
GARDEN COURT
CHAMBERS

Intentional Homelessness:

Deliberate Acts, Causation and Affordability

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Intentional Homelessness

1. What amounts to a “deliberate act” particularly where mental health issues arise?

2. What is the correct test/approach on causation?

3. How to approach affordability cases where applicants lost properties due to rent arrears (Cost of Living update)

Note: English context- slightly different for Wales

Relevance of "Intentional Homelessness"

Changes over time: reduced significance of being found intentionally homeless

Current position:

- An applicant who *is homeless* but is *not found to have become homeless intentionally* and who does have a priority need will, if he or she is still homeless at the time the HA 1996, s 189B(2)1 relief duty comes to an end, generally be owed the HA 1996, s 193(2)2 main housing duty.

- The HA 1996, s 193(2)3 main housing duty will *only apply* where the local housing authority is *'not satisfied that the applicant became homeless intentionally*'. Local housing authorities will therefore be permitted to examine the reasons why the applicant has lost his or her accommodation.

Part 1: Deliberate Acts

Section 191(1) Housing Act 1996

Section 191 Becoming homeless intentionally.

(1)A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2)For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

Statutory Meaning of Intentionality- Six Part Test

The necessary premise for the questions is that the applicant is currently homeless (ignoring, of course, any interim accommodation that the local housing authority may have provided):

(1) Was there a deliberate act or omission (which does not include an act or omission in good faith by a person unaware of a material fact)?

(2) Was that a deliberate act or omission by the applicant?

(3) Was it as a consequence of that deliberate act or omission that the applicant ceased to occupy accommodation?

(4) Is the deliberate act (or omission), and the cessation of occupation it caused, an operative cause of the present homelessness?

(5) Was that accommodation available for the applicant's occupation and for occupation by members of the applicant's family who normally resided with the applicant and by persons with whom the applicant might reasonably have been expected to reside?

(6) Would it have been **reasonable for the applicant to have continued to occupy the accommodation**?

Examples: Generally not “deliberate”

Homelessness Code of Guidance for Local Authorities (England) 2018

9.16 For homelessness to be intentional, the act or omission that led to the loss of accommodation must have been deliberate, and applicants must always be given the opportunity to explain such behaviour. An act or omission should not generally be treated as deliberate, even where deliberately carried out, if it is forced upon the applicant through no fault of their own. Moreover, an act or omission made in good faith where someone is genuinely ignorant of a relevant fact must not be treated as deliberate (see paragraph 9.23).

9.17 Generally, an act or omission should not be considered deliberate where, for example:

a. the act or omission was non-payment of rent or mortgage costs which arose from financial difficulties which were beyond the applicant’s control, or were the result of Housing Benefit or Universal Credit delays;

b. the housing authority has reason to believe the applicant is incapable of managing their affairs, for example, by reason of age, mental illness or disability;

c. the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance misuse problem;

d. the act or omission was made when the applicant was under duress;

e. imprudence or lack of foresight on the part of an applicant led to homelessness but the act or omission was in good faith.

Noteworthy not “deliberate” acts

Homelessness Code of Guidance for Local Authorities (England) 2018

9.18 An applicant’s actions would not amount to intentional homelessness where they have lost their home, or were obliged to sell it, because of rent or mortgage arrears resulting from significant financial difficulties, and the applicant was genuinely unable to keep up the rent or mortgage payments even after claiming benefits, and no further financial help was available. Housing authorities should be alert to the impact of economic abuse and control and coercion on a victim of domestic abuse’s ability to meet rent or mortgage payments.

9.19 Where an applicant has lost a former home due to rent arrears, the reasons why the arrears accrued should be fully explored, including examining the applicant’s ability to pay the housing costs at the time the commitment was taken on. Similarly, in cases which involve mortgagors, housing authorities will need to look at the reasons for mortgage arrears together with the applicant’s ability to pay the mortgage commitment when it was taken on, given the applicant’s financial circumstances at the time.

