The Legal Aid Sentencing and Punishment of Offenders Act 2012: Evidence requirements for private family law matters

1. Introduction

1.1 The Legal Aid Sentencing and Punishment of Offenders Act 2012 (“LASPO”) governs the provision of legal aid from 1 April 2013. One of the key changes introduced by LASPO is that legal aid for most children and finance matters in private family law cases will only be available where a client has specific evidence in relation to domestic violence or child protection.

1.2 The evidence that is required in order for an application for legal aid to be made in these matters is prescribed in the Civil Legal Aid (Procedure) Regulations 2012 (“the Procedure Regulations”). Regulation 33 deals with evidence relating to domestic violence and Regulation 34 with evidence relating to child protection.

1.3 Because the forms of evidence are prescribed by regulation there is no discretion for the Legal Aid Agency to accept other forms of evidence or for the requirement to be waived in particular cases. Any application for legal aid (Controlled or Licensed work) for the private law children and finance matters set out in paragraphs 12 and 13 of Part 1, Schedule 1 of LASPO must satisfy one of the prescribed evidence requirements.

1.4 In order to make a Controlled Work determination and open a matter start, a client must have one of these prescribed forms of evidence set out in Regulations 33 or 34, as appropriate. The relevant box on the CW1 form will need to be ticked and the original documentation must be retained on file.

1.5 Where the client’s initial instructions concern issues falling within both paragraph 11 and paragraph 12 or 13 of Part 1, Schedule 1 of LASPO, evidence is not required to open a matter start dealing with issues of domestic violence (paragraph 11). However Controlled Work may not be provided in relation to issues under paragraph 12 or 13 as part of that matter unless and until the prescribed evidence has been obtained, and claims will be assessed accordingly.

1.6 The evidence must be obtained before the determination for legal aid is made. A matter start may not be opened to assist a client in obtaining the prescribed evidence and legal aid is not available to cover any costs of obtaining the evidence. Legal aid is only available for matters that are within scope, therefore is not available until the point at which prescribed evidence is provided.

1.7 In order to make a Licensed Work determination, a provider must provide the Legal Aid Agency with one of these prescribed forms of evidence as part of the funding application. A provider must also indicate which piece of evidence they are providing on the APP3 form (Licensed Work application form).
1.8 Certified copies of the evidence may be submitted together with the application; however the original evidence document must be retained on the file and can be called for at any time and we may take steps to verify that the evidence meets prescribed requirements.

1.9 Some of the prescribed forms of evidence must relate to incidents within the twenty four month period immediately preceding the date of the application for civil legal services. This time period applies individually each time a new application is made i.e. separately for a Controlled Work and Licensed Work application. For example a client has a piece of evidence dated 20 May 2011. They see you on 8 April 2013 and you provide them with advice under Legal Help and the Family Help (Lower). You subsequently make an application for a legal aid certificate on 1 June 2013 (Licensed Work). The evidence will no longer be valid as it is outside the prescribed time period and a further piece of evidence will need to be obtained before submitting the application for a legal aid certificate.

1.10 This guidance provides further details on the information evidence must contain in order to satisfy the requirements in the regulations. This guidance is not, unless otherwise stated, an exhaustive list of all the kinds of evidence that may satisfy the requirements. It is our intention to review this guidance on a regular basis and update it where necessary. You should read the Act, the regulations and this guidance to establish whether the piece of evidence you have would meet prescribed requirements.

2. Regulation 33 supporting documents: domestic violence - Where your client is seeking legal aid in respect of one of the proceedings listed in paragraph 12 of Part 1, Schedule 1

2.1. If a client provides one of the prescribed forms of evidence set out in this Regulation then legal aid for certain children and finance issues set out in paragraph 12, Part 1, Schedule 1 (including divorce) may be available if the appropriate means and merits criteria are met.

2.2. The LASPO definition of domestic violence is 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.

2.3. The evidence must show, unless otherwise stated, that your client was or is at risk of being a victim of domestic violence from the other party in the case which arise from a family relationship between your client and the other party.

2.4. It is very important that you note the following:

- A Licensed Work application will be refused if a single element of the evidence prescribed in the regulations is missing, on the basis that the case is out of scope for legal aid.
- A Licensed Work application will be rejected if no evidence prescribed in the regulations is submitted with the application.
- A Controlled Work claim that does not meet evidential requirements will be nil assessed on the basis that the case is out of scope for legal aid.
A Controlled Work claim will be nil assessed where it is clear that the evidence was obtained subsequent to the determination being made.

