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|  |  | **Neutral Citation Number: [2015] EWCA Civ 14** |
|  |  | Case No: B5/2014/0429 |

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM Central London Civil Justice Centre  
Mr Recorder Steynor**

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| --- | --- | --- |
|  |  | Royal Courts of Justice Strand, London, WC2A 2LL |
|  |  | 20th January 2015 |

B e f o r e :

**LORD JUSTICE MOORE-BICK   
(Vice President of the Court of Appeal, Civil Division)  
LORD JUSTICE UNDERHILL  
and  
LORD JUSTICE BRIGGS**  
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**Between:**

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|  | **REHANA HUSSAIN** | **Respondent** |
|  | **- and -** |  |
|  | **THE LONDON BOROUGH OF WALTHAM FOREST** | **Appellant** |

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**Christopher Baker (instructed by London Borough of Waltham Forest) for the Appellant  
Stephen Knafler QC and Toby Vanhegan (instructed by TV Edwards Solicitors) for the Respondent  
Hearing date: 2 December 2014**   
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**Lord Justice Underhill :**

INTRODUCTION

1. The Respondent to this appeal, Ms Rehana Hussain, lives with her daughter in a house ("the property") rented from a housing association called Places for People ("PFP") in Bounds Green in the London Borough of Waltham Forest. From early 2012 she became a victim of persistent racial harassment and serious anti-social behaviour from the son of a neighbour, referred to before us simply as "M". She reported the problems to both PFP's community support officer and the police. They gave full credence to her complaints but felt unable to help: in the case of the police this was because so long as she remained in the property Ms Hussain was unwilling to make any formal complaint for fear of reprisals.
2. On 12 September 2012 Ms Hussain applied to the Council under the homelessness provisions in Part VII of the Housing Act 1996, claiming that she was homeless because M's conduct made it unreasonable for her to have to continue to occupy the property. By letter dated 11 December 2012 the agency which manages the Council's obligations under the Act, Ascham Homes Ltd ("AH"), notified her of its decision that she was not homeless. She applied for a review of that decision under section 202 of the Act. In her representations she relied in particular on section 177 (1), which applies where an applicant is at risk of violence if he or she remains in the home. I set out its full terms below: at this stage it is sufficient to say that a person must be treated as homeless if their continued occupation would lead to "violence" against them, or threats of violence which are likely to be carried out. She said that if she continued to live in the property that would lead to such violence or threats by M against her and her daughter.
3. The review was conducted by Taiwo Awoyungbo, a Principal Review Officer employed by AH. He conducted various enquiries, contacting both the community support officer and the police, and he interviewed Ms Hussain on 1 February 2013. By a decision letter dated 13 February he upheld the original decision.
4. Ms Hussain appealed to the County Court under section 204 of the Act. The appeal was heard by Mr Recorder Steynor in the Central London County Court in December 2013. By a judgment handed down on 17 January 2014 he allowed the appeal and quashed the decision of the Review Officer. Although this is not explicit on the face of the order, it is common ground before us that he decided that the decision should be remitted to the Council for a fresh review under section 202.
5. The Council appeals against that decision with the permission of Rimer LJ. Ms Hussain is represented by Mr Stephen Knafler QC, leading Mr Toby Vanhegan, and the Council by Mr Christopher Baker. Mr Vanhegan and Mr Baker both appeared before the Recorder.

THE RELEVANT STATUTORY PROVISIONS

1. Section 175 of the 1996 Act defines homelessness. Sub-section (1) provides that a person is homeless if he has no accommodation available for his occupation. Sub-section (3) provides that:

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

1. Section 177 of the Act contains provisions glossing section 175 (3). For present purposes I need refer only to sub-sections (1) and (1A), which go together, and to sub-section (2). I take them in reverse order.
2. Section 177 (2) provides that in deciding whether it would be reasonable for the applicant to continue to occupy accommodation "regard may be had to the general circumstances prevailing in relation to housing" in the relevant area. The effect of that provision is to allow authorities, at least to some extent, to balance any hardship to an applicant of having to remain in their existing accommodation against pressures on local housing stock. Such pressures are acute in most of London, and Mr Baker accepted that this made it difficult for applicants to London boroughs to rely on section 175 (3), even if their current accommodation was quite seriously unsuitable.
3. Sub-sections (1) and (1A) of section 177 read as follows:

"(1)     It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against him, or against—

(a) a person who normally resides with him as a member of his family, or

(b)    any other person who might reasonably be expected to reside with him.

