



Denied justice:

How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives

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This publication does not contain a comprehensive review of all developments in the law and practice in this area. Readers should take independent legal advice before applying the information contained in this publication to a specific case.

Foreword

Foreword from Nicole Jacobs, Domestic Abuse Commissioner for England and Wales

As Domestic Abuse Commissioner for England and Wales, I receive countless emails from survivors about their experiences of how domestic abuse has impacted their lives. Most of the correspondence relates to the Family Court. The experiences of these survivors echoes those raised in this report and highlight the key issue of access to legal aid. At present, far too many survivors find themselves struggling to navigate a legally complex and emotional process alone because of the financial barriers to obtaining legal representation.

The application process for legal aid is complex, requiring victims and survivors to provide extensive evidence of their finances. This can be difficult for many victims and survivors, whose access to information on their bank accounts or joint assets may have been restricted by a perpetrator throughout the course of the relationship. Whilst victims and survivors of domestic abuse are within the scope of legal aid, the means test which is applied for this is extremely restrictive, leaving many people without basic access to justice.

The income test which is imposed for parties in family law proceedings who make allegations of domestic abuse has not been revisited for over 10 years and does not fall in line with how the median salary has changed throughout this period. Research by the Law Society revealed that individuals on incomes already 10% to 30% below the minimum income were being excluded from legal aid. This has left survivors of domestic abuse having to choose between navigating a process built for legal professionals as litigants in person, or risk getting into debt and facing destitution by taking out loans to cover legal fees. Lack of financial means should not be a barrier to legal support for victims and survivors of domestic abuse. However, as this report highlights, it is the harsh reality being faced by far too many domestic abuse victims.

The recent changes to the capital portion of the means test to discard mortgage debt from the calculations were warmly welcomed and have been vital in helping many victims and survivors. Nevertheless, the discretionary nature of the rule changes has led to inconsistent applications of the capital test. This means that trapped capital continues to prevent many people with no disposable income from receiving legal aid, with the test operating on the assumption that individuals are able to liquidate their assets to fund litigation. Unfortunately, this is unfeasible for many victims and survivors, who may co-own the property with the perpetrator, or are unable to borrow against the property due to debts incurred as part of economic abuse or because they are out of work.

Improving the experience of victims and survivors of domestic abuse in the Family Court is a priority for my office. I believe that the provision of non-means tested legal aid for these individuals is a crucial way of making the Family Court more accessible. I would like to thank Surviving Economic Abuse and the Experts by Experience Group for their vital work on this issue. This report is important in highlighting the impact of the current rules on victims and survivors of domestic abuse and I am pleased to support its call for urgent reform to the legal aid system.



Nicole Jacobs

Domestic Abuse Commissioner for England and Wales

Foreword from Jenny Beck QC (Hon), Solicitor and Director, Beck Fitzgerald

As a family law practitioner, I see on a regular basis how harshly the legal aid means test operates for domestic abuse victim-survivors, effectively preventing them from accessing justice which in turn leaves them and their children vulnerable to further abuse and unequal treatment.

Access to justice should be everybody's right. There is little point having a fair and just legal system if it is inaccessible. The failure to have a fair means test undermines that basic right.

The means test does not take adequate account of the economic abuse that many victim-survivors face, resulting in flawed assessments of income and capital, which in turn disqualify them from legal aid and access to justice. This report by Surviving Economic Abuse highlights some of the most problematic aspects of the means test. These include income and capital being assessed in a way that does not account for the lack of financial control experienced by victim-survivors of domestic abuse, assessments not considering real living costs or taking into account assets which are inaccessible.

The report highlights the impact of being found ineligible for legal aid on victim-survivors. Most are denied fair access to justice. Many are forced to represent themselves without adequate legal support. They may not know their rights or how to exercise them and often have to deal with their perpetrators who may well be expertly represented throughout the court process. For some, managing the process is insurmountable and they feel forced to give up the chance of protecting their family and escaping the abuser. Lack of adequate support in legal proceedings can lead to unemployment, ill-health and debt, all of which restrict victim-survivors' capacity to rebuild their lives independently and to achieve economic stability for themselves and their children, following abuse.

There are simple solutions. The correct administration of the statutory charge and other sensible proposals set out in this report could see a far fairer system.



Jenny Beck QC (Hon)

Solicitor and Director, Beck Fitzgerald

Acknowledgements

Thank you to the victim-survivors of economic abuse in the Experts by Experience Group who responded to the survey and the victim-survivors who worked with us on case studies, whose names have been changed for their safety. All quotes included are from women themselves, so that their experiences can be understood in their own words.

Thank you to Jenny Beck QC (Hon), Olive Craig of Rights of Women and Daniel Rourke of the Public Law Project for their extremely helpful input and comments.

Stephanie Orr wrote the report with input from Cyrene Siriwardhana, both of SEA.

Surviving Economic Abuse

Many women experience economic abuse within the context of intimate partner violence. It limits their choices and ability to access safety. Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it. The charity works day in, day out to ensure that women are supported not only to survive, but also to thrive.

The Experts by Experience Group (EEG)

SEA works alongside a group of victim-survivors, the 'Experts by Experience' Group. They are women who give up their time to speak openly and honestly about what they have gone through so that they can be a force for change. Their insight informs the work we do, from identifying the tools and resources that women need, through to where change is required in policy and practice.

Some have spoken directly with parliamentarians, government ministers and officials via events such as parliamentary receptions, roundtables and evidence sessions. Group members also act as powerful advocates for change by speaking out publicly in the media. We work with journalists to ensure their voices are reflected in features about economic abuse within both print and broadcast media. The strength and courage of these women is inspiring and we are proud to be working with them.

What is economic abuse?

Economic abuse is characterised by controlling behaviour (restriction, exploitation and/or sabotage) that interferes with a partner's ability to acquire, use and maintain economic resources. 95% of cases of domestic abuse include some form of economic abuse.¹

Abusers create or reinforce economic dependency and/or instability, limiting women's choices and their ability to build or access safety. By depleting the victim-survivor's economic resources, abusers undermine their ability to resist coercive control.

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.²

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Executive summary

The legal aid system in England and Wales is failing victim-survivors of domestic abuse and needs urgent reform.

Significant changes were made to the provision of legal aid following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). As a result, victim-survivors of domestic abuse must provide specific evidence of the abuse to be within the scope of legal aid. To access legal aid, they must also meet the eligibility criteria by passing a merits test and a means test, which assesses capital (assets and savings) and income.

Our research looked at victim-survivors' experiences of the legal aid means test and found that it is preventing them from accessing legal aid just when they need it most. More victim-survivors who responded to our survey had to self-represent in legal proceedings (33%) than were able to access legal aid (20%).

This echoes findings elsewhere, most prominently in the recent [Harm Panel report](#)³ looking at how domestic abuse allegations are dealt with in private law children's cases. The Harm Panel report found lack of access to legal representation was "the most important and frequently mentioned form of structural disadvantage."

The means test does not take account of economic abuse used by partners to prevent victim-survivors from accessing income and assets. This is in a context where 95% of cases of domestic abuse include economic abuse.⁴ The means test is preventing women from using the legal system in a fair and equal way to seek justice, as they leave an abuser, attempt to rebuild their lives and protect their children. In a significant number of cases, women living in poverty and struggling to afford essentials, such as food for their children, were deemed to have too high an income to access legal aid.

Lack of access to legal aid not only means that victim-survivors have to remain with an abuser for longer, but has other negative impacts. It affects their health, damages their employment opportunities and is driving some to resort to expensive loans to cover legal expenses.

Critically, most debts are ignored by the means test, including all forms of unsecured debt. Debts may be the result of previous economic abuse, as running up debt in the name of a partner is a common form of economic abuse (in 60% of cases). Taking these debts into account when assessing income is also important to prevent abusers from further benefiting from their controlling behaviour.

Surviving Economic Abuse (SEA) conducted a survey with victim-survivors of economic abuse⁵ to understand the impact of the legal aid means test on their lives. The survey found that the system is failing victim-survivors of economic abuse by not taking account of their complex circumstances. The very nature of economic abuse means that victim-survivors often do not have access to financial resources including both capital and

income. The system can often exclude them from legal support due to economic assets which, because of the abuser, they cannot access. As a result, they find themselves without the funds to pay for legal advice or representation, and have to resort to costly loans or self-representation through complex legal proceedings. Lack of access to legal aid can be a serious obstacle to women attempting to leave an abuser.

The perpetrators on the other hand, by virtue of their abusive behaviour, are in a position to optimise legal outcomes. They use their financial resources, and often those of the victim, to access legal advice and representation.

Key findings

The survey found that victim-survivors of domestic abuse attempted to access legal aid for a variety of proceedings, including protective orders, divorce, financial arrangements and arrangements for children. However, the legal aid means test is causing the following problems:

1. **The capital assessment is preventing many victims of domestic abuse from accessing justice.** Out of 32 women who were unable to access legal aid (80% of respondents), 14 women told SEA that they were ineligible due to the assessment of their capital (44%). At least 10 cases (31%) involved 'trapped capital,' where abusers do not allow victim-survivors to use or borrow against a jointly held asset, such as the family home, to fund legal proceedings.^{6,7}
2. **Real disposable income is being incorrectly assessed.** Failure to account for actual housing and childcare costs and, significantly, to consider debts (which are often coerced by the abuser as a form of economic abuse) is resulting in inflated estimates of disposable income. These estimates do not reflect the lived reality of victim-survivors. Further essential costs are not considered at all under the current rules, such as travel to work. Responses revealed that even some women living in poverty and struggling to afford essentials, like food for their children, were deemed to have too high an income to access legal aid. This echoes research commissioned by the Law Society which found that people on incomes 30% below the minimum income standard are being excluded from legal aid.⁸
3. **Victim-survivors are unable to pay legal aid contributions, or they get into further debt to cover them.** The survey found that two women had no choice but to decline legal aid specifically because they could not afford the contributions that the means test deemed they could pay. The 'domestic abuse waiver' means that, where urgent protective orders are sought, there are no upper limits for income and capital to be eligible for legal aid. However, contributions can still apply and can be unaffordable. Research commissioned by the Law Society found that 20% of victim-survivors who were eligible for an injunction could not proceed with the

application as they could not afford the contributions that were required with the waiver.⁹ Even a low income can trigger a hefty contribution. This means that victim-survivors who are at risk of immediate physical harm cannot access the protections that should be available to them through the legal system. This is critical, as victim-survivors are at increased risk of homicide at the point of separation.¹⁰

