UK Finance

From Control to Financial Freedom

Empowering victim-survivors on their journey from economic abuse to financial independence

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Foreword

Economic abuse has a devastating impact on those affected. Perpetrators exploit, restrict, and sabotage the victim-survivor's financial resources to maintain power, create economic dependence and insecurity, and benefit financially.

The cost of living crisis and the pandemic have triggered a significant increase in the prevalence of economic abuse. According to the latest government figures, 2.4 million adults were impacted in the year ending March 2022. Surviving Economic Abuse's (SEA) research found that in the past 12 months over 5 million women have experienced economic abuse. Of these, 2.5 million had restricted access to their bank accounts, and 2.1 million had credit taken out in their name or had their credit rating deliberately destroyed.

The Domestic Abuse Act (2021)[1] paves the way for abusers to be held accountable for their actions, which should disincentivise future criminal behaviour. However, with only 434 successful convictions in 2021/22, more needs to be done. So far, the focus, as captured in this report, has been on ensuring that victim-survivors receive the support that they urgently need to take back control of their lives. Positive progress has been made but complex, emerging issues that prevent victim-survivors from regaining their financial independence and achieving economic safety must now be addressed.

The financial services sector has a critical role, and we are committed to playing our part. The internationally recognised Financial Abuse Code[2], with 29 signatories across the banking sector, demonstrates this commitment. Implementing the recommendations in our report will drive even greater support to victim-survivors. I encourage collaboration and collective action across government, regulators and the industry to make this happen.

David Postings
Chief Executive of UK Finance

Foreword

Economic abuse is a devastating crime which was legally recognised in the statutory definition of domestic abuse for the first time through the Domestic Abuse Act (2021). Economic abuse affects as many as 95 per cent of victims and survivors of domestic abuse.

Yet too often victims and survivors are unable to access the support they need. In my national survey, half of victims and survivors told me they wanted help with money problems or debt, but just 27 per cent of them were able to access this type of support. This must change.

This report is extremely timely. The cost-of-living crisis continues to have a disproportionate and devastating impact on victims and survivors of domestic abuse. While at the same time online banking systems provide new and more intractable ways for perpetrators to exert financial control.

Thanks to the vital work of organisations like SEA, we have come along leaps and bounds in recent years in our awareness of and response to economic abuse. UK Finance has played an important role in this work, helping to equip financial services to better detect economic abuse and intervene to protect victims. But there is still more to be done.

This report sets out important and survivor-centred recommendations which would enable public and private bodies to come together to prevent economic abuse, mitigate harm, and empower victims and survivors to access the legal support and justice they deserve.

These recommendations require leaders with a shared and bold ambition to address the complexity of the change needed. That includes leadership and resource from government to build tangible momentum and equip public and private sectors to come together to tackle economic abuse.

Domestic abuse is everyone's business and financial services have a crucial role to play in recognising and responding to the signs of economic abuse. That's why it is so positive to see UK Finance – the collective voice for the banking and finance industry – publish this important report.

Nicole Jacobs
Domestic Abuse Commissioner

Key Stakeholder Supporting Comments

Economic abuse has devastating impacts on victim-survivors, often leaving them financially dependent on their abuser or preventing them from gaining financial independence.

As City Minister, I am proud of the action taken to date by the sector to tackle this issue, demonstrated by the many positive initiatives being implemented to support victim-survivors in the prevention and aftermath of economic abuse.

Although there is significant work taking place, this report shows we still have a way to go. It is evident that financial services firms have a vital role in making further progress and I commend industry's continued efforts to take action on the complex issues identified.

Bim Afolami
Economic Secretary to the Treasury

This report marks another important milestone in our collective journey to end economic abuse – a form of domestic abuse which devastates the lives of 1 in 5 adults. UK Finance has shown great dedication in working alongside us to raise awareness of and transform the response to economic abuse amongst financial services firms.

We continue to be encouraged by the increased number of firms signed up to the 2021 Financial Abuse Code. Through the Financial Conduct Authority's (FCA) Consumer Duty, even more firms are taking action to address and prevent 'foreseeable harm' to their customers.

Government's clear commitment to address economic abuse has further galvanised a financial services sector response.

In this report, UK Finance builds on this momentum by making recommendations about how partners can come together to consistently address the complex issues devastating the lives of victim-survivors including coerced debt, joint mortgages, and abusive payment references.

We still have so much more to do together to end economic abuse, including the restoration of credit scores. These solutions must remain survivor-centred and reflect the needs of all victim-survivors. We look forward to continuing to work in partnership with UK Finance to achieve these outcomes for victim-survivors and commend them for the commitments made in this report.

Nicola Sharp-Jeffs OBE
CEO Surviving Economic Abuse

Resolution is an organisation made up of 6,500 professionals working with separating families. As part of its Vision for Family Justice, it supports consideration of how economic abuse can be taken into account in separating families' finance and ensuring that victims of economic abuse do not suffer cost penalties at Court.

For too long economic abuse has been seen as less serious than other forms of abuse, when in fact it is a facet of coercive control that can have far-reaching consequences for the victim-survivors and their children. It is fantastic to see big industry taking these issues, which are incredibly serious for the individual, so seriously.

This report is a crucial roadmap for the future. Resolution is keen to participate in discussions, and work with UK Finance so that we can improve outcomes for victim-survivors of economic abuse when families separate.

Anita Mehta
Barrister, on behalf of Resolution's Pension, Tax and Financial Remedy Committee

The damage wrought by domestic financial abuse can be life changing. As this report makes clear, many firms are already on the lookout for signals so they can point victim-survivors to the right support.

We will continue to work with industry, government and charities to raise awareness of this issue and to encourage the sharing of examples of good practice, so all firms learn from the experiences of others.

Sheldon Mills
Executive Director, Consumers and Competition
Financial Conduct Authority

Contributing Firms

TLT

Domestic abuse can take many forms – physical, emotional and financial – and firms have a key role to play when it comes to supporting victim-survivors and helping prevent such abuse where they can.

We were privileged to be involved with this project and bring together a combination of TLT's market leading Family Law and Financial Services Disputes teams, as well as experience working with UK Finance on key strategic priorities.

We were ideally placed to advise UK Finance in relation to unique areas of law which rarely overlap in practice.

During the project we took an in-depth look at the legal landscape to determine how the law and regulation fit together, examining where the legal thresholds are set and looking at definitions of the types of abuse and how they might lead to or be categorised as economic crime, financial crime and fraud.

Drawing on our expertise of advising clients who have experienced domestic abuse, we were able to help shape a series of recommendations, spanning different areas, with the aim of improving the experiences of, and outcomes for, victim-survivors.

We are very proud to have been a part of such an important piece of work.

Simmons and Simmons

Economic abuse is widespread in the UK – statistics estimate that 1 in 5 UK adults has experienced economic abuse by a current or former partner. It is also incredibly dangerous.[3] By exerting control over their partner's money and finances (and with that, everything that money can buy), the abuser is limiting their partner's choices and their ability to access safety. Financial services firms have an important role to play in supporting victim-survivors of economic abuse.

The FCA's new Consumer Duty, which came into force in July 2023, sets higher standards of consumer protection across financial services, and requires firms to put their consumers' needs first, with a particular emphasis on treatment of consumers with characteristics of vulnerability or who may be at a greater risk of harm.

This, together with the FCA's recent guidance for firms on the fair treatment of vulnerable customers, provides financial services firms with an opportunity to transform their responses to economic abuse.

We are proud to have provided financial services regulatory advice to UK Finance to support this report. We believe that the recommendations set out in this report will go a huge way towards improving lives for victim-survivors of economic abuse.

We are also proud to be working with the charity SEA on ongoing efforts to combat economic abuse. Together we recently published a briefing paper on how the Consumer Duty can transform responses to economic abuse, which aims to assist firms looking to make a meaningful difference through their implementation of the Consumer Duty.

Executive Summary

Domestic, economic and financial abuse is a recognised driver of vulnerability and UK Finance members have been working with specialist domestic and economic abuse charities since 2016 to develop an understanding of the challenges that victim-survivors face.

Since then, the industry has shared best practice, driven consistency and improved consumer outcomes for those impacted by domestic and economic abuse. The Financial Abuse Code is acknowledged as best practice internationally and within the Domestic Abuse and Serious Crime Act (Controlling and Coercive Behaviour) Statutory Guidance. Launched in December 2021, 29 firms covering 39 brands committed to implementing the Code which incorporated a series of 'Debt Principles' for the first time.

This early work and further feedback from specialist charities, highlighted the need to undertake a detailed piece of work covering three complex issues that victim-survivors find particularly challenging to navigate on their journey to achieving financial independence and economic security: controlling or coercive behaviour and debt; separation of joint secured borrowing and abusive payment references (sent via the Faster Payments System).

Our deep dive, guided by principles of survivor-safety, impartiality, light-touch information provision and proportionality, explores the challenges faced by victim-survivors, leading to the identification of a series of recommendations with supporting actions, focused on taking back control, achieving financial stability and independence, and realising their financial ambitions.

Controlling or coercive behaviour and debt

Abusers use controlling and/or coercive behaviour to obtain financial benefit by forcing victim-survivors to apply for or utilise existing credit lines. Surviving Economic Abuse's research[4] suggests that on average victim-survivors have accrued debts of £27k split across five creditors[5] and the consequences often outlast the relationship due to liability for the debts being in their sole name and the subsequent impact on their individual credit report.

As a result of our work, it is clear that balancing the needs of all parties whilst adopting a 'victim-led', safety-first approach is extremely difficult in the current legal and regulatory environment and a new approach is required. To make significant progress on this issue, Government needs to convene a task force to take forward the actions that have been identified in a coordinated, timely manner – otherwise victim-survivors will continue to be impacted by the actions of the abuser.

Separation of joint secured debt

There is no legislative or regulatory guidance available to separate unsecured debts (for example loans and overdrafts) without an agreement or Financial Remedy Order, which needs to be addressed by the forthcoming Consumer Credit Act Review.

The separation of secured debt (or mortgages) introduces further complexity and a broader range of stakeholders for the victim-survivor to engage with including the legal sector (family and property) and the Courts. Through close engagement with domestic abuse charities, our legal partners and members of the Resolution Foundation, we've identified a series of issues which need to be addressed to collectively disrupt abusers' behaviours, provide the necessary professional support to pursue a legal separation of finances and enable the Courts' decisions (Financial Remedy Orders) to be implemented.

Abusive payment references sent via the Faster Payments System

In an attempt to maintain control over their partner, abusers are increasingly using references in faster payments to send abusive phrases or messages to the payment recipient. This abuse can take several forms: expletives, "leet speak" and/or string messages which due to their contextual nature can be very difficult for payment providers to identify. Efforts have been focused on learning from other jurisdictions, exploring technical solutions and developing industry guidance which considers the actions that should be taken to disincentivise this type of behaviour. Unfortunately, under current legislation Basic Bank Accounts could provide a safe harbour for abusers as they can only be closed if the account holder's conduct to a member of a staff constitutes one of several offences specified[6]. To disrupt this form of economic abuse we believe firms should have the flexibility to apply the same approach to situations where the account holder perpetrates economic abuse against another customer.

The fact we have identified 26 specific actions that need to be progressed to deliver improved consumer outcomes for victim-survivors in itself underlines the complexity of the issues covered in the report. To make a significant, positive impact on the lives of some of the most vulnerable members of our society, and hold abusers to account, we need all relevant stakeholders to commit to work alongside UK Finance and each other to deliver on these actions.

Recommendations and Specific Actions

Recommendation 1: Enhanced, victim-led prevention of economic and financial abuse.

Public awareness of domestic and economic abuse has increased significantly in recent years, but there is still more work to be done. Working together, we must continue to raise awareness, encourage victim-survivors to seek help and explore ways in which we can identify and support individuals that may be impacted by this 'hidden crime'. It is also important to explore how financial services firms' customer journeys can be enhanced; developing safe ways to introduce positive, victim-led friction, which is not circumventable, thereby reducing the abuser's opportunity to perpetrate economic abuse.

Actions required

Home Office, financial services and third sector organisations to work together to share best practice, raise awareness of economic abuse and encourage victim-survivors to seek help from relevant organisations.

UK Finance and its members to work with individuals with lived experience and specialist charities to explore how positive friction can be built into customer journeys in a safe way.

The membership organisation Resolution for England and Wales to work with the legal sectors in Scotland and Northern Ireland to review opportunities to share and adopt best practice.

UK Finance to explore options for commissioning a 'big data' research project, to enhance our understanding of relevant risk indicators of economic and financial abuse.

UK Finance members to continue to explore and develop technical features which enable customers to decide how or whether they see the payment reference from a payer.

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Recommendation 2: An ecosystem response that delivers effective, coordinated, tailored support to the victim-survivor's needs across public and private sectors.

The journey towards financial independence and economic safety is often complex and requires the victim-survivor to engage with multiple public and private organisations. This can be extremely challenging, and it is vital that consideration is given to how existing best practice can be leveraged, and new approaches developed, in order to provide a customer centric, multi-agency response to the victim-survivor's needs.

Actions required

Home Office to consider how they can facilitate the development and maintenance of a 'Tell Us Once' disclosure and community response.

UK Finance to work with law enforcement to explore how the Banking Protocol and Vulnerable Victims Notification initiatives can be leveraged.

UK Finance to continue to work with SEA and Money Advice Plus (MAP) to secure a commitment to accept the Economic Abuse Evidence Form (EAEF) across a broad range of audiences including UK Finance members, non-bank creditors and debt advice agencies.

UK Finance members to continue to consider debt write-off requests on a voluntary case-by-case commercial basis.

The Steering Committee on Reciprocity (SCOR) should assess how coerced debt should be reflected on credit files, seeking to achieve a consistent principled and understandable approach to reporting.

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Recommendation 3: Effective legal support which gives victim-survivors the confidence to pursue a fair, legal separation of their financial affairs.

Separating an individual's financial affairs is complex and varies according to the individual's relationship status and financial circumstances. For victim-survivors of economic abuse, the magnitude of the challenge is increased significantly due to the imbalance of power between the victim-survivor and the abuser. It is therefore critical that barriers that would discourage a victim-survivor from seeking support are removed and that they have access to professional support and advice which enables the victim-survivor to have the confidence and capability to safely pursue a fair separation of the financial affairs (including any assets and debts) and signposts the actions required to discharge the terms of the financial settlement.

Actions required

UK Finance, Home Office and HM Treasury to develop guidance for firms on how to appropriately balance supporting victim-survivors (suspected of committing fraud as a result of the coercive or controlling actions of the abuser) with their regulatory reporting obligations.

Ministry of Justice and Home Office to ensure that all victim-survivors can access professional legal advice, either through enhancing existing schemes or developing a new approach.

Ministry of Justice to work with Family Procedure Rule Committee to ensure that Mortgage Capacity Estimate Statements are mandatory where the assets or settlement proposed require one or both parties to borrow.

Government to work with the legal sector and the Courts to ensure that consumers are provided with clear 'standardised' information on how to access legal advice and the steps that need to be completed pre and post the provision of a Financial Remedy Court Order. This should include details on the need to satisfy the FCA Affordability Rules and where appropriate update the documents held at HM Land Registry (HMLR).

Financial Remedy Orders (dealing with the allocation of a property) should include a 'fallback clause' which advises in the event that the individual does not pass the mortgage lender's affordability assessment the property should be sold.

Court Orders should clearly state the implications (enforcement and/or punitive cost orders) to both parties if not enacted and include a mechanism for the Court to intervene where one party fails to comply with the order.

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Recommendation 4: Effective reporting and criminal prosecution processes deliver timely economic justice to victim-survivors and disincentivise future economic abuse.

The Domestic Abuse Act (2021) recognises Economic Abuse as a form of abuse and the Serious Crime Act Controlling and Coercive Behaviour Offence provides the route to pursue a criminal prosecution. However, Surviving Economic Abuse's Seen but Sidelined Report[7], makes it clear that very few cases have been reported to law enforcement and even fewer have resulted in a successful prosecution. Having considered the existing legal framework, we believe mechanisms exist that could be leveraged to support enhanced reporting of suspected controlling and/or coercive behaviour by financial services firms, but the needs and safety of the victim-survivor are paramount and must come first. In line with principles that we agreed at the outset of this piece of work, we strongly believe reporting of the suspected controlling and/or coercive behaviour on behalf of the potential victim should only take place with the customer's consent and without creating legal and regulatory risk for firms under existing regulations. It should also be recognised that whilst we are supportive of holding perpetrators of economic abuse to account, lenders have a duty to treat both parties fairly and under the law no offence has been committed until there is a successful prosecution. A Government Task Force is needed to bring together the diverse range of stakeholders to consider the findings and recommendations of this report so that a new approach which delivers timely economic justice can be developed and operationalised.

