

## Review of a homeless decision

This information is for professionals working in housing and homelessness.

### Reviewable decisions

An applicant can request a review of these decisions:

- if they're homeless
- if they're eligible for homeless assistance
- if they're in priority need
- if they're intentionally homeless
- the suitability of temporary or permanent accommodation offered after they have passed all four homelessness tests

A Housing Executive staff member, senior to the original decision maker, will carry out the review. They must [follow the correct procedure](#).

### Decisions which cannot be reviewed

An applicant does not have a right to review:

- a refusal to open a homelessness assessment
- the suitability of accommodation offered before they passed all four homelessness tests
- a decision to withdraw temporary accommodation
- a refusal to provide temporary accommodation during the review process
- decisions about furniture storage

- a refusal to allow an out-of-time review or to conduct a discretionary second review of a decision

The applicant can challenge these decisions using the Housing Executive's complaints procedure or judicial review.

## **Decision letters**

The Housing Executive must notify an applicant in writing of the outcome of their homelessness assessment.

The decision notice must be in writing and must explain:

- the reasons for the decision if the person fails one of the four homelessness tests
- that the person has a right to request a review if the decision is reviewable
- that the Housing Executive can continue to provide temporary accommodation if the person requests a review and during any county court appeal

A decision letter without this information is defective. An adviser could argue that the Housing Executive remains subject to its duty to make enquiries and accommodate pending enquiries until they issue a proper decision notice.

The Housing Executive should:

- send a letter directly to the person if they provided an address for correspondence and
- make a copy of the letter available at the local office for the person to collect

## **Time limit for requesting a review**

The law gives an applicant 28 days from the date they receive a decision to request a review.<sup>[1](#)</sup> In practice, the Housing Executive allows a person 40 days to ask for a review.

An adviser could challenge the timeframe if the Housing Executive failed to issue a proper decision notice.

The Housing Executive has the discretion to extend the time limit for reviews. Although the 40-day limit is already an extension on the 28 days required by law. When deciding whether to allow an out-of-time review, the Housing Executive will

consider:

- how much time has passed since the deadline
- the reasons for any delay and
- the merits of the case

## **Requesting a review of a homelessness decision**

Asking the Housing Executive to review a homelessness decision is complex task and requires expert advice. Additional evidence and legal arguments must be submitted as part of the review.

**[Contact Housing Rights for specialist advice and to refer a client for help](#)**  
**. We want to help you and your client to get the best outcome.**

Homeless applicants who get a negative homelessness decision have a statutory right to request a review of that decision. The Housing Executive allows applicants 40 days to make this request. Homeless applicants can get help with asking for this review.

### **Submitting evidence and specialist legal arguments**

Requesting a review of a negative homelessness decision can be complicated. The Housing Executive rarely changes its decision without more information about the case and new evidence.

It is not enough just to ask the Housing Executive to look at their decision again. Review submissions need to include legal arguments that refer to:

- case law precedent and
- relevant legislation

There can be serious consequences for a homeless applicant if a homeless review is unsuccessful. [Contact Housing Rights for help submitting a homeless review](#).

### **Difficulties appealing to county court**

A homeless applicant can appeal to the county court but only in very limited circumstances. A county court appeal must be based on a 'point of law'. Only a solicitor with housing expertise can appeal a homeless decision on a point law.

A county court appeal is also very expensive and legal aid is not always available to help with the costs.

If an applicant cannot appeal at county court, they will be unable to access further homelessness support from the Housing Executive.

## **Get the right support**

It is very important that people with a negative homelessness decision get the right advice as quickly as possible. Housing Rights' casework team have the experience and expertise needed to effectively represent homeless applicants in these circumstances.

We often work in partnership with other organisations to challenge negative homeless decisions. If you're working with a person who gets a negative homelessness decision, please contact us as soon as possible.

[Our helpline staff](#) can explain how to refer a client to our casework team.

## **Responding to a request for a review**

On receiving a request to carry out a review the Housing Executive must notify the applicant or their adviser:[2](#)

- that the applicant, or someone else, can send in written representations to support their case
- of the process they'll follow when carrying out the review if they haven't already done this

The person can submit new information to the review which the Housing Executive has not already considered.

