



## **Surviving Economic Abuse (SEA) response to the legal aid means test review consultation June 2022**

### **Introduction and recommendations**

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

Our response will focus on those questions in the consultation which are particularly relevant to victims of domestic abuse, and our answers are limited to our understanding of how the proposed changes may impact this group.

SEA's overarching observation on the proposals in the consultation is that they do not go far enough in ensuring access to justice for domestic abuse victims. Domestic abuse victims should be exempt from the means test altogether in civil, family and immigration proceedings, in order to ensure that they can access the legal support they need to escape from abusive partners, secure protection for themselves and their children and rebuild their lives. Given the harm that domestic abuse victims have experienced, it is crucial that they are provided adequate support from the state to access the justice system. An exemption from means testing is the only way to ensure that victims can access justice when they need it. More detail on this recommendation and the evidence supporting it can be found in a recent report by SEA.<sup>1</sup>

While nothing short of a total exemption can ensure adequate protection, SEA has also suggested in our report certain changes to the existing means test to make it fairer to domestic abuse victims and improve their access to legal aid:

- A fairer income assessment – The assessment of disposable income must take into account: the real housing and childcare costs of victims; 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'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.

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<sup>1</sup> Surviving Economic Abuse, *Denied Justice: How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives* (2021)

- 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 victims from accessing legal advice and representation. They must reflect the victim'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.<sup>2</sup> No one should be priced out of protection when they take steps towards safety.

The consultation proposals attempt to address the above points to a certain extent. However, when considering the complexity of their operation, the added evidential burden imposed on applicants and the administrative burden on the Legal Aid Agency, a blanket exemption from the means test would be altogether more straightforward and possibly more cost effective. The evidential requirements in the current proposals would particularly impact victims who have left their homes without taking all their belongings/documents and those experiencing economic abuse which is the case for 95% of domestic abuse victims.<sup>3</sup> At the very least, all applicants for protective orders, to which the current upper threshold waiver applies, should be exempt from means testing so that they can get the immediate protection they require without having to worry about whether they can afford any contributions required or not.

Bearing in mind that SEA's overarching call is for domestic abuse victims to be exempt from the legal aid means test, and that the consultation does not contain such a proposal, we have given the answer as 'maybe' to several proposals that ameliorate the current position but obviously do not go as far as a blanket exemption. We have made clear in our explanation of these answers that any proposal which improves the chances of a domestic abuse victim getting legal aid – principally the increase in income and capital thresholds and in disregards – are better than the status quo. We have however decided not to say 'yes' to these proposals as we are concerned that the 'yes' answers to each question in the consultation responses received will be added up to show unqualified support for the proposal concerned.

## Answers to consultation questions

**Question 1:** do you agree with our proposal to take household composition into account in the means test by using the OECD Modified approach to equivalisation? Please state yes/no/maybe and provide reasons.

Maybe.

<sup>2</sup> Ibid; Law Society, [Research into the impact of the legal aid capital and contribution thresholds for victims of domestic violence](#) (2018)

<sup>3</sup> Surviving Economic Abuse (2019) - <https://survivingeconomicabuse.org/about-us/projects-and-policy/economic-justice-project/>

SEA is concerned that the equivalisation scale disadvantages lone parents. We are also concerned that the disparity in the equivalisation factor for children over and under 14 when assessing disposable income, seems very large – 72% vs 34% (after housing costs). We worry that this could disproportionately affect younger families, whose costs are not necessarily significantly lower.

This is evidenced in the example of 'Applicant I' on page 52 of the consultation, a single mother of two young children earning £900 per month and receiving Universal Credit and child benefit. They are assessed as being at the very upper limit of the disposable income threshold, despite a relatively small Income, and would have to pay £192 per month in contributions. Given that 49% of lone parents live in poverty,<sup>4</sup> and Universal Credit is designed to ensure that people on low incomes have enough to live on, it's hard to believe that a typical lone parent would be able to afford these contributions, one of the highest amounts the scale allows. This is especially so for domestic abuse victims requiring legal aid, with 95% of domestic abuse victims experiencing economic abuse,<sup>5</sup> and one in four women experiencing economic abuse after leaving the abuser.<sup>6</sup>

We are concerned that women on the lowest incomes will be unable to access legal aid, due to being unable to afford the contributions, or their disposable income being assessed as over the upper threshold and disqualified altogether. This would seriously impact survivors in some of the most economically vulnerable situations. In the context of the current cost of living crisis, this is even more concerning.

