



# HOMELESSNESS CAUSED BY DOMESTIC VIOLENCE<sup>1</sup> HOUSING LAW

<sup>1</sup> Please note that the contents of this leaflet relate to the laws of England and Wales only.



## CONTENTS

1. YOUR CLIENT'S RIGHTS IF THEY DO NOT WISH TO RETURN HOME DUE TO DOMESTIC VIOLENCE	04
2. YOUR CLIENT'S RIGHTS TO ACCOMMODATION IF SHE IS PREGNANT OR HE/SHE HAS CHILDREN	08
3. HOW TO APPLY FOR HELP FROM A LOCAL AUTHORITY	09
4. HOW TO CHALLENGE THE DECISION OF THE LOCAL AUTHORITY IF THEY DECIDE YOUR CLIENT IS NOT ENTITLED TO ACCOMMODATION	10
5. REQUESTING A REVIEW	12
6. COUNTY COURT APPEALS	14
7. COMPLAIN TO THE OMBUDSMAN	16
8. JUDICIAL REVIEW	18
9. HOW TO CHALLENGE THE DECISION OF A REFUGEE IF THEY WILL NOT ASSIST YOUR CLIENT	19
10. WHERE TO GO NEXT	20



## I. YOUR CLIENT'S RIGHTS IF THEY DO NOT WISH TO RETURN HOME DUE TO DOMESTIC VIOLENCE

If your client does not wish to return to their home due to domestic violence the local authority may have a duty to help them under Part VII of the Housing Act 1996 and the Homelessness Act 2002.

The local authority's duty may be to provide them with accommodation or only to provide advice, depending on whether they fulfil certain criteria.

If your client fulfils the following criteria then the local authority will have a duty to provide them with accommodation:

- he/she is homeless or threatened with homelessness;
- he/she became homeless or threatened with homelessness unintentionally;
- he/she has a priority need for accommodation;
- he/she is eligible for assistance; and
- he/she has a local connection.

Each of the above criteria are considered in more detail below:

## **1.1 Homeless or threatened with homelessness**

Your client will be considered to be homeless if it is unreasonable for them to continue to occupy their home because it is probable that this will lead to violence against them. Guidance for local authorities<sup>2</sup> indicates that the term 'violence' should not be given a restricted meaning for these purposes and includes psychological, financial or emotional abuse as well as physical or sexual abuse.

Your client will be considered to be threatened with homelessness if they are likely to become homeless within 28 days.

## **1.2 Homelessness is not intentional**

If your client is forced to leave their home due to domestic violence then they will be considered to be unintentionally homeless.

If your client chose not take legal action against the perpetrator of the violence, the local authority should not use this as a reason for concluding that your client is intentionally homeless. Guidance for local authorities indicates that although authorities may wish to inform your client of their options in relation to taking legal action (e.g. obtaining an injunction), they should make it clear that there is no obligation on them to take any such action. The guidance also makes it clear that if

---

<sup>2</sup>The Homelessness Code of Guidance for Local Authorities.

your client does not have confidence in the ability of an injunction to protect them from further violence they should not be expected to return home on the strength of an injunction.

If your client is found to be intentionally homeless the local authority will not have a duty to provide them with accommodation, but they will still have a duty to provide advice and assistance in finding accommodation. If your client is considered to be in priority need and intentionally homeless then the authority will also have a duty to provide them with accommodation for a period of time which will give them a reasonable opportunity to find alternative accommodation.

### **1.3 Priority need**

Your client will be considered to have a priority need for accommodation if they are vulnerable because they have fled their home because of violence or threats of violence which are likely to be carried out.

It is a matter of judgement for the local authority whether your client's circumstances make them vulnerable. In deciding whether your client is vulnerable the local authority will consider whether they would be less able to fend for themselves when homeless than another as a result of the violence or threats they have experienced.

Your client will also be considered to have a priority need for accommodation if:

- she is pregnant;
- he/she has dependent children with them;
- he/she is considered to be vulnerable as a result of old age, mental illness, learning disability, physical disability, having been in care, having been in the navy, army or air force or having been in prison;

- he/she is 16 or 17;
- he/she is under 21 and used to be in care or fostered; or
- he/she is homeless as a result of an emergency e.g. flood or fire.

If your client is not considered to have a priority need for accommodation then the local authority will not have a duty to provide them with accommodation but it will still have a duty to provide advice and assistance on finding accommodation.

## **1.4 Eligible for assistance**

Unless your client is subject to certain asylum or immigration restrictions it is likely that they will be eligible for assistance.

The provisions on eligibility are complex and so if you are concerned about the immigration status of your client you should advise them to take advice from an immigration solicitor before approaching their local authority. For more information on where to obtain advice please see the "Where to go Next" section below.

