

3. HOMELESSNESS

3.1 Principal definition

3.1.1 Section 175(1) to (3) states:

“(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he –

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court;

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of an enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but –

(a) he cannot secure entry to it, or

(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.”

3.1.2 A person is therefore homeless if:

- They no accommodation which they have a legal right to occupy, or
- They have a legal right to occupy accommodation but they cannot secure entry to it or it is otherwise not available to occupy, or
- They have a legal right to occupy but the accommodation is not reasonable to continue to occupy.

3.2 “Accommodation”

- 3.2.1 “Accommodation” means a place that can be fairly described as accommodation; there is no additional requirement that it must be permanent or settled (*R v Brent LBC ex p Awua* [1996] AC 55).
- 3.2.2 The only gloss that can be put on the word “accommodation” is that which statute imports¹ (*R v Brent LBC Awua* [1996] AC 55).
- 3.2.3 A night shelter with a bed provided on nightly basis with occupants not allowed to remain indoors during the day is not accommodation (*R v Waveney DC ex p Bowers*, *The Times*, May 25, 1982).
- 3.2.4 A person does not cease to be homeless by virtue of accommodation secured for them under the s.188 interim accommodation duty by the council to whom they have applied (*R(Alam) v Tower Hamlets* [2009] EWHC (Admin)).
- 3.2.5 Accommodation which the applicant is required to occupy under the terms of a licence upon release from prison may constitute “accommodation” (*Rageb v Kensington RLBC* [2017] EWCA Civ 360).²

3.3 Legal right to occupy

- 3.3.1 The four types of right of occupation referred to in section 175(1) are:
- Legal interest.
 - Court order.
 - Licence, and

¹ See ‘unable to secure entry’, ‘availability’ and ‘reasonable to continue to occupy’.

² In *Ali v Birmingham CC* [2009] UKHL 36 the House of Lords declined to decide whether a prison cell or hospital ward could constitute accommodation. In *Stewart v Lambeth LBC* [2002] EWCA Civ 753, the Court of Appeal had held that detention against one’s will is the antithesis of accommodation within the meaning of s.175(1).

- Enactment or rule of law permitting occupation or preventing another person from obtaining accommodation.

3.3.2 Common examples of those with such rights of occupation include:

- Owner-occupiers (legal interest).
- Tenants (legal interest).
- Permission from a family member or friend (who owns or rents the property) to occupy accommodation (licence).

See also:

- Occupier with basic protection of section 3 of the Protection from Eviction Act 1977, e.g. a statutory tenant remaining in occupation, following the termination of a protected tenancy under the Rent Act 1977 (right of occupation by virtue of an enactment or rule of law)
- Occupying property in which one holds a beneficial interest, e.g. spouse of owner-occupier who has contributed to purchase of property (equitable interest).
- Court order in family proceedings that a non-owner and non-tenant may occupy a former matrimonial home.
- Court order confirming beneficial interest in land with right of occupation.³

3.3.3 A licence arises where a person is granted permission to occupy premises in circumstances that do not result in a tenancy being created. It is a personal right and does not create an interest in the land that can be transferred to another person (as distinct from a tenancy which can be inherited and assigned to a third party).

³ Trusts of Land and Appointment of Trustees Act 1996, s.14.

- 3.3.4 The three hallmarks of a tenancy or 'lease' (i.e. essential prerequisites in order for a tenancy to be created) are:
- The granting of exclusive possession to the occupier.
 - For a period of time (either fixed term or from period to period), and
 - At a rent (*Street v Mountford* [1985] AC 809).
- 3.3.5 Licenses can be gratuitous (a 'bare licence') or for consideration (in return for money or something of value).
- 3.3.6 S.175(1)(b) refers to licenses which are:
- Express, i.e. permission was expressly given, verbally or in writing.
 - e.g. a hotel giving a customer permission to stay in a room for one night.
 - Implied, i.e. never expressly given; rather permission is inferred from the facts.
 - e.g. where a young adult has always lived with their parent.
- 3.3.7 Assured and assured shorthold tenants who remain in occupation beyond expiry of notice are not homeless because of loss of entitlement to occupy until a possession order is executed by bailiff's warrant⁴ (Housing Act 1988, s.5(1)); *R (Sacupima) v Newham LBC* [2001] 1 WLR 563).
- 3.3.8 Examples of persons without a right to occupy include:
- Licensees, whose licence to occupy is excluded from the basic protection provided by section 3 of the Protection from Eviction Act 1977, and whose licence has been terminated (even if the licensee continues to occupy).⁵
 - Trespassers.

⁴ But consider whether the accommodation is available and reasonable to continue to occupy. In addition, see definition of 'threatened with homelessness'.

⁵ See, for example, *R v Hammersmith and Fulham LBC ex p O'Sullivan* [1991] EGCS 110, QBD.

- 3.3.9 A person occupying a prison cell who is eligible for release on licence has no right to occupy and is therefore homeless (*R(B) v Southwark LBC* [2003] EWHC 1678 (Admin)).
- 3.3.10 A person occupying a matrimonial home with a right not to be evicted or excluded by the spouse holding the legal interest – under section 30 of the Family Law Act 1996 (“home rights”) – has a right to occupy accommodation (*Abdullah v Westminster CC* [2011] EWCA Civ 1171).
- 3.3.11 When deciding an applicant is not homeless a council must determine the basis upon which the applicant has a right of occupation (*Fletcher v Brent LBC* [2006] EWCA Civ 960).⁶
- 3.3.12 A joint tenant can unilaterally terminate a periodic tenancy by giving valid notice to quit, without the agreement or knowledge of the other tenant (*Hammersmith and Fulham LBC v Monk* [1992] 1 AC 478).
- 3.3.13 Where a joint tenant’s notice to quit has ended the applicant’s tenancy the council must consider whether they have any other right to occupy (*Fletcher v Brent LBC* [2006] EWCA Civ 960).
- 3.3.14 For a person not to be homeless because of an entitlement to occupy accommodation under s.175(1), there must be specific accommodation which the applicant has a current right or permission to occupy (*Johnston v Westminster CC* [2015] EWCA Civ 554).
- 3.3.15 A person is homeless where another council has accepted an accommodation duty, but has not secured accommodation (*Johnston v Westminster CC* [2015] EWCA Civ 554).
- 3.3.16 A legal owner of a dwelling rented out to tenants will nevertheless be homeless, in the absence of alternative

⁶ Mrs Fletcher terminated her joint council tenancy with the applicant by serving a valid notice to quit. Brent LBC decided Mr Fletcher was not homeless. However, they erred when not addressing in their decision the nature of his continuing interest.

accommodation being available (*Miah v Tower Hamlets LBC* [2013] (2013) May *Legal Action* 36, CC).

