



AN LGA CONSULTATION PAPER

# PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS TO ANOTHER LOCAL AUTHORITY

## Contents

1. Scope of the Consultation and basic information
2. Introduction
3. The Draft procedures

Annex A - Draft procedures for referrals of homeless applicants to another local authority, guidelines for local authorities on procedures for referral

Annex B - Draft procedures for referrals of homeless applicants to another local authority, guidelines for invoking the disputes procedure

## Scope of the Consultation and Basic information

|                             |   |
|-----------------------------|---|
| Topic of this consultation: | <p>This consultation seeks views on draft voluntary guidelines on procedure for referrals of homeless applicants to another local authority, and for invoking the disputes procedure.</p> <p>The consultation is led by Local Government Association (LGA), together with the Welsh Local Government Association (WLGA) and the Convention of Scottish Local Authorities (CoSLA) with regards cross-border issues only.</p> |
| Impact Assessment:          | <p>The main function of the voluntary guidelines on procedures is the avoidance and resolution without resort to legal proceedings of disputes between local authorities concerning local connection and homeless applications.</p>   |
| Consultees:                 | <p>This consultation is aimed at local authorities, though the views of partners are also welcome. These proposals relate predominantly to English local housing authorities, and to Welsh and Scottish local authorities with regards cross-border issues.</p>   |

## Basic information

|                |   |
|----------------|---|
| Duration:      | <p>This consultation will last for 4 weeks from 13 February 2018 until 13 March 2018</p>  |
| Responding to: | <p>Please email your views on proposed Annex A and Annex B to:<br/><a href="mailto:LGHomelessness.consultation@local.gov.uk">LGHomelessness.consultation@local.gov.uk</a></p> <p>Please reply from a gov.uk email address if from a local authority and please confirm whether you are replying as an individual or on behalf of an organisation and include:</p> <ul style="list-style-type: none"><li>- Your name,</li><li>- Your position,</li><li>- Best contact email address,</li><li>- Contact telephone number.</li></ul> |

We are not seeking responses to a specific set of questions, and would welcome any views on the drafts, our approach, and how they might work in practice.

## Introduction

1. The LGA is seeking the views of local housing authorities on these draft amendments to the voluntary guidelines for local authorities on the procedures for referrals of homeless applicants to another local authority.
2. The main purpose of the guidelines is to avoid so far as possible legal disputes (i.e. in court proceedings) between local housing authorities in relation to whether the conditions for local connection referral are met.
3. The drafts have been prepared by amending the Annex 18 of the existing Homelessness Code of Guidance. We have not been made aware of any particular problems in operating the guidelines as set out in Annex 18, and there is little in the way of reported case law to indicate any real difficulty. In fact, it is worth recalling that in *Ozbek v Ipswich BC* [2006] EWCA Civ 534; [2006] HLR 4, Chadwick LJ highlighted the value of the guidelines in providing 'as basis for speedy and inexpensive resolution of disputes between authorities' [37]-[38].
4. We therefore believe there remains real purpose in retaining a version of these guidelines, even though they have no statutory force and are separate from any agreement for the purposes of, for example, the 1998 Order.
5. Therefore the draft guidelines being consulted on have been amended to:
  - a. Respond to new duties in the Homelessness Reduction Act and the proposed Code of Guidance, which is currently a draft
  - b. Reflect legislative developments in England
  - c. Reflect legislative developments in Wales and Scotland
  - d. Reduce the length where there is overlap with the new proposed Code of Guidance.
6. Please note that there are some outstanding regulations yet to be laid at the time of issuing this consultation. The draft includes underlined and in blue areas where there is need of further text or clarification of existing text.
7. We do not have a set of specific questions but would welcome comments on any issues relating to the proposed guidelines, including:
  - a. General observations on the potential use of the guidelines and value to local housing authorities
  - b. Views on our proposal to reduce the length of the guidelines in relation to the draft Code and to changes in Welsh and Scottish legislation

- c. Specific views or suggestions on the practical application of any issues relating to the proposed guidelines.
- d. Any other views on the proposed guidelines and how they might relate to the legislation and guidance and the potential for separate local protocols.

