

# PROCESS OVERVIEW



# New 3-stage process

Threatened /  
prevention

- s.195 re-written
- Duty strengthened



Homeless /  
relief

- New 56-day period for eligible/homeless
- To 'help to secure' (s.189B(2))
- Interim accommodation *IF* reason to believe may be PN

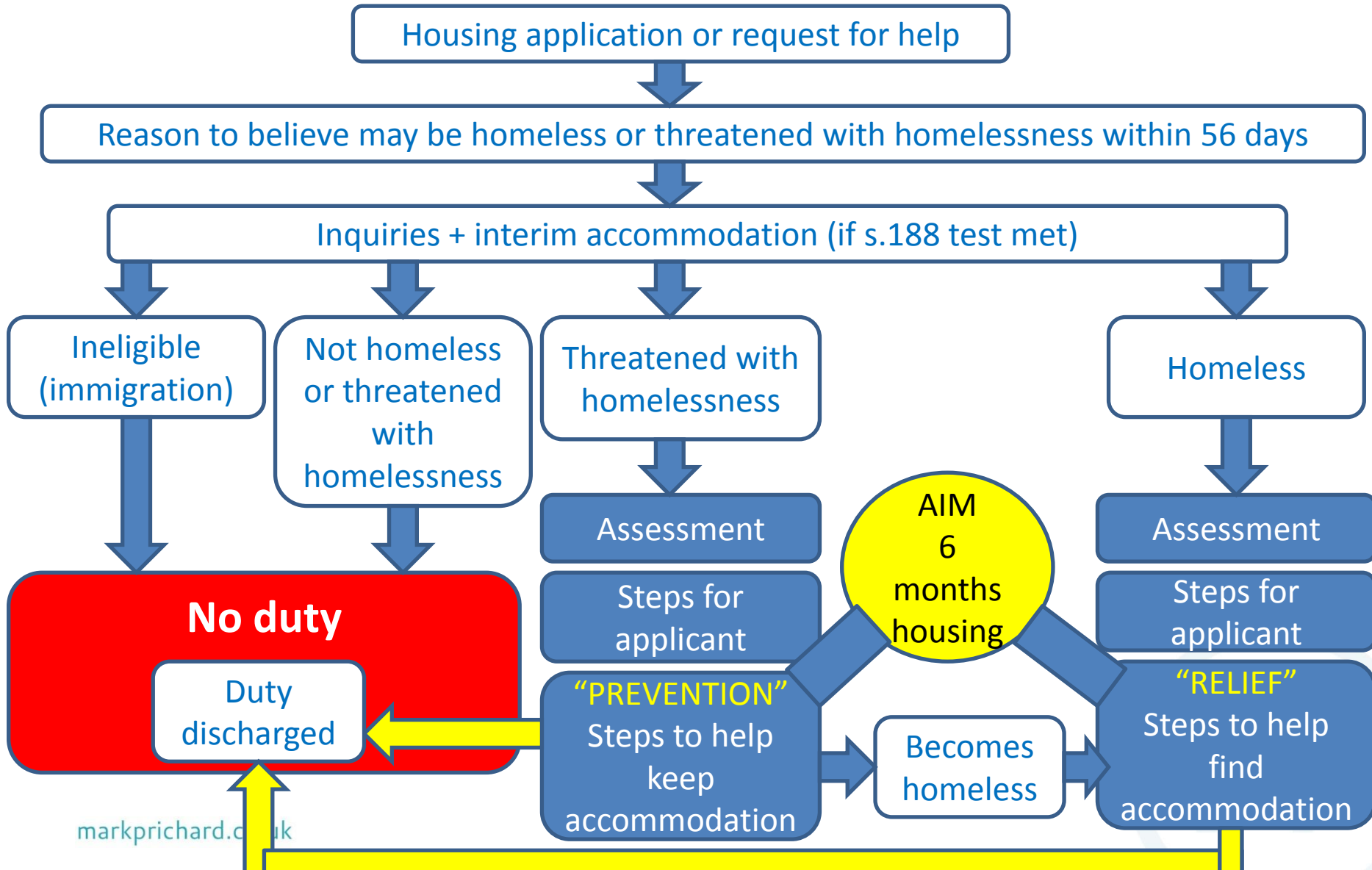


Main s.193  
housing duty

- PN + unintentional + homelessness not resolved within 56 days + no final offer within 56 days



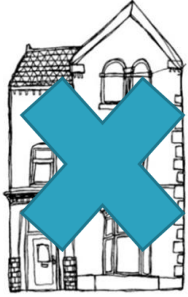
# Homeless application – process



# HOMELESSNESS



# Definition of homelessness



- **No accommodation** which individual has a right to occupy because of:
  - ☐ legal interest (e.g. ownership or tenancy)
  - ☐ licence (permission)



