

WOMEN, HOMELESSNESS and DOMESTIC VIOLENCE

1. The “full” housing duty under section 193 of the Housing Act 1996 (“the Act”) is owed to a person if the local housing authority is satisfied that they are “homeless” and in “priority need” and is not satisfied that they “became homeless intentionally”.
2. Those qualifying conditions have generated a large amount of case law since they were enacted, initially in the Housing (Homeless Persons) Act 1977. This paper focuses on how the qualifying conditions have been applied to women who have been subjected to domestic violence.

Priority Need

3. One might think that a woman who has become “homeless” as the result of domestic violence would automatically also achieve the personal qualification of having a “priority need” for housing and be owed the “full” housing duty. That is indeed the case in Wales, but it is not the case in England.
4. Priority need is defined in section 189 of the Act:

189(1) The following have a priority need for accommodation—

(a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;

(b) a person with whom dependent children reside or might reasonably be expected to reside;

(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;

(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

- (2) The Secretary of State may by order—
 - (a) specify further descriptions of persons as having a priority need for accommodation, and
 - (b) amend or repeal any part of subsection (1)

- 5. Article 2 of the Homeless Persons (Priority Need)(Wales) Order 2001 provides that the descriptions of persons specified in Articles 3 to 7 shall have a “priority need” for accommodation under section 189 of the Act. Article 5 specifies:

5. A person without dependant children who has been subject to domestic violence or is at risk of such violence, or if he or she returns home is at risk of domestic violence.

- 6. By contrast, women in England get the weasel-worded Homeless Persons (Priority Need)(England) Order 2001, which confers a “priority need” on -

6. A person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out.

- 6. The reason why the English Order is “weasel worded” is partly because it adds nothing to section 189(1)(c) of the Act, because women who are vulnerable as the result of domestic violence have always been able to apply for consideration as persons who might be vulnerable as the result of “other special reason” and partly because local housing authorities and the Courts have made “vulnerability” such a difficult qualifying condition, so that almost nobody ever is accepted as actually being “vulnerable”: whether you are a woman who has been subjected to domestic violence, or a man or woman with a mental illness or a drug or alcohol addiction. One might think that the MPs who voted for this legislation must have intended that persons who were old, mentally ill or disabled or physically handicapped would *be* “vulnerable” and that other persons, such as

women made homeless by domestic violence, would also be “vulnerable” if, on a reasonably objective appraisal, they were more susceptible to harm than the average person. Indeed, one knows from the 1977 act that it was understood by MPs that “battered wives” would get accommodation on account of vulnerability. That is not, however, the way things have worked out. It is extremely difficult in practice to qualify as being in “priority need” if you are a single person. See the fairly typical case, in this respect, of Osmani v Camden LBC [2004] EWCA Civ 1706, [2005] HLR 22:

38. I draw the following conclusions about section 189(1)(c) and that formulation of its meaning:

.....

(3) The scheme of the section is not to establish whether an applicant is homeless, but to establish whether he is a person whom the local housing authority believes to be homeless and eligible for assistance has a priority need entitling him to assistance. It does that by defining a number of circumstances, one of which is vulnerability, by which he may qualify as a person having a priority need.

(4) *Pereira* establishes that a person is vulnerable for the purpose if he has such a lesser ability than that of a hypothetically "ordinary homeless person" to fend for himself that he would suffer greater harm from homelessness than would such a person. One has only to attempt to apply the *Pereira* test to any particular case by asking the question whether the applicant would, by reason of whatever condition or circumstances assail him, suffer greater harm from homelessness than an "ordinary homeless person", to see what a necessarily imprecise exercise of comparison it imposes on a local housing authority. Given that each authority is charged with local application of a national scheme of priorities put against its own burden of homeless persons and finite resources, such decisions are often likely to be highly judgmental. In the context of balancing the priorities of such persons a local housing authority is likely to be better placed in most instances for making such a judgment.....

(6) Despite some dicta suggesting the contrary, the test is a single one of a homeless person's less than normal ability to fend for himself such that he will suffer more harm than would an ordinary homeless person a "composite" assessment, as Hobhouse LJ put it.

(7) For the purpose of applying the vulnerability test a local housing authority should take care to assess and apply it on the assumption that an applicant has become or will become street homeless, not on his ability to fend for himself while still housed. In this respect, it should have regard to the particular debilitating effects of depressive disorders and the fragility of those suffering from them if suddenly deprived of the

prop of their own home; see the observations of Brooke LJ in *R v Newham LBC, ex p Lumley* (2003) 33 HLR 111, at para 63.

(8) Nevertheless, although authorities should look for and pay close regard to medical evidence submitted in support of applicants' claims of vulnerability on account of mental illness or handicap, it is for it, not medical experts, to determine this statutory issue of vulnerability.....

