



Mercy Law
Resource Centre

SOCIAL HOUSING, DOMESTIC VIOLENCE AND THE PUBLIC SECTOR DUTY



**Coimisiún na hÉireann
um Chearta an Duine
agus Comhionannas**
Irish Human Rights and
Equality Commission

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About Mercy Law Resource Centre

Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. It also seeks to advocate for change in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society.

Our five core services are: free legal advice; legal representation; legal support and training to organisations and professionals; policy work; and a volunteer befriending service.

MLRC is committed to the principles of human rights, social justice and equality. Partnership and working in collaboration with others is at the heart of our approach and MLRC has built strong working relationships with organisations and professionals working in the field of homelessness and housing.

MLRC's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, and where every individual enjoys equal access to justice to vindicate those rights.



1. Introduction

Since 2009 MLRC has provided free legal advice and representation to people facing housing issues and homelessness. MLRC clients have always included those individuals who are facing housing difficulties because of domestic violence. MLRC has noted that homelessness and housing difficulties flowing from domestic violence is a growing area of work for the centre. This report uses the definition of domestic violence contained within the Council of Europe Convention Against Violence Against Women and Domestic Violence – commonly known as the Istanbul Convention.¹ Under the Istanbul Convention domestic violence is defined as ‘all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim’.² As such this definition includes both intimate partner violence (IPV), as well as child abuse, and abuse by or of adult children and their parents. To be clear, while the Istanbul Convention focuses on violence against women, this report recognises that all genders can be victims of domestic violence.

The focus of this report is on the intersection of domestic violence and homelessness. More specifically, the focus is on the barriers to accessing housing supports faced by those who have fled their homes because of domestic violence. Victims of domestic violence come from a range of social and economic backgrounds and present with varying housing histories and varying housing need. Some victims are migrants to Ireland, some are Irish nationals returning from abroad after facing domestic violence overseas, some are minority groups within Ireland, such being from the Traveller and Roma communities³ or non-white Irish, some own their own homes, while others are renting in either the private rented sector (PRS) or social housing sector. For

the purposes of this report what unites these individuals is their experiences of housing issues as a result of domestic violence, but this report is careful to note how their different backgrounds shape their ability to access both emergency homeless accommodation and social housing supports.

The report seeks to set out the existing legal and policy landscape for victims of domestic violence who have fled their homes. It draws on relevant international experiences to make suggestions for change. It also considers the way in which the Public Sector Equality and Human Rights Duty might effect change and result in benefits for those fleeing domestic violence.

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Finally, MLRC would like to express our sincere thanks to Dr. Sarah Hamill, Assistant Professor of Law at Trinity College Dublin for authoring this much-needed report.

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2. Context

Ireland is in the grip of a housing and homelessness crisis. Multiple reports, including several by MLRC, have noted that the numbers of people identified as being homeless has increased in recent years. The Department of Housing, Local Government and Heritage reported that 12,847 people were accessing emergency accommodation in July 2023.⁴ These figures represent a record level of homelessness in Ireland.⁵

As high as these figures are they are likely to be an underestimate.⁶ The official figures published by the government do not count the so-called “hidden homeless” and, more importantly for the purposes of this report, they do not include those individuals being housed in domestic violence refuges.⁷

The failure of the official homelessness figures to include those accessing refuge accommodation is striking given that domestic violence is a leading cause of homelessness, particularly among women.⁸ Research specific to Ireland confirms that many homeless individuals in Ireland have histories of domestic violence,⁹ which renders the continued exclusion of refuge accommodation from the official figures problematic. While it is true that not all those fleeing domestic violence will access refuge accommodation, and that not all of those in refuge accommodation will go on to need emergency homeless accommodation or social housing supports, a significant number will.

More worryingly, just as levels of homelessness in Ireland remain high, there are also increased levels of domestic violence. The recent trends in increased domestic violence began during the Covid-19 pandemic and related lockdowns. Such trends in levels of domestic violence, much like the housing crisis,¹⁰ are not unique to Ireland.¹¹ In Ireland, both domestic violence services and An Garda Síochána reported increased calls for assistance relating to domestic violence in 2020 as compared with 2019.¹²

Similarly, data from the Courts Service indicates that between July and September 2020 Dublin saw a 40% increase in the number of protection and interim barring orders granted as compared to the same time in 2019.¹³

An Garda Síochána also recently reported increasing numbers of breaches of court orders related to domestic violence. For example there were 3035 such incidents in 2018, but 4741 incidents in 2022, an increase of over fifty percent.¹⁴ The data about breaches are particularly concerning as barring orders are one way to allow victims of domestic violence to stay in their own homes by barring the perpetrator.

Such increases in both domestic violence and homelessness have placed additional pressure on an already overwhelmed housing system and highlight the need for reforms. Victims of domestic violence face particular issues in accessing safe and secure housing. Those fleeing domestic violence can find themselves caught between domestic violence supports and homelessness supports. Given the intersectionality of some victims of domestic violence, that is that these victims can be migrants and/or members of minority groups, including both ethnic and racial minorities as well as members of the LGBTQI+ community and/or have physical disabilities, or mental health issues, they can face multiple barriers to securing adequate housing when fleeing domestic violence. As such this report touches on issues covered in earlier MLRC reports, notably those dealing with minority groups and homelessness, as well as reports from other voluntary sector groups.¹⁵

Given the complexity of issues facing victims of domestic violence who are forced to flee their home, this report is structured to capture these issues. It first sets out the legal and policy framework, noting both key national strategies for domestic violence and housing, and key legal instruments. It then explores the options for those fleeing domestic violence with a brief summary of the issues with accessing domestic violence refuges, before moving on to examine the difficulties in accessing emergency homeless accommodation, and social housing supports. It briefly considers options for those who do not qualify for social housing supports but who may still struggle to find independent accommodation. It then briefly examines relevant international experiences, notably the United Kingdom and the likely effect of the Public Sector Equality and Human Rights Duty, before concluding with some recommendations.



3. Legal and Policy Framework

When a victim of domestic violence has to flee their home there are a range of relevant laws and policies which will affect their ability to either return to their home or secure alternative accommodation. Which laws and policies are relevant depends on the victim's family status – that is are they married, cohabiting, a parent with dependents and so on – their housing tenure – that is do they own their own property, or co-own, are they a joint tenant or sole tenant, or mere licensee – and their immigration status – that is do they have long-term permission to remain in the state or have they recently returned to the state from abroad, perhaps even fleeing domestic violence overseas. Those victims with secure housing tenure and secure immigration status are in a relatively strong position compared to those victims with insecure migration and housing status, particularly as either status may potentially be dependent on the perpetrator. The bulk of this report focuses on the issues which face those victims with less secure housing and migration status, but it must be remembered that even those who own their own homes can be rendered homeless by domestic violence.

Before getting into the detail of the barriers faced by domestic violence victims, it is helpful to set out some key policy documents and relevant legislation. This report does not go into significant detail about the family law system and the ways in which courts handle the division of marital or family property in the case of relationship breakdown. However, where relevant, the family law system is touched upon.

Both domestic violence and the housing crisis have been the subject of national-level plans. As a result of the second national strategy on domestic violence, the Department of Housing, Planning, Community and Local Government issued Policy and Procedural Guidance for Housing Authorities in Relation to Assisting Victims of Domestic Violence with Emergency and Long-term Accommodation Needs in 2017.¹⁶ The guidance is further explored in the relevant sections below.

Last year, the Minister for Justice, Helen McEntee, launched Zero Tolerance: Third National Strategy on Domestic, Sexual and Gender-Based Violence.¹⁷ While in 2021, the Minister for Housing, Darragh O'Brien launched Housing for All – A New

Housing Plan for Ireland.¹⁸ which is the most recent national strategy aimed at addressing homelessness.¹⁹

Both plans note the intersection of domestic violence and homelessness.²⁰ Housing for All promises to continue the capital assistance scheme which supports the development of housing for a range of priority groups. Housing for All expressly mentions this scheme being used to develop new refuges for victims of domestic violence.²¹ Meanwhile, Zero Tolerance promises to remove 'the legal barriers that can prevent people experiencing domestic violence from remaining at home (where it is safe to do so)'.²² Zero Tolerance also recognises the financial cost of fleeing the home as well as the difficulties faced by migrants and minority groups.²³ It promises to double refuge spaces.²⁴ As such, it would seem that both of these national strategies are focusing on providing additional refuges rather than also addressing the various housing issues which can flow from domestic violence.

Nonetheless, Zero Tolerance acknowledges, albeit implicitly, that one of the first steps many victims of domestic violence need to take is actually escaping their home. With the lockdowns during Covid-19, the question of whether a person could flee their home came to the fore and resulted in several policy interventions which have been continued after the lockdown period.

