

Offering accommodation to street homeless people during the pandemic

1. Who is this briefing for

- The Leader of the Council, Housing Lead and other Cabinet members
- Senior management teams in local authorities, including the Head of Housing
- Policy teams in local authorities

2. Introduction

On 11 March 2021, the High Court ruled in the case of *Ncube v Brighton and Hove City Council*¹ that councils can lawfully provide accommodation to street homeless people during the pandemic, even when they are not eligible for Part 7 homelessness assistance.

This is a landmark ruling with major and immediate implications for councils during the on-going coronavirus pandemic.

It is Shelter's view that this judgment is applicable for the duration of the pandemic, as determined by the World Health Organisation, and certainly while England has a coronavirus epidemic, as set out in the government's alert levels (see Annex).

Shelter intervened in the case to show the court that not everybody was being accommodated as part of the government's 'Everyone In' approach because of the confusion around what legal powers, if any, could be used by councils and to show the impact this was having on people who were sleeping rough and/or homeless.

This briefing summarises the ruling and outlines its implications for local and central government policy.

We ask that you pass this information on to the relevant people in your authority's housing and homelessness teams, to ensure that the ruling is implemented correctly.

The MHCLG-funded National Homelessness Advice Service has already circulated a more detailed briefing note to housing officers across local authorities² that are registered to use their services. The following briefing is therefore designed as a more succinct summary for use by Members, senior management and policy teams in local councils.

¹ (2021) EWHC 578 (Admin)

² 12 April 2021, [NHAS Case Brief: Powers of local authorities to accommodate people with no recourse to public funds](#)

3. Overview of the Everyone In approach

On 11 March 2020, the World Health Organisation declared a coronavirus pandemic.³ Two weeks later, the UK government told councils in England *“it is now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week”*.⁴

This approach, referred to as ‘Everyone In’, has been widely credited with saving many lives and protecting street homeless people during the pandemic. We applaud the efforts made by many local authorities to rise to the huge challenge of arranging emergency accommodation and support.

However, this clear direction from government was never underpinned by robust guidance to councils outlining the legal basis on which they should be accommodating people. This was particularly important for people not eligible for statutory homelessness assistance under Part 7 of the Housing Act 1996, including those with No Recourse to Public Funds (NRPF) as a result of their immigration status.

This has led to a lottery of support with some people accommodated and others refused. During every national and local lockdown in 2020-21, Shelter was contacted by street homeless people, because they’d been refused accommodation. In some cases, when Shelter advocated on their behalf, we were also informed by the council there was no requirement to accommodate.

4. Background to *Ncube v Brighton and Hove City Council*

Timon Ncube, 61, fled Zimbabwe to seek asylum in the UK, but his asylum claim was subsequently refused. He has diabetes, is visually impaired and has poor mental health.

He became destitute during the pandemic, and in early September 2020 he was spending most nights at Brighton and Hove Railway Station or walking the streets.

At that time, England was under COVID Alert Level 3 (COVID-19 epidemic in general circulation)⁵ but not under national lockdown restrictions. Brighton and Hove was covered by regional Tier 1 (medium alert) restrictions.⁶

Mr Ncube approached Brighton and Hove Council for emergency accommodation. The council refused on the basis Mr Ncube was ineligible for homelessness assistance under Part 7 of the Housing Act 1996.

Mr Ncube’s solicitors then sent a letter-before-action to the council requesting that Mr Ncube be provided with accommodation on the basis that he was destitute, vulnerable and

³ WHO, 11 March 2020, [Director-General’s opening remarks at the media briefing on COVID-19](#)

⁴ 26 March 2020, [Letter from Homelessness Minister Luke Hall to local authorities](#)

⁵ DHSC, 5 January 2021, [UK COVID-19 alert level methodology: an overview](#)

⁶ NHS, 2020, [Coronavirus Tier 1, Medium Alert](#)

homeless during a pandemic and that accommodation should be provided pursuant to the 'Everyone In' approach.

The council responded that they would not be providing accommodation. They argued that, as a failed asylum seeker, Mr Ncube should apply to the Home Office for support (commonly known as 'section 4' support). Mr Ncube subsequently applied for 'section 4' support but was initially refused.

Mr Ncube's solicitors then issued Judicial Review proceedings on grounds that the council had not considered other powers available to them to provide accommodation outside of Part 7 of the Housing Act 1996, including the Local Government Act 1972 and NHS Act 2006. Shelter supported the position that the above powers could be used to provide accommodation.

5. High Court judgment – March 2021

The court confirmed that councils *do* have powers to accommodate people who are not eligible for Part 7 homelessness assistance under section 138 of the Local Government Act 1972 and section 2B of the NHS Act 2006.