Actions required

A Home Office convened Task Force to consider the coerced debt strawman and associated recommendations and agree an approach which supports victim-survivors to obtain financial stability and independence and holds perpetrators to account.

Home Office to consider how a firm could, with the customer's consent, report suspicions of controlling or coercive behaviour – taking into consideration the potential risk of harm to the victim-survivor. Subject to the outcome of this review UK Finance to develop supporting principles and guidance.

Ministry of Justice and Home Office to explore how the financial services industry can support criminal prosecutions through the provision of evidence.

Ministry of Justice and Home Office to develop a quick, cost-effective pathway for economic abuse prosecutions, ensuring victim-survivors receive economic justice in a timely manner.

Ministry of Justice and Home Office to explore ways in which victim-survivors and/or financial services firm(s) can be recompensed for financial losses incurred.

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Recommendation 5: Policy change to better support victim-survivors.

During our consideration of the three complex issues covered in this report, we have identified a number of enhancements that could be made to existing legislation, regulation and firms' policies in order to provide better support and outcomes to victim-survivors. In some cases, reviews are already in train, so we need to capitalise on those opportunities to effect impactful change. We are asking the Payment Systems Regulator (PSR) to change the Basic Bank Account Regulations so that Basic Bank Account holders are treated in the same way irrespective of whether they are abusive to a customer or a frontline member of staff.

The Consumer Credit Act (1974) Review provides an opportunity to issue guidance to firms on how to deliver good outcomes to both parties when separating unsecured credit products where there is no customer agreement or Court Order. Under the Consumer Duty firms are required to consider how their actions may create foreseeable harm and we have explored how UK Finance members can support victim-survivors who wish to remain in their homes. Current FCA Mortgage Conduct of Business (MCOB) rules provide firms with the ability to be flexible when considering the various types of income that can be used to assess affordability and to ensure victim-survivor's mortgage contracts are affordable. The MCOB rules enable mortgage lenders to consider a wide range of income sources for mortgage borrowers; we would encourage mortgage lenders to consider reviewing their current lending policies to consider (in certain circumstances) whether a temporary, and agreed, period of adjustment may be appropriate when a victim-survivor is looking to become the sole borrower on an existing joint mortgage.

Actions required

- Home Office to review the effectiveness of the Controlling or Coercive Behaviour Offence (Section 76 – Serious Crime Act 2015) where the perpetrator of the offence is in receipt of proceeds of crime and/or money laundering.
- Government's reform of the Consumer Credit Act (1974) to provide guidance on how to split joint unsecured debt where there is no consumer agreement or a Court Order.
- Mortgage lenders to consider whether their existing mortgage lending policies accommodate other sources of income (or agreed temporary periods of financial adjustment) for victim-survivor mortgage contract variation applications. Where they don't, firms may wish to consider changing them to build in this flexibility.
- Ministry of Justice to consider reforms to the laws relating to cohabiting couples as outlined by the Resolution Vision for Family Justice[8].
- PSR to update Payment Accounts Regulations (2015) regulation 26(2)(f) to ensure that firms are able to close a Basic Bank Account of any customer who is causing harm to a third-party.

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Background

What is Domestic, Financial and Economic Abuse?

Domestic abuse is not a new phenomenon, but recent events including the Covid-19 pandemic, the passing of the Domestic Abuse Act (2021) and the cost-of-living crisis have brought it into sharp focus.

The Crime Survey for England and Wales estimates that 2.4 million people experienced domestic abuse in the year ending March 2022[9]. This hidden crime can affect anyone: young or old, male or female, disabled or non-disabled, and the consequences can be life changing, life threatening and long lasting for the individual concerned.

Domestic abuse is often wrongly perceived as purely physical in nature. However, research undertaken by SEA has shown that 95% of victim-survivors have experienced economic abuse and 60% of these individuals have accumulated debts as a result of the controlling, coercive actions of the perpetrator[10].

Following successful campaigning by SEA and other stakeholders including UK Finance, economic abuse was formally recognised in statute for the first time when the Domestic Abuse Act received royal assent in April 2021.

Domestic and Economic Abuse are defined in Section 1 of the Act:

(2) Behaviour of person ("A") towards another person ("B") is "domestic abuse" if

a) A and B are each aged 16 or over and are *personally connected* to each other and

b) the behaviour is *abusive*.

(3) Behaviour is *"abusive"* if it consists of any of the following –

a) physical or sexual abuse;

b) violent or threatening behaviour;

c) controlling or coercive behaviour;

d) economic abuse;

e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) *"Economic abuse"* means any behaviour that has a substantial adverse effect on B's ability to -

a) acquire, use or maintain money or other property, or

b) obtain goods or services.

Perpetrators restrict, exploit and/or sabotage[11] resources such as mobile phones, toiletries, transportation and financial affairs (including income and benefit payments)[12] to maintain power and control and in some cases creating economic dependence and/or insecurity[13].

The restriction, exploitation and sabotage[14] of financial resources is often referred to as 'financial abuse' (a subset of economic abuse) and whilst UK Finance members are limited in what they can do to address wider economic abuse, they recognise that they have an important role to play in supporting victim-survivors to regain their financial stability and independence.

During 2017, UK Finance and its members worked with representatives from charities, victim-survivor support groups, government departments and UK Finance's Consumer Advisory Group to develop a voluntary Financial Abuse Code. First launched in 2018, the Code was created to increase awareness and understanding amongst firms and their staff of financial abuse and how to support victim-survivors. In 2021, the UK Finance Vulnerability Committee agreed to refresh the 2018 Code to ensure that it reflected our deeper understanding of victim-survivors' needs and aligned to legislative and regulatory developments.

The 2021 Financial Abuse Code[15] considers a wide range of financial abuse scenarios including domestic and economic abuse within the context of partner relationships. It incorporates enhanced consideration of the treatment of debt, recognises the new definition of economic abuse as defined in the Domestic Abuse Act (2021) and aligns to the FCA Vulnerability Guidance (2021) which recognises domestic abuse (including economic control) as a key driver of vulnerability[16].

The principles within the 2021 Financial Abuse Code are designed to provide guidance to participating firms on how to support victim-survivors of financial and economic abuse. It is for firms to consider how these principles should best be applied within their organisation, by considering their client base, organisational model and existing support strategies for customers in vulnerable circumstances.

Since work commenced on the inaugural Code, firms have continued to develop a diverse range of support solutions, including the creation of specialist domestic, financial and economic abuse teams, which can be tailored to the victim-survivor's individual circumstances and deployed when they are advised that it is safe to do so. Adopting a victim-survivor led approach is critical, as it is the only way to ensure that a firm's actions do not put the customer at increased risk of harm.

29 organisations covering 39 brands signed up to the 2021 Code and since its publication in December 2021, the Code has been recognised as industry leading both in the UK (e.g., Home Office Domestic Abuse Act Statutory Guidance[17]) and internationally.

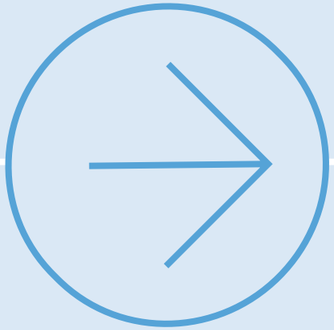
Whilst UK Finance and its members have made significant progress since 2018, we recognised that publication of the revised Code was simply the end of that phase of our work and there was still more work to do. In the last two years UK Finance and its members have been working to develop and share best practice, raise awareness and begin the process of exploring how we can provide further support to victim-survivors who wish to become financially independent. In discussions with specialist charities, the FCA, HM Treasury and the Home Office it became apparent that three complex issues were preventing victim-survivors from achieving financial independence:

- debt accrued as a result of controlling and coercive behaviour,
- separation of joint financial services products, and
- receipt of payments which are accompanied by abusive payment references.

This report takes each of the issues in turn, exploring the current situation, the challenges faced by victim-survivors and key stakeholders and makes recommendations for future action which are focused on supporting victim-survivors to take back control, achieve financial stability and independence and realise their financial ambitions.

Chapter 1

Controlling or Coercive Behaviour and Debt



As noted previously, economic abuse occurs when perpetrators *restrict, exploit and/or sabotage economic resources* to create dependency and insecurity. The consequences of these actions can be particularly acute when they relate to the restriction, exploitation and/or sabotage of a victim-survivor's financial resources.

Restricted access to financial resources can include access to money, existing and/or new financial products and services, better interest rates, information, communication channels and support.

It is often accompanied with reduced and monitored access to devices such as mobile phones, tablets and laptops.

Exploitation involves the perpetrator using threatening behaviour to coerce the victim-survivor into taking out a credit agreement or using available funds to make purchases that the victim-survivor does not want or need, and/or transfer money to the perpetrator's account. There are also situations where the perpetrator takes the victim-survivor's money or applies for credit without their knowledge. This is unauthorised third-party fraud and is covered by both the Fraud Act (2008) and Anti-Money Laundering Regulations, which place specific responsibilities on firms.

Sabotage of property and personal belongings can be extremely distressing and replacing the items can have significant financial consequences. The downstream impacts of sabotage can include damaged credit ratings and result in the need for emergency funds and/or claims against insurance policies to replace and/or reclaim damaged goods and property.

For the first time in 2022, The FCA Financial Lives Survey[18] included information relating to financial abuse. The survey shows that the two most common forms of abuse are being burdened with all or most of the household bills (exploitation) and being kept short of money, denied access to a bank account and/or having their spending controlled (restriction).

Case Study: Refuge Victim-Survivor

Izobel self-referred to Refuge services after experiencing years of abuse from her ex-partner. She expressed having experienced physical, emotional, economic, and technology-facilitated abuse.

Izobel owed over £6,000 on a credit card due to the economic abuse and coercive control that she experienced. It was difficult for Izobel to explain her circumstances because of the years of abuse she endured.

case study

Case Study: SEA Expert by Experience

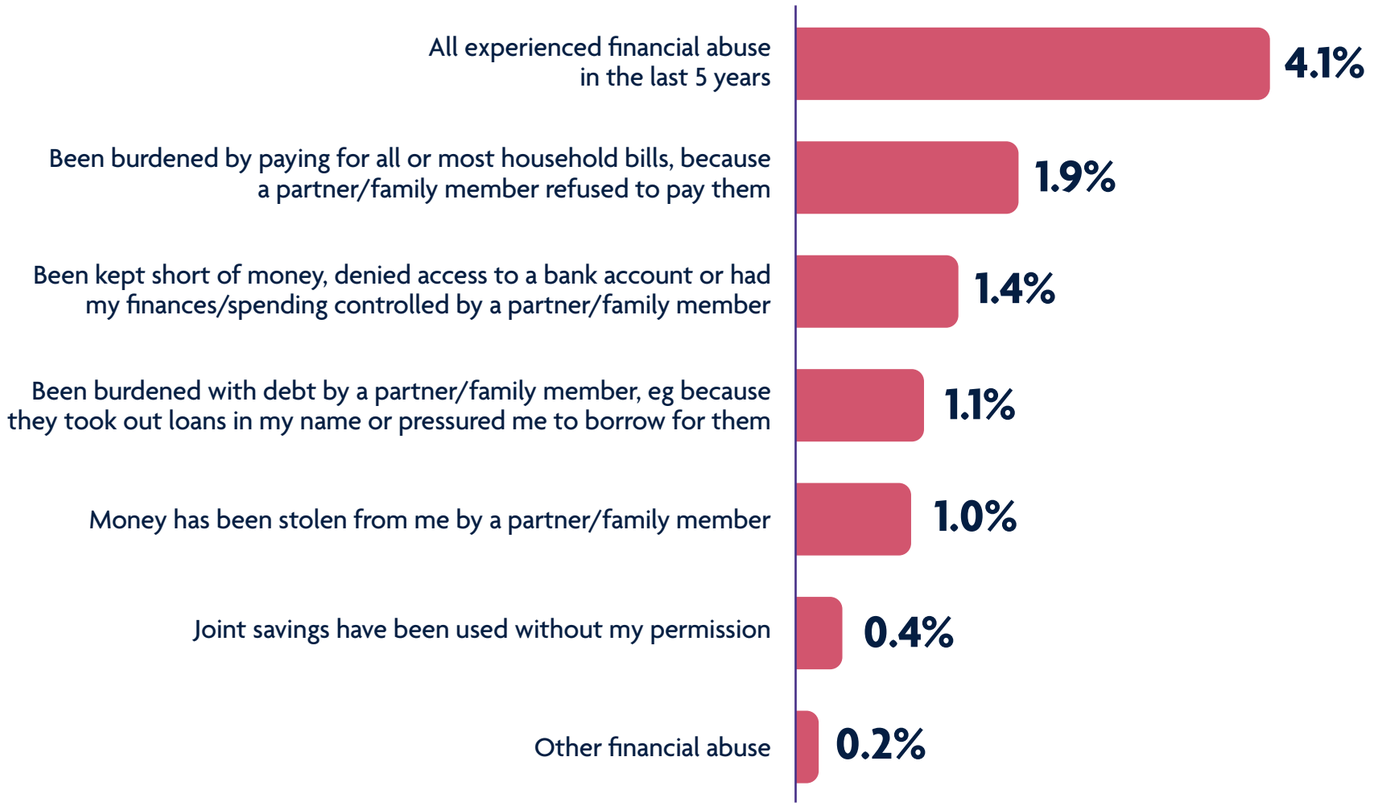
"Yesterday I had a call from my bank's Domestic Abuse Team. They have been through my personal accounts and refunded 12 months' worth of fees. The lady who I spoke to has given me a direct phone number and within the next five days will be looking at my credit card to see what they can do. I am so pleased; it has taken away some of the burden off my shoulders ... I could honestly cry ... with happiness."

UK Finance members have developed a range of treatment strategies which support a victim-survivor to put the foundation blocks in place to establish economic control when it is safe to do so. This may include opening new accounts with non-standard documentation, applying non-geographic sort codes to safeguard the victim's location, increasing controls/having flexibility on change of address processes, issuing new payment cards and resetting the customer's digital banking access. These solutions are designed to remove some of the restrictions placed on the victim-survivor by the perpetrator and enable the individual to start to (re)gain control of their finances.

Minimising the harm experienced by victims of economic exploitation is more complex and difficult to address because controlling or coercive behaviour is a hidden crime and often the victim-survivor doesn't recognise it as a form of abuse.

Coerced debt can have a long-term impact on victim-survivors, and the overarching objective has been to explore how we could support victim-survivors to achieve financial stability and independence quickly and safely. This required us to broaden our understanding of the existing legal framework and the challenges faced

Figure 1: Experience of financial abuse in the last five years (2022)



Source: FLS Base: All UK adults (2022: 19.145) excluding 'prefer not to say' responses (6%) Question: D50 (Rebased). Financial abuse by a partner or family member is said to be common, but it is rarely talked about. Please help us to understand better how widespread it really is. In the last 5 years which, if any, of the following have you experienced?

by victim-survivors, firms and other stakeholders. Only by doing this could policy recommendations be identified which would improve consumer outcomes.

In collaboration with members, UK Finance developed a set of guiding principles (aligned to the Financial Abuse Code) which would act as a 'north star' for the outcomes we collectively wanted to achieve, as follows:

1. We will support victim-survivors and adopt a safety-first approach.

- Adopting a victim-survivor led approach is critical if we are to ensure that the agreed support solutions will help the individual to pursue their financial objectives and *"avoid causing foreseeable harm"*[19].

2. We will remain impartial, providing a balanced and considered approach to all parties.

- Under the FCA Consumer Duty, firms need to ensure that they *"act in good faith towards their customers"*[20]. When supporting customers who have experienced domestic, economic or financial abuse, it is very common for the financial services firm to provide banking services to both parties – the victim-survivor and the perpetrator.

