



Creating a Domestic Abuse Perpetrator Housing Pathway.

ADDRESSING DOMESTIC ABUSE

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Introduction

This guidance uses hypothetical cases to illustrate how legislation and policy can be used to improve practice.

This guidance is part of a more detailed evidence-based resource based on recent research findings is aimed at professionals in local authorities, housing organisations and other services who have an interest in standardising responses across different areas and establishing key principles and developing a coherent and sustainable approach to perpetrator housing.

The Guidance considers how local authorities and housing providers in partnership with domestic abuse perpetrator programmes might use legislation and policies in responding to housing needs of perpetrators of domestic abuse in a bid to support victim survivors.

The legislation is set out in the appendices of the evidence-based resource.

A) Housing Act (1996) and Homelessness Act (2002)

Housing Act, (1996) (Part VII)

Part VII of the Housing Act (1996) sets out local authority duties in relation to homelessness. Although rough sleeping or street homelessness is the most visible form, the Act defines homelessness in such a way as to make it possible to be legally or statutorily homeless, but still have place to live.

In essence, the Act sets out that if a person is:

- eligible for public funds
- has a local connection (as defined in that authority's 'allocations scheme') and
- unintentionally homeless

they will be classed as statutorily homeless. This means that the local authority has a duty to house them, and they will be placed on the 'housing register' or waiting list for housing.

Section 168 of the 1996 Act requires authorities to publish a summary of their allocation scheme and to provide a copy of the summary (free of charge) to any member of the public requesting one. Local authorities in England must have regard to their homelessness strategies, tenancy strategies when preparing or modifying their housing Allocation Schemes.

Local authorities in England operate a mix of points-based / banding system and / or choice-based systems for allocating housing. In either case, there must be some method for ascertaining and granting 'priority need' to households who meet the requirements.

This priority need element includes a set of criteria of vulnerability including ‘other special reason’.

However, as the assessment involves sequential steps, perpetrators of domestic abuse are unlikely to meet the criteria of being unintentionally homeless as it will be considered they have made themselves homeless by their own actions. Even where applicants pass the ‘intentionality’ test, a single homeless person with no dependent children is unlikely to be seen to be in priority need, unless they are deemed **particularly vulnerable**. While some categories will automatically meet the test, **others need to show that they are ‘vulnerable’ in some way to meet the criteria.**

The Homelessness Act (2002)

The *Housing Act 1996* (which focused on the requirement to have a housing register) was substantially amended by the Homelessness Act, 2002 and subsequently by the Localism Act 2011. This resulted in local authorities no longer under a duty to maintain a housing register themselves but that **they must have an allocation scheme for determining priorities between applicants** for housing which sets out the procedure to be followed when allocating housing accommodation.

The *Homelessness Act (2002)* refined the Housing Act 1996 (Part VII) to make people who are vulnerable ‘**as a result of ceasing to occupy accommodation because of violence from another person or threats of violence from another person which are likely to be carried out**’ as in **priority need**.

The test commonly used to establish if someone is vulnerable and, therefore, in priority need became **known as the Pereira Test**. The Court of Appeal, in *Pereira v Camden Council* held that a person is vulnerable if their circumstances were such that they would suffer **more when homeless** than ‘*the ordinary homeless person*’ and would suffer an **injury or other detriment** that ‘the ordinary homeless person’ would not.

This issue of vulnerability has been the subject of more recent case law where the Supreme Court considered three cases, for example *Hotak v London Borough of Southwark* (2015) which highlighted a duty may be owed (*to investigate*) if the person was more vulnerable than the *ordinary person* **and not the ordinary homeless person**. The Supreme Court clarified that ‘**vulnerability**’ **should be judged against an ‘ordinary person’ becoming homeless, not an ‘ordinary homeless person’**.

This means that a person’s individual circumstances should be considered in their entirety when a local authority assesses vulnerability. **The threat of homelessness / lack of safe affordable housing has been consistently identified as a barrier** that prevents victims from leaving an abusive perpetrator (Henderson, 2019; Women’s Aid, 2020).

Vulnerability as Priority Need

Section 189 (1) of the 1996 Act defines priority need, and section 189 (1) (c) outlines that priority need *includes*:

‘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.’