- 3.3.17 Where tied accommodation is occupied under a licence (i.e. a service occupancy), termination of the employment contract ends the licence notwithstanding any offer by the employer to re-employ and re-accommodate the applicant (*R v Kensington and Chelsea RLBC ex p Minton* (1988) 20 HLR 648, QBD).⁷

3.4 Mobile homes

- 3.4.1 Common examples:

- Caravan.
- Mobile home.
- Campervan/caravanette.
- Houseboat.
- Bus or vehicle converted for human habitation.

- 3.4.2 For a person to *not* be homeless under section 175(2)(b):

- The structure, vehicle or vessel must be designed or adapted for human habitation, and
- There must be a place where they are entitled or permitted to reside in it.

- 3.4.3 Travelling showmen moving from fair to fair which provided spaces to park caravans were not homeless or threatened with homelessness. 'Reside' in s.175(2)(b)⁸ means 'live or occupy'; there is no requirement for the permission to provide a degree of permanence (*R v Chiltern DC ex p Roberts* (1990) 23 HLR 387, QBD).

⁷ In *Minton* the applicant, who had ceased to occupy following termination of employment, was homeless despite the former employer's offer to re-employ her. The court quashed the council's decision that the applicant was not homeless. In the absence of a new employment agreement there was no licence at all.

⁸ *Roberts* was decided under HA 1985, s.58(3)(c), the forerunner to HA 1996, s.175(2)(b), which replicated the earlier wording.

- 3.4.4 Houseboat dweller without permanent mooring but with permission to cruise and keep boat on waterway was not homeless (*R v Hillingdon LBC ex p Bax* December (1992) *Legal Action* 21, QBD).
- 3.4.5 Lack of possession proceedings to remove trespasser residing in a caravan following expiry of 30-day permission amounted to implied permission. Applicant 'permitted' to reside on land within meaning of s.175(2)(b) (*R (O'Donoghue) v Brighton and Hove CC* [2003] EWCA Civ 459).
- 3.4.6 A caravan parked on council land where applicants lived on land without express permission for over two and a half years constituted permission to place and reside due to the council's acquiescence (*Smith v Wokingham DC* (1979) [1980] April *LAG Bulletin* 92, CC).

3.5 Unable to secure entry

- 3.5.1 Examples:
- Illegal eviction.
 - Home occupied by squatters.
 - Sealed behind police cordon.
 - Impossible to reach because of flood waters.
- 3.5.2 A council cannot refuse to treat a person as homeless because they fail to use the legal remedies available for the purpose of regaining possession (Code, 6.21).

3.6 Factual availability

- 3.6.1 Accommodation must be legally and practically accessible (*Nipa Begum v Tower Hamlets LBC* [2000] QB 133).

3.6.2 Lack of funds to travel to accommodation abroad renders it unavailable⁹ (*Nipa Begum v Tower Hamlets LBC* [2000] QB 133).

3.6.3 Other potential examples:

- Person unable to lawfully enter accommodation because of a closure order.
- Person unable to lawfully enter geographical area in which accommodation is situated because of injunction.
- Person unable to lawfully enter country in which accommodation is located.

3.7 Availability for household members

3.7.1 Section 176 states:

“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.”

⁹ Although in *Begum* the Court of Appeal declined to quash the ‘not homeless’ decision which relied on accommodation in Bangladesh. During the s.202 review the applicant had failed to raise the issue of inability to travel to the accommodation because of a lack of funds. The council were therefore not required to consider the issue. Auld LJ stated at [458] that “In the absence of an indication of a particular difficulty or difficulties of that sort it is not, in my view, an authority’s duty to take an applicant through a check list to negative all possible obstacles to his or her return to the overseas property”. Contrast with the issues of probable violence and affordability which are mandatory and so which must be considered by the council.

- 3.7.2 The homelessness legislation is designed with the express purpose of bringing families together (*Din v Wandsworth LBC* [1983] 1 AC 657, HL).
- 3.7.3 The requirement that accommodation is available is also an essential component of the definition of intentional homelessness (s.191(1)).
- 3.7.4 Deciding whether a person might reasonably be expected to reside with the applicant is a factual question for the council that may require various issues to be considered, including the practicability of providing accommodation for the additional person(s) (*R v Lambeth LBC ex p Ly* (1987) 19 HLR 51, QBD).
- 3.7.5 Many considerations may be relevant when determining whether a relative is a person who might reasonably be expected to reside with the applicant, including the true nature and ambit of the family unit, blood relationships, and financial and emotional dependency. Where the relationship is at the margin of a family group it may be appropriate to have regard to other matters such as the practicability of providing accommodation for all those with whom the applicant would wish to be re-housed, the possibility of splitting the family unit into coherent smaller units, the geographical relationship between different parts of the family if thus sub-divided, the preparedness of the family to be separated in this way, and the history of the family in terms of the accommodation and separation of its individual members over preceding years (*R v Lambeth LBC ex p Ly* (1987) 19 HLR 51, QBD).¹⁰

¹⁰ In *Ly* the applicant had become separated from her family for around seven years after fleeing Vietnam. Ms Ly sought judicial review of the council's decision to offer her a four bedroom flat in discharge of the main housing duty (then section 4(5) of the Housing (Homeless Persons) Act 1977). The flat would have accommodated Ms Ly and four relatives. She contended that the council's purported discharge was unlawful on the basis that they were duty bound to secure accommodation sufficient for her together with ten family members. None of the family members resided with the applicant when she applied as homeless. However, she had previously resided

3.7.6 Availability “together with” household members can be provided by two units of accommodation providing they are sufficiently closely located to enable the household to live “together” in practical terms. A lack of shared living space is not fatal (*Sharif v Camden LBC* [2013] UKSC 10).

3.7.7 Having accepted that two sisters had lived together up until their application (with their husbands and children), a decision to refuse their request to live together and a purported discharge via two offers of separate accommodation was irrational (*R v Newham LBC ex p Khan and Hussain* (2001) 33 HLR 29, QBD).

