





Domestic Abuse, Housing and The Istanbul Convention

Marina Sergides, Garden Court Chambers

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GARDEN COURT CHAMBERS



Garden Court Chambers

 @gardencourtlaw

The Domestic Abuse Act 2021: what it did....

S.1 DAA

(b) the behaviour is abusive.

(3) Behaviour is “abusive” if it consists of any of the following—

(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;

(d) economic abuse (see subsection (4));

(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

(a) acquire, use or maintain money or other property, or

(b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).

S.2 DAA: recognised children as victims of domestic abuse if they ‘see or hear, or experience the effects of domestic abuse...’



Continued

- In respect of housing:
 - **Section 78** of the DAA amended s.177 and s,189 of the Housing Act 1996.

“(e) a person who is homeless as a result of that person being a victim of domestic abuse.
 - **Section 79** of the DAA inserted s.81ZA after s.81 of the Housing Act 1985. In some instances, survivors of domestic abuse will be granted ‘old style’ secure tenancies where they require housing for reasons connected with that abuse.
 - **Section 57** of the DAA requires each relevant local authority to “assess, or make arrangements for the assessment of, the need for accommodation-based support in its area...” Accommodation based support means “support, in relation to domestic abuse, provided to victims of domestic abuse, or their children, who reside in the relevant accommodation”.



Continued...

What it does **not** do:

- Ensure that housing is provided for survivors of DA with no recourse to public funds (NRPF). The condition is attached to visas for around 1.5 million people preventing them from accessing state support (such as universal credit, other benefits or housing if homeless). NRPF are attached to those that are ‘subject to immigration control’ (as defined by s.115 Immigration and Asylum Act 1999).
- This means that, in respect of accessing support for housing from local authorities (which includes survivors fleeing DA), those with a NRPF condition attached to their visa are not (subject to some exceptions) eligible for housing (pursuant to s.185 of the Housing Act 1996).
- Despite campaigns calling for a change to the NRPF conditions for victims of DA, the DAA did not deliver in this respect.



The Istanbul Convention

- Does the Convention fill in the ‘gaps’ or extend the UK’s obligations towards survivors of DA?

What is it?

- The Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence (The Istanbul Convention)
 - International Treaty
 - Signed by the UK on 8 June 2012, ratified on 21 July 2022 and came into force on 1 November 2022
 - UK was the 37th State to ratify. Only one State has ratified and since denounced
 - It is divided into four pillars: Prevention, Protection, Prosecution, and Integrated Policies. It comprises 81 Articles across 12 Chapters and is accompanied by an Explanatory Report
 - The (then) Home Secretary Priti Patel described it a “gold standard” international charter for the protection of women and girls, and with good reason:



Continued...

Its preamble includes statements about the understanding and commitment of the States who ratify it:

Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women;

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

Recognising the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

Recognising that women and girls are exposed to a higher risk of gender-based violence than men;

Recognising that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

Recognising that children are victims of domestic violence, including as witnesses of violence in the family;

Aspiring to create a Europe free from violence against women and domestic violence...”



Does the IC have any impact on domestic law...?

Starting point:

- When the UK ratifies an international treaty, the international treaty does not automatically become part of domestic law, unless Parliament chooses to incorporate all or part of the treaty into domestic law via primary or secondary legislation (a dualist model).
- Generally, where there is no wholesale implementation, if there is a provision of an unincorporated treaty with no counter provision in the domestic legislation it cannot be said that the treaty gives rise to a free-standing duty in domestic law, see *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26. Treaties must be ‘incorporated’ into domestic law before they can have any direct effect. Accordingly, as the IC is an unincorporated treaty, it does not give rise to free standing rights and obligations.
- There are some instances where it can be said that international treaties have been incorporated into domestic law by way of non-statutory administrative policy (where such a policy is clearly intended to give effect to an international treaty) and such a policy may be challenged on the basis that it fails to reflect the requirements of the treaty (amounts to an error of law), see *R (MS Pakistan) V SSHD* [2020] UKSC 9 (beyond this paper).



How does the UK see their obligations under the IC....?