## **1.5 Local connection**

Local authorities are usually able to refer an application to another local authority if the applicant does not have a local connection with the authority to which the application is submitted. However, if your client is fleeing domestic violence they are entitled to apply to any local authority and that local authority will not be entitled to refer them back to their local authority if there is a risk of violence to them if they return.



## 2. YOUR CLIENT'S RIGHTS TO ACCOMMODATION IF SHE IS PREGNANT OR HE/SHE HAS CHILDREN

Outside the context of domestic violence, the local authority may also have a duty to help your client under Part VII of the Housing Act 1996 and the Homelessness Act 2002 if he/she is pregnant or has children.

If your client fulfils the criteria set out at section 1.3 above then the local authority will have a duty to provide them with accommodation. Your client will be considered to be in priority need if they are pregnant or have dependent children with them.

### 3. HOW TO APPLY FOR HELP FROM A LOCAL AUTHORITY

In order to apply for help from a local authority your client should first contact their local homeless persons unit or local authority housing office. The local authority then has a duty to investigate your client's case.

If the local authority has reason to believe that your client may be homeless, eligible for assistance and have a priority need then it must provide them with immediate temporary accommodation until it has completed its enquiries and notified your client of its decision.

Guidance for local authorities indicates that they should notify your client of their decision in writing within 33 days. If the decision is against your client's interests then this notification must explain clearly and fully the reasons for the decision and notify your client of their right to request a review of decision if they are not happy with it.



## 4. HOW TO CHALLENGE THE DECISION OF THE LOCAL AUTHORITY IF THEY DECIDE YOUR CLIENT IS NOT ENTITLED TO ACCOMMODATION

If your client disagrees with the decision the local authority has made in relation to their homelessness application it may be possible to challenge their decision and get it overturned. Options to challenge the authority's decision include:

- asking the local authority to review its decision;
- appealing the authority's decision to the county court;
- complaining to the local government ombudsman; and/or
- applying for judicial review of the decision.





## 5. REQUESTING A REVIEW

Most decisions that the local authority makes in relation to a homelessness application can be reviewed internally. Decisions which can be reviewed include:

- decisions about whether your client is eligible for assistance;
- decisions about whether the local authority has a duty to provide your client with accommodation or assistance;
- decisions about referring your client to another local authority; and
- decisions about the suitability of accommodation offered.

Your client can request a review by asking for a review within 21 days of receiving the authority's decision. At this point there is no need for your client to set out why they think the authority's decision is wrong, it is enough just to inform the authority that they would like them to review the decision. The authority should not charge to review the decision.

Once your client has made their request they will normally be given a time limit for providing further information about their circumstances. The process can be different at different authorities but normally your client will be given the opportunity to put their arguments forward in writing or in person.

The review itself does not need to be carried out by someone independent to the local authority. However, it must be carried out by someone who was not involved in the original decision and who is more senior than the officer who took the original decision.

It can take 8 weeks or more to conduct a review. During this time the local authority can provide your client with accommodation but does not have to.

Once the review is complete your client will be informed in writing of the decision. The letter must explain:

- the decision made by the local authority on the review;
- how the authority has come to this decision; and
- that your client can appeal against the decision to the county court if they think the decision is legally incorrect and the time limit for doing so.



## 6. COUNTY COURT APPEALS

If your client does not agree with the result of the local authority's review it may be possible for them to appeal to the county court. Your client can only appeal to the county court if they can show that the local authority has come to a decision that is legally incorrect.

In most cases, the appeal needs to be started within 21 days of being notified of the review decision. Appeals in county court are complex and so your client should get legal advice before taking action. Your client should also ask their legal advisor about the costs which may be incurred in appealing the local authority's decision and whether any fees are covered by legal aid before proceeding. For more information on where to obtain advice please see "Where to go Next" below.

If your client needs accommodation until the date of the appeal the local authority can provide this but does not have to.





## 7. COMPLAIN TO THE OMBUDSMAN

The Local Government Ombudsman can look into the way the local authority processed your client's homelessness application to make sure it acted fairly and followed correct procedures. The ombudsman may investigate the way a decision has been made but may not question the merits of a decision properly reached. For example issues that the ombudsman could consider include where the local authority:

- took too long to do something;
- did not follow their own rules or the law;
- broke their promises;
- treated your client unfairly; or
- gave your client the wrong information.

Once the ombudsman has completed its investigations it can recommend that the local authority pays compensation or takes action to put things right. The local authority is not legally obliged to comply with ombudsman's recommendations but they do usually comply.

