






Domestic Abuse: Powers and Duties of Housing Providers
Michael Paget, Dr Sam Fowles



1. What is domestic abuse?
2. New duties
3. The domestic abuse possession grounds
4. Alternative grounds for possession




What is Domestic Abuse?

1. What is domestic abuse? 

Yemshaw v Hounslow LBC [2011] 1 W.L.R. 433

“Domestic Violence” includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.”

- “Coercion and other deprivations of liberty”
- “Psychological violence”

1. What is domestic abuse? 


Domestic Abuse Bill 2019

1. Definition of “domestic abuse”

...

(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

- (a) A and B are each aged 16 or over and are personally connected to each other, and
- (b) the behaviour is abusive.

1. What is Domestic Abuse? 

Domestic Abuse Bill 2019

(3) Behaviour is “abusive” if it consists of any of the following—

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse (see subsection (4));
- (e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct

1. What is Domestic Abuse?



Domestic Abuse Bill 2019

(4) "Economic abuse" means any behaviour that has a substantial adverse effect on B's ability to—

- (a) acquire, use or maintain money or other property, or
- (b) obtain goods or services.

(5) For the purposes of this Part A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).

(6) References in this Part to being abusive towards another person are to be read in accordance with this section.



New Legal Duty

2. New Legal Duty



Section 56 (new section 81ZA Housing Act 1985)

Grant of secure tenancies in cases of domestic abuse

(1) This section applies where a local housing authority grants a secure tenancy of a dwelling-house in England before the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 (grant of new secure tenancies in England) comes fully into force.


(2) The local housing authority must grant a secure tenancy that is not a flexible tenancy if—

- (a) the tenancy is offered to a person who is or was a tenant of some other dwelling-house under a qualifying tenancy (whether as the sole tenant or as a joint tenant), and
- (b) the authority is satisfied that—
 - (i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and
 - (ii) the new tenancy is granted for reasons connected with that abuse.

(3) [Application if a joint tenant.]




 Possession in cases of Domestic Abuse

3. Possession in cases of Domestic Abuse 

Schedule 2, Housing Act 1985 (Similar provisions in Housing Act 1988)


Ground 2A
The dwelling-house was occupied (whether alone or with others) by a married couple, a couple who are civil partners of each other, a couple living together as husband and wife or a couple living together as if they were civil partners and—

- (a) one or both of the partners is a tenant of the dwelling-house,
- (b) one partner has left because of violence or threats of violence by the other towards—
 - (i) that partner, or
 - (ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and
- (c) the court is satisfied that the partner who has left is unlikely to return.

3. Possession in cases of Domestic Abuse 


Challenges

- Often have to work without the participation of the victim
- Must prove domestic abuse – usually takes place without witnesses
- Must prove that the domestic abuse cause the victim to leave the family home
- Satisfying the court that the victim will not return to the property
- Satisfying the court that it is reasonable to make the order in all the circumstances

3. Possession in cases of Domestic Abuse 


Overcoming the Challenges

- Civil law burden of proof (balance of probabilities), hearsay admissible
- Contemporary records
- Witness statements from officers/friends/relatives (hearsay evidence)
- Primary evidence (text messages/photos)
- Can pursue claim without the participation of the victim (and even without a witness statement from the victim)

3. Possession in cases of Domestic Abuse 

Case Study – London and Quadrant Housing Trust v X

- Defendant accused of physical and emotional abuse and controlling behavior from 2010-2018
- Claimant was not prepared to testify.
- Relied on contemporaneous notes, text messages, and witness statement of housing officer.
- When confronted with this evidence in cross examination the Defendant repeated the accusations which formed part of the controlling behavior.

 **Alternative Grounds for Possession**

4. Alternative Grounds for Possession 

ASB (1985 Act, Ground 2)

The tenant or a person residing in or visiting the dwelling-house—

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality,
- (aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions, or
- (b) has been convicted of—
 - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - (ii) an indictable offence committed in, or in the locality of, the dwelling-house.

4. Alternative Grounds for Possession 

ASB (1985 Act, Ground 2)

- Still need to prove domestic violence/abuse
- No need to prove that victim left and not likely to return
- Best used as an alternative ground

4. Alternative Grounds for Possession 

Obligation of the tenancy not performed (1985 Act, Ground 1)

Rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed.

- Most tenancies have ASB clauses
- Can be broader than Ground 2/often include list of examples (including DV)

4. Alternative Grounds for Possession 

- Utilising the unique nature of a periodic tenancy compared to other joint assets.
- Usual position of joint property assets
 - The four unities must be present
 - Unity of possession – each co-owner is entitled to possession of any part of the land as any others.
 - Unity of interest – where leases different length
 - Unity of title – same lease
 - Unity of time – same duration of lease.

4. Alternative Grounds for Possession 

Consent of all joint owners required:

- on sale all owners must sign TR1 form.
- Surrender of lease
- Exercise of break clause
- Giving of notice.

Because – one joint tenant alone does not by herself have the whole estate.
The world at large treats them as one owner.