# ANNEX A

[[HEADING AND INDEX TO BE INSERTED](#)]

## PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS TO ANOTHER LOCAL AUTHORITY

### GUIDELINES FOR LOCAL AUTHORITIES ON PROCEDURES FOR REFERRAL

#### AGREED BY

LOCAL GOVERNMENT ASSOCIATION (LGA)

CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)

WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)

(“*the local authority associations*”)

These procedures and guidelines concern the situation where, under Part 7 of the *Housing Act 1996*, a local housing authority consider that the conditions for referral of the case to another local housing authority are met and notifies the other authority of its opinion. Referrals are discretionary only. Housing authorities are not required to make inquiries as to whether, for example, an applicant has a local connection with another district and, where they decide to do so, there is no requirement to refer applicants to another authority if the conditions for referral are met. Authorities may have a policy about how they may exercise their discretion. However, they cannot decide in advance that a referral will be made in all cases where an applicant may, for example, have a local connection with another district.

#### 1 SCOPE AND PURPOSE

1.1 These procedures and guidelines mainly concern local housing authorities in England and the legal framework which applies to them, but they also cover cross-border issues in relation to Scotland and Wales. They apply following the changes made to Part 7 of the *Housing Act 1996* by the *Homelessness Reduction Act 2017*. Authorities in England may notify another authority of their opinion that the conditions for referral are met if the notifying authority would be subject to a duty under either s.189B (the “initial” or “relief” duty) or s.193 (the “main” housing duty) of the *Housing Act 1996*; but referrals cannot be made to Scottish or Welsh authorities at the relief stage. Authorities should follow the relevant statutory provisions and have regard to governmental guidance when considering referrals; the information given below in relation to those provisions and guidance is by way of an overview only.

1.2 Section 198 of the *Housing Act 1996* provides that:

“(5) The question whether the conditions for referral of a case which does not involve a referral to a local housing authority in Wales are satisfied shall be determined by

agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order.

(5A) The question whether the conditions for referral of a case involving a referral to a local housing authority in Wales shall be decided by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State and the Welsh Ministers may jointly direct by order.

(6) An order may direct that the arrangements shall be:

(a) those agreed by any relevant authorities or associations of relevant authorities, or

(b) in default of such agreement, such arrangements as appear to the Secretary of State or, in the case of an order under subsection (5A), to the Secretary of State and the Welsh Ministers to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.”

**1.3** Similar provision is made in s.80(5) and (6) of the *Housing (Wales) Act 2014* in relation to Wales and in s.33(4) and (5) of the *Housing (Scotland) Act 1987* in relation to Scotland. However, s.8 of the *Homelessness (Scotland) Act 2003* (not yet in force) gives Scottish ministers the power to suspend or vary the circumstances under which a homeless applicant may be referred by a Scottish local authority to another authority in Scotland. Please note any future orders made will need to be taken into account.

**1.4** The LGA, CoSLA and the WLGA, the local authority associations in England, Scotland and Wales, have agreed guidelines for referrals which they recommend to local housing authorities. The relevant statutory framework contains detailed provisions in relation to referrals, including where it appears that the applicant does not have a local connection with the area of the authority receiving the housing application but does have one with another area in England, Scotland or Wales. There are, however, considerable areas of possible disagreement and dispute in determining whether the conditions of referral are met in any particular case. Although, in the last resort, disagreements can only be resolved by the courts, the associations are anxious to avoid, as far as possible, legal disputes between local authorities. The associations therefore issue these agreed guidelines on the procedures and criteria to be followed, and recommend them for general adoption by all their members. **These Guidelines are without prejudice to the duty of local authorities to treat each case on its merits and to take into account existing and future case law.** Furthermore, these Guidelines only apply to the issues of local connection and whether the conditions for referral are met.

**1.5** In *R v Eastleigh BC ex p Betts* [1983] 2 AC 613, the House of Lords considered the application of the referral arrangements agreed between the local authority associations. Their Lordships decided that a rigid application of the arrangements would constitute a fetter on an authority’s discretion. **The agreement could be taken into account, and applied as a guideline, provided its application to each case is given individual consideration.**

**1.6** A previous version of this agreement was considered by the Court of Appeal in *Ozbek v Ipswich BC* [2006] EWCA Civ 534; [2006] HLR 41, the following being said at [37]-[38]:

“one purpose – indeed, perhaps, the principal purpose – of the Referral Guidelines and their predecessor, the Agreement on Procedures, is to facilitate agreement between authorities on the question whether the conditions for referral are met; or to provide a basis for speedy and inexpensive resolution of disputes between authorities on that question. ... [T]hat purpose is unlikely to be achieved unless authorities do follow the guidance which those guidelines provide by applying that guidance ‘generally to all applications which come before them’. ... [A]n authority is not to be criticised for following that guidance in the individual case, provided that they have not closed their mind to the possibility that the particular facts of that case may require a departure from the guidance which they would apply more generally.