- **Accommodation – but not available**
  - ☐ cannot secure entry (physical availability)
  - ☐ not available for all household members (legal availability)
- **Not reasonable to continue to occupy accommodation**
  - ☐ unaffordable
  - ☐ occupation will lead to domestic abuse or violence / threats of violence which are likely to be carried out
  - ☐ other reason

# Accommodation

- Question sometimes – can it fairly be described as ‘accommodation’?
- Only gloss can put on word is that which statute imports (*R v Brent LBC ex p Awua* [1996] AC 55).
- Question whether prison cells and hospital wards were ‘accommodation’ left open by House of Lords in *Ali & others v Birmingham CC; Moran v Manchester CC* [2009] UKHL 36.
- Court of Appeal previously held prison is not ‘accommodation’ (*Stewart v Lambeth* [2002] EWCA Civ 753).
- Held not to be ‘accommodation’:
  - **Night shelter** where bed provided on nightly basis and occupant not allowed to remain indoors during day (*R v Waveney DC ex p Bowers* *The Times*, May 25, 1982; (1983) 4 HLR 118, CA, approved in *Awua* at [67]).
  - **Prison cell** occupied by person eligible for release on licence (R(B) v Southwark LBC [2003] EWHC 1678 (Admin)).

# Temporary accommodation provided under HA 1996, Part 7

- Person secured temporary accommodation by LHA under Part 7 does not cease to be homeless (*Alam v Tower Hamlets LBC* [2009] EWHC 44 (Admin) approved by *Ali v Birmingham CC* [2009] UKHL 36 at [54]).



# Not reasonable to occupy – Deemed & on particular facts

- **Deemed** not to be reasonable to continue to occupy:
  - Domestic abuse or other violence against applicant or family member probable (s.177(1) and (1A)).
  - Not affordable (s.177(3), SI 1996 No 3204).
- Section 175(3) requires LA to consider other relevant matters to determine whether, **as a matter of fact**, the accommodation is reasonable to continue to occupy.
- What issues might applicants sometimes cite?
  - Severe overcrowding.
  - Very bad housing conditions.
  - Impact of location.
  - Imminent loss of right to occupy.
  - Relationship breakdown.





# Availability for household members

## **“176. – Meaning of accommodation available for occupation.**

Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with –

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly.”



# “Reasonable to continue to occupy”

- Means reasonable to continue to occupy **indefinitely, or for as long as applicant will have to if LA do not secure accommodation** (*Birmingham CC v Ali & Aweys; Moran v Manchester CC* [2009] UKHL 36).
- Not necessary that not reasonable for one more day (*Ali & Aweys*).
- Not same as whether accommodation is suitable (when performing a duty).



# Domestic abuse – meaning

- Accommodation not reasonable to continue to occupy if:
  - probable occupation will lead to domestic violence or other violence against applicant or household member (s.177(1)).
- ‘Violence’ includes:
  - physical violence;
  - threats;
  - intimidating behaviour; and
  - any other form of abusewhich, directly or indirectly, may give rise to a risk of harm (*Yemshaw* at [27]–[28], [38], [60]))



# Affordability & homelessness

- Mandatory issue – must be considered in every case.
- Relevant:
  - Whether **homeless** (reasonable to continue to occupy)  
(HA 1996, s.177(3); Homelessness (Suitability of Accommodation) Order 1996 SI No 3204).
  - **Intentional homelessness** (reasonable to continue to occupy) (s.191(1)).
  - **Suitability** of accommodation (if any) secured under Part 7 (s.206).



# Affordability – meaning

- Accommodation is unaffordable if the cost of paying for it (rent, but also essential costs, eg fuel) would deprive the applicant of the **necessities of life** (*R v Brent LBC ex p Baruwa* (1997) 29 HLR 915, CA).
- LAs must also take ‘**other reasonable living expenses**’ into account (The Homelessness (Suitability of Accommodation) Order 1996, Art. 2(d)).
- Assessment of *reasonable* living expenses requires an **objective assessment**; it cannot depend simply on the subjective view of the case officer (*Samuels v Birmingham CC* [2019] UKSC 28 at [34]).
- Correct test – what are/were applicant’s reasonable living expenses, having regard to applicant’s and children’s needs, including promotion of their welfare (*Samuels* at [36]).





