applicants are also experiencing some form of mental health difficulty which can be experienced in addition to all the other reasons for being in priority need such as having dependent children.
- 73. Research from the charity Homeless Link (2016) found that 86% of homeless people reported some form of mental health issue, diagnosed or undiagnosed. 44% of homeless people had a mental health diagnosis, in comparison with 23% of the general population.⁴⁰
- 74. The MHCLG statutory homelessness statistics from Q1, January – March, 2019 show that of the 13,020 households who were assessed for a main duty decision in 2019, two-thirds (67%) of households were found to be in priority need.⁴¹

Families with dependent children

- 75. There are currently 277,000 people recorded as homeless in England.⁴² Of the 84,740 households in temporary accommodation on 31 March 2019, 62,010 households (73%) included 126,020 dependent children.⁴³

⁴⁰ Homeless Link “Health Needs Audit” (2016) <https://www.homeless.org.uk/our-work/resources/homeless-health-needs-audit>

⁴¹ MHCLG Live tables on homelessness: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

⁴² Reynolds (2018) “Research: Homelessness in Great Britain – The numbers behind the story” Shelter https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_homelessness_in_great_britain_-_the_numbers_behind_the_story

⁴³ MCHLG “Statutory homelessness statistics, January to March (Q1) 2019: England” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831246/Statutory_Homelessness_Statistical_Release_Jan_to_March_2019.pdf

76. For the same period, there were 2,190 households in Bed and Breakfast (“B&B”) accommodation with dependent children, 31% of the 7,040 households in B&B accommodation. Of the 2,190 households with children in B&Bs, 810 (37%) had been resident for more than the statutory limit of six weeks.
77. Many families who have to apply to their local authority for homelessness assistance end up experiencing the stress and disruption of multiple moves in local authority temporary accommodation placements. This is because temporary accommodation placements initially are often nightly lets arranged by the local authority. This results in children being frequently uprooted from schools, family, friends, clubs and support networks and not being able to establish themselves anywhere. There is widely published research on this and the emotional cost to children, produced by Shelter and other organisations over many years.
78. In June 2004, Shelter published the findings of a survey of homeless households living in temporary accommodation: “Living in Limbo”.⁴⁴ This report found that homeless children living in temporary accommodation were among some of the most deprived children in this country, missing out on school, play and opportunities to develop and grow in a healthy living environment. The survey showed clearly that the effect on children of being uprooted to new areas where they have no friends and no support networks is extremely detrimental. Families reported increased health problems during their stay in temporary accommodation. The most common problems were depression, other mental health problems, eczema, asthma, chest or breathing problems and repeat vomiting or diarrhoea.
79. The 2004 survey by Shelter also clearly showed the impact of temporary accommodation on children’s education. Many have to change schools, often mid-way through a school year, or have to travel long distances to remain in the same school. Frequent enforced moves also mean missing days from school. Two fifths of parents (43%) reported that their children had missed school due to their housing situation. On average, children had missed 55 days of school, equivalent to a quarter of the school year. The survey also found that children were bullied and unhappy at school due to the stigma of homelessness and starting in a new school.

⁴⁴ Shelter “Living in Limbo: a survey of homeless households in temporary accommodation” (June 2004)

https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/living_in_limbo_-_survey_of_homeless_households_living_in_temporary_accommodation

80. Those who have to move away from their home area lose existing support networks which parents often rely on for emotional and practical support, such as childcare.
81. These key findings were reinforced in Shelter’s research into the experiences of homeless children, published in November 2017.⁴⁵ Teachers reported that they thought children who are homeless are more likely to suffer from anxiety, depression and other mental health problems. This may lead to the development of problematic behaviours such as anger, eating disorders and aggressive behaviour. Teachers felt that homeless children may fall behind in school as they often have no place to do their homework and may not be able to access the tools necessary to complete their school work. Teachers who were spoken to for the Shelter research reported that homeless children are often tired due to having to share beds and bedrooms and / or the long travel distance between temporary accommodation and school.
82. Even before being provided with temporary accommodation, the process of asking for homeless assistance can be traumatic for both parents and children. The casework experience of housing advisers and solicitors at Shelter across England is that many families asking for homelessness assistance are told that the authority will look after the children alone, informing families that their duty is to the children, not their parents. In other words, the authority makes a threat to take the children of the family into care. This operates as a “gatekeeping” tactic, frightening many people into abandoning their request for help.
83. Shelter research into homelessness for the Green Book report in 2016⁴⁶ included qualitative interviews with families who had become homeless:

