

LEGAL NOTICE

GWYNEDD COUNCIL

INTENTIONAL HOMELESSNESS AND THE HOUSING (WALES) ACT 2014

In Wales local housing authorities must decide whether to apply the intentionality test in respect of persons who apply to it for help on grounds of homelessness.

TAKE NOTICE that on the 21st day of August 2024, pursuant to Section 78 of the Housing (Wales) Act 2014 (as amended by the Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022 SI No 1069 (“the Act”), Gwynedd Council (“the Local Authority”) considered the priority categories outlined in Section 70 of the Act, and resolved to apply the test of intentionality to all applicants, to include the categories listed in section 70 of the Act, as set out below.

Categories

- (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
- (b) a person with whom a dependent child resides or might reasonably be expected to reside;
- (c) a person–
 - (i) who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability), or
 - (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;
- (d) a person–
 - (i) who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;
- (e) a person–
 - (i) who is homeless as a result of being subject to domestic abuse, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides (other than the abuser) or might reasonably be expected to reside;
- (f) a person–

- (i) who is aged 16 or 17 when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;
- (g) a person—
 - (i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who is at particular risk of sexual or financial exploitation, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides (other than an exploiter or potential exploiter) or might reasonably be expected to reside;
- (h) a person—
 - (i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who was looked after, accommodated or fostered at any time while under the age of 18, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;
- (i) a person—
 - (i) who has served in the regular armed forces of the Crown who has been homeless since leaving those forces, or
 - (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;
- (j) a person who has a local connection with the area of the local housing authority and who is vulnerable as a result of one of the following reasons—
 - (i) having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 222 of the Sentencing Code,
 - (ii) having been remanded in or committed to custody by an order of a court, or
 - (iii) having been remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,or a person with whom such a person resides or might reasonably be expected to reside;
- (k) a person—

- (i) who is street homeless (within the meaning of section 71(2)), or
- (ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.

Note:

The Council has applied the intentionality test in respect of categories (a) to (j), for the period since 10th July 2015. An additional priority need category came into effect from 24 October 2022, namely category (k) above (applicants who are “street homeless”, as defined in section 71(2) of the 2014 Act). As with all the priority need categories, the Council may decide whether or not to adopt the intentionality test in respect of all persons falling within this additional category.

Reasons:

The Council’s reasons for applying the test of intentionality to all applicants, to include the categories detailed above, and now including category (k), are as follows:

1. The potential disqualification of homeless applicants from the full housing duty under section 75 of the 2014 Act disincentivises persons from voluntarily and unnecessarily giving up suitable accommodation which would otherwise be reasonable for them to continue to occupy. If the Council were to not apply the intentionality test homeless applicants would be able to quit accommodation without it impacting, in the longer term, on the help to which they are entitled under the 2014 Act. Wherever possible persons ought to take responsibility for their actions, and not act in a way that is likely to cause them to lose their home. A decision not to apply the intentionality test would risk encouraging poor behaviour and would potentially adversely impact landlords, other housing applicants and residents generally. It would also increase the risk of repeat homelessness for certain households, which in turn adversely impacts on the welfare of children and vulnerable persons.
2. There are appropriate and effective safeguards in place for persons who have become homeless. These include:
 - (a) The fact that the intentionality test provides that the sanction cannot be applied in certain circumstances, including where:
 - (i) The relevant act or omission was not that of the applicant, for example where the act that precipitated homelessness was taken by a household member.
 - (ii) The act was not deliberate (including, but not limited to, where the applicant was ignorant of a relevant fact and was acting in good faith, or

where the applicant had no real choice but to act in the way they did).

- (iii) The applicant did not cease to occupy the relevant accommodation as a direct consequence of their actions.
 - (iv) It could not have been reasonably foreseen that the act would have resulted in the accommodation being lost.
 - (v) The accommodation lost was not available to the applicant or a household member.
 - (vi) The accommodation was not reasonable to continue to occupy.
 - (vii) The 'chain of causation' between the act and the applicant's current homelessness (at the time of the Council's decision) has been broken, by settled accommodation, a non-voluntary supervening event, or some other event.
- (b) Certain categories of applicant must be secured accommodation under section 75 notwithstanding a decision that they became homeless intentionally, unless they reapply for help and are found to have become intentionally homeless for a second time within a period of five years (by virtue of section 78 of the 2014 Act, and Regulation 2 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 SI No 1265). These categories are:
- (i) A pregnant woman or a person with whom she resides, or might reasonably be expected to reside.
 - (ii) A person with whom a dependent child resides, or might reasonably be expected to reside.
 - (iii) A person who had not attained the age of 21 when the application for help was made, or a person with whom such a person resides, or might reasonably be expected to reside.
 - (iv) A person who had attained the age of 21, but not the age of 25, when the application for help was made, and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside.