40. As to perversity, it has to be kept in mind that vulnerability under section 189(1)(c), depending on the nature and extent of the reason for it, is not exclusively or even necessarily a medical question. There was no doubt here that Mr Osmani suffered from a depressive illness, but it was not such at the time of the decision letter, when he was still being housed by the Council, as to prevent him from fending for himself and his wife in maintaining all their normal support systems and in his daily activities. The question for the reviewing officer, which she addressed, was one of assessing the future risk to those capabilities if and when he were to become homeless. Would his condition deteriorate such that he would not be able to do anything about his homelessness unaided and/or to harm him more than it would an "ordinary homeless person"? In my view, the reviewing officer's conclusion that the risk was not such as to make him vulnerable for either of those purposes was, for the reason she gave, one that was reasonably open to her. I do not regard it as perverse, even though another reviewing officer might have decided differently. On such an evaluative decision in this field, involving, as it does, a balancing of individual priorities in the provision of a local social service, courts should indeed tread warily before they intervene.

7. The reference to "perversity" (ie as the only basis on which a Court will directly intervene on the substance of whether a person is vulnerable) and the expression "tread warily" are, of course, references to the famous (or is it infamous?) statement of Lord Brightman in R v Brent LBC ex p Puhlhofer [1986] AC 484:

My Lords, I am troubled at the prolific use of judicial review for the purpose of challenging the performance by local authorities of their functions under the Act of 1977. Parliament intended the local authority to be the judge of fact. The Act abounds with the formula when, or if the housing authority are satisfied as to this, or that, or have reason to believe this, or that. Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act, or abused their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed by judicial review. The plight of the homeless is a desperate one, and the plight of the applicants in the present case commands the deepest sympathy. But it is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to

monitor the actions of local authorities under the Act save in the exceptional case. The ground upon which the courts will review the exercise of an administrative discretion is abuse of power - e.g. bad faith, a mistake in construing the limits of the power, a procedural irregularity, or unreasonableness in the *Wednesbury* sense - unreasonableness verging on an absurdity: see the speech of Lord Scarman in Reg. v. Secretary of State for the Environment, Ex parte Nottinghamshire County Council [1986] A.C. 240, 247-248. Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely.

8. Once one accepts, as the Courts have done (see *Osmani* – and there are many others), that a person is vulnerable only when they are vulnerable compared with other “homeless” persons (who suffer from a range of problems that only housing officers really know about), that vulnerability is ultimately not a medical issue that can be determined objectively by medical evidence, that an assessment of vulnerability is a “local” assessment that takes into account the local homelessness “burden” and local “finite resources” and that the Courts should only intervene when “perverse” conclusions are reached (see *Puhlhofer*), the practical consequence is, in an age dominated by budgetary considerations, and a shift in policy away from public to private, that only the most extreme cases stand any chance of qualifying for a “priority need” on account of vulnerability. That affects all women (men also) who do not have children and who are suffering from the effects of domestic violence, mental or physical illness, substance abuse or any other debilitating circumstance. As a woman who has been subject to domestic violence, and who is not pregnant or with dependent children, it is extremely hard to qualify unless one lives in Wales (or, possibly, travels to Wales to make a homelessness application). Those who do not know, may be interested to learn that the Scottish Executive has consulted on abolishing “priority need” in Scotland by 2012 i.e. so that *all* unintentionally homeless applicants will qualify, in

accordance with the aim set out in the Homelessness etc (Scotland) Act 2003.

9. (Of course, that does not mean that homelessness appeals made by women in these circumstances never succeed. All the usual procedural grounds remain and may very often succeed: inadequate inquiries, procedural unfairness, failure to take relevant considerations into account and so on).
10. (Of course, if one is a “person from abroad” within the meaning of section 185 of the Act, one is completely excluded from housing assistance, whether or not one is a woman who has been subjected to domestic violence, and irrespective of the extent of the violence or its consequences and irrespective of whether one is pregnant or has children).

“Homeless” and “Unintentionally Homeless”

11. By contrast, in relation to the qualifying conditions of “homeless” and “intentionally homeless” both the legislators and the Courts have drawn bright lines (in both England and Wales) that are of very considerable help to women who have suffered from, or are at risk of, domestic violence, albeit that, for the reasons set out above, that considerable help will in England in actual fact largely only reach pregnant women or those with dependent children living with them.
12. “Homeless is defined in section 175 of the Act:

175 (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but—

(a) he cannot secure entry to it, or

(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.....

13. The definition of “homeless” shares some common features with the definition of “intentionally homeless”, at section 191 of the Act:

191 (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

14. It will have been noted that a person is “homeless” if it is not “reasonable” for them to continue to occupy their accommodation and that a person does not become “intentionally homeless” if they cease to occupy accommodation that it was not “reasonable” for them to occupy.

15. That sounds good. That sounds as though women who are at risk of domestic violence in their own homes will always be homeless, and not intentionally homeless if they leave. However, as noted above, in the topsy-turvy world of public law, a state of affairs is “reasonable” even if it is “unreasonable” (providing only that, after having made every possible allowance in favour of the decision-maker, it is not “perverse”). For present

purposes, one of the problems with that, is that for many years local authorities and Judges took the view that in most cases it was reasonable for women subject to domestic violence to remain in the shared home, or return there, getting protective help from police or local courts.