“Over half of people had been told at some point when applying for help that, if found to be intentionally homeless, the local authority had a duty to their children but not necessarily to them and it could result in the loss of custody. Even if this is often challengeable under legislation and guidance, this had a profound and chilling effect on families. The sense of fear that you were skirting the edge of becoming destitute, and that not following the rules could result in losing your children, was top of mind for the people we spoke to.”

⁴⁵ Shelter “Impacts of homelessness on children – research with teachers” (November 2017) https://england.shelter.org.uk/_data/assets/pdf_file/0011/1474652/2017_12_20_Homelessness_and_School_Children.pdf

⁴⁶ Shelter Green Book “The reality of homelessness for families today” (2016) http://www.shelter.org.uk/_data/assets/pdf_file/0003/1307361/GreenBook_-_A_report_on_homelessness.pdf

84. Children experiencing stress is stressful for the parents. It is hard to cope with managing housing affairs and dealing with correspondence when also managing multiple moves and the other issues associated with homelessness and living in temporary accommodation, outlined further in paragraphs 98 - 100 below.

Young people

85. Research from the charity Homeless Link in 2018 “Young and Homeless 2018”⁴⁷ looked at the support needs and profile of young homeless people. The top three support needs of young people reported by homelessness accommodation providers were: not being in education, employment or training (44%), a lack of independent living skills (41%) and mental health problems (35%). 83% of accommodation providers said the number of young people presenting with multiple and complex needs had increased in the last year due to limited capacity and resources in the homelessness sector, a lack of specialist mental health services and inadequate early intervention initiatives.

People fleeing domestic abuse

86. The All-Party Parliamentary Group (“APPG”) on Ending Homelessness reported in July 2017 on “Homelessness prevention for care leavers, prison leavers and survivors of domestic violence”.⁴⁸ The report highlighted that in 2015 / 16, official statistics showed that 6,550 people were accepted as homeless by their local authority because of a violent relationship breakdown, accounting for 11% of all homeless acceptances.
87. The charity Women’s Aid released a later report in 2018 “Nowhere to Turn”,⁴⁹ which documented the needs of women fleeing domestic abuse and the response they received when requesting help from refuges, statutory agencies and local authorities. The table below extracted from the report shows the multiple support needs of the women taking part in the research, who needed help to find a space with a refuge, make a homeless application or receive some other help with rehousing needs:

⁴⁷ Homeless Link “Young and Homeless 2018” (2018) (Chapter 2) <https://www.homeless.org.uk/sites/default/files/site-attachments/Young%20and%20Homeless%202018.pdf>

⁴⁸ APPG “Homelessness prevention for care leavers, prison leavers and survivors of domestic violence” (July 2017) 2017)

https://www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf

⁴⁹ Women’s Aid, “Nowhere to Turn” (2018) <https://www.womensaid.org.uk/research-and-publications/nowhere-to-turn-2018/>

Support needs and circumstances of women supported by the NWTAs caseworkers		
	Number of women	Percentage out of total number of women
Women who were tied to their local area	141	53.4%
Black and Minority Ethnic (BME) Women	131	49.6%
Women with mental health support needs	99	37.5%
Women who had one or more disability	80	30.3%
Women who had no recourse to public funds (NRPF)	61	23.1%
Women with 4+ children	31	11.7%
Women with same language support needs	22	8.3%
Women previously evicted from refuge	21	8.0%
Women with substance use support needs - drugs	10	3.8%
Women with an offending history	7	2.7%
Women with older male children	7	2.7%
Women with substance use support needs - alcohol	6	2.3%
Total women supported by NWTAs caseworkers	264	

Care leavers

88. A care leaver is a person who has been “looked after” or “in care” with a local authority for at least 13 weeks since the age of 14, and who was in care on their 16th birthday. So the local authority will have acted as their “corporate parent” and will be responsible for managing their transition to adulthood from around age 16 onwards. This should include advice, support and guidance around living independently, finding suitable housing and maintaining a tenancy, but too often, care leavers housing needs are overlooked, and they are not given enough or adequate support in these areas.