The proposals could also disincentivise survivors to work, as reducing their income could be the only way to access legal support. We see the same issue in the housing sector, where women in work are forced to quit their job to access enhanced rate housing benefit to pay for rent in a refuge. It's important that any measures do not impede women achieving economic stability and undermine their safety.

We also understand from the work of our partnership with Money Advice Plus on the Financial Support Line<sup>7</sup>, that the OECD Modified approach is also much less generous than a framework used in debt management, the Standard Financial Statement Spending Guidelines. In this framework, data is taken from the annual Office of National Statistics (ONS) Food and Living Costs survey (LCF) and the Consumer Price Index (CPI). The ONS' LCF is the most significant survey of household spending in the UK. This means that the SFS Spending Guidelines are rooted in the real-life behaviour of low-income households. The guidelines include allowances for communications, leisure, food, housekeeping and personal costs.

These are set by the Money and Pensions Service, a statutory body, so we do not see the rationale for the difference in approach put forward in this consultation, i.e. as to why there is such a variation between the way spending guidelines for low-income people are applied.

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<sup>4</sup> Child Poverty Action Group - <https://cpag.org.uk/child-poverty/child-poverty-facts-and-figures#:~:text=49%20per%20cent%20of%20children,and%20pay%2C%20and%20childcare%20costs>

<sup>5</sup> Surviving Economic Abuse (2019) - <https://survivingeconomicabuse.org/about-us/projects-and-policy/economic-justice-project/>

<sup>6</sup> Sharp-Jeffs, N. (2015) *Money Matters: Research into the extent and nature of financial abuse within intimate relationships in the UK*. London: The Co-operative Banks/Refuge

<sup>7</sup> See <https://survivingeconomicabuse.org/financial-support-line/>

SEA questions how a fair assessment could reach the outcomes outlined above and strongly urges the Ministry of Justice to reconsider the OECD Modified approach.

**Question 2:** do you agree that we should continue to deduct actual rent and mortgage payments and childcare costs for the civil and criminal means assessments? Please state yes/no/maybe and provide reasons.

Yes.

We believe it is always fairer to take into account an applicant's actual costs as far as possible, since that is one of the key factors that goes to the question of whether that particular individual can afford legal assistance or representation. Taking into account actual costs moves away from a 'one size fits all' approach and helps legal aid to be targeted to those who in fact need it most, which is one of the core objectives of the legal aid scheme.

**Question 3:** do you agree with our proposal to deduct jobholder pension contributions as part of the disposable income assessments for civil and criminal legal aid? Please state yes/no/maybe and provide reasons.

Yes, so as not to disincentivise pensions savings and undermine economic independence and stability in later life.

**Question 4:** do you agree with our proposal to limit the amount of jobholder pension contributions we deduct as part of the civil and criminal means assessments to 5% of earnings? Please state yes/no and provide reasons.

No, for the same reasons as in the answer to Question 3 above.

**Question 6:** do you agree with the proposal to deduct agreed repayments of priority debt and student loan repayments taken directly from salary or deducted as part of the applicant's tax return as part of the disposable income assessment for civil and criminal legal aid? Please state yes/no/maybe and provide reasons.

Yes, but we strongly urge that all debts, whether priority or not, be deducted from the disposable income assessment for domestic abuse victims. Debt has a particular dimension for this group, as many victims are coerced into debt and debts in their name may well be the result of economic abuse. Running up debt in the name of a partner is a common form of economic abuse, with 60% of domestic abuse victims in debt as a result of the perpetrator's actions.<sup>8</sup>

SEA's research found that the average coerced debt a survivor faces is over £4,500 per woman and the average number of creditors is five. Victims collectively foot an annual bill of £23.5 million and many use credit cards, overdrafts and loans to survive.<sup>9</sup> It is not reasonable to expect that survivors can negotiate payment breaks for all or their 'non-priority' debts, for up to 24 months. Additionally, for those living on credit to pay for the basics such as food for children, these are likely to be, or should be, treated as priority debts.