The first of these was An Garda Síochána's Operation Faoiseamh.²⁵ This Operation was launched during the pandemic in 2020 and aimed to provide additional support to victims of domestic violence. The operation included measures such as increasing call backs to victims of domestic abuse with the hope that this would give victims the chance to seek additional help. Operation Faoiseamh continued throughout the pandemic, and it is anticipated that its approach will become the standard approach to domestic violence.²⁶ Zero Tolerance notes that Operation Faoiseamh also sought to reassure victims of domestic violence that they could leave their homes during lockdown to report their abuse.²⁷

The second key policy development was the pilot scheme, introduced in June 2020, by the then Minister for Employment



Affairs and Social Protection, Regina Doherty, which granted immediate access to Rent Supplement payments for victims of domestic abuse. This pilot scheme was prompted by the Covid-19 pandemic and related increase in domestic violence.²⁸ In November 2021 the scheme was made permanent.²⁹ The scheme is explored in more detail in the relevant section below.

As noted, victims of domestic violence may be fleeing a variety of housing situations and thus their route to finding secure housing after fleeing their home may involve a range of relevant statutes and constitutional provisions. In the context of a spouse fleeing the co-owned family home, the resolution to their housing situation could involve the rules on property division under the Family Law (Divorce) Act 1996 (as amended) which must consider the property rights protections under the Constitution. Meanwhile, a spouse fleeing a family home that is rented as joint tenants will find themselves bound by the rules in the Residential Tenancies Acts 2004-2022. The barriers that these different regimes and situations can cause are examined in the relevant sections below. These sections also discuss, where relevant, the legislation and regulations governing access to emergency accommodation and social housing supports.

In the context of domestic violence there have been two key legal developments since 2018. The first is that Ireland ratified the Istanbul Convention.³⁰ Ireland had signed the convention in November 2015 but took almost four years to ratify it. Ireland recently delivered its state report under the Istanbul Convention to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).³¹ GREVIO's own report on Ireland is due in 2023.³²

Article 20 of the Istanbul Convention commits parties to the convention to provide 'access to services facilitating their recovery from violence' which 'should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education,

training and assistance in finding employment'.³³ The Istanbul Convention further requires all signatories to ensure 'effective co-operation between all relevant state agencies'.³⁴

The second key development since 2018 was the introduction of the Domestic Violence Act 2018. This Act creates the offence of coercive control,³⁵ and creates the offence of forced marriage – including where an individual is taken from Ireland and forced into a marriage elsewhere.³⁶ Such measures reflect other aspects of the Istanbul Convention. Their relevance for this report is that they broaden the legal definition of domestic violence.

The second key aspect of the 2018 Act is that it restated and extended the range of orders which victims of domestic violence can avail of. These orders include safety orders, which prohibit a person from various threatening or intimidating behaviours,³⁷ and protection orders which can be applied for in the interim between applying for a safety or barring order and its determination.³⁸ More relevant for this report are the various barring orders which the Act allows for. Barring orders, as the name suggests, result in the exclusion of the named person from a particular property.

Under the 2018 Act there are now three types of barring order: a barring order, an interim barring order, and an emergency barring order (EBO). The first two existed prior to 2018,³⁹ the third was introduced by the Act. A barring order is available to a spouse, civil partner, or former spouse or civil partner or cohabitee, or parent of an adult child against their spouse, civil partner, or former partner, or adult child. Such orders can exclude the respondent from residential property where the applicant resides for up to three years at a time. Further barring orders may then be granted, also for up to three years at a time.⁴⁰ If there is the risk of immediate harm to the applicant, they may also apply for an interim barring order while they wait for the determination of the full barring order.⁴¹ An interim barring order can last up to eight working days if made on an ex parte basis.⁴²



There is one significant shortcoming with barring orders and interim barring orders and that has to do with the eligibility requirements. No barring or interim barring order will be granted where the applicant either has no legal or beneficial interest in the property, or where the applicant's legal or beneficial interest in the property is less than that of the respondent's.⁴³ As such barring orders are useful only for those victims of domestic violence who have sufficient ownership interests in their own home. The orders also do not cover every possible instance of domestic violence as they are limited to the relationships named in the Act.

An emergency barring order is 'available to cohabitants and the parents of adult children'⁴⁴ where there is 'an immediate risk of significant harm'.⁴⁵ It is not available to spouses or civil partners against their spouse or civil partner.⁴⁶ As Leahy notes the 'key feature of the EBO is that an applicant's interest in the relevant property does not need to be equal to or greater than that of the respondent in order to avail of the order'.⁴⁷ In effect the EBO allows for some of those without a legal or beneficial interest in their home to access an interim barring order.⁴⁸ Much like an interim barring order, an EBO can be made on an ex parte basis and, if so, can last up to eight working days.⁴⁹ An applicant cannot get a further EBO against the respondent until at least a month after the end date of the last EBO unless 'there are exceptional circumstances'.⁵⁰ While the EBO is a welcome development, it has several shortcomings, most obviously it only offers limited scope for victims of domestic violence to stay in their own home. Given the constitutional protections for property rights, it is unlikely that this can be fully addressed.

The other issue with barring orders, whether full, interim or emergency, is that none of them are necessarily immediate.⁵¹ Accordingly, even though such orders are available to victims of domestic violence and may enable them to stay in their own home, their occupation of their own home may be interrupted. That is a victim may have to first flee, then seek the relevant order, before being able to return to their own home. With this in mind, it is helpful to briefly examine issues in accessing refuge accommodation before moving on to examine accessing emergency homeless accommodation and accessing social housing supports.



4. Accessing Domestic Violence Refuges and Safe Houses

Where a person is fleeing domestic violence, they may present at either a refuge service or to their local authority's housing services. Although these might seem like similar services to most people, they are administered separately. Responsibility for refuge services falls to Tusla – the Child and Family Agency.⁵² Refuge accommodation is only meant to be short-term and if a person fleeing domestic violence cannot return to their prior home or secure alternative accommodation they may have to present to their local authority as homeless.

The Istanbul Convention requires a set level of refuge accommodation for victims of domestic violence. Under the Convention, for every 10,000 people in a state's population, the state should provide one family place with a family place being a refuge for a victim of domestic violence and their children.⁵³ Based on data from February 2022, Ireland has 141 family places, well short of the 512 places needed given the April 2022 population count of 5,123, 536.⁵⁴ Zero Tolerance's commitment to double refuge places would still leave Ireland at almost 50% under target.

Given the significant shortfall in refuge accommodation in Ireland, it should come as no surprise that there are no such services available in nine counties. Even where services are available, they are often oversubscribed. In 2021, Women's Aid reported that 62% of the time, when they called a refuge on behalf of a women seeking accommodation, the refuge was full.⁵⁵

Even if a victim of domestic violence can secure a place in a refuge, most refuges impose a time limit on stays. For example, Sonas Refuge in Dublin can provide refuge accommodation for up to 12 weeks, with limited scope for extensions.⁵⁶ While this 12-week period should work well for

those victims seeking the granting of a barring order that would allow them to return home, other victims must attempt to source alternative housing in this time frame while also recovering from the trauma of violence and fleeing their home.

A further point to note in relation to refuge accommodation is that it typically carries a charge. While a refuge may choose to waive the charge depending on the context, it is significant that the accommodation is not free. It is an additional financial burden on a victim who often may also remain liable for mortgage payments or rent payments for their home.⁵⁷

Not surprisingly, refuge accommodation can end up as functioning as a stopgap between victims fleeing their homes and between them presenting as homeless. As such consideration should be given to whether local authorities should engage with all persons entering a refuge to assess whether they will need additional housing supports and what they should be. Such a step would reflect Ireland's commitments under the Istanbul Convention to integrate services and would help ensure that when a person leaves a refuge, they enter secure accommodation rather than a series of emergency, or other short-term accommodations.



MLRC EXPERIENCE

MLRC assisted a woman and child who were at the end of a refuge stay with nowhere to go. They could not return to their local authority tenancy due to a verified threat from the abuser but could also not access emergency accommodation because they had an active local authority tenancy. The woman had spent the entire stay attempting to engage with the local authority to obtain a transfer to a safe location. Following urgent legal intervention by MLRC, the local authority provided emergency accommodation and ultimately a transfer. No explanation was given by the local authority for their failure to engage, which had created a highly stressful crisis situation for this family.

Some organisations, such as Sonas in Dublin, and Safe Ireland, provide forms of transitional housing to fill the gap between refuge accommodation and permanent housing.⁵⁸ Where such transitional housing is not available either because it does not exist or is oversubscribed, many victims of domestic violence will end up presenting as homeless.



5. Accessing Emergency Accommodation

Victims of domestic violence may end up accessing various forms of accommodation on an emergency basis. These can include staying with friends and family, self-funding stays in hotels or bed and breakfasts or having short stays in such accommodation funded by charities if the person is in immediate danger. These forms of accommodation are not generally considered “emergency accommodation” for the purposes of homeless and housing supports.