89. Due to their often chaotic and / or traumatic personal circumstances, care leavers have particular support needs in order to ensure they can find and maintain a stable home after leaving care. Often they will need to be given multiple chances to find a way to cope with the practicalities and responsibilities of living on their own and managing their independence.
90. The July 2017 report from the APPG on Ending Homelessness⁵⁰ highlighted that:
- In London, between January and March 2017, 11% of rough sleepers were care leavers and 37% had experience of being in prison.
 - One third of care leavers become homeless in the first two years immediately after they leave care.
 - 25% of all homeless people have been in care at some point in their lives.

Prison leavers

91. The 2017 report from the APPG for Ending Homelessness referenced in paragraphs 86 and 90 above also showed that the links between homelessness and offending (and the consequent support needs) are clear. 15% of newly sentenced prisoners reported being homeless before entering custody and a third of people seen rough sleeping in London in 2015 / 16 had experience of serving time in prison. One in seven of newly released long term prisoners were released with no fixed abode.
92. In 2018, Crisis released a report “The Lived Experience of Homelessness”⁵¹ following research with people who had experienced homelessness. The lack of emergency accommodation was highlighted as an issue by people who are leaving prison, who often have nowhere to go, personal problems to deal with, and little support to do so, and by people who have experienced relationship breakdown.

Living without any accommodation

93. A December 2018 investigation by Shelter into rough sleeping: “On the Streets”⁵² found that in 2017:

⁵⁰ APPG “Homelessness prevention for care leavers, prison leavers and survivors of domestic violence” (July 2017)

https://www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf

⁵¹ Crisis “The lived experience of homelessness” (2018) paragraph 2.2.1
https://www.crisis.org.uk/media/238836/the_lived_experience_of_homelessness_report_2018.pdf

⁵² Shelter Summary report “On the Streets: an investigation into rough sleeping” (December 2018)
https://england.shelter.org.uk/data/assets/pdf_file/0003/1636563/Summary_report_-_On_the_streets.pdf

- Almost 5,000 people (4,751) sleep rough on a given night in England. This has more than doubled in five years and increased by 15% in the last year alone.
 - At Shelter in the last five years over 22,000 households have come to us for help when they were street homeless or at risk of becoming street homeless.
 - We know that the majority of people who sleep rough are single men aged over 25. But women and families are also affected; in the last five years, 21% of the households recorded as street homeless were lone women and 11% were families with dependent children.
 - Half of the people Shelter spoke to told us that they experienced difficulties accessing services when they were street homeless.
 - Mental health problems were often cited as a barrier to accessing support when street homeless. One woman suggested that she had been street homeless for 18 months in part because her depression made her feel “worthless”.
94. We now have the 2018 figures, which show that 4,677 people sleep rough on a given night in England.
95. The above study highlighted that for various reasons, it is very difficult for people to manage their affairs when they have no home and are sleeping rough:
- “We also talked to people about their experiences of rough sleeping and the impact it has had on their lives. People told us that they found it difficult to access services, they lost possessions, were at risk of abusive behaviour, and regularly felt stigmatised. There was a common feeling of being judged or looked down on. Being street homeless had significant impacts on people’s lives, particularly in terms of their physical and mental health. Rough sleeping also had a significant impact on people’s relationships with friends and family, often leading to relationship breakdown and feelings of isolation. The people we spoke to told us that it was virtually impossible to get a job whilst rough sleeping.”*
96. These finding echoed earlier research from Crisis into rough sleeping, compiled into their report “It’s no life at all”.⁵³ Key findings from this report were:
- The majority (66%) of respondents thought life on the street is getting worse.
 - Three in ten (30%) rough sleepers reported being deliberately hit or kicked or experiencing another form of violence in the past 12 months (women proportionally more).

