

19 December 2024

Our Ref: FOI 623

Request

We received your request on 10 December 2024 for the following information:

a copy of appeals process of policies and procedures

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

Our response

Please find enclosed a copy of Chapter 11 of the Homelessness policy Manual which covers the requested information in regard to homeless policy and appeals.

This concludes our response.

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Chapter 11 – Review of Homelessness Decisions and County Court Appeals

11.0 General

This chapter provides guidance on the procedures to be followed when an applicant requests the Housing Executive to review its decision on his or her homelessness application. It also provides guidance for staff on the procedures to follow if an applicant appeals to the County Court on a point of law.

The relevant provisions are in the Housing (NI) Order 1988, as amended by the Housing (Amendment) Act (NI) 2010, and the Homelessness (Review) Regulations (Northern Ireland) 2010.

11.1 Right to Request a Review

An applicant has the right to request a review of any decision of the Housing Executive –

- as to his or her eligibility for homelessness assistance
- as to what duty (if any) is owed to the applicant when he or she is homeless or threatened with homelessness
- as to the suitability of accommodation offered to the applicant in discharge of the Housing Executive's duty to those who are homeless or threatened with homelessness

11.1.1 Right to Request a review of a homeless decision

It should be noted that any challenge in relation to a decision on eligibility or the duty owed will always rest with the Housing Executive.

11.1.2 Right to Request a review of the Suitability of Accommodation

If an applicant, who has been awarded the status of a Full Duty Applicant, wishes to challenge the suitability of temporary accommodation which has been made available to them by the Housing Executive or permanent accommodation offered by the Housing Executive or an offer of permanent accommodation offered by a Housing Association then that decision will also be challenged using the review procedure and dealt with in the usual way by the Housing Executive.

11.1.3 Notifying an applicant of the right to a review

When the Housing Executive gives notice of a decision it shall also inform the applicant of the right to request a review, the time limit within which the request for a review must be made and the Housing Executive's discretion in relation to the provision of temporary accommodation in these circumstances and also in the event of an appeal to the County Court. There can only be one statutory review.

11.1.4 When Must the Request for a Review Be Made?

Article 11A(3) of the legislation states that a request for a review must be made before the end of the period of 28 days, beginning with the day on which the applicant is so notified. The legislation also provides for a longer period as the Housing Executive may in writing allow.

The Housing Executive currently allows a period of 40 calendar days for a request for a review to be received; this allows 7 days for service of the decision letter. **This date is generally determined to be 40 calendar days from the date of the decision letter. The decision letter should advise the applicant of the date at which a review request should be received.**

Submission of a review after the 40 calendar days has expired

If an Applicant submits a request for a review after the 40 calendar days has expired, the Housing Executive has discretion to accept the review request outside the statutory period.

Generally, the applicant will be required to show good reason for his/her failure to request the review in time and for the delay in making the request for this discretion to be exercised in his or her favour. However, staff should also examine:

- Was a clear and reasoned decision presented to the Applicant to enable them to understand their position in relation to that decision and the requirements for submitting a review (staff should consider aspects such as any language barriers, for example where English is not the main language)
- Was the statutory decision notice appropriately posted/delivered to the Applicant?
- How far outside the 40 day period has the review request been made
- Was the statutory decision notice made available for collection by the Applicant or their representative, for a reasonable period of time **Note: the above list is not exhaustive**

The decision to accept a review outside the 40 calendar days,

This decision rests with that person, of appropriate seniority, who was not involved in the original decision and who would otherwise be carrying out the review. The Applicant must be notified in writing, of the Housing Executive's decision in relation to this

11.3 Procedure on a Review

11.3.1 Discretion to Accommodate Pending a Review

Where, pending inquiries in the case of an apparent priority need, the Housing Executive was under an interim duty to secure that accommodation was available and where as a result of those inquiries, no Main Duty arises, the Housing Executive is no longer required to provide accommodation. This will be the case even where an applicant submits a Review. However, it is at the Housing Executive's discretion to secure that accommodation is available for the applicant's occupation pending a decision on the Review.

