

# Housing Services

## Non co-operation notices S193B (2) Housing Act 1996

This procedure provided guidelines for issuing applicant's with a warning and  
a notice pursuant to the Housing Act 1996

# 2018



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## Overview

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From 3<sup>rd</sup> April 2018, local housing authorities are subject to a duty under the Housing Act 1996 to prevent and relieve homelessness. This procedure is designed to encourage applicants who are homeless, or threatened with homelessness within 56 days, to take responsibility for working proactively with us, as the local housing authorities, to resolve their homelessness as soon as possible. The measures are considered to be fair and achievable, and there is protection for those applicants who are vulnerable and find these new measures difficult to accomplish.

We will assess the circumstances of an applicant's household and provide written advice to resolve their homelessness. The written advice is called a personal housing plan. The housing plan will explain what steps will need to be taken to resolve their homelessness. Some steps will be recommendations (which the applicant may take, but does not have to) and some will be reasonable steps (which the applicant must take). We, as the housing authority, will also carry out steps to help resolve the applicant's homelessness. Wherever possible, we will agree, with the applicant, the steps they are expected to take. There may, however, be times when we may not agree with the applicant, and if this happens, we will record the reasonable step in dispute, the reason why we could not reach an agreement and our response to those reasons so that we are treating the applicant fairly. The applicant may ask a senior officer to review the steps the housing authority will take in their personal housing plan. The senior officer will consider the reasons the applicant disagrees and normally make a decision within three weeks from the date of the request being made. If the applicant makes representations it will be whichever time frame is longer. There is no right to request a review of the step the applicant must take in their housing plan.

If the applicant fails to engage with a step in their housing plan, we will consider their reasons for not complying; there may be good reasons, such as the applicant was in hospital and in which case the applicant will not be penalised for their failure to adhere with the steps. If, however, the applicant is in breach of the step and their action is considered deliberate and unreasonable a warning (legally called a 'relevant warning') will be given to the applicant. This will give them an opportunity to comply with the step within a given timeframe and to understand the consequence of their actions if they do not comply. Following the 'warning', if the applicants still fails to comply with the step in their housing plan, and their action is both deliberate and unreasonable, we will consider issuing a 'notice'.

Before we give an applicant a warning, or a notice, we will consider the applicant's circumstances and needs. We may decide a notice is not appropriate and nothing more will happen, however, if a notice is appropriate we will explain why it has been given and the effect of it, as well as the right of the applicant to request a review of the authority's decision to give the notice and the timeframe to seek a review. A senior officer will consider the applicant's reasons and explain their decision within the prescribed time frame. Upon issuing a notice, the Council's duty toward the applicant (prevention<sup>1</sup> or relief<sup>2</sup>) will end. This document explains the consequences of that outcome which will depend on the applicant's circumstances.

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<sup>1</sup> S195 (2) Duty owed to an applicant who is threatened with homelessness

<sup>2</sup> S189B (2) Duty owed to an applicant who is homeless

## Personal housing plan

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We will complete a holistic and comprehensive assessment about an applicant's housing circumstances. The assessment will consider why the applicant (and anyone else living or moving with them) became homeless or is at risk of homelessness. It will also consider their housing history; their housing and support needs; what accommodation would be suitable (including location), and what support they need to retain their home or find somewhere else to live. We will consider and record the applicant's wishes and preferences and give information and advice for the applicant to make informal and realistic choices about their housing options. This assessment will be fed into a plan called a personal housing plan which is a written plan given to the applicant.

The housing plan will include steps to prevent, or relieve homelessness, such as the applicant making a repayment plan with a landlord to clear their rent arrears. We will agree with the applicant the steps they should take to prevent their homelessness, or if that is not possible steps to help them find somewhere else to live. We may also have some steps in the plan to help the applicant. Steps, wherever possible, will be SMART which is explained below.

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<b>S</b>	<b>Specific</b>	Set up a direct debit to Mr Smith, your landlord, to pay £25 per week (on top of your rent liability)
<b>M</b>	<b>Measurable</b>	Until your rent account is up to date.
<b>A</b>	<b>Attainable</b>	It is affordable
<b>R</b>	<b>Relevant</b>	If you do this your landlord has agreed not to pursue this section 21 notice 'to evict you'.
<b>T</b>	<b>Timely</b>	This should be done by [date].