## HOMELESSNESS CAUSED BY DOMESTIC VIOLENCE HOUSING LAW

Please note that in most cases the ombudsman would expect your client to have completed the internal review process with the local authority prior to complaining to the ombudsman. In addition if your client has already appealed to the county court they will usually not be allowed to complain to the ombudsman as well.

Your client will need to complain within 12 months of receiving confirmation of the review decision. It is free to complain and your client can do this by completing the review form available at [http://www.lgo.org.uk/forms/ShowForm.asp?fm\\_fid=62](http://www.lgo.org.uk/forms/ShowForm.asp?fm_fid=62)

Guidance on how to complain is also available on the ombudsman's website at <http://www.lgo.org.uk/making-a-complaint/>.

Your client may also wish to get legal advice to assist them in complaining to the ombudsman. Further information on where to obtain advice from is at the "Where to go Next" section below.



## 8. JUDICIAL REVIEW

It is not always possible to appeal a local authority's decision in the county court. In these cases your client may be able to get the decision changed by judicial review. This is generally used to challenge the way a decision was made rather than the decision itself.

This is a very complex area and your client will need specialist legal advice if they wish to pursue this option. Your client should also ask their legal advisor about the costs which may be incurred and whether any fees are covered by legal aid before proceeding. Further information on where to obtain advice from is at "Where to go Next" below.

## 9. HOW TO CHALLENGE THE DECISION OF A REFUGE IF THEY WILL NOT ASSIST YOUR CLIENT

Unlike local authorities, refuges do not have a legal duty to assist your client if they are made homeless due to domestic violence. However, there are some practical steps your client could take to persuade the refuge to help if they will not assist initially.

Firstly your client could ask the refuge to confirm the reasons why they are not able to assist. This may help your client to address any concerns the refuge has about allowing them to stay. Your client could also ask the refuge to provide them with a copy of their policy and/or mission statement and see if this aligns with the reasons they have given for not assisting. If the way they have acted towards your client contradicts commitments made in their policy or mission statement your client may be able to use this to persuade them that they should allow your client to stay at the refuge.



## 10. WHERE TO GO NEXT

### **Rights of Women legal advice line**

Telephone 0207 251 6577

Textphone on 0207 490 2562

(Open Tuesday – Thursday 2.00 pm to 4.00 pm and  
7.00 pm to 9.00 pm, and Friday 12.00 pm to 2.00 pm.)

Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

### **Freephone 24 Hour National Domestic Violence Helpline**

Telephone: 0808 2000 247

Website: [www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)

### **Citizens' Advice Bureau**

Wales: 08444 77 20 20

England: 08444 111 444

TextRelay: 08444 111 445

Website: <http://www.citizensadvice.org.uk>

### **Southall Black Sisters (for immigration matters)**

Provides advice and information on domestic violence,  
racial harassment, welfare and immigration, primarily  
for Asian, African and African-Caribbean women.

Casework primarily undertaken in London Borough of  
Ealing, but deals with enquiries on a national basis.

Tel: 020 8571 9595  
(Open Monday – Friday 10.00 am to 5.00 pm,  
closed Wednesday)  
Fax: 020 8574 6781  
Email: southallblacksisters@btconnect.com

**Community Legal Service Direct (for finding a family/immigration solicitor)**

Telephone: 0845 345 4345  
Website: [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

**The Law Society (for finding a family/immigration solicitor)**

Online search tool: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

**Resolution (for finding a family solicitor)**

Telephone: 01689 820272  
Website: [www.resolution.org.uk](http://www.resolution.org.uk)

**Community Legal Advice (for legal aid calculations)**

Telephone: 0845 345 4345  
(Open Monday – Friday 9.00 am to 8.00 pm,  
Saturday 9.00 am to 12.30 pm)  
Online call back service: [https://forms.direct.gov.uk/forms/form/277/en/community\\_legal\\_advice-call\\_back\\_service](https://forms.direct.gov.uk/forms/form/277/en/community_legal_advice-call_back_service)





"This booklet has been prepared as part of a joint project between DLA Piper and St Mungo's. All rights reserved. While all care has been taken to ensure the accuracy of information, neither party can be held liable for any incorrect information. Copyright, DLA Piper and St Mungo's, April 2012"

*St Mungo's runs over 100 projects across London and the South, providing accommodation and much more for over 1,700 people every night of the year. From emergency support off the streets to semi-independent housing and move on guidance, employment opportunities, training and health support, the charity helps thousands of people to make permanent life changes every year.*  
[www.mungos.org](http://www.mungos.org)

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

[www.dlapiper.com](http://www.dlapiper.com)

**DLA Piper** is a global law firm operating through various separate and distinct legal entities.

Further details of these entities can be found at [www.dlapiper.com](http://www.dlapiper.com)

Copyright © 2012 DLA Piper. All rights reserved. | JUN12 | 2319390