

6. INTERIM ACCOMMODATION DUTY

6.1 Introduction

6.1.1 The interim duty, under section 188, is the first accommodation duty which may be owed to an applicant under Part 7.

6.1.2 Where an applicant is homeless (or may be homeless)²⁰⁸ it is important to establish whether the council owes the interim accommodation duty.

6.1.3 The purpose of the duty is to provide accommodation on an interim basis while the council undertakes inquiries to determine whether a substantive housing duty is owed.

6.2 Relationship to relief duty

6.2.1 The interim accommodation duty (under s.188) is different to the relief duty (under s.189B). The former is a duty to provide accommodation.²⁰⁹ The latter is a duty to take reasonable steps to help the applicant obtain suitable accommodation.²¹⁰

6.2.2 A council may accept both the relief and interim accommodation duty, so they run in parallel. However, for someone who is eligible and homeless the interim accommodation duty is usually only owed if the council also has reason to believe that they may have a priority need.²¹¹

6.2.3 The interim accommodation duty and relief duty differ in terms of:

- The circumstances in which the duties are owed.

²⁰⁸ See the section 'When the duty is owed' later in this chapter.

²⁰⁹ Whether the council provides the accommodation itself, arranges for it to be provided by a third party, or gives such advice or assistance as will ensure a third party provides accommodation; s.206(1). See the section 'Performing the duty' later in this chapter.

²¹⁰ See the chapter 'Relief duty'.

²¹¹ See the chapters 'Homelessness' and 'Priority need' for the statutory definitions. For the circumstances in which the interim accommodation duty is owed see the sections 'When the duty is owed' and 'Re-application with two years of PRSO' later in this chapter.

- The action the council must take, and
- The circumstances in which each duty ends.

6.2.4 It is therefore possible in an individual case that:

- While the council accepts the relief duty (i.e. the obligation to take reasonable steps to help the applicant obtain accommodation), the council may not be obliged to actually *secure* accommodation.
- The interim accommodation duty may end before the relief duty ends, notwithstanding that the applicant remains homeless.²¹² Conversely, in certain circumstances, the interim duty will continue beyond the end of relief.²¹³

6.3 Other accommodation duties

6.3.1 This chapter concerns the s.188 duty.

6.3.2 There are two other 'interim' duties to secure accommodation. Both are owed when a council initiates the process of referring an applicant's case to another council (see the chapter 'Local connection referrals').

6.3.3 In addition, other accommodation duties may be owed when the s.188 interim duty ends, depending on what decisions are made on the application.²¹⁴

6.4 When the duty is owed²¹⁵

6.4.1 Section 188(1) provides:

"If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a

²¹² See the section 'Ending the duty' later in this chapter.

²¹³ See, for example, the section 'Ending relief duty but failing to make s.184 decision' later in this chapter.

²¹⁴ See the section 'Alternative accommodation duties arising when the interim s.188 duty ends' later in this chapter.

²¹⁵ See also the section 'Re-application within 2 years of PRSO' later in this chapter.

priority need, they must secure that accommodation is available for the applicant's occupation."

- 6.4.2 Consequently, the council must have reason to believe that the applicant:
- May be eligible for assistance (on immigration and nationality grounds), *and*
 - May be homeless,²¹⁶ *and*
 - May have a priority need.²¹⁷
- 6.4.3 The duty may be owed immediately when the applicant initially requests assistance. Alternatively the duty may arise subsequently, e.g. if the applicant is only threatened with homelessness when they apply but are later excluded from their accommodation.
- 6.4.4 Homelessness is not merely an absence of accommodation which the applicant has a right to occupy (s.175(1)), but also incorporates:
- Where there is a legal right to occupy accommodation but the accommodation is not physically available (s.175(1) and (2)).
 - Where accommodation is deemed not to be available because it is not available for a person in the applicant's household (as defined by s.176), and
 - Where it is not reasonable to continue to occupy accommodation (s.175(3) and s.177).²¹⁸
- 6.4.5 Thus a council erred by refusing to secure s.188 accommodation when approached by an applicant occupying a one-bedroom flat

²¹⁶ See the chapter 'Homelessness' for the statutory definition of homelessness.

²¹⁷ See the chapter 'Priority need' for the priority need categories and associated definitions.

²¹⁸ See the chapter 'Homelessness' for a more detailed explanation of how the legal definition of homelessness operates. In addition, a person with a mobile home is homeless if they do not have a place where are permitted to place it and reside in it (s.177(2)).

together with six other persons (*R v Haringey LBC ex p Ulger* (1992) December *Legal Action* 21, QBD).²¹⁹

6.4.6 If the applicant is threatened with homelessness but the council has no reason to believe they may have become homeless, the interim accommodation duty is not owed (s.188(1)).²²⁰

6.4.7 The interim accommodation duty arises whether or not the applicant has a local connection with the council's area:

"The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200)." (s.188(2))

6.4.8 The s.188 accommodation duty may not be referred to another council when a referral is sought under s.198. The council which received the application may however owe an *alternative* accommodation duty upon initiating the referral process.²²¹

Low threshold

6.4.9 The threshold test is very low, with only a low degree of certainty required on the council's part (*R (M) v Hammersmith and Fulham LBC* [2006] EWCA Civ 917; *R (Aweys) v Birmingham CC* [2007] EWHC 52 (Admin)).

6.4.10 For example, an applicant informing the council that she is pregnant will ordinarily give the council 'reason to believe' that she 'may be' pregnant (e.g. *Complaint against Tower Hamlets LBC*, 19 000 068, 11 November 2019).

