

Title: Legal aid evidence requirements for victims of domestic abuse in private family law cases IA No: MoJ 008/2016 Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Legal Aid Agency (LAA)	Impact Assessment (IA)			
	Date: 18 April 2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
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Summary: Intervention and Options				RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
N/A	N/A	N/A	N/A	N/A

What is the problem under consideration? Why is government intervention necessary?

Victims of domestic violence can obtain legal aid for private family law matters if they can provide evidence to show that they have suffered domestic violence or are at risk of it. The list of accepted evidence is set out in regulations, which previously stipulated that some types of evidence must have been obtained within a two-year period before the application. Following a Judicial Review challenge from Rights of Women, the Court of Appeal held that this two year time limit for evidence was unlawful. Furthermore the Court held that the evidential criteria did not cater for victims of financial abuse. Government intervention is necessary to alter the regulations in light of this judgment.

What are the policy objectives and the intended effects?

The government's intention is to respond to the Court's concerns by:

- increasing the time limit for evidence of domestic violence from two to five years; and,
- introducing a provision to accept evidence of financial abuse for the Legal Aid Agency (LAA).

This is an interim measure that seeks to meet the concerns of the Court and maintain necessary control of the legal aid regime whilst evidence gathering is performed to inform a longer term solution.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do Nothing: No amendments would be made to the current regulations. There would be no time limit for the acceptable evidence of domestic violence (as any references to a time limit were struck through following the judgment) and no evidential criteria catered towards victims of financial abuse. This is not a viable option because the Court has ruled that a lack of criteria for financial abuse is unlawful and the regulations will need to be amended to correct this illegality.

Option 1: Change the time limit for acceptable evidence of domestic violence from two to five years and introduce a provision to accept evidence of financial abuse for the LAA.

Will the policy be reviewed? It is an interim arrangement to be kept under review. If applicable, set review date: Ongoing.				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro No	Small No
			Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Shailesh Vara Date: 18 April 2016

Summary: Analysis & Evidence

Policy Option 1

Description: Change the time limit for acceptable evidence from two to five years and introduce a discretion for the LAA when considering evidence of financial abuse

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

This option may result in increased expenditure from additional grants of legal aid, though it is not possible to estimate the extent of this. The LAA will also face ongoing additional administrative costs from making more determinations of eligibility, including from applying the financial abuse discretion where appropriate, and will incur a one-off cost of less than £100,000 from making changes to their IT systems.

Other key non-monetised costs by 'main affected groups'

It is not possible to accurately estimate the magnitude of any additional expenditure or caseload volumes that the LAA may experience due to data limitations. This includes any additional on-going administrative costs.

Family legal aid providers may experience an increased administrative burden from assessing eligibility for any increased volumes, including applying the discretion for financial abuse. It is not possible to estimate the costs to providers at this stage.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Family legal aid providers are likely to receive additional income from a greater number of legal aid grants, though it is not possible to estimate the extent of this.

Other key non-monetised benefits by 'main affected groups'

Legal aid claimants will benefit if they are now able to access legal aid whereas, prior to this option, they were unable to because of the regulations.

Key assumptions/sensitivities/risks

Discount rate (%) N/A

Data or applicable research does not exist to inform estimates of either the number of legal aid recipients with evidence of domestic violence between two to five years or who would be able to evidence their financial abuse subject to the LAA's discretion following the policy change. These data limitations mean it is not possible to meaningfully monetise the impact of this policy – therefore all potential impacts are described qualitatively.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: Costs: N/A	Benefits: N/A	Net: N/A	Score for Business Impact Target (qualifying provisions only) £m: N/A
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Evidence Base