# Affordability – meaning (2)

- Guidance:

*“Housing costs should not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet these essential needs. Housing authorities may be guided by the Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs...” (17.46).*

- Affordability must be judged on basis that accommodation available indefinitely, applying *Ali (Samuels)* at [34]).
- Detailed financial statement – part of homelessness assessment

Budget Worksheet

Fixed Expenses	monthly	Debt payments	monthly
Mortgage	\$	Regular payment on credit card(s)	\$
Rent / condo fees	\$	Payment on line(s) of credit	\$
Property taxes (monthly)	\$	Other debt payments	\$
Hydro	\$	Car loan(s) / lease(s)	\$
Water	\$	<b>Total debt payments (B)</b>	<b>\$</b>
Heat (gas, oil)	\$		
Home telephone	\$	<b>Savings</b>	<b>monthly</b>
Cable / satellite TV	\$	RRSP contributions	\$
Home - lawn care, house cleaning etc.	\$	RESP contributions	\$
Internet	\$	Emergency fund	\$
Alimony / support payments	\$	Savings for goals	\$
School tuition	\$	Other savings	\$
Child care	\$	<b>Total savings (C)</b>	<b>\$</b>

# Affordability – factors

- Local Authorities must take account of:
  - a) the financial resources available to him or her;
  - b) the costs in respect of the accommodation;
  - c) maintenance payments (to spouse, former spouse, or in respect of a child); and
  - d) his or her other reasonable living expenses (The Homelessness (Suitability of Accommodation) Order 1996, SI No 3204).



# 'Threatened with homelessness'

- If likely to become homeless within next 56 days (28 at present) (s.175(4)).
- Deemed threatened if:
  - ☐ received a valid s.21 notice
  - ☐ which is due to expire within 56 days (s.175(5)).



Department for  
Communities and  
Local Government

## FORM 6A

### Notice seeking possession of a property let on an Assured Shorthold Tenancy

Housing Act 1988 section 21(1) and (4) as amended by section 194 and paragraph 103 of Schedule 11 to the Local Government and Housing Act 1989 and section 98(2) and (3) of the Housing Act 1996

Please write clearly in black ink. Please tick boxes where appropriate.

This form should be used where a no fault possession of accommodation let under an assured shorthold tenancy (AST) is sought under section 21(1) or (4) of the Housing Act 1988.

There are certain circumstances in which the law says that you cannot seek possession against your tenant using section 21 of the Housing Act 1988, in which case you should not use this form. These are:





# HOMELESS APPLICATIONS



# Threshold test for taking homeless application

- Person applies to authority for:
  - accommodation, or
  - assistance in obtaining accommodation

## **AND**

- Authority has reason to believe that he is or may be:
  - homeless, or
  - threatened with homelessness (s.183(1)).
- Sometimes possible to decide no reason to believe at first approach; however normally inquiries need to be carried out (Code, 11.4).



# How to apply

- Cannot require applications to be in a particular form (*R v Chiltern DC ex p Roberts* (1991) 23 HLR 387, QBD).



