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Intentionally homeless test

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.

Intentionally homeless

The Housing Executive does not have a duty to provide accommodation to someone who is intentionally homeless. They must provide the person with advice and assistance to find their own accommodation. They may do this by offering a list of accommodation providers.

The Housing Executive considers a person as intentionally homeless if they have: 1

- deliberately done or failed to do something, and
- because of this they have ceased to occupy accommodation that was available to them

It must have been reasonable for the applicant to continue to occupy the accommodation that they left.2

An act or omission made in good faith should not be treated as deliberate if the applicant did not have all the relevant facts. They must have been aware of all facts before deliberately taking, or failing to take, the action that led to them losing their home.

Ceasing to occupy accommodation

For a person to be intentionally homeless they will need to have actually left the accommodation. This can mean accommodation in UK or abroad.

A person cannot become homeless from accommodation that they have never occupied. A person can be homeless from accommodation they occupied intermittently as long as this accommodation is still available to them.

Available accommodation

A person is not intentionally homeless if there is no available accommodation for them or anyone reasonably expected to live with them.

Reasonable to continue to occupy

For the Housing Executive to consider a person intentionally homeless, it must have been reasonable for they and their household to continue living in their accommodation at the time they left it.

Collusion by giving up accommodation

The Housing Executive treat a person as intentionally homeless if:3

- they willingly enter into an arrangement to leave their accommodation
- it was reasonable for them to have continued to occupy the accommodation
- the purpose of the arrangement was to enable them to become entitled to assistance as a homeless person
- there is no other good reason why they are homeless or threatened with homelessness

Collusion of this kind may take place between family and friends or between a landlord and tenant. The Housing Executive needs to be satisfied that collusion exists, and should not rely on hearsay or suspicion.

Deliberate act or omission

5 The Housing Executive must be able to identify an act or omission that is deliberate and must always give the person an opportunity to explain their actions.
An act is not deliberate if:

- it stemmed from financial difficulties beyond the person's control
- the person is incapable of managing their own affairs
- the person had limited mental capacity
- the person's actions were the result of temporary instability caused by mental illness or frailty
- the person's homelessness is due to violence, but they failed to follow legal remedies due to fear or ignorance

An act may be deliberate if a person:4

- sells their home where there is no practical compulsion to do so
- failed to pay rent or mortgage despite being capable of doing so
- voluntarily gave up accommodation they could have stayed in
- lost their home because they caused nuisance or antisocial behaviour
- resigns from a job which provided accommodation when it was not reasonable to do so

Behaviour of other parties

A person who was formerly part of a household that is found to be intentionally homeless will have to prove that they did not allow this behaviour to happen without challenge. Otherwise, the Housing Executive may find they are intentionally homeless.

Acts in good faith

The Housing Executive should not treat something as a deliberate act if:

- the person doing it was unaware of a relevant fact and
- they acted in good faith

'Good faith' case law

A person who wilfully ignores relevant facts is not acting in good faith.6

A person who acts dishonestly is not acting in good faith, but a person whose actions are careless may be.7

A finding that someone is not acting in good faith should relate to ‘some kind of impropriety, or some element of misuse or abuse of the legislation'.[8]

A 1997 case put forward relevant considerations when deciding if someone claims to be unaware of a relevant fact.[9] The case sets out that:

- whether a person has enquired into the existence of the fact is relevant to their awareness of it
- the fact is relevant if the person would have given weight to it when giving up accommodation had they been aware of it
- a fact must be sufficiently clear and definite for its existence to be established
- the fact the person is unaware of must exist at the time of their deliberate act or omission

Causation in intentionality decisions

When determining if a person became homeless intentionally, NIHE must consider if:

- the person did something or failed to do something
- this action or lack of action led to their becoming homeless
- the accommodation they lived in was and remains reasonable for them to occupy

The Housing Executive can look at the chain of events that led to the current incidence of homelessness. This chain of events is only broken by a:

- period of settled accommodation, or
- relevant change in circumstances

The Housing Executive’s final decision should consider the person’s circumstances at the time the decision is being made and not just at the time they became homeless.[10]

The NIHE Homelessness Guidance Manual says that officers should disregard anything that happened more than one year before the application, unless there are exceptional circumstances, such as the person:[11]

- had illegally occupied a Housing Executive property, or
- experienced homelessness caused by imprisonment

Period of settled accommodation

A period living in settled accommodation can end the chain of causation for a person who was intentionally homeless.

The manual does not give information on what constitutes settled accommodation. The English Code of Guidance says that the length of residence and security of tenure will be relevant.

Relevant change in circumstances

The Housing Executive should carefully consider any change in the person's circumstances since the event that made them intentionally homeless.

A significant change in circumstances may mean that the former accommodation would no longer be suitable for the person. The Supreme Court found that a person's pregnancy broke the chain of causation for a person who was intentionally homeless from accommodation for single women. The woman would no longer be able to occupy that property once she became pregnant and so the former finding of intentionality was no longer relevant.10

A person found to be intentionally homeless can make a repeat application if their circumstances change.

The Housing Executive is not required to open a new assessment if it's based on exactly the same facts as the last one.

Footnotes