2.5 The paragraphs below provide more information on the types of documents that will be accepted as evidence. They state where the list of acceptable forms of evidence is an exhaustive list. Checklists are provided to assist you to ensure you address all the required elements of the evidence.

A) An unspent conviction for a domestic violence offence

2.7 The evidence should name the person charged with the offence (who must be the other party in the case).

2.8 If the offence was committed within the United Kingdom, it must also show that a relevant domestic violence offence was committed. A list of relevant domestic violence offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/3098/pdfs/uksiem_20123098_en.pdf

2.9 Some sexual offences do not specifically name the victim; for all other offences the victim must be named and must be your client.

2.10 The fact that a perpetrator has committed a domestic violence offence against a third party, which your client believes might place him/her at a future risk of domestic violence will not meet the evidence criteria.

2.11 Where the date and length of conviction are stated, it is possible to establish whether the conviction is spent or not using this document: http://www.justice.gov.uk/downloads/offenders/rehabilitation/rehabilitation-offenders.pdf

2.12 When a conviction is spent information will not be available from the Courts.

Offences committed overseas

2.13 If the evidence relates to an offence outside the United Kingdom then the evidence may be a letter from the relevant law enforcement agency in the country where the offence was tried. This will usually be on letterheaded paper and the Legal Aid Agency may take steps to verify this.

2.14 The evidence must be in English, and if it needs to be translated both a copy of the original document and the translation needs to be provided and retained on the file.
Evidence checklist
Document could be one of the following (examples) but must contain all required information below:
- Memorandum of Conviction (Magistrates Court)
- Certificate of Conviction (Crown Court)
- Formal written confirmation on Police or CPS (or equivalent) letterhead or from a pnn.police.uk email address
- Newspaper clippings in regard to the case

Required information
- Your client is the victim where the victim is named
- Respondent named as the person convicted
- Relevant domestic violence offence
- Conviction unspent

B) A police caution

Regulation 33 (2) b) “a relevant police caution for a domestic violence offence given within the twenty four month period immediately preceding the date of the application for civil legal services;”

2.15. This evidence can only be provided by the police. A police report would not be sufficient to meet the evidence requirements, for example, where your client telephoned the police to complain about their ex-partner and the police took no action.

2.16 The police caution must have been within the twenty four months immediately preceding the date of the application for legal aid. It must include the name of the victim (who must be your client) and the name of the person cautioned (who must be the other party in the case).

2.17 It must also reflect that the other party was cautioned for a relevant offence. A list of relevant domestic violence offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/3098/pdfs/uksiem_20123098_en.pdf

2.18 Some cautions for sexual offences do not specifically name the victim; for all other cautions the victim must be named and must be your client.

Evidence checklist
Document could be one of the following (examples) but must contain all required information below:
- Formal caution
- Formal written confirmation on Police letterhead or from a pnn.police.uk email address

Required information
- Your client is the victim where the victim is named
- Respondent named as the person cautioned
- Relevant domestic violence offence
- Date of caution is within 24 months immediately preceding legal aid application
C) Ongoing criminal proceedings

Regulation 33 (2) (c) “evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;”

2.19 The evidence should name the person charged with the offence (who must be the other party in the case).

2.20 The evidence must show the perpetrator has been charged with a domestic violence offence against your client, although the proceedings may not have been listed. This criterion is not satisfied unless the perpetrator has been formally charged, so for example where there is an on-going police investigation and the perpetrator is on police bail would not be sufficient.

2.21 The proceedings must also be in relation to a relevant domestic offence. A list of relevant domestic violence offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: 

2.22 Some sexual offences do not specifically name the victim; for all other offences the victim must be named and must be your client.

2.23 The fact that the other party has committed a domestic violence offence against a third party, which your client believes places them at a future risk of domestic violence, will not meet the evidence criteria.

Ongoing proceedings overseas

2.24 If the evidence relates to a criminal proceeding outside the United Kingdom then the evidence may be a letter from the relevant law enforcement agency in the country where the offence is being tried. This will usually be on letterheaded paper and the Legal Aid Agency may take steps to verify this.

2.25 The evidence must be in English and if it needs to be translated both a copy of the original document and the translation need to be provided and retained on the file.

