

Domestic abuse is a crime under both civil and criminal law. The legislation is summarised below.

1. Civil action

1.1 Family Law Act 1996 Part IV

1.1.1 The Act provides for a single set of remedies to deal with domestic abuse and to regulate occupation of the family home, through two specific types of order, the non-molestation order and the occupation order.

1.2 Non-molestation orders / injunctions

1.2.1 It is possible to take out an injunction against anyone: e.g. father, husband, son, gay partner, other family member or other household member. An order can prohibit a perpetrator from molesting any named person including any children. The molestation can take the form of physical abuse but can also include other forms of abuse and harassment. It can include specific injunctions such as instructing a perpetrator to stay away from the home.

1.3 Occupation orders

1.3.1 This may take a number of forms (e.g. enforcing the women's right to remain in the home or restricting the perpetrator's right to occupy it, even if he is a tenant or owner occupier). The court has power to order someone to live only in a certain part of the house or to allow someone back into the house, etc. The court has wide powers to order someone not to surrender a tenancy or remove or destroy the contents of the home.

1.3.2 In most cases such orders are made for short periods of time and do not affect long term rights in the property. In the longer term an application can be made to the court for a tenancy to be transferred. An order may be for a specified period, usually six months, or for open-ended period or until a different order is made if further provisions are needed.

1.3.3 Anyone who is a person who is associated with the respondent may apply for an order and an application may be made on behalf of a relevant child. Associated persons are people who:

- Are or have been married;
- Are or have been civil partners;
- Are or have been co-habitees;
- Have lived in the same household (other than one of them being the other's tenant, lodger, boarder or employee);
- Have agreed to marry;
- In relation to a child, they are both parents or have parental responsibility.

This list is not exhaustive.

1.4 Power of arrest

1.4.1 In order to provide better protection, the powers of arrest in relation to the above orders have been strengthened. Where the court makes an occupation or non-molestation order and it appears to the court that the abuser has used or threatened to use abuse against the applicant or a relevant child, the court must attach a power of arrest unless it is satisfied that the applicant or child will be adequately protected without such a power. If a power of arrest is attached a person in breach of the order may be arrested without a warrant.

1.5 Court procedure and privacy

1.5.1 The woman can be reassured that the court process takes place in a private room at the court, which is not open to members of the public. The woman's solicitor will prepare a written statement for her to sign in support of her application for an injunction and/or occupation order. The woman will need to attend court when her application is heard. The woman's solicitor or barrister will put her case to the judge. Getting an injunction will involve at least one court hearing. Unlike a criminal case, there is no obligation on the opponent to attend - if he does not turn up, an order will be made in his absence.

1.5.2 In a dire emergency and/or if it is not safe to give the man prior warning of the application to the court, a court hearing will go ahead without notice to the opponent. Usually an order is granted to the woman. Sometimes the order will provide temporary protection until a further hearing of which the opponent has notice. Otherwise applications are made and the opponent is given prior notice of the court hearing.

1.6 Standard of proof

1.6.1 The standard of proof is lower than in a criminal case. The court has to decide whether the allegations of abuse are true on the balance of probabilities (in a criminal case, it must be beyond reasonable doubt.) In some cases, perpetrators do not even go to court or contest cases, so evidence such as reports to the police may not be required. However, if the perpetrator does fight the case, it helps if there is medical evidence and incidents have been reported to the police or witnessed by others.

1.7 Housing Acts 1985 and 1996

1.7.1 Under Ground 1 Schedule 2 of the Housing Act 1985, a possession order can be granted where an obligation of the tenancy has been broken or not performed. Tenancy agreements should have a clause such as the following, which can be used in relation to domestic abuse, eg:

'you or any member of your family must not use or threaten to use violence by using physical, mental, emotional or sexual abuse against anyone legally entitled to live either in your home or in another of our properties'

1.7.2 The Housing Act 1996 added Ground 2A of Schedule 2 to the Housing Act 1985. Under the Act, possession action can be taken against a remaining tenant where their partner has left the family home because of violence or threats of violence and does not intend to return. This ground can be considered when the partner (whether or not they are a tenant) has been rehoused because of violence and the perpetrator is left in occupation (particularly as they may be under-occupying a family sized unit).

1.7.3 In such cases, sufficient evidence of violence having occurred is required, which can include evidence provided by any professional the survivor is working with. In addition, social landlords can take injunctive action against a tenant if he is in breach of the terms of his tenancy agreement.

1.7.4 Other anti-social behaviour legislation also allows social landlords powers to act against perpetrators in respect of their tenancies. Practitioners should always seek advice from local housing authorities when considering what options are available to the woman in securing protection for herself and the children. It is good practice to invite local housing authorities to meetings arranged to draw up safety plans around women.

2. Criminal action

2.1 Lincolnshire Police officers are under a duty to take positive action when investigating domestic violence offences. Please refer to the College of Policing Authorised Professional Practice, which publishes latest guidance for all police forces to follow investigating domestic abuse.

3. Housing options

Victims of domestic abuse need to consider their housing options for both the short and longer term. If a woman feels she is unable to remain at the family home at least temporarily, the following options could be considered. Note the options of removing the perpetrator as outlined above should always be made known to the woman. Local authority housing teams, homelessness teams or Independent Domestic Violence Advisors are a good source of advice and support regarding housing options.

3.1 Sanctuary Schemes

3.1.1 The Sanctuary Scheme supports some victims of domestic violence who are at risk of becoming homeless due to domestic violence from a current or former spouse, partner or close family member. These schemes are usually managed by the local housing authority.

3.1.2 The Sanctuary scheme can offer victims of domestic abuse the option to remain safely and securely in their homes, through the installation of free, tailored home security. Different councils will have different protocols and processes to access the Sanctuary Scheme. Practitioners will need to contact the relevant council for further information.