If an individual fleeing domestic violence has to present as homeless, the emergency accommodation available may be limited and highly unsuitable. The Department of Housing’s 2017 guidelines on providing housing to victims of domestic violence notes that ‘refuge accommodation...is regarded as best practice’ because of ‘the relative ease of access to services and supports...not available in traditional homeless emergency accommodation’.⁵⁹ As such while homeless hostels will accept referrals for those fleeing domestic abuse, the hostel setting is generally not suitable for those seeking to recover from trauma.

Another issue is that homeless hostels are generally unsuitable for victims of domestic violence fleeing with children. In such circumstances, local authorities may provide hotel or B&B accommodation, but these are also unsuitable for any length of time given the frequent lack of cooking or laundry facilities. The cramped space of such accommodation may also inhibit children’s development with one study noting that ‘children were unable to learn to crawl or walk due to a lack of space in hotel rooms.’⁶⁰

Even family hubs, which MLRC clients have generally seen as a “least worst” form of emergency accommodation, offer only limited space and are usually configured for relatively small family sizes. Victims of domestic violence from minority groups with larger families could be placed at a pronounced disadvantage in seeking to access more suitable forms of emergency accommodation.⁶¹

MLRC EXPERIENCE

MLRC assisted a client and her family who had been forced to shelter at a refuge for almost a year, despite the placement only being meant to be for a maximum of 10 weeks. The local authority wrongly considered the refuge placement as emergency accommodation. After MLRC’s intervention the family were made an offer of social housing.

The 2017 policy guidelines remind housing authorities that where victims of domestic violence present as homeless, they should be referred to specialist services for additional support.⁶² This reminder could partially address the lack of services in emergency homeless accommodation. The 2017 policy guidelines also note that a housing authority can provide ‘short-term emergency accommodation’ to victims of domestic violence ‘without having to assess their eligibility for social housing...or include them on the authority’s waiting list for housing supports.’⁶³

The policy expressly notes that such housing supports can be considered if the housing authority comes to assess the victims under the Housing Act 1988, section 2.⁶⁴ That section reads:

“A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—

- (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or
- (b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a),



and he is, in the opinion of the authority, unable to provide accommodation from his own resources.”

The 2017 guidelines state that section 2 is broad enough ‘to include those that cannot return to their homes for fear of violence’. However, such wording could be included in the Act itself to remove any discretion on the part of the housing authority.

A homeless assessment under section 2 requires the local authority to form an opinion as to whether an applicant can provide accommodation from their own resources. It may be that those fleeing domestic violence have sufficient resources but may not be able to access them due to the need to secure a barring order or because of coercive control. The 2017 guidelines are not clear on how local authorities should treat ‘own resources’ for the purposes of a section 2 assessment. Eligibility for social housing supports should not be a prerequisite. In practice, it seems the section 2 assessment is sufficiently broad to allow local authorities to assess someone as homeless where the applicant has fled domestic violence. Nonetheless, there remains scope to amend section 2 to make this clear.

Given the lack of refuge space, there is a clear gap in the provision of emergency accommodation for those fleeing domestic violence. The risk here is that victims of domestic abuse may feel they have no other option to stay with their abuser if there are not sufficient spaces for them to flee to.

Some victims of domestic violence may be able to fund their own stays in a hotel or B&B and thus escape their abuser. However, expecting victims of domestic violence to self-fund their own “emergency” accommodation imposes a financial burden on highly vulnerable individuals which may

impede their ability to return to secure housing – a point Zero Tolerance notes.⁶⁵ It is also worth pointing out that, at the time of writing, there is a shortage of hotel accommodation in Ireland.⁶⁶ Such a shortage imposes a practical barrier to self-funding emergency accommodation for victims of domestic violence and further highlights the need for more refuge and emergency accommodation for those fleeing domestic violence, and for this accommodation to be affordable.

MLRC EXPERIENCE

MLRC has dealt with cases of persons being refused emergency accommodation because they are deemed adequately housed despite living with their abuser.



6. Social Housing Supports

Barriers to accessing social housing supports

Where a person has fled their home because of domestic violence, their stay in refuge accommodation will typically be short. While such persons may be moved to emergency accommodation provided by a housing authority, or transitional housing, their ultimate goal will be to secure long-term accommodation. Some victims of domestic violence may be able to return to their own home but, for others, they will have to secure alternative accommodation and here it is relevant to consider the social housing supports available and barriers in accessing them.

In Ireland there are two main types of social housing support: the actual provision of housing either by a local authority or an approved housing body; and the provision of housing-specific welfare payments. It is envisaged that the housing-specific welfare payments will be used to secure a tenancy in the PRS rather than the social housing sector.⁶⁷ The Housing Assistance Payment ('HAP') for example requires individuals to find rental accommodation in the PRS.⁶⁸

a) Availability of social housing

The first barrier to note is a practical one: there is simply not enough social housing or housing in the PRS to meet demand. In the Dublin City Council area, for example, someone applying for social housing can expect to wait years before being housed, though the exact time will depend on their housing need.⁶⁹ Despite the lengthy wait times, a study from 2018 showed that homeless families preferred to wait for social housing given the perceived security it offers.⁷⁰

Similarly, in the PRS there is an acute lack of supply for those in receipt of HAP. The Simon Communities of Ireland's most recent Locked Out of the Market report found that in the 16 areas they examined there were 934 properties available to rent at any price, with just 50 properties to be found available

to rent within standard and discretionary HAP limits. This means that of the properties available to rent just 5.4% of them are available at HAP rates.⁷¹

b) Eligibility for social housing supports

In Ireland social housing is not available to all.⁷² The Housing (Miscellaneous Provisions) Act 2009 section 20 along with the Social Housing Regulations 2011 (as amended) set out the eligibility criteria for social housing in Ireland. Put briefly, applicants must be in genuine need of accommodation, have no alternative accommodation, and be unable to provide accommodation from their own resources.

Applicants must have an income no higher than a set amount – which varies across local authorities. For example, single applicants in Dublin must have net earnings of no more than €40,000 while single applicants in County Cavan can earn no more than €30,000 net.⁷³ These limits include a recent increase of €5,000 which took effect on 1 January 2023.⁷⁴ Where the applicant household has other adults, there is a 5% uplift to these limits for each adult up to a maximum of 10% additional uplift. For applicant households with children, each child results in a 2.5% increase to the maximum income limits with no maximum uplift.⁷⁵ Such rules do not fully recognise the increasing phenomenon in Ireland of adult children continuing to live with their parents due to the broader housing crisis.⁷⁶

Calculation of income for these purposes is subject to the Social Housing Support Household Means Policy 2021.⁷⁷ which provides that a local authority must assess the applicant's 12-month average income. It is understood to be intended that under this policy a local authority has no discretion to accept a social housing application from a person whose 12-month average income is above the statutory income threshold, even where their current income is far below it. This may present particular challenges for persons who have experienced disruption to their employment due to domestic violence.



In addition to these income limits applicants must provide information about any land or property owned by the applicant or their household.⁷⁸ Current ownership includes property which is overseas and property which is rented out to someone else. If the applicant is a former owner, they must explain how much they got from the sale.⁷⁹ Current owners have to explain why they cannot stay in their property. Applicants must also not have run up any rent arrears in local authority housing (although this may be addressed by entering a repayment plan).⁸⁰

Applicants for social housing must also have a long-term right to reside in Ireland and generally will need to show 'a local connection' to the area which they are applying in.⁸¹ These local connections include living or working in the area or having a child attending school in the area.⁸² Asylum seekers are not eligible for social housing until they get leave to remain, or are granted refugee or subsidiary protection status.⁸³ Housing circular 41/2012 purports to provide housing authorities with 'advice when considering whether to accept an application for social housing support from a non-Irish national'.⁸⁴ The circular states that EEA nationals can apply for social housing if they are employed in Ireland or were employed for at least a year. However, the legal status of the circular is questionable.⁸⁵ Besides from UK nationals, according to the circular non-EEA nationals typically need to have resided in the state for at least five years.⁸⁶

c) The need for formal separation before accessing the waiting list

Although there may be refuge and emergency accommodation available to victims fleeing domestic violence, before accessing the social housing waiting list there is an additional hurdle for some victims. That hurdle is that local authorities require those seeking accommodation after relationship breakdown to have formalised their separation.

The 2021 Social Housing Assessment (Amendment) Regulations provide an example for local authorities to use when seeking proof of separation. This proof can include the separation/divorce agreement or, where that is not yet available, a legal affidavit from a solicitor which must confirm there is no letter of agreement, the parties are not waiting for court proceedings under family law legislation, any custody arrangements, property ownership, and any maintenance payments.⁸⁷

There is a significant cost to securing such an affidavit from a solicitor both in terms of time and money. If a victim fleeing domestic violence cannot afford the financial cost of a solicitor, they may seek Legal Aid but applying for Legal Aid is a lengthy and bureaucratic process requiring applicants to prove their financial status. The Legal Aid application requires information about rent payments or mortgage payments and so those fleeing the family home may find themselves ineligible on that basis.

