



# Supporting legal literacy across social care and housing

# Introduction

This resource has been developed from the Families and Homes Change Project. This project was established in response to growing awareness in research and practitioner communities that while the housing and social care needs of families are often interrelated, efforts to support them can be fragmented across sectors that do not always work closely together, sometimes resulting in conflicting policy and practice.

The Families and Homes Change Project facilitated a development process to formulate responses, solutions and tools to support joint working across these services. Participants included:

- > People with lived experience of the issues.
- > Practitioners and leaders from children and families services and adults social care.
- > Practitioners and leaders from local authority housing departments.
- > Academic experts.

This practice tool sets out some of the key legal duties and powers relevant to families with social care and housing needs. This will assist practitioners from the different services to identify and understand the key language, legislation and policy frameworks which they may encounter while supporting families.

The practice tool is designed to help professionals understand how actions, decisions and duties exercised within their own legal and policy frameworks intersect with those of other professionals. It also helps guide strategic leaders in their efforts to embed change within teams and departments through service design. In doing so, it aims to encourage and support legal literacy across housing and social care services.

Research evidence, practitioner insights and lived experience reveal disconnections in support from children and families services, adults social care and housing, when fulfilling policy and legal duties and exercising legal powers towards families with overlapping needs. Limited understanding, and tensions between different legal and policy frameworks in these professional areas, can be barriers to meeting the needs of families, creating 'complexity in the system' that can be difficult for families to navigate (Bimpson et al., 2020; Preston-Shoot, 2020; Sen et al., 2022b). Therefore, there are opportunities to enhance understanding and joint-working between professional groups, and thereby reduce complexity in the system.

These opportunities are illustrated within the resource through a series of scenarios, each accompanied by one or more family journey. Each family journey reveals a particular point of intersection between the operational frameworks of housing and social care services, where enhanced legal literacy could more effectively support families in housing need. The five scenarios cover:

1. Opportunities to prevent homelessness and family breakdown.
2. Aligning housing and support interventions for parents/carers separated from their children.
3. Working holistically with families in situations of domestic violence and abuse (DVA).
4. Supporting families subject to restrictive immigration controls.
5. Housing entitlements, options and support for care experienced young people.

Each of the scenarios is structured as follows:

1. The opportunity at the intersection of housing and social care.
2. The family journey.
3. Key messages.
4. Takeaway legal points: information about the key terms, duties and powers, across housing and social care, relevant to that family's situation.
5. Relevant housing and social care legislation and policy: The detail.
6. Reflective questions for practitioners and managers, to help them critically reflect on their understanding and application of local authority powers and duties in this context.

The resource is designed to be used by practitioners in the course of their daily work, to help them support and advocate confidently for families. It can also be used by teams engaged in reflective practice, as part of training or supervision, or by strategic leaders to assess, and potentially redress, legal literacy gaps across housing and social care in their local authority. Teams could consider reviewing family scenarios from their own caseloads, and reflect on their knowledge and understanding of the duties of other professionals in relation to those examples. **The Successful relationships - working together across the housing and social care workforce: Practice Tool** can further support practitioners and teams seeking to develop their knowledge and understanding of partner services.

This practice tool is complemented by and can be used in conjunction with resources generated from the Research in Practice Legal Literacy Change Project, including:

- > **Resources setting the scene and explaining legal literacy.**
- > **Organisational tools to support organisations to embed legal literacy in their organisations.**

### **Notes on the family journeys in this resource**

The family journeys presented in this resource are rooted in the experiences and outcomes of real families. However, they are composite case studies based on the experiences of multiple families, and have been adapted for the purposes of highlighting points of tension known to be evident between housing and social care legal and policy frameworks, as well as to protect individuals' anonymity. In addition, some of the laws and policies in place today, and to which the resource refers, were introduced after these families' experiences took place.

The families whose journeys are described are all headed by women, and the experiences of fathers are not explicitly represented within these case studies. The authors were keen to focus their attention on single parent families where mothers are the primary carer as this is reflective of the families that they have worked with during their research. There is also some evidence to suggest that experiences of housing and social care are gendered, and that women may be more likely to experience the kinds of systemic disconnections the resource highlights and seeks to address by promoting legal literacy at the interface of housing and social care (Bimpson et al., 2020).

However, fathers can also face problems at the intersection of housing and social care, and improved legal literacy among practitioners may benefit all parents, regardless of gender. Therefore, the reflective questions that form part of this resource encourage professionals to consider the family journeys through the eyes of fathers as well as mothers, and to reflect on whether those journeys and service responses would have developed differently.



## What is legal literacy?

Legal literacy has been defined as the **ability to connect relevant legal rules with the professional priorities and objectives of ethical practice** (Braye & Preston-Shoot, 2016; 2021). It involves:

- > **Doing things right.**  
Having knowledge of, and accurately applying, legal rules.
- > **Doing right things.**  
Strong engagement with professional ethics.
- > **Rights-based thinking.**  
Rooting practice in the principles of human rights and equality.

In practice, these components of legal literacy are filtered through discretion, informed by knowledge and values, and skilfully applied to the circumstances. For example, many statutory powers are discretionary, and many legal duties are fulfilled in circumstances that are complex and where the 'right' decision, intervention or response is not clearly prescribed in law (Braye & Preston-Shoot, 2016; 2021).

## Why is legal literacy important in the context of supporting families in housing need?

- > Legal literacy empowers individuals outside the legal profession about issues involving the law and, as such, has been identified as a key contributor to successful practice (Braye et al., 2014). Legal literacy enables practitioners to recognise the limits of their own knowledge and understanding and to be aware when a situation raises particularly difficult or contentious legal issues. In those circumstances, it is always appropriate for practitioners to seek senior support or advice from their organisation's legal team.

The Families and Homes Change Project Strategic Briefing, Supporting families at the intersection of social care and housing, highlights that:

- > Legal literacy enables professionals to understand the powers and duties available to them at the interface of social care and housing.
- > Joint working between housing and social care can help support better decision-making, so that the implementation of law or policy by one professional group (in relation to housing allocation, for example) does not have detrimental impacts on the work of another (in relation to family wellbeing or reunification, for example).
- > Limited understanding of the legal and policy frameworks of other professional groups can lead to unrealistic expectations of what other departments can do, with consequences for families.

Ensuring that the system is working in alignment requires housing and social care professionals to be both knowledgeable about legislation and government guidance, and able to interpret and apply this knowledge accurately and ethically in complex situations.

# Scenario 1

- 1. The intersection of housing and social care: Opportunities to prevent homelessness and family breakdown**
- 2. The family journey: Laura - Preventing family homelessness**

Laura, aged 45, had lived in her council rented property for over ten years with her two daughters, aged thirteen and ten. She also had three grown up children who returned to live with her for short periods. Laura notified the council when her non-dependent children moved back in, leading to a reduction in her housing benefit entitlement. However, she had not been paying attention to the letters she received about this change and so rent arrears began accumulating as Laura did not realise she needed to make up the shortfall between her housing benefit and her rent.

Laura eventually accrued £2,000 in rent arrears and her landlord began possession proceedings to evict her. Laura was unaware of the 'notice of seeking possession' and subsequent court hearing, and it was only after a possession order was granted that Laura became aware of the risk to her home. As Laura had two dependent children, children's social care were notified of the eviction order.

In response to the extreme anxiety caused by the impending eviction order, Laura began drinking heavily. The family's imminent homelessness, combined with the escalation in Laura's drinking, prompted concerns within children's social care about Laura's capacity to care for her two younger daughters. It was suggested that the children should be temporarily placed in kinship care until Laura was able to manage her alcohol use and had resolved her housing crisis.

Social workers talked to Laura and her eldest daughter. Laura was reluctant to accept this arrangement, but her daughter was persuaded that it would be the right thing to do and so Laura agreed. The children were placed under a voluntary arrangement with Laura's sister, who lived in a town 200 miles away. Together with the trauma of losing their home and being separated from their mother, Laura's daughters had to move out of their local area, change schools, and leave friends behind. It was a four-hour, expensive train journey to visit her children while they were in kinship care and so Laura had minimal contact with them, other than telephone calls.

After Laura was evicted from her home she stayed at a relative's house and then, with the help of a local housing advice agency, found a place in a homeless hostel. Laura sought support around her alcohol use and was in recovery very quickly so, after six months, she made a homelessness application to the local authority. However, she was assessed as being intentionally homeless due to her previous rent arrears and so the local authority did not have a duty to secure settled housing for her and her children. The prospects of family reunification for Laura were slim given this decision.