16. Thus, even one of the wisest and most respected judges of the modern era, once said (in a case called *R v London Borough of Wandsworth, ex parte Nimako- Boateng* (1983) 11 HLR 98):

‘There are all sorts of protection that a woman can get if her husband misbehaves. The local authority could perfectly properly in many cases in this country take the view that it would be reasonable for the wife to continue to occupy accommodation and say to a wife, if she thinks it right:

‘If you are having trouble with your husband, go to the appropriate authority, be it a magistrates’ court or the Family Division, and get protection against your husband’.

If the woman does not then take that course and chooses to leave, the authority could take the view that it was reasonable for the lady to remain.’

17. Parliament eventually got fed up of local housing authorities telling women fleeing domestic violence that they were not homeless, or that they had become “intentionally homeless”, because their old accommodation was, or had been, “reasonable” to occupy (and the Courts deciding that such decisions were not “perverse” in the *Puhlhofer* sense). So Parliament enacted the bright line rule in section 177:

177 (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.]

(2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.....

18. That was still not the end of it. Old habits die hard and, ultimately, Lady Justice Hale (as she then was) had to kill them off, or at least eviscerate them, which she did in a case called Bond v Leicester City Council [2001] EWCA Civ 1544, [2002] HLR 158. The local authority had decided that it was reasonable for Ms Bond to return home taking into account the various remedies that she could obtain to exclude her former partner and protect herself from his violence. The local authority’s decision, which the circuit judge had upheld as being lawful, had said:

Miss Bond has been the subject of domestic violence from Mr O’Neill for some considerable time having had to flee two previous properties before arriving at Appleby Close, Leicester. In my view Miss Bond should have taken action under the criminal/civil law to prevent Mr O’Neill from coming near her or indeed Appleby Close. The nature of the problems at Appleby Close were that once Mr O’Neill had been excluded from 18 Appleby Close he did not seek to re-enter the property by force. In these circumstances Miss Bond should have, at the very least, sort [sic] legal advice and indeed at the very least, should have approached both the Police and the landlord. Miss Bond would not be on her own as the landlord in this case, being a social landlord, had its own remedies to keep Mr O’Neill away from the property and the area. Miss Bond herself would have been offered protection in the way of alarms at her property, which if used would guarantee a grade 1 response from the Police. Both the Police and social landlord have domestic violence policies which would mean that additional security in the way of toughened doors, toughened glass, and indeed in some cases, cameras can be fitted at the victim’s property. I do not accept your client’s position that Mr O’Neill is above the law and have decided that to consider the legal remedies is not sufficient but that she should have obtained both advice and assistance from all the agencies and consequently, I consider that she became homeless intentionally as she failed to take these measures and as a consequence of her failure, she ceased to occupy accommodation which was available for her

occupation and would have been reasonable for her to continue to occupy.

19. Lady Justice Hale (with whom Mr Justice Steele agreed) made it clear that the area of discretionary evaluations was extremely limited, by saying:

24. These cases [*such as Nimako-Boateng*] are of no help to us now in applying section 177(1)..... neither in deciding upon homelessness or upon intentionality is the test of reasonableness at large in domestic violence cases. The only test is what is probable.

25. This in my view is a pure question of fact, devoid of value judgments about what an applicant should or should not do. If there are measures which have been taken or probably will be taken which will probably prove effective in preventing actual or threatened violence, then that may reduce the level of risk below one of probability. But those are the questions which the authority must ask themselves, rather than assume that such measures will be taken or will be effective if taken.....

28. Taken to the extreme, it could mean that a probable victim of domestic violence, who had been offered every assistance available for her protection, could reject it and seek rehousing even if there was good reason to think that it would be effective. But Mr Arden acknowledges that even cases like the present one, in which the applicant had twice before fled from domestic violence, are rare. It will be rare indeed for a parent of children (for this is what gives her the priority need) to uproot herself from a situation in which legal or practical measures are not only on offer but likely to be effective. But the issues are issues of fact in the particular case.

29. To hold otherwise would leave it open to local authorities to put pressures upon the victims of domestic violence which fail to take account of some of its well known features. Once begun it is likely to be repeated, often with escalating severity. It induces a sense of shame and of powerlessness in the victims, who often blame themselves and find it impossible to escape. There are various legal and practical remedies available, but it is by no means easy for many victims to invoke these. However hard the family courts try, they are often ineffective. Escape may well be the only practicable answer. The victim is the one who knows the perpetrator best and is likely to be best able to judge this. It is not, after all, a decision to be lightly taken by a young mother of two young children.

30. The family courts also do their utmost to require parents with whom the children are living to arrange and encourage contact with the other parent. Only comparatively recently have we recognised that violence and threats towards the parent can have a damaging effect upon the children, such that it may constitute a good reason for refusing all contact. Even now, there is certainly no presumption to that effect. In those circumstances, it would be most unfair if one part of the system were to blame or penalise a mother for resuming contact with the father

of her children, unless another part of the system has found that there should be no contact because it is harmful to them.