3.7.8 The Code states:

“...The phrase ‘as a member of the family’, although not defined for these purposes in legislation, will include those with close blood or marital relationships and cohabiting partners, and, where such a person is an established member of the household, the accommodation must provide for them as well.”¹¹

Might reasonably be expected to reside

3.7.9 *Luba et al* (2018) suggests the second category (s.176(b)) contains three potential sub-groups:

- *“Any member of the applicant’s family not normally residing with him or her, but who might reasonably be expected to reside with the applicant.
[e.g.]...dependent child who has been living with [other parent]..., married couple or civil partners, who have to live apart...because they have nowhere to live together...*

with her family in Vietnam. The court held that the council’s decision not to regard all ten relatives as persons who might reasonably be expected to reside with the applicant was not irrational.

¹¹ Para 6.7.

- *“Someone already normally residing with the applicant (but not as a member of his or her family) who might reasonably be expected to continue to reside with the applicant.”*
[e.g.]...lodger, nanny, carer, friend...
- *Someone who is not a member of the applicant’s family and does not normally live with the applicant but who might reasonably be expected to reside with the applicant.*
[e.g.] ...prospective carer...”¹²

3.7.10 The Code states:

“...People in this group might include a companion for an elderly or disabled person, or children who are being fostered by the applicant or a member of their family.¹³ This group will also include those members of the family who were not living as part of the household at the time of the application but who nonetheless might reasonably be expected to form part of it.”¹⁴

3.7.11 The Code continues:

“...Persons who would normally live with the applicant but who are unable to do so because there is no accommodation in which they can all live together should be included in the assessment...”¹⁵

3.7.12 Ineligibility for disability living allowance was irrelevant when deciding whether a prospective carer was a person who might reasonably be expected to reside with an applicant; the criteria for DLA entitlement was far more stringent than the question of

¹² *Housing Allocation and Homelessness*, para 10.29.

¹³ But if the child is already residing with the applicant as a member of their family see s.176(a).

¹⁴ Para 6.8.

¹⁵ Para 6.9.

whether a person needs constant live-in help (*R v Southwark LBC ex p Ryder* (1995) 28 HLR 56, QBD).

- 3.7.13 A council applied the wrong legal test by asking whether an applicant with reduced mobility was so disabled that he needed a live-in carer, rather than asking whether his companion, who helped with daily tasks (and with whom he had been residing for three years)¹⁶ was a person who might reasonably be expected to reside with him (*R v Hackney LBC ex p Tonniodi* (1997) 30 HLR 916, QBD).¹⁷
- 3.7.14 The fact that two persons intend and expect to live together does not necessarily mean they are persons who might reasonably be expected to reside with each other (*R v Barking and Dagenham LBC ex p Okuneye* (1995) 28 HLR 174, QBD).¹⁸

3.8 Household members' immigration status when determining homelessness

- 3.8.1 Section 185 states:

"[...]

(4) A person from abroad who is not eligible for housing assistance shall be disregarded in determining for the purposes of this Part whether a person falling within subsection (5)–

- (a) is homeless or threatened with homelessness, or
(b) has a priority need for accommodation.*

¹⁶ Including squatting together prior to applying for homelessness assistance.

¹⁷ The High Court also found the council had failed to have regard to the statutory guidance which provided (1997 version) that s.176(b) will cover "disabled persons who live with...companions and carers" and "persons who normally live with the applicant but who are unable to do so for no other reason than that there is no accommodation in which can live together".

¹⁸ A challenge to a decision that the applicant had become homeless intentionally. The issue arose in relation to whether the applicant and fiancé's decision to vacate their separate homes in Nigeria had been intentional, i.e. whether, at that time, they were persons who might reasonably be expected to reside with each other.

*(5) A person falls within this subsection if the person—
 (a) falls within a class prescribed by regulations made
 under subsection (2); but
 is not a national of an EEA State or Switzerland.”*

3.8.2 Ineligible household members of persons subject to immigration control (excluding EEA nationals and Switzerland nationals) – e.g. refugees, those given indefinite leave to remain – are disregarded when deciding whether such persons are homeless (s.184(4) and (5)).¹⁹

3.9 Reasonable to continue to occupy

3.9.1 The question of whether accommodation is reasonable to continue to occupy arises in relation to:

- Homelessness, and
- Intentional homelessness.²⁰

3.9.2 Section 175(3) states:

“A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.”

3.9.3 Section 177 states:

*“(1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against him, or against—
 (a) a 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.*

¹⁹ See also ‘restricted cases’.

²⁰ ‘Reasonable to continue to occupy’ is therefore also considered in the chapter on ‘intentional homelessness’.

(1A) For this purpose 'violence' means–

(a) violence from another person, or

(b) threats of violence from another person which are likely to be carried out; and violence is 'domestic violence' if it is from a person who is associated with the victim.

(2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation–

(3) The Secretary of State may by order specify–

(a) other circumstances in which it is to be regarded as reasonable or not reasonable for a person to continue to occupy accommodation, and

(b) other matters to be taken into account or disregarded in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation.”

3.9.4 The issue of whether one has reached the point in time when accommodation is no longer reasonable to continue to occupy is a factual issue for the council to decide (*Ali v Birmingham CC* [2009] UKHL 36).

3.9.5 The decision-maker must ask whether the accommodation is reasonable to continue to occupy indefinitely or for such period as the applicant will have to occupy if the council does not intervene and secure accommodation. It is therefore unnecessary that conditions are such that they cannot occupy

for one day longer (*Ali v Birmingham CC; Moran v Manchester CC* [2009] UKHL 36).

- 3.9.6 A council can accept an applicant is homeless because their accommodation is not reasonable for them to continue to occupy and decide that the same accommodation is suitable for performing an accommodation duty for a short period. 'Reasonable to continue to occupy' and suitability are distinct albeit related concepts (*Ali v Birmingham CC* [2009] UKHL 36)).
- 3.9.7 When deciding reasonableness the council need not consider whether the accommodation is suitable under sections 206 and 210 of the 1996 Act (*Temur v Hackney LBC* [2014] EWCA Civ 877).
- 3.9.8 It is not reasonable to continue to occupy a women's refuge indefinitely (*Moran v Manchester CC* [2009] UKHL 36).²¹
- 3.9.9 In *Moran* Baroness Hale, in relation to refuges, stated:
- "...a refuge is not simply crisis intervention for a few nights. It is a safe haven in which to find peace and support. But it is not a place to live. There are rules which are necessary for the protection of residents but make it impossible to live a normal family life. It is a place to gather one's strength and one's thoughts and to decide what to do with one's life."*²²
- 3.9.10 Reasonableness of continued occupation involves, where necessary, considering not merely the impact on the applicant but also the impact on (1) members of their family who normally reside with them; and (2) persons who might reasonably be expected to reside with them (*R v Westminster CC ex p Bishop* (1993) 25 HLR 459, CA).