### 3. Key message

Parents, like Laura, often do not approach a local authority themselves until they are already, or imminently going to be, homeless. It is therefore imperative that all professionals look for early warning signs of homelessness risk so that families can receive the preventative help to which they are entitled, and professionals can exercise their 'duty to refer'.

Social care practitioners can play a vital role in recognising families' housing needs early, to facilitate prompt access to support. Recognition of early warning signs such as rent arrears, other debts or borrowing, changes to the size of the household (with implications for housing benefit entitlement), unopened letters, and escalation in other support needs such as mental health and substance abuse, can enable practitioners to offer preventative intervention. In turn, this is likely to result in more families being able to stay together.

### 4. What do professionals need to know about housing and social care legislation and policy that could help them better support families like Laura's?

#### Takeaway legal points (eviction and intentionality):

- > Local authorities have a duty to help prevent homelessness for eligible applicants who are threatened with homelessness within 56 days (*Homelessness Reduction Act 2017*).
- > Practitioners from children and families and adults social care have a duty to refer people who they think may be homeless or threatened with homelessness within 56 days to local authority homelessness teams (*Homelessness Reduction Act 2017* ([legislation.gov.uk](http://legislation.gov.uk))).
- > If a local housing authority determines that a person to whom they owe the 'main housing duty' (i.e. they have a duty to secure accommodation for them) has made themselves 'intentionally homeless' they can discharge that duty (i.e. they no longer have a duty to secure accommodation for that applicant). 'Intentional homelessness' means that a tenant deliberately did something or failed to do something they should have done and this caused them to lose their home. This can include getting into rent arrears (*Housing Act 1996*).
- > A key principle of the *Children Act 1989* is that children are best looked after within their family, with their parents playing a full part in their lives, unless intervention in family life is essential (*The Children Act 1989 guidance and regulations*).

### 5. Relevant housing and social care legislation and policy: The detail

#### The *Homelessness Reduction Act 2017*

- > The *Homelessness Reduction Act 2017* amended the *Housing Act 1996*, increasing the duties that local housing authorities have towards people at risk of homelessness.
- > Local housing authorities have a duty to help prevent homelessness for eligible applicants who are threatened with homelessness within 56 days. They are required to 'take reasonable steps to help the applicant to secure that accommodation does not cease to be available' (*Duties to those who are homeless or threatened with homelessness*).
- > Children and families and adults social care, along with other public authorities, have a duty to refer people who they think may be homeless or threatened with homelessness within 56 days to local authority homelessness teams if the person agrees to that referral (section 213B). (*Homelessness code of guidance for local authorities - Chapter 4: The duty to refer cases in England to housing authorities*).

## The Housing Act 1996 Part 7

- > If a person is homeless and 'eligible' (section 185),<sup>1</sup> then the local housing authority must take 'reasonable steps' to help them secure a 'reasonable prospect' of having suitable accommodation for at least six months (section 189B). This initial 'relief duty' will involve creating a personalised housing plan (section 189A) (*Homelessness code of guidance for local authorities - Chapter 13: Relief duty*).
- > Local housing authorities have a duty to secure accommodation for certain groups of people who are homeless (section 193(2)). This is called the 'main housing duty' (*Homelessness code of guidance for local authorities - Chapter 15: Accommodation duties and powers*). Accommodation can be temporary, initially, before settled accommodation is found. It may be in the social housing sector (council or housing association) or through a private landlord. To be owed the 'main housing duty' a household must be eligible (section 185), homeless (sections 175, 176, 177), and in 'priority need' (section 189).
- > If the relief duty has ended, and a local housing authority determines that a person to whom they owe the 'main housing duty' has made themselves 'intentionally homeless' they can discharge that duty (i.e. they no longer have a duty to secure accommodation for that applicant) (section 191). 'Intentional homelessness' means that a tenant deliberately did something or failed to do something that they should have done and this caused them to lose their home (*Homelessness code of guidance for local authorities - Chapter 9: Intentional homelessness - Guidance*).

This can include getting into rent arrears. If a person who is 'intentionally homeless' is in 'priority need', then the authority must secure temporary accommodation for a period of time that will give them a reasonable opportunity to find their own accommodation (section 190(2)). This will vary from case to case, but the guidance suggests (in paragraph 15.15) that a 'few weeks' may be enough.

## The Children Act 1989

Local authorities have an ongoing general duty to safeguard and promote the welfare of 'children in need' in their area (section 17). A child without accommodation will almost always be a child 'in need' (*R(G) v London Borough of Southwark [2009] UKHL 26, paragraph 28*). This section of the *Children Act 1989* also contains a duty to promote 'the upbringing of such children by their families', but only if doing so is 'consistent' with the primary duty towards the child's welfare.

- > The authority can provide accommodation to meet its duty to safeguard the child and promote their welfare (section 17(6)), and this can include providing services and accommodation to a child's family if doing so would help meet its duty to the child (s17(3)). However, this is a discretionary power to supply accommodation and not a separate duty to do so. Although the local authority has a duty to assess a child they believe to be 'in need', section 17 of the *Children Act 1989* does not create a duty to meet all assessed needs.

The authority must act 'reasonably' to provide 'appropriate' services, but it is not obliged to do more than that (*R(W) v London Borough of Barnet [2003] UKHL 57, paragraph 30-34, 80-94*). In particular, an authority can take cost into account when deciding what services to provide under section 17. Section 17 powers are not restricted by the family's eligibility for homelessness assistance (section 17 Provision of services for children in need, their families, and others).

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1 See glossary for explanation of key terms not defined within the scenarios.

- > Children can be looked after by a friend or family member, often referred to as ‘kinship care’ under a voluntary arrangement ([section 20 Provision of accommodation for children: general](#)). This can be for a variety of reasons. It includes when a family is struggling and a voluntary arrangement can help prevent a crisis, and if Children’s Services are concerned about a parent’s capacity to care for their children.

Other situations include where a child is an unaccompanied asylum seeker and when parents of disabled children feel the family need short-term respite. A voluntary arrangement can never be used if any person with parental responsibility, who is willing and able to provide accommodation or to arrange for accommodation to be provided, objects to it ([section 20\(7\)](#)). See *Children in the care system under voluntary arrangements (section 20)* - Family Rights Group.

- > Children can be removed from a voluntary arrangement at any time by a person with parental responsibility. If the local authority believes that this is likely to cause the child ‘significant harm’, they can apply to the court for a care order ([section 31](#)), which will give them parental responsibility.
- > A key principle of the *Children Act 1989* is that children are best looked after within their family, with their parents playing a full part in their lives, unless intervention in family life is essential (*The Children Act 1989 guidance and regulations*).

### **The Care Act 2014**

- > Substance use may give rise to care and support needs that are eligible for support under the *Care Act 2014* (*Care and support statutory guidance, paragraph 6.104*). Where it appears that an adult may have needs for care and support, local authorities are required to carry out a ‘needs assessment’ ([section 9](#)). This determines whether the adult has care and support needs, what those needs may be, and whether the nature of their needs is such that the local authority will be under a duty to meet them (i.e. they have ‘eligible’ needs) (*Care Act 2014 - Explanatory Notes*).
- > Local authorities also have a duty to make enquiries about safeguarding concerns for adults who have a need for care and support, or are experiencing, or at risk of, abuse or neglect (including self-neglect) and, as a result of their needs, are unable to protect themselves from abuse or neglect (including self-neglect) ([section 42](#)) (*Care Act 2014*) and *Care and support statutory guidance: Chapter 14. Safeguarding*.
- > The *Care Act 2014* also requires local authorities to create a Safeguarding Adults Board to allow different agencies to coordinate their efforts to protect these individuals ([section 43](#)). The statutory guidance suggests that ‘representatives of housing providers’ and ‘housing support providers’ can be included in its membership (paragraph 14.146). These boards can present an excellent opportunity for inter-agency working.
- > Local authorities have a duty to promote the wellbeing of the individual when exercising their functions under the *Care Act 2014*, referred to as the ‘wellbeing principle’. The areas of wellbeing include physical, mental and emotional wellbeing, being protected from abuse and neglect, domestic, family and personal relationships, and suitable living accommodation ([section 1](#)) (*Care Act 2014*).