## **Reviewing officer**

The officer who carries out the review will:

- not have been involved in the original decision
- be superior to the person who made the original decision[3](#)

## **'Minded to' letter**

The Housing Executive should notify the applicant in writing if they:[4](#)

- find an error or deficiency in the original decision, but
- are minded to make a decision against the person's interests

This 'minded to' letter must include the Housing Executive's reasons for its intended decision. They must give the person an opportunity to respond before they make a final decision on the review.

## **Decisions on review**

The Housing Executive should make a decision on a review within eight weeks.

This period can be extended by mutual written agreement. An applicant may need to ask for the timeframe to be extended if they've made a subject access request and have to wait for their file.[5](#)

The decision letter must include:

- reasons for the decision if it confirms the original decision
- details about the person's right to appeal the decision at county court

The Housing Executive should:

- send a letter directly to the person if they provided an address for correspondence and
- make a copy of the letter available at the local office for the person to collect

The Housing Executive should refer the case back to the original office if they still have to make a decision on further homeless tests. The person may end up receiving a negative decision on the next test and has the same right to request a review of this decision.

## **Suitability of accommodation**

A person can request a review of the suitability of:

- temporary accommodation after they've passed all four homelessness tests
- offers of permanent accommodation after they've passed all four homelessness tests

A person can still challenge the suitability of temporary accommodation if they have moved into it.

The Housing Executive's current policy is to refuse to make any other offers of temporary accommodation to a full duty applicant if they challenge the suitability of this accommodation.

Temporary accommodation must still be broadly suitable for the time the person is likely to live there. The Housing Executive should consider this principle when offering temporary accommodation. What is suitable for a very short period may not be suitable for a period of six months or longer.

## **Homelessness decision appeals**

### **County court appeal of negative homeless decisions**

A person can appeal to the county court if the Housing Executive upholds the original decision on review.

An appeal must be on a point of law arising from the:[6](#)

- review decision, or
- original homelessness decision if the Housing Executive has not made a decision on review within eight weeks

A person can only appeal a [decision that carries review rights](#).

### **Point of law**

An applicant can appeal a decision on a point of law. While there is no set definition of what constitutes a point of law, a person can appeal on the same grounds that form the basis of a judicial review.[7](#)

A person can appeal on a point of law if the Housing Executive:

- interpreted the law or case law incorrectly
- made procedural errors
- gave inadequate reasons for the decision
- ignored relevant information or took into account irrelevant factors
- restricted its discretion by using blanket policies
- placed too high a burden of proof on the person or failed to give them the benefit of the doubt
- made a perverse or irrational decision

Courts will take a 'benevolent approach [...] to the interpretation of review decisions'.[8](#)

## **New information at an appeal**

The applicant can only introduce new evidence during an appeal if this is to illustrate that the Housing Executive erred on a point of law, for example by failing to carry out full investigations.

Otherwise, the appeal can only consider the information raised in the initial investigation and during the review.

## **Time limits for appealing**

The applicant must lodge an appeal within 28 days of the date they:[9](#)

- are notified of the review decision or
- should have been notified of the review decision if it is delayed

The person can apply for permission to get a review outside the 28-day period either before the period has expired or after the time has expired.[10](#)

The court will only grant permission if satisfied that:

- there is a good reason for the applicant to be unable to bring the appeal in time if applying before the end of the 28 days
- there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for leave if applying after the 28-day period ends

There is no definitive list of what constitutes good reason. It depends on the facts of each individual case but can include:[11](#)

- delays in getting legal aid
- the applicant having no funds to support the appeal
- the applicant's socially disadvantaged position
- if the applicant has alcohol or drug problems
- if the applicant has what's sometimes called, a 'chaotic' lifestyle
- if the applicant needs to get and rely on advice
- if that advice comes from charitable organisations who rely on legal aid or other funding
- lack of a permanent address where the applicant can receive letters

- lack of money to top-up a mobile phone
- lack of a landline telephone

It can be extremely difficult to convince the court to allow an out-of-time review. Advisers should always try to get the appeal issued within the 28-day timeframe.

