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27 April 2020

By email only to: thetreasurysolicitor@governmentlegal.gov.uk and
mhclgcorrespondence@communities.gov.uk

- EXTREMELY URGENT -

Dear Sirs/Madams,

**RE: Judicial Review Pre-Action Protocol letter on behalf of Southall Black Sisters –
regarding the failure to provide emergency funding for adequate accommodation for
domestic abuse survivors during the Covid-19 crisis**

This is a judicial review Pre-Action Protocol letter. Evidence will be served in due course should this matter proceed to an application for judicial review. We reserve the right to add further Claimants to any such proceedings.

The Defendant

1. The Defendant is the Secretary of State for Housing, Communities and Local Government. Representatives of the Defendant are the Government Legal Department, 102 Petty France, Westminster, London, SW1H 9GL.

The Claimant

2. The Claimant is Southall Black Sisters of 21 Avenue Rd, Southall UB1 3BL.

The Claimant's Legal Representatives

3. Public Interest Law Centre (PILC) represents the Claimant in these proposed judicial review proceedings. The solicitor with care and conduct of the case is Helen Mowatt, solicitor at PILC.

The Matter Being Challenged

4. The significant increase in reports of domestic abuse incidents during the current Covid-19 outbreak is an unintended but foreseeable consequence of the Defendant's social distancing measures. Between **23 March** and **12 April 2020**, the number of recorded killings rose from a weekly average of two deaths per week to an average of five deaths per week, a total of 16 killings within a three-week period.¹ This figure represents those who have been murdered by their perpetrators and is a powerful indicator of a general trend of increased risk of ill-treatment, self-harm and death to those living in abusive homes.
5. The Defendant's social distancing measures pose a real and immediate risk of ill-treatment, harm and death to those exposed to domestic abuse in the home. However, despite acknowledging these risks, which have been widely reported in the media and raised with the Defendant by both the Claimant and PILC separately, the Defendant has to date failed to take immediate concrete steps to ensure effective access to sufficient provision of safe accommodation whilst the stringent social distancing measures are in place.
6. The inevitable consequence of the absence of an increase in suitable safe accommodation in response to the current crisis is an increased risk of the ill-treatment, harm and potentially death, of victims of domestic violence. The absence of sufficient safe accommodation and measures to facilitate effective access to such accommodation for those exposed to domestic abuse is:
 - i. a failure to take all reasonable steps to implement practical and effective measures to prevent individuals from being subjected to torture, inhuman or degrading treatment or punishment, contrary to Article 3 ECHR.
 - ii. an unjustified interference with the private and family life of victims of domestic abuse and that of their children in breach of Article 8 ECHR
7. The failure to make adequate provision of safe accommodation disproportionately affects victims of domestic violence (who are disproportionately women) and constitutes unjustified discrimination contrary to Article 14 ECHR.

¹ <https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown>

8. The Defendant has failed to properly monitor the impact of social distancing requirements during the pandemic on victims of domestic abuse, to gather evidence and review Government guidelines in the light of such evidence and considerations. The Defendant is already on notice of the concerns about the increase in domestic violence incidents, and aware of the increased domestic homicides. Such a failure to monitor and to review the impact of Government guidelines on social distancing on victims of domestic abuse victims and to implement immediate measures for protection is unlawful and in breach of the public-sector equality duty contained in the Equality Act 2015 s 149.

Background Facts

9. The Claimant is Southall Black Sisters (“SBS”). SBS is a not-for-profit organisation which was established in 1979 to meet the needs of Black (Asian and African-Caribbean) women. For more than three decades SBS have been at the forefront of challenging domestic and gender-related violence locally and nationally and have campaigned for the provision of proper and accountable support services to enable women and their children to escape violent relationships.² SBS runs an advice, advocacy and resource centre which provides a comprehensive service to women experiencing violence and abuse and other forms of inequality.³ Whilst SBS’ focus is on the needs of black and minority women, it will also assist any woman away who needs emergency help.⁴
10. On **16 March 2020**, the Government first announced social distancing measures.
11. On **17 March 2020**, the Defendant’s department, the Ministry of Housing Communities and Local Government announced £3.2 million initial emergency funding specifically to help rough sleepers to self-isolate during the pandemic.⁵ The Defendant stated that *“public safety and protecting the most vulnerable people in society from coronavirus is this government’s top priority. We are working closely with councils and charities to ensure they have the support they need throughout this period.”*⁶

² <https://southallblacksisters.org.uk/about/>

³ Ibid

⁴ Ibid

⁵ <https://www.gov.uk/government/news/3-2-million-emergency-support-for-rough-sleepers-during-coronavirus-outbreak>

⁶ [ibid](#)

12. On **19 March 2020** £2.9 billion funding⁷ was announced to strengthen care for the vulnerable generally. £1.6 billion of this was to be allocated to local authorities to help them respond to Covid-19 pressures including increasing support for the adult social care workforce and for services helping the most vulnerable, including homeless people.⁸ No specific measures were directed at helping domestic abuse victims.
13. On **23 March 2020**, the Government's 'stay at home' guidance was introduced.⁹
14. On **25 March 2020** the Coronavirus Act 2020 ('CVA 20') came into force and on **26 March 2020** the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 were implemented. The Government's Covid-19 guidance on '*Staying at home and away from others (social distancing)*' requires everyone to stay at home except in four limited circumstances: essential food-shopping; one form of exercise a day; meeting medical needs; and travelling for work purposes where it is not possible to work from home.¹⁰
15. On **26 March 2020**, Luke Hall MP, the Parliamentary Under-Secretary for Housing, Communities and Local Government, wrote to local government requiring local authorities to urgently procure accommodation for rough sleepers in order to prevent the spread of coronavirus, stating that it was '*now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week (29 March 2020).*'
16. On **27 March 2020** the Claimant together with 'Compassion in Politics', and support from 30+ VAWG Organisations, as well as the Domestic Abuse Commissioner, the London Victim's Commissioner and the Victim's Commission, sent a letter to a selection of leading hotel chains. The letter requested accommodation for women and children fleeing abuse.¹¹ This email was sent from the office of Jess Phillips MP.
17. The same day a leading hotel chain emailed Jess Phillips' office with an offer of accommodation for those in need. That hotel chain had acknowledged receipt of the

⁷ <https://www.gov.uk/government/news/2-9-billion-funding-to-strengthen-care-for-the-vulnerable>

⁸ [ibid.](#)

⁹ <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others>

¹⁰ <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

¹¹ <https://southallblack SISTERS.org.uk/wp-content/uploads/2020/03/Letter-to-hotel-from-VAWG-sector-Friday-27-March-2020.pdf>

Claimant's letter and its contents and sought to arrange a conversation to see whether they could help.

18. On **29 March 2020**, in a newspaper column, the Home Secretary accepted that restrictions on people leaving their home is harder for those whose *'home is not the safe haven it should be.'*¹² She continued:

I am acutely aware that the necessary guidelines about social distancing and self-isolation may leave the victims of hidden crime, such as domestic abuse and child sexual abuse, feeling especially isolated, vulnerable and exposed... But my message to every potential victim is simple: we have not forgotten you and we will not let you down.