## **The Equality Act 2010**

- > The public sector equality duty (section 149) applies to all public bodies when they carry out their functions. This includes all functions relating to housing and homelessness. This duty requires public authorities to have 'due regard' for:
  - The need to eliminate all discrimination, harassment and victimisation based on a person's protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).
  - The need to advance equality of opportunity between people who share a protected characteristic and people who do not.
  - The need to foster good relations between people who share a protected characteristic and people who do not.
- > The government has published a Quick Start Guide to the public sector equality duty - *Equality Act 2010: Public Sector Equality Duty What Do I Need To Know?* This makes it clear that the legal duty to have due regard to the three aims listed above cannot be a matter of 'box-ticking'. Instead, they must be given 'real consideration' in decision-making processes.

## **The Human Rights Act 1998**

- > The *Human Rights Act 1998* made the European Convention on Human Rights more directly legally effective in the UK. It prevents public authorities from acting in a way that is 'incompatible' with a Convention right ([section 6](#)), unless they could not have legally acted in any other way ([section 6\(2\)](#)).
- > The rights protected by the *Human Rights Act 1998* include the 'right to respect for private and family life', often referred to as '[Article 8](#)'. This states that 'Everyone has the right to respect for his private and family life, his home and his correspondence'. However, it is a 'qualified' right which means that public authorities can interfere with it in some circumstances.
- > For an interference with someone's Article 8 rights to be legal it must meet three criteria:
  - It must be carried out in a way that is in accordance with the rest of the law.
  - It must be necessary to achieve 'national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.
  - The interference with the person's rights must be proportionate to the situation and the goal that the interference is attempting to achieve. For instance, it would not be proportionate to remove someone from their family completely in order to avoid a small risk of a minor harm.



## 6. Questions for reflection

### What actions could have prevented Laura's homelessness?

- > What procedures could be put in place to ensure local authorities do not begin possession proceedings against families with dependent children without considering all alternative courses of action?
- > Were sufficient efforts made to help Laura access appropriate legal advice and information, even as a last-minute intervention, to equip her and empower her to prevent homelessness?
- > Tools are available that could have potentially enabled Laura to stay in her home, including suspending the eviction/possession order, and a discretionary housing payment (*Applying for a Discretionary Housing Payment*). What other local advice and support agencies are available that families in Laura's situation can use to equip themselves with the knowledge, or access advocacy, to allow them to address their needs?
- > Was there sufficient scrutiny of the 'intentionality' decision? As a matter involving interpretation and discretion, did the local authority 'do the right thing'? Are there opportunities to ensure that 'doing the right thing' is fully embedded in decision-making around intentionality, while also adhering to the powers and duties set out in the *Housing Act 1997*?
- > What efforts were made to listen to Laura, understand her situation and history from her perspective, and support or enable her to achieve the outcome she desired? To what extent are people with lived experience involved more generally in the design and delivery of services, and how can this help professionals understand and connect better with those using their service?

Establishing a parent-led parents' group such as Parents 4 Positive Change is one example of how service providers can ensure parents are listened to (*Parents and carers - Salford Safeguarding Children Partnership*).

- > Read the family journey again but replace 'Laura' with 'Stephen'. If the head of this single parent family had been a father rather than a mother, would the interpretation of, and response to, the situation have been any different?

What training and guidance is provided to professionals (for example on unconscious bias, equality diversity and inclusion, and the *Equality Act 2010*) to ensure that discriminatory and prejudicial judgements, about gender or any other characteristics, are not brought to bear on decision-making? When was the quality and depth of training in your own local authority last reviewed?

## Scenario 2

1. **The intersection of housing and social care: Aligning housing and support interventions for parents/carers separated from their children**
2. **The family journey: Ciara – Access to, and allocation of, housing for a homeless mother**

Ciara first experienced homelessness at the age of 16, when her parents asked her to leave the family home. Unaware that she might be eligible for help from the local authority's housing or social care departments, she spent several years sofa-surfing, rough sleeping and renting cheap bedsits. When she was 19, she began a relationship with a man and became pregnant. They rented a flat together and, when their baby daughter was a year old, they had a second child.

Ciara's partner had issues with alcohol and other drugs, which escalated after the birth of their second child. By the time he was six months old, Ciara was also dependent on heroin and drinking heavily, she experienced an episode of drug-induced psychosis and was detained under the *Mental Health Act 1983*. This alerted children's social care to the family's situation, a care order was made, and her children were placed with foster carers.

Motivated by the experience of having her children removed, Ciara made the decision to leave her partner on discharge from hospital. However, still dependent on alcohol and other drugs, experiencing depression, and in trauma from being separated from her children, life was difficult and her housing situation was very insecure. She moved between friends, sleeping rough and staying at hostels, often missing appointments with children's social care, and doing occasional sex work to fund her dependency.

After about six months, she resolved to address her problems and regain care of her children and a care plan was drawn up. Her engagement with services was initially intermittent, but over time she made progress. She successfully completed a detox and residential rehabilitation programme on her second attempt and then maintained contact with health services to stabilise her mental health. By the time her youngest child was two years old she had met all of the requirements of the care plan, apart from having suitable housing in which to live with her children. Ciara, at this time, was living in a homeless hostel.

Ciara made a homelessness application to the local authority. However, she was defined as 'not having dependent children' (or as being 'single' as it is often termed), because they were not living with her. As a result, she was not awarded 'priority need', and so the local authority did not have a duty to house her. She was eligible to bid for social housing on the general lettings system, but only for single persons (i.e. one bed) accommodation that would not be large enough to accommodate her family, nor satisfy the requirements of her care plan.

### 3. Key message

- > Collaboration between homelessness and social care services in the execution of their duties can help to align housing and social care policy, enabling a whole-family approach which accounts for all family members, even when they are living apart.
- > Joint working, and better shared understanding of social care and housing duties and powers, can improve planning for a family's longer-term needs and goals for family reunification.

#### 4. What do professionals need to know about housing/social care legislation and policy that could help them better support families like Ciara's?

##### Takeaway legal points (allocation of housing and dependent children):

- > Local authorities have to a duty to secure accommodation for people who are eligible, homeless and in 'priority need' (if they have not made themselves 'intentionally homeless', *Housing Act 1996*).
- > Adults who have dependent children, or children who 'might reasonably be expected' to live with them, have 'priority need' (*Housing Act 1996*).
- > However, where children might 'reasonably be expected' to live is not always straightforward to determine and can change over time. Homelessness officers may not be aware that a social care plan is in place requiring the parent to have family housing before social workers will judge that the children can reside with them.

Meanwhile, social workers may not understand the difficulties parents can face accessing family-sized housing while still living apart from their children. Therefore, 'priority need' is not always granted to families whose children are living elsewhere temporarily, even when 'having appropriate housing' is the only remaining requirement to be met in a social care plan.

#### 5. Relevant housing and social care legislation and policy: The detail

##### The *Housing Act 1996 Part 7*

- > Local authorities have to a duty to secure accommodation for people who are eligible, homeless and in 'priority need', and who are not deemed to have made themselves homeless intentionally. An eligible applicant will be awarded priority need if they have dependent children living with them. Statutory guidance clarifies that this includes having children who 'might reasonably be expected to live with them' but that 'there must also be actual residence or a reasonable expectation of residence' (*Homelessness code of guidance for local authorities – Chapter 8*). There are other 'priority need' categories too, including being homeless as a result domestic violence, and being vulnerable as a result of old age, mental illness or disability, or other vulnerabilities (*section 189, Housing Act 1996*).

##### The *Children Act 1989*

- > Local authority housing and children's social care services both have duties towards homeless 16 and 17-year-olds. Local authority children's Services have a duty to accommodate children under 18 in their area if there is no person with parental responsibility for them, or the person caring for them is unable to provide them with accommodation or care (*section 20(1) of the Children Act 1989*).

In addition, authorities have a duty to provide housing for any 16 to 18 year-old whose welfare would be 'seriously prejudiced' if they do not (*section 20(3)*), and a discretionary power to accommodate any child 'if they consider that to do so would safeguard or promote the child's welfare' (*section 20(4)*).

- > Under the homelessness legislation, homeless 16 and 17 year-olds have 'priority need' for housing (*The Homelessness (Priority Need for Accommodation) (England) Order 2002*). Any duty owed to homeless 16 and 17 year-olds under the *Children Act 1989* takes precedence over the duties under the homelessness legislation.
- > If the court grants a local authority a care order, then that authority has parental responsibility for the child (*section 33*) and a duty to provide them with accommodation (*section 22A*). When finding a placement for a looked after child, the authority must place them with a parent or someone else with parental responsibility, unless that would not be consistent with the child's welfare or 'reasonably practicable'. Otherwise the child must be placed with a relative who is a local authority foster parent if that is possible (*section 22C*).