A. Background

1. Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), which came into force in April 2013, removed most private family law matters from the scope of legal aid. One exception, among others, was where a party is or has been a victim of domestic violence. In these cases the party in question could apply for legal aid but was required by law to provide prescribed evidence of the domestic violence set out in the Civil Legal Aid (Procedure) Regulations 2012 in order to obtain funding¹. Some types of evidence submitted for this purpose must have been obtained within a two year period before the application in order to be accepted.
2. In 2013-14, the first year after LASPO, there were at least 4,100 applications made for legal aid for civil representation in private family law where the applicant was a victim, or at risk of being a victim, of domestic violence. Around 3,000 of these were granted. The list of acceptable evidence was expanded in April 2014, following which the number of applications and grants for legal aid in private family law where domestic violence was a factor rose – to at least 5,600 applications in 2014-15, and to around 3,900 grants². The majority of refusals tend to be on the basis of financial eligibility.
3. On 9 March 2016, following a Judicial Review challenge from Rights of Women, the Court of Appeal held that the application of a two year time limit for certain types of evidence was unlawful. The Court struck through all parts of the relevant regulation that made reference to a two year time period. The Court also held that the evidence criteria did not cater for victims of domestic violence who had suffered from financial abuse and ordered that the Lord Chancellor lay before Parliament an amendment to the regulations to make provision for evidence of financial abuse.

B. Policy Rationale and Objectives

4. The Government's intention is to respond to the Court's concerns by:
 - a. increasing the time limit for evidence of domestic violence from two to five years; and,
 - b. introducing a provision for the LAA in relation to evidence of financial abuse.
5. The proposed amendments to the regulations are an immediate, interim measure seeking to address the concerns of the Court and make sure that arrangements are in place that allow victims of domestic violence to access legal aid in private family disputes. Given the need to provide operational decision-makers with certainty as they consider applications for legal aid, the implementation of these changes will be expedited.
6. The time limit on evidence is being extended significantly from the original two years to five years in recognition of the Court's concerns that this was a "comparatively short period of time". The Ministry of Justice (MoJ) has begun work with domestic violence support groups, legal representative bodies and colleagues across government to gather data and develop understanding of the issues in order to inform an evidence-based solution in the longer term. In the meantime the time limit is being more

¹ The types of evidence of domestic violence that the LAA approve include, for example, a conviction, police caution, criminal proceedings for a domestic violence offence that are ongoing, a protective injunction, an undertaking given in court and a confirmation of an assessment of domestic violence from social services.

² These statistics are taken from the quarterly Legal Aid Statistics bulletin published by the Ministry of Justice. The words 'at least' are used deliberately – as for some applications and grants it is not clear from the data held whether the evidence provided was for domestic violence or child abuse. This is explained further in the guide accompanying the quarterly bulletin.

than doubled – increasing from two years to five years – which will widen access to legal aid for those in genuine need of such assistance whilst maintaining the necessary control of the legal aid regime.

Description of Options Considered

7. The following two options are considered:
 - a. **Option 0 – Do Nothing.** No amendments would be made to the regulations. There would be no time limit for the acceptable evidence and no evidential criteria catered towards victims of financial abuse.
 - b. **Option 1 – Change the time limit for acceptable evidence from two to five years and introduce a provision for the LAA in relation to evidence of financial abuse.**
8. The Government's preferred option is Option 1. To do nothing would be to act unlawfully in respect of the financial abuse element.

C. Affected Groups

9. The following key groups are likely to be affected by the proposals:
 - a. individuals who seek to apply for civil legal aid for private family law matters and who are victims of, or are at risk of being a victim of, domestic violence;
 - b. legal service providers who hold a legal aid contract with the LAA allowing them to undertake family work; and,
 - c. the LAA, which is responsible for administering civil legal aid.

D. Cost Benefit Analysis

10. Where possible, this Impact Assessment (IA) outlines the potential costs and benefits from implementing the proposed option on the key groups identified above. The costs and benefits of this option are compared to Option 0, the do nothing, or baseline, option. IAs place a strong emphasis on valuing the costs and benefits in monetary terms but there are some aspects that cannot always be meaningfully monetised.
11. This IA considers the impact of the proposed reform in isolation.

Key Assumptions

12. It is not possible to provide meaningful, monetised estimates for the impact of this proposal on legal aid volumes, due to limitations with the data currently collected by the LAA in this area. Whilst data is routinely collected on the value of legal aid given in these cases, the number of applications and the type of evidence submitted, data is not collected on the age of the evidence when applicants are not granted legal aid on the basis of the time limit, nor is data collected where individuals choose not to make or complete an application because they know they do not meet the evidential criteria. No adequate research or data presently exists from which to derive assumptions on how many individuals might have evidence between two to five years and/or evidence of financial abuse, and who might be eligible for legal aid in private family cases more generally.

13. Nevertheless, in describing the costs and benefits it is assumed that more individuals will receive legal aid as a result of the policy change because it represents an expansion of legal aid entitlement.