In deciding to secure that accommodation is available, staff should individually consider a request for temporary accommodation which is made pending the outcome, by taking into consideration:

- The strength of the applicant's case on review
- Whether any new material, information or argument has been raised since the initial decision was made
- The personal circumstances of the applicant
- The consequences for the applicant if accommodation is not secured and any other relevant considerations

Consideration must also be given to determining if, at the outset, there was a complete absence of any explanation or reasoning in the statutory decision letter, in dealing with the various important aspects of the case.

As the provision of temporary accommodation pending review under Article 8(3) of the 1988 Order is down to the Housing Executive's discretionary power, there is no right of review against a decision not to provide temporary accommodation in these circumstances. The only way in which the applicant can challenge such a decision is by using the Housing Executive's formal complaints procedure and by judicial review.

11.3.2 The period within which a review decision is to be given to the applicant

The period within which notice of the decision on a review is to be given to the applicant by the Housing Executive is 8 weeks, or such longer period as the applicant and the Housing Executive may agree in writing. It is therefore important that, once a request for a review has been received by the Housing Executive, it is immediately forwarded to the relevant Reviewing Team.

11.3.3 Acknowledgement of a Review

Where a request for a review has been received by the Housing Executive, the Housing Executive shall notify the applicant –

- that they, or someone acting on their behalf may make representations in writing to the Housing Executive in connection with the review and
- of the procedure to be followed in connection with the review, if it has not done so already

A sample acknowledgement letter can be found at [Appendix 12 – Acknowledgement of a Request for a Review of your Homelessness Decision](#).

11.3.4 Who may carry out the Review?

The review will be carried out by a person who was not involved in the original decision and is senior to the officer who made the decision.

Ineligible decisions

Only the Team Leader or a more senior officer can make a decision that the applicant is ineligible for homelessness assistance, whether on grounds of unacceptable behaviour or because the applicant is a person from abroad or subject to immigration control. As a result, only a more senior officer to the Team Leader or to the senior officer who reached the ineligibility decision can review that decision. Only the Team Leader or a more senior officer can make a decision on the grounds of intimidation.

11.3.5 "Minded to" letter

If the Housing Executive considers that there is a deficiency or 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 Housing Executive shall notify the applicant that –

- the Housing Executive is so minded and the reasons why and

- the applicant, or someone acting on their behalf, should be invited to make further representations to the Housing Executive orally or in writing or both orally and in writing.

The purpose of the “minded” letter is a statutory obligation and it is advisable to seek advice from Legal Services in these circumstances

A sample “minded” letter is at [Appendix 13 – Minded Letter](#).

11.3.6 What Will the Review Cover?

The review is more than a reconsideration of the original decision; it allows additional information to be considered and requires the Housing Executive to make full and proper enquiries. The Reviewing Officer is obliged to carry out his or her own investigations and cannot simply rely on matters raised by the applicant. The review will cover –

- all information taken into account by the Designated Officer in arriving at the original decision
- adherence by the Designated Officer to the Homelessness Legislation and the Homeless Guidance Manual
- any additional information provided by the applicant in his or her review request or at any oral hearing
- any enquiries made and any additional information sourced by the officer undertaking the review

11.3.7 Notification of the Decision on a Review

The Housing Executive shall notify the applicant of the decision on review. The reasons for the decision should be proper, intelligible and adequate to allow the applicant to understand the reasons for the Reviewing Officer’s decision. This is subject to the caveat below regarding the circumstances in which such notification will be delivered.

The period within which notice of the decision on a review shall be given to the applicant by the Housing Executive shall be 8 weeks, or such longer period as the applicant and the Housing Executive may agree in writing.

If the decision is to confirm the original decision on any issue against the interests of the applicant, the Housing Executive shall also notify the applicant of the reasons for the decision.

The Housing Executive shall inform the applicant of the right to appeal to the county court on a point of law and the period within which such an appeal must be made.

It is important to note that notice of the decision shall not be treated as given unless and until the applicant is advised of his/her rights on appeal, the applicable time limits in respect of same and where the decision is to confirm the original decision which was against the interests of the applicant, reasons for that decision are also given.