The broad effect of this protection is that dependent children and young persons are protected, unless and until there is repeated 'wrongdoing'.

- (c) Eligible persons who are homeless and have a priority need for accommodation will, in any event, benefit from

help under the 2014 Act. An adverse intentionality finding only takes effect after reasonable steps have been taken to help the applicant obtain alternative accommodation. In addition, the applicant will ordinarily qualify for temporary accommodation that must last for a sufficient period, which cannot be less than 56 days, by virtue of section 69(5) and (6). In most cases applicants that may be deemed intentionally homeless will be warned well in advance that they might not qualify for the full duty. An honest and frank discussion will ordinarily take place about causal factors and the circumstances that gave rise to their request for help. In this way the intentionality test may be used positively to ensure the applicant understands the consequences of their actions in causing their homelessness and the need to avoid a recurrence. Applicants will have an opportunity to take advantage of the help on offer (including the provision of interim accommodation), with a view to obtaining alternative accommodation, for example via the private rented sector. The Council may offer financial assistance for this purpose.

3. The consequence of not applying the test to the aforementioned categories of applicant would most likely result in those housing applicants who did not cause their own homelessness being disadvantaged by comparison, in terms of accessing the most suitable temporary accommodation under the statutory homelessness provisions, which given current levels of demand is routinely in short supply. In addition, there is potential for unfairness in relation to the allocation of social housing. Inquiries into whether a deliberate act caused homelessness are likely to uncover information which is relevant for deciding whether a person's housing register application should receive less priority, e.g. because of a history of unacceptable behaviour which affects their suitability to be a tenant (see section 3.43 of the Common Housing Allocations Policy).
4. Whilst the Council must, when deciding whether the full section 75 accommodation duty is owed, decide whether the applicant became homeless intentionally (assuming the test is adopted in respect of the relevant priority need category), the decision-maker retains discretion when evaluating the facts of individual cases. For example, a decision-maker who doubts whether the seven-stage legal test (or any sub-component of it) is satisfied in a particular case may decline to apply the sanction. Account must be taken of an applicant's disabilities and support needs where relevant.
5. The Local Authority takes a considered and careful approach to applying the sanction, as evidenced by the low numbers of homeless applicants having previously been found to have become homeless intentionally. In the Years 2022/23 and 2023/24 4 and 8 applicants received an intentional decision respectively. This is equivalent to a mere 2 per cent of all

applications for homelessness assistance made during those years.

- 6, Notwithstanding (5), the intentionality test remains an important tool, particularly for the worst instances of poor or unwise behaviour. Furthermore, were the intentionality sanction not to be applied, there would be significant resource implications for the Authority. Applying the intentionality test is warranted given the shortage of affordable accommodation for local persons on low and medium incomes. In this context, available resources should, as a general rule, be targeted on the most deserving cases.
7. Notwithstanding the legal obligation on applicants to answer questions fully and truthfully (see section 97 of the 2014 Act), there is, particularly in relation to category (k), a perverse incentive for applicants to not inform the Council of accommodation that is or might be available to them (or has been or may be offered to them) at the point in time when temporary accommodation is requested, or when the issue of whether the full s.75 duty falls to be made. This is because if the Council cannot establish a right to occupy accommodation, an applicant falls within the “street homeless” definition. Were the use of the intentionality test not adopted for category (k), there is a risk that persons (or more persons) might be encouraged to not take up offers of accommodation (including short-term accommodation which they would have a licence), with a view to obtaining temporary accommodation for a longer period of time than might otherwise be the case.
8. Any decision not to apply the intentionality test to all categories of applicant would be fundamentally inequitable, as all homeless persons (in respect of which s.75(3) does not apply) would be treated the same when the ‘relief’ duty under section 73 of the Act came to an end, irrespective of their personal culpability in causing their state of homelessness.

This decision will take effect from the 21st of August 2024, in accordance with regulations 3 and 4 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 SI No 1265.

Date: 7th Of August 2024

**FOR FURTHER INFORMATION REGARDING THIS NOTICE,
PLEASE ASK TO SPEAK TO A HOMELESSNESS AND SUPPORT
OFFICER.**

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