

DOMESTIC ABUSE, CIVIL REMEDIES AND LEGAL AID

What is legal aid?

Legal aid helps with the costs of legal advice and representation for people who can't afford it.

Anyone can apply for legal aid. Whether they will receive it will usually depend upon:

- the type of legal problem
- their income (how much they earn) and how much capital they have (money, property, belongings).
- whether they have a reasonable chance of winning their case and whether the cost is proportionate to any benefit they will receive

In the majority of cases victims of domestic abuse will be financially eligible for Legal Aid.

The Legal Services Commission changed the financial eligibility rules for domestic abuse cases in April 2007. Unlike legal aid for other applications there is now no maximum limit to a victim's income or capital. Anyone applying for legal aid to cover the costs of seeking protection from domestic abuse will meet the financial eligibility requirements.

We would always recommend that victims seek early advice from a solicitor who can advise them on legal aid.

How can the law help?

There are several ways the law can protect people (and their children) from domestic abuse.

Whether or not they have been injured, they can get an order, sometimes called an injunction, from the court to give the victim some protection from the abuser.

There are two main types of orders available under Part IV of the Family Law Act 1996:

Non-molestation orders will state that the abuser should not abuse or threaten to abuse the victim or their children. This can include intimidating, harassing or pestering the victim.

Occupation orders make it clear who can live in the family home. The order can force the abuser to leave home and can also restrict them from entering the surrounding area. This is useful for victims who do not feel safe continuing to live in their home. Victims who have already left the home to escape abuse can return home and exclude their abuser.

Abusers that break the terms of the court order can be arrested.

How can legal aid help?

Victims of domestic abuse will normally need the help of a solicitor to apply for an order. The solicitor should also explain how the process works and speak to their client about other possible ways of stopping the abuse or threats of abuse.

Legal aid can cover these legal costs.

Who is financially eligible for legal aid in domestic abuse cases?

In domestic abuse cases there is no maximum income or capital limit above which legal aid will not be available.

Do victims pay a contribution towards their legal costs?

Victims living on benefits or a low (or no) income with little or no savings will not be asked to pay a contribution towards their legal costs.

Victims will be asked to pay a contribution towards the costs if their disposable income (i.e. their income after certain outgoings have been taken into account) is over a certain amount or they have savings over a certain amount.

At present, those with a disposable income of £316 per month or above will be asked to pay a monthly amount towards any legal costs over £311. The greater their income the higher the monthly contribution they will be asked to pay.

We do not consider the income or savings of an abusive partner if the victim is taking legal action against them.

What about if the victim or their abuser is not British?

Victims or their abusers do not have to be British or to be living in England or Wales to qualify for legal aid.

The important thing is that the case relates to the law of England and Wales.

Legal aid from the Legal Services Commission is not available for legal proceedings in any other country (including Scotland and Northern Ireland). In those cases it would be necessary to apply for legal aid in the relevant country.

Contact the Scottish Legal Aid Board www.slab.org.uk or the Northern Irish Legal Services Commission www.nilsc.org.uk

Can victims with no recourse to public funds still get legal aid?

No recourse to public funds refers to people from abroad who are subject to immigration control and have no entitlement to welfare benefits, Home Office support or public housing.

Under Home Office guidelines, legal aid is not classed as a 'public fund' for the purposes of those with no recourse.

Legal aid is available regardless of immigration status.

What happens if victims don't speak English?

Because of the nature of domestic abuse cases, the Court Service will provide an interpreter for a hearing if required. This is irrespective of whether solicitors are involved or public funding is available. Legal aid solicitors can also arrange an interpreter for people who don't speak English if necessary and the costs of this can be paid under the legal aid certificate. This also applies to BSL interpreters.

What about forced marriages?

Following the introduction of the Forced Marriage (Civil Protection) Act 2007, courts are able to make orders preventing forced marriages and to stop attempts to force another person into marriage. Legal Aid is available for victims applying for orders to protect them from being forced into a marriage on the same basis as described above.

What about emergency situations, do victims have to wait?

No. In urgent cases, for example to make someone or their children safe from abuse, a solicitor will be able to grant legal aid to allow the victim to be represented in court without waiting for the application to be processed by the Legal Services Commission.

Is legal aid available for enforcement proceedings as well?

Non-molestation orders

Legal aid is still available to allow committal proceedings to be taken against a partner or ex-partner if they breach a court order or undertaking. However, under the Domestic Violence, Crime and Victims Act 2004, breaching a non-molestation order is a criminal offence and if a person has been charged by the police and convicted of a criminal offence then committal proceedings cannot be taken for the same incident. If criminal proceedings had been started by the police it is therefore unlikely that legal aid would be granted to take committal proceedings as well. However, where there has been a breach and the police are not taking criminal proceedings legal aid may be granted for a committal application.

In addition where the police are taking criminal proceedings and bail conditions are likely to finish shortly but incidents are likely to continue then legal aid may be granted for an injunction to protect the victim.

In this situation, victims should explain to their solicitor what contact they have had with the police so that they can talk to them about the best course of action.

Occupation Orders

Legal aid is available for civil proceedings where an occupation order is breached, both to apply for an issue of a warrant of arrest or for committal proceedings. Funding will also be available to allow the client to be represented when the police have exercised any power of arrest under the order.

Forced Marriage (Civil Protection) Act 2007

Legal aid is also available to allow a client to be represented on a breach of a forced marriage protection order.

Injunctions under the Protection from Harassment Act 1997

In a similar way to non-molestation orders as breach of an injunction is a criminal offence legal aid is unlikely to be granted for committal proceedings if criminal proceedings are ongoing.

Where can I find a solicitor?

Details of local solicitors who do “family” law (this includes domestic abuse work) can be found by calling Community Legal Advice on 0845 345 4345 or using the searchable directory at www.communitylegaladvice.org.uk. Both will give contact details of solicitors who offer legal aid. There is also further information available on the website including a leaflet entitled “Domestic Violence, Abuse and Harassment”.

Where can I go for further information and support?

For help and advice regarding domestic abuse issues, call the confidential 24-hour National Domestic Violence Freephone Helpline on 0808 2000 247