Examples: Generally “deliberate”

Homelessness Code of Guidance for Local Authorities (England) 2018

9.20 Examples of acts or omissions which may be regarded as deliberate (unless any of the circumstances set out in paragraph 9.17 apply) include the following, where someone:

a. chooses to sell their home in circumstances where they are under no risk of losing it;

b. has lost their home because of willful and persistent refusal to pay rent or mortgage payments;

c. could be said to have significantly neglected their affairs having disregarded sound advice from qualified people;

d. voluntarily surrenders adequate accommodation in this country or abroad which it would have been reasonable for them to continue to occupy;

e. is evicted because of their anti-social behaviour, nuisance to neighbours or harassment;

f. is evicted because of violence or threats of violence or abuse by them towards another person;

g. leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for them to continue in the employment and reasonable to continue to occupy the accommodation.

Part 2: Causation

Causation

Haile V London Borough of Waltham Forest [2015] UKSC 34

[27] two separate questions arise concerning causation. One arises, under what is now section 191(1) of the 1996 Act, in respect of what Brightman LJ described as the cause: the person's ceasing to occupy accommodation which he could reasonably have continued to occupy must be the consequence of his deliberate act or omission. The second arises, under what is now section 193(1) , in respect of what Brightman LJ described as the effect: the homelessness which the authority have found to exist must be the consequence of that intentional conduct

TWO STAGE TEST:

1. Did the applicant became homeless intentionally, within the meaning of HA 1996, s 191(1); i.e. did he or she deliberately fail to do *anything in consequence* of which he or she *ceased to occupy* accommodation?

2. For the purposes of HA 1996, s 193(1), was the applicant's *current homelessness* caused by his or her intentional conduct or has the causal chain has been broken by subsequent events?

Stage 1: Deliberate Act or Omission Cause of Cessation of Occupation

(1)Has there been any cessation of occupation at all?

(2)If so, did the deliberate act or omission cause the cessation of occupation?

(1) Occupation:

- Accommodation may have been anywhere in the world; local housing authorities are not restricted to considering accommodation the applicant has occupied in the UK **(para 9.12 of Guidance)**

- Failing to take up an offer of accommodation will not suffice (par**a 9.12 of Guidance)**

- Decisions by applicants: (1) to rid themselves of accommodation that they have not occupied; or (2) not to accept accommodation offered to them to occupy; cannot result in findings that they have become homeless intentionally

Stage 1: Deliberate Act or Omission Cause of Cessation of Occupation

(2) Causal link:

- Identify the real or effective cause of the homelessness, which should be approached in a practical common-sense way; see ***Enfield London Borough Council v Najim [2015] EWCA Civ 319;***

- Where a number of independent factors separately contributed to the loss of accommodation (parallel causation) it suffices if one of them is the deliberate act or omission of the applicant- a question of fact for the LA; see ***O'Connor v Kensington and Chelsea Royal London Borough Council [2004] EWCA Civ 394***

- Where a sequence of connected events led to the cessation of occupation (linear causation or 'the domino effect'), the control mechanism is whether it was reasonably likely that the act or omission would result in homelessness; see ***Watchman v Ipswich Borough Council [2007] EWCA Civ 348***

- The causal chain will be broken by an intervening independent act or omission of a third party; see ***Cox v Brent London Borough Council [2015] EWCA Civ 1551***

Stage 2: Cause of *Current Homelessness*

(1) Time in settled accommodation

Doka v Southwark London Borough Council [2017] EWCA Civ 1532: *What the applicant needs to establish is a period of occupation under either a licence or a tenancy which has at its outset or during its term a real prospect of continuation for a significant or indefinite period of time so that the applicant's transition from his earlier accommodation cannot be said to have put him into a more precarious position than he previously enjoyed.*