²¹ See also para 6.39 of the Code, which applies this principle to other types of short-term crisis accommodation.

²² *Ali v Birmingham CC; Moran v Manchester CC* [2009] UKHL 36 at [43].

- 3.9.11 An applicant may be not homeless on the basis that accommodation is available to them and reasonable to *continue* to occupy, notwithstanding that they are not currently occupying the accommodation. If they are not occupying the accommodation the words "accommodation which it would be reasonable for him to continue to occupy" in s.175(3) means "accommodation which it would be reasonable...to occupy for a continuing period", i.e. for the future (*Waltham Forest LBC ex p Maloba* [2007] EWCA Civ 1281).²³
- 3.9.12 In districts where there are many households occupying unsatisfactory accommodation, severe budgetary constraints and a shortage of accommodation, such factors may be relevant when deciding whether it is reasonable for the applicant to continue to occupy (*Ali v Birmingham CC* [2009] UKHL 36).
- 3.9.13 In a case where the council decided it was reasonable for a pregnant applicant to continue to occupy an overcrowded flat²⁴ and relied on her increased priority on the housing register but did not address the question of whether it would be reasonable upon the baby's birth, the council was required to ask itself (1) how long in the short term it would be reasonable for them to continue to occupy, and (2) in light of that period, whether they would be able to obtain suitable accommodation in that period

²³ Waltham Forest's decision was that Mr Maloba was not homeless because he, his wife and daughter could reside in accommodation that the wife and daughter had formerly occupied in Uganda before they came to join Mr Maloba in the UK. On a s.204 appeal the county court held that the council's decision on reasonableness to occupy was *Wednesbury* unreasonable. The council's appeal to the Court of Appeal, on grounds, *inter alia*, that the question of reasonableness was immaterial, was refused. The council had also erred when failing to consider whether it was reasonable for Mr Maloba to relocate to Uganda.

²⁴ The applicant was a secure council tenant occupying one bedroom flat with a living room, kitchen and bathroom. Her household comprised of herself, her husband and their first child.

via the register (*Safi v Sandwell MBC* [2018] EWCA Civ 2876).²⁵

3.10 Domestic violence probable – deemed not reasonable to occupy

3.10.1 Section 177(1A) defines ‘domestic violence’.

3.10.2 The Code states:

*“Domestic violence or abuse is ‘domestic’ in nature if the perpetrator is a person who is associated with the victim. It is not limited to physical violence or confined to instances within the home.”*²⁶

3.10.3 Section 178 defines the types of relationship where a person “is associated with” the applicant for the purpose of ‘domestic violence’ definition.

3.10.4 ‘Probable’²⁷ means ‘more likely than not’ (*Bond v Leicester CC* [2001] EWCA Civ 1544).

3.10.5 ‘Likely’²⁸ means ‘a real or serious possibility’ (*Bond v Leicester CC* [2001] EWCA Civ 1544).

3.10.6 The question to be asked is therefore:

*“Is it more likely than not that continuing to occupy the accommodation will lead to violence, or to threats of violence where there is a real or serious possibility that those threats are likely to be carried out?”*²⁹

²⁵ Before the judgment was handed down the council had accepted that the birth of the applicant’s second and third children amounted to a change in circumstances and triggered a fresh homeless application.

²⁶ Para 21.2.

²⁷ HA 1996, s.177(3).

²⁸ HA 1996, s.177(3).

²⁹ When deciding whether the applicant is homeless and whether the relief duty is owed. When asked in the context of deciding whether the s.184(1) inquiry duty or s.188(1) interim accommodation duty is owed, the statement must effectively be prefaced with the additional words “Is there reason to believe that it is...”

- 3.10.7 'Domestic violence' is not limited to physical violence but includes threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to a risk of harm (Yemshaw v Hounslow LBC [2011] UKSC 3).
- 3.10.8 Chapter 21 of the Code includes guidance on domestic abuse.
- 3.10.9 In all cases involving violence the safety of the applicant and their household should be the primary consideration (Code, 21.31).
- 3.10.10 An assessment of the likelihood of a threat of violence or abuse being carried out should not be based on whether there has been actual violence or abuse in the past (Code, 21.20).
- 3.10.11 Corroborative evidence of actual or threatened violence may not be available (Code, 21.21).
- 3.10.12 The period during which a victim is planning or making an exit is often the most dangerous time for them and any children (Code, 21.23).
- 3.10.13 The Code states:
- "Housing authorities must take account of the cross-government definition of domestic violence and abuse..."³⁰*
- "It is essential that inquiries do not provoke further violence and abuse. Housing authorities should not approach the alleged perpetrator, since this could generate further violence and abuse. Housing authorities may, however, wish to seek information from friends and relatives of the applicant, social services, health professionals, MARACs, a domestic abuse support service or the police, as appropriate...Housing authorities should not have a blanket approach...which requires corroborative or police evidence to be provided."³¹*

³⁰ Para 21.3.

³¹ Para 21.21.

“Applicants should be given the option of being interviewed by an officer of the same sex if they so wish.”³²

“Procedures should be in place to keep all information on victims safe and secure.”³³

“...it may be necessary to restrict access to cases...to only named members of staff.”³⁴

“There is a clear need for victims of abuse and their children to be able to travel to different areas in order for them to be safe...and...authorities should extend the same level of support to those from other areas as they do to their own residents.”³⁵

3.10.14 The Code incorporates the cross-Government definition of domestic abuse, and gives examples of the various types of abuse (Code, 21.4).

3.10.15 The Code states:

“Specialist training for staff and managers will help them to provide a more sensitive response and to identify, with applicants, housing options which are safe and appropriate to their needs”³⁶

3.10.16 A policy requiring a joint tenant fleeing accommodation because of domestic violence to relinquish their tenancy before the main housing duty would be accepted and accommodation secured was unlawful (*R (Hamia) v Wandsworth LBC [2005] EWHC 1127 (Admin)*).

³² Para 21.23.

³³ Para 21.13.

³⁴ Para 21.14.

³⁵ Para 21.15.

³⁶ Para 21.9.

