

The Duty to Refer: Guidance for Public Authorities

Introduction

The Homelessness Reduction Act 2017 significantly reformed England's homelessness legislation by placing duties on local housing authorities to intervene at earlier stages to prevent homelessness in their areas, and to provide homelessness services to all those who are eligible. Additionally, the Act introduced a **duty on specified public authorities to refer service users who they think may be homeless or threatened with homelessness to local authority homelessness/housing options teams.**¹ This duty is effective from 1 October 2018 when the list of public authorities comes into force.

The Duty to Refer will help to ensure that services are working together effectively to prevent homelessness by ensuring that peoples' housing needs are considered when they come into contact with public authorities. It is also anticipated that it will encourage local housing authorities and other public authorities to build strong partnerships which enable them to work together to intervene earlier to prevent homelessness through increasingly integrated services.

This guidance is designed for those working in specified public authorities, which have a duty to refer. If you work for a public authority which is not subject to the duty you can still make a referral. It will help these authorities identify service users who may be homeless or are at risk of homelessness, and explains how to refer the service user to a local housing authority. Local housing authorities are encouraged to consult chapter four of the Homelessness Code of Guidance² for further information on their role in maximising the benefits from the Duty to Refer.

Throughout this guidance we have used the generic term 'service user' to describe the people who come into contact with public services.

Public bodies with a Duty to Refer

The specified public authorities subject to the Duty to Refer are:

- Prisons;
- Young offender institutions;
- Secure training centres;
- Secure colleges;
- Youth offending teams;
- Probation services (including community rehabilitation companies);
- Jobcentre Plus;
- Social service authorities;
- Emergency departments;
- Urgent treatment centres;
- Hospitals in their function of providing inpatient care;

¹ Ibid. (p. 7)

² <https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities>

- Secretary of State for defence in relation to members of the regular armed forces.³

The Duty to Refer only applies to the specified public authorities in England and individuals can only be referred to a local housing authority in England.⁴

Requirements of the Duty to Refer

The new duty requires specified public authorities to identify and refer their service users who are homeless or may be threatened with homelessness, to a local housing authority of the service users choice. The service user must consent to the referral being made. The consent can be made in writing or given orally.

A person is considered homeless if:

- they do not have any accommodation which is available for them which they have a legal right to occupy; or,
- it is not reasonable for them to occupy their current accommodation, for example because they would be at risk of domestic abuse.⁵

Someone is defined as being threatened with homelessness where they are likely to become homeless within 56 days, or have been served with a valid notice under section 21 of the Housing Act 1988 by their landlord which expires within 56 days.

Identifying when a referral might be required

Staff in public authorities will usually know if a service user is sleeping rough and therefore actually homeless. They may also become aware of service users who are homeless but not roofless (sometimes described as 'sofa surfers') if they provide 'care of' addresses or frequently change their address.

Identifying that a family, couple or individual is threatened with homelessness is less straight forward. The following are factors that would indicate that a service user **may** be threatened with homelessness and should be asked about their housing circumstances:

- problems with debt, particularly rent or mortgage arrears;
- problems with a landlord, being threatened with eviction or served notice to leave;
- being a victim of domestic abuse, or other forms of violence, threats or intimidation;
- approaching discharge from hospital, armed forces or release from custody, with no accommodation available to them;
- having previously been in care, the armed forces or in prison;

Choosing which local authority to refer to

The duty allows service users to choose which local housing authority they are referred to. However, when discussing the referral and offering guidance to the service user, it is important to be aware that local housing authorities owe more duties towards homeless applicants who have a local connection with their area, and so a local housing authority

³ The Homelessness (Review Procedure etc.) Regulations 2018 (<http://www.legislation.gov.uk/uksi/2018/223/made>)

⁴ Ibid. (4.2)

⁵ Ibid. (6.3-4)

might subsequently refer on to another local housing authority somebody who is homeless and applying to them for help.

Generally speaking, a service user is likely to have a local connection to an area if they are a resident, work there or have a close family connection.