“... The conditions for referral – set out in s.198(2) of the 1996 Act – include (a) that the applicant does not have a local connection with the notifying authority and (b) that the applicant does have a local connection with the notified authority. It is desirable (if the statutory scheme is to work smoothly) that both notifying authority and notified authority should be able to agree on both conditions. Or, to put the point another way, it is desirable that the notified authority – who is being asked to assume the burden of providing accommodation for the applicant in the place of the notifying authority – should be able to accept the view of the notifying authority both that the applicant has no local connection with the district of the notifying authority and that the applicant does have a local connection with their own district. Ready agreement is unlikely to be achieved on those two points unless both the notifying authority and the notified authority are able to approach the question from a common basis. It is the need for that common basis which, as it seems to me, provides the imperative for all authorities to apply the guidelines ‘generally to all applications which come before them’.”

## **2 DEFINITIONS**

**2.1** For the purposes of this agreement, the relevant statutory definitions apply. All references in this agreement to an “*applicant*” are to be taken as references to a housing applicant to whom the relevant duty would be owed but for the decision to refer the case to another authority.

**2.2** The authority to whom the applicant applies for accommodation or assistance and which decides to refer the case to another authority is the “*notifying authority*”.

**2.3** Where the notifying authority consider that the conditions for referral are met, including where neither the applicant nor any person who might reasonably reside with the applicant has a local connection with its district but does have one with another local authority district and notifies the other local authority of its opinion, the authority which they notify is known as the “*notified authority*”.

**2.4** The principal context in which the question of referral may arise concerns “*local connection*”, defined as explained below, but the conditions for referral may also be met in certain other cases. These guidelines provide a framework within which the referral procedures may be applied.



### **3 CRITERIA FOR NOTIFICATION**

**3.1** The criteria for notification are set out in the statutory framework and are addressed in governmental guidance. The following is designed to provide merely an overview.

**3.2** Before a local authority can consider referring an applicant to another local authority under s.198(A1) it must first be satisfied that the applicant is

- (i) eligible for assistance and
- (ii) homeless.

**3.3** Before a local authority can consider referring an applicant to another local authority under s.198(1) it must be satisfied that, in addition to meeting the two criteria noted above, the applicant also:

- (i) is in priority need and
- (ii) did not become homeless intentionally.

**3.4** Before making a referral the notifying authority must be satisfied that the conditions of referral are met. Broadly, the conditions for referral will be met if:

- (a) neither the applicant nor any person who might reasonably be expected to reside with the applicant has a local connection with the district of the authority to which the application was originally made,
- (b) either the applicant or any person who might reasonably be expected to reside with the applicant has a local connection with the district of the other authority,
- (c) neither the applicant nor any person who might reasonably be expected to reside with the applicant would run the risk of domestic violence in that other district and
- (d) neither the applicant nor any person who might reasonably be expected to reside with the applicant has suffered any other violence in that other district and it is not probable that returning to that district would lead to further violence of a similar kind.

**3.5** The conditions for referral will also be met if the application is made within a period of two years beginning with the date on which the applicant accepted a “private rented sector” offer from the other authority under s.193(7AA), provided that (c) and (d), above, are met.

**3.6** The conditions for referral will also be met if the applicant was placed in the authority’s district by another authority as a result of a previous application to that authority and the second application is made within the prescribed period (5 years) of the first.

**3.7** In deciding whether or not to make a referral, authorities should also consider the Court of Appeal decision in the case of *R v Newham LBC ex p Tower Hamlets LBC* [1991] 1 WLR 1032. The notifying authority should have regard to any decisions made by the notified authority that may have a bearing on the case in question (e.g. a previous decision that the applicant was intentionally homeless) as well as any other material considerations, which

should include the general housing circumstances prevailing in the district of the notifying authority and in the district of the notified authority. The notifying authority should also consider whether it is in the public interest to accept a duty to secure accommodation.

**3.8** Should a local authority wish to accept a duty to secure accommodation for an applicant who does not have a local connection with its district, nothing in this agreement shall prevent the authority from providing such assistance. The decision to make a referral is discretionary and could be challenged if the discretion was considered to have been exercised unreasonably.

**3.9** Under s.202 of the *Housing Act 1996*, applicants have the right to request a review of certain decisions made by the local authority about their application, including a decision to notify another authority under s.198(1) and a decision that the conditions are met for referral of the case to another authority.

#### **4 LOCAL CONNECTION**

**4.1** The test for establishing a local connection is set out in s.199 of the *Housing Act 1996* and addressed in detail in governmental guidance. The following is designed to provide merely an overview.

