

Domestic violence gateway evidence

Briefing on updated changes effective from January 8th 2018

Introduction

Legal Aid is available for those who have experienced or are at risk of experiencing domestic violence for private family law cases. The provision for this is under Regulation 33 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which lists the types of evidence that the Legal Aid Agency will accept to grant legal aid in these circumstances.

The regulations changed on January 8th 2018. A broader list of acceptable types of evidence has been introduced with the intended purpose of widening access for survivors. This happened as a result of a successful judicial review (on appeal) brought by Rights of Women (RoW) in 2016 with the help of the Public Law Project, which argued that the previous regulations were too restrictive. Prior to this RoW worked in partnership with Women's Aid and Welsh Women's Aid on several national consultations with survivors about their experience of using the gateway. These consultations showed around 40% of genuine survivors were unable to satisfy the evidence requirements because the list was too narrow and there was a time limit on all evidence requiring it to be no more than 2 years old.

Acceptable evidence types

Below is a list of the types of evidence the Legal Aid Agency will accept as evidence of domestic violence for the purposes of family law legal aid.

“Applicant” means person applying for legal aid.

“Abuser” means the person who presents a risk of domestic abuse but will also be the other side in the case.

A note on using ‘third party evidence’

The changes to the evidence criteria mean that for some of the evidence listed below, it is acceptable if it relates to abuse between the abuser and a third party who is not the applicant. The third party must be someone the abuser was in a family relationship with and suffered, or was at risk of suffering, harm from the abuser as a result of domestic abuse. For example, if the abuser has convictions for domestic violence offences against a previous partner, this would count as evidence.

The evidence that can relate to someone other than the applicant has 2 asterisks at the end of it, like this: **

Where there are no asterisks, the evidence has to relate to the applicant.

Police and criminal justice system

- the abuser has been arrested for a domestic violence offence and the investigation is ongoing**
- a police caution for a domestic violence offence**
- criminal proceedings for a domestic violence offence which have not concluded**
- a conviction for a domestic violence offence**
- a court order binding over the abuser in connection with a domestic violence offence**
- a domestic violence protection notice or a domestic violence protection order against the abuser**

Domestic violence offence: A list of domestic violence offences is on the MoJ website here: www.gov.uk/government/publications/domestic-violence-and-child-abuse-offences

Bind over: This is an order the court can make when it considers that the abuser may offend again in the future. The abuser must agree to behave properly for a period of time.

Injunctions

- a protective injunction**

Rather than set out a list of accepted protective injunctions, the regulations define a **protective injunction** as:

an order made by the court—

- (a) in respect of persons who are in a family relationship with each other, containing any of the following provisions—
- (i) protecting a person from harm, intimidation, threats or harassment;
 - (ii) protecting a person from being forced into a marriage or from any attempt to be forced into a marriage;
 - (iii) prohibiting a person from contacting, or communicating with, another;
 - (iv) concerning entry or access to, or the use or occupation of, property;
- (b) for the protection from female genital mutilation under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003(13); or
- (c) in respect of a violent offender within the meaning of section 98 of the Criminal Justice and Immigration Act 2008(14);

This definition would currently include:

- non-molestation orders
- occupation orders
- harassment injunctions under the Protection from Harassment Act 1997
- restraining orders
- forced marriage protection orders
- female genital mutilation protection orders
- violent offender orders

There may be other orders that would be acceptable as long as they meet the definition above.

Court documents

- an undertaking relating to domestic abuse given by the abuser provided that a cross-undertaking was not given by the applicant**
- a copy of a finding of fact that there has been domestic violence by the abuser. The finding of fact must have been made by a court in the UK**

- an expert report produced as evidence in proceedings in the UK for the benefit of a court or tribunal confirming that someone who was in a family relationship with the abuser was assessed as being, or at risk of being, a victim of domestic violence from the abuser**

An **undertaking** is a formal promise to the court usually given in place of a non-molestation or occupation order.

A **cross-undertaking** is when both parties to the relationship give an undertaking. For example, if the abuser has given an undertaking not to be violent towards the survivor, and the survivor has also given an undertaking not to be violent against the abuser, then they have given cross undertakings and neither of them can use the undertakings as evidence of domestic violence for legal aid.

However, if the undertaking given by the survivor does not relate to domestic abuse, for example, the survivor has given an undertaking to continue to pay the rent on a property, this would not be counted as a cross-undertaking for the purposes of legal aid.

The **expert report** has to be from a person qualified to give expert advice on all or most of the matters that are the subject of the report. It can include a CAFCASS report. It has to have

been provided for the purposes of court or tribunal proceedings (not necessarily family proceedings).

Health professionals

- a letter or report from a health professional who has access to the medical records of the applicant for legal aid, confirming that that professional, or another health professional—
 - (a) has examined the applicant in person; and
 - (b) was satisfied following that examination that the applicant had injuries or a condition consistent with those of a victim of domestic violence.