⁵³ Crisis “It’s No Life at All, Rough sleepers’ experiences of violence and abuse on the streets of England and Wales” (December 2016) https://www.crisis.org.uk/media/20502/crisis_its_no_life_at_all2016.pdf

- 6% of respondents had been sexually assaulted in the past 12 months.
- Furthermore, almost half (45%) of the current or recent rough sleepers surveyed said they had been intimidated or threatened with violence or force. 30% (31%) had had things thrown at them and in 7% of cases rough sleepers had been urinated on.
- Adding to these experiences was the verbal abuse rough sleepers received. This was the most common form of anti-social behaviour experienced; with over half of respondents (56%) being verbally abused or harassed.
- Damage to, and theft of, their personal property was also commonly experienced. More than half (51%) of recent and current rough sleepers surveyed reported having personal belongings stolen. Deliberate damage or having personal items vandalised was experienced by 20%.
- Members of the public, who the survey respondents did not know, were the leading perpetrators of incidences of violence and abuse. Over half (53%) of the incidences of abuse and violence rough sleepers had experienced were unreported to the police. The main reason for this was due to the expectation that nothing would be done by the police.
- In-depth interviews with people experiencing crime and anti-social behaviour further highlighted the impact and consequences of these experiences. Rough sleepers reported how living on the streets meant living in fear and having to navigate constant risk and uncertainty about their safety. This was largely caused by the dilemma of who to trust and whether to remain hidden or close to busy areas.
- Fear and isolation affected rough sleepers' health and wellbeing. Those who shared their experiences with us often linked the incidences that took place with negative patterns of behaviour such as alcohol and drug abuse. For some people their experience of rough sleeping also affected their physical health.
- For many people who took part in the survey and interviews, their experiences took a toll on their mental wellbeing pushing some to question the relevance of their existence and undermining their confidence to move on from their circumstances.

97. In 2018, the University of York and the Centre for Housing Policy⁵⁴ were commissioned to carry out similar research specifically around women and rough sleeping. The women they spoke to shared common experiences of sleeping on the streets:

“The women who participated in the three focus groups spoke frankly about the experience of sleeping rough. Most had been subjected to horrific violations, this included being spat, urinated and vomited on. Many had been robbed,

⁵⁴ University of York/Centre for Housing Policy “Women and Rough Sleeping” (2018) <https://mungos.org/app/uploads/2018/10/Women-and-Rough-Sleeping-Report-2018.pdf>

threatened, experienced physical violence and been continually harassed for sex by male members of the public. The attitudes experienced by the women varied. Verbal abuse and being treated with contempt were common experiences, there was also a frequent assumption that being on the street meant they were involved in sex work.”

Living in temporary accommodation

98. Even though the provision of temporary accommodation provides a roof over someone’s head, the conditions in such accommodation and the frequency of moves between different accommodation placements means that it is still incredibly difficult for someone to manage their affairs whilst in temporary accommodation. For example, multiple moves between short term temporary accommodation placements can mean it is very difficult to ensure that post gets delivered to the correct address.
99. At the end of March 2019, the total number of households in temporary accommodation arranged by local authorities under homelessness legislation was 84,740, including 126,020 children. It is the highest number of households in temporary accommodation since mid-2007. This is 5% higher than the 80,720 households reported a year earlier at the end of March 2018 and up 65% on the start of the decade (51,310 on 31 March 2010). In London the number of households in temporary accommodation at 31 March 2019 was 56,280, two-thirds (66%) of the total England figure.⁵⁵
100. Shelter’s Green Book report⁵⁶ outlined how difficult it is to manage everyday life activities whilst in temporary accommodation:

“The impact on day-to-day: changing your life to accommodate being without a home

Even when support is in place, homelessness has many impacts on day to day life. Families were grateful to have received some help. But when asked, four-fifths felt that their accommodation was not adequate for their needs. Making up for this deficit affects the way that homeless families live. This was in three main ways: relying on family and friends, spending more to meet needs and giving up some parts of their lives, like work.

