

Written evidence submitted by Housing Law Practitioners Association [IOC 212]

Submission to the Housing, Communities and Local Government Committee's Inquiry into the Impact of Covid-19 (coronavirus) on homelessness and the private rented sector inquiry

Housing Law Practitioners Association

The Housing Law Practitioners Association (HPLA) is an organisation of solicitors, barristers, advice workers, independent environmental health officers and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. HPLA has existed for over 20 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance). HPLA's Responses are available at www.hlpa.org.uk.

Membership of HPLA is on the basis of a commitment to HPLA's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

This communication has been prepared on an urgent basis by HPLA members and executive committee members. All members have been consulted by email survey and the responses received have been incorporated. A summary of our responses is attached at Schedule A.

This submission is divided into the following sections:

- Summary
- **Section 1 – homelessness and rough sleeping**
- **Section 2 – the private rented sector**
- Conclusions
- Schedule A – summary of consultation responses

Summary of Submission

Section 1 – homelessness and rough sleeping

1. HLPAs applauds the stated aims of the government's "Everyone In" scheme, however our members have observed difficulties and failings in the way it is being implemented in practice. Although many homeless persons have been accommodated as a result of the scheme, many remain homeless over a month since its announcement. Many are also housed in poor quality, unsuitable accommodation. HLPAs have identified through its membership specific barriers to universal and effective implementation of the scheme, including:
 - (a) Lack of clarity in relation to local authority accommodation powers to be exercised, particularly for those who fall outside of the provisions of Part VII Housing Act 1996;
 - (b) Lack of local authorities resources, particularly housing stock;
 - (c) Elements of existing statutory frameworks which hinder the universal approach of "Everyone In", particularly priority need requirements.
2. HLPAs members also share concerns that positive measures adopted during Covid-19 will be abandoned following the end of emergency measures and Lockdown, resulting in a return to widespread homelessness and rough-sleeping.
3. HLPAs makes a range of recommendations to the panel in relation to enabling the effective implementation of the "Everyone In" scheme, and urges that any progress made during this time towards the eradication of homelessness and rough sleeping is maintained in the long term.

Section 2 – the private rented sector

4. HLPAs members observe that the measures taken to protect renters from eviction during the Covid-19 pandemic were delayed, and that the legislative provisions were inadequate to halt evictions in line with the stated governmental aim. The steps taken by the Master of the Rolls and Lord Chancellor in the form of Practice Direction PD51Z are applauded by HLPAs, and it is recommended that these measures are placed onto statutory footing.
5. Members share concerns over the situation of renters after emergency measures halting possession proceedings and evictions are lifted, as in the absence of a suspension of rental liability a very large number of renters will be accruing substantial arrears giving rise to an inevitable avalanche of possession and eviction actions. This will lead to an increase in homelessness which it is feared local authorities will be ill-equipped to handle.
6. HLPAs recommends a range of measures to be taken in the medium to long term to prevent a national crisis of homelessness.

SECTION 1

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1.1 The "Everyone In" scheme

- 1.1.1 Lack of powers to assist NRPF persons
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- 1.2.1 Gatekeeping
- 1.2.2 Priority need
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1.3 Issues with accommodation provided

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1.5 Summary of recommendations

1.1 The “Everyone In” scheme

1. The Minister for Homelessness Luke Hall MP in his letter to Local Authority leaders on 26 March 2020 (“the Luke Hall letter”) outlined the government’s strategy in relation to rough sleepers and homeless persons during the Covid-19 pandemic. The letter states that “it is now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week” (Sunday 29 March 2020), and sets out a range of expected actions to be taken by local authorities in achieving this aim.
2. HLPAs are fully supportive of the stated aims of the Luke Hall letter and the Everyone In scheme. It is entirely appropriate and necessary during this public health crisis that shelter is provided to all, regardless of status and circumstances.
3. However, a month on, there remain significant numbers of rough sleepers and homeless persons throughout the country who have not been supported into accommodation. The ongoing presence of homeless persons on the streets has been observed in the national press. HLPAs members report continuing approaches by persons without any accommodation seeking legal advice, responses including:
 - (a) homelessness is “the only category of case where we have not seen a very large drop in new referrals”;
 - (b) “these are the majority of new client cases we are getting at present”.
4. HLPAs members have reported ongoing difficulties faced by homeless persons in obtaining support, for instance one member has been informed by rough sleepers in her area that “the police are simply moving them on from begging hot spots and they have not been offered any assistance.”
5. HLPAs are of the view the stated aims of the Luke Hall letter have been obstructed by:
 - (a) a lack of clarity as to which powers local authorities are to exercise in compliance with the Everyone In scheme;
 - (b) the absence of accommodation powers and duties suitable for dealing with the Covid-19 crisis; and
 - (c) chronic lack of resources within local authority homelessness services.
6. Local authority accommodation duties and powers are a complex tapestry of distinct statutory frameworks. No one piece of legislation contains anything close to a general power to accommodate rough sleepers.
7. Many homeless, both rough sleepers and the precariously housed, are continuing to fall through the gaps between the various statutory frameworks and support provided by the charitable homeless sector. This response addresses a number of specific concerns in turn.

8. One particularly concerning response from a HLPAs member contained correspondence from a local authority housing officer claiming that they “have been advised by the Ministry of Housing to revert back to applying the 1996 Housing Act as they normally would, in effect reversing the all in announcement that was made under Covid 19”. Whether or not such a communication was made to the local authority in question, this demonstrates the extreme confusion as to which frameworks and resources local authorities are meant to rely upon in order to effect the scheme. Furthermore, it is clear that local authorities are finding it difficult to pivot away from an extremely restrictive approach to assisting homeless people which has been their modus operandi for decades but particularly in the years of austerity since the 2008 financial crash.

