

CHIVERS WALSH

FAMILY LAW

Information Leaflet

Legal aid

Until April 2013, legal aid was available for all types of family law cases. However, as a result of cut-backs the government then made, legal aid has not been available for most types of family law cases since 1 April 2013 (but it remains available to deal with issues arising from domestic abuse, such as applications for non-molestation orders or solicitors' "warning letters"). In particular, legal aid is not available (subject to a small number of exceptions) for:

- applications for child arrangements orders (what used to be called "contact" orders and "residence" orders and, before that, "access" orders and "custody" orders) about children¹ ("*children cases*"); and
- divorce (the process of dissolving the marriage and of dealing with the financial issues arising from its breakdown) ("*divorce cases*").

These changes to legal aid were very unfair and leave many people whose relationships have broken down in a very vulnerable position.

There are a few circumstances in which legal aid will continue to be available for children and divorce cases (subject to the person concerned, of course, being financially eligible). In children cases, they are where the person who wishes to apply for legal aid ("*the legal aid applicant*") is, or is at risk of being, a victim of domestic abuse, or is seeking to protect a child from the risk of abuse. In divorce cases, the circumstances are where the legal aid applicant is, or is at risk of being, a victim of domestic abuse. However, the legal aid authorities will only accept that a person (or a child) is a victim (or at risk of harm) where that person can produce a piece of evidence to satisfy the domestic abuse requirement (or to satisfy the requirement that a child is at risk of harm).

The legal aid authorities will accept only a limited number of pieces of evidence, which are:

In cases where the legal aid applicant is a victim or at risk of being a victim of **domestic abuse**:

- 1 a **certificate of conviction** which shows that the other party (to any potential court proceedings) has been convicted of an offence of violence against the legal aid applicant (offences of violence are defined and are set out in the footnote below)² or a **police caution** for one of those offences;

¹ Or for 'prohibited steps' orders and 'specific issue' orders.

² A threat to kill, shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, inflicting bodily injury with or without weapon, maliciously administering poison, so as to endanger life or inflict grievous bodily harm, maliciously administering poison with intent to injure, aggrieve or annoy any other, causing gunpowder to explode, or sending to any person an explosive substance or throwing corrosive fluid on a person, with intent to do grievous bodily harm, assault occasion and actual bodily harm, common assault, child destruction, cruelty to persons under 16, rape, procurement of a woman by threats administering drugs to obtain or facilitate intercourse, indecent assault, procuring a miscarriage, theft, blackmail, destroying or damaging property, threats to destroy or damage property, violence for securing entry, abduction of a child, affray, fear or provocation of violence, intentional harassment, alarm or distress, harassment harm or distress, the offence of sending letters etc. with intent to cause distress or anxiety, intimidation of witnesses, jurors and others, breaching a non-molestation order, harassment, stalking, putting people in fear of violence, assault by penetration, sexual assault, causing a person to engage in sexual activity without consent, causing or inciting prostitution for gain, controlling prostitution for gain, trafficking into the UK for sexual exploitation, trafficking within the UK for sexual exploitation, trafficking out of the UK for sexual exploitation, administering a substance with intent to commit a sexual offence, committing an offence with intent to commit a sexual offence, trespass with intent to commit a sexual offence improper use of public electronic communications network, breach of non-molestation order, trafficking people for exploitation, kidnapping, false imprisonment, perverting the course of public justice, aiding, abetting counselling or procuring the commission of an indictable offence.

- 2 a **letter³ from the police** confirming that there are ongoing criminal proceedings for an offence of the type referred to in the footnote and the other party is on **bail** in relation to those investigations;
- 3 a **Domestic Violence Protection Order** or a **Violent Offender Order⁴**;
- 4 a **family protective injunction** (a personal protection order made by a court or a domestic violence protection notice) or an “undertaking” (non-molestation promise to a court) of this type;
- 5 a **letter** from the chair of a meeting at which a **Multi-Agency Risk Assessment Conference Plan** was put in place confirming the Plan;
- 6 a **female genital mutilation order**;
- 7 a **finding of a court** that there has been an incident, or a pattern of incidents, of controlling, coercive or threatening behaviour, abuse or abuse between individuals who are associated with each other and who would be the parties to the relevant potential court proceedings;
- 8 a **letter or report from a health professional or a Social Services department** confirming a report of an incident, or pattern of incidents, of controlling, coercive or threatening behaviour, abuse or abuse between individuals who are associated with each other and who would be the parties to the relevant potential court proceedings (or a **letter** that the situation has been **referred to domestic abuse support services**);
- 9 a **letter from a refuge** confirming the legal aid applicant is admitted to a refuge for those at risk of domestic abuse (or has applied for admission to a refuge but was refused because there was insufficient accommodation available in the refuge);
- 10 a **letter** from a specialist domestic abuse organisation confirming the legal aid applicant is referred to that organisation by a health professional; and

In cases where the legal aid applicant believes there is a need to **protect a child from the risk of abuse**:

- 1 a **certificate of conviction** that shows that the other party (to any potential court proceedings) has a conviction for a child protection offence (see the footnote above for the list of offences) or a **police caution** for one of those offences;
- 2 a **letter from the police** confirming that there are ongoing criminal proceedings for an offence of the type referred to in the footnote above and the other party is on **bail** in relation to those investigations;
- 3 a **family protective injunction**;
- 4 a **letter from a Social Services department** confirming that the **child concerned has been assessed as being at risk** or that a **child protection plan** is in place;
- 5 a **letter or report from a health professional or a Social Services department** confirming an incident, or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between individuals who are associated with each other and who would be the parties to the relevant court proceedings; <https://www.gov.uk/government/collections/sample-letters-to-get-evidence-of-domestic-violence>

³ Guidance about the form of the letter and the letters referred to below can be found here: <https://www.gov.uk/government/collections/sample-letters-to-get-evidence-of-domestic-violence>.

⁴ Orders made by a criminal court on application by the police.

- 6 a **finding of a court** that there has been an incident, or a pattern of incidents, of controlling, coercive or threatening behaviour, abuse or abuse between individuals who are associated with each other and who would be the parties to the relevant court proceedings;
- 7 a copy of an **application that has been made for a family protective order**, together with a copy of **an application for a prohibited steps order** which is yet to be decided by the court.

If your case falls within one of these exceptions to the general rule that legal aid is not available, you must provide us with one of the pieces of evidence referred to above at our first meeting with you; we cannot obtain the evidence for you and, if you do not let us have it at our first meeting, we shall have to make another appointment for you at which you can produce it.

If you are unable to give us any evidence of the type referred to above, unfortunately, we will not be able to act for you at all under the legal aid scheme in a children case or a divorce case. We can, however, act for you on a fee-paying basis. We offer a number of fixed-price packages which we feel offer excellent value and details of which are set out in the accompanying information leaflet.

Cases that have continued to be covered by legal aid after 1 April 2013 in every situation

Legal aid will continue to be available for the following cases:

- where a local authority is applying for a care order or a supervision order about a child;
- advice about harassment by a “related person” and applications for non-molestation orders and occupation orders (personal protection orders) and forced marriage protection orders; and
- child abduction cases (very narrowly defined by the legal aid authorities).

Legal aid is also available for “family mediation” (which is a scheme for helping those involved in relationship breakdown to resolve by agreement and outside the court system issues arising from the breakdown of their relationship).