4. **The legal aid system is causing debt and destitution.** Victim-survivors reported a depletion of savings and other economic resources in order to pay for legal costs when they were unable to access legal aid. Many also accrued debts. These debts were significant, with many women citing debts reaching tens of thousands of pounds. Two women even spoke about legal fees reaching into six figures. Victim-survivors paid for a variety of different services and charges out of their own pockets, using various methods of borrowing. Alarming, 45% of the women who responded to the survey said they made serious cutbacks that affected their ability to pay for basics, such as food, in order to pay for legal costs. The ability to recover funds from the perpetrator is negligible, as orders for one party to pay the costs of the other are rarely made in the family court.
5. **The system hinders victim-survivors in rebuilding their lives.** Many victim-survivors said their employment had been negatively impacted by the legal aid system, especially if they could not afford legal representation and had to self-represent. 15 respondents (38%) described how their employment was affected due to self-representing. Six respondents (15%) who were litigants in person (LIPs) said that they had lost their jobs or were no longer able to work at all due to the demands of their court cases. Four further women (10%) spoke about being unable to work as many hours as they were previously able to. This indicates that the earned income of at least 25% of respondents was diminished due to the demands of their court cases, creating further instability.
6. **Many victims reported health concerns as a result of proceedings,** particularly those who were self-representing. The emotional and mental impact was enormous, with women who represented themselves in court experiencing a deterioration in their mental health. Three women also disclosed how the court process exacerbated chronic illnesses. Others spoke about how the stress and trauma led to physical health problems which were so severe that they were no longer able to work.
7. **Victim-survivors stated that their safety had been compromised by participating in the proceedings.** Respondents shared that they had asked for special measures which were not provided and had experienced continued harassment from the abuser. One woman detailed how the many years of court hearings enabled her ex-partner to continue to stalk her. In addition, multiple women identified the proceedings as a way that the perpetrator continued to

subject them to economic abuse. This added to the multiple forms of control women faced during the proceedings and mirrors findings from the Harm Panel review.

8. Women also detailed **risks to their children** that arose because they were unable to access legal representation. Some respondents believe that child arrangements proceedings were compromised as they did not have the expertise to self-represent, often against a strong legal team appointed by the perpetrator.

Recommendations

SEA is calling for victim-survivors to be exempt from the legal aid means test, to ensure they can access the legal support they so desperately need as they escape from abusive partners and rebuild their lives.

As detailed in this report, the legal aid means test fails to account for the economic realities faced by those experiencing domestic abuse. Moreover, the wider context of domestic abuse policy and legislation calls for a re-examination of the means test to reflect the new statutory definition of domestic abuse in the Domestic Abuse Act 2021. This definition now includes economic abuse. This would also be in line with the offence of controlling or coercive behaviour having been extended to post-separation abuse (by the Domestic Abuse Act 2021). It is increasingly recognised that much economic abuse takes place after a relationship has ended. Controlling behaviour manifested through court proceedings is one way in which abusers continue the domestic abuse post-separation.

Government policies need to be consistent with this explicit recognition of economic abuse, enhanced understanding of post-separation abuse, and the importance of economic safety for victim-survivors. Legal aid policy undermines these in the way it applies the means test to victim-survivors. As this report clearly shows, without legal aid, victim-survivors are:

- unable to leave abusers because they cannot afford the legal costs of separation
- unable to rebuild their lives separate from the abuser because of legal costs depleting existing resources
- exposed to (further) economic abuse, by the abuser, through the court system.

This report shows that the means test prevents legal aid from being targeted at those who need it most, which is one of the four objectives of LASPO. Victim-survivors of domestic abuse are amongst those most in need of legal advice and representation. However, many are not able to access it because of the means test. This results in worse outcomes for victim-survivors and their children, in addition to the extra time-pressure placed on courts when dealing with litigants in person. As a result, not only is it not safe, but any cost savings may well be offset by the additional costs placed on the court system.

The harms this causes are significant and varied, including damage to victim-survivors' economic safety, physical safety, health and court outcomes. The economic harms are also wide-ranging and include experiences of destitution, debt and loss of employment or earnings.

There are many facets of the means test that could be addressed to make it fairer for victim-survivors and more in line with the realities of their lived experience. The following changes would go some way towards improving the current position:

- **A fairer income assessment** – The assessment of disposable income must take into account: the real housing and childcare costs of victim-survivors; debt repayments, which are often a result of economic abuse; and other essential costs, such as travel to work. The income of a new partner must not be aggregated with the victim-survivor's, as this promotes economic dependency which could lead to abuse by the new partner. The gross income test must give discretion for those who are earning over the cap, but living in 'in-work poverty'. This could be because they are facing significant debt repayments and/or living in an area where housing costs are very high.
- **Consistent recognition of trapped capital and 'capital passporting'** – Assessment of capital must be underpinned by an understanding of economic abuse, and the wider dynamics and implications of coercive control. Trapped capital must always be disregarded, rather than based on discretion, and capital that is the subject matter of dispute must be disregarded in its entirety.
- **More affordable contributions** – Contributions must be affordable so that they do not prevent victim-survivors from accessing legal advice and representation. They must reflect the victim-survivor's actual disposable income and not expect trapped capital to be liquidated. The requirement for contributions must be entirely removed for protective orders to which the 'domestic abuse waiver' currently applies. The high levels of contributions mean that this route is inaccessible for many victim-survivors.¹¹ No one should be priced out of protection when they take steps towards safety.

These changes would result in a fairer assessment of means under the means test. However, where domestic abuse is shown to have occurred and, given that 95% of domestic abuse victim-survivors experience economic abuse,¹² and therefore don't have control of their income and assets,¹³ **nothing short of a total exemption from the means test will fully protect victim-survivors.** Without this change, many victim-survivors will be left unable to access the legal support they so desperately need to protect their family, escape from abusive partners and rebuild their lives.

Zahra's story

Zahra experienced economic, psychological and physical abuse. She separated from the abuser and issued divorce proceedings. In response, the abuser made threats to kill her and abduct the children, so Zahra applied for a non-molestation order. She spoke to a legal advice service about legal aid, but they informed her that she was over the capital threshold because she jointly owned her home with the abuser.

Zahra was signposted to a specialist helpline which supported her to write her statement for court. She represented herself as a litigant in person as she could not afford the legal aid contributions she was required to pay. However, the abuser said that he would contest the application and, terrified of having to face him in court, Zahra instructed a barrister for the hearing at a cost of £1,500. She had to put it on credit cards. The abuser didn't turn up to court, however Zahra still had to pay.

After she obtained the non-molestation order, Zahra began lengthy divorce and financial proceedings which the abuser frustrated, including not turning up to court for hearings and causing delays. Zahra represented herself at court. However, the divorce cost her £4,000 in solicitors' costs and court fees, as she paid for a legal expert to draw up the paperwork. This was to try to ensure that the abuser did not manipulate the process and continue to maintain economic ties. This caused further debt. The abuser proceeded to breach the order, refusing to comply and separate the marital property, continuing the economic abuse.

The continued economic abuse led to repossession proceedings and Zahra was taken to court by the mortgage lender. She also attempted to enforce the financial order and requested a penal order. This was incredibly difficult. The abuser was able to harass Zahra in court, the judge refused to issue the penal order and the abuser faced no consequences for breach of the financial order.

Because of the economic abuse by her partner, Zahra could not afford representation. She would, instead, go to a solicitor for a fixed fee appointment for advice about how to fill in applications, paying for the sessions using credit. These were £60 for a 30-minute appointment. The burden of representing herself meant that she had to reduce her hours at work in order to deal with court matters, which she described as a full-time job. This reduced her income at a time she needed it most.

Zahra said that she initially put off starting enforcement proceedings because she couldn't afford legal representation. She believes that, if she had accessed representation from the start, the divorce would not have been seen as separate from the domestic abuse and the financial settlement would have been more favourable.

Following proceedings, Zahra has no financial safety net. Her credit file means she cannot even get a credit card. She and her children face homelessness.

Claire's story

Claire lives with her two children in the home she jointly owns with her ex-partner. He was physically, emotionally and psychologically abusive, and controlled all of Claire's money. When Claire worked, the abuser took all the money she earned, forcing her to give it to him. He would give her just £5 per week to buy food, would check the receipts and examine the food. The control was so severe that the abuser would count how many slices of bread Claire and the children had eaten.

Needing protection and somewhere safe to live with her children, Claire went to court and obtained a non-molestation order and an occupation order to remove the abuser from the home. Claire receives Universal Credit, however she was not entitled to legal aid because she owns some of the equity in the home.

The abuser made an application for a child arrangements order, to have unsupervised contact with the children, and applied to force the sale of the home. Claire had to represent herself in court, without any legal advice or help, against an experienced barrister who had been instructed by the abuser. She vomited in court when she heard the abuser's voice.

Claire cannot sell the home because that would make her and her children homeless. She cannot borrow against its value because she would require her ex-partner's consent, which he will not give. Whether to sell the house and how to apportion the equity is subject to proceedings, for which she needs legal aid.

Introduction

This report outlines the findings from a survey of the Experts by Experience Group (EEG) who work alongside SEA, about the operation of the legal aid means test in England and Wales.¹⁴ The survey was designed to find out about women's experiences of accessing legal aid or self-funding legal representation.

The family court arena is frequently cited by Experts by Experience and women who contact SEA as one where abusers perpetrate economic abuse and where their control is facilitated by the system. For women who are not eligible for legal aid, this abuse is often compounded by having to represent themselves as litigants in person. Ineligibility for legal aid is usually due to the legal aid means test, which deems that those with 'sufficient' income or capital should pay for their own legal representation. This is determined through a calculation which is set out in legal aid regulations.

Victim-survivors report that the legal aid means test operates unfairly for those experiencing economic abuse, by failing to take account of the abuse when assessing their income and capital to determine eligibility. Where victims hold assets or receive income, they are regularly assessed as failing the means tests. This is in spite of the fact that they are unable to access or control their assets and money as a result of the abuser's behaviour. They are often unable in practice to pay the contributions that may be required under the current legal aid scheme for the same reasons.

Lack of access to legal aid can be a serious obstacle for women attempting to leave an abuser. Any funds they have are crucial for regaining economic independence and stability, but many have to channel these into paying for essential legal proceedings. This is critical because economic barriers to leaving can lead to women staying with an abusive partner, experiencing more harm as a result.¹⁵ Further, lack of access to economic resources post-separation is the primary reason women return to an abusive partner¹⁶ and makes the process of rebuilding an independent life much harder. 95% of victim-survivors of domestic abuse experience economic abuse, and 60% are in debt as a result.¹⁷

Victim-survivors whose assets are within the control of the abuser or whose 'surplus' income is spent repaying coerced debts, are penalised by the test. In the case of joint assets, the test does not acknowledge that many victim-survivors do not have the power to liquidate these assets.

Policy context

Significant changes were made to the legal aid means test in April 2013 when new regulations came into force following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The scope of legal aid provision was considerably reduced. Victim-survivors of domestic (including economic) abuse are a group who remain within scope of legal aid, subject to certain eligibility requirements. Legal aid is vital for victim-survivors to address the power imbalance inherent in domestic abuse cases and enable access to legal protection.