⁵⁵ MCHLG “Statutory homelessness statistics, January to March (Q1) 2019: England” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831246/Statutory_Homelessness_Statistical_Release_Jan_to_March_2019.pdf

⁵⁶ Shelter Green Book “The Reality of Homelessness for Families Today” (2016) [http://www.shelter.org.uk/data/assets/pdf_file/0003/1307361/GreenBook - A report on homelessness.pdf](http://www.shelter.org.uk/data/assets/pdf_file/0003/1307361/GreenBook_-_A_report_on_homelessness.pdf)

Relying on family and friends

Many people said they were more reliant on family and friends to meet basic needs. This included depending on family for basic tasks including cooking hot meals, storing possessions, or cleaning clothes and bedding. Obviously families do often pull together in difficult times. But this could be particularly disruptive for other family members. For example, one father, with a son and a daughter with severe food allergies, was placed in shared accommodation. He sent his daughter to stay on the sofa of his mum's one bedroom flat. However, as his mother was unwell, he asked his brother to go over and cook and care for his daughter every day. Homeless families had to rely more on public spaces. Many families relied on the public Wi-Fi in cafes and fast food chains so that older children could do their homework.

Spending more money

Many families had to spend more money to meet their basic needs such as maintaining jobs, getting children to school, and organising their lives. Half of families were paying for storage for their possessions. Families were spending as much as £35 a day on taxis, buses, and trains to maintain jobs and school places as accommodation was often far away from their previous homes. Two thirds of families we spoke to said school runs were longer (in some cases over two hours each way) and journeys more complicated.

Sacrificing some parts of their lives

People couldn't always pull together enough family support or resources to maintain their previous lives. This led to having to pause or lose aspects of their previous lives. Work particularly suffered. More than half of families interviewed said that being homeless made it harder for them to work. In twelve of the families at least one parent had stopped working after being made homeless. Two women closed down businesses, losing their own income but also removing the jobs of other people. The main reason given for having to stop work was having to travel longer distances. Connected to this was no longer having local friends they could draw on to watch children, or not having the space or resources (such as the internet) they needed. As one woman described, settled housing is vital for maintaining the other parts of your life.

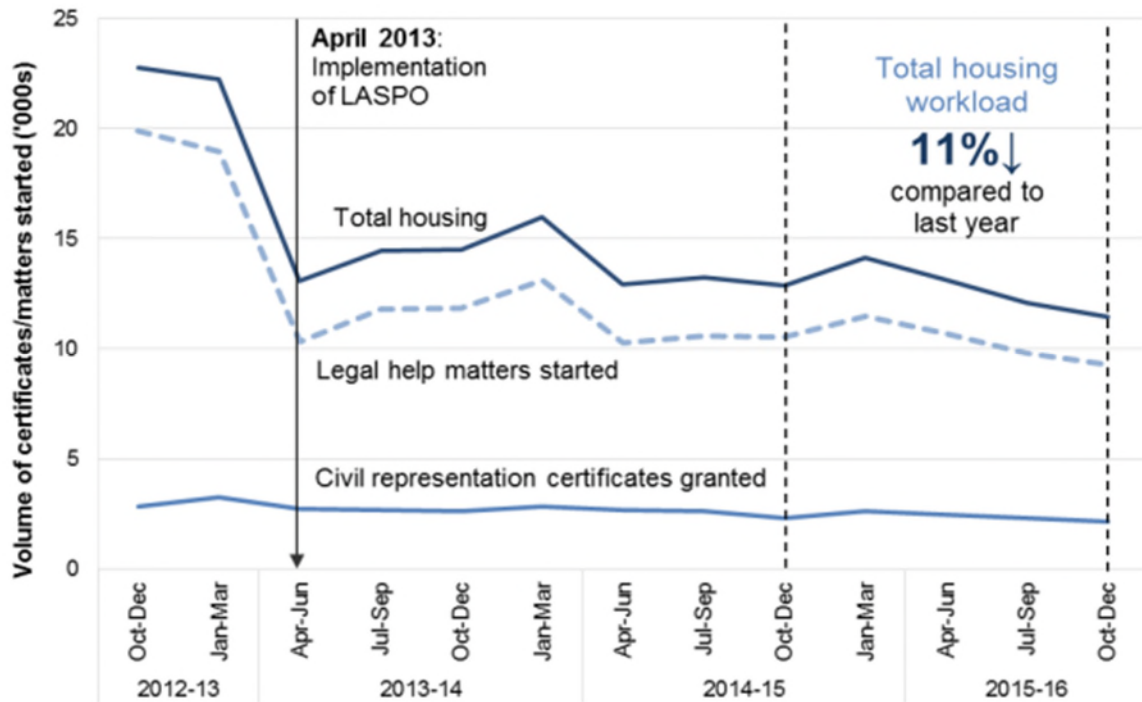
Some of the other areas families had to cut out were even more worrying. One mother spoke about not feeling it was safe to wean her baby as she couldn't sterilise bottles and equipment. Three other parents mentioned not being able to maintain their children's developmental progress, for example not having space for young children to practice walking. Four families reported that their children missed school. One child missed a year of infant school as they moved too far from their previous home and were unable to secure an alternative school place."

