



The Litigant in Person  
Support Strategy

# Family Law Briefing for Parliamentarians

## Introduction

This is a joint briefing from LawWorks, the Litigant in Person Support (LIPS) Strategy partners and the Advice Services Alliance, representing a key cross-section of stakeholders in the court and tribunal reform process, and the civil family justice sphere. With the COVID-19 pandemic we know that this is a difficult and worrying time for families. This is particularly so for couples and families experiencing relationship breakdown, for adults and children living with domestic abuse, for all those engaged in the family justice system, and for professionals and volunteers working hard to support families affected by these issues. This briefing addresses the challenges, including briefings on the Divorce, Dissolution and Separation Bill, and the Domestic Abuse Bill.



**advice  
services  
alliance**

## About LawWorks, the Advice Services Alliance and the LIPS Strategy

LawWorks (the Solicitors Pro Bono Group) promotes, supports and facilitates pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. We champion pro bono because of the positive contribution and difference it makes for individuals, communities and society. We work with the solicitors' profession and our members, the Law Society, law schools and law students, law centres, advice agencies and others to develop and support pro bono legal services and clinics, and to promote access to justice for all. LawWorks also provides the Secretariat to the APPG on Pro Bono and Public Legal Education. The Advice Services Alliance (ASA) is the umbrella body for independent advice services and networks in the UK.

The Litigants in Person Support (LIPS) Strategy is a national partnership to improve the experience of people facing the legal process alone. The partner organisations are Support through Court, RCJ Advice, Law for Life (incorporating Advicenow), Advocate, LawWorks and the Access to Justice Foundation. Working in partnership with the Ministry of Justice these organisations have come together to deliver on the following aims:

- Litigants in person know what support is available to them;
- Litigants in person access appropriate practical and emotional support;
- Litigants in person have routes to free or affordable legal advice;
- The legal system is more responsive to the needs of litigants in person.

## Current issues in family law and the family justice system

It is deeply concerning that there has recently been a reported rise in domestic violence, for example the National Domestic Abuse helpline handled a 25% increase in calls and online requests immediately following the lockdown,<sup>i</sup> and demand has been increasing since with Refuge, the domestic abuse charity, reporting a 700% increase in calls to its helpline and website visits in a single day.<sup>ii</sup> The Respect phone line, which provides confidential advice to perpetrators about violence and domestic abuse, had a 27% increase in calls in the week starting 30 March, compared with the week before. The Men's Advice Line, for male victims of domestic abuse, also run by the charity Respect, had an increase in calls of 16.6% in the same week.<sup>iii</sup>

Another concern is that, for separated families, parental responsibility, contact arrangements and compliance with Child Arrangements Orders, as well as maintenance can be more complicated under the 'stay at home' lockdown restrictions. The need for an effective family justice system, backed by clear information, resources, guidance and advice, that serve both its users and the interests of justice, has never been greater.

Her Majesty's Courts and Tribunals services (HMCTS) is working to substantially continue the full operation of the family justice system, albeit on a remote access basis. Four years into the HMCTS reform programme, which aims to bring new technology and modern ways of working into the way justice is administered, family courts have faced significant challenges making this adaptation. The Ministry of Justice's full introduction of a centralised remote access system (the forthcoming 'Cloud Video Platform' or CVP), is still pending. The recently issued Practice Direction on "The Remote Access Family Court" has therefore had to quickly utilise 'off the shelf' remote communications platforms, such as Skype, with the aim of keeping business going safely in the Family Court and Family Division of the High Court.<sup>iv</sup>

This briefing highlights key issues and challenges and also addresses the legislative context.

- **Urgency:** The Courts are prioritising urgent matters, such as applying for a non-molestation order, dealing with other domestic violence matters or where a child's wellbeing may be at risk.
- **Orders concerning children:** There are concerns about whether the online process for court orders can cover all postcode areas, and deal with urgent applications, otherwise forms need to be downloaded and posted to local courts.<sup>v</sup> The notice issued by the President of the Family Division in respect of C100 applications on 3rd April suggests this is now changing<sup>vi</sup>; the online service needs to be available nationwide as in the case of the divorce process. Currently it costs £215 to apply for a court order, and we believe there is a case for suspending the fee at this time.
- **Legal Aid:** Further flexibility from the Legal Aid Agency in their dealings with the family legal aid suppliers would be welcome at this time, especially for urgent issues, but also for sustaining legal aid suppliers and enabling them to work remotely.
- **Other charities and support services:** Domestic violence and other family support charities are facing challenges and costs from operating during the lockdown, keeping crucial digital services running and expanding to meet need - including early intervention and support, and not just crisis intervention. The Home Secretary's announcement of additional £2 million funding to immediately bolster domestic abuse helplines and online support is welcome,<sup>vii</sup> but currently insufficient to meet the need and the challenges charities are facing - it is important that funding for the domestic violence sector filters down to community level, support groups, and local legal help organisations and free legal advice clinics.
- **Policy reform:** With Parliament having gone into early recess and Government focussing on Covid-19 matters, it is important that key reforms supported by stakeholders are not put "on hold" (see legislative reform below).

