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SURVIVING
ECONOMIC
A B U S E

Legal rights and remedies for economic abuse

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Contents

Clause	Page
1. Introduction	4
2. Executive Summary	6
3. What is domestic abuse?	8
4. What is economic abuse?	10
5. How prevalent is economic and financial abuse?	11
6. The Criminal Justice System	12
6.1 General	12
6.2 What crime may have been committed?	13
6.3 Controlling or coercive behaviour in an intimate or family relationship	14
6.4 Fraud	17
6.5 Theft	19
6.6 Criminal Damage	21
7. Remedies	22
7.1 Compensation orders under s.130 of the Powers of Criminal Courts (Sentencing) Act 2000 ("PCCA")	22
7.2 Confiscation orders under the Proceeds of Crime Act 2002 ("POCA")	24
7.3 Criminal Injuries Compensation Scheme	27
7.4 Domestic Abuse Protection Notices and Orders	30
8. Key recommendations for persons involved with The Criminal Justice System	32
8.1 Consider charging abusers with multiple offences	32
8.2 Front line workers need to have a greater awareness of s.76 SCA and utilise it more frequently	33
8.3 Wider review of s.76 SCA	36
8.4 Increase awareness of economic abuse	37
9. The Civil Justice System	38
9.1 Overview	38
9.2 Comparing civil and criminal proceedings	40
9.3 DAA and The Justice System	40
9.4 Occupation Orders: General	41
9.5 Occupation Orders: S. 33 FLA96 - applicant entitled to occupy or has home rights	41
9.6 Occupation Orders: S. 35 FLA96 - applicant not entitled to occupy but former spouse or former civil partner entitled to occupy	43
9.7 Occupation Orders: S. 36 FLA96 - applicant not entitled to occupy but (former) cohabitant entitled to occupy	44
9.8 Occupation Orders: S. 37 FLA96 - neither applicant nor (former) spouse or (former) civil partner entitled to occupy	45
9.9 Occupation Orders: S. 38 FLA96 - neither applicant nor (former) cohabitant entitled to occupy	46
9.10 Occupation Orders: Additional Provisions	46
9.11 Procedural aspects of obtaining an occupation order	47
9.12 Advantages and limitations of occupation orders	49
9.13 Landlord's possession under HA85 and HA88	50
9.14 County Court Money Claims Centre	54
10. Key Recommendations For Persons Involved With The Civil Justice System	56
10.1 Practical actions for victims	56
10.2 Use occupation orders to set out financial arrangements	56
10.3 Agree next steps with landlords	58
10.4 Increase awareness of economic abuse	59
10.5 Provide non-means tested legal aid for domestic abuse survivors	59
11. Other Routes Of Redress	60
11.1 General	60
11.2 Paid Leave: A Recommendation for Employers	60
11.3 Sick Pay	65
11.4 Hardship Fund	66
11.5 Revenue support grants	69
11.6 Destitution Domestic Violence concession	70
11.7 Breathing Space	72
12. Conclusion	75
Schedule One	76
The legislation: s. 76 SCA	76
Schedule Two	78
The legislation: Fraud Act 2006 ("FA")	78
Schedule Three	78
FLA96 terminology	78

1. Introduction

Domestic abuse is a multi-faceted concept. "Economic abuse" is a form of domestic manipulation and/or exploitation that is rarely given much focus in the political and public spheres. However, such abuse can be devastating for victims and have long-lasting effects even after a victim has left the abuser. The term "economic abuse" broadly means that an abuser has manipulated another person's access to finances and assets. The abuser influences a victim's decision-making so as to foster control over the victim and ensure the victim's dependence on the abuser. Spikes in domestic abuse reporting during the COVID-19 crisis imply that this kind of conduct is likely to have become more acute over the course of 2020 and 2021.

This report explores how the civil and criminal justice systems in England and Wales provide remedies to victims of economic abuse. Unfortunately, there is no definitive route of redress that will meet the needs of every victim of abuse. However, by reviewing current legal frameworks in place, we hope to find creative solutions for victims. We have also made some key recommendations where applicable.

The authors acknowledge the complexity of abuse and understand that the experience of abuse is unique to each victim. This report covers a range of possible routes of reparation for victims of abuse who are or were in an intimate relationship with their abuser at a relatively high level, so as to be as helpful as possible to as many people as possible. This report aims to help professionals working with victims of abuse to navigate the legal routes to redress available to victims.

It is acknowledged that some readers may find the use of the word "victim" in this report problematic. This report uses the language of "victim" and "abuser" in order to provide consistency when assessing the benefits and limitations of routes of redress across different legal spheres, and is not intended to offend.

Please note that this report is limited to considering the law in England and Wales.

2. Executive summary

2.1 What is this report?

This report is a guide through the various legal routes for compensation (and practical issues to navigate) where someone is experiencing economic abuse. Economic abuse is a form of domestic abuse, and is included within the definition of domestic abuse in the Domestic Abuse Act 2021. It involves the control of

a partner's or ex-partner's access to and use of resources, including money and the things that money can buy, such as accommodation, food or transport. One in six women in the UK has experienced economic abuse,¹ and 95% of women who experience domestic abuse report experiencing economic abuse.²

2.2 Who is this report intended for?

- Professionals working with victims of abuse.
- Legal professionals including the Crown Prosecution Service.

2.3 Innovations

- (a) **The importance of reparations for this specific group:** Economic abuse is rarely given focus in public and political spheres. However, such abuse can be devastating for victims and has long-lasting effects, even after a victim has left the abuser. Therefore, routes to compensation are key, both as a moral obligation and as a practical means to redressing the negative economic impact caused by such abuse. We believe that this report may be the first of its kind, in focusing on reparations for victims of economic abuse specifically.
- (b) **Confiscation orders and compensation orders:** We recommend that Prosecutors should use the controlling or coercive behaviour offence (s.76 Serious Crime Act 2015) in tandem with the Proceeds of Crime Act 2002, so that assets derived from criminal conduct (such as controlling or coercive behaviour, often seen in cases of economic abuse) can be confiscated from the perpetrator. Some of these confiscated assets may then be used to compensate the victim, by way of a compensation order. We do not believe that this has ever been done in practice in the UK. This report represents an opportunity for Prosecutors to put the method into practice.
- (c) **Voices of people with lived experience:** In order to draft this report, we have incorporated the voices of people with lived experience of economic abuse. We want to honour their bravery in speaking out about what they have been through, in the hope that it will improve the lives of others in the future.

What are the key recommendations?

2.4 This report advocates for 8 key areas of change, set out in detail in chapters 8 and 10:

- | | |
|---|---|
| a) Prosecutors should consider charging abusers with multiple offences (particularly including the controlling or coercive behaviour offence where relevant). | e) Legal professionals should advocate for occupation orders that set out financial arrangements as well as where people will live. |
| b) Front line workers need to have a greater awareness of the controlling or coercive behaviour offence. | f) For renters affected by economic abuse, if safe to do so, it may be worth working out how to proceed with living arrangements with your landlord. |
| c) Prosecutors should use the controlling or coercive behaviour offence in tandem with the Proceeds of Crime Act 2002 so that victims can be compensated for what has happened. | g) All persons working in the justice system, both criminal and civil, should have a greater awareness of economic abuse. |
| d) The controlling or coercive behaviour offence still needs reform. | h) Domestic abuse victims should be exempt from the legal aid means test so that they have the legal support they need to access remedies for economic abuse. |

2.5 A note on the text

The report is for information only. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship with Hogan Lovells International LLP.

1) Refuge, (2020), Know Economic Abuse, Refuge: London.

2) <https://survivingeconomicabuse.org/about-us/projects-and-policy/economic-justice-project/>

3. What is domestic abuse?

The Domestic Abuse Act 2021 (“DAA”), which gained Royal Assent on 29 April 2021, created the first statutory definition of domestic abuse. The definition is fairly broad and covers a range of abusive behaviours, including physical or sexual abuse, violent or threatening behaviour, coercive or controlling behaviour, psychological or emotional abuse and economic abuse. There are two criteria for domestic abuse: that both

the abuser and the victim are aged 16 or over, and that both people must be “personally connected”. There is no requirement for both people to live in the same household or for the relationship to be subsisting.



4. What is economic abuse?

The DAA has introduced a statutory definition of economic abuse as “any behaviour that has a substantial adverse effect on [the victim’s] ability to:

- (a) acquire, use or maintain money or other property, or
- (b) obtain goods or services.”

The charity Surviving Economic Abuse (“SEA”) proposes that this term includes situations where an abuser restricts “how their partner acquires, uses and maintains money and economic resources, such as accommodation, food, clothing and transportation”.³

A form of economic abuse is financial abuse. Financial abuse involves the abuser “using or misusing money which limits and controls their partner’s current and future actions and their freedom of choice”. Some examples of financial abuse include using credit cards without permission, putting contractual obligations in their partner’s name (ranging from monthly phone contracts to mortgages) and gambling with family assets.

There have been some instances where financial abuse has been defined in legislation. In such cases, the definitions are usually limited in scope so do not directly apply to other circumstances. However, it is interesting to note that the definitions of financial abuse used in legislation are relatively consistent with one another. It would therefore be sensible to take account of the following factors (which are often seen in these definitions) when considering financial abuse:

“financial abuse” includes:

- (a) having money or other property stolen;
- (b) being defrauded;
- (c) being put under pressure in relation to money or other property; and
- (d) having money or other property misused.

According to Government guidance, financial abuse can be a “feature of controlling or coercive behaviour forming a pattern of abuse alongside physical abuse, or in many instances as an independent form of abuse”.⁴ Such behaviour has been criminalised under S.76 the Serious Crime Act 2015, which is discussed further below. To determine whether financial abuse is taking place, there should be an assessment of the power dynamics in a relationship, with focus on who has control and access to the finances.

Economic abuse is broader than financial abuse because it can go as far as “restricting access to essential resources such as food, clothing or transport, and denying the means to improve a person’s economic status (for example, through employment, education or training)”⁵. Economic abuse can also include financial abuse. However, SEA maintains that these terms should not be used interchangeably and that the term “economic abuse” better describes the range of behaviours abusers use to exert power over their victims.⁶ As indicated earlier, economic abuse includes financial abuse, but is broader than financial abuse in that it covers control not just over money but also over things that money can buy.

³ <https://survivingeconomicabuse.org/economic-abuse/what-is-economic-abuse/> (accessed 20 December 2019).

⁴ <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/financial-abuse/> (accessed 20 December 2019).

⁵ <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/financial-abuse/> (accessed 20 December 2019).

⁶ https://survivingeconomicabuse.org/wp-content/uploads/2020/12/P743-SEA-In-Plain-Sight-report_V3.pdf (accessed 20 December 2019).

5. How prevalent is economic and financial abuse?

The Crime Survey for England and Wales estimated that the cost of domestic abuse for victims for the year ending 31 March 2017 was approximately £66 billion.⁷ However, due to insufficient data, this estimate does not include the costs of financial and economic abuse imposed on victims. The scarcity of specific data on economic and financial abuse indicates a lack of understanding of the consequences of these kinds of abuse. It also suggests significant under-reporting of financial and economic abuse. It is noted that the Office for National Statistics and the Crime Survey for England and Wales initially attempted to introduce questions regarding coercive and controlling behaviour into the survey, but “have agreed that further development is needed” and have removed such questions whilst further research is conducted.⁸

As financial abuse and economic abuse are not standalone offences, the Ministry of Justice cannot report arrest or conviction rates.

Therefore, victims will often not show in statistical reports because they cannot secure a conviction against the abuser and, even when they do appear (e.g. in S.76 SCA statistics), it is not clear if the victim has suffered financial abuse

or another form of domestic abuse. Research from SEA suggests that economic abuse is usually not the only form of abuse committed against a victim; instead, economic abuse usually takes place within some combination of psychological, physical and/or sexual abuse.⁹ However, there is an argument that the law does not adequately protect victims of financial and economic abuse because there are limited offences which criminalise such abuse.

In preparation for this report, Hogan Lovells conducted a survey amongst SEA’s network of economic abuse survivors (the “**EBE Survey**”). Fourteen anonymous respondents took part. Although it is acknowledged that this is only a small sample size, throughout this report we refer to statistics from the EBE Survey to give colour to these issues and reflect the voices of those victims.

Some participants also provided case studies which are published throughout this report. One of the case studies presented in this report was provided by a Hogan Lovells contact and their experience was not included in the EBE Survey.

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772180/horr107.pdf

⁸ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/developingameasureofcontrollingorcoercivebehaviour/2019-04-18> (accessed 23 December 2019).

⁹ Surviving Economic Abuse, ‘Into Plain Sight’, December 2017.



6. The Criminal Justice System

6.1 General

In some circumstances, victims of financial or economic abuse can utilise the criminal justice system to obtain remedies from their abusers. The abuser would have to be subject to criminal prosecution, and whether or not the victim can obtain remedies will depend on a number of factors, such as the nature and extent of the abuse suffered and the evidence available.

There are some important advantages to using the criminal justice system to obtain remedies:

- (a) As the abuser will be subject to a criminal prosecution, they could end up spending some time in prison. This would benefit those victims who could be protected from further abuse if the abuser was removed from the home.
- (b) The police have wider powers of investigation than the average individual and can authorise such actions as accessing bank accounts and other confidential information, and executing search warrants.
- (c) The burden of finding evidence is on the police and the CPS in criminal proceedings, as opposed to civil proceedings where the victim is in control of providing evidence to the court.
- (d) Criminal prosecution also tends to be less expensive for victims than pursuing civil proceedings.

However, seeking remedies through criminal proceedings is a complex process and may not always operate effectively for all victims of abuse. For example, criminal proceedings tend to be longer than civil proceedings which could prolong the trauma of the abuse for the victim. Additionally, victims may also have to undergo the emotional strain of providing testimony and being questioned in court (however under the DAA they will no longer be cross-examined by the abuser in court)¹⁰ Aside from the strain of criminal proceedings, it is important to note that there is no guarantee that the CPS will prosecute a case in any event. The CPS must determine whether the case would be in the public's interest and will also consider the likelihood of securing a conviction. The standard of proof in criminal proceedings is significantly greater than for civil claims; the prosecution will have to prove "beyond reasonable doubt" that an offence occurred in criminal proceedings, rather than simply on the balance of probabilities (i.e. demonstrating that it is more likely than not that abuse occurred) in civil proceedings.

This means that it will be easier to succeed in civil proceedings than in criminal proceedings.

6.2 What crime may have been committed?

As the law stands currently, neither financial nor economic abuse is a stand-alone criminal offence. However, the specific actions involved in such abuse may bring the abuser's conduct under the remit of existing criminal offences. This section explores three groups of criminal offences which may capture certain actions involved in financial and economic abuse:

- (a) Controlling or coercive behaviour in an intimate or family relationship or post-separation,
- (b) Fraud, and
- (c) Theft.

The DAA also introduced further offences of non-fatal strangulation and threatening disclosure of private sexual photographs and films, but we have limited our analysis below to those which may capture specifically financial and economic abuse.

Case study 1

The Expert ("E") is a survivor of domestic abuse but it was luck that saved her life, not the system. A week after leaving her partner ("P"), E found him waiting in the boot of her car with a knife and cable ties. After E escaped, P fled in the car, which was impounded when he was caught by the police.

Thanks to the support of the detective on her case, E received the full value of the car from her insurance company. This allowed E to avoid the terrible choice between the trauma of driving the car that she was nearly killed in and not having a vehicle to get to work.

E has not always received the support that she required. When E first went to the police, the initial detective said that E should consider herself lucky because P had agreed to write a letter apologising to her. P was then bailed just days before the kidnap attempt.

E obtained an injunction restraining P. The family court quickly granted the order, but E had no support in pursuing the injunction and had to do everything herself. For someone less comfortable with the legal system, E feels that this would have been impossible.

During the trial, E's employer failed to support her, requiring her to take annual leave to give evidence. The victim support service also failed E and ignored her calls about important parole hearings.

E's experience shows what a survivor of abuse can achieve when they have a degree of financial independence and receive support from the police. But E feels that the system of support for victims of abuse remains a lottery, and E has been badly let down on other occasions.

¹⁰ The Domestic Abuse Act prohibits an alleged abuser from questioning the victim themselves in certain circumstances, and allows victims to provide testimony through video link or from behind a screen.

6.3 Controlling or coercive behaviour in an intimate or family relationship

Engaging in controlling or coercive behaviour in an intimate or family relationship is a criminal offence under s. 76 SCA (which is set out in Schedule 1) as amended by section 68 DAA. This means it can be used to prosecute some abusive partners or ex-partners.

(a) Who could this help?

A victim who:

- (i) is, or has been, married to or in a civil partnership with the abuser;
- (ii) has agreed to marry or enter into a civil partnership agreement with the abuser (whether or not the agreement has been terminated);
- (iii) is, or has been, in an intimate personal relationship with the abuser;
- (iv) has, or there has been a time when they have had, a parental relationship in relation to the same child as the abuser (meaning they are a parent or have parental responsibility for the child); or
- (v) is a relative of the abuser.