1.1.1 No Recourse to Public Funds

9. The Luke Hall letter states that local authorities should “utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic”.
10. HLPAs wishes to emphasise to the Committee the extremely limited nature of local authority powers to provide accommodation to individuals with no recourse to public funds (“NRPF”).
11. NRPF persons are excluded from homelessness assistance under Part VII of the Housing Act 1996 (section 185 of that Act), and the courts have held that this exclusion also prevents local authorities from relying upon their general competence under section 1 Localism Act 2011 to provide accommodation to NRPF individuals.
12. That leaves NRPF individuals facing homelessness and destitution to rely upon the limited community care frameworks: for the most part limited to the Children Act 1989 and the Care Act 2014. Those without children, or needs for care and support (the latter as specifically defined in the Care Act 2014) will not be able to obtain accommodation under these acts. Obtaining accommodation under the Care Act 2014 is notoriously challenging as the need for accommodation alone is not considered to be a need for care and support for the purposes of the act.
13. Many NRPF persons will face the additional hurdle of having to demonstrate a breach of their human rights if they are to access any support at all (Schedule 3 of the Nationality, Immigration and Asylum Act 2002).
14. Measures to address this issue are essential to achieving the stated aims of the Everyone In scheme. NRPF persons form a large proportion of the rough sleeping population – their inability to access public funds leaves them with no alternatives to street homelessness.

15. Some HLPAs members report approaches from NRPF clients seeking financial and housing support. Members comment, for instance:
 - (a) “those with NRPF but who are allowed to work are losing their jobs unexpectedly and find themselves very suddenly in urgent need of support”;
 - (b) “services that work with migrants with NRPF have not found it straight forward for this client group to be housed by [local authority in South East England]”
16. Practices appear to vary widely by local authority area, and one HLPAs member reports that a working group had been established in Brighton & Hove specifically to address NRPF persons, with the council passing a motion declaring “its commitment to explore ways of continuing the unconditional offer of shelter currently being offered to rough sleepers during the crisis”.

Recommendation:

17. HLPAs urges the Committee to consider proposing legislative measures to provide local authorities with a power to accommodate NRPF persons who are otherwise excluded from assistance, in line with the stated governmental aims under the Everyone In scheme. This could take the form of either a suspension of section 185 Housing Act 1996, or an amendment to section 1 Localism Act 2011. Such a power will only be effective if there is explicit guidance setting out the expectation by central government that it will be exercised.

1.1.2 Local Authorities unable to effect the Everyone In scheme due to lack of resources

18. A number of HLPAs members report concerns over the strain on local authority resources and accommodation stock in light of the Covid-19 pandemic. One member provided correspondence with a local authority housing officer in which that officer claimed that accommodation stock had run so low that there were not even sufficient rooms to house those deemed in priority need. Other members report an increase of out of area placements potentially resulting from a complete lack of local housing stock. In very many areas dysfunctional benefits mechanisms such as LHA rates are one of the major drivers of this problem, both in ‘normal times’ and in the current crisis, even with the inadequate uprating that has occurred. The funding support from central government is simply insufficient to address these shortages.

1.1.3 Difficulties in reliance upon the third sector

19. Many local authorities are attempting to make use of existing third sector rough sleeping services, for instance StreetLink, in order to implement the Everyone In scheme.
20. Unfortunately, HLPAs members have observed instances in which this is leading to confusion and difficulties for homeless persons in obtaining support. Members report:
 - (a) homeless persons who are unknown to services (for instance regular residents in private hostels who irregularly sleep rough) being turned away;
 - (b) homeless persons who may be eligible for statutory assistance under Part VII Housing Act 1996 suffering gatekeeping when seeking help from the council, sometimes being directed to third sector services;

(c) homeless persons being told that in order to obtain assistance from third sector organisations that they must first “bed down” on the streets;

21. HLPAs are concerned that the ill-defined sharing of responsibility for homelessness services between local authorities and the third sector is making it difficult for homeless persons to challenge refusals of assistance. It can be unclear where responsibility lies, and which if any statutory frameworks are operating. This is creating an absence of transparency and accountability, and is leaving vulnerable homeless people at risk of falling through the gaps and remaining on the streets where they are unable to effectively socially distance in line with public health guidance.

Recommendations:

22. HLPAs recommend that further guidance is issued to local authorities in relation to how to manage co-operative action with third sector services to ensure that there is sufficient transparency and accountability. It must be clear when a person approaches their local authority under what powers they are being assisted, who is ultimately responsible, and what options are open to the homeless person to challenge any adverse decisions.

23. Guidance addressed to third sector homelessness services should also be given, as in certain circumstances inappropriate gateway conditions are being imposed, such as having been previously “verified” as a rough sleeper (which excludes many new or hidden homeless people), or a requirement that the person “bed down” on the streets at a time when any unnecessary time spent out of doors increases risk of contracting Covid-19. Structural drivers of acute accommodation shortages such as the LHA should be much more radically lifted/reformed.

1.2 Part VII Housing Act 1996 concerns

24. HLPAs members share concerns over the manner in which the mainstream homelessness provisions of Part VII Housing Act 1996 is functioning as the primary statutory framework for the provision of accommodation during Covid-19. The concerns relate both the legislation itself, and local authority practices.