Won't include:	***Will include***
holiday lets; a temporary stay with relatives; a statutorily overcrowded and unaffordable assured shorthold tenancy; precarious occupation; whether as a bare licensee or as an unlawful sub-tenant	returning to long-term occupation of the parental home; tied accommodation as a long-term employee; freehold or leasehold ownership; an indefinite licence or permission to occupy

(2) Other examples

- Breakdown of marriage following temporary stay with family: ***R v Basingstoke and Deane District Council ex p Bassett (1983) 10 HLR 125, QBD.***
- Spousal desertion following a move: ***R v Camden London Borough Council ex p Aranda (1997) 30 HLR 76, CA***

Part 3: Affordability

Homelessness (Suitability of Accommodation) Order 1996

Relevant to question (6) Would it have been **reasonable for the applicant to have continued to occupy the accommodation**?

Under section 210(2) HA 1996, the Secretary of State made the *Homelessness (Suitability of Accommodation) Order 1996.* Specifies that: *In determining whether it would be, or would have been, reasonable for a person to occupy accommodation and in determining whether accommodation is suitable a housing authority must take into account whether the accommodation is affordable by them, and in particular must take account of:*

Examples: set out at Guidance para 17.46

(a) The financial resources available to them (i.e. all forms of income)

(b) Savings and other capital sums which may be a source of income or might be available to meet accommodation expenses

(c) The costs in respect of the accommodation,

(d) Payments which that person is required to make under a court order for the making of periodical payments to a spouse or former spouse, or to, or for the benefit of, a child and payments of child support maintenance required to be made under the Child Support Act 1991;

(e) Other reasonable living expenses

Ordinary Necessities of Life

- Accommodation is not reasonable for an applicant to continue to occupy if the cost of paying for it would deprive the applicant of the means to provide for 'the ordinary necessities of life'; see ***R v Wandsworth London Borough Council ex p Hawthorne [1994] 1 WLR 1442, CA***

- What constitutes 'the ordinary necessities of life' is a question of fact and can vary according to each applicant's needs; see ***R v Hillingdon London Borough Council ex p Tinn (1988) 20 HLR 305, QBD.***

- Care must be taken in evaluating these needs. A broad assertion by a local housing authority that an applicant's expenditure is exaggerated and that his or her accommodation is affordable, without any consideration of which items of expenditure could be reduced or why, will not be lawful; see ***Farah v Hillingdon London Borough Council [2014] EWCA Civ 359***

- The guidance in the Codes is also relevant. The English Code advises (in the context of assessing the suitability of accommodation) that local housing authorities consider 'whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to their circumstances'.

Royal Borough of Kingston upon Thames v Baptie [2022] EWCA Civ 888

- Affordability of particular accommodation for an applicant was not a question of whether their actual residual income after living expenses was enough to meet the rent obligation.
- A local authority had to determine whether the rent was one that the applicant could afford.
- That depended on their available income and "reasonable" living expenses.
- In the context of an affordability assessment, the "reasonable living costs" of an individual or household were the sum they reasonable needed to provide the necessities of life to a minimum standard (see [46]-[47] of judgment).
- The *Association of Housing Advice Services'* document "***Evidence base for cost of living and guidance for caseworkers***" Guidance purported to be objective and relied on evidence of prices at which relevant goods were offered for sale by mainstream supermarkets, identified by research carried out in London.
- The instant court had treated the guidance as a reliable objective source. There was no reason why the reviewing officer in the instant case was wrong to do the same ([48]-[54]).

Cost of Living Crisis

Association of Housing Advice Services Updated Affordability Report May 23: latest version updated in mid May 2023 takes into account cost of living increases including food inflation

Cost of Living Homelessness Assessment Slides from Andrew Carter RMG for Westminster Council presentation at AHAS Seminar November 2022

Samuels v Birmingham City Council [2019] UKSC 98 is still the starting point!