  Financial services firms have no jurisdiction to determine if the actions of one customer constitute criminal activity and in the United Kingdom an individual *is innocent until proven guilty*. As a result, firms need to be fair to both parties, if not they risk non-compliance with the FCA Consumer Duty and 'reputational risk' in the court of public opinion.

3. We will adopt a *de minimis* approach to information provision.

- Under the FCA Vulnerability Guidance, financial services firms need to create disclosure environments[21] and ensure that their staff have the skills and capability to recognise and respond empathetically when a customer chooses to disclose that they are a victim-survivor of domestic abuse[22].
- Our members understand that the process of providing and receiving sensitive information can be traumatic for both the victim-survivor and firms' frontline colleagues and in line with data privacy and data protection requirements, requests for information are kept to a minimum.

4. We will adopt a proportionate approach which recognises that we have a role to play but are not responsible for the perpetrator's actions.

- UK Finance members recognise that they have an important role to play, but it can be very difficult to identify and respond to financial abuse, especially when the customer does not recognise that they are a victim.
- Members are also clear that perpetrators of financial abuse should be held to account. Collectively, all stakeholders need to work together to ensure the perpetrator does not benefit from their behaviour and there is a sufficient incentive to prevent re-offending.

"She had fled, but only in the clothes she was standing in, her mobile phone had been smashed so she couldn't reach out to family. She wanted to go and stay with her Mum who lived quite a distance away but had no means of contacting her or getting there.

We provided the branch phone to call her Mum, who welcomed her to go and stay in a safe environment. We explored the flee fund and were able to help her with £285."

– Quote from an employee of a UK Finance member

Case Study: Money Advice Plus Client

case study

Tina fled the abuse from her partner. At the time of meeting him she spoke very little English and had no recourse to public funds due to her immigration status at the time, meaning she could not access housing or financial support. Her partner controlled her access to money and how she could spend it. After fleeing, the abuser found her and made demands for financial reimbursement for having supported her financially during the relationship. He coerced Tina into taking out a bank loan with threats of further violence and sexual assault. The loan monies were transferred in full directly from her account to the perpetrator's bank account, in two separate transactions of approximately £14,000.

Tina was given specialist advice, and the Money Advisor prepared an EAEF to request a write off from the creditor for the bank loan. The creditor responded immediately and very compassionately. Within five days the bank had agreed to write off the bank loan entirely. The creditor also refunded Tina over £2,000 worth of payments that she had already made towards the debt.

The Legal Framework

In order to look at this issue strategically, it is important to understand how controlling or coercive behaviour is defined in a legal context.

Recognising that perpetrators inflict domestic abuse on victim-survivors by exerting power and control on a number of levels including physical, psychological, economic and emotional, the Home Office introduced the controlling or coercive behaviour criminal offence (Section 76) into the Serious Crime Act in 2015.

This legislative change was designed to *"protect victims who would otherwise be subjected to sustained patterns of abuse that can lead to total control of their lives by the perpetrator"*, and *"close a gap in the law around patterns of coercive and controlling behaviour during a relationship between intimate partners, former partners who still live together, or family members"*[23].

Section 76 of the Serious Crime Act[24] was amended in April 2023 to ensure it aligned with the new Domestic Abuse Act (2021) and it is designed to provide a route to justice for victim-survivors, provided the perpetrator's behaviour meets the following legal test:

Controlling or coercive behaviour in an intimate or family relationship

1) A person (A) commits an offence if—

   a) A *repeatedly or continuously engages in behaviour* towards another person (B) that is controlling or coercive,

   b) at the time of the behaviour, A and B are personally connected

   c) the behaviour has a serious effect on B, and

   d) A knows or ought to know that the behaviour will have a serious effect on B

4) A's behaviour has a "serious effect" on B if—

   a) it causes B to fear, on at least two occasions, that violence will be used against B, or

   b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities

In summary, for an offence to be prosecuted, there has to be evidence of either a pattern of controlling or coercive behaviour, which causes the victim-survivor to believe that non-compliance on two separate occasions would have resulted in physical violence, or the unlawful behaviour has to have had a significant negative impact on their day-to-day activities.

Controlling or coercive behaviour is therefore quite different to fraud. When a victim-survivor is coerced into debt, they are unable to challenge this because they fear the adverse consequences, whereas fraud occurs where money is taken from the victim-survivor's account without their knowledge or consent.

Whilst developing our understanding of how controlling or coercive behaviour is defined in a legal context, UK Finance and its members identified a scenario which creates a tension between firms' preference to adopt a victim centred approach and their regulatory requirements. It is our understanding that when victim-survivors are coerced into providing false information (e.g., purpose of borrowing) during a credit application they commit fraud by misrepresentation. Under Part 7 of the Proceeds of Crime Act regulations, regulated firms that know or suspect that a victim-survivor has committed fraud (a predicate offence under anti-money laundering regulations) should consider the submission of a Suspicious Activity Report (SAR), and may, where

appropriate, apply fraud markers such as updating the relevant CIFAS database.

UK Finance members are extremely concerned that complying with these requirements is incongruous with their victim-survivor centred, safety first approach and will result in negative outcomes for the individual. We recognise that any requirement to report this activity may deter victim-survivors from disclosing that they are experiencing economic abuse. Additionally, whilst fraud by misrepresentation is technically a criminal offence, we strongly believe the risk to the financial system is low and the victim-survivor is the one contracted to make the repayments, which they would undoubtedly argue is a penalty in and of itself. Furthermore, members are concerned that placing fraud markers on an individual's account could create foreseeable harm, preventing the victim-survivor from obtaining new products and services such as a current account or mobile phone, essential items required for fleeing and regaining financial independence.

It is our strong view that a review of this type of crime reporting should be undertaken to help firms better understand how they can appropriately balance supporting the victim-survivor whilst complying with any reporting obligations.

We also note that under current legislation the victim-survivor cannot rely on a defence of 'duress' for their actions. Proposed Amendment 38 of Domestic Abuse Bill was designed to provide this protection but was dismissed[25]. We believe that this should be revisited in relation to scenarios where financial abuse and fraud intersect.

"He set up new accounts in my name and set user IDs, passwords, and memorable info without my knowledge."

– Quote from SEA Expert by Experience

Action required

UK Finance, Home Office and HM Treasury to develop guidance for firms on how to appropriately balance supporting victim-survivors (suspected of committing fraud as a result of the coercive or controlling actions of the abuser) with their regulatory reporting obligations.

The Challenges

When considering controlling or coercive behaviour, consumer advocacy groups, academics and the media often focus on how victim-survivors endure the ongoing adverse effects of coerced debt long after they have left the abuser, due to the debts that they have accrued in their name and the subsequent impact on their individual credit report.

Research from SEA found that c.60% of victim-survivors[26] of economic abuse had been coerced into debt. On average victim-survivors have accrued debts of £27k[27] split across five creditors[28] including financial services firms and non-financial services firms (including utilities and local authorities).

UK Finance members are committed to supporting victim-survivors and some are voluntarily writing-off debts that they believe to be coerced (on a case-by-case basis) to assist the victim-survivor to take a further step towards safely rebuilding their life. SEA note that *"one in four debt write-off requests are successful"*[29] and whilst every penny counts, this does not provide the financial freedom that consumer groups are advocating for.

The case studies shared in the media and in academic journals make difficult reading, but if we are to improve consumer outcomes, we need to approach this issue strategically. If a strategic response focuses only on creditors in the financial services sector, we estimate that approximately half of an individual's debts would be out of scope and the victim-survivor would holistically be no better off. A joined-up approach is required where all key stakeholders play their part.

As a result of our investigations, it has become clear that balancing the needs of all parties and adopting a 'victim-led' safety first approach is extremely challenging to achieve in the current legal and regulatory environment. To achieve the desired outcomes set out on page 24 a new approach is required and our thoughts on how this might be achieved are set out on the following page.

Action required

Home Office, financial services and third sector organisations to work together to share best practice, raise awareness of Economic Abuse and encourage victim-survivors to seek help from relevant organisations.

Coerced Debt – a new approach

Prevention is better than cure

A new approach has to start with consideration of the actions that can be taken to prevent 'coerced' credit applications being approved in the first place. In line with Consumer Duty requirements, where firms should anticipate foreseeable harm based on their knowledge and experience, further action is required in the following three areas:

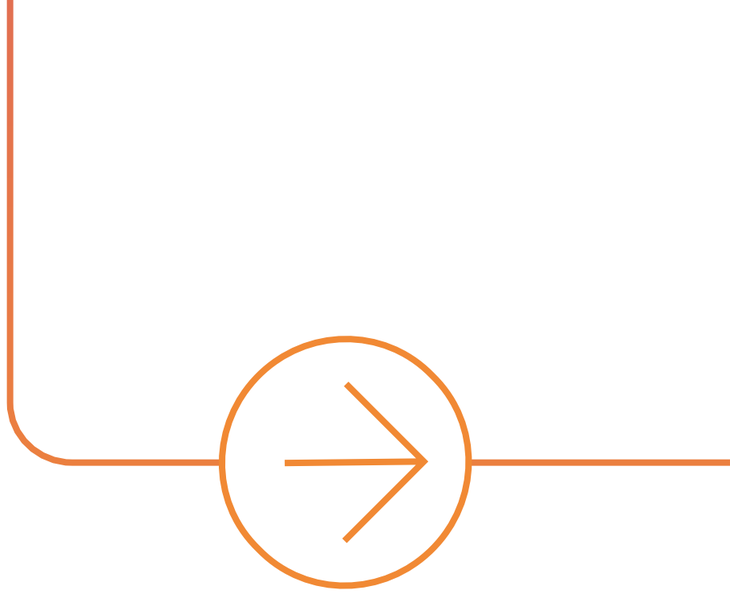
1. Raising awareness, seeking support and disclosure

UK Finance members have implemented a diverse range of support solutions to raise awareness and educate consumers of the dangers of financial abuse: HSBC communicated the message *"if someone controls your finances, they control you"* through high impact advertising on TV, radio, the Underground and billboards. UK Finance worked in partnership with SEA to develop the new 'It's Your Money' consumer leaflet.

Firms like The Co-Operative Bank, Metro Bank, Nationwide and Santander have created safe environments through which victim-survivors can seek support by designating their branches as Safe Spaces.

Lloyds Banking Group have implemented 'quick exit buttons' on their websites so that victim-survivors can exit financial abuse related web pages quickly without leaving any browsing history and members offer a wide range of ways that individuals can disclose their personal circumstances remotely including through banking apps, secure messaging and online forms, in addition to branch, telephony, specialist domestic abuse teams and webchat channels.

There is a significant amount of support available, including access to emergency flee funds provided by NatWest Group and TSB, but this can only be provided if the victim-survivor recognises that they need help, is ready to seek it out and knows where to find it. UK Finance and its members welcome the development of Surviving Economic Abuse's Banking Directory, which provides details of the support available from the financial services sector in one place. Consumer education takes time and requires all key stakeholders to increase and co-ordinate their efforts to raise awareness of what financial and economic abuse is and encourage victim-survivors to seek help from their financial services provider.



"A customer came into the branch who was extremely distraught. She was not aware of safe spaces and didn't know where to turn or what to do. We quickly directed her from the main banking hall to a closed office for privacy."

– Quote from an employee of a UK Finance member

"We decided to look at the Emergency Flee Fund to offer her the support she needed. I was pleased to be able to tell the customer that we were able to provide her with £368 to help her get food, clothing, and a new bed for her son, and that she did not need to pay this money back."

– Quote from an employee of a UK Finance member

2. Data led prevention strategies

There are a number of ways in which data can be leveraged to support a prevention strategy and mitigate the risk of foreseeable harm.

Under the FCA Vulnerability Guidance, financial services firms are required to recognise and respond to clear indicators of vulnerability characteristics[30]. UK Finance worked with members to develop a list of observed indicators for financial abuse. In developing this list, we recognised that there is a risk that the indicators could result in false flags, as for example a salary being paid into an account and immediately being transferred to another account could be the first sign of abuse, equally it could be an indicator of criminality (with no abuse present) or perfectly legitimate. Members agreed that a single indicator on its own may not give a clear view, but the presence of several indicators would increase the probability that the account holder is a victim-survivor. This list will be reviewed on a regular basis and members will continue to ensure that vulnerability and domestic abuse training provides colleagues with the knowledge and skills to recognise and respond to clear indicators of financial abuse.

With developments in the field of artificial intelligence (AI), behavioural science and data modelling, we should consider how we can build on the lessons learnt from the sector's work in the field of gambling addiction and adapt them to financial abuse.

A scientific data led research project, which modelled the transactional behaviour of known victim-survivors' finances, could help us to develop a clearer view of the cause-and-effect risk indicators for controlling or coercive behaviour. Firms could then explore how this insight could be incorporated into risk control algorithms and where necessary introduce appropriate levels of positive friction into product and service journeys.

"I hadn't realised how useful the training was until the situation presented itself. It had been sometime since I had completed the training but I had taken in enough that I felt prepared."

– Quote from an employee of a UK Finance member

There are a number of ways in which data can be leveraged to support a prevention strategy and mitigate the risk of *'foreseeable harm'*.

Action required

UK Finance to explore options for commissioning a 'big data' research project, to enhance our understanding of relevant risk indicators of economic and financial abuse.

3. Customer Journeys

With greater insight and awareness of the transactional cause-and-effect risk indicators for financial abuse and specifically controlling or coercive behaviour, firms could look to introduce appropriate levels of positive friction into customer journeys.

However, this is not without its challenges. First, firms would need to achieve the right balance, ensuring that enhanced safeguards, often achieved through the introduction of friction, are deployed at the right time, on the right accounts and only where firms' systems indicate that a specific set of circumstances may indicate a heightened risk. Whilst this may protect victim-survivors in the short term, false flags may also lead to inconvenience for customers (i.e., 96% of UK adults)[31] that are not experiencing financial abuse.

Second, firms need to develop ways to introduce effective friction without putting the victim-survivor at increased risk of harm. Members discussed the pros and cons of issuing effective warnings to raise awareness of financial abuse at the point of a credit application, requiring greater information/disclosures, introducing drawdown codes for the release of funds and changes to Terms and Conditions.

However, members concluded that it is unlikely that any of these solutions will adequately protect the victim-survivor from the actions of a controlling third-party as they can all be circumvented and more importantly, the introduction of friction could result in increased risk to the victim-survivor.

Further work is required in this area and UK Finance and its members would welcome engagement from individuals with lived experience and specialist charities to identify and co-design ways in which effective friction can be built into consumer journeys in a safe way.

Action required

UK Finance and its members to work with individuals with lived experience and specialist charities to explore how positive friction can be built into customer journeys in a safe way.

Strawman for supporting victims to obtain financial independence and economic justice

Having considered the steps that can be taken to prevent abusers from coercing intimate partners/family members into taking out debt, it is equally important to consider how victim-survivors can be better supported when they disclose that they have taken out a credit facility through fear of the repercussions if they refuse.

Based on our research, we believe that an ecosystem approach is needed to improve the outcomes that victim-survivors receive.

UK Finance has considered what a new approach might look like, taking into consideration the similarities and differences with other victims of crime journeys such as fraud.

This strawman provides a starting point for a conversation and requires consideration, constructive challenge and improvement by all key stakeholders. Given the number of stakeholders, the complexity of the issues and the number of workstreams involved, we strongly believe that Ministerial sponsorship and a government led project is required to deliver real, meaningful change.

Disclosure and Community Response

The first step in the process is victim-survivor disclosure. This may be as a result of firms recognising and responding to clear indicators of domestic, economic and financial abuse or a direct disclosure from the victim-survivor or third party. Whilst individual financial services firms have developed an omni-channel approach to disclosure within an individual firm, there is no ability for a victim-survivor to make a single 'Tell Us Once' disclosure to the financial services sector as there is for Death Notification. Whilst this could be progressed unilaterally by the financial services sector it wouldn't achieve 'Tell Us Once' as the victim-survivor would still have to contact multiple-agencies, (including specialist domestic abuse charities, independent debt advice organisations, legal sector firms, financial services firms, their local authority and/or law enforcement), to access the support they need.

Having to repeat details of abuse on multiple occasions, increases the risk that the perpetrator will discover the actions being taken and can have a re-traumatising emotional impact on the victim-survivor.

Action required

A Home Office convened Task Force to consider the coerced debt strawman and associated recommendations and agree an approach which supports victim-survivors to obtain financial stability and independence and holds perpetrators to account.