Case Study Example of Vulnerability and in Priority Need

Kate and Sam

Kate and Sam were referred to Restart from Children’s Services. They have one child together, Noah, who is two years old. Complaints had been made to the Local Authority Housing Department by neighbours reporting hearing shouting (by Sam). The neighbours had concerns for Kate and Noah. Sam and Kate felt they could not continue the relationship in its current form as Sam’s behaviour was becoming more controlling, and Kate was feeling more isolated as a result.

Kate had a sole tenancy and there had been no complaints made in the 10 years she had lived there. Sam had moved in 8 years ago, but the tenancy was still in Kate’s name only. The 2 bedroomed house was near to her mum, who lived about ten minutes’ walk from her. Kate worked as a receptionist for 3 hours a day, 2 days a week at the local GP Surgery while Noah was at nursery or with Kate’s mum. Kate had been asked by the Surgery if she would like to increase her hours to an extra day and she was keen to do so.

Kate felt that she had no option to leave Sam and rebuild her life but felt she was stuck in limbo. Sam had Crohn’s Disease, and she worried that if she asked him to leave, he would have nowhere to live which could worsen his condition. He had been hospitalised on a few occasions and she was concerned this might happen. Kate cared for Sam in that he was the father of her child and did not want him to become ill.

Restart engaged with Sam and Kate. Kate had support from the Partner Support Worker. Sam’s Case Manager ascertained an understanding of Sam’s health condition and worked with the Local Authority Homeless Team to investigate any if Sam could get any support around accommodation. Sam, as the alleged perpetrator was worried that as his behaviour had resulted in the relationship ending, he would not be entitled to any support.

Discussions with Sam, the local authority Homeless Team and Restart came to agreement that Sam’s condition meant he could be classed as vulnerable, (and in priority need as defined in the Housing Act, 1996 and Homelessness Act, 2002) and he was supported to access accommodation.

Accommodation was found for Sam and Kate continued living in the home with Noah.

B) Social Housing Joint Tenancies

Joint tenancies can present issues in cases of domestic abuse. A joint tenancy means that both parties have **individual and joint rights and responsibilities** under the terms of the tenancy agreement. Both tenants are responsible for paying rent and adhering to the conditions of the tenancy agreement; **both parties have the right to stay in the home and one party cannot exclude the other** e.g. change the locks or make the other party leave. It is important that rent is still paid whilst decisions are made as to ending the joint tenancy as it could affect a future tenancy if rent arrears are incurred.

If one joint tenant gives notice to the landlord, the agreement will be ended for both/all tenants (as confirmed in *Hammersmith v Monk* (*Hammersmith and Fulham LBC v. Monk* [1992] AC 478).

Where there is a joint tenancy, both parties are named on the tenancy agreement. In cases of domestic abuse, a joint tenancy can be used by the perpetrator to control the victim survivor on a variety of levels;

- For example, the perpetrator could end the tenancy, which ends the tenancy for both parties, thereby rendering the victim survivor homeless.
- Both tenants are responsible for paying the rent; if one tenant ceases paying the rent, then the rent arrears would be pursued against both tenants, which could lead to eviction action and present issues in terms of making themselves intentionally homeless.

Rent arrears and having an eviction order granted against a person can cause problems in securing another social housing tenancy and checks made by private sector landlord could mean that a tenancy in the private rented sector would also be difficult to acquire.

Tenancy breaches other than rent arrears are also problematic in joint tenancies. **Where one party could breach the tenancy agreement, for example through anti-social behaviour, action would be taken against both tenants** and not only the tenant breaching the tenancy agreement.

Where enforcement action has been taken in cases of a joint tenancy this could provide problems for either party securing a future tenancy. Whilst **housing providers may seek to support a victim of domestic abuse in a joint tenancy, they are not required to specifically enquire (under regulatory standards) around domestic abuse when a joint tenancy ends.**

Generally, a joint tenancy can be ended by either tenant possibly rendering them both homeless (potentially intentionally so). There are three options:

- a. The landlord may offer either party a new, sole tenancy
- b. The landlord may offer neither party a new, sole tenancy

- c. A court may decide the issue.