31. Whatever the facts of this particular case, therefore, I do not find it surprising that Parliament should have recognised a tendency in parts of the system to consider it reasonable to expect victims of domestic violence to do, or not to do, things which in reality place them in an almost impossible position; and that Parliament should therefore have enacted the clear rule in section 177(1).....

The outcome

34. Despite Mr Arden's valiant attempts to attach a different meaning to the authority's decision letters, and in particular the review letter of 9 August 2000, they did not clearly ask, let alone clearly answer, the right question. The authority therefore erred in law. On appeal, section 204(3) of the 1996 Act permits the county court and hence this court either to confirm, quash or vary the decision as it thinks fit. Mr Luba invites us to vary the decision by the insertion of the word 'not': had the authority asked the right question, the only possible conclusion would have been that it was probable that continued occupation of 18 Appleby Close would lead to domestic violence against Miss Bond, so that she was not intentionally homeless in leaving that address.

35. One certainly cannot reach the conclusion that, if the authority had addressed the right question they would have arrived at the same result. There was abundant material upon which they could have reached the conclusion that further domestic violence was probable if she stayed. There had been domestic violence in the past, such that she had twice before left her accommodation with two young children to escape it. There had been domestic violence in these very premises, it appears when he was reluctant to leave after visiting the family. Thereafter, although he had not forced his way into the premises, he had taken to sitting in the back garden, shouting and throwing stones at the windows. This pattern of behaviour is all too familiar to family judges. Many victims find it a great deal more frightening than the violence itself. The definition of domestic violence in section 177(1) includes 'threats of violence which are likely to be carried out'. 'Likely' is different from 'probable'. 'Probable' means 'more likely than not'. 'Likely' includes a real or serious possibility. Such behaviour may readily be held to constitute a threat of further violence which is likely to be carried out by a person who has not only done it before but shown a readiness to use it as a response to exclusion from the home. There was nothing to suggest that the applicant had a full understanding of what might be done to help her or that she would feel that it would be so effective that she would probably have sought such help if she had returned.

36. Hence it seems to me more likely than not that if the authority had asked themselves the right questions they would have reached the conclusion on the material before them for which Mr Luba contends. There would be little point in quashing the decision and sending it back for them to make it once more. If the order is instead varied, as sought, they will then be in a position to arrange accommodation which takes account of the problems in this case and thus reduces the probability of domestic violence in future. I would therefore allow the appeal and vary

the decision to one that the applicant had not become homeless intentionally.

Domestic Violence Refuges

20. One might think that a woman who has fled domestic violence and obtained shelter in a domestic violence refuge was, albeit not “street homeless” a very clear example of a person who was, at least for the time being, “homeless”.

21. Thus the law had stood, ever since the 1st instance judgment of Mr Justice Hodgson in R v Ealing LBC ex p Sidhu (1982) 80 LGR 534, until the Court of Appeal felt driven by a range of authority, not least the decision in *Puhlhofer*, to hold that a refuge was “accommodation” for the purposes of the Act and, also, accommodation that it could be “reasonable to continue to occupy” so that occupiers of refuges were no longer homeless. That decision created a major problem for women’s refuges, as well as victims of domestic violence. First, if refuge occupiers were not automatically “homeless” then refuges would “silt up” with women who have no other recourse than local authority housing (because, inevitably, authorities will take the view that it is *reasonable* for women to remain in refuges for as long as possible). Second, particularly vulnerable women who were unable to cope in a refuge, would be likely to react in an ant-social way and then be asked to leave, and would then almost inevitably be found “intentionally homeless” (from the refuge) by the local authority – sometimes leaving them with no realistic option other than to return to live with the violent partner.

22. The House of Lords solved these problems in Moran v Manchester CC [2009] UKHL 36, [2010] 1 WRL 1506 by holding that accommodation is only accommodation that it is “reasonable ...to continue to occupy” if it is

accommodation that it is reasonable to continue to occupy for as long as a person would have to continue to occupy it unless the authority took action. Baroness Hale, as she had become, delivered the main speech on behalf of the appellate committee and said (in relation to the *Moran* case and another, linked case, raising the different situation of a family who were “homeless at home”):

35 The Court of Appeal in the *Manchester* case, the courts below in the *Birmingham* case, and perhaps other courts before them, have assumed that the former is the case: that section 175(3) is concerned with the reasonableness of present occupation. Obviously, once it is unreasonable for the person to stay there one more night, section 175(3) is met; the person is homeless and cannot be intentionally homeless if she leaves.

36 However, the language suggests that both sections 175(3) and 191(1) are looking to the future as well as to the present. They do not say "which it *is* reasonable for him to occupy" or "which it *was* reasonable for him to occupy". They both use the words "continue to". This suggests that they are looking at occupation over time. This suggestion is reinforced by the words "would be" and "would have been". These again suggest an element of looking to the future as well as to the present. They contrast with section 177(1) which provides that "it is not reasonable" to continue to occupy accommodation where there is a risk of violence.