3.11 Violence probable – deemed not reasonable to occupy

- 3.11.1 “Other violence” is not limited to physical violence (actual or threatened) but includes other threatening or intimidating behaviour or abuse; however, conduct cannot be described as “violent” as opposed to merely anti-social unless it is of such a nature and seriousness as to be liable to cause psychological harm. This connotes something more than transient upset or distress (*Hussain v Waltham Forest LBC* [2015] EWCA Civ 14).
- 3.11.2 However, the term “psychological harm” does not appear in s.177 and should not be treated as a formal requirement. Psychological harm will often shade into or overlap with a diagnosed injury or illness, such as depression, but that need not always be so (*Hussain v Waltham Forest LBC* [2015] EWCA Civ 14).
- 3.11.3 It may be less likely that persons suffering intimidating behaviour and abuse from neighbours will suffer harm as a result, when compared with the domestic context. In practice the threshold of seriousness may be higher (*Yemshaw v Hounslow LBC* [2011] UKSC 3).³⁷

3.12 Availability of legal remedies

- 3.12.1 Value judgements about what the applicant should do or should have done to prevent violence – e.g. obtain an injunction – are irrelevant to determining the factual question of whether violence (actual or threatened) is probable (*Bond v Leicester CC* [2001] EWCA Civ 1544).
- 3.12.2 Measures which have been taken or probably will be taken and which are likely to be effective in preventing violence may make the risk of violence (actual or threatened) unlikely; however this

³⁷ *Obiter* comments of Lady Hale at [35].

is a factual issue for the council to determine; they cannot assume such measures will be taken or that they will be effective (*Bond v Leicester CC* [2001] EWCA Civ 1544).

3.12.3 The Code states:

“Housing authorities should recognise that injunctions ordering a person not to molest (non-molestation orders) or not to live in the home or enter the surrounding area (occupation orders) may not be effective in deterring some perpetrators from carrying out further violence, abuse or incursions, and applicants may not have confidence in their effectiveness. Consequently, applicants should not be expected to return home on the strength of an injunction.”³⁸

3.12.4 Applicants may be advised about security measures and the option of seeking an injunction. If they wish to pursue this option they should be advised to seek legal advice and informed that legal aid may be available (Code, 21.29).

3.13 Affordability

3.13.1 Whether accommodation is affordable is a mandatory issue, which must always be considered when deciding whether accommodation is reasonable to continue to occupy (s.177(3)(b); Homelessness (Suitability of Accommodation) Order 1996 No 3204).

3.13.2 Accommodation is not affordable if paying for housing costs would deprive the applicant of “the ordinary necessities of life” (*R v Wandsworth LBC ex p Hawthorne* (1995) 27 HLR 59, CA; *R v Brent LBC ex p Baruwa* (1997) 29 HLR 915, CA); *R v Hillingdon LBC ex p Tinn* (1988) 20 HLR 305, QBD).

³⁸ Para 21.30.

- 3.13.3 Regulation 2 of the 1996 Suitability Order lists financial items which the council must take into account,³⁹ including:
- Accommodation costs.
 - Maintenance payments.
 - “other reasonable living expenses”.
- 3.13.4 Assessment of reasonable living expenses requires an objective assessment; it cannot simply depend on the decision-maker’s subjective view (*Samuels v Birmingham CC* [2019] UKSC 28).
- 3.13.5 If the applicant has children the duty to have regard to the need to safeguard and promote the welfare of children⁴⁰ and the applicable amounts in subsistence benefits for children are relevant when deciding whether accommodation is (or was) affordable (*Samuels v Birmingham CC* [2019] UKSC 28).
- 3.13.6 A decision-maker which asked whether there was sufficiently flexibility enabling the applicant to cope with a shortfall between rent and housing benefit of £37 per month erred in law (*Samuels v Birmingham CC* [2019] UKSC 28).
- 3.13.7 In the absence of an objective assessment and guidance, a council erred when deciding that an applicant’s stated expenses – which were less than the relevant applicable benefit amounts – were not reasonable (*Samuels v Birmingham CC* [2019] UKSC 28).
- 3.13.8 The Code states:
- “Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to their circumstances. Housing*

³⁹ Both when deciding whether accommodation is reasonable to continue to occupy (i.e. homelessness) and whether accommodation secured to perform and/or end an accommodation duty is suitable.

⁴⁰ Children Act 2004, s.11.

costs should not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet those essential needs. Housing authorities may be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but should ensure that the wishes, needs and circumstances of the applicant and their household are taken into account”⁴¹

- 3.13.9 Decision letter does not need to contain arithmetical calculations or itemised quantifications of the applicant’s expenses (*Bernard v Enfield LBC* [2001] EWCA Civ 1831).
- 3.13.10 A council erred in law when it failed to engage with representations as to expenses which the applicant asserted were essential and where the council failed to specify which items of expenditure were not essential or excessive (*Farah v Hillingdon LBC* [2014] EWCA Civ 359).
- 3.13.11 The council should not assume, in the absence of inquiry or facts, that an application for discretionary housing payments will be (or would have been) successful, nor assume the period for which such payments will be available (*Barker v Watford CC* (2017) July/August *Legal Action* 42, CC).

3.14 Other factors / reasonableness ‘at large’

- 3.14.1 In principle there is no limit on the types of issue that may be relevant when determining whether accommodation is reasonable to continue to occupy.
- 3.14.2 The statutory matters,⁴² housing issues and physical conditions of the accommodation are not exhaustive as to the considerations that may be relevant when deciding whether

⁴¹ Para 17.3.

⁴² See ‘violence’, ‘affordability’ and ‘housing circumstances in district’.

accommodation is reasonable to continue to occupy (*R v Hammersmith and Fulham LBC ex p Duro-Rama* (1983) 9 HLR 71, QBD; *R v Broxbourne BC ex p Willmoth* (1989) 22 HLR 118, CA; *Waltham Forest LBC ex p Maloba* [2007] EWCA Civ 1281).⁴³

- 3.14.3 The issue is subjective in that the council should consider how the relevant situation affects this particular applicant (*R v Brent LBC ex p McManus* (1993) 25 HLR 643, QBD).
- 3.14.4 The issue is for the council to decide (*Noh v Hammersmith and Fulham LBC* [2001] EWCA Civ 905; *R v Brent LBC ex p Bariise* (1998) 31 HLR 50, CA).
- 3.14.5 Reasonableness to continue to occupy does not merely concern the quality of accommodation and amenities; the applicant's particular circumstances are relevant (*Waltham Forest LBC v Maloba* [2007] EWCA Civ 1281).
- 3.14.6 Reasonableness under s.177(3) relates to household members as well as the applicant (*R v Westminster CC ex p Bishop* (1993) 25 HLR 459, CA).⁴⁴
- 3.14.7 The Code sets out factors which may be relevant when deciding whether it is reasonable to continue to occupy.⁴⁵ However, the Code also explains the nature of the decision by stating that:

"There is no simple test of reasonableness. It is for the housing authority to make a judgement on the facts of each

⁴³ The council failed to consider the applicant's reasons for leaving a house they owned in Spain, namely lack of mains water, lack of employment and cessation of social security.