Evidence checklist
Document could be one of the following (examples) but must contain all required information below:

- A copy of the charge sheet from the police
- A document from the court confirming that the case has been listed
- Formal written confirmation on police or CPS (or equivalent) letterhead or from a pnn.police.uk email address
- Newspaper clippings in regard to the case

Required information

- Your client is the victim where the victim is named
- Respondent named as perpetrator
- Relevant domestic violence offence
D) Protective Injunction

Regulation 33 (2) (d) “a relevant protective injunction which is in force or which was granted within the twenty four month period immediately preceding the date of the application for civil legal services;”

2.26 This form of evidence can only be satisfied by a copy of the Order containing the relevant protective injunction. The evidence must name the protected party (who must be your client) and the person whom the injunction was made against (who must be the other party in the case).

2.27 It must also be in relation to a relevant protective injunction. The list of applicable protective injunctions is referred to in Regulation 33 (3) here: http://www.legislation.gov.uk/uksi/2012/3098/regulation/33/made

2.28 This includes where an ex-parte order is granted. Even if the respondent disputes the allegations at a subsequent hearing in relation to the protective injunction, and the Order falls, the client is still eligible for legal aid because they were granted a protective injunction.

2.29 If the protective injunction is no longer in force then it must have been granted within the twenty four months immediately preceding the application for legal aid. If the injunction is still in force then it could have been made at any time in the past for example a forced marriage protection order may have been granted for an indefinite period.

2.30 Where you are making an application for a protective order on behalf of your client then the order must be obtained before you are able to assist your client with children or financial issues although this may be on the same day.

Evidence checklist
Document must be (exhaustive):

- Court sealed Order containing a relevant protective injunction
- Your client named as the protected party
- Respondent named as the person whom the injunction was made against

In addition, one of the following:

- Protective injunction is in force at time of legal aid application; or
- Date of order is within 24 months immediately preceding legal aid application.

E) Undertaking

Regulation 33 (2) (e) “an undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996(22) (or given in Scotland or Northern Ireland in place of a protective injunction)—

(i) by the individual (“B”) with whom the applicant for civil legal services (“A”) was in a family relationship giving rise to the need for the civil legal services which are the subject of the application; and

(ii) within the twenty four month period immediately preceding the date of the application for civil legal services, provided that a cross-undertaking was not given by A;”
2.31 The undertaking must be 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).

2.32 The undertaking must have been given within the twenty four month period immediately preceding the date of the application for civil legal services.

2.33 There must not have been any cross-undertaking given by the applicant for legal aid.

### Evidence checklist

**Document could be (examples):**
- General Form of Undertaking (currently N117)
- Any other document sealed by the Court

**Required information**
- Your client named as victim
- Respondent named as perpetrator
- Undertaking is under appropriate section/Act - 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).
- Date of undertaking is within 24 months immediately preceding legal aid application
- A cross undertaking has not been given by your client

### F) MARAC (Multi-Agency Risk Assessment Conference)

*Regulation 33 (2) (f) “a letter from the person appointed to chair a multi-agency risk assessment conference confirming that—

(i) A was referred to the conference as a high risk victim of domestic violence; and

(ii) the conference has, within the twenty four month period immediately preceding the date of the application for civil legal services, put in place a plan to protect A from a risk of harm by B;”*

2.34 This evidence must be from the chair of the MARAC and must name the perpetrator to satisfy this criterion.

2.35 The evidence must confirm there has been an assessment that the applicant (who is your client) was or is at high risk of being a victim of domestic violence and that within the immediately preceding 24 months of the date of the application for legal aid the conference has put in place a plan to protect the client from the other party.

### Evidence checklist

**Document must be:**
- Letter from chair of MARAC or
- Report from chair of MARAC or
- Email from chair of MARAC

**Required information**
- Your client named as victim
- Respondent named as perpetrator
- A plan was put in place within 24 months immediately preceding legal aid application
G) Finding of fact

**Regulation 33 (2) (g)** “a copy of a finding of fact, made in proceedings in the United Kingdom within the twenty four month period immediately preceding the date of the application for civil legal services, that there has been domestic violence by B giving rise to a risk of harm to A;”

2.36 This evidence will be in the form of a judgement or Order from the Court (including a Tribunal if relevant) that your client is at risk of harm from domestic violence by the other party in the case.