- Universal Credit (plus UC allowances) is the minimum income for a household and the starting point for an assessment
- LA must Assess the family's reasonable living expenses
- If those expenses are more than UC, then does this automatically lead us to conclude the accommodation is unreasonable to occupy?
- Have those expenses increased recently due to the CoL crisis?
- Are winter fuel costs causing a temporary spike in expenditure?
- Does the government relief plus other forms of relief mitigate the additional costs in the interim period?
- Can the family improve its income?

Thank you

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Intentional Homelessness

Edward Fitzpatrick, 6 July 2023

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Repeat Applications – Where applicant was previously found to be intentionally homeless

- Previously in ***R v Southwark LBC, ex parte Campisi*** (1998) 31 HLR 560 it was held by the CA that if an authority had discharged their duty on a first application, they are only obliged to accept a subsequent application unless there had been a "material" change in circumstances.
- This approach was rejected in ***R v Harrow LBC, ex parte Fahia*** [1998] WLR 1396 before the House of Lords. The issue was whether or not further enquiries had to be made on a fresh homelessness application. The applicant and her six children had been evicted from private rented accommodation and the applicant was found to be "intentionally homeless". For a long time, they were staying in a guest house provided as temporary accommodation. Eventually, an issue arose as to housing benefit payments for the guest house, and they were asked to vacate. It was held that the duty to make enquiries imposed on the local authorities applied whenever they had reason to believe an applicant for accommodation was homeless or threatened with homelessness and that when the applicant made her second application she was threatened with homelessness and it could not be said there was **no relevant change** in circumstances since her previous application or that her two applications could be treated as being **identical**.

Repeat Applications – Where applicant was previously found to be intentionally homeless

- This approach was considered by the Court of Appeal in ***Rikha Begum v Tower Hamlets LBC*** [2005] HLR 34. On a previous homelessness application, the appellant had refused an offer of permanent accommodation on the basis that it was not suitable. There was a review and an unsuccessful County Court appeal. The applicant and her family had to vacate temporary accommodation and return to live with her parents. Sometime after the applicant made a second homelessness application on the basis it was not reasonable for her to continue to occupy the parents' address. The authority decided they were not obliged to assist as there had been no material change in circumstances since the first application.

Repeat Applications – Where applicant was previously found to be intentionally homeless

The Court of Appeal (leading judgment Neuberger LJ) held:

> *"A person applies for housing assistance under Pt.7 Housing Act 1996 to a local authority who had previously determined an application for such assistance from him, and the authority have reason to believe that he may be homeless or threatened with homelessness, the only circumstances in which they may refuse to accept a subsequent application is where* ***it is based on exactly the same facts as the previous application****; when deciding whether the subsequent application is based on the same facts as the previous one, the authority must compare the facts at the date of the subsequent application with those at the date of determination of the previous one …"*

Further

> *"Where a person makes a subsequent application … it is his responsibility to identify which facts render the application different from those at the date of the determination of the previous one; if no new facts are revealed, or if the facts on which the applicant relies are, to the authority's knowledge and without further investigation, not new or are* ***fanciful or trivial*** *the authority should reject the application; where, however, the new facts are not within the authority's knowledge and are not, in the light of the information available to them, fanciful or trivial, they must accept the application; it is not open to the authority to investigate the accuracy of the new facts before deciding whether to accept the subsequent application, even in circumstances where there may be reason to suspect the accuracy of the new facts."*

DO THE NEW FACTS PRESENTED HAVE TO COME INTO EXISTENCE AFTER THE PREVIOUS DECISION?