*Whilst our advice is to stay at home, anyone who is at risk of, or experiencing, domestic abuse, is still able to leave and seek refuge.'*¹³

19. On **31 March 2020** PILC sent a letter to the Defendant seeking urgent measures, similar to those taken for rough sleepers, to ensure that those at risk of domestic abuse were properly protected and supported during the current outbreak of Covid-19. PILC highlighted the heightened risk to women as a result of infection control measures and cited increases in domestic abuse cases in both the UK and internationally. PILC asked the Defendant to *inter alia*:

- i. Immediately provide a separate emergency fund to Local Authorities to ensure they are able to adequately house survivors of domestic abuse in hotels or other appropriate locations, as has been allocated for rough sleepers;
- ii. Introduce an urgent statutory instrument to amend the Housing Act 1996 to include within the 'categories of person in priority need' those who have had to leave accommodation because of violence or threats of violence from another person, without having to also satisfy the vulnerability criteria and temporarily suspend any restrictions for access to safe accommodation

¹² <https://www.dailymail.co.uk/news/article-8163421/Priti-Patel-promises-protect-vulnerable-coronavirus-lockdown-exclusive-letter.html>

¹³ [ibid.](#)

so as to ensure that victims with no recourse to public funds can also access safe accommodation during the pandemic¹⁴; and

- iii. Publish guidance for Local Authorities on any new measures and, vitally, on the relaxation of the Government's guidance on 'Staying at home and away from others (social distancing)' to disapply it in cases of domestic abuse.

20. In the same letter, PILC also raised concerns about the fact that those with an insecure immigration status/no recourse to public funds are likely to suffer *additional* abuse as a result of their abusive partners who use their precarious status as a further means of control and are therefore more likely to be more seriously affected by the lockdown measures than other women.
21. The letter emphasised that often lack the language, self-esteem and confidence to understand their rights, and as a result, control and coercion are essential features of the abuse they suffer. Many women are forced to endure financial dependency, acute isolation, domestic servitude and abandonment. Therefore, such women face additional barriers when accessing or attempting to access specialist support services, protection and accommodation. The letter therefore repeated the demand for those with no recourse to public funds (including undocumented survivors of domestic violence), to be able to access the same safe accommodation and support measures as those whose immigration status is secure, without fear of their details being shared for the purposes of immigration enforcement.
22. Further to an initial telephone meeting with the Claimant, on **31 March 2020** and **1 April 2020** a leading hostel chain wrote to the Claimant, Compassion in Politics and Jess Phillips MP outlining their accommodation offer and the associated costs of the same.
23. On **3 April 2020**, the Claimant took part in a telephone meeting with the Domestic Abuse Team and the Ministry of Housing, Communities and Local Government, in which they informed them of the hotel/hotel offers received and reiterated the urgency with which the Defendant needed to act in order to meet the cost of emergency accommodation for abused women and children.

¹⁴ This is notwithstanding our view that all survivors should automatically be considered as priority need when presenting as homeless, in any event.

24. On **6 April 2020**, the Claimant sent an email to the Domestic Abuse Team with an anonymised summary of the three accommodation offers and associated costs (the Defendant had requested a copy of the same during the meeting on 3 April 2020). This email highlighted the rise in calls to the national helpline, and the urgent need for funding; we referred to ‘complete confusion and chaos on the ground.’
25. On **7 April 2020**, the Domestic Abuse Team responded to the Claimant’s email, and while thanking the Claimant for the information noting it was ‘extremely helpful’, provided no further information or assurances on what steps would now be taken.
26. The same day, the Claimant together with Women’s Aid, Solace Women’s Aid, Surviving Economic Abuse, The End Violence Against Women and Girls Coalition and Safe Lives wrote to the Prime Minister outlining the urgent action needed to prevent and respond to an increase in VAWG. The following were copied into this correspondence: The Defendant, Chancellor of the Exchequer, Home Secretary, Secretary of State for Justice, Secretary of State for Work and Pensions, Secretary of State for Health and Social Care, Secretary of State for Digital, Culture, Media and Sport, Secretary of State for Education, Minister for the Cabinet Office.
27. This letter included a specific ask of the Defendant to fund and support services, noting:
“Where refuge accommodation is not available, enable local authorities to work with specialist VAWG organisations to provide immediate alternative accommodation for survivors. This could include coordinating with hotels to provide safe and secure rooms free of charge, with referral and ongoing support delivered through specialist services...”
28. On **7 April 2020** the World Health Organisation (WHO) published guidance on Covid-19 and violence against women.¹⁵ It stated that as distancing measures are put in place and people are encouraged to stay at home, the risk of intimate partner violence is likely to increase. For example:¹⁶

¹⁵ <https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>

¹⁶ [ibid](#)

- i. The likelihood that women in an abusive relationship and their children will be exposed to violence is dramatically increased, as family members spend more time in close contact and families cope with additional stress and potential economic or job losses.
- ii. Women may have less contact with family and friends who may provide support and protection from violence.
- iii. The disruption of livelihoods and ability to earn a living, including for women (many of whom are informal wage workers), will decrease access to basic needs and services, increasing stress on families, with the potential to exacerbate conflicts and violence. As resources become scarcer, women may be at greater risk for experiencing economic abuse.
- iv. Perpetrators of abuse may use restrictions due to COVID-19 to exercise power and control over their partners to further reduce access to services, help, and psychosocial support from both formal and informal networks.
- v. Perpetrators may also restrict access to necessary items such as soap and hand sanitizer.
- vi. Perpetrators may exert control by spreading misinformation about the disease and stigmatize partners.
- vii. Services, such as hotlines, crisis centres, shelters, legal aid, and protection services may also be scaled back, further reducing access to the few sources of help that women in abusive relationships might have.

29. These concerns have been echoed internationally by, inter alia, the Secretary General of the Council of Europe¹⁷, the UN Special Rapporteur on violence against women¹⁸, and the President of GREVIO¹⁹, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence.

30. On **8 April 2020**, the Chancellor of the Exchequer announced a fund worth £750 million for frontline charities including organisations such as hospices, children's charities, Citizen's Advice Bureau, as well as domestic abuse charities, in the form of cash payments.²⁰

¹⁷ <https://www.coe.int/en/web/portal/-/covid-19-crisis-secretary-general-concerned-about-increased-risk-of-domestic-violence>

¹⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>

¹⁹ <https://rm.coe.int/grevio-statement-covid-24-march-2020/pdfa/16809cf55e>

²⁰ <https://www.gov.uk/government/news/chancellor-sets-out-extra-750-million-coronavirus-funding-for-frontline-charities>

No funding has been ring-fenced for the domestic abuse sector. There are also concerns that this funding will be delivered through existing commissioning structures (specifically Police and Crime Commissioners), which will disadvantage smaller, specialist BME organisations.

31. On **9 April 2020**, Refuge, the UK's largest domestic abuse charity, reported an increase of 700% in calls to its helpline in a single day.²¹
32. On **9 April 2020**, the Claimant together with Compassion in Politics and with the support from 30 + VAWG organisations, as well as the Deputy Mayor for Policing and Crime sent a letter to the Chancellor of the Exchequer Rishi Sunak and Home Secretary Priti Patel, with an *'urgent request to government to underwrite the costs of hotel and hostel chains offering safe accommodation to survivors of domestic and sexual abuse'*. The following were copied into this correspondence: The Defendant, the Secretary of State for Justice, the Secretary of State for Work and Pensions, the Minister for the Cabinet Office and the Parliamentary Under Secretary of State (Minister for Safeguarding).²²
33. On **9 April 2020** the Domestic Abuse Commissioner and the Victim's Commissioner wrote to leading hotel chains, in support of the Claimant's request for accommodation.
34. On **11 April 2020**, the Home Secretary announced:
 - i. A national communications campaign (the 'You are not alone' campaign) to reach out to those who are at risk from abuse and to provide them information on how to access support;
 - ii. Up to £2 million to *'enhance online support services and helplines for domestic abuse, so that anybody who needs that help and support can access that help and support.'*²³
35. In the same announcement, the Home Secretary highlighted her concerns about the limited capacity of refuges during the Covid-19 outbreak. She stated that *'where a victim, and their children, do need to leave, we will ensure they have a safe place to go.'*²⁴ In order to achieve this, the

²¹ <https://www.theguardian.com/society/2020/apr/12/domestic-violence-surges-seven-hundred-per-cent-uk-coronavirus>

²² <https://southallblacksisters.org.uk/wp-content/uploads/2020/04/Letter-to-Rt-Hon-Rishi-Sunak-MP-from-SBS-and-Compassion-in-Politics-9-April-2020.pdf>

²³ <https://www.gov.uk/government/speeches/home-secretary-outlines-support-for-domestic-abuse-victims>

²⁴ Ibid.