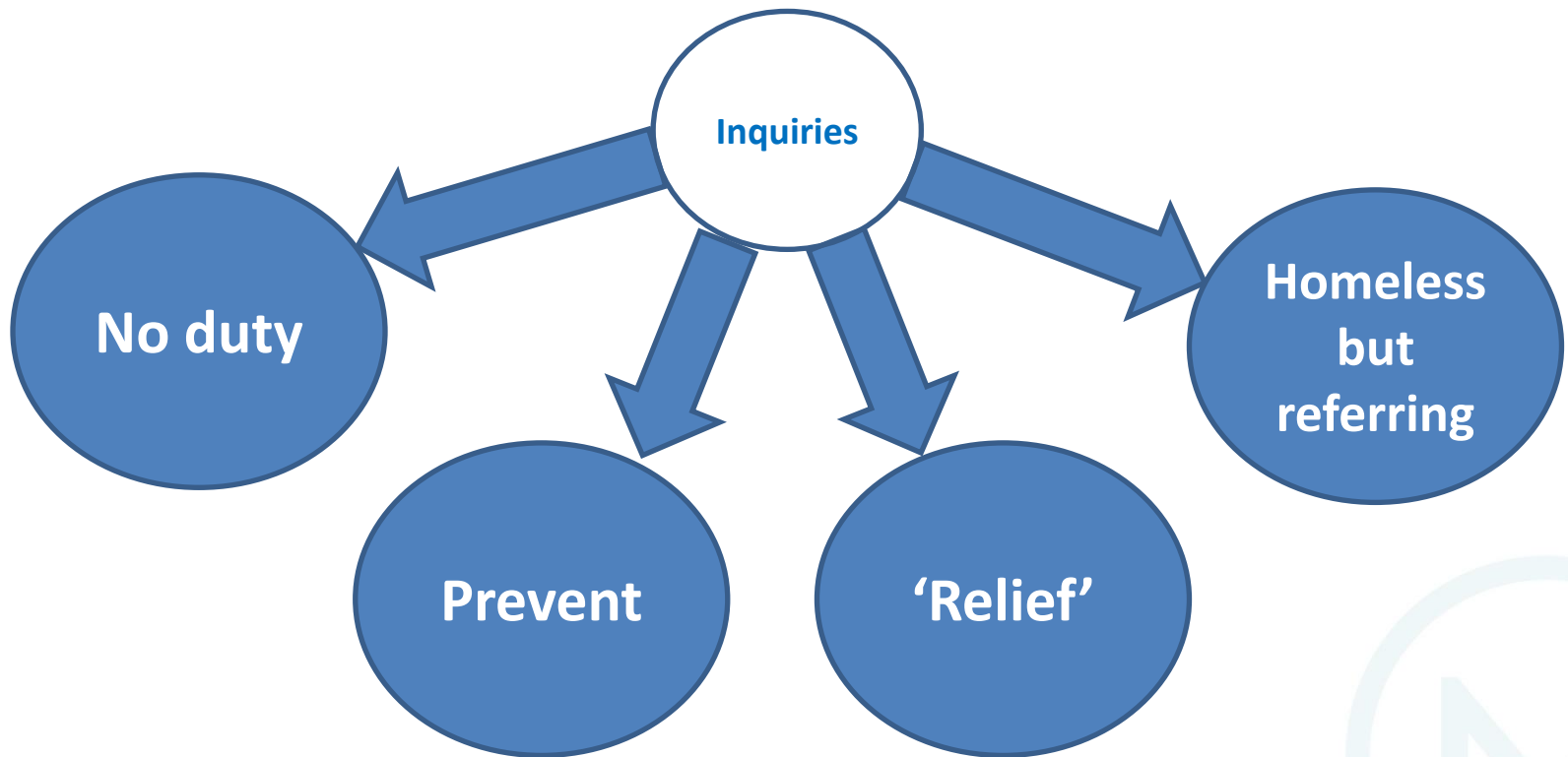
- Requirement to have reasonable arrangements for receiving applications might require, in urban areas, 24-hour cover (Code, paras 4.19, 18.2, 18.4).

# If an application is made – what *is* the duty?

- Duty to make such inquiries as are necessary to satisfy the LA:
  - whether the applicant is eligible for assistance (on immigration & nationality grounds); and
  - if so, whether any duty, and if so what duty is owed to him under Part 7 of the Housing Act 1996 (s.184(1)).
- Duty, on completing inquiries, to:
  - notify the applicant of the LA's decision;
  - so far as any issue is decided against the applicant's interests, inform him of the reasons for the decision (s.184(3));
  - inform the applicant of his right to request a review of the decision; and
  - Inform the applicant of the time within review request must be made (s.184(5)).

# Key issue - initially

- What duty is owed?



# PERSONS UNABLE TO APPLY



# Persons unable to apply

- **Dependent children** (*R v Oldham MBC ex p Garlick* [1993] AC 509).
  - But no exclusion on minors *per se*.
- **Repeat application** – ‘exactly the same facts’ as when previous application disposed of if LA/applicant previously refused assistance (*R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396, HL; *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340).
  - Is application based on same facts?
  - Lower threshold than ‘material change in circumstances’.
  - Statutory right to re-apply if main s.193 housing duty ended.
  - But no bar on different household members applying.
  - Also, s.193(9) provides right to re-apply if main duty discharged.

## Persons unable to apply (2)

- ***Unlawfully in UK*** – i.e. offender under Immigration Act 1971, s.14 (*R v Westminster CC ex p Castelli and Tristran-Garcia* (1996) 28 HLR 617; *R v Secretary of State for the Environment ex p Tower Hamlets LBC* [1993] QB 632, 25 HLR 524, CA; *R v Hillingdon LBC ex p Streeting* (No 2) [1980] 1 WLR 1425, CA).
- ***Lack mental capacity*** – to understand offer & undertake responsibilities (*R v Tower Hamlets LBC ex p Begum* [1993] AC 509).





# Capacity

- Should inquire into capacity if evidence raises real possibility that disability might affect capacity.
- Capacity defined:
  - Assumed to have capacity unless established otherwise.
  - Issue specific – whether capacity to make particular decision.
  - Impairment or disturbance in the functioning of the mind or brain, which leads to the person being incapable of making a decision.
  - May be temporary or permanent (Mental Capacity Act 2005, ss.1-3).
- Questions:
  - Real possibility that applicant disabled?
  - Effect of disability on capacity?