2.37 Paragraph 21 of Practice Direction 12J – ‘Residence and contact orders: domestic violence and harm’ states that the court shall record its findings in writing, and shall serve a copy on the parties. This Practice Direction can be found here: [http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j)

2.38. The must have been a specific finding of fact made within the twenty four months immediately preceding the application for legal aid, although the incident to which the finding relates may have occurred at an earlier stage.

2.39 For example allegations that are made within an undefended divorce petition, even if not refuted or where a decree nisi is granted on the basis of unreasonable behaviour, would not meet the evidential requirements as there has been no formal finding of fact.

**Evidence checklist**

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<th>Document must be (exhaustive):</th>
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<td>☐ Court sealed document</td>
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<th>Required information</th>
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<td>☐ Your client named as victim</td>
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<tr>
<td>☐ Respondent named as perpetrator</td>
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<td>☐ The finding of fact was within 24 months immediately preceding the legal aid application</td>
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H) Letter from a Health Professional

**Regulation 33(2)(h)** “a letter or report from a health professional—

(i) has examined A within the twenty four month period immediately preceding the date of the application for civil legal services;

(ii) was satisfied following that examination that A had injuries or a condition consistent with those of a victim of domestic violence; and

(iii) has no reason to believe that A’s injuries or condition were not caused by domestic violence;”

2.40 The Regulation states that for these purposes a ‘health professional’ means a registered:

(a) medical practitioner who holds a license to practise;

(b) a nurse; or

(c) midwife.
2.50 A medical practitioner will include all doctors, for example, a General Practitioner (GP), a doctor working in the Accident and Emergency department of a hospital or a psychiatrist. Dentists are not included in this definition for the purposes of the evidence.

2.51 They must have been registered when they undertook the examination of your client. You can confirm whether a medical practitioner is registered with the General Medical Council on their website here: http://www.gmc-uk.org/doctors/register/LRMP.asp

A nurse or midwife must be registered with the Nursing and Mid-Wifery Council: http://www.nmc-uk.org/Search-the-register/

2.52 The letter must confirm that the health professional has examined the client within the twenty four month period immediately preceding the date of the application and that the health professional:

a) was satisfied following that examination that the client had injuries or a condition consistent with those of a victim of domestic violence; and
b) have no reason to believe that client’s injuries or condition were not caused by domestic violence.

2.53 There are two parts to this evidence and both parts must be met in order for the evidence to be satisfied. It is not necessary for the specific form of words to be used but the meaning must be clear.

2.54 The evidence does not need to name the perpetrator. The evidence does not need to include details of the injuries or conditions.

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<td>Document must be (exhaustive):</td>
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<td>☐ A letter from a health professional on letterhead; or</td>
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<tr>
<td>☐ An email from an nhs.net address; including either:</td>
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<tr>
<td>☐ General Medical Council (GMC) reference number; or</td>
</tr>
<tr>
<td>☐ Nursing and Midwifery Council (NMC) Pin number</td>
</tr>
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Required information

☐ Your client named as victim
☐ The medical assessment was within 24 months immediately preceding legal aid application
☐ The injuries or condition were consistent with those of a victim of domestic violence
☐ There was no reason to believe injuries or condition were not caused by domestic violence

I) Social Services Letter

Regulation 33 (2) (i) “a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, A was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment).”
2.55 This evidence must be from:

- a Social Services Department in England or Wales;
- a Local Authority in Scotland; or
- a Health and Social Care Trust in Northern Ireland

and must be in the form of a letter on a department letterhead or an email from a Social Services (or equivalent in Scotland or Northern Ireland) email address.

2.56 The evidence must confirm there has been an assessment that the applicant (who is your client) was or is at risk of being a victim of domestic violence and that this assessment took place within the 24 months immediately preceding the date of the application for legal aid. The evidence must name the perpetrator to satisfy this criterion.

2.57 The evidence may relate to a variety of issues, for example it could be a pre-proceedings letter before care proceedings are instituted or a letter from Housing Services regarding alternative accommodation.

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<td>Document must be (exhaustive):</td>
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<td>☐ A letter from a Social Services Department (or equivalent) on letterhead; or</td>
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<td>☐ An assessment report from a Social Services Department (or equivalent); or</td>
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<td>☐ An email from a Social Services Department (or equivalent) email address e.g. gov.uk or hscni.net</td>
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<td>☐ Respondent named as perpetrator</td>
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<td>☐ The assessment was within 24 months immediately preceding legal aid application</td>
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2.58 The largest domestic violence refuge organisations are Women’s Aid, Refuge and Welsh Women’s Aid, however, there may be other organisations that also provide refuge services. The evidence must be on letterhead or, where emailed, evidence must clearly identify the name of the domestic violence support organisation. The Legal Aid Agency may take steps to verify that it is a domestic violence support organisation.

