

Allocations Scheme was referred to Stephen Knafler QC to review, who has considerable experience in housing law and considered the Scheme to be legal. As a result of the Local Eligibility Criteria, the Council received a number of calls from non-qualifying applicants and dealt with around 170 written appeals.

Hillsden v Epping Forest District Council

2. The Claimant in the above case joined the Council's Housing Register on 14 October 2008 and, under the Scheme in force at that time, was placed in Band 5 as she was lacking a bedroom and was living outside the District. The Claimant moved into the District in May 2012. Her application was promoted to Band 3 on 31 May 2013 as she then had 12 months residency which was a requirement under the former Scheme. However, as she had not been in the District for sufficient time in order to meet with the requirements of the new Scheme which came into force on 1 September 2013, she was removed from the list at that time.

3. On 5 August 2013, the Claimant appealed the decision that she would be removed from the Council's Housing Register. Having considered the Appeal, the Assistant Director (Housing Operations) wrote to the Claimant confirming that he was upholding the Council's decision, and if still unhappy she could make a complaint to the Local Government Ombudsman.

4. The Claimant sought legal advice and her Solicitor applied for a Judicial Review by way of a written application to the High Court. A High Court Judge considered the application and written submissions sent to the Court (prepared by Stephen Knafler QC on behalf of the Council), and decided that the Council had acted lawfully and was within its rights to decide locally, in accordance with the Localism Act (and the associated Government's Code of Guidance), on how it should allocate its accommodation. In short, the Judge felt the Council had done nothing wrong and also refused permission for the matter to proceed for a full Judicial Review.

5. The Claimant's Solicitor applied for an oral hearing of the permission application which was heard in the High Court on 10 June 2014. The Council was again represented at the hearing by Stephen Knafler QC and the Claimant was also represented by a Barrister. The High Court Judge who presided at the hearing took the view that the case should proceed to a full Judicial Review hearing as "the matter is of some importance and significance and should be determined as soon as reasonably possible". The Judge commented that he was not himself in favour of the provisions of the Localism Act, (which allows authorities to decide locally how schemes are framed provided they are both legal and rational). The Council's Scheme met with all of the requirements of the Localism Act and associated Codes of Guidance.

6. The Claimant was awarded Legal Aid which allowed her to be represented by a QC and Junior Counsel on the basis that the matter raises issues of some public importance.

7. Officers had a discussion with the Housing Portfolio Holder about the case, prior to the Judicial Review hearing. On the request of the Housing Portfolio Holder, officers sent a briefing note on the matter to the Leader and Deputy Leader of the Council and the Chairman of the Housing Scrutiny Panel.

8. Prior to the case being heard, Stephen Knafler QC expressed the view that the Council had around a 70% chance of success. It was considered that, although it was not possible to predict the costs of defending the action, the Council should defend in order to uphold the Council's policies. If the case was not defended, it could have undermined the Council's Housing Allocations Scheme and had implications on other similar non-qualifying cases.

The Claimant's two main arguments were that:

- (i) Although the Council argues that the delegated authority granted to the Director of Communities to make decisions as he considers appropriate in exceptional circumstances not covered by the Scheme only applies to qualifying persons (i.e. people already admitted onto the Housing Register), the Claimant says the Scheme is framed in a way that infers it applies to both qualifying and non-qualifying persons; and
- (ii) That housing allocation schemes nationally, regardless of how framed, should consider exceptional circumstances of all non-qualifying applicants following a request for a review. If successful on this argument, it could have far-reaching implications on all other local authorities under their own local eligibility criteria.

9. A full Judicial Review hearing was heard in the High Court on 25 & 26 September 2014. The Judgement was handed down on 7 January 2015. In the conclusion of his judgement the Judge said "I have rejected all aspects of the Claimant's challenge". In respect of Paragraph 8 (i) above he stated that such authority was directed to qualifying persons and there is no statutory support for the second argument set out in Paragraph 8 (ii) above.

