

Written evidence from Surviving Economic Abuse [HAB0255]

“I lived with the guy for 20 years...I was stunned that I had no rights when I thought I had everything tied down, I had my name on the mortgage but [I was treated by lawyers] like, “stupid woman didn’t get married”.”

About Surviving Economic Abuse (SEA)

Surviving Economic Abuse (SEA) is the only charity in the UK dedicated to raising awareness of economic abuse and transforming responses to it. All our work is informed by Experts by Experience – a group of women who speak about what they have gone through so that they can be a force for change. Our response to this call for evidence focuses specifically on our area of expertise, economic abuse as a form of controlling or coercive behaviour within intimate partner relationships. This form of abuse is now recognised within the Domestic Abuse Act (2021).

Abusers seek to undermine their partner’s ability to resist coercive control through depleting their personal, social and tangible resources. Controlling behaviour (restriction, exploitation and/or sabotage) that interferes with a partner’s ability to acquire, use and maintain economic resources is known as economic abuse. Economic abuse as a form of domestic abuse is characterised by perpetrators seeking to reinforce or create economic dependency and/or instability. This, in turn, limits women’s choices and their ability to build or access safety. The term ‘economic abuse’ recognises that it is not just money and finances that can be controlled by an abuser (known as ‘financial abuse’) but also the things that money can buy, like food, clothing, transportation and housing. (1)

SEA held a focus group with Experts by Experience (hitherto referred to as Experts) to explore the questions raised within this consultation and we include their voices within this submission.

1. Should there be a legal definition of cohabitation and, if so, what should it be?

SEA believes strongly that all people deserve economic protection after a relationship separation, so that no partner is disadvantaged and/or unable to meet their needs. This is particularly important for victim-survivors of domestic abuse, since 95% will experience economic abuse, 60% of whom are also coerced into debt due to the abuser’s actions (2). Victim-survivors of economic abuse will be well-represented in separating couples so should be considered carefully in the development of provisions; research published by the Chartered Insurance Institute found that women who are separated or divorced were most likely to have experienced domestic abuse within the last year, at a figure of 20% (3).

A legal definition of cohabitation, based on milestones in a relationship, could lead to people falling through gaps in legislation. Many women tell us that economic abuse can start very quickly, for example a partner moving into their home and immediately refusing to contribute, and these women may not be protected should a minimum cohabitation duration of three years apply. We believe that the ability to seek financial recourse due to economic disadvantage should apply to anyone who has experienced economic abuse, no matter the duration of the relationship.

During our consultation with Experts, women raised concerns about the length of cohabitation being defined, and all felt that a three-year time frame, such as that proposed in the Cohabitation Rights Bill currently in the House of Lords as a Private Member's Bill and used in countries such as Australia and New Zealand, was not long enough. Experts were concerned that attempts to introduce greater protection for cohabiting couples may end up making their situation even worse than it currently is. It is important to ensure that any legislative changes do not have this unintended consequence. However, all Experts felt that where there are children, financial recourse should be available in the best interests of the children, no matter the duration of cohabitation.

“After three years I genuinely don't think that's long enough for somebody to have access to a lump sum or property unless they've actually contributed. But if you do have children and you split, yes I do agree that there should be something, even if it's just making sure the child is looked after.”

Although provisions in Scottish Law¹ require an applicant to have experienced an 'economic disadvantage' in order to make a financial claim, SEA is concerned that abusers will use any legal avenues at their disposal to continue the abuse. This could be to gain access to the victim-survivor post-separation or to run up legal costs for them, even where there is no realistic expectation of a successful financial claim. This vexatious litigation is something that has been reported to SEA time and again and we have raised concerns about it within an evidence submission to the Ministry of Justice (4). The Domestic Abuse Act contains provisions aimed at reducing these types of unnecessary/repeat applications to harass victim-survivors but it remains to be seen if these will provide enhanced protection.

