

Disability Justice Project
Discrimination guide

Access to housing

Council tenants

Housing – council tenants

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This guide covers what to do if you would like to know your housing options as a council tenant. Please refer to our other guides for support if you:



[are a different kind of social tenant \(for example, of a housing association\)](#)



[are a private tenant](#)



[do not currently have a tenancy and are trying to find accommodations](#)







[own your own home or have a mortgage](#)

Your options

This section provides information on these options for council tenants, the likely outcomes and the problems you may experience along the way.

This section covers:

-  Home swaps
-  Applying for a transfer
-  Making improvements or adaptations to your home
-  Making the argument that you are homeless because your existing accommodation is so bad

Home swap

Almost all council tenants (after the first 12 months of their tenancy) have the right to swap their home with other council tenants or tenants of other social landlords. This is called 'mutual exchange'.

The process – what you must do to get a mutual exchange

- Find someone who has a council or other social tenancy who wants to do a mutual exchange. There are several websites on which tenants advertise that they are looking to exchange their tenancy for another one.
- You must get your landlord's written consent (and your exchange partner needs to have their landlord's written consent).
- You must take the correct legal steps to make sure the tenancies are properly exchanged, or in some cases ended and new tenancies granted. Most councils will help with this and provide the necessary forms.



You can find out what your council's policies are by going onto this website and putting in your postcode: www.gov.uk/apply-swap-homes-council

Advantages

You get to identify a property and to choose whether you want to do the exchange or not. If you decide you don't want to go ahead you don't have to.

Disadvantages

It can be hard to find suitable exchange partners. More people want to move to ground floor properties with gardens than want to give up those properties.

If you need a property that is specially adapted it is unlikely you will find one this way. However, you may find a property that can be adapted in the future.

Possible problems or legal issues

Both landlords must consent to the exchange.

Landlords can only refuse consent for certain reasons. These include:

- You (or your exchange partner) have rent arrears.
- Steps to take possession of the property have been started
- The property you want to move to is bigger than you need
- One of the properties is Disabled adapted and the exchange will mean that a person who needs the adaptations will not be living in it. A landlord could decide that the person who wants to get the flat does not need those specific adaptations

Since 2012 social landlords, including councils, can grant fixed term tenancies for as little as 2 years. Different rules apply if one tenant has a new fixed term tenancy. You may need to take advice about what kind of tenancy you will get if your exchange partner has a different kind of tenancy.

Apply for a transfer

When a council tenant applies for a transfer from their own council landlord this will be dealt with under the council's Allocation Scheme.

All councils have Allocation Schemes and most of them will be online so you can check the rules. If not, councils must provide a summary for free but can charge for providing the full Allocation Scheme.

Each council's Allocation Scheme is different but most put applicants into bands that reflect their priority. Some councils give priority points instead of or within banding schemes.

The process

The way you can apply for a transfer will be set out in your council's Allocation Scheme.

Advantages

Some council's Allocation Schemes give high priority to people who need accessible housing and who have strong medical reasons for needing to move.

Most councils operate bidding schemes so you get to choose what you bid for.

Disadvantages

In most areas there is a severe shortage of accessible homes and you may be given high priority but still not be offered anything suitable for a very long time.

Some councils' Allocation Schemes give higher priority to other groups of people. There have been some challenges to councils' Allocation Schemes because they discriminate against Disabled people and other protected groups. But successful challenges are rare as the courts usually say that it is for local councils to decide how they allocate accommodation as long as they are not acting unlawfully. See Challenging the Allocation Scheme below.

Possible problems or legal issues

Challenging the priority you have been given

You may be given a level of priority that you think is not enough. You can challenge this if the council have made an error about the facts of your case. This could include not having the right information about you and your family or ignoring medical evidence you have submitted.

To challenge an individual decision like this you must first ask the council to review the decision. If the council review the decision and do not agree to change it the only way to challenge that is by bringing a claim for judicial review.

