



Local connection requirements for social housing for victims of domestic abuse

Consultation response by the Garden Court Chambers Housing Team

About the Garden Court Chambers Housing Team

1. Garden Court Chambers is the largest barristers' chambers in London. Founded in 1974, it has a long-standing commitment to defending human rights, undertaking legal aid work, and upholding the rule of law.
2. The Housing Team at Garden Court Chambers is comprised of 28 barristers with expertise in all areas of housing law, from unlawful evictions and welfare benefits to homelessness and allocations. Books by members of the team include *Housing Allocation and Homelessness* (LexisNexis, 2022) and *The Housing Law Handbook* (Law Society, 2020). Members of the team frequently represent victims of domestic violence in a wide range of cases.

Response to consultation

3. Our general position is that we warmly welcome these proposals and we strongly encourage the Government to bring them forward.

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4. This response deals with questions (2), (5), (6), (7), (8), (9), (11), and (13). It does not respond to questions (1), (3), (4), (10), and (12), which are aimed at other types of respondent.

(Q2) The government proposes to make regulations to require local authorities to ensure that domestic abuse victims are exempt from any local connection or residency requirements as part of their qualification criteria for applicants for social housing. Do you agree?

5. Yes. We agree that regulations should be made requiring local housing authorities to ensure that victims of domestic abuse are exempt from any local connection or residency qualification criteria.
6. We consider that those local connection or residency criteria may well in any event be unlawful. First, they may amount to a disproportionate interference with the right not to be discriminated against under Article 14 ECHR together with Article 8 ECHR, as was found to be the case in *R (HA) v Ealing London Borough Council* [2015] EWHC 2375 (Admin). Second, they may be unlawful where they exclude persons who are entitled to a reasonable preference pursuant to s166A(3) of the Housing Act 1996. Pursuant to s166A(3) HA 1996, a local housing authority's scheme "shall" be framed so as to secure that reasonable preference is given to five groups of people, namely people who are homeless, people who are owed one of certain duties under Part 7 HA 1996, people occupying insanitary or overcrowded or otherwise unsatisfactory housing, people who need to move on medical or welfare grounds, and people who need to move to a particular locality where failure to do so would meet hardship. A person who is seeking accommodation as a result of fleeing domestic abuse will almost certainly be homeless as defined by s175 HA 1996 and will therefore come within a category of persons entitled to a reasonable preference. It is therefore doubtful that he or she may lawfully be disqualified, given the requirement that he or she be given a reasonable preference within the scheme. However, the law on this question is currently in a state of some uncertainty, with two conflicting first-instance decisions on the issue: *R (Montero) v Lewisham London Borough Council* [2021] EWHC 1359 (Admin) and *R (HA) v Ealing London Borough Council*

[2015] EWHC 2375 (Admin). We would therefore welcome the clarification which regulations would bring to this particular group.

7. We do, however, consider that the Government should go further and make regulations prohibiting local authorities from reducing the *priority* given to victims of domestic abuse on the grounds that they do not meet local connection or residency criteria as well as preventing them from *disqualifying* applicants on such grounds. Local authorities control access to their social housing not only by imposing qualification criteria under s160ZA HA 1996 but also by increasing or reducing the degree of preference given to qualifying applicants under s166A HA 1996. There is a serious shortage of social housing: in England as of December 2021, there were 1.187 million households on local authority waiting lists (*Table 600: Numbers of households on local authorities' housing waiting list, by district: England, 1982-2021*). This means that even if an applicant qualifies for an allocation, if he or she is given a low level of priority, he or she has no realistic prospect of being made an allocation of social housing. If local authorities are prohibited from disqualifying victims of domestic abuse on grounds of local connection or residence but are permitted to give them the lowest level of priority for the same reason, the ends sought to be achieved by the Government will be frustrated and the practical result for the applicant will be the same as if he or she had been disqualified: he or she will not be made an allocation of social housing. A similar factual matrix occurred in the case of *R (Gullu) v Hillingdon London Borough Council* [2019] EWCA Civ 692 where, as described by Lewison LJ at §1:

Hillingdon London Borough Council's housing allocation policy provides that, subject to exceptions, a person who has not been continuously living in the borough for at least ten years will not qualify to join the housing register. One of the exceptions is that an unintentionally homeless person who does not satisfy the residence requirement is entitled to join the register; but is placed in band D. Two challenges were brought against the lawfulness of that policy...

(Q5) Do respondents agree that local connection should be defined by reference to Section 199 of the Housing Act 1996?

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8. No, we consider that the regulations need to be more broadly drafted. If the regulations are drafted solely by reference to “*local connection*” as defined by s199 HA 1996, it may create unfortunate lacunae. Regulations which prohibit the use of qualification criteria defined exclusively by reference to s199 HA 1996 may not catch qualification criteria which are based on a link to the local housing authority’s area but which do not use the statutory definition at s199 HA 1996.
9. “*Local connection*” is defined at s199(1) HA 1996:
- (1) *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.*
10. Local connection and residence are not necessarily coterminous. In order to give rise to a local connection, residence must be “*normal*”, voluntary, and of a sufficient quality to create a connection with the area: see for example *NJ v Wandsworth London Borough Council* [2013] EWCA Civ 1373, in which it was disputed whether an applicant living in a refuge was residing there of her own choice. Regulations which prohibit the use of local connection criteria may not therefore necessarily “catch” a criterion based on pure residence. By way of a practical example: Ms A has fled her home due to domestic violence. She is currently in a refuge in the London Borough of X but she wishes to move to the London Borough of Y because she has family there. The London Borough of Y has adopted criteria which disqualify (1) persons who are not resident in their area and (2) persons who do not have a local connection to their area. Regulations based solely on local connection would prohibit the London Borough of Y applying the second criterion to Ms A, but it would not prohibit them applying the first to her.

