

Chapter 4: Domestic abuse and homelessness law entitlements

This supplement provides an overview of homelessness law as it relates to domestic abuse cases, specifically with a view to helping readers gain a sense of victims' potential housing law entitlements and their relationship to the decision-making process in occupation order cases, as discussed at 4.5.3 of the main text.

Background

Alternative housing is a vital source of support for victims fleeing domestic abuse, whether provided via the state or by the voluntary sector (for example in refuges). Over 10 per cent of households owed the main homelessness duty by local authorities under the housing legislation considered in this supplement cite violent relationship breakdown as the reason for loss of their last settled home.¹ Local authorities' duties towards homeless persons are particularly important for those who cannot obtain occupation orders under the Family Law Act 1996, or whose protection under that Act or under a DAPO made under the Domestic Abuse Act 2021 has expired (see update to this chapter on the Online Resources re the 2021 Act). But even victims entitled to long-term court orders may prefer to move away from their current home to get away from the perpetrator.

Lack of economic and social resources prevents many victims of abusive – particularly women – from leaving abusive relationships.²

Pascall, G. et al (2001). 'Changing housing policy: women escaping domestic violence'. *Journal of Social Welfare and Family Law* 23: 293, 297

Women's housing access is a critical aspect of their autonomy in relationships. Women still tend to have lower incomes than men, and care responsibilities, which increase dependence on men and reduce their resources for housing. When relationships become violent, women's access to independent housing is sharply tested. In the UK, the social housing sector has been especially important for women, especially as lone parents, and access to social housing is key to women's ability to live apart from men...

These authors draw on US researchers, who argue that:

structural interventions – in particular enabling housing access – are 'more powerful than the approach of criminal justice systems', whose interventions do not change the power relationships which underlie violence and whose achievements are often temporary.

There is a strong case, then, that housing is a key resource, if not *the* key resource that enables women to protect themselves against violence. Any erosion of housing access for women experiencing domestic violence exposes them to risk and makes them more vulnerable in relationships.

The importance of housing for victims has long been emphasized by government:

Home Office (2003). *Safety and Justice: The Government's Proposals on Domestic Violence*, 42

Victims are often deterred from seeking help or leaving a violent relationship because they have nowhere else to go, do not feel safe in their own homes or do not have legal rights to remain. The availability of safe and secure accommodation for victims, as a respite or as a stepping stone to re-housing, is therefore critical and can be life-saving. However, it is important to recognise that victims, where it is possible and safe to do so, may want to remain in their own homes.

¹ England: DCLG (2018), *Live Tables on Homelessness*, tables 773-774.

² Pizzey (1974); Pahl (1985); Hoff (1990).

In the course of discussing occupation orders under FLA 1996, we encountered aspects of housing law.³ The court hearing applications for such orders has to consider the ‘housing resources’ of each party. That includes their potential entitlements from the local authority should either party find themselves homeless as a result of the court’s decision regarding the occupation of the family home. In this section, we outline in more detail the nature and extent of different individuals’ housing entitlements, focusing on the statutory duties of local authorities towards ‘homeless’ persons.

As a costly aspect of welfare provision, the housing duties of local authorities are a politically charged issue. Law and practice in this area are sensitive to changes in the political and economic climate, given the social policies and resources of central and local government.⁴ Current homelessness law derives from legislation enacted in 1977, around the same time as the key statutes which introduced special civil remedies for domestic abuse. The 1977 Act improved victims’ access to social housing, revising local authorities’ duties towards homeless persons, defined to include those who had to leave accommodation because of domestic abuse.⁵ Over time, after an erosion of rights by changes made in the 1990s, later amendments have sought further to improve the position of victims seeking social housing in their flight from domestic abuse, most recently by the Domestic Abuse Act 2021. But the limited availability of social housing means that, even once found to be legally entitled to housing, victims may not obtain permanent accommodation by this route for some time.

Duties owed by local authorities to the ‘homeless’

Local authorities’ duties are set out in the Housing Act 1996, as amended most recently in 2021.⁶ In order to trigger the local authority’s maximum duty under the present legislation – which is owed only if the authority is unable to prevent or relieve the household’s homelessness by other means⁷ – three main criteria⁸ must be met. The applicant must be:

- ‘homeless’;
- in priority need; and
- not ‘intentionally homeless’.

‘Homelessness’

Housing Act 1996

175 Homelessness and threatened homelessness

- (1) A person is homeless if he has no accommodation available for his occupation, ..., which he—
- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
 - (b) has an express or implied licence to occupy, or
 - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if he has accommodation but –
- (a) he cannot secure entry to it ...
 - (b) [relating to those who live in moveable structures, eg houseboats, caravans]

³ Notably in discussing *B v B (Occupation Order)* [1999] 1 FLR 715, at page 253.

