



Public
Law
Project

ECF SHORT GUIDE 1

How to get legal aid Exceptional Case Funding (ECF) in family law



Public Law Project was founded in 1990. We seek a world in which individual rights are respected and public bodies act fairly and lawfully.

Our priorities are to:

- **Promote and preserve the Rule of Law**
- **Ensure fair systems**
- **Improve access to justice**

To achieve our objectives we use a combination of casework, research, training, outreach and policy work.

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How to get Exceptional Case Funding for family cases

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How to get Exceptional Case Funding for family cases

This guide is intended to assist legal aid providers in determining the cases where it might be appropriate to apply for Exceptional Case Funding (“ECF”) for family proceedings, and to assist providers in making successful applications for ECF.

PLP has produced a separate guide for individuals making ECF applications without assistance which is available [here](#).



1. Introduction

Most private family law proceedings were removed from the scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”), along with vast swathes of other areas of law. In response to concerns raised in the consultation prior to LASPO, the Government included provision for funding to be made available in certain cases which would otherwise be outside the scope of legal aid: ECF. Accordingly, funding is available where without it, there would be a breach, or the risk of a breach, of an individual’s rights under the European Convention on Human Rights (“ECHR”), or their rights to legal aid under EU law, principally under the Charter of Fundamental Rights of the European Union (“the Charter”).

ECF is only available in cases that are outside the scope of legal aid. You cannot apply for ECF in cases where legal aid is unavailable because the ordinary means or merits criteria are not met.

As was well publicised, at the outset of the scheme it was very difficult for many people, even those with strong cases for ECF, to obtain the funding that they needed. The number of grants was very low in the first year of the scheme; approximately one per cent of applications in non-inquest cases were successful. Following the cases of *Gudanaviciene and ors v Director of*

Legal Aid Casework and the Lord Chancellor [2014] EWCA Civ 1622 and *IS (by way of his litigation friend, the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor* [2016] EWCA Civ 464, and subsequent changes to the ECF guidance and practical improvements to the scheme, the grant rate has risen significantly, to 54% in the last quarter for which statistics are available (April – July 2017).

Despite this, the number of applications for ECF in family cases has been low and has decreased sharply since the outset of the scheme, from 819 in 2013–14 down to 305 in 2016–17. Although lower than the general picture, the grant rate for family cases has risen to 27% in the period April – June 2017.

ECF is potentially available in a wide range of family proceedings, where the applicant’s particular circumstances require it. This guide is intended to help to identify those cases where making an ECF application is worthwhile and to maximise the chances of making a *successful* application.



2. Case Studies

These case studies are based on successful applications for ECF in family proceedings made by PLP.

Special guardianship proceedings

Catherine was the mother of two children aged 9 and 11. She had been detained under the Mental Health Act 1983 for three months and diagnosed with bipolar affective disorder. When she was admitted to hospital her two children were placed with their maternal aunt by the local authority. The children’s aunt then applied for a Special Guardianship Order (“SGO”), with the local authority funding her application. Catherine opposed the imposition of an SGO.

Catherine applied for ECF on the basis that the proceedings would determine the nature of her relationship with her children, the level of contact she would have with them, and potentially whether they would ever live with her

again. The proceedings were therefore of critical importance to her.

She also argued that the proceedings were so complex she would not be able to conduct them without help. She did not understand the full implications of a Special Guardianship Order, or the test and circumstances in which one could be imposed. Without an understanding of the legal criteria she could not argue effectively against the order. Further, Catherine would have to cross-examine her sister, because the SGO application contained assertions which she disputed. She did not have the skills to do this, and needed the assistance of a lawyer with advocacy experience. Medical evidence of her psychiatric condition was required and without funding she would not be able to obtain the evidence required. Her mental health condition and emotional involvement in the proceedings would make it impossible for her to present her case to the Court in an objective manner.

Another relevant factor in Catherine's case was the fact that the local authority was funding the SGO application. Had the proceedings been brought directly by the local authority (with many of the same consequences), legal aid would have been available.

Child arrangements proceedings

Example One

Michael and his ex-wife Helen had a shared residence order in respect of their daughter Jessica. Following disclosures by Jessica, and a police investigation into allegations of sexual abuse, Helen made an application for a residence order in her favour.

The police investigation concluded with no action taken against Michael. Following Helen's application, which contained a number of serious allegations, a hearing was listed. Helen was in receipt of a legal aid certificate and would be represented by counsel at the hearing.

Michael applied for ECF in order to be represented at the hearing. His application was made on the basis that the consequences of an adverse outcome to the proceedings would be extremely serious; it would potentially mean he would have no contact with his daughter.

Michael also argued that the factual dispute over the allegations was too

complex for him to engage with without legal representation. He would be unable to assess any expert reports prepared by social services, or respond to them adequately. He would also be unable to analyse the police material, and did not have any understanding of the differing standards of proof in criminal and civil matters. Michael would be required to cross-examine Helen, and possibly other individuals concerning the allegations of abuse, which he did not have the ability or experience to do.

Further, as a result of the proceedings, Michael was suffering from depression and anxiety, and had been prescribed antidepressants by his GP. His ability to concentrate was affected by his health problems, and combined with his emotional involvement in the proceedings meant that he could not present his case effectively.

Example Two

Shamima's marriage had broken down before the birth of her daughter. A year later, her ex-husband initiated proceedings to seek contact with the child. Shamima had a learning disability, and following an intervention by the local authority, required help from her mother in order to care for the child. She struggled to understand the issues involved, but was clear that she did not want her ex-husband to have contact with their child. She also suspected that his motivation in seeking contact was the result of his insecure immigration status.

Her ex-husband had previously been violent towards her, but due to her fears and her learning disability she had never reported the violence. She did not have the evidence required for in scope funding on the basis of domestic violence. She therefore sought ECF in order to respond to the contact proceedings.

Shamima applied for ECF on the basis that her ex-husband having contact with their child would have a severe impact on her, as he would remain present in her life. She was also concerned about the impact that contact would have on the welfare of their child. The proceedings were complex, because she wished to make allegations of domestic violence, but did not have evidence of the violence she had suffered. It would be necessary for her to produce a detailed written statement, which she did not have the ability to do. She would have to present those arguments to her ex-husband in cross-examination. She would also need to explain the previous involvement of the local authority, and to present evidence relevant to her ex-husband's

potential motives for making a contact application.