The UK passed the **Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017**. The purpose of the Act was to prepare the UK for ratification and set out the reporting process (namely, annual progress reports laid before Parliament). At the end of each progress report is a list of legislation that identifies the administrative and legislative measures the UK has adopted that complies with the IC. The progress report does not cross reference the domestic legislation that directly corresponds with the Articles in the IC but the Home Office Explanatory Memorandum on the IC, and laid before Parliament as an ‘unnumbered Act Paper’ states “*Existing UK legislation satisfied the requirements of the Convention, primarily through the legislation set out below...*”. It then lists legislation inc, the Equality Act 2010 and the Domestic Abuse Act 2021.

In the 2020 progress report, the UK stated that it already complied with, or went further than, almost all the Convention’s articles; In the 5th and final Progress Report 2021, the UK stated that it passed the “*landmark Domestic Abuse Act 2021*” which meant that it was “*fully compliant with Article 44*” of the IC and referred to other sections of the DAA that also complied with IC (such as the definition of Domestic Abuse in s.1 of the DAA).

On 17 May 2022, Priti Patel announced that the UK’s laws were now compliant with the treaty and the government intended to ratify. The House of Lords International Agreements Committee has welcomed the ratification, but has expressed concern about two reservations the UK wishes to make from the treaty. <https://lordslibrary.parliament.uk/istanbul-convention-preventing-and-combating-violence-against-women-and-domestic-violence/>



The Articles...

In its 5th progress report (Annex 5), UK states that it is compliant in England, Wales, Northern Ireland and Scotland with the following articles:

Article 3 – Definition domestic violence

“violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

“domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

“gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

“gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

Article 20 – General support services

1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.

2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services

Article 23 Shelters - Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

<https://www.gov.uk/government/publications/istanbul-convention-implementation-progress-report-2021/istanbul-convention-5th-progress-report-2021-accessible-web-version#annex-a-compliance>

Previous slides refer to the relevant provisions of the DAA.

Article 4 (3)...

Article 4

4. Fundamental rights, equality and non-discrimination

....

3. ***The implementation*** of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

The UK states that it is “Compliant, other than section 3 in relation to the migrant or refugee status element, which is under review”. There is no reservation in respect of Article 4, but there is a reservation in respect of Article 59 and, because of this reservation, the UK accept that there is no compliance with Article 4 (3).



The reservation....Article 59 (!)

59. Residence status

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
 - a. where the competent authority considers that their stay is necessary owing to their personal situation
 - b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings
4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.



Points to note

- There is no ambiguity about this Article, the UK's reservation to it or the fact that in most instances people with NRPF are not entitled to state funded support.
- In March 2022, the Council of Europe published a collection of papers on ensuring the non-discriminatory implementation of measures and Article 4 (3). It concludes that discrimination and inequality should not be considered exclusively in connection with one of the grounds in Article 4 (3). It encourages States to consider the intersectionality of discrimination and warns that “...*women tend to experience multiple forms of discrimination as may be the case of women with disabilities, or/and women of ethnic minorities, Roma, or women with HIV/AIDS infection...migrant women, including undocumented migrant women, and women asylum seekers...are particularly vulnerable to gender based violence*”.

<https://rm.coe.int/paper-on-article-4-paragraph-3-of-the-istanbul-convention/1680a5d92e>



The Government's response to the reservation...

- See Home Office statutory guidance 'Domestic Abuse July 2022', updated on 5 September 2022 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089015/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf, the 5th progress report and the Explanatory Memorandum on Council of Europe laid before Parliament (Command Paper No CP 674).
 - National Referral Mechanism – which assists potential victims of modern slavery
 - Destitution Domestic Violence Concession (DDVC) (where there is domestic abuse and victim is destitute, leave may be granted for 3 months whilst an application to settle is made)
 - Support for Migrant Victims Scheme, April 2021: more information can be found on the Southall Black Sister's website, who are operating the scheme together with its partners across the UK.



Monitoring...