MLRC EXPERIENCE

MLRC frequently drafts "affidavits" for clients who jointly own a property but who are now separated from their partner and can no longer reside there. The Centre is able to provide this service free of charge but it will still take time which can be an issue for a client fleeing an unsafe environment. While what is to be done with the property is determined by the Courts, clients will generally only be eligible for HAP (or the Rental Accommodation Scheme, known as RAS).⁸⁸

In Northern Ireland, the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, section 28 waives the financial eligibility test for legal aid for victims of domestic abuse when they are responding to an application by their abuser.⁸⁹ While this is a welcome step, which is echoed by the proposed scheme in this jurisdiction to enhance legal



aid and legal advice for victims of sexual violence in court,⁹⁰ it would be of no assistance to those needing to prove separation for the purposes of applying for social housing. As such, the government should consider further changes to legal aid in the context of domestic violence.

d) Priority Bands and Delay in Accessing Social Housing

Assuming an applicant qualifies for social housing they are first placed on a waiting list. All local authorities must publish details about how they prioritise applications.⁹¹ An applicant’s position and priority on the list can change as their circumstances change and as the circumstances of others on the list change. While there are variations across local authorities, the allocation schemes tend to prioritise families and older people. As such single persons fleeing domestic violence are often at a disadvantage.

It is open for local authorities to award priority for accommodation on named circumstances. Dublin City Council, for example, recognises ‘exceptional welfare grounds’ as being sufficient to get priority status.⁹² This ground does not explicitly mention domestic violence. The ground does mention applicants ‘subject to harassment and/or intimidation’ but this ground requires an investigation either by Dublin City Council’s estate management staff, where the applicant is already residing in social housing, and/or by An Garda Síochána. As such it is reasonable to conclude that applicants seeking priority on the basis of domestic violence will need to have reported their abuse to An Garda Síochána first.

In contrast to Dublin City Council, Fingal County Council’s allocation scheme expressly mentions those fleeing domestic violence as being granted category three status in their priority ranking. As laudable as this is, category three is the lowest category of priority need in Fingal. It is unclear whether victims of domestic violence may also qualify under Fingal’s category one’s ‘exceptional compassionate grounds.’⁹³

Two points flow from these allocation schemes: first, even if domestic violence is recognised it is not necessarily given a high priority status; and second, the allocation schemes are not always clear and easy to follow.⁹⁴ There is an argument that the government should consider mandating the same allocation schemes across housing authorities so as to ensure equality of access across the country. At the very least it is recommended that these allocation schemes be required to consider the needs of those fleeing domestic violence and other vulnerable people as being priority applicants.

The result of the allocation schemes’ lack of priority for victims of domestic violence is that most will face a significant delay in securing social housing. These delays can act as a deterrent for those considering fleeing domestic violence and can result in those who have fled returning to their abuser for fear of becoming homeless.⁹⁵ Lengthy delays can also see those on the waiting list lose their eligibility for social housing given changes in their income and other circumstances.

e) Choice of location

The other issue which victims of domestic violence may face when being allocated social housing is the lack of choice over where they are housed. Applicants can be suspended from the social housing waiting list if they refuse two reasonable offers of accommodation. While this suspension only lasts for 12 months, applicants may lose their entitlement to Rent Supplement during this period and may lose their priority status when they are returned to the list.⁹⁶

It is vital that guidance is issued to local authorities on how to deal with victims of domestic violence who may be afraid to live in particular areas. Similarly, there is no guarantee that victims of domestic violence will be rehoused close to where their children attend school. As such, when children are fleeing with a parent, they may face significant disruption in their schooling.



MLRC EXPERIENCE

MLRC provided advice to a client who felt she had no choice other than to surrender her local authority property due to suffering extreme anti-social behaviour. Unsafe in her current area, the only alternative area in the local authority's jurisdiction was where her former partner resided. He had subjected her to violence, with a Barring Order and a Protection Order in place. She felt her only choice was to surrender her tenancy and accept a HAP payment so that she could try and source PRS accommodation herself in a safe location, knowing that this would be less secure.

f) Quality of Accommodation

Even assuming that an applicant is ultimately successful, the standard of social housing is variable. The European Committee of Social Rights raised concerns about the quality of Irish social housing in 2017 and research conducted by the Economic and Social Research Institute shows that local authority renters have the highest risk of neighbourhood problems.⁹⁷ As such, even where a victim of domestic violence is rehoused in social housing the quality of accommodation may force them to consider returning to their abuser.

g) Prior Housing and Accessing Social Housing

In addition to the issues noted above, those fleeing domestic violence can face further issues on accessing social housing because of the type of housing they are fleeing.

i) Co-Owned Property

Where a person is fleeing the co-owned family home, they will be unable to sell the home without the consent of the other co-owner. Here the provisions around divorce and property division, as well as the various barring orders may eventually assist the victim in remaining in their own home.

The recent Court of Appeal decision in *NK v SK*⁹⁸ is illustrative of the issues at play when an individual has to be excluded from the family home. The decision of Hogan J notes that orders excluding a person from the family home may engage the protections of a person's good name under Art 40.3.2, their 'right of lawful abode' under Art 40.3.2, and the 'inviolability of the dwelling' under Art 40.5.⁹⁹ The key point being that clear statutory authority is needed to justify this removal. The Domestic Violence Act 2018 would meet this standard.

It is open, however, for a decree of divorce to delay the sale of the co-owned family home rather than require an immediate sale. Here the High Court decision in *Y v Z*¹⁰⁰ is to be commended for its recognition that an abuser could not demand the immediate sale of co-owned property. In this case the wife had secured a barring order because of domestic violence and then the couple had begun divorce proceedings. In *Y v Z* the former husband was seeking an immediate sale of the property to allow him to restart with his new partner. The High Court denied this request.¹⁰¹

However, *Y v Z* suggests that issues with housing after domestic violence may take some time to fully realise. The reason why is that allowing the victim to stay put for several years is preferable to an immediate sale but there is no guarantee that the victim will be able to find suitable accommodation when the delay period ends. Such an outcome is more likely where the property market is volatile. During the last recession, for example, many homeowners found themselves in negative equity and thus those fleeing domestic violence struggled to achieve financial independence even after receiving the proceeds of sale of the family home.¹⁰²

ii) Joint Tenancies in Rented Accommodation

One trend in Irish housing since the 1990s has been the increase in those living in the PRS.¹⁰³ While it is possible that a cohabiting couple may have only one of their names on the lease, it is equally possible that both parties' names are



on the lease.¹⁰⁴ The Residential Tenancies Acts 2004-2022 apply regardless of whether the individuals are joint tenants or whether one is a licensee of the other.¹⁰⁵

The Residential Tenancies Act 2004-2022 provides security of tenure after six months. Crucially from the perspective of a person considering fleeing their home because of domestic violence, the Acts allow for another tenant to benefit from an existing tenant's security of tenure. That is, where there are multiple tenants, the security of tenure applies to the dwelling rather than each tenant individually.¹⁰⁶ Accordingly, if a person moves in with their partner and their partner then leaves the property, the person who moved in can benefit from any security of tenure their partner had.

The acts of one tenant cannot, in theory, prejudicially affect or end the security of tenure of another tenant. Thus, where there has been anti-social behaviour – and some forms of domestic violence could amount to this¹⁰⁷ – then the perpetrator's acts cannot harm the victim's security of tenure.¹⁰⁸ However, the practice is often different with the entire household potentially being found liable for anti-social behaviour even in the context of domestic violence.¹⁰⁹ An eviction for anti-social behaviour can seriously affect a person's ability to secure subsequent accommodation, including social housing.

Where the entire household escapes eviction, that is where the perpetrator of domestic violence moves out or is barred under a barring order, the end result is not necessarily much better. The reason why is that all tenants are liable for the obligations of the tenancy which means then the remaining tenant(s) will be liable for the entire rent.

Here the housing crisis could cause significant problems for tenants either seeking to flee domestic violence or seeking to remain in their rented property after being the victim of domestic violence. The housing crisis has seen rents increase to levels which are unaffordable for many. As such even if a victim of domestic violence remains in the rented accommodation, they may not be able to afford it. This is exacerbated by the manner in which HAP rates are tied to

household composition – if the household reduces in size, the HAP rate payable may also reduce despite the rent being unchanged.

Where the victim of domestic violence flees, the issue is much the same and there is no guarantee that the fleeing tenant will be able to seek the return of their portion of the security deposit.¹¹⁰ The consequence of this is that any fleeing tenant may have significantly reduced funds and could remain liable for some of the rent of their former home.