Burden of proof

²¹⁹ There being a reason to believe that the accommodation may not be reasonable to continue to occupy because of the overcrowding.

²²⁰ If the applicant is threatened with homelessness and eligible for assistance the council will owe the s.195 prevention duty. See the chapter 'Prevention duty'.

²²¹ Under s.199A(2) or s.200(1), depending on whether the referral process is initiated when the council accept that the applicant is eligible and homeless, or when the relief duty ends. See the section 'Alternative accommodation duties arising when the s.188 interim duty ends' later in this chapter, and the chapter 'Local connection' referrals'.

- 6.4.11 The burden is on the council to determine whether the duty is owed, rather than on the applicant to prove their case (*R v Woodspring DC ex p Walters* (1984) 16 HLR 73, QBD).
- 6.4.12 Nonetheless it will generally be in an applicant's interests to put information and evidence before the council.
- 6.4.13 There have been many Ombudsman reports where councils have incorrectly required the applicant to provide medical evidence as a requirement of securing interim accommodation. In *Complaint against Ealing LBC* (90/A/2032) a disabled single man presented upon discharge from hospital. The council informed him that no temporary accommodation would be provided until he provided a letter from the hospital or medical information. The Ombudsman stated "instead of making enquiries themselves, the council left it to [the applicant] to obtain medical evidence", and recommended compensation of £1,000.
- 6.4.14 In *Complaint against Harrow LBC* the council incorrectly concluded that it needed evidence from the police to confirm domestic abuse or violence before interim accommodation could be offered. The applicant had previously been stalked and harassed by a violent ex-partner. However, the council did not assess whether there was a probable risk of abuse or violence if the applicant remained in her accommodation. Compensation of £800 was agreed in recognition of distress and the impact of leaving the applicant in accommodation where she was exposed to the risk of harm (19 000 787, 28 October 2019).
- 6.4.15 While irrationality is a high threshold, it is not uncommon for applicants to be able to legitimately assert that no council could rationally decide there is not the requisite 'reason to believe' on the information available to them.²²²

²²² See 'Gatekeeping' section below.

6.5 Gatekeeping

- 6.5.1 In *Kelly and Mehari* a council's practices were held to be unlawful. The council's documents did not refer to the s.188(1) test and instructed staff to consider whether the applicant would be at "risk of harm" if "sent home" (*R (Kelly and Mehari) v Birmingham CC* [2009] EWHC 3240 (Admin)).
- 6.5.2 The council cannot fetter its discretion by introducing additional non-statutory requirements which prevent it from properly exercising its discretion, e.g. by insisting on evidence the applicant does not have before accepting the duty (e.g. *Complaint against Tower Hamlets LBC*, 19 000 068, 11 November 2019; *Complaint against Hounslow LBC*, 17 018 631, 3 October 2018).²²³
- 6.5.3 In *IA* the applicant was a refugee who had been subjected to mental and physical torture. He presented with medical evidence detailing depression, panic attacks, insomnia, back and leg pains affecting mobility, difficulty in coping, and a list of medication. Following a one-hour interview the homeless officer gave the applicant a non-priority need decision letter that was written during the interview. On an application for permission for judicial review it was held the applicant had good prospects of establishing the council was in breach of the s.188(1) duty in not securing interim accommodation pending a lawful s.184 decision as to what duty was owed (*R (IA) v Westminster CC* [2013] EWHC 1273 (QB)).
- 6.5.4 The Ombudsman may recommend compensation if injustice is caused by a failure to perform the s.188 duty, e.g. if the applicant has experienced homelessness or occupied unsuitable accommodation as a result (e.g. *Complaint against Hounslow*

²²³ See 'Fettering discretion' section in the chapter 'Sources of law and principles of decision-making'.

LBC, 18 000 644, 9 November 2018; Complaint against Haringey LBC, 18 015 518, 7 October 2019).

Challenging a failure to secure accommodation

6.5.5 No statutory right to request a review or appeal lies against a refusal or failure to provide interim accommodation.

6.5.6 Any legal challenge to a refusal to secure interim accommodation (or failure to consider the issue) must therefore be made via judicial review.

6.6 Duty to notify non-acceptance?

6.6.1 Councils are not required by the Act to notify applicants of a decision that the interim accommodation duty is not owed.

6.6.2 It may be in an applicant's interests to request written confirmation of whether the duty is accepted, and if not, the council's reasons. This is particularly the case where the council's decision (or failure to consider the issue) is arguably unlawful.²²⁴

6.7 Re-application within 2 years of PRSO

6.7.1 Special provisions apply where:

- The applicant was previously owed the main s.193 housing duty.
- That duty ended via the acceptance of a 'private rented sector offer' (under s.193(7AA) to (7AC)).²²⁵
- The applicant re-applies to the same council within two years of when they accepted the final offer, and
- The council has reason to believe that the main s.193(2) housing duty may apply.²²⁶

²²⁴ Where appropriate in the form a pre-action letter threatening judicial review from a solicitor with a legal aid contract for housing.

²²⁵ See the section 'Final private rented sector offer ('PRSOs') – generally' in the chapter 'Main housing duty'.

6.7.2 Section 188(2A) states:

“...if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant’s occupation until the later of paragraph (a) or (b) of subsection (1ZB) regardless of whether the applicant has a priority need.”

6.7.3 Section 195A states:

“(1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority –

- (a) is satisfied that the applicant is homeless and eligible for assistance, and*
- (b) is not satisfied that the applicant became homeless intentionally,*

the duty under section 193(2) applies regardless of whether the applicant has a priority need.”