In addition to the usual rules about local connection, care leavers have special provision. This provides that where the service user is a care leaver aged 18-21, in addition to any local connection they may have elsewhere, they will have a local connection with the local authority that looked after them, and with an area where they have been placed in accommodation for at least two years, including a period of time before their 16th birthday. In areas where there is a county council and district councils (often referred to as two-tier areas), care leavers will have a local connection with every local housing authority (district council) that falls within the area of the local authority (county) that cared for them.

Obtaining Consent

A referral cannot be made without the service users consent. Those working with a service user they consider ought to be referred should ensure that the service user understands the purpose of the referral, and consents to information and contact details being passed on to the local housing authority so that they can be contacted about the referral.⁶ It is advisable to obtain the service users signature to confirm that they have consented to a referral being made. Consent should be well informed, taking into account circumstances where the service user would not benefit from a referral being made, for example, because the service user already has an open application for assistance from the local housing authority. Public authorities are advised to record on the service user's records if a referral has been made, and if consent to a referral is refused.

Public authorities providing services to children within a family that is threatened with homelessness or actually homeless, will usually need to obtain consent from a parent or adult carer before referring the family to a local housing authority. However, referrals without consent may be made in order to safeguard children or vulnerable adults, in accordance with local procedures.

Process for referrals

Local housing authorities should work with public authorities in their area to design effective referral mechanisms which meet their local circumstances. Local housing authorities should place information on their websites explaining what their referral mechanisms are, and may also have online referral forms for referring public authorities to use. Local housing authorities should make referral mechanisms as simple as possible, based on the minimum information required by law for a public authority to make a legitimate referral; this is individuals names, contact details and agreed reason for referral.

However, a specified public authority may make a referral to a local housing authority in any manner they wish as long as they include the minimum information required by law.

Local housing authorities have been asked to provide a standard email address that Duty to Refer referrals can be sent to (dutytorefer@insertlocalauthorityname.gov.uk). Further

⁶ Ibid. (4.1)

information on contact details for local housing authorities can be found at:www.gov.uk/homelessness-help-from-council

Frequently Asked Questions

How much information do I need to provide when I am referring someone?

Referrals to local housing authorities must include the service user's name, contact details and the agreed reason for the service user being referred to the local housing authority (i.e. the public authority considers that the service user is either homeless or threatened with homelessness).⁷ Local housing authorities may create their own referral forms which ask for more information, however, only the details mentioned here are legally required to make a legitimate referral.

What will happen when I refer someone to the local housing authority?

When the local housing authority receives your referral, they should make contact with the service user being referred using the contact details provided.⁸ When you have sent your referral, a local housing authority should provide you with a receipt of referral, which may be in the form of an automatic email reply. You are advised to contact the local housing authority if you do not receive this.

It is good practice for local housing authorities to go beyond referral procedures and work with other public authorities to prepare a comprehensive assessment of need for the service user. Local housing authorities and public authorities are encouraged to put arrangements in place to support these joint efforts, and to be open to working together to achieve the best possible solutions for their service users.

Local housing authorities should include information about how they will respond where a referral indicates that an applicant is at risk of, or is already, sleeping rough.⁹

What duties does the local housing authority have to assist people who they accept as homeless?

The Homelessness Reduction Act 2017 places duties on local housing authorities to take reasonable steps to prevent and relieve an eligible applicant's homelessness. Once the local housing authority has agreed that the applicant is eligible for assistance (based on their immigration status) and that they are homeless or threatened with homelessness, they will work with the applicant to develop a Personalised Housing Plan, which identifies the reasonable steps that the service user and the local housing authority will take to ensure the applicant has and is able to retain suitable accommodation. If the applicant is homeless during the 56 day relief stage and may have priority need (because, for example, they are pregnant or have children in their care), the local housing authority must provide them with temporary accommodation. Some single people may also have a priority need, for example if they are vulnerable as a result of old age or disability.¹⁰

⁷ Ibid. (4.13-14)

⁸ Ibid. (4.19)

⁹ Ibid. (4.9)

¹⁰ Ibid. (8.3-8.31)

I am aware that a member of staff in another public authority has previously referred someone to the housing authority. Do I need to refer them as well?