(b) Can financial and economic abuse fall under the remit of s. 76 SCA/s.68 DAA?

According to statutory guidance provided by the Government, financial abuse is an example of controlling or coercive behaviour, *"forming a pattern of abuse alongside physical abuse, or in many instances as an independent form of abuse"*.¹¹

Surviving Economic Abuse suggests that the following types of behaviour (among many others) may be considered to be examples of controlling or coercive behaviour:¹²

The abuser –

- (i) Takes your pay;
- (ii) Limits your working hours;
- (iii) Makes you ask for money when you need it;
- (iv) Refuses to let you access a bank account; or
- (v) Builds up debt in your name

It would be helpful for the Government to have given examples of such behaviours in its guidance as well and we await the DAA statutory guidance. Nevertheless, the guidance does set out how coercive and controlling behaviour is "designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour".¹³

To determine whether financial abuse has taken place, there should also be an assessment of the power dynamics in a relationship, with focus on who has control and access to finances.

(c) What needs to be proved?

The abuser's controlling or coercive behaviour must have a "serious effect" on the victim. This might seem obvious, but the law goes on to define what a "serious effect" means;

- (i) the abuser's behaviour must cause the victim to fear, on at least two occasions, that violence will be used against them; or
- (ii) it must cause the victim serious alarm or distress which has a substantial adverse effect on their usual day-to-day activities.

The second limb that may be more challenging to prove, so we anticipate most people will use the first limb route.

¹³ Circular 003/2013: new government domestic violence and abuse definition, 14 February 2013 (<https://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition/circular-0032013-new-government-domestic-violence-and-abuse-definition>).

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf (accessed 26 February 2020).

¹² <https://survivingeconomicabuse.org/i-need-help/economic-abuse-and-the-law/controlling-or-coercive-behaviour/>



(d) Advantages

The general advantages associated with criminal prosecutions apply here. For example, if the prosecution is successful, a convicted abuser may be sent to prison.

This gives victims peace of mind that justice has been done and protection from future contact with the abuser. This also means that a victim gains official recognition that abuse has occurred even though there is no separate 'economic abuse' offence currently.

In terms of advantages specific to this offence, s.76 the Serious Crime Act 2015 is an indictable offence (meaning that it can be prosecuted in either the Magistrates' Courts or the Crown Courts). This means that there is no time limit for bringing charges against the abuser, which can be helpful given the complex nature of domestic abuse and the amount of time it can take for a victim to escape.¹⁴

The broad wording of the offence may also give the prosecution more flexibility to interpret the law and argue in a way that captures more scenarios of financial abuse than the other criminal offences. However, as noted above, the Government's guidance could go further to recognise economic abuse as well and provide examples of abusive behaviour.

(e) Limitations

It may be difficult to prove fear of violence or "serious alarm or distress". For example, cases where the abuser's coercion was subtle so that the victim was not seriously alarmed or distressed, or cases where the victim managed to safely distance themselves away from the abuser by moving to a safe house, friends or family, but the abuser continued to exploit the victim's financial means and assets. Whilst it is recognised by this report and many others in the sector that "serious alarm or distress" does not have to stem from physical abuse but can, in fact, arise from economic harm or abuse, limited understanding and recognition of economic abuse across the justice system may impact on the perception of economic abuse as a source of "serious alarm or distress". The recent review of s.76 the Serious Crime Act 2015 (discussed below) refers to challenges in evidencing controlling or coercive behaviour, with some literature linking this to the perceived high evidential threshold to prove a 'serious effect' on a victim, and practical difficulties in gathering such evidence.

As noted above, S.76 the Serious Crime Act 2015 does not expressly refer to economic abuse or financial abuse and the Government's guidance on the offence does not go as far as to refer to economic abuse, although it does refer to financial abuse. The DAA has also not expanded upon this except to broaden the types of relationship the victim may have had with their abuser and to provide the statutory definition of economic abuse as above. As such, it is possible that s.76 SCA would not be interpreted widely enough to assist all victims of economic and financial abuse without further guidance. Updated guidance on the offence due to be published this year should therefore ensure that economic abuse is properly

¹⁴) S.127 Magistrates' Courts Act 1980.

6.4 Fraud

taken into account.

In some circumstances, economic or financial abuse could fall within the remit of fraud. There are two key fraud offences which may be relevant for the purposes of this report; fraud by false representation, and fraud by abuse of position. These are further discussed below and the legislation is set out in Schedule 2.¹⁵

(a) Who could this help?

A victim who goes through:

(i) Fraud by false representation:

Whose abuser lies about certain facts or deliberately implies something intending to make a gain or cause a loss. By way of example, if an abuser uses their victim's credit card for example, they may be making a representation that they are the victim, or at least have the victim's permission to use the card for whatever transaction it is being used for. If the victim does not agree to such use, the abuser's representation to the recipient of the payment would be considered false.

(ii) Fraud by abuse of position:

Who is in an intimate relationship with their abuser, and their abuser dishonestly abuses that position and intends, through this abuse of position to make a gain or cause loss to the victim. In other words, this offence could capture more forms of manipulation or abusive conduct beyond lying, e.g. by using half-truths to mislead without actually making false representations.

Abuse also captures non-action, so where an offender, holding the appropriate position, does not correct their victim's knowledge or understanding in order to make a gain or cause loss, they could have committed an offence.

(b) What needs to be proved?

The difference between fraud by representation and fraud by abuse of position are set out above. The key thing to note is that both offences involve dishonesty. The test for dishonesty is objective. This means that the court will have to decide whether the offender's conduct (taking into account what the offender knew or their intentions) would be considered dishonest by an ordinary reasonable person.¹⁶

(c) Financial and economic abuse in the context of fraud

It is possible for some forms of financial or economic abuse to be considered fraud:

- (i) the abuser uses the victim's credit/debit cards without the victim's consent or knowledge;
- (ii) the abuser uses the victim's credit/debit cards for unauthorised purposes;
- (iii) the abuser hides or takes the victim's or joint financial resources and transfers them into a private account;

¹⁵) The third type of fraud which is not considered concerns fraud by failing to disclose information where there is a legal duty to do so (s.3 Fraud Acts).

¹⁶) Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

In the EBE Survey, just over half of respondents (57.14%) noted that they had spoken with the police about "controlling or coercive behaviour" or s.76 SCA.

- (iv) the abuser withdraws or spends more money than the victim consented to, using the victim's account;
- (v) the abuser deceives the victim into giving them control over the victim's financial resources, e.g. by asking the victim for their account details and password, or confiscating the victim's pay cheques, under the pretence of "helping" the victim manage their finances;
- (vi) the abuser runs up the victim's credit card limits and leaves the victim to pay the debt;
- (vii) the abuser applies for credit cards in the victim's name without their consent or knowledge; and
- (viii) the abuser applies for loans in the victim's name without their consent or knowledge.

(d) Advantages

Fraud offences are indictable offences. This means that (i) convicted abusers would face the most serious kinds of penalties and (ii) there is no time limit for bringing charges against the abuser.¹⁷ This is likely to be helpful for victims of abuse who may struggle to come forward right away and report the abuser to the police.

The fraud offences may also be helpful for their focus on the offender's conduct, rather than the outcomes of that conduct. Although the offender needs to have intended to make a gain or cause loss, the prosecution does not need to prove that the offender was successful in this.

This focus on the offender also means that issues about proving that the victim was affected, e.g. appropriation

of property (theft), serious alarm or distress or fear of violence (coercive or controlling behaviour), do not apply here.

Fraud by abuse of position may offer greater scope for remedies for the victim compared to fraud by false representation, as it is not limited to "representations" but extends to the ordinary meaning of abuse.

(e) Limitations

To establish fraud, the gain or loss described must be monetary or proprietary.¹⁸ Therefore, fraud may not be helpful for all forms of economic or financial abuse, for example cases where the abuser prevents the victim from working. Actions whereby the abuser does not intend to cause direct monetary or proprietary gain for themselves or loss to the victim, but instead they aim to increase the victim's dependence on them, can be difficult to fit within the remit of the fraud offences.

The need to show intent to gain or cause loss may also be an obstacle for cases where financial abuse occurs in the context of joint accounts.

This is because, if the abuser simply uses the joint funds without the victim's consent, then there may be an argument that the funds are owned jointly by both parties, with no separation as to ownership. As such, it is not apparent that the abuser would have intended to gain or cause loss from money that was legally theirs.

The requirement for dishonesty may be another potential hurdle for victims. Financial or economic abuse may not sit neatly with the concept of dishonesty – for instance, in cases where the abuser uses threats or

intimidates the victim so as to exercise financial control, it is not clear that dishonesty plays a central role. This is rather different to circumstances where an abuser lies to a bank to obtain a mortgage or a loan, or steals cash directly from the victim. This could

help to explain why there is greater recognition by the criminal justice system and the wider media of fraud in the context of elder abuse, where the element of dishonesty may be more prevalent.¹⁹

¹⁹ For example, the case of *R v Amy Dhuvar* [2015] EWCA Crim 2519 and the unreported case seen here: <https://www.herts.police.uk/news-and-appeals/care-worker-sentenced-for-stealing-thousands-of-pounds-from-elderly-victims-2652all> (accessed 26 February 2020).

6.5 Theft

Financial and economic abuse may also fall within the remit of theft. The relevant legislation here is ss.1 and 7 of the Theft Act 1968 ("TA"). This section will explore the conditions that need to be proved for a theft conviction and the advantages and limitations of this offence.

(a) Who might this help?

A victim whose property is taken by their abuser. The abuser must intend permanently to deprive the victim of his/her property.

(b) What needs to be proved for a theft offence?

A person commits theft if they dishonestly "appropriate" property belonging to another with the intention of permanently depriving the other of it. Dishonesty is determined objectively, as with fraud offences.

This means that the abuser's conduct must be what an ordinary reasonable person would consider dishonest.

(c) Can financial and economic abuse fall under the remit of the TA?

Therefore, if an abuser uses the victim's money and argues that the victim consented to such use, appropriation would still have occurred, but the abuser may not be considered dishonest.

Some of the examples of financial and economic abuse provided above in relation to fraud offences may also be considered theft, such as if:

- (i) the abuser uses the victim's credit/debit cards without the victim's consent or knowledge;
- (ii) the abuser uses the victim's credit/debit cards for unauthorised purposes;
- (iii) the abuser hides or takes the victim's financial resources and puts them into a private account; and
- (iv) the abuser withdraws or spends more money than the victim consented to, using the victim's account.

¹⁷ S.127 Magistrates' Courts Act 1980.

¹⁸ S.5(2) Fraud Act.



(d) Advantages

Like fraud, theft is an indictable offence, so the same advantages apply. There is scope for some overlap between theft and the fraud offences discussed above, however there are cases where prosecuting for theft may be easier than prosecuting for fraud. For example:

- (i) where there was no false representation or abuse of position involved; or
- (ii) the abuser was arguably not in the required "position" of safeguarding the victim's financial interests.

The general distinction that could be made between theft and fraud is that theft is the taking of a victim's property without consent, whereas fraud involves manipulating a victim into giving away their property.

(e) Limitations

As with fraud, the requirement for dishonesty may be a potential hurdle for victims.²⁰

As property must "belong to another", if the abuser uses funds from a joint account with the victim, it may be more difficult to prove theft.

Therefore, if for example there is no understanding that a joint account is subject to 50/50 ownership, or there are no agreed rules over how it should be used, then an abuser could argue

that they believed they had the legal right to use the common funds however they wished. In this way, it may be more difficult to prove theft.

It is also worth noting that the Director of Public Prosecutions ("DPP") needs to consent to theft proceedings against a spouse.²¹ The DPP will grant consent in accordance with the Code for Crown Prosecutors. In short, the prosecutor needs to show that there is sufficient evidence to prosecute so that there is a "realistic prospect of conviction". The prosecutor will also need to show that it is in the public interest to prosecute.²² This might include an assessment as to whether prosecution would be a proportionate response judging by the harm caused, the fault of the abuser and other factors.

Though this may not be a high hurdle to overcome, it is another layer of prosecutorial discretion which may cause uncertainty for cases with little evidence.

It may also be worth noting that though the definition of "property" for the purposes of theft is not restricted to tangible property, the scope is not wide enough to include confidential information, such as passwords.²³ Therefore, if, for example, an abuser simply obtains their victim's card account details and changes them as a means of control, but does not actually use the card to make payments, then theft may not have taken place.

6.6 Criminal Damage

Financial and economic abuse may also fall within the remit of criminal damage, in some circumstances. This section will explore the conditions that need to be proved for a criminal damage conviction and the advantages and limitations of this offence.

(a) Who might this help?

Victims whose abusers have damaged their personal property.

(b) What needs to be proven for a Criminal Damage Act offence?

Under the Criminal Damage Act 1971 (the "CDA"), a person commits an offence if they destroy or damage any property belonging to another, with the intention to destroy or damage, or while reckless as to whether such property would be destroyed or damaged.²⁴

(c) Can financial and economic abuse fall under the remit of the CDA?

Financial and economic abuse rarely occurs in a vacuum. Often there are other kinds of abuse going on simultaneously.

Where an abuser's actions involve an element of physical damage to the victim's property, this offence could be relevant.

For example:

- (i) if the abuser breaks the victim's phone, laptop or other device in an effort to isolate the victim from friends and family;

- (ii) if the abuser deliberately destroys the victim's property so that the victim will have to spend money to replace it; and
- (iii) if the abuser destroys the victim's property in an effort to intimidate the victim into accepting the abuser's control over the victim's financial resources.

(d) Advantages

Like fraud and theft, criminal damage is an indictable offence, so similar benefits apply. The criminal damage offence is also relatively simple to navigate and prove. All a prosecutor would need to prove is that property belonging to the victim was damaged by the abuser, with the appropriate intention to destroy or damage.

The law also captures "recklessness", so even if the abuser tries to argue that they did not mean to cause damage and acted in the heat of the moment, this would not be a valid defence.

The fact that the damaged property is jointly owned is also not a defence. According to guidance from the CPS, a person can be guilty of criminal damage even if the property is theirs, if it also belonged to someone else at the same time.²⁵

20) For example, the case of R v Amy Dhupar [2015] EWCA Crim 2519 and the unreported case seen here: <https://www.herts.police.uk/news-and-appeals/care-worker-sentenced-for-stealing-thousands-of-pounds-from-elderly-victims-2652all> (accessed 26 February 2020).

21) S.30(4) TA.

22) For further information, see here: <https://www.cps.gov.uk/publication/code-crown-prosecutors> (accessed 9 June 2020).

23) Oxford v Moss (1979) 68 Cr App Rep 183.

24) S.1(1) CDA.

25) <https://www.cps.gov.uk/legal-guidance/criminal-damage> (accessed 9 June 2020).

(e) Limitations

Criminal damage is based on physical damage to property. Victims of purely financial or economic abuse may not, therefore, be able to utilise the CDA to obtain remedies. This also means that any compensation for harm or economic loss suffered may be limited compared to what could be received under the other criminal offences.

As with theft, damage of property belonging to a spouse also requires the DPP's consent in order to bring a prosecution.²⁶ As such, there may be some uncertainty as to whether a case of this type could reach the courts if there is not enough evidence available.

Although the court is obliged to consider whether to make a compensation order in appropriate cases, victims should nevertheless make clear to the Police if they would like to claim compensation early on in the criminal justice process. This should help keep the compensation order process moving.

The EBE Survey suggests another major limitation to compensation orders; the overwhelming majority of victims had not heard of them (92.31%) and, unsurprisingly, none of the respondents reported compensation orders ever being made in their favour against an abuser.

26) S.30(4) TA.

7. Remedies

7.1 Compensation orders under s.130 of the Powers of Criminal Courts (Sentencing) Act 2000 ("PCCA")

Under s.130(1) PCCA, a court by or before which a person is convicted for an offence, may order the offender to compensate their victim for any personal injury, loss or damage resulting from that offence. This can include financial loss suffered as a direct result of an offence, as well as related pain and distress.²⁷ The court should take into account the victim's personal circumstances in assessing pain and distress.

Compensation orders are therefore a way for victims of financial and economic abuse to receive compensation if, for example, one of the crimes above is established.

However, double recovery is not allowed. If compensation is given under a compensation order, and the victim then looks for an alternative means of compensation, such as Criminal Injuries Compensation or a civil claim against the offender, the amounts given under alternative compensation may be reduced or withheld.

(a) When will a compensation order be granted?

When a person is convicted of a crime (i.e. found guilty), the court may order that the offender pays compensation to the victim under a compensation order.

In any case where the court is empowered to do so, it must consider granting a compensation order if there is any personal injury, loss or damage resulting from the offence.²⁸ The CPS will draw the court's attention to its obligation to consider compensation, inviting them to make such an order where appropriate and providing information in order to assess an appropriate award.²⁹ If the court decides not to make a compensation order, it must provide reasons.³⁰

(b) How is the amount of a compensation order fixed?