11. If the Government’s intention is, as stated at paragraph 18 of the consultation document, to prevent local authorities from “*applying a local connection or residency test to victims who have been forced to flee*” then the regulations should do exactly that and apply to criteria based on residence, or indeed any other form of link to the area, as well as local connection. We would therefore encourage the adoption of a much broader definition, such as “*local connection (whether as defined by s199 HA 1996 or otherwise) or residence*”.

(Q6) Do respondents consider that exemptions of local connection or residency tests for domestic abuse victims should be time limited? If so, what length of time is appropriate, when should the period begin, and who should make that assessment?

12. We do not consider that the exemptions should be time limited. This is for three reasons. First, as the consultation document notes at paragraph 24, victims of domestic abuse may face a very unsettled period after fleeing the domestic abuse. A time limit risks arbitrarily excluding some victims. Indeed, it is likely to operate most harshly against victims who are more vulnerable, as the less vulnerable victims may well be able to make an application more promptly. Second, the shortage of social housing is such that applicants may spend a very long time on the waiting list before being made an allocation. Recent figures indicate that 13% of households spend five years or more on the waiting list before being made an allocation (*Social Housing Lettings: April to September 2020, England*, MHCLG, March 2021). In these circumstances applicants may find that their time limit “expires” before they reach the top of the list and they face being disqualified even if their application was made promptly. Third, in our view such a rule would undermine the purpose of the regulations. The important issue is the need to move. Even if the survivor of domestic abuse has not moved within a specified time, she will continue to have a need to move and should not be excluded from the protection of the regulations.

(Q7) Alternatively, do respondents consider, instead of having a time limited exemption, that we should provide for ensuring exemptions from local connection or residency tests apply where the need to move to a new area relates to reasons connected with domestic abuse?

13. We do not consider that there should be a requirement that the need to move to a new area relates to reasons connected with domestic abuse. If a person is a victim of domestic abuse and is in need of an allocation of social housing, he or she should be able to move. The absence of a connection between those two factors does not render him or her less “deserving” of social housing. Our concern is that a requirement for a connection will not get rid of unmeritorious cases but will instead form a barrier for meritorious cases.

14. It is relevant to note that qualification criteria have been imposed with enthusiasm by local authorities: a recent report by the Chartered Institute of Housing found that, following the introduction of powers to set qualification criteria in the Localism Act 2011, “*the number of households on waiting lists in England dropped, by 40 per cent...even though real housing demand had risen during this period*” (Chartered Institute of Housing, *Rethinking allocations*, September 2019, p21). This indicates that where local authorities are presented with an opportunity to exclude people from their waiting lists, they will take it. We are concerned therefore that hard-pressed local authorities may try to use exceptions to the exemption to exclude vulnerable victims of domestic abuse from their waiting lists.

(Q8) Do respondents agree that the proposed exemption to local connection and residency tests should extend to social housing applications made in England where the victim has fled from elsewhere in the UK?

15. We agree.

(Q9) Do respondents agree that the proposed exemption from local connection and residency tests should be applied to domestic abuse victims in privately rented accommodation, privately owned housing, and temporary accommodation? If not, please explain why.

16. We agree. It should also (for the avoidance of doubt) be applied to homeowners.

(Q11) Is there a need for further statutory guidance with regards to collecting evidence of domestic abuse to support local authorities when considering applications for social

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housing, to make sure the vulnerabilities of the victim and needs of the local authority are balanced. If so, what might this include?

17. We would welcome further statutory guidance on this topic. We agree with and share the concerns referred to at paragraph 34 of the consultation document that “*some local authorities impose stringent evidence requirements for victims of domestic abuse*”. It is important that local authorities are aware that victims of domestic abuse face significant difficulties providing evidence, whether because they have left a controlling relationship where they had limited access to documentation; or because they have previously been too frightened to report the domestic abuse to official agencies; or because they have fled their home with few possessions; or for many other reasons.

18. We note the very detailed guidance at paragraphs 21.20 – 21.32 in the Homelessness Code of Guidance, in particular at paragraph 21.24: “*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***” [emphasis in original]. We recommend that similar guidance be given to local housing authorities assessing applications for an allocation of social housing.

(Q13) Are there any barriers that prevent neighbouring local authorities from working together to support domestic abuse victims and their families applying for social housing outside their area?

19. In our experience, the main barrier to co-operative working between local housing authorities is the shortage of social housing, which results in local authorities being unwilling to accede to requests to provide accommodation to applicants who are not on their own lists.

20. However, we are aware of initiatives which work well. One example of this is the Pan-London Housing Reciprocal. This is a collaboration between all local authorities in London (together with other registered housing providers and support agencies) pursuant to which one London borough (“the receiving borough”) will provide accommodation to a social housing tenant fleeing violence from another London borough (“the home borough”) in return for the home borough agreeing to make available a unit of accommodation in its own borough when needed. Our view is that the barriers to co-operation will be reduced where local housing authorities are confident that the responsibility for accommodating households in need is distributed fairly.

Conclusion

21. We broadly welcome the proposals in this consultation document and encourage the Government to adopt them.

22. If we can be of any further assistance, please do not hesitate to contact us.

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