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CHAMBERS

**A gendered approach to homelessness**

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Garden Court Chambers

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## Homelessness Statistics

- England: July to September 2023:
  - [Statutory homelessness in England: July to September 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
  - The second most common reason for homelessness for those owed a relief duty was domestic abuse, accounting for 7,220 or 16.9% of households. An increase of 4.5% from the same quarter last year
  - 12.2% of households owed either a prevention or relief duty were assessed as at risk of or experience of domestic abuse;
  - The number of households owed a main housing duty who were homeless and have priority need due to domestic abuse had increased 37.3% to 1,140
  - 24% of households owed a prevention duty were single female parents with dependent children, 21% were single females (no children);
  - 18% of households owed a relief duty were single female parents with dependent children, 22% were single females (no children)
  - Rough Sleeping Snapshot, autumn 2023: [Rough sleeping snapshot in England: autumn 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
    - 3,214 men (82%) and 568 women (15%) sleeping rough;
    - NB female rough sleeping more likely to be hidden.

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## Homelessness statistics

- Wales April 2022 – March 2023:
  - [Homelessness \(gov.wales\)](https://gov.wales)
  - 51% applicants female;
  - Prevention duty owed to 63% females, 37% males;
  - Relief duty owed to 44% females, 56% males;
  - Main housing duty owed to 50.4% females, 49.6% males;
  - Reason for loss of home violent breakdown of relationship 9.5%;
  - Priority need due to domestic abuse 12% of those who have a priority need.
- Scotland: April – September 2023
  - [Homelessness in Scotland: update to 30 September 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot)
  - No priority need test;
  - 13% of applications due to violent or abusive dispute within household;
  - 44% of applicants assessed as homeless or threatened with homelessness are female:
    - 16% single female parent;
    - 21% single females (no children).

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## Statistics & reports

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- *ONS Domestic Abuse in England and Wales overview: November 2023:*
  - [Domestic abuse in England and Wales overview - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/domestic-abuse-in-england-and-wales-overview)
  - Experienced by approximately 2.1 million people a year (aged 16 or over);
  - 1.4 million women & 751,000 men – roughly two-thirds/one-third.
- *Reducing inequalities amongst women experiencing homelessness (St Mungos, 2023)*
  - [StM Women Homelessness 0223 Final.pdf \(mungos.org\)](https://www.stmungos.org/wp-content/uploads/2023/02/StM-Women-Homelessness-0223-Final.pdf);
  - Women more likely to be hidden homeless, sofa surfing, sleeping on buses, staying in precarious accommodation;
  - Women's homelessness often occurs after prolonged experiences of trauma, including physical sexual and emotional abuse by those close to them;
  - Women more likely than men to have experienced physical & sexual violence as adults and children & more likely to experience further abuse, exploitation, violence when homeless, hindering ability to recover.

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## Statistics & reports

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- *Shelter Fobbed Off: the barriers preventing women accessing housing and homelessness support, and the women-centred approach needed to overcome them (2021 Fobbed off women-centred peer research report FINAL.pdf (ctfassets.net)*
  - Domestic abuse causes women's homelessness;
  - Lone mothers face particular challenges;
  - Women centred approach would involve increasing women-only provision; importance of co-production and involving women with lived experience;
  - Taking trauma-informed approach.
- *Hard Edges.*

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## Homelessness & women

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- Chapter 21 Homelessness Code *Domestic Abuse*
- *Moran v Manchester City Council* [2009] UKHL 36, [2009] 1 WLR 1506, HL:
  - Refuges are not accommodation which it is reasonable to continue to occupy: *“a refuge is not simply crisis intervention for a few nights. It is a safe haven in which to find peace and support. But it is not a place to live. There are rules which are necessary for the protection of residents but make it impossible to live a normal family life. It is a place to gather one's strength and one's thoughts and to decide what to do with one's life”* Baroness Hale at [43].
- Section 177(1) Housing Act 1996 (HA 1996): *“It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to violence or domestic abuse 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.”*
  - *Bond v Leicester City Council* [2001] EWCA Civ 1544, [2002] HLR 5, CA.

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## Homelessness & women

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- Domestic abuse:
  - Section 177(1A) HA 1996:
    - *“(1A) For this purpose—(a) “domestic abuse” has the meaning given by [section 1 of the Domestic Abuse Act 2021](#)”.*
  - Domestic Abuse Act 2021 s.1:
    - “(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—*
      - (a) A and B are each aged 16 or over and are personally connected to each other, and*
      - (b) the behaviour is abusive.*
      - (3) Behaviour is “abusive” if it consists of any of the following—*
        - (a) physical or sexual abuse;*
        - (b) violent or threatening behaviour;*
        - (c) controlling or coercive behaviour;*
        - (d) economic abuse (see subsection (4));*
        - (e) psychological, emotional or other abuse;*
      - and it does not matter whether the behaviour consists of a single incident or a course of conduct.”*

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## Homelessness & women

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- Priority need: s.189 HA 1996:
  - Pregnant woman or person with whom she resides or might reasonably be expected to reside;
  - Person with whom dependent children reside or might reasonably be expected to reside;
  - Person who is homeless as a result of that person being a victim of domestic abuse;
  - Person who is vulnerable:

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## Homelessness & women

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### Conditions for referral:

- Not met if either the applicant or any person who might reasonably be expected to reside with her will run the risk of domestic abuse in the other local housing authority's district: s.198(2)(c) & (2A)(b) HA 1996.
- Local connection & residence:
  - Residence in women's refuge capable of being residence of a person's own choice: NJ v Wandsworth LBC [2013] EWCA Civ 1373, [2014] HLR 6, CA.