It also ruled that those powers fall outside of the restrictions of section 185 of the Housing Act 1996, providing that the use of those powers is not being used to deliberately circumvent section 185. Section 185 of the Housing Act 1996 does not apply to the use of these powers as they are separate statutory regimes to Part 7.

Section 138 of the Local Government Act 1972

The court found there is a power for a local authority to provide accommodation, including to a person who is not eligible for homelessness assistance under Part 7 Housing Act 1996, under section 138 where;

- (a) there has been an emergency or disaster, or it is imminent or there is reasonable ground for apprehending such an emergency or disaster;
- (b) the type of disaster is one involving danger to life or property;
- (c) if so, the Council is of opinion that it is likely to affect its area or some of its inhabitants; and
- (d) if so, the Council may incur such expenditure as it considers necessary to avert, alleviate or eradicate its effects or potential effects.

Although the court was cautious about being overly prescriptive about what would constitute an 'emergency' or 'disaster' it found the current pandemic was clearly an 'emergency' and there was an emergency when Mr Ncube presented as homeless in September last year when England was under COVID Alert Level 3 (COVID-19 epidemic in general circulation)⁷ and Brighton and Hove was covered by Tier 1 (medium alert) restrictions.⁸

⁷ DHSC, 5 January 2021, [UK COVID-19 alert level methodology: an overview](#)

⁸ NHS, 2020, [Coronavirus Tier 1, Medium Alert](#)

Section 2B NHS Act 2006

The court also decided that councils have the power to provide accommodation under s.2 National Health Service Act 2006, as part of its duty to take such steps as it considered appropriate for improving the health of the people in its area. That power can be used to accommodate people who are not eligible for Part 7 homelessness assistance, where the accommodation is provided in order to minimise any risk to health and it is not intended to circumvent the prohibition at s.185 Housing Act 1996.

6. Recommendations for local authorities

The court has now explicitly confirmed that the pandemic is an emergency and a public health issue for the purposes of:

- Local Government Act 1972 (section 138) and
- NHS Act 2006 (section 2B)

and that those powers can be used by councils to legally accommodate those not eligible for Part 7 homelessness assistance.

This means that no one should be left on, or asked to return to, the streets during the pandemic, as the court has confirmed powers exist to accommodate everyone.

It is Shelter's view that this judgment is applicable for the duration of the pandemic, as determined by the World Health Organisation, and certainly while England has a coronavirus epidemic set out in the government's alert levels (see Annex), regardless of easing of lockdown measures.

We recommend that your housing and homelessness officers receive training about this important case.

We recommend that you use your legal powers to provide emergency accommodation and support to all street homeless people, or those at imminent risk of the street, including those who are:

- Not eligible for Part 7 homelessness assistance (because of immigration status)
- Eligible but where there is no duty to accommodate under Part 7 homelessness assistance for reasons of priority need, intentionality or local connection.

7. Recommendation for central government

We recommend the Ministry of Housing, Communities and Local Government now urgently issues explicit guidance to councils confirming these powers can and should be used to accommodate all those at risk of the street for the duration of the pandemic.

Annex: National COVID Alert Levels and Tiers

When Mr Ncube was street homeless, England was under Alert Level 3.

At the time of publishing this briefing (April 2021), England is under Alert Level 4.

| COVID Alert Levels | | |
|--------------------|---|---|
| Level | Description | Action |
| 5 | As level 4 and there is a material risk of healthcare services being overwhelmed | Social distancing measures increase from today's level |
| 4 | A COVID-19 epidemic is in general circulation; transmission is high or rising exponentially | Current social distancing measures and restrictions |
| 3 | A COVID-19 epidemic is in general circulation | Gradual relaxing of restrictions and social distancing measures |
| 2 | COVID-19 is present in the UK, but the number of cases and transmission is low | No or minimal social distancing measures; enhanced testing, tracing, monitoring and screening |
| 1 | COVID-19 is not known to be present in the UK | Routine international monitoring |

The regional tier system⁹ was used in English regions in 2020 at times when national lockdown restrictions were eased.

When Mr Ncube was street homeless Brighton & Hove was under Tier 1 (Medium Alert):

| Tier 1: Medium alert | Tier 2: High alert | Tier 3: Very High alert |
|--|---|--|
| Meeting friends and family | | |
| Maximum of six indoors or outdoors, other than single households or support bubbles. | No mixing of households indoors, apart from support bubbles. Maximum of six outdoors. | No mixing of households indoors, or most outdoor places, apart from support bubbles. Maximum of six in some outdoor public spaces (e.g. parks, sports courts, public gardens). |

⁹ Cabinet Office, 2 December 2020, [COVID Winter Plan summary](#)