37 These linguistic reasons are reinforced by the policy of the Act. The words defined in section 175 are "homeless" and "threatened with homelessness". The aim is to provide help to people who have lost the homes to which they were entitled and where they could be expected to stay. Section 175(3) was introduced for a case like the Puhlhofers (*R v Hillingdon London Borough Council, Ex p Puhlhofer* [1986] AC 484), who could no doubt have been expected to stay a little while longer in their cramped accommodation, but not for the length of time that they would have to stay there if the local authority did not intervene.

38 In the *Birmingham* case, this interpretation has the advantage that the council can accept that a family is homeless even though they can actually get by where they are for a little while longer. The council can begin the hunt for more suitable accommodation for them. Otherwise the council would have to reject the application until the family could not stay there any longer. The likely result would be that the family would have to go into very short-term (even bed and breakfast) accommodation, which is highly unsatisfactory.....

43 In the *Manchester* case, this interpretation has the advantage that a woman who has lost her home because of domestic violence remains homeless even though she has a roof over her head in the refuge. We have been greatly assisted by the submissions of [counsel] on behalf of

the Women's Aid Federation of England, who are understandably worried about the "bed-blocking" effect if women in refuges are no longer regarded as homeless. They point out that 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. The choices facing a woman who flees domestic violence are complex and difficult. Should she return home in the hope that she will be safe? Is this what her children would like her to do ("he is their father after all")? Should she risk taking court proceedings for a non-molestation order to give her some protection or will this simply inflame matters further? Should she take proceedings for an occupation order to exclude him from the home? Dare she take the risk that she may not win (if the court decides the remedy is too "draconian")? Should she make a complaint to the police and have him prosecuted? Can she predict the outcome with enough confidence to make it safe for her to do this? Does she really want him punished anyway ("it's only the drink that does it")? Is she ready to accept that he will never change, make the break and start a new life in a new home?

44 It was no doubt for all these reasons that Hodgson J, in R v Ealing London Borough Council, Ex p Sidhu 80 LGR 534, instinctively felt, in our view rightly, that Parliament did not intend that a woman who left her violent partner and found temporary shelter in a women's refuge should no longer be considered homeless. The refuge was a mere staging post until she had decided where to go from there.

23. The decision does not overtly introduce a bright line rule into the statute, but in substance it virtually does: it is very hard to see any local authority deciding, in the light of *Moran*, that an applicant for housing assistance is not homeless because of temporary accommodation in a refuge, or that an applicant who has had to leave temporary accommodation in a refuge, because of breaches of the rules, has become intentionally homeless and none have done so, thus far.

The Domestic Violence Context

The social context

24. As the Law Commission report called *Family Law: Domestic Violence and Occupation of the Family Home* (Law Com. No 207, 7th May 1992) put it at paragraph 2.1. "Whilst the phenomenon [of domestic violence] is by no means new, its recognition as a major social problem dates only from the

early 1970s” and the Law Commission then says in a footnote “Popular awareness in this country was prompted to a large extent by E.Pizzey, *Scream Quietly or the Neighbours Will Hear*, (1974) and by media coverage of Chiswick Women’s Aid”. Ms Pizzey was one of the founders of Chiswick Women’s Aid and the Chiswick Refuge, the first refuge in Europe. Thus, the Women’s Aid and refuge movement were significant in the development of governmental responses to the problem of domestic violence, stemming from the 1970s, of which the 1977 Act is a prime example.

25. As the Law Commission at paragraph 2.1 of its report went on to say:

“There can be no doubt about the extent of the problem. It has been summarised thus: “all studies that exist indicate that wife abuse is a common and pervasive problem and that men from practically all countries, cultures, classes and income groups indulge in the behaviour. The issue has serious implications from both a short-term and long-term perspective and from an individual and societal perspective. Many victims suffer serious physical and psychological injury, sometimes even death, while the economic and social costs to the community are enormous and the implications for future generations impossible to estimate (*Violence against women in the family*, (1989), p.97, United Nations Centre for Social Development and Humanitarian Affairs)”.

26. There are collated statistics on domestic violence in the Federation’s report called *Updated Statistics on Domestic Violence: June 2007*. The economic costs associated with domestic violence are assessed in a report, *The cost of domestic violence*, Professor Sylvia Walby (then of the University of Leeds), 2004, for the Office for National Statistics and the Women and Equality Unit (funded by the Department of Trade and Industry). The government’s *National Domestic Violence Delivery Plan* (Annual Progress Report 2007/8) attests to the very considerable efforts and expenditure made by the government across many sectors since the 1970s but also to the deep-rooted and prevalent nature of the problem:

pages 21-23 emphasise the importance of safe and appropriate accommodation in many cases, as part of the solution to domestic violence.