You can also ask for information about how your application has been dealt with and this may help you to know if the council has made a mistake

Challenging a decision that you cannot go on the Allocation Scheme

Councils can set their own rules about who can go on their Allocation Scheme and may have rules that say that you can only be considered under the scheme if you have lived in the area for a certain length of time. Some Schemes say that you cannot go on the Allocation Scheme for other reasons, e.g. if you have in the past been guilty of anti-social behaviour or been evicted because of rent arrears. Some councils will only allow you to go on their Allocation Scheme if they assess you as having housing needs. If they consider you are adequately housed they may not let you go on the Scheme.

It can be difficult to challenge these rules unless you think the council has made a mistake about the facts of your case or that it is acting unlawfully (for example if you have rent arrears but the council fails to take into account that they are not very much and you are repaying them).



[Template letters requesting info, requesting review](#)

To challenge an individual decision like this you must first ask the council to review the decision. If the council review the decision and do not agree to change it, the only way to challenge that is by bringing a claim for judicial review.

Challenging the Allocation Scheme

If your council's Allocation Scheme discriminates against Disabled people or is unlawful because of the rules about who may go on the Scheme or what priority they are given you may be able to bring a claim for judicial review to challenge the Scheme itself. A scheme may discriminate against Disabled people by for example giving priority to people who are working full time. However, the courts have held that where the council has a "legitimate aim" such as creating "mixed communities" and/or other parts of the Allocation Scheme give high priority to the needs of Disabled people and those who need to move on medical grounds the discrimination may be considered lawful.

You will need legal advice about challenging an Allocation Scheme. If it is part of a challenge to a decision that has been made on your individual application legal action will need to be started as soon as possible, and no later than 3 months after the decision is made.



Make adaptations to your home

Financial help from the council

If you need adaptations or aids to help you to live in your own home your local council will have a duty to help you.

Usually the first step will be to ask for an assessment of your needs under the Care Act 2014. This is done by the council's social services department. They must carry out an assessment of your needs if "it appears" that you may have needs for care and support. After carrying out a 'needs assessment' the council will carry out an 'eligibility assessment'. This is to decide whether there is a duty to meet those needs. The eligibility assessment is based on the impact of your needs on your well-being'. The impact must be "significant."

If the council decide that you have eligible needs for care and support this means that the council has a duty to meet those needs. It can do this by providing services,

by arranging for someone else to provide them or by making direct payments to you, so you can make your own arrangements.

The council can charge for the services it provides if your income and savings are above a certain level.

The council's assessment may say that you have eligible needs for adaptations and aids to be provided in your home.

Adaptations and aids costing no more than £1000
Social services should provide these for free.

Adaptations costing more than £1000
Social services could provide these but usually they will instead refer to the housing department and/or help you to apply for a Disabled Facilities Grant from the council's housing department.

Disabled Facilities Grants

You are entitled to a Disabled facilities grant of up to £30,000 to pay for works of adaptation to your home if certain conditions are met. The conditions are:

Only or main residence – for next five years

There must be a Disabled occupant who lives in the premises as their only or main residence who intends to live there for at least five years.

Purpose of the works

The works must be for one of the following purposes:

- To facilitate access by the Disabled occupant to and from the home
- To make the premises safe for the Disabled occupant and others living with him/her
- To facilitate access by the Disabled occupant to the main family room or to a bedroom or to provide such a room

- To facilitate a Disabled occupant's access to and use of a lavatory, a room with a bath or shower or wash-hand basin or to provide those facilities
- To facilitate the preparation and cooking of food by the Disabled occupant
- To improve or install a heating system to meet the needs of the Disabled occupant
- To facilitate the use by the Disabled occupant of power, light or heat by altering the position of the controls
- To facilitate access and movement of the Disabled person around the home to enable him or her to care for another person who normally lives there and needs care
- To facilitate or make safe access by a Disabled occupant to a garden.

These are the conditions for a mandatory grant but discretionary grants may be available to make the home generally more suitable.