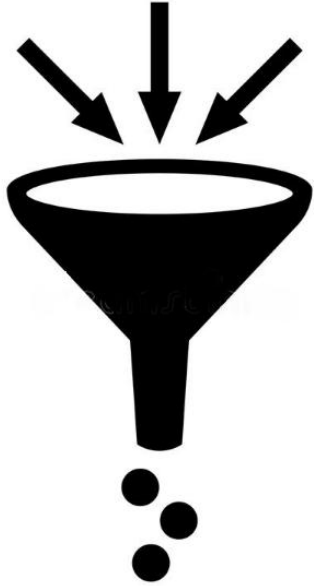




# DUTY ON PUBLIC AUTHORITIES TO REFER



# Duty on public authorities to refer (s.213B)



- Came into effect ***1 October 2018***.
- Duty to notify housing authority of service users they consider ***may be homeless or threatened with homelessness***.

# Specified public authorities

- prisons
- youth offender institutions
- secure training centres
- secure colleges
- youth offending teams
- probation services (including community rehabilitation companies)
- Jobcentre Plus
- social service authorities
- emergency departments
- urgent treatment centres
- hospitals in their function of providing inpatient care
- the regular armed forces (in respect of members of the Royal Navy, regular army and Royal Air Force.

(Schedule to The Homelessness (Review Procedure etc.) Regulations 2018)

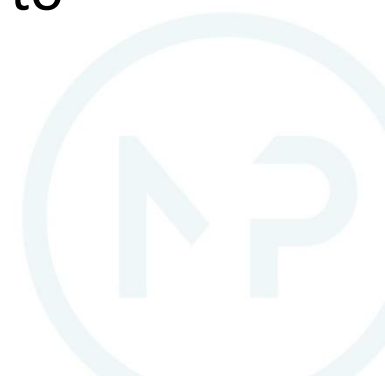
# Duty on public authorities to refer (s.213B) (2)

## ***Duty to ask consent***

- Duty on public authority to ask person whether s/he wishes public authority to notify a LHA in England of:
  - opinion that may be homeless / threatened with homelessness; and
  - how the LHA may contact them (s.213B(2)).

## ***Duty to notify LHA***

- Public authority must notify LHA of opinion / contact details ***if*** person:
  - agrees to notification; and
  - identifies LHA that want notification to be sent to (s.213B(3)).



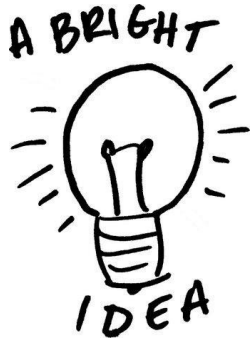
# Duty on public authorities to refer (s.213B) (3)

***Is receipt of s.213B referral a homeless application?***

- Guidance suggests not:
  - “A referral...will not in itself constitute an application for assistance under Part 7, but...should always respond to any referral received.” (Code, 4.19)



# If cannot establish contact...



- Questionable whether para 4.19 is accurate.
- Send 'minded to find' letter.
- Warning application will be treated as withdrawn unless contact.



# Does the person wish to pursue a homelessness application?

- Previously common practice to:
  - concentrate advice & assistance on those with priority need;
  - offer choice to non-priority applicants to not pursue application.
- Unlikely now to be appropriate.
- Risks subsequent challenge / complaint.
- Any decision not to pursue application should be **fully informed** (incl. implications) & **evidenced** by LA.





# 16 & 17 year olds

- 16 and 17 year-olds have a priority need (SI 2002 No 2051, Art.3).
- Part 7 accommodation duty owed unless accommodation duty owed under Children Act 1989, s.20.
- Issue – which department owes a duty?



## 16 & 17 year olds (2)

- LA cannot lawfully rely on homelessness duty or referral to housing authority to negate or 'side step' s.20 duty (*R (G) v Southwark LBC* [2009] UKHL 26).
- s.20 is primary duty; if owed, homelessness application 'falls away'.
- Statutory guidance requires LHAs & SSAs to have joint working practices / joint assessment procedures / protocols.
- Guidance: *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* (2018).



# Social services must decide...

- Series of questions social services must ask:
  - ☐ Is applicant a child?
  - ☐ Is applicant a child in need?
  - ☐ Is child within LA area?
  - ☐ Does child need accommodation?
  - ☐ Is this because of one of statutory reasons?
    - “There being no person who has parental responsibility for him”.
    - “His being lost or having been abandoned”
    - “The person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.”
  - ☐ Child’s wishes and feelings regarding provision of accommodation.
  - ☐ What consideration should be given to those wishes?

# Exercise