(1A) For this purpose "violence" means—

(a)     violence from another person; or

(b) threats of violence from another person which are likely to be carried out;

and violence is "domestic violence" if it is from a person who is associated with the victim."

(Sub-section (1A), together with the words "or other violence" in sub-section (1), were inserted by section 10 of the Homelessness Act 2002.) In *Yemshaw v Hounslow London Borough Council* [[2011] UKSC 3](http://www.bailii.org/uk/cases/UKSC/2011/3.html), [[2011] 1 WLR 433](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKSC/2011/3.html), to which I refer more fully below, Lady Hale described the effect of section 177 (1) as follows (see para. 7, at p. 436 G-H):

"It has variously been called a 'deeming' or a 'pass-porting' provision.  The effect is ... that a person who is at risk of the violence to which it applies is automatically homeless, even though she has every right to remain in the accommodation concerned and however reasonable it might in other respects be for her to do so.  Questions of local housing conditions or shortages do not come into it."

1. There are provisions in very similar terms to those of section 177 in section 198 of the Act, which deals with the circumstances where an authority to which an application is made under Part VII can refer the case to another authority with which the applicant has a local connection. Section 198 (2A) provides that such referral shall not proceed if:

"(a) the applicant or any person who might reasonably be expected to reside with him has suffered violence (other than domestic violence) in the district of the other authority; and

(b) it is probable that the return to that district of that victim will lead to further violence of a similar kind against him."

Sub-section (3) provides that for the purpose of sub-section (2A)

"... 'violence' means–

(a) violence from another person; or

(b) threats of violence from another person which are likely to be carried out;

and violence is domestic violence if it is from a person who is associated with the victim."

1. I do not understand why the draftsman thought it necessary, in both section 177 and section 198, explicitly to include threats of violence as a sub-category within the definition of violence. This seems to me to add an unnecessary level of complication. If such threats have been made, and – as the definition requires – are "likely to be carried out", that would seem necessarily to establish that it was probable that actual violence would occur if the applicant continues to occupy the property, or returns to the district (as the case may be); and specific provision is redundant. But I make this point only in the interests of clear thinking: it does not seem to impinge on the issues which we have to decide.
2. I should mention for completeness that under powers conferred by section 182 of the Act the Secretary of State has issued a *Homelessness Code of Guidance for Local Authorities* to which authorities are obliged to have regard in exercising their functions relating to homelessness. We were referred to this by counsel, but I am bound to say that I found nothing in it which was useful for the purpose of the particular issues which we have to decide.

MS HUSSAIN'S CASE AS TO THE RISK OF VIOLENCE

1. In her written representations and her interview with the Review Officer, and in her complaints to PFP and the police (of which the Review Officer had the records), Ms Hussain relied on a number of matters as giving rise to a risk of violence by M. These can be summarised as follows:

(1) On one occasion M tried to break into her car. This seems, though there are some contradictory statements in the papers, to have occurred in 2009, when she first moved in to the property.

(2) For most of 2012 M had been subjecting her to gross racial abuse, from the street or from his mother's property, which she has to pass whenever she leaves her home, on a daily basis.

(3) M was regularly involved in drug dealing in the street outside her house. In early 2012 she had witnessed a shooting incident in which M was involved.

(4) On about ten occasions in the three months or so prior to the Council's initial decision faeces had been smeared on her car or on her front door. When M saw her cleaning away the mess he made racially offensive remarks. It was clear that it was he who had been responsible.

(5) M would regularly and deliberately park his car in such a way that she could not move her own. If asked to move it he would do so only reluctantly and his conduct would be offensive and intimidatory.

(6) On one occasion M said to her "watch what I'm going to do" and made a throat-slitting gesture. He often spat at her or in her vicinity.

