

DOMESTIC VIOLENCE, HOUSING AND HOMELESSNESS



Domestic violence accounts for around a quarter of all recorded crime and is one of the leading causes of homelessness for women. This guide sets out your housing rights if you are experiencing domestic violence and are currently living with your abuser. It also looks at the legal options which are available if you can no longer stay in your home and need to find somewhere else to live.

There is no legal definition of domestic violence in the law of England and Wales. It can include any violence or threat of violence that takes place in or outside the home between family, household members or partners in existing or previous relationships. In addition to physical violence and sexual abuse it may include financial, psychological and emotional abuse – such as harassment, persistent letters, telephone calls, text messages or emails.

Almost all domestic violence is directed by men against women, but it can and does occur in same-sex relationships, and in a small minority of cases, by women against men. Although we refer here to the abuser as ‘he’ we recognise that this is not always the case.

How can the law protect me if I want to stay in my home?

The options that are available to you depend on whether you are married, in a civil partnership or living together. In addition, your rights may depend on whether you are renting or you own your home.

If you are married, in a civil partnership or cohabiting with your abuser you can apply to the court for an **occupation order**. This is an order which decides who lives in your home. It

is a temporary measure which can exclude your abuser from your home. It usually lasts six months although it can be extended and will allow you time to look at other options.

The court has the power to order your abuser to pay the rent, mortgage or other outgoings when making an occupation order. If you have been forced out of your home you can also apply to the court to get back in.

This is a complex area of law and you should see our **Guide to Domestic Violence and the Law**, call our advice line or contact a solicitor for further information.

If you own your home or are renting and the tenancy is in your name and you are not married then your abuser has no legal right to remain in the property and you can request that he leaves.

Alternatively, if you rent your home with your abuser and the tenancy is not in your name (or if it is in your joint names) you can apply to the county court under **Part IV Schedule 7** of the **Family Law Act 1996** for the tenancy to be transferred into your sole name. This type of order is called ‘a Part II Order’. You can make an application under this section if you are married or civil partners (provided you have started divorce/dissolution

proceedings), or if you are living together. The court can order the person to whom the tenancy is transferred to pay money in respect of rent to the other person.

If the tenancy is an assured shorthold tenancy you will not be entitled to make this application so you will need to check what sort of tenancy you have.

When deciding whether to make a transfer of tenancy the court must consider all the circumstances including:

- the circumstances in which the tenancy was granted
- the circumstances in which either of you became tenants
- the housing needs and housing resources of you/any relevant child
- your financial resources
- the likely effect of any order on the health, safety and wellbeing of both of you and any relevant child
- the conduct of both of you
- your suitability as tenants

If you are cohabitants and only one of you has a right to live in the property, the court will also consider:

- the nature of the relationship
- the length of time you lived together
- whether there are children
- the length of time since you stopped living together

You can apply for this order whether you are renting privately or whether you are a local authority tenant.

If you want to remain in your home but you are concerned about the security, you should contact your local authority to see if they operate a **sanctuary scheme** in your area. The purpose of this scheme is to help prevent victims of domestic violence from having to leave their homes by providing them with additional security measures including a **safe room** in their home. This involves a room fitted with safety measures such as extra

locks, closed circuit television, security lights and a direct alarm through to the police. You will need to check with your local authority to see if they offer this service. This scheme will only be set up if you request it and if your abuser no longer lives in your home. If you are at high risk this may not provide sufficient protection for you.

Emergency transfer

In certain circumstances local authorities are able to do emergency transfers. You will normally require a statement from the police confirming that you are at risk and that you must be moved. Because local authority allocation schemes vary, you should contact your local authority housing officer about this option.

What are my rights if I leave my home because of domestic violence?

If you leave your home because staying there will lead to domestic violence and you do not wish to return, the local authority may have a duty to help you under **Part VII** of the **Housing Act 1996** (HA1996) and the **Homelessness Act 2002**.

The duties of the local authority vary depending on whether you meet certain criteria.

The criteria are that you:

- are unintentionally homeless
- are in priority need
- are eligible
- have a local connection

It may have a duty to provide you with accommodation or you may only be entitled to advice.

