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BRIEFING PAPER

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Applying as homeless from an assured shorthold tenancy (England)

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1. Introduction

When an English local authority is approached for assistance by a household that has been served with a notice of the landlord's intention to seek possession under section 21 of the *Housing Act 1988,* a common response has been to tell the applicant to remain in situ until a court order/bailiff's warrant has been obtained. Authorities often told these households that an application for homelessness assistance under Part 7 of the *Housing Act 1996* (as amended) would not be considered before a court order/bailiff's warrant was issued.

The then Housing Minister, Brandon Lewis, wrote to all local authority CEOs concerning this issue in June 2016. The letter said: "Unless a local authority has very good reason to depart from the statutory guidance then they should not be placing households in this position."

Measures in the *Homelessness Reduction Act 2017,* which came into force on 3 April 2018, mean that authorities in England are now **required to treat an applicant as threatened with homelessness if they have been served with a valid section 21 notice which expires in 56 days or less and have no other accommodation available for occupation**. The effect of this is to trigger the authority's homelessness prevention duty.

Private renting has grown in recent years and is now the second-largest tenure in England; an estimated 19% of households rented privately in 2018/19.[1]

The end of an Assured Shorthold Tenancy (AST) is a significant cause of homelessness. Households who are homeless, or threatened with homelessness, can apply to their local authority for assistance. The Ministry of Housing, Communities and Local Government (MHCLG) publishes statistics on the number of applications received. In 2010/11, the end of an AST was given as a cause of homelessness in 6,630 applications (15% of cases), rising to 15,500 applications (27% of cases) in 2017/18. In London, 33% of homeless acceptances were due to the end of an AST over this period. [2]

In April 2018, the *Homelessness Reduction Act 2017* came into force, broadening local authorities' duties towards homeless households and those threatened with homelessness (see section 4). Data on homeless applications before and after the Act came into force

1 MHCLG, English housing survey headline report 2018 to 2019, 23 January 2020
2 MHCLG, Acceptances and decisions live tables: January to March 2018, Table 774, December 2018

are not comparable. In the last quarter of 2019, applications following the end of an AST accounted for 19% of households owed a duty to prevent or relieve homelessness by their local authority. The reason for the AST ending was also recorded. The landlord wishing to sell or re-let the property was given as the reason for ending the tenancy in 43% of applications in this group, while rent arrears was given as the reason in 28% of cases.[3]

There is some evidence that the 2017 Act has improved the way in which local authorities are delivering their homelessness prevention services, but there are variations. MHCLG is currently reviewing implementation of the Act; a report was expected by March 2020.

2. Assured shorthold tenants: 'no fault' eviction

Assured shorthold tenants have no long-term security of tenure. To summarise, a landlord of an Assured Shorthold Tenancy (AST) must give at least 2 months' notice that they require possession under section 21 of the *Housing Act 1988* to terminate the tenancy at the end of its fixed-term.[4]

Changes to notice requirements which applied to ASTs created on or after 1 October 2015 were extended to cover **all** ASTs on 1 October 2018. This means that the section 21 notice must be in a prescribed form. A two month notice period is sufficient in most cases[5] but where a contractual tenancy period runs for longer, landlords must give an appropriate matching period of notice (e.g. 3 months' notice for quarterly tenancy periods where the landlord takes the rent quarterly etc).

A section 21 notice cannot be served in the first 4 months of the original tenancy but may be served at the outset of a replacement tenancy. A section 21 notice cannot end during a fixed-term. Once served, in most cases a section 21 notice will last for six months. A section 21 notice will be invalid if a landlord/agent has not complied with certain requirements, e.g. protecting the tenant's deposit in a government approved scheme.

Section 21 of the 1988 Act gives a landlord a right to possession of the property without having to give any grounds (reasons) once the fixed-term has expired. It is often referred to as a 'no fault' ground for eviction.[6]

If a tenant does not leave at the end of the notice period the landlord must apply for a court order to evict. They may be able to use the accelerated possession procedure.

If a tenant does not leave the property on the date specified in the court order the landlord must apply to the court for a warrant for eviction. The court will arrange for bailiffs to evict the tenant.