Shamima's learning disability meant that she struggled to understand even the basic concepts involved in her case. She was unable to understand the various options open to the court, for example the form that contact might take, and would require advice in order to make an informed choice. She could not rely on her mother to act as a litigation friend.

Financial relief proceedings

Jane was the respondent to divorce proceedings initiated by her husband. She was the main carer for their two daughters, one of whom was severely disabled. As a result of her caring responsibilities Jane was unable to work, and was in receipt of state benefits. Her husband had stopped paying the mortgage when he moved out, and the interest payments were being covered by housing benefit, which was paid by the local authority. She was also suffering from mental health problems, which were related to the stress of the family proceedings and the strain of caring for her children. She continued to live in the family home, which had been adapted for her younger daughter's needs following a grant from the local authority.

Jane's husband was seeking a property adjustment order in respect of the family home, and had informed her that his intention was for it to be sold so that he could realise his share of the equity in the property. Her husband had instructed solicitors to represent him in the proceedings.

Jane risked losing the home she shared with her daughters, which had been specially adapted to meet the needs of her younger daughter. She had tried to take out a mortgage to buy out her husband's share but was unable to do so. If the property was sold she would be unable to afford to buy any other suitable property. One of her daughters was experiencing panic attacks at the thought of losing her home, and both would face having to change schools at a crucial time for their education if they had to move. Further, the grant which had enabled the adaptations to the house would become repayable if the house was sold. The proceedings were therefore of huge importance to Jane.

Jane would be required to collate and present complex financial evidence, to complete and file legal documents, and to make submissions to the court. She had not been able to file any documents herself, which had already prejudiced her case. In her vulnerable state, managing the case herself while

her husband was represented created an unacceptable inequality of arms.



3. In scope family proceedings

Before making an application for ECF it is essential to check that the matter is not within scope of legal aid. Section 9 LASPO states:

“(1) Civil legal services are to be available to an individual under this Part if –

They are civil legal service described in Part 1 of Schedule 1, and

The Director [of Legal Aid Casework, i.e. the LAA] has determined that the individual qualifies for the services in accordance with this part (and has not withdrawn the determination).”

The civil legal services that are funded routinely within the scope of legal aid are those set out in Schedule 1 to LASPO. It is worth looking at the provisions in Part 1 of Schedule 1 to understand what proceedings are in scope. The exceptions in Parts 2 and 3 also need to be considered. There are two broad questions to consider:

- (1) The type of proceedings** and
- (2) The nature of the client**

The type of proceedings

In the case of family law, broadly speaking public law children proceedings are in scope. Paragraph 1 of Part 1 provides for legal services to be provided in cases where a local authority is considering commencing, or has commenced proceedings relating to the care, supervision and protection of children.

Legal aid is also available in cases related to local authority proceedings, for example an application for contact in respect of a child under the care of a local authority, or an application for a special guardianship order where it is an alternative to a care order.

Also in scope for legal aid are cases involving the unlawful removal of a child from the United Kingdom (paragraph 10), and injunctions such as non-molestation orders (paragraph 11), occupation orders (paragraph 11), forced marriage protection orders (paragraph 16) and female genital mutilation protection orders (paragraph 15A).

Legal aid is also available for mediation in family disputes (paragraph 14).

*A full list of all in scope family proceedings is set out in **Appendix 1**.*

Children

Legal services are also available to children who are parties in family proceedings under paragraph 15 of Part 1 Schedule 1.

Domestic violence

Legal services are provided to victims of domestic violence under paragraph 12 of Part 1 Schedule 1. Legal services are also available in cases where there is a risk of abuse to a child under paragraph 13.

The types of evidence of domestic violence which must be provided in support of an application for legal aid, are specified in schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012.

The evidential requirements which were originally specified by Regulation 33 were the subject of a legal challenge in *Rights of Women v the Lord Chancellor* [2015] EWHC 35. The Court of Appeal found that the exclusion of evidence older than 24 months, and the failure to make any provision for victims of financial abuse, frustrated the purpose of LASPO. Regulation 33 was quashed insofar as it was unlawful.

The Lord Chancellor laid interim regulations in May 2016 to reflect the Court's finding, which broadened the categories of evidence and allowed evidence from the preceding 5 years. On 4 December 2017, the Lord Chancellor announced that the time limit would be scrapped entirely, and the categories of evidence widened further, to include statements from domestic violence support organisations and housing support officers. On 8 January 2018, schedule 1 of the procedure regulations came into force providing

for further categories of domestic violence. To qualify for in scope legal aid under paragraph 12, applicants must be able to provide evidence of any of the following:

- Evidence that the other party has been arrested for a relevant domestic violence offence
- A police caution for a domestic violence offence
- Evidence of relevant criminal proceedings for a domestic violence offence which have not concluded
- A relevant conviction for a domestic violence offence
- Evidence of a court order binding over the other party in connection with a domestic violence offence
- A domestic violence protection notice
- A protective injunction
- A finding of fact that there has been domestic violence by the other party

Evidence is also accepted that a person was a victim of domestic violence in the form of:

- An expert report
- A letter or report from a health professional
- A letter from any person who is a member of a multi-agency risk assessment conference
- A letter from an independent domestic violence or independent sexual violence advisor
- A letter from an officer of a local authority or housing association
- A letter from an organisation providing domestic violence support services
- A letter from a public authority confirming that the person was assessed as being at risk of domestic violence from the other party
- A letter from the Home Secretary confirming that the person has been granted leave under paragraph 289B of the Immigration Rules
- Evidence of financial abuse

A full list of all the acceptable evidence is set out in Appendix 2



4. Exceptional Case Funding

Statutory framework

All civil legal services which are not within the scope of Schedule 1 LASPO are out of scope and may potentially be funded as an ‘exceptional case’.

Section 10 of LASPO provides that:

“Civil legal services, other than services described in part 1 of schedule 1, are to be available to an individual under this part if subsection (2) or (4) is satisfied.”

