

Disability Justice Project  
Discrimination guide

# Access to housing

No current tenancy

## Housing – no current tenancy

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This guide covers what to do if you would like to know your housing options as someone with no existing tenancy. Please refer to our other guides for support if you:



[are a council tenant](#)



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



[are a private tenant](#)



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

## Your options

This section provides information on these options for someone without an existing tenancy, the likely outcomes and the problems you may experience along the way.

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This section covers:



Applying to go on the council's waiting list for accessible accommodation



Applying as homeless

# Apply to go on the council's waiting list

All councils have Allocation Schemes and most of them will be on-line 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 council or other social tenancy 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. The courts usually say



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](http://www.gov.uk/apply-swap-homes-council)

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 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 rent arrears or have in the past been guilty of anti-social behaviour. 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 unfairly (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).

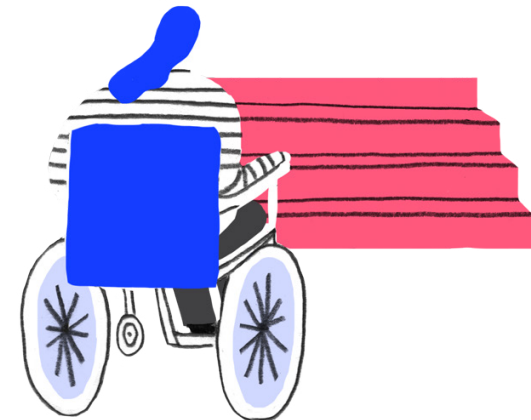
To challenge an individual decision like this you must first ask the council to review the decision. If the council review the decision and do not agree to change it, the only way to challenge that is by bringing a claim for judicial review.

### Challenging the Allocation Scheme

If your council's Allocation Scheme discriminates against Disabled people 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.



## Apply as homeless

A person is homeless if they have no accommodation they are entitled to live in or are permitted to live in. If you are living with family or friends and they have not asked you to leave you are not homeless even though you do not have strong rights to stay.

A person is also 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 are currently living 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 somewhere to stay 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 where you are living and state clearly that you are making an application as homeless. Use the template letter: [Making a homelessness application](#).

The council must carry out inquiries but may decide that it is reasonable for you to remain where you are (e.g. staying in someone else’s home who has not asked you to leave or in a hostel) and apply for an allocation through the Allocation Scheme. You are entitled to a written decision with reasons.

If you have nowhere to stay the council may have a duty to provide you with accommodation while they make their inquiries. They will have a duty to do this if they have ‘reason to believe’ that you ‘may be’ eligible (this is about your immigration status), homeless and in priority need.

## How to challenge homelessness decisions

### Reviews

You can challenge a council that says it is reasonable for you 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 your current living situation 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 find more suitable accommodation elsewhere.

If you have applied for accommodation 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 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.

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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

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## Letter types

Word template



Online form



## Challenging decisions about council housing allocation

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Requesting information on allocations

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Requesting a review for allocations

## Homelessness

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### 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](http://england.shelter.org.uk/get_help)

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### Making a homeless application

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### Requesting a review of a homelessness decision

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## The Disability Justice Project

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