A summary of the notice/eviction process can be found on the GOV.UK website.

The fact that the landlord of an AST has the right, having followed the correct notice procedure, to obtain a court order on a 'no fault' basis under section 21 (i.e., they do not have to give any reasons for terminating the tenancy), gave rise to the question of

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3 MHCLG, Statutory homelessness live tables, Table A2, 21 May 2020

4 Nb. The *Coronavirus Act 2020* temporarily extended the notice periods that certain tenants, including ASTs, are entitled to receive to 3 months for notices served between 26 March and 30 September 2020.

5 See footnote 4 above.

6 The Government has committed to legislate to abolish the use of 'no fault' evictions by removing section 21 of the *Housing Act 1988* and reforming the grounds for possession. The House of Commons Library briefing paper CBP08658: The end of 'no fault' section 21 evictions provides further information.

whether authorities, on receipt of a homelessness application, were justified in requiring assured shorthold tenants to remain in occupation once the 2 months' notice period had expired.

This issue arose when AST tenants applied to a local authority for assistance due to threatened homelessness. As noted above, on receipt of such an application local authorities, particularly in areas of high housing demand, often advised the tenants to remain in occupation until the landlord obtained a court order to evict, even though the tenants had no defence to the claim. Sometimes authorities required applicants to remain in occupation until a bailiff's warrant was executed. Assured shorthold tenants could find themselves facing court costs in these circumstances.

It appears that local authorities adopted this approach to delay the point at which they were obliged to secure temporary/permanent accommodation for households threatened with homelessness.[7] For example, Westminster Council submitted the following written evidence to the Communities and Local Government (CLG) Select Committee's scrutiny of the draft Homelessness Reduction Bill:

> We have case studies where effective prevention work at these critical stages keeps tenants in their homes and we have identified that over the last couple of months, tenants in Westminster present to us at various stages of the possession process where we have been able to offer a defence to possession proceedings. Furthermore, the change may have many unintended consequences – these changes may actually incentivise more landlords to end tenancies at an earlier point, leading to higher levels of homelessness. Where a local authority can demonstrate that there is a reasonable defence to possession action, it should be able to assist the applicant in their defence against possession to remain in the property. For new legislation to insist that the authority provides accommodation and the tenant moves out could undermine the tenant's rights.[8]

Organisations representing homeless people argued that requiring households to wait for a bailiff's warrant created more uncertainty and instability and could render tenants liable for the landlord's court costs. Private landlords argued that forcing them to obtain court orders to evict these tenants meant that they were less likely to offer tenancies to more vulnerable households. There was evidence to suggest that some authorities had adopted a blanket policy of requiring all assured shorthold tenants to await a court order/bailiff's warrant before triggering the homelessness duties owed under the 1996 Act.[9]

3. Letter from Brandon Lewis June 2016

The then Minister for Housing, Brandon Lewis, wrote to all local authority CEOs in June 2016 noting that he received a "large amount of correspondence" on the question of local authorities advising tenants to stay when issued with a Notice of Intention to Seek Possession of a property let on an AST under section 21(1) or (4) of the *Housing Act 1988*. The letter, extracts from which are reproduced below, set out the Government's position:

> The legislation relating to landlords and tenants, as well as statutory guidance on homelessness, seeks to strike the right balance between protecting the rights of tenants and landlords. But a local authority advises a tenant to stay in a property beyond the notice period and, therefore, compels the landlord to go to the courts to

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7 Note that local authorities do not have a duty to secure accommodation for all homeless households. A statutory rehousing duty is owed to eligible households (mainly determined by immigration status) who are unintentionally homeless and in a priority need category. The priority need categories are set out in section 189 of the *Housing Act 1996*.