Greater consideration should be given to how communication and collaboration can be enhanced between key stakeholders to create a domestic abuse support ecosystem. Early engagement with financial services firms may enable the victim-survivor to obtain important financial information that will inform the forward-looking response across multiple agencies, ensuring that the victim-survivor receives better outcomes.

UK Finance has developed positive partnerships with the UK's police forces which have resulted in the introduction of the 'Banking Protocol' for fraud prevention and the 'Vulnerable Victims Notification Scheme', otherwise known as the 'reverse banking protocol'. These initiatives are having a significant, positive impact from a fraud prevention perspective and consideration should be given to how these can be leveraged, replicated or adapted to support a victim-led response to financial and economic abuse.

Safeguarding the Customer

On receipt of a disclosure the firm should offer a supportive response which first and foremost prioritises the safety of the victim-survivor. The firm's response should be empathetic and victim-led, respecting the individual's need for privacy and choice of channel. The firm should also be able to share relevant information on the support options available to the victim-survivor, enabling them to make an informed choice about their next steps.

"When the customer came into the branch, she was clearly distressed. I discussed the situation with my manager and we both knew we had to do everything we could to help her. She explained her situation and told us she had left her family home with her son to escape her abusive partner."

– Quote from an employee of a UK Finance member

Actions required

UK Finance to work with law enforcement to explore how the Banking Protocol and Vulnerable Victims Notification initiatives can be leveraged.

Home Office to consider how they can facilitate the development and maintenance of a 'Tell Us Once' disclosure and community response.

Establishing the victim-survivor's financial position

If a victim-survivor is unaware of their financial position, they can obtain information and support from several organisations such as independent debt advice organisations, their financial services provider and/or a credit reference agency.

This initial research may reveal that the victim-survivor has debts that they were unaware of, in which case firms will have to liaise with their fraud teams. They may also establish that they are in financial difficulty and, if this is the case, the financial services firm will consider what forbearance options are suitable considering the victim-survivor's unique personal circumstances. In situations where the victim-survivor has multiple debts and creditors, the financial services firm may advise seeking independent debt advice from an organisation that has the skills and expertise to deal with complex domestic abuse cases.

The victim-survivor may at this point disclose that some of the debts in their name were coerced and they may request a debt write-off, either directly or with the assistance of a specialist support agency.

The financial services firm may also receive an EAEF.

The EAEF is an information-sharing tool devised by MAP, and piloted in partnership with SEA, for a victim-survivor to communicate with third parties about their financial situation[32]. It captures information about the economic abuse that a victim-survivor has experienced. It can be shared with a financial services firm alongside a summary of their financial liabilities and a notification of which debts are believed to be the result of controlling, coercive behaviour, based on the information provided by the victim.

The EAEF has been piloted since January 2021 and a total of six lenders and ten independent debt advice agencies have participated. An independent Early Impact Evaluation[33] conducted by Dr Clare Wiper concluded:

- the information provided by accredited money and debt advisors involved in the pilot was *"impartial, high quality and accurate"*,
- *"The EAEF pilot has had a positive impact on knowledge, attitude, confidence and ability of stakeholders"*, and
- *"It has helped firms to be more consistent in their approach and respond quicker"*.

UK Finance members are supportive of the EAEF as an information sharing, 'Tell Us Once' tool, and we have been working with SEA and MAP to find resolutions to a number of issues and agree a roll-out plan that is proportionate and achievable given resource constraints and the existing mandatory change stack. Positive progress has been made and we look forward to continuing to work with SEA and MAP to agree an approach which enables increased participation and commitment by UK Finance members.

This includes securing a way forward for our Northern Irish members, who are currently unable to participate in the pilot. We welcome SEA and MAP's efforts to explore potential partnerships with Northern Irish debt advice agencies MindWise and Advice NI.

Case Study: UK Finance member

case study

When Simon reached adulthood, he was moved to the UK as part of an arranged marriage, which he felt would be an opportunity for a new life. Sadly, his wife who was a few years older began to subject him to physical and financial abuse. She withheld his passport and money he earned, so he didn't have anything of his own or means of escape. Eventually after several years he contacted the police about the abuse and through a support group began divorce proceedings. Simon's mental health has suffered severely over the years of torment and had mentioned to us his thoughts of suicide. As a result, he has been deemed as unfit to work and is currently only in receipt of benefits which aren't enough to sustain his outgoings. He had also got himself into considerable debt with various companies while trying to rebuild his life.

His bank signposted him to Citizen's Advice to help with his debts. His bank also agreed to write off his debt with them and adjust his credit file to reduce the impacts of the abuse on him in the future. The pilot impact report has shown

that the EAEF is having a positive impact, but if it is to reach its full potential, two issues need to be addressed:

- Currently the Money and Pensions Service commissioned debt advice organisations are unable to provide the long-term, complex casework support that is necessary for victim-survivors and a mandatory requirement of the EAEF initiative.
- However, Money Advice Trust's National Debt Line and StepChange both provide a self-help model and are able to signpost victim-survivors to specialist services such as MAP which offer casework support. MAP is actively engaging with the Money and Pension Service and participating in their commissioning research so that tailored advice services for victim-survivors are funded appropriately going forwards. If this issue is not resolved, it will impact the volume of victim-survivors that can benefit from the introduction of the form.
- Noting that c.50% of an individual's debts sit outside the banking and finance sector, the EAEF must be rolled out to a wide range of non-bank creditors if it is to support its aims of being a 'Tell Us Once' information sharing tool. SEA and MAP have worked with the Cabinet Office and the Treasury to develop an economic abuse toolkit for the public sector and are working with the Local Government Association to support the use of the form for public sector debts. One local authority (Brighton and Hove) has given their commitment to accept the form. This is a positive step but further work is required.

Financial Services Investigation

On receipt of an EAEF or a direct disclosure from a customer, financial services firms should undertake a comprehensive investigation. Some firms currently assess coerced debt cases on a case-by-case basis and there have been calls from the third sector for greater consistency across the industry.

Recognising that these are commercial decisions, which are subject to competition law regulations, there are limits to how much consistency can be achieved. That said, UK Finance should explore whether it is possible to develop a set of principles which provide guidance on the approach that firms can take to reaching a decision as to whether there are reasonable grounds to suspect that the victim-survivor has experienced controlling or coercive behaviour and in turn whether they wish to voluntarily write off some or all of the debt. Whilst this supports victim-survivors it also rewards the abuser's behaviour.

Action required

UK Finance to continue to work with SEA and MAP to secure a commitment to accept the EAEF across a broad range of audiences including UK Finance members, non-bank creditors and debt advice agencies.

A principle based approach which takes account of regional differences may incorporate the following steps:

1. **Firm Assessment:** firms should develop a clear understanding of the products and services that may have been subject to controlling or coercive behaviour. This could include whether the products are held in joint or sole names and whether any borrowing includes balances that have been transferred in or consolidated.

2. **Safeguard the Customer:** noting that 68% of high-risk victim-survivors try to leave 2-3 times before they are able to flee an abuser[34], firms may wish to consider whether the individual has tried to flee previously and if they need additional support. Current safeguards should therefore be reviewed and if there are additional controls that can be put in place to protect the customer these should be discussed and if appropriate actioned.

3. **Firm Conduct Check:** where a customer has previously disclosed to the firm that they are a victim-survivor of domestic abuse, the firm should determine whether its actions have contributed to or exacerbated the victim-survivors' experience and outcomes. If it is concluded that the firm's actions or inactions have caused harm to the customer, appropriate remedial action should be progressed in line with the FCA Consumer Duty requirements[35].

4. **Suspicious Activity Check:** firms should consider if there is any evidence to suggest that the victim-survivor has been or may have been the victim of controlling or coercive behaviour. Whilst firms have no jurisdiction to make a legal determination, they do have a duty under existing regulations to report known or suspicious activity where a criminal offence has led to the perpetrator receiving an acquisitive financial benefit. To support firms, consideration should be given to developing a set of principles which provides guidance on how to reach a view as to whether there are reasonable grounds to suspect that the victim-survivor has been subject to controlling or coercive behaviour.

Where there is no evidence of criminal activity, the firm could decide to pursue either or both parties to a joint and severally liable credit agreement. If the decision is taken to pursue a single party (e.g., alleged perpetrator), that party could have grounds to counter-sue the victim-survivor.

Action required

Home Office to consider how a firm should report suspicions of controlling, coercive behaviour– taking into consideration the potential risk of harm to the victim-survivor. Subject to the outcome UK Finance to develop supporting principles and guidance.

Reporting potential criminal activity to the appropriate authorities

If the firm suspects or has reasonable grounds for knowing or suspecting that a victim-survivor has been subject to controlling or coercive behaviour that has resulted in the perpetrator obtaining an acquisitive financial benefit, then under existing anti-money laundering regulations they are required to submit a Suspicious Activity Report on the suspected money laundering activity. They may also deem it appropriate to report the potential economic abuse to the appropriate authorities flagging the involvement of a vulnerable adult.

UK Finance members are concerned that reporting a crime of this nature to law enforcement, without consulting the victim-survivor could put them at risk of harm. Our preference (where appropriate) would be to have an impartial discussion with the victim-survivor and in line with a victim-survivor led approach, only report the crime with the victim-survivor's knowledge and where appropriate consent, whilst being mindful of any other reporting obligation.

A discussion with the victim-survivor could result in one of three possible outcomes:

1. **The victim-survivor declines:** as with the fraud journey, this victim-survivor led decision would result in no further action being taken by the firm in respect of the reporting, debt write-off and/or reimbursement unless the firm wishes to consider a voluntary commercial decision. Firms will continue to provide other specific support services to the victim-survivor based on their individual needs which may include tailored forbearance for customers in financial difficulty.

2. **The victim-survivor wishes to report the perpetrator to law enforcement but not immediately:** as with the previous scenario, the decision should be respected, no further action would be taken in respect of reporting or debt write-off and/or reimbursement – unless the firm wishes to consider a voluntary commercial decision. Firms will continue to provide other specific support services to the victim-survivor based on their individual needs until such time as they are ready to proceed.

3. **The victim-survivor wishes the firm to report the perpetrator to the appropriate authorities:** this would trigger reporting to the relevant authorities through an appropriate route, industry data sharing and a commercial decision point. Firms should also consider if any further controls need to be in place to safeguard the victim-survivor's finances.

Action required

UK Finance members to continue to consider debt write-off requests on a voluntary case-by-case commercial basis.

Whilst considering the approach, firms must be mindful of any regulatory obligations they may have.

The process outlined on the previous page endeavours to balance the needs and safety of the victim-survivor, with holding the perpetrator to account and firms' regulatory and legal compliance requirements. However, further review is required to understand if this is possible under the existing legislative framework or if it will require government policy change.

Commercial Decision Point

In parallel with progressing the reporting of controlling and/or coercive behaviour, firms need to make a commercial decision as to whether they will voluntarily write-off any of the victim-survivor's debts at this juncture (i.e., before the outcome of any criminal prosecution is decided) or when the outcome of a criminal prosecution is known.

Under the law, until such time as there is a criminal prosecution, there is no proven coercion and therefore no coerced debt. Any decision by the financial services firm to write-off some or all of the debt has to be made on a case-by-case basis. This must remain a voluntary, commercial decision as the firm should not be held accountable for the criminal actions of the perpetrator.

The timing of any financial arrangement also has to be considered, as where joint credit agreements are involved communications must be sent to both parties, and this could alert the perpetrator and put the victim-survivor at increased risk of harm.

With regards to debt write-off decisions, there are obvious benefits to the victim-survivor, but they do have a financial impact for the firm which has to be accounted for. This will either result in cross-subsidisation/increased pricing for products and services used by the firm's customer base, a reduced return to shareholders or a combination of both. The financial sums involved are significant, and as a result this could negatively impact the competitiveness and investability of the banking and finance sector.

Criminal prosecution and perpetrator accountability

First, for a criminal prosecution to be successful, there needs to be an effective criminal offence.

Actions required

Home Office to review the effectiveness of the Controlling or Coercive Behaviour Offence (Section 76 - Serious Crime Act 2015) where the perpetrator of the offence is in receipt of proceeds of crime and/or money laundering.

Ministry of Justice and Home Office to explore how the financial services industry can support criminal prosecutions through the provision of evidence.

The Controlling and Coercive Behaviour Offence was intended to protect victims and close the legal gap, but research has shown that whilst there has been an increasing trend over the last eight years, the number of successful convictions is minimal compared to the estimated number of victims, which suggests it is not as effective as it needs to be.

In the financial year 2021/22 there were 41,626 cases recorded by the police, which led to 1,925 cases being heard in magistrates' courts but only 434 convictions[36].

In Barlow et al (2019)[37] the following factors were cited as preventing the successful prosecution of coercive control cases:

- Crown Prosecution Service requiring further investigation and evidence,
- the case not meeting the evidential threshold, and
- the coercive controlling behaviour offence being dropped, whilst other (often physical) offences are progressed.

Where a perpetrator has received financial benefit as a result of a criminal offence, i.e., controlling, coercive behaviour, this constitutes proceeds of crime and may be money laundering if the money is moved or spent.

Taking this into account and noting Surviving Economic Abuse's recommendation in the 'Seen yet sidelined' report[38] we echo the approach by SEA that the Westminster Government should explore and review the pros and cons of making economic abuse a criminal offence. As part of this review, consideration needs to be given to whether existing regulations can be deployed to freeze assets and recompense the victim-survivor and/or financial services firm for any financial losses or if new powers are required. Potential options which could be explored include powers afforded by the Proceeds of Crime Act and possibly Constructive Trusteeships. This would align with the Domestic Abuse Commissioner's Strategic Plan[39] which states that holding perpetrators to account is an important element and recognises that if financial services firms simply write off the debt, there is no incentive for the perpetrator to adapt their behaviour. Members are concerned about the risk of this perverse incentive being exploited.

Actions required

Ministry of Justice and Home Office to develop a quick, cost-effective pathway for economic abuse prosecutions, ensuring victim-survivors receive economic justice in a timely manner.

Ministry of Justice and Home Office to explore ways in which victim-survivors and/or financial services firms can be recompensed for financial losses incurred.

A mind shift is also needed across all stakeholders that controlling or coercive behaviour that results in a financial benefit is seen as proceeds of crime and could also be money laundering, to ensure that this element of domestic abuse is given sufficient priority.

Finally, it is important to recognise that the path to economic justice needs to be quick, cost-effective and deliver results. Only then will financial services firms feel that the investment that they are making in providing transactional evidence (subject to a Court Order) to support the prosecution is justified, the perpetrator is held accountable, and the victim-survivor is able to take back control and re(gain) their financial independence.

Credit Reference Agencies (CRAs)

To complement the industry policy work on how coerced debts are to be considered by lenders for debt write off/waiver, the associated reporting of the credit agreement on the credit file also needs to be reviewed.

Aligned to the industry policy for debt write off/waiver, the ambition should be for clear and transparent communication to the customer as to how the account will be reflected on their credit file and, where possible, a consistent approach adopted which reflects the victim-survivor's creditworthiness and not the abuse they have experienced.

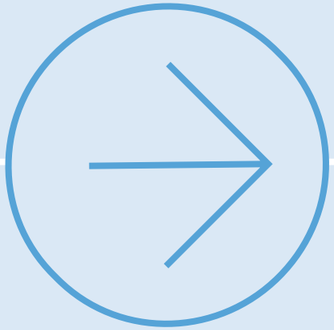
It is understood that CRAs do not currently have any attribute that can be used on a credit file to show anything specific relating to coerced debt write-off, domestic/economic abuse etc.

Action required

The Steering Committee on Reciprocity (SCOR), should assess how coerced debt should be reflected on credit files, seeking to achieve a consistent principled and understandable approach to reporting.

Chapter 2

Separation of Joint Secured Debt



To achieve financial stability and independence, victim-survivors need to be supported to ensure that all financial connections between themselves and their abusive partner have been severed. This requires any joint financial products including joint credit agreements to be separated. This sounds simple, but in practice it can be very complex dependent on the products involved, the legal status of the relationship and the level of co-operation from each party.

Victim-survivors may have both unsecured and secured credit products, and whilst we will touch on both, the main focus of this report is separation of joint secured debt (mortgages), as this is the most complex product to separate and generally the largest liability.