⁴⁴ In *Bishop* the council erred by failing to consider whether it was reasonable for the applicant's daughter to continue to occupy where there were factors suggesting it may not be. The daughter had left the applicant's accommodation to stay with her grandmother, following bullying and assaults by other children on the estate. Letters and reports from her school described her as suffering from severe anxiety and tension because of her accommodation.

⁴⁵ Para 6.39, under the headings 'physical characteristics', 'type of accommodation' and 'people fleeing harassment'. Recommendations are also made in relation to assured shorthold tenants facing possession proceedings, about which see below.

case, taking into account the circumstances of the applicant.”

⁴⁶

Importance of applicant raising issues

- 3.14.8 Section 175(3) does not create a presumption that the accommodation is unsuitable which must be rebutted by the council. The council must make such inquiries into the issue of reasonableness to continue to occupy given the facts known to them, or of which they ought reasonably to have been aware (*R v Sedgemoor ex p McCarthy* (1996) 28 HLR 607, QB).⁴⁷
- 3.14.9 Accordingly, applicants and their representatives should explain why occupation is not (or would not have been)⁴⁸ reasonable. Given councils' wide discretion⁴⁹ it is in the applicants' interests for strong supporting evidence to be submitted, e.g. reports from environmental health officers, treating doctors, social workers etc.

Having regard to housing circumstances in district

- 3.14.10 When exercising the s.177(2) power to have regard to the general housing circumstances, the comparison is between the accommodation occupied⁵⁰ – wherever it is situated – and the housing circumstances in the district of the council to which the applicant has applied (*R v Tower Hamlets LBC ex p Monaf* (1988) 20 HLR 529, CA).

⁴⁶ Para 6.23.

⁴⁷ In *McCarthy* the applicant did not raise any issue as to why her present accommodation might be not reasonable to occupy. The court held there had been no failure on the facts to carry out inquiries. It was further held that the decision (that the applicant was not homeless because she had accommodation) was not defective for failing to deal with the issue of reasonableness to continue to occupy.

⁴⁸ In the context of intentional homelessness.

⁴⁹ When considering reasonableness 'at large'.

⁵⁰ Or the accommodation lost, if the decision is whether the applicant became homeless intentionally.

- 3.14.11 This comparative exercise may support a council's contention that continued occupation *is* reasonable, if the types of problem cited by the applicant are prevalent to a similar (or worse) extent in the council's area.
- 3.14.12 The decision-maker may be required to ask themselves whether the applicant's circumstances (in relation to continued occupation) are out of the ordinary or out of the norm (*R v Brent LBC ex p Bariise* (1998) 31 HLR 50, CA; *Lomax v Gosport BC* [2018] EWCA Civ 1846).
- 3.14.13 The council is in the best position to assess the general housing conditions prevailing in its district, and the extent to which the applicant's housing situation takes their case out of the norm (*R v Brent LBC ex p Bariise* (1998) 31 HLR 50, CA).
- 3.14.14 When exercising the s.177(2) power the council is not obliged to take into account every possible detail concerning the 'general housing circumstances', but may address those circumstances relatively broadly by considering 'the generally prevailing standard of accommodation in their area, with which people have to be satisfied' (*Tickner v Mole Valley DC* [1980] August *LAG Bulletin* 187, CA).
- 3.14.15 The numbers of applicants awaiting an allocation on the housing register may be a relevant consideration when the council is undertaking the comparison under s.177(2) (*Tickner v Mole Valley DC* [1980] August *LAG Bulletin* 187, CA).
- 3.14.16 In *Lomax* the decision-maker erred when concluding he should give "considerable weight" to the general circumstances in relation to housing in the council's district, when deciding it was reasonable for a severely disabled person to continue to occupy her present accommodation notwithstanding an imminent lack of care and detrimental impact on her mental health (*Lomax v Gosport BC* [2018] EWCA Civ 1846).

3.14.17 A council errs in law when using an incorrect comparator. For example, in *Lomax*, a severely disabled person was losing her 24-hour carer where evidence suggested staying in her accommodation would be detrimental to her mental health. A generalised reference to the situation of people on the council's housing register who were also needing one bedroom accommodation who, it was said, would also suffer medial or social impact, failed to have the required sharp focus on the applicant's particular disabilities and the consequences for her of remaining in the accommodation (*Lomax v Gosport BC* [2018] EWCA Civ 1846).⁵¹

Location

3.14.18 The location of accommodation may be relevant; the issue is not confined to the characteristics of the accommodation itself (*Lomax v Gosport BC* [2018] EWCA Civ 1846; *R v Wycombe DC ex p Homes* (1988) 22 HLR 150, QBD).

Permanence

3.14.19 Accommodation need not have some degree of permanence for it to be reasonable to continue to occupy (*Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA).

Possession proceedings

3.14.20 Deciding it is reasonable for an assured shorthold tenant to continue to occupy their tenanted accommodation, notwithstanding that they have received a valid section 21 notice, is not a lawful basis for not accepting a homeless

⁵¹ For examples in the county court in the context of overcrowding see *Mohamoud v Greenwich LBC* (2002) [2003] January *Legal Action* 23, CC and *Ali v Bristol CC* (2007) October *Legal Action* 26, CC.

application⁵² or not accepting the s.195 prevention duty,⁵³ since such applicants will ordinarily be owed the prevention duty.⁵⁴

3.14.21 The question of when an assured shorthold tenant who has received a valid s.21 notice *becomes homeless*, because it no longer reasonable to continue to occupy, arises where:

- The s.21 notice has expired.
- Possession proceedings have been issued.
- A possession order has been granted, and
- A bailiff's warrant has been applied for.⁵⁵

3.14.22 Where the applicant is an assured shorthold tenant who has received a section 21 notice which has expired, the Code states it is unlikely to be reasonable to continue to occupy if all of the following apply:

- The notice is valid and there would be no defence to possession proceedings.
- The council is satisfied the landlord intends to seek possession.
- Further efforts to persuade the landlord to allow the tenant to remain in the property are unlikely to be successful, and
- The council are not taking steps to persuade the landlord to allow the tenant to continue to occupy for a reasonable period to provide an opportunity for alternative accommodation to be found.⁵⁶

⁵² Unless the notice does not expire within 56 days, or unless the person has alternative accommodation available for them to occupy: s.175(5), 183, s.184.