- The convention mandates an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (see Chapter 9).
- GREVIO monitors the implementation of the convention and its members are elected by the state parties; depending on the number of state parties the body consists of between ten and fifteen members. GREVIO prepare evaluation reports and make findings on the State Party's compliance.
- The timetable for the UK's evaluation has been set with the baseline evaluation report due in November 2024. <https://rm.coe.int/provisional-timetable-for-the-baseline-evaluation-procedure-2016-2028/1680a8f03b>



International Women's Day: Domestic Abuse and Housing

Aleisha Ebrahimi

Senior Policy Advisor



Outline of presentation

1. How do domestic abuse and housing intersect?
2. The Domestic Abuse Act 2021.
3. Istanbul Convention: Reservation and effect.
4. Immigration abuse as domestic abuse.
5. The Domestic Abuse Commissioner's recommendations to Government and looking forward.



How do housing and domestic abuse intersect?



Intersection

Pandemic – increase in domestic abuse and subsequent impact on housing.

Accessing help – what help victims and survivors need in situations of domestic abuse and what can be accessed.

Domestic Abuse Commissioner – role, remit and research



Domestic Abuse Act 2021



Domestic Abuse Act 2021

The Commissioner's role is independent of government, and an important function of the Commissioner's Office is to hold the Government to account with regards to the national policy response to domestic abuse.

The Act also provides certain powers, including to request information from a range of public authorities and to formally lay reports before Parliament, which must then be responded to by Government Ministers within 56 days.



Housing Provisions within the Act

- Part 4 of the Domestic Abuse
- Part 7 of the Act amends homelessness
- Limitations of Destitute Domestic Violence Concession
- Does not allow time for holistic engagement.



Safety Before Status

Summary report: policy findings and recommendations. Available in BSL, Easy Read, Welsh, Polish, Arabic, French, Spanish, Portuguese, Urdu, Gujarati and Chinese.

Policy report: detailed policy findings and recommendations.

Technical report: Method, samples, limitations, detailed analysis of qualitative and quantitative data.

Specific issues: Immigration abuse.

<https://domesticabusecommissioner.uk/national-mapping-of-domestic-abuse-services/>



The effect of the Istanbul Convention Reservation



Istanbul Convention: Article 59

Immigration abuse – a form of coercive control which can be used post-separation.

Compounds abuse – intensifies an abusive situation.

Cost effective? Commissioned research by LSE and Oxford Migration Observatory found this was far from the case



Immigration Abuse



Immigration Abuse

Immigration abuse: a form of coercive control which can be used post-separation.

Centres around migration status and leverages control.

Far reaching implications: children, work, health



**domestic
abuse
commissioner**

The Commissioner's Recommendations



Recommendations

Firewall and extension of services to migrant survivors of domestic abuse.

Support for those who also have Family Court proceedings.

Higher levels of care for all victims and survivors of domestic abuse.



Thank you

Commissioner@domesticabusecommissioner.independent.gov.uk



‘Abused twice’: the
gatekeeping of support for
domestic abuse survivors in
every London borough

Isabella Mulholland

Introducing the Public Interest Law Centre

- Public Law and Action Against Public Authorities
- Radical and creative use of the law as a force for social change
- Accessible public interest strategic litigation for: activists; frontline sector orgs; and community as a whole

Domestic abuse and Housing Project

- Why housing?
- Broad pattern: barriers to accessing housing for domestic abuse survivors

Campaign – ‘Abused Twice’

- Gatekeeping by Local Authorities
- Systemic problem in London
- One witness statement from each of the 32 London boroughs

Findings

1. Emergency accommodation often refused

Low threshold: The words “**reason to believe**” and “**may**” indicate a low threshold.

[R (Kelly & Mehari) v Birmingham City Council [2009] EWHC 3240 [at paragraph 7(iv)] and para 15.5 of the Homelessness Code of Guidance].

Findings

1. Emergency accommodation often refused

- Paragraph 21.25 of The Code states:

*“If there is evidence that would give the authority reason to believe the applicant may be homeless as a result of domestic abuse the authority should make interim accommodation available to the applicant **immediately** whilst they undertake their investigations.” [Emphasis added]. ”*

Findings

1. Emergency accommodation often refused

- **One third** of participants were not accommodation in emergency accommodation

Findings

1. Emergency accommodation often refused

“[Lambeth] said they couldn’t provide emergency accommodation until after the weekend. I decided to stay with a friend that weekend. I found out from my neighbour that my ex-partner had visited our house when I wasn’t there [...] Even though it was so obvious I was in danger, Lambeth had still not moved me to a safe property and had actually left me to stay in a dangerous one. If I hadn’t been able to stay at my friend’s house I would have been subject to more abuse that weekend. Lambeth did nothing to protect me from that.”