Under HA 1996 domestic violence is defined as 'violence from another person or threats from another person which are likely to be carried out'. This includes actual violence and threats of violence and includes violence inside or outside the home. There is no need for violence to have

already taken place. The **Homelessness Code of Guidance 2006** makes it clear that domestic violence is not just physical violence and specifically states that it should be understood to include threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional). Local authorities must have regard to the Code of Guidance before making a decision and cannot require proof of domestic violence before they will act.

The local authority will have a duty to help you if you are homeless or if you are threatened with homelessness. Threatened with homelessness means that you are likely to become homeless within 28 days. You can still be considered homeless if you are living in a refuge or if you have a home but it is likely that you will experience violence or threats of violence if you return.

You will be considered **unintentionally homeless** if someone has used or threatened violence against you and you have been forced to leave your home because of domestic violence.

You will be considered **in priority need** if you:

- are pregnant
- have dependent children who live with you or might reasonably be expected to live with you
- are vulnerable as a result of mental illness or disability
- are homeless as a result of emergency: flood, fire or disaster.

If you are not pregnant and you do not have dependent children, you will still be in priority need if the local authority finds that you are **vulnerable** as a result of having to leave your home because of violence or threats of violence. The local authority will decide whether your personal circumstances mean that being homeless will have a particularly serious effect on you.

If you are applying to a local authority in **Wales** you will be considered to be in priority need if you are fleeing domestic violence. This makes it much

easier to qualify for housing assistance if you are not pregnant and do not have dependent children.

Unless you are pregnant or have dependent children the decision as to whether you are in priority need can be complicated. You may wish to seek legal advice from a solicitor.

In order to qualify for local authority help you must also be **eligible** for assistance. Unless you are subject to asylum or immigration restrictions it is very likely you will be eligible. The rules on eligibility are subject to change, so if you have any concerns about your immigration status you should get advice from an immigration solicitor before approaching your local authority.

If you are fleeing domestic violence you are entitled to apply to any local authority and the local authority will not be allowed to refer you back if there is a risk of violence to you if you return. It is not necessary to have a **local connection** in cases of domestic violence.

Procedure

You should first contact your local homeless persons unit (HPU) or local authority housing office. The local authority will then have a duty to investigate your case.

If the local authority has reason to believe that you are homeless/threatened with homelessness, in priority need (for example, you are vulnerable from domestic violence) and eligible it **must** provide you with immediate temporary accommodation until they have completed their enquiries and notified you in writing of their decision. This may be bed and breakfast or hostel accommodation. If you have been experiencing domestic violence you should therefore tell the local authority at the earliest opportunity.

It is up to the local authority to investigate your case, it is not your responsibility to prove it. Although you do not need proof of violence, if you

have a police report concerning an incident of domestic violence you should give this to the local authority because it is good evidence which can assist you.

If the local authority is satisfied that you are eligible, in priority need and unintentionally homeless it has a duty to provide you and your family with secure and suitable accommodation. This is called the **main housing duty**. There is no time limit on this but it can end in certain circumstances. You should ask your local housing officer for further information.

If the local authority does not consider that you are in priority need but decides you are unintentionally homeless and eligible it must provide you with free advice and assistance. This should include a list of hostels and private accommodation in your area.

The **Homelessness Code of Guidance 2006**, which local authorities must consider, says that they have a duty to notify you in writing within 33 days. At the same time it must also notify you of your right to request a review of the decision if you are not happy with it.

Challenging the LA's decision

Once you have been notified in writing of a decision there are various ways you can challenge it.

You have a right to request a review by the local authority of many decisions including those of eligibility, priority need and whether you are intentionally homeless or not. The request for review must normally be made within 21 days. The 21 days starts on the day you receive the decision, not from the date it was sent. This can be important if you have left your home and are having problems getting your post.

A review request does not need to be in writing so a conversation with someone or a message left on an answering machine can be a legitimate

request. This should only be relied on in an emergency, for example, if the deadline is about to expire. It is always useful to make a note of the name of the person that you speak to.