**4.2** The relevant date for deciding whether or not a local connection has been established is not the date when the application for housing assistance was made but the date of the decision or, if there is a review, the date of the review decision (see the House of Lords' judgment in *Mohamed v Hammersmith and Fulham LBC* [2001] 1 AC 547). Moreover, if inquiries prior to a decision have been prolonged, the notifying authority should also consider whether there may have been any material change in circumstances that might affect the question of whether a local connection has been established.

**4.3** A local connection may be established where the following grounds apply, subject to the exceptions below:

- (i) the applicant or a person who might reasonably be expected to reside with the applicant is, or in the past was, normally resident in the district. It is suggested that a working definition of "normal residence" should be residence for at least 6 months in the area during the previous 12 months, or for not less than 3 years during the previous 5-year period. The period taken into account should be up to the date of the authority's decision. This should include any periods living in temporary accommodation secured by the authority under s.188 (interim duty pending inquiries);
- (ii) the applicant or a person who might reasonably be expected to reside with the applicant is at present employed in the district. The local authority should obtain confirmation from the employer that the person is in employment and that the employment is not of a casual nature;
- (iii) the applicant or a person who might reasonably be expected to reside with the applicant has family associations in the district. Family associations normally arise where an applicant or a person who might reasonably be expected to reside with the applicant has parents, adult children or brothers or sisters who have been resident in the district for a period of at least 5 years at the date of the decision, and the applicant indicates a wish to

be near them. Only in exceptional circumstances would the residence of relatives other than those listed above be taken to establish a local connection. The residence of dependent children in a different district from their parents would not be residence of their own choice and therefore would not establish a local connection with that district. However, a referral should not be made to another local authority on the grounds of a local connection because of family associations if the applicant objects to those grounds;

(iv) there are special circumstances which the authority considers establish a local connection with the district. This may be particularly relevant where the applicant has been in prison or hospital and his or her circumstances do not conform to the criteria in (i) – (iii) above. Where, for example, an applicant seeks to return to a district where he or she was brought up or lived for a considerable length of time in the past, there may be grounds for considering that the applicant has a local connection with that district because of special circumstances. An authority must exercise its discretion when considering whether special circumstances apply.

**4.4** A notifying authority should not refer an applicant to another authority on grounds of a local connection because of special circumstances without the prior consent of the notified authority. Alternatively, authorities may come to an informal arrangement in such cases on a reciprocal basis, subject to the agreement of the applicants.

**4.5** There are certain circumstances where the local connection provisions set out above may be modified. More detail is contained in governmental guidance. See:

- (i) care leavers;
- (ii) ex-service personnel;
- (iii) ex-prisoners and detainees under the *Mental Health Act 1983*;
- (iv) former asylum seekers.

## **5 PROCEDURES IN MAKING A REFERRAL**

**5.1** If an authority considers that the conditions for referral in s.198 *Housing Act 1996* are likely to be met in a particular case it should make any necessary enquiries in the area/s where there may be a local connection. These should be undertaken as soon as possible. An authority that is considering making a referral must investigate all the circumstances of the case with the same thoroughness as if it were not considering a referral.

**5.2** Under s.184(4) *Housing Act 1996*, if a housing authority notifies or intends to notify another authority in England under s.198(A1) (*i.e.* at the relief duty stage) that it considers that the conditions for referral of a case are met, the authority must at the same time notify the applicant of this decision and the reasons for it. Under s.184(5) of the 1996 Act, the notice must also inform the applicant of his right, under s.202, to request a review of the decision and that any request must be made within 21 days, or such longer period as the authority allows in writing.

**5.3** See further below as to the duty to ensure that suitable accommodation is available for occupation by the applicant, where an authority notifies an applicant, either as above under s.198(A1) or for the purposes of s.200(1) (*i.e.* at the s.193 main duty stage).

**5.4** In general, the notified authority is bound by any decision made by the notifying authority as to whether the applicant is eligible, homeless, unintentionally homeless, and in priority need; there is no provision for the notified authority to challenge the decision other than judicial review in the High Court. For notifications made under s.198(A1), however, where the notifying authority has made a decision as to whether the applicant is eligible, homeless or became homeless intentionally, the notified authority may come to a different decision but only if it is satisfied the applicant's circumstances have changed or further information has come to light since the notifying authority made its decision, and that the change in circumstances or further information justifies coming to a different decision (s.199A(5)(c)).

**5.5** When it has been decided whether the conditions for referral are met, the notifying authority must notify the applicant of the decision and the reason for it (s.199A(3) and s.200(2)). The applicant must also be informed of his right to ask for a review of the decision and that any request must be made within 21 days or such longer period as the authority may allow in writing.