Findings

2. Long delays

- Survivors waiting for long periods of time for updates
- Duty to make enquiries:
 - Low threshold
 - Cannot be postponed
- See *R (Aweys) v Birmingham City Council* [2007] EWHC 52 (Admin), [2007] HLR 27, Admin Ct at [8] per Collins J; and *R (Edwards) v Birmingham City Council* [2016] EWHC 173 (Admin), [2016] HLR 11, Admin Ct per Hickinbottom J at [39].
- *Robinson v Hammersmith & Fulham London Borough Council* [2006] EWCA Civ 1122, [2007] HLR 7, CA; and *R (Edwards) v Birmingham City Council* [2016] EWHC 173 (Admin), [2016] HLR 11, Admin Ct per Hickinbottom J at [44].

Findings

3. Unsuitable accommodation

- **Two thirds of participants** were accommodated in unsuitable accommodation
- Accommodation must not fall below minimum standard

Findings

3. Unsuitable accommodation

“There was only one bed, with a mattress that was stained, dirty and the mattress filling had been torn out in places. There was damp and mould throughout the property. There were rat droppings all over the property, it was often freezing and there weren’t any curtain poles to darken the room at all [...] The agent eventually came over and agreed to change the mattress, however this didn’t come to anything. In the end my key worker had to arrange for a single bed to be placed in the room which both me and my daughter slept in. I begged the landlord to buy a mattress for me as it was very uncomfortable to share a single bed with my daughter. The landlord eventually visited the property and agreed to change the mattress three months later.”

Findings

4. Intervention of a lawyer

- **Over a quarter** require legal intervention to get LA to provide housing
- Legal aid cuts:
 - 37% do not have access to a single housing legal-aid provider

Real-life consequences – Abused Twice

- Remaining in dangerous properties or returning to the perpetrator
- Street homelessness
- Unsuitable and unaffordable accommodation
- Moved away from support networks
- Retraumatization

Wider socio-economic context

- **Diminishing housing stock**
 - 1970 - 2014: 6.5 million to 2 million dwellings
- **Austerity**
 - Since 2010: funding cuts to Local Authorities by Central Government by 63%.

'Abused Twice' Campaign – A Call

- Asking the government to tackle systemic and unlawful gatekeeping
- Provide survivors with access to safe and suitable housing without delay

'Abused Twice' Campaign – Comms



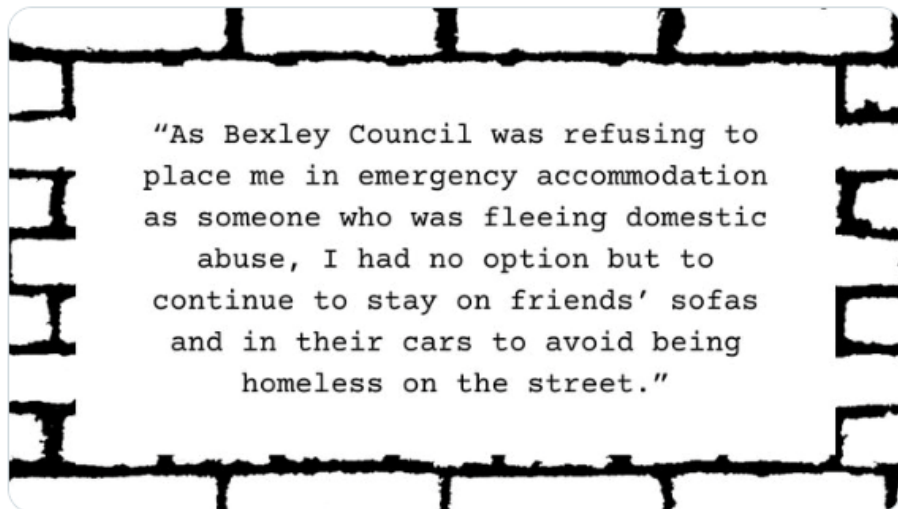
Public Interest Law Centre
@publiclawcentre

...