Home Secretary stated that the Government is looking at alternative accommodation to *'ensure that there are enough places for those in need at this difficult time.'*²⁵ No such plan has since been announced.

36. On **14 April 2020**, Solace Women's Aid confirmed that all of their 23 refuges across London are full.²⁶ They further indicated that none of their 154 spaces will become free in the near future due to the difficulties associated with moving on service users to longer term accommodation during the pandemic.²⁷
37. On **15 April 2020**, Vera Baird QC announced that the project Counting Dead Women had recorded 16 killings between **23 March and 12 April 2020** as a result of domestic abuse. These statistics illustrate a current average of 5 deaths a week, nearly treble the average of 2 deaths per week prior to the introduction of lockdown measures.²⁸
38. On the same day, the Home Affairs Committee examined the impact of the Covid-19 crisis on domestic and child abuse and the Government's response to the increased risks of harm within the home. The domestic abuse charity Refuge submitted evidence to the panel announcing a 417% overall increase in calls to its advice line. Imkaan charity highlighted a 30-50% increase in calls to refuges in the North of England but noted that women could not obtain places as all refuges were at capacity.
39. On **17 April 2020**, the Defendant responded to PILC's letter reaffirming a recognition of the importance of domestic abuse victims to have an immediate place of safety should they require and the need for safe accommodation options for victims and their children. However, none of the measures cited in the letter identify safe accommodation arrangements as an objective. In respect of migrant women subject to No Recourse to Public Funds, the Defendant pointed to the Destitute Domestic Violence Concession as the solution (without acknowledging its application to a limited group of migrant women and not all affected), or that this was not a new measure in response to the Covid-19 crisis but rather a reform that has in fact been in operation since 2012. It also cited generic potential provision from local authorities even though the Local Government Association

²⁵ Ibid.

²⁶ <https://www.theguardian.com/society/2020/apr/14/fiona-dwyer-2m-for-coronavirus-domestic-abuse-victims-its-pitiful>

²⁷ Ibid.

²⁸ <https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown>

raised concerns about the financial strain local authorities are under during the pandemic and the real risk of many at risk of bankruptcy.²⁹

40. On **18 April 2020**, the Defendant announced an additional £1.6 billion fund to provide essential services for vulnerable people.³⁰ This package *'includes getting rough sleepers off the street, supporting new shielding programmes for clinically extremely vulnerable people and assistance for our heroic public health workforce and fire and rescue services.'*³¹ Again, the package did not include specific support for domestic abuse survivors in respect of safe accommodation. In the same announcement the Defendant confirmed that measures implemented to protect rough sleepers had resulted in over 90 per cent being offered safe accommodation.³²
41. On **18 April 2020**, the Claimant and Compassion in Politics published a campaign video to draw attention to the plight of abused women and children trapped at home.³³
42. As of **19 April 2020**, NHS doctors had already begun noting a significant rise in the number of domestic abuse related medical emergencies throughout Accident & Emergency departments. This appears to be an issue of concern across a number of hospitals but there appears to be no proper recording or monitoring of the escalation of the risks of domestic abuse during the pandemic and under the current social distancing rules.
43. On **24 April 2020**, the Metropolitan Police announced that since 9 March they had seen a 24% increase in charges and cautions in relation to domestic violence. They stated that they were arresting 100 people a day but the true figure of offending was likely to be higher.³⁴
44. The Claimant's campaign to secure emergency accommodation for abused women and children received widespread coverage from the likes of the BBC³⁵, the Times, The Telegraph³⁶ and the Guardian.³⁷ The Claimant also launched a campaign video online, of

²⁹ <https://www.theguardian.com/society/2020/apr/17/english-councils-set-for-1bn-bailout-coronavirus-ravages-finance>

³⁰ <https://www.gov.uk/government/news/government-pledges-extra-16-billion-for-councils>

³¹ *ibid*

³² <https://www.dailymail.co.uk/news/article-8232679/Councils-extra-16-billion-funding-amid-coronavirus-pandemic.html>

³³ https://www.youtube.com/watch?v=g4nY1OOtgyo&feature=emb_logo

³⁴

<https://www.theguardian.com/society/2020/apr/24/charges-and-cautions-for-domestic-violence-rise-by-24-in-london>

³⁵ <https://www.bbc.co.uk/news/uk-52081280>

³⁶ <https://www.telegraph.co.uk/women/life/have-five-minutes-need-help-life-domestic-abuse-frontline-coronavirus/>

³⁷ <https://www.theguardian.com/society/2020/apr/19/hotels-refuge-abuse-snubbed>

actors reading out the accounts of women who have contacted them seeking help during the pandemic, to highlight the distressing circumstances that abused women and children find themselves in, trapped at home with abuser(s)³⁸ with no alternative accommodation options available to them.

45. On **27 April 2020**, an embargoed report by the Home Affairs Select Committee gave support to the Claimant's ask:

"to address the huge and immediate pressure on refugees, clear Government leadership should be brought to the task of securing hotel and hostel accommodation for victims across the country"

46. The report also specifically referred to the Claimant's letter to the Chancellor of the Exchequer urging him to provide funds to secure hotel/hostel accommodation:

*"A potential solution has been offered by Southall Black Sisters, working with Compassion in Politics. Following agreement by the government in France to accommodate domestic abuse victims in hotels, these organisations approached hotels and hostels in the UK to ask if they would accommodate victims at heavily subsidised rates, to cover their running costs. Having received an "overwhelmingly positive" response from providers, these organisations wrote to the Chancellor of Exchequer on 9 April asking the Government to make "an immediate commitment to underwrite the costs of hotels and hostels willing to offer accommodation to women and children who experience abuse, including migrant women subject to 'no recourse to public funds' and without leave to remain". They noted that women accessing such accommodation would need specialist support, which would also require funding."*³⁹

Applicable Law and Policy

Equalities and Human Rights Law

European Convention on Human Rights

47. Article 3 provides that *'no one shall be subjected to torture or to inhuman or degrading treatment or punishment*. An alleged failure by bodies to provide adequate protection against domestic violence engages Article 3.⁴⁰

48. Article 8 provides that everyone has the right to respect *"for his private and family life, his home and his correspondence*." Article 8 must be read in conjunction with Article 14 which provides:

³⁸ https://www.youtube.com/watch?v=g4nY1OOtgvo&feature=emb_logo

³⁹ <https://publications.parliament.uk/pa/cm5801/cmselect/cmhaff/321/321.pdf>

⁴⁰ E.S. and Others v. Slovakia (no. 8227/04) 15 September 2009

"the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language... birth, or other status."

49. Being a survivor of domestic abuse is a qualifying characteristic for the purposes of Article 14 ECHR.⁴¹ Discrimination can only be justified in certain circumstances. It must be proportionate and strike a fair balance between the severity of the consequences for the individual, and the importance of the overall aim of the policy or practice in question.
50. The European Court of Human Rights has consistently held that ECHR rights are to be construed in the light of the content of international law, where relevant: *Demir v Turkey* (2009) 48 EHRR 1272 at §§85-86; *Neulinger v Switzerland* (2010) 54 EHRR 1087 at §§131-132. Of relevance are the following:

The UN Declaration on Elimination of Violence against Women

51. In the Declaration, Violence against women is defined as:

*'Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women [or girls], including threats of such acts, coercion or arbitrary deprivation of liberty.'*⁴²

52. This includes physical, sexual, financial, emotional and psychological abuse.

UN Convention on the Elimination of Discrimination against Women ('CEDAW')

53. Article 2 of CEDAW condemns discrimination against women and requires states to *"take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."*
54. Article 13 includes *"all appropriate measures"* in the areas of economic and social life, including housing and living conditions.