Whilst victim-survivors of domestic abuse remain within the scope of legal aid,¹⁸ they are subject to means and merits testing. The focus of this report is the means test, which inevitably disqualified many victim-survivors from legal aid. However, those disqualified do not always have the means to pay for legal representation. This has forced many to self-represent against the abuser and many others to abandon the possibility of legal proceedings. It is common for victim-survivors to spiral further into debt to cover some or all of the legal costs. For more detail on the policy context, see Annex.

The now wide recognition of the negative impacts of the LASPO changes on family justice has prompted calls for a variety of reforms, expanding access to legal assistance and representation. The Law Society, for instance, has called for the reinstatement of early advice in family cases¹⁹. The Bar Council proposed an (unsuccessful) amendment to the Domestic Abuse Bill to provide non-means tested legal aid in all domestic abuse cases. The influential [Harm Panel report](#), looking at how domestic abuse allegations are dealt with in private law children's cases, found lack of access to legal representation was "the most important and frequently mentioned form of structural disadvantage." The government's own Post-Implementation Review of LASPO²⁰ indicates that, "online advice alone was not considered a suitable alternative to legally aided help or representation." The government's ongoing review of the means test proposes to look specifically at the capital thresholds for victims of domestic violence²¹. The fundamental issues with the means test as they affect domestic abuse victim-survivors however cannot be addressed by piecemeal changes.

The survey findings in this report provide stark evidence of the problems with the legal aid means test through the lived experiences of victim-survivors. They show why it is essential that victim-survivors are fully exempt from the means test.

Calculating eligibility for legal aid

The following image shows a breakdown of the different parts of the means test and how eligibility is calculated broadly for victim-survivors of domestic abuse in family law cases. There are some limited cases where the means test does not apply, for example care proceedings.

The test primarily looks at monthly income and 'capital' (assets and savings). If income or capital exceed the caps assigned by the Legal Aid Agency,²² the applicant is deemed ineligible for legal aid. The upper thresholds in cases of domestic abuse are different to other applications, for example disposable capital is capped at £3,000 for immigration cases and £8,000 for domestic abuse cases.

For certain domestic abuse related applications, the thresholds of the means test can be waived completely, through the 'domestic abuse waiver,' so that all victim-survivors 'pass' the means test. However, contribution payments based on income or capital still apply (see further in this report for related survey findings). For contributions based on income, monthly payments must be made, and for those based on capital, a lump sum must be paid upfront.

There are specific calculations to assess the 'capital' of a property, which start from its current value. The likely costs of selling the home (3% of the value) can then be deducted, along with any mortgages, up to £100,000 of any equity and an additional £100,000 if the property is the subject matter of dispute (SMOD) within the proceedings.

Additionally, those who are eligible for legal aid may be required to repay it in part or in full. This is through the statutory charge, which is a charge placed by the Legal Aid Agency against property owned by the applicant. The application of the statutory charge effectively converts legal aid from a grant into a loan. It means that the Legal Aid Agency can recover legal costs from any property, including money, objects and residential property, which was recovered or preserved through the proceedings.

Legal aid means test - family law

Step 1. Passporting benefits



Is the applicant in receipt of the following benefits?

- Income Support
- Income-based Job Seekers Allowance
- Income-related Employment and Support Allowance
- Universal Credit
- Guarantee Credit

YES - income is 'passported'. Proceed to step 4.

NO - proceed to step 2 for the income tests.

Step 2. Gross income test



Is the applicant's gross income less than the cap of £2,657 per month?

Note: If there are more than 4 children in the household, the cap is higher. The means test may take into account the income of other adults in the home (not the abuser).

YES - proceed to step 3 for the disposable income test.

NO - not eligible for legal aid. Check if the waiver applies.

Step 3. Disposable income test



Set allowances are deducted from gross income, such as:

- Housing costs
- Childcare costs
- Dependents allowance
- Partner allowance
- Work expenses
- Income tax, National Insurance

Note: allowances are capped and may not cover all costs, e.g. housing costs for single people are capped at £545 per month.

Disposable income > £733 - not eligible for legal aid. Check if the waiver applies.

Disposable income < £733 - proceed to step 4. Contributions apply over £316.

Step 4. Disposable capital test



This test looks at a person's savings, valuables, property etc to assess the total value of their assets. "Trapped capital" can be ignored, e.g. equity in a home that cannot be accessed.

Note: unsecured debts are not considered. Property that is the subject matter of proceedings can be disregarded up to £100k. Legal costs may have to be repaid if any capital is recovered or preserved during proceedings (through the statutory charge).

Capital > £8,000 - not eligible for legal aid. Check if the waiver applies.

£8,000 < capital < £3,000 - eligible with contributions.

Capital < £3,000 - eligible.

Paying contributions



Monthly contributions based on disposable income:

Band	Disposable Income	Contribution
A	£316 – £465	35% of income > £311
B	£466 – £616	£53.90 + 45% of income > £465
C	£617 – £733*	£121.85 + 70% of income > £616

*There is no upper limit for Band C when the waiver applies

Contributions based on capital are payable immediately as a lump sum of either the capital exceeding £3,000 or the likely maximum costs of the funded service, whichever is the lesser.

Note: contributions only apply to legal representation, not for legal support classed as 'legal help'.

Waiver of eligibility limits



The upper limits of the capital and income tests can be waived for applications for orders to protect the applicant from harm:

- non-molestation orders
- occupation orders
- forced marriage protection orders
- female genital mutilation protection orders

Contributions still apply with no upper limit for Band C.

Fictional examples where victim-survivors would fail the means test

Income

Amalia earns £33,000 pa, taking home £2,077 pcm. She lives in a privately rented flat in London. Her rent is £1,300 pcm, leaving her with £777 pcm for all her other expenditures. The abuser exploited Amalia's income and forced her to take out personal loans and other debts. She struggles to afford the debt repayments and make ends meet but her disposable income is calculated, according to the means test, to be £1,487 pcm. She wants to get a non-molestation order, so the domestic abuse waiver applies, but she must pay contributions of £731.55 pcm, which she cannot afford.

Capital – joint homeowner

Susan jointly owns a property with her husband, valued at £600,000. She exceeds the capital threshold of the means test and is therefore ineligible for legal aid on the grounds that she has equity in her property. However, she is unable to raise funds from the property without the consent of the abuser.

Capital – sole homeowner

Jade owns a house, valued at £240,000. The mortgage outstanding is £110,000. Her capital is assessed by the means test to be £22,800, which exceeds the upper limit. She could try to apply for a home equity loan to raise funds, but it would probably take several weeks and she needs an urgent protective order. Her access to loans would also depend on the extent of damage the abuser has done to her credit rating. The means test limits can be waived for such orders, however, the requirement to pay contributions means that legal aid would still be unaffordable for Jade. Capital contributions are typically paid upfront in a lump sum and would either be the capital exceed the £3,000 threshold or the likely maximum costs of the funded service*, whichever is the lesser.

*Specialist domestic abuse service Reducing the Risk suggests these orders can typically cost in the region of £1500-£3500.²³

Survey findings

At the time of the survey, the Experts by Experience Group comprised 110 women and SEA received 40 responses to the survey.²⁴

Nature of the court proceedings women participated in

The women who responded to the survey were involved in a variety of proceedings. For some, this involved multiple, parallel proceedings and some were involved in different proceedings taking place at different times (for example they had to return to court years after an initial application for a further matter).

Respondents were most frequently involved in divorce proceedings, with 32 out of 40 respondents (80%) undertaking a divorce. This was followed by financial arrangements (27 women, 68%). 13 responses (33%) were 'other', for example, proceedings initiated by Children's Services, preparatory and enforcement proceedings. Figure 1 shows a breakdown of proceedings.

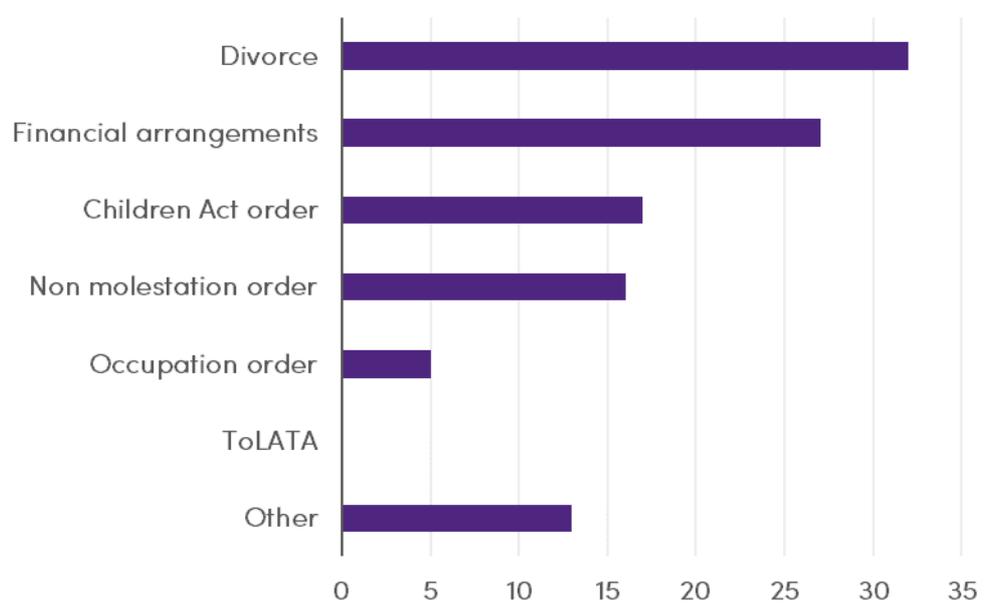


Figure 1: The number of respondents who participated in various court proceedings.

Although ToLATA (Trusts of Land and Appointment of Trustees Act, applying to cohabiting couples) proceedings were not selected, one woman discussed civil proceedings regarding her property and issues that she encountered due to presumptions of costs in these cases. This indicates that respondents may have participated in such proceedings. The judicial review related to trapped capital referenced elsewhere in this report included ToLATA proceedings.

Factors influencing applications for legal aid

Out of 40 respondents to the survey, only 21 women stated that they applied for legal aid. Of those who made an application, five women (24%) applied for legal aid before April 2013 (pre-LASPO), 12 women (57%) after April 2013 and three women (14%) made a combination of applications as proceedings spanned the time pre- and post-LASPO. One woman wasn't sure when her application was made.

Of the 21 women who applied, only eight were successful in accessing legal aid (38%). This equates to just 20% of all respondents.

There were two groups of women who did not access legal aid – those who did not apply for it and those whose applications were declined. Women who did not apply cited a variety of reasons, and responses highlighted the role of the lawyer in identifying abuse and economic factors as key barriers.