(7) In late 2012 her bedroom window had been damaged, apparently by someone trying to get in. M had made remarks to her which strongly suggested that he was the perpetrator.

1. The police confirmed in their report to the Review Officer that M was associated with a local criminal gang and had convictions for, *inter alia*, drug dealing, burglary, affray, robbery and possession of an offensive weapon. They also told him that they suspected that Ms Hussain may have been targeted by M because he believed that she had complained about his drug-dealing activities to a neighbour who acted as an informal neighbourhood representative.
2. The PFP report submitted to the Review Officer summarised the effect of this conduct on Ms Hussain as follows:

"Ms Hussain is suffering as a result of this person's behaviour and intimidation and believes that she is being targeted as she is a single parent. Ms Hussain has said that she hates going out in case he is there as she is petrified of him. She is currently under a great deal of stress and is depressed by this and is at the end of her tether."

In her review application Ms Hussain says that she is "on medication for depression" and is prepared to provide evidence of her medication. She also signed a consent form allowing the Council to obtain details of her health from her GP. However, there is no medical report in the papers before us and the only medication referred to is chlorphenamine, which is an antihistamine and not an anti-depressant.

THE DECISION OF THE REVIEW OFFICER

1. As is all too commonly the case, the Review Officer's decision letter is extremely long, running to fourteen pages of single-spaced type. It contains much detail on points that were not contentious as well as some repetition. I would not wish to be too critical of him: review officers are not lawyers, and they have no doubt been warned that if they leave out anything which might even arguably be relevant that could be used as the basis of a legal challenge. But the diffuseness of the letter does mean that only a very limited part of it is relevant for present purposes.
2. At pp. 7-8 of the letter the Review Officer refers to a number of the particular incidents which I have set out above. He makes the point that neither the attempt to break into her car three years previously nor the firearms incident appeared to have been targeted at Ms Hussain. He says that the smearing of the faeces and the attempted break-in could not be definitively attributed to M, though he concedes that he "may well" have been responsible. He then continues, at pp. 8-9:

"Clearly from your account of things [M] has been behaving very badly towards you. However his misbehaviour and harassment falls short of actual violence or threats of violence that is likely to be carried out. In my view [the property] is not deemed to be unreasonable for you and members of your household to continue to occupy. There is little to support the view that the implied violence from [M] is 'likely to be carried out' not overlooking that the word 'likely' does not mean that the violence has to have been carried out already. The council has not requested nor expected you to show an actual history of violence. Many authorities failed to observe this important distinction, and require a high standard of proof of actual violence in the past, as evidence of both probability and likelihood. The council is aware that the test may be satisfied by the lower standard of threats by someone likely to carry them out, but the council does not accept that the threats made by [M] are 'more likely than not' to be carried out. As per paragraph 8.22 of the Code an assessment of the likelihood of the threat of violence being carried out should not be based on whether there has been actual violence in the past. An assessment must be based on the facts of the case and devoid of any value judgements about what an applicant should or should not do, to mitigate the risk of any violence (e.g. seeking police help or apply for an injunction against the perpetrator).

There is obvious emotional and other upset that [M's] misbehaviour has caused you and continues to cause you, but given that his misconduct falls short of actual violence or threats of violence that are likely to be carried out nothing untoward has happened. It is not 'probable' that continued occupation of the accommodation will lead to 'domestic violence or other violence' against you or against a member of your household. The local housing authority's enquiries have been focused to finding the facts necessary to answer the question of whether such violence is probable. The test is not whether there has been violence in the past, or whether violence would definitely occur in the future. The question for the council is whether it is 'probable' that continued occupation of the accommodation would lead either to violence, or to threats of violence which are likely to be carried out. 'Probable' means 'more likely than not'. 'Likely' in the context of 'threats of violence' includes 'a real serious possibility'. Considering the facts of your case, as above, it is not more likely than not that your continued occupation of your home will lead to violence or threats of violence where there is a real or serious possibility that those threats will be carried out."