We would like to agree these steps with the applicant, so we are working together to prevent their homelessness, but sometimes this may not be possible. If the applicant does not agree with a step they should speak to their housing adviser to find a satisfactory resolution. Ultimately, however, if agreement cannot be reached the applicant must comply with the plan, and we will keep a written record of why we could not agree.

The housing plan will be kept under review whilst we are working with the applicant to resolve their homelessness. It will be reviewed at least once a month, but if there is a change in the applicant's circumstances, earlier than the standard review date, such as the applicant is evicted from their home, the assessment, plan and ultimately the steps will change to respond to those circumstances. The applicant will be given in writing a copy of their amended plan, and if the applicant does not adhere to the plan they may receive a warning, a notice and ultimately we may discharge our prevention or relief duty.

## The warning

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We will give an applicant a warning if we believe they have failed to follow a step (or steps) in their personal housing plan. We will only do this if:

### WARNING

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Step 1	We owe the applicant either a <b>relief</b> or <b>preventioin</b> duty
Step 2	The applicant has <b>refused</b> to comply with a step in their personal housing plan
Step 3	The applicant has <b>failed</b> to comply with a step in their personal housing plan, or if the applicant did not agree to take the step then it is recorded in writing in our records why that is so
Step 4	We have considered the applicant's particular <b>circumstances</b> and <b>needs</b> and feel it is appropriate to give a warning
Step 5	The applicant's non-compliance with the step is <b>deliberate</b> and <b>unreasonable</b> .

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We will try to agree, with the applicant, the steps in their housing plan. If we cannot reach an agreement we will record the following:

The step in question	Why we could not agree	Any steps the authority will take	A review date
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A warning cannot be given if this record does not exist.

We will not issue a warning to someone who is not eligible, homeless (or threatened with homelessness), or who was unaware that they were required to carry out the step in their plan.

The applicant must also have refused to comply with the step. Where the applicant's refusal is not explicit, the housing adviser will need to be satisfied that their actions lead them to decide that they have refused to comply. For example, an applicant who fails to maintain contact with their case officer would not necessarily have refused to comply with the step, and may have simply not given an update to the officer.

## Circumstance and support needs

Before giving a warning, the adviser will consider the applicant's circumstances (including vulnerabilities) and whether, or not, they are part of their housing plan. This will include:



If necessary, we will speak to the applicant's support worker to try to resolve the need for a warning and will continue to seek the applicant's co-operation (including understanding their reason why they are not co-operating) to try to reach a resolution. We will consider if the applicant's ability to carry out normal activities of daily living and how this impacts on the step, and if additional help was provided whether the step could be completed without the need for a warning.

## Time limit

We will give the applicant a reasonable period to comply with the warning. This will depend on the applicant's circumstances and the step in question, but will usually be seven calendar days from being notified. More time maybe required for an applicant to complete a complicated step; and less time if there is an immediate risk of the applicant becoming homeless if the step is not complete. The warning will be in writing, and if the applicant does not have a postal address it will be available for collection in the Council's office.

## Reviewing the warning

If, following the warning, the applicant complies with the step in their housing plan no further action will be taken. If, however following the warning, the applicant does not comply with the step we will consider whether we will give the applicant a notice under the Housing Act 1996. If an applicant complies with the step in the plan then stops complying, the housing adviser will need to consider the time which has elapsed since the warning, and whether the applicant's non-compliance with the step is on the same grounds as the warning. If it is not on the same grounds, or a significant period has elapsed, another warning will be given.

## Decision maker

The decision to give a warning will be made by a housing adviser or someone of the equivalent grade.

## Deliberate and unreasonable refusal

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There is no definition of “deliberate” in the Housing Act 1996 Part 7, but case law has evolved around the term in respect to intentionality<sup>33</sup>. Decision makers should have regard to case law when making their decision. A deliberate act is:

A free election to act (or fail to act) in a particular way by a person in possession of all the relevant facts.