Of the 21 women who applied, only 8 were successful in accessing legal aid (33%).

- Six women (19%) said they were advised by a lawyer that they were not eligible due to exceeding the capital or income elements of the means test.
- Five women (16%) received advice they were not eligible due to the means test from someone other than a lawyer.
- One woman (3%) said she was eligible but was deterred from applying because the statutory charge²⁵ would have been placed against her home.
- Three women (10%) said they did not recognise the abuse at the time or felt unable to disclose it.
- Two women (7%) said that they did not know legal aid was an option.
- One woman (3%) stated multiple reasons – concerns about the statutory charge and fear of disclosing the abuse.
- One woman (3%) was advised by a solicitor that legal aid was not an option because of the nature of the application – enforcing a court order.
- Three women (10%) said they spoke to lawyers about experiencing economic abuse, but that this was dismissed or not identified as abuse.

Further in the survey, there were also comments about requirements for evidence of domestic abuse, and the abuse not being recognised by legal professionals.

"I was advised that I'd have to prove the abuse and without it being physical that it would be extremely hard to do." – Expert by Experience

One woman spoke about other professionals outside of the legal arena being unwilling to provide evidence of domestic violence:

“The GP said that, as I did not have bruises, he was unable to complete the form.” – Expert by Experience

Two women also cited the perpetrator being able to access legal aid, despite jointly owning assets that disqualified the victim-survivor and/or having a substantial income.

“The perpetrator has been receiving legal aid by making false allegations. This has now been revoked after investigation.” – Expert by Experience

Eligibility barriers

Women cited a variety of barriers to being considered ‘eligible’ for legal aid. Before even making an application, one woman (3%) was advised that her application was out of scope, 11 women (28%) were advised not to apply due to the means test requirements, and four women (10%) found their experiences of abuse were not recognised by professionals. 13 respondents (33%) said that they had applied for legal aid and that their applications were declined.

Those who said they were deemed ‘ineligible’ gave the following reasons (respondents were able to select more than one):

- 13 women (33%) stated that they were deemed to be over the capital threshold.
- Two women (5%) stated that they exceeded the income threshold.
- Three women (7.5%) said they did not access legal aid due to having insufficient evidence of the abuse.
- Two of women (5%) stated that they never understood why they were refused.

Assessment of income

“It has meant that I am still struggling with the impact of the cost. Although my income was judged too high, I was only earning £22k and had debts from the marriage of £150k in my sole name.” – Expert by Experience

The income threshold was an issue for women. Two respondents to the survey (5%) said that they were unable to access legal aid as their income was over the upper limit. An additional four women (10%) stated that they were assessed as needing to pay contributions due to their income. Two of them could not afford the contributions and were unable to access legal aid as a result (see below discussion of contributions for further details). One woman said that the calculated disposable income was not representative of her actual disposable income, but she still managed to pay the contributions by borrowing money and getting into debt.

Unsecured debts were highlighted as an issue as these are not taken into account in the means test regulations. One woman argued that debts should be taken into account when calculating disposable income. This is pertinent when considering that debts may have been accrued by the abuser – a common form of economic abuse.

In addition, the thresholds of the disposable income assessment are not representative of everyday living costs for many victim-survivors. As reported by the Law Society and University of Loughborough, families who are only just able to pay for necessities such as food, housing and heating, but do not have enough for other expenses such as clothing, household goods and personal care items, are still assessed as having to pay contributions.²⁶

The cap on housing costs of £545 pcm for a single person falls far short of average rents, particularly those in the private rented sector for which the average cost of rent in England now exceeds £1,000 pcm.²⁷ In London, Local Housing Allowance (LHA) rates (which represent the 30th percentile of private rents) for a one-bedroom property are typically in excess of £1,000 pcm (see Table 1).

Table 1: Local Housing Allowance (LHA) rates for one-bedroom properties in different areas of London, per calendar month. LHA rates represent the bottom 30% of private market rents being paid by tenants in a given area, or Broad Market Rental Area (BRMA). These LHA rates are significantly higher than the legal aid means test upper limit for housing costs.

Broad Market Rental Area (BRMA)	Local Housing Allowance rates for one-bedroom properties (pcm)
Central London BRMA	£1280
Inner West London BRMA	£1205
Inner South East London BRMA	£1147
Outer South West London BRMA	£1047
Inner South West London BRMA	£1124
Inner North London BRMA	£1124
Outer North East London BRMA	£897

The disposable income assessment doesn't take account of the reality of housing costs. The upper limit for disposable income in the means test is £733 per month. However, single women renting a one-bedroom property at the 30th percentile of rents in Central London would normally need to pay rent that is £735 over the cap on housing costs. This would fully consume the entire disposable income allowance, before considering other essential expenditures. Someone with an income sufficient to cover this rent, but with none left over as disposable income and insufficient funds for legal fees, would not be entitled to legal aid.

As noted above, it's also important to consider the role of debts. This is especially important for victim-survivors of domestic abuse, 95% of whom experience economic abuse and 60% of whom are coerced into taking out loans and credit. Even those who earn a gross income over the £2,657 per month upper limit may be struggling with debt repayment that consumes much of this seemingly adequate income. This debt may be a direct result of economic abuse and should not be the barrier to accessing legal advice and representation to obtain relief from the very same abuse. The means test must recognise actual debt repayments and housing costs.

Assessment of capital

“The capital I had in the property was entirely notional.” – Expert by Experience

Many respondents – 13 (33%) –exceeded the capital upper limit of the means test. The reasons given were mainly to do with ownership of property, showing that homeowners are particularly affected by this aspect of the means assessment. This is significant given that 63% of the UK population live in privately owned housing.²⁸ In addition, for the women who are eligible, the statutory charge would apply, and this presents further issues which are outlined in this report.

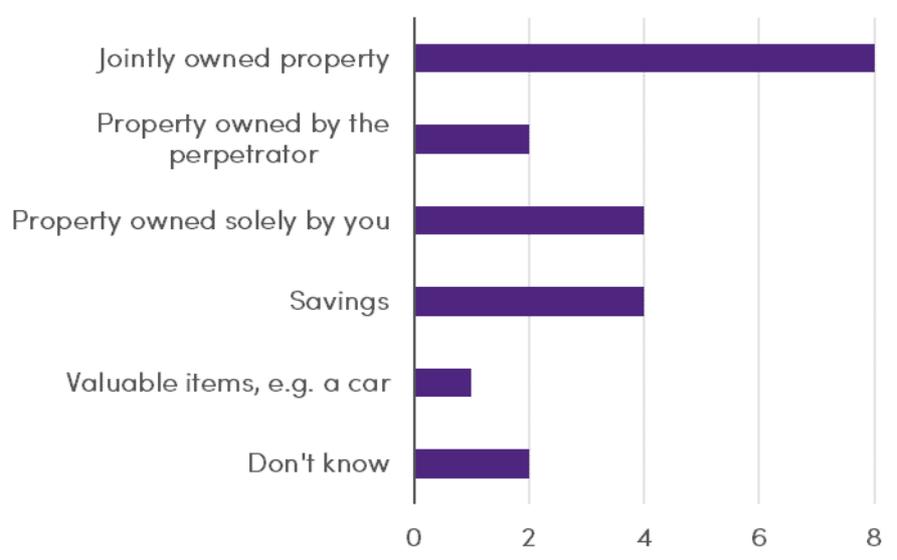


Figure 2: Reasons for exceeding the upper limit of the capital assessment, shown by number of women.

Only four women (10%) stated that all their costs were covered by legal aid, and they did not have to pay for anything else, despite eight women (20%) accessing legal aid. In addition to paying contributions, there are other litigation-related costs which survivors find it especially hard to bear because of their situation. Some victim-survivors may be awarded legal aid but still be exposed to legal costs they cannot afford.

Trapped capital

A key issue identified by respondents was that the means test did not account for the control that perpetrators have over a jointly owned or marital home. Respondents stated that they did not think this should be taken into account as capital within the means test. Even sole homeowners encountered this problem. Four respondents to the survey (10%) said that they were unable to access legal aid due to owning a property in their sole name. For example, one respondent was precluded from getting legal aid because the abuser had lodged a Notice of Interest with the Land Registry, which blocked her from releasing equity or securing any borrowing against her home.

*“Having a beneficial interest in a property should not count towards the legal aid means test for women who have been abused. In my case I was forced to leave my home and had no access to it. Because of this interest in a property I couldn't sell/access, I didn't meet the threshold for legal aid, even though I had limited savings to pay for legal bills.” –
Expert by Experience*

There is a paradox of being expected to liquidate an asset that is the subject matter of the court proceedings. Whilst capital that is the subject matter of dispute (SMOD) can be disregarded, this is capped at £100,000. This is similar to the mortgage disregard prior to the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020, which removed the cap. One woman whose home was the SMOD felt let down when she was vulnerable and in need of help:

“Horrendous that I can't access this when I am at my most vulnerable as my assets were tied up in a house that we were in court over.” – Expert by Experience

Trapped capital was recognised in a judgment by the High Court in response to a judicial review of the means test. SEA supported the litigation, which was brought by the Public Law Project in June 2020. The litigation was on behalf of a victim-survivor who had been declined legal aid due to jointly owning a property with her ex-partner. The woman was in receipt of Universal Credit and was unable to use the property to raise funds to pay for legal proceedings. The court recognised these circumstances and concluded that the Legal Aid Agency has discretion to ignore trapped capital, a judgement which was applied immediately.²⁹ We understand, however, that women are still being refused legal aid despite their capital being trapped (see discussion in Annex for more detail).

Compensation and back-payment of benefits

Three women raised concerns about the assessment of capital relating to back-payments on benefits and compensation. For one respondent, this was compensation following an accident that left her requiring a wheelchair. Having to pay for legal costs using funds meant for a wheelchair accessible vehicle had long-term implications for her health and independence.

"I used up all the settlement awarded for an accident, that was meant to help pay for carers and extra living costs, on legal bills...I have had to give up the dream of having a wheelchair accessible vehicle as I can no longer afford the large deposit required by Motability, so my independence is limited." - Expert by Experience

One woman reported that she sought compensation through the Criminal Injuries Compensation Authority specifically to cover legal costs, as she was ineligible for legal aid.

Contributions and repayment of legal aid

Four women stated that they were required to pay monthly contributions due to the assessment of their income. Of these, two women stated that they were unable to pay because their actual disposable income was less than that assessed by the Legal Aid Agency, and they were therefore unable to access legal aid.

As mentioned earlier, the means test calculations relevant to calculating disposable income and income-based contributions are flawed. They do not consider the actual living costs victim-survivors have, especially housing costs, childcare and debt repayments. This leaves victim-survivors unable to access legal aid or facing further debts which impact their economic safety and ability to rebuild their lives after domestic abuse.