4. Alternative Grounds for Possession 

- Periodic joint tenancies are an exception.
 - As there is no fixed contractual term there must be consent of the tenant at the end of each period to renew the tenancy for a further period.
 - The consent of the tenant means the consent of all parts of the tenant – both joint tenants.
 - If one of the joint tenants does not consent to a renewal the 'tenant' does not consent.

4. Alternative Grounds for Possession

Hammersmith & Fulham LBC v Monk [1992] 1 A.C. 478 24 H.L.R. 206

Defendant and victim were joint tenants

- Victim fled property due to Defendant's domestic abuse.
- On leaving she submitted a "Tenancy Termination Form" to the landlord. This said that she wanted to end the tenancy.
- The landlord accepted this as a Notice to Quit.
- Court found that the "Tenancy Termination Form" fulfilled all the criteria of a Notice to Quit and the landlord was, therefore entitled to treat it as such.
- The Defendant was, therefore, a trespasser from the date of the expiry of the notice.

4. Alternative Grounds for Possession

- Very attractive option for landlords
 - Certainty
 - Avoids reasonableness problems.
 - Motivation behind giving of notice does not matter.
 - Positive outcome if the notice giver is a genuine victim.
 - Unfortunate outcome if the notice giver is vindictive and a liar.

4. Alternative Grounds for Possession

- Can even terminate when subject to court order requiring re-admittance of other tenant to property!
- An injunction requiring a wife to readmit her husband did not affect her right to terminate their joint tenancy by notice to quit.
- Because the injunction was concerned with the exercise of the husband's rights under the tenancy, not with the continued existence of the tenancy itself: *Harrow LBC v Johnstone* [1997] 1 WLR 459

4. Alternative Grounds for Possession

- Very attractive option for landlords
 - A joint tenant is not exercising a function in relation to a trust of land within the meaning of the Trusts of Land and Appointment of Trustees Act 1996, s.11. There is no legal obligation on joint tenant to consult their fellow joint tenants prior to the giving of notice – *Notting Hill Housing Trust v Brackley* [2001] EWCA Civ 601.
 - Formal requirements of the notice period can be waived where departing partner is sole tenant – *Hackney LBC v Snowden* (2001) 33 HLR 554, CA.

4. Alternative Grounds for Possession

- Very unattractive option for other joint tenants
 - A notice to quit is not regarded as a disposition of property and so it cannot be set aside pursuant to s.37, Matrimonial Causes Act 1973 – *Newlon Housing Association v Al-Sulaimen* [1999] 1 AC 313
 - 'One moment you have an apparently secure tenancy; the next minute it has disappeared by the unilateral (and secret) action of your former partner of which you know nothing' S.Cretney [1998] Fam. Law 590.

4. Alternative Grounds for Possession

- Can the occupying tenant do anything to preserve the tenancy?
 - YES, if act before notice is given.
 - Pre-emptive injunction
 - If married – s.37 Matrimonial Causes Act 1973
 - If unmarried – Family Law Act 1996 as an interim measure before seeking the transfer of tenancy from joint names to sole name – *Greenwich LBC v Bate* [1999] 4 All ER 944.

4. Alternative Grounds for Possession 

- Can the occupying tenant do anything to preserve the tenancy?
 - NO, if act after notice has been given.
 - BUT YES, if notice is not valid – (because agreement of all tenants needed to waive defect) – but not very common
- *Sims v Dacorum Borough Council* [2014] UKSC 6, [2015] AC 1336 – not a breach of the occupier’s Article 8 rights.

4. Alternative Grounds for Possession 

- Tenancy has terminated. But can subsequent possession proceedings be defended on human rights basis?
- The property will be their home, Article 8 will be engaged. In *Qazi v Harrow LBC* [2004] 1 AC 983, the House of Lords held that there was no violation of art.8 where a possession order was granted pursuant to a notice to quit served by one joint tenant.

4. Alternative Grounds for Possession 

- In *Sims v Dacorum Borough Council* [2014] UKSC 6, [2015] AC 1336 it was held that the rule in *Monk* was not incompatible with art.8 because the remaining occupier (Mr Sims) had been entitled to raise a proportionality defence in the county court and had done so. It was further held that there was no violation of art.1 of the First Protocol because the terms of the tenancy had expressly provided that it could be determined by one joint tenant giving notice to quit; Mr Sims had lost his tenancy in circumstances and in a manner which was specifically provided for in the agreement.

4. Alternative Grounds for Possession

Case Study – Ipswich BC v Y

- Defendant lived in property with his partner (who was not a tenant)
- Defendant assaulted partner and was convicted of assault and a restraining order imposed.
- Victim remained in the property while Defendant was excluded by Defendant proposed to return to the property when restraining order expired.
- Relied on Grounds 1 (prohibition of DV in tenancy agreement) and 2
- Reasonability – public policy, balance of prejudice

Questions?





Domestic Abuse: Powers and Duties of
Housing Providers

Michael Paget, Dr Sam Fowles