1.2.1 Gatekeeping

25. HLPAs members report the ongoing prevalence of “gatekeeping” practices among local authorities, by which homeless persons seeking support are turned away without proper assessment. These practices are sadly commonplace even outside of the current emergency, however are all the more concerning in the context of Covid-19. Reports include:

- (a) the London Borough of Camden refusing to accept a homelessness application for a person in unsuitable accommodation, insisting that a Part 7 application is ‘unnecessary’ as they may be making an extra-statutory offer of accommodation in the next few weeks in the private sector;
- (b) various reports of local authorities insisting upon homelessness applications being made online even where that is impossible due to homeless persons’ lack of access to technology.

1.2.2 Priority need

26. The Luke Hall letter recognises the imperative need to bring everyone in during Covid-19. The requirement that a person be in a priority need category in order to obtain homelessness assistance under the Housing Act 1996 is incompatible with the necessities of the present public health emergency.
27. HLPA members experience is that local authorities are often failing to take the Covid-19 context into account when reaching decisions in relation to priority need. Those who are found not to be in priority need are in some cases being threatened with the termination of their temporary accommodation, which would render them homeless during the pandemic.

Recommendation

28. HLPA urges the Secretary of State to exercise his power under section 189(2) of the Housing Act 1996 to make an order classifying all persons as having a priority need for accommodation. It is noted that the priority need requirement for homelessness support was abolished in Scotland in 2012.
29. At the very least those persons with specific Covid-19 risk factors as identified by Public Health England guidance should be recognised as being automatically in priority need. It is however noted that a lack of specific risk factors is no guarantee that a person will not suffer an acute, and even a fatal illness as a result of contracting Covid-19.

1.2.3 Domestic Violence

30. HLPA notes with concern the increased incidence of domestic violence which is resulting from Covid-19 lock-down measures. It is imperative that those seeking to escape dangerous domestic violence situations at this time are able to reliably obtain alternative accommodation.
31. Persons fleeing domestic violence are not automatically deemed to be in priority need for accommodation for the purposes of homelessness assistance under Part VII Housing Act 1996, and are required to prove additional “vulnerability” in order to access housing support. Establishing vulnerability in the context of homelessness priority need is notoriously challenging, and the law in relation to this concept has become extremely complex.

Recommendation

32. HLPA urges the Committee to recognise that all those who become homeless as a result of fleeing domestic violence are vulnerable, and should be treated as in priority need.
33. HLPA recommends an urgent amendment to article 6 of the Homelessness (Priority Need for Accommodation) (England) Order 2002 removing the additional vulnerability requirement in relation to persons having “ceased to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out.”

1.3 Accommodation provided

34. HLPAs members report serious concerns over the nature and quality of accommodation being offered to homeless persons during the Covid-19 crisis, both under the Housing Act 1996 and alternative forms of accommodation support. One member describes the situation of one of her clients, who had approached the London Borough of Hillingdon for assistance:

“One client with no recourse to public funds, who is a wheelchair user, was housed in a unit which previously cared for formerly looked after children. He was housed in a room previously used as a storage cupboard labelled ‘emergency room’. It has no window. He has no key to his door. There are no cooking facilities. The toilet is blocked and the shower does not work. Before this he was offered a hostel on the first floor which he could not enter.”

35. There have been reports also of accommodation being provided without laundry facilities, and without hot water, making it impossible to maintain good hygiene.
36. On the 25 March 2020, the government announced that it would provide guidance on hostels but as of 30 April 2020 no such guidance has been published. <https://www.gov.uk/government/publications/covid-19-guidance-on-services-for-people-experiencing-rough-sleeping/covid-19-guidance-for-hostel-or-day-centre-providers-of-services-for-people-experiencing-rough-sleeping> .

1.3.1 Shared accommodation

37. Much accommodation provided to homeless persons, both through local authorities and the third sector, continues to be shared accommodation in which residents are required to make use of communal facilities, for instance kitchens and bathrooms.
38. The specific health concerns raised by shared accommodation are recognised in the Luke Hall letter and one of the stated aims of the government strategy are to “make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities”.
39. HLPAs members report an ongoing use by local authorities of shared accommodation (often B&Bs) to house homeless households, including families with children. Reports include instances of individuals with Covid-19 risk factors being offered or placed into shared accommodation, including an individual with severe, chronic asthma, and another suffering from immunosuppression. This is echoed by reporting in the mainstream media.¹

¹ “Homelessness Fears of ‘catastrophic coronavirus outbreak’ among homeless in hostels”, Tom Wall for The Observer, <https://www.theguardian.com/society/2020/apr/19/fears-of-catastrophic-coronavirus-outbreak-among-homeless-in-hostels>

40. It is HPLA's position that during the Covid-19 pandemic, specifically for the period that the public health guidance remains that individual households should socially isolate, shared facility accommodation cannot be suitable to house homeless persons, whether that be under the Housing Act 1996, or otherwise.
41. The extent of the risk posed by shared homeless accommodation is presently being researched and modelled by the UCL Collaborative Centre for Inclusion Health, with results due to be published shortly. Preliminary findings include that:

“the coronavirus death rate of homeless people living in London's hostels is 25 times higher than the general adult population. It found that 38% of hostels in the capital had suspected Covid-19 cases, with 41% of sick residents sharing bathrooms with other residents and 35% of affected hostels still using communal dining rooms. At least 17 residents have been admitted to hospital with more severe symptoms since March. [...] The model, set to be released next week, predicts up to 12,000 hospital admissions and 900 deaths of homeless people in England over the next three to four months if no action is taken.”