We have explored the separation of joint secured products in the context of the end-to-end legal separation of the relationship customer journey and have identified several challenges and areas for improvement.

Before we explore this in more detail it is important to understand the contractual basis of a joint credit agreement.

Joint Credit Agreements

When two people enter into a secured joint borrowing agreement for expensive items such as a car or a house, it is important to understand the nature of the borrowing and risks involved if the payments are not met.

When two people sign a financial contract to borrow money, they become **"jointly and severally"** liable to pay back the money that is owed. Even if they decide to divorce or separate, they will continue to be **jointly** liable for the outstanding amount of the debt, until such time as the debt has been repaid or they have been discharged from the liability.

Couples often wrongly believe that they are only responsible for their half of the amount that has been borrowed so it can be difficult to understand scenarios where they remain liable e.g. when the money was spent by the other party; only one person is living in the house that is secured by the mortgage; or the money was used for something else entirely and one party received no benefit.

In cases where one party is experiencing economic abuse, this situation is due to the ongoing control and fear that the individual is experiencing. Increasingly customers are requesting the lender to release them from their liability due to their circumstances.

Discharging the liability in the case of a mortgage usually requires the mortgage to be repaid. This might only be possible by selling the property and paying back what is owed to the lender. This can pose further complications when one party wants to remain in the property, or they can't afford to move. An ex-partner who wants to maintain control through uncooperative and abusive tactics can also create additional problems for the victim-survivor and the lender.

What records are created when an application for a joint credit product is approved?

Knowing how joint debt is created and recorded is an important step to understanding how to separate the debt later if the relationship ends or breaks down.

When applying for a joint loan the lender will look at whether the borrowers can afford the loan and make the regular monthly repayments based on their joint income and outgoings. To do this, the lender will conduct a credit check on each person's credit file to see how much borrowing is already in place and how well that debt is being managed.

They will also look for any arrears or late payments and the amount of debt that is already owed.

Credit checks for loans are called 'hard searches' and will be done on both parties applying for the joint loan. Hard searches will normally stay on the respective credit files for two years creating a clear trail of when an application for credit has been made.

Financial Associations

A financial association will be created by opening a joint bank account or applying for credit with another person. A financial association will stay on the credit file of both parties indefinitely and consists only of the person's name.

Removal of a financial association can only be done when all joint products have been closed and the request must be made to the credit reference agencies (CRAs) where the financial association is recorded. If customers are no longer together due to the breakdown of their relationship, (because of divorce or other circumstances), but still share a joint mortgage, it may be possible to break the association after six months, but all other shared financial products (e.g., joint bank accounts) must have been closed.

Financial associations which are not resolved can have a direct impact on a customer's credit worthiness, their credit score and ultimately their ability to access credit in the future.

Customers should monitor their credit report at regular intervals, to ensure that any financial associations are up to date and check that an ex-partner is not negatively impacting their own ability to access credit by having a poor credit score. Major changes in a customer's life should always prompt them to access and check their credit report to make sure it is accurate.

Separation of joint unsecured debt

Financial services firms recognise that customers can experience difficulties separating joint unsecured debt (personal loans and overdrafts) particularly where there is no customer agreement or Court Order which details how any assets or liabilities should be divided.

The absence of such an agreement, exacerbated by the lack of engagement of a party to the account, creates challenges for firms as there is currently no legislative framework or regulatory guidance available to firms which sets out how a joint and severally liable debt should be divided between each party in order to achieve a fair outcome to both parties.

However, joint and severally liable agreements do provide firms with the flexibility to seek payment from either or both parties, and some firms have updated their terms and conditions enabling them to assist customers to separate joint unsecured debt products, such as overdrafts.

As noted previously, if the firm decides to pursue a single party (e.g., alleged perpetrator) for repayment of the debt, this could give that party grounds to counter-sue the other party (i.e. the victim-survivor).

Furthermore, in all cases, firms have an obligation under the new Consumer Duty to act in good faith and deliver good outcomes for both parties to joint products.

Customers can experience difficulties separating joint unsecured debt.

Action required

Government's reform of the Consumer Credit Act (1974) to provide guidance on how to split joint unsecured debt where there is no consumer agreement or a Court Order.

Separation of joint secured debt

Separating joint secured debt is a complex process which varies according to several factors including the products held, the status of the relationship (married, civil partnership, cohabiting or non-cohabiting relationship), and whether the parties can reach a mutual agreement without the need for Court intervention. It is important that all necessary steps are fully completed as there can be far reaching consequences for individuals that do not deal with their finances when a relationship ends.

Seeking professional advice

Given the complexity of the process and the ways in which perpetrators will use secured debts to maintain control over a victim-survivor it is crucial that the victim-survivor secures access to professional legal and/or financial services support early in the process. Access to professional advice will equip them to make informed choices, identify the necessary actions to be completed and help them on the path to financial stability and independence.

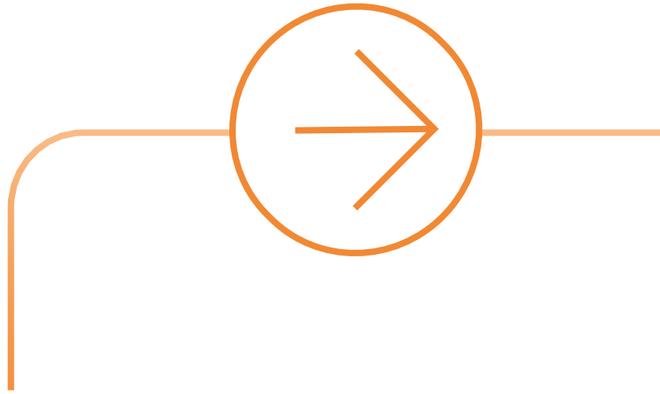
Taking this step can be stressful and dangerous for victim-survivors, but until the circumstances are shared with legal or financial firms, it is difficult for the victim-survivor to obtain support or to consider what financial and legal remedies might be available.

Accessing legal advice

Whilst there is a pressing need for individuals to secure access to legal advice when navigating a relationship separation, the associated costs prohibit many from seeking even an initial consultation.

The Fair Shares Report[40] has shown that although the costs of divorce for the majority of divorcees were comparatively modest, cost was a significant deterrent from using lawyers.

- Six in ten (62 per cent) divorcees incurred legal or mediation costs when trying to sort out their finances when they divorced.
- For many those costs were relatively modest. A quarter (24 per cent) had to find less than £1,000; a further one in six (18 per cent) incurred costs of between £1,000 and £2,999 and one in eleven (9 per cent) incurred costs of £10,000 or more, with higher costs associated with more assets.
- Cost was a major factor in deterring participants from using lawyers, with 42 per cent not using them at all and 48 per cent for only part of the process.



Case Study: Refuge Victim-Survivor

case study

June was married for over 15 years and experienced extensive physical, emotional and economic abuse. The home was jointly owned, and the mortgage was also joint. June's husband had never allowed her to see documents or information about their joint financial products when he had been in the home. So, this was the first time June was able to really see and understand the household financial situation.

Now that June was able to regain control of her finances, she started to tackle the debt that her husband had accrued. She found out about unpaid utility bills, overdue council tax bills and that the last two mortgage payments had been missed. Refuge supported June to apply for a grant to clear her utilities debt, and a discretionary reduction of the council tax debt.

June was terrified to speak to her mortgage provider because she didn't know anything about the account, and she was scared that they wouldn't be able to help her. Refuge supported June to request copies of her account information and to explain her circumstances. Initially her mortgage provider was not able to do anything to help her manage the monthly repayments. However, after June gave further context of her circumstances, providing copies of the Court Orders, they agreed to speak to her about possible support. Unfortunately, June's salary wasn't high enough for the bank to agree a mortgage just in her name for the property.

June has sought legal advice and is in the process of a divorce and financial settlement. Until then the mortgage is still joint, and June's husband still uses this to manipulate and abuse her.

Victim-survivors of domestic and economic abuse face many challenges including the cost, being able to save or access the funds required due to the economic abuse they are experiencing, financial restrictions and the ongoing control of the abuser who may refuse to make mortgage payments or co-operate with changes to the mortgage.

Civil Legal Aid Eligibility Rules

If an individual is unable to pay for professional legal advice, they can explore if they are eligible for Civil Legal Aid. Seeking legal aid to help with legal costs, where available, is generally means tested, although there are a few exceptions (e.g., proceedings involving children, or those with parental responsibility in care proceedings). Domestic, including economic abuse is not automatically exempt and would be means tested[41].

The means test looks at the applicant's income and capital at a household level and would generally include the resources of the applicant's partner, although partners of victim-survivors do not need to cooperate with the application.

For customers to be eligible for civil legal aid they must pass the gross monthly income and the capital eligibility tests. Anyone exceeding the gross monthly income threshold (currently £2,657) will not be eligible for civil legal aid. Any applicant who is in receipt of qualifying benefits will automatically satisfy the gross income test.

Qualifying Benefits:

- Income support
- Income-based jobseeker's allowance
- Income-based employment and support allowance
- State pension guarantee credit
- Universal credit

Disposable income and disposable capital tests

Where the applicant has satisfied the gross income test, their disposable income and disposable capital will be assessed. Subject to exceptions, currently, an applicant will be eligible for civil legal aid, where their monthly disposable income does not exceed £733. Disposable capital should not exceed £8,000.

Waiver of eligibility limits

Eligibility limits may be waived in certain circumstances, such as for certain proceedings relating to domestic abuse. An individual applying for legal aid where they are facing domestic abuse could mean legal aid would be granted even if the income or capital exceeded the usual eligibility limits.

Mediation

Where professional legal advice is not available, individuals may seek the support of mediation services to enable an agreement to be reached between the two parties.

Family mediation is increasingly becoming a default option when trying to resolve family disputes relating to children, assets (including property) and finances.

Whilst mediation can be effective in many circumstances, it is recognised that it is never appropriate in cases of domestic abuse due to the imbalance of power. A mediator will be unable to ensure a fair outcome for both parties and the process can put the victim-survivor at increased risk of harm.

Where there is clear evidence of domestic abuse in a case, the victim-survivor still needs to find a way to move forward.

Access to professional legal advice is important because it enables victim-survivors to ensure that they are aware of their rights, have the confidence and capability to make the case for a fair financial settlement and if appropriate seek justice for any criminal offences committed.

A lack of professional support can lead to unfair outcomes for the victim-survivor and increased emotional stress and trauma.

A lack of professional legal advice can lead to vital steps in the process being missed which can create challenges for the financial services provider and in turn impact the support that they are able to provide their customers.

Interestingly, firms noted that they do not experience the same challenges with separating the financial affairs of couples from Northern Ireland. This is believed to be because in Northern Ireland, there are very few litigants in person because all parties to a divorce/separation have access to legal aid.

Learning the lessons from other jurisdictions, we believe that there is strong argument for providing professional legal advice to all domestic abuse victim-survivors and consideration should be given to how this can best be achieved. Civil Legal Aid and MOJ Family Mediation Voucher Scheme (£500 contribution) rules should be reviewed, and consideration could be given to developing a new scheme providing pro bono access to professional advice for all victim-survivors that are unable to access professional legal advice.

Action required

Ministry of Justice and Home Office to ensure that all victim-survivors can access professional legal advice, either through enhancing existing schemes or developing a new approach.

Case Study: SEA Expert by Experience

case study

Zahra experienced economic, psychological and physical abuse. She separated from the abuser and issued divorce proceedings. In response, the abuser made threats to kill her and abduct the children, so Zahra applied for a non-molestation order. She spoke to a legal advice service about legal aid, but they informed her that she was over the capital threshold because she jointly owned her home with the abuser. Zahra was signposted to a specialist helpline which supported her to write her statement for Court.

She represented herself as a litigant in person as she could not afford the legal aid contributions she was required to pay. However, the abuser said that he would contest the application and, terrified of having to face him in Court, Zahra instructed a barrister for the hearing at a cost of £1,500. She had to put it on credit cards. The abuser didn't turn up to Court, however Zahra still had to pay.

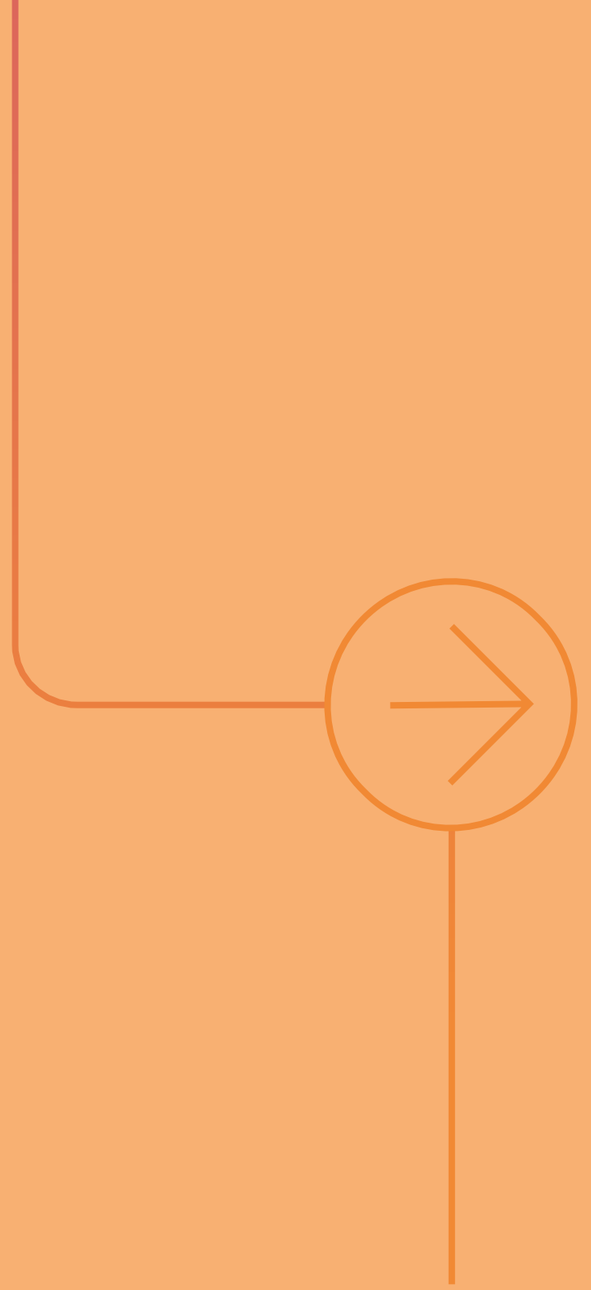
After she obtained the non-molestation order, Zahra began lengthy divorce and financial proceedings which the abuser frustrated, including not turning up to Court for hearings and causing delays. Zahra represented herself at Court.

However, the divorce and financial proceedings cost her £4,000 in solicitors' costs and Court fees, as she paid for a legal expert to draw up the paperwork. This was to try to ensure that the abuser did not manipulate the process and continue to maintain economic ties. This caused further debt.

The abuser proceeded to breach the order, refusing to comply and separate the marital property, continuing the economic abuse. The continued economic abuse led to repossession proceedings and Zahra was taken to Court by the mortgage lender. She also attempted to enforce the financial order and requested an enforcement order. This was incredibly difficult. The abuser was able to harass Zahra in Court, the Judge refused to issue the Enforcement Order and the abuser faced no consequences for breach of the Financial Order.

Because of the economic abuse by her partner, Zahra could not afford representation. She would, instead, go to a solicitor for a fixed fee appointment for advice about how to fill in applications, paying for the sessions using credit. These were £60 for a 30-minute appointment.

The burden of representing herself meant that she had to reduce her hours at work in order to deal with Court matters, which she described as a full-time job. This reduced her income at a time she needed it most. Zahra said that she initially put off starting enforcement proceedings because she couldn't afford legal representation. She believes that, if she had accessed representation from the start, the divorce would not have been seen as separate from the domestic abuse and the financial settlement would have been more favourable. Following proceedings, Zahra has no financial safety net. Her credit file means she cannot even get a credit card. She and her children are facing homelessness.



Divorce and separation of finances

After years of campaigning, no-fault divorce finally became reality when the new law came into effect on 6 April 2022. This represents the biggest shakeup to divorce laws since the Divorce Reform Act of 1969.

The Divorce, Dissolution and Separation Act (2020) received royal assent in June 2020[42]. Under the Act, it is no longer necessary for separating couples to apportion blame for the breakdown of their marriage, helping them instead, *"to focus on the key practical decisions involving children or their finances to look to the future"*[43].

