

Please read the following summary and then answer the following questions.

- (a) What specific part of the relevant legal test is the main issue that arises on these facts? (Section 191 is reproduced below the scenario to help you).
- (b) Can the proposed decision be lawfully made on the facts as stated? Give reasons for your answer.
- (c) Is there any action your colleague could take to obtain information that may enable the decision to be lawfully made?
- (d) Does the principle for the case of *Haile* prevent the proposed decision being lawfully made? Give reasons for your answer.

Harriet is 35-years-old and has two young children.

56 days ago the Council accepted that she was owed the homelessness relief duty, after she vacated her home on the last day of a section 21 notice period.

Harriet telephoned the Council and asked about applying for council housing when she'd first received notice. It is standard practice in this situation for applicants to be advised to attend an interview with a housing advisor, and to bring the relevant paperwork to the appointment so they can be advised on the validity of the notice. Given the extreme shortage of family housing in the borough applicants are also routinely advised of their legal right to remain beyond the notice expiry date, given that their tenancy only ends once a court order is enforced by bailiff's warrant.

Harriet says she thought she had to move out on the last of the notice, having received a request to do so by the landlord's agent. She's supplied a letter from the agent which does indeed ask her to deliver the keys to their office on the last day of the notice.

While Harriet accepts that she received initial advice there doesn't appear to be any record on the Council's system in connection with Harriet's initial phone call.

A homeless application was only taken after Harriet vacated. The s.189A assessment was carried out the same day and Harriet was notified that she was eligible for assistance and homeless.

Harriet's case is being overseen by a colleague of yours. After taking the application he established that while the landlord had taken a deposit from Harriet's mother Kaleisha, Kaleisha had not received the prescribed information. Neither had he issued Harriet with a gas safety certificate.

Unfortunately the Council has been unable to help Harriet obtain accommodation and she and her children have remained in a hostel which the Council arranged when she presented as homeless.

Your colleague says he will be notifying Harriet this afternoon that she became homeless intentionally, is not owed the main duty, but instead owed a duty under section 190 of the Housing Act 1996.

After relaying the above facts your colleague asks whether you'd make the same decision.



EXERCISE: Factual basis for decision

Excerpt from section 191 of the Housing Act 1996:

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.

(3) A person shall be treated as becoming homeless intentionally if—

(a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and

(b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part,

and there is no other good reason why he is homeless.

(a) What specific part of the relevant legal test is the main issue that arises on these facts? (Section 191 is reproduced above to help you).

(b) Can the proposed decision be lawfully made on the facts as stated? Give reasons for your answer.



EXERCISE: Factual basis for decision

(c) Is there any action your colleague could take to obtain information that may enable the decision to be lawfully made?

(d) Does the principle for the case of *Haile* prevent the proposed decision being lawfully made? Give reasons for your answer.