In determining whether to make a compensation order, and in determining the amount to be paid under the order, the court shall have regards to the offender's means so far as they appear or are known to the court.³¹ The court will fix a compensation order at an amount which it considers "appropriate", taking into account evidence and representations from the prosecution and defence.³² As mentioned above, the court can consider financial loss and related pain and suffering, but this must have been caused by the offence. It is not necessary that the loss, damage or personal injury should be inflicted intentionally.³³

The court may order that compensation will be paid in one lump sum or by instalments.³⁴ The court may allow compensation to be paid over a period of up to three years in appropriate cases, according to sentencing guidance, but previous cases have granted compensation orders lasting up to eight years.³⁵

It is not enough for a third party to be able to satisfy a compensation order,³⁶ but a compensation order could be given if an offender can borrow funds from a third party (e.g. family members) and has the ability to repay the loan.³⁷

Ultimately, a compensation order will not be made unless it is realistic. The court must be satisfied that the offender either has the means available, or will have the ability to pay within a reasonable time.³⁸

(c) Advantages of compensation orders

There is no limit to how much compensation a court can order for offenders aged 18 or over.³⁹ The court will disregard other sources of potential compensation such as civil remedies and the Criminal Injuries Compensation Scheme as well when determining what amount of compensation is appropriate.

31) S.130(11) PCCA

32) S.130(4) PCCA

33) <https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders> (accessed 26 October 2021).

34) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831394/asset-recovery-financial-years-2014-to-2019-hosb2019.pdf (accessed 26 October 2021).

35) *In R v Molly Ganyo, Prize Ganyo* [2011] EWCA Crim 2491, the court upheld compensation orders which would take 8 years and 5 1/2 years respectively to discharge.

36) *R v Mortimer* [1977] Crim. L. R. 624

37) *R v Carrington* [2014] Cr App R (S) 41 CA.

38) Sentencing - Ancillary Orders | The Crown Prosecution Service (cps.gov.uk) (accessed 4 November 2021)

39) https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders#_Toc21084739 (accessed 26 February 2020).

27) <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/compensation/1-introduction-to-compensation/> (accessed 9 June 2020).

28) S.130(2A) PCCA.

29) <https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders> (accessed 26 October 2021)

30) S.130(3) PCCA.

Compensation orders may be imposed on an offender instead of, or in addition to, dealing with them in any other way⁴⁰. For example, a compensation order may be imposed in addition to a fine or a term of imprisonment. Where the offender is given a fine and a compensation order, and has insufficient means to pay both, the compensation order will take priority⁴¹. If the offender is sentenced to a period of imprisonment as well as a compensation order, the judge should direct that the first instalment should be paid within a specified period following the offender's release from prison⁴².

If an offender fails to satisfy a compensation order, they may be sent to prison.⁴³ The prison sentence given will depend on the amount of the compensation order, with 12 months being the maximum.⁴⁴

40) S.130(1) PCCA.

41) S. 130(12) PCCA.

42) *R v Bradburn* (1973) 57 Cr App R 948 CA

43) S.76(1) Magistrates Courts' Act 1980.

44) Schedule 4 Magistrates Courts' Act 1980.

45) S.79 Magistrates Courts' Act 1980.

7.2 Confiscation orders under the Proceeds of Crime Act 2002 ("POCA")

Broadly, POCA provides a mechanism for the Crown Court to confiscate assets derived from criminal conduct.⁴⁶ By imposing a confiscation order, the court can recover the financial benefit that the offender has obtained from his criminal conduct. Compensation orders in favour of victims can be granted alongside confiscation orders.⁴⁷

(a) When are confiscation orders granted?

The Crown Court will consider the following questions:

46) S.6 POCA
47) S.13(5)-(6) POCA
48) S.6(2) POCA
49) S.6(3) POCA
50) S.6(4)(a) POCA.

(d) Limitations of compensation orders

As discussed above, compensation orders are limited by the offender's own resources and so will not be given in all cases, even where loss is established.

If an offender is imprisoned for failing to satisfy a compensation order, once the prison sentence has been served, the obligation to pay compensation to the victim expires.⁴⁵

The EBE Survey suggests another major limitation to compensation orders; the overwhelming majority of victims had not even heard of them (92.31%) and, unsurprisingly, none of the respondents reported compensation orders ever being made in their favour against an abuser.

- (i) Has the defendant been convicted of an offence(s) in the Crown Court, or are they before the Crown Court to be sentenced?⁴⁸
- (ii) Has the prosecutor requested that the court consider making a confiscation order, or does the court believe that it is appropriate to consider making a confiscation order?⁴⁹
- (iii) Does the defendant have a "criminal lifestyle"?⁵⁰

- (iv) If he has a criminal lifestyle, has he benefited from his general criminal conduct?⁵¹and
- (v) If he does not have a criminal lifestyle, has he benefited from his particular criminal conduct?⁵²

If the answer is yes to (iii) and (iv), or (v) above, on a balance of probabilities,⁵³ then the court must decide how much money to recover from the defendant and make a confiscation order to that effect.⁵⁴ What these questions mean is explored below. They will require more complex investigations into the facts and circumstances of the offender's crime(s).

(b) What constitutes a "criminal lifestyle"?

Section 75 POCA provides that a defendant has a "criminal lifestyle" if they commit an offence that:

- (i) is specified in Schedule 2 POCA;
- (ii) forms part of a course of criminal activity (such that in the current proceedings the defendant was convicted of three or more other offences, and had benefited from each offence, or in the last six years the defendant has been convicted on at least two separate occasions of an offence from which they had benefited); or
- (iii) is committed over a period of at least six months and the defendant has benefited from said offence.

51) S.6(4)(b) POCA.

52) S.6(4)(c) POCA. This refers to the conduct which constitutes the offence(s) for which the defendant has just been convicted, or conduct which constitutes offences which the court will be taking into consideration when deciding the sentence for the offence(s) for which the defendant has just been convicted.

53) S.6(7) POCA. If the question of whether certain facts existed is to be determined on a "balance of probabilities", then the court needs to consider whether it is more likely than not that those facts existed.

54) S.6(5) POCA.

55) Schedule 2 does include the offence of blackmail (s. 21 Theft Act 1968) so if the abuser uses blackmail for monetary gain or cause monetary loss, the defendant would be deemed to have a "criminal lifestyle".

56) S.10(1) – (3) POCA.

57) S.10(6) POCA.

58) S.75(4) POCA.

59) S. 341 POCA.

Schedule 2 POCA does not include any of the criminal offences explored in this report.⁵⁵

(c) What constitutes "benefit" from a criminal lifestyle?

It can be difficult to determine how much the offender has benefited from his criminal conduct. However, if the court determines that the offender had a "criminal lifestyle", it can presume that any property the offender owned at the time of his conviction (or owned in the six years prior), constitutes "benefit".⁵⁶ This presumption applies unless it can be shown to be incorrect or that there is a serious risk of injustice.⁵⁷

To satisfy the requirements of (ii) and (iii) above, the "benefit" has to amount to £5,000 or more, which may be difficult to prove.⁵⁸ The extent of a defendant's benefit from criminal conduct is established via a confiscation investigation (otherwise known as a financial investigation). A confiscation investigation seeks to establish:

- (i) Whether a person has benefited from his criminal conduct;
- (ii) The extent or whereabouts of that benefit; and
- (iii) The extent or whereabouts of realisable property available for satisfying a confiscation order made against him.⁵⁹

As part of the confiscation investigation, investigators can apply to the Crown Court for various orders to assist them in locating, securing and/or seizing the defendant's assets, and/or restraining the defendant from dissipating assets that may ultimately be the subject of a confiscation order.⁶⁰

It is not altogether clear how the use of confiscation orders will apply in the context of economic abuse or financial abuse, as there is no specific guidance available or previous judgments that are publicly available to draw upon. What would be important here, in any case, is the amount of evidence adduced by a victim to demonstrate that the offender had benefitted, e.g. if a victim's credit card was used without permission, what it was used to purchase.

(d) Benefit from criminal conduct, where the court decides there is no "criminal lifestyle"

If the court decides that the defendant does not have a criminal lifestyle, it must decide whether he has benefitted from his particular criminal conduct. S. 76(4) of POCA provides that a person benefits from criminal conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct. Criminal conduct is conduct which constitutes an offence in England and Wales.

e) Determining the amount of a confiscation order

If the Crown Court grants a confiscation order, it must then determine how much to confiscate from the offender.

The recoverable amount should be equal to the amount of benefit the offender received from the criminal conduct concerned, subject to the offender's actual resources.⁶¹ A confiscation order must also be proportionate to the legitimate aim of recovery of the proceeds of crime.

The Crown Court will set a deadline for the offender to pay the confiscation order. If the offender does not pay the confiscation order on time, then he is liable for interest and may be subject to imprisonment for failing to pay.⁶²

(f) How confiscation orders can help victims of financial or economic abuse

If an abuser is convicted of a criminal offence on indictment, the court may grant a confiscation order in appropriate cases. The confiscation regime is an effective way of establishing the whereabouts and extent of an offender's benefit from criminal conduct – and securing and recovering that benefit – so that there is a "pool" of money from which reparation can be made to victims. Over £36m was paid in compensation to victims from the proceeds of confiscation in 2018/19, although it is not clear what kinds of offences were charged in these cases.⁶³

Assets confiscated under a confiscation order are typically given to governmental agencies to invest in future asset recovery work. However, if a confiscation order is granted alongside a compensation order and the convicted offender does not have the means available to pay both, then sums collected under the confiscation order will be used to settle the compensation order first.⁶⁴

Unfortunately, there is no data available to show how often the two orders are granted together.

Granting both a confiscation order and a compensation order is particularly helpful for victims of abuse because additional enforcement powers are available under the confiscation regime. For example, under a confiscation order, money held in an offender's bank account can be seized,⁶⁵ or the offender could be subject to a travel ban so that they cannot escape abroad.⁶⁶

In addition, if a confiscation order is not satisfied and the offender is sent to prison, the obligation to pay does not expire when the sentence is served, unlike with compensation orders.

65) S.67 POCA.
66) S.13A POCA.

7.3 Criminal Injuries Compensation Scheme

(a) Eligibility and the application process

The Criminal Injuries Compensation Scheme is funded by the Government and operated by the Criminal Injuries Compensation Authority ("CICA"). The scheme aims to compensate victims who suffer a "criminal injury which is directly attributable to their being a direct victim of a crime of violence".⁶⁷ A "crime of violence" is defined as a physical attack or a threat causing fear of immediate violence.⁶⁸ Generally, applicants must have resided in the UK although there are exceptions to this.

Being able to receive compensation from a confiscation order may also be helpful in terms of timing. Unlike compensation orders which may allow offenders several years to pay, confiscation orders require immediate payment. If the offender needs more time to materialise assets, e.g. sell property, then they may be given up to six months to pay. As a result, victims may be able to receive much needed compensation more quickly.

However, both orders are ultimately limited by the offender's resources.

Compensation under the scheme is intended as a last resort. Therefore, applicants must have taken reasonable steps to obtain remedy elsewhere, e.g. report the injury to the police and co-operate with a police investigation, claim insurance (though they do not have to wait for the outcome of these claims).

Generally, a victim should make an application to CICA within two years after the date the incident occurred. If more than two years has passed, the victim must provide CICA with evidence showing why the application could not have been made earlier.

67) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf, p. 2 (accessed 26 February 2020).
68) *Ibid.* p. 37.

60) Ss 40-47, 345-351, 352-356A, 357-362, 363-369, 370-375B POCA

61) S.7 POCA.

62) S. 139 and 140 PCCA.

63) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831394/asset-recovery-financial-years-2014-to-2019-hosb2019.pdf (accessed 9 June 2020).

64) Ss.13(5) and (6) POCA.

(a) Eligibility and the application process

After receiving an application, a claims officer will then make a decision based on whether they think the incident is more likely to have happened than not to have happened.

Applicants will generally have to wait for up to a year for a determination.⁶⁹ Compensation will be calculated based on what physical or mental injury was suffered in the scheme's tariff. Injuries not set out in the tariff will need to be approved by the Secretary of State.

(b) Potential remedy for victims of financial and economic abuse

Although the scheme is limited to providing compensation for physical and/or mental injury directly resulting from crimes of violence, we must not ignore the fact that different kinds of domestic abuse are often interlinked and/or simultaneous. There may be scope to remedy financial or economic abuse if such abuse was closely intertwined with physical abuse, or the fear of immediate physical abuse. For example, if physical abuse (or the threat of) results in physical and/or diagnosed mental injury which is compensated under the scheme, the victim could seek an additional payment for loss of earnings if that injury made them unable to work.⁷⁰

(c) The "same roof rule"

For completeness, we note that this scheme has been widened since its inception. Between August 1964 and 30 September 1979, compensation was not available to certain victims where their injuries were caused by a family member they lived with (known as the "same roof" rule).

However, this rule has now been abolished. CICA accepted applications from victims who were prevented from applying for compensation due to the same roof rule until 13 June 2021, although the CICA have some discretion to extend this period in exceptional cases. It is hoped that this move indicates an increased willingness to bring domestic abuse-type offences into CICA's remit.

(d) Advantages and limitations of the scheme

An application to the scheme may be more appropriate than pursuing a civil or criminal remedy for cases where the abuser does not have sufficient assets to compensate the victim, as the compensation fund is provided by the Government.

A successful application to the scheme will also provide compensation without the victim having to undergo the stress of criminal proceedings. For example, a victim would not have to be subject to questioning in court when giving oral evidence.

However, a clear limitation of the scheme is that it only helps victims of "crimes of violence". Therefore, for financial or economic abuse which was not related to physical violence or a threat of immediate violence, the scheme may not be a source of compensation.

Additionally, a person is only eligible for an award under the scheme if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence.

69) <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#application-process> (accessed 3 March 2020).

70) The Criminal Injuries Compensation Scheme 2012, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf, (accessed 26 February 2020), p.11.

The EBE Survey indicates that over half of the respondents were unable to work due to the abuse suffered (64.29%).

7.4 Domestic Abuse Protection Notices and Orders

Section 22 DAA permits senior police officers to issue a domestic abuse protection notice if:

- (a) the officer has reasonable grounds for believing a potential abuser has been abusive towards a person aged 16 or over to whom the abuser is connected; and
- (b) the officer has reasonable grounds for believing that it is necessary to give the notice to protect the victim from domestic abuse or the risk of domestic abuse.

The notices provide that the abuser may not contact the victim or come within a specified distance of the victim's premises. If the abuser breaches the notice, a constable may arrest them without warrant.

Sections 27 to 49 DAA give the courts power to grant a domestic abuse protection order following an application to the court or in the course of proceedings. The orders prohibit abusers from doing things set out in the order or require them to do things set out in the order.

Applications are to be made to the family court, unless the abuser and victim are parties to any civil proceedings, or a chief officer of police makes the application to a magistrates' court.

Orders may be issued in criminal proceedings where the abuser has been convicted (unless in the Court of Appeal) or acquitted of an offence.

The conditions for the issue of the orders are that on the balance of probabilities the abuser has been abusive to a victim aged 16 or over to whom they are personally connected, and the order is necessary to protect the victim from domestic abuse or the risk of domestic abuse.

The extent to which these Notices and Orders will offer protection specifically against economic abuse remains to be seen as the Act starts to be implemented. The inclusion of economic abuse within the definition of domestic abuse in the Act means that these orders should be used equally to protect against this form of abuse as any other, and criminal justice professionals should ensure that these Notices and Orders are so used.



8. Key Recommendations For Persons Involved With The Criminal Justice System

8.1 Consider charging abusers with multiple offences

Most people assume that when a person is arrested they are being investigated for a single crime. However, it is well-known and well-documented that victims of domestic abuse often experience abuse in a variety of different ways. There is a general sense amongst professionals working with victims of abuse that it is preferable to charge abusers with criminal offences that may be easier to prove (and carry heavier penalties) than s.76 SCA. For example, charging an abuser with assault or another violent crime may be easier to prove than an offence under s.76 SCA. This is supported by the recent review of s.76 SCA carried out by the Home Office which shows that the total number of ‘domestic abuse-related offences’ recorded by the police in 2019/20 was 30 times greater than the total estimated number of controlling or coercive behaviour offences.⁷¹ However, there can be huge benefits in charging abusers with multiple offences where they are relevant – not least because the court is presented with a more complete picture of the abuser’s behaviour, but also because it provides an additional route of redress for the victim should the abuser defeat other charges.

The EBE Survey seems promising in this regard; two respondents reported that, where an abuser was charged by the police, they were charged with more than one criminal offence. Unfortunately, we should note that there was a low response rate to this question, which could indicate a lack of criminal justice involvement for the other 12 respondents involved in the EBE Survey.

We also recommend that Prosecutors should use the controlling or coercive behaviour offence (s.76 Serious Crime Act 2015) in tandem with the Proceeds of Crime Act 2002, so that assets derived from criminal conduct (such as controlling or coercive behaviour, often seen in cases of economic abuse) can be confiscated from the perpetrator. Some of these confiscated assets may then be used to compensate the victim, by way of a compensation order. We do not believe that this has ever been done in practice in the UK. This report represents an opportunity for Prosecutors to put the method into practice.