- This was considered in ***R (on the application of Ibrahim) v Westminster City Council*** [2022] HLR 13.
- The claimant was a national of the Democratic Republic of Congo who had been married to a general in the Congolese Army. Her husband had been murdered and the general had raped her and threatened to kill her. She came to the UK in 2014 and subsequently claimed asylum. Her temporary accommodation provided by NAS was in Middlesbrough where she then made a homelessness application and was provided with temporary accommodation. In July 2017, a male occupant of the neighbouring flat entered the claimant's flat through a bedroom window when she was in the bath. He was arrested and subsequently released without charge. The claimant of the flat stayed with a friend and his wife in London in August 2017. She was referred to and received treatment from a psychiatrist, a Dr Ketteley, who found she was suffering from PTSD and severe depression. When she had to leave the friend's accommodation, she made a homelessness application and eventually on the 19th November 2018 the authority found that she was intentionally homeless as a result of her departure from the accommodation in Middlesbrough. It was said in relation to the incident with the neighbour that might have been upsetting but there was no risk of violence or threats of violence. In January 2019, the claimant made a second homelessness application which was accepted. The application was accepted, but it was then found that she had made herself intentionally homeless. Again, this became the subject of a review. As with the previous application letters from Dr Ketteley were relied on.

R (on the application of Ibrahim) v Westminster City Council [2022] HLR 13

- In particular, a third report from Dr Ketteley dated the 11th February 2020 was provided. This was the most comprehensive report and it linked previous trauma to the event in the flat in Middlesbrough, finding that:

  "*It is obvious that she could not have remained in the property in Middlesbrough … the option to flee may have been the only option available to her – and may well have been mediated by her stress system rather than it being a cognitive choice*".

- Whilst the evidence was that the letter was delivered to the local authority did not feature at all on the further review. On this review, the claimant was poorly served by solicitors who did not put in any representations following a "minded to" letter. The review decision was issued on the 28th August 2020.
- The claimant instructed new solicitors and on the 30th October 2020, they made representations requesting that a third application be accepted on the basis that there had been a failure to take into account the Report of the 11th February 2020. It was also argued that the authority should agree to accept an appeal out of time and/or agree to withdraw the review decision.

R (on the application of Ibrahim) v Westminster City Council [2022] HLR 13

- On a challenge by way of judicial review in respect of a failure to accept a third homelessness application it was argued that the facts were not identical to those considered on the previous applications in that the Report of Dr Ketteley of the 11th February 2020 had not been taken into account. Moreover, it was argued that generally the previous did not properly address the question of whether it was "reasonable for the claimant to continue to occupy" the accommodation in Middlesbrough.
- On behalf of the authority, it was argued that the material relied on was not new, i.e., coming into existence after the previous review decision. It was also argued that whilst not explicitly or comprehensively addressed the issue of "reasonable to continue to occupy" had been considered on previous reviews – it being pointed out that no detailed representations had been made on this topic.

In deciding the case Mr Justice Soole held:

[65] Reference is made to ***R (Hoyte) v Lambeth LBC*** [2016] HLR 35 where it was stated:

> "*The fact that material is before a decision maker does not necessarily mean that the facts gleaned from it have been accepted to be the facts actually existing at the time the decision was made … a person who is presented with evidence but rejects it cannot reasonably say "I knew that all along" when later presented with fresh evidence of the facts alleged*".

[98] It was not accepted that a new application is dependent on the occurrence of a new fact or circumstantial event which postdates the original decision. It is found that the decision in *Fahia* and *Begum* provide no basis for that contention:

> " *I can see neither authority or reason to exclude a relevant new fact or circumstance which does not postdate the original decision; not least, as here, where the relevant material has been supplied to the authority but by some error has not been placed before the reviewing officer.*"

[99] An argument to say that such an approach would result of a cycle of applications is rejected. It is said that in such cases the authority would be entitled to reject such applications as abusive.

Cont

An argument to say that the failure of those advising and assisting the claimant in the making of submissions and previous reviews should bar … … … case:

> "*I consider that this was an obvious point for the authority to consider as part of its duty of enquiry and in the light of the evidence supplied, and notwithstanding that the point was also repeatedly missed by those advising the claimant*".

[101] It is found that consideration of "reasonable to continue to occupy" was even on a benevolent interpretation not properly considered and rejected.