Sub-section (4) is only relevant to inquests. Sub-section 10(2) states that this sub-section is satisfied where the Director has made an exceptional case determination in relation to the individual and the services, and has determined that the individual qualifies for the services in accordance with this Part and has not withdrawn either determination. **The case must satisfy the same merits, means and any other regulations made under LASPO.**

Instead of being a type of case listed in Schedule 1, the other qualifying feature is being the subject of an exceptional case determination.

Sub-section 10(3)(a) states that:

(3) For the purposes of subsection (2), an exceptional case determination is a determination—

- (a)** that it is necessary to make the services available to the individual under this Part because failure to do so would be a breach of—
 - (i) the individual’s Convention rights (within the meaning of the Human Rights Act 1998), or
 - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or
- (b)** that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

In other words, an exceptional case determination is one that finds that it is necessary to make legal services available to an individual because a failure to do so would amount to a breach of his or her Convention rights within the meaning of the Human Rights Act 1998 or because he or she has an enforceable right to such services under EU law. In addition, sub-section 10(3)(b) states that an exceptional case determination will also be made if it is appropriate to do so in the particular circumstances of the individual case in order to avoid a risk of a breach of the ECHR or EU law.

When does a right to legal aid arise under the ECHR/EU law?

Unlike criminal legal aid, there is no express right to legal aid in civil proceedings in the ECHR. Since the decision in *Airey v Ireland* (1979) 2 EHRR 305, it has been accepted that some Convention rights may have an associated right to legal aid in some civil cases in order for the rights to be practical and effective.

A Convention right to civil legal aid is most likely to arise under Article 6 ECHR, the right to a fair hearing, and Article 8 ECHR, the right to respect for private and family life and Article 3 ECHR, the right to be free from inhuman or degrading treatment. Article 6 is only engaged where there is a civil right and/or obligation to be determined. Most, if not all, family proceedings engage Article 6 ECHR. In family cases, a right to civil legal aid under Article 8 ECHR will often also arise. A right to civil legal aid under Article 3 may arise in some family cases involving domestic abuse, or the risk of continued abuse through the court process.

The relevant provision of EU law is Article 47 of the Charter of Fundamental Rights of the European Union. Article 47 states that **“Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”**. This is engaged when the matter for which funding is required falls within the scope of EU law. It will only apply in family cases not already covered by “in scope” legal aid in limited circumstances.

The case of Gudaviciene

The Lord Chancellor's published Exceptional Funding Guidance ("**the Guidance**") sets out the tests applied by the LAA when determining whether a grant of ECF is required. The approach originally taken in the Guidance was challenged in *Gudaviciene and Others v Director of Legal Aid Casework and Anor* [2014] EWCA Civ 1622 and it was subsequently amended to take account of that judgment.

The Court of Appeal judgment in *Gudaviciene* is now a fairly definitive guide to the law concerning when the Convention and/or Charter require legal aid to be made available. The Court referred to a significant body of European and domestic case law in its judgment, but it is unlikely that any of this would now be required to make an application for ECF. The pertinent principles are largely summarised in the judgment, and are set out below.

The critical question under Article 6(1) ECHR is whether an unrepresented litigant is able to present his case effectively and without obvious unfairness (paragraph 56). The test is essentially the same for Article 8 and Article 47 as it is for Article 6, although the Article 8 test is broader than the Article 6(1) test in that it does not require a hearing before a court or tribunal, but only involvement in the decision-making process.

An effective right is one which is "**practical and effective, not theoretical and illusory in relation to the right of access to the courts**" and "**the question is whether the applicant's appearance before the court or tribunal in question without the assistance of a lawyer was effective, in the sense of whether he or she was able to present the case satisfactorily**" (paragraph 46).

In relation to fairness, the court said "**it is relevant whether the proceedings taken as a whole were fair**", "**the importance of the appearance of fairness is also relevant: simply because an applicant can struggle through 'in the teeth of all the difficulties' does not necessarily mean that the procedure was fair**" and "**equality of arms must be guaranteed to the extent that each side is afforded a reasonable opportunity to present his or her case under conditions that do not place them at a substantial disadvantage vis-à-vis their opponent**" (paragraph 46).

Factors relevant to whether ECF is required

Assessing whether Convention rights require funding is effectively a three-way balancing act. The factors which need to be addressed are:

1. The legal, factual and procedural complexity of the matter;
2. The importance of what is at stake; and
3. The ability of the applicant to represent themselves without legal assistance.

A matter of very great importance to a client (e.g. ceasing contact with a child) might in some cases require funding despite the matter being relatively straightforward and/or having a relatively capable client. Likewise, a really incapable client might need assistance with a relatively trivial and/or straightforward matter. It will be very much case sensitive.

Applying the ECF criteria in family cases

The case studies in this guide are all examples of successful ECF applications in family proceedings. As they demonstrate, ECF can be available for many types of out of scope proceedings. The importance of what is at stake in family proceedings will often be obvious, since proceedings concern the rights of different family members to maintain a relationship with each other, or the protection of the family home. Whether a case is a suitable one for an ECF application will depend as much on the applicant's ability to cope with the demands of the proceedings as on the complexity of their case. The key to making a successful ECF application is showing that the particular complexities of the applicant's case, taken together with their individual ability or lack of it, means that the applicant will be unable to present their case effectively.

Complexity

Legal, factual and procedural complexity are all relevant to whether a grant of ECF is appropriate. An individual without legal training is unlikely to be able to effectively conduct cross-examination, to make legal submissions during a final hearing, or be able to obtain expert evidence. In order to make a successful ECF application it is necessary to spell out all the procedural and other complexities to the LAA. The LAA seems to take the approach that the relatively straightforward legal issues in many family cases means that ECF is not required. This approach is incorrect, but it is essential to demonstrate that there are complex procedural steps that must be taken, arguments to be made, or evidence to analyse, in order to show that the complexity requires a grant of funding.

For example, an individual without legal training is also less likely to be able to understand the evidential requirements, or the criteria that their evidence (or their opponent's) must address. In cases in which there are allegations that an applicant represents a risk to a child, the applicant will have to analyse the evidence presented by the other side, to be aware of the test that they are required to meet, and present their own evidence to address that test. The Court of Appeal's comments in relation to the claimant in *Gudanaviciene* are useful in these cases; the Court found that although the issues in her case were essentially factual and this was **"the kind of factual question which the Tribunal would readily be able to determine if all the relevant evidence was placed before it...in order to ensure that all of the relevant evidence was placed before the Tribunal TG will have to be able to identify this key question; and to produce evidence, and make submissions as to present risk"** (paragraph 90).