### **The Homelessness Reduction Act 2017**

- > Under the amendments that the *Homelessness Reduction Act 2017* made to the *Housing Act 1996*, local authorities have a duty to draw up personalised housing plans for eligible homeless applicants like Ciara. These must be based on an assessment of the applicant's housing needs, but also on the support that would be necessary for the applicant to have and retain suitable accommodation ([section 189A](#)). The [statutory code of guidance](#) encourages a 'holistic and comprehensive' assessment of support beyond just those that the local authority is aware of.

### **The Care Act 2014**

- > People experiencing multiple exclusion homelessness (something that would apply to Ciara at points in her journey) will often be experiencing abuse and neglect (including self-neglect) and have care and support needs that arise from physical and mental ill health, substance abuse, and trauma that both precedes and is triggered or compounded by the experience of homelessness. Local authorities are required to assess a person who appears to have needs for care and support ([section 9](#)).
- > Not all needs for care and support are 'eligible'. A person's needs only meet the eligibility criteria for support if they arise from or are related to a physical or mental impairment or illness; and, as a result, they are unable to achieve two or more of certain specified outcomes; and, as a consequence, there is, or there is likely to be, a significant impact on the adult's wellbeing. The eligibility criteria are set out in the *Care and Support (Eligibility Criteria) Regulations 2015*.
- > If a person's needs for care and support are eligible, then the local authority has a duty to meet those needs if the person 'is ordinarily resident in the authority's area or is present in its area but of no settled residence' ([section 18](#)).

### **The Mental Health Act 1983**

- > People detained under some sections of the *Mental Health Act 1983* have a right to 'after-care' ([section 117](#)), and in some circumstances this can include the provision of accommodation. Those detained for up to 28 days for assessment ([section 2](#)) do not have this right, but those detained for treatment ([section 3](#)) and patients 'concerned in criminal proceedings' ([part III](#)) do.
- > A right to accommodation will only form part of after-care if the need for accommodation directly results from the mental health condition that caused the person to be detained, the person needs 'enhanced specialised accommodation' to meet needs arising from that condition, and the placement is involuntary due to the person 'being incapacitated' (*R(Afework) v London Borough of Camden* [2013] EWHC 1637 (Admin)).

### **The Human Rights Act 1998**

- > The human rights law introduced in scenario 1 is also relevant to Ciara's situation. However, it is worth noting that because Ciara did not voluntarily agree to her children's foster placement, a more serious interference with the Article 8 rights of her and her family has occurred, and so a stronger justification is required to show that it was necessary and proportionate.



## 6. Questions for reflection

### **How could Ciara have been better supported to have her children returned?**

- > Were there any missed opportunities to engage positively with Ciara earlier in her life, and alter her trajectory? How might Ciara's experience impact on her trust of, and future engagement with, services? What opportunities are there to understand experiences such as Ciara's, and consider how to build trusting relationships in order to build engagement and support effective practice?
- > Having overcome many difficult hurdles to meet the requirement of the care plan, were Ciara's social workers sufficiently curious about why she had not managed to meet the final, practical requirement to provide suitable housing for her family? Tools and resources are available to support development of a culture of professional curiosity (for example, *Professional curiosity in safeguarding adults: Strategic Briefing (2020)*).
- > The officer conducting Ciara's homelessness investigation appeared unaware that she had children who could, subject to suitable housing, reside with her. Was that assessment comprehensive enough to uncover this highly pertinent detail? If homelessness officers were trained to actively enquire about non-resident children (during their homelessness investigations and discussions around personalised housing plans), would it result in more accurate assessments of 'priority need', with implications for families' access to appropriate housing?
- > Whether children 'might reasonably be expected to reside' with a parent when assessing priority need is not always straightforward to determine, and can change over time, as was the case for Ciara. How might you use legal literacy to approach this area of assessment? How might collaboration and discussions between housing and social care, and advocacy for the family, have supported family reunification?
- > How might this knowledge and understanding be applied to families where a father is living in single-person hostel accommodation, but his children could otherwise reasonably be expected to reside with him? How are non-resident fathers involved when working with families' housing and social care needs?

## Scenario 3

1. **The intersection of housing and social care: Working holistically with families in situations of domestic violence and abuse (DVA)**
2. **Family journeys: Sundeep and Harriet - Homelessness, DVA and the impact on families**

### **Family journey 1: Sundeep**

When Sundeep was 19, she lived at home with her parents. Sundeep and her partner, Kris, decided to have a baby. When she became pregnant, they were allocated a social housing tenancy and moved in together. Kris was physically, emotionally and financially abusive. The police were called to the house several times and made a referral to Children's Services.

When Sundeep was in hospital having her son, Kris came to the hospital and was abusive to Sundeep and to the staff. Sundeep wanted to leave Kris and live alone with her baby but could not afford to rent or buy privately, and she was not aware of the housing assistance available to her. She thought her only option was to return to her home, but Kris refused to leave the property.

Sundeep's son was taken into care (and subsequently adopted) to protect him from the abuse within the home, and Sundeep returned to her home and her partner. Soon after, she left her partner and their home, becoming homeless, and stayed with friends and family for several months before accessing a place in a supported housing project for young people.

### **Family journey 2: Harriet**

Harriet was living in a social rented house with her son, Harvey, aged 7. She started a new relationship, her partner moved in and they had a baby. Harriet's partner became violent towards her, prompting the involvement of children's social care, who assigned a family support worker (FSW). Harriet ended the relationship, but her ex-partner continued to turn up at her home, threatening violence and harassing her to let him see their child, and so her FSW took Harriet to the local authority housing office where she made a homelessness application.

Harriet is a wheelchair user, so the safe temporary accommodation provided to her had to be accessible. Refuge spaces were scarce in this and the surrounding local authority areas, and few were accessible, but the local authority eventually found her a place in a refuge in a town 40 miles away. Harvey was resistant to such a move, and Harriet was concerned about the disruption to his schooling and friendships so she arranged for him to stay with her parents who lived in the same neighbourhood, while Harriet and her baby moved into the refuge.

Harriet's priority was reuniting with her eldest son and securing family housing in her original city of residence. However, to fulfil their responsibility to protect the younger child (who was the subject of social care concerns), social care instructed her not to return to her area of origin unless she had a non-molestation order (NMO) against her ex-partner. Harriet did not know how to obtain such an order and continued visiting the area in order to see her eldest son and parents.

On one occasion Harriet bumped into her ex-partner in the street. He begged to see his baby and so she took their daughter to his house for an hour, during which time they argued and the neighbour phoned the police who recorded a domestic incident. This prompted children's social care to initiate pre-care proceedings (including assessing Harriet's parents as potential kinship foster carers, and holding a pre-proceedings meeting) on the grounds that she had put her daughter at risk.

In terms of her rehousing application, Harriet was offered accommodation in her city of origin but could not accept this because of the risk of child protection proceedings. However, she was told by housing services that if she refuses an offer of accommodation the local authority can 'discharge its duty' to house her. Harriet feels she is in a situation where one of her children is in a city that she cannot live in without losing custody of her other child.

### 3. Key message

Collaborative and complementary support from housing and social care has the potential to keep families experiencing DVA accommodated safely together. However, local authority departments are often focused on their own core duties and remit (for example, children's social care focused on the needs of the child, and housing services on an applicants' housing needs).

### 4. What do professionals need to know about housing/social care legislation to help them support families like Sundeep's and Harriet's?

#### Key takeaway legal points (homelessness and DVA):

- > Any person who is homeless as a result of domestic abuse has 'priority need' for housing (*Domestic Abuse Act 2021*).
- > A homeless applicant should not be referred back to the local authority where they have a local connection if there is a risk of violence (*Homelessness code of guidance for local authorities - Chapter 10: Local connection and referrals to another housing authority - Guidance*).
- > Housing and children's social care policy can place conflicting demands on a homeless family – to accept accommodation within a specified area on the one hand (housing), and not to return to that area on the other (children's social care).