⁴ Pascall *et al* (2001).

⁵ Arden and Bates (2021), ch 1.

⁶ Please note that this supplement does not deal with changes made in response to the Covid-19 pandemic.

⁷ See amendments to the Housing Act 1996 by the Homelessness Reduction Act 2017, introducing new duties of prevention and relief.

⁸ We do not consider here the eligibility for assistance test (ss 185-7), which focuses on issues relating to immigration status and habitual residence in the UK: see *ibid*, ch 3.

- (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 56 days.

Key concepts in that definition are those of accommodation being ‘available’ and ‘reasonable’ for occupation.

176 Meaning of accommodation available for occupation

Accommodation shall be regarded as available for a person’s occupation only if it is available for occupation by him together with—

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person’s occupation shall be construed accordingly.

The entitlement of victims fleeing with children is assessed by reference to whether there is accommodation available that will house them all. The victim might be entitled as a matter of property law to occupy his or her home or have, or be able to obtain, an occupation order, and so not in that sense appear to be homeless. Nevertheless, he or she may be regarded as ‘homeless’ if it is not ‘reasonable’ for him or her to continue to occupy that property. Here, the Act has been amended by the Domestic Abuse Act 2021, s 78, to bring victims of all forms of domestic abuse squarely within the Act’s protection:

177 Whether it is reasonable to continue to occupy accommodation

(1) It is not reasonable for a person to continue to occupy accommodation if it is **probable** that this will lead to **violence or domestic abuse** against him, or against —

- (a) a person who normally resides with him as a member of his family,⁹ or
- (b) any other person who might reasonably be expected to reside with him.

(1A) For this purpose—

- (a) “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;
- (b) “violence” means
 - (i) violence from another person; or
 - (ii) threats of violence from another person which are likely to be carried out.

It is worth observing there that in one respect the 2021 Act has narrowed the scope of protection here, as that Act’s concept of domestic abuse covers a narrower range of relationships than the FLA 1996’s ‘associated person’ concept, on which s 177 had previously relied. Individuals not covered by the new ‘domestic abuse’ concept as a result will instead have to rely on the concept of ‘violence’, which is not tied to any relationship but which appears to be narrower than both the 2021 Act’s concept and the scope of the FLA 1996, where neither violence nor the threat of violence as such is a statutory prerequisite for obtaining non-molestation or occupation orders. Moreover, the reasonableness test in the HA 1996 requires that the danger be ‘probable’, not merely a real possibility (which is sufficient for the balance of harm test in the FLA 1996 occupation order scheme). That said, the concept of threats is defined by reference to a mere ‘real possibility’ that they will be carried out.¹⁰

Prior to the 2021 amendment, the Supreme Court had adopted a broad interpretation of the term ‘domestic violence’ in s 177, crucially extending the scope of the Act beyond *physical* violence to cover a wider range of domestic abuse.¹¹ It remains to be seen whether that broader approach will be applied to (implicitly ‘non-domestic’) violence under the housing legislation post-2021.

The Code of Guidance (published in 2018 but updated online in July 2021 after the enactment of the Domestic Abuse Act 2021) encourages authorities not to assess the likelihood of future threats

⁹ Not defined in the legislation.

¹⁰ *Bond v Leicester City Council* [2001] EWCA Civ 1544, [35].

¹¹ *Yemshaw v Hounslow LBC* [2011] UKSC 3.

of violence or abuse being carried out solely on the basis of whether there has been past violence/abuse, and not to require victims to produce corroborating or police evidence to support their claim.¹² The reasonableness test and the relevance of the availability of Family Law Act orders are examined further below. But note for now that the Code gives the following examples of actual and threatened homelessness in the domestic abuse context:

DCLG (2018), *Homelessness Code of Guidance for Local Authorities: England*, available at www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities

21.34 ... For example, a person at risk of abuse may be threatened with homelessness because a perpetrator is soon to be released from custody (and so the person is likely to become homeless within 56 days); but would be actually homeless if the perpetrator was in the community and presented a risk to them at their home (and so it is not reasonable for the person to continue to occupy the accommodation).

'Priority need'

Even if the applicant is found to be homeless, in order to enjoy the full statutory duty, the case must also fall within one of the categories of 'priority'. But here again, amendments from the 2021 Act have boosted the position of survivors of domestic abuse by singling them out as a priority need category:

189 Priority need for accommodation

- (1) The following have a priority need for accommodation—
- (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
 - (b) a person with whom dependent children reside or might reasonably be expected to reside;
 - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
 - (d) ...
 - (e) a person who is homeless as a result of that person being a victim of domestic abuse [as defined by the Domestic Abuse Act 2021, s 1].

