

Offering Temporary Accommodation Out of Area

1. Who is this briefing for

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

2. Introduction

The following briefing document is intended to summarise the recent Supreme Court ruling (2nd April 2015) on out of area temporary accommodation ([Nzolameso vs Westminster City Council \[2015\] UKSC 22](#)), and to outline implications for local and central government policy.

Shelter Children's Legal Service intervened in this important test case because their experience showed that housing authorities were failing to make arrangements which take account of the best interests of children when offering temporary accommodation. Shelter provides practical advice and support to over 4 million homeless or badly housed people a year via its website, telephone helpline and network of advice services. It employs over 200 advisers and 40 solicitors to give advice and offer representation. Last year, Shelter advised 5245 people who were living in temporary accommodation.

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

3. Overview of out-of-borough/area placements

In areas with high levels of homelessness, notably London, local authorities are increasingly placing homeless applicants into temporary accommodation that is located in a different council area. A quarter of all temporary accommodation for homeless households falls into this category, with an estimated record 16,810 families accommodated in a different borough, a 30% increase on last year.

Of particular concern is when homeless households are sent out of area, and placed in a different region to their last settled accommodation. Although we recognise that some placements that are classed as out of area may improve a household's housing situation, or may still be close to the home borough, evidence suggests that significant numbers are being placed a long way from their last settled accommodation. Figures from March 2015 show that 2,707 families have been placed out of Greater London, sometimes as far away as the North of England.

Councils have been criticised for not considering the full circumstances surrounding a homeless household when making the offer of temporary accommodation, and for not alerting the host local authority when placing a homeless family there. Such concerns were highlighted in the recent case of *Titina Nzolameso vs Westminster City Council*.

4. Background to *Nzolameso vs Westminster City Council*

Ms. Nzolameso applied to Westminster as homeless. She had five children, aged between 8 to 14 years old, all of whom attended schools in Westminster. Ms Nzolameso was not in good health, as she was HIV positive and suffered from diabetes, retinopathy and possible depression. Her GP was in Westminster and she also had a support network of friends in Westminster who helped with her children.

Westminster accepted a housing duty to Ms Nzolameso, and they offered her accommodation some 50 miles away from Westminster. Westminster's offer letter contained what appeared to be a standard paragraph, referring generally to their shortage of accommodation. The letter stated that they considered it reasonable to offer Ms Nzolameso accommodation outside the Westminster area, with no reference to consideration of the household's individual or collective needs.

Ms Nzolameso refused this accommodation and unsuccessfully pursued the matter through a housing review, the County Court and the Court of Appeal. Westminster in the meantime discharged their duty to house her, and subsequently took her children into care. The children were separated between three different foster placements. At this point the case was taken to the Supreme Court.

5. Supreme Court findings

The Supreme Court unanimously upheld Ms Nzolameso's appeal, with Shelter Children's Legal Service intervening in the case. The Court reiterated the council's statutory duties under sections 206 and 208 Housing Act 1996, which state that local authorities must provide homeless applicants with suitable accommodation, which as far as reasonably practicable must be within their area. Failing this, authorities must try to place the household as close as possible to where they were previously living and to avoid serious disruption during the process. It is clear however that this doesn't preclude out of area placements where they are unavoidable.

The Court also emphasised that authorities have a duty to safeguard and promote children's welfare under s11(2) of the Children Act 2004, when making decisions regarding temporary accommodation placements. The judgment makes it clear that this duty requires a proactive approach, and therefore:

'It is not enough for the decision-maker to simply ask whether any of the children are approaching GCSE or other externally assessed examinations...The decision-maker should identify the principal needs of the children, both individually and collectively...'

In this case, the council had not made wider enquiries such as whether school places were available in Bletchley, nor had there been any consideration of Ms Nzolameso's medical needs and whether these could be met in Bletchley. There had been no consideration of whether accommodation could be located nearer to Westminster.

6. Recommendations for local authorities

Shelter supports the recommendations made by the Supreme Court, which stated that local authorities should take the following immediate steps when making offers of accommodation to homeless households:

- As far as reasonably practicable, councils should avoid making out of area placements to homeless households, and use this option only as a last resort when no accommodation in the local area can be procured.
- If accommodation cannot be procured in area, then attempts must be made to find a suitable alternative as close as possible to where the household were previously living. The search for accommodation must be evidenced.
- The principal needs of the individual household must be acknowledged, including adults and children, and assessed both individually and collectively when determining the location of accommodation.
- Written evidence and explanation should be recorded and given on a case-by-case basis when making out of area placements, acknowledging each household's collective and individual needs.
- Households must be given sufficient time to make a decision on an out of area offer, when no alternatives are available, and thorough information regarding the proposed area must be provided. Currently, in some cases local authorities are requesting that families make a decision on the same day that the out of area offer is made.

The Supreme Court also advised that local authorities adopt the following longer-term approaches:

- Produce and keep up to date a publically available policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming 12 months.
- Produce and keep up to date a publically available policy for allocating temporary accommodation units, which would be used to explain the individual factors that have been taken into account when offering such accommodation to households.
- The above policies would have the advantage of:
 - Guiding temporary accommodation letting teams in their daily business, and helping ensure that the right accommodation is procured for a household.
 - Informing homeless households, and their supporting agencies of local housing pressures and what to expect from an offer of temporary accommodation.
 - Assisting reviewing officers in ensuring that policies were applied correctly to an individual case.
 - Assist both homeless households and local authorities in disputes around the offer of temporary accommodation.

7. Recommendations for central government

Local authority housing services are currently facing significant pressures through reforms to housing benefit, the static temporary accommodation subsidy arrangement and the general low supply of housing. To assist local authorities in their duty to house homeless households in borough Shelter advises central government to take the following steps in relation to temporary accommodation:

- Review current temporary accommodation subsidy arrangements to better help local authorities procure the necessary units in borough.
- Exempt households living in temporary accommodation from the Benefit Cap, which currently restricts use of temporary accommodation located in London.

Ensure local authorities can access a ready supply of social and private rented sector accommodation by building more affordable homes and reviewing Local Housing Allowance levels.

8. Conclusion

Local authorities currently face significant pressures in housing homeless households, especially in high demand areas such as London; however, placing homeless households out of borough must be avoided where possible, and used only as a last resort. When the only option remaining is to place a homeless family out of area then local authorities should consult the recommendations made by the Supreme Court.

To ensure that local authorities do not need to rely on out of area placements in the first place, the government must review the current constraints on procuring temporary accommodation and help prevent homelessness in the first place by building more affordable homes.

Further queries

For any queries regarding out of area placements please contact:

Kevin Garvey (Policy Team)

kevin_garvey@shelter.org.uk