

The issue

Lockdowns around the world bring rise in domestic violence

<https://www.theguardian.com/society/2020/mar/28/lockdowns-world-rise-domestic-violence>

The Lancet 8 May 2020

An area of concern is the impending crisis of domestic violence—gender-based violence and child abuse and neglect, due to movement restrictions, loss of income, isolation, overcrowding, and stress and anxiety, all which put women and children at a disproportionately increased risk of harm –

[https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30112-2/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30112-2/fulltext)

Legal issues

- Ability to travel to move away from abuse
- Housing and support options from local government
- Those without recourse to public funds because of immigration status
- Human rights implications
- Equalities Act implications

Travel/ movement restrictions

Restrictions on movement

6.—(1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse **includes the need—**

(a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;

(b) to take exercise either alone or with other members of their household;

(c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2;

(d) to provide care or assistance, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006(3), to a vulnerable person, or to provide emergency assistance;

(e) to donate blood;

(f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;

(g) to attend a funeral of—

(i) a member of the person's household,

(ii) a close family member, or

(iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;

(cont'd)

h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;

(i) to access critical public services, including—

(i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);

(ii) social services;

(iii) services provided by the Department of Work and Pensions;

(iv) services provided to victims (such as victims of crime);

(j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;

(k) in the case of a minister of religion or worship leader, to go to their place of worship;

(l) to move house where reasonably necessary;

(m) to avoid injury or illness or to escape a risk of harm.

(3) For the purposes of paragraph (1), the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.

(4) Paragraph (1) does not apply to any person who is homeless.

The amendment Regulations

5 May 2020

“(I) to undertake any of the following activities in connection with the purchase, sale, letting or rental of a residential property— (i) visiting estate or letting agents, developer sales offices or show homes; (ii) viewing residential properties to look for a property to buy or rent; (iii) preparing a residential property to move in; (iv) moving home; (v) visiting a residential property to undertake any activities required for the rental or sale of that property;”;

http://www.legislation.gov.uk/ukxi/2020/500/pdfs/ukxi_20200500_en.pdf

Is fleeing DV essential movement?

What is an essential move?

<https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-social-landlords-on-essential-moves>

All social landlords are therefore advised to pause non-essential allocation and transfer activity.

Essential activity deemed to be in the public interest would include:

supporting victims of domestic abuse and people fleeing other forms of violence

preventing severe overcrowding

facilitating move-on from temporary accommodation

facilitating discharge from hospital to free-up bed space for others requiring care

supporting those living in unsafe accommodation, or without settled accommodation, which poses a risk to their health

Moving home guidance

<https://www.gov.uk/government/news/new-guidance-on-moving-home>

13 May 2020

Housing Act 1996

S.175 definition of homelessness, includes as person whose accommodation is not reasonable to continue to occupy

Housing Act 1996 s.177

Whether it is reasonable to continue to occupy accommodation

(1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against him, or against—

- (a) a person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

(1A) For this purpose “violence” means—

- (a) violence from another person; or
- (b) threats of violence from another person which are likely to be carried out;

and violence is “domestic violence” if it is from a person who is associated with the victim.

Housing Act 1996 s.178

Definition of associated person for purposes of s.177

Homelessness Code of Guidance

<https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-21-domestic-abuse>

CoG

21.19 The term ‘violence’ **should not be given a restrictive meaning**, and ‘domestic violence’ should be understood to include physical violence, threatening or intimidating behaviour, and any other form of abuse which directly or indirectly may give rise to harm; between persons who are, or have been, intimate partners, family members or members of the same household, regardless of gender identity or sexual orientation.

21.20 An assessment of the likelihood of a threat of violence or abuse being carried out should not be based on whether there has been actual violence or abuse in the past. Assessments must be based on the facts of the case and should be devoid of any value judgements about what an applicant should or should not do, or should or should not have done, to mitigate the risk of any violence and abuse. [my emphases]

21.21 It is essential that inquiries do not provoke further violence and abuse. Housing authorities **should not approach the alleged perpetrator...**[original emphasis]

Housing Act eligibility

S.185 immigration based eligibility: those subject to immigration control not eligible for assistance unless re-included by the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006

Those who are not eligible for housing assistance...