Concerns were also raised by Experts about opportunistic abusers who could enter relationships solely for the purpose of economic exploitation, should there be a defined time-limit. SEA recommends that any changes to legislation contain sufficient safeguards to prevent such exploitative claims.

“How open is this going to be to be abused? ...are these people then going to think all I need to do is be with a person for three years and then I'm going to be able to access some of this?... I would be so afraid to have a relationship with somebody and think after three years somebody could have accessed my NHS pension, or my home...that would worry me.”

2. What legislative changes, if any, are needed to better protect the rights of cohabiting partners in the event of death or separation?

Greater protections are needed for cohabitants during the separation process to prevent economic harm. For homeowners who pursue current legal options, the costs of Trusts of Land and Appointment of Trustees Act 1996 (ToLATA) litigation and appeals are prohibitive, and many women have informed SEA that this has emboldened their abusers to negotiate unfairly, knowing that they are unlikely to proceed to court due to the risk of having to pay both parties' costs. This is exacerbated by the reduced availability of legal aid following cuts introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. SEA has recommended elsewhere that victim-survivors should be automatically exempt from the legal aid means test (4).

¹ The Family Law (Scotland) Act 2006 offers limited financial provision to cohabitants whose relationships have ended, whether by breakdown or death.

Another issue SEA has encountered is the failure of civil law to address the needs of people experiencing domestic abuse when dealing with the family home, with legal specialists often having a great knowledge of commercial law but a lack of understanding of family matters. Conversely, women tell us that family lawyers simply do not have sufficient expertise to give effective advice on ToLATA matters, with one woman who switched to a commercial lawyer citing significant differences in advice given.

This issue also extends to judges within the county court, for whom family matters make up a minority of cases overseen. One woman told SEA that she separated many years ago and is still trying to regain control of her property; she signed a Deed of Trust under undue influence and the abuser had not complied with the terms of the agreement. However, she was not able to be heard in front of a judge, who instead issued an order based on the Deed of Trust. This victim-survivor felt that these circumstances would be more likely to be taken into account in a family court and raised that it is important for significant debts built up in her name by the abuser to be taken into account, which she believes could be achieved through divorce proceedings.

Conversely, many divorcing women tell SEA that they are advised not to, or prevented from, raising details of economic abuse within financial proceedings. SEA believes this is in part due to 'conduct' only being seen as relevant in extreme circumstances within financial proceedings, amongst further factors. Indeed, there is a perception that bringing up such issues may be to their disadvantage, with research showing that women who disclose physical abuse within financial proceedings are more likely to receive a minority share of the property than those who do not (5).

In addition, victim-survivors tell SEA that abusers deliberately do not disclose assets and income, another factor preventing a fair financial settlement. Experts also questioned the accessibility of new financial remedy pathways, *"Is there going to be an easy pathway for this, or is there then going to be another legal wrangle?"* It is important to ensure these issues faced by divorcing couples are not replicated in any legal proceedings for cohabiting couples.

Non-compliance with financial orders is a frequent issue for victim-survivors. One Expert who works alongside SEA obtained a financial order which stated that the abuser must remove her name from buy-to-let properties and tried to enforce a breach when the abuser did not comply. However, at the breach hearing no action was taken and eventually the properties were repossessed in negative equity, leaving a substantial debt in her name which then placed her family home at risk. Any new legislation must include robust enforcement processes. SEA supports the recommendations put forward by the Law Commission, for example the ability of the court to confiscate a driving license, as measures which could support with compliance and enforcement (6).

One potential legislative change that SEA is extremely concerned about, that is outlined in the Cohabitation Rights Bill mentioned above, is the suggestion to extend the rights of spouses to take out life insurance policies on their partners to cohabitants. We do not believe that this is appropriate for any person who has the capacity to take out their own policy. One Expert also raised serious concerns and objections to this based on her own experiences.