Procedural complexity can also give rise to a need for ECF. It may be inappropriate, or even impossible, for an individual to cross examine witnesses, for example where there are allegations of domestic or sexual violence against the litigant. It may also be inappropriate for litigants in person to cross examine an expert witness in order to challenge a psychological assessment. A recent article in Family Law Journal* on the risks to litigants in person in this scenario is worth considering in an ECF application where an individual will be required cross examine a psychological expert witness.

* Dr Jamie Craig, The risks to litigants in person when cross-examining psychologist expert witnesses, Family Law Journal, [2018] Fam Law 64

The importance of the issues at stake

It should be possible to show that any proceedings affecting a family relationship are of importance to an applicant, and in particular any proceedings which will alter or determine the nature of the relationship an applicant will have with their child will be of vital importance. Financial relief proceedings which are purely about money may be less obviously significant but if your client will be unable to meet his or her basic needs, or those of any children, or to keep a roof over their heads without a satisfactory outcome then that should be emphasised in order to show the importance of the issue.

The ability of the applicant to present their case effectively

In family cases, the highly emotive issues will often mean that an applicant for ECF would find it difficult to present their case with the objectivity required, especially where the proceedings concern an applicant's relationship with their children.

Other factors relevant to an applicant's ability to present their case effectively will include their physical and mental health, their level of education, and their ability to communicate in English. However, an assessment of an applicant's ability to engage in the proceedings should not be limited to these obvious barriers. In the case of 'B', a claimant in *Gudanaviciene*, the Court said **"B was wholly unable to represent herself or other family members. It was not simply that she was unable to speak English but that "[s]he did not have the first clue"**". It is not necessary for an applicant for ECF to be prevented from engaging with their case by a language barrier or lack of capacity to litigate; it may simply be that they do not have the ability to understand or carry out the steps they need to take in their case.

Equality of arms

In *Gudanaviciene*, the Court said that **“Equality of arms must be guaranteed to the extent that each side is afforded a reasonable opportunity to present his or her case under conditions that do not place them at a substantial disadvantage vis-à-vis their opponent”** (paragraph 46). In many family cases, one party will be represented and the other will not. Where one party has the benefit of representation, there will often be an obvious unfairness faced by the other. It is worth pointing out that the court will not be able to address the disadvantage faced by the unrepresented party: the court cannot advise a litigant or advance one party’s interests, but must remain impartial, even if it is used to dealing with litigants in person.



5. Reported cases

Gudanaviciene concerned six cases in which ECF had been applied for in relation to immigration proceedings. However, there have been some reported family cases where an entitlement to ECF has been mentioned, although not determined in the judgment. These are worth considering as they demonstrate some factual scenarios in which ECF might be available.

D (as described by HHJ Wildblood in D v K [2014] EWHC 700 (Fam) and by Munby P in Re B (a Child) [2014] EWFC 31)

- Family proceedings at disputed final hearing stage (i.e. full representation);
- Father accused of serious (and potentially criminal) conduct (in this case, rape) in family proceedings;
- Cross-examination was necessary for fairness, and, if the father was unrepresented he would have to cross-examine the mother in respect of the rape allegations;
- Important because contact with child at stake;
- Complex because cross-examination is a specific skill;
- **“Where allegations of this seriousness arise it is very important that the respondent to the allegation is given advice. That advice cannot be given to him by the judge and could not be given to him by the representative of the guardian”** (HHJ Wildblood at paragraph 6(v)).

Q (as described by Munby P in Q v Q [2014] EWFC 7; Q v Q [2014] EWFC 31)

- A father who had been convicted of a sexual offence against a minor had applied for contact with his child; expert reports said that he should not have contact; the father spoke very poor English, and could not effectively mount a defence at the final hearing;
- Munby P stated he was **“unpersuaded that there are not matters in these reports which could properly be challenged, probed, by someone representing the father”** and as a result could not dismiss the application as the mother requested.



6. How to apply for ECF – practicalities

Knowing when to make an application

While the rate of grants in family remains fairly low, it is no longer almost impossible to get ECF, where there are genuine reasons for doing so. If you consider that your client needs ECF in order to have a fair hearing, making an ECF application may be worthwhile and enable your client to get legal advice/representation in cases where they would otherwise not be able to do so. Consider your client’s ability to understand the issues in the case, gather evidence and prepare for the hearing, as well as representing themselves during the hearing.

The fact that some work needs to be done urgently should not be a complete deterrent – urgency is dealt with below. Provisions for backdated funding are also discussed.

If you can see reasons why the individual would find it genuinely difficult to pursue the case themselves, then an ECF application may be worthwhile – bearing in mind that a refusal of ECF may be challengeable by way of Judicial Review.

In any event, where you think an ECF application may be worthwhile, it is likely to be a good idea to make it sooner rather than later. Because of the problems with the urgency procedure, it is not a good idea to delay making an application until it becomes urgent.

If you are unsure about whether your client might qualify for ECF, one option is to apply for “ECF for ECF”: see below.

Forms

In addition to the normal legal aid forms (or CCMS for legal representation), providers should get clients to sign form CIV ECF1 for any ECF application.

You can provide your arguments for why ECF should be granted either in the form itself or in separate ‘grounds’ or ‘statement of case’.

Urgency

At the top of the first page, there is a box marked ‘Urgent Application’. Tick this whenever you want the application to be considered in less than 20 working days. There is space on page 6 of the form to provide information about urgency. Scenarios that require urgency include where:

- There is an imminent date for an injunction or other emergency proceedings;
- A hearing in existing proceedings;
- A limitation period that is about to expire; and
- A delay would cause risk to the life, liberty or physical safety of the applicant.

In practice, only a limitation deadline or imminent hearing is likely to be accepted by the LAA as requiring an urgent decision. If the hearing is not imminent, but significant work is required in order to prepare for the hearing, then it will be necessary to set out the steps that need to be taken, and to

explain why this means that the application is urgent.