This should ameliorate the position of survivors, who were previously left dependent on individual local authorities' treating them as 'vulnerable', albeit encouraged by an Order extending priority need to those 'vulnerable' as a result of leaving violence or threats of violence that are likely to be carried out,¹³ and by the Code of Guidance.¹⁴ The 2021 Act reform is a long-overdue response to evidence reported by an All-Party Parliamentary Group and Women's Aid in 2018 that just over half of women supported Women's Aid's 'No Woman Turned Away' project had not been adjudged 'vulnerable' by their local authority.¹⁵

'Intentionally homeless'

Victims found to have priority need will attract local authorities' highest duty unless found to be 'intentionally homeless'.

191 Becoming homeless intentionally

¹² DCLG (2018), para 21.26 and 21.24.

¹³ Homelessness (Priority Need for Accommodation)(England) Order 2002 (SI 2002/2051). The equivalent Welsh provision is more generous, imposing no additional 'vulnerability' criterion: Housing (Wales) Act 2014, s 70. Rubens (2008) reported that most English local authorities require evidence of physical or mental illness before a finding of vulnerability will be made.

¹⁴ Para 8.15, 21.34.

¹⁵ All-Party Parliamentary Group on Domestic Violence and Abuse, and Women's Aid (2018), *Creating a Truly Transformative Domestic Abuse Bill*, available at www.womensaid.org.uk/appg-reports/

(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. ...

The concepts of 'available' accommodation that it is 'reasonable' for the victim to occupy are defined as above. It might be considered that applicants should be expected to take steps to secure safe occupation of their own homes before presenting themselves to the local authority as 'homeless'. Is it 'reasonable' for victims to continue to occupy property if they have remedies available to them, for example under the FLA 1996, that they have yet to seek? Does their 'deliberate failure' to pursue such remedies render them intentionally homeless?

The Code of Guidance comments specifically on these issues. In relation to the basic concept of homelessness, it states that:

DCLG (2018), *Homelessness Code of Guidance for Local Authorities*

21.38 Housing authorities may wish to inform applicants of the options of seeking an injunction against the perpetrator. Where applicants wish to pursue this option, authorities should inform them that they should seek legal advice and that they may be eligible for legal aid.

21.39 Housing authorities should recognise that injunctions ordering a person not to molest (non-molestation orders), or not to live in the home or enter the surrounding area (occupation orders) ... may not be effective in deterring some perpetrators from carrying out further violence, abuse or incursions, and applicants may not have confidence in their effectiveness. Consequently, applicants should not be expected to return home on the strength of an injunction. To ensure applicants who have experienced actual or threatened violence get the support they need, authorities should inform them of appropriate specialist organisations in the area as well as agencies offering counselling and support

21.40 When dealing with domestic abuse and violence within the home, where the authority is the landlord, housing authorities should consider the scope for evicting the perpetrator and allowing the victim to remain in their home.¹⁶ However, where there would be a probability of violence if the applicant continued to occupy their present accommodation, the housing authority must treat the applicant as homeless and should not expect them to remain in, or return to, the accommodation. **In all cases involving abuse the safety of the applicant and their household should be the primary consideration at all stages of decision making as to whether or not the applicant remains in their own home.** [bold in original]

Conversely, in relation to intentionality, the Code provides:

9.20. Examples of acts or omissions which may be regarded as deliberate ... include the following, where someone: ...

(f) is evicted because of violence or threats of violence by them towards an associated person; ...

The current guidance was issued following a case in which the test of reasonableness was held to turn solely on the question of whether domestic violence (as it was then referred to) was 'probable':

***Bond v Leicester City Council* [2001] EWCA Civ 1544**

HALE LJ:

25. This ... is a pure question of fact, devoid of value judgments about what an applicant should or should not do. If there are measures which have been taken or probably will be taken which will probably prove effective in preventing actual or threatened violence, then that may reduce the level of risk below one of probability. But those are the questions which the authority must ask themselves, rather than assume that such measures will be taken or will be effective if taken....

¹⁶ See also s 79 of the Domestic Abuse Act 2021 on grant of secure tenancies to abuse victims.

29. To hold otherwise would leave it open to local authorities to put pressures upon the victims of domestic violence which fail to take account of some of its well known features. Once begun it is likely to be repeated, often with escalating severity. It induces a sense of shame and powerlessness in the victims, who often blame themselves and find it impossible to escape. There are various legal and practical remedies available, but it is by no means easy for many victims to invoke these. However hard the family courts try, they are often ineffective. Escape may well be the only practicable answer. The victim is the one who knows the perpetrator best and is likely to be best able to judge this. ...