"I was married when my ex took out insurance on me, but he took out insurance on me after we had split up and I had no knowledge. Whether married or not, the person who they're going to insure has to consent...He'd actually told someone to push me out of a moving car, that was three weeks after

he'd taken out the life insurance policy on me...But that was without my consent and I don't agree that anyone can take a life insurance policy out on somebody if they have the capacity to consent."

This is an opportunity to develop legislative changes through a fresh lens which can benefit from learnings of the shortcomings of the current financial remedies. SEA is encouraged to see 'economic disadvantage' as a central component of the Scottish Law remedy, as this presents an opportunity to reconsider what is currently seen as fair and equitable, moving away from the 50:50 split which is rarely appropriate in cases of domestic abuse as 95% of domestic abuse cases include economic abuse. However, if an 'economic disadvantage' model is developed, we advise that clear guidance is available to the judiciary so that there is a clear process for dealing with coerced debt (debts accrued by the abuser), and so that all levels of wealth are catered to and proceedings are not biased towards higher net worth individuals.

It is clear that an accessible system is needed, that is affordable and does not have prohibitive costs such as exist under ToLATA. A lack of access to specialist financial courts is also indicative of a two-tier system for married couples and cohabiting couples, and SEA believes such courts should be available to all separating couples. Any new legislation must take into account common issues faced by victim-survivors during financial remedy proceedings whether they are married or cohabiting and include victim-survivors' voices in the design.

3. What equalities issues are raised by the lack of legal protection for those in cohabiting relationships?

There are distinct economic disparities between men and women when it comes to separation, and these are exemplified in statistics about pensions. A mere 14% of divorces with pensions result in pension sharing (7), and the median pension wealth for divorced and separated men and women is £30,000 vs £9,000 and £12,000 vs £0, respectively (8). These negative economic outcomes for women also extend to cohabittees, with Insuring Women's Futures (established by the Chartered Insurance Institute) referring to a 'cohabitation pitfall' (8) and cohabitation as a particular risk point for women, financially. There is a clear need to increase awareness about the myths of the 'common-law marriage' in the interests of women and SEA recommends a public awareness raising campaign about this, specifically targeted at women.

Regarding pensions, there is a clear gender gap with divorced and separated women and much needs to be done to improve pension sharing upon divorce, which leads to negative outcomes for women. However, it is important to note that the women SEA spoke to regarding this call for evidence were very concerned about their pensions being included and emphasized a need to protect their long-term economic safety from the abuser. However, they also raised concerns about women who may not qualify for a state pension due to being prevented from working from the abuser, which contrasted with their experience of being economically exploited through their earnings.

From an equality perspective, all Experts who took part in the focus group raised concerns about the current lack of legal protections they faced as female cohabittees and sexist responses they had received from multiple agencies, ranging from police, lawyers, the courts and housing professionals. Women raised how the abuser had been able to stay in their home after the separation, and the onus was placed on them to flee. Concerns were raised about the imbalance of their rights to occupy their own property and to safety from abuse, with the abuser's housing rights. In addition, concerns

about sexist perceptions from legal professionals and others of women as ‘gold-diggers’ who were ‘just complaining about money’ were raised. One Expert fled to a refuge and was paying rent for her room there and the mortgage on her home, which was in her sole name, however upon application to court the abuser was not removed from her home due to his perceived housing need.

“Nobody listened to me when I was living with the person and I couldn’t get him out of the house. I was told that I had a safe house, that I had a safe place because I had gone to a refuge, even though I was still eligible for the mortgage payments and everything else, and the bills, because it was all in my name...No matter what I tried, I couldn’t get the police to help, I couldn’t even get him evicted and it escalated from there and I ended up marrying him...it didn’t matter if I’d been raped or attacked, because I was challenging money, they just thought I was complaining because I had to pay a mortgage and a refuge bill. I left because if I didn’t leave I would have been dead...I was paying for my mortgage and I was paying to stay at the refuge – how could I be the gold-digger when I was paying for everything? And it didn’t matter who I asked for help I was asked where was he going to live because I had a safe place to stay.”