Art.3 based right to support

Limbuela v SSHD [2005] UKHL 31: not a freestanding art.3 right to support, see [66]

Also *R(MK) v LB Barking and Dagenham* [2013] EWHC 3486 (Admin) at [89]

Localism Act

Not a route into housing for the ineligible

See MK (above) and *R(AR) v Hammersmith and Fulham* [2018] EWHC 3453 (Admin)

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/3453.html&query=\(.2018.\)+AND+\(EWHC\)+AND+\(3453\)+AND+\(\(Admin\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/3453.html&query=(.2018.)+AND+(EWHC)+AND+(3453)+AND+((Admin)))

Care Act 2014

No accommodation power or duty to provide ordinary accommodation unless care and support needs which require the provision of accommodation

see *AR* and also *R(GS) v LB*

Camden [2016] EWHC 1762 (Admin)

MHCLG position

See letter from MCHLG 26 March 2020

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876466/Letter_from_Minister_Hall_to_Local_Authorities.pdf

MHCLG letter

The basic principles are to:

- focus on people who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres*
- make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities*
- utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic***
- mitigate their own risk of infection, and transmission to others, by ensuring they are able to self-isolate as appropriate in line with public health guidance [emphasis added]*

(cont'd)

Urgently procuring accommodation for people on the streets if you have not already done so – MHCLG will support you to do so if you are struggling to procure sufficient units

4. Triaging people ...

5. Getting the social care basics such as food, and clinician care to people who need it in the self-contained accommodation. It is likely that you will need to utilise your commissioned homeless services to provide support to people in this accommodation and we urge you to work with the commissioned and non-commissioned sector to make sure there are adequate levels of support provided.

Further explanation of Govt position

<https://homeofficemedia.blog.gov.uk/2020/05/05/no-recourse-to-public-funds-nrpf/>

- *The Government also announced the provision of additional funding for local authorities in England and additional funding for the devolved administrations. This additional funding to councils in England means we have now provided them with over £3.2 billion during this pandemic to support vulnerable groups.*
- *This funding will assist local authorities across the UK with providing accommodation and support to vulnerable people who are at risk of, or who have been diagnosed with, Covid-19. **We will continue to work closely with local authorities to ensure that they have the resource they need to protect people who are currently, or at risk of, sleeping rough.***
- *In addition, **local authorities may provide basic safety net support, regardless of immigration status, if it is established that there is a genuine care need that does not arise solely from destitution, for example, where there are community care needs, migrants with serious health problems or family cases where the wellbeing of a child is in question.***
- *We have also temporarily extended the eligibility criteria for [free school meals](#) to support some families with no recourse to public funds, in recognition of the difficulties they may be facing during these unique circumstances.*

and...specifically re DV

- *The Government recognises that NRPF restrictions can make it difficult for migrant victims of domestic abuse to access safe accommodation, particularly when many refugees rely on housing benefit to fund their services.*
- *The **Destitution Domestic Violence Concession** (DDVC) is designed to address this issue for those who have been granted leave to enter or remain in the UK on a partner visa and who therefore have a reasonable expectation of securing indefinite leave to remain. For those who are eligible, the DDVC provides a period of three months' leave outside the Immigration Rules independent from their sponsor, as well as recourse to public funds to support them to find safe accommodation whilst they apply for indefinite leave to remain under the Immigration Rules.*
- *As noted, the DDVC is only available to migrants on a UK partner visa, however the Home Office has announced it is opening a £1.5 million pilot fund to support those with no recourse to public funds in securing safe accommodation. The Home Office will then use this pilot to assess the level of support needed for migrant victims, in order to inform future funding decisions. Separately, as part of the Domestic Abuse Bill, the Home Office will provide a review of the Government's response to migrant victims of domestic abuse during the report phase of the Bill.*
- *During the coronavirus outbreak, the Home Office has also launched the #YouAreNotAlone campaign to ensure that all victims of domestic abuse are aware that existing sources of support remain open to them.*
- *The Home Office has also announced £2 million in funding to improve domestic abuse charities online tools such as websites and chat rooms.*

Under what power?