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<sup>8</sup> Surviving Economic Abuse (2019) - <https://survivingeconomicabuse.org/about-us/projects-and-policy/economic-justice-project/>

<sup>9</sup> Ibid

A connected issue which SEA would like to raise here is the dangerous practice some women involved in family proceedings are driven to in the absence of legal aid, that of taking litigation loans.<sup>10</sup> A legal aid scheme that truly protects the most vulnerable, needs to take into account the reality that domestic abuse victims get into *further* debt as litigation commences and proceeds, which is in a sense a ‘hidden’ debt as far as the means assessment is concerned. Domestic abuse victims who are already in precarious economic circumstances should not have to further risk their financial security in order to protect themselves and end their relationship with an abusive partner. This once again highlights how inappropriate mean testing is for this cohort.

Taking all these debts into account in assessing income is therefore not only fair but also important to prevent abusers from further benefiting from their controlling behaviour.

SEA is also concerned about the evidential burden which domestic abuse victims will have to bear when it comes to establishing debt, whether it is only priority debt or other debt. We echo the call by the Public Law Project that a more relaxed approach be taken to evidential requirements in the case of evidencing debt. Due to the context of coercive control applicants may not even know about all of the debts taken in their name by an abusive partner. This further highlights the weakness of the means test as a method of assessing the disposable income of applicants experiencing domestic and economic abuse, and points to the need for this cohort to be exempt from the test.

Given problems with evidencing debt, relevant in this regard is the Economic Abuse Evidence Form (EAEF) which SEA is currently piloting and which could potentially be useful in relation to means testing. The EAEF is an information-sharing tool for use by debt advisers to capture information about the abuse that a victim has experienced, modelled on the existing Debt and Mental Health Evidence Form used by money and debt advice services. The Money and Pensions Service has supported its national roll out as part of the UK Strategy on Financial Wellbeing, and government support is needed to widen its reach including rolling it out to local authorities.<sup>11</sup>

**Question 10:** do you agree with our proposal to remove housing benefit payments from the civil and criminal income disregards regulations? Please state yes/no/maybe and provide reasons.

No. SEA is concerned that taking into account these payments in calculating an applicant’s gross income, will result in applicants failing the means test at this first hurdle without reaching the stage of disposable income assessment. SEA agrees with the position set out by the Public Law Project on the disproportionate impact this may have on single parents, who would receive higher levels of housing benefit. This includes women who are attempting to rebuild their lives and support their children after leaving an abusive partner. SEA also echoes the points made by the Public Law Project on the disproportionate impact of this proposal on applicants in London and other areas where housing costs are high.

**Question 11:** do you agree that we should continue to passport any remaining recipients of income-based Jobseeker’s Allowance, income-related Employment Support Allowance

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<sup>10</sup> <https://bylinetimes.com/2021/07/20/divorced-from-reality-how-legal-loans-racked-up-half-a-million-debt-for-a-standard-divorce/>; <https://www.refinery29.com/en-gb/divorce-funding-loans>

<sup>11</sup> <https://survivingeconomicabuse.org/economic-abuse-evidence-form/>

and Income Support through the income element of the civil and criminal means tests? Please state yes/no/maybe and provide reasons.

Yes. Individuals on these benefits are very unlikely to be able to afford to fund litigation privately.

**Question 13:** do you agree with our proposal to raise the gross income threshold for civil legal aid for a single person to £34,950 per year? Please state yes/no/maybe and provide reasons.

Maybe. The gross income threshold, or any threshold including for disposable income or capital, which is used as part of a means assessment can be meaningless for many victims of domestic abuse due to the unique nature of domestic and economic abuse and coercive control. The specific circumstances of this cohort of applicants mean that the arguments used to justify means testing for other cohorts do not hold for them. This goes back to the need to exempt domestic abuse victims from means testing altogether. In the absence of such an exemption however any increase in the thresholds is better than none.

**Question 14:** do you agree with our proposal to introduce a lower gross income threshold for civil legal help cases, with the threshold set at £946 per month? Please state yes/no/maybe and provide reasons.

Maybe. However the same points as above for Question 13 apply with regard to applicants who are domestic abuse victims.

