



# International Women's Day

Homelessness and fleeing domestic violence - Is law and policy keeping pace?

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GARDEN COURT CHAMBERS



11 March 2021



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# Homelessness and Fleeing Domestic Violence – is law and policy keeping pace?

## The Present

Justine Compton, Garden Court Chambers

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# Current Legislation

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- All Applicants who are homeless must apply in the same way
- Part 7 Housing Act 1996 - provisions which must be satisfied before a duty is owed to any person to accommodate them
- Code of Guidance 2018 – Statutory Guidance - Chapter 21 – specifically deals with domestic violence
- Duties vary - ranging from advice and assistance to a full duty to house
- Shortage of social housing = a long and arduous road to accommodation



# Definition of Domestic Violence

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- Fundamental flaw - No statutory definition
- Historically, it has been defined as physical abuse
- **Yemshaw v LB Hounslow [2011] UKSC 3** – DV to be interpreted as it is used in family proceedings:

*‘domestic violence includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly may give rise to the risk of harm’.*

- 2018 Code of Guidance – Chapter 21 – Wider definition of DV used – this is guidance only



# The Hurdles!

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- A duty will only arise to those who are:
  - Homeless (s.177)
  - Eligible (s.185)
  - In Priority Need (s.189)
  - Not Intentionally Homeless (s.191)
- Survivors of Domestic Violence do not get any preference and are required to fit within the same criteria as all other applicants



## s. 177 - Homelessness

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- If it is probable that continued occupation will lead to violence against A or A's household, the accommodation is deemed to be unreasonable to continue to occupy (s.177(1))
- A will be regarded as homeless and will pass the 1<sup>st</sup> hurdle
- **How does A evidence this?**
  - Safeguards in the Code in terms of inquiries and treatment of A
  - Recognition that 3<sup>rd</sup> parties may not be involved
  - No need for violence to have already occurred
  - Steps to mitigate can be advisory but no obligation on A to take



# Difficulties faced by Applicants

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- The Act and Code appear to be benevolent to survivors of abuse
- Problems encountered:
  - Existence of DV in its broadest sense is not recognised – a restrictive interpretation whereby physical violence is the marker is used
  - Emotional, financial and coercive control is underplayed and categorised as ‘relationship breakdown/difficulties’. The more subtle signs of DV are missed
  - Incorrect test is applied – evidence of past physical violence and/or imminent risk of future physical violence is required – the test is probability not certainty
  - Generally unsympathetic approach





## s.189 - Priority Need

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- No automatic priority need even if DV proven
- An applicant must be vulnerable by reason of mental or physical health issues or other special reason
- It is not an easy test to satisfy
- Survivors would need to demonstrate mental or physical health condition which then renders the applicant vulnerable
- Production of medical evidence showing a mental or physical effect from the abuse is necessary



## Priority Need (continued)

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- Evidence is a significant problem for survivors who may not have approached 3<sup>rd</sup> parties for obvious reasons
- The effect is that a survivor cannot establish priority need and no housing duty will be owed
- Domestic Abuse Act - a separate category of priority need for survivors without the vulnerability test
- The work of Liz Davies (Garden Court) and Crisis has been vital in securing this provision



## s.191 - Intentional Homelessness

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- If the s.177(1) deeming provision is satisfied then no issue of intentional homelessness applies
- Difficulties arise where the LA find that it is not DV as defined – it falls short (e.g. non-violent harassment or perhaps actions which can be ‘explained’)
- This gives rise to the complex issue of when does behaviour cross the line and become abuse and how long should someone have to endure it before it is accepted that they cannot return
- Decisions made on the basis that there was no reason to leave or that A can return are difficult to challenge



# What changes are needed?

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- A broad statutory definition of DV
- Free-standing priority need category for survivors of abuse
- Lift the evidential burden
- Adopt a sympathetic approach and use properly trained specialist officers to make decisions in DV cases



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# The Domestic Abuse Bill is good, but it could be better...

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## **No Recourse to Public Funds**

- The Housing Act 1996 provides that people from abroad are only entitled to homelessness assistance if they are eligible (s.185, s186 and s.187 of the HA 1996). The rules are complex and outside of this paper. In summary, subject to some exceptions, those who have ‘No Recourse to Public Funds’ are not eligible for housing/homelessness assistance/benefits.
- Migrants with many different types of visa or leave have a ‘no recourse to public funds’ condition attached. Student or work visas generally do not allow access to public funds. Those who have no valid leave in the UK, such as overstayers and those who are appeal rights exhausted, have no recourse to public funds.
- A huge disappointment and a lost opportunity. Many survivors of domestic abuse are affected and Pragna will talk more about that.