- a letter or report from—
 - (a) the health professional who made the referral described below; or
 - (b) a health professional who has access to the medical records of the applicant, confirming that there was a referral by a health professional of the applicant to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence

Only certain **health professionals** are able to provide this evidence. They are:

- A **medical practitioner** licensed to practise by the General Medical Council. This includes all doctors, for example, a GP, a psychiatrist or a doctor working in A&E.
- A **midwife or nurse** including **public health nurses, health visitors (HV), school nurses (SN), occupational health nurses, family nurses, substance misuse nurses, mental health nurses** registered to practise in the UK by the Nursing and Midwifery Council.
- A **dentist** including **clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists, and orthodontic therapists** registered to practise by the General Dental Council.
- A **paramedic, practitioner psychologist, radiographer or social worker** registered to practise in the UK by the Health and Care Professions Council

Domestic violence support services

- a letter from an independent domestic violence advisor confirming that they are providing support to the applicant

- a letter from an independent sexual violence advisor confirming that they are providing support to the applicant relating to sexual violence from the abuser

- a letter from an organisation providing domestic violence support services. The letter must set out that:
 - (a) the organisation is situated in England and Wales;
 - (b) the organisation has been operating for an uninterrupted period of 6 months or more; and
 - (c) the organisation has provided the applicant with support in relation to her needs as a victim or person at risk of domestic abuse and contain:
 - (i) a statement that in the professional judgment of the author of the letter, the applicant is, or is at risk of being, a victim of domestic abuse;
 - (ii) a description of the matters relied upon to support that judgment;
 - (iii) a description of the support provided to the applicant;
 - (iv) a statement of the reasons why the applicant needed that support.

- a letter from an organisation providing domestic violence support services in the UK confirming that:
 - (a) someone who was in a family relationship with the abuser was refused admission to a refuge;
 - (b) the date on which she was refused admission to the refuge; and
 - (c) she sought admission to the refuge because of allegations of domestic violence by the abuser.**

- a letter or report from the person to whom the referral was made, confirming that there was a referral by a health professional of the applicant to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence.

Other public bodies including social services

- a letter from any person who is a member of a multi-agency risk assessment conference (MARAC) or other local safeguarding forum confirming that the applicant or a person who is in a family relationship with the **applicant** is, or has been, at risk of harm from domestic abuse from the abuser.

- a letter from a public authority confirming that a person with whom the abuser is or was in a family relationship was assessed as being, or at risk of being, a victim of domestic violence by the abuser (or a copy of that assessment).**

- a letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing:

- (a) a statement that in their professional judgment, a person with whom the abuser is or was in a family relationship is, or is at risk of being, a victim of domestic violence by the abuser;
- (b) a description of the specific matters relied upon to support that judgment; and
- (c) a description of the support they provided to the victim of domestic violence or the person at risk of domestic violence**

- a letter from the Secretary of State for the Home Department confirming that the applicant has been granted leave to remain in the UK under paragraph 289B of the Immigration Rules.

There is no definition of a **local safeguarding forum** but it should consist of more than one agency/organisation. The evidence can come from any one member of the local safeguarding forum or MARAC and many different agencies could be members of a local safeguarding forum. For example, the police, education, probation, drug and alcohol services, CAFCASS.

Examples of local safeguarding forums would include the Multi-Agency Safeguarding Hub (MASH) or Multi-Agency Public Protection Arrangements (MAPPA).

Public authority includes:

- (a) a court or tribunal, and
- (b) any person certain of whose functions are functions of a public nature,

Children's Services would be a public authority. Therefore, any assessments completed by Children's Services would count as evidence.

The evidence provided by the local authority or housing association in relation to supporting tenants must set out the support they have provided. This may be a decision reached, for example, to allocate the individual as priority need for social housing because they were, or are at risk of domestic violence or to exempt them from local connection rules.

Financial abuse

- evidence which the Director of the Legal Aid Agency is satisfied demonstrates that the applicant has been, or is at risk of being, a victim of domestic violence by the abuser in the form of abuse which relates to financial matters.

There is no specific type of evidence that the applicant must provide to show that she is a victim of financial abuse. The Legal Aid Agency has provided the following list as examples of evidence that she might produce, but this is not an exhaustive list:

- copies of both the victim's and the perpetrator's bank statements and/or cancelled cheques, relevant letters from banks
- credit card accounts, loan documents and statements
- business financial statements, employee benefit records including insurance, stock options and bonuses
- letter from a domestic violence support organisation
- money order receipts
- documentation about any public assistance received
- emails, text messages, diary kept by the victim,
- letters from employers or from an education or training institute
- benefits or welfare history
- application for Universal Credit Split Payment
- evidence from foodbank
- exemption from child maintenance service fees

There will be many cases where the survivor of financial abuse has no documentary evidence. In these cases, the Legal Aid Agency will consider a statement by the survivor herself which sets out:

- when the financial abuse commenced
- the degree of financial abuse
- the duration of the financial abuse
- the impact on her
- an explanation as to why no other documentary evidence is available

She can provide more than one type of evidence, for example a statement and bank documents.

The evidence will need to satisfy the Legal Aid Agency that the applicant is a survivor of financial abuse.

Template letters

The Ministry of Justice has produced template letters which survivors can adapt to request evidence from the various organisations above and example letters for professionals showing what is expected. The template letters are available to download online.

Template letters for domestic violence:

www.gov.uk/government/collections/sample-letters-to-get-evidence-of-domestic-violence

Template letters for child abuse:

www.gov.uk/government/collections/sample-letters-to-get-evidence-of-child-abuse

Example letters for professionals:

www.gov.uk/government/collections/legal-aid-cases-of-domestic-violence-and-child-abuse-letters-for-professionals

Guidance

The Legal Aid Agency has updated its guidance in relation to the evidence requirements in private family law matters. This guidance can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672143/evidence-requirements-private-family-law-matters-guidance-version-8.pdf