8.2 Front line workers need to have a greater awareness of s.76 SCA and utilise it more frequently

The s.76 SCA offence provides a mechanism through which financial abuse can be identified and prosecuted. However, it is rarely used; the CPS has reported that a total of 314 offences of coercive and controlling behaviour had been charged and reached the first hearing since the legislation came into force (29 December 2015 up until 31 March 2017).

Ministry of Justice figures for 2016 show that 155 defendants were prosecuted for controlling or coercive behaviour, with 59 found guilty and 28 of those imprisoned. Of those successfully prosecuted cases, research from SEA has found that 60% of cases included behaviours that interfere with an individuals’ ability to acquire, use and maintain economic resources.⁷²

These figures suggest that economic abuse is more likely than not to be present in controlling or coercive behaviours.

As such, it is vitally important that frontline workers who come into contact with victims of abuse appreciate how the abuse may be multifaceted and that it is likely to include elements of financial and economic abuse. Even more importantly, frontline workers (such as the police and domestic abuse service providers) need to have the tools available to them to help victims obtain remedies for abuse. As this report has shown, there is no straightforward way to do this, but greater utilisation of s.76 SCA would be a good way to start.

All of the respondents to the EBE survey who reported speaking to front line staff about their experiences noted that they did not seem knowledgeable about financial and/or economic abuse, and over half reported that they did not seem to have any experience working with victims of financial or economic abuse (53.85%).

71) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf

72) Sharp-Jeffs, N. with Learmonth, S. (2017) Into Plain Sight: How economic abuse is reflected in successful prosecutions of controlling or coercive behaviour.

Case study 2

In order to tackle economic and financial abuse, and enforce the current legislation, the police must understand that these types of abuse constitute crimes. Unfortunately, the experience of one expert (“E”) was that the police did not understand this. E made multiple reports to the police demonstrating a recurring pattern of physical, mental, financial and economic abuse inflicted by her estranged partner (“P”), but the police did not call P in for questioning and E received no explanation as to why the matter could not proceed further. It was clear to E that, although the police were familiar with domestic violence, they did not understand what economic and financial abuse was and did not know how to address it. P has never been investigated by the police, nor charged with any crime.

Even more concerningly, E later found out, via a freedom of information request, that the police recorded observations in their incident reports which stated their perception that E was trying to make P sound worse than he was and that her motivation in making the reports to the police was because she was unhappy that the abuser would receive a significant amount of the marital property.

In this case, the police did not understand what economic and financial abuse was. They dismissed E’s reports for reasons which demonstrated a failure to understand or empathise with E’s situation and a lack of understanding of the legal implications of what she had told them. A failure to recognise the specificities of controlling or coercive behaviour fails to validate the lived experiences of survivors, and does not recognise that controlling or coercive behaviour underpins the entire dynamic of a relationship.

The Court of Appeal’s landmark decision in *Re H-N and Others*, in March 2021, makes clear that analysing the context of abuse and patterns of behaviour is vital for providing justice. It is important that agencies such as the police also follow this approach.



8.3 Wider review of s.76 SCA

S.76 SCA attempts to criminalise financial and economic abuse by making controlling or coercive behaviour within intimate or family relationships a criminal offence. However, as explored above, there are several problems with the offence as it stands. The Home Office have recently reviewed the offence.⁷³ Their review found that, whilst volumes of recorded offences and prosecutions have increased year on year since the offence's introduction, there is likely still room for improvement in understanding, identifying and evidencing controlling or coercive behaviour. The review did note that academic literature has suggested aligning s.76 SCA with Scotland's recent Domestic Abuse (Scotland) Act 2018, which is generally seen to tackle this kind of domestic abuse more effectively. Whilst s.68 DAA has now extended the scope of s.76 to apply to former partners as well as existing relationships, further amendments to the offence itself would be helpful.

For example, s.76 SCA defines coercive or controlling behaviour by focusing on the impact of the actions on the victim and sets an unrealistically high standard. Victims need to prove that they feared violence or that the abuse had a "substantial adverse effect" on their day-to-day activities because it caused "serious alarm or distress".

In contrast, the Scottish domestic abuse offence centres around the intent of the abuser's behaviour and likelihood of the abuser's behaviour causing harm. It also expressly recognises more subtle forms of abusive behaviour, such as:

- (a) isolating victims from family and other support;
- (b) depriving victims' freedom of action; and
- (c) making victims dependent on abusers.

In contrast with the position in England and Wales, it is not strictly necessary under Scottish law for victims to have actually suffered harm.

The review did not go so far as to make this recommendation itself, but noted that, if legislative changes are implemented, these would need to be monitored and reviewed to assess the impact of any such changes and to identify whether any unintended consequences stemmed from them.

⁷³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf

8.4 Increase awareness of economic abuse

In order to ensure that economic abuse is properly taken into account within all relevant offences, the awareness and understanding of economic abuse by those working in the criminal justice system needs to be increased.

Training on economic abuse and how it fits within the offences of controlling or coercive behaviour, fraud etc. should be rolled out to frontline domestic abuse staff as well as the police and other criminal justice professionals.

Case study 3

The Expert ("E"), a non-UK citizen, was financially stable and successful when she met her former partner ("P"), an aspiring businessman with little money, in her home country. Very quickly, they moved in together and got married.

Throughout their marriage, P sought to secure control over E's money and assets, and to take advantage of her better financial standing:

- (a) When the couple bought a house, E provided the deposit and obtained the mortgage, yet P insisted that they enter into shared ownership of the property.
- (b) P set up a business with financial support provided by E. Unknown to E, P signed documents in E's name, granting him control over their companies, bank accounts and assets. In this way, E was deceived by P into undertaking liability for very significant debts of the business, which negatively affected her credit rating.
- (c) Over a period of time, unknown to E, P deposited the marital assets (the majority of which had come from E) into complex arrangements with non-UK financial institutions, with access subject to his control. As a result, E could not access her own money.

After many years of marriage, E and P separated, and acrimonious divorce proceedings followed. P falsely accused E of domestic abuse, and succeeded in obtaining a court order against E that prevented her accessing her children and the family home. E perceived that P's false allegations were acted on without investigation, because P drew attention to his professional status and portrayed himself as an ostensibly credible witness.

During divorce proceedings, P dissipated assets using third-party assistance and was obstructive in the disclosure process. Having known E's email and financial log-in details and passwords from when they were married, P logged into E's emails to forge and delete evidence.

The divorce proceedings ran on for over a decade. Eventually, E agreed to a settlement for a small amount of her original assets' value. Her appetite for further litigation, and for making any complaint to the regulator of P's profession, was much reduced given P's proven litigiousness, the time, money and energy she had already expended, and having regard to the interests and wellbeing of their children.



9. The Civil Justice System

9.1 Overview

This section focuses on two key civil claims that could be useful to victims of economic and financial abuse: occupation orders under Part IV of the Family Law Act 1996 ("FLA96") and possession by the landlord on grounds of domestic violence under the Housing Act 1985 ("HA85") and the Housing Act 1988 ("HA88"). It also considers how the County Court Money Claims Centre (commonly known as the 'small claims courts') could help victims.

Although the civil justice system does not provide direct remedies to victims for experiencing economic and financial abuse, civil claims can have significant practical and economic benefits, such as:

- (a) securing a victim's legal right and/or practical ability to occupy their own home and exclude the abuser from it; and
- (b) in some cases, abusers may be required to continue making rent or mortgage payments. By shifting this economic burden, victims can utilise their finances in other ways and take more control over the process of rebuilding their lives.

However, it is important to recognise the limits of civil claims. For instance:

- (a) an occupation or possession order may not provide protection from the abuser where physical abuse is involved. This is critically important, given that abuse is often multi-faceted; and
- (b) the process of initiating civil proceedings can seem daunting to anyone, particularly someone who has been abused. The cost of civil proceedings may be borne by the victim in the first instance (although some of the cost may be recoverable from the abuser if the claim is ultimately successful), which can pose an insurmountable obstacle, particularly for victims of economic and financial abuse. If the victim is not eligible for legally aided advice or other financial support, they may struggle to meet the costs of legal advice and representation, and many may not even initiate proceedings as a result.

Case study 4

During and after the relationship with my partner, he used our joint finances to exert control and influence over me. I was expected to pay the majority of the bills, which he insisted be put in my name, and not doing so would lead to his aggressive behaviour. When I ended my relationship with my then partner, he refused to leave the joint residential property. He then proceeded to rent out rooms in our property, and he solely benefited from the undeclared income.

As a result, and to feel safe, I had to move away to rent another property and leave my full-time employment. After our separation, I paid rent on this home as well as my share of the mortgage repayments. I also began to work part-time to care for my young children, so I was increasingly facing financial issues.

I also faced major problems as a result of our joint mortgage. My ex-partner coerced me to agree for him to secure additional borrowing using our mortgage. When selling our joint residential property, our solicitors wrongly advised me that I needed to

pay back my borrowing while he did not repay the additional sum he had borrowed. During this process, I did not feel adequately protected or represented by the mortgage lender or my solicitors. It seemed to me that these organisations did not really appreciate that the situation was abusive, and did not take my concerns seriously or understand my perspective.

Until a few years ago, we were financially connected as he continued to pay child support. These payments meant we were still in communication. He often used this to verbally abuse and manipulate me. I did not feel completely safe until there were no further financial connections between us.

Overall, I believe my circumstances were not recognised as "proper abuse" at the time because I was not physically abused or assaulted, and threats I was receiving were not specifically relating to "violence". Therefore, there were no adequate avenues for redress or protection in my experience.



9.2 Comparing civil and criminal proceedings

There are some key differences between civil and criminal proceedings that are important to consider:

- (a) Standard of proof: whilst a victim will still have to prove their case against the abuser in both a civil and criminal case, the standard of proof required in a civil matter is on a balance of probabilities. This is a lower standard of proof than in criminal proceedings, where a case must be proved beyond reasonable doubt.
- (b) It is possible in some cases to initiate civil proceedings and obtain remedies without the abuser knowing of or participating in the process (for instance, through an ex parte application to court, which is discussed further below). There is no such anonymity in criminal proceedings.

- (c) Civil proceedings are also shorter than criminal proceedings in general and are brought by the victim, not by the Crown Prosecution Service (the “CPS”), so the victim may feel that they have greater control over how their case proceeds.

Civil and criminal proceedings can be brought in parallel. A two-pronged approach can be really helpful for victims because multiple goals can be achieved simultaneously. For example, the CPS may be working on prosecuting an abuser for a domestic abuse offence whilst the victim simultaneously applies to court for an occupation order.

9.3 DAA and the justice system

The DAA has introduced a number of changes to civil, family and criminal proceedings to be aware of. Under the DAA:

- (a) abusers are prohibited from cross-examining their victims in civil and family courts;
- (b) there is a statutory presumption that victims of domestic abuse are eligible for special measures in the civil, family and criminal courts; and

- (c) it is restated that a person may not consent to the infliction of serious harm and cannot consent to their own death.

9.4 Occupation Orders: General

(a) Overview

Sections 33 to 40 of FLA96 permit the High Court or the family court to make an occupation order in certain circumstances when one party (an “**applicant**”) applies to the court for an occupation order against another party (a “**respondent**”).⁷⁴ Other key terminology is set out in Schedule 3. This section proceeds on the presumption that victims of economic abuse will be applicants and abusers will be respondents.

Broadly, an occupation order may declare and enforce an applicant's pre-existing legal right to occupy a home or it may regulate who can enter a home at any given time.

In this section, we will summarise certain terminology used in FLA96, explain the five types of occupation orders and their contents, highlight certain procedural aspects of obtaining an occupation order and finally assess the advantages and limitations of occupation orders. Which type of occupation order a victim should apply for depends, first, on whether they or the abuser are entitled to occupy their home and, secondly, on the nature of the relationship between the victim and their abuser.

⁷⁴) s. 57 FLA96.

9.5 Occupation Orders: S. 33 FLA96 - applicant entitled to occupy or has home rights

(a) Who can apply for this type of order?

A victim of economic abuse should seek this type of order if:⁷⁵

- (i) they are entitled to occupy the home;
- (ii) the home was intended to be or is the home they share with their spouse or civil partner;
- (iii) the respondent is an associated person of the applicant (i.e. they are or have been marital or civil partners of each other, currently or used to live together, have agreed to marry one another or enter into a civil partnership together, have or had an intimate personal relationship with each other over a long period of time, were parents of the same child

or had parental responsibility for the same child, or the home is or was the home of the applicant and the respondent, or was at any time intended by them to be their home).

This report is concerned only with victims and abusers who are or were in an intimate relationship. However, for completeness, it is noted that, where the victim and abuser are not or have not been in an intimate relationship, this will be the only type of occupation order available to the victim.

⁷⁵) s. 33(1) FLA96.



(b) How does it work?

There is great flexibility in the contents of an occupation order under s. 33 FLA96. It may enforce the applicant's entitlement to occupy their home, permit the applicant to enter and live in any part of the home, regulate either party's occupation of the home, prohibit or suspend or restrict the respondent's entitlement to occupy the home (if any) and exclude the respondent from any part of the home or a defined area which includes the home.⁷⁶ The order may last for a specified period, until the occurrence of a specified event, or until a further order is made.⁷⁷

In deciding whether to make an occupation order and the terms of that order, the court must have regard to all the circumstance of the case including the following "**Core Criteria**":⁷⁸

- (i) the housing needs and housing resources of each of the parties and of any relevant child;
- (ii) the financial resources of each of the parties;
- (iii) the likely effect of any order, or of any decision by the court not to make an order, on the health, safety or well-being of the parties and of any relevant child; and
- (iv) the conduct of the parties in relation to each other and otherwise.

The respondent's economic abuse and the applicant's lack of financial resources will normally weigh in favour of the applicant. Although the FLA96 does not expressly refer to economic or financial abuse, the court must consider the financial resources of each of the parties and is required to make an occupation order if the applicant or any relevant child is likely to suffer significant harm due to the respondent's conduct if an order is not made – for example, where the respondent is also physically or sexually or emotionally abusive.

However, the parties' housing needs and the likely effect of the occupation order on their well-being will also be considered and will be dependent on the particular facts of each case. For instance, the court is not required to make an occupation order if the respondent or any relevant child will suffer as great or greater harm if the occupation order is made. This is referred to as the "**Balance of Harm Test**".⁷⁹ The concept of "harm" may include economic abuse because ill-treatment does not need to be physical ill-treatment, but this is not certain.⁸⁰ This is because "harm" does not include hardship (for example, difficulty in finding alternative accommodation or problems in getting to work, which are some of the consequences of economic abuse).⁸¹

76) s. 33(3) FLA96.

77) s. 33(10) FLA96.

78) s. 33(5) FLA96.

79) s. 33(7) FLA96.

80) s. 63(1) FLA96 defines harm as ill-treatment (including forms that are not physical) or impairment of health (including mental health), so economic abuse can constitute harm.

81) The Law Commission report which gave rise to the current occupation orders framework considered harm to be a narrower concept than hardship – on this basis we do not expect harm to include difficulty in finding alternative accommodation, unsuitability of alternative accommodation or problems in getting to work. See Paragraph 4.34 of Law Commission Report No. 207 (Domestic Violence and Occupation of the Family Home): <http://www.lawcom.gov.uk/app/uploads/2016/07/LC-207-FAMILY-LAW-DOMESTIC-VIOLENCE-AND-OCCUPATION-OF-THE-FAMILY-HOME.pdf>

9.6 Occupation Orders: S. 35 FLA96 - applicant not entitled to occupy but former spouse or former civil partner entitled to occupy**(a) Who can apply for this type of order?**

A victim of economic abuse should seek this type of order if:⁸²

- (i) they are not entitled to occupy the home;
- (ii) the respondent is their former spouse or former civil partner;
- (iii) the respondent is entitled to occupy the home; and
- (iv) the home is or was the home of the applicant and the respondent, or was at any time intended by them to be their home.

(b) How does it work?

An occupation order made under s. 35 FLA96 must contain certain provisions. If the applicant lives in the home in question, the occupation order must give the applicant the right not to be excluded or evicted and it must prohibit the respondent from excluding or evicting the applicant. If the applicant does not live in the home in question, the order must give the applicant the right to enter and occupy the home and it must require the respondent to permit the applicant to exercise that right.⁸³

The order must not last for more than six months, but it may be extended any number of times for further six month periods.⁸⁴

82) s. 35(1) FLA96.

83) ss. 35(3) and (4) FLA96.

84) s. 35(10) FLA96.

85) s. 35(6) FLA96.

86) s. 35(8) FLA96

87) s. 35(5) FLA96.

88) s. 35(7) FLA96.

In deciding whether to make an occupation order, the court must consider the Core Criteria and the following additional criteria:⁸⁵

- (i) the length of time that has elapsed since the parties ceased to live together;
- (ii) the length of time that has elapsed since the marriage or civil partnership was dissolved or annulled; and
- (iii) the existence of any pending proceedings between the parties for a property adjustment order, for an order for financial relief against parents, or relating to the legal or beneficial ownership of the home.