Recommendation

42. In light of the above HPLA recommends that the Secretary of State urgently exercise his power under section 210 Housing Act 1996 to make an order with respect to the automatic unsuitability of shared facility accommodation during the period in which emergency social distancing measures continue.
43. The Secretary of State urgently issues guidance in respect of hostel accommodation.

1.3.2 Shortages and out of borough placements

44. As raised above, HPLA members have also reported an increase in the number of placements by local authorities of homeless persons into accommodation outside of their area. An example of this is the attempted placement by a London authority of a homeless client with Covid-19 vulnerability into a shared accommodation hundred of miles from the local area, requiring him to travel many hours on the presently diminished public transport system at a time when it is not safe for him to do so.

1.4 Post lock-down concerns

45. There are serious concerns as to what the position will be of those accommodated in the context of the Covid-19 pandemic following the end of emergency measures. As one HPLA member responded:

“Once this is over are those who been placed in temporary accommodation under Covid 19 just going to be put back onto the street?”

46. HPLA is anxious that any positive progress made during the crisis is not reversed, and urges the Committee to consider long-term measures strengthening the homelessness safety net in the UK to achieve the ultimate aim of ending rough sleeping and ensuring adequate housing for all.

47. The present crisis has highlighted the profound inadequacy of homelessness provision in the UK. The limited scope of the existing statutory frameworks prevents an effective response to a public health crisis, and outside of emergency conditions produces a culture of conditionality which presents significant barriers to resolving the societal ill of rough sleeping and inadequate accommodation.

1.5 Summary of Recommendations to the Committee

- (a) Propose urgent legislative measures to tackle the lacuna of accommodation powers around persons with no recourse to public funds, either through the suspension of section 185 Housing Act 1996, or an amendment to section 1 Localism Act 2011, accompanied by government guidance;
- (b) Urge the Secretary of State to issue further guidance to local authorities in relation to managing co-operative action with third sector service in the implementation of the Everyone In scheme;
- (c) Urge the Secretary of State to consider issuing guidance specifically to third sector homelessness services encouraging the dis-application of gateway conditions which are inappropriate during the Covid-19 pandemic;
- (d) Urge the Secretary of State exercise his power under section 210 Housing Act 1996 to make an order classifying shared facility accommodation as automatically unsuitable, and to issue guidance in respect of hostel accommodation;
- (e) Urge the Secretary of State to exercise his power under 189(2) of the Housing Act 1996 to make an order classifying all persons as being in priority need for accommodation;
- (f) Urge the Secretary of State to amend the Homelessness (Priority Need for Accommodation) (England) Order 2002 to remove the additional vulnerability requirement in relation to priority need for those fleeing violence.
- (g) Consider long-term measures to reinforce rather than deconstruct improvements made to homelessness provision during the Covid-19 pandemic.

SECTION 2

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2.1 Insufficient and unacceptably delayed measures to protect renters

2.2 Rent arrears

2.2.1 NRPF persons

2.2.2 EEA Nationals

2.3 Post-lockdown concerns

2.4 Summary of recommendations

2.1 Insufficient and unacceptably delayed measures to protect renters

48. HLPAs asks the Committee to acknowledge that the government response in relation to protecting renters during the Covid-19 crisis was insufficient, and unacceptably delayed.
49. On 18 March 2020 it was announced by the MHCLG that there would be “complete ban on evictions and additional protection for renters”.
50. Unfortunately the measures enacting these proposed changes at section 81 and Schedule 29 of the Coronavirus Act 2020 (in force from 26 March 2020) were far more limited in scope than expected in light of the government’s stated intention to stop all evictions. The measures in fact only extend the notice period for fresh possession claims to a period of 3 months, and preventing fresh claims except those in which a valid 3 month notice has expired. Given the time it takes for claims to be heard and to reach enforcement stage, these provisions would not of themselves have prevented evictions in existing possession claims from continuing to take place during the Covid-19 crisis.
51. Court possession hearings continued to be listed, and evictions took place until 27 March 2020 when measures were taken by the Master of the Rolls and the Lord Chancellor in the form of an urgent practice direction 51Z staying all current possession actions, including enforcement (evictions), for an initial period of 90 days.
52. Prior to 27 March 2020 court duty advisors were expected to continue to attend to provide face-to-face advice and representation in the County Courts. One HLPAs member acting as duty solicitor reported a situation arising on 20 March 2020 in which it was necessary to advise and represent an individual displaying Covid-19 symptoms, who had attended court out of necessity to prevent his and his family’s imminent eviction. The fact that lawyers, court staff, and parties continued to be placed at risk in this fashion is unacceptable.
53. HLPAs recommends that the measures set out in Practice Direction 51Z are placed on statutory footing. Given the paramount importance of preventing an increase in homelessness during the Covid-19 pandemic, it is desirable that the sensible measures taken by the Master of the Rolls and Lord Chancellor are given the weight of primary legislation.

2.2 Rent Arrears

54. HLPAs is disappointed by the failure of the government to implement a suspension of rental liability during the coronavirus crisis, or at least an option for renters to apply for the same. Property owners have been granted the right to claim a mortgage holiday, however renters who have lost income due to Covid-19 are not at present to be granted any corresponding relief. This will leave many with significant arrears, which unlike the mortgage interest continuing to accrue for borrowers during mortgage holidays, will give rise to grounds for possession action. PD51Z does not prevent possession claims being issued and it is anticipated that there will be a sharp rise in possession claims (and homelessness) when PD51Z is lifted.
55. Although the updated Local Housing Allowance rates are welcomed by HLPAs, the increase will not prevent the accumulation of significant rental arrears throughout the private sector in particular.