# Where is a survivor's autonomy? Where is a survivor's choice?

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The current legislation, Housing Act 1996 Part 6 (Allocations) or Part 7 (Homelessness), does not focus on a survivor's choice. This is not the aim or focus of it.

- **Referrals (s.198)** *“The conditions for referral of the case to another authority are met if—  
(a)neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,  
(b)the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and  
(c)neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.....”*
- **Local connection (s.199)** *“A person has a local connection with the district of a local housing authority if he has a connection with it—  
(a)because he is, or in the past was, normally resident there, and that residence is or was of his own choice,  
(b)because he is employed there,  
(c)because of family associations, or  
(d)because of special circumstances”.*
- In *NJ v Wandsworth London Borough Council* [2013] EWCA Civ 1373, the Court of Appeal held that accommodation at a women's refuge *could* constitute residents of a person's 'own choice' for the purposes of building a local connection. By contrast, see *R (on the Application of HA) v London Borough of Ealing* [2015] EWHC 2375 (Admin) where the Ealing's allocation scheme, that disqualified applicants that had not been resident in the borough for the last five years, was discriminatory.



# Suitability...?

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- In respect of the ‘suitability’ of the accommodation offered (s.206), the location of that accommodation is relevant (s.208 and Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601 art, 2). The decision on suitability is for the LA to make.
- **Paragraph 17.6 of the Homelessness Code of Guidance** states that when a LA considers the suitability of accommodation: *‘Account will need to be taken of any social considerations relating to the applicant and their household that might affect the suitability of accommodation, including any risk of violence, racial or other harassment in a particular locality. Where domestic violence or abuse is involved and the applicant is not able to stay in the current home, housing authorities may need to consider the need for alternative accommodation whose location can be kept a secret and which has security measures and staffing to protect the occupants.’* (see also chapter 21, para 16.40 -16.41).
- When applying the suitability provisions/guidance, LA often place survivors far away from their support networks without regard to where a *survivor feels safe*. See *SM v Waltham Forest LBC*, County Court at Central London, 23 June 2020 (Legal Action Group, November 2020 Edition).





# Reciprocal arrangements: parallel universe

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- Running parallel to the statutory provisions are reciprocal arrangements entered into by local authorities. In London, the Pan-London Housing Reciprocal is operated by Safer London.
- Such schemes operate to allow LA to make direct offers to survivors of DA – arguably avoiding the need to make a homelessness application under Part 7. Survivors will provide a list of boroughs that they would live in/feel safe in. Directs offers are made by those boroughs. Offers made following a referral must be made in accordance with that LA allocation scheme.
- Pan London has currently stopped taking referrals – which gives some idea of the demand.
- Pan reciprocal arrangements do not have statutory footing and remain somewhat of an enigma.
- The passing of the DA Bill would have been a good opportunity to codify the above.



## What else....

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- **Secure tenancies:**

The DA Bill seeks to insert s.81ZA after s.85 of the Housing Act 1985. It proposes that where the LA grants a secure tenancy to a ‘victim of DA’, that tenancy will not be a ‘flexible tenancy’. The Bill does not seek to amend s.193 of the Housing Act 1996 so that the LA have a duty to grant a secure tenancy to victims of domestic abuse in discharge of their duties under Part 7.

- **Joint secure tenancies:**

The transfer of a tenancy into one’s sole name can be a long process under the current legislation. A welcome change would be for this process to be streamlined – making it more accessible to survivors.

- **Local connection requirements under Part 6**

An amendment to Part 6 so as to prohibit LAs from having local connection requirements for those who leave their accommodation as a result of DA.



# Holistic Advice

Multi-disciplinary approaches to resolving legal problems

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#IWD2021 #ChooseToChallenge

# What does it mean?

- People do not have single legal issues but life events – an intersection of legal and other problems.
- Legal research has shown that people are more likely to have three or more legal problems – that they have them in clusters.
- We need to address all - legal and non-legal issues - to make lasting change for the client. We need a more joined up approach to addressing legal need.