6.7.4 Accordingly the interim accommodation duty is owed irrespective of apparent priority need if the above conditions are met.

6.7.5 However, if the council would not be satisfied that the main duty is owed except for a restricted person,²²⁷ they must have reason to believe the applicant may have a priority need for the interim accommodation duty to be owed upon receiving such a re-application (s.195A(5)).

²²⁶ See the section ‘When the duty is owed’ in the chapter ‘Main housing duty’, although note the effect of s.188(2A) in relation to priority need detailed in the following paragraphs.

²²⁷ ‘Restricted person’ is defined at s.184(7). See the section ‘Restricted person’ in the chapter ‘Main housing duty’.

6.7.6 An applicant benefitting from s.188(2A) is deemed to be homeless when a valid s.21 notice expires (s.195A(2)):

“For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.”

6.8 Performing the duty

6.8.1 Performance of the interim accommodation duty cannot be postponed (*R v Newham LBC ex p Mashuda Begum* [2000] 2 All ER 72, QBD).

6.8.2 The council is only obliged to make one offer of accommodation (*R (Brooks) v Islington LBC* [2015] EWHC 2657 (Admin)).²²⁸

6.8.3 Accommodation secured must be:

- Available, and
- Suitable (s.206).

Availability

6.8.4 The accommodation must be physically available for the applicant.²²⁹

6.8.5 The accommodation secured must be available for the applicant together with:

- Any person who normally resides with the applicant as a member of their family, and
- Any person who might reasonably be expected to reside with them (s.176).²³⁰

²²⁸ Although an alternative accommodation duty may be owed when the s.188 duty ends. See the section 'Alternative accommodation duties arising when the interim s.188 duty ends' later in this chapter.

²²⁹ See *Carstens* below, in the 'Refusal of interim accommodation' section, although the court's reasoning in that case was based on the absence of a refusal.

²³⁰ See the section 'Availability for household members' in the chapter 'Homelessness'.

Bed & breakfast

- 6.8.6 Bed and breakfast accommodation²³¹ is deemed to be unsuitable when performing an accommodation duty for an applicant with family commitments,²³² unless there is no other accommodation available, and then only up to a maximum of six weeks.²³³

16 & 17 year-olds

- 6.8.7 The s.188 duty may be owed pending the referral of a 16 or 17-year-old to social services, or pending acceptance by social services that they are a 'child in need' requiring accommodation under section 20 of the Children Act 1989 (*R (M) v Hammersmith and Fulham LBC* [2008] UKHL 14).²³⁴

'Homeless at home'

- 6.8.8 Where an applicant is homeless because it is not reasonable for them to continue to occupy accommodation,²³⁵ the council may perform the s.188 duty by arranging for the applicant to stay in the same accommodation for a short period, providing it is suitable (*Ali v Birmingham CC* [2009] UKHL 36).
- 6.8.9 Similarly there is no obligation to provide *alternative* accommodation if:
- The applicant informs the council they are willing to remain in their current accommodation
- providing that the applicant knows that:

²³¹ The term 'bed and breakfast' is defined by regulations (SI 2003 No 3326, Art. 2). See the section 'Bed & breakfast' in the chapter 'Suitability of accommodation'.

²³² An applicant with family commitments includes a person with whom dependent children reside, or might reasonably be expected to reside, someone who is pregnant, and someone with whom a pregnant woman resides or might reasonably be expected to reside; SI 2003 No 3326, Art. 2.

²³³ See the section 'Bed & breakfast' in the chapter 'Suitability of accommodation'.

²³⁴ The applicant should be asked to consent to a referral to social services. See the chapter 'Social services duties'.

²³⁵ See the section 'Reasonable to continue to occupy' in the chapter 'Homelessness'.

- They have a right to interim accommodation, and
- They can subsequently request interim accommodation at a later point,

so they can make an informed decision (*R (Edwards) v Birmingham CC* [2016] EWCA Civ 173).

- 6.8.10 In these circumstances the council may rely on the applicant's 'self-certification' of the suitability of the accommodation (*R (Edwards) v Birmingham CC* [2016] EWCA Civ 173).

Moving the applicant

- 6.8.11 The council may perform the duty by providing a series of placements.
- 6.8.12 There is nothing unlawful *per se* with requiring the applicant to move at short notice (*R (Araya) v Leeds CC* [2009] EWHC 1962 (Admin)).
- 6.8.13 If the applicant refuses suitable accommodation the council may treat the duty as having ended.²³⁶

Suitability²³⁷

- 6.8.14 The accommodation must be suitable for the applicant and their household members (s.206(1)).²³⁸
- 6.8.15 The council has a wide discretion when deciding what is suitable for the applicant's needs.
- 6.8.16 Suitability requires consideration of the applicant's particular needs and circumstances, as well as the matters specified in the legislation (*R v Brent LBC ex p Omar* (1991) 23 HLR 446, QBD).

²³⁶ See the section 'Ending the duty' later in this chapter.

²³⁷ See also the chapter 'Suitability of accommodation'.

²³⁸ The definition of household member is governed by section 176. See the section 'Availability for household members' in the chapter 'Homelessness'.