8 Westminster City Council - written evidence, October 2016 [Note that the draft Bill was subsequently amended to remove the provision to which Westminster Council was referring]

9 14 Sep 2016 - Scrutiny of Homelessness Reduction Bill - oral evidence, Q53, pp6-7

> obtain possession, this results in significant costs. Authorities should not routinely be advising tenants to stay until the bailiffs arrive; there in no barrier to them assisting the tenant before this. By doing this local authorities miss a valuable opportunity to prevent homeless.
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> The statutory homelessness Code of Guidance, which local authorities are required by law to have regard to, is clear on this matter. It contains guidance on how authorities should treat homelessness applications in circumstances where a tenant has received a valid s.21 notice. It says that housing authorities should not, in every case, insist upon a court order for possession and that no local authority should adopt a blanket policy in this respect. The Guidance states that if the landlord intends to seek possession and there would be no defence to an application for a possession order then it is unlikely that it would be reasonable for the applicant to continue to occupy the accommodation.
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> Unless a local authority has very good reason to depart from the statutory guidance then they should not be placing households in this position.
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> As you may be aware, Government is committed to working with local authorities, homelessness organisations and across the Departments to consider options, including legislation, to prevent more people from becoming homeless. The way local authorities deal with s21 notices will be one of the things I will be looking at.[10]

4. The Homelessness Reduction Act 2017

The treatment of households approaching their local authorities for assistance after having been served with a section 21 notice by their landlords, was raised during the CLG Select Committee's 2015-16 inquiry into homelessness. Bob Blackman introduced the *Homelessness Reduction Bill 2016-17* on 29 June 2016. The Bill attracted Government and cross-Party support and received Royal Assent on 27 April 2017. The Act came into force on 3 April 2018.

Section 1 of the Act amended the definition of 'threatened with homelessness' in the *Housing Act 1996*. Authorities are now required to treat an applicant as threatened with homelessness if they have been served with a valid section 21 notice which expires in 56 days or less and have no other accommodation available for occupation. In effect, this has clarified that an authority's duty to prevent homelessness is triggered in these circumstances. The then Minister explained the aim of the amendment:

> The prevention duty provides that local authorities must work quickly and proactively with applicants who are threatened with homelessness to find a long-term housing solution during that period. The amendment adds to that by making it clear that any applicant with a valid section 21 notice that expires in 56 days or less is to be treated as threatened with homelessness and therefore offered the relevant help and support. Where applicants in those circumstances seek help, local housing authorities will be required to work with them to try to prevent them from becoming homeless before the notice expires. That should help to reduce evictions from privately rented accommodation and facilitate less disruptive moves to alternative housing when tenants do have to move out. It has been mentioned many times that once a family have paid a deposit bond to a landlord, if they are subsequently evicted quite often the biggest challenge is that do not have that bond to get back into the rental market.[11]

Section 4 of the Act has extended the prevention duty to cover instances where a household with an AST is served with a section 21 notice and is still in situ after receiving 56 days of help from the local authority under the new prevention duty. For example, the

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10 Brandon Lewis letter to all CEOs English local authorities, June 2016
11 PCB 18 January 2017 (Afternoon) c159

section 21 notice may have expired, but no action has been taken to evict the occupants. In these cases, the prevention duty continues until the local authority brings it to an end for one of the reasons set out in section 4,[12] even where 56 days has passed.[13]

The aim is to ensure greater continuity of help between the prevention and relief duties for households during the eviction process. The Government said it would take additional action to encourage those at risk of homelessness to make early contact with local authorities:

> We will amend form 6A, which is used to evict tenants through section 21, and amend the "How to Rent" guide to include information encouraging tenants to seek help earlier when they receive a section 21 notice and believe they are at risk of homelessness as a result.[14]

4.1 What should an authority do for applicants served with a section 21 notice?

The requirement on authorities to treat eligible tenants served with a valid section 21 notice as threatened with homelessness, as described above, means that the authority should carry out an assessment of the applicant's needs:

> Following this assessment the LHA must work with the person who has applied for help, to agree the actions to be taken by both parties to ensure the person has and is able to retain suitable accommodation. Of these actions, there will be a small number of key steps the individual would be required to take. These steps would be tailored to their needs and be those most relevant to securing and keeping accommodation. These actions must be reasonable and achievable.[15]

The aim is to ensure that applicants are prevented from becoming homeless:

> This measure will extend homelessness prevention so that help is provided at an earlier stage to all eligible households, regardless of priority need status, intentionality and whether they have a local connection. LHAs will take reasonable steps to help people secure accommodation. This extends the help available to people not in priority need. Government is supporting this measure because we agree that earlier prevention will mean fewer households will have to face the stress and upheaval of a homelessness crisis.
>
> To help make prevention action more effective, this new duty will sit alongside other measures in the Bill, in particular the non-cooperation measure, that will encourage those who are homeless or at risk of becoming homeless to work proactively with their LHA, and the duty on local authorities to provide advice and information.[16]

The Act has **not** placed a duty on local authorities to secure accommodation themselves for all eligible applicants threatened with homelessness, although they may do so if they wish.[17]

The duty to prevent homelessness can be ended in the following circumstances:

- First and foremost through successful prevention, where the LHA is satisfied that suitable accommodation has been secured where there is a reasonable prospect of that accommodation being retained for at least six months. This is what prevention is all about.
- It can also come to an end where the LHA has taken reasonable steps for 56 days to help the applicant to secure that accommodation does not stop being

12 Now section 195(6) of the *Housing Act 1996*
13 HC Deb 27 January 2017 c577
14 PCB 18 January 2017 (Afternoon) c160
15 MHCLG, Policy Factsheet 3: Duty to assess all eligible applicants' cases and agree a plan
16 MHCLG, Policy Factsheet 4: Homelessness prevention duty
17 Ibid.

> available for their occupation. However, the duty cannot be brought to an end after 56 days if a valid section 21 notice has been served and an applicant remains in their property and is still threatened with homelessness.
>
> - It can be brought to an end if the person unreasonably and deliberately refuses to co-operate with the LHA by failing to carry out the agreed steps set out in their personalised plan (or those deemed reasonable by the LHA in the absence of agreement). If this happens, safeguards are in place to ensure other forms of help continue for people who are in priority need where they are homeless through no fault of their own and eligible for assistance.
> - If the prevention has not been successful and the person loses their home they will be owed the relief duty, ensuring they receive continuous help.[18]

Once the prevention duty has ended, if an applicant becomes homeless, rather than threatened with homelessness, the authority will have a duty to work to relieve homelessness for a period of 56 days:

> The relief duty requires LHAs to take reasonable steps to help secure accommodation for any eligible person who is homeless. This help could be, for example, the provision of a rent deposit or debt advice.
>
> The duty lasts for up to 56 days, and would be available to all those who are homeless and eligible regardless of whether they have a priority need. Those who have a priority need (for example they have dependent children or are vulnerable in some way) will be provided with interim accommodation whilst the LHA carries out the reasonable steps.[19]

The relief duty does not place a duty on an authority to provide accommodation itself, although there is a duty to provide interim accommodation for eligible homeless applicants in priority need. The main rehousing duty owed to unintentionally homeless households in priority need is unchanged.

The relief duty can be ended in similar circumstances to the prevention duty.[20]

4.2 Must landlords still obtain a court order?

A new statutory Homelessness Code of Guidance for local authorities has been issued which incorporates changes made by the 2017 Act. The Code contains the following guidance for local authorities on whether they should require an assured shorthold tenant to remain in situ until the landlord, having served a section 21 notice, has obtained a court order to evict/bailiff's warrant:

> In cases where the applicant has been occupying accommodation as a tenant and has received a valid notice to quit, or a notice that the landlord intends to recover possession, housing authorities should make contact with the landlord at an early stage. This will be necessary both to understand the circumstances in which the applicant has become threatened with homelessness, and to establish what reasonable steps may be taken by the housing authority and by the applicant to prevent their homelessness.
>
> A housing authority can give notice to end the section 195(2) prevention duty where 56 days has passed since the prevention duty was accepted, whether or not the applicant is still threatened with homelessness (section 195(8)(b)). However, section 195(6) of the 1996 Act prevents an authority from doing this if the applicant has been given a valid section 21 notice which will expire within 56 days, or has already expired, in respect of the only accommodation available for the applicant's occupation. This means an applicant in these circumstances cannot be 'timed out' of the prevention duty if they remain threatened with homelessness, and the authority

18 Ibid.
19 MHCLG, Policy Factsheet 5: Relief
20 See: MHCLG, Policy Factsheet 5: Relief

must continue to help the applicant to retain or secure accommodation until the prevention duty ends in another way.

