

Abused women and the Law



Using a lawyer

A helpful lawyer is a great asset. S/he will be able to explain in more detail the legal rights outlined in this pack and describe the court procedures which may be necessary to enforce your rights. If you don't already know a lawyer, your local Women's Aid group or Advice Centre will be able to recommend one for you.

S/he will be able to act on your behalf in applying for housing, or in getting the police to take action against your violent man. Don't be afraid of going to a lawyer. S/he is there to help you and to take your instructions about how you want matters dealt with. Of course you will listen to your lawyer's advice and their professional opinion about your chances of success in any particular course of action. But remember that your lawyer is working for you, not for you and your man as a couple. If you are unsure about the advice you get from your lawyer, it may be worth checking with an advice agency (such as a Citizens' Advice Bureau) or another lawyer. If you are unhappy with your lawyer, you are entitled to change, even if you have legal aid and/or an action underway. It is better to change sooner rather than later.

Money for legal costs

Do not be put off consulting a lawyer because you are worried about the cost. You may be entitled to financial help towards your legal costs. This help is called Legal Aid, and Legal Advice and Assistance. Your lawyer will help you with filling in the forms. Some lawyers give a first interview free of charge or charge a small fixed fee - you can find out which ones from your local Citizens' Advice Bureau.

Legal Advice and Assistance

Under this scheme a lawyer can give you advice, write letters, make phone calls, and generally negotiate on your behalf. S/he can draw up an agreement between yourself and your man, help with housing problems, make an application for you to the Criminal Injuries Compensation Board (see next page), and generally provide advice and assistance on any matter of Scots Law short of going to court for you. Every lawyer has a "keycard" which allows them to work out there and then whether you qualify for free legal advice and assistance, or qualify but have to pay a contribution. If you are on Income Support and Family Credit, you will automatically qualify for free legal advice and assistance. Otherwise your eligibility will depend on your income and capital and the number and ages of your children. If you seek advice because of problems with your husband/partner, his income is disregarded. If you recover money while being assisted by a lawyer under this scheme, you have to repay your legal costs out of the money you get unless the Legal Aid Board considers that this would cause you financial hardship.

Legal Aid

Under the Legal Aid scheme you can raise court proceedings on the understanding that all, most, or some of your legal costs will be met out of the Legal Aid fund. In order to qualify you have to satisfy the Legal Aid Board:

1 That you have grounds to raise the action and a reasonable prospect of success and

2 That you don't have enough income or capital to pay your own legal expenses.

If you are claiming Income Support, you will qualify on financial grounds for Legal Aid but you must still have grounds for the action. If you are not claiming Income Support, the Legal Aid Board will look at all your income and outgoings and decide whether you should get free legal aid or pay a contribution. Most contributions, which rise steeply the more disposable income you have, have to be paid in monthly instalments. If you need to raise an action urgently, it is possible to have emergency Legal Aid granted immediately. This is done on the understanding that your full application will be successful.

If you fail to establish grounds or don't qualify financially or don't cooperate with the Legal Aid Board eg by providing information requested, you will receive a bill for work done by your lawyer while you had an emergency Legal Aid certificate. If you are awarded a lump sum of more than a certain amount in a divorce action, the Legal Aid Board can make you pay your own expenses out of the balance. If you have contributions to pay, your lawyer can ask you to pay a sum of money up front, to cover court fees and other charges s/he may have to pay out on your behalf. Before going ahead with any legal action, you should insist on full information from your lawyer.

Appearing in court

Many women worry about taking any kind of legal action because they are afraid of appearing in court. Going to court is likely to be less formal and less frightening than you expect. Ask your lawyer to describe and explain the procedures beforehand. If you can, go to court to hear another case before yours comes up.

Most women who raise an individual (civil) action against their man do not ever have to give evidence in court. Most actions are either defended, or they start off defended but settle before the stage of a full hearing ("proof"). They are therefore finalised without witnesses having to give evidence at a proof. In some cases the court will expect affidavits (statements sworn before a lawyer) before granting decrees. These include undefended divorce actions, some custody actions, and applications for an exclusion order. If you raise an action which is defended and does not settle, there will usually have to be a proof at which you and your witnesses will have to give evidence.

If your man is charged with a criminal offence (eg assaulting you) and he pleads "not guilty", then you will be called as a witness and will be expected to give evidence in court.

Criminal Injuries Compensation Scheme

If you have been injured as a result of a crime of violence, you can apply for payment of compensation. You have to apply within one year of the date you were injured and your injuries have to be considered to be serious enough.

Other conditions also apply. You must have reported the incident to the police without delay and your man must have been prosecuted (unless there are good reasons why this cannot be done). You cannot apply if you are still living with the man who injured you. To apply for compensation, you should write to the Criminal Injuries Compensation Authority, Tay House, 300 Bath Street, Glasgow, G2 4JR. They will send you a form to fill in and then, after making their own enquiries, they will notify you of their decision. If you are not satisfied with the decision, you can ask for a hearing.

Compensation is usually paid as a lump sum by cheque. Social security payments are deducted in full. If you apply with the help of a lawyer under the Legal Advice and Assistance scheme, you will be expected to pay your own legal costs out of your award unless the Legal Aid Board accepts that this would cause you financial hardship.