Devenport v Salford City Council [1983]

The deliberate act, of non-compliance with the step, must have been committed by the applicant. The applicant’s step in their housing plan must be achievable because a step which the applicant is unable to achieve would not be deliberate. Circumstances may arise where an applicant’s step in their housing plan may pertain to the behaviour of their children and that behaviour is causing their tenancy to be at risk. We would expect a parent to take appropriate steps to manage their children’s behaviour, and if they did not take that action their failure could be deliberate. If, however, the parent did all that was asked in their plan but the behaviour of the child was outside of their control then their action may not be deliberate.

The Homelessness Code of Guidance for local authorities introduces examples of deliberate in the context of intentionality which should be considered, when applicable, to the circumstances of the applicant’s non-compliance with the step in their plan. In particular, if an applicant is forced to do something (or not to do something), or chooses to act in a particular way, but did so in ignorance of all the relevant facts we will not consider them to have done so deliberately. We will also not consider an act (or omission) in good faith on the part of a person who was unaware of any relevant fact to be deliberate. It is difficult to see when an applicant would be ignorant, or unaware, of a relevant fact because the applicant would be in regular contact with their housing adviser, and the steps would have been given to them in writing.

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<sup>33</sup> Housing Act 1996 s191

## The notice

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We will consider if it is appropriate in the circumstances to give the applicant a notice. Before we issue a notice we will:

### NOTICE

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|--------|--|
| Step 1 | Ensure the step, the applicant has failed to comply with, is in their <b>personal housing plan</b> , or if the applicant did not agree to take the step, then it must be recorded in writing on the Council's records why that is so.                            |
| Step 2 | Check the <b>warning</b> has been given to the applicant and the <b>timeframe</b> to comply has expired.   |
| Step 3 | Consider the applicant's particular <b>circumstances</b> and their <b>needs</b> and, whether or not, they are part of their personal housing plan. Any evidence they have put forward as to why they have not complied, in particular in defence of the warning. |
| Step 4 | The applicant's non-compliance with the step(s) must be <b>deliberate</b> and <b>unreasonable</b> , if it is not, then we will not given a notice.   |
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### Decision maker

The decision to give a warning will be made by a housing adviser, or someone of the equivalent grade. If the step has little, or no significance, to our prevention or relief duty then the decision maker may decide not to give a notice. The decision will be authorised by another officer of the equivalent grade (usually a housing adviser) not involved in the decision to give the notice. A notice will end the Council's duty toward the applicant (either prevention<sup>4</sup> or relief<sup>5</sup>).

#### *Ending the prevention duty*

We will no longer have to prevent the household's homelessness<sup>6</sup>, but if the applicant was to become homeless the relief duty will apply and the applicant's housing plan will need to reflect their new steps based on their circumstances.

#### *Ending the relief duty*

The main housing duty<sup>7</sup> will not apply, but in some circumstances we will have a duty to secure that accommodation is available for occupation by the applicant, if that applicant would have otherwise been owed the main housing duty.

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<sup>4</sup> S195 (2) Duty owed to an applicant who is threatened with homelessness

<sup>5</sup> S189B (2) Duty owed to an applicant who is homeless

<sup>6</sup> S195 (2) Duties to cases of threatened with homelessness

<sup>7</sup> S193 Duty to persons with priority need who are not homeless intentionally

## Equality Act 2010

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Under section 149(1) Equality Act 2010, we in exercising our functions must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

We will have regard to our equality duty in relation to the decision and consider if the applicant has a protected characteristic under the Equality Act.

## General Data Protection Regulation (GDPR)

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We will ensure that at all times we consider the requirements of GDPR. This is particularly important when managing electronic data. It is essential that emails containing any personal information being sent externally are sent by secure emails and staff should be extra vigilant in ensuring they are emailing the correct person.

## Safeguarding vulnerable adults and children

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We will follow the Council's procedure in respect to safeguarding concerns. Housing Advisers should seek guidance from their line manager.

## Need to protect the interest of children

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The Children Act 2004 s11 (2) requires local authorities to discharge their functions having regard to the need to safeguard and promote the welfare of children. This is commonly known as the 'best interest duty'. Safeguarding and promoting the welfare of children is defined as:

- Protecting children from maltreatment
- Preventing impairment of children's health or development
- Ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- Undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully

Due regard should be given to the child's physical, mental health and emotional health;

protection from harm and neglect, education, training and recreation, making a positive contribution to society and social and their economic well-being<sup>8</sup>.