3.2 Refuges

3.2.1 Refuges provide safe, emergency temporary accommodation for women and children who need protection from abuse. The workers in the refuges can provide information, advice and support. They can give practical assistance with benefit claims, court appearance etc. However, facilities such as kitchens, bathrooms, and sitting rooms are normally shared and many refuges will not accept women with boys aged 12 or over. Accommodation for males, larger families and older children will also be available from July 2015.

3.2.2 The 24 hour national domestic abuse helpline (0808 2000 247) is run in partnership by Refuge and Women's Aid. As well as providing general advice and support, these agencies refer women to refuges in Lincoln or around the country, or advise on other possibilities if refuges are full.

3.3 Staying with family and friends

3.3.1 Depending on the circumstances, this may be an appropriate short term option. The victim may get more support and it is quick and cheap. However, it may also mean that she is easy for the abuser to find.

3.4 Making a homelessness application

3.4.1 Homeless applications can be made from any address including Refuges and to any Local Authority. They can be made in person, over the phone or by fax or e-mail and by either the victim or the victim's representative. In the first instance, the Local Authority which the victim approaches will decide whether they have a duty to provide temporary accommodation and if so, the type and location of accommodation to ensure the safety of the victim. They will need to consider if they believe it is unreasonable to expect the victim to continue to occupy their accommodation, are eligible and in priority need. If the answer is yes to all of these, then the authority will need ensure suitable temporary accommodation is available to the victim whilst investigations into their Homeless Application are ongoing. Each case will be assessed on an individual basis but Out of Area placements may be necessary.

3.4.2 If the local authority then concludes that the victim is owed a full rehousing duty then the duty to ensure suitable accommodation is available will continue until that duty is discharged in one of the prescribed ways. This is usually through an offer of suitable permanent accommodation. Accommodation must be deemed safe to be thought of as suitable.

3.4.3 Waiting times in temporary accommodation can be lengthy and will vary dependent upon properties becoming available and the needs of the victim/family.

3.5 Management transfers

3.5.1 A management transfer may be an option if the woman is a sole tenant of social housing and the perpetrator lives elsewhere. Each case will need to be considered on an individual basis. Advice about legal remedies and specialist support agencies, as outlined above, should be given to enable the woman to take any necessary steps to protect herself and her family while she is waiting for a transfer. Practitioners should note that some social housing providers will not facilitate management transfers and applicants will have to go through the normal housing register, they should however be given a high level of priority if they are a MARAC case.

3.6 Out of Area

3.6.1 If a sole tenant is experiencing domestic abuse and wishes to move out of the area, it may be possible to nominate to another council or housing association. It may be possible to offer permanent rehousing quickly out of the area. It should be noted however that any victim of Domestic Abuse can be referred to another council under homelessness legislation but they are more likely to be successfully rehoused if they apply directly to the Authority where they wish to live. This is because

the housing authority they apply to will owe the duty and will have easier access to accommodation within their own district.

3.7 Application for Social Housing

3.7.1 Victims can apply to go onto a waiting list usually known as a housing register for a property with a Council or Social Housing Provider. Victims of domestic abuse should be awarded a high level of priority which means they might get rehoused quickly if suitable properties become available.

3.8 Accommodation in the Private Sector

3.8.1 Most if not all local authority housing teams will have a scheme to assist eligible persons to access accommodation in the private sector. This is likely to include some financial assistance with tenancy deposits.

3.8.2 Professionals should ensure that any new home whether social housing or private sector provides sufficient protection for the victim.

4. Immigration issues

Professionals need to ensure that they have a firm understanding of issues around families with no recourse to public funds and how they can work with these victims, especially in relation to access to Legal Aid and Housing.

4.1 Domestic abuse and the two year rule

4.1.1 People from abroad who enter or stay in the UK on the basis of marriage or relationship to a spouse/partner who is settled in the UK or is a British citizen are initially given limited leave to remain. They are subjected to a probationary period, at the end of which, with the support of their spouse or partner who is settled in UK, they can apply for indefinite leave to remain. This probationary period was extended to two years in 2003.

4.1.2 During the two year period, the partner from abroad is restricted from recourse to public funds. If the relationship breaks down, the partner from abroad becomes liable to be removed from the UK unless they can show the required evidence of domestic abuse under the domestic abuse concession to the rule. Fear that they will be deported is a factor that may inhibit women in such situations disclosing. Perpetrators often use this fear as a tool of control.

4.1.3 In such situations, practitioners should seek advice from support agencies as to any women's eligibility to apply under the domestic abuse concessions to the rule.

4.2 No Recourse to Public Funds

4.2.1 A foreign national who wants to settle in the United Kingdom on the basis of marriage or an unmarried partnership to someone already present and settled here must normally live with their partner or spouse for a probationary period. If the marriage or partnership breaks down during that period, they have no right to remain in the UK.

4.2.2 To protect victims of domestic abuse, the Government introduced a concession in 1999 so that those who left their spouse or partner during the probationary period and could prove, by a court conviction or similar, that the relationship ended because of domestic abuse, were granted settlement.

4.2.3 In November 2002, the Government extended the types of evidence that could be used as proof of abuse, and these were formally included in the immigration rules. This is a significant improvement in the position of victims of domestic abuse who are still subject to immigration control. In addition, these applications are flagged and given priority consideration by the Border and Immigration Agency.

4.2.4 While their applications are still being considered by the Border and Immigration Agency, victims of domestic abuse still subject to immigration control cannot have access to public funds for the period until the application has been decided. There are no plans to amend legislation in this area. Lincolnshire refuge services do not accept women who have no access to public funds; however they will support the victim to access other refuges that do accept woman.