**5.6** The local authority associations' disputes procedure should be used only where there is a disagreement over the question of whether the conditions for referral are met and not for resolving disagreement on any other matter.

## ***6 MAKING THE NOTIFICATION TO THE OTHER AUTHORITY***

**6.1** All notifications and arrangements concerning an applicant should be made by telephone and then confirmed in writing. A specimen standard notification form is [attached](#), which authorities are advised to use. If telephone contact cannot be made, an email or fax should be sent. Where the notified authority accepts that the conditions for referral are met, it should not wait for the receipt of written confirmation of notification before making appropriate arrangements to secure accommodation for the applicant and his or her household.

**6.2** Each authority should nominate an officer responsible for making decisions about applications notified by another authority. Appropriate arrangements should also be put in place to ensure cover during any absences of the designated officer.

**6.3** The notified authority should normally accept the facts of the case relating to residence, employment, family associations etc., as stated by the notifying authority, unless they have clear evidence to the contrary. It is the notifying authority's duty to make inquiries into the circumstances of homelessness with the same degree of care and thoroughness before referring a case to another authority as it would for any other case.

**6.4** Local authorities should try to avoid causing undue disruption to the applicant which could arise from the operation of the criteria and procedures set out above. For instance, where it is agreed that the conditions for referral are met, the two authorities involved could agree, subject to the applicants' consent, to enter into a reciprocal arrangement so as to avoid having to move a household which may already have made arrangements within the notifying authority's area for schooling, medical treatment etc. Such arrangements could involve provision via nominations to other social housing providers such as registered social

landlords. Authorities are reminded that there is no requirement to refer applicants to another authority even where it is agreed that the conditions for referral are met.

**6.5** Once written confirmation of notification has been received the notified authority should, within 10 days, reply to the notifying authority. If, despite reminders, there is an unreasonable delay by the notified authority in formally responding to the notification, the notifying authority may ask its local authority association to intercede on its behalf.

## ***7 ARRANGEMENTS FOR SECURING ACCOMMODATION***

**7.1** Where an authority notifies an applicant that it intends to notify or has notified another authority of their opinion that the conditions for referral are met at the s.193 main duty stage, it has a duty under s.200(1) to ensure that suitable accommodation is available for occupation by the applicant until s/he is notified of the decision whether the conditions for referral are met. A similar duty arises under s.199A(2) where the notifying authority similarly notifies an applicant in relation to a s.198(A1) referral at the s.189B relief duty stage, but only if it has reason to believe that the applicant may have a priority need. The notifying authority may also have a duty (under s.211) to take reasonable steps for the protection of property belonging to the applicant or anyone who might reasonably be expected to reside with the applicant.

**7.2** If it is decided that the conditions for referral are not met, the notifying authority will be subject to either the s.189B relief duty (see s199A(4)(a)) or the s.193 main duty (see s.200(3)), depending on whether the referral arose under s.198(A1) or s.198(1).

**7.3** If it is decided that the conditions for referral are met, then either

(i) under s.199A(5)(a), the applicant is treated as having made an application to the notified authority on the date on which the applicant is given notice that the referral conditions are met, or

(ii) under s.200(4), the notified authority will be subject to the s.193 main duty and must ensure that suitable accommodation is available for the applicant,

as the case may be.

**7.4** The local authority associations recommend that once a notified authority has accepted that the conditions of referral are met it shall reimburse the notifying authority for any expenses which may reasonably have been incurred in providing temporary accommodation, including protection of property. If the notifying authority delays unduly before advising an authority of its intention to refer an applicant then the notified authority shall only be responsible for expenses incurred after the receipt of notification. In normal circumstances a period of more than 30 working days, commencing from the date when the notifying authority had reason to believe that the applicant may be homeless or threatened with homelessness and commenced inquiries under s.184, should be considered as constituting undue delay.

## ***8. RIGHT OF REVIEW OF REFERRAL DECISIONS***

**8.1** Under s.202(1)(c) *Housing Act 1996*, applicants have the right to request a review of a decision by the authority under s.198(1) to notify another authority of its opinion that the conditions for referral are met.

**8.2** Further, under s.202(1)(d), applicants have the right to request a review of any decision whether the conditions for referral are met (whether the notification was made under s.198(A1) or s.198(1)).

## **9 STATUTORY PROCEDURE ON REVIEW**

**9.1** The procedural requirements for a review are set out in the *Homelessness (Review Procedure etc) Regulations 2018 (SI 2018 No.????)*. There is some overlap between the requirements for reviews in general, considered here so far as they are relevant to referrals, and the requirements for reviews of a referee's decision under the Disputes Procedure, considered below.