Respondents also reported that repayment of legal aid following a financial settlement, through the statutory charge, undermined their long-term economic stability and safety. Some had waited years for a financial settlement, to access their assets and lift them out of poverty, to find that much of it was consumed by legal aid repayments.

Two women stated that they were unable to pay contributions because their actual disposable income was less than that assessed by the legal aid agency, and therefore unable to access legal aid.

“During the court proceedings, which lasted six years, I was on benefits so not required to make a contribution to legal aid. But when the divorce settlement came through, I was required to pay back the £21.5K legal bill incurred...The settlement money got swallowed up in legal and living costs like rent, food, and bills so there wasn't much of a point of us having the settlement. I felt it was wrong that we had to pay all the legal aid back when we were in poverty.” – Expert by Experience

Some women mentioned that the need to repay the legal aid through the statutory charge after reaching a financial settlement was a deterrent to accessing legal representation and a barrier to financial security after the abuse. One woman decided not to apply for legal aid as she knew that it would be charged against her property.

The impact on victim-survivors of funding legal proceedings

More victim-survivors had to self-represent (33%) than were able to access legal aid (20%). The impacts on the economic safety and independence of victim-survivors unable to access legal aid for essential legal proceedings were many and wide-ranging, and are set out below.

Debt and destitution

“I got into debt paying legal fees and not paying off my cards...The fact I had a small child and heavy overheads made no difference. I learnt then that poorer people got legal aid and rich people could afford the legal system but, if you were working, there was no help whatsoever and the costs are ridiculous and crippling.” – Experts by Experience

The depletion of savings and other economic resources was mentioned throughout the survey responses, along with the accrual of debts in order to pay for legal costs when women were unable to access legal aid. These debts were significant, with many women citing debts reaching tens of thousands of pounds. Two women even spoke about legal fees reaching into six figures.

Responses to the survey showed that women used a myriad of ways to try to access legal advice and representation, including a mixture of self-representation and ad-hoc support from lawyers. We asked women what they had to pay for out of their own pocket:

- 28 (70%) paid for advice outside of court
- 24 (60%) paid for help filling in paperwork and/or writing statements and submissions
- 24 (60%) paid for representation during hearings
- Other costs included: meetings with barristers outside of court; counselling to cope with the emotional impact of the court case; accounting; actuarial work; surveying; and court fees.

We asked respondents how they managed to pay for this, and most used a combination of methods. The most common were using savings (20) and borrowing money from friends and family (18); thus depleting an economic safety net and accruing informal debts. Many women also acquired formal debts, such as taking out loans, credit card debt and overdrafts (see Table 2 below).

Table 2: Methods by which women accessed legal advice and/or representation (n=40).

How did you pay for legal advice, representation or legal aid contributions?	Number	Per cent
I used my savings	20	50%
I took out a litigation loan	2	5%
I took out another type of personal loan	7	18%
I used credit cards	9	23%
I borrowed money from friends or family	18	45%
I used my overdraft(s)	7	18%
I sold assets such as my car or jewellery	12	30%
I remortgaged, released equity or sold my home	5	13%
I made serious cutbacks that affected my ability to pay for basics such as food	18	45%
Arranged to pay after financial settlement	3	8%
I had pro bono representation	0	0%
I used free consultations or advice lines	5	13%
I represented myself	12	30%
All my costs were covered by legal aid	4	10%
Other	7	18%
Total responses	40	

For respondents, it's clear that paying for legal advice and representation pulls women down economically, decimates any economic safety nets and affects their ability to rebuild their lives. Perhaps most concerning, 18 women (45%) stated that they made serious cutbacks that affected their ability to pay for basics, such as food. Access to food was also a recurrent theme amongst written responses. One woman told us that she was completely destitute.

18 women stated that they made serious cutbacks that affected their ability to pay for basics such as food.

"Street homeless and starving" – Expert by Experience

A further respondent told SEA they were diverting money they needed for day-to-day expenditure to pay legal costs:

"Spending large amounts of money I don't have [on legal costs] instead of living [costs] and eating." – Expert by Experience

Many women were forced into poverty to fund legal battles. Respondents did not access any 'pro bono' support. Women said they were "financially ruined", even where the legal costs were kept low by partially self-representing.

"It was still a large amount of money with the ad-hoc representation. It impacted on providing for my children and increasing the debt I'm still in." – Expert by Experience

Additionally, women told us that this impacted the economic safety of elderly relatives, indicating far-reaching economic impacts across society.

Disabled women also reported facing economic penalties that ate away at money earmarked for the care that they need. One woman was not eligible for legal aid due to receiving a settlement following an accident, and after using this money to pay for legal fees, had to stretch Universal Credit payments further than intended:

"I used settlement money from an accident...I [now] have to pay top ups for my carers from my Universal Credit, rather than from my accident settlement. This makes money tight each week." – Expert by Experience

Some women spoke about how the economic abuse they experienced during legal proceedings caused their legal costs to inflate, through excessive correspondence and other means. This is due to the court process itself being used to start, continue or escalate economic abuse, which is discussed further in this report.

"I used £100k, which was all of my savings, on court proceedings for children and finance. His solicitor used to send lots of harassing letters to intimidate me, drive up costs and deplete my will to carry on." – Expert by Experience

Employment

Many respondents said that their employment was negatively impacted by legal proceedings, particularly for those who did not access legal aid and were self-representing.

15 respondents (38%) left written comments describing how their employment was affected due to self-representing. One respondent even stated that she deliberately kept financial proceedings out of court because of the impact she anticipated on her employment and education, even though this was to her own financial detriment.

Six respondents (15%) who were LIPs said that they had lost their job or were no longer able to work at all due to the demands of the court case. Four further women (10%) spoke about being unable to work as many hours as they had previously, indicating the earned income of at least 25% of women was diminished due to the demands of the court case.

One respondent who had lost her job because of the impact of the court proceedings had subsequently found new employment, but then feared her new job would also be at risk due to continuing proceedings.

"This is my second year in court. No resolution. I've lost my job, now have a new one, fear that will be lost too." – Expert by Experience

This raises serious concerns about victim-survivors' economic stability and safety, both during court proceedings and in the long-term if their earning potential and career pathways have been impacted.

Another woman, who had to leave her full-time job when she fled the abuser and begin hourly-paid agency work, described how attending the court hearings further reduced her ability to work and reduced her income. Furthermore, women described the time pressures and costs of accessing free advice surgeries and services, whilst trying to hold down a job and make ends meet.

“Taking time off work to get to legal centres at a certain time when they can offer you a 15-minute slot, travel to the lawyer, phone calls, having no savings, no support or financial safety net. Then [because of] losing work, I had to take any work in totally unrelated jobs to get money for basics like food and utilities, terrified I would 'go under' and still having to 'fight the battle'.” – Expert by Experience

Many respondents found that self-representing in the family court became a “full-time job”, in many cases lasting for several years. Responses further detailed the impact of this burden on time and other resources. Respondents described being looked over for promotions due to needing to take time off for court and to attend Cafcass meetings. This further demonstrates a need for paid leave for domestic abuse victims-survivors. SEA has called for paid leave previously, including in response to the Department for Business, Energy and Industrial Strategy’s (BEIS) call for evidence on ‘Support in the workplace for victims of domestic abuse’.³⁰ In this response, we detailed how court proceedings specifically place an additional burden on victim-survivors’ employment, particularly for LIPs, and that this leave would make a significant difference to survivors’ lives.

Long-term impacts on employment also emerged from the survey, and one woman spoke about how support from her employer changed over time. This shows that the duration of court proceedings can test the goodwill of employers. Paid leave for domestic abuse would send out a clear message that workplaces need to support victim-survivors.

“My employer was initially supportive, however the other party failed to cooperate, so proceedings took longer than necessary and [my] employer began to comment.” – Expert by Experience

Women who were able to continue working outlined emotional issues that affected their performance at work, such as breaking down in tears from the stress of representing themselves. SEA's evaluation report of the Everyone's Business Project, which worked to improve the response to domestic abuse in the workplace, also found an emotional impact of family court cases on employees with links to performance.³¹

Self-employed women also reported impacts of representing themselves in court on their work and long-term economic safety.

“Defending myself in court over the last eight years has consumed my life, making it very difficult to for me to run and develop my business. This in turn has made it incredibly difficult to support my four children and pay the household bills, including the mortgage, and service the debts I have been left with.” – Expert by Experience

Childcare was also mentioned as another factor that required significant time and financial resources, alongside employment and having to prepare a legal case as a litigant in person. Women spoke about how they simply did not have the time to carry out childcare, work and self-represent, so had no choice but to reduce their working hours.

As detailed further in this report, respondents also said that their health was affected by self-representing and the stress of having to pay for legal fees. This indirectly prevented some from working.

It is clear that self-representing had a profound impact on employment and earning potential for the Experts by Experience who responded to this survey. This will have long-term implications for their economic stability and safety. This undermines efforts to support women's economic independence and will hinder the wider benefits this has for society and the economy. Government policies should support women, especially victim-survivors who are rebuilding their lives after abuse, to access and retain employment and the economic independence and safety it brings. Having to act as a 'lawyer' in a legal case against an abuser, a reality faced by too many survivors due to the current legal aid scheme, undermines rather than enhances women's ability to enter and retain employment.

Health

"I suffered significant, long-term, chronic health impacts, including complex PTSD, frequent migraines and insomnia. The sense of being utterly alone in this long battle was also significant. It required a superhuman effort to keep going. I think it will take me many years to recover psychologically." – Expert by Experience

The emotional and mental impact of self-representing was substantial, with women describing a deterioration in their mental health due to representing themselves in court. Women reported experiencing "severe stress, anxiety and panic attacks" and also experiences of depression and suicidal thoughts. For one woman, trying to represent herself against the abuser and obtain a safe outcome without knowing the law was "emotionally scarring". Another woman described the trauma of having to face the abuser in court as a litigant in person:

"I don't know if you understand how utterly traumatic this is against an abusive perpetrator, who will not listen or care and realistically wants to destroy you and take everything, and always has." – Expert by Experience

The fear and stress associated with the court process exacerbated chronic illnesses for three women. Others spoke about how the stress and trauma led to physical health problems which were so severe that they were no longer able to work (discussed further in 'Employment' section above).

There were many more reports of mental health impacts. Victim-survivors said that they were emotionally and physically drained, and that their relationships with their children were affected by the intense work required to prepare their legal cases. For those who managed to fund representation independently, the debts they incurred in the process also caused mental distress. One woman described being:

"In a financial cul-de-sac with no way out." – Expert by Experience

Safety

The survey did not ask about safety measures in court, however safety was a theme within women's responses. In addition to the marked health and wellbeing impacts, some women stated that their safety had been compromised by participating in the proceedings. One woman stated that she had asked for special measures which were not provided. Harassment was also raised. One woman detailed how the many years of court hearings enabled her ex-partner to continue to stalk her.