Unlike in scope legal aid applications, there are no specific regulations allowing the LAA to make grants of ECF on an urgent basis. The LAA's own time frames are that it will decide non-urgent applications within 20 working days and urgent applications within five working days. The LAA first considers whether it accepts that the application is urgent and if it accepts that it is, then it will prioritise it over non-urgent work.

However, unlike in scope legal aid applications, the LAA may backdate funding:

“A determination under section 10 of the Act may specify that the determination is to be treated as having effect from a date earlier than the date of the determination.” (Procedure Regulations, reg. 68(1))

The LAA's policy, as stated in the Provider Pack is that:

“Controlled Work – Provided the application is submitted within two months of the date when the client signs the controlled work form we will backdate any successful exceptional case funding application to the date the client signs the legal help form (i.e. CW1 or CW2 form)”

“Legal Representation – Where the application is submitted within 2 months from the date recorded in the CIVAPP1 or CIVAPP3 as the date of the client's first attendance/instruction on the matter at the firm making the application we will backdate the certificate to this date ... Where the date of first attendance is recoded as more than 2 months before the application for funding (for example a client who has been helped by the provider in the case for a period before making the application) then we would generally expect to backdate the certificate to the date of receipt of a successful application.”

The ECF Provider Pack states that in cases where the applicant has completed the 'Urgent Case Details' section of the form, the LAA will consider the information provided, and if it agrees that the case is urgent, it will be dealt with within five working days.

Providers are not notified if the LAA declines to treat the application as urgent. It is therefore worth chasing urgent applications with the ECF team, in order to determine the time frame in which the application will be dealt with. If the LAA refuses to treat an application as urgent or fails to deal

with it with the degree of urgency required, the remedy is an application for judicial review (for which in-scope legal aid may be available).

“ECF for ECF”

There may be cases in which you cannot determine whether or not your client meets the ECF criteria without further investigative work, for example, where it is not yet clear what steps your client needs to take, or how complex their case is.

Where it is necessary to undertake investigative work to determine whether funding is required, Legal Help is available in order to carry out that work. Page three of Form ECF1 allows you to make an application for ECF Legal Help in order to investigate the merits of making a full ECF application. You should set out what work is required in order to determine whether ECF is required; for example, it may be necessary to take instructions from the client, or to obtain further papers.

It is possible to claim disbursements under a Legal Help matter granted for the purpose of investigating an ECF application. For example, the guidance in the Provider Pack states that funding for counsel’s advice on the merits of making an ECF application may be appropriate. That advice could then be attached to the back of an application for full ECF. It is also appropriate to claim for interpreter’s fees, but funding for expert reports including medical reports is less likely to be appropriate at this stage.

It is important to note that the Costs Assessment Guidance states when incurring disbursements for investigatory work under ECF, the provider must be able to show that the disbursement was necessary for the purpose of investigating the possibility of making a full application for ECF, rather than for use in the proceedings for which ECF is ultimately being sought. The relevant section of the Costs Assessment Guidance is at 3.51 – 3.54.

Assessment of means

The same means forms and evidence are required for an ECF application as for an ‘in-scope’ application.

Other Evidence

As with all legal aid applications, some evidence of the client's situation and relevant decisions/correspondence will be necessary. You will need to supply key documents, e.g. substantive correspondence from the client's opponent, any claim or appeal forms.

It is also important to consider whether you have in your possession, or can readily obtain, any evidence relevant to why your client's case is exceptional. This may be particularly relevant where the client has a medical condition which would affect their ability to present their case.

What information to include

The LAA are likely to need some kind of account of the basics of the case. This does not need to be particularly long, but to give a concise account of the relevant background, and make clear what the proposed action is.

It may be that you cannot provide a clear account of the action to be taken because you have not been able to take sufficient instructions or obtain relevant information. In this case, you need to make clear what points you wish to advise upon or investigate further. You could ask the LAA to grant 'ECF for ECF' as an alternative to granting full ECF, if they are not satisfied on the information that you are able to provide that full ECF should be granted.

Absence of Evidence

When there are restrictions on your ability to take instructions (e.g. because doing so would incur travel costs for a client in custody, or interpreter's fees) then that should be made clear. You should obviously state what you know – but the function of ECF is to provide funding for the case. The LAA should not demand extensive information which is, for good reasons, beyond your power to obtain without funding.

If you have genuine doubts about your client's capacity to instruct you (e.g. from taking instructions, or because the client was assessed as lacking capacity in relation to another matter), then you should make that clear, even if you do not have evidence that he or she lacks capacity in relation to

your case. Many professionals will charge to make such an assessment, and the Official Solicitor cannot become involved until it has been determined that the client lacks capacity. As such, the fact that you have genuine doubts as to a person's capacity should be enough to present to the LAA a prima facie case for ECF to be granted (subject to means, merits and any other relevant considerations).

The LAA have, in the past, asked for extensive documentation and information. This is now less common, but if such documentation or further instructions are difficult to obtain (or would incur a charge which cannot be met) then the LAA need to be informed of this and why the documents or information are unavailable.

Arguments or Evidence as to Complexity

In some cases, explaining how complicated a matter is can be a significant task in itself, requiring digestion of case law, statute and close analysis of the client's circumstances. It is important to bear in mind that the LAA should not demand of you more than is reasonable. You do not have to do all the work on the case and then get funding; funding should be provided for you to do the case.

For instance, where a case raises (or appears to raise) a complex legal issue which will take time to research and analyse, you are not obliged to 'bottom out' the issue fully before applying for funding. The point of the funding is to enable you to be paid for the time this takes. You do not need to present a complete case to the LAA before they make a decision.



7. What to do if your client is refused ECF

Applicants can apply to the LAA for an internal review of a refusal to grant ECF. The internal review should be made on form APP9E, which should be provided with any refusal. A request for internal review must be made within 14 days of the refusal. The LAA aims to process applications for internal review within 10 working days.