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## Homelessness & women

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Homelessness (Suitability of Accommodation) (England) Order 2012, SI No 2601, Art 2 on location:

- Significance of any disruption caused by the location.. to employment, caring responsibilities or education;
- Paras 21.41 – 21.45 Homelessness Code:
  - Refuges key short term intensive support, not simply a substitute for other forms of temporary accommodation; risk of violence should be taken into account; need for accommodation that would not be found by the perpetrator (which may involve out of district placement.
  - Is mixed gender accommodation suitable? Settlement in R (FB) v Camden LBC March 2021: Successful policy challenge: homeless women fleeing domestic violence | News | Garden Court Chambers | Leading Barristers located in London, UK

Homelessness (Suitability of Accommodation) (Wales) Order 2015, SI No 1268: Art 3 on location includes:

- Proximity of alleged perpetrators and victims of domestic abuse.

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## Homelessness & Public Sector Equality Duty

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- Equality Act 2010 s 149:
  - “(1) A public authority must, in the exercise of its functions, have due regard to the need to—*
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
    - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
    - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it...*
  - (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”*

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## Homelessness & Public Sector Equality Duty

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### Case-law:

- Hotak v Southwark LBC [2015] UKSC 30, [2016] AC 811: sharp focus whether applicant has relevant protected characteristic, likely effect if & when homeless;
- Hackney LBC v Haque [2017] EWCA Civ 4, [2017] HLR 14: 6 step approach: recognition of protected characteristic, focus on consequences & disadvantages might suffer by comparison with person without protected characteristic, similar focus on needs & recognition may require her to be treated more favourably;
- Lomax v Gosport BC [2018] EWCA Civ 1846, [2018] HLR 40, CA refinement of 6 step approach: sharp focus on whether protected characteristic, on likely effect & needs, comparison between her needs & those of others without protected characteristic & recognition that PSED applies at all stages of decision making process.
- See A Practical Guide to the Public Sector Equality Duty in Housing (Bano, Law Brief Publishing, 2023).

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## PSED in relation to protected characteristic of sex?

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### Priority need & vulnerable:

#### Sharp focus on risk if rough sleeping:

- History of domestic abuse; SS v Waltham Forest LBC (2016) November Legal Action, CLCC: PSED on grounds of sex should have been considered in relation to woman with history of domestic abuse.
  - Risk of sexual abuse:
- Risk of sexual assault if rough sleeping:
  - Barrett v Westminster City Council (2016) February Legal Action, p 45, CLCC;
  - MQ v Southwark London Borough Council (2016) December Legal Action, p 42, CLCC.
- Women more likely to be hidden homeless.

Case-law on “homeless as a result of that person being a victim of domestic abuse”?

### Suitability of accommodation:

- Women at risk of domestic abuse likely to understand where they may be safe: SM v Waltham Forest (2020) November Legal Action p41, CLCC

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## PSED in relation to protected characteristic of sex?

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### Suitability of accommodation:

Women at risk of domestic abuse likely to understand where they may be safe: *SM v Waltham Forest* (2020) November Legal Action p41, CLCC;

Affordability: benefits cap has disproportionate effect on women (more likely to be single parents) *R (SG) v SSWP* [2015] UKSC 16, [2015] 1 WLR 1449, SC;

Single sex accommodation: recognition of different needs.

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## Direct & indirect discrimination in homelessness?

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Cannot be brought as part of s.204 HA 1996 appeal: *Adesotu v Lewisham LBC* [2019] EWCA Civ 1405, [2019] 1 WLR 5637, CA:

- Unless issue is raised as part of review representations & possible to argue that review decision is wrong in law in its conclusion;
- Otherwise bring claim for damages in County Court: 6 month time limit.
- Try to hear the two sets of proceedings together?
- What might constitute discrimination?
  - Direct discrimination “we will never house...”?
  - Indirect discrimination: a requirement say to respond to an offer within an inflexible period.

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## Allocation cases

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Use of both PSED & indirect discrimination:

- R (HA) v Ealing LBC [2015] EWHC 2375 (Admin):
  - Residence criteria indirectly discriminatory against women as more likely to be victims of domestic violence.
  
- R (TX) v Adur DC [2022] EWHC 3340 (Admin), [2023] HLR 17 Admin Ct:
  - Lower band for applicants who lived outside area (but had local connection) indirectly discriminatory against women as more likely to be fleeing domestic abuse, disadvantage to those fleeing domestic abuse obvious & equally obvious that effect significantly more disadvantageous to women.
  
- R (AK) v Westminster City Council [2024] EWHC 769 (Admin):
  - Westminster refused “reciprocal arrangement” that would have resulted in housing AK, whose child had been sexually abused by neighbour. Indirectly discriminatory because people who need to move borough to escape violence or crisis more likely to be women than men. No consideration of PSED.

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# Thank you

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