- 6.8.17 Resources – e.g. financial constraints and limited availability of accommodation – are relevant matters that can be taken into account when deciding whether a particular unit of accommodation is suitable (*R v Newham LBC ex p Sacupima* (2001) 33 HLR 2, CA).
- 6.8.18 There are degrees of suitability. What is suitable in the short term may not be suitable in the longer term (*Ali v Birmingham CC* [2009] UKHL, 36).
- 6.8.19 Practically this means that a lower standard of accommodation may be used to perform the interim duty.
- 6.8.20 However, there is a 'bottom line' below which no reasonable authority could decide that accommodation is suitable (*R (Sacupima) v Newham LBC* [2001] 1 WLR 563, CA; *R v Newham LBC ex p Ojuri (No 3)* (1998) 31 HLR 542, QB).²³⁹
- 6.8.21 For accommodation to be suitable it must be affordable (s.206; SI 1996 No 3204; *R v Tower Hamlets LBC ex p Kaur* (1994) 26 HLR 597, QB).

Charges

- 6.8.22 The council may require the applicant to pay reasonable charges in respect of the accommodation it secures (s.206(2)).

Challenging suitability of interim accommodation

- 6.8.23 No right to a review or appeal lies against a decision on the suitability of interim accommodation (or a failure to consider its suitability).
- 6.8.24 Any legal challenge must therefore be made via judicial review.

Record keeping

²³⁹ As well as not making an irrational decision the council must determine the issue of suitability without making any other error of law. See the section 'Grounds for judicial review' and subsequent sections in the chapter 'Sources of law and principles of decision-making'. In *Sacupima* the council erred by failing to take the location of interim accommodation into account.

6.8.25 The council should consider representations and document how decisions are reached. See, for example, *Complaint against Tower Hamlets LBC* (19 000 068, 11 November 2019) where the council failed to properly consider concerns raised by a pregnant applicant about harassment and the suitability of unfurnished interim accommodation an hour away from its area. The council did not record how it considered information provided by the applicant about her specific needs was considered. Neither did the council record its reasons for deciding that the accommodation was suitable. The council could not provide a satisfactory explanation, even retrospectively, and its contemporaneous records did not assist. Compensation of £1,000 was recommended.²⁴⁰

6.9 Ending the duty

6.9.1 The interim accommodation duty ordinarily ends when the applicant is notified of the council's decision as to what duty is owed. However, there are exceptions. In addition, the council is obliged to notify the applicant of certain matters.²⁴¹

6.9.2 The applicant may be owed another accommodation duty when the s.188 duty ends.²⁴²

Ineligible or not homeless and relief duty not owed

²⁴⁰ The report stated "An explanation of what happened that is given after the events, either in a complaint response or during our investigations, may provide relevant evidence. However, it would not necessarily prove the Council acted without fault. This is because we need evidence that shows the Council exercised its discretion properly at the time it made its decision. Officers must keep contemporaneous case notes" (para 24).

²⁴¹ The precise circumstances in which the interim accommodation duty can legitimately be treated as having ended are set out in the remainder of this chapter. The ending of the duty is governed by s.188(1ZA), s.188(1ZB), s.188(2A) and, in respect of the refusal or loss of accommodation, case law.

²⁴² See the section 'Alternative accommodation duties arising when the interim s.188 duty ends' later in this chapter. Also see the chapters 'Main housing duty', 'Section 190 accommodation duty' and 'Local connection referrals' for the precise circumstances in which these alternative accommodation duties are owed.

- 6.9.3 The interim accommodation duty ends if the council notifies the applicant of a decision that they are not owed the relief duty (s.188(1ZB)).²⁴³
- 6.9.4 The notification must – in order to end the s.188 duty – notify the applicant of the fact that they are not owed another homelessness duty.²⁴⁴
- 6.9.5 The Code states that if an applicant is found ineligible information and advice must be provided under s.179 (15.12).
Homeless but case being referred
- 6.9.6 Where the council is satisfied that the applicant is eligible and homeless but are also satisfied that the referral conditions apply, they may initiate the s.198 referral procedure (instead of accepting relief).²⁴⁵
- 6.9.7 The s.188 duty ends if the council:
- Notifies the applicant of its decision that the relief duty is not owed; and
 - Notifies the applicant of its decision as to what other duty (if any) is owed (s.188(1ZB), s.199A(1)).
- 6.9.8 There is a duty to secure interim accommodation (pending the outcome of the referral request) if the council has reason to

²⁴³ The relief duty will not be owed if, upon completing its initial s.184 inquiries, the council is satisfied that the applicant is ineligible for assistance (on immigration and nationality grounds), not homeless.

²⁴⁴ Section 188(1ZB) states the interim duty ends upon the later of the applicant being (a) notified that they are not owed the relief duty, and (b) notified of the decision as to what duty (if any) they are owed. One would expect the council to combine this information in the same notification. The applicant will not ordinarily be owed another duty because they are ineligible or not homeless. An exception may arise if the protection of belongings duty is owed (s.211(2); see the chapter 'Protection of Belongings').

²⁴⁵ See the chapter 'Local connection referral' for details of the referral conditions and the referral process generally.

believe that the applicant may have a priority need (s.199A(2)).²⁴⁶

Refusal of interim accommodation

- 6.9.9 The s.188 duty will have been performed if the applicant refuses an offer of suitable accommodation (*R (Brooks) v Islington LBC* [2015] EWHC 2659).
- 6.9.10 The duty is not discharged unless the applicant unreasonably refuses the accommodation or acts in a wholly unreasonable manner (*R (Carstens) v Basildon DC* [2006] EWHC Admin, 7 November; (2007) Sept *Legal Action* 18).
- 6.9.11 In *Carstens* Basildon DC booked a B&B in Southend. The applicant could not raise the money to travel to the accommodation until the next day, by which time the council had cancelled the booking. The council had not discharged the duty as the applicant had not rejected the accommodation.
- 6.9.12 The relief duty will continue (if it is owed) notwithstanding the ending of the accommodation duty, until one of the statutory grounds for ending relief applies (s.189B, s.193A–s.193C).²⁴⁷
- 6.9.13 If the applicant has previously refused an offer of interim accommodation, the council cannot be required to secure further accommodation under a continuing s.188 duty unless there is a change in the applicant's circumstances (*R (Brooks) v Islington LBC* [2015] EWHC 2659).

