Housing Rights

https://www.housingrights.org.uk/professionals/advice-and-information/homelessness-advice-professionals/eligibility-grounds-behaviour

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Eligibility on grounds of behaviour

This information is for professionals working in housing and homelessness in Northern Ireland.

If you are a member of the public looking for help, please visit our housing advice pages.

The Housing Executive can find someone ineligible for housing and homelessness help if they've engaged in 'unacceptable behaviour'.

Behaviour is unacceptable if the Housing Executive is satisfied that at the time of application:1

- The person has engaged in unacceptable behaviour and is likely to continue this
- They would have been able to get a possession order against the person due to their behaviour under Ground 2 or 3 of the Housing Order (NI) 1983
- The courts would have granted an outright, rather than suspended possession order

The person doesn't need to have been a Housing Executive tenant when the behaviour happened.

The Housing Executive can't make someone ineligible because of past behaviour if they've behaved well since then.

Types of behaviour

The Housing Executive can find someone ineligible if a court would have ended their tenancy because they were:2

- Guilty of causing nuisance or annoyance to residents, visitors or others in the area
- Convicted of an offence related to using a property for immoral or illegal purposes
- Convicted of an indictable offence committed in the property they live in or its locality
- Neglectful or damaged a property they were living in

A person can be ‘guilty’ of causing nuisance or annoyance without a conviction. The Housing Executive can consider information from:

- The applicant about previous tenancies and why they ended
- Previous private and social landlords

Location of unacceptable behaviour

The grounds for granting a possession order refer to certain types of behaviour committed in or likely to impact on the area of the property.

This means it includes:

- The property the person was living in, whether this was permanent or temporary housing
- The area surrounding that accommodation
- Common parts and walkways
- Shops and other facilities likely to be used by residents of the area the person was living in

Whose behaviour is considered

The Housing Executive can consider the behaviour of:

- The applicant
- Any members of their household
- Visitors and guests to their home

When the Housing Executive decides someone is ineligible because of a visitor or guest's previous behaviour they must show that the person applying was implicated in some way in this incident.

A person should not be found ineligible because of poor behaviour from an unwelcome or unpredictable guest or visitor.

Timing of unacceptable behaviour

The Housing Executive must consider the person's past behaviour and how it impacts their suitability at the time their application is considered. A person should not be found ineligible if:

- The behaviour happened in the past and they've behaved well since
- They engage in unacceptable behaviour after the Housing Executive has already decided they are eligible

The Department for Communities intends to change the law so the Housing Executive can consider a person's behaviour at any time before an allocation of housing and not just when they initially apply.[3]

However, the Housing Executive believes that the law as currently stated gives them sufficient power to make a person ineligible on grounds of their behaviour at any point up to a property being allocated.[4]

Housing Rights has helped many people who have been found ineligible despite previously having passed the test. Contact our helpline if you need advice on this type of challenge.

Vulnerabilities leading to unacceptable behaviour

The Housing Executive must consider if the unacceptable behaviour was caused by a vulnerability, such as:

- Mental health issues
- Physical health issues or disabilities
- Learning disabilities
- Addictions

If a person's behaviour is directly linked to their vulnerability the Housing Executive should consider reasonable adjustments to avoid discrimination against a person with a disability.[5]

The Housing Executive should consider what steps the person is taking that reduce the chance the behaviour will happen again. An adviser may be able to show that a person is eligible if they are currently or willing to engage with support services.[6]

The Department for Communities issued guidance on antisocial behaviour to the Housing Executive in 2017. Annex E and F set out guidance the Housing Executive must follow when deciding if a person is ineligible due to their behaviour. This includes:

- Preventing the Housing Executive from applying blanket exclusions against particular applicants, such as leaving custody from prison
- Setting out the particular steps the Housing Executive should follow when making a decision
- Acting reasonably when using its discretion to decide someone is ineligible and considering all relevant matters, including the person’s health and dependants
- Taking into account any support the person is getting to address previous behaviour
- Giving a person written reasons why they are ineligible for an offer of housing
- Considering whether the behaviour stemmed from a physical, mental or learning disability and whether they could sustain a tenancy with appropriate care and support

Deciding a person is ineligible because of behaviour

The Department for Communities guidance requires the Housing Executive to:

- Notify the person in writing of the reasons why they were found ineligible
- Offer them an chance to review the decision, this will be a homelessness review if they were found ineligible under the 1988 Order
- Explain what could help reverse the decision

Applying again after person is found ineligible

A person may be able to apply again if there has been a significant change in circumstances. The burden of proof is on the person applying unless a significant amount of time has passed.

Footnotes

- [1] The Housing (NI) Order 1988; 22A(7) Housing Order (NI) 1981, 7(A)(5).
- [2]Article 29 of the Housing (NI) Order 1983, (Grounds 2 and 3 of Schedule 3).
- [3]Proposals 2&3 Fundamental Review of Social Housing Allocations, https://www.communities-ni.gov.uk/consultations/fundamental-review-social-housing-allocations, accessed June 2022.
- [4] Northern Ireland Housing Executive, Housing Selection Scheme, Chapter 2.6.16.
- [5]Disability Discrimination Act 1995, Article 12.
- [6]Disability Discrimination Act 1995, Article 12.