⁵³ Unless the person is ineligible for assistance on immigration and nationality grounds: s.175(5), 195(1)–(2).

⁵⁴ See definition of 'threatened with homelessness' below.

⁵⁵ To enforce the terms of the possession order where the tenant has not relinquished possession.

⁵⁶ Para 6.39.

3.14.23 The Code further recommends:

- It is *highly unlikely* to be reasonable for a tenant to continue to occupy beyond the date on which the court has ordered them to give up possession.⁵⁷
- Councils *should not consider it reasonable* for the tenant to continue to occupy up until the point at which a court issues an eviction warrant to enforce a possession order.⁵⁸
- Councils *should ensure* homeless families and vulnerable persons owed the interim s.188 or main s.193 accommodation duties are *not evicted via the enforcement of a possession order*, because of the council's failure to make suitable accommodation available.⁵⁹

3.14.24 *Jarvis*⁶⁰ and *Ugbo*⁶¹ both concerned the lawfulness of council decisions that it was reasonable to continue to occupy beyond the expiry of a valid s.21 notice in circumstances where the applicants had no defence to possession proceedings. In *Jarvis* the decision was upheld in circumstances where the council had considered the Code and given adequate reasons. In *Ugbo* the council erred because there was no indication they had had regard to the guidance.⁶²

3.14.25 The Code suggests certain considerations that may be relevant when the council is considering if it is reasonable for an assured

⁵⁷ Para 6.36.

⁵⁸ Para 6.37.

⁵⁹ Para 6.38.

⁶⁰ *R v Croydon LBC ex p Jarvis* (1993) 26 HLR 194, QBD.

⁶¹ *R v Newham LBC ex p Ugbo* (1993) 26 HLR 263, QBD.

⁶² Para 10.12 of the 3rd (1991) edition of the Code of Guidance, which stated that councils should not require tenants to fight a possession action where the landlord has a certain prospect of success. Louis Blom-Cooper stated at 267 "The [council's] sub-committee did not consider this paragraph [10.12], which....they were bound to take into account, even if they might, for good reasons, reject the guidance contained in the Code."

shorthold tenant to continue to occupy when a valid s.21 notice has expired.⁶³

Armed Forces accommodation

- 3.14.26 The Code recommends that councils accept former armed forces personnel as homeless from the date on the Certificate of Cessation of Entitlement to Occupy Service Living Accommodation,⁶⁴ rather than requiring the Ministry of Defence to obtain a possession order (Para 24.8).

Special provision – homeless following PRSO

- 3.14.27 An applicant who has received a s.21 notice is deemed homeless⁶⁵ upon the expiry of the notice if:
- They previously applied as homeless to the same council.
 - That previous application was made on or after 9 November 2012.
 - The main housing duty was accepted as a result of the previous application.
 - The main duty ended because a private rented sector offer⁶⁶ was accepted.
 - The present application was made within two years of the date on which the private rented sector offer was accepted, and
 - The applicant remains eligible for assistance.⁶⁷

⁶³ See para 6.33.

⁶⁴ Six months' notice is given. The notice provides a date on which entitlement to occupy the service accommodation ends.

⁶⁵ And will be owed the s.189B(2) relief duty.

⁶⁶ A "private rented sector offer" ("PRSO") is a type of final offer to end the main housing duty, which is defined at s.193(7AC). In summary, a PRSO is an offer of an assured shorthold tenancy by a private landlord that has been arranged with the council's agreement for ending the main s.193(2) accommodation duty, where the fixed term is for a period of at least 12 months.

⁶⁷ s.195A. This deeming provision only operates once. Therefore, if an applicant re-applies for a second time within two years of accepting a private rented sector offer, they will be required to

3.14.28 An applicant to whom s.195A applies will be owed the main housing duty (if relief is unsuccessful) irrespective of priority need status, providing the applicant did not become homeless intentionally.⁶⁸

Illness & disability

3.14.29 Where medical reasons are given for accommodation not being reasonable to occupy, the council must inquire into them (*R v Wycombe DC ex p Homes* (1988) 22 HLR 150, QBD).

3.14.30 A medical opinion from the applicant's doctor or expert is a relevant consideration. It may be legitimate for the council to accept the doctor's opinion as to medical conditions, but not accept their views as to the effects of the conditions on the question of reasonableness (*Noh v Hammersmith and Fulham LBC* [2001] EWCA Civ 905).

3.14.31 It would not be reasonable for a wheelchair user to continue to occupy accommodation which was unsuitable because access is limited (Code, 6.39).

3.14.32 Where an applicant is disabled⁶⁹ the council must not breach the relevant equality duties.⁷⁰ The public sector equality duty⁷¹ requires the decision-maker to:

- Focus sharply on the applicant's disabilities and the consequences for them of continuing to occupy their accommodation, including the particular reasons why continuing in occupation may be detrimental to their health.

demonstrate a priority need if relief is unsuccessful, in order to be owed the main housing duty: s.195A(6).

⁶⁸ s.195A(1). Unless the main duty would only owed because of the presence of a 'restricted person' in the household: s.195A(5).

⁶⁹ The definition of disability is set out at section 6 of the Equality Act 2010.

⁷⁰ Under the Equality Act 2010.

⁷¹ Under section 149 of the Equality Act 2010.

- Have regard to the duty to take steps to meet the different needs of a disabled person, as compared with those who are not disabled (*Lomax v Gosport BC* [2018] EWCA Civ 1846).

Poor housing conditions

3.14.33 Arden (2019) observes:

*“Accommodation will have to be very poor indeed before an applicant can claim with confidence that it would not be reasonable to continue to occupy on the ground of its physical condition.”*⁷²

3.14.34 The presence of hazards⁷³ and the severity of hazards may be relevant considerations and matters about which reasons must be given when finding accommodation is reasonable to continue to occupy.⁷⁴

3.14.35 In the context of securing suitable accommodation the Code recommends that:

*“...housing authorities should, as a minimum, ensure that all accommodation is free of Category 1 hazards.”*⁷⁵

3.14.36 Where the council is taking enforcement action to address poor housing conditions, this may be a relevant consideration and provide a lawful basis for deciding the accommodation is reasonable to continue to occupy (e.g. *R v Kensington and Chelsea RLBC ex p Ben-El-Mabrouk* (1995) 27 HLR 564, CA).⁷⁶

⁷² *Homelessness and Allocations*, para 4.104.