Case Study Example on What Housing Providers Can Do Where There are Joint Tenancies

Yasmin and Jai

Yasmin and Jai live in a three-bedroom social housing property. Their two adult children moved out the year before and they have a 12-year-old child still at home. They have lived in the property for over ten years, have a joint tenancy and have always paid rent on time and have not had any complaints made about them. Yasmin and Jai want to stay in the relationship but over the last few years Jai's behaviour has become more controlling and abusive. He states he wants to address this if there is any chance of staying with Yasmin.

Jai is engaging well with his Restart Case Manager. He feels that to **build trust with Yasmin that he can change he needs to move out**. However, if Jai moves out Yasmin will not be able to afford to live in the property as her benefit will not cover the extra bedroom. Jai and Yasmin have been discussing the situation with their Housing Officer who has supported Jai to apply for re-housing. The house they currently live in is in a good area and sought after by families. The Housing Officer is looking into a 'management transfer' for them both as a result of the 'relation breakdown'. Jai requires a 1-bedroom property and Yasmin a 2 bedroomed property.

After 6 months of waiting for properties, Jai and Yasmin moved out of their family home and are both receiving support from the Restart Programme. Yasmin is happy with the support she is receiving from the Partner Support Worker and feels there is no pressure to stay with Jai now she has her own flat that she can afford. Jai has just moved into a one bedroomed flat meaning there is no pressure for Yasmin to let him stay with her.

They plan to stay together if Jai can address his behaviour. A family with 2 children moved into their old property after waiting over 4 years for a property.

C) Homelessness Reduction Act (2017)

The Homelessness Reduction Act (2017) applies to England in the context of providing more proactive and personalised support to prevent and relieve homelessness, ensuring people receive the help they need much earlier. The act sets out a duty to provide **advisory services**.

Statutory Guidance sets out that local authorities must offer a professional, non-judgmental service. Importantly, the Guidance states that applicants should be encouraged to share information without fear that this will reduce their chances of receiving support, and **questions should be asked in a sensitive way and with an awareness that the applicant may be reluctant to disclose** personal details if they lack confidence that their circumstances will be understood and considered sympathetically.

Section 189a of the Housing Act requires housing authorities to carry out **assessments to determine the duties** owed to a person applying for assistance, and the needs and circumstances of those applicants who are eligible for assistance and homeless or threatened with homelessness.

To ascertain if the person is eligible for assistance an initial interview is undertaken. If there is reason to believe that they **may be homeless or threatened with homelessness** within **56 days** the housing authority must carry out an assessment to determine if this is the case, and whether they are eligible for assistance. If the applicant is not eligible for assistance or if the authority is satisfied that they are not homeless or threatened with homelessness within 56 days, they must be given a written Section 184 notification of the decision reached.

The Act places **2 main duties** on local housing authorities:

- **Duty to Prevent Homelessness:** Local authorities are required to take reasonable steps to help prevent homelessness for anyone at risk within 56 days. This includes providing advice and support to **help individuals stay in their current accommodation or find alternative housing**. The duty may be ended if the applicant has a reasonable prospect of having suitable accommodation for at least six months (which might be a six-month private rental).
- **Duty to Relieve Homelessness:** If someone is already homeless, local authorities must take *reasonable steps to help* them secure accommodation **within 56 days**. This duty applies to *all eligible applicants*, regardless of whether they have a priority need.

Personal Housing Plans

The Homeless Reduction Act (2017) requires local authorities to work with individuals to develop a personalised housing plan, outlining the steps both parties will take to resolve the issue. This means that a perpetrator of domestic abuse will need to outline what they are doing to resolve the issue. If they are a joint tenant in a social housing tenancy for example this might include seeking advice from the housing provider on accessing a sole tenancy (see page 5 the example of Yasmin and Jai).

Case Example of the ‘Duty to Relieve Homelessness’

Mai and Taz

Mai and Taz were in a relationship for 5 years which ended recently due to Taz’ abusive behaviour. They don’t have any children. Taz approached his local authority to seek help and is receiving support from Restart working with his Case Manager to address his abusive behaviour.