However, an authority should give notice to end the section 195 prevention duty when an applicant has become homeless, triggering a section 189B relief duty. It follows that housing authorities will be required to assess at what point a tenant who has been served a valid section 21 becomes homeless and is owed a relief duty; and that **expiry of a valid section 21 notice does not automatically render the person homeless for the purposes of the 1996 Act.** Under section 175 of the 1996 Act, an applicant must be considered homeless if they have no accommodation to which they have a legal right to occupy that is available to them and **reasonable for them to continue to occupy.**

In determining whether it would be reasonable for an applicant to continue to occupy accommodation following expiry of a valid section 21 notice **the authority will need to consider all the factors relevant to the case and decide the weight that each should attract.** If the landlord confirms a willingness to consider delaying or halting action to recover possession if certain steps are taken, it will usually be reasonable for the tenant to remain in occupation to allow time for action to be taken which may prevent homelessness. This might include, for example, resolving problems with a benefit claim or establishing a manageable repayment schedule for rent arrears.

Authorities should not adopt a blanket policy or practice on the point at which it will no longer be reasonable for an applicant to occupy following the expiry of a section 21 notice. As well as the factors set out elsewhere in this chapter, factors which may be relevant include the preference of the applicant (who may, for example, want to remain in the property until they can move into alternative settled accommodation if there is the prospect of a timely move, or alternatively to leave the property to avoid incurring court costs); the position of the landlord; the financial impact of court action and any build up of rent arrears on both landlord and tenant; the burden on the courts of unnecessary proceedings where there is no defence to a possession claim; and the general cost to the housing authority. Housing authorities will be mindful of the need to maintain good relations with landlords providing accommodation in the district.

Throughout any period that an applicant remains in occupation whilst the landlord pursues possession action, the housing authority should keep the reasonable steps in the applicant's personalised housing plan under regular review, and maintain contact with the tenant and landlord to ascertain if there is any change in circumstances which affects whether or not it continues to be reasonable for the applicant to occupy.

The Secretary of State considers that where an applicant is:

a. an assured shorthold tenant who has received a valid notice in accordance with section 21 of the Housing Act 1988;

b. the housing authority is satisfied that the landlord intends to seek possession **and further efforts from the housing authority to resolve the situation and persuade the landlord to allow the tenant to remain in the property are unlikely to be successful**; and,

c. there would be no defence to an application for a possession order;

then it is unlikely to be reasonable for the applicant to continue to occupy beyond the expiry of a valid section 21 notice, unless the housing authority is taking steps to persuade the landlord to allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found.

The Secretary of State considers that it is highly unlikely to be reasonable for the applicant to continue to occupy beyond the date on which the court has ordered them to leave the property and give possession to the landlord.

> Housing authorities should not consider it reasonable for an applicant to remain in occupation up until the point at which a court issues a warrant or writ to enforce an order for possession.
>
> **Housing authorities should ensure that homeless families and vulnerable individuals who are owed a section 188 interim accommodation duty or section 193(2) main housing duty are not evicted through the enforcement of an order for possession as a result of a failure by the authority to make suitable accommodation available to them.**[21]

It is entirely a matter for an individual landlord whether to seek a court order to evict/bailiff's warrant. Assured shorthold tenants have the right to remain in occupation until a court order to evict is obtained and enforced. When dealing with applications from assured shorthold tenants served with a valid section 21 notice, local authorities will need to consider the circumstances of each case, having regard to the guidance set out above, when deciding how to advise these applicants. It has been known for authorities to tell applicants in priority need that if they leave an AST before a court order/bailiff's warrant is obtained, they will be deemed to be intentionally homeless. These households are not owed a main rehousing duty. A constituent who is given this advice by a local housing authority would be best advised to seek professional legal assistance – it may be possible to challenge the local authority if there are grounds on which to argue that they are not acting with proper regard to the Code of Guidance.