As under s. 33 FLA96, the court must make an occupation order if the Balance of Harm Test is satisfied.⁸⁶

In addition to the above mandatory provisions, an occupation order made under s. 35 FLA96 may also:

- (i) regulate either party's occupation of the home;
- (ii) prohibit or suspend or restrict the respondent's entitlement to occupy the home (if any); and
- (iii) exclude the respondent from any part of the home or a defined area which includes the home.⁸⁷

The court must consider the Core Criteria in deciding whether to make such additional provisions.⁸⁸

9.7 Occupation Orders: S. 36 FLA96 - applicant not entitled to occupy but (former) cohabitant entitled to occupy

(a) Who can apply for this type of order?

A victim of economic abuse should seek this type of order if:⁸⁹

- (i) they are not entitled to occupy the home;
- (ii) the respondent is their cohabitant or former cohabitant;
- (iii) the respondent is entitled to occupy the home; and
- (iv) the home is the home in which the victim and the respondent cohabit, or was at any time the home in which they cohabited or intended to cohabit.

(b) How does it work?

An occupation order made under s. 36 FLA96 must also contain certain provisions. If the applicant lives in the home in question, the order must give the applicant the right not to be excluded or evicted and it must prohibit the respondent from excluding or evicting the applicant.

If the applicant does not live in the home in question, the order must give the applicant the right to enter and occupy the home and it must require the respondent to permit the applicant to exercise that right.⁹⁰ The order must not last for more than six months, but it may be extended any number of times for further six month periods.⁹¹

In deciding whether to make an occupation order, the court must consider the Core Criteria and the following additional criteria:⁹²

- (i) the nature of the parties' relationship and in particular the level of commitment involved in it;
- (ii) the length of time during which they have cohabited;
- (iii) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
- (iv) the length of time that has elapsed since the parties ceased to live together; and
- (v) the existence of any pending proceedings between the parties for an order for financial relief against parents or relating to the legal or beneficial ownership of the home.

In addition to the above mandatory provisions, an occupation order made under s. 36 FLA96 may stipulate further conditions, including:

- (i) regulating either party's occupation of the home;
- (ii) prohibiting or suspending or restricting the respondent's entitlement to occupy (if any) and
- (iii) excluding the respondent from any part of the home or a defined area which includes the home.⁹³

The court must consider the Core Criteria and apply the Balance of Harm Test in deciding whether to make such additional provisions.

The court is not required to make an occupation order if the Balance of

Harm Test is satisfied; its satisfaction is merely one factor for the court to consider when deciding whether to make additional provisions under an occupation order.⁹⁴

⁹⁴ s. 36(7) FLA96.

9.8 Occupation Orders: S. 37 FLA96 - neither applicant nor (former) spouse or (former) civil partner entitled to occupy

(a) Who can apply for this type of order?

A victim of economic abuse should seek this type of order if:⁹⁵

- (1) neither they nor the respondent is entitled to occupy the home;
- (2) the respondent is their spouse, former spouse, civil partner, or former civil partner;
- (3) both they and the respondent in fact occupy the home; and
- (4) the home is or was their matrimonial or civil partnership home.

For example, this may be the case where the parties live under an informal arrangement in a home owned by the abuser's parents.

(b) How does it work?

An occupation order made under s. 37 FLA96 is not required to contain any specific provisions. However, such orders are generally quite limited when compared to the above types of occupation orders. For example, these orders may require the respondent to permit the applicant to enter and remain in any part of the home, regulate either party's occupation of the home, prohibit or suspend or restrict the respondent's entitlement to occupy the home (if any) and exclude the respondent from any part of the home or a defined area which includes the home.⁹⁶ The order must not last for more than six months, but it may be extended any number of times for further six month periods.⁹⁷

The court must consider the Core Criteria when deciding whether to make an order and on what terms. It must make an order if the Balance of Harm Test is satisfied.⁹⁸

⁸⁹ s. 36(1) FLA 96.

⁹⁰ ss. 36(3) and (4) FLA96.

⁹¹ s. 36(10) FLA96.

⁹² s. 36(6) FLA96.

⁹³ s. 36(5) FLA96.

⁹⁵ ss. 37(1) and (1A) FLA96.

⁹⁶ s. 37(3) FLA96.

⁹⁷ s. 35(5) FLA96.

⁹⁸ s. 37(4) FLA96.

9.9 Occupation Orders: S. 38 FLA96 - neither applicant nor (former) cohabitant entitled to occupy

(a) Who can apply for this type of order?

A victim of economic abuse should seek this type of order if:⁹⁹

- (i) neither they nor the respondent is entitled to occupy the home;
- (ii) the respondent is their cohabitant or former cohabitant;
- (iii) both they and the respondent in fact occupy the home; and
- (iv) the home is the home in which they cohabit or cohabited.

For example, this may be the case where the parties live under an informal arrangement in a home owned by the abuser's parents.

(b) How does it work?

An occupation order made under s. 38 FLA96 operates in a similar way to an order made under S. 37 FLA96.¹⁰⁰ The duration of the order must not exceed six months and it may be renewed only once for a further duration of up to six months.¹⁰¹

The court must consider the Core Criteria and whether the Balance of Harm Test is satisfied when deciding whether to make an order and on what terms. Note that unlike some other types of occupation orders, the court is not required to make an occupation order if the Balance of Harm Test is satisfied; its satisfaction is merely one factor for the court to consider when deciding whether to make additional provisions under an occupation order.¹⁰²

99) s. 38(1) FLA96.
100) s. 38(3) FLA96.
101) s. 38(6) FLA96.
102) ss. 38(4) and (5) FLA96.

9.10 Occupation Orders: Additional Provisions

For any of the occupation orders described above, the court may make certain additional provisions which do not regulate the occupation of the home.

The order may require either party to discharge rent or mortgage payments or other outgoings, repair or maintain the home, or make periodic payments to the other party if the other party would be entitled to occupy but for the occupation order. Provisions may also be made as to the possession and maintenance of furniture and the security of the home and its contents.¹⁰³ This can be useful where the victim lacks financial resources by requiring the abuser to make rent or mortgage payments

and meet maintenance costs.

In deciding whether and how to make such provisions, the court must consider all the circumstances, including:¹⁰⁴

- (a) the financial needs and financial resources of the parties; and
- (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

103) s. 40(1) FLA96.
104) s. 40(2) FLA96.

The order shall attach a power of arrest to any of its provisions if it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child, unless it is satisfied that the applicant or relevant child will be adequately protected without a power of arrest.¹⁰⁵ This will be particularly useful where the victim is also physically abused. The effect of it is that, where the police have reasonable suspicion that the respondent has breached the provisions of the occupation order to which the power of arrest is attached, they may arrest the respondent without a warrant.¹⁰⁶

105) s. 47(1) FLA96.
106) s. 47(6) FLA96.
107) s. 47(8) FLA96.
108) s. 46 FLA96.

If no power of arrest is attached, then a warrant must be obtained to make the arrest, which is significantly more time consuming.¹⁰⁷

Where the court has power to make an occupation order, unless it would attach a power of arrest to that order, it may accept an undertaking from any party as to their future conduct. The undertaking is enforceable as if an occupation order had been made on the same terms as that undertaking. It is therefore more appropriate in situations where the risk of non-compliance or physical abuse is low.¹⁰⁸

9.11 Procedural aspects of obtaining an occupation order

The detailed procedure for obtaining an occupation order is in Part 10 of the Family Procedure Rule and in the accompanying Practice Direction.¹⁰⁹ This section highlights certain procedural aspects that may be significant for victims of economic and financial abuse.

As mentioned above, an application for an occupation order may be made to the High Court (Family Division) or, more usually, to the Family Court.¹¹⁰ The Family Court will normally hear all other cases about family issues, but may transfer some cases to the High Court, for instance if complex issues are involved or if certain decisions made by the Family Court are being appealed. For victims of financial and economic abuse, initiating

proceedings in the Family Court can have practical benefits too given the flexibility of the various orders described above. On a very practical level, there are significantly more locations of the Family Court across England and Wales, so the expenses of travelling to the court may be minimised.¹¹¹

Civil procedure rules ordinarily require the respondent to be given notice of the proceedings. However, the court may make an occupation order even though the respondent has not been given such notice (an "**Ex Parte Order**") where the court considers that it is just and convenient to do so.

109) https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_10

110) Except in particularly complex cases, it is generally more appropriate for applications to be made to the Family Court.

111) <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/family-law-courts/>



The court must consider the following factors in its decision:¹¹²

- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved in effecting substituted service.

It is therefore appropriate in situations where the victim is also physically abused, or time is of the essence (such as a period where the respondent is absent), or the respondent is likely to severely harass the victim to deter them from pursuing the proceedings if given notice.¹¹³ However, an Ex Parte Order is only an interim order: as soon as is just and convenient there must be a full hearing at which the respondent may make representations.

A power of arrest may also be attached to any provisions of an Ex Parte Order if the respondent has used or threatened violence against the applicant or a relevant child and there is a risk of significant harm to the applicant or a relevant child due to the respondent's conduct if the power of arrest is not immediately attached.¹¹⁴

The duration of the power of arrest may be shorter than the duration of the Ex Parte Order.¹¹⁵

The form used to apply for an occupation order allows an applicant to request special arrangements to protect them from the respondent.¹¹⁶ These may include a separate waiting room from the respondent, entering the building through separate entrances, being separated by a screen and having the hearing in separate rooms.¹¹⁷ These arrangements can be particularly useful where the abuse is multi-faceted: for example, where the respondent may become violent towards the applicant or where, due to the respondent's emotional or psychological abuse, the applicant may be triggered by seeing or being in the same room as the respondent.

There is provision for a third party representative (such as the police) to apply for an occupation order on behalf of the victim – unfortunately this provision has never been brought into force so it cannot currently be used.¹¹⁸

9.12 Advantages and limitations of occupation orders

The most significant advantage of an occupation order is its breadth: they can secure a victim's legal right and practical ability to occupy their home, exclude the abuser from it and, in some cases, assist them financially by requiring the abuser to make rent or mortgage payments or maintenance costs. Access to safe accommodation and inability to pay for it are often major concerns for victims of economic abuse. Occupation orders are therefore an effective way to resolve these concerns and can enable victims to rebuild their lives whilst remaining in their own homes.

Occupation orders can also be helpful where the abuse is multi-faceted. For example, where economic or financial abuse is coupled with physical or sexual abuse or repeated harassment, an interim occupation order may be obtained without notifying the respondent of the process and the court may make an order containing provisions to which a power of arrest is attached. This means that the respondent be arrested without a warrant if they breach the order.¹¹⁹

Where victims of economic or financial abuse have children, occupation orders can be particularly useful. Not only can obtaining an order enable the victim and their children to remain in their home, but the court must consider the children's interests in deciding whether to grant an occupation order and the terms of that order.

The major limitation of occupation orders is that they do not necessarily require the abuser to pay the victim any compensation or any amount towards meeting rent or mortgage payments. As such, whilst an occupation order can help a victim to reclaim their home, it does not provide the victim with a liquid form of compensation and does not deal with the financial burden of taking on a home alone.

Another drawback is that, although there is no fee to apply for an occupation order, the victim will still incur costs in relation to obtaining legal advice (unless they are eligible for legally aided advice or financial support from a third party, such as a friend, family member or a charity).¹²⁰ This will be particularly challenging for victims of economic abuse, whose financial resources are likely to have been used up or put beyond their reach.

Additionally, occupation orders are not permanent. Some types of occupation order may only last up to six months, whereas others may last longer, but, in each case, their duration will be limited if the home is occupied under a lease or a licence which is set to expire.¹²¹

¹¹² ss. 45(1) and (2) FLA96.

¹¹³ s. 45(3) FLA96.

¹¹⁴ s. 47(3) FLA96.

¹¹⁵ s. 47(4) FLA96.

¹¹⁶ Section 9 of Form FL401: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998334/FL401_Non-mol_and_occ_order.pdf

¹¹⁷ <https://www.citizensadvice.org.uk/family/ending-a-relationship/if-you-were-living-together/your-ex-partner-has-left-your-home/>

¹¹⁸ s. 60 FLA96 allows a third party representative to apply for an occupation order on behalf of the applicant. It was intended that regulations would be made under s. 60 setting out the details of who could be a representative, in what circumstances they could apply and whether the court would treat the grant of an occupation order any differently. Unfortunately, s. 60 has never been brought into force and no regulations have ever been made under it. The Law Commission report which gave rise to the current occupation orders framework envisioned that the police could consult the victim and act on their behalf. This would be helpful where the victim is unable to bring proceedings themselves and it would give the proceedings more "weight" – see paragraphs 5.18-5.23 of Law Commission Report No. 207 (Domestic Violence and Occupation of the Family Home): <http://www.lawcom.gov.uk/app/uploads/2016/07/LC.-207-FAMILY-LAW-DOMESTIC-VIOLENCE-AND-OCCUPATION-OF-THE-FAMILY-HOME.pdf>

¹¹⁹ See Part 10 Applications under Part 4 of the Family Law Act 1996 under the Family Procedure Rules.

¹²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042440/EX50_web_1221.pdf

¹²¹ This should not be an issue where a home is privately owned.

9.13 Landlord's Possession under HA85 and HA88

(a) Overview

A public sector landlord or a social landlord may seek possession of their property on grounds of domestic violence involving the tenants under Part IV of HA85 or Part I of HA88. The landlord may then re-let the property to the victim, resulting in safe accommodation and the ability to move on with their life without needing to move home, although the landlord is not required to do so. Any new tenancy granted to the victim would require the victim to pay rent, which may not be possible in all cases. There is flexibility for the possession order to be suspended or stayed in return for the imposition of conditions which may include that the abuser leaves the property and the victim returns to it and that the abuser pays rent.

However, there are a number of significant limitations to the use of possession orders in cases of economic abuse. Below, we detail when a landlord may apply for possession on grounds of domestic violence, the procedure for doing so and the advantages and limitations of this form of remedy.

122) ss. 79-81 HA85.

123) s.79(2)(a) and Schedule 1 to HA85.

124) s. 1(1) HA88.

125) ss. 1(1)(c) and (2) and Schedule 1 to HA88.

(b) Types of tenancy

(i) Secure tenancy

Broadly, a secure tenancy is a lease or licence of a home where the landlord is a public sector landlord and the tenant (or one amongst joint tenants) occupies the home as their sole or principal home.¹²² There are some notable exclusions, such as a tenancy for over 21 years and a student tenancy.¹²³

Most public sector tenancies will be secure tenancies.

(ii) Assured tenancy and assured shorthold tenancy

Broadly, an assured tenancy is a tenancy of a home which the tenant (or one amongst joint tenants) occupies as their sole or principal home.¹²⁴ There are some notable exclusions: live-in landlords (this may be relevant where the abuser is the victim's landlord), tenancies at a very high or very low rent and local authority landlords.¹²⁵ It should always be checked that the tenancy in question does not fall within one of these exclusions.

Any assured tenancy granted after 28 February 1997 will be an assured shorthold tenancy,¹²⁶ unless the landlord gives the tenant notice otherwise or the contract stipulates, otherwise in which case the tenancy will remain an assured tenancy.¹²⁷

Most private sector tenancies will be assured shorthold tenancies (or otherwise assured tenancies).

However, a landlord of an assured tenancy or assured shorthold tenancy can only seek possession on grounds of domestic violence if they are a social landlord, which is one of the following:¹²⁸

- (1) a non-profit registered provider of social housing;
- (2) a registered social landlord;
- (3) a charitable housing trust; or
- (4) where the property is social housing, a profit-making registered provider of social housing.

In practice, this means most private landlords who are individuals, businesses or property developers cannot seek a possession order on grounds of domestic violence.

Under DAA, where a local authority grants (for reasons connected with domestic abuse) a new assured tenancy to a social tenant who had or has a secure lifetime or assured tenancy (other than shorthold), this must be a secure lifetime tenancy.

126) s. 19A HA88, inserted by s. 96 HA96.

127) Paragraphs 1-3 of Schedule 2A to HA88, inserted by s. 96 HA96.

128) Ground 14A Paragraph (b) in Schedule 2 to HA88.

129) s. 83(1)(a) HA85 and s. 8(1)(a) HA88.

130) s. 83(4) HA85 and s.8(2)-(3) HA88.

131) s. 83(5) HA85 and s. 8(3)(b) HA88.

132) s. 8(4B) HA88.

133) s. 83(4)(b) HA85 and s. 8(3)(c) HA88.

(c) Procedural requirements for seeking possession

Before applying to court for possession, the landlord must serve the tenant with a notice that it is seeking possession.¹²⁹

The notice has to contain certain details, including:

- (i) If applicable, that the possession is sought on the ground of domestic violence;
- (ii) how that ground is met; and
- (iii) the date after which proceedings for possession may begin.¹³⁰ Proceedings for possession under a secure tenancy may not begin until the date the landlord could bring the secure tenancy to an end by giving the tenant a notice to quit.¹³¹ Proceedings for possession under an assured tenancy or an assured shorthold tenancy may not begin until two weeks after the date of service of the notice.¹³²

A notice seeking possession expires 12 months after the date specified, after which proceedings may begin (in the case of a secure tenancy) or 12 months after the date the notice is served (in the case of an assured tenancy or an assured short hold tenancy).¹³³ Proceedings for possession may not be brought once the notice expires.