**9.2** The notifying authority must notify the applicant:

- (i) that the applicant, or someone acting on the applicant's behalf, may make written representations; and
- (ii) of the review procedures.

**9.3** If the reviewer acting for the notifying authority considers that there is an irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant, the reviewer must notify the applicant:

- (i) that the reviewer is so minded, and the reasons why; and
- (ii) that the applicant, or someone acting on the applicant's behalf, may make further written and/or oral representations.

**9.4** In carrying out a review the reviewer must:

- (i) consider any representations made by, or on behalf of, the applicant;
- (ii) consider any further written and/or oral representations made by, or on behalf of, the applicant in response to a notification referred to in paragraph 9.3(ii) above; and
- (iii) make a decision on the basis of the facts known at the date of the review.

**9.5** In general, the applicant must be notified of the decision on a review within:

- (i) eight weeks from the date on which a request for review was made, or
- (ii) such longer period as the applicant may agree in writing.

**9.6** Where the decision under review is a joint decision by the notifying housing authority and the notified housing authority, s.202(4) requires that the review be carried out jointly by the

two housing authorities. In that situation, the applicant must be notified of the decision on a review within:

- (i) ten weeks from the date on which a request for review was made, or
- (ii) such longer period as the applicant may agree in writing.

**9.7** Where the decision under s.198(5) was taken by a referee, the procedure is described in the *Guidelines for Invoking the Disputes Procedure*, below.

**9.8** Section 204 gives applicants the right to appeal to the county court on a point of law if dissatisfied with the decision on the review (or the initial decision, if a review decision is not made within the relevant prescribed time limit).

## ***10 DISPUTES BETWEEN AUTHORITIES***

**10.1** Where a notified authority considers the conditions for referral are not met it should write to the notifying authority giving its reasons in full, within 10 days. The letter should contain all the reasons for its opinion, to avoid delay and minimise any inconvenience for the applicant.

**10.2** The *Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No. [1578](#)) sets out the arrangements for determining whether the conditions for referral are met, should the notifying and the notified authority fail to agree.

**10.3** Where two authorities cannot reach agreement on whether the conditions for referral are met they must seek to agree on a referee who will make the decision. The LGA has established an independent panel of referees for this purpose. A referee should be appointed within 21 days of the notified authority receiving the notification.

**10.4** Authorities invoking the disputes procedure should, having first agreed on the proposed referee, establish that he or she is available and willing to accept the case. Each authority is then responsible for providing the referee with such information as he or she requires to reach a decision, making copies of the submission available to the applicant and ensuring prompt payment of fees and expenses. The *Guidelines for Invoking the Disputes Procedure* set out in greater detail the requirements and timescale for the disputes procedure.

**10.5** If the authorities are unable to agree on the choice of a referee, they must jointly request that the LGA appoint a referee on their behalf from the independent panel.

**10.6** If a referee has still not been appointed within six weeks of the notified authority receiving the referral, the notifying authority must request the LGA to appoint a referee.

**10.7** The local authority associations should only be involved in the direct appointment of referees as a last resort. Under normal circumstances authorities should jointly agree the arrangements between themselves in accordance with the *Guidelines for Invoking the Disputes Procedure*.

**10.8** Authorities invoking the disputes procedure should be bound by the decision of the referee, including the apportionment of fees and expenses, subject to a further decision by a referee where the applicant asks for a review of the initial decision.

## ***11 CROSS-BORDER DISPUTES***

**11.1** In Scotland, the main homelessness law is the *Housing (Scotland) Act 1987*, while in Wales it is the *Housing (Wales) Act 2014*. Both make similar provision to s.198 of the *Housing Act 1996*: s.33 of the *Housing (Scotland) Act 1987* and s.80 of the *Housing (Wales) Act 2014*. Where relevant, regard should be had to the appropriate national governmental guidance. Note that the position of former asylum seekers with regard to local connection may be quite different in Scotland from England and Wales.

**11.2** Where there is a cross-border dispute, it is the legislation relevant to the location of the *notified* authority which should be applied in determining whether the conditions for referral are met.

**11.3** The review procedure in Scotland and Wales respectively is governed by ss 35A and 35B of the *Housing (Scotland) Act 1987* and the *Homelessness (Review Procedure) (Wales) Regulations 2015* (SI 2015 No. 1266).

**11.4** The *Homelessness (Decisions on Referrals (Scotland) Order 1998* (SI 1998 No. [1603](#)) sets out the arrangements for determining whether the conditions for referral are met, should the notifying and the notified authority fail to agree, where the notifying authority is in Scotland. These are in the same terms as for England, but the referee is appointed through CoSLA.