4.3 Impact of the 2017 Act

Shelter carried out a six-month multi-method research programme on the operation of the HRA 2017 - Caught in the Act: A review of the new homelessness legislation (April 2020). The research found evidence of some improvements in the way housing authorities were delivering services to prevent homelessness. However, it also identified that some local authorities were still advising tenants served with a valid section 21 notice to return to the authority once they had an eviction date, thereby reducing the time available to attempt to prevent homelessness:

> Despite the new legislation and guidance, we found evidence that some officers are still delaying intervention and waiting until an applicant has been evicted before assisting, rather than trying to negotiate with the landlord to keep them in their existing home or take immediate steps to find a suitable alternative.
>
> Shelter's audits of housing authorities' homelessness services uncovered several examples of persisting poor practice. Our review of case notes also uncovered many examples of inaction, and of the housing authority waiting until the applicant was evicted. This resulted in real, and possibly avoidable, hardship to homeless families.
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> > Case study 7: no attempt to prevent eviction and homelessness
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> > The applicant presented to the housing authority with a valid section 21 notice, but the duty to prevent homelessness was only accepted nine months later. The authority waited for the eviction warrant and no steps were taken to prevent homelessness. This resulted in the applicant, who had two disabled children, being evicted and then offered temporary accommodation consisting of a single room. The room was clearly unsuitable given the identified need in the personalised housing plan (PHP) for a three-bedroom home.
> >
> > *Shelter consultancy case*
>
> Although some authorities do seem to be putting more effort into preventing the loss of the existing home, the government statistics clearly show that prevention assistance

[21] MHCLG, Homelessness Code of Guidance, 2018, paras 6.29-6.38 [emphasis added]

> is not helping people to remain in their homes in the majority of cases, and evidence from our services suggests that officers are still delaying intervention.[22]

Shelter "strongly recommend that the Government should commit to statutory regulations on whether it is reasonable to occupy beyond the service of a valid Section 21 notice".[23]

The Housing, Communities and Local Government (HCLG) Select Committee held a one-off evidence session on the Homelessness Reduction Act - One Year On on 23 April 2019. The Committee heard evidence from the Chief Executive of Crisis, Jon Sparkes, that there was variation in the way that local authorities were implementing the Act. This ranged from authorities who were implementing a full culture change, redesigning their services and developing new services, to authorities who were simply layering the Act on top of existing services. He also considered that some local authorities were failing to engage with the spirit of the new prevention duty:

> …We are seeing a variation. There are local authorities that have clearly entered into the spirit of it. We have 58% of local authorities introducing new prevention and relief services as a direct result of the HRA. We have local authorities saying that the HRA has prompted more effective homelessness prevention work to be done. We certainly have examples where we have literally seen the creation of new job roles, a different approach, more of a coaching methodology to providing service, reflective practice, and the use of a strengths-based approach. There is a real culture shift in some cases.
>
> We then have other examples. We have certainly seen that characterisation of people taking it literally and, for example, not providing the support that is really needed where there is not absolutely robust proof that the person is going to be homeless in 56 days. The reason there is no proof is because the landlord who is threatening to kick them out is not going to give them written evidence that they are going to kick them out in 56 days. If you take it literally, you do not prevent or relieve unless you know absolutely that they are going to be homeless in 56 days, even though anybody can see that this person is at risk of homelessness. That is an example, and it is not the only example. There is some evidence of gatekeeping still in place, that sense of running down the days because they know someone is not owed the full duty. That is really not entering into the spirit of it.[24]

MHCLG is currently reviewing implementation of the *Homelessness Reduction Act 2017*. A call for evidence ran from 23 July to 15 October 2019.[25] Alongside the call for evidence the Government commissioned field research to gain a better understanding of how different local authorities have implemented the Act. The Government's report, setting out findings and recommendations going forward, was expected to be published by March 2020.