2.59 The evidence must state that the client was admitted for a period of 24 hours or more. A letter from an organisation stating that the client had sought refuge but was not admitted to the refuge (e.g. because there were insufficient beds) is not sufficient.
2.60 In addition an organisation stating they provided outreach services to a client is not sufficient to meet the requirement of the regulations.

### Evidence checklist

**Document must be:**
- Letter from refuge on letterhead; or
- Email from refuge, identifying which domestic violence support organisation it is from

**Required information**
- Your client named as victim
- The admission to the refuge was within 24 months immediately preceding legal aid application
- The admission to the refuge was for a period of 24 hours or more

### 3. Regulation 34 Supporting evidence: protection of children - Where your client is seeking legal aid in respect of one of the proceedings listed in paragraph 13 of Part 1, Schedule 1

3.1. If a client provides one of the prescribed forms of evidence set out in this Regulation then legal aid for certain children issues (relating to the protection of a child from another party) for orders which are set out in paragraph 13, Part 1, Schedule 1) may be available if the appropriate means and merits criteria are met. Anyone with the care of a child may seek to protect them, for example a grandmother with care of a child who seeks to prevent the child’s father from having contact.

3.2. The evidence must show, unless otherwise stated, that your client is seeking to protect a child from risk of abuse from the other party to proceedings.

3.3. It is very important that you note the following:

- A Licensed Work application will be refused if a single element of the evidence prescribed in the regulations is missing, on the basis that the case is out of scope for legal aid.
- A Licensed Work application will be rejected if no evidence prescribed in the regulations is submitted with the application.
- A Controlled Work claim that does not meet evidential requirements will be nil assessed on the basis that the case is out of scope for legal aid.
- A Controlled Work claim will be nil assessed where it is clear that the evidence was obtained subsequent to the determination being made.

3.4. The paragraphs below provide more information on the types of documents that will be accepted as evidence. They state where the list of acceptable forms of evidence is an exhaustive list. Checklists are provided to assist you to ensure you address all the required elements of the evidence.

### A) An unspent conviction for a child abuse offence

*Regulation 34 (2) (a) “a relevant unspent conviction for a child abuse offence;”*
3.5. The offence does not need to be in respect of the child for whom protection is sought: it can be in respect of any child. The evidence need only name the person convicted of a relevant child abuse offence (who must be the other party in the case).

3.6. It must also state that a relevant offence was committed. A list of relevant child abuse offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/3098/pdfs/uksiem_20123098_en.pdf

3.7. Where the date and length of conviction are stated, it is possible to establish whether the conviction is spent or not using this document: http://www.justice.gov.uk/downloads/offenders/rehabilitation/rehabilitation-offenders.pdf

3.8 When a conviction is spent, information will not be available from the Courts.

Offences committed overseas

3.9 If the evidence relates to an offence outside the United Kingdom then the evidence may be a letter from the relevant law enforcement agency in the country where the offence was tried. This will usually be on letterheaded paper and the Legal Aid Agency may take steps to verify this.

3.10 The evidence must be in English and if it needs to be translated both a copy of the original document and the translation need to be provided and retained on the file.

Evidence checklist

Document could be one of the following (examples) but must contain all required information below:

- Memorandum of Conviction (Magistrates Court)
- Certificate of Conviction (Crown Court)
- Formal written confirmation on police or CPS (or equivalent) letterhead
- Newspaper clippings in regard to the case

Required information

- Respondent named as person convicted
- Relevant child abuse offence
- Conviction unspent

B) A police caution

Regulation 34 (2) (b) “a relevant police caution for a child abuse offence given within the twenty four month period immediately preceding the date of the application for civil legal services;”

3.11 This evidence can only be provided by the police. A police report would not be sufficient to meet the evidence requirements, for example, where your client telephoned the police to complain about their ex-partner and the police took no action.

3.12. The police caution must have been within the twenty four months immediately preceding the date of the application for legal aid. The person cautioned must be the other party in the case.
3.13. The caution does not need to be in respect of the child for whom protection is sought: it can be in respect of any child. The evidence only needs to set out the name of the respondent to the proceedings as the person cautioned in relation to the child abuse offence.