# **PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS TO ANOTHER LOCAL AUTHORITY**

## **GUIDELINES FOR INVOKING THE DISPUTES PROCEDURE**

### ***AGREED BY***

**LOCAL GOVERNMENT ASSOCIATION (LGA)**

**CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)**

**WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)**

**(“the local authority associations”)**

### ***12 DETERMINING DISPUTES***

**12.1** The local authority associations have been concerned to establish an inexpensive, simple, speedy, fair and consistent way of resolving disputes between authorities arising from the referral of homeless applicants.

**12.2** For the purpose of this Disputes Procedure, arbitrators are referred to as “referees”. Referees will not normally be entitled to apply the criteria set out in this agreed procedure without the consent of the local authorities involved in the dispute. Where the issues in the case are evenly balanced, referees may have regard to the wishes of the applicant.

**12.3** In determining disputes referees will need to apply the relevant statutory framework and have regard to the appropriate national governmental guidance.

### ***13 ARRANGEMENTS FOR APPOINTING REFEREES***

**13.1** Referees will be approached by the authorities in dispute, both of which must agree that the referee should be invited to accept the appointment, to establish whether they are willing and able to act in a particular dispute. The referee should be appointed within 21 days of the notified authority receiving the referral. If the local authorities are unable to agree on the choice of referee they should contact the LGA in accordance with section 10 of the *Guidelines for Local Authorities on Procedures for Referral*.

**13.2** A referee will be given an initial indication of the reason for the dispute by the relevant authorities or the local authority association. The referee’s jurisdiction is limited to the issue of whether the conditions for referral are met.

**13.3** A referee must not have any personal interest in the outcome of the dispute and should not accept the appointment if he or she is, or was, employed by, or is a council tax payer in, one of the disputing local authorities, or if he or she has any connection with the applicant.

### ***14 PROCEDURES FOR DETERMINING THE DISPUTE***

**14.1** The general procedures to be followed by a referee in determining a dispute are outlined in the Schedule to the *Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No. [1578](#)). It is recommended that the following, more detailed, procedures are applied to *all* cases.

**14.2** Following appointment, the referee shall invite the notifying and notified authorities to submit written representations within a period of *fourteen* working days, specifying the closing date, and requiring them to send copies of their submission to the applicant and to the other authority involved in the dispute. Authorities must have the opportunity to see each other's written statements, and should be allowed a further period of *ten* working days to comment thereon before the referee proceeds to determine the issue. The referee may also invite further written representations from the authorities, if considered necessary.

**14.3** The homeless applicant to whom the dispute relates is not a direct party to the dispute but the referee may invite written or oral representations from the applicant, or any other person, which is proper and relevant to the issue. Where the referee invites representations from a person they may be made by another person acting on the person's behalf, whether or not the other person is legally qualified.

**14.4** The disputing authorities should make copies of their submissions available to the applicant. The authorities should have the opportunity to comment on any information from the applicant (or any other source) upon which the referee intends to rely in reaching his/her decision.

**14.5** Since the applicant's place of abode is in question, and temporary accommodation and property storage charges may be involved, it is important that a decision should be reached as quickly as possible – normally within *a month* of the receipt of the written representations and comments from the notifying and notified authority. This period will commence at the end of the process described in paragraph 14.2. In the last resort, a referee may determine a dispute on the facts before him/her if one authority has, after reminders, failed to present its case without reasonable cause.

## ***15 ORAL HEARINGS***

**15.1** Where an oral hearing is necessary or more convenient (e.g. where the applicant is illiterate, English is not his/her first language or further information is necessary to resolve issues in dispute), it is suggested that the notifying authority should be invited to present its case first, followed by the notified authority and any other persons whom the referee wishes to hear. The applicant may be invited to provide information on relevant matters. The authorities should then be given a right to reply to earlier submissions.

**15.2** The referee will have to arrange the venue for the hearing and it is suggested that the offices of the notifying authority would often be the most convenient location.

**15.3** Where a person has made oral representations the referee may direct either or both authorities to pay reasonable travelling expenses. The notifying and notified authorities will pay their own costs.

**15.4** The referee's determination must be in writing even when there is an oral hearing.

## ***16 NOTIFICATION OF DETERMINATION***

**16.1** The written decision of the referee should set out:

- (a) the issue(s) which s/he has been asked to determine
- (b) the findings of fact which are relevant to the question(s) in issue
- (c) the decision
- (d) the reasons for the decision.

The referee's determination is binding upon the participating local authorities, subject to the applicant's right to ask for a review of the decision under s.202 of the *Housing Act 1996* (and possible right of appeal to the county court on a point of law under s.204).