11. The Judge further referred, in particular, to his view that "the target audience for the Scheme was not the Courts and it [the Scheme] is not for forensic dissection and has to function in the real world and be evaluated as a whole". He felt that the Scheme is unambiguous and has hard-edged rules with no discretion.

12. Stephen Knafler QC commented that it was "a 100% victory". It should be noted that although the Judge has refused Permission to Appeal, the Claimant may seek leave to Appeal in a higher Court. Should the Claimant ultimately lodge an Appeal, the Council will need to consider whether it would continue to defend its position.

13. The Council has obtained an Order for costs although based on experience in previous cases, any costs awarded to the Council are unlikely to be recovered as the Claimant was legally aided.

14. At its meeting on 21 October 2014, the Housing Scrutiny Panel considered the review of the Housing Allocations Scheme following 12 months of operation. As a result of the Claimant's case, the Panel will be recommending to the Cabinet that as part of the review the Housing Allocations Scheme be amended to absolutely clarify that discretion in exceptional circumstances will only apply to persons already admitted onto the Housing Register and that the Director of Communities will not have discretion to allow any non-qualifying applicant onto the Housing Register.

15. As it was not possible to foresee such a challenge being made, no budget provision has been made for any costs. Therefore, the Committee is asked to recommend to the Cabinet that a report be made to Council requesting a Supplementary Estimate in the sum of £40,000 funded from Housing Revenue Account (HRA) Balances in order to meet the costs incurred in the current year for the engagement of Stephen Knafler QC to successfully defend the legal challenge against the Council's Housing Allocations Scheme's Residency Criteria (£37,000) and the provision of advice given on the Council's revised Housing Allocations Scheme (around £3,000) which was agreed by the Housing Scrutiny Panel on 21 October 2014.

16. The Committee are asked to note that due Stephen Knafler QC having extensive experience in this field and in-depth knowledge of the Council's Housing Allocations Scheme he was able to be engaged without competitive quote under Contract Standing Orders C16 (7) which grants exemptions in such circumstances.

Resource Implications:

Supplementary Estimate in the sum of £40,000 funded from Housing Revenue Account (HRA) Balances.

Legal and Governance Implications:

There are currently no Legal or Governance implications, as the Council have been successful in defending the challenge. However, should the Claimant lodge an Appeal, the Council will need to consider whether it would continue to defend its position. If any Appeal was successful, amendments may need to be made to the Housing Allocations Scheme at that time.

Both the current Housing Allocations Scheme and the draft reviewed Scheme has been considered to be legal by Stephen Knafler QC.

Safer, Cleaner and Greener Implications:

None

Consultation Undertaken:

A Consultation exercise was undertaken on the current Housing Allocations Scheme with the Tenants and Leaseholders Federation, Town and Parish Councils, every private Registered Providers of social housing with which the Council has nomination arrangements and partner agencies with an interest in the Scheme. The same arrangements are on-going for the revised draft Housing Allocations Scheme.

Background Papers:

Housing Allocations Scheme
Advice of Stephen Knafler QC
Judgement on Hillsden v Epping Forest District Council

Risk Management:

Any legal risks have been minimised by the Council's Housing Allocations Scheme being reviewed by Stephen Knafler QC. However, as the current Scheme, and to a greater extent the draft revised Scheme, includes strict eligibility rules for a person to qualify to join the Council's Housing Register, the likelihood of challenges by applicants has increased which could result in costly legal representation.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

The Housing Scrutiny Panel considers a report on the Protected Characteristics of all home seekers on the Housing Register compared to those who are allocated accommodation to determine whether there is any disparity. To date no concerns have been raised.

In the case set out in the report, the person who was removed from the Council's Housing Register was one of many who did not meet with the Local Eligibility Criteria in terms of residency. A full Equality Impact Assessment on the Housing Allocations Scheme was undertaken prior to the revised Scheme coming into force on 1 September 2013 which found that the Scheme does not discriminate against any particular group, including when taking into account the Residency Criteria.