**Question 15:** do you agree with our proposal to remove the £545 monthly cap on allowable housing costs for applicants for civil legal aid with no partner or children? Please state yes/no/maybe and provide reasons.

Yes. We argued along similar lines in our report *Denied Justice* (page 32):

*Costs of living, including housing and childcare, are not accurately represented in the means test. There is no reflection that housing costs vary greatly across the country and cannot be represented fairly by a single cap.<sup>12</sup> Accordingly, the Legal Aid Practitioners Group (LAPG) recommend the removal of the £545 per calendar month housing costs cap in family law legal aid and domestic abuse cases.<sup>13</sup> 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.<sup>14</sup>*

**Question 16:** do you agree with our proposal to deduct actual Council Tax as part of the civil means assessment? Please state yes/no/maybe and provide reasons.

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<sup>12</sup> 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.

<sup>13</sup> Manifesto for Legal Aid, Legal Aid Practitioners Group, 2017, [https://lapg.co.uk/wp-content/uploads/LAPG\\_Manifesto\\_A5\\_FINAL.pdf](https://lapg.co.uk/wp-content/uploads/LAPG_Manifesto_A5_FINAL.pdf)

<sup>14</sup> *Surviving Economic Abuse, Denied Justice: How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives* (2021)

Yes. As pointed out by the Public Law Project this would better reflect household expenditure and make the income test fairer.

**Question 17:** do you agree with our proposal to increase the work allowance in the civil legal aid means test to £66 per month? Please state yes/no/maybe and provide reasons.

Maybe. Increasing the work allowance would again better reflect the expenses of an individual. However we agree with the Public Law Project's points on this Question about the need for an updated assessment of costs for travel to work, the trend towards homeworking benefiting higher earners, and the need to include students' travel costs.

**Question 18:** do you agree with our proposal to use a Cost of Living Allowance drawing on essential household spending as the basis of our proposed lower income threshold? Please state yes/no/maybe and provide reasons.

Maybe. Any increase to the current thresholds is better than none. However SEA is uncertain to what extent this Allowance takes into account what individuals need to maintain a socially acceptable standard of living.

**Question 19:** do you agree with our proposal to set the Cost of Living Allowance at £622 per month for an individual? Please state yes/no/maybe and provide reasons.

Maybe. Any increase to the current thresholds is better than none. However we do not agree with the approach taken to determine the figure, for reasons given above in Question 18, and are concerned that the current cost of living crisis means these figures are now out of date.

**Question 20:** do you agree with our proposal to use median household spending as the basis for the proposed upper income threshold? Please state yes/no/maybe and provide reasons.

No, given the answers to Questions 18 and 19 above. SEA agrees with the approach of the Public Law Project that income thresholds should be set at a level which ensures that those who are disqualified from legal aid can afford to pay privately for services which are in scope of legal aid.

**Question 21:** do you agree with our proposal to set the upper disposable income threshold at £946 per month for an individual? Please state yes/no/maybe and provide reasons.

Maybe, on the basis that any increase in income thresholds is better than none, but this does not address the specific concerns regarding domestic abuse victims for whom there should be an automatic exemption from means testing for the reasons outlined above.

**Question 22:** do you agree with our proposal to set allowances for dependents at £448 per month for each adult and child aged 14 or over, and £211 for each child under 14? Please state yes/no/maybe and provide reasons.

No. We do not agree with the significant difference in the allowances between children over and under 14, and feel it would adversely affect families with younger children. We endorse the arguments made by PLP in this regard.

**Question 23:** do you agree with our proposal to not take into account the means of anyone providing temporary assistance to the applicant in the civil legal aid means assessment? Please state yes/no/maybe and provide reasons.

Yes, as it is unreasonable to expect that this kind of assistance could be extended to privately fund a person's litigation.

**Question 24:** do you agree with our proposal to implement a £500 earnings threshold for applicants in receipt of UC who are currently passported through the income assessment for civil legal aid? Please state yes/no/maybe and provide reasons.

No.

The consultation recognises the huge administrative burden of this change, and that the biggest impact will be felt by lone parents, the majority of whom are women. Most survivors with children who have fled abuse become lone parents, so this will have a serious impact on access to safety. It is particularly concerning that those in receipt of Universal Credit will be expected to pay income-based contributions, given the frequency of those subject to the benefit cap and also facing deductions due to Universal Credit advance payments. This is in addition to the current cost of living crisis and the impacts of economic abuse.