35. ... [On the facts, there] was abundant material upon which [the authority] could have reached the conclusion that further domestic violence was probable if she stayed. There had been domestic violence in the past, such that she had twice before left her accommodation with two young children to escape it. There had been domestic violence in these very premises, it appears when he was reluctant to leave after visiting the family. Thereafter, although he had not forced his way into the premises, he had taken to sitting in the back garden, shouting and throwing stones at the windows. This pattern of behaviour is all too familiar to family judges. Many victims find it a great deal more frightening than the violence itself. ... There was nothing to suggest that the applicant had a full understanding of what might have been done to help her or that she would feel that it would be so effective that she would probably have sought such help if she had returned.

36. ... I would therefore allow the appeal and vary the decision to one that the applicant had not become homeless intentionally.

Research predating the 2002 legislation and new Code suggests that most authorities adopted this line:

Barron, J. (2002). *Five Years On: A review of legal protection from domestic violence* (Bristol: Women's Aid), 12.

[T]he majority of housing authorities seemed to recognise that, for example, if a woman had a non-molestation injunction or even an occupation order, but she still felt in danger, then that was not an adequate reason for refusing help; nor did they necessarily expect women to apply for occupation orders so that they could return home, if the woman herself believed that to be inappropriate.

Overall, Barron reported a generally encouraging impression of local authorities' implementation of the Act at that stage. However, as with other public agencies involved in domestic abuse, housing authorities' responses remained variable, depending in part on which officer handled the case, and on whether the victims themselves were supported (in this survey, by a refuge) and aware of their rights. Recent research by Women's Aid paints a gloomy picture of repeated failings by statutory services.¹⁷ Significant budget cuts since 2008 have, naturally, not made matters easier.

The duties owed to each category of person

On receipt of an application, if the authority has reason to believe that the applicant *may* be homeless and in priority need, it must provide accommodation pending its investigation and decision.¹⁸ If, having assessed the applicant's case, the authority has been unable to prevent the homelessness or otherwise relieve the applicant's situation:¹⁹

- If all three criteria are judged to be met – homeless, in priority need, not intentionally homeless – and the authority must secure that accommodation is available for the applicant's occupation.²⁰

¹⁷ Women's Aid (2018)

¹⁸ Housing Act 1996, s 188.

¹⁹ See ss 189A-B

²⁰ *Ibid*, s 193; the duty is not time-limited, but terminates only in the circumstances defined in that section.

- If the applicant is found to be homeless and in priority need but intentionally homeless, the authority is only required to secure accommodation for the applicant's occupation 'for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation', providing him with advice and assistance to that end.²¹

Applicants to whom duties to accommodate are owed and the 'homeless' generally are also regarded as priority candidates to whom 'reasonable preference' must be given in the allocation of property from the authority's normal waiting list.²²

Summary

The combined effect of the definition of homelessness in cases of domestic abuse, the priority need of such applicants, and the approach to applicants who have not pursued private law remedies – for example under the FLA 1996 – *ought* to mean that the Housing Act 1996 provides victims fleeing the home with a reliable source of support. Conversely, should victims pursue those other remedies and secure the eviction of their abusers, the latter will then be found to be intentionally homeless: their deliberate acts of abuse have caused their homelessness.

Additional bibliography for the housing law supplement:

All-Party Parliamentary Group on Domestic Violence and Abuse, and Women's Aid (2018), *Creating a Truly Transformative Domestic Abuse Bill*, available at www.womensaid.org.uk/appg-reports/

Arden, A. and Bates, J. (2021). *Homelessness and Allocations* (12th edn). London: Legal Action Group.

Barron, J. (2002). *Five Years On: A review of legal protection from domestic violence*. Bristol: Women's Aid.

DCLG (2018), *Homelessness Code of Guidance for Local Authorities: England*, available and updated at www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities, updated July 2021.

Home Office (2003). *Safety and Justice: The Government's Proposals on Domestic Violence*.

Home Office (2008). *Government Response to the Sixth Report from the Home Affairs Committee 2007-8 HC263: Domestic violence, forced marriage and "honour"-based violence*. Cm 7450. (London: TSO).
www.official-documents.gov.uk/document/cm74/7450/7450.pdf

Pascall, G., Lee, S., Morley, R., and Parker, S. (2001). 'Changing housing policy: women escaping domestic violence'. *Journal of Social Welfare and Family Law* 23: 293.

Rubens, T. (2008). *Domestic violence and priority need*. (2008) *Journal of Housing Law* 11: 28.

²¹ Ibid, s 190.

²² Ibid, s 167.

Women's Aid, *Nowhere to Turn*, 2018, available at www.womensaid.org.uk/research-and-publications/nowhere-to-turn-2018/