

Consultation Response

Financial considerations when leaving an abusive relationship

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Legal Aid and Access to Justice Committees welcome the opportunity to consider and respond to the Scottish Government consultation, “Financial considerations when leaving an abusive relationship”. We note we are best placed to comment on question 4 so have concentrated our response on the issues raised there, other organisations being better placed to comment on the important questions raised elsewhere within the consultation. The Society was also pleased to respond to the recent Scottish Law Commission consultation around civil remedies for domestic abuse and would suggest the outcome of that work would be of interest here, in terms of improvement and changes in this area.

We have the following comments to put forward for consideration.

Question 4.

Do legal aid rules take sufficient account of the financial circumstances of women who have experienced domestic abuse? Do you have any specific examples of rules or practices which need to change?

Legal aid is primarily an access to justice issue. The current threat to legal aid in Scotland puts our most vulnerable citizens at greater risk. The system requires to be prioritised to ensure that justice remains accessible to everyone - not just those who can afford it.

There is a growing problem across Scotland with legal aid provision, including civil legal aid for family and other civil matters. It is increasingly difficult for people who are eligible for legal aid to find a solicitor who's able to take on their case. The Society has continually warned that this was a likely consequence following years of neglect. Rates, hours and onerous administrative requirements have become unsustainable. Succession and retainment are also key issues in this sector.

In the context of this consultation, consideration should be given to looking at the legal aid fee structure for family law matters relating to gender-based violence, to increase greater access to legal representation in this area.



We remain encouraged that the Scottish Government is speaking about legal aid reform, though we are yet to see details of what is proposed in terms of change, and urgent investment is required.

Legal aid is available for domestic abuse cases however the system does create barriers to access in terms of how means testing is carried out, particularly around financial control and the difference between criminal and civil cases.

Domestic abuse cases have unique complexities which should be considered in terms issues of financial control of the victim by their abuser and their ability to gather the required evidence. It may be difficult for victims to contribute to fees when asked to, or they may appear to be in a stronger financial position than they are in reality.

That financial control can extend to issues around, for example, tenancies where consideration should be given to write off or reduce outstanding arrears where these have arisen due to an abusive relationship to avoid victims facing eviction where they were unaware their partner was not paying rent. We are aware that the current Housing Bill (as drafted) will force social landlords to adopt suitable pre action steps when they think they might be evicting someone affected by domestic abuse, and would support these steps.

Consideration could be given to extending automatic legal aid to civil cases relating to domestic abuse, as well as considering the process of means testing to account for those under financial control by their abuser. Thought should be given to the need for contribution towards legal aid fees in domestic abuse cases and whether this deters victims from seeking legal protection. This is especially relevant in relation to protective orders.

Support to reduce court backlogs and funding to better support victims and witnesses of crimes continues, however there remains an urgent need to properly fund legal aid practitioners to allow them to support their clients and carry out this work, and for legal aid reform to address the needs and gaps of the current system and make it one which is fit for purpose.



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