## Collaboration

It is important that collaboration is promoted across both the statutory and voluntary sectors. A good example of collaboration is FLOWS— Finding Legal Options for Women Survivors, delivered by the Family Team at Royal Courts of Justice Advice Bureau (RCJ Advice), in partnership with Rights of Women, which provides advice about the legal options available to those experiencing domestic abuse.<sup>viii</sup> FLOWS is designed for all relevant support organisations and the staff and volunteers that work in them, and for anyone who is a survivor of domestic abuse. It delivers legal-advice resources for front-line professionals in Women's Refuges, Women's Aid organisations and organisations that provide safe environments to disclose abuse: for example, local Citizens Advice services, law clinics, and court-based services, such as Support through Court, as well as individual women. The resources include, for example, online assistance from over 65 domestic abuse accredited legal aid solicitors

across England and Wales to help complete a Non-Molestation or Occupation Order. RCJ Advice also assist women who do not receive legal aid. CourtNav, the online application, has been made available to the public in response to concerns about Covid-19 preventing women from seeking help via the phone.

FLOWs received a call a police force in Sheffield to say they were concerned about a woman and children where the offender's bail was ending. We spoke to the woman, gave her the link to CourtNav at 12.03 [pm]. The woman submitted the first draft of her answers at 13.26. A local FLOWs solicitor picked the CourtNav application up at 13.32. The woman contacted with RCJ Advice at 13.55 to say that the solicitors had been in touch with her, they had her documents and were preparing for court to apply for an occupation order. The woman was very happy and overwhelmed with the support she had received.

We hope that the spirit of collaboration will extend to the Government, Judiciary and public bodies working in closer partnership with the voluntary and community sectors (including family law clinics), and the legal professions to support vulnerable families at this unprecedented time. There have been some extremely welcome resources published by CAFcASS (the Children and Family Court Advisory and Support Service, which represents children in family court cases) including COVID-19 guidance for separated parents.<sup>ix</sup> Government and local authority information channels could make these resources available more widely, along with the family court's guidance on child arrangement orders,<sup>x</sup> and ensure they are appropriately cascaded to bespoke online tools and apps, like Our Family Wizard,<sup>xi</sup> that enable parents to communicate through software.

## Legislative reforms

There are two important Bills currently before Parliament; **the Divorce, Dissolution and Separation Bill**, and the **Domestic Abuse Bill**. Both have a high degree of cross-party support and contain overdue measures that have been widely consulted on, but have been persistently delayed in Parliament - first by Brexit, and now by the Covid-19 crisis. As a result, this important legislation, and the issues addressed, may not receive appropriate attention from policymakers and parliamentarians. To make these key legislative reforms work, there will need to be secondary legislation, and a whole range of non-legislative operational changes and policies to complement these Bills. They are a starting-point rather than the end-point of making our family justice system more fit for purpose and responsive to families' needs.

### Divorce, Dissolution and Separation Bill

This Bill introduces what is commonly called a "no-fault" divorce policy. It does this by:

- replacing the requirement to provide evidence of "conduct" or separation facts and periods, with a new requirement to provide a 'statement of irretrievable breakdown' to be taken as conclusive evidence that the marriage has broken down;
- introducing a new option of a 'joint application' for divorce.

The Bill also introduces a minimum overall timeframe of six months into the divorce process, and updates legal terminology (such as '*decree nisi*', etc). The legislative reforms are intended to complement the government's new online divorce portal, designed to make the divorce procedure easier and more streamlined, and to enable applicants to complete the process without needing specialist family lawyers.