56. The updated LHA rates reflect only the lowest 30th percentile of market rents, meaning that those in the upper 70th percentile of the rental market who have lost their entire income as a result of Covid-19 will not be able to rely on Universal Credit to cover their entire rental liability. The accumulation of significant rental arrears for many is simply inevitable.
57. Furthermore, in response to the Covid -19 crisis the government were able to 'speed up' UC claims assessments and offered advance payments. The fact that the government were able to do so, does expose their previous unwillingness to address the dire UC system. Advance payments, which are repaid by deductions in future UC payments, assist in the short term but worsen peoples positions in the long term - they merely push vulnerable tenants into future debt, rent arrears and possession proceedings.

2.2.1 NRPF persons

58. The difficulties facing private renters who have lost income due to Covid-19 are all the more acute where they are people with no recourse to public funds. Where NRPF people lose paid work due to Covid-19, and do not qualify for the government's Coronavirus Job Retention or Self-employment Income Support Schemes, they will be left with no means whatsoever to meet their basic needs let alone their rental liability.

2.2.2 EEA nationals

59. HLPAs members report that there are ongoing difficulties faced by EEA nationals in obtaining Universal Credit, due to a widespread lack of understanding in the DWP in relation to their eligibility for benefits. One member reported that multiple clients had approached their service for assistance after being refused Universal Credit on the basis of ineligibility to claim benefits despite having EU Settled Status, finding themselves unable to challenge the refusal due to problems with the online system, difficulty getting through to the DWP on the telephone, and the closure of libraries.

Recommendation

60. To suspend and review Ground 8 Schedule 2 of Housing Act 1988 and any mandatory grounds case where the underlying reason for seeking possession is rent arrears. Tenants should not suffer eviction in circumstances where the arrears are entirely out of their control. They should not be in a worse position than homeowners.
61. To restrict the use of section 21 of the Housing Act 1988 for any new possession claims. This would be consistent with the government's stated intention.
62. The UC advance payments should be given as grants not loans.

2.3 Post Lockdown Concerns

63. HLPAs wish to express grave concern over the situation of renters following the end of the Covid-19 pandemic, particularly those in the private market, who will have accrued rental arrears due to lost income. Following the easing of lockdown measures, there will be no quick solutions for individuals who have developed financial difficulties, likely including other debt beyond arrears of rent. The economic impacts of the Covid-19 pandemic are likely to be deep and broad. It is far from certain how many will be able to quickly return to gainful employment / self-employment with comparative earnings to their pre-Covid-19 positions.
64. As one HLPAs member responds:
- “Families could be in privately rented accommodation that is well above the LHA because they could afford it and now can’t. PRS landlords are likely to start serving notices and whilst there will be a requirement for the pre-action protocol to be considered what if there are no options for families to pay the full rent, let alone the full rent plus an amount off the arrears.”*
65. HLPAs welcome the concept of a broadened possession pre-action protocol (as proposed in the government statement of 18 March 2020) encouraging private landlords to reach out to tenants to understand their financial position. It must be noted however that unless this is supported by legislative measures it will not prevent private landlords from seeking possession and evicting their tenants in circumstances in which arrears have arisen as a result of lost income during and following Covid-19.
66. Failure to comply with a pre-action protocol will not invalidate a claim or give rise to a defence.
67. HLPAs are concerned that a pre-action protocol, while providing a model for best practice which may be adopted by some private landlords, does not go far enough to prevent a likely onslaught of possession action and evictions. Private landlords will continue to be able to rely upon mandatory grounds for possession where the original tenancy term is complete (section 21) and where tenants have accrued 8 weeks or 2 months of arrears (ground 8). Arrears at the level are likely in many cases, especially given that Universal Credit housing element is paid in arrears. To such claims for possession tenants will have no defence regardless of their circumstances resulting from Covid-19.
68. Many private landlords will be facing financial difficulties of their own, and will be strongly incentivised to remove and replace tenants who are not immediately in a position to meet their rental obligations and begin making payments toward arrears.
69. A large increase in the number of evictions will lead to increased strain on local authority housing options and homelessness services, which are already being stretched to breaking point by the Covid-19 crisis, as addressed above.
70. Furthermore, a decimated legally aided housing law sector will not be able to service the huge demand for housing law advice post lockdown. Tenants need a period of protection while the government puts in place measures to rebuild the housing law advice sector throughout England and Wales (see <https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/>).

2.4 Summary of Recommendations to the Committee

71. To prevent a national crisis of homelessness following the end of the Covid-19 pandemic, HLPAs recommends:
- (a) the extension of the eviction-delaying measures both under section 81 and schedule 29 of the Coronavirus Act 2020, and under Practice Direction 51Z, for a period of 3 months beyond the easing of restrictions. This will enable tenants a brief period to seek work and stabilise their finances in a highly uncertain economic environment;
 - (b) the placing of the measures contained in Practice Direction 51Z onto statutory footing;
 - (c) the abolition of section 21 evictions, as was previously proposed by Theresa May's government prior the 2019 General Election;
 - (d) the medium term suspension of ground 8 of schedule 2 Housing Act 1988, allowing the courts to consider the reasonableness of making possession orders in all rent arrears claims;
 - (e) to give consideration to a rental arrears amnesty following the end of emergency measures;
 - (f) to give consideration to a rental support fund similar to Discretionary Housing Payment to provide assistance to those facing eviction following the end of emergency measures.
72. A properly focussed government that is determined to mitigate this harm must examine and face head on the underlying structural-societal failures of the last forty years. We urge this government to take steps to make welfare changes to protect the poor and vulnerable that are properly funded and which are for the long term. Patchwork responses will simply defer the impact of this crisis.
73. In so doing, the government must:
- (a) Abolish the right to buy.
 - (b) Reform homelessness law.
 - (c) Rent control in the private sector.
 - (d) Reform the Universal Credit scheme.
 - (e) Make rents 'genuinely' affordable.
 - (f) Make good on repeated promises to build more affordable housing.