A common issue is the failure of councils to offer survivors emergency accommodation. Such failures are not only morally abhorrent—they are also unlawful.

As a result of [@LBofBexley](#) failing to offer emergency accommodation, Kaja was forced to sleep in her friend's car.

1/2



Bexley Times and 8 others

11:13 AM · Sep 24, 2022

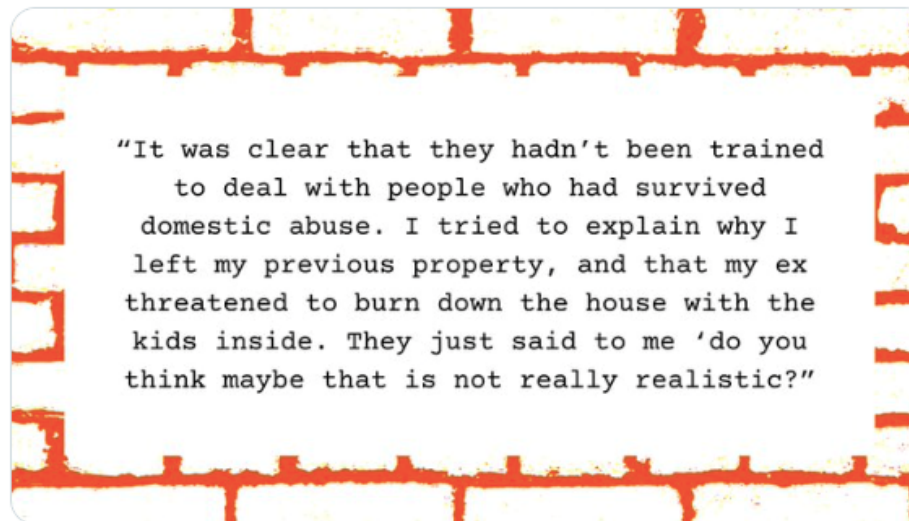


Public Interest Law Centre
@publiclawcentre

...

Council officers frequently apply value judgments when assessing applications for support made by domestic abuse survivors.

In Eva's case, a housing officer at [@LewishamCouncil](#) questioned her account of the abuse she had suffered.



LewishamSanctuary and 8 others

9:38 AM · Sep 28, 2022

'Abused Twice' Campaign – Comms

Domestic abuse survivors at risk from councils' failure to rehouse them

Exclusive: Local authorities frequently breach legal duty to prioritise housing for abuse survivors, risking further danger or trauma

Emily Dugan

@emilydugan

Fri 23 Sep 2022 06.00 BST



Stock photo of a young man's fist set against a woman hunched in the background Photograph: Pekka Sakki/REX

People fleeing domestic abuse are being put in danger by local authorities who fail to provide housing for months on end, despite a law which should prioritise them, a new study shows.



BBC London
@BBCLondonNews



Public Interest Law Centre say the “gatekeeping” of housing support for domestic abuse survivors in every London borough means they are effectively “abused twice.”

We speak to one survivor left in a refuge for a year.

[@JessicaMCUre](#) | [#politicslondon](#) | [bbc.in/3dHa9kX](#)

Traducir Tweet



Abused Twice Campaign – Next Steps

- Possibility of legal action – DLUHC
- Response:

In direct response to your letter, we have also written to all local authorities in London, referring to your correspondence and the issues you have identified. We have reminded London LAs of their statutory duties in relation to homelessness and in particular in relation to people who have experienced domestic abuse. In that letter we have also stressed the importance of staff training on DA and reminded LAs of the training the Department funds to help upskill staff.