Whilst there is an obligation to carry out our functions in a way which takes into account the need to safeguard and promote the welfare of children, this does not mean that our duties are re-defined, or that it is a paramount consideration if that would be inconsistent with the statutory language<sup>9</sup>. Decision which are purely factual<sup>10</sup>, such as whether or not someone is intentionally homeless, would not be impacted on by the best interest duty. The best interest duty may arise where decisions are made where there is an exercise of discretion or judgement.

## Fresh application

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An applicant can make a fresh homeless application if there is a change in circumstances that is not trivial. Past non-cooperation may be taken into account in a subsequent homelessness assessment.

## Review date

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This procedure will be kept under review and will be amended as required. We will review the procedure, at least annually, if no change has occurred during that period

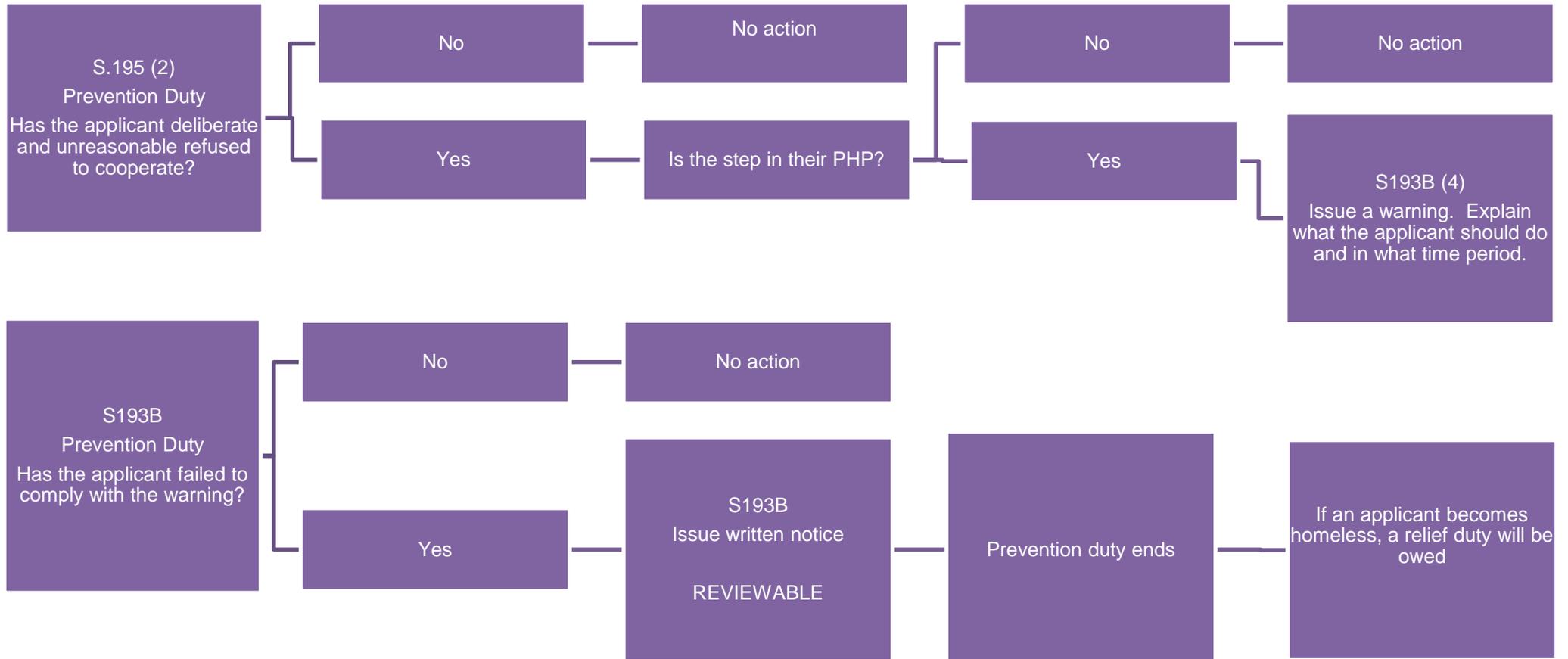
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<sup>8</sup> Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004

