

Legal Services Commission response to the Welsh Assembly Government's consultation on the strategic action plan to address violence against women 16 September 2009

Introduction

The Legal Services Commission (LSC) is responsible for the administration of legal aid across England and Wales. We are a non-departmental public body sponsored by the Ministry of Justice (MoJ), with whom we have a close working relationship.

We are committed to empowering the most vulnerable people in society to safeguard their rights. Victims of domestic abuse are a key priority for the LSC. In July 2008, I led a workshop at the Women's Aid National Conference (England) and specifically spoke on domestic violence. The workshop had two main objectives. First, I wanted to raise the profile of legal aid so that victims of domestic abuse know how, when and where to access the legal services we provide. The second objective was to break down barriers by clarifying and correcting common myths which deter victims of domestic abuse from getting the appropriate legal advice at the right stage.

The LSC welcomes this consultation and the continuing development of the Welsh Assembly Government's Domestic Abuse Strategy. We would like this response to be the start of a dialogue about how the LSC can work with the Welsh Assembly Government to ensure vulnerable women are able to reach the legal advice they need.

How legal aid supports victims of domestic abuse

Legal aid helps with the costs of legal advice and representation for people who cannot afford it. If a woman experiencing domestic abuse wants to apply for a non-molestation order or occupation order they will normally need the help of a solicitor. Legal aid can cover these costs.

The LSC's Family Legal Aid strategy, published in March 2007, sets out our aims to develop policy that increases access to legal advice for domestic abuse victims. We are committed to improving and increasing access as follows.

Eligibility

In April 2007, the LSC changed the financial eligibility rules for domestic abuse cases. Unlike legal aid for other applications there is now no maximum limit to a victim's income or capital. This means that anyone suffering from domestic abuse will be entitled to legal aid, regardless of their financial status.

For a fact sheet about domestic abuse and legal aid and full details of eligibility requirements, please see **Annex A**.

Forced Marriages

Following the implementation of the Forced Marriage Act in November 2008, legal aid has also been made available for victims of forced marriages who are seeking a forced marriage protection order. Legal aid for these cases applies on the same basis as other domestic abuse cases including the upper eligibility limit waiver described above.

Community Legal Advice (CLA) Helpline

The CLA helpline is a free and confidential telephone advice service paid for by legal aid. The helpline (0845 345 4 345) offers free, independent advice about family, debt, education, benefits and tax credits, employment and housing problems to those eligible for legal aid.

Offering telephone advice assists people who find it difficult to access traditional services and will provide a valuable resource to victims of domestic abuse. The CLA helpline also offers the potential for linked advice for those who may be suffering from multiple problems (such as debt or housing) as result of domestic abuse. This joined-up service is crucial in preventing 'referral fatigue' amongst those seeking help. If telephone advice is not appropriate for a client (e.g. there is a risk of harm) callers will be immediately referred to a face-to-face adviser and any relevant support services.

As part of our response to this consultation we would like to draw attention to the CLA Helpline service and how it might be incorporated into the Welsh Assembly Government's Domestic Abuse Strategy. We hope that, as result of this consultation there will be opportunity to help promote the helpline ensuring access to all the women who need it.

Advice in Refuges

We are currently working to improve access to legal advice for women living in refuge accommodation and accessing refuge support services. Traditional face-to-face services are not always appropriate for this group – the unfamiliar environment of a solicitor's office can be threatening and distressing and may prevent them from accessing advice.

We are therefore running a project to set up effective relationships between domestic abuse services and providers so that solicitors can make visits to refuges or attend outreach sessions in order to give advice.

We have been working with Welsh Women's Aid to identify the services that would benefit from better relationships with local advice providers. The organisations we will be working with include culturally specific services catering to the most vulnerable groups of women.

Response to specific consultation points

2.4 – Those with no recourse to public funds

The consultation paper states that the Welsh Assembly Government has been working to find ways to support victims of domestic abuse with no recourse to public funds.

The LSC have found that confusion about the definition of 'no recourse' is rife amongst those who work with victims of domestic abuse. We have received numerous anecdotal reports that demonstrate women are being deterred from seeking legal aid as they are under the misconception that their immigration status would render them ineligible.

The LSC would like to take this opportunity to confirm that, under Home Office guidelines, legal aid is not classed as a 'public fund' for the purposes of those with no recourse. Legal aid is therefore available to victims of domestic abuse, regardless of their immigration status.

The applicant for public funding also does not have to be British or to be living in England and Wales to qualify for legal aid. The issue is whether the case relates to the law of England and Wales.

We feel that better publicity regarding the availability of legal aid for those with 'no recourse' might be included within the Welsh Assembly Government's Domestic Abuse strategy. It is vital that these vulnerable women have access to legal advice when they need it and are not

put off by the perpetration of misconceptions and myths. We would welcome the opportunity to work with others to develop a strategy for how this can be better achieved.

5.4 – Work with the All Wales Domestic Abuse Working Group to develop a national information hub

The LSC is pleased to already have the opportunity to disseminate information on legal aid through our membership of the All Wales Domestic Abuse Working Group. We would like to stress the importance of efficient information sharing between government departments. The LSC would be delighted to work further with the Welsh Assembly Government to make sure that information about legal aid and the services we deliver (such as the Community Legal Advice helpline) are shared as widely as possible with our government colleagues.

The LSC has 2377 legal advice providers across England and Wales who offer advice for issues involving domestic abuse.

There are currently legal aid providers who can offer advice around domestic abuse issues available in every single local authority.

There is at least one provider offering domestic abuse advice in each local authority and 70% of local authorities have 4 or more providers.

The LSC are committed to improving and increasing access to these advice providers. We would like to encourage other commissioners of local services to work with us to ensure that we are providing the most joined-up services and that advice is reaching those who need it most.

I hope you will find this response useful. If you have any queries about its contents, please do not hesitate to contact Sara Kovach-Clark, Head of Civil Policy Development - Family sara.kovach-clark@legalservices.gov.uk

Yours sincerely

Carolyn Regan
Chief Executive
Legal Services Commission

Annex A

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.niisc.org.uk

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

Yes.

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 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