SIMON MULLINGS AND MARINA SERGIDES

Co-chairs of HLPAs

SCHEDULE A

HLPA member responses to HLPAs call for evidence

On 28 April 2020, HLPAs put out an urgent call for evidence from its members. Our request was as follows:

Dear HLPAs Member,

RESPONSE BY THURSDAY 30TH MAY

We have had an incredible response to our call for evidence in respect of HLPAs intervention in Arkin v Marshall, in the Court of Appeal on Thursday 30 May 2020. A massive thanks to those who have responded, providing HLPAs with invaluable evidence so quickly. It was because of this evidence, setting out your experiences, that we have been able to intervene.

You may recall that HLPAs is also responding to the the HCLGC call for evidence in respect of its inquiry into the government's Covid-19 response to homelessness and rented sector

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/news/covid-19-homelessness-rented-sector-inquiry-launched-19-21/>

The terms of reference are:

- How effective has the support provided by MHCLG and other Government departments in addressing the impact of COVID-19 on those in the private rented sector, rough sleepers, and the homeless*
- What problems remain a current and immediate concern for these groups*
- What might be the immediate post-lockdown impacts for these groups, and what action is needed to help with these.*

*Time is of the essence as the response needs to be returned by **1st May 2020**.*

Please could you respond to the following:

- 1. Are you still being approached by homeless applicants?*

2. *Are your clients being placed in temporary accommodation where they are unable to comply with the social distancing rules? If so, please give examples.*
4. *How are your clients with No Recourse to Public Funds being affected? If they are being housed, can you give some details as to who the provider is?*
5. *Many local authorities are attempting to make use of existing third sector rough sleeping services, for instance StreetLink, in order to implement the Everyone In scheme. Are your clients experiencing any of the following and, if so, can you give examples:*
- a) homeless persons who are unknown to services (for instance regular residents in private hostels who irregularly sleep rough) being turned away;*
 - b) homeless persons who may be eligible for statutory assistance under Part VII Housing Act 1996 being turned away by local authorities or being directed to third sector services;*
 - c) homeless persons being told that in order to obtain assistance from third party organisations that they must first “bed down” on the streets;*
6. *Any other experience that may be relevant to the inquiry.*

Below are some of the extracts directly quoted from our responses:

1. *Are you still being approached by homeless applicants?*

REPLY 1: Yes – these are the majority of new client cases we are getting at present.

REPLY 2: Not street homeless ones although I am approaching those I see on the streets in Woolwich: There is invariably at least on apparently one street homeless person begging in or outside the doors of Tesco Woolwich and others on the high street. We are not providing face to face services and despite giving some of those I speak with legal aid forms, they have not posted them back to us to enable us to assist. They tell me that the police were simply moving them on from begging hot spots and they have not been offered any assistance. I have tried contacting the big issue to see how we can reach those in Greenwich/Lewisham that are temporarily placed in hostels, as my experience is that almost all those rough sleepers I speak to are vulnerable within the required legal definition and should be taken off the streets but I have received no response. The street homeless people I speak to want money for a ‘bed for a night’ and neglect to actually pursue the legal route to housing but complain of being turned away by the council. In almost all anecdotal cases their attempts to get assistance from the council have been responded to unlawfully.

REPLY 3: Yes lots of new inquiries

REPLY 4:

REPLY 5: Yes, I handle new enquiries and I would say that homeless applicants are the only category of case that we have not seen a very large drop in new referrals.

REPLY 6: Yes, many

REPLY 7: I have not actually been contacted directly by anyone with a homelessness application since the restrictions started. I have been contacted by two homeless families with no recourse to public funds who I assisted in relation to applications under Children Act 1989. I was also contacted yesterday on behalf of someone who was homeless but I had not heard back yet.

REPLY 8: Yes, both with new 'gatekeeping' enquiries and by applicants in temporary accommodation who have been found not to meet the s193 criteria and who are threatened with the end of their temporary accommodation. We are being approached by far fewer homeless applicants than pre-coronavirus, one or two a week rather than a few every day.

REPLY 9: Yes. Because of closing face to face services this has been restricted to clients able to find our telephone advice service or email us, and the numbers have fallen. However the cases we have seen are serious, and have included seriously disabled people being denied interim accommodation and having to challenge homelessness decisions in difficult circumstances where we cannot see client face to face and there is a difficulty in using digital documents (one client is blind).

2. Are your clients being placed in temporary accommodation where they are unable to comply with the social distancing rules? If so, please give examples.