27. The refuge movement slightly pre-dates the homelessness legislation. In 1971, the 1st Women's Aid centre opened in Goldhawk Road, Chiswick. This was the first refuge in Europe. Many others rapidly opened. The women who opened the first refuges used their own financial resources and donations from members of the public.
28. The *First Report from the Select Committee on Violence in the Family: Battered Wives* (Session 1975-6) and the *Second Report from the Select Committee on Violence in the Family: Battered Wives* (1976-7) describe the rapid growth of the refuge movement and of public concern about domestic violence. They identify 2 social problems in particular: (1) a lack of refuge provision, (2) the lack of an entitlement to local authority help with accommodation on the part of women fleeing violence including those in refuges (many of whom were turned away by local authorities on the basis of discretionary decisions that the women had a home to return to, albeit a violent one). The government made it clear that it would ensure the passage through Parliament of, Mr Stephen Ross MP's Housing (Homeless Persons) Bill, in order to address these problems.
29. Lord Hailsham graphically described part of the "social problem" at 61F of Simmons v Pizzey [1979] 1 AC 37:

This appellant, and the registered charity of which she is the agent, is providing a service for people in urgent and tragic need. It is a service which is in fact provided by no other organ of our much vaunted system of public welfare. It is so urgently needed that the demand for it heavily exceeds the supply. When people come to her door not seldom accompanied by young children in desperate straits and at all

hours because, being in danger, they cannot go home, and because being without other accommodation they cannot easily go elsewhere, the appellant does not turn them away and tell them to seek assistance from someone else but takes them in and gives them shelter and comfort. And what happens to her when she does so? She finds herself the defendant in criminal proceedings at the suit of the local authority because she has allowed the inmates of her house to exceed the permitted maximum, and to that charge, I believe, she has no defence in law.

30. The Green Paper *Housing Policy: A Consultative Document* (June 1977) dealt with “battered women” at paragraphs 12.23 to 12.25. It also identified the social problem as including (i) inadequate refuge provision, (ii) a lack of entitlement to longer-term accommodation for women in refuges:
- a. The Green Paper said that “there is no more urgent or desperate housing problem than that of the woman who is physically assaulted and is forced to flee the marital home”. It accepted “the immediate need of a woman in such circumstances for some form of shelter while she takes stock of her position and considers what step to take next” and aimed to encourage local authorities to help Women’s Aid groups throughout the country provide refuges for women unable to obtain “sanctuary” with relatives or friends;
 - b. The Green Paper said that “adequate second-stage and permanent accommodation was needed to release places in refuges for new arrivals who require immediate shelter and support in an emergency” and “welcome[d] the recognition of this special problem in the Housing (Homeless Persons) Bill” (i.e. in respect of women unable to take private law measures).

The nature of refuge provision

31. It is vital not to underestimate the effects of domestic violence on a woman's self-esteem, confidence and functioning and also the complexity of the choices that she faces, in order to fully appreciate what refuges do, as explained in paragraphs 1 and 3 of *Written Evidence to the House of Commons Home Affairs Committee Inquiry into Domestic Violence* by the Women's Aid Federation of England ("the Federation").
32. Refuges do not provide a "quick fix", nor do they advise women what course to take, then discontinue their services, in the way that some other statutory services work. They operate on the basis that (i) women who have reached the point of needing outside help need to be listened to and taken seriously, which takes time, (ii) women need information, space and time to reflect on their needs, rather than advice on what course to take, (iii) an insensitive or inappropriate response can lead to women returning to abusive situations, (iv) escaping from and surviving abuse will almost always be a lengthy process; some women require considerable reassurance, support and time to make choices that are appropriate for them.
33. Women's Aid services are based on the following principles: (i) the central importance of the abused woman's perspective in the provision of support and services, (ii) the need to enable women to regain control of their lives, (iii) the value of mutual support from other women who have had similar experiences, (iv) a commitment to caring for the emotional, developmental and educational needs of children affected by domestic violence.
34. Thus, the essence of what refuges do is provide an exceptional space, outside of normal community life, where vulnerable and damaged women, and often their vulnerable children, are provided with support to help them return to ordinary living, when they are ready to do so, having made the

choices that it is first necessary to make, as to how to proceed. That function is such that the provision of shelter by a refuge cannot be fairly equated with the provision of ordinary accommodation, for the purposes of the Act.