### 5. Relevant housing and social care legislation and policy: The detail

#### The *Children Act 1989*

- > Local authorities have a duty to safeguard and promote the welfare of all children 'in need' in their area ([section 17](#)). A child without accommodation will almost always be a child 'in need' (*R(G) v London Borough of Southwark* [2009] UKHL 26, [paragraph 28](#)). If they have any reasonable reason to suspect that a child in their area is suffering from significant harm, or likely to suffer such harm, then the local authority has a duty to make further enquiries to determine what steps are necessary to safeguard or promote that child's welfare ([section 47](#)). They also have wide discretionary powers to take actions to assist them to safeguard children ([section 17](#)).
- > If investigations suggest that a child is 'likely to suffer significant harm', then a local authority can make an application to court for an emergency protection order ([section 44](#)). If made, this order can grant them the ability to remove a child from their current accommodation and from the care of particular individuals. An emergency protection order will last eight days and the court can extend it for one further seven-day period ([section 45](#)). If it is believed to be necessary to place the child for a longer period of time than this, then an application for a care order must be made.

The court can only grant a care order if it is satisfied that the child is suffering, or likely to suffer, 'significant harm' and that the harm is directly caused by either the care they would otherwise receive 'not being what it would be reasonable to expect a parent to give to the child' or due to the child being 'beyond parental control' ([section 31](#)).



- > For the purposes of making a care order, when deciding whether or not a child is suffering ‘harm’, the *Children Act 1989* states that ‘harm’ ‘means ill-treatment or the impairment of health or development’. It further clarifies that this includes sexual abuse, ‘forms of ill-treatment that are not physical’, and ‘impairment suffered from seeing or hearing the ill-treatment of another’ ([section 31\(9\)](#)). This means that harms caused by witnessing the abuse of another person can be significant when the court decides whether or not to make a care order.
- > Domestic violence and abuse is the most common factor identified at the end of assessments of children in need under section 17 of the *Children Act 1989* (ADCS, 2021).

### **The Housing Act 1996 Part 7**

- > A person would be legally defined as being homeless if it is not ‘reasonable’ to expect them to occupy their accommodation ([section 175](#)). If it is likely that it will lead to domestic abuse against them, then it is not reasonable to expect someone to occupy their accommodation ([section 177](#)) (as in Sundeep’s case, following her discharge from hospital with her baby).
- > If a homeless applicant refuses a final offer of accommodation, then the local authority’s duty can be ‘discharged’ (i.e. the local authority no longer has a duty to accommodate that applicant, ([section 193A](#))). Any accommodation offered by a local authority under a homelessness duty must, however, be suitable ([section 206](#)).
- > The local authority that owes the ‘main housing duty’ is usually the authority where the applicant has a ‘local connection’ ([section 199](#)). Local authorities are not obliged to apply the local connection test when assessing homelessness applications, but they are allowed to do so, and most will. For homeless applications placed ‘out of area’ (as in Harriet’s case) this means that the settled accommodation offered will be in their area of original ‘local connection’.

It also means they are unlikely to be owed the main housing duty by the local authority in which they are currently living, although statutory guidance advises that applicants should not be referred back to the local authority where they have a local connection if there is a risk of violence (*Homelessness code of guidance for local authorities - Chapter 10: Local connection and referrals to another housing authority - Guidance*). At the time of writing the Government was consulting on the local connection criteria for social housing for victims of domestic abuse, following the introduction of the *Domestic Abuse Act 2021*.

### **The Domestic Abuse Act 2021**

The *Domestic Abuse Act 2021* amended the *Housing Act 1996* to ensure that any person who is homeless as a result of domestic abuse has ‘priority need’ for housing ([section 189 Housing Act 1996](#)):

- > ‘Domestic abuse’ in this Act includes physical and sexual abuse, violent and threatening behaviour, controlling and coercive behaviour, economic abuse, and psychological and emotional abuse ([section 1](#)). If a child sees, hears or experiences the effects of a person they are related to, then they are also considered to be a victim for the purposes of this Act ([section 3](#)).
- > The local authority has a duty to secure accommodation (i.e. owes the ‘main housing duty’) for the person and their household.
- > Local authorities have a duty to provide support to victims of domestic abuse and their children in refuges and other safe accommodation ([section 57](#)).
- > Local authorities must plan and provide [accommodation-based support](#) for victims of domestic abuse and their children in the area ([section 57](#)).
- > Local authorities must also establish domestic abuse local partnership boards to advise them about how to provide support to the victims of domestic abuse ([section 58](#)).

## **The Family Law Act 1996**

- > The *Family Law Act 1996* allows a person to ask the court to make a non-molestation order, which will prevent someone from ‘molesting’ them or a ‘relevant child’ ([section 42](#)). If the person named in the order breaches it, then they will be guilty of an offence with a maximum sentence of five years imprisonment ([section 42A](#)).

## **The Care Act 2014**

- > The *Care Act 2014* specifies that ‘protection from abuse and neglect’ is part of a person’s wellbeing that a local authority has a general legal duty to promote ([section 1](#)). The statutory guidance elaborates: ‘This is not confined only to safeguarding issues, but should be a general principle applied in every case’ ([paragraph 1.14\(g\)](#)).
- > Domestic abuse is an adult safeguarding concern. Statutory guidance makes clear that adult safeguarding involves ‘protecting an adult’s right to live in safety, free from abuse and neglect’ (*Care and support statutory guidance*).
- > Local authorities have a duty to make enquiries about safeguarding concerns for adults who have a need for care and support, are experiencing or at risk of abuse or neglect and, as a result of their needs, are unable to protect themselves from abuse or neglect ([section 42](#)) (*Care Act 2014* and *Care and support statutory guidance*).
- > Local authorities are required to assess a person who appears to have needs for care and support ([section 9](#)). A person’s needs meet the eligibility criteria for support if they arise from, or are related to, a physical or mental impairment or illness; and, as a result, they are unable to achieve two or more of certain specified outcomes; and, as a consequence there is, or there is likely to be, a significant impact on the adult’s wellbeing. The eligibility criteria are set out in the *Care and Support (Eligibility Criteria) Regulations 2015*.
- > Local authorities have a duty to cooperate with other care and support organisations, which includes cooperation between its own adult social care, children’s social care and housing departments ([sections 6-7](#)).

## **The Equality Act 2010**

- > As noted in scenario 1, the public sector equality duty ([section 149](#)) applies to all public bodies when they carry out their functions. This includes all functions relating to housing and homelessness. This duty requires public authorities to have ‘due regard’ for:
  - The need to eliminate all discrimination, harassment and victimisation based on a person’s protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).
  - The need to advance equality of opportunity between people who share a protected characteristic and people who do not.
  - The need to foster good relations between people who share a protected characteristic and people who do not.
- > When having due regard to these three needs, local authorities must, in particular, ‘take account of disabled persons’ disabilities’ ([section 149\(4\)](#)).

## **The Human Rights Act 1998**

- > In addition to the right to respect private and family life introduced in scenario 1, the *Human Rights Act 1998* brings into domestic law the ‘Prohibition of Discrimination’. This states that all other rights must be secured ‘without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’ ([Article 14](#)). This includes discrimination based on disability (*Glor v Switzerland* [2009] ECHR 2181).
- > The prohibition of discrimination means that interferences with other rights should not happen in a discriminatory manner and that the protection of rights must be provided in a non-discriminatory manner.



## 6. Questions for reflection

### How could Harriet and Sundeep have been supported to escape DVA without the need for child removal/separation?

- > In Harriet's case, how could housing and social care professionals have taken a more holistic approach that took account of the needs of the whole family? This would include considering the elder child and Harriet's parenting role towards him, as well as ensuring that Harriet and her younger child were safe.

What efforts were made to listen to Harriet, understand her situation and history from her perspective, and support or enable her to achieve the outcome she desired? How can services ensure that families are considered, alongside the professionals working with them, as 'expert voices' with influence over the support they receive and the desired outcomes?

- > Both Sundeep and Harriet (and their children) bore the consequences of the actions of violent partners. Neither woman wanted to stay in relationships with their partners, but both were powerless to change their behaviour (in Sundeep's case to force her partner to leave their home; and in Harriet's case to stop her ex-partner locating and being abusive towards her in the neighbourhood).

What changes can be implemented to ensure that people who are already vulnerable by virtue of their experience of abuse, are not implicitly made responsible for the violence perpetrated against them?

See [Staying Mum - AVA - Against Violence & Abuse \(avaproject.org.uk\)](http://avaproject.org.uk) for useful resources and training about supporting mothers experiencing domestic abuse.

- > How could Harriet have been helped to access legal advice and information, to equip her with the tools and knowledge to apply for relevant orders against the perpetrator?
- > Could unconscious bias, or professional or systemic discrimination, have influenced the response that Sundeep or Harriet received from services, or the options made available to them? How might inequalities and discrimination they faced as a result of their disability, gender or ethnicity have intersected with their housing and support needs, options, and further marginalisation, due to homelessness and child protection intervention?