5. Ending an AST and intentionality

In line with the guidance set out above, homeless applicants **cannot** be deemed to be intentionally homeless for leaving an AST unless, in the authority's view, it would have been reasonable for him/her to have continued to occupy their accommodation.[26] In addition, for homelessness to be intentional the act or omission leading to the applicant becoming homeless must have been deliberate:

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22 Shelter, Caught in the Act: A review of the new homelessness legislation, April 2020, p25
23 Ibid., p26
24 House of Commons Housing, Communities and Local Government Committee, Oral evidence: Homelessness Reduction Act—One Year On, HC 2089, 23 April 2019, Q5
25 MHCLG, Homelessness Reduction Act 2017: Call for evidence, 23 July 2019
26 MHCLG, Homelessness Code of Guidance, 2018, para 9.22

> 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
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> […]
>
> Acts or omissions made by the applicant in good faith where they were genuinely unaware of a relevant fact must not be regarded as deliberate. Provided that the applicant has acted in good faith, there is no requirement that ignorance of the relevant fact be reasonable.
>
> A general example of an act made in good faith would be a situation where someone gave up possession of accommodation in the belief that they had no legal right to continue to occupy the accommodation and, therefore, it would not be reasonable for them to continue to occupy it. This could apply where someone leaves rented accommodation in the private sector having received a valid notice to quit or notice that the assured shorthold tenancy has come to an end and the landlord requires possession of the property, and the former tenant was genuinely unaware that they had a right to remain until the court granted an order for possession and a warrant or writ for possession to enforce it.[27]

Housing authorities must not adopt general (blanket) policies which seek to pre-define circumstances which do or do not amount to intentional homelessness or threatened homelessness, such as leaving an AST before a court order is granted.

Remaining in situ pending a court order for eviction does not amount to an offence (criminal or civil).

6. Case law (pre-the Homelessness Reduction Act 2017)

In *R v LB Newham ex parte Ugbo*[28] the authority's failure to consider the advice in the 2006 Code of Guidance on security of tenure (and the implications of the applicant being only an assured shorthold rather than a fully assured tenant) invalidated its decision on the question of whether it was reasonable for the applicant to continue to occupy the accommodation.

However, *Ugbo* can be contrasted with *R v LB Croydon ex parte Jarvis,*[29] where the authority considered the Code of Guidance and could still properly reach the conclusion that it was reasonable to continue to occupy pending a court order following the termination of an AST.

The decision as to the imminence of possession proceedings and whether an applicant would have a defence is a question of fact for the housing authority.

7. Tenants' liability for costs

A tenant who remains in situ beyond the expiry of a section 21 notice *may* be required by the court to meet the landlord's court fees if they do not defend the action for possession.

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27 MHCLG, Homelessness Code of Guidance, 2018, para 9.16 & 9.23 – 9.24
28 [1993] 26 HLR 263, QBD
29 [1994] 26 HLR 194, QBD

Landlords may also seek an award to cover their legal costs, e.g. instructing a solicitor. The current fixed-fee for an accelerated possession procedure application is £355.

According to the housing charity Shelter, in 2017 costs could amount to around £555 for an accelerated possessions case without a hearing and £600 for a standard possessions case with a hearing.[30]

In *R v LB Croydon ex parte Jarvis*[31] the landlord obtained an order for possession against the tenant and also an order for £280 in costs. A press release issued by the Government-approved My Deposits scheme in 2014 noted that court costs for possession and other claims had risen and that, depending on how the terms of the deposit payment were drafted, it may be possible for landlords to withhold these costs from the tenant's deposit:

> This of course is far from ideal for the tenant. While it's too early to see exactly how the changes will affect tenants, it conflicts with advice given out by local councils, many of which actively encourage tenants to remain in the property when facing eviction. This is because voluntarily leaving a property means a tenant is less likely to be rehoused by a local council or in social housing.
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> The potential cost to the landlord – and subsequently the tenant – of using the courts could potentially reach over £400.00.[32]

The Homelessness Code of Guidance says that the financial impact of court action on both landlords and tenants should be taken into account by an authority when deciding whether or not it is reasonable to require a tenant with an AST to remain in situ until a court order/bailiff's warrant is obtained.

30 Shelter webpage on Section 21 eviction [Accessed 2 July 2019]
31 Ibid.
32 Bad news for landlords and tenants as court fees rise by 60%, *My Deposits News Release,* May 2014 [Accessed 2 July 2019]