REPLY 1: Yes. This is extract from an email we received from one of our clients (I have anonymised for GDPR purposes) "*I've been having a very hard time with this lockdown and especially with some of the further restrictions, which are being practiced in this place. I've had to spend most of time trying to fix my room and rearrange it, in order to function properly whilst self-isolating, but it's proved to be very difficult, because in such a confined space, it's impossible not to transfer and contaminate, if I've brought the virus in. Washing and cleaning and wiping down again and again and again, has become an irritating obsession, because it's never ending. When I last emailed you, I was at breaking point, because I couldn't think clearly and was letting all this Coronavirus News and Daily Updates, upset and I don't think I'm alone in feeling this way, because it seems that the whole country is feeling similarly. Anyway, I still haven't sat down to look at your draft reply for the new decision, nor have I looked at what Ms XXXX was wanting from me. At the moment I'm still fixing my room to function safely in self-isolation and keep safe. I hardly leave my room and only go downstairs to the reception to sign the register for the whole week and to pick up my post if there's something for me*".

Problems are (a) space confined, (b) having to share kitchen and washing facilities which are not being cleaned. Also, due to a weakening of standards by the government, there are too many people sharing kitchens and toilets.

Whilst not an issue with social distancing per se- we have one client was placed in temporary accommodation at a hotel in Docklands. Placement by social services as he has been assessed as lacking capacity to make a homeless application. He was moved from a hotel where he was getting

food and drink laid on to a hotel where only beverages provided and no access to any fridge. There were no local smaller shops and he was getting very stressed and anxious about having to go out to buy food at the local larger supermarket because of having to stand in queues for prolonged periods and people not respecting social distancing. The client had been very happy in the hotel he had been in (part of a large chain) but that hotel decided to close its doors due to the pandemic.

REPLY 2:

REPLY 3: Yes. I currently have a client who made a homeless application before the crisis that is in NASS accommodation (it should have been terminated well before the pandemic due to the 28 day rule as client was granted refugee status, but has not for some reason). The accommodation is totally unsuitable and the client has given birth to a child with down syndrome and a heart condition. They are all living in one room and it is very difficult to social isolate form other households in their current accommodation. The local authority (Barking and Dagenham) has failed to provide s188 accommodation. I have looked into a JR, but Counsel has advised we would require more evidence that the accommodation could not be considered to be suitable even in the short term (applying the Birmingham v Aweys case) so for now the family remain stuck in unsuitable temporary accommodation. I have other clients who have been placed in interim accommodation with shared cooking/laundry/bathroom/dining facilities making it impossible to properly socially distance.

REPLY 4: By writing a pre-action letter under the JR protocol, the local authority provided her with unsuitable s188 accommodation. It's lack of space made it unsuitable for my client, who is about to give birth -there was no room for a cot. However, she has her own bathroom and does not have to share with others.

I sent another pre action letter and I think the LA will place her in suitable s188 accommodation this week.

REPLY 5: I have had one client who has been street homeless/sofa-surfing since September placed in temporary accommodation on the day that the government issued the new advice to local authorities – the local authority did act quickly and responsibly in this case. In another case, where a homeless client is living in unsuitable accommodation with her daughter, who has a chronic lung condition, our client has not been offered temporary accommodation – we have raised the issue of social distancing in our reps. We are still being approached by homeless clients who are not able to comply with social distancing rules and who are still being gatekept by local authorities. One of these potential clients is a care-leaver who is studying nursing – we are working hard with him to get evidence for LH eligibility as he is on a student loan so it is a tricky case.

REPLY 6: Yes, for example, accommodation with shared cooking/laundry/bathroom/dining facilities, or where no laundry facilities are provided so our client has to risk exposure and go out to a laundrette. This is particularly problematic for clients in high risk categories with no support networks e.g. I have an immune-supressed client that has been placed in a B&B by Brent under s188(1) and we are trying to get him moved to self-contained accommodation.

REPLY 7: I have not come across a case of this since the restrictions started.

REPLY 8: No

REPLY 9: Yes

3. *How are your clients with No Recourse to Public Funds being affected? If they are being housed, can you give some details as to who the provider is?*

REPLY 1: We don't have any clients in the housing team at present who are NRPF so no information.

REPLY 2:

REPLY 3: I have a client who I have just managed to get her NRPF condition lifted, but she is currently stuck in accommodation that she shares with her landlord and their family. She has to share a kitchen with them. The client has been diagnosed with Hodgkin's Lymphoma and is undergoing chemotherapy. She has a letter from the NHS confirming that she is considered to be at risk of severe illness if she contracts coronavirus and is considered to be in the most vulnerable category of people. A homeless application has now been made now the NRPF condition has been lifted, but no action has yet been taken to secure self-contained accommodation for the client.

REPLY 4:

REPLY 5: I currently only have one NRPF case and she is in suitable accommodation with family. We are being approached more often by clients who are NRPF seeking financial and housing support and I will likely be taking on more of these cases in the coming weeks. My anecdotal impression is that those with NRPF but who are allowed to work are losing their jobs unexpectedly and find themselves very suddenly in urgent need of support.

REPLY 6: Don't have any clients with NRPF currently. However, Lambeth tried to suggest that they would only provide interim s188(1) accommodation to our client and not her 16yo son because only she had RPF. We pointed out that she was the homeless applicant and the Part 7 duties extend to her household irrespective of whether they have RPF if a duty is owed to her. They did not respond but provided 2 bedroom accommodation.

REPLY 7: I have found that apart from problems with Greenwich council advising people that they were not carrying out assessments under Children Act 1989 pending the lifting of restrictions there are no problems yet. Greenwich changed their advice after a pre action letter and provided suitable accommodation. I received a fast and helpful response from Barking and Dagenham to another pre action letter about unsuitable accommodation.