The request does not need to contain reasons why the decision is wrong, these can be provided at a later stage. You only need to state that you want to review the decision. This can be useful if you need time to find legal representation.

If the review fails you can apply to the county court within a further 21 days. However this can only be done where there is a "point of law" and you should seek urgent legal advice as the deadline is extremely strict. The council may decide to continue to house you while it reviews your case but it does not have to do so.

You may be able to challenge other decisions by judicial review. Strict time limits apply and you should seek urgent legal advice.

Alternatively, you may wish to contact the government ombudsman. This can be a slow process and you normally have to use the local authority complaints procedure first.

The law clearly states that there is **no obligation to get an injunction** (i.e. a non molestation order or an occupation order) before the local authority will help you. You should challenge your local authority if they refuse to help you for this reason.

Can I reject the accommodation?

The home you are offered should be reasonable and suitable for your needs. This means it must be big enough for you and any children that live with you and that it should be free from a risk of violence.

What is considered reasonable may depend on whether the home you are offered is temporary or permanent. For example, it might be considered reasonable for a woman with one child to live in a one bedroom flat if it is only on a temporary basis.

You are entitled to view the property before being requested to say whether you accept or refuse it and before you sign the tenancy agreement.

If you do not think the accommodation is suitable, it is still advisable to accept the offer and request a review. This is because if you reject it the council may be entitled to refuse to find you alternative accommodation.

Protection of your belongings

Under HA 1996 if you have been provided with temporary or permanent accommodation the local authority also has a duty to take reasonable steps to protect your personal belongings if they are in danger of being lost or damaged because you cannot look after them. For example, this could be if they are in your former home and your abuser is threatening to dispose of them.

Transferring to another area

If you are at risk of domestic violence you can be transferred to another local authority. The local authority will first need to establish that you are eligible before transferring you.

Housing Benefit

If you are fleeing domestic violence and you have to rent another property you may be entitled to housing benefit, even if you own the home you have left.

In some cases housing benefit can be paid on two homes for a limited period if the reason you are absent from your home is because of a fear of violence.

If you are intending to return you may be entitled to housing benefit for up to 52 weeks. If you are not intending to return housing benefit may only be payable for 4 weeks.

This is a complex area and the law frequently changes. You should check with your local Citizens

Advice Bureau (see Other useful numbers) or your local benefits office.

Evicting your abuser

If you were living in rented accommodation with your abuser and are now living elsewhere and are unlikely to return, it may be possible for your landlord to make an application to the county court to **evict your abuser** because of domestic violence. This will depend on the type of landlord and tenancy that you have. There is no obligation on the landlord to grant you a new tenancy once your abuser has been evicted, therefore the main effect is that this will punish your abuser rather than assist you directly. This is a complicated area of law and you should seek legal advice.

Other options

Refuges are available to women with or without children who are fleeing domestic violence. There are 400 in England. In addition to accommodation they will provide you with support and advice on benefits and housing.

You should also apply to go on the local authority's **housing register** in addition to any other application you make. Local authorities can only offer you permanent housing if you are on this register. This can avoid the situation where you are constantly being moved from one temporary home to another. Waiting lists can be long, so the sooner you apply the better. You do not need to wait for the outcome of the decision on homelessness before you do this.

The law relating to domestic violence, housing rights and homelessness is complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or contacting a solicitor.

For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)** on **Tuesdays 11am–1pm and Thursdays 2–4pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 2–4pm and Wednesdays 11am–1pm.**

Other useful contacts

Community Legal Advice (for finding a family solicitor)	0845 345 4345	www.legaladvisorfinder.justice.gov.uk/AdviserSearch.do
Department of Work and Pensions		www.dwp.gov.uk
Gingerbread	0808 802 0925	www.gingerbread.org.uk
National Domestic Violence Helpline	0808 2000 247	www.nationaldomesticviolencehelpline.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Shelter	0808 800 4444	www.shelter.org.uk

Rights of Women, 52 – 54 Featherstone Street, London EC1Y 8RT

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Website: www.rightsofwomen.org.uk

Charity number: 1147913

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Please note that the law referred to in this legal guide is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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