Breach of rules and exclusion

- 6.9.14 A council may terminate the s.188 duty if the applicant persistently refuses to comply with reasonable requirements

²⁴⁶ See the chapter 'Local connection referrals'. By contrast if the referral process is initiated when the relief duty ends there is a duty to accommodate in all cases, pending the outcome of the referral. This reflects the fact that applicants must have a priority need for the council to exercise the power to seek a referral of their case at this later stage (s.198(1)).

²⁴⁷ There are also notification requirements. See the chapter 'Relief duty'.

imposed in relation to their occupation of the accommodation (*R v Kensington and Chelsea RLBC ex p Kujtim* [1999] 4 ER 161 by analogy).²⁴⁸

- 6.9.15 Before concluding there has been such a refusal it is desirable that the council issues a final written warning (*Kujtim*).
- 6.9.16 The council must act reasonably when deciding to treat the interim duty as having ended. Fairness may require giving the applicant an opportunity to put their case.²⁴⁹ The degree of seriousness of the applicant's breach is a relevant factor when deciding whether a warning should be given before treating the duty as having ended.
- 6.9.17 The relief duty will continue (if it is owed) notwithstanding the withdrawal of s.188 accommodation, until one of the statutory grounds for ending relief applies (s.189B, s.193A–s.193C).²⁵⁰
Ending the duty versus ending the right to occupy²⁵¹
- 6.9.18 There is a distinction between the ending of a Part 7 duty and the termination of a person's right to occupy.
- 6.9.19 Accommodation secured to perform the s.188 duty which is occupied under a licence is excluded from basic protection.²⁵² As such the licensor is not required to serve a four-week notice to quit and obtain a possession order (*R (ZH and CN) v Lewisham LBC* [2014] UKSC 62).
- 6.9.20 An unprotected licence may be terminated by the giving of reasonable notice. Alternatively the licensor must, where

²⁴⁸ *Kujtim*, also reported as *Kutjim*, concerned accommodation secured by social services under section 21 of the National Assistance Act 1948. See now the Care Act 2014.

²⁴⁹ A decision to treat the duty as having ended is challengeable on the usual public law grounds. See the chapter 'Sources of law and principles of decision-making'.

²⁵⁰ There are also notification requirements. See chapter 'Relief duty'.

²⁵¹ A detailed explanation of the notice and possession requirements for the different type of licence and tenancy is beyond the scope of these notes.

²⁵² Section 3 of the Protection of Eviction Act 1977, which provides that a court order is required to recover possession, does not apply since the premises is not 'let as a dwelling'.

applicable, give the period of notice contractually required under the terms of the licence.

6.9.21 While the notice period in relation to interim accommodation will ordinarily be short, councils are under a public law duty to act reasonably (*R v Secretary of State for the Home Department ex p Shelter* [1997] COD 49, QBD).

6.9.22 The Code states:

"If (section 188) interim accommodation has been provided, notice periods should take account of the needs of the applicant and the time required for them to access assistance. For households including children or particularly vulnerable adults who are owed duties under the Children Act 1989 or Care Act 2014, the local authorities should consider having arrangements in place to manage a transition in responsibilities, so that there is no break in the provision of accommodation..." (15.12)

"...housing authorities...must act reasonably by giving the applicant at least some opportunity to find alternative accommodation before the interim accommodation is terminated. What is considered 'reasonable notice' would depend on the facts of the case, taking into account the circumstances of the applicant and allowing time for them to consider whether to request a review of the decision." (15.20)

6.9.23 In *Ojuri* the giving of one day's notice to terminate interim s.188(3) accommodation pending review was arguably unlawful (*R v Newham LBC ex p Ojuri (No 5)* (1999) 31 HLR 631, QBD).

6.9.24 In *Lumley* a young single man asserting mental illness was given six days' notice to vacate interim accommodation following an adverse s.184 decision. This would have been lawful, had the

decision not been flawed (*R v Newham LBC ex p Lumley* [2000] EWHC Admin 285).

Losing interim accommodation and intentional homelessness

- 6.9.25 A person does not cease to be homeless by virtue of being secured interim accommodation, for this would defeat the purpose of the Act (*R (Alam) v Tower Hamlets LBC* [2009] EWHC 44 (Admin); *Birmingham CC v Ali* [2009] UKHL 36).
- 6.9.26 Therefore, actions leading to the loss of interim accommodation should not be used as the basis for finding a person became homeless intentionally (*Din v Wandsworth LBC* [1983] 1 AC 657; *R v Islington LBC ex p Hassan* (1995) 27 HLR 485, QBD).²⁵³

Non-priority decisions

- 6.9.27 S.188(1ZA) states:
- “In a case in which the local housing authority conclude their inquiries under section 184 and decide that the applicant does not have a priority need–*
- (a) where the authority decide that they do not owe the applicant a duty under section 189B(2), the duty under subsection (1) comes to an end when the authority notify the applicant of that decision, or*
- (b) otherwise, the duty under subsection (1) comes to an end upon the authority notifying the applicant of their decision that, upon the duty under section 189B(2) coming to an end, they do not owe the applicant any other duty under section 190 or 193.*

²⁵³ Compare with the intentional loss of main duty accommodation, which results in that duty ending (s.193(6)(b)). See the section ‘Intentionally homeless from temporary accommodation’ in the chapter ‘Main housing duty’.