Abused Twice Campaign – Next Steps

- London Councils, working with London's Housing Directors, has secured a grant for a project to:
 - *'Identify the principles and processes that would underpin an exemplar housing support service model to ensure that people with an eligibility for support receive the service they are entitled to. This project takes a holistic view of homelessness support, but particularly builds on the work that London Housing Directors have been leading to prevent rough sleeping and seeks to address the findings of the recent report that identified examples of failures in how London local authority housing services were responding to domestic abuse survivors approaching the councils for support.'*
- March to end of July 2023.
- Engagement with partners and stakeholders about rough sleeping, domestic abuse and homelessness across the triage service.

Abused Twice Campaign – Next Steps

- Progress:
 - Housing Directors have sat down with specialists and acknowledged the problem
 - Positive aspects of the pilot
- However:
 - Will not resolve the wider issue
 - Too many excuses
 - Where's the campaign for more funds from Central Government?

Abused Twice Campaign – Conclusions

- Campaigning is a great tool – highlights systemic issues which can be difficult with litigation
- Law can be used to aid the wider campaign
- Importance: 32 London boroughs
- Understand limitations as lawyers
- Need a movement to build more social housing
- In the meantime, we can challenge gatekeeping, share resources, and keep raising awareness.

solace

Domestic abuse and housing: Garden Court Chambers webinar

Housing and the Domestic Abuse Act

70% of women we support have a housing need

The Domestic Abuse Act made two key changes on housing for domestic abuse survivors

- Funding for increasing the provision of safe accommodation
- Changes to priority need

Ongoing barriers for women in accessing housing

- Since the changes came into force the number of people made homeless by domestic abuse between these periods increased by **24% in England and 22% in London.**
- In our services 887 of whom were made homeless by domestic abuse in the in 2021-22 compared to 609 the previous year.
- The number of people accepted as priority need also increased between the 9 month period above, by 35% in England from 1,140 to 1,540 people and by **193% in London**, from 140 to 410 people.

Some survivors are still excluded

Changes to priority need excluded two key groups of survivors:

- Migrant women with insecure immigration status and those with no recourse to public
- Survivors of rape and sexual violence are excluded unless perpetrated by an intimate partner or family member.

Gatekeeping still exists but is changing

- 30% of frontline workers said priority need has improved survivors' experiences of making homelessness applications, but half said it has not improved
- 71% of frontline staff reported that police corroboration was asked for that this happens in at least some cases, this has increased from last year when 67% said the same.

“ *Housing advisors/officers are often discouraging women by giving worst case scenario re: waiting times and women are often signposted to other local authorities and placed out of area in temporary accommodation, leaving them more vulnerable.* ”

Our asks on housing

Government needs to:

- Extend eligibility under the Domestic Violence Rule and Destitution Domestic Violence Concession (DDVC) to all migrant survivors with insecure immigration status, and/ or no recourse to public funds
- Extend priority need and the shared accommodation exemption for single people under 35 to survivors of rape and sexual violence
- Increase Local Housing Allowance rates so that they are linked again to the actual market rent levels, and increase benefits in line with inflation

Local authorities need to:

- Ensure every housing officer has been trained in their duties in relation to domestic abuse
- Commission co-located housing advocates to provide advice and training to housing officers.
- Ensure that there is a physical presence in the housing department of every council during normal business hours

Wider issues: cost living and housing



46% of survivors have said they are unable to pay for essentials

31% of survivors have already reported increased levels of debt

92% of survivors have been impacted by the cost of living crisis

Wider housing issues

- Given the pressures on social housing, it tends to only be survivors who already have a social housing tenancy who are able to settle into new social housing through support unless they have very high needs.
- Pressures on social housing has meant we have seen long waits for management transfers or stating it will be a long delay so the survivor seeks alternatives or gives up.
- Survivors who are being given priority need are only being offered hotel accommodation.





Domestic Abuse and Housing, Part 2

Points for practitioners

Angharad Monk, Garden Court Chambers

16 March 2023



GARDEN COURT CHAMBERS



 @gardencourtlaw

Gatekeeping at interim accommodation stage

- Section 188(1) HA 1996 :

“where the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.”

- Where the three conditions are met, the duty at section 188(1) is absolute, and cannot be delayed or avoided (Hickinbottom J in *R (Kelly & Mehari) v Birmingham City Council* [2009] EWHC 3240 (Admin), paragraph 7(5); see also paragraphs 15.5 and 21.25 and of the Homelessness Code of Guidance for Local Authorities)



Homelessness

Section 177 HA 1996:

- (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, 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.