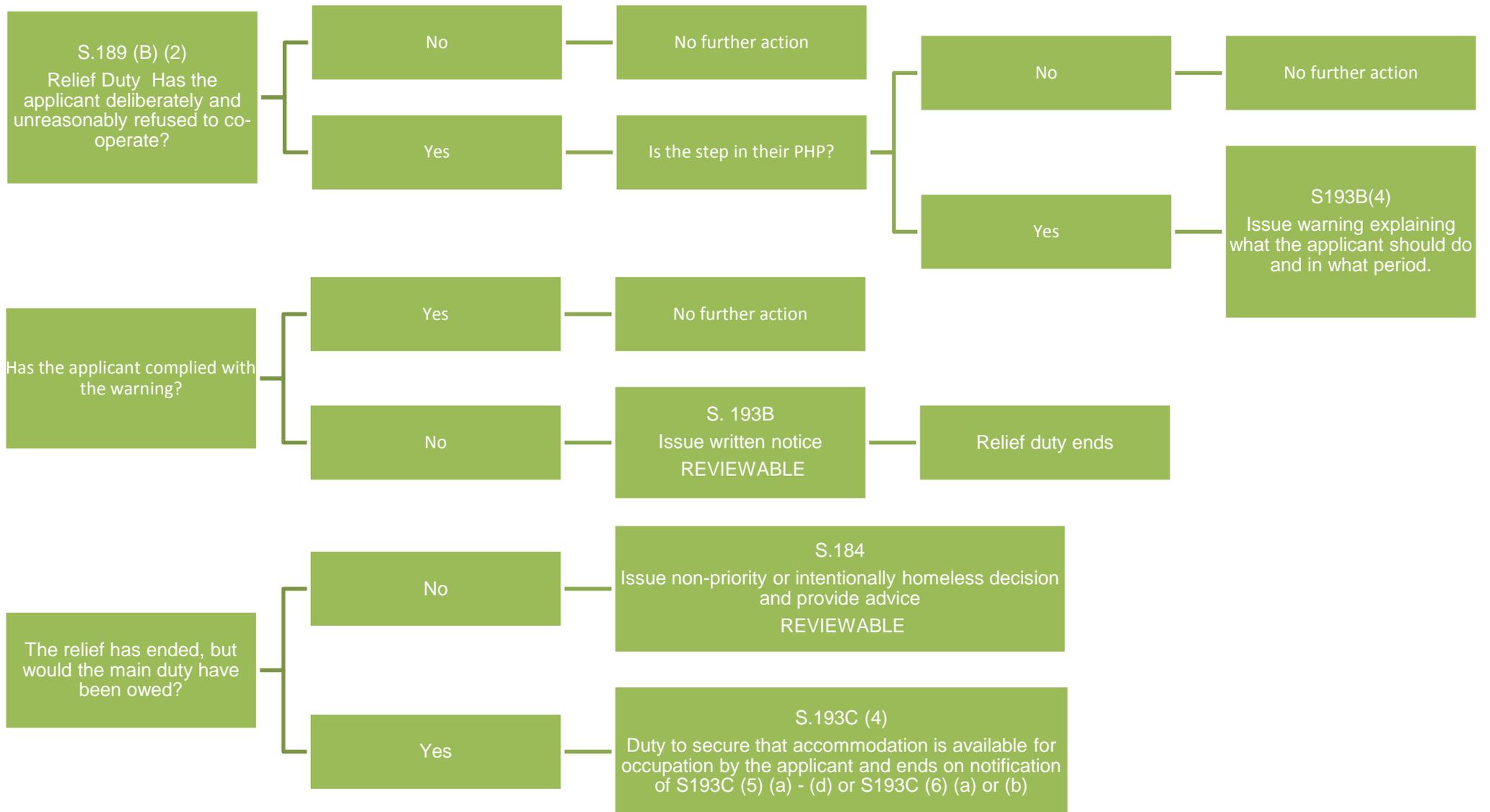
<sup>9</sup> Hines v Lambeth London Borough Council [2014] Ruiz Zambrano v Office national de l'emploi (Case C-34/09) [2014]

<sup>10</sup> Nzolamesco v City of Westminster Council [2015] Huzrat v Hounslow London Borough Council [2013]

## Appendix 1: Deliberate and unreasonable refusal to co-operate flowchart – Prevention Duty



## Appendix 2: Deliberate and unreasonable refusal to co-operate flowchart – Relief Duty



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