Consider the family journeys again and reflect on whether, or how, these journeys might have developed differently if, for example, Harriet was non-disabled, Sundeep was White British, or they were male survivors of domestic abuse.

- > Families escaping violence are often housed out-of-area (and, in Harriet's case, required to stay out of the area) to keep them safe. Was proper consideration given to the implications for Harriet of this move in terms of, for example, her support networks, family relationships, and her eldest son's needs? What measures are available to enable families to remain together in situ, for example target hardening schemes ([Sanctuary schemes for households at risk of domestic violence: Guide for agencies](#)), and are these always exhausted before an out-of-area placement is considered?

## Scenario 4

- 1. The intersection of housing and social care: Supporting families subject to restrictive immigration controls.**
- 2. The family journey: Ifelayo – Meeting the housing needs of families with no recourse to public funds (NRPF)**

Ifelayo (aged 35) was trafficked to England from Nigeria ten years earlier, held captive, subjected to brutal acts of violence and forced into sex work. After four years, she managed to escape, carrying with her significant physical and psychological injuries. Without friends or family, and with limited understanding of English and no knowledge of the services available that could provide emergency assistance, Ifelayo slept rough and turned to street sex work to survive.

After two years, a chance encounter in a café with a fellow Nigerian led Ifelayo to an independent charity that offers migrant women with no recourse to public funds (NRPF) practical, emotional and legal support. It was here she found some stability and began to receive the immigration and welfare advice she needed. This included support to make an application to the Home Office [National Referral Mechanism \(NRM\)](#) and, later, for leave to remain in the UK.

After finding out she was pregnant, Ifelayo was referred to children's social care. The social worker's intervention focused primarily on Ifelayo's right to live in the UK and what her immigration and housing status might mean for her ability to look after her child. Social care stepped back from providing Ifelayo with support, partly because she had a case worker from the migrant women's organisation. Ifelayo feared social care would take her child away and did not trust her social worker.

Ifelayo was placed in a safe house through the NRM, which was managed by a service dedicated to supporting victims of trafficking. However, not long after giving birth to her son, the organisation closed because of cuts to funding. As a result, Ifelayo lost her accommodation and the associated support. With her newborn baby she was moved into unsuitable emergency hotel accommodation, without the specialist support and continuity of care she needed.

A health visitor and lawyer intervened because of the inadequacy of this accommodation, advocating on her behalf, and Ifelayo was subsequently moved to interim hostel accommodation – also inappropriate given its location out of the borough and away from her limited but vital support network. These repeated, unplanned moves were disruptive to Ifelayo, who had already endured extensive trauma, and further damaged her fragile mental health.

After exiting the support provided by the NRM on receipt of a positive conclusive grounds decision and 'discretionary leave' to remain, the switch from Home Office accommodation to local authority housing was disjointed, difficult and distressing. Ifelayo was required to approach her local authority for housing and was granted priority need. She was moved (again) into short-term temporary accommodation before being offered long-term accommodation in the private rented sector, but this was very poor quality. Ifelayo only reluctantly accepted it and was upset and distressed by the offer. Refusing the offer would automatically end the main housing duty owed to her.



### 3. Key message

Emergency welfare support for families with NRPF is often provided by other migrants and a limited number of specialist charitable organisations. However, it is vital that these families are provided with short-term solutions to alleviate their destitution, longer-term support to secure stable accommodation, and smooth transitions between types of housing and support to avoid further crises.

### 4. What do professionals need to know about housing/social care legislation to help them support families like Ifelayo's?

#### Key takeaway legal points (NRPF):

- > Local authorities have the power to provide accommodation to families with NRPF in order to meet their duty to safeguard the child.
- > A family who is subject to NRPF will not be eligible for homelessness assistance but must be provided with advice to help prevent their homelessness. This might include a referral to social services.
- > A trafficked person may be eligible for homelessness assistance and the local authority may have a duty to house them under the *Care Act 2014* or *Housing Act 1996*.

### 5. Relevant housing and social care legislation and policy: The detail

#### The *Children Act 1989*

- > When a person does not have any immigration permission to live in the UK, they will have no recourse to public funds. Social care support is not classed as a public fund for immigration purposes, however, and the *Children Act 1989* section 17 duty to safeguard and promote the welfare of children continues to apply. The duty to promote 'the upbringing of such children by their families', if that is 'consistent' with the primary duty towards the child's welfare, also continues to apply.
- > Local authorities have the power to provide accommodation to meet their duty to safeguard the child and promote their welfare ([section 17\(6\)](#)), and this can include providing services and accommodation to a child's family if doing so would help meet its duty to the child ([section 17\(3\)](#)).

Although the local authority has a duty to assess a child they believe to be 'in need', the *Children Act 1989* does not create a duty to meet all needs. The authority must act 'reasonably' to provide 'appropriate' services, but it is not obliged to do more than that (*R(W) v London Borough of Barnet* [2003] UKHL 57, paragraph 30-34, 80-94). In particular, an authority can take cost into account when deciding what services to provide.

- > Section 17 support will be terminated if a family's circumstances change and they are able to claim homelessness assistance. In establishing whether homelessness can be prevented, and where families are being accommodated in private tenancies, housing services can explore the possibility of transferring the existing license agreement to a tenancy.
- > In families with NRPF, the parents' immigration status should not have a bearing on a requirement on a child's 'in need' assessment – which should be based only on an appearance of need ([section 17](#)). A child without accommodation will almost always be a child 'in need' (*R(G) v London Borough of Southwark* [2009] UKHL 26, paragraph 28).

## **The Housing Act 1996 Part 7**

- > A family that is subject to NRPF condition will not be eligible for homelessness assistance. It must, though, be provided with information and advice to help prevent their homelessness (section 179). This might include a referral to social services.
- > The National Referral Mechanism is a framework for identifying and supporting victims of human trafficking. A person is only eligible for housing through this pathway when they have received a decision that there are 'reasonable grounds' to consider that they are a trafficking victim.
- > A person is eligible for homelessness assistance under Part 7 of the *Housing Act 1996* if they have been given limited leave under *Appendix: Temporary Permission to Stay for Victims of Human Trafficking or Slavery of the Immigration Rules*.
- > A trafficked person who is eligible for homelessness assistance may have priority need for housing if they are assessed as being vulnerable 'as a result of old age, mental illness or handicap or physical disability or other special reason' or if they live with, or might be expected to live with, someone vulnerable in one of or more of these ways (section 189).

The risk of further exploitation and trafficking should be taken into account when considering whether a trafficked person is significantly more vulnerable than an ordinary person facing homelessness (*Homelessness code of guidance for local authorities – Chapter 25: Modern slavery and trafficking – Guidance*).

- > Section 206 of the *Housing Act 1996* states that accommodation secured under Part 7 of the Act must be suitable. A trafficked person's traumatic experiences may have had an effect on what kind of accommodation is suitable for them. Accommodation may need to be gender specific, as well as have appropriate security measures. The risk of violence or racial harassment in a particular locality should also be taken into account.

## **The Homelessness Reduction Act 2017**

- > Families who are in the NRM process may still be eligible for housing support where they have recourse to public funds and might be owed the prevention or relief duty. Councils must take reasonable steps to try and prevent their homelessness or relieve it if they are already homeless.
- > The *Homelessness Reduction Act 2017* and *Homelessness code of guidance* require local authorities in England to take steps to assist groups who are ineligible for homelessness assistance by providing information and appropriate signposting, and to account for these groups within their homelessness strategies. (*Homelessness code of guidance for local authorities – Chapter 7: Eligibility for assistance – Guidance*).

## **The Care Act 2014**

- > When an adult has needs arising from a physical or mental impairment or illness, they may be eligible for care and support under the *Care Act 2014*. A referral for a needs assessment under section 9 of the *Care Act 2014* can be made with the adult's consent or, if they lack the mental capacity to make that decision, on their behalf if it is in their best interests. See the *Mental Capacity Act 2005 decision-making – care, support and treatment: Practice Tool (2021)* for further reading.
- > An adult victim of trafficking who is not eligible for assistance under homelessness legislation may still apply to a local authority for assistance under the *Care Act 2014*. An adult with no recourse to public funds may be provided with (residential or supported living) accommodation and financial support by social services under section 18 or 19(1) of the *Care Act 2014* if they have eligible care and support needs that are accommodation-related.