THE JUDGMENT OF THE RECORDER

1. We do not have a transcript of the Recorder's judgment, owing to a problem with the tape. Counsel have provided an agreed note, but it is not at all points very clear and it does not appear to have been submitted to the Recorder for his approval, as it should have been. But the absence of an approved judgment does not pose a real difficulty, not least because we are ultimately concerned with the reasoning of the Review Officer rather than that of the Recorder.
2. I can summarise the Recorder's reasoning very shortly. He referred to the decision of the Supreme Court in *Yemshaw*, to which I have already referred at para. 9 above. The Court in that case held that "domestic violence" covered not only physical violence but "any other form of abuse which, directly or indirectly, might give rise to the risk of harm", including psychological harm: I set out the relevant passages in full below. The Review Officer had not referred to *Yemshaw* in his decision, and the Recorder believed that his approach in the passage which I have quoted above depended on a narrow definition of "violence" which was inconsistent with the approach approved by the Supreme Court. He also appears to have held that if the Review Officer had applied the correct test he would have been bound to find that Ms Hussain's continued occupation of the property would lead to violence against her; but, as I have said, he did not make any such ruling in his order and he remitted the decision to the Council.

THE ISSUES

1. I need not rehearse at this stage the submissions advanced by counsel: I will refer to them so far as necessary in the course of the discussion which follows. In essence the issues which we have to decide are threefold:

(1) What is the scope of the term "other violence" in section 177 (1) of the 1996 Act ? In particular, does it extend beyond physical violence so as to cover psychological harm ?

(2) Did the Review Officer properly apply the correct test, as established by the answer to (1) ?

(3) If he applied the wrong test, can a remittal nevertheless be avoided ?

(1) THE MEANING OF "VIOLENCE" IN SECTION 177

1. The starting-point is the decision of this Court in *Danesh v Kensington and Chelsea Royal London Borough Council*, [[2006] EWCA Civ 1404](http://www.bailii.org/ew/cases/EWCA/Civ/2006/1404.html" \o "Link to BAILII version), [[2007] 1 WLR 69](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2006/1404.html). In that case the applicant had applied to the respondent council under the homelessness provisions, but it sought to refer his case to the local authority in Swansea, where he had previously been living, under section 198 of the Act. The applicant claimed that on two occasions in Swansea he had been the subject of racial abuse in the street. Reversing the decision of the county court judge, this court upheld the decision of the review officer that that did not give rise to a probability of violence sufficient to engage section 198 (2A). Neuberger LJ, who delivered the only substantial judgment, said at para. 14 (p. 75 D-E):

"The council's contention in this connection is that ... 'violence' in section 198 involves in a case such as this some sort of physical contact. In my view, that contention is correct, and the judge was wrong.  In section 198, "violence" means physical violence, and the word 'violence' on its own does not include threats of violence or acts or gestures, which lead someone to fear physical violence."

He gave various reasons for that conclusion which I need not set out in full but which contained the observation, at para. 15 (p. 75E), that in its natural meaning "violence" refers to physical violence.

1. I turn to *Yemshaw*, which, as I have said, formed the basis of the Recorder's decision. The facts and procedural background are sufficiently summarised in the headnote in the Weekly Law Reports, which reads:

"The claimant, a married woman with two young children, left the home in which she lived with her husband, taking the children with her, and sought the help of the local housing authority. When interviewed by housing officers, she complained about her husband's behaviour, which included shouting at her in front of the children and not giving her any money for housekeeping, and she said that she was scared that if she confronted him he would hit her or take the children away from her. The housing officers decided that she was not homeless as her husband had never actually hit her or threatened to do so. A review panel and the judge upheld that decision. On the claimant's appeal, the Court of Appeal held that, for the purposes of section 177 (1) of the Housing Act 1996, under which it was not reasonable for a person to continue to occupy accommodation if it was probable that that would lead to 'domestic violence or other violence' against her or other members of her household, 'violence' was limited to physical contact and, therefore, the appeal was dismissed."

In short, this Court construed the language of section 177 (1) in accordance with the decision in *Danesh*: it was in practice obliged to do so, since the language of sections 198 and 177 is in the relevant respects substantially identical.