The notice shall be given in writing and shall, if not received by the applicant, be treated as given to the person only if it is made available for a reasonable period at the office of the Housing Executive to which the person applied, for collection by or on behalf of that person.

If the Review Period will take longer than 8 weeks

Where the review process requires further time then, in accordance with legislation¹, the Housing Executive and the Applicant may agree a longer period in writing. Staff should therefore write to the Applicant or the Applicant's representative to seek agreement to an extended period as early as possible.

11.4 Right of Appeal to a County Court on a Point of Law

If an applicant who has requested a review of a homelessness decision and–

- is dissatisfied with the decision on the review, or
- is not notified of the decision on the review within the time period prescribed i.e. 8 weeks

The applicant may appeal to the County Court on any point of law arising from the review decision or, as the case may be, the original decision.

An appeal must be brought within 28 days of the applicant's being notified of the decision or, as the case may be, of the date on which the applicant should have been notified of a decision on the review.

The County Court may give leave for an appeal to be brought after the expiry of the said 28 days but only if it is satisfied that there is a good reason for the applicant being unable to bring the appeal on time or, where leave is sought after that time, there is good reason for the applicant's failure to bring the appeal on time and for any delay in applying for leave. The Housing Executive does not have power to extend this time limit as only the Court has this discretion.

¹ Article 5 (1) The Homelessness (Review) Regulations (Northern Ireland) 2010

On an appeal, the County Court may make an order confirming, quashing or varying the Housing Executive's decision as it thinks fit.

Where the Housing Executive receives notification of an intention to appeal to the County Court, contact should be made in the first instance with the Housing Executive's Legal Department.

11.4.1 Where the Housing Executive is provided with new information at the same time as the Applicant has appealed or is intending to appeal to County Court

An applicant may, upon receipt of notification from the Housing Executive to uphold an earlier decision, seek legal representation for the purposes of appealing to County Court. At this point new information may also be presented to the Housing Executive which, had it been available before an adverse decision was reached, led to a positive decision. In these circumstances the Housing Executive would consider withdrawing the review decision to avoid the cost of an appeal to County Court. The Reviewing Officer should notify The Housing Executive's Legal Services, who will in turn advise the applicant's solicitor that the review decision will be withdrawn on the basis of new information. The case will go back to the original decision making stage for a new decision; therefore the applicant will have the benefit of the statutory review and appeal on this new decision.

11.4.2 Discretion to Accommodate Pending an Appeal or its Outcome

Where the Housing Executive was under a duty to secure that accommodation was available pending enquiries (interim duty to accommodate) or to applicants found to be intentionally homeless or ineligible, but homeless and in priority need (duties to those found to be homeless) or where it provided accommodation under its discretionary powers during the Review period, it may secure that accommodation is so available where a person appeals to the County Court –

- during the period for appealing the Housing Executive's decision, and
- if an appeal is brought, until the appeal (and any further appeal) is finally determined

11.4.3 Appeals and Exercise of Duty to Accommodate Pending Outcome of Appeal

- If the applicant is dissatisfied with the Housing Executive's decision: not to exercise its power to secure accommodation is available either during the period for appealing the above decision or not to secure accommodation until the final determination by the court or
- to cease exercising its power before that time then the applicant may appeal to the County Court in respect of that decision.

On this appeal in relation to the provision of temporary accommodation the County Court –

- may order the Housing Executive to secure that accommodation is available for the applicant's occupation until the determination of the appeal (or such earlier time as the Court may specify)
- shall confirm or quash the decision appealed against

In considering whether to confirm or quash the decision the court shall apply the principles applied by the High Court on an application for judicial review. Broadly speaking those principles relate to reasonableness, procedural propriety and , illegality of decisions made

If the County Court quashes the Housing Executive's decision it may order that the Housing Executive secures accommodation for such period as may be specified in the order. Such an order may only be made if the Court is satisfied that the failure of the Housing Executive to exercise its powers here would substantially prejudice the applicant's ability to pursue the main appeal. However, the court cannot order that accommodation is provided after the main appeal has been decided.