35. The nature of arrangements at a refuge cannot be fairly equated with ordinary accommodation where people live as part of their ordinary lives. In 1998, a research paper published by the Federation called *Refuge Services: meeting the needs of women and children?* noted that “During the past twenty years the essential refuge “model” has changed very little from its original concept of a house shared by women and children who have fled from violence”. Although physical accommodation standards had generally improved, refuges continued to have the following attributes:
 - a. Most refuges are open to provide shelter immediately on demand for 24 hours a day every day of the year;
 - b. Refuges provide a “refuge” or “sanctuary”, that is, a place where women and children can go, to escape from immediate danger and receive physical protection from any man who is pursuing them;
 - c. In order to provide an effective sanctuary, refuges (i) only permit occupation by women fleeing domestic violence and their children, (ii) do not permit any male occupiers over 16, including children (iii) require occupiers (by licence conditions or house rules) to keep the refuge address and sometimes its telephone number confidential, so that (a) neither women nor their children may disclose their address to anyone, (b) occupiers cannot use their address for ordinary or official purposes (although there will be a PO box), (c)

occupiers cannot have any visitors, even family or friends or, in the case of children, old friends of theirs or new friends from their new school;

- d. The provision of shelter is part of a package that includes support, counselling and practical assistance, for up to 24 hours a day. Almost all refuges provide information, support and advocacy in connection with statutory agencies and legal procedures, and have full or part time specialist children's counsellors. Some provide clothing, additional help with childcare and family welfare and with removing and reclaiming personal possessions and evidence. Some provide other specialist services. A few shelters provide for particular groups of women e.g. black and minority ethnic women, lesbians or disabled women;

- e. Some refuges have self-contained dwelling-units for occupation by women with children, but in most refuges women share one room with all their children. Almost always, women share kitchens and sitting room areas. They sometimes share bathrooms and toilets. The Federation's standard licence agreement, in widespread use, also provides that women may have to share their rooms with other families, and move rooms, as required, and that does happen. It requires women to attend all house meetings (usually weekly) and obey the house rules;

- f. Women can stay for as short a time as they wish and can return as often as they wish. They are not "disqualified" no matter how many times they return to violent partners;

- g. Occupation agreements do not generally allow the management to require occupiers to leave except in cases of misconduct.;
- h. It cannot be said that there is no known instance of a refuge ever having issued possession proceedings against an occupier, as that is understood to have happened 2 or 3 times since the 1970s, in very extraordinary circumstances. But to the best of the Federation's knowledge there is no case of any refuge ever having obtained or enforced a possession order against a refuge resident. It may not be straightforward legally to execute a warrant of possession in respect of one room in a refuge but the real problem will be the great reluctance on the part of refuges to take such action: it is completely against the refuge ethos and the strongly held beliefs of individuals who work there, often on a voluntary basis, it risks undermining relationships with vulnerable women and refuges do not have the financial, administrative or personnel resources to take such action.

36. In exceptional cases, a refuge will allow women to remain at the refuge on an indefinite basis for therapeutic reasons or because of practical considerations (e.g. where women from abroad who are domestic violence victims have no recourse to any public assistance and therefore would be destitute if required to leave) ("exceptional cases"). Otherwise, refuges –

- a. Always provide emergency shelter during periods of crisis¹ ("crisis period" accommodation). (If paragraphs 42-45 of the Court of

¹ The Federation's position is that the crisis of a woman who has fled her home as the result of domestic violence lasts until the immediate and obvious risks to the woman's safety have been addressed, she has reached the position where she is able to decide what steps to take to resolve her situation and she has begun to take them, for example, by making an application for housing assistance to the local housing authority, issuing proceedings against her former partner or taking steps to secure private sector accommodation of her own. (NB a crisis can re-occur).

Appeal judgment are intended to suggest that all refuges do not always provide this service, then they are mistaken);

- b. Sometimes provide longer-term, but still temporary shelter, for some women, who continue to require help after their crisis has passed, because of some extraneous factor that is blocking their ability to secure a longer-term solution, typically (i) a difficulty in securing private law redress against the former partner, (ii) a difficulty in securing long term social sector accommodation under Parts 6 or 7 of the Act, or suitable private sector accommodation, (iii) some other factor that creates a significant risk that means that it is not safe to leave the refuge (“longer term period accommodation”);
- c. Sometimes, by arrangement with housing authorities, provide accommodation to assist housing authorities discharge their functions under the Act, in particular under sections 188, 204 and 193 (“Housing Act cases”).

37. Since the mid 1990s that women are staying longer at refuges. There are thought to be a number of reasons for this, including that there may be less incoming pressure on spaces because of outreach and other services (but funding for this provision is now reducing), but also, greater difficulty in securing second-stage and permanent housing authority accommodation. The Women’s Aid Federation of England’s written evidence to the Office of the Deputy Prime Minister’s Housing, Planning, Local Government and the Regions Committee (*Homelessness: Written Evidence*, HC 1116-II, 20th October 2004) noted that it was becoming

increasingly difficult to re-house women from refuges into suitable permanent affordable housing as the result of the serious shortage of housing available, so that women were remaining for much longer periods of time in refuges, creating bottlenecks resulting in some women not being able to access refuge accommodation. Concerns were also noted about local authority temporary accommodation often being inappropriate or unsafe. A research paper on behalf of the Federation and the University of Bristol called *Domestic Violence and Housing: Local Authority Responses to Women and Children Escaping Violence in the Home* (1993) found at paragraph 1.10 that “Refuges continue to provide a vital service in providing emergency and temporary housing for large numbers of women and children made homeless by domestic violence. However the number of refuges is inadequate for women’s needs. They are often overcrowded and are placed under great pressure when women and their children have to stay for long periods of time because they are unable to be rehoused safely”. The Federation’s *Special Survey* provided to the *Home Affairs Select Committee Enquiry into Domestic Violence* (September 2007) contained further evidence of delays in women at refuges securing permanent accommodation, at paragraph 5.3, with two thirds of respondents to the survey reporting longer delays than had been the case 2 years earlier and a much higher proportion of women being re-housed in private sector accommodation (of which there are also shortages, at affordable rents).