## Lessons from Australia & Canada

- I recognised from my practice in the UK that a much more integrated approach to resolving legal problems was needed, and importantly, before they escalated.
- I travelled to Canada and Australia for six weeks to examine multi-disciplinary approaches to resolving legal problems.
- Health Justice Partnerships in Australia and Trusted Intermediaries, or Trusted Help in Canada were a focus.

# Health Justice Partnerships

- Health Justice partnerships work by embedding legal help into healthcare settings in hospitals and primary health care settings.
- They collaborate with health services and their patients to address unmet legal need that is often causing harm to their health.
- Just as we have a strategic approach to public health, we must do so with legal issues. HJP's are one way that we can do this – they shine a light on what is possible. It is a model to do something bigger.

## Acting on the Warning Signs

- <https://www.youtube.com/watch?v=IA3QkKBKB4>
- The Royal Women's Hospital and the Inner Melbourne Community Legal was at the forefront of the Health-Justice Partnership movement in Australia.
- This project was the first of its kind in a major, metropolitan hospital in Australia.
- Through this partnership, lawyers offer free legal assistance to inpatients and outpatients of the hospital and training to medical professionals.

# Stepping Stones

- Co-location of financial counselling with family law legal advice.
- Assisted women who left violent relationship with debt, often brought about through economic abuse in the course of the relationship.
- Co-location meant women could resolve legal and financial options, make informed decisions and eliminate necessity of communicating with multiple professionals.
- Attending appointments of government agencies with clients.
- First findings: 25% of women fully resolved their debt and 45% partially resolved.



“It is like a big jigsaw puzzle.  
It becomes apparent early on that there is a legal matter  
to resolve but there is also a housing, mental health, food  
and disclosure issue.”

Phynea Clarke of Central Australian Aboriginal Family Legal Unit  
Alice Springs

- They provide a complete package in terms of client needs: attending court, Centre Link, housing, refuges, police stations with their clients. Some towns are hundreds of miles away, so they have a car to assist the women wherever they need to go.
- Lawyers (described as quasi-social workers) support people and work alongside their Indigenous Client Service Officers and are integrated into the community.

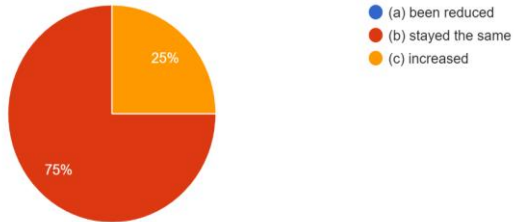


# Women's Crisis Navigator



# From Fragmented to Holistic: Initial Findings

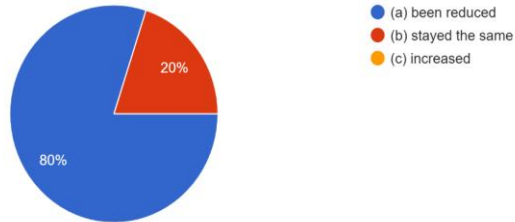
As a result of the advice you received from the navigator, has your trust



As a result of the advice you received from the navigator, has your empowerment



As a result of the advice you received from the navigator, has your anxiety



“For it to work everybody needs to know a little bit about everyone else’s stuff. A transfer of information as well as trust.”

Tania Wolff, lawyer at First Step, Melbourne.

- Lawyers need to have empathy and work as part of a team.
- Matt Faulkner, Katherine Women’s Legal Service, called it “preventative lawyering” and Tania Wolff, “compassionate lawyering”.
- They must value the input from other colleagues, which suggests formal legal training in a singular way needs to change.
- We also need to value lawyers’ time differently.

## It needs funding

- “It’s about recognising that legal issues can create barriers to well-being or create pathways to wellbeing and telling that story better, more persuasively with government, so that they value it differently.” Pete Noble, Victoria Legal Aid, Melbourne.
- Funding legal advice presents a challenge in the UK. In the last ten years we have seen the justice budget cut by 40%.
- There is a need to shift the narrative on the benefit of legal advice – that it not only defends fundamental rights - but can benefit people’s physical and mental health and make lasting change.

## What next?

- The pandemic has pushed our services even more remote. We can't just sit in our offices anymore waiting for our clients to find us. It is about building relationships and trust in a multi-disciplinary team with a person-centred approach.
- To be successful, this change will involve a fundamental shift in how social welfare cases are funded and the value of having a lawyer as part of a team.
- Justice must be funded along with health and education. It has the potential to make lasting change for survivors of domestic abuse.

# Thank you

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