[104] In terms of the test for intervention, it is found that it is necessary to establish conventional grounds for judicial review but that it made easier in a case of a decision which depends on a comparison of facts and circumstances in the original decision and the subsequent application:

> "*In my judgment it is clear that no reasonable authority could have concluded that this was not a new application*".

In deciding the case it was also found that on the previous review, there had been a failure to take into account the public sector Equality Act duty due to an absence of "a sharp focus" in terms of the claimant's psychiatric history.

SECTION 191(2) A BENEVOLENT APPROACH

Section 191(2) provides:

> "*For the purposes of sub-section (1) an act or omission in* ***good faith*** *on the part of a person who was* ***unaware of any relevant fact*** *shall not be treated as deliberate.*"

This provision has been the subject of considerable and varied judicial decisions some of which can be regarded as benevolent and some perhaps rather harsh.

- To give context the Supreme Court in ***Haile v Waltham Forest*** [2015] AC 1471 found that the purpose of provisions concerning intentional homelessness "*is to prevent queue jumping*".

Unaware of a relevant fact – development of approach.

In the case that has been purportedly followed throughout ***R v Westminster City Council ex parte Obeid*** (1996) 29 HLR 389, QBD, Carnwath J (as he then was) held:

> *"It can be noted that the test is not the **reasonableness** of the applicant's action, but whether they were taken in ignorance. This may seem unjust. A person who takes the trouble to find out all the facts but makes a reasonable but mistaken judgment cannot apparently claim the benefit of the section; a person who makes no enquiries at all and therefore acts in ignorance, may be able to do so. … **An applicant's appreciation of the prospects of future housing or future employment can be treated as "awareness of a relevant fact" for the purposes of the sub-section, provided it is sufficiently specific (that is related to specific employment or specific housing opportunities)** and provided it is based on **some genuine investigation** and not mere "aspiration". Although that interpretation may not accord with what one would normally understand by reference in a statute to a "relevant fact", it is an interpretation by which I am bound. It is perhaps justified by the general intent of the act, to ensure that those who find themselves under the extreme pressures of homelessness should not be penalised except for decisions made with their eyes fully open."*

Unaware of a relevant fact – development of approach.

- In ***AW-Aden v Birmingham City Council*** [2005] EWCA Civ 1834 where a scientist gave up accommodation in Belgium to come to the UK, the Court of Appeal described his prospects of finding suitable employment as resting on "little more than a wing and a prayer".
- Likewise in ***F v Birmingham City Council*** [2007] HLR 18, CA where the applicant had "closed her eyes to the obvious" in a case where housing benefit would not be available for the whole of the contractual rent in respect of a property the applicant decided to move to – there was no "relevant fact". As a result, the issue of good faith did not arise.
- In ***Najim v Enfield LBC*** [2015] HLR 19 it was held that a relevant fact of which an applicant is unaware must exist at the time of the deliberate act or omission.

Unaware of a relevant fact – development of approach.

- In ***R v Westminster City Council ex parte N-Dormadingar*** (1997) Times, 20 November QBD the Court found that a fact is relevant where – had the applicant been aware of it he or she would have taken it into account in deciding whether she give up her accommodation.
- In ***R v Hammersmith and Fulham LBC ex parte Lusi*** (1991) 23 HLR 260 the applicants who were Turkish had moved from England to Turkey in order to take up a business opportunity there which proved to be unsuccessful. They returned to England and applied as homeless. It was found that the mistaken belief that they would be pursuing a sound business venture overseas capable of financing alternative accommodation and was capable of amounting to a "relevant fact".
- In ***R v Eastleigh Borough Council ex parte Beattie (No.2)*** (1984) 17 HLR 168, QBD it was held that ignorance of legal consequences of a deliberate act or omission is not sufficient. That would also apply to lack of knowledge as to legal consequences (although see ***Ugiagbe***).

