

Suitable private rented sector offer? (Hajjaj v Westminster CC)

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Local Government analysis: Since the Localism Act 2011 amendments came into force, local housing authorities have been able to use offers of accommodation in the private rented sector to bring the main housing duty under section 193 of the Housing Act 1996 (HA 1996) to an end. An authority cannot approve a private rented sector offer unless it is satisfied that the accommodation is suitable for the applicant. The Court of Appeal held that the authority must be satisfied that none of the ten bars to suitability in Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012 applies. They must be satisfied on the basis of evidence rather than assumptions. That does not mean that the authority must have first-hand evidence. ‘Satisfactory hearsay evidence may be enough.’ Written by Ian Peacock (who appeared for one of the respondent authorities) and Anneli Robins; both barristers at 4-5 Gray’s Inn Square.

Hajjaj v Westminster City Council [\[2021\] EWCA Civ 1688](#).

What are the practical implications of this case?

A private rented sector offer is an offer of a fixed term assured shorthold tenancy for a period of at least 12 months made by a private landlord pursuant to arrangements made by the authority with the landlord with a view to bringing the authority’s duty under [HA 1996, s 193](#) to an end.

By [HA 1996, s 193\(7F\)](#), an authority cannot approve a private rented sector offer unless it is satisfied that the accommodation is suitable for the applicant.

Homelessness (Suitability of Accommodation) (England) Order 2012, [SI 2012/2601, Art 3](#) is designed to ensure that any accommodation offered is of a sufficient standard. Those standards relate to the physical condition of the accommodation, the safety of electrical equipment, fire safety precautions, precautions to prevent carbon monoxide poisoning and the suitability of the landlord; the accommodation being licensed if required and having a valid energy performance certificate and current gas safety record; and the adequacy of the tenancy agreement.

In considering suitability local authority officers should ensure they have adequate evidence that the requirements of Homelessness (Suitability of Accommodation) (England) Order 2012, [SI 2012/2601, Art 3](#) are met (albeit the requirement for them to consider any suggested tenancy agreement may be dependent on the facts—as to which see below). They should be conscious that their consideration must be based on evidence rather than assumptions, and there is no reverse burden on any prospective tenant at the time the offer is made.

Those advising applicants should consider and raise any issues as to Homelessness (Suitability of Accommodation) (England) Order 2012, [SI 2012/2601, Art 3](#), including in submissions at the review stage.

What was the background?

Both Mr Hajjaj and Ms Akhter applied for housing assistance under [HA 1996, Pt VII](#). The former to Westminster, the latter to Waltham Forest.

In each case the authority had accepted that the applicant was owed the main housing duty. Each applicant refused a private rented sector offer and, as a result, the authority treated the duty to them as having come to an end. In each case the suitability of the offer, and the decision that the duty had come to an end, were upheld on review. Appeals against those review decisions pursuant to [HA 1996](#), of the Act were dismissed in the County Court.

Both applicants appealed to the Court of Appeal. Each applicant argued that the authority had failed adequately to address the requirements of Homelessness (Suitability of Accommodation) (England)

Order 2012, [SI 2012/2601, Art 3](#). They argued that each of the ten requirements needed to be considered by the authority and that there was no scope for assumptions to be made as to the requirements being met.

Ms Akhter had been offered accommodation outside Waltham Forest. She raised a further ground of appeal, criticising the absence of a policy for procuring accommodation to be offered as private rented sector offers by Waltham Forest. She argued that, in the absence of such a policy, the authority had acted in breach of the duty under [HA 1996, s 208](#) to secure accommodation in its own district so far as reasonably practicable.

What did the court decide?

Giving the lead judgment, Lord Justice Bean decided:

- the authority must be satisfied that none of the ten bars to suitability in Homelessness (Suitability of Accommodation) (England) Order 2012, [SI 2012/2601, Art 3](#) applies
- moreover, they must be satisfied on the basis of evidence rather than assumptions
- satisfactory hearsay evidence, rather than first-hand evidence, may be sufficient
- if the prospective landlord has a patchy track record, or is a newcomer with no track record, it may be necessary for an inspection to be carried out by or on behalf of the authority itself
- where the offer is by an established landlord with a high reputation, a report and sign off document from the landlord is likely to be sufficient
- common sense would suggest that where a letting is to be on the terms of a standard form tenancy agreement previously supplied to the authority, it is not necessary for the text to be sent again each time a property is to be let. But that issue was not critical to the outcome of either appeal and may have to be reargued in a future case
- the reliance on assumptions meant that the review decision in Mr Hajjaj's case could not stand
- Ms Akhter's appeal was dismissed. The authority had ample evidence for the findings in the review decision in relation to Homelessness (Suitability of Accommodation) (England) Order 2012, [SI 2012/2601, Art 3](#). It was unfair to allow the lack of a draft tenancy agreement to be raised for the first time on appeal
- it is not necessary for an authority to publish a procurement policy as well as an allocation policy

Case details

- Court: Court of Appeal
- Judges: Lord Justice Bean, Lord Justice Nugee and Mrs Justice Falk
- Date of judgment: 12 November 2021

Ian Peacock (who appeared for one of the respondent authorities) and Anneli Robins are both barristers at 4-5 Gray's Inn Square. If you have any questions about membership of LexisPSL's Case Analysis Expert Panel, please contact caseanalysiscommissioning@lexisnexis.co.uk.

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