Meeting the needs of the Disabled person

The proposed works must also be ‘necessary and appropriate’ to meet the needs of the Disabled occupant

Practicality of the works

It must be ‘reasonable and practicable’ to carry out the works having regard to the age and condition of the home and/or the building in which the home is.

Expert reports

Usually the council will need a report by an Occupational Therapist or other specialist to decide on what particular works are required to meet the needs of the Disabled occupant and a report from building experts about whether it is reasonable and practicable to carry out the works.

Decisions and time limits

The council must inform the applicant in writing whether the application has been approved or refused “as soon as reasonably practicable” but in all cases no later than 6 months after the date of the application.

If the application is approved the decision letter must set out what works are approved and the amount of the grant. The grant must be paid no later than 12 months after the application was made.

If the application is refused the council must give reasons.

Means testing

If the Disabled occupant is under the age of 19 there is no means test.

For Disabled adults a financial assessment will be carried out and a contribution may be required. If income and savings are above a certain level the contribution may be 100% of the cost of the works.

Possible problems or legal issues

Delay

Delays in getting adaptations carried out are common. Delays may occur at several stages of the process:

- Getting social services to carry out a needs assessment
- Getting from the point of applying for a Disabled Facilities Grant to getting the works finished. This may be for many different reasons: delay in an Occupational Therapist doing an assessment; delay in getting any necessary consents/permission under the building regulations or planning control; delays once the work has started.

- Most councils do works of adaptations to their own stock rather than paying a grant for the tenant to get outside contractors to do the works. But if the council is delaying and not carrying out the works there is a right to apply for a Disabled Facilities Grant.
- If the tenant/family has to pay a contribution, they may struggle to raise the necessary funds.

Negative decisions

The council may decide that the works recommended are not feasible or do not meet the necessary legal criteria for a DFG.

Major works costing more than £30,000

The works that are needed may cost more than £30,000. The mandatory DFG is capped at £30,000 so you may have to pay the balance of the cost. Alternatively, you could ask social services to pay on the basis that the works are necessary to meet your eligible needs.

Challenging the Council's delays and decision-making

Judicial Review

It is possible to judicially review a delay or failure to make a decision. Sometimes the delay is a result of practical problems (such as if workmen are slow or there is a severe shortage of OTs or other experts to advise them). This may make it difficult to judicially review the council. However, the threat of judicial review often results in the process being speeded up.

Formal complaints

Making formal complaints about delay can also mean that the authority speeds up the process. However, sometimes the complaints procedure itself is very slow and may not be an effective way of speeding up the process.

Negative decisions can also be challenged by judicial review or formal complaint but you will need to show that the council got the law wrong or made a mistake about the facts of the case.

Advantages and disadvantages of judicial review and formal complaints

Judicial Review

Claims and threats of claims can be very effective to force councils to take action and make decisions when they are delaying. Applications can be made urgently and often the threat of an application is enough.

Although not strictly necessary under the rules, judicial review is complicated and you will usually need a lawyer to act on your behalf.

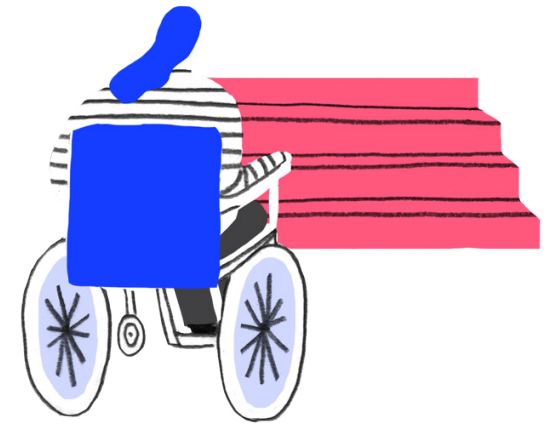
Legal aid is available for judicial review claims but only if your income and savings are below a certain level.

Formal complaints

You do not need a lawyer to make formal complaint. You do not have to prove that the council acted unlawfully but that they were guilty of ‘maladministration’. This includes acting unlawfully but also includes rudeness, failure to keep you informed and general delay and errors.

