

**ANDY GALE**

Caselaw update and potential areas for legal challenge  
and

How to overcome some of the key challenges faced by  
Housing Options Services in 2022

# Caselaw update and potential areas for legal challenge

1. Are having different rules for pre settled status cases compared to settled status cases lawful - UK Supreme Court (Dec 21) *R(Fratila) v Secretary of State for Work and Pensions*
2. Power to accommodate no recourse cases – can you use Ncube and Brighton as we exit the pandemic?
3. Does “everyone in” mean the council has to continue to bring everyone in - *R(ZLL) v SSHCLG (Jan 2022)*
4. *El Kundi and others v Birmingham (May 2021)* – the requirement of the main TA duty and the difference between suitable and reasonable to continue to occupy

## Caselaw update 2

5. Suitability and affordability – critically important to understand *Paley and Waltham Forest (Feb 2022)*, and *Patel and Hackney (2021)* which provide a framework for affordability assessments post *Samuels v Birmingham UKSC 2019*
6. *Montero v Lewisham 2021* – Reasonable preference and residency rules
7. Challenge to councils who have failed to include the prevention or relief duties in their Part 6 Housing Allocation scheme – *Westminster Council October 2021*
8. Assessing homelessness post the DA – applying the DA definitions for physical and non-physical abuse

## Caselaw update 3

9. Assessing homelessness post the DA Act – when does intervening accommodation impact on automatic priority need?
10. Afghan households who are accommodated in bridging hotels who leave
11. Potential challenge for failure to grant priority need based on failing to consider the Covid Regulations
12. Can an applicant be simultaneously be owed a prevention or relief duty by more than one council?

## Caselaw update 4

- 13. Potential challenge that reasonable steps recorded in PHPs “all look the same”
- 14. Ombudsman concern that Prevention PHPs fail to include actions to try and keep a household in the accommodation they have presented from
- 15. Failure to consider the code when deciding whether a TA is or isn't owed at the expiry of a valid section 21 notice
- 16. Testing the evidence base needed for an authority to end a P or R duty using the legal term “reasonable prospect of having suitable accommodation”

## Caselaw update 5

17. Relief stage failure to complete enquires within 77 days re whether a main duty is owed due to case backlogs. Evidence of systematic failure/maladministration? (precedent - Birmingham Council housing application backlog Ombudsman decision Oct 2021)
18. Ending the relief duty for losing interim 188 TA. Is it lawful?
19. Failure to issue a not eligible decisions as H-CLIC records a homeless application only after the question of eligibility has been decided.
20. Failure to issue a notification letter when required – duty owed, duty ended, PHP

# Overcoming key challenges faced by Housing Options Services in 2022

Challenges faced by councils in 2022 are considerable and not short term

To overcome them may require a “reset” for delivering your Housing Options Service

# Four key challenges facing councils in 2022

1. The need for a new model for recruiting and training staff.
2. The need to adopt a new approach to casework in order to manage rising applications and the risk of unsustainable caseloads and case backlogs, caused by rising rents, rising fuel costs and “pent up” demand post Covid.
3. The need to “reboot” your prevention model to respond to the reality of rising applications and limited resources
4. Deciding how to deliver your Housing Options Service post Covid



## Challenge 1

# A new model for recruiting and training staff?

- Councils struggling to recruit experienced officers
- The impact of covid on confidence and time taken for new officers to become fully effective
- Huge training requirement for new and long-term officers
- External training capacity may not be available

## Challenge 1: A new model for recruiting and training staff?

### The solution

- New scheme to support councils to come together to deliver self-training and development
- Launch in April of free on-line “*Housing Options Training Academy*”
- Based on five core modules
- Consists of exercises and multiple-choice quiz for each module
- Option for you to “develop your own” trainers within your region or sub region

## Challenge 2

# The need to adopt a new approach to casework

- Applications will rise due to rent arrears, rising fuel costs and “pent up” demand post Covid.
- Rising applications risks caseloads and case backlogs.

## Challenge 2: The need to adopt a new approach to casework

### The solutions

1. The new 2022 Part 7 assessment and interview toolkit
  - Free resource, launches in April and can be downloaded via Locata's website
2. The all new 2022 Homelessness letters pack containing 155 letters
  - Fully updated and expanded covering changes in caselaw and up to date code references

## Challenge 3

# The need to "reboot" your prevention model

- Reality of rising applications and limited resources will impact on your “prevention deal”
- Target the two main causes of family homelessness
- Family exclusions – follow councils who have successfully taken the majority out of the homelessness route

## Challenge 3

# The need to "reboot" your prevention model (2)

- Tenancy notice cases – not sustainable to continue to be the “Bank of Prevention” paying off all or majority of rent arrears
- A new deal may need to be based on a landlord losing money but demonstrating it is more cost effective than evicting
- Your Allocation Policy needs to include ability to “turn on the tap” to manage TA numbers

## Challenge 4

# Deciding how to deliver your Housing Options Service post Covid

- Majority of councils unlikely to revert to “pre Covid” Reception Service model
- Use of remote ICT - home working here to stay
- 82% of councils surveyed say their future delivery model will be remote with face-to-face reserved for vulnerable applicants only

## Challenge 4

# Deciding how to deliver your Housing Options Service post Covid (2)

- Staff likely to be office based for part of the week only, or when on duty
- Only 22% have used customer satisfaction surveys since the pandemic
- Few councils interviewing through Teams or Zoom
- Standard model is telephone interview



## Challenge 4: Deciding how to deliver your Housing Options Service post Covid

### The solutions - internal

- Support for officers working from home
- Mental health caused by stress and isolation
- Training need re skills needed for effective remote working
- Keeping people fresh and motivated

## Challenge 4: Deciding how to deliver your Housing Options Service post Covid

### The solutions - external

- Identifying vulnerable applicants where face-to-face likely to be needed
- Digital exclusion - how to ensure ease of access to most excluded people
- Improving systems for uploading documents, verification checks
- What does remote interviewing and prevention work look like? On-line home visits
- How do you manage the risk of fraud?
- How do you make sure you are able to gather enough information for your assessments?