## Comments on the Bill and its implementation

We welcome the move to no-fault divorce and the intention of this Bill to simplify the divorce process. The move to establishing 'irretrievable breakdown' as a sole ground of divorce without having to prove long periods of separation, or alternatively having to allege and demonstrate things about your spouse's conduct, reflects the current view of marriage as based on consent, mutuality and responsibility. We also support enabling couples to make joint petitions. These reforms will hopefully lead to a less adversarial process, and therefore a less challenging process for litigants in person to navigate where lawyers are not acting on their behalf. Fault-based pleadings can become a tactical process, or incentivise an avoidable level of conflict. There is a strong evidence base behind these reforms, especially Professor Tinder's research which demonstrates scant links between pleaded facts and the real drivers of relationship breakdown. The research also identifies significant differences between outcomes in the English and Scottish systems.<sup>xii</sup> The research concludes that finding fault may in fact trigger, or exacerbate, parental conflict, with a negative impact on children.<sup>xiii</sup>

It is vital that the law and the legal process allow people to move on in as constructive a way as possible. However, these divorce reforms alone, whilst welcome, should not be seen as a 'magic bullet' solution for couples seeking to secure a divorce and engaging with the legal process, especially as the legal separation is likely to be only one aspect of the relationship breakdown.<sup>xiv</sup> Some legal understanding on the part of the parties is still required in respect of rights and responsibilities. Separating couples may have a range of issues to resolve including the future of their children, homes and finances, and using a legal system that is daunting especially for vulnerable people. For example:

Kathryn came into the Support through Court's offices as she needed help filling out an application for emergency child arrangements for her nine-year-old daughter. Both Kathryn and her daughter were struggling with severe mental health difficulties including depression and anxiety, which were worse when her daughter was attending a weekly contact session with her father. Support through Court helped Kathryn to complete the correct forms, and a volunteer then went with her to the emergency hearing in court. During the hearing Kathryn was extremely distressed. The judge granted an interim order for Kathryn's daughter to stay with her whilst they looked for counselling to help with their mental health issues.

Alongside the Bill, other complementary measures need to be looked at and put into place, including:

### ***Greater provision for early legal advice***

Divorce is more than an administrative process, especially where children are concerned. As the former President of the Supreme Court, Lady Hale, said recently "it is unreasonable to expect a husband and wife or mother and father who are in crisis in their personal relationship to make their own arrangements without help."<sup>xv</sup> The absence of initial advice can negate positive early interventions, prolong disputes, and make processes of alternative dispute resolution more difficult to access.

In cutting legal aid for private family matters, there was a failure on the part of policymakers to recognise that solicitors who provide early advice are a significant source of referral to mediation, avoiding costly court hearings. For private law family cases that do progress to court, the proportion of disposals where neither the applicant nor respondent have legal representation is now 39%, an increase of 25% since 2013.<sup>xvi</sup>

Following the review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and the Ministry of Justice's 'Legal Support Action Plan', which has a particular focus on early advice, we hope this issue will be addressed, and that the overly limited scope of private law family legal aid can be revisited.<sup>xvii</sup> It is welcome that in the Action Plan the Ministry

of Justice have committed to "work with The Law Society to explore an alternative model for family legal aid", as there is now significant potential to develop new approaches and "unbundled" legal support packages. Examples to draw on might include the new Affordable Advice service from Law for Life and Resolution,<sup>xviii</sup> and the Divorce Surgery - the 'one couple, one lawyer' service.<sup>xix</sup>

### ***Assisted digital support with the online process***

A welcome reform, introduced alongside this legislation, has been the introduction of the online application process, to make the using the system easier. However it is also important to address the issue of digital exclusion, and the need for assisted digital support. Almost five million people in the UK have never used the internet or have not used it in the last 3 months,<sup>xx</sup> and nearly 11 million adults have no or limited digital skills, such as being able to complete online forms or locate relevant websites. It is important that the HMCTS reform programme 'scales-up' access to assisted digital support.

### ***The cost of the process***

For these on low incomes, or even modest incomes, the current court fee of £550 for divorce applications is high. This disadvantages those less able to afford it. As one of the policy intentions of the legislation is to see less judicial scrutiny and court involvement in the divorce process, (remission schemes notwithstanding) consideration should be given to reducing the fee.

### ***Appropriate signposting and access to marriage and relationship support services and non-court based dispute resolution, and seamless referrals to money advice.***

Separating families, or families in distress, engaging with the family law system or legal advice services, can often have a range of issues and needs, especially in sorting out financial matters, but also in support for their wellbeing. All services should strive to operate on the basis of their being no 'wrong door' for accessing support, and ensuring that service users can be triaged and referred to the most appropriate sources of help.