38. Women’s Aid organisations are locally-based, dedicated services providing a range of services depending on their funding and other local factors, including (i) refuges, (ii) advice, information and support both at and outside of refuges, and (iii) outreach services to women still living with violent men, or who have fled but are not staying at a refuge. Refuges are still not able to provide spaces for anything like the number of women

applying². The *Home Affairs Committee Third Report: Domestic Violence* (the 25th February 1993) considered housing at paragraph 130, highlighted the continued inadequate funding for, and numbers of, refuges and said “We are convinced that an adequate response to domestic violence will be impossible unless refuges, and move-one housing, are available for victims of domestic violence”. In the last 3 years between 17,000 and 18,000 women have stayed at refuges every year, and between 19,000 and 25,000 children, whilst around 130,000 women and around 100,00 children have had either refuge-based or outreach Women’s Aid services and there have been about 150,000 calls each year to the National Domestic Violence helpline.

Gaps in provision

39. There remain gaps and shortcomings in the provision of domestic violence services, in particular in relation to women with special needs, including women with mental health problems and/or substance abuse problems.

40. The Federation has published documents (funded by the Department of Health and reflected in subsequent DoH policy) called *Mental Ill-Health and Domestic Violence: summary of research and publications* and *Principles of Good Practice for working with women with mental health issues*. These demonstrate that a number of studies have shown that (i) violence against women is probably the most prevalent cause of depression and other mental health difficulties experienced by women, (ii) female mental health users are much more likely to have experienced domestic violence than women in the general population, (iii) substance abuse is often used as a means of coping with abuse, or self-medication, (iv) strikingly – and apparently of relevance to the Appellant – over 80% of

² Women’s Aid Annual Survey Day counted 485 women turned away by refuge providers on 2 November 2006 and 500 turned away on 2 November 2007, generally because the refuge was full.

women diagnosed as having a borderline personality disorder have experienced sexual violence, or abuse, at some point in their lives, (v) between 50% and 60% of female mental health service users have experienced domestic violence, (vi) between 35% and 73% of abused women suffer from depression or anxiety disorders, (vii) abused women are 5 times more likely to commit suicide than other women, (viii) children who live with domestic violence are at increased risk of behavioural problems and emotional trauma. The recommendation of the *Principles* document was that refuges should provide staff training in mental health issues and seek funding for a specialist mental health worker.

41. Unfortunately, however, as a research paper called *Struggle to Survive: Challenges for delivering services on mental health, substance misuse and domestic violence (2002-3)* noted, it has been a cause of concern to the Federation for “many years” that “local services do not have the capacity to meet these needs effectively”, that is, the needs of victims of domestic violence who have mental health or substance abuse problems. It explains that the majority (but by no means all) of refuges might *accept* women with such additional needs but it depended on a number of factors, including the severity of the needs, the number of residents with additional needs already at the refuge, whether the women concerned had children (and so on). However, the evidence was that refuges needed significantly more resources and staff training to *deal effectively with* women with additional needs and the conclusion was that the data presented “a rather worrying picture: there is a severe shortage of appropriate provision and a relative lack of specialist mental health or substance misuse training for refuge and outreach staff”. At the time of writing, there was, for example, only 1 refuge in England providing specialist services for women with mental health problems (depression) (see the *Report to DETR*, page 14). (cf. all refuges try to provide one full or part-time child worker: page 10 of *Refuge Services: Meeting the Needs of Women and Children*).

42. Thus, refuges will often (for obvious reasons) accept women with mental health or substance abuse problems, knowing that the arrangement might well break down because of the combination of those women's problems, the lack of specialist support services at or near the refuge and the nature of refuge life, which has its own limitations and pressures, which some women (and their children) can find particularly stressful. When refuges require such women to leave, that action reflects the factors just mentioned, and the need to ensure the welfare of other vulnerable women and children at the refuge. Therefore, the circumstances under which women with particular problems may have to leave a refuge are highly exceptional. Further, these women, who are also the most likely to need local authority housing assistance because of a lack of personal and family resources, are often the most vulnerable of all the women who become homeless because of domestic violence. Refuges who require such women to leave have no intention of making those women intentionally homeless. It is important for the welfare of other women and children in the refuge that refuges continue to be able to take such management decisions, without being significantly impeded in their ability to do so, by the consideration that they are making a particularly vulnerable woman intentionally homeless and therefore at risk of further violence.

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