⁴¹ *Stewart v Watts* [2018] Ch 423

⁴² 1993, Article 1

55. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), in its general recommendation No 19 (1992) recognised gender-based violence as a form of discrimination against women because it is violence that is directed against a woman because she is a woman or that affects women disproportionately.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ('the Istanbul Convention')

56. The Istanbul Convention, which the UK signed on **8 June 2012**, builds on the positive obligation under CEDAW to eliminate discrimination against women by explicitly recognising that violence against women and girls is gender-based discrimination necessitating positive action by state bodies to address the adverse effect of such violence.
57. The purposes of the Istanbul Convention are set out in Article 1 and include not only prevention, prosecution and elimination of violence against women, but importantly too, the requirement to *“design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence”*.⁴³
58. Article 4 requires that *‘parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere’*,⁴⁴ and that *‘the implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, ground such as sex, gender, race, colour, language, religion, political or other opinion, orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.*⁴⁵
59. Article 18 requires States to *‘take the necessary legislative or other measures to protect all victims from any further acts of violence.*⁴⁶

⁴³ Article 1(c).

⁴⁴ Article 4(1)

⁴⁵ Article 4(3)

⁴⁶ Article 18(1).

60. Under Article 20, the provision of housing is recognised as an essential measure for “facilitating [victims’] recovery from violence”, the arrangement of which should “properly address” the needs of the victims in respect of their recovery.⁴⁷

61. Article 23 requires states to:

‘[T]ake the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.’

Equality Act 2010

62. Housing authorities are required under s.29 not to act in a way that constitutes discrimination within the meaning of the Act.

63. Discrimination may be direct, where a person is treated less favourably than they treat or would treat others, on the basis of a protected characteristic.⁴⁸ If the protected characteristic is sex –

(a)less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b)in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.⁴⁹

64. Discrimination can also be indirect, where a person or body discriminates against another by applying a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic:⁵⁰

a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a)A applies, or would apply, it to persons with whom B does not share the characteristic,

⁴⁷ §126 of the Explanatory Report.

⁴⁸ s13 Equality Act 2010

⁴⁹ Ibid at 13(6)

⁵⁰ s19 Equality Act 2010

- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.⁵¹*

65. The Defendant must comply with the Public-Sector Equality duty contained in s149:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to—*
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
- [...]*
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
- [...]*
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
- (a) tackle prejudice, and*
 - (b) promote understanding.*
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act... [emphasis added]⁵²*

⁵¹ s.19(2) Equality Act 2010

⁵² s149 Equality Act 2010

66. Local authorities are entitled to a fair ‘stand-back’ reading of a decision rather than a forensic analysis, however, the Court must be able to discern from the decision that the Defendant has complied with the duty in substance, with rigour and with an open mind.⁵³

Domestic Abuse and Housing

The Housing Act 1996 [as amended by the Localism Act 2011]

67. S.177(1) of the Housing Act 1996 provides that *[i]t is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence against him [...]*

Ending Violence against Women and Girls Strategy 2016-2020

68. The Government recognises that domestic abuse is a “*disproportionately gendered crime*” which affects women and girls more. This is reflected in the national strategy to combat domestic abuse: *Ending Violence against Women and Girls Strategy 2016-2020* (VAWG strategy).⁵⁴
69. This includes a recognition of the need to ensure sufficient refuge provision and other accommodation-based services for survivors of domestic abuse, with the responsibility for achieving this allocated to the Ministry of Housing, Communities and Local Government.
70. The Strategy also recognises the multiple barriers faced by vulnerable groups:

“We recognise that some sectors of society can experience multiple forms of discrimination and disadvantage or additional barriers to accessing support. These include women and girls from Black and Minority Ethnic (BME) communities, lesbian, gay, bisexual and transgender (LGB&T) women and disabled women, adults who seek help for childhood sexual abuse, and the needs of female offenders who have also been victims of violence and abuse”⁵⁵

⁵³ *London Borough of Hackney v Haque* [2017] EWCA Civ 4. Briggs LJ

⁵⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF

⁵⁵ *Ibid*, p10

Coronavirus Policy and Legislation

The Coronavirus Act 2020

71. Section 86 of the Coronavirus Act 2020 appears to be the statutory basis upon which funding is made for specific Covid-related measures, and provides:

- (1) *There is to be paid out of money provided by Parliament—*
 - i. *any expenditure which is incurred by a Minister of the Crown, government department or other public authority by virtue of this Act,*
 - ii. *any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided, and*
 - iii. *any other expenditure which is incurred by a Minister of the Crown, government department or other public authority in connection with the making of payments, or the giving of financial assistance to a person (whether directly or indirectly), as a result of coronavirus or coronavirus disease.*
- (2) *In subsection (1)(c)—*
 - (a) *the reference to expenditure includes expenditure incurred before or after the passing of this Act, and*
 - (b) *“financial assistance” includes assistance provided by way of grant, loan, guarantee or indemnity, and any other kind of financial assistance (actual or contingent).*

Health Protection (Coronavirus Restrictions) Regulations 2020

72. During the emergency period, the Government has imposed restrictions on various businesses. Regulation 5(3) provides:

- (3) *Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.*
- (4) *A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—*

- (a) to provide accommodation for any person, who—*
 - (i) is unable to return to their main residence;*
 - (ii) uses that accommodation as their main residence;*
 - (iii) needs accommodation while moving house;*
 - (iv) needs accommodation to attend a funeral;*
- (b) to provide accommodation or support services for the homeless,*
- (c) to host blood donation sessions, or*
- (d) for any purpose requested by the Secretary of State, or a local authority.*

Grounds

Ground 1 - The Defendant has failed to ensure adequate provision of safe accommodation for survivors of domestic abuse requiring safe accommodation, in breach of Articles 3 and 8 ECHR taken alone and read with Article 14.

73. As noted above, the Defendant has powers under s.86 Coronavirus Act 2020 (“The Act”) to provide expenditure and financial assistance to Public Authorities in order to carry out specific Covid-related measures under the Act. It also has the power under the Health Protection (Coronavirus Restrictions) Regulations 2020 (“The Regulations”) to request hotels to remain open for a specified purpose. The Defendant appears to have exercised those powers when announcing the £1.6 billion to fund local authorities to address rough sleeping during the pandemic, and the £2 million announced by the Home Secretary to assist online help for domestic abuse charities running helplines. It has however failed to provide the necessary funding to increase the available pool of safe accommodation spaces, in circumstances where it is already well known to the Government that even prior to the pandemic there was a shortage of refuge spaces and where measures introduced to respond to the Covid crisis could lead to a predictable rise in the risk of domestic abuse.

74. Neither the Act nor the Regulations seek to derogate from the Human Rights Act 1998 and thus decisions based on statutory functions conferred under the Act must be made compatibly with section 6 of the Human Rights Act 1998.