"They harassed me outside the court room when I was a LIP and they cornered me." – Expert by Experience

Some women also detailed risks to their children that arose as a result of being unable to access legal representation. One respondent felt that child contact proceedings were compromised as they did not have the necessary expertise to self-represent. Another woman's effort to reach an agreement outside of court, reducing costs, meant that she had to agree to child contact and pay for this to happen, as she was unable to afford to go to court for an order. This was despite having serious safety concerns for her children. A further woman stated that a lack of access to funds meant she was unable to vary an unsafe order relating to child contact. SEA has raised this issue previously, and the Harm Panel report recognised SEA's concerns that victim-survivors need legal advice and representation in order to effectively rebut the presumption of parental involvement in child contact cases.³²

In addition, several women identified the proceedings as a way that the abuser continued to subject them to economic abuse, adding to the multiple forms of abuse women faced during proceedings.

“The perpetrator has used the court system to inflict economic abuse through his numerous court applications. This abuse should be identified and eliminated.” – Expert by Experience

Finally, women also felt abused by the courts themselves – a form of institutional abuse. Some felt that their interactions with legal professionals replicated the dynamics of control used by the abuser.

Additional themes

The role of legal and court professionals

The survey prompted responses that detailed issues with family court proceedings more broadly, beyond access to legal aid, which are worth outlining.

Respondents raised concerns about the service provided by lawyers through legal aid funding. This mirrors reports elsewhere which detail a lack of understanding of abuse by legal professionals and inappropriate advice being given to victim-survivors.³³ This points to a clear need for a trauma-informed approach to cases where domestic abuse is raised. Some of the challenges in this area are also linked to wider cuts to the legal aid budget and the sustainability of family legal aid work.³⁴

The need for lawyers to recognise and support women through the ongoing abuse from their former partner was highlighted as paramount. One woman cited a positive experience with a lawyer and the difference it made to be represented by someone who understood the dynamics of domestic abuse.

“I was lucky to get a lawyer who’d experienced this type of character before, she knew how to work with him. She was as much emotional protection as legal advice, limiting my access to him or his attacks, and softening the blow at times.” – Expert by Experience

Concerns were raised about agencies involved in the court proceedings, such as Cafcass, including a lack of understanding of the reality of self-representing. This mirrored wider concerns that professionals at all levels of the proceedings did not understand how abusers could perpetrate economic abuse through the court system, including as a means to increase legal fees, such as vexatious litigation. SEA shared concerns about repeat applications and the need for clear guidance on the use of section 91(14) of the Children Act 1989, or ‘barring orders,’ in its response to the Harm Panel review³⁵. The recommendations published in the resulting Harm Panel report are very much aligned with SEA’s recommendation.

Conduct of the abuser

As mentioned elsewhere in this report, being denied legal aid and having to self-represent meant that women felt at a disadvantage when it came to court outcomes. Many women spoke of financial settlements that were unfair or that left very little once the legal aid costs were recovered. One woman attributed the unfair financial settlement in her case to having to act as a litigant in person where the abuser was represented:

“[It was] very stressful and ex’s solicitor used bullying tactics to influence my outcome.” – Expert by Experience

Respondents mentioned the difficulty in raising the issue of economic abuse, or “conduct” of the abuser, in the first place, particularly within financial proceedings. The fact that conduct can only be raised within financial proceedings when it is considered exceptional, as defined by case law³⁶, will certainly affect this.

Concerningly, research has shown that women who report domestic abuse within financial proceedings are more likely to receive a minority share of a property than women who do not.³⁷ The same study also found that women had to “give up” on proceedings, to their own detriment, in order to limit further abuse. SEA hears anecdotal reports of women being advised by legal professionals not to mention domestic abuse within proceedings. Alarmingly, the study referred to suggests that it may not always be in the victim-survivors’ best interests. This exemplifies gender stereotypes and biases which often underpin domestic abuse.

In response to the survey, many victim-survivors raised concerns about the abuser’s poor conduct, including a lack of response to abusive behaviour by the court. In addition, many women spoke about the inability of the court process to address economic abuse that had happened when they were in a relationship with the abuser, and that which was taking place post-separation through the proceedings.³⁸

“The Family Court was not fit for purpose for financial abuse, it could only threaten action, my husband did not comply and the court could not help.” – Expert by Experience

An inability to access legal aid, and therefore legal representation, means that victim-survivors are less able to challenge abuse from a former partner. It is also imperative that victim-survivors’ accounts of economic abuse are heard within financial proceedings. These will be pertinent to their current and long-term economic circumstances and needs and, therefore, to any financial settlement or order. Qualified legal representatives will be better equipped to do this.

Concerns were also raised about the frequent breaches of financial orders by abusers and the inadequacy of the process of enforcement of these orders.

"I am still waiting payment of a maintenance order from 2010, I cannot get the courts to enforce." – Expert by Experience

It is vital that abusers are held to account for their abuse, and the systems in place within the family and civil courts must be robust enough to do this.

Access to legal advice and support, especially in the face of abusers being able to exert control in and through the court room, is essential to enable women to challenge this control and access justice. The legal aid means test must not be a barrier to this.

Recommendations

As we have outlined throughout this report, the legal aid means test fails to take account of the economic realities faced by those experiencing domestic abuse.

Moreover, the wider context of domestic abuse policy and legislation calls for a re-examination of the means test, with the new statutory definition of domestic abuse in the Domestic Abuse Act now including economic abuse.

Government policies need to be consistent with this explicit recognition of economic abuse. The legal aid system currently undermines this recognition in the way it applies the means test to victim-survivors. This is because, as the survey findings show, without legal aid, victim-survivors are:

- unable to leave abusers because they cannot afford the legal costs of separation
- unable to rebuild their lives separate from the abuser because of legal costs depleting any remaining resources
- exposed to further economic abuse, by the abuser, through the court system.

SEA is calling for victim-survivors of domestic abuse to be exempt from the legal aid means test, to ensure they can access the legal support they so desperately need as they escape from abusive partners and rebuild their lives. Given the harm that victim-survivors have experienced, it is crucial that they are helped to access the justice system and prevent further harm to them and their children.

An exemption from means testing is the only way to ensure that victim-survivors can access the justice system when they need it. SEA has considered different aspects of the means test that could be improved to make the test fairer for victim-survivors of domestic abuse, and we outline these below. Whilst these changes would be an improvement on the current position, they are insufficient to ensure access to legal aid for all victim-survivors of domestic abuse who need protection for themselves and their children.

Government policies need to be consistent with the explicit recognition of economic abuse in the Domestic Abuse Act.

An exemption from means testing is the only way to ensure that victim-survivors can access the legal support they need when they need it.

A fairer income assessment

As outlined in this report, the disposable income test underestimates essential living costs. This results in an over-estimate of a person's ability to pay for legal costs.

Costs of living, including housing and childcare, are not accurately represented in the means test. There is no reflection of the fact that housing costs vary greatly across the country and cannot be represented fairly by a single cap.³⁹ Accordingly, the Legal Aid Practitioners Group (LAPG) recommend the removal of the housing costs cap of £545 per calendar month in family law legal aid and domestic abuse cases.⁴⁰ The cap is inconsistent with other areas of government policy. Means testing for the housing element of Universal Credit is based on Local Housing Allowance rates, not a one-size-fits-all cap.

No one should have to sell their home or move to a cheaper area to access protection from harm, and it is not always possible to do so during a fixed-term private rental contract. Further, the immediacy and urgency of domestic abuse matters means that it is not possible to do so or not safe to wait.

Similarly, the cap on childcare costs is unrealistic for many, and other essential costs, such as travel to work, are not considered at all. Our findings show that some women living in poverty and struggling to afford food for their children are deemed to have too high an income to access legal aid.

Additionally, including a new partner's income in the income assessment increases economic dependency and hence increases the risk of economic abuse. This also assumes the victim-survivor has access to this income and that the new partner is willing or able to help. We know that abusers can exploit this situation, and what may seem initially as a generous offer can later be unveiled as coercive control. This policy undermines victim-survivor's economic independence and safety.

Debt may be a direct result of economic abuse and must not be the barrier to accessing legal advice and representation to address the very same abuse.

Debts are a significant element of economic abuse. 24 respondents (60%) said that the abuser had forced them into debt.⁴¹ The test fails to consider debts and repayments, which can consume large amounts of income. Even those who earn a gross income over the £2,657 per month upper limit may be struggling with debt repayment that consumes much of their income. This debt may be a direct result of economic abuse. It must not be a barrier to accessing legal advice and representation to obtain relief from the very same abuse.

While the factors described above could be addressed through changes to the means test, this would be likely to result in further complication and administrative burden. Crucially, any adjustments simply cannot account for economic abuse. This is because the Legal Aid Agency can never determine that the applicant has control over their income and that it is not being controlled by the abuser. It is common for abusers to withhold information and important documentation about financial affairs and products. This often makes it impossible for victim-survivors to provide evidence of financial abuse to support an application. This would be exacerbated if the test was to become more complicated by requiring evidence of debt status.

How can the Legal Aid Agency determine whether the applicant actually has control over their income, and that it is not being controlled by the abuser?

If arbitrary caps are retained, victim-survivors who need protection will be blocked from accessing legal aid and left at risk. Assessment of eligibility must take into account realistic essential living costs of victim-survivors and, crucially, debts must be considered. Debts may be the result of previous economic abuse. Taking them into account in assessing income is also important to prevent abusers from further benefiting from their controlling behaviour.

Consistent recognition of trapped capital and ‘capital passporting’

The capital test fails to acknowledge assets that are controlled by the abuser, and the full value of those that are the subject matter of dispute.

Any jointly held property, or any property owned solely by victim-survivors who are married, will be a target for the abuser to control. It is common for economic abuse to escalate after separation, as it is a form of domestic abuse that can be perpetrated without physical proximity. Therefore, it is imperative that legal aid eligibility assessments acknowledge how abusers may restrict access to economic resources as part of a wider pattern of abuse known as coercive control.⁴²

SEA welcomes the recent High Court ruling clarifying that the Legal Aid Agency has discretion to disregard trapped capital (see Annex for further information). This judgment came after the SEA survey and it is too early to have clear data on what difference this has made for victim-survivors. However, we understand that the discretion is not being applied appropriately in all cases (see Annex for more detail).⁴³ This is a significant problem: 78% of respondents to the survey who were ineligible for legal aid said they were so due to the capital test, and of these, the majority said they were ineligible due to home ownership. In its current form, the capital assessment is serving as a barrier to providing legal aid to those most in need.

