

Written evidence submitted by the Law Society of England and Wales (COR0094)

Summary

1. The Law Society of England and Wales is the independent professional body that works globally to support and represent 190,000 solicitors, promoting the highest professional standards and the rule of law.
2. The Law Society is concerned at reports of an increase in the number of domestic abuse cases arising throughout this pandemic. It is vital that the justice system is equipped to tackle such cases.
3. Lockdown measures have made it even more difficult for victims to get time and space away from their alleged abuser. This creates significant barriers to accessing vital support services and legal advice. Revised guidance should make it easier to access advice and for victims to secure injunctions against their alleged abuser.
4. The criteria for legal aid should be urgently revised to ensure that victims of domestic abuse can access legal advice without having their means assessed.
5. The evidence requirements to satisfy the domestic abuse 'gateway' and obtain legal aid in family cases should be relaxed, allowing solicitors to certify that an individual is a victim of abuse. Many victims are required to seek evidence from a medical professional but in the current circumstances this is very difficult to obtain.

Reported increase in incidents

6. The committee will be aware of the reported spike in cases of domestic abuse during the coronavirus outbreak. In its evidence session of 15 April 2020, the committee heard from witnesses that there have been increases in the number of calls to police and support services of incidents involving domestic abuse.¹
7. We also note that during that session, Nicole Jacobs, the Designate Domestic Abuse Commissioner said that there will be an inevitable surge in domestic abuse cases reported once some lockdown measures are lifted, that there are victims who will have waited throughout the crisis to feel safe enough to make contact support services and will take the earliest opportunity to access the courts. It is vital that the justice system is equipped to be able to process these cases and ensure that victims have access to justice.
8. The Law Society welcomed the Government's acknowledgement of domestic abuse as an issue of concern during the pandemic, the recognition of reported spikes in cases and their commitment to addressing it. The Government's 'You Are Not Alone' campaign to raise public awareness of domestic abuse and signpost resources – and forthcoming investment in domestic abuse services – are also welcomed but there is still much more to be done.

¹ [Home Affairs Committee, Oral evidence: Home Office preparedness for Covid-19 \(Coronavirus\), HC 232](#)

9. We believe it is vital that every effort is made to support refuges and advice services so that domestic abuse victims know what can be done to help them and where they can go to feel safe. Ensuring that victims are signposted to legal advisors is also integral in ensuring they are able to access justice and are afforded the most appropriate legal protections.

Emergency injunctions guidance

10. Covid-19 lockdown measures have made it even more difficult for domestic abuse victims to get time away from their abuser – leaving many trapped in an increasingly volatile situation.
11. On 9 April, HMCTS updated its guidance regarding applications for an emergency injunction – which seek to prevent abusers harming or threatening victims.²
12. The Law Society highlighted the need for the guidance to acknowledge that victims may not be able to get time or space away from their abuser to attend a telephone hearing. We were encouraged to see the Government amend the guidance to reflect this.
13. It is also important to ensure the safety of victims and their children once an emergency injunction is made. For this to be possible, it is vital that every effort is made to support domestic abuse refuges and to provide emergency accommodation. This will require specifically allocated funding for local authorities and front-line organisations. We appreciate this may be difficult, but we consider it necessary to placing these families in safe accommodation, to providing them with support from local authorities and other such organisations and ensuring they have access to justice. Unless this is provided, victims of domestic abuse will continue to be vulnerable and be greatly disadvantaged by government isolation measures.

Legal aid and access to justice

14. The Law Society has long proposed that there is a need for non-means tested legal aid to be made available for individuals affected by domestic abuse. These changes to legal aid are now urgently required in response to coronavirus, to ensure that victims can access the protections that they desperately need.
15. While the Legal Aid Agency has expanded how domestic violence requirements may be evidenced, strict legal aid criteria still leaves many victims navigating the process unrepresented. Making non-means tested legal aid available for domestic abuse cases would allow all victims access to legal support.³
16. The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) removed legal aid for all private family law cases except where an individual can prove that

² 'How to apply for a domestic abuse injunction for unrepresented applicants' guidance, HMCTS, 9 April 2020 [<https://www.gov.uk/guidance/applying-for-a-domestic-violence-family-law-act-injunction-for-unrepresented-applicants#support-during-the-coronavirus-outbreak>]

³ 'Funding and costs assessment for civil and crime matters', Legal Aid Agency, April 2020 [<https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters>]

they are a victim of abuse. Victims who seek legal aid funded services also have to fulfil the financial eligibility criteria. The legal aid means test has three main elements: gross income, disposable income and capital. If any of these is higher than a given threshold, legal aid is denied.

17. A report, commissioned by the Law Society but produced independently by Professor Donald Hirsch of the University of Loughborough, shows that some of society's most vulnerable – including those living below the poverty line – are unable to meet the legal aid means test.⁴
18. The report's central finding is that the means testing of legal aid is set at a level requiring many people on low incomes to make contributions to legal costs they cannot afford while maintaining a socially acceptable standard of living. Families with children, and homeowners with low income, are particularly affected by the stringent means test. The Law Society has long believed that the legal aid means test is a barrier preventing people from accessing the legal system in order to avoid a situation of domestic abuse. The lockdown measures mean that it is more urgent than ever that Government removes this barrier
19. In addition, coronavirus and social distancing measures will have an impact on the economy and people's incomes. It is unclear at this stage whether that will see more or less people denied advice funded by legal aid.
20. While a review of the legal aid means test is ongoing, changes to legal aid are now urgently required in response to coronavirus, to ensure that victims can access the protections that they desperately need.
21. We are calling on the government to introduce non-means tested legal aid for victims of abuse so that they can obtain advice and representation for protective injunctions and also for any related Children Act proceedings. This will provide victims and their children with the urgent protection that they need. We also believe the government should work with front line organisations to ensure that the additional funding they are providing means that those support agencies are able to act quickly and refer cases to legal advisors that can provide advice and representation on a non-means tested basis to ensure victims are protected.

Domestic abuse gateway requirements

22. The Government should also relax the usual legal aid "gateway" evidence requirements during the pandemic so that solicitors – as well as busy frontline professionals and doctors – can certify that an individual has experienced domestic abuse and allow them access to legal aid.
23. Many victims are required to get evidence from doctors to access the legal aid gateway, but doctors are simply too busy to provide evidence of abuse at this time - whilst victims still urgently need access to advice and representation.

⁴ 'Disqualified from justice: Legal aid means test report', Donald Hirsch, April 2018
[\[https://www.lawsociety.org.uk/support-services/research-trends/legal-aid-means-test-report/\]](https://www.lawsociety.org.uk/support-services/research-trends/legal-aid-means-test-report/)

24. We therefore believe solicitors should be able to certify that an individual is a victim of domestic abuse for the purposes of obtaining legal aid during the crisis.

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