75. The Defendant has failed to exercise its powers under s86 of the Act and 5(4)(d) of the Regulations and allocate critical funding and/or utilise existing hotel spaces to ensure domestic abuse survivors are safely accommodated whilst social distancing measures continue. This failure constitutes a breach of Articles 3 and/ or 8 and / or read with 14 ECHR for the following reasons.
76. In order to comply with its positive obligations under ECHR, where a national authority is aware, or ought to have been aware at the time, of the existence of a “real and immediate risk” of harm that falls within Articles 3 and or 8, the authority has a duty to take reasonable preventative operation measures with a view to preventing further harm.⁵⁶
77. The Defendant is well aware of the shortage of accommodation provision for survivors of domestic abuse, both prior to as well as during the pandemic, and of the risks to migrant women with no recourse to public funds.
78. Prior to the Covid-19 outbreak, the UK government’s failure to provide sufficient funding for the provision of safe accommodation for survivors of domestic abuse was widely documented. The number of refuge spaces across the UK, outside of the current pandemic, is 30% lower than the Council of Europe’s minimum recommendation.⁵⁷ Women from marginalised groups, or who have additional support needs, face further barriers to accessing a suitable refuge space. In 2019-2020, 43.2% of a sample of 243 women turned away from refuges were from BME communities, 40.7% had mental health support needs, 28% had one or more disability, and 25% had no recourse to public funds.
79. The existing shortfall in accommodation provision for survivors of domestic abuse has been exacerbated and made more acute by the response to the current Covid-19 outbreak. As outlined above, the number of domestic homicides has trebled during this period⁵⁸ and domestic abuse charities are experiencing a four-fold increase in call volumes.⁵⁹ The existing

⁵⁶ *Hajduová v. Slovakia*, no. 2660/03, 30 November 2010 & *Kontrná v. Slovakia*, no. 7510/04, 31 May 2007.

⁵⁷ The Domestic Abuse Report 2020: The Annual Audit, Women’s Aid at p 28. <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/The-Domestic-Abuse-Report-2020-The-Annual-Audit.pdf>

⁵⁸ <https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown>

⁵⁹ See para 22.

shortage of accommodation coupled with an increased risk of harm to domestic abuse survivors as a result of lockdown has culminated in an even greater need for accommodation at the current time.

80. The importance and urgency of this issue has been both brought to the attention of, and recognised by, the Defendant on several occasions:

- i. On **29 March 2020**, in a newspaper column⁶⁰, the Home Secretary accepted that Government restrictions on people leaving their homes is harder for those whose *'home is not the safe haven it should be.'*⁶¹ She continued:

I am acutely aware that the necessary guidelines about social distancing and self-isolation may leave the victims of hidden crime, such as domestic abuse and child sexual abuse, feeling especially isolated, vulnerable and exposed... But my message to every potential victim is simple: we have not forgotten you and we will not let you down.

*Whilst our advice is to stay at home, anyone who is at risk of, or experiencing, domestic abuse, is still able to leave and seek refuge.*⁶²

- ii. PILC's letter to the Defendant on **31 March 2020** (signed by 50+ organisations) showed that a) as a result of social distancing measures there had been a reported rise in abuse in the UK; b) that this rise was mirrored in other countries who had implemented similar measures; and c) that the numbers were expected to increase further.⁶³
- iii. On **3 April 2020**, the Claimant spoke with the Domestic Abuse Team and Defendant's department and reiterated the urgency with which the Defendant needed to act in order to meet the cost of emergency accommodation for abused women and children. This was followed up by an email on **6 April 2020** which included an anonymised summary of the three accommodation offers and associated costs (which the Defendant had requested during the telephone meeting on 3 April 2020). The Domestic Abuse Team responded and thanked

⁶⁰ <https://www.dailymail.co.uk/news/article-8163421/Priti-Patel-promises-protect-vulnerable-coronavirus-lockdown-exclusive-letter.html>

⁶¹ [ibid](#)

⁶² [ibid](#)

⁶³ <https://www.pilc.org.uk/news/story/urgent-action-for-dv-survivors-during-covid-19/>

the Claimant for the information noting it was ‘extremely helpful’ but provided no further information or assurances on what steps would now be taken.

- iv. Also on **6 April 2020**, the Claimant together with Women’s Aid, Solace Women’s Aid, Surviving Economic Abuse, The End Violence Against Women and Girls Coalition and Safe Lives, wrote to the Prime Minister outlining the urgent action needed to prevent and respond to an increase in VAWG. The letter included a specific ask of the Defendant to fund and support services, saying: *“Where refuge accommodation is not available, enable local authorities to work with specialist VAWG organisations to provide immediate alternative accommodation for survivors. This could include coordinating with hotels to provide safe and secure rooms free of charge, with referral and ongoing support delivered through specialist services...”* The Defendant was copied into this correspondence, along with: The Chancellor of the Exchequer, Home Secretary, Secretary of State for Justice, Secretary of State for Work and Pensions, Secretary of State for Health and Social Care, Secretary of State for Digital, Culture, Media and Sport, Secretary of State for Education, Minister for the Cabinet Office.
- v. On **9 April 2020**, the Claimant together with Compassion in Politics and with the support from 30 + VAWG organisations, as well as the Deputy Mayor for Policing and Crime sent a letter to the Chancellor of the Exchequer Rishi Sunak and Home Secretary Priti Patel, with an *‘urgent request to government to underwrite the costs of hotel and hostel chains offering safe accommodation to survivors of domestic and sexual abuse’*. The following were copied into this correspondence: The Defendant, the Secretary of State for Justice, the Secretary of State for Work and Pensions, the Minister for the Cabinet Office and the Parliamentary Under Secretary of State (Minister for Safeguarding).⁶⁴
- vi. In the Home Secretary’s announcement of **11 April 2020**, she raised concerns about the current limited capacity of refuges and confirmed that *‘where a victim, and their children, do need to leave, we will **ensure** they have a safe place to go.’*⁶⁵ [Emphasis added]. In order to achieve this, the Home Secretary stated that the Government

⁶⁴ <https://southallblack SISTERS.org.uk/wp-content/uploads/2020/04/Letter-to-Rt-Hon-Rishi-Sunak-MP-from-SBS-and-Compassion-in-Politics-9-April-2020.pdf>

⁶⁵ <https://www.gov.uk/government/speeches/home-secretary-outlines-support-for-domestic-abuse-victims>

is looking at alternative accommodation to ‘ensure that there are enough places for those in need at this difficult time.’⁶⁶

- vii. In the Defendant’s letter to PILC on **17 April 2020**, the Defendant acknowledged the real and immediate risk to survivors and showed a commitment to dealing with this problem:

‘This Government is aware that domestic abuse victims are at heightened risk at this time, and agrees it is vitally important that domestic abuse victims who need an immediate place of safety are supported to find an accommodation solution that meets their needs and reflects their individual circumstances.’

‘We are continuing to work with the sector, local authorities and the Domestic Abuse Commissioner Designate to monitor the demand for domestic abuse services and are also looking carefully at the different accommodation options for safely supporting victims of domestic abuse and their children.’

‘Pleased be assured that this government is absolutely committed to ensuring victims and their children have access to the right support when they need it.’

- viii. On **27 April 2020**, an embargoed report by the Home Affairs Select Committee gave support to the Claimant’s ask: “to address the huge and immediate pressure on refuges, clear Government leadership should be brought to the task of securing hotel and hostel accommodation for victims across the country.”⁶⁷ The report also included the following recommendation:

“The Government must prioritise working with local authorities, providers and other stakeholders to increase the availability of refuge and move-on accommodation. Clear Government leadership should be brought to the task of securing hotel and hostel accommodation for victims in all parts of the country, as national coordination is needed to meet the scale and urgency of the challenge, and so that anyone needing to leave their home during lockdown because of abuse can be guaranteed a safe place to stay. The Government must also ensure that the existing network of refuges remains sustainable for the long term by providing ring-fenced support for the additional costs, and loss of income, incurred by these services as a result of coronavirus.”⁶⁸

⁶⁶ Ibid.