Afonso-da-Trindade v Hackney LBC

The Court of Appeal in ***Afonso-da-Trindade v Hackney LBC*** [2017] HLR 37 reviewed the case law – adopting **Obeid,** then held that in relation to prospects of future **housing or future employment, they could be treated as "awareness of a relevant fact" – provided it is sufficiently specific** (that is, related to specific employment or specific housing opportunities) and provided it is based on **some genuine investigation and not mere "aspiration**". It was held that the authority had been entitled to conclude that the applicant had not properly investigated her prospects of accommodation in the UK at the time she left her home in Africa (despite having somewhere to stay in the UK). It was held that she left her accommodation in Africa with a reckless disregard of what her housing prospects would be.

Afonso-da-Trindade v Hackney LBC

Lord Justice Sales held:

> *"[24] The proper approach is be derived from such authorities, and* ***Tranckle*** *in particular, was summarised by Carnwath J (as he then was) in an influential passage in the* ***Obeid*** *case …:*
>
> *"…"*
>
> *This statement of a relevant principle has been authoritively endorsed more than once by this court see* ***AW-Aden, F v Birmingham and Ugiagbe*** *…*
>
> *[26] Accordingly, an applicant who seeks to bring herself within s.191(2) where the future has not worked out as expected by her, has to show that at the time of her actual omission to act referred to in s.191(1),* ***she had an active belief that a specific state of affairs would arise or continue in the future based on a genuine investigation about those prospects, and not on the mere aspiration.*** *Her belief about her current prospects regarding the future can then properly be regarded as belief about a current relevant fact (the apparent good prospects that the future will work out as she expects), such that if that belief can be seen to be justified by what a fully informed appreciation of her prospects at the time would have revealed, her mistake will qualify as unawareness of relevant fact for the purposes of s.191(2)."*

In deciding the case Lord Justice Sales differentiates between cases where there was some *genuine investigation* in cases where there was no investigation, or it could be said that the applicant acted on "a wing and a prayer". It was concluded that the reviewing officer had conducted a thorough investigation of the issues and reached conclusions that were unassailable.

Good Faith

In ***R v Hammersmith and Fulham LBC ex parte Lusi*** (see above) where the applicants had gone to Turkey to pursue a business in terms of good faith Roche J commented:

> *"So, there is a distinction between **honest blundering and carelessness** on the one hand, where a person can still act in good faith, dishonesty, on the other hand where there could be no question of a person acting in good faith."*

This approach was followed in:

- ***O'Connor v Kensington and Chelsea RLBC*** [2004] HLR 37 Lord Justice Sedley found:

  *"It is no doubt because of the harshness of s.191(1), which fixes people with all the unintended and unpredictable consequences of what may have been perfectly reasonable and prudent acts, that s.191(2) is there to mitigate it … subtracts from the category of deliberate acts those done in good faith and in ignorance of "any relevant fact". Importantly, it imposes no requirement that such ignorance be reasonable. … wilful ignorance, at least must fail the good faith test … a person's ignorance may well be due to their having behaved unreasonably but they do in consequence may still be done in good faith. The statutory dividing line, it seems to me, comes not at the point where the applicant's ignorance of a relevant fact was due to his own unreasonable conduct at the point where, for example, **by shutting his eyes to the obvious** he can be said not to have acted in good faith."*

Ugiagbe v Southwark LBC

- There was a further review of the provision in ***Ugiagbe v Southwark LBC*** [2009] HLR 35 where it was held that a failure to go to HPU for help could be categorised as foolish and imprudent but was not sufficient to put the conduct into the category of not being in good faith. It was held the conduct did not amount to "wilful blindness". Lloyd LJ found:

  "The use of this phrase "good faith" carries a connotation of some kind of impropriety or some element of misuse or abuse of the legislation. It is aimed at protecting local authorities from findings that they owed a full duty under Part VII to a person who despite some relevant ignorance, ought to be regarded as intentionally homeless … dishonesty is the most obvious kind of conduct which it would catch, and wilful blindness in a Nelsonian sense comes close to that."