### **Domestic Abuse Bill**

This Bill tackles domestic abuse and introduces new protections and provisions, dealing with aspects of criminal, civil as well as family law, including:

- a new statutory definition of domestic abuse (inclusive of physical, psychological, and economic);
- the establishment of a 'Domestic Abuse Commissioner';
- provisions for a new civil preventative order regime - the Domestic Abuse Protection Notice ("DAPN") and Domestic Abuse Protection Order ('DAPO');
- new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation;
- eligibility for special measures in the criminal courts for victims and witnesses;
- a prohibition on perpetrators of certain offences from cross-examining their victims in person in the family courts (and vice versa), supported by a power for family courts, in some circumstances, to appoint a legal representative to conduct the cross-examination.

### **Comments on the Bill and its implementation**

We welcome this Bill which has the potential to deliver a more effective approach to tackling domestic abuse, and a step-change in the national response and framework. There has been a co-operative process of stakeholder engagement in getting the Bill to its current form. The legislation is important to reinforce that domestic abuse should be not tackled solely as a

criminal justice issue, but as a family justice issue also, working across health and social care, housing, children's services and welfare. However, much will depend on how it is implemented, and the legislation should be underpinned by a resource commitment from Government to ensure a sustainable future for specialist services and support, with multiple access points in the community and online. The Domestic Abuse Commissioner should have a key oversight role in making this happen and reporting on the progress of statutory agencies in implementing the legislation, and also a role in developing statutory guidance.

Much of what we have said above about the importance of early intervention and support in respect of relationship breakdown, applies to domestic abuse also, and recognising and acting on 'early warning signs' to better enable early intervention. There is also a key role for the advice sector (eg., see FLOWS, above), though often for advice sector clients the immediate 'presenting issue' may be different (e.g., housing issues, benefits or debt.)<sup>xxi</sup>

Areas where the response of statutory agencies may need to be strengthened and co-ordinated include the modern slavery national referral mechanism, priority needs for social housing and secure tenancy allocations, fast-tracking access to mental health support for survivors, and an enhanced role and priority in the health and social care sectors to identify and support victims (see, for example, the IRISI Model<sup>xxii</sup>). The court system has started to see the introduction of Specialist Domestic Violence Courts (SDVCs), specifically adapting magistrates' court hearings to improve prosecutions, victim safety and satisfaction, provide additional training for staff, and support by independent domestic violence advocates. Building on the proposed legislation we hope domestic violence courts will secure the powers, tools and resources that they need to be effective, and work in an integrated way with the family and civil jurisdictions. Alongside scrutiny of the Bill, there are a number of issues to address, including:

### ***Special measures in the courts***

Special measures - such as separate entrances and exits, waiting rooms, screens and video links - should also be equally as available in the civil and family courts. There should also be an active programme of awareness raising for court-users, with enough resource to ensure they are reliably available on request, without the need for chasing up on the day by the litigant.

### ***Collaboration between civil and family justice, especially in supporting vulnerable litigants and witnesses.***

Further to what we have said above, it will be important to ensure that civil and family courts work closely together; as litigants whose issues involve domestic violence may find themselves in any of the court jurisdictions, as their cases could easily move between civil, family and criminal systems. Within the civil jurisdiction, the Civil Justice Council's vulnerable parties paper is just one example of where learning, practice and recommendations for improvements can be shared.<sup>xxiii</sup> There is scope for collaboration on further measures, including the use of translators, intermediaries, and professional cross-examination where vulnerability has been identified.

### ***Monitoring and judicial training***

As above, monitoring will be key and the Commissioner should have an important role in this to ensure compliance. Anecdotal evidence suggests that the effectiveness of the new Family Procedure rules,<sup>xxiv</sup> which contain for example provisions relating to the deployment of case officers, is still inconsistent: Enhancing the rules and the underpinning legal framework is the first step, but training and resourcing must follow if equal access to justice is truly to be achieved. There is also a critically important role for judicial training, so that the justice system understands that domestic abuse includes coercive, financial and other forms of abuse.

## ***Immigration status and access to support***

We think it is fundamentally important that for those experiencing domestic abuse needing to access support services, refuge spaces or obtain a legal remedy, there should be no linkage with considerations of immigration status security or enforcement. Migrant women should be able to safely report to the police, and other agencies and access support services.

**Contact:** James Sandbach, Director of Policy and External Affairs, LawWorks:  
james.sandbach@lawworks.org.uk (07508 327606)  
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