

The need for a Robust Independent Appeals Mechanism for Decisions related to Social Housing and Homelessness

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1pm

**A presentation by members of the Irish
Homeless Policy Group**

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Decisions related to social housing and homeless supports are made by employees of local authorities. These decisions can have profound impacts on the lives of those affected by them. Local authorities are responsible for determining whether a household is entitled to join the social housing waiting list, access HAP, transfer to different properties, have priority status applied to their application, or even to determine whether a household is homeless and entitled to access emergency accommodation.

In 2024 the Joint Oireachtas Committee on Housing, Local Government and Heritage carried out pre-legislative scrutiny over the Housing (Miscellaneous Provisions) Bill 2024. During hearings on this bill, members of the Oireachtas and civil society groups pointed to the lack of a robust, independent appeals mechanism for decisions related to housing and homelessness. The Department of Housing expressed a willingness to engage with the creation of such a mechanism. The Joint Committee recommended *“that a robust and independent appeals mechanism be included in the legislation”*, going on to recommend that *“this appeals process should not be operated by local authorities; rather, it should be centrally operated in order to ensure that a level of expertise can be build [sic] up over time.”*

Member organisations of the Irish Homeless Policy Group believe strongly that a statutory appeal structure should be put in place to allow appeals and reviews of decisions made by local authorities. This desire is informed by the experience of these organisations, where advocating for their clients regularly reveals substantial variance in the robustness of decision making across different local authority areas. All too often, member organisations have experienced decisions being made without clear legal basis or consistent approach, often resulting in profound negative impacts on the households seeking assistance. The enclosed case studies have been gathered from member organisations in the hope that they can provide important context for discussion.

In the absence of an independent appeals mechanism, these households are left with very few options but to seek legal intervention in the form of a judicial review before the High Court.

Appeal structures already exist across many areas of administrative decision making including, among others, International Protection, planning, tax, and social welfare. In addition, the jurisdiction of England & Wales has a clear, tiered, structured appeal system for decisions made by local authorities related to housing and homelessness.

We would ask the members to engage with the Minister and the Department of Housing, Local Government and Heritage to move quickly to create a system which will allow applicants to vindicate their rights without needing to have recourse to the courts.

Case Study 1 - Refusal of emergency accommodation

A family had been residing in private rented accommodation when they were lawfully required to leave. The family moved into a hotel at great personal expense for six nights before they were no longer able to afford the rooms. They contacted the local authority seeking to avail of emergency accommodation. In a misapplication of the law the local authority refused the family shelter by erroneously conflating their refusal of social housing outside of their areas of preference, as defined in the Social Housing Allocations Regulations 2011, and at considerable distance from the children's schools and place of work of their father.

A pro-bono legal service were instructed to engage in legal advocacy on behalf of the family; arguing that the local authority had failed in its statutory obligations under section 2 of the Housing Act 1988 by refusing to conduct a homeless needs assessment for the family. The team further argued this failure also infringed on the family's Constitutional right to family and private life and the right to education. Further, such failure potentially breached Article 8 of the European Convention on Human Rights. After engaging in correspondence over a number of weeks the family were finally provided with emergency accommodation and quickly thereafter social housing within their areas of preference.

Alternative: Due to the misapplication of the law the family had no choice but seek legal help. If the family had not sought out legal services they would have been forced to either uproot their family to settle in an accommodation that was far from their day-to-day lives or forced to be without housing in general.

Case Study 2 – Pressured surrender of Council tenancy

The applicant was an individual who was experiencing issues with his local authority tenancy. He was particularly vulnerable, having suffered from physical and mental health conditions including an acquired brain injury, schizophrenia, and substance abuse. He moved into a local authority tenancy but had to move out after six months due to estate management concerns.

The local authority cited noise complaints and anti-social behavior complaints from other residents as a result of another person that the client had brought onto the property, in breach of his tenancy agreement. The local authority verbally asked the applicant to surrender the property or else they would have to evict him and he would not be eligible for another house for 3-5 years.