The Residential Tenancies Acts 2004-2022 are silent about solutions for victims of domestic violence. It seems likely that any tenant fleeing a rented property as a result of domestic violence will face significant financial difficulties in the short-term. It would be helpful if the Residential Tenancies Acts 2004-2022 could be updated to consider the removal of one tenant from the tenancy in the context of relationship breakdown as well as domestic violence.

If the tenancy is not in the PRS but with a local authority or approved housing body the procedure for removing one party from the tenancy is highly variable. For approved housing bodies the procedures under the Residential Tenancies Act 2004-2022 apply but these procedures do not apply to local authority tenancies. There is no governing legislation for removing one tenant from local authority tenancies, but the first option is that both parties agree that one name be removed from the joint tenancy agreement. Obviously in the context of a person fleeing domestic violence, such agreement, particularly from an abuser, may not be forthcoming.

If the other joint tenant does not agree for their name to be removed, the person seeking their removal must provide evidence that the relationship has ended.¹¹¹ Citizen's Information does not offer guidance as to what that evidence might be and, particularly, in the context of cohabittees there may not be much in the way of evidence. It is likely that where there is a complaint to An Garda Síochána of domestic violence that report may be evidence for the purpose of ending the joint tenancy.



MLRC EXPERIENCE

MLRC drafted an “affidavit” for a client who sought to have her former husband’s name removed from their joint local authority tenancy. She had been subject to serious domestic violence by her former husband, with a Barring Order in place and file with the Director of Public Prosecutions. The client had a serious concern that upon the expiry of the Barring Order the former husband would return to the property and commit further acts of violence. In spite of the seriousness of the matter, the local authority would not remove the former husband from the joint tenancy, stating that: “[T]here is no provision under the Housing Acts 1966-2018 for the Council to remove a tenant of a joint tenancy without their written consent”.

Where the joint tenants of social housing are married or civilly partnered, the divorce/separation process will consider who should remain in the family home. The Court can order the transfer of the tenancy where one joint tenant is non-cooperative. However, it must be noted that if there is a transfer of tenancy, one tenant will have to find somewhere else to live. Citizens Information advises that if a person is left on their own in the tenancy, they may be deemed to be overhoused and offered alternative accommodation.¹¹² The key word here is ‘may’ as a local authority will not force a person with a valid tenancy to downsize.

Even assuming that a victim of domestic violence in social housing can secure the removal of their abuser from the lease and/or their home, they may wish to move to a new address out of safety concerns. Although transfers within social housing are possible, the housing allocation schemes may require any requests rooted in domestic (or other) violence must have been investigated either by the Estate Management team or the Gardai.

The Dublin City Council Housing Allocation scheme, for example, allows for transfers on exceptional welfare grounds where recommended by a Housing Welfare Officer.

The procedure may be confidential, but it is also obscure insofar as the nature of the process and the grounds for

appeal to the Chief Housing Welfare Office are not clearly stated. Again, this issue could be solved if victims of domestic violence were awarded a clear priority status in social housing allocation which would include requests for transfer.

For cohabittees in approved housing bodies, the outcome will be different if one of the parties is deemed a licensee of the named tenant. The Residential Tenancies Acts 2004-2022 do not allow licensees in occupation of an approved housing body tenancy to become a tenant.¹¹³ As such if a licensee of such a dwelling has to flee their home, they will lose it.

Asides from the practical issue of there being a lack of social housing to deal with relationship breakdowns, it would be helpful if there were legislation in place to deal with ending a joint tenancy in the context of relationship breakdowns. In particular, it would be useful if the procedure for removing one joint tenant from the lease was standardised across local authorities and approved housing bodies.

At present it must be stressed that the difficulty in removing a tenant from the lease renders it challenging for that tenant, whether in the PRS or social housing, to access additional housing supports and flee the relationship. This is compounded by the fact that those fleeing domestic violence have no guarantee of securing priority on a social housing waiting list on that basis alone.

h) Issues faced by migrants, minority groups, and members of the Traveller and Roma Communities

Just as someone’s prior housing situation can affect their ability to access social housing supports, so too can a person’s immigration status, or membership of a minority group affect their ability to secure alternative accommodation and/or social housing supports. Although migration status and ethnic background are separate considerations, they can intersect, and it is helpful to examine both together.

The first challenge is that both migrants to Ireland, and those returning to Ireland in crisis can face issues in securing the necessary housing supports. In 2019, Crosscare’s study of



Irish emigrants returning in crisis noted that housing issues were a key challenge for this group of people.¹¹⁴ The report noted that some of these returnees were fleeing domestic violence.¹¹⁵

One of the key issues for returnees fleeing domestic violence will be the local connection test applied by local authorities for accessing supports in their area. The local connection test can consider *prior* connections with the locality and the connections represented by having family members in the area. As laudable as this is, the difficulty will be in proving prior connections particularly if that connection occurred when the person was a child.

The second major issue faced by returnees will be proving the lack of alternative accommodation. It is common for local authorities to consider property owned abroad as being sufficient as alternative accommodation,¹¹⁶ and proving a negative is always more challenging. There can be significant costs involved in securing the necessary affidavits from the other country to show no property is owned,¹¹⁷ to say nothing of the risk that the abuser may stymie the process. There is also evidence that local authorities do not adequately consider whether any property owned abroad is actually alternative accommodation.¹¹⁸

The challenges in proving prior connections and proving a lack of alternative accommodation abroad are particularly acute for naturalised citizens returning in crisis,¹¹⁹ and are also issued faced by migrants to Ireland. In the context of the former, that group may not have other family members living in Ireland and may not have lived in the same local authority for long enough while securing their citizenship.¹²⁰

In the context of migrants to Ireland, non-EEA migrants are particularly vulnerable as they need to have resided in Ireland for at least five years to satisfy the 'reckonable residence' requirement in circular 41/2012 for social housing supports. When coupled with the fact that some victims' immigration status will be linked with that of their abuser,¹²¹ such individuals can find themselves unable to leave domestic violence.

MLRC EXPERIENCE

MLRC assisted a vulnerable elderly client who had been subject to abuse and was in refuge accommodation. They were being refused access to emergency homeless accommodation and access to social housing supports on account of their immigration status – as a non-EEA national with a Stamp 3 permission. MLRC wrote to the local authority highlighting that, under Circular 41/2012 an aggregate of five years of 'reckonable residence', including Stamp 3, qualifies an applicant for inclusion on the social housing list. Notwithstanding our client's eligibility under the Circular, MLRC also highlighted that the Circular is a policy and not primary legislation and that it must be applied flexibly, particularly in such circumstances. Following MLRC's intervention the client was accepted onto the social housing list and provided with access to emergency accommodation.

In 2021, guidance was issued about how the Irish Immigration system should deal with cases of domestic violence where the victim is a foreign national.¹²² This guidance does not extend to providing social housing supports but merely covers immigration status. The guidance allows someone with a dependent immigration status to apply for independent status when fleeing domestic violence.

While there is no fee for applying, the application will require documentary proof of the domestic violence and there is no guarantee that where the applicant is successful, they will get a status which allows them to work. The Minister may, in their discretion, grant such permission but it is not automatic. It is recommended that permission to work be granted in such applications so that those fleeing domestic violence can guarantee their financial independence from their abusers.

There is also no express provision to allow a person applying for independent status to access emergency accommodation while waiting for the determination of their application. Such persons are accordingly incredibly vulnerable and may feel pressured to return to their abuser.



In the context of accessing social housing supports, Irish citizens who are members of minority groups should, in theory, face only the same barriers as other Irish citizens. However, minority groups, as MLRC has recently highlighted, face specific issues in accessing housing and homelessness services.¹²³ These issues include some matters already highlighted such as the local connection test and the no alternative accommodation test.¹²⁴

An earlier MLRC report considered local connection test in the context of the Equal Status Acts 2000 to 2018 as it could amount to indirect discrimination.¹²⁵ There is also the potential that the application of the test could result in unconstitutional discrimination.¹²⁶ The local connection test is but one aspect of a local authority's discretion in accepting an application for housing support. As such this report reiterates the conclusions and recommendations of the earlier MLRC report on minority groups and housing supports.

There is a further issue faced by minority groups in that it is well documented that such groups face housing discrimination when seeking accommodation in the PRS.¹²⁷ The result of this is that even if a person may be able to afford their own accommodation they may, as a result of discrimination, struggle to secure housing in the PRS.