- 6.9.28 Thus, a decision that the applicant does not have a priority need enables the council to end the interim accommodation duty.
- 6.9.29 When the council completes its s.184 inquiries and decides that the relief duty is not owed the s.188 duty ends when the applicant is notified of that decision (s.188(1ZA)(a)).
- 6.9.30 In many cases the relief duty will have previously been accepted. In these circumstances the s.188 duty ends when the council notifies the applicant that:
- The relief duty has ended,²⁵⁴ and
 - No further accommodation duty will be owed under s.190 or s.193 (s.188(1ZA)(b); *R (Mitchell) v Islington LBC* [2020] EWHC 1478 (Admin)).
- 6.9.31 Accordingly, notifying a non-priority decision at any point in time during the relief duty enables the council to end the interim accommodation duty, notwithstanding that the relief duty continues (*Mitchell*).
- 6.9.32 No replacement accommodation duty will be owed given that the applicant does not have a priority need.
- 6.9.33 In *Mitchell* the council notified the applicant of its decision that he did not have a priority need. The relief duty continued. The notification was not sufficient to end the interim duty because it did not, as required by s.188(1ZA)(b), notify the applicant that, when the relief duty ended, neither the s.190 or s.193 duty would be owed (*R (Mitchell) v Islington LBC* [2020] EWHC 1478 (Admin)).

Other cases – generally

²⁵⁴ The notification relating to the ending of relief must meet certain statutory requirements, under section 189B(6). See the section 'Discharge notice requirements' in the chapter 'Relief duty'.

6.9.34 In respect of cases where there has been no negative priority need decision, section 188(1ZB) states:

“In any other case, the duty under subsection (1) comes to an end upon the later of–

- (a) the duty owed to the applicant under section 189B(2) coming to an end or the authority notifying the applicant that they have decided that they do not owe the applicant a duty under that section, and*
- (b) the authority notifying the applicant of their decision as to what duty (if any) they owe to the applicant under the following provisions of this Part upon the duty under section 189B(2) coming to an end.”*

6.9.35 Therefore, where the applicant has a priority need, or where a negative priority need decision is unnecessary, one must consider:

- Whether the applicant has been notified that the relief duty is not owed or has ended, and
- Whether the applicant has been notified of the decision as to what Part 7 duty is owed when the relief duty ends.

6.9.36 The interim accommodation duty will end upon the later of these two notifications.²⁵⁵

6.9.37 The Act does not prevent a decision being taken during relief (i.e. before there are grounds for ending relief) on what duty will be owed when relief ends (at a later point in time).²⁵⁶ For example, a decision that a priority need applicant became homeless intentionally could be taken two weeks ‘into relief’ providing the council has completed the necessary inquiries.

²⁵⁵ Albeit that the notifications may be contained in the same document or otherwise be given simultaneously.

²⁵⁶ The wording of s.188(1ZA) and (1ZB) acknowledges this possibility by the wording “upon the duty under section 189B(2) coming to an end”. See also *R (Mitchell) v Islington LBC* [2020] EWHC 1478 (Admin), and the Code at paras 13.9 to 13.11 and 15.9.

End of 56 days

- 6.9.38 If a period of 56 days passes²⁵⁷ and the council have complied with the 'reasonable steps' duty, the council may end the relief duty by notifying the applicant.²⁵⁸
- 6.9.39 This results in the interim accommodation duty also ending, providing the applicant is notified of what other duty (if any) is owed (s.188 (1ZA) and (1ZB)).²⁵⁹

Priority need but intentionally homeless

- 6.9.40 The simultaneous notification of an intentional decision and a decision to end the relief duty ends the interim accommodation duty (s.188(1ZB)).²⁶⁰
- 6.9.41 The notification of a decision *during the relief duty* that an applicant became homeless intentionally (and so will not be owed the main housing duty) will not end the interim accommodation duty.²⁶¹ The interim duty continues until the relief duty ends and the council has notified the applicant that the short-term s.190 duty is owed (s.188(1ZB)).
- 6.9.42 In *Harris* an applicant sought judicial review of a decision to treat the interim duty as having ended in circumstances where:
- A decision that the applicant was priority need but intentionally homeless had been notified.
 - The s.190 duty was asserted by the council to be owed.

²⁵⁷ From the date on which the council were first satisfied that the applicant was homeless and eligible for assistance (s.189B(7)b)).

²⁵⁸ s.189B(5) to (7). See the section 'End of 56 days' in the chapter 'Relief duty' for the requirements relating to this discharge ground and the associated notification requirements.

²⁵⁹ If the council decide that the applicant does not have a priority need, the statutory requirement under subsection (1ZA) is that the applicant is notified that the council does not either the section 190 or section 193 duty.

²⁶⁰ Assuming the council accepts the applicant has a priority need. The council must have grounds for ending the relief duty (see the chapter 'Relief duty') and notify the applicant what duty is owed when the relief duty ends (s.188(1ZB)).

²⁶¹ Assuming the council is satisfied the applicant has a priority need.

But where:

- No personal housing plan had been provided.
- No decision that the s.189B relief duty had ended had been notified.