## **The Equality Act 2010**

- > As detailed under previous scenarios, section 149 of the *Equality Act 2010* requires all public authorities to have due regard to three things:
  - The need to eliminate all discrimination, harassment, and victimisation based on a person's protected characteristics.
  - The need to advance equality of opportunity between people who share a protected characteristic and people who do not.
  - The need to foster good relations between people who share a protected characteristic and people who do not.
- > Victims of trafficking are particularly likely to be affected by conditions such as post traumatic stress disorder, depression and anxiety disorders, to the extent that they are considered disabled. In the case of trafficking victims, local authorities should take into account advice from specialist agencies that provide services to the applicant.

## **The Human Rights Act 1998**

- > The 'prohibition of discrimination' discussed in the last scenario can include discriminatory treatment based on immigration status (*Hode v UK* [2012] ECHR 1871). However, differential treatments that are 'reasonably and objectively justified' and clearly prescribed in law, do not breach the prohibition of discrimination (*Bah v UK* [2011] ECHR 1448).
- > The *Human Rights Act 1998* brings into domestic law rights not to be 'subjected to torture or to inhuman or degrading treatment or punishment' (Article 3), and not to be 'held in slavery or servitude' or 'required to perform forced or compulsory labour' (Article 4). Public authorities have a positive duty to investigate whenever there is a reason to believe these rights are being breached (*Assenov v Bulgaria* [1998] ECHR 98; *Siliadin v France* [2005] ECHR 545).



## 6. Questions for reflection

- > Ifelayo felt the relationship with her social worker was strained and that she was treated less favourably because of her immigration status. Could unconscious racial bias or discrimination (where professionals make assumptions, generalisations, judgements, or stereotype) have influenced the treatment and response Ifelayo received from services? What changes can services make to ensure they are inclusive, culturally sensitive and cater to the needs of those with NRPF?
- > When she escaped her traffickers, the problems facing Ifelayo severely limited her capacity to resolve her housing crisis. How could a more joined-up, specialist and multi-agency approach (between specialist voluntary organisations, law centres, housing and social care services) have helped Ifelayo address her housing needs more effectively?

Local authorities could adopt a specialist, coordinated and effective service response when supporting families with NRPF with a dedicated lead or team. This might include multi-agency risk assessment conference (MARAC) style arrangements to support victims of trafficking and fast-tracking systems such as emergency housing protocols (guidance for local authorities on modern slavery is available [here](#)). Relationships with third sector organisations are important so that individuals can be referred quickly.

- > Legal aid is not a prohibited public fund, therefore migrant families have the right to legal advice by a legal aid lawyer. Do frontline workers understand where and when to signpost to specialist legal advice and advocacy?
- > Secure, long-term housing is vital for the recovery of victims of trafficking. Ifelayo's journey included multiple unplanned, no-choice, housing transitions, including when she exited the housing and care package provided through the NRM. What would have helped to avoid this, or made these transitions smoother? Could the move from the NRM have been better planned in order to help Ifelayo access more appropriate long-term accommodation?
- > What legal powers do children's social care services have that could have supported Ifelayo and helped resolve her housing crisis? Housing options outside of the NRM were not explored in Ifelayo's case. Consideration might have been given to accommodation provided under the *Children Act 1989*.

## Scenario 5

1. **The intersection of housing and social care: Housing entitlements, options and support for care experienced young people**
2. **The family journey: Paula - Complex pathways out of care**

Many young people become homeless directly after leaving home, or soon after their transition to independence. After being forced to leave the family home by her mother when Paula came out as bisexual, she went to live with her father who she barely knew and who was not able to provide her with the stability and care she needed. Not long after moving in with him, Paula was referred to children's social care and assessed as a 'child in need'. When Paula was 16, her father received a long prison sentence, leaving her with nowhere to live. It was not possible for her to return to live with her mother or for Paula to be placed with another person in her family.

Paula was therefore moved into supported accommodation for young people under section 17 of the *Children Act 1989*. This meant that she would not be eligible for a 'leaving care' support package provided by local social services authorities when she turned 18. Under section 17, support is only available until a young person's 18th birthday. Once she had turned 18, Paula became aware that she should have been accommodated under section 20 but was told there was no way to resolve the error. She found interactions with multiple different social workers confusing and felt let down by the system designed to protect her.

Paula was working full-time when she turned 18 and, because the rent for her supported accommodation was so high, she was forced to move out of supported housing (which brings additional care costs) to a self-contained flat in the private sector. This was the first time she had lived independently. Given that she was not considered 'looked after', Paula received limited support and no financial assistance from social services during this transition.

Now living alone, Paula began a relationship with Haryati and she soon became pregnant. The relationship did not last long but Paula and Haryati parted amicably and were keen to co-parent their daughter when she was born. Haryati tried to find self-contained rented accommodation so their baby daughter would be able to stay with him a night or two a week after she was born but, because the income from his part-time job was so low, he was reliant on help with housing costs through the benefit system. As he was under the age of 35, this only covered the cost of a room in a shared house<sup>2</sup>. They both considered this an inappropriate environment for a family and Paula was particularly concerned about her daughter being cared for in a home where other adults were living. Being pregnant, Paula decided to leave her job and, unable to meet the rent on her property, she fell into arrears and was subsequently given notice to quit when her six-month tenancy expired.

Paula presented herself to the council and made a homeless application. Despite being a pregnant, 18-year-old care leaver, Paula was found to be intentionally homeless (for having voluntarily left her supported accommodation). There was an inadequate assessment around her vulnerability which failed to appreciate her childhood history and care leaver status. Classed as in priority need because she was pregnant, Paula was placed in poorly maintained emergency hostel accommodation by the local authority.

Paula met a new partner, Lisa, in the hostel, who was a great support to Paula, but the hostel was some distance from her wider support and social networks and from where Haryati was living. This was Paula's home when her baby was born prematurely. Paula was left feeling vulnerable, uncertain about her future, and feeling that children's social care had not met their obligations to her.

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<sup>2</sup> For under 35s living in private housing, and not living with a partner, the maximum housing payment available is usually the rent for a single room in a shared house in their area, even if the person is not living in shared housing. This is called the local housing allowance shared accommodation rate (SAR). See housing costs and Universal Credit: Renting from a private landlord - GOV.UK ([www.gov.uk](http://www.gov.uk)).



### 3. Key message

16 and 17-year-olds who are homeless or at risk of homelessness are made particularly vulnerable by their circumstances. It is essential that children's social care and housing services act according to the law to ensure young people receive the support they are legally entitled to.

### 4. What do professionals need to know about housing/social care legislation to help them support families like Paula's?

#### Key takeaway legal points (pathways out of care):

- > A homeless 16 or 17-year-old could be accommodated under the *Children Act 1989* and under the *Housing Act 1996*.
- > When housing a homeless young person under 18, the Southwark Judgment found that the *Children Act 1989* duty should take precedence over the *Housing Act 1996*.
- > Where there is a failure of the local authority to provide accommodation under section 20, the local authority could be asked to exercise its discretion to provide assistance to those classed as a 'former relevant child'.

### 5. Relevant housing and social care legislation and policy: The detail

- > A homeless 16 or 17-year-old could be accommodated under three legislative powers:
  - Under Section 17 of the *Children Act 1989*, a 16 or 17-year-old is treated as a child in need, and not a looked after child. Therefore, the young person will not be entitled to any of the support owed to looked after children, or leaving care support.
  - Section 20 of the *Children Act 1989* establishes that local authority Children's Services have a duty to accommodate children under 18 who are unable to live with their families. The young person will be entitled to leaving care support when they turn 18 until they are 25 years old.
  - Local authority housing services also have a duty to homeless 16 and 17-year-olds. A 16 or 17-year-old who has not been a 'looked after' child and is not owed a duty under section 20 of the *Children Act* will be deemed to be in 'priority need' for housing ([Homelessness code of guidance for local authorities - Chapter 8: Priority need, paragraph 8.21](#)).
- > In *R(G) v London Borough of Southwark [2009] UKHL 26*, the House of Lords found that the *Children Act 1989* duty should take precedence over the *Housing Act 1996*. This means that social services usually have the main responsibility for housing and support for somebody under 18 years old and homeless. The judgment also made clear that, if the criteria are met under section 20, it is unlawful for children's social care to provide accommodation under section 17 or to make a referral for accommodation to the housing department.
- > Care leavers aged under 21 who were looked after while aged 16 or 17 automatically have priority need when making a homelessness application ([The Homelessness \(Priority Need for Accommodation\) \(England\) Order 2002 paragraph 4](#)).
- > Payment can be made to 16 or 17-year-olds under [section 17](#) of the *Children Act 1989* to help them secure accommodation in the private sector by paying a deposit and rent in advance, or to enable them to meet any rent shortfall after housing benefit.
- > Where there is a failure of the local authority to provide accommodation under section 20 resulting from an error that came to light after the child has turned 18, the local authority could be asked to exercise its discretion to provide assistance to those classed as a 'former relevant child'; those who, before reaching the age of 18, were either eligible or relevant children (a child aged 16 or 17 who was looked after for a relevant period of time but is not looked after anymore) ([Children Act 1989 s23C\(4\)](#)). Looked after status can also be granted retrospectively.