3.14. It must also reflect that the perpetrator was cautioned for a relevant offence. A list of relevant offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/3098/pdfs/uksiem_20123098_en.pdf

**Evidence checklist**

Document could be one of the following (examples) but must contain all required information below:

- Formal caution
- Formal written confirmation on Police letterhead or from a pnn.police.uk email address

**Required information**

- Respondent named as the person cautioned
- Relevant child abuse offence
- Date of caution is within 24 months immediately preceding legal aid application

**C) Ongoing criminal proceedings**

- Regulation 34 (2) (c) “evidence of relevant criminal proceedings for a child abuse offence which have not concluded;”

3.15. The offence does not need to be in respect of the child for whom protection is sought: it can be in respect of any child. The evidence need only set out the name of the respondent to the proceedings (who must be the other party in the case) as the perpetrator.

3.16 The evidence must show the perpetrator has been charged with a child abuse offence, although the proceedings may not have been listed. This criterion is not satisfied unless the perpetrator has been formally charged, so for example where there is an on-going police investigation and the perpetrator is on police bail would not be sufficient.

3.17 The proceedings must also be in relation to a relevant child abuse offence. A list of relevant offences can be found in the Explanatory Memorandum to the Civil Legal Aid (Procedure) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/3098/pdfs/uksiem_20123098_en.pdf

**Ongoing proceedings overseas**

3.18 If the evidence relates to a criminal proceeding outside the United Kingdom then the evidence may be a letter from the relevant law enforcement agency in the country where the offence is being tried. This will usually be on letterheaded paper and the Legal Aid Agency may take steps to verify this.

3.19 The evidence must be in English and if it needs to be translated both a copy of the original document and the translation need to be provided and retained on the file.
Evidence checklist
Document could be one of the following (examples) but must contain all required information below:

- A copy of the charge sheet from the police
- A document from the court confirming that the case has been listed
- Formal written confirmation on police or CPS (or equivalent) letterhead or from a .pnn.police.uk email address
- Newspaper clippings in regard to the case

Required information
- Respondent named as person charged with offence
- Relevant child abuse offence

D) Protective Injunction

Regulation 34 (2) (d) “a relevant protective injunction which is in force or which was granted within the twenty four month period immediately preceding the date of the application for civil legal services;”

3.20 This form of evidence can only be satisfied by a copy of the order containing relevant protective injunction.

3.21. The protective injunction must be to protect the child who is the subject of the case from the respondent. The evidence must name the protected child who your client must be seeking to protect. The evidence must also name the person against whom the injunction was made, who must be the other party in the case (and must not be your client).

3.22 It must also be in relation to a relevant protective injunction. The list of applicable protective injunctions is referred to in Regulation 33 (3) here: http://www.legislation.gov.uk/uksi/2012/3098/regulation/33/made

3.23 This includes where an ex-parte order is granted. Even if respondent disputes the allegations at subsequent hearing in relation to the protective injunction and the Order falls, the client is still eligible for legal aid as they were granted a protective injunction

3.24. If the protective injunction is no longer in force then it must have been granted within the twenty four months immediately preceding the application for legal aid. If the injunction is still in force then it could have been made at any time, for example a forced marriage protection order may have been granted for an indefinite period.

3.25. Where you are making an application for a protective order on behalf of your client then, to satisfy this requirement, the order must be obtained before you are able to assist your client with children issues, this may be on the same day.

Evidence checklist
Document must be (exhaustive):

- Court sealed order containing relevant protective injunction
- Child named as party your client is seeking to protect
- Respondent named as the person whom the injunction was made against

In addition, one of the following:

- Protective injunction is in force at time of legal aid application; or
- Date of order is within 24 months immediately preceding legal aid application
E) Finding of fact

Regulation 34 (2) (e) “a copy of a finding of fact, made in proceedings in the United Kingdom within the twenty four month period immediately preceding the date of the application for civil legal services, of abuse of a child by B;”

3.26 This evidence will be in the form of a judgement or Order from the Court (including a Tribunal if relevant) that a child was abused by the respondent, who must be the other party to the proceedings and not your client.