The court has discretion to dispense with the requirement to serve the tenant with notice where it considers it just and equitable.¹³⁴ In deciding whether that would be just and equitable, the court must take all the circumstances into account, both from the view of the landlord and the tenant.¹³⁵ This will be helpful where there is a concern that the abuser will become physically violent or harass the victim.

Where the victim is not a tenant, the landlord must also take all reasonable steps to serve notice of the proceedings on the victim.

The notice must state that proceedings for possession on grounds of domestic violence have begun and explain how that ground is met.¹³⁶ In the case of assured tenancies and assured short hold tenancies, but not secure tenancies, the court has discretion to dispense with the requirement to serve the victim with notice where it considers it just and equitable.¹³⁷

(d) Seeking possession for domestic violence

The landlord of a secure tenancy may apply to court for possession of the property only on specified grounds.¹³⁸

The court may make an order for possession on grounds of domestic violence only if all of the following requirements are satisfied:¹³⁹

- (i) the home was occupied (whether alone or with others) by a married couple, civil partners or a couple living together as if they were married or civil partners;

- (ii) one or both of the parties is a tenant of the home;
- (iii) one partner has left because of violence or threats of violence by the other partner towards that partner or a family member of that partner who was residing with that partner immediately before that partner left;
- (iv) the court is satisfied that the partner who has left is unlikely to return; and
- (v) the court considers it reasonable to make the order.

Although the parties must have occupied the property together, there is no requirement for the parties to have lived together at the time of the violence.¹⁴⁰

In addition to the power to make an order for possession, the court has discretion to adjourn proceedings, stay or suspend execution of the order, or postpone the date of possession for any period or periods it thinks fit.¹⁴¹

If the court exercises this discretion, then it must require the tenant to pay the landlord rent (including any arrears) unless it considers that to be unreasonable or that it will cause exceptional hardship to the tenant. It may also impose any other conditions it thinks fit. If the conditions are complied with, the court may discharge or rescind the possession order.¹⁴²

These are broad-ranging powers and enable the court to, for example, order that execution of the order be suspended on the condition that the abuser leaves the property but continues to pay rent to the landlord.

(e) Advantages and limitations of landlord possession

Although possession orders do not provide a lump sum of compensation to victims of economic and financial abuse, they have important practical effects such as ensuring safe accommodation for the victim. However, there are a number of limitations to possession orders, including:

- (i) the victim and the abuser must be in an intimate relationship. Although we expect this will often be the case, this will exclude situations where, for example, the victim is the parent, child or sibling of the abuser.
- (ii) the victim must have left their home and be unlikely to return. Many victims of economic abuse remain in their home because they lack resources to leave or for other reasons.
- (iii) "Violence or threats of violence" is not defined and there is no guidance on its meaning. It is not clear whether it includes economic abuse without any other kinds of abuse occurring simultaneously.

- (iv) Once a possession order has been obtained and the landlord in fact takes back possession, the secure tenancy ends.¹⁴³ The landlord is not required to re-let the property to the victim so it may not result in safe accommodation for them, although the Homelessness Code of Guidance does encourage local authority landlords of secure tenancies to consider the scope for evicting the abuser and allowing the victim to remain in the property.¹⁴⁴ It will therefore be important to ascertain the landlord's attitude towards re-letting the property to the victim before encouraging the landlord to commence possession proceedings.
- (v) The landlord, not the victim, must seek possession of the home. This means that the landlord's co-operation is required throughout the process, and little control is given to the victim of abuse.

¹³⁴ s. 83(1)(b) HA85 and s. 8(1)(b) HA88.

¹³⁵ *Kelsey Housing Association v King* (1996) 28 HLR 270.

¹³⁶ s. 83A(3) and (6) HA85 and s.8A(1) and (3) HA88.

¹³⁷ s. 8A(1)(b) HA88.

¹³⁸ s. 84 HA85 and s. 7(1) HA88.

¹³⁹ s. 84(2)(a) and Ground 2A in Schedule 2 to HA85; and s. 7(4) and Ground 14A in Schedule 2 to HA88.

¹⁴⁰ *Metropolitan Housing Trust v Hadjazi* [2010] EWCA Civ 750.

¹⁴¹ s. 85(1) and (2) HA85 and s. 9(1) and (2) HA88.

¹⁴² s. 85(3) and (4) HA85 and s. 9(3) and (4) HA88.

¹⁴³ s. 82(1A)(a) HA85 and s. 5(1)(a) HA88.

¹⁴⁴ Paragraph 21.31.

9.14 County Court Money Claims Centre

It may also be possible for a victim of economic abuse to pursue a claim through the County Court Money Claims Centre.¹⁴⁵ This could be available in circumstances where money is owed to the victim by their abuser, and is often referred to as the process of using the ‘small claims court’. Some of the key details of the nature and format of these claims is set out below.

Claims can be made for both fixed and unspecified sums of money that are owed to the victim. Claims for fixed or specified sums can be made either online or using a hard copy/paper format. A claim for an unspecified sum requires a victim to use the hard copy/paper format only.

Whether the online or hard copy/paper claim form is used, the victim will be required to enter the following details:

- (a) Their name and address;
- (b) The abuser’s name and address;
- (c) Some details about the money they are claiming. This should include details of what money is owed and an explanation of why it is owed. There is no need to append or attach supporting documentation at this stage;
- (d) The amount they are claiming, as well as any interest; and
- (e) They will also be required to sign a statement of truth confirming that the content of the claim form is true.

Upon making a claim, a court fee will need to be paid, with the level of fee varying depending on the sum being claimed (and with fees increasing the greater the amount claimed). It is possible in certain circumstances to get financial help to pay the court fee, for example if the victim is on a low income.

Claims for amounts over £100,000 cannot be made using the online service. Interest can also be claimed on the amount of money owed, and the victim will be required to calculate this amount if the sum being claimed is for a fixed amount.

Following a claim being made, the abuser (i.e. the defendant) will be served with the claim and typically have 14 days to file a response.

The next step will depend on the nature of the abuser’s response. If they are defending/resisting the claim, the abuser will have 33 days from the date of a defence being filed to provide instructions to the Court. Such a request for information/instructions will be provided with the defence document. If the claim is being resisted, and any mediation arranged by the Court is not successful, the case will be transferred to the local court of the abuser, with a judge deciding upon the next steps (i.e. whether a hearing is necessary etc.).

Alternatively, if the abuser admits liability and agrees to pay the money owed, the victim can request a judgment from the Money Claim Online system or from the Court if a hard copy/paper format was used. If the abuser in fact pays the money owed before submitting any defence or admitting liability, the victim can inform the Money Claim Online service, or the Court, that the claim has been settled.

If the abuser does not respond and cannot be found, then judgment will likely be given in favour of the victim. However, this may make enforcing the judgment more difficult; for instance, it may necessitate engaging bailiffs, or applying for further court orders that effectively ‘freeze’ the abuser’s assets so they cannot hide them, etc.

There is not a straightforward avenue in these kinds of situations, and the victim will likely incur further fees. If the abuser is imprisoned, which is a possibility in circumstances where there is a history of abuse, then the victim at least has some certainty as to where the abuser is and how they can be contacted.

If judgment is given in favour of the victim, the court will award the amount that should be repaid and set a date for when payment should be made by the abuser. However, there may be issues with whether the abuser has any assets or money to pay the amount owed to the victim. If it is uncertain what the abuser can afford to pay, the victim can make a further application to ask the Court to order the abuser to give information about their financial situation and what they can afford to repay (although this will incur a further fee). Armed with this knowledge, the victim may decide to start enforcement proceedings to get the debt paid. The Court could also assist with enforcing the judgment. However, if the abuser is bankrupt and has no valuable assets, then the chances of the debt being repaid are extremely low, as there is unlikely to be any money available to pay the victim.

Advantages of the County Court Money Claims Centre

- (a) Allows for claims to be commenced online, and does not necessarily require formal legal advice or the instruction of any legal advisors.
- (b) It may be possible to achieve a successful outcome without having to physically attend court, and therefore avoid the need for any personal interaction with an abuser.

Limitations of the County Court Money Claims Centre

- (a) A court fee must be paid at the outset of the claim.
- (b) Additional court fees may need to be paid if further instructions or hearings are required at Court.
- (c) If the victim is unsuccessful, they may be liable to pay certain fixed costs incurred by the abuser/defendant, for example the reasonable expenses they may have incurred in attending a hearing.
- (d) Enforcing a judgment can be difficult.
- (e) If the abuser does not have any assets or money, there is no way of obtaining monetary redress.

¹⁴⁵ <https://www.gov.uk/make-court-claim-for-money>

10. Key Recommendations For Persons Involved With The Civil Justice System

10.1 Practical actions for victims

To obtain an occupation order, the victim will need to make a statement to the court about the abuse they have experienced. So as to ensure that such a statement, if needed, can be as detailed and precise as possible, the victim should keep a record of the abuse that has been suffered, where safe to do so.

The victim may also want to obtain advice from a law firm in order to help them through the legal process.

The Police will not usually be involved in the process to grant an Occupation Order, although crime reports (if any) may be helpful to demonstrate historic abuse.

Once an Occupation Order has been obtained, the victim should send a copy to their local police station. In the event that the abuser breaches the restrictions, the police will already have a record of the Occupation Order on file. There may however be instances where the victim may prefer to have no police involvement, so it should be the victim's choice as to whether they follow this process or not.

10.2 Use occupation orders to set out financial arrangements

As noted above, occupation orders can specify a variety of arrangements between parties. Of particular importance to victims of domestic abuse is the ability to use an occupation order to require the abuser to discharge rent or mortgage payments or other outgoings and make other similar financial provisions. However, these provisions are not automatically included in occupation orders. Professionals working with victims of abuse should ensure that, where possible, any application for an occupation order contains financial provisions.

Although the mandatory provisions of an occupation order will help victims secure housing, these non-mandatory provisions will improve their financial security and give them greater flexibility to reshape their lives.

The EBE Survey suggests that there is a real mix of understanding regarding occupation orders; most respondents had never applied for an occupation order to prevent an abuser from entering their home (57.14%), despite the fact that most respondents reported having to leave their home at some point because their abuser would not leave (again, 57.14%). Less than a third of respondents sought legal advice on their housing rights (30.77%), and the reasons given for this were mixed.

Case study 5

I may not be the kind of person you would typically think of as someone who would suffer economic abuse. I once had a successful career but left the world of work to care full-time for mine and my partner's children.

Over the course of our marriage my then partner treated any savings I had as his own. When I first met him he was in debt and I paid most of the bills. My ex-partner refused to work.

After all my savings were spent my ex-partner eventually found work. I was totally financially dependent upon him despite him having retreated from family life. Instead of us sharing a bank account, I received a small sum of money from him every month to run the home on a shoestring. He refused to let me see any bank statements or records. Away from the family, he lived a much more comfortable lifestyle – he travelled and ate out all the time.

He told me he had secretly gambled with our money on the stock market and lost hundreds of thousands of pounds. He wanted to re-mortgage our home to pay for this. I refused – it was his fault and it was a massive risk, but he insisted. He physically forced me to sign the documents by moving my hand when holding the pen.

My ex-partner subjected me to sexual and physical abuse and was eventually forced to leave the family home as he had become a threat to my safety and the welfare of the children. Until that point, nobody knew what was going on. The divorce negotiations left me and my children without a home and we have no money to pursue any form of legal redress or to prevent him from constantly interfering with our lives.

10.3 Agree next steps with landlords

Before taking any steps towards obtaining a possession order, the victim may first want to approach the landlord about the situation to explore whether they can end their rental agreement without penalty. A qualified legal advisor will be able to advise on the lease and the renter's rights to move out earlier than the contractual term.

If a possession order is deemed to be the best way forward, then, as noted above, the possession order is applied for at the landlord's discretion. Landlords and professionals working with a victim of abuse should work together to ensure that the victim is in a position to let the property from the landlord

again once proceedings have been finalised, or, if the victim is concerned for their safety remaining at the same address, all efforts should be made to find somewhere new. This should be uncontroversial for public sector and social landlords, particularly for those who are local authorities as this approach is recommended by the Homelessness Code of Guidance.

Admittedly, the EBE Survey suggests that landlord involvement may not apply in the vast majority of cases; 76.92% of respondents reported that they were not renting their homes at the time of the abuse.

10.4 Increase awareness of economic abuse

As with the criminal justice system, awareness and understanding of economic abuse by professionals working in the civil justice system need to be increased. Training on economic abuse, including the dynamics of economic coercion such as manipulation

and intimidation, should be rolled out to all persons involved in the civil justice system including judges and lawyers. This should include information on supporting victims through signposting and referral systems.

10.5 Provide non-means tested legal aid for domestic abuse survivors

As the above discussion shows, the law in this area is complex and the route to remedies for economic abuse are not straightforward. The restrictions on obtaining legal aid brought in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has left domestic abuse victims struggling to navigate the civil justice system with little legal support. A recent report

by SEA details these difficulties and calls for domestic abuse survivors to be exempt from the legal aid means test.¹⁴⁶ Increasing the availability of legal aid for this group would greatly assist them in accessing the remedies for economic abuse which exist within the law but remain under-used or unexplored.

¹⁴⁶ <https://survivingeconomicabuse.org/wp-content/uploads/2021/10/Denied-justice-October-2021.pdf>

Case study 6

Throughout the Expert's ("E") relationship, her partner ("P") exhibited coercive and controlling behaviour. During E's relationship with her partner, P would often refuse to spend money that was necessary for their family security and wellbeing. At one point, P disappeared for months and refused E access to money on his return, and he was also physically abusive to E on a number of occasions and refused to let her spend money that she felt was absolutely necessary after he himself had refused to do so.

When E separated from P due to his coercive and controlling behaviour, P stopped paying money to E which she was entitled to under their separation agreement and cancelled the contract on the property she was renting. She was penniless and was forced to leave the property she was renting and ended up homeless. E sought legal aid to deal with her situation, however, as E owned a property, albeit a low-value one, her application was denied.

When E and P were married, E had originally purchased the house to give her family a stable home. P had refused to, which meant that the family were often temporarily homeless when P's current job contract ended, forcing the family to spend nights outside as P refused to book a hotel. E felt that P did not want to commit to his family and could not control E if she had somewhere else to stay whenever necessary.

Following several refusals by Legal Aid over a number of years, which E believes would have enabled her to rectify her situation, E successfully relied on judicial review, citing trapped capital to show that the money from the property she owns cannot be used to pay for legal representation. This means, however, the Legal Aid Agency will be entitled to all of the proceeds of any subsequent sale of E's property. Furthermore, due to the delay in bringing proceedings, E now faces the challenge of succeeding with her civil claim as the limitation periods for doing so have expired.

11. Other Routes Of Redress

11.1 General

In addition to the remedies outlined above, victims of financial or economic abuse may access financial assistance through other public and/or private arrangements. Examples of such arrangements are set out below.

It should be noted that each arrangement includes a specific criteria in order for the individual to be eligible to apply for financial

assistance. This section sets out the relevant criteria for each arrangement, including whether the individual is employed and/or entitled to receive public funding. Individuals must satisfy a significant number of criteria to be entitled to receive public or private funding, and the processes for applying to receive such funding may be time-consuming.

11.2 Paid Leave: A Recommendation for Employers

Although there is currently no specific requirement for employers to allow paid leave for victims of financial or economic abuse, it is good practice to do so. If there is no abuse-specific paid leave policy at a work place, victims may be able to take paid leave if they fall under another kind of category. This is because paid leave can be taken in many forms, such as statutory leave, compassionate leave and safe leave.

Employers have a legal responsibility to provide a safe and effective work environment and they have a duty of care to employees in this regard. Helping to support and protect employees who are experiencing domestic abuse is part of that responsibility, although would not require payment for time off to attend court. Providing flexible working arrangements and giving paid leave to employees experiencing domestic abuse (which could include paid leave to attend court), are important support mechanisms. The EBE Survey provides interesting data on paid leave, as over half of the respondents reported that they had not taken any paid leave in connection with the abuse they suffered (57.14%).

It is good practice for employers to include provisions in their domestic abuse policy about special leave and flexible working arrangements where someone is experiencing domestic abuse and has practical matters to attend to. Providing special leave that is paid is likely to help a survivor and this is supported by the 2020 report from the Chartered Institute of Personnel Development and the European Human Rights Commission.¹⁴⁷

In June 2020, the Department for Business, Energy & Industrial Strategy asked for evidence to inform their review, which focuses on how employers and the Government could better support domestic abuse survivors in the workplace. The recently published review focuses on three key themes: raising awareness and understanding of the impacts that domestic abuse can have on individuals and employers, building and sharing best practice among employers and the role of employment rights.¹⁴⁸

Case study 7

The expert (“E”) is a survivor of financial and economic abuse, controlling or coercive behaviour, and domestic abuse, committed by her former long-term partner.