When does s.191(2) require consideration if not explicitly raised?

In many cases where applicants are not represented unless specifically directed, they will have no knowledge of this provision or the comprehensive judicial guidance. In ***F v Birmingham City Council,*** Lord Justice May considered the question of when the provision needs to be addressed holding:

> "*[17] In conducting a review under s.202…a local authority is obliged to consider the effect of section 191(2),* ***even if they have not been specifically invited to do so*** *(****O'Connor*** *paragraphs 35, 40, 54)* ***if it is sensibly capable of arising on the facts***."

Ciftci v Haringey LBC

In ***Ciftci v Haringey LBC*** [2022] HLR 9, an issue arose in respect of an applicant who was not represented at the review stage as to whether sufficient enquiries had been made to determine the issues arising under s.191(2). The applicant, who is disabled with prosthetic legs, lived with her son in a flat in Switzerland. In January 2019, she gave up her tenancy of a flat and came to the UK. In advance of her coming to the UK through her sister, she had sorted out alternative employment at Rainbow Meats and alternative temporary accommodation. After working at Rainbow Meats for a number of months, the applicant left the job, as, although the job was administrative, there was more standing required than she was able to manage. She later had to leave the temporary accommodation arranged by her sister and made a homelessness application. The reviewing officer upheld the decision to say that she made herself "intentionally homeless" with no sufficient plan to obtain settled accommodation in England and giving up her flat in Switzerland had acted "on a wing and a prayer".

Judgment

- In the leading judgment of the Court of Appeal, Lord Justice Lewison found that the applicant had been asked questions about her leaving the accommodation in Switzerland, and had been given sufficient opportunity to address issues arising under s.191(2). On the approach in ***F v Birmingham CC*** it was said:

  "*But there is no such duty outside the circumstances of obviousness or circumstances in which it is plain that the housing authority has been put on warning as to something that might arise and merit consideration under s.191(2).*"

- It was found that the reviewing officer had not explicitly considered whether the applicant was unaware of a relevant fact or acted in good faith, however, it is found that this amounts to an enquiries argument and at least two opportunities were made on review for the applicant to make representations. It was found there had been references in the "minded to" letter to her giving up settled accommodation and acting on a wing and a prayer, and that she was unaware of relevant facts due to her own lack of planning and investigation. It was held that this was sufficient in the circumstances, and no further enquiry was necessary.

Cont

- It was also found that the applicant never made a link between the job for which she came to England and the prospect of future accommodation. It was held that if she had put forward representations to say that the loss of her job resulted in her not being able to stay in accommodation, or finance alternative accommodation then as part of an articulated plan, then it may have been something that the reviewing officer was required to look at, however, this was not something that was raised.

Certainly, in terms of future prospects of employment which would result in housing and future prospects of accommodation, the approach in recent cases is less benevolent. Whilst, previously, the focus was on whether or not an applicant acted in “good faith” where honest blundering could be protected. The focus now is on whether the applicant was “unaware of a relevant fact”, which is now approached within fairly strict confinements. An applicant who is not represented at the review stage is unlikely to be in a position to make these precise arguments and support their case evidentially.

Poshteh v Kensington and Chelsea RLBC

More optimistically, in ***Poshteh v Kensington and Chelsea RLBC*** Central London County Court 22nd February 2023 Legal Action April 2023 p.46. Following the challenge of suitability, which went to the Supreme Court but was rejected on a further application, Ms Poshteh argued that she had been unaware that she could have accepted the accommodation, which was offered, and at the same time applied for a review. His Honour Judge Roberts allowed a section 204 appeal holding that the decision to say otherwise was irrational on the facts, and that no rational reviewing officer could have reached such a conclusion and accordingly the decision was varied to one that Ms Poshteh had not become homeless intentionally.

Thank you

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