Combination of accommodation (Housing) and social care support (Care Act) to those who are ineligible for these forms of support because of s.185 HA 1996 and/ or Schedule 3 Nationality Immigration and Asylum Act 2002 (para.1, 3, and 7)

Operation of NIAA 2002

- Those who are unlawfully present are ordinarily ineligible for CA 2014 support, save where it is necessary to prevent a breach of a person's human rights
- Human rights breach may be capable of being avoided by applicant returning to country of origin
- C-19 may prevent this with resulting art.3 need for support

Human Rights issues

- No HRA right to housing
- Positive obligations under art.8 limited by the need for connection between the service sought and art.8 and the margin of appreciation where allocation of scarce resources is in issue: *Sentges v Netherlands* (2003) 7 CCLR 400, 405

Case law on art.8

- **Bernard v Enfield “high water mark”**

“they had to endure deplorable conditions, wholly inimical to private and family life, for a long time. They have received no explanation or apology and do not have the comfort of knowing that their sufferings have not been in vain. There is no indication that this case has prompted the Council to introduce revised procedures. The claimants' problems have been compounded by the defendant's conduct: its failure to respond to correspondence or to make any meaningful response until driven to do so by judicial review proceedings, the unwarranted threat of eviction, and its failure to comply with timetables set by the court. These criticisms may appear harsh, but they are inevitable in the absence of any relevant evidence from the defendant” [61].

R(Anufrijeva) v LB Southwark
[2004] QB 1124

CA held that:

- Article 8 is capable of imposing a positive obligation to provide support, but it was hard to conceive of a situation where Article 8 required a person to be provided with welfare support where his predicament was not sufficient to engage article 3 (inhuman or degrading treatment).
- However, **if a child's welfare was at stake**, Article 8 may require the provision of welfare support to allow the family life to continue.

McDonald v RB Kensington and Chelsea

<https://www.supremecourt.uk/cases/docs/uk-sc-2011-0005-judgment.pdf>

No breach of art.8 where LA declined to provide night time carer to assist toileting but offered incontinence pads where applicant was not clinically incontinent but had mobility issues

ECtHR held that there was a breach of art.8 while there was an assessed need for night time care and this was not provided

R(Idolo) v Bromley

<https://www.bailii.org/ew/cases/EWHC/Admin/2020/860.pdf>

No breach of art.8: delay but no culpability
[69]

Article 14

SSHHD v JCWI (“right to rent”) [2020] EWCA Civ 542

- well-established and uncontroversial that article 14 is not a free-standing provision generally proscribing discrimination on the grounds of a relevant status, but it relates only to the enjoyment of one of the substantive ECHR rights – in this case, article 8.
- for article 14 to be engaged, it does not require a breach of that substantive right, for otherwise it would add nothing to the protection given by those rights and would be at most a mere reinforcing provision. Nevertheless, it must have some relationship with a substantive right.
- proceeded on the assumption that, whilst not falling within the scope of article 8, the facts fell within its ambit
- On the basis that there was relevant discrimination which fell within the ambit of article 8 of the ECHR, the vital question was whether there is "an objective and reasonable justification" for the difference in treatment
- Such justification was found to exist but “whether seen in terms of the manifestly without reasonable foundation criterion or on a simple proportionality balancing exercise, I consider the Scheme to be a proportionate means of achieving its legitimate objective and thus justified” [151]

NRPF condition unlawful

R(W, a child) v SSHD 6 May 2020 (no judgment available)

<https://www.gardencourtchambers.co.uk/news/high-court-rules-home-office-no-recourse-to-public-funds-policy-for-migrants-en-route-to-settlement-is-unlawful>

Resources

<https://www.gov.uk/government/publications/covid-19-guidance-for-domestic-abuse-safe-accommodation-provision/covid-19-guidance-on-isolation-for-domestic-abuse-safe-accommodation-settings>

Any questions?