Couples still need to have been married for at least one year before they can consider getting a divorce, but the removal of blame now means that a spouse or a couple together can apply for a divorce stating that the marriage has broken down irretrievably. This legislative change is significant as it stops one partner from preventing their partner from leaving and moving on.

The Ministry of Justice stated *"in some cases, domestic abusers can use their ability to challenge the process to further harm their victims or to trap them in the relationship. The reforms will put an end to this behaviour"*[44].

Many couples believe that a divorce automatically breaks their financial ties with their ex-partner. However, financial ties will continue until a Financial Remedy Order, including a Clean Break Order has been obtained. A Clean Break Order will generally be included within a Financial Remedy Order, either agreed between the parties or imposed by a Family Court Judge, which brings the parties financial claims against each other to an end.

A Financial Remedy and Clean Break Order does not remove the necessity for each party to take further action to separate their finances including dealing with the Financial Association that exists with their ex-partner on their credit report.

Case Study: UK Finance member

case study

Barbara advised the bank that she had been a victim of domestic abuse. She and her husband, the accused abuser, were both jointly named on the mortgage. Barbara wanted to convert the mortgage to interest-only to make payments more affordable while the divorce proceedings were going through. The bank agreed this for 2 months as a short-term forbearance without the other parties' consent. However, it was made clear that any further forbearance would need to be discussed with the other named party.

Sporadic payments were being made manually to the account but as neither customer had their current account with the bank, they were unable to ascertain who was making payments.

Two months passed and Barbara asked for further support. Upon contact with Barry, Barbara's husband, he advised the bank that he was the victim, not his wife. He refused to any further forbearance measures as he had to move out of the family home with his children due to the abusive behaviour from his wife. He had been sending money to Barbara to keep up with the mortgage payment, but she had not been using this money as intended.

Given the conflicting information from both parties the bank had to ask for evidence to understand what was really happening.

Barry was able to provide documentation from his solicitor that substantiated everything that he had told the bank. Following a hearing at the Family Court the Judge advised that as Barry had to pay rent and look after the children, he shouldn't contribute to the mortgage. After a long court battle, the property was eventually sold.

Separating finances for married couples

Separation of joint secured debt, such as a mortgage, can be complex and challenging, particularly if one party disagrees.

In the first quarter of 2023, 28,865 divorce applications were made under the new Fault Free Divorce legislation, 76% were sole applicants (21,937) and 24% were from joint applicants (6,928)[45].

During the research phase of this project, several customer journeys were identified for separating joint secured debt and it has become clear that the overall customer journey remains the same whether the individual has instructed lawyers or has decided to self-serve for their divorce proceedings. The key challenge is ensuring that all necessary steps are completed, and a fair outcome is reached if one or both parties are not in receipt of professional advice.

The recent Fair Shares Report authored by Bristol University, Nuffield Foundation and Bryson Purdon Social Research has focused particularly on the financial arrangements of parties who do instruct a lawyer to handle their divorce and those who don't. Tim Gardman, Chief Executive of the Nuffield Foundation, states in his foreword:

"This research lands at a particularly critical moment, as the Law Commission reviews the laws implemented half a century ago that determine how finances are divided between couples after divorce. There is no doubt that the research, which adds a much-needed empirical understanding to the process, outcomes and experience of reaching a financial arrangement, will prove invaluable to the work of the Commission. It makes tangible the challenges that currently exist, including the persistence and prevalence of myths around finances and divorce, as well as the need for nuance and flexibility in how incomes and assets are quantified, attributed and shared"[46].

Often the parties who don't instruct a solicitor won't make any financial arrangements at all (e.g., no Consent Order) thereby potentially leaving financial claims against each other open until some point in the future.

The Fair Shares Report[47] identified that the majority of arrangements were made by couples themselves, although women were twice as likely as men to go to Court because they could not get an agreement with their ex[48]:

- 52 per cent of financial arrangements were reached by the divorcing parties themselves,
- 17 per cent of participants reached an agreement with the aid of lawyers, and
- 13 per cent of participants used mediation services.

23,865 divorce applications were made under the new Fault Free Divorce legislation in the first quarter of 2023.

The Fair Shares Report also noted differences in the content of the agreement itself. Where parties don't instruct a solicitor, they are less likely to deal with pensions and any agreement reached may be less likely to be in line with legal principles i.e. what the Court would do, which could potentially disadvantage financially vulnerable individuals.

Where the parties don't instruct solicitors or take any advice, financial services firms are more likely to see orders that don't properly deal with the property, or where the mortgage hasn't fully been considered.

A substantial number of divorcing couples made no particular financial arrangements between them, did not seek legal advice and felt knowledge of their ex-spouse's finances was not good[49].

- A third (36 per cent) of divorcees did not see themselves as having made a 'financial arrangement' as such with their ex-spouse.
- Just over half (56 per cent) of divorcees had sought legal advice at some point during the divorce process, 29 per cent had used government websites, and 12 per cent said they had sought no advice or information about their divorce.
- Only a third (32 per cent) of divorcees reported that they had used some form of legal advice in relation to their finances during the divorce process.
- Two in five divorcees (38 per cent) felt that knowledge of their ex-spouse's finances at the start of the divorce process was not good.

Whilst the process is the same whether legal advice is sought or not, it is clear from the research that there are significant disadvantages of not obtaining professional advice. These issues will of course be amplified if one party is a victim-survivor of domestic including economic abuse, which reinforces the need for victim-survivors to have access to free legal advice if they are unable to pay for it.

Legal separation of finances

Financial Information Statements

When a married or civil partnership couple decide to divorce or separate, there are six key forms/statements that need to be submitted at various stages of the proceedings (Figure 3, page 63). These are as follows:

Divorce Application is used to start the process of ending a divorce or civil partnership (previously known as "Divorce Petition").

Form A gives notice of the intention to proceed with an application for a Financial Order and is used to start financial remedy proceedings, following commencement of the divorce, where a couple cannot agree an order voluntarily.

Form E (Financial Disclosure) when completed provides details about an individual's financial position. This can be completed voluntarily to assist with reaching an agreement without the need for Court intervention and is mandatory if the Court is involved in determining the financial settlement. Form E prompts the parties to provide details of any properties but does not request any information pertaining to the individual's ability to afford the mortgage on their own.

Mortgage Capacity Estimate is a letter or statement from an independent mortgage broker setting out how much the individual may be able to borrow based on certain assumptions e.g., based on income of £x and capital of £y, assuming liabilities of £z, Party A will be able to borrow between £ and £. The broker may also provide details of estimated monthly repayments within the assessment.

Form D81 (Consent Order) is used in family law proceedings in England and Wales and is known as a *"statement of information for a Consent Order in relation to a financial remedy"*. A D81 form provides a summary of the financial situation of both parties and informs the Court's decision as to whether to approve the Financial Order agreed and submitted by both the parties. The D81 Form does not include any information on a particular applicant's ability to afford the mortgage.

S25 Statement Where the financial proceedings are contested, the Court will determine what they believe to be a fair outcome. The Court may require each party to submit a S25 Statement which provides a detailed account of the parties' financial situation, standard of living and other considerations. However, it does not include any reference to the individual's ability to afford the mortgage on a sole basis.

The key input to the financial settlement proceedings from a mortgage lender perspective is the provision of an accurate Mortgage Capacity Estimate Statement, as this should inform the viability of any financial settlement reached in relation to the assignee being able to afford the mortgage repayments for the property.

The Mortgage Capacity Estimate is prepared by an independent mortgage broker and provides a view on the individual's current and/or future borrowing capacity. Costs vary depending on whether the application is for a single or joint capacity assessment. A tailored report can also be prepared which provides a view on how the individual's borrowing capacity may change according to different possible outcomes of a financial settlement.

This should provide the Court with the information needed to draft a Court Order which mortgage lenders can comply with.

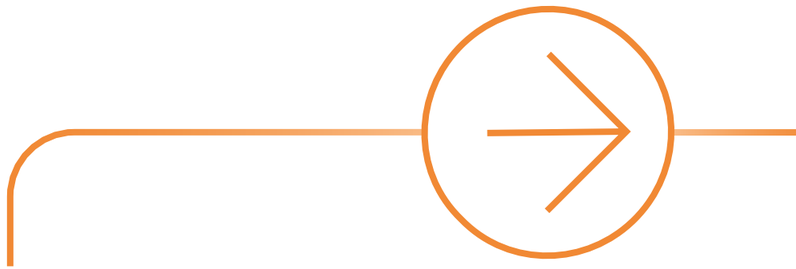


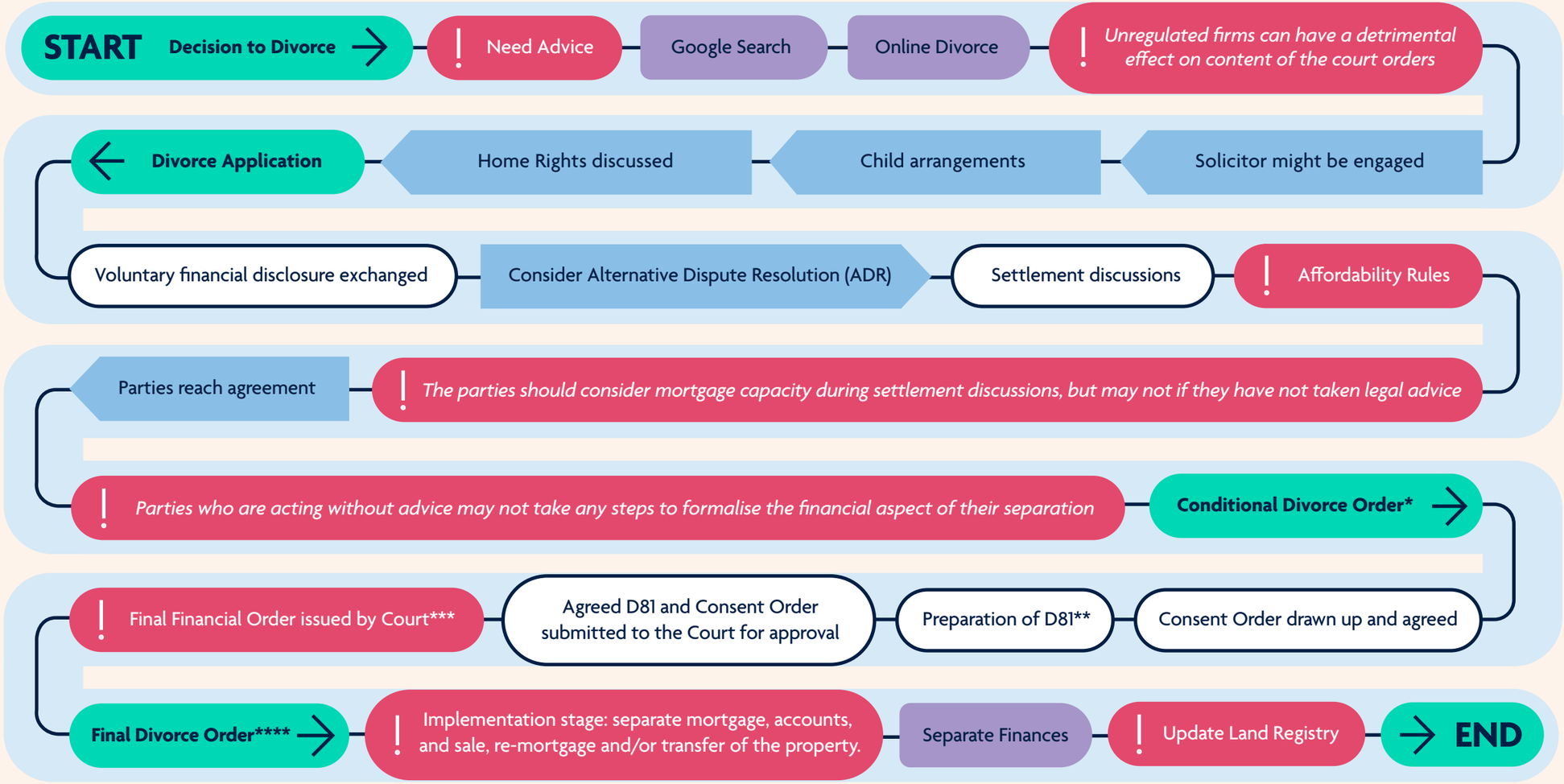
Figure 2: Typical customer journey for divorce and financial proceedings where parties consent

Scenario assumptions:

- Married for more than 1 year
- Domestic/Economic Abuse

Key

- Journey Stage
- Self Serve
- Challenge
- Legal Involvement
- Legal Finance Paperwork



* Previously known as Decree Nisi
** D81 also known as Statement of Information. It is a financial summary for the Court.

*** Divorce does not mean finances will be separated on Credit File (CRA Financial Association). Economic Abuse could continue.
**** Previously known as Decree Absolute

Court Orders

A Court Order is a decision made by the Court which the parties to the Court Order must comply with. The Court Order is always provided in writing, and everyone involved in the proceedings will receive a copy of the Court Order.

Court Orders will be unique and tailored to the individual's personal circumstances. They provide details of what has to happen regarding financial and family matters.

Having considered all relevant financial information (including the Mortgage Capacity Estimate Statement) and the needs of the individuals concerned, the Court will issue a Financial Remedy Court Order which determines how the assets and liabilities are to be allocated.

The Court may award one party a greater share of the assets to clear down existing debt as part of the assessment of need. Alternatively, one party may be asked to indemnify the other party where debts continue.

In situations where there are children involved, the Court may determine that the property cannot be sold. Instead, the Court may decide to give sole use of the property to a party until a future specified date. In these circumstances the Court Order may determine that the other party should:

- continue to contribute to the mortgage, and
- co-operate when agreeing any new mortgage deals/rates.

If there are no children involved, the Court will decide whether the property is to be sold or assigned to one party. This deals with the asset (i.e., the equity) but not the liability i.e., the outstanding mortgage.

Unfortunately, individuals often believe that receipt of the Court Order changes the ownership of the property, and no further action is required. However, there are several steps which need to be completed outside of Court proceedings to transfer the legal title and change the mortgage contract from joint to sole names.

Action required

Government to work with the legal sector and the Courts to ensure that consumers are provided with clear 'standardised' information on how to access legal advice and the steps that need to be completed pre and post the provision of a Financial Remedy Court Order. This should include details on the need to satisfy the FCA Affordability Rules and where appropriate update the documents held at HM Land Registry (HMLR).

The lack of consumer awareness is unsurprising as parties to the Court Order do not currently receive any standardised consumer facing information, which clearly sets out the steps that need to be taken to achieve the outcomes specified in the Court Order.

Furthermore, consumers often don't appreciate that lenders are not party to the Court Order and are not bound by its terms. Consumers need to be educated that the transfer of the property is subject to the charge registered at HMLR and the assignee being able to meet the FCA responsible lending affordability requirements.

FCA Affordability Rules

Where the Court makes an order transferring the property into the sole name of one of the joint borrowers, that borrower may apply to the lender for a change of borrower/transfer of equity to transfer the mortgage into their sole name.

As required by the MCOB rules, removing a party to the mortgage triggers a variation in the mortgage contract which means the lender is required to carry out an affordability assessment to ensure the party looking to take over the mortgage in their sole name has the financial means to maintain payments on a long-term, sustainable basis. Currently, mortgage lenders carry out their own standard affordability assessment to determine if the mortgage would be affordable.

If an accurate Mortgage Capacity Estimate Statement was submitted to the Court, and considered in the Court's decision, this document could form the basis of the lender determining whether the party looking to assume ownership of the property (and responsibility for the outstanding mortgage) could afford the mortgage. It is worth noting however that this does not always hold true. This could be for a variety of reasons for example:

- a Mortgage Capacity Estimate Statement was not completed, or
- the Mortgage Capacity Estimate Statement was based on information that differs to the financial settlement stipulated in the final court order.

Should the application pass the affordability assessment, the lender would look to transfer the equity into the sole name of the applicant, using the standard Transfer of Equity process.

If the application fails to pass the affordability assessment, the mortgage would continue in the joint names of the borrowers. A declined change of borrower application would not automatically lead to enforcement action; provided the payments are maintained no action will be taken by the lender. In these circumstances, the applicant may wish to seek legal advice and revert to the Court for a revised Order.