## 6. Questions for reflection

- > Being forced to leave the family home after disclosing their sexual or gender identity is the main cause of homelessness among LGBTQ+ young people. LGBTQ+ young people are also more likely to have been in care. Were Paula's needs as a young LGBTQ+ person considered in her child in need assessment and subsequent homelessness assessments?
- > Despite a duty to accommodate children under section 20 of the *Children Act 1989*, some local authorities instead choose to accommodate a minority of young people like Paula under section 17 of the *Children Act 1989*, or to provide housing under the *Housing Act 1996*. What procedures and checks should have been in place to ensure Paula received section 20 support rather than support under section 17 of the *Children Act 1989* or Part 7 of the *Housing Act 1996*?
- > Paula did not receive the care she was eligible for from social care and, consequently, had an unsatisfactory transition from care which involved multiple moves and left her vulnerable. What measures and actions might have enabled Paula to access the correct care, support and accommodation?
- > A **transitional safeguarding** approach focuses on safeguarding young people from adolescence into adulthood, with the notions of both 'transitions' and 'safeguarding' aligned with, and defined by, children's and adult social care eligibility criteria. How could embedding a transitional approach have facilitated a more holistic, collaborative and effective response to Paula's needs? How could the fundamental error that prevented Paula's eligibility for care leaver support been corrected, and the detrimental consequences that followed prevented or alleviated?
- > When Paula presented as homeless, there was a lack of a coordinated response between social care and housing. How could they have worked better together to understand and assess Paula's circumstances and plan for appropriate accommodation and support?

## Legal definitions and Glossary

**Kinship foster care** is when a friend or family member becomes an official foster carer for a child. This can be done under a voluntary arrangement or by a care order. Parental responsibility may be retained by the parents, or passed to the local authority depending on the children's route into kinship foster care.

The powers that Children's Services have to approve someone as a foster carer on a temporary basis come from regulation 24 of *The Care Planning, Placement and Case Review (England) Regulations 2010*. There is also statutory guidance that sets out a framework for provision of support to family and friends carers (*Family and Friends Care: Statutory Guidance for Local Authorities*).

**Eligibility** for homelessness assistance depends on residency and immigration status. Most people subject to immigration control, and people who are not 'habitually resident' in England, are not, therefore, eligible for assistance under homelessness legislation. However, local authorities do have some duties and powers to help families subject to 'no recourse to public funds' with housing and financial support where there is a 'child in need' in the family or adults with care and support needs.

A person is defined as **homeless** if they have no accommodation which is available for occupation that they have a right to occupy and that it is reasonable to expect them to occupy (*Housing Act 1996*).

Local authorities must treat a child as a '**child in need**' if they are likely to require support from the local authority to achieve or maintain a 'reasonable standard of health or development'. All disabled children must also be treated as a 'child in need' (*section 17 Children Act 1989*).

### Parental responsibility

Parental responsibility is defined in *section 3(1) Children Act 1989* as being: '...all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'. Local authorities have parental responsibility for a child when one of the following orders is made by the court: emergency protection order; interim care order; final care order; placement order. When these orders are made, they do not remove parental responsibility from anyone else, such as the child's parents. However, in exceptional circumstances the court may also make an order that removes parental responsibility. Whether a kinship carer has parental responsibility for a child will depend on the type of kinship care arrangement.

### Notice seeking possession

A notice requiring possession (under *section 21 of the Housing Act 1988*), or a notice seeking possession (under *section 8 of the Housing Act 1988*), is a written notice that a landlord is seeking to repossess a property. The notice will specify why the landlord wants to evict the tenant and the date by which they are being asked to leave their home. After this date, possession proceedings may be started.

## **No recourse to public funds**

A person will have no recourse to public funds (mainstream benefits and local authority housing assistance) when they are 'subject to immigration control', as defined at section 115 of the *Immigration and Asylum Act 1999* (unless an exception applies).

## **Care orders**

Under the *Children Act 1989* a local authority can apply to a court for a care order if it believes a child is suffering, or at risk of suffering, significant harm and that harm is caused by the child's care 'not being what it would be reasonable to expect a parent to give' or by the child being 'beyond parental control'. If the court grants a care order, it allows a local authority to keep the child in its care. The local authority will share parental responsibility for the child under the order. When the local authority has a care order for a child, they are responsible for deciding where the child should live. By default, the local authority must allow 'reasonable contact' between the child and their parents, but the court has the power to vary this.

## **Local connection**

A person who is homeless, or at risk of homelessness, can apply to any local authority for help. The local authority will usually look at whether the person has a local connection to the area. Local connection criteria includes:

- > The person has lived in the area for six months out of the past twelve, or three years out of the past five.
- > The person has close family who have lived in the area for at least five years.
- > The person works in the area.
- > The person is under 21 and has previously been in care in the area for at least two years.
- > The person has other special reasons. For example, they are receiving specialist health care or, in the past, had lived in the area for a long time.
- > The person is under 25 and receiving advice and support from the local authority social care team under a pathway plan.
- > The person has a local connection to the last council area they were housed in by the Home Office under asylum support.

If somebody does not have a local connection to the area in which they have made a homelessness application, they could be referred to a different local authority - but not an area where they would be at risk of domestic abuse or violence.



## Further information and useful resources

The British Association of Social Workers (BASW) has published a reflective guide for social work practice around family homelessness and housing need:

*Social work with families who are homeless or have housing needs: A reflective guide for social workers and social work managers*

The Equalities and Human Rights Commission (EHRC) provide a detailed guide to the *Human Rights Act 1988*:

*A guide to the Human Rights Act*

The Family Rights Group offer useful and accessible information about kinship care/carers:

*Helping Families Helping Children*

HM Government provide a series of accessible fact sheets explaining different aspects of the legislation referenced in this practice tool:

- > *Homelessness Reduction Act: Policy factsheets*
- > *Care Act factsheets*

HM Government statutory guidance on relevant legislation may also be of use:

- > *The Children Act 1989 guidance and regulations. Volume 2: Care planning, placement and case review*
- > *Family and Friends Care: Statutory Guidance for Local Authorities*
- > *Homelessness code of guidance for local authorities*

HM Government offer a quick start guide to help public sector organisations understand the public sector Equality Duty:

*Public sector: Quick start guide to the public sector Equality Duty*

The House of Commons Library provides a summary briefing of the legislative framework for child protection in England:

*An overview of child protection legislation in England. Briefing Paper (6787)*

The Local Government Association (LGA) has published practical guidance for local authority teams supporting people who have experienced modern slavery:

*Supporting modern slavery victims: Guidance and good practice for council homelessness services*

The Local Government Association (LGA) and Association of Directors of Adult Social Services (ADASS) offer a briefing on positive practice in adult safeguarding and homelessness:

*Adult safeguarding and homelessness: A briefing on positive practice*

No Recourse to Public Funds (NRPF) Network and the Centre On Migration, Policy & Society (COMPAS) provide an online toolkit to support migrant families looking for help with housing and financial support when they have no recourse to public funds:

*Support for migrant families*



The National Society for the Prevention of Cruelty to Children (NSPCC) provide information on the child protection system in the different UK nations:

*Child protection system in England*

Project 17 provide information on housing and financial options for families with NRPF, especially in relation to accessing local authority support:

[www.project17.org.uk](http://www.project17.org.uk)

Research in Practice has published useful practice tools on housing, social care and legal literacy:

- > *Successful relationships – working together across housing and social care: Practice Tool*
- > *Legal literacy: Change Project*

Shelter’s legal website offers useful and accessible summaries of the legislation relating to housing, homelessness and, more specifically, to homelessness applications:

- > *Shelter Legal – England and Wales*
- > *Homelessness applications*

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# research in practice

This resource was correct at the time of writing and they do not constitute legal advice.

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