SEA urges that pre-existing gender inequalities in relation to occupancy and access to safe accommodation are not replicated in any new legislation. SEA also supported amendment 44 to the Domestic Abuse Bill which asked for specialist training on domestic abuse for Magistrates and Judges hearing cases in family proceedings (9). This amendment was unfortunately unsuccessful, however SEA believes enhanced training focusing on the family courts is vitally important to address these issues as perpetrators use the family justice system in a variety of ways to undermine victims’ economic stability, making this a key arena for economic abuse.

4. Should legal changes be made to better provide for the children of cohabiting partners?

Although rights to make a claim in the interests of a child do exist in the Children Act 1989, and financial support can be facilitated through the Child Maintenance Service, Experts felt that existing provisions were not sufficient.

“Because of child maintenance I was involved with this man until 2017, I think this would just tie me up [legally]. You can’t move on or sort the legal stuff, it’s basically a no-win situation. I don’t think 3 years or 10 years makes any damn difference, I was with him 20 years.”

SEA believes children should be well protected and that this is an opportunity to review how current systems and provisions are not meeting the needs of the children of victim-survivors. SEA recommends a full review of how financial remedies work for children following marriage and cohabitation.

5. Should cohabiting partners have the same rights as those who are married or in a civil partnership?

Cohabiting partners should have rights that offer them the same protections from harm that those who are married or in civil partnerships benefit from. However, this should not mean that the present inadequacies in or failures of protection for survivors of domestic/economic abuse who are married or in civil partnerships are simply replicated for cohabiting partners. Some of the ways in which this may happen have been outlined above.

Discussions with Experts highlighted particular concerns about access to pensions and life insurance policies, and as stated above, it is imperative that women’s pensions gap is addressed so that all

women are protected in later life. Therefore, there is a need for pensions to be considered upon all relationship separations where women may face such disadvantages. SEA would like to reiterate the need to consider where current financial provisions for married women may be insufficient for those who experience economic abuse, before any steps are taken to replicate current provisions for married couples.

6. Are there examples of good practice in relation to the rights of cohabiting partners in the UK or internationally that the Government should seek emulate in England and Wales?

n/a

References

1. **Liz Kelly, Nicola Sharp and Renate Klein.** *Finding the Costs of Freedom: How women and children rebuild their lives after domestic violence.* s.l. : Solace Women's Aid, 2015.
2. **Surviving Economic Abuse.** *Midterm Report of the Economic Justice Project.* 2019.
3. **Portas, Jane.** *Risk, exposure and resilience to risk in Britain today; Women's Risks in Life - an interim report.* London : Chartered Insurance Institute, 2019.
4. **Surviving Economic Abuse (SEA).** SEA's response to the Ministry of Justice Call for Evidence: Assessing risk of harm to children and parents. London : s.n., 2019.
5. **District Judge Judith Crisp and Rosemary Hunter.** *Domestic abuse in financial remedy applications.* London : Family Law, 2019.
6. **Law Commission.** Enforcement of Family Financial Orders. <https://www.lawcom.gov.uk/>. [Online] [Cited: 24 6 2021.] <https://www.lawcom.gov.uk/project/enforcement-of-family-financial-orders/>.
7. **Portas, Jane.** *Living a financially resilient life in the UK – The Moments That Matter in improving women's and all of our financial futures.* s.l. : Insuring Women's Futures, 2019.
8. **Portas, Jane.** *Securing the financial future of the next generation: The Moments that Matter in the lives of young British women.* s.l. : Chartered Insurance Institute, 2018.
9. **Surviving Economic Abuse.** The Domestic Abuse Bill and the recognition of economic abuse House of Lords Report Stage briefing. [Online] 2021. <https://survivingeconomicabuse.org/wp-content/uploads/2021/03/SEA-DA-Bill-briefing-Report-Stage-March-2021-FINAL.pdf>.

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