Any asset that is the subject matter of dispute with an abuser must be disregarded in its entirety from the capital test. In these cases, victim-survivors are unable to access or borrow against the property. Where a high value property is the subject matter of dispute, the statutory charge would enable funds to be recovered by the Legal Aid Agency, once the victim-survivor has been supported to cut economic and legal ties with the abuser. De-linking economic ties is an essential first step to achieving economic safety, and it is vitally important that all victim-survivors are able to do this, no matter the value of their home. Victim-survivors should not have to sell their family's home and become homeless to be able to access the legal system.

This has led SEA and others to consider the possibility of 'capital passporting,' whereby victim-survivors who pass the income test can bypass the capital test. This would effectively address the significant numbers who find that joint assets which they cannot access place them over the capital threshold. It would also provide a solution to those excluded from legal aid due to the cap on the disregard for assets that are the subject matter of dispute.⁴⁴ The Post-Implementation Review of LASPO found that the application of the capital test within family and civil law saved an estimated £9m per year, a relatively low figure compared to the £250m saved by reducing the scope of these cases.⁴⁵

Capital passporting would, however, only address part of the problem, leaving many victim-survivors without access to legal representation because of the income test.

More affordable contributions

As this report has shown, unrealistic income and capital assessment means that victim-survivors are faced with contributions that they are unable to pay. They often get into further debt in order to cover them. The survey found that some women had no choice but to decline legal aid as the contributions they were assessed to pay were unaffordable. If disposable income and capital were assessed more realistically, as suggested above, contributions would correspondingly be more realistic. Furthermore, capital contributions, which are an upfront lump-sum payment, must take trapped capital into account.

The requirement to pay contributions is particularly problematic in the case of urgent protective orders. The 'domestic abuse waiver', which purports to make legal aid accessible where these orders are needed, is often inaccessible in practice due to the extent of contributions required. This is supported by research by the Law Society. The research found that one in five (20%) of the 2,026 callers to the National Centre for Domestic Violence helpline who were eligible to apply for a domestic violence injunction were not able to proceed with their application because they could not afford the contributions towards their legal aid.⁴⁶ Hundreds of women in that cohort were left with the choice of facing the abuser in court, alone, without proper advice, or forgoing their application.

This shows that the 'domestic abuse waiver', which makes an exception for victim-survivors in urgent need of protective orders and waives upper limits of the capital and income tests, is not, in fact, providing effective protection. The requirement to pay contributions for applications to which the waiver applies must be removed. No one should be priced out of protection when they need to keep themselves or their families safe.

Conclusion

The current operation of the means test is preventing legal aid from being targeted at those who need it most, which is one of the four core objectives of LASPO. Victim-survivors of domestic abuse are among those most in need of legal advice and representation but many are not able to access it. This results in worse outcomes for victim-survivors and their children. It also results in less efficient and timely court proceedings as litigants are not supported by skilled legal professionals. This leads to wasted court time, and suggests that the anticipated cost saving by restricting legal aid for these cases may be offset by the additional costs placed on the court system.

Victim-survivors who are unable to access legal aid are experiencing significant harm. This harm includes impacts on economic safety, physical safety, health and justice, encompassing a variety of negative experiences such as destitution, debt and loss of employment or earnings.

There are changes that could be made to specific aspects of the means test to make its application fairer towards victim-survivors of domestic abuse. However, with 95% of victim-survivors of domestic abuse also experiencing economic abuse⁴⁷ and the fact that economic abuse can start, continue or escalate post-separation,⁴⁸ nothing short of a total exemption from the means test will fully protect victim-survivors and ensure their economic safety and independence. Unless this is done, many victim-survivors will still be left unable to access the legal support they so desperately need to escape from abusive partners and rebuild their lives.

Annex – Additional policy context

Recent legal changes

In 2020, two successful legal challenges were brought on behalf of women by the Public Law Project, relating to the capital element of the means test. The cases were financially supported by the Law Society, which provided costs protection. Rights of Women, SEA and others supported pre-litigation work through providing case studies and supported the ‘trapped capital’ case by providing witness statements.

One case addressed the paradox of ‘imaginary capital’ through judicial review proceedings. The case challenged the Director of Legal Aid’s refusal to grant legal aid to a victim-survivor of domestic abuse and the lawfulness of the rules relating to how mortgage debt is assessed. The rules included a £100,000 “mortgage cap” whereby outstanding mortgage debt in excess of the cap was effectively treated as equity, hence the term “imaginary capital.”⁴⁹ The legal challenge prompted changes to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations, which now allows the Legal Aid Agency to take into account the full mortgage when calculating capital in a property.

A further judicial review addressed the issue of “trapped capital,” where it is assumed that applicants, of whom victim-survivors are a clear illustration, have access to assets that they are unable to liquidate or use to secure borrowing. SEA supported the litigation which was brought by the Public Law Project in June 2020 on behalf of a victim-survivor who had been declined legal aid due to jointly owning a property with her ex-partner. The woman was in receipt of Universal Credit and was unable to use the property to raise funds to pay for legal proceedings, as the proceeding themselves were brought to decide what to do with the property, which she needed as a home for her children.⁵⁰ The court recognised that applicants may be unable to raise funds in such circumstances and concluded that the Legal Aid Agency did have discretion to ignore trapped capital, a judgement which was applied immediately.⁵¹ Unfortunately, SEA understands from legal professionals that this discretion is not being consistently applied.⁵²

Findings from the Harm Panel report

The final report of the expert panel on ‘Assessing Risk of Harm to Children and Parents in Private Law Children Cases’, known as the Harm Panel report, was published by the Ministry of Justice in June 2020.⁵³ It outlines findings and recommendations of an expert panel following a consultation process which heard from over 1,200 respondents. The central question in the consultation was, “How effectively do the family courts respond to

allegations of domestic abuse and other risks of harm to children and parent victims in private law children proceedings, having regard to both the process and outcomes for the parties and the children?" Most of the evidence focused on domestic abuse. The report concluded that domestic abuse is not being tackled effectively in private family law proceedings and highlighted resource constraints, including barriers to access to legal aid, as a key issue in these proceedings.

The report found lack of access to legal representation was "the most important and frequently mentioned form of structural disadvantage.". It found that, post-LASPO, most private law children cases now involve at least one litigant in person (LIP).

The report found that challenges for LIPs when navigating family court proceedings are particularly pronounced in domestic abuse cases, where self-representation intersects with the adversarial system and pro-contact culture. Pro-contact culture refers to the belief or assumption that children should have contact with both parents, ideally without any restrictions, and that co-parenting is the ideal post-separation arrangement for children. However, the consultation responses suggested that this results in a pattern of minimisation and disbelief of allegations of domestic abuse and child sexual abuse.

[The means test] can exacerbate economic abuse experienced by a victim if their assets are controlled by the abuser who blocks access to them.

- The Harm Panel report

The report referred to submissions from victims who re-mortgaged their home, declared bankruptcy and accrued considerable debt to pay for legal representation to prove their allegations of domestic abuse. It found that the legal aid means test, "can penalise victims financially who may well have equity in a house, or elsewhere, but very limited available cash to afford legal representation. It can exacerbate economic abuse experienced by a victim if their assets are controlled by the abuser who blocks access to them."^{iv}

The report recommended additional investment to make legal aid available in child contact cases to alleged perpetrators as well as alleged victims of domestic abuse in the interests of the child.

SEA's work to date

SEA, along with others, has long argued that legal aid reform is needed to redress the imbalance of power between victims and perpetrators in family court proceedings. In the Round Table Report, 'Economic abuse is your past, present and future' - on the practical barriers women face in rebuilding their lives after domestic violence,⁵⁴ SEA shared the voices and concerns of victim-survivors who had experienced economic abuse through the family court system. SEA made a series of recommendations linked to legal aid provision. Some recommendations related to the 'inequality of arms' present in cases

involving LIPs and some related to the economic impacts of funding litigation. In 2017 SEA worked with the Ministry of Justice to inform its review of the regulations on legal aid in family proceedings and the impact of the domestic violence evidence requirements. As a result of this the range of evidence permitted to show financial abuse was elaborated on, to specify for example bank statements; emails, text messages, diary kept by the victim; or a letter from a domestic violence support organisation.⁵⁵

More recently, SEA used the emerging findings from the present survey in its response to the Justice Select Committee's inquiry into the Future of Legal Aid, bringing out many of the points which are now elaborated on in this report. We are pleased to see that some progress has since been made, with the Domestic Abuse Act prohibiting cross-examination of victims by alleged abusers. However, there is much more to be done.

In SEA's submission to the Harm Panel (above), we raised issues related to an inability of some victim-survivors to access legal aid. Victim-survivors are often unable to properly raise and argue the issue of domestic abuse without legal advice and representation. While private law family law matters which involve domestic violence do come within the scope of legal aid, the legal aid means test serves to unfairly disqualify victims of domestic abuse, and in particular those experiencing economic abuse. The submission argues that attempting to navigate a system designed for trained legal professionals is a daunting and difficult process for many survivors. The problems in court faced by LIPs, such as understanding evidential requirements, identifying legally relevant facts and dealing with forms, coupled with the overwhelming procedural demands of the court, can impact the ability to present a case effectively and thereby shape family court outcomes.⁵⁶ Additionally, it is well understood that a trauma-informed approach is essential to achieving best evidence, and representing oneself against an abuser is often a traumatic experience for victim-survivors, untrained and unused to the legal domain.

Other research findings

In 2016, cuts to legal aid in the family court setting meant that only 20% of family court cases involved parties who both had representation; in 35% of cases neither party had a lawyer.⁵⁷ A fall-out of the increasing numbers of LIPs in the family courts is a lowering in the quality of decisions. Meta-analysis of LIP cases has revealed that lawyers have a positive effect on case outcomes⁵⁸ and good representation produces properly investigated cases.⁵⁹ If these cases are 'lawyer-free zones' then the quality of the proceedings and resultant rulings will be impaired.⁶⁰ The survey bears this out, showing that gendered imbalances in power and economic resources negatively impacted the outcome of family court cases.

The situation is exacerbated for victim-survivors whose ex-partners have the resources to pay for a team of lawyers and advisors, leaving survivors at a significant disadvantage in court. This is especially true if they are not eligible for legal aid and have to represent themselves. The recent Women's Aid report on domestic abuse, human rights and the

family courts contains very similar findings.⁶¹ Not only can the outcomes of cases with unrepresented parties be flawed, evidence reveals that unrepresented parties' cases take twice the time they used to when legal aid was available.⁶²

Other research has highlighted the plight of victim-survivors who cannot access legal aid.⁶³ 29% of women responding to a Rights of Women's survey looking at the ability of women affected by violence to access family law legal aid post-LASPO, were ineligible for legal aid because their disposable income was above the permitted limits. 20.4% were ineligible because they had capital or savings above the allowed limits. Concerningly, 52.8% of respondents said they did nothing as a result of not being able to apply for legal aid. For one respondent, this impacted their decision to leave and they decided to stay with the abuser.

