Housing Rights

https://www.housingrights.org.uk/professionals/advice-and-information/homelessness-advice-professionals/review-homeless-decision

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Review of a homeless decision

This information is for professionals working in housing and homelessness in Northern Ireland.

If you are a member of the public looking for help, please visit our housing advice pages.

Reviewable decisions

Applicants can challenge some homeless decisions by requesting a statutory review.

An applicant can request a review of decisions about whether they[1]

- are homeless
- are eligible for homeless assistance
- are in priority need
- are intentionally homeless
- have been offered suitable temporary or permanent accommodation after they have passed all four homelessness tests

A Housing Executive staff member, who is senior to the original decision maker, will carry out the review.[2]

They must **follow the correct procedure**.

Decisions which cannot be reviewed

An applicant does not have a right to request a review of:

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

If there is no right to request a review, the applicant can challenge a decision using the Housing Executive's complaints procedure. In exceptional circumstances, there may also be grounds to request a 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 [3]
- right to request a review if the decision is reviewable[4]
- Housing Executive can continue to provide temporary accommodation while a homelessness decision is challenged

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 to the applicant if they provided an address for correspondence and
- make a copy of the letter available at the local office for the person to collect [5]

Requesting a review of a homelessness decision

Asking the Housing Executive to review a homelessness decision is complex 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 get the best outcome.

Time limit for requesting a review

The law gives an applicant 28 days from the date they receive a decision to request a review. In practice, the Housing Executive allows a person 40 days to ask for a review.

An adviser can challenge the time limit if the Housing Executive did not issue a proper decision notice.

Although the 40-day limit is an extension of the 28 days required by law, the Housing Executive can further extend the time limit for reviews.6

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

Submitting evidence and specialist legal arguments

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

It is not enough 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

If a homeless applicant's homeless review is unsuccessful, there can be serious consequences. **Contact Housing Rights for help submitting a homeless review**.

Difficulties appealing to the county court

A homeless applicant can only appeal to the county court 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 of law.

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

Applicants who cannot appeal to the county court cannot access further homelessness support from the Housing Executive.

Get the right support

People who receive a negative homelessness decision must 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 work with a person who gets a negative homelessness decision, please get in touch with us as soon as possible.

Our helpline staff can explain how to refer clients 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:

- 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 senior to the person who made the original decision[7]

‘Minded to’ letter

The Housing Executive should notify the applicant in writing if they:[8]

- 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.[9] 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.

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 the 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 decide on further homeless tests. The person may receive 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.

It is the Housing Executive's current policy to refuse to make further offers of temporary accommodation to a full duty applicant while 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[9] arising from the:

- 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 a point of law, a person can appeal on the same grounds that may form the basis of a judicial review.[10]

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’.11

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:12

- 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.13

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
- 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 a good reason. It depends on the facts of each individual case, but can include:14

- 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 that 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.

Footnotes

- [1]

  The Housing (Northern Ireland) Order 1988, Article 11(a).

- [2]

  The Homeless (Review) Regulations (Northern Ireland) 2010, Regulation 2.

- [3]

  The Housing Order (Northern Ireland) 1988, Articles 9(4) and 7A(9).

- [4]

  The Housing Order (Northern Ireland) 1988, Article 11A (5).

- [5]

  The Housing Order (Northern Ireland) 1988, Article 7A (10).

- [6]

  The Housing Order (Northern Ireland) 1988, 11A (3).

- [8]

  The Homelessness (Review) Regulations (Northern Ireland) 2010, Regulation 4(2).

- [9]

  The Housing (Northern Ireland) Order 1988, Article 11C.

- [10]

Begum (Nipa) v Tower Hamlets LBC [1999] EWCA Civ.

- [11]

  50 Holmes-Moorhouse v Richmond-upon-Thames LBC [2009] UKHL 7.

- [12]

  The Housing (Northern Ireland) 1988 Order, Article 11C(2).

- [13]

  The Housing Order (Northern Ireland) 1988, Article 11C(3).

- [14]

  Ranza (Beata) v Northern Ireland Housing Executive [2015] NIQB 13