Some service users, who are threatened with homelessness or are homeless, such as prisoners, may come into contact with a range of different public authorities. While it is clearly desirable to minimise duplication, the priority should be to ensure that service users are being referred so they can receive the right support at an early stage from local housing authorities. Additionally, it should be noted that a client's housing circumstances may have changed from the last time they were referred, which may require different support from a local housing authority. Therefore, the public authority should – with the individual's consent - make a referral to the local housing authority.

The Code of Guidance advises local housing authorities to agree arrangements with public authorities to consider the issues around multiple and repeat referrals. This may include providing information on systems to enable public authorities to check whether someone has been referred or is receiving support from the local housing authority.¹¹

I would like to do a joint referral with a colleague. Is this possible, or do we need to complete separate referrals?

It is possible to complete a joint referral, if you submit the referral at the same time as your colleague and both sign and agree to the content provided within the referral.

I work in a public authority which the Duty to Refer doesn't apply. However, I fear that someone is threatened with homelessness or is currently homeless. What should I do?

If the public authority you work for is not subject to the Duty to Refer, you may still refer the service user to the local housing authority, and, once they have made an application, the service user will be entitled to the same assistance as they would be if your public authority were subject to the Duty to Refer. It is still essential that you have the service user's consent before referring them to the local housing authority and share the minimum details required to make a legitimate referral. You must also allow the service user to identify the local housing authority in England that they would like their referral to be made to.¹²

I am concerned that my service user will not respond to contact from the local housing authority following referral, and may be best advised to attend the Housing Options service themselves for help. Can I offer this advice?

Any service user who needs advice or help about homelessness can contact their local housing authority and expect to receive some assistance. The Duty to Refer is an additional route intended to encourage earlier identification of need, and to enable public authorities to work better together to meet those needs. If a service user needs more support to help them access services, public authorities should work together to provide this. Where there is concern that a referral might fail without additional support then this could be identified through the referral information, and/or through further contact with the local housing authority to arrange an appointment for assessment. However, a public authority with the

¹¹ Ibid. (4.17)

¹² Ibid. (4.1)

Duty to Refer should not advise a service user to make a direct application for assistance themselves, as an alternative to making a referral.

If the service user is not eligible for assistance under the Homelessness Reduction Act, they will still be able to receive free information and advice from the local housing authority.

My public authority also has responsibilities to help accommodate service users. Do I still need to make a referral to a local housing authority?

Public authorities that have arrangements in place to secure accommodation for service users would not need to make a referral if they are satisfied that the person is not threatened with homelessness.

In the case of 16-17 year olds, duties may be owed by children's services and/or by housing authorities depending on the circumstances. Specific guidance on how the duty to refer applies to 16-17 year olds who are homeless or threatened with homelessness is included within joint DfE/MHCLG guidance [Prevention of homelessness and provisions of accommodation for 16 and 17 year olds young people who may be homeless and/ or require accommodation](#).

Is a referral an application?

Service users must still make an application in the usual way following a referral. However, we have set our expectation in the Homelessness Code of Guidance that local authorities should always respond to referrals by making contact with the individual.

Will I hear what happened to my referral?

The Duty to Refer does not require the local housing authority to tell the notifying public authority about the outcome of the referral. If the service user consents for the local housing authority to notify the public authority of the outcome of the referral then they may but there is no legal duty for them to notify you of the outcome.

What should I do if I think my referral has not been acted upon?

When you have sent your referral, a local housing authority should provide you with a receipt of referral, which may be in the form of an automatic email reply. You are advised to contact the local housing authority if you do not receive this. If you do not think your referral has been acted upon you are advised to get in touch with the local housing authority.

The LHA's referral form requires information I don't have; can I still make a referral?

As long as you have the service users name, contact details and the agreed reason for referral (e.g. the individual is homeless or at risk of homelessness) then you can still make a referral. You will always need the service users consent.

My service user will not consent to a referral but I'm really concerned about their welfare, what should I do?

You must have consent to make a referral. In the absence of this and where safeguarding concerns remain, you should contact Social Care.