Research commissioned by the Law Society found that people on incomes already 10% to 30% below the minimum income standard are being excluded from legal aid as a result of the income means test.⁶⁴ They found that borrowing against a home can come at a huge economic cost in the long term, especially for those on lower incomes. The research also looked at capital thresholds and the ease of borrowing against property to fund legal proceedings. It found that some low-income homeowners may find it difficult or even impossible to access 'standard' mortgage products as a result of the mandatory affordability checks employed by lenders.⁶⁵ They concluded that, even where borrowing is possible for these groups, turning to the 'sub-prime' or adverse credit sector could place these households in a precarious financial position that could eventually lead to their home being at risk of repossession.

Similarly, the Public Law Project found that changes to legal aid eligibility post-LASPO have excluded people from legal aid who are already unable to sustain an acceptable standard of living without having to pay for legal advice and representation.⁶⁶ They conclude that there is a need to ensure that those who are not otherwise able to pay for legal advice and representation are not expected to make contributions that they cannot afford.

¹ Factsheet: Statistics on financial and economic abuse, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse.pdf>

² 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.

³ <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/>

⁴ Factsheet: Statistics on financial and economic abuse, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse.pdf>

⁵Economic abuse that takes place within a pattern of coercive and controlling behaviour, usually alongside other forms of domestic abuse.

⁶ We also know that victim-survivors who solely own their homes can be prevented from accessing the capital by the abuser. We cannot quantify the number of respondents who faced this issue, although some women detailed this experience in open text responses.

⁷ The survey pre-dated a judgment of the High Court, discussed later in the report, which held that there is a discretion to take into account 'trapped capital' when assessing capital for the purposes of the means test.

⁸ Priced out of Justice? Means testing legal aid and making ends meet, Professor Donald Hirsch, Loughborough University, March 2018, Commissioned by the Law Society, 2018.

⁹ Research into the impact of the legal aid capital and contribution thresholds for victims of domestic violence, 2018, The Law Society

¹⁰ Nicola Sharp-Jeffs and Liz Kelly (2016), Domestic Homicide Review (DHR) Case Analysis, London Metropolitan University, for Standing Together Against Domestic Abuse

¹¹ Research into the impact of the legal aid capital and contribution thresholds for victims of domestic violence, 2018, The Law Society

¹² Factsheet: Statistics on financial and economic abuse, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse.pdf>

¹³ 'Economic abuse is your past, present and future': a report on the practical barriers women face in rebuilding their lives after domestic violence., Surviving Economic Abuse, 2018

¹⁴ Survey carried out in June 2020

¹⁵Welfare and Domestic Violence Against Women: Lessons from Research. Lyon, Eleanor. s.l. : National Online Resource Center on Violence Against Women, VAWnet, 2002.

¹⁶ Surviving Economic Abuse (2018) Transforming the response to domestic abuse, Response to the Government consultation

¹⁷ Factsheet: Statistics on financial and economic abuse, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse.pdf>

¹⁸ Victim-survivors also report problems with providing evidence of domestic abuse (known as ‘gateway evidence’) in order to come within the *scope* of legal aid, which also constitutes a barrier to accessing legal aid. The focus of this report and the survey on which it is based however is *eligibility* for legal aid and the barrier posed by the means test, and not the difficulties with ‘gateway evidence’ although we fully acknowledge them.

¹⁹ Defending the public purse: The economic value of the free legal advice sector, A report for the Community Justice Fund, Clare Leckie, Rebecca Munro and Mark Pragnell, 2021

²⁰ Ministry of Justice, Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, (2019) para 705

²¹ Legal Support: The Way Ahead, Ministry of Justice, February 2019

²² Means Assessment Guidance, Legal Aid Agency, Updated May 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/983070/Means_Assessment_Guidance.pdf

²³ <https://reducingtherisk.org.uk/injunctions/>

²⁴ We received 43 survey responses from Experts and, upon close inspection, two of these appeared to be duplicates. One response also detailed experiences outside of the UK, in another jurisdiction, and so will not be reported here. This leaves 40 survey responses which have been analysed and outlined in this report.

²⁵ The statutory charge converts legal aid from a grant into a loan. It means that the Legal Aid Agency can recover legal costs from any property, including money, objects and residential property, which is recovered or preserved through the proceedings.

²⁶ Priced out of Justice? Means testing legal aid and making ends meet, Professor Donald Hirsch, Loughborough University, March 2018, Commissioned by the Law Society, 2018.

²⁷ <https://homelet.co.uk/homelet-rental-index>

²⁸ It should be noted that it is possible that some of these women may now be considered eligible following the recent changes to the means test mortgage allowance as well as the effect of the judgment on ‘trapped capital’ (see above), although we are unable to make an assessment of how these changes might have applied in the case of each respondent.

²⁹ <https://rightsofwomen.org.uk/wp-content/uploads/2021/01/Means-test-changes-guidance-note-28.01.2021.pdf>

³⁰ <https://survivingeconomicabuse.org/wp-content/uploads/2021/03/SEA-response-to-BEIS-consultation-Workplace-support-for-DA-victims-FINAL.pdf>

³¹ Surviving Economic Abuse, (2020), Evaluation of the Everyone's Business Project, unpublished report

³² Assessing Risk of Harm to Children and Parents in Private Law Children Cases, Final Report, Ministry of Justice, June 2020

³³ As above

³⁴ Civil legal aid: a review of its sustainability and the challenges to its viability, The Law Society, 2021, <https://www.lawsociety.org.uk/topics/research/civil-sustainability-review>

³⁵ Assessing Risk of Harm to Children and Parents in Private Law Children Cases consultation, accepting evidence from June – September 2019

³⁶ Case law such as *OG v AG* [2020] EWFC 52 established that the ‘conduct’ of a party to proceedings, will only be raised in ‘very exceptional circumstances’ where it is ‘obvious and gross’ and it would be ‘inequitable to disregard’ the conduct. This includes domestic abuse.

³⁷ Judith Crisp and Rosemary Hunter, *Domestic abuse in financial remedy applications*, Fam Law, 2019

³⁸ Economic abuse is now included within the statutory definition of domestic abuse in the Domestic Abuse Act 2021, and the offence of controlling or coercive behaviour in the Serious Crime Act 2015 was amended to cover post-separation abuse. SEA campaigned for both these changes.

³⁹ The cap on the housing costs allowance falls significantly short of Local Housing Allowance (LHA) rates (which represent the 30th percentile of private rents) in some areas. This means that much of the calculated ‘disposable’ income is subsumed by housing costs. A single woman renting a one-bedroom property at the 30th percentile of rents in Central London would need to pay rent that is £735 over the cap on housing costs. This would fully consume the entire disposable income allowance, before considering other essential expenditures.

⁴⁰ Manifesto for Legal Aid, Legal Aid Practitioners Group, 2017, https://lapg.co.uk/wp-content/uploads/LAPG_Manifesto_A5_FINAL.pdf

⁴¹ Coerced debt: Impact and statistics factsheet, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/SEA-Coerced-Debt-Statistics-08-2020-Final-1.pdf>

⁴² As defined earlier in this report, abusers undermine their partner’s ability to resist coercive control through depleting their personal, social and tangible (economic) resources.

⁴³ Anecdotal evidence from legal aid practitioners.

⁴⁴ Paradoxically, some victim-survivors may be expected to liquidate an asset to pay for court proceedings to decide what to do with that asset.

⁴⁵ Ministry of Justice, *Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, (2019) para 705

⁴⁶ *Research into the impact of the legal aid capital and contribution thresholds for victims of domestic violence*, 2018, The Law Society

⁴⁷ Factsheet: Statistics on financial and economic abuse, Surviving Economic Abuse, <https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse.pdf>

⁴⁸ ‘Economic abuse is your past, present and future’: a report on the practical barriers women face in rebuilding their lives after domestic violence., Surviving Economic Abuse, 2018

⁴⁹ <https://publiclawproject.org.uk/latest/legal-aid-rule-change-for-home-owners-on-low-incomes-domestic-violence-survivors/>

⁵⁰ Practice Note: ‘Trapped Capital’, Public Law Project, https://publiclawproject.org.uk/content/uploads/2021/07/210726-GR-v-DLAC-Practice-note-v-3_published-tbc.pdf

⁵¹ <https://rightsofwomen.org.uk/wp-content/uploads/2021/01/Means-test-changes-guidance-note-28.01.2021.pdf>

⁵² Anecdotal evidence from legal aid practitioners.

⁵³ Assessing Risk of Harm to Children and Parents in Private Law Children Cases, Final Report, Ministry of Justice, June 2020

⁵⁴ Economic abuse is your past, present and future' – A report on the practical barriers women face in rebuilding their lives after domestic violence, Surviving Economic Abuse, 2018

⁵⁵ Legal Aid Agency, *The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 – Evidence Requirements for Private Family Law Matters*, May 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885447/Evidence_Requirements_for_Private_Family_Law_Matters_guidance_version_10.pdf

⁵⁶ Williams, Kim (2018). *Litigants in person, a literature review*.

⁵⁷ Hill, A. (2016). *How legal aid cuts filled family courts with bewildered litigants*. [online] the Guardian. Available at: <https://www.theguardian.com/law/2018/dec/26/how-legal-aid-cuts-filled-family-courts-with-bewildered-litigant>

⁵⁸ Sandefur, R. (2011) Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes.

⁵⁹ Genn, H. and Genn, Y. (1989) The effectiveness of representation at tribunals. Lord Chancellor's Department.

⁶⁰ <https://www.transparencyproject.org.uk/the-crisis-in-private-law-by-sir-james-munby/>

⁶¹ Birchall, J. and Choudhry, S. (2018) *"What about my right not to be abused?" Domestic abuse, human rights and the family courts*, Bristol: Women's Aid.

⁶² Family Law Week (2019). *Family lawyers call for independent inquiry into treatment of domestic abuse in family courts* [online] available at: <https://www.familylawweek.co.uk/site.aspx?i=ed201043>

⁶³ Evidencing domestic violence: nearly 3 years on – Rights of Women Report, Rights of Women, 2014, <https://rightsofwomen.org.uk/wp-content/uploads/2014/09/Evidencing-domestic-violence-V.pdf>

⁶⁴ Priced out of Justice? Means testing legal aid and making ends meet, Professor Donald Hirsch, Loughborough University, March 2018, Commissioned by the Law Society, 2018.

⁶⁵ Report on the affordability of legal proceedings for those who are ineligible for legal aid by reason of exceeding the capital threshold., Dr Lisa Whitehouse for the Law Society, March 2018.

⁶⁶ <https://publiclawproject.org.uk/wp-content/uploads/2018/09/LASPO-PIR-SUBMISSION-PLP.pdf>

Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it. We work day in, day out to ensure that women are supported not only to survive, but also to thrive.

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