Appendix 1

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
Sched 1 Part 1 Para 1(1) Civil legal services provided in relation to—	s25 Children Act 1989 secure accommodation orders	<p><i>Paragraph 1</i> brings within scope civil legal services in relation to certain orders and proceedings relating to the intervention of a local authority in the care, supervision and protection of a child.</p> <p><i>Paragraph 1(1)</i> lists the types of cases involving care, supervision and protection of children that are to be within scope. These include where the local authority is considering commencing, or has commenced, care or supervision proceedings under Part IV of the Children Act 1989 in respect of a child, proceedings for a child assessment order or proceedings for an emergency protection order under Part V of the Children Act 1989, and adoption cases under the Adoption and Children Act 2002. So, for example, legal aid will be available for parents where a local authority is seeking to take their child into care.</p>
	s31 Children Act 1989 Care and supervision orders	
	s34 Children Act 1989 Contact with child in care	
	s39 Children Act 1989 Discharge and variation of care and supervision orders	
	s43 Children Act 1989 Child Assessment Orders	
	s44 Children Act 1989 Emergency Protection Orders	
	Sched 2 para 19 Children Act 1989 Arrangement to assist children to live abroad	
	s8 Crime and Disorder Act 1998 Parenting orders	
	s11 Crime and Disorder Act 1998 Child safety orders	
	s21 Adoption and Children Act 2002 Placement orders	
	s26 Adoption and Children Act 2002 Contact with child where agency authorised to place for adoption/under 6 weeks and agency places for adoption	
	s36 Adoption and Children Act 2002 Application for leave to remove child from a person's custody	
	s41 Adoption and Children Act 2002 Recovery Orders	
	s46 Adoption and Children Act 2002 Adoption orders	
	s84 Adoption and Children Act 2002 Order giving parental responsibility to people intending to adopt under law of country/territory outside British Isles	

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
<p>Sched 1 Part 1 Para 1(2)</p> <p>Civil legal services provided in relation to an order under an enactment made—</p> <p>a) as an alternative to an order mentioned in sub-paragraph (1), or</p> <p>b) in proceedings heard together with proceedings relating to such an order.</p>	N/A	<p><i>Paragraph 1(2)</i> brings within the scope of civil legal aid services for cases related to those set out at paragraph 1(1); that is, where an order is sought as an alternative to one of those orders, or for proceedings heard together with proceedings relating to such an order. So, for example, an application for a special guardianship order in respect of a child who is the subject of a care order application by a local authority will be in scope, if the two proceedings are to be heard together or the special guardianship order is an alternative to the care order.</p>
<p>Sched 1 Part 1 Para 9</p>	Inherent jurisdiction of High Court in relation to children and vulnerable adults	<p><i>Paragraph 9</i> provides that civil legal services may be made available in relation to the inherent jurisdiction of the High Court in relation to children and vulnerable adults.</p> <p>The High Court may exercise its inherent jurisdiction to protect children and vulnerable adults in cases that call for judicial intervention but which fall outside the relevant statutory framework. So, for example, an application for a wardship order or for an injunction to protect a person under the inherent jurisdiction of the court will be in scope.</p>
<p>Sched 1 Part 1 Para 10</p> <p>(1)Civil legal services provided to an individual in relation to the following orders and requirements where the individual is seeking to prevent the unlawful removal of a related child from the United Kingdom or to secure the return of a related child who has been unlawfully removed from the United Kingdom—</p> <p>For the purposes of this paragraph, a child is related to an individual if the individual is the child's parent or has parental responsibility for the child.</p>	<p>s8(1) Children Act 1989 Prohibited Steps Order</p> <p>s33 Family Law Act 1986 Disclosure of the child's whereabouts</p> <p>s34 Family Law Act 1986 Order for child's return</p> <p>s37 Family Law Act 1986 Requirement to surrender passport issued to or containing particulars of child</p>	<p><i>Paragraph 10(1)</i> brings within the scope of civil legal aid services provided for an individual in relation to any of a list of specified orders and requirements where the individual is seeking to prevent the unlawful removal from the United Kingdom of a child to whom the individual is related. It also provides that civil legal services may be made available to an individual who is seeking the return of a related child who has been unlawfully removed to a place within the United Kingdom.</p> <p>A typical situation would be where a child resides with one parent pursuant to a residence order and there are settled arrangements for staying contact with the 'non-resident' parent, the child is collected by the 'non-resident' parent but is not returned and there is concern they may remove the child from the United Kingdom. Legal aid may be made available for the resident parent in relation to the orders or requirements to prevent the removal which are listed in sub-paragraph (1)(a) to (c). A similar situation within the UK would be where the non-resident parent does not return the child to the resident parent after a period of otherwise agreed contact has ended.</p>

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
<p>Sched 1 Part 1 Para 10</p> <p>(2) Civil legal services provided to an individual in relation to the following orders and applications where the individual is seeking to secure the return of a related child who has been unlawfully removed to a place in the United Kingdom—</p> <p>For the purposes of this paragraph, a child is related to an individual if the individual is the child's parent or has parental responsibility for the child.</p>	s8(1) Children Act 1989 Prohibited Steps Order	<p><i>Paragraph 10(2)</i> brings within the scope of civil legal aid certain services provided to an individual seeking to secure the return of a related child who has been unlawfully removed to a place in the United Kingdom.</p>
	S27 Family Law Act 1986 Application for registration of order relating to the child	
	s33 Family Law Act 1986 Disclosure of the child's whereabouts	
	s34 Family Law Act 1986 Order for child's return	
<p>Sched 1 Part 1 Para 11</p> <p>(1) Civil legal services provided in relation to home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996.</p> <p>(2) Civil legal services provided in relation to the following circumstances arising out of a family relationship:</p> <p>(a) an injunction following assault, battery or imprisonment</p> <p>(b) the inherent jurisdiction of the High Court to protect an adult</p>	s30 Family Law Act 1996 Matrimonial home rights	<p><i>Paragraph 11</i> refers to civil legal services for cases where a person is seeking protection from domestic violence. 851.</p> <p>Sub-paragraphs (1) and (2) list the types of cases that are to be within scope. They cover cases where a person is seeking a civil remedy specifically to provide protection from domestic violence, in the form of an order under Part 4 of the Family Law Act 1996 (sub-paragraph (1)) or an injunction following assault, battery or false imprisonment or an injunction or other order under the inherent jurisdiction of the High Court (sub-paragraph (2)).</p>
	Part 4 Family Law Act 1996 Occupation orders	
	s42 Family Law Act 1996 Non-molestation orders	