The abuse centred around a property E purchased in her sole name, with a mortgage and her hard-earned savings. Following the purchase, E invested time and money in making the property fit for purpose, and took out loans to fund refurbishment works.

E’s partner was physically and emotionally abusive. He demanded to move into the property. He began to pressurise E into terminating her mortgage early, replacing it with a joint mortgage and transferring the property into their joint names. Following a sustained campaign of abuse by her partner, E agreed. Her partner did not pay his share of the mortgage payments.

E’s partner assumed control over their joint account, and made frivolous purchases without her permission. He also siphoned off money to his sole account.

When E ended the relationship, her former partner threatened to kill her. On the advice of Women’s Aid, E moved into temporary accommodation to conceal her location from her former partner.

The abuse endured by E has had a sustained impact on her mental health and financial circumstances.

E reached out for support from the police and her employer; however, this was largely ignored. The police determined that the threats were not serious enough to investigate and refused to investigate the economic abuse. E made the difficult decision to leave her role due to her employer’s treatment of her following the abuse and the impact the abuse was having on her ability to perform her role.

E has been repeatedly failed by the system. Her bank failed to ensure E had access to independent legal advice in relation to the transfer of her property and the mortgage. However, when E subsequently raised a complaint with the Financial Ombudsman, they determined that the bank had acted within government guidelines.

E sought legal advice on numerous occasions. Her solicitors failed to advise her about the reparations available to her as a victim of economic abuse. E was forced to negotiate with her former partner in an attempt to regain full ownership of her property. The situation remains unresolved.

E’s experience demonstrates the lack of support and financial redress available to victims of economic abuse and how abuse of this nature has a longstanding and profound impact on the day-to-day lives of victims.

¹⁴⁷ https://www.cipd.co.uk/Images/good-work-index-full-report-2020-2_tcm18-79210.pdf.

¹⁴⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952445/workplace-support-for-victims-of-domestic-abuse-report.pdf



(a) Employees and Workers

An individual's employment status, such as whether they are classed as an "employee" or "worker", helps determine that individual's employment right. It is beyond the scope of this report to set out all of the various factors taken into account when determining whether someone is a worker or an employee, but, as a general rule of thumb, employees are entitled to protection against unfair dismissal and have the right to ask for time off for emergencies, usually known as "compassionate leave".¹⁴⁹ Employees are also allowed a reasonable amount of time off to deal with an emergency, but there is no set amount of time or rules on whether the employee will continue to receive pay, as it depends on the situation.¹⁵⁰

(b) Statutory Leave

Many workers are entitled to a minimum of 5.6 weeks' paid annual leave ("**Statutory Leave**").¹⁵¹

For a full-time employee, this amounts to a minimum holiday entitlement of 28 working days. Many employees also receive additional holiday rights under their employment contracts. Both workers and employees are entitled to Statutory Leave as part of their employment, regardless of whether it is stated in their contract of employment.

A worker must give notice to his or her employer if they wish to take Statutory Leave.¹⁵² The notice must be given for a period of at least twice the length of the requested period of Statutory Leave in advance of the date on which the Statutory Leave is due to start, although this term may be amended by the terms of the employment contract.¹⁵³ An employer has the right to oppose this notice by issuing a counter-notice.¹⁵⁴

(c) Compassionate Leave

As stated above, an employee may be able to take compassionate leave in addition to Statutory Leave. Compassionate leave may be paid at the employers' discretion. Employees should consult their employment contract or employers' handbook in order to ascertain their employers' rules regarding compassionate (or emergency) leave.

Generally, compassionate leave is granted to employees in circumstances where a family member has fallen ill or there is bereavement. Employers may have differing approaches as to whether financial abuse, and the challenges victims face in response to such abuse (such as co-operating with a police investigation or moving home), would be considered as necessary emergencies.

(d) Safe Leave

A small number of employers have recently introduced "safe leave" to employees who are victims of domestic abuse. In February 2019, the South Ayrshire Council was the first local authority in Europe to introduce paid safe leave for its employees.¹⁵⁵

In March 2019, Vodafone became the first company in the UK to introduce safe leave to employees across its global business.¹⁵⁶ The policy is designed to allow employees experiencing domestic abuse the time to access important help and support. In both cases, employees are entitled to claim up to ten days of paid leave per year without having to sacrifice annual leave or salary entitlements. Individuals employed by either organisation should consult their employers' handbook for further guidance on how to take safe leave. The policy has not been widely introduced so far but it does indicate a growing awareness and commitment by employers to support their employees experiencing domestic abuse. It could be the beginning of a real shift in the workforce; data from the EBE Survey indicates that lots of employers do not have a safe leave policy in place (69.23%) and a relatively large group of respondents did not know whether a safe leave policy was in place (23.08%). Whether this scheme continues to expand and includes support to victims of financial or economic abuse, remains to be seen.¹⁵⁷

Hogan Lovells has taken steps to support anyone who endures and/or witnesses domestic abuse, coercive behaviour or control and/or stalking. The firm's domestic abuse policy sets out the kind of response that can be agreed with victims (including up to 10 days' paid leave, salary advances and a grant of up to £5,000).

(e) Limitations

The entitlement for workers and employees to take paid leave is only available once the individual has been continuously employed for 13 weeks. This requirement excludes individuals who are employed periodically and/or on a short-term basis only, or those who have recently begun new employment.

Due to the requirement to give notice, arranging to take some paid leave from work may not be suitable for some individuals' circumstances. Victims who need to act quickly, e.g. to move to a shelter or to go to medical or legal appointments, may not be able to give their employers much, if any, notice. If their situation changes rapidly, victims may find that relying on annual leave is problematic.

The terms of an individual's holiday entitlement will depend on their contract of employment, but, in reality, a total of 28 days' paid leave may not be sufficient time for some victims. This maximum may be especially unhelpful in cases where there may be repeat occasions throughout one year where a victim would need time off work.

Paid leave does not provide additional financial assistance to victims; instead it enables individuals to continue receiving pay during annual leave. In this sense, this arrangement does not provide additional assistance to victims who may be financially insecure, who are unable to live within their current income, and/or who will need further financial assistance in order to change their circumstances.

149) HM Government, "Holiday Entitlement Rights", <https://www.gov.uk/holiday-entitlement-rights> (accessed on 16 March 2020).

150) Ibid. (accessed on 20 June 2020).

151) Regulation 13(2) of the Working Time Regulations 1998.

152) Regulation 15(1) of the Working Time Regulations 1998.

153) HM Government, "Holiday Entitlement Rights", <https://www.gov.uk/holiday-entitlement-rights> (accessed on 20 June 2020).

154) Regulation 15(4) of the Working Time Regulations 1998.

155) Libby Brooks, "Council to give "safe leave" to staff who are victims of domestic abuse" (The Guardian, 13 February 2019) https://www.theguardian.com/uk-news/2019/feb/13/council-to-give-safe-leave-to-staff-who-are-victims-of-domestic-abuse?CMP=share_btn_link (accessed on 28 March 2020).

156) Maya Oppenheim, "Vodafone becomes first company to offer 10 days' paid leave to domestic-abuse victims across territories" (The Independent, 4 March 2019) <https://www.independent.co.uk/news/business/news/vodafone-paid-leave-domestic-violence-victims-a8806771.html> (accessed on 28 March 2020).

157) Further information can be found at <https://www.eida.org.uk/>.

Some corporates have also put in place their own policies and practices to address the challenges that their employees may face if they experience domestic abuse.

For instance, Hogan Lovells has a domestic abuse policy for its UK offices which outlines the support and assistance available to those who endure or witness domestic abuse, coercive control or stalking.

The EBE Survey suggests that implementing these kinds of policies can make a real difference; 63.73% of respondents reported that having an accessible domestic abuse policy would have made their experiences at work easier.

However, it should also be noted that employees do not always tell their employers about their experience; the EBE Survey indicates that over half of respondents did not tell their employers about the abuse they were going through (53.85%).

(f) Is the workplace safer than home?

In some instances, the workplace may be safer than the home as it provides a place that is removed from an abuser and removed from the threats of financial, emotional and physical abuse within the home sphere. As such, annual leave would provide no respite

to victims in these circumstances (unless, of course, the annual leave enables the victim to arrange their escape from the abuse).

Furthermore, victims may be uncomfortable sharing their personal circumstances with their employer in instances where the abuser knows, or is known by, the victim's workplace and colleagues. The problem remains that paid leave does not provide further assistance to a victim.

(g) Talking to an employer

Although some victims may be able to use unpaid leave to deal with the fallout from financial or economic abuse, it may affect their availability and/or performance at work. It might be sensible to let their employer know what is going on but this would require victims to discuss their personal circumstances with their employer. While it may be practicable to discuss personal circumstances with an employer, this introduces a further burden on the victim. This emphasises the need for employers to have in place helpful domestic abuse policies, which may include raising awareness amongst employees, training senior staff, managers and ambassadors on how to identify those who may need help, and offering direct help or signposting to where it can be found.

11.3 Sick Pay

(a) Overview

The UK Statutory Sick Pay scheme ("SSP") is outlined in the Social Security Contributions and Benefits Act 1992 ("SSCBA"), as amended, and the Statutory Sick Pay (General) Regulations 1982 ("SSP(G)R"), as amended. SSP provides that qualifying employees who are absent from work due to incapacity are entitled to receive a minimum weekly SSP payment for up to 28 weeks. In addition, some employers may provide additional sick pay and individuals should consult their employment contract or employers' handbook for further guidance.

Employees are eligible for SSP if they:

- (a) are working under a contract of employment;¹⁵⁸
- (b) are incapable by reason of disablement from doing work which they could reasonably be expected to perform under the contract; and
- (c) have average weekly earnings¹⁵⁹ of not less than the Lower Earnings Limit ("LEL") based on the previous eight weeks.¹⁶⁰ The LEL is an amount of earnings set each tax year by the government, which qualifies employees earning below the LEL to apply for certain state benefits without being required to pay national insurance. In the 2020/21 tax year, the LEL is set at £120 a week.¹⁶¹

"A day of incapacity" is defined as a day on which "the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract".¹⁶²

An employee is entitled to up to 28 weeks' SSP in any period of incapacity of work ("PIW").¹⁶³ PIWs will be linked if they are not more than eight weeks apart. In other words, the "clock" on SSP entitlement resets every eight weeks.¹⁶⁴ After 28 weeks, the employee may be entitled to receive sickness benefit entitlement from the Department of Work and Pensions by way of SSP. SSP is not payable for the first three qualifying days in any period of incapacity.¹⁶⁵

(d) Limitations

SSP is not available to all types of workers and so many low income or casual workers may not have access to the scheme. Victims who do not work have no access to this scheme either

To qualify for SSP, an individual must be incapacitated. As such, they have to suffer from "some specific disease or bodily or mental disablement".

Whilst some victims of financial or economic abuse may suffer from other forms of abuse which qualify as such, not all victims will be able to satisfy this requirement.

¹⁵⁸ Section 151(1) SSCBA.

¹⁵⁹ Regulation 19 SSP(G)R.

¹⁶⁰ Paragraph 2(c), Schedule 11, SSCBA.

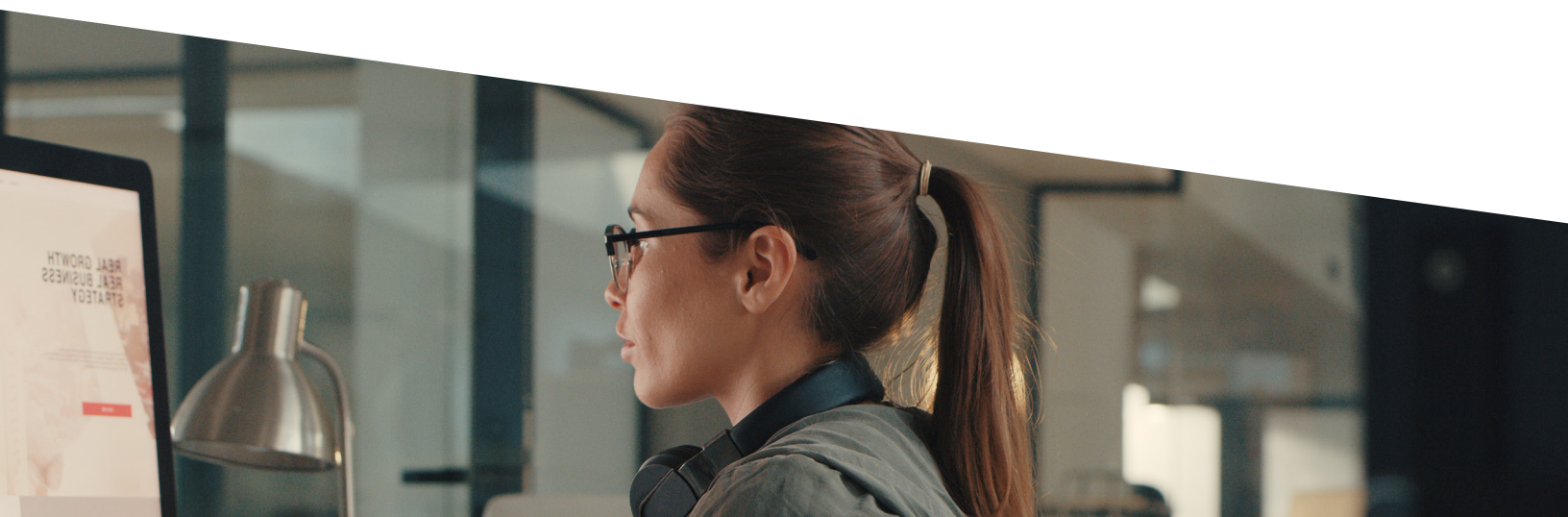
¹⁶¹ HM Revenue & Customs, "Rates and allowances: National Insurance contributions" (gov.uk, updated 6 April 2020) <https://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions> (accessed on 29 June 2020).

¹⁶² Section 151(4) SSCBA.

¹⁶³ Section 152(2) SSCBA.

¹⁶⁴ Section 152(3) SSCBA.

¹⁶⁵ These are defined as the "waiting days" under section 155(1) SSCBA.



(e) Is the workplace safer for the victim?

As previously discussed, the workplace may be safer than the home as it provides a place that is removed from an abuser and removed from the threats of financial, emotional and physical abuse within the home sphere.

As a result, SSP would not be helpful to individuals who feel threatened within their home sphere and who use the workplace as a respite from the threats of abuse.

11.4 Hardship Fund**(a) General**

The Hardship Fund (the "**Fund**") is a discretionary fund available to very low paid workers who satisfy the following conditions:¹⁶⁶

- (i) **Condition 1:** They are temporarily unable to work as a direct result of being a victim of certain crimes of violence. Annex B of the Criminal Injuries Compensation Scheme 2012 defines a "crime of violence" as a crime which involves physical attacks or omissions, threats and arson attacks. Such acts only constitute a crime of violence if they are carried out either intentionally or recklessly.
- (ii) **Condition 2:** They have sustained an injury as a result of the crime of violence and those injuries do not fall within the Criminal Injuries Compensation Scheme 2012. The injury must have rendered the individual unable to work for a period of at least seven consecutive days.
- (iii) **Condition 3:** The individual must earn less than the minimum amount needed to qualify for SSP and not be in receipt of SSP or an equivalent employer-provided scheme.

- (iv) **Condition 4:** The individual must not have any unspent criminal convictions which under the Criminal Injuries Compensation Scheme 2012 would bar someone from an award.
 - (v) **Condition 5:** The individual must report their injuries to the police as soon as is reasonably practicable (but normally within 48 hours of the incident taking place).
 - (vi) **Condition 6:** The individual must apply to the Fund within eight weeks of the date of the incident.
- The Fund is administered by the Criminal Injuries Compensation Authority (an HM Government organisation). The Fund seeks to provide financial relief to those who have no recourse to other sources of financial assistance, such as Statutory Sick Pay.

(b) Application Process¹⁶⁷

To gain access to the Fund, individuals must be assessed as eligible by Victim Support (an independent national charity for people affected by crime, which can be contacted via its website, www.victimsupport.org.uk). Victim Support will then refer those individuals to the Criminal Injuries Compensation Authority to administer the financial assistance. The Criminal Injuries Compensation Authority will contact the police to confirm details of the incident and conduct a criminal records check to establish if the individual has any unspent criminal convictions. Following these checks, the Criminal Injuries Compensation Authority will inform the individual

directly of their decision. If the claim is approved, financial assistance is paid directly to the successful applicant's bank/building society account.

The amount of relief is based on the current weekly rate of SSP and is paid directly to the successful applicant. It provides financial support from the fourth to the 28th day of absence, provided the applicant has been unable to work for a period of seven consecutive days. The maximum is capped at the equivalent of four weeks SSP (less the first three days).

¹⁶⁷ HM Government guidance, "The Hardship Fund: A Guide", <https://www.gov.uk/guidance/the-hardship-fund-a-guide> (accessed on 16 March 2020).