REPLY 8: One client with no recourse to public funds, who is a wheelchair user, was housed in a unit which previously cared for formerly looked after children. He was housed in a room

previously used as a storage cupboard labelled 'emergency room'. It has no window. He has no key to his door. There are no cooking facilities. The toilet is blocked and the shower does not work. Before this he was offered a hostel on the first floor which he could not enter. The provider is the London Borough of Hillingdon.

REPLY 9: We are not aware of any cases where NRPF client has been accommodated despite not being eligible for homelessness assistance. Some potential additional grant funding may become available to help this cohort e.g. access soup kitchens, but that is entirely inadequate to the underlying problems.

4. *Many local authorities are attempting to make use of existing third sector rough sleeping services, for instance StreetLink, in order to implement the Everyone In scheme. Are your clients experiencing any of the following and, if so, can you give examples:*

REPLY 1 a) homeless persons who are unknown to services (for instance regular residents in private hostels who irregularly sleep rough) being turned away: Yes – one client we had was sleeping rough in his car in a car park. Local authority saying did not have to house because not a known rough sleeper.

REPLY 2:

REPLY 3: b) homeless persons who may be eligible for statutory assistance under Part VII Housing Act 1996 being turned away by local authorities or being directed to third sector services; We are finding that where a client has any form of accommodation (however unsuitable) local authorities are either failing to accept an application or are failing to provide interim accommodation pending a decision (see example above with Barking and Dagenham).

REPLY 4

REPLY 5 c) homeless persons being told that in order to obtain assistance from third party organisations that they must first "bed down" on the streets; I have not experienced this with my clients but I have been asked where one of my clients "beds down" – I have never been asked this before. That client doesn't "bed down" as he is vulnerable to gang violence in various areas so moves area nightly. He was still provided with emergency accommodation by the LA.

REPLY 6: b) homeless persons who may be eligible for statutory assistance under Part VII Housing Act 1996 being turned away by local authorities or being directed to third sector services; Yes. Camden are refusing to accept a Part 7 application for a person known to them to be in a hostel which OT evidence shows is unsuitable – Camden are insisting that a Part 7 application is 'unnecessary' as they may be making an extra-statutory offer of accommodation in the next few weeks in the private sector.

In another case, Lambeth were aware that client and her 16 year old son would be street homeless as of Good Friday. The client and the friend who was no longer able to accommodate

her provided evidence that she would be homeless, that she was eligible and had a priority need directly to the housing officer in advance of the bank holiday weekend. However, Lambeth took no action to accommodate the family and an urgent out of hours application for interim relief had to be made on Good Friday afternoon. The family were subsequently provided with interim accommodation in a hotel room (shared dining facilities) over the weekend and then a self-contained flat on 14/02/20 but with no working washing machine (necessitating venturing out to a laundrette), no hot water in bathroom and no bedding knowing our client did not have means to purchase these items. These issues increase risk of infection due to lack of hygiene. Washing machine and hot water still not fixed at time of writing. Children services provided funding on 24/04/20 for our client to finally purchase bedding for her and her son.

REPLY 7:

REPLY 8:

REPLY 9: a) homeless persons who are unknown to services (for instance regular residents in private hostels who irregularly sleep rough) being turned away; (Yes) See 1 and 2 in letter. b) homeless persons who may be eligible for statutory assistance under Part VII Housing Act 1996 being turned away by local authorities or being directed to third sector services; Yes. See section 1 Letter. In the cases that we have seen the problems in accessing homelessness assistance have been magnified during lockdown. c) homeless persons being told that in order to obtain assistance from third party organisations that they must first “bed down” on the streets; Yes see Section 2 letter. (further details in letter from the Hackney Community Law Centre also submitted to the inquiry).

5. Any other experience that may be relevant to the injury.

REPLY 1: Also had clients who were where already being temporarily accommodated in other hotel chains in borough and close to support when the country went into lockdown, having to be moved due to the chains closing doors on some/all their hotels.

REPLY: 2, 3, 4, 5

REPLY 6: A 23 year old client with learning disabilities was evicted from interim accommodation provided by Camden on 07/04/20 due to allegations of breaching the accommodation’s rules re visitors and loud music. He was only given a few hours notice and no prior warning. He was not given any opportunity to respond to the allegations, nor were the accommodation rules properly explained to our client with the assistance of his advocate in light of his learning difficulties. As a result, the housing department decided that our client had made himself intentionally homeless and declined to provide further accommodation. Social services subsequently provided sheltered accommodation on 16/04/20. In the meantime, our client was forced to breach social distancing and sofa surf with a friend.

REPLY 7:

REPLY 8: I requested a suitability review for a homeless client in temporary accommodation. My client cannot read or write and the local authority knows this. I was told that they will not process the review until she has signed consent forms. Normally she would come into my office, I would read them to her and she would sign them. I would send them to the local authority with an explanation that I had read them to her. I have posted them to her and read them over the phone, with instructions for her to return in a SAE but have no confidence that I will get these forms back. I have had a similar situation with consent forms requested to complete s184 investigations. This kind of inflexibility may be really putting off unrepresented applicants.

In general terms I really worry about homeless applicants in unsuitable accommodation at this time. Being in a hostel room with your children may be bearable if you are all out for most of the day and you come home to sleep. If you are stuck inside with no space to move, study or work this will have a severe impact on mental health and wellbeing.

When the stay on possession proceedings is lifted there will be a rush of new homeless applicants that councils will struggle to deal with. If rent continues to be due during coronavirus then local authorities need increased budgets for DHPs and to work with the private sector to try and keep people in their homes.

REPLY 9: Referred to contents of letter also submitted to the inquiry (Hackney Community Law Centre)

May 2020