Lenders also see cases where having reviewed the customer's circumstances, they conclude that the individual does not pass their affordability assessment, but a review of the customer's wider circumstances may indicate that the individual has been making the contractual repayments. These situations are challenging, especially when a victim-survivor of domestic (including economic) abuse is involved. Financial services firms would be concerned that any pre-existing affordability calculations could result in poor outcomes (i.e., inability to separate the mortgage or enforced sale) for the victim-survivors. This is something that all FCA regulated firms must consider as part of their responsibilities in relation to affordable lending and Consumer Duty obligations.

Firms considered how they could support victim-survivors that do not pass the lender's affordability assessment but make repayments on a regular basis and concluded that it would not be appropriate to seek a waiver to MCOB 11.6.2 (mortgage affordability) from the FCA in these situations.

Instead, mortgage lenders should (where their risk appetite allows) use the existing rules within MCOB 11.6.2 to consider applying a degree of flexibility when considering the sources of non-standard income that can be considered to support the mortgage variation application affordability assessment and this flexibility should be supported by their own Lending Policy.

Examples of non-standard income could include:

- family members, willing to support by contributing to the mortgage payments (guarantor style),
- using benefit income at 100% (Child benefit, PIP, Tax credits/Universal credit etc), or
- new self-employed income (less than 2 years accounts/ trading history) or agency/zero-hour/income (less than 12 months history).

In situations where an individual has not met the lender's affordability assessment and the requirements of the Court Order cannot be met, they will either need to go back to Court or sell the property. This is a foreseeable outcome and to mitigate the risk of additional costs, all Financial Remedy Court Orders which deal with a property should include a fall back clause or 'Plan B'. These clauses should state that in the event that the lender's affordability assessment is not met, the property should be sold. The inclusion of this clause will prevent the individuals concerned having to go back to Court, saving valuable time and reducing costs and emotional distress for the individual.

Perpetrators and customers who deliberately disrupt the process

A Court Order issued by the Family Court Judge is legally binding and must be complied with at all times. An individual will be in contempt of Court if they interfere with the administration of justice. Deliberately breaching a Court Order may be in contempt of Court. Sanctions for contempt of Court include imprisonment.

Actions required

Ministry of Justice to work with Family Procedure Rule Committee to ensure that Mortgage Capacity Estimate Statements are mandatory where the assets or settlement proposed require one or both parties to borrow.

Mortgage lenders to consider whether their existing mortgage lending policies accommodate other sources of income (or agreed temporary period of financial adjustment) for victim-survivor mortgage contract variation applications. Where they don't, firms may wish to consider changing them to build in this flexibility.

There are clear guidelines provided by the Court about the implications of not upholding a Family Court Order. However, despite the seriousness of breaching the Court Order and the threat of being in contempt, some perpetrators continue to abuse the victim-survivor by using a range of delaying tactics including failure to:

- engage with the lender,
- provide the necessary finance documentation to the Court, and
- complete the necessary steps required to sell the family home.

Lenders will not ordinarily be party to the proceedings so would have no standing to make any applications to the Court. Where the Court Order fails, due to lack of co-operation by one party the responsibility rests with the other party to return to the Court for further assistance.

This cycle of "failure demand"[50] created when one party will not cooperate or wants to disrupt the process adding to the workload of the Court and can mean the same case returns to the Judge for further consideration over and over again.

This obstructive behaviour results in increased costs for the victim-survivor and undoubtedly has a significant adverse impact on the victim-survivor's ability to "acquire, use or maintain money or other property". We believe this meets the legal threshold for the controlling or coercive behaviour offence and the Court should leverage this to break the cycle.

Divorce in Devolved Nations

Both Northern Ireland and Scotland approach divorce and dissolution in a different way to England and Wales and through discussions it became apparent that mortgage lenders do not experience challenges separating the financial matters of customers based in Scotland and Northern Ireland. Whilst it is difficult to say with certainty why this is the case without more research and best practice sharing, our initial discussions identified the following key differences:

Actions required

Financial Remedy Orders (dealing with the allocation of a property) should include a 'fallback clause' which advises in the event that the individual does not pass the mortgage lender's affordability assessment the property should be sold.

Court Orders should clearly state the implications (enforcement and/or punitive cost orders) to both parties if not enacted and include a mechanism for the court to intervene where one party fails to comply with the order.

Divorce/Dissolution in Northern Ireland

Northern Ireland has fewer litigants in person as Legal Aid is available in Northern Ireland for divorce and, as previously noted, we believe the access to advice ensures that the necessary legal procedures are completed, which in turn ensures that the financial services sector receives Court directions that can be implemented.

Divorce/Dissolution in Scotland

Financial matters must be dealt with in Scotland before decree of divorce is granted and it is common not to start Court proceedings for divorce in Scotland until after a financial agreement has been concluded.

In Scotland, the separation of most financial matters are dealt with through negotiation, with the parties entering into a contract, known as a "Minute of Agreement". The agreement is final and binding, provided it is followed up by a Scottish decree of divorce. It is not necessary for these agreements to be approved by the Court. Where divorcing spouses (or civil partners who are dissolving the partnership) cannot reach agreement on the sharing of matrimonial property, either party may raise an action in the Scottish Court seeking divorce and accompanying Orders for financial provision.

The Sheriff Courts (local Courts around Scotland) deal with most of these actions, but if the matter is complicated or higher value the action may be raised in the Court of Session in Edinburgh.

Action required

The membership organisation Resolution for England and Wales to work with the legal sectors in Scotland and Northern Ireland to review opportunities to share and adopt best practice.

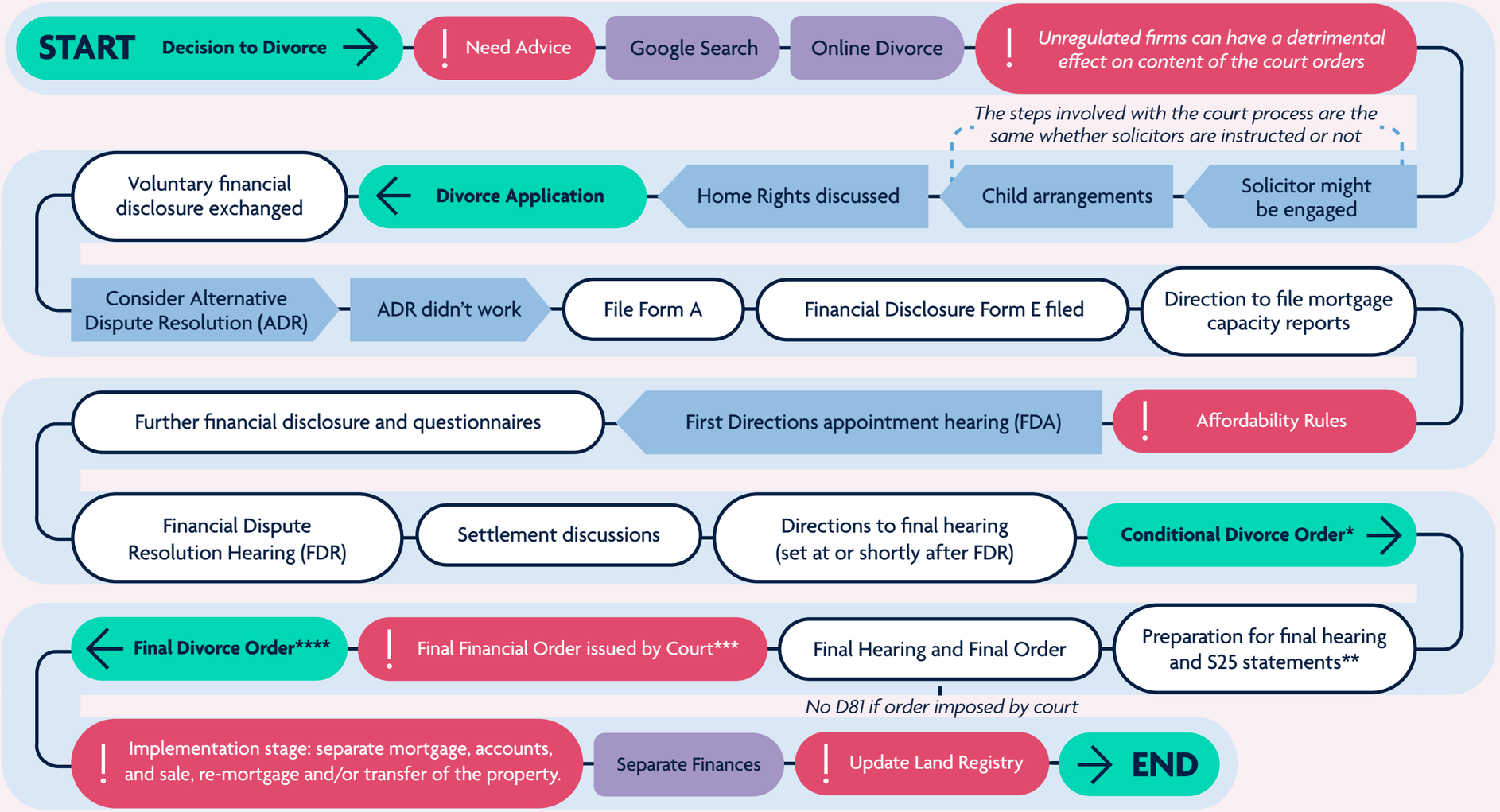
Figure 3: Typical customer journey for divorce and financial proceedings - parties contesting

Scenario assumptions:

- Married for more than 1 year
- Domestic/Economic Abuse
- Partner not co-operating

Key

- Journey Stage
- Self Serve
- Challenge
- Legal Involvement
- Legal Finance Paperwork



* Previously known as Decree Nisi – the timing of this stage is variable
** If the finances are not settled early on then the Court may require each party to prepare a S25 statement

*** Divorce does not mean finances will be separated on Credit File (CRA Financial Association). Economic Abuse could continue.
**** Previously known as Decree Absolute

Case Study: UK Finance member

case study

Marcia attempted to buy out her ex-husband from the family home they previously shared with their children. During a 20-month period her ex-husband did not accept any of the eight valuations that had been completed. On the eighth valuation he was not happy and challenged trivial points.

At the start of the process, Marcia was in a position to buy her ex-husband out. However, due to his lack of cooperation, on-going delays resulted in increased interest payments due to rising interest rates, and substantial additional costs including solicitor's fees.

The Court had already stated that Marcia could buy her ex-husband out. Marcia had now attended numerous Court hearings which caused undue stress and restricted her accessing her funds.

Separating Finances for non-married couples

Separating joint secured debt for unmarried couples is governed primarily by the Trusts of Land and Appointment of Trustees Act (TLATA) 1996 and Schedule 1 of the Children Act 1989.

There are several variances depending on circumstances (joint tenants, tenants in common, whether there are children and whether the parties agree or are contesting the financial proceedings) but the need for advice is still paramount in ensuring a smooth separation.

One fundamental difference with unmarried couples is the role of the Court in proceedings if they cannot agree. Courts do not have the wider discretionary powers to re-distribute assets such as pensions and company interests or other capital to offset debts in the same way they can when parties are married or in a civil partnership.

Under the Trusts of Land and Appointment of Trustees Act 1996, the Court only has the ability to deal with real[51] property. Under Schedule 1 Children Act 1989[52] the Court can make Orders which provide maintenance, and which effectively loan capital or property to provide housing during a child's minority, but the property reverts back to the other party when the child is either 18 or finishes education.

Unlike a divorcing couple, there is no requirement for a cohabiting couple to have a formal agreement in place when the relationship breaks down. However, there are options available should they feel an agreement is necessary. These include a Cohabitation Agreement or Deed of Separation. These can vary in content between law firms or if the couple have decided to try and draw up the agreement themselves, an unlikely scenario in cases of abuse, they may look online for a template.

Government statistics note that the number of cohabiting couples has increased from around 1.5million in 1996 to c 3.6 million in 2021 an increase of 144%. In light of this increasing trend and calls from the Women and Equalities Committee to reform family law so that it *"better protects cohabiting couples and their children from financial hardship in the event of separation"* we believe that consideration should be given to reviewing the legal mechanisms which govern the separation of assets and liabilities for these modern relationships[53].

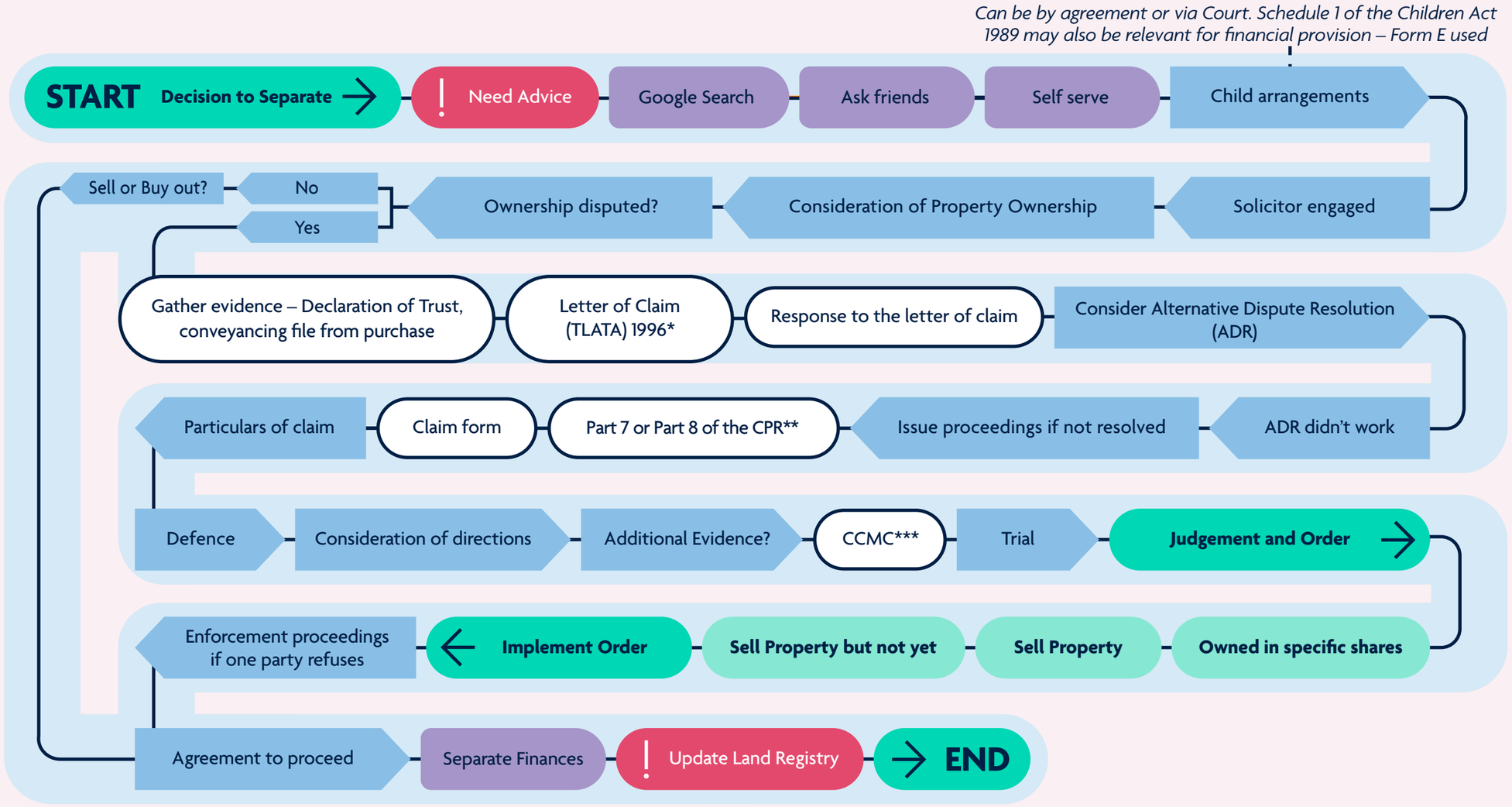
Action required

Ministry of Justice to consider reforms to the laws relating to cohabiting couples as outlined by the Resolution Vision for Family Justice[54].