Taz had shown up at Mai's on a few occasions asking to stay saying he has nowhere to go. She had refused and said if he did this again, she would call the police. Mai contacted the Partner Support worker to advise of recent events and the impact on her feelings of safety. Taz's Case Manager addressed these recent events with him as part of his ongoing behaviour change work.

Taz has enquired with some private rented landlords he heard about through friends, but the landlords had no available properties. Taz is sofa surfing and recently resorted to sleeping in his car.

As part of the requirement to develop a personalised housing plan (PHP) in partnership with the applicant and local authority Taz showed the person undertaking his Homeless Assessment his email correspondence with landlords, and they made a note of his activity as part of the plan. Taz recently accepted a job in another area of the city, where he has friends and family and is keen to move back there to be closer to work and rebuild his life.

The Homeless Assessment Officer made a referral to the local authority area, where Taz accessed support to gain a 6-month tenancy in the private rented sector with a deposit paid by the local authority. Taz has started his job and is re-building a life and engaging with Restart.

Mai remained in the property and is rebuilding her life.

Case Example of the 'Duty to Prevent Homelessness'

Kate and John

Kate and John have been together 5 years and have a 1-year-old child, Noah. The Police were recently called to their property by Kate after John slapped her in an argument. The Police referred them to Restart. John is engaging well with Restart and is keen to demonstrate he will address his abusive behaviour. He and Kate have agreed he will move out while he works on changing this behaviour. She is not sure if she will allow him back in the family home at this stage.

John approached his local authority for help in finding accommodation. There was very little available accommodation in the area. He was keen to stay in the locality as Kate took Noah to his sister, Vicky's house to see him. Kate and John have a good relationship with Vicky.

Under the Prevention Duty, the local authority arranged a small payment to Vicky for John to live in his sister's spare room for 6 months if he is engaging with the Restart Project. John has registered with the local authority and is now on the housing allocation list and actively looking for private landlords in the area.

D) Housing Register Managing Distribution

Part 6 (Sections 159 -174) of the Housing Act (1996) stipulates that local authorities must have an allocation scheme to manage housing distribution fairly (they do not have to manage that allocation themselves). Many local authorities use a banding system to categorise different levels of housing need.

A banding system helps identify those in the greatest housing need and reflects the aims and objectives of the area's Allocations Policy. Applications are placed in a band depending on the information provided in the application form and according to their need. Banding will cover those in most need (Band A) to those in general housing need.

Case Example of Housing Register

Salma and Massoud

Salma and Massoud were in a relationship for 15 years which ended recently because of domestic abuse by Massoud. They have a ten-year-old child. Massoud was referred to Restart after seeking help from his Housing Officer and is engaging well. Salma declined support from Restart.

They had a joint tenancy, which they jointly decided to end. The Housing Officer has arranged a management move for Salma to be given a sole tenancy at the property. Massoud has moved in with his brother on a temporary basis but is sleeping on the sofa as there is no room for this to be long term. He has joined the allocations scheme in the area that is piloting a new approach as part of the local authority's response to Part 4 of the Domestic Abuse Act (2021). As a single person Massoud would not typically be given priority and would be in Band 4 which was general needs (the lowest priority band). Under the allocations pilot, those engaging with the Restart Project are awarded Band 2 status and considered for an allocation under this band when it means that the victim survivor has remained in their home.

The Allocations Scheme pilot has been utilised using Part 4 of the Domestic Abuse Act (2021) whereby local authorities are required to have a strategy on accommodation support on accommodation for victim survivors of domestic abuse. The local authority is looking at all options which allow a victim survivor to stay in their home, so they do not have to move to leave the relationship. Obviously, this will not be an option in all cases and is part of a suite of options.

Conclusion

The Restart Programme is an earlier intervention and accommodation pilot for those who are at risk of perpetrating or where there is domestic abuse within families who are in contact with children's social care. The intervention is designed to fully assess risk and potential for abuse alongside offering support and tools for use in the longer term. The

Restart Project has been piloted across 6 London Boroughs with the aim of developing it further.

This document has been produced to set out some examples for discussion in relation to creating a domestic abuse perpetrator housing pathway in relation to existing legislation. It is intended to stimulate discussion and consideration in areas across England as to how we can support victim survivors to stay in their own homes when it is safe to do by working to address perpetrators housing needs.