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
	<p>Specific exclusion</p> <p>(6) The services described in sub-paragraph (1) do not include services provided in relation to a claim in tort in respect of the domestic violence.</p> <p>Definitions</p> <p>(7) For the purposes of this paragraph—</p> <p>(a) there is a family relationship between two people if they are associated with each other, and</p> <p>(b) “associated” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act).</p> <p>(8) For the purposes of this paragraph—</p> <p>(a) matters arising out of a family relationship include matters arising under a family enactment, and</p> <p>(b) (subject to paragraph (a)) the Lord Chancellor may by regulations make provision about when matters arise out of a family relationship.</p> <p>(9) In this paragraph—</p> <p>“adult” means a person aged 18 or over;</p> <p>[“domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other;] 1</p> <p>“family enactment” means—</p> <p>(a) section 17 of the Married Women’s Property Act 1882 (questions between husband and wife as to property);</p> <p>(b) the Maintenance Orders (Facilities for Enforcement) Act 1920;</p> <p>(c) the Maintenance Orders Act 1950;</p> <p>(d) the Maintenance Orders Act 1958;</p> <p>(e) the Maintenance Orders (Reciprocal Enforcement) Act 1972;</p> <p>(f) Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (staying of matrimonial proceedings) and corresponding provision in relation to civil partnerships made by rules of court under section 223 of the Civil Partnership Act 2004;</p> <p>(g) the Matrimonial Causes Act 1973;</p> <p><i>continues over page</i></p>	

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
	<p>(h) the Inheritance (Provision for Family Dependents) Act 1975;</p> <p>(i) the Domestic Proceedings and Magistrates' Courts Act 1978;</p> <p>(j) Part 3 of the Matrimonial and Family Proceedings Act 1984 (financial relief after overseas divorce etc);</p> <p>(k) Parts 1 and 3 of the Family Law Act 1986 (child custody and declarations of status);</p> <p>(l) Parts 1 and 2 of the Children Act 1989 (orders with respect to children in family proceedings);</p> <p>(m) section 53 of, and Schedule 7 to, the Family Law Act 1996 (transfer of tenancies on divorce etc or separation of cohabitants);</p> <p>(n) Chapters 2 and 3 of Part 2 of the Civil Partnership Act 2004 (dissolution, nullity and other proceedings and property and financial arrangements);</p> <p>(o) section 54 of the Human Fertilisation and Embryology Act 2008 (applications for parental orders) [;] 2</p> <p>[</p> <p>(p) section 51A of the Adoption and Children Act 2002 (post-adoption contact orders).</p>	
<p>Sched 1 Part 1 Para 13</p> <p>Civil legal services provided to an adult ("A") in relation to the following orders and procedures where the child who is or would be the subject of the order is at risk of abuse from an individual other than A</p>	<p>s4(2A) Children Act 1989 Orders removing father's parental responsibility</p> <p>s6(7) Children Act 1989 Application to end appointment of Guardian</p> <p>s8(1) Children Act 1989 Child Arrangement Orders, Prohibited Steps Orders, Specific Issue Orders</p> <p>Special Guardianship Orders</p> <p>s33 Family Law Act 1986 Disclosure of child's whereabouts</p> <p>s34 Family Law Act 1986 Return of child</p>	<p><i>Paragraph 13</i> refers to civil legal services where a person is seeking in a private law family case to protect a child from abuse by applying for any of the list of orders and procedures set out in sub-paragraph (1). So, for example, civil legal aid may be made available to a person who is seeking an order under section 8 of the Children Act 1989 to prevent a person who has abused a child from having contact with that child.</p> <p>It is intended that the regulations made under section 11 will be used to ensure that funding for services described in this paragraph is limited to cases where there is appropriately clear evidence of the need for protection in a similar way to those services described in paragraph 12.</p>

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
<p>Sched 1 Part 1 Para 14</p> <p>(1) Mediation provided in relation to family disputes</p> <p>(2) Civil legal services provided in connection with the mediation of family disputes</p>		<p><i>Paragraph 14</i> refers to civil legal aid for mediation in relation to family disputes. Under paragraph 14(1) and (2) legal aid will be in scope both for mediation and for civil legal services provided in connection with the mediation. It is intended that the regulations made under section 11 will be used to determine what legal services in connection with mediation will be provided as part of legal aid. The type of legal advice to be available is described in the response to the consultation paper <i>Proposals for the Reform of Legal Aid in England and Wales</i>.</p>
<p>Sched 1 Part 1 Para 15</p> <p>(1) Civil legal services provided to a child in relation to family proceedings—</p> <p>(a) where the child is, or proposes to be, the applicant or respondent;</p> <p>(b) where the child is made a party to the proceedings by a court under rule 16.2 of the Family Procedure Rules;</p> <p>(c) where the child is a party to the proceedings and is conducting, or proposes to conduct, the proceedings without a children's guardian or litigation friend in accordance with rule 16.6 of the Family Procedure Rules.</p>		<p><i>Paragraph 15</i> refers to civil legal services for children in relation to family proceedings. Sub-paragraph (1)(a) to (c) lists the types of instances when civil legal aid may be provided, for example where the child is, or proposes to be the applicant or respondent to the proceedings, or when the child is made a party to proceedings by the court under Rule 16.2 of the Family Procedure Rules 2010.</p> <p>867. Sub-paragraph (3)(a) defines proceedings as family proceedings if they arise out of a family relationship, and sub-paragraph (3)(b) and (c) defines "family relationship" (giving it the same broad meaning as in paragraph 11) for the purpose of this paragraph. Sub-paragraph (4) provides that cases arising out of a family relationship include proceedings arising under a family enactment ("family enactment" having by virtue of sub-paragraph (5) the same meaning as in paragraph 12), and gives the Lord Chancellor a power to set out in regulations when matters arise out of a family relationship.</p> <p>These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012</p> <p>131</p> <p>868. Sub-paragraph (5) defines a "child" as a person under the age of 18.</p>
<p>Sched 1 Part 1 Para 15A</p> <p>(1) Civil legal services provided in relation to female genital mutilation protection orders under paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003.</p>		

