

# Homelessness Code of Guidance for Local Authorities

## **Supplementary Guidance on Intentional Homelessness**

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# Applicants who face homelessness following difficulties in meeting mortgage commitments

**In response to the current economic climate, and the robust framework of financial support the Government has put in place to help homeowners in financial difficulty<sup>1</sup>, this note provides guidance on how local housing authorities should exercise their homelessness functions, and apply the various statutory criteria, when considering whether applicants who are homeless having lost their home because of difficulties in meeting mortgage commitments are intentionally or unintentionally homeless.**

## INTRODUCTION

1. This guidance is issued by the Secretary of State under s.182 of the *Housing Act 1996* ("the 1996 Act"). Under s.182(1) of the 1996 Act, housing authorities are required to have regard to this guidance in exercising their functions under Part 7 of the 1996 Act.
2. This statutory guidance supplements Chapter 11 of the *Homelessness Code of Guidance for Local Authorities* issued in July 2006 ("the 2006 Code"), and should be read in conjunction with that chapter.

## HOMELESSNESS FOLLOWING MORTGAGE DIFFICULTIES

3. Homeowners may be at risk of homelessness if they experience difficulties in meeting their mortgage commitments, for example, because a member of the household loses their employment or suffers an income shock. Individual homeowners may respond in different ways when faced with such difficult circumstances.
4. Some homeowners may voluntarily give up possession of the property (hand back the keys to the lender). Some homeowners may decide to sell the property. Others may seek help to remain in their home, including help under the Mortgage Rescue Scheme (MRS) or Homeowner Mortgage Support (HMS), but decide – if found eligible for the scheme – not to accept an offer because they consider that continuing with home ownership would be unsustainable or would entail unacceptable financial risk. Where homeowners who have experienced such circumstances become homeless or threatened with homelessness and apply to a local housing authority for assistance, the authority will need to give careful consideration to the substantive cause(s) of homelessness before coming to a decision on intentionality.

<sup>1</sup> The Mortgage Rescue Scheme and Homeowner Mortgage Support

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## DEFINITION OF INTENTIONAL HOMELESSNESS

5. Authorities are reminded that by sections 191(1) and 196(1) of the 1996 Act, a person becomes homeless intentionally or threatened with homelessness intentionally, if:
  - i) the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation (or the likely result of which is that the person will be forced to leave accommodation);
  - ii) the accommodation is available for the person's occupation; and
  - iii) it would have been reasonable for the person to continue to occupy the accommodation.

However, an act or omission made in good faith by someone who was unaware of any relevant fact must not be treated as deliberate.

6. Authorities are also reminded that they must not adopt general policies that seek to pre-define circumstances that do or do not amount to intentional homelessness or threatened homelessness (see paragraph 11.5 of the *Homelessness Code of Guidance for Local Authorities*).

## PRINCIPLES ESTABLISHED BY CASE LAW

7. The broad thrust of section 191 is to ascribe intentional homelessness to a person who on the facts is responsible for his homelessness by virtue of his own act or omission. Whilst it is not part of the purpose of the legislation to require local authorities to house people whose homelessness is brought upon them by their own fault, equally, it is not part of the legislation that authorities should refuse to accommodate people whose homelessness has been brought upon them without fault on their part, for example, by an inability to make ends meet.
8. Nobody may be presumed to be intentionally homeless; the local housing authority must be satisfied of intentionality and must ask and answer the questions set out in the legislation. The decision maker in the local authority must look for the substantive cause of the homelessness and the effective cause will not always be the most immediate proximate cause.
9. Intentionality does not depend on whether applicants have behaved wisely or prudently or reasonably. Where an applicant's failure to seek help may have been foolish, imprudent or even unreasonable, this would not necessarily mean his or her conduct was not in good faith.

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## SOME POSSIBLE SCENARIOS

- 10.** As mentioned above, some former homeowners may seek housing assistance from a local housing authority having lost their home in one of the following circumstances:
- i) having voluntarily surrendered the property (handed the keys back);
  - ii) having sold the property;
  - iii) where the property was repossessed after the applicant refused an offer under the MRS;
  - iv) where the property was repossessed after the applicant refused an offer of HMS;
  - v) where the property was repossessed and the applicant had not sought help.

There should be no general presumption that a homeowner will have brought homelessness on him or herself in any of the above scenarios. A person cannot be found to have become intentionally homeless from a property where he or she was already statutorily homeless: e.g. because it was not reasonable for him to continue to occupy the property (see paragraph 8.18 et seq of the *Homelessness Code of Guidance for Local Authorities*). Consequently, where someone was already homeless before surrendering or selling their home or refusing an offer under MRS or HMS, the 'acts' of surrender or sale, and the 'omission' of refusing an offer of MRS or HMS cannot be treated as the cause of homelessness.

- 11.** In particular, authorities will need to satisfy themselves on two questions as applied at the point in time immediately before the applicant ceased to occupy accommodation (i.e. prior to the surrender, sale or refusal of help). First, was the applicant's home available as accommodation for the applicant, any other person who normally resides with him as a member of his family and any person who might reasonably be expected to reside with him? Second, did the applicant's home constitute accommodation that it would have been reasonable for him or her to continue to occupy? It would not have been reasonable for the applicant to continue to occupy his or her home, for example, if the home was not affordable, for example, because the applicant could not meet the cost of his or her mortgage commitments.
- 12.** If the answer to either of the two questions above is in the negative, the applicant will have been homeless prior to the surrender or sale of the property or refusal of an offer of assistance under the MRS or HMS. In such a case, the authority may still consider whether the applicant's homelessness was intentional but will need to look at the substantive causes of that homelessness prior to surrender or sale of the property or refusal of an offer of assistance under the MRS or HMS.