Option 0: Do nothing

14. Under this option:

- a. There would be no reference to a time limit against the evidential criteria that need to be satisfied in order to obtain legal aid in private family law where the applicant has been a victim or is at risk of being a victim of domestic violence. This is because the previous references to a time limit were struck through in the Order handed down by the Court of Appeal;
- b. The regulations would not be amended to make provision for evidence of financial abuse, which would be unlawful in light of the Order from the Court of Appeal.

15. As the Do nothing option is compared against itself, the costs and benefits are necessarily zero. Doing nothing is not a viable option as, in respect of financial abuse, it would be unlawful in respect of the Court's judgment.

Option 1: Change the time limit for acceptable evidence from two to five years and introduce a discretion for the LAA when considering evidence of financial abuse

16. Under this option:

- a. There would be immediate, interim, measures seeking to address the concerns of the Court and to make sure that arrangements are in place that allow victims of domestic violence to access legal aid in private family disputes.
- b. The time limit on evidence of domestic violence would be extended, from the original two years, to five years.
- c. The interim regulations would introduce a provision, which will provide that the Director of Legal Aid Casework will determine that the evidence criteria are met if satisfied that the evidence supplied with the application demonstrates financial abuse, or risk thereof.
- d. The measures would be in force for an interim period. The MoJ will begin work immediately with domestic violence support groups, legal representative bodies and colleagues across government to gather data and develop understanding of the issues in order to inform an evidence-based solution.

Costs of Option 1

Legal Aid Agency

17. There will be an increased on-going cost to the legal aid fund as a result of this option if the number of people in receipt of legal aid increases – though for the reasons outlined in paragraph 12 it is not possible to meaningfully estimate the magnitude of these costs.

18. There will also be an increased, on-going administrative cost to the LAA from processing a greater number of applications with evidence between two and five years, and from applying a discretion as to evidence that is acceptable in cases of financial abuse where evidence of such abuse is submitted.

19. To account for the new arrangements, changes to the LAA's IT system for recording and processing applications will be made, at a one-off cost of less than £100,000.

Legal Aid Providers

20. If the number of people in receipt of legal aid increases as a result of the policy, providers with the relevant contracts from the LAA may experience an additional increase in their administrative costs. Where legal aid work is contracted out by the LAA as 'controlled work' providers have delegated authority to conduct the assessments of eligibility – in private family law this applies when an applicant seeks initial advice and assistance about their legal problem, provided it is in scope. In these circumstances providers will have to apply the financial abuse provision.

Benefits of Option 1

Legal Aid Providers

21. Legal aid providers who hold contracts with the LAA to do family legal aid work are likely to experience an increase in demand for their services and a consequential increase in legal aid fee income if a greater number of individuals qualify for civil legal aid as a result of the policy. It is not possible to accurately estimate the magnitude of any increase for the reasons expressed in paragraph 12.

Legal Aid Applicants

22. The number of individuals eligible to claim legal aid in private family law cases is likely to increase, as the policy has the effect of expanding entitlement. Prior to the policy those that were ineligible may have resolved their issue another way, for example by representing themselves or paying privately for representation, or they may have chosen not to resolve their issue at all.

Net Impact of Option 1

23. It is not possible to evaluate the net economic impact of this option as we are unable to meaningfully estimate the increase in applications and any subsequent financial implications.

F. Risks and Uncertainties

24. There is a chance that there will be a one-off surge in the number of applications for legal aid in private family law following implementation of the policy as applicants who were previously ineligible and who are currently mid-proceedings, or who have chosen not to pursue their case, may decide to apply. This increase would be above that which is expected in steady state as a result of this change.

G. Enforcement and Implementation

25. Given the need to provide operational decision-makers with certainty as they consider applications for legal aid, the implementation of changes is to be expedited.
26. Decision-makers will have to consider whether they are satisfied, on the basis of the evidence presented, that the applicant is a victim of financial abuse. The Director of Legal Aid Casework will amend Operational Guidance to reflect the changes.

H. Monitoring and Evaluation

27. The impacts of these changes will be monitored and the findings used to inform a wider review of the domestic violence evidence requirements for legal aid.

I. One in Three Out

28. These proposals do not constitute regulation and are therefore out of scope of the One in Three Out framework.