Following legal advocacy by a pro-bono legal service the local authority offered the applicant an interim placement for 12 months in a shared accommodation and organized a meeting to discuss his options. The legal service advised the applicant as to his rights and entitlements going into this meeting and the local authority agreed to attempt to re-house the applicant. The pro-bono solicitor attended at the meeting and supported him to self-advocate with the staff members from the local authority. The applicant moved into respite care. A further meeting with the local authority took place, discussing the complaints against the applicant and possible solutions. The local authority offered the applicant a new local authority house, in a different area, closer to his family. The applicant viewed the property and signed for the new tenancy.

Alternative: With an appeal structure, the local authority's initial refusal to transfer the applicant could have been challenged without need to have recourse to legal intervention.

Case Study 3 - New mother refused access to emergency accommodation

A young woman had been living in Ireland for a couple of years and had been volunteering with a charity here. She became pregnant and gave birth to a baby. She was unable to return to the accommodation provided by the charity with her new baby and had no alternative accommodation available to her. A pro-bono legal team contacted two local authorities seeking a homeless assessment for the household.

One local authority refused to conduct a homeless assessment because her recent address was within another local authority's functional area. The pro-bono legal service wrote to both local authorities and requested immediate assessment, failing which leave to apply for judicial review would be sought. During this time the applicant remained a patient on the maternity ward with her daughter. An application for permission to remain in Ireland was made on behalf of the applicant based on their parentage of an Irish citizen child.

After issuing pre-litigation action letters to both local authorities the applicant was assessed by one and granted emergency accommodation. A month later she was granted permission to remain and Stamp 4 residency in Ireland. The applicant was admitted to the social housing list and successfully sourced a property to rent in a neighboring county.

Fair procedures and transparency in the appeal process was a challenge for the applicant; who without access to legal assistance would have faced significant challenging in navigating the local authority.

Alternative: An appeal structure would have provided a clear means to challenge the refusals of each local authority to provide the applicant with access to emergency accommodation without needing to have recourse to solicitors and the thread of proceedings.

Case Study 4 – Domestic violence and access to Emergency Accommodation

The applicant and her seven children were forced to flee their home owing to ongoing domestic violence. She returned to the county where she was from, and where she had spent her childhood and much of her adult life. Upon their return, the family stayed temporarily with friends and family, as they did not have the resources to secure their own accommodation. They lived in overcrowded conditions, often sharing a single bedroom.

The applicant presented to her local authority for a homeless assessment and was advised by the local authority that she needed to return to the county from where they had fled to access emergency accommodation. The local authority was basing this decision on the Local Connection Protocol, which was adopted by the City and County Manager's Association – a document which has no statutory basis.

The applicant made several unsuccessful attempts to secure emergency accommodation from the local authority, with the support of a local Traveller advocacy group.

At this point, legal intervention became necessary. Following pre-litigation correspondence, the local authority reversed its position and offered the applicant emergency accommodation.

Alternative: The applicant and her advocate could have resolved the matter themselves if a formal appeals mechanism existed, without requiring recourse to legal assistance, in circumstances where the applicant clearly met the legal standard for homelessness. An independent mechanism would also improve the quality and consistency of decision making across local authorities and ensure that housing officers are applying the correct legal tests.

Case Study 5 – Refusal to provide effective Emergency Accommodation

The applicants were a couple who had been living in a tent in the countryside for over a month. They had been assessed as homeless by the local authority and had been provided with one night's emergency accommodation in a hostel. However, the couple was subsequently asked to leave the hostel owing to a historic criminal conviction of one of the applicants. The local authority thereafter refused to provide them with alternative emergency accommodation and the couple were forced to stay in a tent. The precariousness of their living conditions was having a severely detrimental impact on the applicants, on both their physical and mental health.

A local Traveller advocacy group had been assisting the couple in seeking access to emergency accommodation, to no avail. It was only following legal intervention, including pre-litigation correspondence threatening judicial review proceedings, that the local authority agreed to provide the couple of accommodation.

Alternative: It took legal intervention for a couple, who had already been deemed to be homeless, to gain access to basic supports. An appeals process could have resolved this crisis in a prompt and fair manner, without the stress and delay in seeking legal assistance.

Case Study 6 - Unlawful removal from housing list

The household (comprising two parents and two children) had been living in private rental accommodation, with the support of the Housing Assistance Payment (HAP) for nearly nine years.