1. The Supreme Court reversed the decision of this Court. It may be debatable whether, on a strict analysis, it also definitively over-ruled *Danesh*, but on any view it disapproved much of its reasoning. The leading judgment is that of Lady Hale, with whom Lord Hope and Lord Walker agreed. Her reasoning can be sufficiently summarised for present purposes as follows:

(1) She begins the relevant part of her judgment by disagreeing with Neuberger LJ's observation in *Danesh* that the natural meaning of "violence" is confined to physical violence. She says, at para. 19 (p. 440 A-C):

"I can readily accept that this is *a* natural meaning of the word.  It is, for example, the first of the meanings given in the *Shorter Oxford English Dictionary*.  But I do not accept that it is *the only* natural meaning of the word. It is commonplace to speak of the violence of a person's language or of a person's feelings.  Thus the revised 3rd edition, published in 1973, also included 'vehemence of personal feeling or action; great, excessive, or extreme ardour or fervour … passion, fury'; and the 4th (1993), 5th (2002) and 6th (2006) editions all include 'strength or intensity of emotion; fervour, passion'.  When used as an adjective it can refer to a range of behaviours falling short of physical contact with the person: see, for example, section 8 of the Public Order Act 1986.  The question is what it means in the 1996 Act."

(2) I need not set out the detailed reasoning which follows, which focuses on the term "domestic violence" rather than "violence" more generally. But at paras. 27-28 (p. 443), after referring to *Fitzpatrick v Sterling Housing Association Ltd*. [[2001] 1 AC 27](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1999/42.html), in which it was held that the meaning of the term "family" could change over time, she says:

"27.   'Violence' is a word very similar to the word 'family'.  It is not a term of art.  It is capable of bearing several meanings and applying to many different types of behaviour.  These can change and develop over time.  There is no comprehensive definition of the kind of conduct which it involves in the Housing Act 1996: the definition is directed towards the people involved.  The essential question, as it was in the *Fitzpatrick* case, is whether an updated meaning is consistent with the statutory purpose - in that case providing a secure home for those who share their lives together.  In this case the purpose is to ensure that a person is not obliged to remain living in a home where she, her children or other members of her household are at risk of harm.  A further purpose is that the victim of domestic violence has a real choice between remaining in her home and seeking protection from the criminal or civil law and leaving to begin a new life elsewhere.

28.   That being the case, it seems clear to me that, whatever may have been the position in 1977, the general understanding of the harm which intimate partners or other family members may do to one another has moved on.  The purpose of the legislation would be achieved if the term 'domestic violence' were interpreted in the same sense in which it is used by Sir Mark Potter P, the President of the Family Division, in his *Practice Direction (Residence and Contact Orders: Domestic Violence) (No 2)*   [2009] 1 WLR  251, para 2, suitably adapted to the forward-looking context of sections 177(1) and 198(2) of the Housing Act 1996: '"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'."

It is clear that the "harm" referred to in Sir Mark Potter's formulation is what Lady Hale describes elsewhere (see, e.g., para. 25) as "psychological harm".

(3) At paras. 31-35 she considers whether giving the words "domestic violence" the meaning set out in the Practice Direction quoted in para. 28 would be inconsistent with anything in the statutory language or purpose. I need not quote paras. 31-34, but para. 35 addresses precisely the question which arises in this case – that is, whether, if "domestic violence" is given a meaning that goes beyond physical violence, the same must go for the phrase "other violence". Lady Hale says:

"The introduction in 2002 of 'other' violence into a statute which was previously concerned only with domestic violence also raises questions.  They are readily answered, if I am right that the concept of domestic violence in 1996 was already wider than physical contact.  As [counsel for the claimant] points out, the introduction of 'other' violence in 2002 cannot possibly have been intended to cut down the meaning which the statute already had.  However, if the understanding of the conduct to which the word applies has moved on, the question of whether this also applies to 'other violence' does not arise on the facts of this case, and so it is unnecessary for us to express a concluded view.  Reading the statute as it now stands, there are arguments on either side.  On the one hand, if 'violence' has the same meaning in both 'domestic violence' and 'other violence', there was no need to retain the separate concept of domestic violence, together with the complicated definition of associated persons in section 178.  A person who was at risk of any violence if she stayed in or returned to the property or the locality would be protected.  Retaining them as separate concepts suggests that 'domestic violence' is limited by the relationship between the victim and the perpetrator, rather than by the nature of the conduct involved.  'Other violence', having no such limitation and lacking the connotations of an intimate or familial relationship, might relate to a narrower set of behaviours.  On the other hand, providing in sections 177 (1A) and 198 (3) that 'violence is "domestic violence"' suggests that 'violence' has a constant meaning.  Hence, I would incline towards the view that it does.  Nor would that be surprising. People who are at risk of intimidating or harmful behaviour from their near neighbours are equally worthy of protection as are those who run the same risk from their relations.  But it may be less likely that they will suffer harm as a result of the abusive behaviour of their neighbours than it is in the domestic context.  In practice, the threshold of seriousness may be higher."