In the context of minority groups in Ireland, the Traveller and Roma communities are at a high risk of experiencing housing issues.¹²⁸ Statistics show that Traveller women account for a high number of women admitted to refuges and that some are repeat admissions suggesting difficulty securing alternative accommodation.¹²⁹ Meanwhile, the Roma Community have been adversely impacted by the 41/2012 Circular which has led Pavee Point to call for a domestic violence exemption to the application of the reckonable residence test in that circular.¹³⁰

Traveller and Roma women also struggle when it comes to exiting refuge accommodation into long-term accommodation. Under the Housing (Traveller Accommodation) Act 1998 it is the responsibility of local authorities to provide 'adequate, safe, and culturally

appropriate accommodation for Travellers.¹³¹ Pavee Point notes that local authorities consistently fail to provide such accommodation.¹³² This makes it difficult to secure alternative accommodation for those fleeing domestic violence as they often suffer discrimination in the PRS.¹³³

MLRC EXPERIENCE

When seeking to exit refuge accommodation, a Traveller client stated that she felt discriminated against by landlords in the PRS. She described constantly looking for accommodation with the support of refuge staff but only getting "two minute viewings" and being "rushed out of properties due to her last name".

Pavee Point noted in 2013 that the practice of refuges of referring Traveller women to homeless services or temporary hotel-style accommodation was 'not suitable for any women fleeing a violent relationship' and was particularly unsuitable for Traveller women who would consider that sort of accommodation as unsafe and 'will not risk attracting additional stigma from their community'.¹³⁴ Pavee Point also notes that such accommodation alienates Traveller women from their community and support networks.¹³⁵ Pavee Point notes that even if Traveller and Roma women do seek social housing supports from a local authority, they are at high risk of failing the local connection test or the reckonable residence test under the Circular.¹³⁶

Pavee Point has called for the creation of refuge, transitional and other accommodation which is supportive of the needs specific to Traveller and Roma women.¹³⁷ Such culturally appropriate accommodation is essential if Traveller women facing domestic violence are to feel able to flee the abuse. It is therefore recommended that any such accommodation be designed in partnership with the Traveller and Roma communities.



i) The issues with housing welfare payments

Outside of the provision of social housing there is the potential to access housing welfare payments. These payments include Rent Supplement payments, and the Housing Assistance Payment (HAP). The former is for those who do not qualify for their local authority's housing waiting list, while HAP is for those who do qualify.¹³⁸

In June 2020 the Department of Employment Affairs and Social Protection launched a pilot scheme, since made permanent, to allow victims of domestic violence to secure immediate access to Rent Supplement payment.¹³⁹ Under this scheme victims of domestic violence will be provided with Rent Supplement for three months, and then can apply for a three-month extension but this will be assessed as a standard application for Rent Supplement. As noted above, the provision of temporary Rent Supplement to victims of domestic violence may be useful in helping pay for refuge accommodation or perhaps for other temporary forms of accommodation where, for example, a barring order is being sought to allow the victim to return home.

If the applicant should need to apply for another three months of Rent Supplement, they may struggle to qualify. For example, the applicant being in full-time employment will disqualify them from Rent Supplement.¹⁴⁰ In addition, Rent Supplement payments are capped. For Dublin – which has the highest cap – the rent is capped at €1,275 for a single parent and two children.¹⁴¹ The Residential Tenancies Board's rent index report from the fourth quarter of 2022 indicates that in Dublin the average rent for new tenancies in a three-bedroom house was €2,196 per month.¹⁴² It does not appear that the maximum rents for Rent Supplement have been changed since 2007. An urgent review of these rent caps is thus recommended.

As laudable as the access to immediate Rent Supplement is for victims of domestic violence, it potentially operates as a form of private, individual refuge accommodation. In effect, much like domestic violence refuge accommodation, it is available for three months during which time the victim is expected to source alternative accommodation.

Government information about the Rent Supplement suggests that even if the victim of domestic violence can secure an additional three months of the payment there is no guarantee they will get any further payments. The advice is that after six months of Rent Supplement, victims should seek local authority assistance.¹⁴³ What those persons who

either do not qualify for local authority assistance or cannot secure an additional three months of Rent Supplement are supposed to do is not explained.

For those who do qualify for the social housing waiting list, they may be offered HAP. Under HAP, the local authority pays rent to the landlord, and the recipient pays rent to the local authority. Those in receipt of HAP can be in full-time employment but otherwise qualify for social housing. If a person successfully secures a HAP tenancy, they are removed from the social housing waiting list. If they still wish to secure social housing, they must then apply to be placed on the transfer list.¹⁴⁴

Like the Rent Supplement, HAP is limited though there is some scope for local authorities to go up to 35% above the limits.¹⁴⁵¹⁴⁶ In Dublin City Council, for example, the HAP limits for a single parent with 3 children are €1,300 per month. Under the increased flexibility this could be increased to an absolute maximum of €1,755.

The HAP rules also allow for local authorities to use the HAP rate for couples for a single person for new tenancies. So, for example, in Dublin City Council a single person would be entitled to €900 per month. It is not clear if there would be a 35% flexibility on top of this amount. Such flexibility would be very useful for those fleeing domestic violence.

The issues with HAP are threefold. First, even with the discretionary flexibility the HAP rates remain well below market rent. As such there are typically only a handful of properties available to rent which meet the HAP rates.¹⁴⁷ A report published in July 2023 counted only 50 properties eligible for HAP available across 16 areas.¹⁴⁸ To put this into perspective, the Central Statistics Office reported that at the end of 2021 there were 60,747 'active HAP properties in the State'.¹⁴⁹ The same report noted this was an increase of 4.5% from 2020. Quite clearly there are not enough suitable properties to meet the demand for HAP.

Second, even if a HAP recipient can find a property to rent there is no guarantee that the landlord will rent to them. The Equal Status Acts 2000 to 2018 prohibit discrimination by landlords on the grounds that a tenant or prospective tenant receives HAP.¹⁵⁰ However IHREC found in April 2022 that discrimination towards recipients of HAP still occurs.¹⁵¹ IHREC also noted that when such discrimination occurs, affected parties simply do not have the ability to bring a complaint as their priority is finding a home.¹⁵²

The difficulty in finding a suitable property for HAP recipients is compounded by the broader shortage of properties in the PRS. Even where rental properties are available, they may not be suitable for those fleeing domestic violence either because they are too small or in the wrong area for children's schooling. Many properties in the PRS are also of poor quality, a problem which is particularly acute for apartments.¹⁵³

Worryingly, the decision in *Feeney v Waterford* illustrates that HAP tenants occupying a defective property have limited recourse. In that case the applicants' landlord failed to fix the defects in the property and the council ceased payment of HAP on the basis that the property was not up to the required standards. The High Court held that the council did not have to issue an improvement or prohibition notice to the landlord and that the council was entitled to cease paying HAP to the landlord.¹⁵⁴ Accordingly the decision in this cases illustrates a further challenge with securing HAP properties.

Thirdly, even if a person can find a property under HAP, they do not get a social housing tenancy but get the security of tenure provided by the Residential Tenancies Acts 2004-2022.¹⁵⁵ As such they are vulnerable to the landlord seeking to evict them under one of the allowable 'no fault' grounds in the Residential Tenancies Acts 2004-2022.¹⁵⁶

Wrongful Refusal of Social Housing Supports

There is, at present, limited redress for victims of domestic violence or, for that matter, anyone else who is wrongfully refused social housing supports. There is no statutory appeals mechanism for challenging refusals of access to social housing supports or emergency homeless accommodation. This means that where a patently unlawful decision is made, the only option to challenge it is often through litigation. The broader issue of access to justice is beyond the scope of this report but suffice to say that there are many barriers to a person accessing the courts in respect of such matters, including the high cost of litigation and tight time limits for bringing judicial review. Further, even when the courts can be accessed, as Casey notes, the issue arises that there is a significant degree of discretion afforded to local authorities.¹⁵⁷ While the guidance provided by the government in 2017 makes it clear that the relevant legislation is sufficiently broad to allow local authorities to

assist victims of domestic violence seeking housing, the discretion granted also means there is scope to refuse assistance.¹⁵⁸

The governing legislation could be amended to reduce local authorities' discretion but absent additional funding for more social housing the problems noted above would likely remain. Accordingly, it is recommended both that the relevant legislation be amended to make it clear that victims of domestic violence fleeing their home will qualify as homeless, and that additional funding be provided for social housing. More generally, the introduction of a pathway to appeal refusals of access to supports without recourse to the Courts would be welcomed.

Alternatives to Social Housing Supports

Before examining what other countries have done to address the housing needs of victims of domestic violence it is helpful to briefly note alternatives to the supports listed above. Given the intersection of a tight rental and residential property market, and the income limits for those seeking social housing supports, it is entirely possible that many victims of domestic violence will find themselves unable to afford adequate housing by themselves but be ineligible for housing supports.

Victims who find themselves in this gap between affording adequate housing and eligibility for housing supports may be able to access other forms of housing. Recent years have seen the introduction of various cost-rental schemes. The income eligibility limits for cost-rental schemes are higher than those seen in social housing supports but they are run on a lottery basis rather than considering various levels of priority need for housing.¹⁵⁹

Similarly, victims of domestic violence who were formerly co-owners might be eligible for the First Home Scheme, a shared equity scheme. This scheme is typically not open to those who have already been owners but in the context of family breakdown there are exceptions.¹⁶⁰

Neither of these schemes have any specific eligibility for victims fleeing domestic violence. It is recommended that these schemes be amended to address the eligibility and, where relevant, priority for victims of domestic violence.