⁶⁷ <https://publications.parliament.uk/pa/cm5801/cmselect/cmhaff/321/321.pdf>

⁶⁸ Ibid.

- ix. The same report specifically referred to the Claimant's letter to the Chancellor of the Exchequer urging him to provide funds to secure hotel/hostel accommodation:

*"A potential solution has been offered by Southall Black Sisters, working with Compassion in Politics. Following agreement by the government in France to accommodate domestic abuse victims in hotels, these organisations approached hotels and hostels in the UK to ask if they would accommodate victims at heavily subsidised rates, to cover their running costs. Having received an "overwhelmingly positive" response from providers, these organisations wrote to the Chancellor of Exchequer on 9 April asking the Government to make "an immediate commitment to underwrite the costs of hotels and hostels willing to offer accommodation to women and children who experience abuse, including migrant women subject to 'no recourse to public funds' and without leave to remain". They noted that women accessing such accommodation would need specialist support, which would also require funding."*⁶⁹

81. Despite the Defendant's recognition of a real and immediate risk posed to women during the Covid-19 outbreak, and a commitment to ensuring women have a safe place to go during lockdown, at no point either in response to the letters and emails written by the Claimant, hotels and over 30 charities or to PILC and Solace Women's Aid, has the government given any details of its plans.

82. The measures taken by the Defendant so far do not address the shortage of accommodation provision:

- i. The £750 million funding announced on **8 April 2020** for frontline charities includes: St Johns' Ambulance, Citizens Advice Bureaus, charities supporting vulnerable children, disabled people and victims of domestic abuse.⁷⁰ There is no clarity as to how much of this will be allocated to domestic abuse charities, and if any of the allocated funds will be used for accommodation provision. It is not clear if any such funds have been so used or if the Defendant has monitored such use. The VAWG sector is calling for at least £65 million to be ring-fenced for specialist VAWG providers, with a specific ring-fence for specialist BME services and groups.

⁶⁹ Ibid.

⁷⁰ <https://www.gov.uk/government/speeches/chancellor-of-the-exchequer-rishi-sunak-on-economic-support-for-the-charity-sector>

- ii. The ‘up to £2million’ pledged on **11 April 2020** is to be spent on ‘*enhanc[ing] online support services and helplines for domestic abuse, so that anybody who needs that help and support can access that help and support*’.⁷¹ Whilst funding of helplines may assist some domestic abuse survivors to take action, it does not displace the need for sufficient safe accommodation for those survivors who have to leave their family homes and therefore are homeless. Such awareness-raising around helplines is encouraging members of the public to reach out to a service, which does not have sufficient accommodation spaces for existing demand – let alone additional demand.
- iii. Similarly, the £1.6 billion allocated to local authorities to help them respond to Covid-19 pressures includes increasing support for the adult social care workforce and for services helping the most vulnerable, including homeless people.⁷² No specific measures were directed at helping domestic abuse victims.

83. The introduction of a general fund for charities and a focus on domestic abuse support helplines do not therefore provide an answer to the Defendant’s public policy recognition of the need for sufficient safe accommodation provision for survivors of domestic abuse. In comparison, the Defendant allocated an emergency fund to ensure ‘swift’ support for rough sleepers to ensure they can self-isolate,⁷³ resulting in 90 per cent of rough sleepers being offered safe accommodation.⁷⁴

84. The Government’s funding measures for frontline domestic abuse charities and for online helplines, as announced on **9 April 2020** and **11 April 2020** respectively, is plainly not sufficient to discharge the Defendant’s positive obligations under Art 3 and/or 8. These measures do not solve the problem of an increased number of women needing to flee their homes. The Defendant’s failure to take the necessary steps to protect victims of domestic abuse in the context of public health measures has taken place amid a series of ‘*absolute*’ commitments to protect survivors of domestic abuse to ‘*ensur[e] victims and their children have access to the right support when they need it*’.⁷⁵ This has created, and continues to create,

⁷¹ <https://www.gov.uk/government/speeches/home-secretary-outlines-support-for-domestic-abuse-victims>

⁷² *ibid.*

⁷³ <https://www.gov.uk/government/news/3-2-million-emergency-support-for-rough-sleepers-during-coronavirus-outbreak>

⁷⁴ <https://www.dailymail.co.uk/news/article-8232679/Councils-extra-1-6billion-funding-amid-coronavirus-pandemic.html>

⁷⁵ Please see Defendant’s letter to PILC on 17 April 2020.

unacceptable risks of women having to face actual or threats of domestic abuse in the home alongside an expectation that support will be provided. The lack of guidance in this area is leading to inconsistent practice and responses to abused women needing accommodation from Local Authorities with many turning women away.

85. In light of the above, notwithstanding the fact that the Defendant has acknowledged a real and immediate risk of ill-treatment and death to survivors it has failed to ensure the provision of adequate accommodation for survivors of domestic abuse whilst social distancing measures are in place and therefore adequate protection against domestic abuse.⁷⁶ As a result, the Defendant has failed to:

- i. Take the necessary measures to prevent individuals from being subjected to torture, inhuman or degrading treatment or punishment, contrary to Article 3 ECHR.⁷⁷ The fact that this is an unintended consequence of the social distancing measures is not a defence to the creation of an unacceptable risk of such harm in breach of Article 3, particularly as it is an entirely foreseeable and credible risk, and one which has over the course of the lockdown been repeatedly drawn to the Government's attention.⁷⁸ It is also not an answer for the Defendant to say that the matter will be dealt with on a case by case basis once women have already been subjected to violence. The Defendant must not only deal with the matter *ex post facto*, but also prevent further violence from materialising.⁷⁹ That obligation is an anticipatory one, and one which must be acted upon where the Government has become aware of the real and immediate risk of harm posed to domestic abuse victims as a consequence of the social distancing rules.
- ii. Ensure that victims and any dependent child have the ability to access suitable safe accommodation⁸⁰, and therefore put in place a workable system in which the private and family life of survivors is respected, contrary to Article 8 ECHR.⁸¹

⁷⁶ E.S. and Others v. Slovakia (no. 8227/04) 15 September 2009

⁷⁷ Ibid (n54) at § 50

⁷⁸ *Price v UK* (2001) 34 EHRR 1285 and *Keenan v UK* App No 27229/95, 3 April 2001

⁷⁹ Ibid

⁸⁰ *Kontrová*, see also, e.g. *Anufrijeva v Southwark LBC* [2004] QB 1124, CA per Lord Woolf CJ at [18];

⁸¹ Ibid.

86. The impact is not only on victims of domestic abuse but also on those dependent children who live in abusive households and are bearing witness to the increased violence. This is clearly also contrary to their welfare and best interests under Article 3 of the UN Convention on the Rights of the Child.

D's Failure Disproportionately Impacts Women breaching Article 14 ECHR

87. The failure to ensure adequate provision of safe accommodation furthermore discriminates against women (who make up a significant disproportion of the victims of domestic abuse).

88. The prohibition on discrimination contained in ECHR Art 14 encompasses both direct and indirect discrimination. A difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group. Such a situation may amount to “indirect discrimination”, which does not necessarily require a discriminatory intent.⁸²

89. The Defendant acknowledges that a disproportionate number of victims of domestic abuse are women, and as such it is a ‘disproportionately gendered crime’.⁸³ It is also well established therefore that women are more likely to become homeless due to domestic abuse than men. Research from the specialist women’s organisation, Sisters for Change, confirms that BME and refugee women experience higher rates of domestic homicide, and are three times more likely to commit suicide than other women in the UK. Further, some 50% of BME and migrant women victims of violence experience abuse from multiple perpetrators.

90. As noted in full above, infection control measures are having, and will continue to have, a disproportionate impact on victims of domestic abuse (and hence disproportionately

⁸² *DH v Czech Republic* GC (2008) 47 EHRR 3 (§184).