Statutory definition of domestic abuse

Section 1 Domestic Abuse Act 2022

- “[...]”
- (2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—
 - (a) A and B are each aged 16 or over and are personally connected to each other, and
 - (b) the behaviour is abusive.
- (3) Behaviour is “abusive” if it consists of any of the following—
 - (a) physical or sexual abuse;
 - (b) violent or threatening behaviour;
 - (c) controlling or coercive behaviour;
 - (d) economic abuse (see subsection (4));
 - (e) psychological, emotional or other abuse; and it does not matter whether the behaviour consists of a single incident or a course of conduct.”



Priority need

- New priority need category introduced under the Domestic Abuse Act 2022:
 - “a person who is homeless as a result of that person being a victim of domestic abuse” (section 189(1)(e) Housing Act 1996)
- No more vulnerability test – nexus of enquiry now causal.
- Need to be alive to situations where historic cause of homelessness is DA but this remains the operative cause (for instance where no periods of settled accommodation since). Familiar exercise to intentional homelessness.
- Victim of domestic abuse can include children under the age of 18 if they see, hear or experience the effects of abuse, and are related to the perpetrator or the person experiencing the abuse. *However these will only be able to apply in their own right where no longer dependent – only likely to be of assistance where homelessness caused before 18 but they remain homeless post-18.*



Toolkit: Chapter 21 Homelessness Code of Guidance

- Very clear provisions in respect of the careful, victim-focussed approach required by LHAs when processing applications from survivors of domestic abuse.
- Acknowledges difficulties faced by survivors in evidencing abuse:

“[...] In some cases, corroborative evidence of abuse may not be available, for example, because there were no adult witnesses and/or the applicant was too frightened or ashamed to report incidents to family, friends or the police. The housing officer may be the first person that the victim has confided in. Housing authorities should not have a blanket approach toward domestic abuse which requires corroborative or police evidence to be provided.” (para 21.24)
- Other valuable paragraphs in relation to evidential requirements and assessment approach at 21.25-21.26, 21.31-32.



Toolkit: Equality Act 2010

- Consider potential relevance of indirect discrimination under section 19 EqA 2010 and the public sector equality duty under section 149 EqA 2010.
- Women are overwhelmingly more likely than men to be the victims of domestic abuse (*R (HA) v Ealing LBC* [2016] PTSR 16, paras 13, 25-26)
- Where you can identify a provision, criterion or practice being applied to your client which places survivors of domestic abuse at a particular disadvantage, you may be able to establish prima facie case of indirect sex discrimination.
- Potential PCPs:
 - application of evidential requirements in respect of the abuse which your client cannot meet for the reasons common in DA cases, as identified in the Code of Guidance;
 - placement of your client into mixed-gender shared accommodation.



188(1) challenges

- Very often resolved at PAP stage if the survivor can obtain legal representation.
- Points to raise:
 - the low threshold test under section 188(1) duty
 - failure to comply with chapter 21 of the Code of Guidance, particularly paragraphs 21.24-21.26, 21.31-21.32
 - potential Equality Act 2010 arguments based on the disproportionate impact upon women of the application of an excessively high evidential burden in respect of DA.



188(3) challenges

- Tactic by LAs to avoid section 188(1) duty by issuing an immediate section 184 decision finding the client to be not homeless or not in priority need, and therefore put applicant into discretionary accommodation territory.
- Immediately trigger a review and provide initial representations citing relevant parts of chapter 21 of the Code of Guidance, as unlikely that the LA has complied with the approach set out therein.
- Provide strong representations on the *Mohammed* criteria:
 - strengths of the review: your points about failure to follow Chapter 21 of the Code of Guidance, and general failure to make inquiries, possible Equality Act 2010 points;
 - new material: set out if your client may be able to provide corroborative evidence at a later date, for instance evidence from an IDVA, social services, or statements from friends and family;
 - personal circumstances: set out ongoing risk of DA, including any child welfare concerns, and specific vulnerabilities.