1. Lord Rodger delivered a concurring judgment. At para. 44 (p. 447 A-C) he says:

"44.  At first sight it is curious that Parliament has maintained the special term 'domestic violence'.  Section 177(1) now applies to cases where it is probable that continuing to occupy accommodation will lead to 'domestic or other violence' – 'other' violence being violence from people, such as neighbours, who are not associated with the victim.  Subsection (1A) then says that violence is 'domestic violence' if it is from a person who is associated with the victim.  In my view, there is no doubt that violence means the same, whether it comes from a person associated with the victim or from a third party.  The form of the provision may simply reflect the way that the provision has evolved.  More likely, however, the retention of the term 'domestic violence' is intended to serve a purpose.  The aim, it seems to me, may well be to ensure that the same standard is applied to violence within the home as to other violence and so to counter any suggestion that violence within the home is to be treated as being somehow of less significance than violence outside the home.  Subsection (1A) makes it clear that any conduct that would count as violence outside the home counts as violence if it occurs within the home: the law does not give a discount to the perpetrator because of the domestic setting."

He then observes, at para. 45, that when in 1977 Parliament enacted the first version of what became the homelessness provisions cases of psychological harm were not its main focus; but he says that it is "commonplace for courts to have to consider whether circumstances beyond those at the forefront of Parliament's consideration may properly be held to be within the scope of a provision, having regard to its purpose" (p. 445E). He continues, at para. 46 (p. 447 E-G):

"Similarly, cases of physical violence surely remain the main focus of section 177 (1) of the 1996 Act.  And, similarly, the question remains: does deliberate non-physical abuse which harms the other party fall within the scope of 'violence' in that subsection, having regard to its purpose?  Parliament has provided that it is not reasonable for someone to continue to occupy accommodation if it is probable that this will lead to her being subjected to violence in the form of deliberate conduct, or threats of deliberate conduct, that may cause her physical harm.  So the person at risk is automatically homeless for the purposes of the 1996 Act.  I can see no reason why Parliament would have intended the position to be any different where someone will be subjected to deliberate conduct, or threats of such conduct, that may cause her psychological harm.  I would therefore interpret 'violence' as including such conduct and the subsection as applying in such cases.  To conclude otherwise would be to play down the serious nature of psychological harm."

