

Law Society of Scotland submission of 1 November 2023

PE2025/C: Improve the support available to victims of domestic violence, who have been forced to flee their home

Thank you for giving our Child and Family Law Sub-Committee the opportunity to comment on the above mentioned petition.

Ensuring access to legal aid for divorce proceedings where domestic violence is a contributing factor

Legal aid is available, subject to means, where the occurrence of domestic abuse is a basis for divorce on the grounds of unreasonable behaviour. If the petition seeks that legal aid is made available irrespective of means, that is either an issue for SLAB to look at or likely something to address as part of a wider review of legal aid. One possible issue may be that the court does not know whether abuse has or has not occurred until a decision is made on that (often contested) fact. To work in practice, it would likely require legal aid to be made available automatically to anyone who alleges domestic abuse. That potentially opens the scheme up to misuse.

Ensuring victims are financially compensated for loss of the marital home, including loss of personal possessions and furniture left in the property

Considerations of fairness and equity underpin the Family Law (Scotland) Act 1985. In appropriate circumstances, the court should take account of such matters. Free and means tested legal aid is available to claim against the other party. Generally the claim must be reasonable and in the public interest, so it will depend on the circumstances as to whether or not this is awarded. Any blanket grant in these circumstances would require input by SLAB and the point on potential misuse would then have to be considered.

Ensuring that victims are consulted before any changes are made to non-harassment orders

The committee would support the suggestion that a victim should be heard prior to a decision being made to vary or revoke a NHO. In a civil context that should happen automatically (as such an order would normally have been sought by the victim). It may be this is about an

NHO made alongside sentencing in a criminal case. In any case, this would likely be best examined on a case specific basis to mitigate concerns around a blanket grant being given on an allegation not yet been proved.

We would also highlight the SPICe briefing and comments from the Law Commission already received, which are helpful in identifying areas covered by their project in relation to this petition.

We hope this is helpful in your discussions and please do let us know should you require further clarification.