III. FINDING A LEGAL AID HOUSING SOLICITOR

Legal aid advice deserts

101. The provision of advice for housing law matters under legal aid contracts has been severely diminished by the introduction of LASPO. This Act removed several areas of law from the scope of legal aid. Homelessness matters remain in scope (LASPO Schedule 1, paragraph 34) but only where a local authority has made a negative decision that could be challenged, so early legal advice is out of scope.
102. Homeless applicants should be able to get a full legal aid certificate to cover the work necessary for a county court appeal, providing they meet the Legal Aid Agency means and merits tests. Prior to that, Legal Help is available for a solicitor to advise and represent them during the review process, but this will only provide a fixed fee for three hours work, unless the review work extends over nine hours. If the casework goes over the three hour fixed fee limit, but concludes before reaching the nine hour limit, the work over three hours is not paid for by the Legal Aid Agency.
103. Many housing cases are now outside the scope of legal aid. As a result, many people find themselves unable to obtain housing advice, particularly at the early stages of a problem, for example, in relation to housing benefit problems before these develop into serious rent arrears and possession proceedings. Housing solicitors are no longer able to provide advice under legal aid on debt and welfare matters and many other housing issues that fall short of actual or threatened court proceedings or homelessness. Welfare benefits matters are now out of scope for legal aid apart from benefits appeals to the Upper Tribunal.
104. The chart below shows that immediately after the introduction of LASPO, the volume of legally aided housing cases halved between July to September 2012 and July to September 2013. It is unclear where people went for housing advice – or rather, it is clear that people had to do without the advice they needed:

Chart: Workload in housing law, Oct-Dec 2012 to Oct-Dec 2015



Source: MoJ (2016) Legal Aid Statistics: October to December 2015

Note: total housing workload calculated using legal help matters started and civil representation certificates granted.

105. Research commissioned by the MoJ at the end of 2015 found that, overall, the not-for-profit legal advice sector (if counted by the number of centres providing advice) has shrunk by over 50% from 2005 – 2015 and that 54% of those surveyed agreed that changes to the scope and eligibility of legal aid had required their organisation to make major changes to how they delivered services since 1 April 2013 (paragraph 7.1).⁵⁷

⁵⁷ MoJ “Survey of Not for Profit Legal Advice Providers in England and Wales” (2015) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/485636/not-for-profit-la-providers-survey.pdf

106. More recent research by the Law Society (2019) analysed data from the Legal Aid Agency directory of providers and the Office of National Statistics and found that in England and Wales:

- 37% of the population live in a local authority area with no housing legal aid providers; and
- over half of all local authorities do not have any housing legal aid services within their area.⁵⁸

107. Despite Government assurances that the supply of legal aid would not be affected by the LASPO changes, it is clear that there are now areas of the country where it is almost impossible to get face to face legal advice in housing law and that LASPO has created housing advice deserts throughout the country. Its impact has been made even more devastating when combined with the fact that legal aid rates have not increased for over 20 years. Providers who were already struggling to make legal aid work pay in the past have found it even harder with swathes of advice areas being taken out of scope for legal aid and so advice centres and solicitors offices are closing or taking the decision not to undertake legal aid work any longer.

Lack of capacity among legal aid housing lawyers

108. Cuts in legal aid funding have been largely responsible for the closure of many law centres, legal aid private practices and voluntary organisations. Many advice services that have survived do so with much reduced capacity. The increased cost and bureaucracy, coupled with the static legal aid rates, makes it difficult if not impossible to make a legal aid practice pay for itself. This means that even people who are still entitled to legal aid will often not be able to find someone to provide the service they need.