7. International Comparisons

This section examines the experiences of other countries. The bulk of the focus is on the United Kingdom given its proximity and the similarity of some of the legislative provisions around homelessness. The section also examines the experiences of a handful of other signatories to the Istanbul Convention particularly with respect to the provision of refuge accommodation for victims of domestic violence and their ability to exit refuge accommodation.

a) The United Kingdom

In 2018 the United Kingdom ('UK') recognised that providing housing to victims of domestic violence was an important part of supporting these victims.¹⁶¹ However there are now some differences between the various sub-state jurisdictions within the UK over how housing and homeless are handled.¹⁶² These differences tend to be at the level of detail but developed out of the original response to homelessness in Great Britain which has long recognised the need to house victims of domestic violence.¹⁶³

Like Ireland, the UK does not have emergency refuge accommodation available in all areas. However, the 2018 Guidance asks that local authorities work together to assist victims and asks that local authorities liaise with the refuge provider to figure out how long a victim should be allowed to stay in such accommodation.

In the context of providing accommodation to those fleeing domestic violence there are two key statutory regimes. The first is the recently enacted Domestic Abuse Act 2021. This Act makes several changes to the law surrounding domestic violence in the UK, but the focus of this report is on how it speaks to housing issues.

Part 4 of the 2021 Act covers what local authorities in England 'must' do for victims of domestic violence.¹⁶⁴ The Act requires that English local authorities assess 'the need for accommodation-based support' and to plan for and monitor the delivery of 'such support'.¹⁶⁵ The 2021 Act also requires

that English local authorities establish a 'domestic abuse local partnership board' with responsibility for advising the local authority on their accommodation-based support.¹⁶⁶ The Act stipulates that the board must have at least one person 'to represent the interests of victims of domestic abuse' and one person 'to represent the interest of children of domestic abuse victims',¹⁶⁷ among others¹⁶⁸. By design these boards are meant to capture the voices of victims and involve them in decisions about the levels of support needed.

The Domestic Abuse Act of 2021 creates the Domestic Abuse Protection Notice (DAPN).¹⁶⁹ One feature of this notice is that it may be given by a 'senior police officer'¹⁷⁰ and it can, if necessary, ban the named party from a specific property.¹⁷¹ DAPNs last for a relatively short period of time, up to forty-eight hours,¹⁷² and within that time frame 'a chief of police officer is required...to apply for a domestic abuse protection order'.¹⁷³ As Leahy notes the DAPN allows for 'immediate protection to a domestic abuse victim'.¹⁷⁴ In theory, then, the DAPN could prevent victims of domestic abuse needing to enter any form of refuge or emergency accommodation. Leahy has called for a similar notice to be available in Ireland.¹⁷⁵ This report echoes Leahy's recommendation.

The second key statutory regime for housing those fleeing domestic violence is the Housing Act 1996. This Act governs what happens when a person is homeless because of domestic abuse. There are now some differences in approaches across the UK under this Act. Scotland, notably, has abolished the categories of priority need in the context of providing long-term housing to those found to be homeless.¹⁷⁶

However, England retains the category of priority need and the rules are found in Part 7 of the 1996 Act. The Act expressly states that '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 anyone who normally resides with that person.¹⁷⁷ Accordingly this Act allows a parent to flee with their children where it is their children being abused.



The 1996 Act requires local authorities in England to provide housing advice to those who are homeless and threatened with homelessness.¹⁷⁸ Where a person is homeless and applies to a local housing authority for help and is in 'priority need' then the authority 'must secure that accommodation is available for the applicant's accommodation.'¹⁷⁹ Here it must be noted that not everyone is eligible for housing assistance and the Act has provisions which set out when 'persons from abroad'¹⁸⁰ and asylum-seekers are and are not eligible for such assistance.¹⁸¹

The 1996 Act also imposes a local connection test for applicants but applicants¹⁸² cannot be referred back to another local authority if they are at risk of abuse there.¹⁸³ Accordingly the 1996 Act recognises that victims of domestic violence may need to avoid being rehoused in certain areas.

However, if a person is homeless, eligible for housing assistance, and is in priority need then the authority must 'take reasonable steps to help the applicant to secure that suitable accommodation becomes available'.¹⁸⁴ There are several categories of priority need in England including 'a person who is homeless as a result of that person being a victim of domestic abuse'.¹⁸⁵

The advice given by Shelter England, a leading homeless charity, indicates that the support available to those fleeing domestic violence is not limited to those who meet the eligibility requirements for social housing supports.¹⁸⁶ The sort of support provided will differ however as the duties of local authorities are to provide emergency housing to those fleeing domestic violence and then they must look into the person's situation and agree a personal housing plan with that person. That plan may involve the person applying for social housing, but it does not have to.

The Statutory Guidance issued in 2018 discussed the need 'to promote a consistent approach across local authorities to the way they consider applications from victims of domestic abuse in refuges.'¹⁸⁷ The Guidance urges 'all local authorities' to exempt those fleeing domestic violence and living in a refuge or temporary accommodation in their area from the residency requirements over social housing.¹⁸⁸

If a person is a secure tenant of social housing and needs to be re-housed because of being a victim of domestic abuse, they must be offered a secure tenancy when they are rehoused.¹⁸⁹ If the victim is a joint tenant of rented accommodation, they can apply to the court to ask that the tenancy be transferred to their sole name.¹⁹⁰

In 2022 the Department of Levelling Up, Housing and Communities, carried out a consultation about the rules around joint tenancies in social housing.¹⁹¹ One issue of particular concern is that, under English law, if the victim and perpetrator are joint tenants of social housing then the perpetrator can end the tenancy and render the victim homeless.

There was a proposed amendment to the Domestic Abuse Act 2021 while it was at the committee stage which would have allowed for the transfer to joint tenancies where one joint tenant has experienced domestic abuse at the hands of another joint tenant, but it was withdrawn.¹⁹² The draft amendment does, however, offer a model which Ireland could adopt.

In Wales, the Renting Homes (Wales) Act 2016 allows for joint tenants to be removed from the tenancy.¹⁹³ Besides from this provision, the rules in Wales are largely the same though they are contained within a different statutory regime. Wales replaced part 7 of the Housing Act 1996 with the Housing (Wales) Act 2014 chapter 2. The 2014 Act places duties on Welsh local authorities to 'help people who are homeless or threatened with homelessness.'¹⁹⁴ The 2014 Act maintains the priority need of those who are homeless because of domestic abuse and similarly prevents the referral of an applicant to another area if they are at risk of abuse in that area.¹⁹⁵

The other UK initiative which is worth noting is the emergence of women-only Housing First programs.¹⁹⁶ Housing First is a relatively new program in the UK-context and these women-only programs are equally new.¹⁹⁷ While some are targeted at those escaping domestic violence,¹⁹⁸ others are targeted at those who have been sexually exploited.¹⁹⁹ Obviously the two categories are not mutually



exclusive. Such women-only programs are welcome on a number of grounds, not least as a way of addressing the lack of attention and resources for homeless women. Equally important is the provision of specific domestic violence supports alongside housing.

b) Norway

In Norway domestic violence shelters are known as crisis centres²⁰⁰ and are governed by the Law on Crisis Centres 2010. This statute imposes a duty on municipalities to guarantee access to such centres. There is no maximum duration and, crucially, Norway complies with the Istanbul Convention's guidance of one family place per 10,000²⁰¹ people. The 2010 Law also requires that victims have adequate support including translation services.²⁰²

However, these centres are not evenly distributed across the country and evidence suggests that some are underfunded.²⁰³ Norway also has gaps in the provision of spaces for disabled individuals, those struggling with addiction, and for the Indigenous Sami population.²⁰⁴ There is scope for Ireland to consider these points as well given the commitment to increase the level of refuge accommodation. That is, Ireland should consider a more coordinated approach to refuge accommodation which would offer other supports, such as addiction supports, as well as providing refuge spaces which are accessible for all.

GREVIO's report also notes that Norway has 'long waiting lists and a high threshold' for accessing 'municipal housing' and this can hinder victims of domestic violence fleeing their abuser.²⁰⁵ Accordingly, despite having the required number of refuge places, Norway still falls short when it comes to fully supporting victims of domestic violence seeking housing free from abuse.

c) Iceland

Iceland currently has only two women's shelters and so, like Ireland, falls short of the target of one family place per 10,000 people.²⁰⁶ However, GREVIO's report notes that the shelter accommodation is free and that no woman has been asked to leave or turned away for lack of space.²⁰⁷ GREVIO's report also notes that Iceland's Women's Shelter Association has an agreement with hotels which allows women with

disabilities to have accessible accommodation with the necessary support when fleeing domestic violence.²⁰⁸ Iceland was, as of late 2022, building a new shelter which would be 'barrier-free'.²⁰⁹ Like Norway, however, Iceland struggles to provide support for those victims of domestic violence who have addiction issues.²¹⁰

Iceland's provision of free shelter accommodation is to be commended given how fleeing the home can impose costs on victims. Equally, Iceland's ability to ensure that disabled victims of domestic violence have a safe location to flee to is something which Ireland should emulate; that is Ireland should make sure its refuges are accessible.