A recent Women's Aid and Shelter report<sup>15</sup> on the impact of the benefits cap on survivors found that families with children affected by the benefit cap are losing an average of £255 a month on top of any shortfalls between housing benefit rates and their rent. In addition, a recent Lloyds Bank Foundation report<sup>16</sup> on benefits deductions found that 44% of people receiving Universal Credit were having money deducted to repay debts. Due to the five weeks wait for Universal Credit, many survivors may have to access an advance payment at the point of fleeing the abuser, and are therefore likely to be experiencing deductions to recover the advance payment at the very time they are seeking legal protection from the abuser.

**Question 27:** do you agree with our proposal to use a tiered model approach (40%/60%/80%) to determine the monthly income contribution? Please state yes/no/maybe and provide reasons.

Maybe. However, as elaborated in the *Denied Justice* report, the requirement to pay contributions is a major deterrent to domestic abuse victims seeking legal support.<sup>17</sup> The report shows that women decline legal aid due to the fear that they will not be able to pay contributions, and that others get into debt in order to pay the contributions, putting themselves in a precarious economic situation just when they are looking to rebuild their lives following abuse. This once again demonstrates the difficulty of applying any system of means testing, whether contribution-based or not, when it comes to this cohort.

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[https://england.shelter.org.uk/professional\\_resources/policy\\_and\\_research/policy\\_library/joint\\_briefing\\_with\\_womens\\_aid\\_the\\_benefit\\_cap\\_and\\_domestic\\_abuse](https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/joint_briefing_with_womens_aid_the_benefit_cap_and_domestic_abuse)

<sup>16</sup> [https://www.lloydsbankfoundation.org.uk/we-influence/welfare-deductions#:~:text=Deductions%20are%20payments%20that%20DWP,utilities%20bills%20and%20rent%20arrears\).](https://www.lloydsbankfoundation.org.uk/we-influence/welfare-deductions#:~:text=Deductions%20are%20payments%20that%20DWP,utilities%20bills%20and%20rent%20arrears).)

<sup>17</sup> *Surviving Economic Abuse, Denied Justice: How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives* (2021)



SEA also strongly reiterates that in any event, no contributions should be required for applications for protective orders. No woman should be in a position where she is unable to access immediate protection from harm due to contributions requirements attached to her access to legal aid.

**Question 28:** do you agree with our proposals for setting a minimum monthly income contribution of £20? Please state yes/no/maybe and provide reasons.

Maybe. However we reiterate what we have said in answer to Question 27 above.

**Question 29:** do you agree with our proposal to increase the lower capital threshold to £7,000 and the upper capital threshold to £11,000? Please state yes/no/maybe and provide reasons.

Maybe. Please see our answer to Question 13.

**Question 30:** do you agree with our proposal to increase the equity disregard from £100,000 to £185,000? Please state yes/no/maybe and provide reasons.

Maybe. For domestic abuse victims we expect that the rule on inaccessible capital will apply and all of their equity will be disregarded due to the economic control commonly experienced in these cases. But we would like further information on how applicants are expected to evidence that the capital is inaccessible. If the evidence requirements are stringent this may result in victims being unable to show that they fall within the inaccessible capital rule and end up failing the means test. We have already mentioned in the introduction the specific difficulties this group will face in submitting evidence, having had to flee their homes without all relevant documents etc.

**Question 31:** do you agree with our proposal to amend the means test so that where a victim has temporarily left their home, the equity disregard should be applied? Please state yes/no/maybe and provide reasons.

Yes. However the disregard should also apply in the case of a domestic abuse victim who has left permanently. Survivors living in social housing encounter a similar rule when fleeing their home. In order to retain a tenancy whilst applying for a property transfer to a new, safe location and living in temporary accommodation, a survivor must apply for dual housing benefit. The regulations only permit dual housing benefit if a survivor is planning to return to their home, and survivors are asked during the assessment if they plan to return. Many answer 'no' as it is unsafe for them and they are merely maintaining the tenancy pending the transfer, with no plans to return to the address, and then find themselves unable to access dual housing benefit.