109. The cuts in legal aid brought about by LASPO have certainly had a major impact on Shelter's legal services. They have led to a 50% cut in funding of over 50% for our legal services from just over £6m, down to just over £2.8m. In March 2013, we were forced to close nine of our services in Rotherham, Ashford, Dover, Milton Keynes, Chester, Gloucester, Taunton, Hatfield and Kendal.

110. These closures mean that those housing advice providers that are still left are facing increased demand and often do not have the capacity to assist everyone who approaches them for help. The potential demand just for advice around homelessness is enormous. In 2017 / 18, there were 109,470 applications for statutory homelessness assistance and 56,600 households were accepted for

⁵⁸ Law Society, "End legal aid deserts" (2019) <https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/>

statutory homelessness assistance: acceptances increased by 28% between 2010 / 11 and 2017 / 18⁵⁹.

111. Even in a large organisation such as Shelter, where we are also able to offer digital and telephone advice via our national helpline and website, we cannot assist everyone who needs our help. Our solicitors routinely have to turn away potential clients as they do not have capacity to assist everyone. In 2018, our national telephone helpline was only able to answer 12% of the calls we received. Our London advice line was only able to answer 19% of the calls received.
112. Further, even in an area of London like Newham, where the Appellant tried to find a housing solicitor, although there are more housing providers than in more rural areas, those left in practice do not have capacity to cope with the demand on their services.

IV. FREEDOM OF INFORMATION REQUEST RESULTS

113. I am informed that, on 24 September 2019, Freshfields Bruckhaus Deringer LLP (“Freshfields”) sent requests on behalf of Shelter for information pursuant to the Freedom of Information Act 2000 to: (i) Her Majesty’s Courts and Tribunals Service (“HMCTS”) (PN1/1-3); the Legal Aid Agency (“LAA”) (PN1/7-9); and (iii) all local authorities in England (PN1/12-21).

HMCTS

114. HMCTS were asked: (i) how many appeals under section 204 HA 96 were issued in all county courts in England in the last three years; (ii) how many of those appeals were also filed with an application for permission to appeal out of time; (iii) how many of those applications to appeal out of time were granted; and (iv) what were considered by the county courts to be “good reasons” to permit filing of an appeal out of time (PN1/1-3).
115. HMCTS responded on 10 October 2019 (PN1/4-5) explaining that it could not respond because the HMCTS County Court case management and information systems do not hold the requested information and so the cost of complying with the request would exceed the financial limit. Freshfields responded to HMCTS on 23 October 2019 (PN1/6) asking HMCTS to suggest how to revise the request so that it might fall within the cost limit and requesting that the information be provided for the last year if possible. At the time I make this statement I understand that HMCTS has not replied to this 23 October 2019

⁵⁹ MHCLG, Live tables on homelessness, Acceptances and decisions, Table 770 <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

email. Shelter is not aware of any other body or organisation, including Shelter itself, that may hold a comprehensive record of this information. The current position is therefore that, at this time, there is no information available for Shelter to present to this Court as to what has been considered a “good reason” for an extension of time by county court judges.

LAA

116. The LAA was asked: (i) how many legal aid certificates have been granted for homelessness appeals to the county court on a point of law in the last three years; and (ii) what was the reported outcome of these matters at the conclusion of the case (**PN1/7-9**).
117. The LAA responded on 22 October 2019 (**PN1/10-11**). The LAA’s response shows that between 2015-2019 a total of 2,990 legal aid certificates were granted for homelessness appeals to the county court on a point of law. Shelter does not, however, consider it appropriate to draw firm conclusions from the data provided by the LAA on the outcomes of these matters. This is because a number of the reported outcomes are implausible outcomes for a homelessness appeal which indicates, in Shelter’s view, that there may be inaccuracies in this outcomes data.⁶⁰
118. While mindful of these caveats, I do note that the information provided in the LAA’s response indicates that a settlement is reached in at least 30% of funded appeals.⁶¹

Local authorities in England

119. All English local authorities were asked: (i) how many adverse decisions were made in the last three years under section 202 HA 96; (ii) how many section 204 HA 96 appeals have been issued in the county courts against decisions made by the authority in the last three years; (iii) how many of those appeals were issued by litigants in person and by represented litigants; and (iv) what the outcome of the appeals was, including those cases that were settled or withdrawn (see **PN1/12-21**).