Since 2021, Iceland's Women's Shelter Organisation has provided transitional housing for victims of domestic violence. This transitional housing allows victims to exit refuge accommodation while still availing of 'continued support and counselling'.²¹¹ Such transitional housing would be very welcome in the Irish context; however, it should be possible to ensure ongoing support and housing outside of the transitional housing context.

d) Luxembourg

Luxembourg currently exceeds the minimum ratio of family places, having roughly 1 place per 2,722 inhabitants.²¹² However, even with a high level of shelter places relative to population, and the two-to-three-month limit generally imposed on shelter stays, many women struggle to access shelters in Luxembourg as the 'private housing shortage in Luxembourg' means women cannot leave shelters.²¹³ GREVIO's report on Luxembourg mentioned the lack of 'second-phase' housing which would allow women to exit shelters while still receiving support.²¹⁴

Luxembourg's experiences are illustrative for the Irish context as they show that Ireland must also tackle the broader housing crisis as well as providing more refuge accommodation. It is not enough to provide the 1 family place per 10,000 people if there is nowhere for victims of domestic violence to move to after their time in the refuge.

GREVIO's report also criticised Luxembourg's lack of priority access to social housing for victims of domestic violence.²¹⁵ Ireland also suffers from a lack of clear priority given to victims of domestic violence in allocating social housing.

8. The Public Sector Equality and Human Rights Duty and Housing Victims of Domestic Violence

In 2014 the Irish Human Rights and Equality Commission Act introduced the Public Sector Equality and Human Rights Duty (PSEHRD) for public bodies in Ireland.²¹⁶ The relevant public bodies for the purposes of housing provision include Departments of State and any local authority under the Local Government Act 2001.²¹⁷ The PSEHRD requires public bodies to 'have regard to the need to ...eliminate discrimination...promote equality of opportunity and treatment...protect the human rights of its members, staff and the persons to whom it provides services.'²¹⁸

The PSEHRD is designed to encourage public bodies to self-assess their compliance with the duty. As such the 2014 Act requires public bodies to have a strategic plan for how it will give effect to the PSEHRD.²¹⁹ This plan should include an assessment of 'the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues'²²⁰ and public bodies should produce an accessible report 'on developments and achievements in that regard in its annual report'.²²¹

The Act also grants IHREC the power to ask public bodies to review their performance or 'prepare and implement an action plan' where IHREC thinks there is 'a failure' to comply with the PSEHRD.²²² An earlier MLRC report noted that IHREC had asked Dublin's local authorities to review 'non-Irish nationals' access to social housing and homeless services' and this resulted in some changes to how those individuals accessed housing supports.²²³

This report has noted that victims of domestic violence needing housing support face several barriers. An earlier MLRC report notes that the PSEHRD could be used to make

housing supports more accessible to members of minority groups and the same conclusions would apply to those victims of domestic violence who are members of minority groups.²²⁴

The challenge is that what unites victims of domestic violence is that they have suffered domestic violence. While it is true that many victims of domestic violence are women, men and other genders can be victims of domestic violence as well. Yet, being a victim of domestic violence is not a protected characteristic under the Equal Status Acts sufficient to warrant public bodies having due regard to addressing discrimination based on that status alone.

The barriers which victims of domestic violence face because of their gender or sexual orientation or minority group status can and should be addressed under the PSEHRD. The sort of change which might flow from this is the need to have sufficient refuge accommodation, emergency accommodation, and other supports available for male victims of domestic violence, as well as similar provisions for LGBTQI+ victims of domestic violence, and for Travellers and Roma facing domestic violence.

The PSEHRD has the potential to consider the intersection of protected characteristics and how they are relevant for victims of domestic violence seeking housing supports. For example, the IRHEC asked every local authority in 2019 to conduct 'an equality review' over the provision of Traveller accommodation.²²⁵ This report has highlighted that Traveller women can face specific issues when trying to access housing supports following domestic violence and providing refuge and other accommodation for Traveller women in those circumstances must be part of the provision of Traveller accommodation.



MLRC EXPERIENCE

MLRC represented a woman, who was a member of the Traveller Community, who became homeless when she fled domestic violence with her child. She was unable to access refuge accommodation for various reasons and the local authority failed to make any other provision for their housing, one reason given being that the local authority felt standard emergency homeless accommodation would not be safe given the level of threat facing the family. The family were forced to sleep in their car for a number of days and the matter was only resolved following the commencement of legal proceedings.

Crosscare's observation that the PSEHRD requires access to interpreters is also relevant for victims of domestic violence seeking social housing supports.²²⁶ Accordingly it is recommended that local authorities and Tusla should ensure that information about domestic violence supports is available in a range of languages and formats, such as videos, so that it is accessible to all.

The PSEHRD echoes the public sector equality duty in the UK.²²⁷ That duty has been the subject of some scepticism, but it has had some successes.²²⁸ Of particular relevance to this report is that the public sector equality duty has seen the allocation policies for social housing in England be subject to judicial review.²²⁹ It could also be argued that the partnership boards and support plans discussed above represent a broader realisation of the public sector equality duty in the UK. That is by building-in consultation with affected

groups, particularly within the context of supports for those fleeing domestic violence, the UK is building equality into every stage of the response to domestic violence. This is something which Ireland should consider moving forward.

However, the PSEHRD in Ireland has some specific limitations with respect to the provision of social housing in Ireland. MLRC's own information about the PSEHRD and housing notes that local authorities are allowed to treat people differently based on family size, family status, civil status, disability, age, and membership of the Traveller community when providing particular types of housing.²³⁰ Such an exemption is tied to the limited supply of social housing. It could potentially work to aid victims of domestic violence getting social housing supports sooner, but it could also work to indirectly discriminate against certain minority groups. Such indirect discrimination should be guarded against. That being said, any future review of social housing and housing guidelines more broadly, should consider how these guidelines will support those fleeing domestic violence. Such a step would be reflective of the PSHERD.



Conclusions and Recommendations

Domestic violence can often result in individuals having to flee their homes and seek alternative accommodation either for the short-term or long-term. This report has highlighted that victims of domestic violence can face many issues in securing adequate alternative accommodation. The report makes the following recommendations:

- 1) The report recommends that refuge accommodation be increased to the required level of one family place per 10,000 people as per the Istanbul Convention.
- 2) The report also calls on Ireland to ensure that future refuge accommodation meets accessibility requirements can assist those victims of domestic violence who have addiction issues, and that there is sufficient and culturally appropriate refuge accommodation for Traveller women and Roma women. These points have been raised in respect of other states and they are equally relevant for the Irish experience.
- 3) The report recommends that Ireland amend the Domestic Violence Act 2018 to allow for an equivalent to the UK's Domestic Abuse Protection Notice so that perpetrators of abuse can be immediately barred from the family or victim's home.
- 4) The report recommends that the Housing Act 1988, section 2 be amended to make it clear that victims of domestic violence who cannot return home should not be found to have alternative accommodation available to them.
- 5) The report calls on the government to provide guidance for social housing allocation schemes so that victims of domestic violence are accorded appropriate priority across local authorities.
- 6) The report recommends that the local connection test or, where relevant, the reckonable residence tests be applied flexibly in the context of victims of domestic violence.
- 7) The report calls for clear legislative guidance on severing and/or transferring a joint tenancy of social housing in the context of domestic abuse and family breakdown.
- 8) The report recommends a review of the rent caps for Rent Supplement payments.
- 9) The report recommends that the Residential Tenancies Acts 2004 to 2022 be amended to allow for a tenant's name to be removed from the lease in the context of domestic abuse and/or relationship breakdown. Any such provision must not harm the security of tenure of the remaining tenant(s).
- 10) The report recommends that the cost-rental and first-home schemes consider the needs of victims of domestic violence.
- 11) The report recommends that Tusla and local authorities should provide information about emergency accommodation and social housing in a range of languages and formats to fulfil their PSEHRD.
- 12) The report calls for Circular 41/2012 be replaced to address the indirect and direct discrimination it results in.
- 13) The report recommends the introduction of a tribunal or appeals procedure for the resolution of disputes with local authorities in relation to housing matters.
- 14) The report calls for all staff involved in the provision of social housing supports and emergency accommodation to be provided with appropriate training in relation to domestic violence.
- 15) Consideration should be given to local authorities engaging with all persons entering a refuge to assess their potential need for additional housing supports



Endnotes

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