Similarly, survivors who own their homes and are unable to return for their own safety should not be penalised, and this proposal should apply to those who have left permanently.

**Question 32:** do you agree with our proposal to remove the £100,000 cap on the disregard for assets which are the Subject Matter of Dispute? Please state yes/no/maybe and provide reasons.

Yes. It is irrational to consider any part of the Subject Matter of Dispute as an asset which an individual could liquidate to pay for legal proceedings, as it is clearly inaccessible. However we consider that hand in hand with this reform the statutory charge, which attaches to assets preserved or recovered through legally aided proceedings, should also be revisited and reformed.

SEA's *Denied Justice* report found that the statutory charge is a deterrent to domestic abuse victims applying for legal aid.<sup>18</sup> We echo the points made by the Public Law Project on this issue: that domestic abuse victims in family proceedings are a group particularly affected by the application of the charge, which attaches most often to the applicant's home; and the high interest payable on what is in effect a loan to obtain legal assistance is a serious disincentive to accessing legal aid.

**Question 33:** would you support creating a new mandatory disregard in relation to inaccessible capital, and introducing a charging system to recoup legal costs in these cases?

Which legal services should this charge apply to? For example, Licensed Work only, or Licensed Work and controlled work?

What legal costs should be recoverable? Do you agree that the value of the charge should be any capital over the capital thresholds, once any disregards have been applied, up to the estimated cost of the legal services provided?

Do you think a waiver should apply (that is, do you think there are any cases in which we should not apply such a charge), and if so in what circumstances should it apply?

Do you have any concerns in terms either of how this proposal would operate practically, or its impact on access to justice?

SEA would support a new mandatory disregard in relation to inaccessible capital, but on the condition that it is defined more broadly and will be no more difficult to meet than the current discretion.

We would strongly oppose a charging system to recoup legal costs in these cases, for the same reasons as we have argued against the application of the statutory charge in answer to Question 32 above.

SEA agrees with the Public Law Project that the charge should be waived in family proceedings concerning children and applications for urgent domestic abuse injunctions.

We have serious concerns on the impact of this proposal on access to justice for the reasons outlined above. We know that the statutory charge is already a disincentive for domestic abuse victims accessing legal aid, so we would be very concerned that no charge of any kind is applied to applications for protective orders.

**Question 37:** do you agree with our proposal to create a discretionary disregard for benefit and child maintenance back payments from the capital assessment? Please state yes/no/maybe and provide reasons.

Yes, but the disregard should be mandatory and not discretionary. Domestic abuse victims should not be penalised for delays in receiving these payments They will likely have been struggling to make ends meet while they have been waiting for the payments. These back payments are likely to be owed as various debts, as victims would have had to borrow money to cover the shortfall

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<sup>18</sup> Ibid

they had to live with pending the payments. It's worth noting that non-payment and delayed payment of child maintenance is a common form of post-separation abuse, with 60% of applicants to the Child Maintenance Service experiencing domestic abuse.<sup>19</sup>

**Question 38:** do you agree with our proposal to create a discretion to allow the DLAC and providers to disregard compensation, damages and/or ex-gratia payments for personal harm? Please state yes/no/maybe and provide reasons.

Yes. Such a disregard would avoid having to legislate for ad hoc disregards as and when they arise. We agree with the Public Law Project that where the payment is intended to compensate for personal harm, the disregard should be mandatory. This is particularly so in a context where it is rare to obtain compensation/ reparation for economic abuse through the legal system.<sup>20</sup>

**Question 39:** do you agree with our proposal to reintroduce capital passporting for non-homeowners in receipt of passporting benefits through the capital assessment for civil legal aid? Please state yes/no/maybe and provide reasons.

Yes, as some form of capital passporting is better than none, in order to increase the numbers of those who would be eligible for legal aid. SEA would however prefer that, in the absence of a blanket exemption from the means test for all domestic abuse victims, this proposal at least went further and provided for capital passporting for this entire cohort including home-owners.

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<sup>19</sup> <https://www.gingerbread.org.uk/what-we-do/news/fundamental-flaws-in-the-child-maintenance-service-leave-parents-high-and-dry/>

<sup>20</sup> See Hogan Lovells report in collaboration with Surviving Economic Abuse, [Legal rights and remedies for economic abuse](#) (2022)