6.9.43 The applicant asserted that the duty to notify the plan was a necessary precursor to the s.189B(2) relief duty. Further, a s.184(3) notice as to what duties are owed under s.189A and s.189B is required, and that when considering advice under s.190, regard must be had to the s.189A assessment and plan.

6.9.44 The claim was settled by a consent order by which the council agreed the s.188(1) duty had not ended (*R (Harris) v Islington LBC* [2019] EWHC (Admin) CO/1282/2019 (unreported)).

6.9.45 The s.190 duty requires accommodation to be secured for a period of time which the council considers will give the applicant a reasonable opportunity of securing alternative accommodation for themselves (s.190(2)).²⁶²

Refusal of final offer during relief

6.9.46 A refusal of a final offer (made for the purpose of ending the relief duty) ends the interim accommodation duty, providing the offer does in fact constitute a final offer and the council has complied with certain statutory requirements (s.188(1ZB), s.193A).²⁶³

6.9.47 However, the interim accommodation duty continues if the applicant refuses the final offer and asks the council to review the suitability of the accommodation offered. In these circumstances the duty does not end until the applicant is notified of the review decision (s.188(2A), s.193A).

²⁶² See the chapter 'Section 190 accommodation duty'.

²⁶³ See the section 'Final offer' in the chapter 'Relief duty' for the requirements relating to final offers.

End of interim accommodation duty because of a non-final offer – generally²⁶⁴

- 6.9.48 Some offers of accommodation made to the applicant during relief will not qualify as final offers.²⁶⁵
- 6.9.49 The action which the council must take to end the interim accommodation duty when relying on a non-final offer principally depends on whether the applicant accepts or refuses the accommodation.

Refusal of non-final offer

- 6.9.50 If the applicant refuses a non-final offer the council may end the relief duty. This may in turn have the effect of ending the interim accommodation duty.²⁶⁶
- 6.9.51 However, merely notifying a decision to end the relief duty is not sufficient to end the s.188 accommodation duty. The applicant must also be notified of what duty (if any) will be owed when the relief duty ends (s.188(1ZA) and (1ZB)).²⁶⁷
- 6.9.52 This will, in turn, usually require a decision on whether the applicant has a priority need, and if so, whether the applicant became homeless intentionally.²⁶⁸
- 6.9.53 A council is unlikely to end the relief duty because a non-final offer has been refused if the applicant has a priority need and did not become homeless intentionally. In these circumstances ending the relief duty will simply result in the main housing duty

²⁶⁴ The term 'non-final offer' is used by the author for those offers of accommodation arising during relief that do not qualify as a 'final offer' as defined by s.193A.

²⁶⁵ For the definition of 'final offer' see the section 'Final offer' in the chapter 'Relief duty'.

²⁶⁶ Subject to certain requirements being met. See the section 'Refusal of non-final offer' in the chapter 'Relief duty'.

²⁶⁷ If the council decides that the applicant does not have a priority need the requirement is that the applicant is notified that neither the short-term s.190 accommodation duty or main housing duty is owed (s.188(1ZA)).

²⁶⁸ Most applicants will still be homeless and eligible for assistance when the relief duty ends if they refuse a non-final offer. Such decisions are required to determine whether a duty is owed when relief ends, and if so what duty.

being accepted, perhaps sooner than would otherwise be the case.²⁶⁹

- 6.9.54 Unlike the refusal of a final offer to end the relief duty, the applicant cannot prolong the interim accommodation duty by requesting a review of the suitability of the accommodation.

Acceptance of non-final offer

- 6.9.55 The acceptance of accommodation generally enables the council to notify the applicant that the relief duty has ended, and thereby end the interim accommodation duty.

- 6.9.56 Where the offer is not a final offer²⁷⁰ the council must be satisfied that:

- The accommodation is available.
- The accommodation is suitable, and
- There is a reasonable prospect of the applicant having suitable accommodation available for at least six months (s.189B(7)(a)).²⁷¹

- 6.9.57 The Council must notify the applicant that relief is being ended and the statutory basis on which the duty is being ended (s.189B(6)).²⁷²

- 6.9.58 In addition, the council must notify the applicant of their decision as to what duty (if any) is owed under Part 7 (s.188(1ZB)).

²⁶⁹ The council may use its discretion not to end the relief duty (and thereby the s.188 accommodation duty), particularly if the applicant has not had the benefit of help for a period of 56 days. See the section 'Refusal of non-final offer' in the chapter 'Relief duty' for a more detailed explanation of this ground for ending relief.

²⁷⁰

²⁷¹ See also the section 'Acceptance of non-final offer' in the chapter 'Relief duty' in relation to this ground for ending relief.

²⁷² The notification must also inform the applicant that they have a right to request a review of the decision to end the relief duty, and the time within which a review must be requested (s.189B(6)).

6.9.59 As the applicant will no longer be homeless the applicant may be notified that no other accommodation duty will be owed.

Relief duty ended because of non-cooperation

6.9.60 Notification of a decision that the relief duty has ended because of non-cooperation²⁷³ will also end the interim accommodation duty providing the applicant is notified of what duty (if any) the applicant is owed when the relief duty ends (s.188(1ZB)).²⁷⁴

6.9.61 An alternative accommodation duty is owed if (in summary) the applicant would have been owed the main housing duty, but for the non-cooperation sanction being applied (s.193C(1) to (4)).²⁷⁵

Ending relief duty but failing to make s.184 decision

6.9.62 In certain circumstances the council is required, upon ending the relief duty, to make a decision to determine whether another Part 7 is owed, in order to end the interim accommodation duty.