## **Multiple and repeat applications**

There is no limit to the number of homeless applications a person can make to the Housing Executive.[12](#)

The Housing Executive should accept a new application if there are new facts to differentiate the new application from the earlier one.

The Housing Executive should open a fresh investigation if:

- people have joined or left the household
- the person has had settled accommodation since their last application
- the person has a new health condition or an existing condition has deteriorated
- the person can provide new evidence about their situation which was not previously considered

## **Case law on repeat applications**

There has been a considerable amount of case law in this area. The court of appeal has established criteria that the Housing Executive should consider when deciding whether to accept a repeat application:[13](#)

- the person applying must identify the new facts that make a fresh application different to an earlier one
- the Housing Executive must compare the facts of the new application against the facts on the date when they made their latest decision
- the Housing Executive is not required to open a fresh investigation if the only new facts are 'fanciful or trivial'

## **Information not considered at the time of the application**



The Housing Executive should open a new case if:

- information was available to them at the time of the original decision, but
- the housing officer did not take this information into account when making the decision

Although the fact is not new, it is a fact they were not aware of when they made the original decision.[14](#)

## **New medical information**

While a repeat application may be very similar to an earlier application, the Housing Executive cannot reject this immediately as factually identical.

The courts granted an appeal where an applicant was able to provide new evidence showing her doctor had revised their initial assessment of the person's risk of suicide.[15](#)

The courts granted an appeal where a person who had asserted that they were in good health later engaged with mental health services which provided evidence to support a second application. There were new facts and these were not fanciful or trivial.[16](#)

## **Withdrawing an application**

An applicant can withdraw their application for help at any stage.

The Housing Executive will cancel a person's application for help with homelessness or housing if they:[17](#)

- fail to respond to contact from the Housing Executive within three months, or
- do not renew their application with the Housing Executive each year

Each year the Housing Executive sends out a form to everyone registered on the waiting list for housing. This asks the person to confirm that they wish to remain on the list. If a person fails to respond their case is closed.

## **Footnotes**

- [\[1\]](#)The Housing (Northern Ireland) 1988 Order, Article 11C(A)3.

- [\[2\]](#) Maswaku v Westminster CC [2012] EWCA Civ 669; El Goure v Kensington & Chelsea RLBC [2012] EWCA Civ 670.
- [\[3\]](#) The Homelessness (Review) Regulations (Northern Ireland) 2010, Regulation 2.
- [\[4\]](#) The Homelessness (Review) Regulations (Northern Ireland) 2010, Regulation 4(2).
- [\[5\]](#) The Homelessness (Review) Regulations (Northern Ireland) 2010, Regulation 5.
- [\[6\]](#) The Housing (Northern Ireland) Order 1988, Article 11C.
- [\[7\]](#) Begum (Nipa) v Tower Hamlets LBC [1999] EWCA Civ.
- [\[8\]](#) 50 Holmes-Moorhouse v Richmond-upon-Thames LBC [2009] UKHL 7.
- [\[9\]](#) The Housing (Northern Ireland) 1988 Order, Article 11C(2).
- [\[10\]](#) The Housing Order (Northern Ireland) 1988, Article 11C(3).
- [\[11\]](#) Ranza (Beata) v Northern Ireland Housing Executive [2015] NIQB 13.
- [\[12\]](#) Northern Ireland Housing Executive, Homeless Guidance, Chapter 6.9.
- [\[13\]](#) London Borough of Tower Hamlets v Begum [2005] EWCA Civ 340.
- [\[14\]](#) Ibrahim, R (On the Application Of) v Westminster City Council, (2021) EWHC 2616 (Admin).
- [\[15\]](#) Hoyte, R (on the application of) v London Borough of Southwark [2016] EWHC 1665 (Admin).
- [\[16\]](#) Bukartyk v Welwyn Hatfield BC, [2019] EWHC 3480 (Admin).
- [\[17\]](#) Northern Ireland Housing Executive, Homelessness Guidance, Chapter 1.3.4.