

**From representative to council homelessness team
Homelessness application, on affordability grounds, and request for financial assistance, by
representative on applicant's behalf**

[ADDRESS OF HOMELESSESS ASSESSMENT TEAM]

[DATE]

By first class post and email to [EMAIL ADDRESS]

Dear Sir/Madam

**HOMELESSNESS APPLICATION
REQUEST FOR FINANCIAL ASSISTANCE
[NAME AND ADDRESS OF CLIENT]
HOUSING (WALES) ACT 2014, PART 2, CHAPTER 2**

We write on behalf of the above-named person. I am their [housing support worker], and am currently assisting them [with their housing, benefit and debt issues].

I hereby confirm that [NAME] wishes to apply for accommodation, and for help in obtaining accommodation, on grounds of homelessness, under Part 2 of the 2014 Act.

Facts

[NAME] is a single mother with two children, [NAME OF CHILD] ([#] years; DOB [DATE]) and [NAME OF CHILD] ([#] years; DOB [DATE]).

[Set out facts in relation to tenancy e.g.] On or around [DATE] [NAME] was granted an [Assured shorthold tenancy / occupation contract] by their landlord [NAME] of [ADDRESS]. The tenancy is a [sole tenancy / joint tenancy, held with Ms [NAME]'s former partner Mr [NAME]]. At that time Mr [NAME] was in full-time employment for which he received monthly wages of £[AMOUNT].

The property is a [self-contained one / two / three] bedroomed [house / flat / maisonette / bungalow].

The contractual rent is £[AMOUNT] per [week/calendar month], and has remained this amount since the initial tenancy was agreed.

[Set out facts in relation as to why housing costs are currently unaffordable, e.g.] Unfortunately, on or around [DATE], [NAME] and [NAME OF EX PARTNER] separated, and [NAME OF EX-PARTNER] vacated the home. Consequently, [NAME] effectively lost the income which she and her children previously relied on (including when she decided to take up the tenancy with her ex-partner). [NAME] was then required to apply for welfare benefits.

I enclose a statement that sets out [NAME]'s current income and expenditure. As can be seen from the statement her current financial position, in summary, is that her total income



amounts to a monthly equivalent of £[AMOUNT]. After paying rent and utilities, she is however only left with £[AMOUNT] per month. This is insufficient to meet the costs of essentials and reasonable living expenses. In short, she has unavoidable expenditure that significantly exceeds her income.

[NAME] is not currently receiving any maintenance payments from the children's father.

Because of the aforementioned shortfall between income and expenditure [NAME] has accrued arrears of rent. These arrears stand at £[AMOUNT] as at [DATE]. Consequently, [NAME] is at risk of losing her tenancy.

On [DATE] the landlord served a possession notice under section 173 of the Housing (Wales) Act 2016. We understand that the notice was served as a direct consequent of the rent arrears, and [NAME]'s inability to make payments towards arrears, such that the landlord apparently lacks confidence that the debt will reduce over time.

However, we understand that [NAME] has not breached any other terms of her occupation contract, and has otherwise been a model tenant. She would prefer to remain in her home, if a way could be found to clear the outstanding arrears, and reassure the landlord that she will receive additional financial assistance.

While [NAME] was formerly in receipt of a discretionary housing payment from around [DATE] in respect of the rent shortfall, this period in respect of which the payment related expired on or around [DATE].

Availability for interview

[NAME] informs us that she is available for an assessment interview, either in person at your offices or by telephone. Her telephone number is [TEL NO]. Her email address is [EMAIL ADDRESS].

The law

You will be aware that under section 62(1) of the 2014 Act a local housing authority must carry out an assessment of a person's case if they apply for accommodation or for help with retaining or obtaining accommodation, and it appears to the authority that they may be homeless or threatened with homelessness.

Section 55(3) provides that a person is not to be treated as having accommodation unless it is accommodation which it would be reasonable for the person to continue to occupy.

In determining whether accommodation is reasonable to continue to occupy, the authority must have regard to whether the accommodation is affordable (s.56(3)(b)).

Paragraph 8.29 of the statutory guidance states that the authority should take account of the financial resources available to the person, the costs in respect of the accommodation, maintenance payments, and the applicant's other reasonable living expenses.



The Supreme Court has held that when assessing what ‘reasonable living expenses’ the applicant requires, that assessment cannot depend on the decision-maker’s subjective view. Rather, an objective measure must be used (*Samuels v Birmingham CC* [2019] UKSC 28).