## ***17 COSTS OF DETERMINATION***

**17.1** Referees will be expected to provide their own secretarial services and to obtain their own advice on points of law. The cost of so doing, however, will be costs of the determination and recoverable as such.

## ***18 CIRCULATION OF DETERMINATION***

**18.1** Referees should send copies of the determination to both disputing authorities and to the LGA. The LGA will circulate copies to other members of the Panel of Referees as an aid to settling future disputes and promoting consistency in decisions.

**18.2** The notifying authority should inform the applicant of the outcome promptly.

## ***19 PAYMENT OF FEES AND COSTS***

**19.1** The local authority associations recommend a flat rate fee of **£500** per determination (including determinations made on a review) which should be paid in full and as speedily as possible after the determination has been received. However, in exceptional cases where a dispute takes a disproportionate time to resolve, a referee may negotiate a higher fee. In addition, the referee may claim the actual cost of any travelling, secretarial or other incidental expenses which s/he has incurred, including any additional costs arising from the right of review or the right of appeal to a county court on a point of law.

**19.2** The LGA will determine such additional fees as may be appropriate for any additional work which may subsequently arise should there be a further dispute or appeal after the initial determination has been made or should a referee be party to an appeal, under s.204 *Housing Act 1996*, to the county court on a point of law.

**19.3** The referee's fees and expenses, and any third party costs, would normally be recovered from the unsuccessful party to the dispute, although a referee may choose to apportion expenses between the disputing authorities if s/he considers it warranted. Referees are advised, when issuing invoices to local authorities, to stipulate that payment must be made within **28 days**.

## **20 REOPENING A DISPUTE**

**20.1** Once a determination on a dispute is made, a referee is not permitted to reopen the case, even though new facts may be presented to him or her, unless a fresh determination is required to rectify an error arising from a mistake or omission.

## **21 REVIEW OF REFEREE'S DECISION**

**21.1** Section 202(1)(d) *Housing Act 1996* gives an applicant the right to request a review of any decision made under this Dispute Procedure. The procedural requirements for a review are set out in the *Homelessness (Review Procedure etc) Regulations 2018 (SI 2018 No.????)*. There is some overlap between the requirements for reviews of a referee's decision under the Disputes Procedure, considered here, and the requirements for reviews in general, considered above so far as they are relevant to referrals.

**21.2** If an applicant asks for a review of a referee's decision the notifying and notified authority must, within five working days, appoint another referee ("the reviewer") from the panel. This applies even if the original referee was appointed by the LGA. The reviewer must be a different referee from the referee who made the initial decision. If the two authorities fail to appoint a reviewer within this period then the notifying authority must, within five working days, request the LGA to appoint a reviewer and the LGA must do so within seven days of the request.

**21.3** The authorities are required to provide the reviewer with the reasons for the initial decision, and the information on which the decision is based, within five working days of his or her appointment. The two authorities should decide between them who will be responsible for notifying the applicant of the reviewer's decision, once received.

**21.4** The reviewer is required to:

- (i) notify the applicant that he or she, or someone acting on his or her behalf, may make written representations,
- (ii) notify the applicant of the review procedures, and
- (iii) send copies of the applicant's representations to the two authorities and invite them to respond.

**21.5** If the reviewer considers that there is an irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer must notify the applicant:

- (a) that the reviewer is so minded and the reasons why, and
- (b) that the applicant, or someone acting on his behalf, may make further written and/or oral representations.

**21.6** In carrying out a review, the reviewer is required to:

- (i) consider any representations made by, or on behalf of, the applicant,

(ii) consider any responses to (i) above,

(iii) consider any further written and/or oral representations made by, or on behalf of, the applicant in response to a notification referred to in paragraph 21.5(b), and

(iv) make a decision on the basis of the facts known at the date of the review.

**21.7** The applicant must be notified of the decision on a review within twelve weeks from the date on which the request for the review was made, or such longer period as the applicant may agree in writing. The two authorities must be advised in writing of the decision on the review, and the reasons for it, **at least a week before the end of the period** in order to allow them adequate time to notify the applicant. Copies of the decision should also be sent to the LGA.

## ***22 CROSS-BORDER DISPUTES***

**22.1** For cross-border cases, see Section 11 of the Guidelines, above.



**Local Government Association**

18 Smith Square  
London SW1P 3HZ

Telephone 020 7664 3000  
Fax 020 7664 3030  
Email [info@local.gov.uk](mailto:info@local.gov.uk)  
[www.local.gov.uk](http://www.local.gov.uk)

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