LASPO Provision	Nature of legal issue in-scope	Annex C: Detailed explanatory note for Part 1 of Schedule 1,
<p>Sched 1 Part 1 Para 16</p> <p>(1) Civil legal services provided in relation to forced marriage protection orders</p>	<p>Part 4A Family Law Act 1996</p>	<p><i>Paragraph 16</i> refers to civil legal services in relation to forced marriage protection orders, which are made under Part 4A of the Family Law Act 1996. In conjunction with paragraph 11 of the Schedule, this paragraph ensures that cases where an injunction or other order is sought to protect an individual from forced marriage or domestic violence will be within the scope of civil legal aid.</p>

Appendix 2

Full list of evidence of domestic violence for the purpose of legal aid as set out in Schedule 1 of the Civil Legal Aid (Procedure) Regulations 2012

1. Evidence that B has been arrested for a relevant domestic violence offence.
2. A relevant police caution for a domestic violence offence.
3. Evidence of relevant criminal proceedings for a domestic violence offence which have not concluded.
4. A relevant conviction for a domestic violence offence.
5. Evidence of a court order binding over B in connection with a domestic violence offence.
6. A domestic violence protection notice issued under section 24 of the Crime and Security Act 2010 against B.
7. A relevant protective injunction.
8. An undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996 1 (or given in Scotland or Northern Ireland in place of a protective injunction) by B provided that a cross-undertaking relating to domestic violence was not given by A.
9. A copy of a finding of fact, made in proceedings in the United Kingdom, that there has been domestic violence by B.
10. An expert report produced as evidence in proceedings in the United Kingdom for the benefit of a court or tribunal confirming that a person with whom B is or was in a family relationship, was assessed as being, or at risk of being, a victim of domestic violence by B.
11. A letter or report from an appropriate health professional confirming that that professional, or another appropriate health professional—
 - (a) has examined A in person; and
 - (b) in the reasonable professional judgement of the author or the examining appropriate health professional A has, or has had, injuries or a condition consistent with being a victim of domestic violence.
12. A letter or report from—
 - (a) the appropriate health professional who made the referral described below;
 - (b) an appropriate health professional who has access to the medical records of A; or
 - (c) the person to whom the referral described below was made;confirming that there was a referral by an appropriate health professional of A to a person who provides

specialist support or assistance for victims of, or those at risk of, domestic violence.

13. A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that A, or a person with whom A is in a family relationship, is or has been at risk of harm from domestic violence by B.

14. A letter from an independent domestic violence advisor confirming that they are providing support to A.

15. A letter from an independent sexual violence advisor confirming that they are providing support to A relating to sexual violence by B.

16. A letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing—

(a) a statement to the effect that, in their reasonable professional judgment, a person with whom B is or has been in a family relationship is, or is at risk of being, a victim of domestic violence by B;

(b) a description of the specific matters relied upon to support that judgment; and

(c) a description of the support they provided to the victim of domestic violence or the person at risk of domestic violence by B.

17. (1) A letter from an organisation providing domestic violence support services.

(2) The letter must confirm that it—

(a) is situated in England and Wales;

(b) has been operating for an uninterrupted period of six months or more; and

(c) provided A with support in relation to A's needs as a victim, or person at risk, of domestic violence.

(3) The letter must contain—

(a) a statement to the effect that, in the reasonable professional judgment of the author of the letter, A is, or is at risk of being, a victim of domestic violence;

(b) a description of the specific matters relied upon to support that judgment;

(c) a description of the support provided to A; and

(d) a statement of the reasons why A needed that support.

Appendix 2

(a) that a person with whom B is or was in a family relationship was refused admission to a refuge;

(b) the date on which they were refused admission to the refuge; and

(c) they sought admission to the refuge because of allegations of domestic violence by B.

19. A letter from a public authority confirming that a person with whom B is or was in a family relationship, was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment).

20. A letter from the Secretary of State for the Home Department confirming that A has been granted leave to remain in the United Kingdom under paragraph 289B of the Immigration Rules.

21. Evidence which the Director is satisfied demonstrates that A has been, or is at risk of being, the victim of domestic violence by B in the form of abuse which relates to financial matters.

22. For the purpose of this Schedule—

“A” means the applicant for civil legal services;

“appropriate health professional” means—

(a) a medical practitioner licensed to practise by the General Medical Council; or

(b) a health professional who is registered to practise in the United Kingdom by—

(i) the Nursing and Midwifery Council;

(ii) the General Dental Council; or

(c) a paramedic, practitioner psychologist, radiographer or social worker registered to practise in the United Kingdom by the Health and Care Professions Council;

“B” means the individual with whom A was in a family relationship giving rise to the need for the civil legal services that are the subject of the application;

“domestic violence offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;

“expert report” means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;

“housing association” has the same meaning as in subsection 1(1) of the Housing Associations Act 1985;

“Immigration Rules” means rules made by the Secretary of State under section 3(3) of the Immigration Act 1971;

“local authority” means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council;

“protective injunction” means an order made by the court—

(a) in respect of persons who are in a family relationship with each other, containing any of the following provisions—

(i) protecting a person from harm, intimidation, threats or harassment;

(ii) protecting a person from being forced into a marriage or from any attempt to be forced into a marriage;

(iii) prohibiting a person from contacting, or communicating with, another;

(iv) concerning entry or access to, or the use or occupation of, property;

(b) for the protection from female genital mutilation under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003; or

(c) in respect of a violent offender within the meaning of section 98 of the Criminal Justice and Immigration Act 2008;

but does not include an order made without notice to the respondent that was subsequently set aside by the court;

“public authority” has the same meaning as in section 6 of the Human Rights Act 1998;

“refuge” means—

(a) a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence; or

(b) a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic violence;

“relevant” means that the evidence—

(a) identifies a person with whom B is or was in a family relationship as being, or at risk of being, the victim of domestic violence; or

(b) is—

(i) in a form described in paragraphs 1 to 4 of this Schedule;

(ii) identifies B as the person arrested for, cautioned with, charged with, or convicted of the domestic violence offence; and

(iii) relates to a domestic violence offence which does not identify the victim.

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