1. As for Lord Brown, he expressed serious doubts about the conclusion reached by the majority, but in the end he was not prepared to dissent. The only aspect of his reasoning which is relevant for present purposes is that one of the reasons for his concern was the fact that if the phrase "domestic violence" were construed as to cover "psychological abuse" it would be impossible to avoid construing "other violence" in the same way: see para. 51 (at p. 448G).
2. It is clear that as a matter of ratio *Yemshaw* only applies to the meaning of "violence" in the context of domestic violence. Although Lord Rodger and Lord Brown both thought that if it extended beyond physical violence in the context of domestic violence it must do so also in the case of "other violence", Lady Hale left the point open, albeit "inclining to" the same view; and hers was the majority judgment. It is thus open to us to hold that "other violence" does indeed only cover physical violence. I must say that I was at first tempted to do so. I see real force in the "on the one hand" points summarised by Lady Hale at para. 35 of her judgment. "Domestic violence", if not strictly a term of art, does seem to me to have in ordinary usage a special meaning, and one which reflects the special potential for psychological harm which can arise in the context of intimate or familial relationships. I would see nothing inherently wrong in a conclusion that the phrase "domestic violence" covers a wider range of behaviour than the word "violence" used nakedly. Also, as Lady Hale notes, if "other violence" covers as wide a range of conduct as "domestic violence" it is hard to see why it was necessary to make special provision for the latter at all; I do not find the explanation suggested by Lord Rodger at para. 44 of his judgment entirely convincing. A strong case can therefore be made for arguing that Parliament intended to create two separate categories of behaviour, with different characteristics, and that only "domestic violence" extends beyond (actual or threatened) physical injury; and Mr Baker urged that case on us.
3. In the end, however, I have concluded that such an approach cannot be reconciled with the way that section 177 (1A) is drafted. The structure which the draftsman has adopted is that there is a single concept of "violence", of which "domestic violence" is a sub-category. This is, I think, the same point as Lady Hale makes, "on the other hand", in para. 35 of her judgment in *Yemshaw*; and it appears also to be the basis of the views of Lord Rodger and Lord Brown that "violence" must have a single meaning. Further, quite apart from this verbal point, on reflection I think that to distinguish between the meaning of "violence" as it appears in the phrases "domestic violence" and "other violence" is unsatisfactory as a matter of substance. As Lady Hale observes, people who are at risk of intimidating or harmful behaviour from their near neighbours merit protection no less than those who run the same risk from partners or family members; and Lord Rodger's warning about "playing down the serious nature of psychological harm" is not confined to the domestic context.
4. Mr Baker emphasised what he said would be the serious consequences of such a ruling. Once conduct (actual or threatened) which causes psychological harm can "pass-port" applicants through section 175 (3), the class of persons who can establish that they are homeless will be substantially widened, causing even greater difficulties for local authorities which are already faced with acute pressure on housing stock and on their financial resources. If, as he urged, we were to hold that "other violence" in section 177 (1) referred only to physical violence, victims of psychological harm would still be entitled to the protection of section 175 (3), albeit that, as he accepted, that leaves a significant area of judgement for the local authority.
5. I understand that concern, but I do not believe that it can affect the construction of section 177 (1). The burden which adopting a broader construction of "other violence" may place on authorities is not of a nature, or inherently on a scale, that could justify the conclusion that Parliament cannot have intended it (still less so if, as I suspect, the additional impact caused by such a construction is likely to be less than that already caused by *Yemshaw*).
6. I am in any event not convinced that the effect of adopting a broader construction of "other violence" will be as great as the Council may fear. An applicant will only be able to come within the terms of section 177 (1) by demonstrating conduct, actual or threatened, which can properly be described as "violent". Even in the broader sense endorsed in *Yemshaw*, that is not equivalent to conduct which is merely anti-social, however persistent or frequent, or indeed to any conduct which may cause psychological harm. The principal element in the definition in Sir Mark Potter's Practice Direction is "threatening or intimidating behaviour": that necessarily connotes behaviour that is liable to put the victim in fear, even if the fear need not be of immediate physical injury, and does not extend to behaviour which is merely offensive or upsetting. I would also add that behaviour cannot in my view properly be described as constituting "violence against [an applicant]" within the meaning of section 177 (1) unless it is in some sense aimed at him or her. It is true that Sir Mark refers also to "other forms of abuse"; but it must be borne in mind that he was concerned with the domestic context, and I doubt if this category of "violence" has much of a role to play outside that context. It is well recognised that in a family or an intimate relationship one person may abuse his or her position in that relationship in a way which causes psychological harm, but without necessarily engaging in behaviour that could be described as intimidatory; but it will be rare for potential for abuse of that kind to arise as between strangers. This is, as I understand it, the sort of point which Lady Hale had in mind when she says, at the end of para. 35 of her judgment in *Yemshaw*, that outside the domestic context "the threshold of seriousness may be higher".
7. In short, therefore, I believe that the phrase "other violence" in section 177 (1) covers not only physical violence (actual or threatened) but other threatening or intimidating behaviour or abuse, if of such seriousness that it may give rise to psychological harm.
8. I should perhaps say a little more about "psychological harm". That term does not appear in the statute itself and it should not be treated as a formal requirement of section 177 (1) that an applicant has suffered, or is likely to suffer, such harm as a result of the conduct in question. Rather, its significance is, as discussed above, that conduct cannot normally be described as "violent", as opposed to merely anti-social, unless it is of such a nature and seriousness as to be liable to cause psychological harm. That being so, it is not necessary for officers making decisions under the homelessness provisions to search for some technical, still less medical, meaning. I think the broad sense in which the phrase is employed in *Yemshaw* is adequately well understood in ordinary usage. It connotes something more than transient upset or distress. Psychological harm will often shade into, or overlap with, a diagnosed psychiatric injury or illness, such as depression; but that need not always be so.