6.9.63 Generally this will be where relief has been unsuccessful and the applicant has not obtained accommodation.²⁷⁶

6.9.64 For example, a priority need decision will ordinarily be required if:

- 56 days have passed and reasonable steps have been taken, or
- The applicant refused a non-final offer of accommodation, or

²⁷³ See the chapter 'Non-cooperation' for the statutory requirements relation to such a decision. See the chapter 'Relief duty' for an explanation of when the relief duty ends in these circumstances

²⁷⁴ If the council decide that the applicant does not have a priority need the statutory requirement is that the applicant is notified that the council does not owe the section 190 or section 193 duty; s.188(1ZA).

²⁷⁵ See the chapter 'Non-cooperation'.

²⁷⁶ If the applicant is no longer homeless then the decision notifying the end of relief can confirm that, for this reason, neither the main housing duty nor s.190 duty is owed.

- The applicant deliberately and unreasonably refused to take a mandatory step in their housing plan.

6.9.65 In these circumstances notifying the end of the relief duty but failing to notify the applicant as to what duty (if any) is owed going forward results in the s.188 continuing. This is because neither of the following statutory requirements have been met.

- Where the council decide the applicant does not have a priority need:

“the authority notifying the applicant of their decision that, upon the duty under s.189B(2) coming to an end, they do not owe the applicant any duty under section 190 or 193.” (s.188(1ZA))

- Other cases:

“the authority notifying the applicant of their decision as to what duty (if any) they owe to the applicant under the following provisions of this Part upon the duty under section 189B(2) coming to an end (s.188(1ZB)).

Withdrawn application

6.9.66 The interim accommodation duty ends if the council notifies the applicant that the relief duty has ended because the application has been withdrawn (s.188(1ZB), 189B(5), (6) and (7)(f)).

6.9.67 The council must notify the applicant of its decision that no other Part 7 duty is owed, in order to end the interim accommodation duty (s.188(1ZB)).²⁷⁷

6.9.68 If the relief duty has not been accepted the council must notify the applicant that the relief duty is not owed, in order to end the interim accommodation duty (s.188(1ZA)).

²⁷⁷ The notification must also inform the applicant that they have a right to request a review of the decision to end the relief duty, and the time within which a review must be requested (s.189B(6)).

6.9.69 No other duty will be owed, given that the application has been withdrawn.

Becoming ineligible during relief

6.9.70 The s.188 duty will end if, having previously accepted relief, the council notifies the applicant that they are ineligible for assistance on immigration and nationality grounds.

6.9.71 The council must notify the applicant of its decision that the relief duty has ended and that no other Part 7 duty is owed (s.188(1ZB)).²⁷⁸

6.9.72 No other accommodation duty will be owed, given that the applicant is ineligible for assistance.

6.10 Alternative accommodation duties arising when the interim s.188 duty ends

6.10.1 In certain circumstances an alternative accommodation duty arises when the s.188 duty ends. These duties are:

- The main housing duty – where the relief duty ends other than by a final offer²⁷⁹ or non-cooperation²⁸⁰ and the council is satisfied the applicant remains eligible and homeless, and that they have a priority need and did not become homeless intentionally (s.193(1)).²⁸¹

²⁷⁸ Section 188(1ZB) states the interim duty ends upon the later of (a) the relief duty coming to an end, and (b) the applicant being notified of the decision as to what duty (if any) they are owed. One would expect the council to combine these notifications. The applicant will not ordinarily be owed another duty because they are ineligible. An exception may arise if the protection of belongings duty continues (see the chapter 'Protection of Belongings'). The notification must inform the applicant that they have a right to request a review of the decision to end the relief duty, and the time within which a review must be requested (s.189B(6)).

²⁷⁹ See the section 'Final offers' in the chapter 'Relief duty'.

²⁸⁰ See the chapter 'Non-cooperation'.

²⁸¹ See the section 'When the main duty is owed' in the chapter 'The main housing duty'.

- Short-term s.190 duty – an applicant who has a priority need but who became homeless intentionally (s.190(2)).²⁸²
- Interim accommodation duty / referral to avoid relief – a duty to accommodate an applicant whose case the council is seeking to refer to another council on becoming satisfied they are homeless and eligible. This duty is owed if the council has reason to believe the applicant may have a priority need (s.199A(2)).²⁸³
- Interim accommodation / referral at end of relief – a duty to accommodate an applicant whose case the council is seeking to refer to another council when the relief duty ends. Such a referral can be made on the basis that the main housing duty would be owed but that one of the three sets of referral conditions apply (s.200(1)).²⁸⁴
- Non-cooperation housing duty – a duty to accommodate an applicant who (in summary) would be owed the main housing duty except that the relief duty ended because they deliberately and unreasonably refused to take a mandatory steps in their housing plan (s.193C(4)).²⁸⁵

²⁸² Assuming the applicant remains homeless and eligible for assistance. See the section 'When the duty is owed' in the chapter 'Section 190 accommodation duty'.

²⁸³ Assuming the applicant has been notified that the council is intending to refer their case. See the chapter 'Local connection referrals', which includes a more detailed explanation of when the power to refer can be exercised.

²⁸⁴ Assuming the applicant has been notified that the council is intending to refer their case. See the chapter 'Local connection referrals' for a more detailed explanation of when the power to refer can be exercised.

²⁸⁵ The council must, under section 193B and 193C, comply with certain statutory requirements in order to end the relief duty on the basis of non-cooperation. See the chapter 'Non-cooperation'.