Case study 8

E and **P** had a mortgage in their joint names over the marital home. Both during the marriage and after the parties separated, **P** coerced **E** by acts of violence and intimidation into agreeing to additional drawdowns on the mortgage which she then had to sign over to **P**. When **E** reported this to the bank (mortgage lender), the bank's response was that the mortgage was in

joint names and that **E** – who had been the only party making repayments on the mortgage – would remain liable for the entire amount advanced. At a follow-up meeting, the bank expressed itself in sympathy with **E**, but indicated that it had not acted negligently in handing over the proceeds of the house remortgage to **E**.

¹⁶⁶ As outlined in HM Government guidance, "The Hardship Fund: A Guide", <https://www.gov.uk/guidance/the-hardship-fund-a-guide> (accessed on 16 March 2020).

(c) Limitations

As outlined above, there are a significant number of criteria required in order for an individual to be eligible for the Fund, and these requirements may exclude individuals in particularly distressed situations (including those who are unable to find work due to unspent convictions). It is the responsibility of the victim to prove that they are eligible for the Fund.

The Fund is designed for victims of violent crime, which does not include financial or economic abuse. Although a number of such victims may also be

victims of domestic or physical abuse, and so would be able to apply on these grounds, there remains no option for victims who cannot show they have sustained physical injury or threats of physical violence. Neither financial nor economic abuse is defined as crimes under Annex B of the Criminal Injuries Compensation Scheme 2012, therefore the Fund will not be available to victims of financial or economic abuse only.

11.5 Revenue support grants

Revenue Support Grant is a central government grant given to local authorities which can be used to finance revenue expenditure on any public service. The amount of Revenue Support Grant to be provided to authorities is established through the local government finance settlement. On 17 February 2020, the former Secretary of State for Housing, Communities & Local Government, Robert Jenrick MP, confirmed the government will provide £16.6 million to 75 projects across England to help fund domestic abuse refuge services.

Mr Jenrick said that the new funding was designed to help "local areas better protect victims and their children and provide essential life-saving services, delivering the urgent support that they need to rebuild their lives".¹⁶⁸

Grants, between £44,000 and £974,540, will be provided to local authorities across the UK. The full list of recipient local councils can be found via the Ministry of Housing, Communities & Local Government website,¹⁶⁹ and individuals will be able to apply for access to the funding according to their local council's guidelines.

¹⁶⁸ Ministry of Housing, Communities & Local Government and The Rt Hon Robert Jenrick MP, "Press Release" (gov.uk, 17 February 2020) <https://www.gov.uk/government/news/housing-secretary-confirms-new-support-for-survivors-of-domestic-violence> (accessed on 20 April 2020).

¹⁶⁹ Ministry of Housing, Communities & Local Government and The Rt Hon Robert Jenrick MP, "List of local authorities receiving funding" (gov.uk, 17 February 2020) <https://assets.publishing.service.gov.uk/media/5e4a71d8e5274a6d3205e84b/list-of-successful-las.pdf> (accessed on 20 April 2020).



11.6 Destitution Domestic Violence concession

(a) Overview

Some victims of domestic violence who have been admitted to the UK as the spouse or partner of a British citizen can apply for leave to remain under the Destitution Domestic Violence (“DDV”) concession. Successful applicants will be granted three months’ leave to remain in England and Wales outside the immigration rules which will enable them to apply to public funds.

Under Government-issued guidance, the DDV concession applies to applicants who:¹⁷⁰

- (i) were first granted leave to enter or remain in the UK as the spouse, civil partner, unmarried or same-sex partner of a British citizen;
- (ii) from 1 December 2013, were last granted leave to enter or remain in the UK as the partner of a member of HM forces who is British, settled, still serving and who is considered exempt from immigration control and has at least four years’ service as a regular, or was granted limited leave to remain on discharge; and

- (iii) claim that their relationship with their spouse, civil partner, unmarried or same-sex partner has broken down as a result of domestic violence;
- (iv) claim to need access to funds in order to leave the relationship; or
- (v) intend to apply for indefinite leave to remain as a victim of domestic violence.

(b) Limitations

As discussed in relation to previous remedies, the DDV concession is available only to victims of domestic violence and it is unclear whether the government would apply the wider definition to include victims of financial or economic abuse. According to Home Office immigration guidance financial abuse is within the definition of domestic violence/abuse, so there is an argument that such abuse should be considered for the purposes of the DDV.¹⁷¹ The DDV concession was introduced on 1 April 2012 (replacing the Sojourner Project), before controlling or coercive behaviour was established as an offence. As a result, the DDV concession was not designed with a view to assist victims of financial or economic abuse, but it focuses on victims of physical violence. This disconnect means that we are unsure how the DDV concession will be applied to victims of financial or economic abuse, and it may be that the concession can only be applied in limited circumstances.

EEA nationals are not eligible to apply for the DDV concession if they are present in the UK under freedom of movement rights only (rather than a partner or spousal visa). Kirsty Blackman, MP for Aberdeen North and Depute Leader of the SNP Group at Westminster, highlighted the issue in her motion for leave to bring a bill extending the DDV concession on 20 March 2019. In her motion, Blackman stated that “too many women are being forced to stay in, or return to, abusive homes.

The Home Secretary must extend eligibility for the Destitution Domestic Violence Concession and protect migrant women”.¹⁷²

The DDV concession is also not available for migrant women experiencing domestic abuse who are on visas other than partner visas, such as student visas etc. Attempts to extend the concession to all migrant women regardless of their immigration status through an amendment to the Domestic Abuse Bill did not succeed. This remains a gap in the legal protection of migrant domestic abuse victims.¹⁷³

¹⁷⁰) As outlined in HM Government guidance, “Destitute domestic violence (DDV) concession: Version 1.0” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf (accessed on 18 April 2020).

¹⁷¹) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036187/Victims_of_domestic_violence.pdf

¹⁷²) Kirsty Blackman MP, HC Deb 20 March 2019, vol 656, col 1090 <https://hansard.parliament.uk/commons/2019-03-20/debates/633b0fdb-e585-4069-8731-4eb1bb338a12/CommonsChamber> (accessed on 16 March 2020).

¹⁷³) <https://southhallblacksisters.org.uk/wp-content/uploads/2021/01/DA-Bill-Briefing-Paper-2.pdf>

11.7 Breathing Space

In February 2020, the Government announced the introduction of "Breathing Space". Under the Breathing Space scheme, an individual in problem debt can be provided with 60 days of respite from creditor action in order to seek debt advice.¹⁷⁴

There are two types of breathing space: a standard breathing space and a mental health crisis breathing space.

A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on their debts.

A mental health crisis breathing space is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. It lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

(a) Debtor eligibility for a standard breathing space

The debtor must:

- be an individual
- owe a qualifying debt to a creditor
- live or usually reside in England or Wales
- not have a debt relief order (DRO), an individual voluntary arrangement (IVA), an interim order, or be an undischarged bankrupt at the time they apply

- not already have a breathing space or have had a standard breathing space in the last 12 months at the time they apply. A debt adviser must also be satisfied that the debtor cannot, or is unlikely to be able to, repay all or some of their debt and a breathing space is appropriate for them

(b) Debtor eligibility for a mental health crisis breathing space

The debtor must still meet the same criteria and conditions for a standard breathing space, but they must also be receiving mental health crisis treatment at the time that an application is made. A debtor who has had a standard or mental health crisis breathing space in the last 12 months may be eligible for a mental health crisis breathing space.

There is no limit to how many times a debtor can enter a mental health crisis breathing space.

(c) Limitations

Individuals would only be entitled to one standard Breathing Space in a 12-month period. This restriction may limit the effectiveness of the scheme for victims who endure repeat circumstances of financial or economic abuse.

Individuals receiving mental health crisis treatment would be permitted more than one Breathing Space in a 12-month period and could receive the same debt protections until their treatment is complete.

This arrangement may be helpful to victims of financial or economic abuse who are receiving mental health treatment; however the arrangement would require the additional burden of being assessed by a mental health professional. Furthermore, victims of financial or economic abuse may not be eligible for mental health treatment, as the mental health effects of such abuse can go unnoticed by professionals, so this arrangement is unsuitable.

Breathing Space does not provide financial assistance, nor does it remove an individual's existing debts and financial burdens. The scheme is designed only to provide additional time and advice to individuals in financial difficulty. The victims would still be required to settle any existing debts and financial difficulty which arose as a result of financial or economic abuse. As a result, this scheme would not directly address or ameliorate the financial burdens that victims may face.¹⁷⁵

¹⁷⁴ HM Treasury and John Glen MP, "News Story: Breathing Space to help millions in debt" (gov.uk, 6 February 2020) <https://www.gov.uk/government/news/breathing-space-to-help-millions-in-debt> (accessed on 28 April 2020).

¹⁷⁵ SEA is currently piloting the [Economic Abuse Evidence Form \(EAEF\)](#), an information-sharing tool for use by debt advisers to capture information about the abuse that a victim has experienced, modelled on the existing [Debt and Mental Health Evidence Form](#) used by money and debt advice services, financial services and other creditors. The EAEF makes it quicker and easier for creditors to support victims by verifying that they have experienced economic abuse, enabling creditors to help them find a solution to coerced debt such as a debt write off. The Money and Pensions Service has supported its national roll out as part of the UK Strategy on Financial Wellbeing.

Case study 9

Throughout the Expert's ("E") relationship, her partner ("P") controlled her finances entirely, and through that controlled her life. E and her son were isolated in the UK, drowning in litigation and dependent entirely on court-ordered payments from her P. These payments would be withheld or drip-fed and accompanied with directions over what the money had to be used for, and threats if it was used for any other purpose. This intentionally kept E and her son in a so-called "sandwich" position: on paper too well-funded to access benefits, but in reality without any money of their own.

It is taking extreme bravery and dogged determination for E to survive this situation. E feels that the systems that should have been there to support her are not just broken, they have worked against her: E was told that the police could do nothing unless and until she was the victim of physical violence, no law firm would take her case, which was too complicated and expensive, and even though she had no money for rent she was denied housing benefit because of her ex-husband's deliberately timed payments. E's landlord served her with an eviction notice; for a time, she was homeless.

E has not given up. As much by chance as by judgment, she came across two helpful individuals, who truly cared and listened – one in the Citizens Advice Bureau and another a student finance officer – and with their combined assistance finally began to receive housing and disability benefit. That has given E some stability, but it had taken over four years to get there and the struggle is on-going.

E feels that her experience illustrates the lack of support or accessible information on routes to redress for victims of financial and economic abuse. A system filled with cracks has let E down and – while E has displayed immense resilience – the effects of economic and financial abuse continue to play a powerful debilitating role in her life. It does not bear to think what could have happened were it not for E's resilience and determination.

12. Conclusion

This report has explored how the civil and criminal justice systems in England and Wales provide remedies to victims of financial and economic abuse. Unfortunately, there is no definitive route of redress that meets the needs of every victim of abuse and, indeed, the current legal framework appears to assist such victims only to a limited extent. The lack of awareness and understanding of economic abuse within the legal system is also an obstacle to obtaining effective remedies. However, it is hoped that, by reviewing current legal frameworks and by making some simple suggestions for professionals working in this field, we can find creative solutions for victims which would help them build economic independence and stability and move forward with their lives.

**SURVIVING
ECONOMIC
ABUSE**

About Surviving Economic Abuse (SEA)

Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it. The charity works day in, day out to ensure that women are supported not only to survive, but also to thrive.

Information and resources for those supporting someone experiencing economic abuse can be found on www.survivingeconomicabuse.org

Schedule One

The legislation: s. 76 SCA

Under s.76(1) SCA, "A person (A) commits an offence if:

- (a) *A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive;*
- (b) *at the time of the behaviour, A and B are personally connected;*
- (c) *the behaviour has a serious effect on B; and*
- (d) *A knows or ought to know that the behaviour will have a serious effect on B.*¹⁷⁶

"Personally connected" means that:

A is in an intimate personal relationship with B; or

A and B live together and:

- (i) they are members of the same family; or
- (ii) they have previously been in an intimate personal relationship with each other.

Under s.76(4) SCA, A's behaviour has a "serious effect" on B if:

- (i) it causes B to fear, on at least two occasions, that violence will be used against B; or
- (ii) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

The legislation also sets out the circumstances in which A and B are considered members of the same family. For our purposes, the key relationships are where A and B:

- (iii) are, or have been, married to each other;
- (iv) are, or have been, civil partners of each other;
- (v) have agreed to marry one another (whether or not the agreement has been terminated);
- (vi) have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (vii) they are both parents of the same child; or
- (viii) they have, or have had, parental responsibility for the same child.

The legislation: s.68 DAA

(1) Section 76 of the Serious Crime Act 2015 (offence of controlling or coercive behaviour in an intimate or family relationship) is amended as follows.

- (2) In subsection (1)(b), after "personally connected" insert "(see subsection (6))".
- (3) Omit subsection (2).
- (4) For subsection (6) substitute—
- (6) A and B are "personally connected" if any of the following applies—
 - (a) they are, or have been, married to each other;

- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another (whether or not the agreement has been terminated);
- (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (e) they are, or have been, in an intimate personal relationship with each other;
- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (6A));

(g) they are relatives.

(6A) For the purposes of subsection (6)(f) a person has a parental relationship in relation to a child if—

- (a) the person is a parent of the child, or
 - (b) the person has parental responsibility for the child."
- (5) In subsection (7), for "subsection (6)" substitute "subsections (6) and (6A)".



¹⁷⁶ We note that this is an objective test. For the purposes of this subsection, A "ought to know" that which a reasonable person in possession of the same information would know (see s.76(5) SCA).

Schedule Two

The legislation: Fraud Act 2006 ("FA")

S.2 FA: Fraud by false representation

A person commits an offence under this section if they dishonestly make a false representation and intend to make a gain or cause loss to another by making said representation.¹ A false representation is a representation as to fact or law which is:

- (1) untrue or misleading; and
- (2) the offender knows that it is, or might be, untrue or misleading.²

Representations can be direct or implied. This means that, if an offender lied about certain facts or deliberately implied they would be making a false representation as to fact or law.

1) S.2(1) FA.

2) Ss. 2(2) and (3) FA.

3) S.4(1) FA.

4) <http://www.legislation.gov.uk/ukpga/2006/35/notes> (accessed 26 February 2020).

Schedule Three

FLA96 terminology

1. Entitlement To Occupy A Home⁵

A person is entitled to occupy a home where this entitlement arises by virtue of:

- (a) a beneficial estate (this covers a situation where a person does not legally own the property, but they have a right to the benefits of it i.e. a stay at home mother who has not paid into the property via rent or a mortgage might fall into this category);
- (b) an interest;
- (c) a contract; or
- (d) any enactment giving them the right to remain in occupation.

5) For example, see ss. 30 and 33 FLA96.

6) s. 30 FLA96.

S.4 FA: Fraud by abuse of position

A person will have committed an offence under this section if they:

- (3) hold a position where they are "expected to safeguard, or not to act against, the financial interests of another person";
- (4) dishonestly abuses that position; and
- (5) intends, through this abuse of position, to make a gain or cause loss to another.³

The explanatory notes for this offence expressly recognise that fraud can arise between a family and or intimate partners.⁴

In practice, this will cover a wide variety of living situations, including sole and joint ownership (whether legal ownership or beneficial ownership), leases, contractual licences and public authority housing.

2. Home Rights⁶

Section 30 FLA96 establishes the concept of home rights. Where one spouse or civil partner ("A") is entitled to occupy a home and the other spouse or civil partner ("B") is not so entitled, then, unless the home was never their

matrimonial or civil partnership home and was never intended to be as such, B has the following home rights:

- (a) if B still lives there, then B has the right not to be evicted or excluded from any part of the home by A, except under an occupation order; and
- (b) if B does not still live there, then B has the right (with permission from the court) to enter and occupy the home.

B will cease to have home rights when the marriage or civil partnership ends or when A's entitlement to occupy the home ends, whichever is earlier.

3. Relevant Child⁷

A relevant child is:

- (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
- (b) any child in relation to whom an order under the Adoption Act 1976, the Adoption and Children Act 2002 or the Children Act 1989 is in question in the proceedings; and
- (c) any other child whose interests the court considers relevant.

4. Associated Person⁸

The FLA96 sets out multiple relationships by which one person can be "associated" with another. For the purposes of this report, a person is associated with another person if:

- (a) they are or have been married to each other;
- (b) they are or have been civil partners of each other;

7) s. 62(2) FLA96.

8) s. 62(3) FLA96.

9) s. 62(1) FLA96.

- (c) they are cohabitants or former cohabitants;
- (d) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
- (e) they have agreed to marry one another (whether or not that agreement has been terminated);
- (f) they have or have had an intimate personal relationship with each other which is or was of significant duration;
- (g) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated); or
- (h) in relation to any child, both persons are parents of the child or have or have had parental responsibility for the child.

5. Cohabitant

A person is a cohabitant of another person if they are neither married to each other nor civil partners of each other but are living together as if they were a married couple or civil partners.⁹

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dublin
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh*
Rome
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