The words ‘continue to occupy’ look to occupation over time and suggest an element of looking to the future. Accordingly, the ‘reasonable to continue to occupy’ test must be applied so that one asks whether it is reasonable to continue to occupy indefinitely, or for such period of time the applicant will have to occupy unless and until the housing authority secures accommodation (*Birmingham CC v Ali* [2009] UKHL 36). This includes where affordability is in issue (*Samuels*).

In determining affordability and reasonableness of continuing occupation, the authority will need to take into account any forthcoming changes in the applicant’s circumstances (*Samuels; Safi v Sandwell MBC* [2018] EWCA Civ 2876). Plainly, this would include situations such as where there is an imminent reduction or expiry of a discretionary housing payment, or where financial assistance is time limited.

Paragraph 8.30 of the guidance confirms that households should not be penalised for unavoidable changes in their welfare benefits or income that has led to their accommodation becoming unaffordable, and that persons should be assisted at the earliest opportunity, to maintain their accommodation, or provided with assistance to look for alternative accommodation.

The Supreme Court has held that benefit levels are not generally designed to provide for a surplus above subsistence needs, and that the rate at which ‘subsistence’ benefits are paid is a material consideration when assessing whether an applicant will be left without the necessities of live or sufficient funds for reasonable living expenses (*Samuels*).

The Court of Appeal has held that a schedule based on the research of retail prices at which goods were offered for sale in a specific geographical area constituted the kind of objective and reliable measure which complies with the rule in *Samuels (Baptie v Kingston upon Thames RLBC* [2022] EWCA Civ 888).

The 2014 Act confirms that payments, including for rent arrears, may be made for the purpose of securing that suitable accommodation is available (or does not cease to be available) (s.64(2)).

Submissions

It appears clear from aforementioned facts, that:

1. [NAME]’s rent arrears have been unavoidably accrued.
2. There is a substantial shortfall between [NAME]’s income and essential expenditure, such that her present accommodation is not affordable.
3. Accordingly, without additional financial assistance, [NAME]’s accommodation will not be reasonable to continue to occupy, and she is currently statutory homeless.
4. That homelessness is not [NAME]’s fault.



5. There is, however, an opportunity to secure that [NAME] has suitable and sustainable accommodation, if the Council makes payments (or secures that payments are made) to the landlord, for the purposes of:
 - (a) Clearing the outstanding rent arrears, and
 - (b) Meeting the ongoing shortfall between the contractual rent and rate at which subsistence benefits are being paid.
6. Securing such payments would most likely be a much more cost-effective way of alleviating [NAME]'s homelessness, than say, a prolonged period of securing temporary accommodation, at considerable expense, pursuant to the accommodation duty under section 68 (and potentially under section 75) of the 2014 Act.
7. Accordingly, the making of such payments is likely to be a good use of the authority's resources.

Request for response

I would be grateful if you could, by return:

1. Confirm whether the Council has taken a homeless application, and will be undertaking an assessment under section 62 of the 2014 Act.
2. Confirm the objective measure that the Council uses when assessing affordability under Part 2, Chapter 2 of the 2014 Act.
3. Provide a copy of the Council policy, procedure or in the absence of any policy a copy of the relevant internal instruction or similar communication, in relation to the objective measure (or measures) that Council housing staff are required to utilise for the purpose of undertaking affordability assessments for the purposes of carrying out its homelessness functions.
4. Confirm what steps the Council will be taking for the purpose of securing that suitable accommodation is available, or does not cease to be available, for [NAME], including, in particular, whether the landlord is to be offered financial payments.

If the authority refuses to carry out an assessment, please forward written confirmation of your reasons for this decision.

I would be grateful if you would also, upon the completion of the s.62 assessment:

5. Forward a copy of the statutory notification of the outcome of the assessment, and any personal housing plan, so that we may advise our client.

We enclose signed authority for us to act on our client's behalf and for the disclosure of confidential information.

If we do not receive a response by *[insert date and time, e.g.]* 4.00p.m. [DATE 14 DAYS HENCE] we will assume that you are refusing to accept a duty to assess and furnish the aforementioned information.

[If agency does not provide legal advice]



We would then refer our client to solicitors so that she may be advised and assisted in commencing judicial review proceedings against the authority, or submitting a formal complaint, or both.

We look forward to hearing from you.

[If agency provides legal advice]

In these circumstances we are instructed to commence judicial review proceedings against the authority in respect of breach of statutory duty

We would accordingly forward a letter before claim in accordance with the pre-action protocol for judicial review claims.

We trust that this will not be necessary and look forward to hearing from you.

Yours faithfully

[NAME]

[JOB TITLE]

Enc: Signed authorisation for [AGENCY] to act on [NAME]'s behalf