⁸³ The Government Response To The Report From The Joint Committee On The Draft Domestic Abuse Bill, Session 2017-19 Hl Paper 378 / Hc 2075: Draft Domestic Abuse Bill[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817556/CS0619467038-001_Domestic_Abuse_Bill_Print_WEB_Accessible.pdf]

impact women) because of the increased likelihood of abuse,⁸⁴ a disproportionate number of women will therefore require safe accommodation during this period.

91. It will have a far greater detrimental impact on migrant women, many of whom will have come to the UK through many different routes, including as an asylum-seeker, on a time-limited visa, as a victim of trafficking, or on a visa which grants them leave but without recourse to public funds (“NRPF”). None of these women are entitled to apply under the DDVC which acts as a passport to basic benefits and social housing because they have not entered the UK on spousal visas. Their restricted immigration status stands as a significant barrier to disclosure, as these women face a perceived and often well-founded, fear that if they report abuse to the police they will be penalised, detained or even deported.
92. The Defendant has been made aware or ought to have been made aware of the existing risks to migrant women with NRPF who are being abused. The Claimant having made several submissions to various parliamentary committees:
 - i. The Claimant, in their evidence to the Home Affairs Select Committee for the draft Domestic Abuse Bill consultation, cited several examples of the police prioritisation of immigration enforcement over victim protection, including a challenge to the stated position of a local police force that abused women with immigration status should not call the police as they are duty-bound to arrest and report them to immigration authorities if they are flagged as ‘illegal immigrants’.⁸⁵ As to the homelessness for domestic abuse victims with NRPF, submission also stated:

“Not only are they unable to access social housing/housing benefit, but also effectively unable to rent in the private sector. The Immigration Acts 2014 and 2016 prohibit renting to those “unlawfully present”. In practice this means even those lawfully present but who lack documents, or those seeking to regularise their

⁸⁴ WHO also highlights that as distancing measures are put in place the likelihood that women in abusive relationships and their children will be exposed to violence is dramatically increased, as family members spend more time in close contact and families cope with additional stress and potential economic or job losses.

⁸⁵ Southall Black Sisters submissions to the DVA Draft Bill consultation:

<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Home%20Affairs/Domestic%20abuse/written/86074.html>

status, are turned away. Refuge spaces are also at a premium as the specialist refuge sector has been decimated.’⁸⁶

- ii. More recently, from 2018 onwards, the Claimant has had meetings with the Home Office to discuss their NRPF work and support for abused migrant women. In **March 2019** the Claimant became aware that the Home Office was carrying out an internal review on its NRPF policy and have therefore been engaging directly with the Home Office in relation to that review ever since. Despite several meetings having taken place, most recently in **February 2020**. The Claimant has received no further feedback or information regarding the progress of the review.
- iii. The Claimant wrote to the Home Secretary about the Domestic Abuse Bill and the need for support for migrant survivors of domestic abuse. On **17 February 2020**, the Claimant received a response the Home Office which stated: *‘The Government’s view is that support levels for migrant survivors of domestic abuse may be improved as part of a package of non-legislative measures aimed at supporting the Government’s overall response to victims of this heinous crime. Irrespective of the Domestic Abuse Bill falling in November 2019, development of these non-legislative measures has continued.’*
- iv. On **11 March 2020**, the Home Office invited the Claimant to yet another meeting to discuss their work on NRPF. The Claimant provided the Home Office with hard copies of their Briefing Paper on the Domestic Abuse Bill, with case studies outlining the ways in which the NRPF requirement puts migrant women at risk of harm. The Claimant also discussed evaluation findings of its NRPF Project and the support required by migrant women for accommodation and subsistence, as a consequence of the NRPF condition.
- v. On **23 April 2020**, the Claimant made a written submission to the Home Office’s ‘final call for evidence’ into support levels for migrant victims of domestic abuse’ subject to NRPF.

⁸⁶ Ibid.

93. This history of engagement shows that the Home Office and by extension the Government, has recognised the NRPF requirement as a structural barrier for abused migrant women needing protection and support and that it needs to put measures into place that mitigate against the risks and harms that such women face. This is yet another reason why the Defendant's response to VAWG and the lack of protection for migrant women in the context of the Covid-19 crisis is wholly inadequate.

94. The Home Affairs Select Committee in its report dated **27 April 2020** also made the following recommendations as regards to the need for funding and support for BME services and those with NRPF:

"Government funding for support services and refugee accommodation must include specialist provision and must ensure that BME services can continue and expand to meet any increased need.

*It is vital that BME and specialist services get the funding they need at this time, and any individual with No Recourse to Public Funds status should, following referral from a domestic abuse service, be entitled to access state support during the coronavirus crisis, regardless of their immigration status.'*⁸⁷

95. The Claimant further reported the responses from a BBC Freedom of Information request that showed that some 27 out of 45 police forces shared victims' details with the Home Office.⁸⁸ The same BBC report cited the case of one victim who, beaten by her partner, was herself arrested by the police and detained at Yarl's Wood immigration removal centre.⁸⁹ The chilling-effect on migrant women reporting abuse is stark. The absence of a safety net and access to safe accommodation as a victim first irrespective of immigration status aggravates the serious risks already facing migrant women who suffer domestic a

96. It therefore follows that the failure to ensure adequate provision of safe accommodation for survivors of domestic abuse requiring safe accommodation, by disproportionately disadvantaging victims of domestic abuse, has a disproportionately prejudicial effect on women, including migrant women. That is *prima facie* discrimination on the basis of a status recognised by Article 14 ECHR.

⁸⁷ Ibid (n 67). recommendations 18 and 19.

⁸⁸ As per Catrin Nye, Natalie Bloomer and Samir Jeraj, 'Victims of serious crime face arrest over immigration status', BBC's Victoria Derbyshire programme: <http://www.bbc.co.uk/news/uk-44074572>.

⁸⁹ Ibid, BBC report.

97. The right not to be discriminated against under Article 14 is not only violated when States treat persons differently in analogous situations without providing an objective and reasonable justification, but also where States fail to treat differently persons whose situations are significantly different without an objective and reasonable justification.⁹⁰ Applying this to the Claimant's case, the Defendant has treated survivors in the same way as any other person presenting as homeless during the pandemic (or in fact less favourably given the funding that has already been designated to rough sleepers, who are predominantly men) in circumstances where their circumstances are relatively and significantly different.
98. The failure to provide safe accommodation (and corresponding failure to protect people from domestic abuse and violence against women and girls under the Istanbul Convention) therefore necessarily requires justification under Article 14 ECHR.⁹¹
99. It cannot be said that the Defendant's failure in this regard is justified. It is difficult to see how it can be proportionate to refuse to provide adequate funding and accommodation, especially when the Defendant itself has assured survivors that it will 'ensure *they have a safe place to go*'⁹² and 'ensure that there are enough places for those in need at this difficult time.'⁹³ In addition, despite the Government's public commitment to its obligations under the Istanbul Convention, it has failed to act in accordance with its objectives by failing to 'take the necessary legislative or other measures to protect all victims from any further acts of violence'⁹⁴ and for failing 'to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.'⁹⁵
100. It is clear that the availability of funding for online helplines and funding for frontline domestic abuse charities is not sufficient to justify a failure to take measures to provide safe and secure accommodation for survivors of domestic abuse:
- i. Whilst funding of helplines may assist some domestic abuse survivors to take action, it does not displace the need for sufficient safe accommodation for those

⁹⁰ *Thlimmimos v Greece* (2000) 31 EHRR at [44]

⁹¹ *R (DA and Ors) v SSWP* [2019] UKSC 21 [2019] 1 WLR 3289.