3.27. Paragraph 21 of Practice Direction 12J – ‘Residence and contact orders: domestic violence and harm’ states that the court shall record its findings in writing, and shall serve a copy on the parties. This Practice Direction can be found here: http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j

3.28 There must have been a specific finding of fact by a Court made within the twenty four months immediately preceding the application for legal aid although the incident to which the finding relates may have occurred at an earlier stage.

**Evidence checklist**

Document must be (exhaustive):
- Court sealed document
- Respondent named as perpetrator
- The finding of fact was within 24 months immediately preceding legal aid application

F) Social Services Letter

Regulation 34 (2) (f) “a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, the child was assessed as being, or at risk of being, a victim of child abuse by B (or a copy of that assessment);”

3.29 This evidence must be from:

- a Social Services Department in England or Wales;
- a Local Authority in Scotland; or
- a Health and Social Care Trust in Northern Ireland

and must be in the form of a letter on a department letterhead or an email from a Social Services (or equivalent in Scotland or Northern Ireland) email address.

3.30 The evidence must confirm there has been an assessment that the child was or is at risk of being a victim of abuse and that this assessment took place within the 24 months immediately preceding the date of the application for legal aid.

3.31 The evidence must name the perpetrator to satisfy this criterion.
Evidence checklist
Documents must be (exhaustive):
- A letter from a Social Services Department (or equivalent) on letterhead; or
- An assessment report from a Social Services Department (or equivalent); or
- An email from a Social Services Department (or equivalent) email address e.g. gov.uk or hscni.net

Required information
- Child named as party your client is seeking to protect
- Respondent named as perpetrator
- The assessment was within 24 months immediately preceding legal aid application

G) Social Services Child Protection Plan

Regulation 34 (2) (g) “a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, a child protection plan was put in place to protect the child from abuse or a risk of abuse by B (or a copy of that plan);”

3.32 This evidence must be from:
- a Social Services Department in England or Wales;
- a Local Authority in Scotland; or
- a Health and Social Care Trust in Northern Ireland

and must be in the form of a letter on a department letterhead or an email from a Social Services (or equivalent in Scotland or Northern Ireland) email address.

3.33 The form of evidence could be a copy of the Child Protection plan or a letter from the Local Authority stating that there was such a plan in place and that it had been put in place within the twenty four months immediately preceding the application for legal aid.

3.34. The evidence must name the perpetrator to satisfy this criterion. The plan should identify the cause(s) of harm to the child within it and this should name the respondent, who must not be your client.

Evidence checklist
Documents must be (exhaustive):
- A copy of a Child Protection Plan from a Social Services Department (or equivalent); or
- A letter from a Social Services Department (or equivalent) on letterhead confirming a plan was in place; or
- An email from a Social Services Department (or equivalent) email address e.g. gov.uk or hscni.net confirming a plan was in place.

Required information
- Child named as party your client is seeking to protect
- Respondent named as perpetrator
- The plan was put in place within 24 months immediately preceding legal aid application
H) Application for a protective injunction with an application for a prohibited steps order

Regulation 34 (h) “an application for an injunction described in paragraph (2)(d) made with an application for a prohibited steps order against B under section 8 of the Children Act 1989(38) which has not, at the date of the application for civil legal services, been decided by the court.;”

3.35 This form of evidence requires two documents:

- a copy of the court sealed application for a protective injunction AND
- a copy of the court sealed application for a prohibited steps order under section 8 of the Children Act 1989.

3.36 Both documents must be court sealed applications seeking to protect the child from the other party (and must not be your client). Both applications must be undetermined by the Court on the date that the legal aid application was made.

Protective injunction evidence

3.37 The evidence must name the child who your client must be seeking to protect. The evidence must also name the person against whom the injunction is requested and who must be the other party in the case (and must not be your client). The protective injunction must be to protect the child from the respondent.

3.38 It must be in relation to an application for a relevant protective injunction. The list of applicable protective injunctions is referred to in Regulation 33 (3) here:

http://www.legislation.gov.uk/uksi/2012/3098/regulation/33/made

Evidence checklist

1. Protective injunction application
   Document must be (exhaustive):
   - Court sealed application for relevant Order
   - Child named as the party your client is seeking to protect
   - Respondent named as the person against whom the injunction is requested
   - Date of application is within 24 months immediately preceding the legal aid application

   AND

2. Prohibited steps order application
   - Document must be (exhaustive):
     - Court sealed application
     - Respondent named as the person against whom the PSO application is made
     - Date of application is within 24 months immediately preceding the legal aid application