⁶⁰ By way of example, “Client obtains order or agreement for repairs only” (see the table at PN1/11) is not a plausible outcome of a homelessness appeal

⁶¹ This figure (29.4%) is arrived at by dividing the number of matters with reported outcome “Settlement – with significant benefits for the client” (879) by the total number of funded matters (2,990). It is not clear from the data provided by the LAA whether any matters resulted in a settlement without significant benefits for the appellant. If so, this would increase the number of settled matters

120. I understand that over 90% of local authorities in England have responded to this request for information, with just under 80% of authorities responding to all questions (see the summary of responses at **PN1/22-23**). I understand that the responses of the local authorities were not provided in a uniform fashion, and that the responses identify inconsistencies in how different authorities record the requested information. For example, I am told that some authorities were able to say whether a settlement or withdrawal of an appeal was favourable to the appellant, while others did not have / provide this information. Some authorities do not hold relevant data for the entire period and have therefore only provided it for the amount of time for which it is available. A number of the authorities who have not provided responses in full are larger authorities who Shelter would expect to have issued a material number of adverse decisions.⁶² As a result, it is again difficult for Shelter to draw any firm conclusions from the responses received from the local authorities, including whether the information received in the responses is an accurate reflection of the position nationally.
121. Mindful of these caveats, Shelter does make the following observations on high-level points arising from the information received from the local authorities:
- A very small proportion of adverse decisions made under section 202 HA 96 are appealed under section 204 HA 96. Only 88 local authorities reported that they had received an appeal issued against an adverse decision. These 88 authorities issued collectively 13,204 adverse decisions in the time period covered by their respective responses. Only 755 appeals were issued against these 13,204 adverse decisions (5.7%).
 - The vast majority of reported appeals were issued by a represented litigant (687 appeals), with only a very low number issued by a litigant in person (55 appeals).
 - Appeals issued by represented litigants are more likely to be settled or withdrawn than appeals issued by litigants in person where this information is available: 50% (304/687) vs 20% (9/55).⁶³
122. In relation to the significant proportion of settled / withdrawn appeals – and notwithstanding that not all authorities have been able to provide data on the proportion of withdrawn appeals / settlements that represented success or failure for the Appellant – in Shelter’s experience, settlements / withdrawal of homelessness appeals are more likely than not to be in favour of the appellant. Supporting this view, the data received from the local authorities in respect of

⁶² Authorities who have not responded to all questions include Birmingham City Council, the London Borough of Haringey, the London Borough of Islington, and Manchester City Council

⁶³ The available information shows that at least 64% of appeals issued by litigants in person proceeded to judgment (35/55). For represented litigants this proportion is just 45% (310/687)

settled or withdrawn appeals does not indicate that any of these settlements / withdrawals represented a negative outcome for the Appellant. Of the 313 withdrawn or settled section 204 HA 96 appeals, the local authorities have reported that 148 (47%) represented successes for the Appellant. It is unknown whether the Appellant succeeded or failed in respect of the remaining 165 (53%) settlements / withdrawals. None of the replies received by Freshfields have expressly identified any settlements / withdrawals considered, by the replying authority, to represent a negative outcome for the Appellant.

V. CONCLUSION

123. For all the above reasons, Shelter is of the view that it is wrong to hold that difficulties in obtaining legal advice and representation, and a decision by a homeless applicant not to issue an appeal in person during the 21 day time limit cannot constitute a “*good reason*” for being out of time to issue an appeal. Shelter submits that each application for an extension of time must be considered on the specific facts put forward by the applicant in support of his or her application. In principle, the Courts should recognise that:

- a. the issuing of an appeal without legal advice is technical and difficult;
- b. that the availability of legal advice in this area of law is limited; and
- c. in consequence of (a) and (b), difficulties in obtaining legal advice and representation *may* and – providing the applicant has acted diligently throughout – frequently *will*, constitute a good reason for failing to lodge an appeal within the 21-day time limit.

I, Polly Neate, believe that the facts in this witness statement are true.

Signed



Polly Neate

Dated 8th November 2019