Legal aid is not available to help you to make a complaint.

The council may improve the way they are dealing with your case if you complain but if they do not and if they do not uphold your complaint you can complain to the Local Government and Social Care Ombudsman:
www.lgo.org.uk.



Argue that you are homeless

A person is homeless if they have accommodation but 'it is not reasonable to continue to occupy' the accommodation. However, it is for the council to decide if it is reasonable to continue to occupy accommodation.

If you are arguing that the lack of accessibility/limits to how you can live in your home means you should be classed as homeless the council can compare your situation to the situation of other people in their area. So, if there are a lot of people in severe housing need it is harder to convince the council that you should be treated as homeless.

The process

You can make an application as homeless but if you have a tenancy it can be difficult to persuade the council that you want to be considered as homeless. You will need to set out the reasons it is not reasonable to continue to stay in your home and state clearly that you are making an application as homeless.

Councils have a duty to carry out a 'personalised housing assessment' and agree with you a 'personalised housing plan' but only if they accept that you are 'homeless'. This means that they must accept that it is not reasonable for you to continue living in your home in the long term. The council must carry out inquiries but may decide that you are not homeless because it is reasonable for you to remain in your home and apply for a DFG or to pursue an application for a transfer or allocation under the Allocation Scheme. You are entitled to a written decision with reasons and you can ask for a review of that decision.



[Template letters making a homelessness application](#)

How to challenge homelessness decisions

Reviews

You can challenge a council that says it is reasonable for you to continue to live in your home by first asking for a review of the decision. You must ask for a review within 21 days starting with the day you are notified of the decision.

You can ask for a review for any reason and put forward new evidence and arguments. The review should be conducted by someone different from the person who made the decision. If they work for the council they must be senior to the person who made the decision. The council should complete the review within eight weeks of the request being made.

Appeals

If the decision is upheld you can bring an appeal in the County Court. You must also do this within 21 days of being notified of the review decision.

To succeed in an appeal you must be able to show that the council acted unlawfully in some way. Legal aid is available for appeals but only if the appeal has a good chance of succeeding. If you bring an appeal without legal aid and lose the appeal you will have to pay the council's legal costs.

Advantages

If the lack of accessibility/adaptations is having a very serious impact on your well-being the council may agree that you are homeless and work with you to formulate a personalised housing plan under which steps must be taken to 'relieve' your situation. This may include helping you to obtain a Disabled Facilities Grant or carry out adaptations that would make your home more suitable. It may also include helping you to obtain other accommodation that is more suitable.

If you have applied for more suitable accommodation by way of a transfer or under the council's Allocation Scheme

the personalised housing plan may help in making sure you have been given the right level of priority.

Disadvantages





If the council agrees that you are homeless because it is not reasonable for you to continue to live in your home, one of the ways it can discharge its duty to you is to use the private sector. It must find somewhere that is suitable, which means it must be accessible, but this may be an assured shorthold tenancy with a private landlord.

Many councils often accommodate homeless people outside of their own area. The accommodation they provide should be suitable, in terms of location and any need to be near to work, schools and medical facilities will be relevant. The council must consider each case, and must house people locally where possible, but in many cases it won't be unlawful for a council to provide accommodation that is some distance from where you currently live.

Letters

We have put together the following template letters, which you can use to request information or challenge decisions.

This section covers:

-  Requesting information on transfers or allocations
-  Requesting review for transfers or allocations
-  Making a homeless application
-  Requesting a review of a homelessness decision

Letter types

Word template



Online form



Challenging decisions about council housing allocation

Requesting information on allocations

Requesting a review for allocations

Homelessness

Things to remember

- You need to ask for a review within 21 days from the date of the decision
- Get advice about your options: england.shelter.org.uk/get_help

Making a homeless application

Requesting a review of a homelessness decision

The Disability Justice Project

Inclusion London
336 Brixton Road
London SW9 7AA

www.disabilityjustice.org.uk
info@inclusionlondon.org.uk
020 7237 3181

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