

Domestic Abuse Commissioner for England and Wales
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Sent by email

Dear Lord Chancellor

Means testing for Legal Aid for victims of domestic abuse during the Covid-19 pandemic

As you know well, the Covid-19 pandemic and necessary measures in place to slow the spread of the virus has created a uniquely troubling and dangerous time for victims and survivors of domestic abuse and their children.

This is a phenomenon seen across the world, with China reporting a three-fold increase in police call-outs for domestic abuse, and in the UK the national Domestic Abuse helpline has seen a 50% increase in calls in comparison to before lock-down. I also fear that there will be many experiencing domestic abuse who are unable to escape their abuser to even make a telephone call, and we can expect a second surge in demand for help as lockdown measures begin to lift. The funding that Government has committed to support the domestic abuse sector over the next 6 months will go a long way in meeting the needs of victims and is very welcome.

However, there are still significant barriers to victims accessing legal redress during this crisis, and so I call on you to remove the means test for legal aid during this period. Recent published guidance on how victims of abuse who are ineligible for legal aid suggests that victims must complete their own documentation and statements, and contact a number of courts to secure a time to hear their application for an injunction order. This is entirely unsuitable and highly risky for many victims, who are unlikely to be familiar with the complexities of the legal system and may well still be living with or in close contact with the perpetrator.

It is also worth highlighting my more general concern about eligibility criteria for Legal Aid, which disproportionately excludes victims of domestic abuse. I know that this is currently under review, but the circumstances of the Covid-19 pandemic adds greater urgency to the need for change.

Currently, legal aid means tests in respect of capital include all assets, which is wholly inappropriate for victims of domestic abuse. Many victims' assets (for example, their home) will be jointly owned with their abuser, which means that would

be unable to sell or secure the release any funds from them. I have heard of many examples where a victim in a refuge cannot access legal aid because the value of the home that they were forced to flee in fear of their lives is considered in the means test. In these cases, because the victim has fled the home, it is considered a 'second home' rendering the victim automatically ineligible. In all cases a wholly outdated mortgage disregard is applied and equity, however inaccessible, is largely taken into account. I call upon you to take immediate steps to remove the means test for all victims of abuse seeking to protect themselves and their children.

I would welcome a discussion about the inadequacies of the current means test in relation to family proceedings involving victims of abuse. Changes are vital so that the promise so that the promise that access to justice is available for those most in need can become a reality.

I stand ready to support you and your officials in developing these options or to discuss in further detail. I understand the proposal for non means tested legal aid for victims has the support of the President of the Family Division Sir Andrew MacFarlane and the Family Justice Council.

I am keen to work with you and the judiciary to make these proposals a reality.

Yours

A handwritten signature in black ink that reads "Nicole Jacobs". The signature is written in a cursive, flowing style.

Nicole Jacobs
Domestic Abuse Commissioner for England and Wales