When one tenancy came to an end, in circumstances where their landlord sought to sell the property, the household moved to new private rental accommodation and sought to avail of HAP with respect to this tenancy. Despite numerous requests from the household, the new landlord refused to complete the relevant section of the HAP application form.

The household subsequently received a letter from the local authority, without any warning or lawful reason, stating that their application for social housing supports was closed owing to their *"failure to move to another HAP property within the 6-month period"*. The household sought to overturn this decision, with the assistance of a migrant rights service, without success.

Following legal intervention, the local authority accepted that it had wrongly removed the household from the housing list and re-instated them to their original position.

Alternative: In the absence of an independent appeals mechanism, this household had no option but to seek legal assistance to overturn a clearly erroneous and unlawful decision. If the household had not sought legal advice, they would have lost nearly nine years on the housing list. With an appropriate independent and standardised appeals structure, this matter could have been resolved in prompt, fair and effective manner without any legal intervention.

Case Study 7 – Closure of Social Housing Application

The applicant was a homeless single mother, residing in emergency accommodation having fled domestic violence. The local authority made the decision to close her social housing application, without citing any legal basis, on foot of an incorrect belief that the applicant owned property abroad. The local authority refused to accept the statement of the applicant that she owned no property, nor an affidavit to this effect, indicating that they were operating a national policy requiring the equivalent of land registry documents to be provided from a series of countries confirming non-ownership.

Legal intervention became necessary and Freedom of Information requests reflected that no such policy existed outside of this particular local authority. It became clear that the local authority were operating off of allegations of ownership made by the applicant's ex-partner.

Following legal intervention, the applicant began to take High Court proceedings to preserve her rights. Immediately before proceedings were lodged the local authority took legal advice and resiled from their position.

Alternative: With an appeal structure, a local authority could not stand over closing an application without citing a lawful basis. It would become much more difficult for unlawful local rules to be applied. The applicant and her advocates would have been able to preserve her rights without requiring legal intervention.

Case Study 8 – Conflation of Social Housing and Homeless Services

Applicant, an EU citizen employed in the State, became at imminent risk of rough sleeping along with his wife and children due to receiving a Notice of Termination from his Private Rented home. He presented to his Local Authority but they first insisted on having a translation of his birth certificate. Unfortunately, he became homeless and began sofa surfing. Because his friends could only assist him for a short time, he went back to the local authority who then insisted on him submitting a "complete" housing application before he could be considered for any assistance. Due to his difficulties, it was becoming increasingly challenging to continue to get to work and his child was unable to attend school as it was too far away from his friend's house.

The applicant contacted an NGO who are part of the homeless services. The NGO contacted the Local Authority but, even though they pointed out that; there is no legal basis for conflating the provision of homeless services and applying for Social Housing Support, the rights of workers and their family members under EU Law and, the responsibility of the Local Authority to act in the best interests of children, the officials still refused to help. Over a month, the applicant could not work and the child could not go to school. With the situation desperate, a legal intervention was

made. Only under threat of legal action did the officials offer a self-accommodation voucher whereby the applicant would have to find his own accommodation. This was accepted but as his family were by this time traumatised, they left Ireland.

Alternative: With an appeal structure, a local authority could not stand over acting without a legal basis or obstructing the fundamental rights of workers and their family members under EU Law. A prompt independent appeal mechanism and precedent case base, accessible by all, would save huge amounts of work, effort and time by all and avoid completely unnecessary legal action and distress.

Case Study 9 – Incorrect Application of Local Connection Criteria

Applicant household sought to apply for social housing supports in a local authority area other than the one in which they currently reside. The father of the household worked within fifteen kilometres of the local authority area and his extended family, including his sibling, had resided within the local authority's functional area for several years. This clearly amounts to a local connection within the meaning of the Social Housing Assessment Regulations.

However, the local authority issued short, perfunctory refusals on two occasions to this client, indicating that as the household did not reside within the functional area they could not apply for social housing supports there. The applicant sought legal advice and correspondence issued to the local authority calling on them to change their position and correctly apply the law. However, this correspondence was ignored, and the applicant was left with no option but to begin the process of seeking a High Court judicial review. Once pre-litigation correspondence issued, the local authority agreed to review its position.

Alternative: With an appeal structure, the very clear misapplication of the law could have been reviewed and overturned without the need to engage legal services.