Suitability

- Relevant both to substantive suitability challenges and discharge of duty decisions.
- Common issues:
 - Survivor offered accommodation of such a poor quality (hostels etc), or at such distance from support network / children's schools that they are deterred from leaving the danger accommodation.
 - Placement in mixed gender shared accommodation.
 - Accommodation offered in discharge of duty unsuitable due to risk of further DA.



Suitability (continued)

When offered poor quality interim accommodation:

- Applicant does not need to accept a section 188(1) offer, however if refused they will then need to await acceptance of main housing duty for next offer of accommodation which may present further risk of DA.
- Can take accommodation and immediately challenge suitability. Send PAP to LA raising suitability points. Must bear in mind suitability challenges at this stage can be very difficult so the client must be prepared for the possibility that they will need to wait until main duty accepted to effectively challenge.



Suitability (continued)

Mixed gender hostels

- Unfortunately survivors of domestic abuse are still on occasion placed into mixed-gender shared accommodation by LAs.
- Readily challengeable and should be challenged, points to raise:
 - Paragraph 21.44 of the Code of Guidance “Housing authorities should consider whether mixed gender accommodation is appropriate and seek to provide single sex accommodation where this is required and available. Some victims may find it traumatic to share facilities with members of a particular gender and may be the case particularly for some women who feel safer sharing with other women.”
 - Equality Act 2010 arguments, both indirect discrimination and the PSED, potentially targeting both the individual offer and the authority’s broader practices of offering such accommodation to women survivors (see a similar challenge brought by PILC against LB Camden - <https://www.pilc.org.uk/news/legal-challenge-against-camden-council-success/>)



Suitability (continued)

Section 11 Children Act

- Many survivors will be the primary carers of children, and there can be a tension between safety concerns arising from DA, and the need for maintaining links to schools etc. Section 11 obligations still apply and should form part of the housing needs assessment / specific suitability assessments.
- *Nzolameso v Westminster City Council* [2015] UKSC 22; [2015] PTSR 549 – well known passages of Baroness Hale’s judgment at paragraphs 27-29 describing the requirement that LAs have regard to the need to safeguard and promote the welfare of children as part of suitability assessments, including potential disruption to education and other support networks.



Suitability (continued)

- *R(E) v Islington LBC* [2017] EWHC 1440 (Admin); [2018] PTSR 349 provides detail on the nature and extent of the obligations on LAs placing households with children out of borough: the need “to demonstrate objectively, and by reference to contemporary reasoning and records, how and why it came to the conclusion (if it did) that the delegation of its housing obligations would not imperil the child's educational welfare” and to liaise with the education department of the receiving authority in order to be satisfied that suitable arrangements were or would be in place.
- *R (YR) v LB Lambeth* [2022] EWHC 2813 (Admin); [2023] ACD 14 – “the children’s needs were key for the purposes of s.189A, and were the nuts and bolts of any lawful assessment” and ought to have included reference to “the needs of the children and the disruption that a move away from Lambeth would cause to their education”. An offer of section 188(1) accommodation in Essex was unlawful and irrational as it was based on an unlawful s.189A assessment and inadequate inquiries, and Lambeth had failed to apply its own policy.
- See also *XY v London Borough of Haringey LBC* [2019] EWHC 2276 (Admin) on the requirements of housing needs assessments under section 189A(1) HA 1996.



Practical considerations

- Always consider and apply for anonymity orders if necessary to protect your client from further DA.
- Gathering evidence:
 - IDVAs, social services, MARAC, medical / psychiatric, letters of friends and family.
- Where client has a social tenancy always consider allocations / management transfers as an optional alternative, or a parallel application alongside a Part 7 application to manage immediate risk. Otherwise the client faces the loss of the social tenancy and may never obtain another. Can be complex and fact specific. Consider the Pan London Housing Reciprocal and direct approach to local authority/ies.
- Identify potential danger areas at an early stage and ensure this is recorded in the PHP – ask the client to consider the residences and workplaces of the perpetrator and any persons linked to him. Be as clear as possible about which areas are and are not a risk.
- Ensure inclusion in PHP of any children’s education and welfare needs.



Thank you

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