⁷³ Housing Act 2004, sections 1 and 2.

⁷⁴ See, for example, *Khadija v Bristol CC* (2007) [2007] October *Legal Action* 26, CC and *Hashi v Birmingham CC* (2010) November *Legal Action* 19, CC.

⁷⁵ Para 4.104.

⁷⁶ Mr Ben-El-Mabrouk’s tenanted home was a two-roomed flat on the top floor of a six-floored HMO with inadequate fire prevention facilities and inadequate means of escape. There was no lift

Overcrowding

- 3.14.37 Overcrowding is a relevant fact when deciding whether it is reasonable to continue to occupy accommodation (*R v Eastleigh BC ex p Beattie (No 1)* (1983) 10 HLR 134, QBD).
- 3.14.38 A council should consider non-statutory overcrowding (*R v Westminster CC ex p Alouat* (1989) 21 HLR 477, QBD).
- 3.14.39 However, the fact that overcrowding falls short of statutory overcrowding is a relevant consideration (*R v Eastleigh BC ex p Beattie (No 2)* (1985) 17 HLR 168, QBD).
- 3.14.40 A landlord or occupier who causes or permits statutory overcrowding commits an offence.⁷⁷ Statutory overcrowding is established by determining whether either of the two measures are exceeded, namely:
- Two persons of the opposite sex must share a sleeping room (bedroom or living room) discounting children under 10 years of age (room standard),⁷⁸ and
 - The number of persons in the household exceeds the permitted number, according to the formulation at section 326 of the Housing Act 1985 (space standard).
- 3.14.41 Statutory overcrowding does not compel the council to accept that accommodation is not reasonable to continue to occupy (*Harouki v Kensington & Chelsea RLBC* [2007] EWCA Civ 1000).⁷⁹

and 98 stairs to the flat. The applicant resided there with his wife and newborn son, who had recently been delivered by cesarian section. An Environmental Health Officer engaged by the applicant had found the flat to be unfit for human habitation and prejudicial to health. At the time of the council's decision it had served a statutory notice on the owner in an attempt to remedy the inadequate means of escape. A first instance judgment that the 'not homeless' decision was irrational was overturned by the Court of Appeal.

⁷⁷ Subject to the definitions at Housing Act 1985, ss327 and 331.

⁷⁸ Housing Act 1986, s.325.

⁷⁹ Mr and Mrs Harouki's lived with their five children in a three bedroom flat. The overcrowding exceeded the space standard by half a person. The council's decision of 'not homeless', upheld on

3.14.42 A council may err if they apply only one of the two measures of overcrowding, e.g. the 'room' standard but not the 'space' standard (*Elrify v Westminster CC* [2007] EWCA Civ 332).⁸⁰

3.14.43 A decision-maker may err in law if they (1) fail to establish the particular degree of overcrowding in the applicant's case, or (2) rely on general assertions about the prevalence of overcrowding in the district, without identifying the extent to which overcrowding of a similar degree is prevalent (*Mohamoud v Greenwich LBC* (2002) [2003] January *Legal Action* 23, CC).

Residing with former partners

3.14.44 It may be reasonable for an applicant to continue to occupy accommodation with their ex partner (*Abdullah v Westminster CC* [2011] EWCA Civ 1171).⁸¹

Accommodation obtained by fraud

3.14.45 In *Chishimba*, obtaining accommodation using deception⁸² meant the applicant never had a lawful right to occupy. This in turn meant it was not reasonable for her to continue to occupy it (*Chishimba v Kensington & Chelsea RLBC* [2013] EWCA Civ 786).

appeal, stated "There are unfortunately a great many families currently living in overcrowded accommodation...I am of the view that there are many local families in more severely overcrowded conditions than you and your family...There are at present 21 households on the register who are in greater need than you for five bedroomed accommodation. Therefore, in comparison to the prevailing conditions...in this authority's area your circumstances...are not considered to be exceptional".

⁸⁰ In *Elrify* the council relied on the overcrowding exceeding the 'room' standard by only one person when deciding the applicant was not homeless. However they did not consider the 'space' standard, which resulted in an excess of two and a half persons. The finding on the degree of overcrowding was central to the council's decision that the accommodation was not so overcrowded as to be unreasonable to continue to occupy. Accordingly, that decision was flawed.

⁸¹ See also *R v Kensington and Chelsea RLBC ex p Moncada* (1996) 29 HLR 289, QBD.

⁸² Ms Chishimba, a Namibian national, used a counterfeit passport when applying as homeless, at a time when she had no right to remain in the UK.

3.15 Threatened with homelessness

3.15.1 Section 175(4) and (5) state:

“(4) A person is threatened with homelessness if it is likely that he will become homeless within 56 days.

(5) A person is also threatened with homelessness if –

- (a) a valid notice has been given to the person under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) in respect of the only accommodation the person has that is available for the person’s occupation, and*
- (b) that notice will expire within 56 days.”*

Subsection (4) definition

3.15.2 There is no reason in principle for distinguishing between the definition of ‘homelessness’ and the s.175(4) definition of ‘threatened with homelessness’, except for the 56-day requirement (*Dyson v Kerrier DC* [1980] 1 WLR 1205).

3.15.3 Deciding whether a person is threatened with homelessness most commonly involves considering:

- The likelihood they will lose the legal right to occupy their present accommodation within the next 56 days

However, the council may also be required to consider:

- The likelihood that the applicant’s accommodation will cease to be available within 56 days,⁸³ and/or
- The likelihood their accommodation will cease to be reasonable to continue to occupy within the next 56 days.⁸⁴

⁸³ See the definition of homelessness above.

⁸⁴ See the definition of homelessness above.

Valid section 21 notices

- 3.15.4 There are many circumstances in which a notice may be invalid or ineffective.
- 3.15.5 Section 175(5) addresses the situation where the notice has been *given to the applicant*. Therefore, a person who is not the tenant is not deemed to be threatened with homelessness by virtue of s.175(5). Whether they are threatened with homelessness will depend on the application of s.175(4) on the facts.
- 3.15.6 Likewise an assured shorthold tenant who is the applicant but who has been served with a Notice of Seeking Possession.⁸⁵

⁸⁵ Under section 8 of the Housing Act 1988.