(2) DID THE REVIEW OFFICER APPLY THE CORRECT TEST ?

1. I have set out the relevant passage from the Review Officer's decision at para. 17 above. Although it is quite long, much of it consists of boiler-plate assurances that the decision-maker has not fallen into various possible errors – e.g. requiring proof of past violence or applying too high a standard of proof. It does not in fact address the essential question for our purposes, namely what amounts to "violence", more particularly whether it must be "physical". The Officer's repeated reference to "actual" violence is clearly in contradistinction to the *threat* of violence (though in fact this may be an empty distinction – see para. 11 above), rather than connoting any distinction between physical and other violence.
2. In my view, however, it is likely that the Officer did indeed proceed on the basis that Ms Hussain could only bring herself within the terms of section 177 (1) by establishing the probability of physical violence (actual or threatened). At the beginning of the first paragraph quoted he explicitly acknowledges that M had been "behaving very badly towards [her]" (that is, admittedly, "on your account of things", but he does not suggest that her account should be disbelieved); and he had earlier referred to the incidents which I have summarised at para. 13 above, including "threatening gestures" from M and PFP's description of his "harassment and intimidation". At the beginning of the second paragraph, he acknowledges that M had caused her "obvious emotional and other upset". But he goes on immediately in both paragraphs to say that the conduct in question "falls short of actual violence or threats of violence". Absent any more sophisticated reasoning, that reads to me as if the Officer believed that targeted intimidatory behaviour causing emotional upset was incapable in law of constituting "violence" – in other words, that physical violence (actual or threatened) was required. If that was not his reasoning, i.e. if he understood that "psychological violence" might suffice, I would have expected an explicit and careful explanation of why the intimidatory behaviour and emotional upset which he accepted had occurred did not nevertheless meet the necessary threshold. Indeed I would have expected him to refer in terms to *Yemshaw* and explain that he was adopting the same approach as the Court had required in the case of domestic violence – particularly in the light of the care taken in other respects to demonstrate how he has directed himself in law.
3. I accordingly agree with the Recorder that the Review Officer applied the wrong test in law to the applicability of section 177 (1). I would add that even if I were wrong, and the Officer did not restrict his consideration to physical violence (actual or threatened), I would have held that the decision was in any event vitiated by the absence of any clear explanation of the basis on which he reached his decision that the admitted facts did not establish the probability of violence if Ms Hussain continued to reside at the property.

(3) MUST THE DECISION BE REMITTED ?

1. Mr Knafler submitted that if we held that the Officer had misdirected himself we could and should conclude that the only decision which he could properly have reached on the basis of the material before him was that the case fell within the terms of section 177 (1), with the result that Ms Hussain was homeless, and that we should so declare. The short answer to that submission is that the Recorder, despite the same argument being advanced to him, ordered a remittal, and that there is no Respondent's Notice challenging that order. But I would have been very cautious about acceding to Mr Knafler's submission in any event. The Recorder apparently thought that Ms Hussain had a strong case under section 177 (1), and he may have been right; but the decision has been entrusted by Parliament to the Council and not the Court. It is also material that over two years have passed since the original application, and it cannot be assumed that circumstances now will be the same as they were at the end of 2012.

DISPOSAL

1. I would dismiss the Council's appeal. The effect of that decision will be that the Council must now conduct a fresh review of its decision that Ms Hussain is not homeless. For the avoidance of doubt, it is not necessary that the remitted decision be taken by the same Review Officer.

**Lord Justice Briggs:**

1. I agree.

**Lord Justice Moore-Bick:**

1. I also agree.

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