⁹² <https://www.gov.uk/government/speeches/home-secretary-outlines-support-for-domestic-abuse-victims>

⁹³ *Ibid.*

⁹⁴ Article 18(1).

⁹⁵ Article 23

survivors who have to leave their family homes and therefore are homeless, which the Government recognises to be an essential part of the support package for survivors for domestic abuse generally. The focus on helplines, thus, does not provide an answer to the Government's public policy recognition of the need for sufficient safe accommodation provision for survivors of domestic abuse.

- ii. The £750 million funding announced is not all going to domestic abuse charities; there is no clarity as to how much of it will go to these charities, and in what way.
- iii. Neither of these provisions answer the difference of treatment as between rough sleepers and domestic abuse survivors; both cohorts require the provision of safe accommodation in the context of the pandemic. One group is funded with guaranteed accommodation and the other is not. This is what needs to be justified and it is difficult to see how it can be.

101. In addition, there is a clear and urgent need for the Defendant to take steps to make it easier for local authorities to provide support to migrant women fleeing abuse. The Defendant in its letter dated 17 April placed sole reliance on the Destitute Domestic Violence Concession (DDVC) as a way of mitigating any potential disadvantage to migrant women. It is the case that an individual with the DDVC will be eligible for housing assistance under the Housing Act 1998. However, the Defendant's reliance on the DDVC concession is wrong for the following reasons:

- i. As noted in the joint letter dated **31 March 2020**, migrant women, with or without documents and whether or not on spousal visas are particularly vulnerable to gender-based violence. It is precisely for this reason that the Istanbul Convention ensures that its provisions are implemented without discrimination on the grounds of migrant status, refugee status or other status (Article 4, Paragraph 3).⁹⁶
- ii. Those women who can under usual circumstances apply for the DDVC will find this difficult if not impossible during the Covid-19 crisis whilst self-

⁹⁶<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680460>

isolating with perpetrators, notwithstanding the additional barrier of obtaining advice and support

- iii. In any event, as the Defendant ought to be aware, the DDVC only applies to those on spousal visas and therefore does not apply to migrant women who have other types of leave to remain. Many migrant women who are fleeing abuse are therefore excluded from support altogether.
- iv. Women with NRPF and who are not on spousal visas and cannot access the DDVC are therefore more likely to be subjected to domestic abuse and are therefore more likely to be forced to sleep on the streets or remain in abusive relationships.
- v. It therefore follows that any immigration-status based eligibility criteria for housing and hotel accommodation, will disproportionately disadvantage migrant women with NRPF, (whether or not they are technically eligible to apply for DDVC) who are either forced into homelessness or are unable to flee their abusive homes. It cannot be said that the justification for excluding these women from accommodation is justified particularly given the Defendant's own statement that *'It is essential that migrant victims of domestic abuse are treated first and foremost as victims'*⁹⁷ as well as the fact that the Prime Minister last month pledged to provide all necessary accommodation and support for destitute migrants, including all those with no recourse to public funds.⁹⁸
- vi. Article 8 ECHR interpreted in light of the Istanbul convention means that all women who are fleeing abuse must have access to safe accommodation, irrespective of immigration status. The funding and accommodation that the Defendant provides must be non-discriminatory towards different cohorts of DV survivors, and indeed, to the extent that any criteria is applied on the basis of immigration status that would be discriminatory.

⁹⁷ See letter from Defendant to PILC dated 17 April 2020.

⁹⁸ <https://twitter.com/scotrefcouncil/status/1242820979535097857?s=20> / <https://www.theguardian.com/society/2020/apr/16/homeless-migrants-still-sleeping-rough-despite-pms-pledge-say-charities#maincontent>

102. In light of the above, the Defendant's failure to ensure adequate provision of safe accommodation is having and will continue to have a disproportionate and prejudicial impact on domestic abuse survivors (who are predominantly women). The Defendant is unable to meet the test for justification by relying on generic measures which do not account for the relatively different circumstances that domestic abuse survivors find themselves in, or for the more favourable treatment afforded to rough sleepers and has acted contrary to Article 14 ECHR as read with Articles 3 and 8, as a result.

Ground 2 – Breach of Public Sector Equality Duty

103. As far as the Claimant is aware the Defendant has not sought to gather evidence on the impact of the current Covid crisis on the incidents and severity of domestic abuse. If that the case, it is breach of the public sector equality duty contained in section 149 of the Equality Act 2010.

Action Required

104. The ongoing failure to provide emergency funding for adequate accommodation for domestic abuse survivors during a period of increased risk creates a barrier to women fleeing abusive homes, constituting a violation of the Defendant's obligations under Articles 3, 8 and 14 ECHR. It needs to be addressed urgently to prevent further risks of ill-treatment, harm and deaths to victims of domestic abuse and their children.

105. In light of this, the Claimant asks the Defendant to:

- i. Immediately provide a separate emergency fund to Local Authorities to ensure they are able to adequately house survivors of domestic abuse in hotels or other appropriate locations, as has been allocated for rough sleepers.⁹⁹ This is in addition to the need for the Government to deliver emergency funding to refugees and guarantee their sustainable long-term funding future;

⁹⁹ Taking into consideration the fact that the VAWG sector is calling for at least £65 million to be ring-fenced for specialist VAWG providers, with a specific ring-fence for specialist BME services and groups

- ii. The funding and accommodation referred to at i. to be made accessible to all women and regardless of their immigration status. In terms of wider concerns relating to No Recourse to Public Funds, we would endorse wider requests made by The Joint Council of the Welfare of Immigrants¹⁰⁰ and Project 17, Migrant's Right Network and Public Interest Law Centre to lift or suspend the condition¹⁰¹;
- iii. Introduce a safe system of coordination, developed in conjunction with specialist VAWG providers and with Local Authorities, to allocate hotel spaces and self-contained accommodation alongside specialist support to survivors;
- iv. Publish guidance for Local Authorities on any new measures, including clear guidelines on:
 - how Local Authorities must use the funds referred to at i. and vitally, what steps they must take in order to coordinate with VAWG providers in respect of the same;
 - the relaxation of the Government's guidance on 'Staying at home and away from others (social distancing)' in domestic abuse cases.
- v. Provide training materials to all Local Authorities to ensure they adequately train their staff on any new policy, procedure and/or guidance;
- vi. Publish clear information for domestic abuse survivors (in the form of targeted adverts on television and social media) to ensure the above is brought to their attention. This communication must be accessible to all communities, including in different languages; and
- vii. Provide information relating to the steps the Government is taking to monitor the increase in domestic abuse cases, including monitoring the numbers of domestic abuse victims presenting to Accident & Emergency departments, calls to the police and to helplines.¹⁰²

¹⁰⁰ <https://www.jcwi.org.uk/protecting-migrants-from-covid-19>

¹⁰¹ <https://www.pilc.org.uk/wp-content/uploads/2020/03/Joint-letter-to-LAs-COVID-19-and-migrant-homelessness-BM.pdf>

¹⁰² Given reports evidencing a rise in the numbers of deaths, domestic abuse related cases in Accident & Emergency departments, and significant increase in call volumes to domestic abuse helplines.

Given the urgency of this matter, please note the abridged time-frame for a response, and specifically that we require a substantive and appropriate response by 4pm 4 May 2020.

Should the Defendant fail to carry out the action or provide a response as required, we will have no choice but to issue advise our client on its right to judicial review proceedings without further notice.

If you have any queries, please contact Helen Mowatt or Isabella Mulholland by telephone on **I&S**

I&S or alternatively by e-mail to helen.mowatt@pilc.org.uk / Isabella.mulholland@pilc.org.uk

Yours sincerely,

PD

Public Interest Law Centre