Figure 4: Typical customer journey - cohabitation breakdown

Scenario assumptions:

- Not married
- Couple own a property together
- Domestic/Economic Abuse
- Partner not co-operating
- Court has no power to consider unsecured debts and other assets such as pensions



Key

- Journey Stage
- Self Serve
- Challenge
- Legal Involvement
- Legal Finance Paperwork

* Trusts of Land and Appointment of Trustees Act 1996 ** Civil Procedure Rules 1998 *** Costs and Case Management Conference

Chapter 3

Abusive Payment References sent via the Faster Payments System

Abuse does not always require physical proximity. Perpetrators can leverage digital channels and financial arrangements to continue to try and exert control over the victim-survivor.

When banking details are known or payments are required to be made from the perpetrator to a victim-survivor, such as for child maintenance, victim-survivors have reported how perpetrators can misuse payments systems to send payments which contain abusive words and messages in the payment reference field. Sometimes, perpetrators sending multiple small value payments can be considered as harassment, abusive or threatening behaviour by victim-survivors.

Economic abuse can start and/or escalate after the victim-survivor has left the abuser. In recognition of the significant danger that this can present to individuals fleeing an abuser, SEA with support from charities such as SafeLives[55] successfully advocated for a legislative amendment to the Serious Crime Act (2015) via the Domestic Abuse Act (2021) to ensure that victim-survivors are protected post-separation.

For example, in cases where children are involved, a parent may be required to pay child maintenance to the primary carer, and this can provide perpetrators with the opportunity to withhold payments or misuse the payments systems to send ex-partners payments which contain abusive words and messages in the payment reference field.

What are abusive payment references?

This involves the sending customer using the payment reference field to send an abusive phrase or message to the recipient. This abuse may take a number of forms:

- The sending of expletives, words or phrases, such that these words or phrases may be written clearly or masked.
- More covert abuse, such as sending phrases which have personal, often traumatic resonance with the recipient.
- The sending of multiple (usually low-value payments) which when the payment references are strung together form a longer narrative which the recipient may find threatening or abusive.
- Sending repeated (often low value) payments with very little, or no, referencing, with the sole intention of causing harassment and/or distress to the recipient.

The contextual nature of this problem means that some abusive messages are easier to identify than others. Those that contain profanities, informal language, or code used on the internet where standard letters are often replaced by numerals or special characters, known as leet speak are more likely to be identified as potentially inappropriate than those which contain covert and seemingly innocuous phrases such as a location or are communicated in a language other than English.

UK Finance members are strongly opposed to the payments system being used to cause consumer detriment and economic abuse in this way.

Working with Pay.UK, firms agreed a list of 50 'banned' words and will be required to:

- use the industry agreed profanity table and any other words or expressions they choose to add to stop inappropriate content being included in any payment instruction, and
- provide a contact to receive enquires from other participants of the scheme on issues around abusive messages.

The Faster Payment Service (FPS) rules are live with firms needing to have tested their compliance around abusive payments by January 2024. Firms will be required to attest they are compliant throughout 2024. This initiative is a positive step however, industry data has shown that perpetrators' "*modus operandi*" continue to evolve, and firms recognise that a stronger response is required.

Challenges

Perpetrators have found additional ways to abuse their (ex)partners by sending multiple small payments with messages to facilitate the communication of longer sentences and abusive messages.

The 'word blocking' response is only able to stop or limit a small proportion of the messages sent by customers who are seeking to control a partner or ex-partner by using economic abuse. The narrative can be manipulated using characters (*/ @) to avoid the profanities being picked up/blocked.

The Scunthorpe problem

Text entered into the faster payments field can be filtered or searched and may contain combinations of letters that, out of context, might appear to have an obscene or otherwise unacceptable meaning. Place names, abbreviations and technical terms are cited as the most common words affected by this issue.

Pay.UK's list of 50 words can be identified as a string of text in the payment field, but it could lead to false positives, identifying innocent and perfectly legitimate words.

Other languages

The Pay.UK 50 'banned' word list is comprised of English words and abuse can be sent in different languages, bypassing the filter and enabling the abuse to take place.

Whilst the profanities list is a good start and helpful in preventing the more overt expletives being sent, it does have its limitations, namely:

- **Manipulating the narrative** – the 'word blocking' response will only stop/limit a small proportion of the messages sent by abusive customers, as the narrative can be gamed using characters (*/@) and may be case sensitive to avoid the profanities being picked up/blocked.
- **String messages** – perpetrators can send multiple small payments with messages to facilitate the communication of longer sentences or messages.

Moreover, abuse and harassment can be covert and personal in nature. Due to the very specific and personal nature of this type of abuse in some circumstances, we recognise that it is unlikely that we will be able to completely eradicate this inappropriate behaviour, but we want to ensure that firms have policies and processes in place which create environments which deter abuse, help recipients of abuse to come forward when it does happen and reduce the risk that payment systems are used inappropriately.

Since June 2023, UK Finance has initiated work with expertise from our personal banking and payment members to explore how to address this issue in a consistent way at an industry level to protect customers. There are several key areas which remain the focus of this work:

- developing industry guidance which will ensure a more consistent approach to managing customers who send or receive this abuse within the firms and across the sector, and
- exploring technical solutions which put the recipient in control of what references they can see.

In developing a consistent approach to managing victims and perpetrators it is important that we design a process that adopts a safety-first approach, ensuring that any actions taken are with the full consent of the recipient of the abusive messages.

Case Study: SEA Expert by Experience

Rebecca separated from her abusive partner over a decade ago. He refused to pay child maintenance and after a court battle, was ordered to pay the money he owed directly to her.

"Although the money should have been paid as a lump sum, he would pay in small instalments with payment references that would remind me of times he verbally and physically abused me.

The references weren't ever flagged by the bank because to an outsider, they didn't look abusive, but when they popped up on my phone, I would get flashbacks to his abuse. The messages were a way for him to maintain that power and control over me, showing me that even though I had left him, I would never be free from his harassment.

My kids and I needed the support money, but it didn't feel worth the endless stream of abusive payment references, and I didn't want to explain to my bank why I didn't want to see them. The ability to hide these references with a simple tap makes all the difference and I am so pleased that Starling listened to my experience."

case study

"The ability to hide these references with a simple tap makes all the difference."

Future Industry Work

Under the Consumer Duty, firms have to act to deliver good outcomes for customers. A firm's customer could be the payee, the payer (against whom allegations of sending abusive messages are made) or both. Firms need to be fair to all parties who are customers of the firm. A proportionate, phased response needs to be developed which explains the potential consequences and disincentivises this type of inappropriate behaviour.

Within proposed Industry Guidance, firms will be guided towards making appropriate contact with their customer when this issue is brought to light. This contact will vary depending on the role of the customer, whether they sent or received the abusive message, and on the severity of the case. The foundational principle of the Guidance will remain that the recipient of the messages is involved with agreeing what action firms will take in order to protect them from further harm.

Often, the first contact by a firm may be sufficient to deter a perpetrator from further abuse. In repeated or more serious cases, a firm may need to take further steps such as closing a perpetrator's account.

His Majesty's Treasury (HMT) is currently developing new legislation which will set out the steps and timescales that firms need to adhere to in order to exit customers, and UK Finance is advocating for provisions which enable an account holder to be exited in a shorter time period, where the individual is causing harm to either the organisation's employees or other customers.

This needs to be possible across all products that have access to the payments system and currently there is potential for the Basic Bank Account to provide 'safe harbour' for a perpetrator due to the wording of the 2015 Payment Accounts Regulations.

The Payment Accounts Regulations 2015 26.2(f) states that

26. (2) A designated credit institution may only close a payment account with basic features where at least one of the following conditions is met —

(a) the consumer has knowingly used, or attempted to use, the payment account for illegal purposes;

(f) the credit institution considers that the consumer's conduct in relation to the credit firm's staff amounts to the commission of an offence under —

(i) section 4, 4A or 5 of the Public Order Act 1986;

(ii) the Protection from Harassment Act 1997;

(iii) section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour);

(iv) Article 9 of the Public Order (Northern Ireland) Order 1987 (use of words or behaviour or display of written material);

(v) the Protection from Harassment (Northern Ireland) Order 1997.

This legislation needs to be updated to ensure that conduct in relation to a consumer is recognised and treated in the same manner as that of the credit institution's staff and the list of offences needs to be reviewed and potentially broadened to ensure that sending payment references which cause harm and harassment are sufficient grounds on which to exit a customer. This may require 26.2 (f) to be updated to include reference to the Malicious Communications Act (1988), Domestic Abuse Act (2021) and/or the s76 Serious Crime Act (2015) (relating to Controlling and Coercive Behaviour).

Furthermore, it is important that as an industry we understand whether this inappropriate behaviour is material enough to constitute a criminal offence when it is part of controlling or coercive behaviour, as this will enable members to determine whether victim-survivors should be encouraged to report this type of activity and whether processes need to be put in place to provide appropriate evidence to support a criminal prosecution when required to do so by law enforcement. Legal advice and guidance from relevant government departments will be important here, to help advise firms on how to approach these situations.

Action required

PSR to update Payment Accounts Regulations 2015 regulation 26(2)(f) to ensure that firms are able to close a basic bank account of any customer who is causing harm to a third-party.

Hiding Payment Reference Fields

International best practice has informed member discussions on this topic. We would like to thank ComBank in Australia who shared their experience of developing an AI led tech solution to tackle this issue. Closer to home, Starling Bank also shared their latest customer-led innovation – a 'Hide Reference' feature which enables a customer to hide references for the payments they receive (see case study on page 71).

Several helpful technological features have been identified and members are exploring which innovations have the potential to deliver the greatest impact. It is important that any solutions and features agreed upon by members are delivered in a consistent manner across the industry. This includes confirming clear plans for the technical, operational and legal aspects of the solution that all firms are able to commit to.

It is important to ensure that, once agreed upon and implemented, consumers are aware of these features and how to use them. Communications on this issue will need to balance the need to inform and help customers utilise the help available, without inadvertently promoting an avenue for sending abuse for perpetrators which may have been previously unknown to them.

It is important to ensure that consumers are aware of these features and how to use them.

Action required

UK Finance members to continue to explore and develop technical features which enable customers to decide how or whether they see the payment reference from a payer.

Glossary

Alternative Dispute Resolution (ADR): An alternative dispute resolution (ADR) is used instead of going to Court. It can also be used to reduce the number of issues relating to the problem before going to Court.

Controlling or coercive behaviour: Under section 76 of the Serious Crime Act (2015), where it takes place repeatedly or continuously, the victim and the perpetrator are "personally connected" and the behaviour has a serious adverse effect on the victim.

Coerced debt: One person making their partner take out a loan, credit card or buying something on credit against their wishes.

Clean financial break: An outcome which provides an end to any ongoing financial relationship between spouses on divorce. If made into a Court Order, it prevents any possibility of future liability.

Consent Order: A legally binding order dealing with the financial agreement arising from a couple's divorce.

Contested litigation/proceedings: A case where both parties have been unable to reach an agreement and the case proceeds to a hearing or series of hearings in Court.

Credit Reference Agency (CRA): An independent organisation that collects and securely holds information that is used to provide an individual's credit report and if subscribed to the service their specific credit score.

Decree Absolute: The previous name for a Final Court Order in divorce proceedings, which legally brings a marriage to an end.

Deed of Trust: A legally binding document which specifies how the ownership of a property is to be held.

Dispute resolution: The process by which parties resolve their disagreement. There are a number of different methods to resolve family legal disputes including arbitration and mediation.

Domestic abuse: Domestic abuse typically manifests as a pattern of abusive behaviour toward an (ex-)partner in an intimate or family relationship, where the abuser exerts power and control over the victim. Domestic abuse can be mental, physical, economic and/or sexual in nature.

Economic abuse: Any behaviour that has a substantial and adverse effect on an individual's ability to:

- acquire, use or maintain money or other property (such as a mobile phone or car), or
- obtain goods (such as food and clothing) or services (such as utilities, like heating).

Equity: For outright homeowners without a mortgage, this is the total value of the home. For those with a mortgage, this is the value after the mortgage is repaid.

Family Court: Civil Court which decides family matters including divorce.

Final Order: An order at a final hearing made by a Judge following a contested application.

Financial arrangement: An arrangement concerning spouses' finances and property which they make on separation or divorce.

Financial Dispute Resolution Appointment (FDR): A meeting in which a Judge attempts to help the parties and their advisors to narrow the areas of disagreement between them, and to give an early neutral evaluation of the likely outcome if the case does not settle. A 'private FDR' may be used by the parties outside of Court proceedings to facilitate settlement.

Financial Remedy Order: A legally binding order made on divorce relating to a couple's finances and property. FPR 2010, r 2.3, defines each of those terms.

First Directions Appointment (FDA): The First Directions Appointment is commonly referred to as the 'First Appointment' or 'FDA' and is the first hearing that takes place during the Court financial proceedings part of a divorce.

Form D81: Accompanies a consent order application and sets out the parties' current financial circumstances, their proposed arrangements and the rationale for these.

Form A: Specifies each type of order that is sought by the applicant when giving notice of their intention to proceed with an application for a Financial Remedy Order.

Form E: Used in contested proceedings to set out in detail each spouse's financial circumstances and provide information such as a valuation of the matrimonial home.

Ministry of Justice (MoJ): Government department responsible for, among other things, Courts, and Family Law Policy.

Perpetrator: A person who perpetrates domestic, financial and economic abuse.

Personal Loan: A way of borrowing money for a fixed period and at an agreed rate of interest.

Secured Debt: Debt in which the borrower provides an asset as collateral for the loan – e.g., mortgage and house deeds.

Separation: Ending the intimate partner relationship with another person.

Uncontested application: Where the parties have reached an agreement, and they are asking the Court to consider and approve the agreement (Consent Order submitted via the portal with accompanying form D81).

Unsecured debt: Debt or a financial obligation that is not protected by a guarantor or assets.

Victim-survivor: A person who has experienced domestic, including financial or economic abuse.

Acknowledgements

UK Finance would like to thank:

- The victim-survivors and SEA Experts by Experience for sharing their stories and helping to build the evidence needed for the recommendations in this report.
- Members of the UK Finance Domestic, Financial and Economic and the UK Finance Vulnerability Committee for their on-going support and commitment to supporting victim-survivors.
- SEA and Refuge for their constructive challenges and support.
- Organisations and professionals from the legal sector for their expertise, support, and engagement.

Our case studies were supplied by Surviving Economic Abuse, the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it and Refuge, a charity delivering specialist services for survivors of Violence Against Women and Girls (VAWG). Note: All case study names have been changed.

About UK Finance

UK Finance represents 300 firms, we're a centre of trust, expertise and collaboration at the heart of financial services. Championing a thriving sector and building a better society. The financial services industry plays a vital and often underappreciated role enabling individuals, families and communities to achieve their ambitions in a safe and sustainable way – through home ownership, starting a new business or saving for retirement.

The sector is fundamental to people's lives, and we are proud to promote the work it is doing to support customers and businesses up and down the country. Whether through innovating for the future, driving economic growth, helping struggling customers amid increases in the cost of living, fighting economic crime or working to finance the net zero transition – the industry is having an overwhelmingly positive effect on the lives of people across the UK and improving the society we live in.
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About TLT

TLT is a leading full-service UK law firm with one of the UK's largest and most experienced financial services legal teams with over 600 lawyers in all UK jurisdictions. In addition, TLT has a strong private client offering, including specialist family lawyers with a diverse portfolio of clients.

Both teams worked closely with UK Finance and their members during 2023 in this important initiative that will shape the legal landscape for domestic abuse victims.

TLT has won 'Law Firm of the Year' at the Legal Business Awards 2023, the third Law Firm of the Year award it has taken away in as many years, having previously been named Law Firm of the Year at the Lawyer Awards in 2021 and the British Legal Awards in 2022.

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Annex

Endnotes

1 https://www.gov.uk/government/publications/domestic-abuse-act-2021

2 UK Finance (Dec 2021) 2021 Financial Abuse Code

3 Surviving Economic Abuse and Opinium (2023): Understanding the prevalence of economic abuse in the UK https://survivingeconomicabuse.org/news/5-5-million-uk-women-experiencing-economic-abuse/

4 Nicola Sharp-Jeffs (2022) Understanding and responding to economic abuse (page 127)

5 SEA and MAP data – Quarterly average July to Sept 2023

6 The Payment Accounts Regulations 2015 (ref TBC)

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7 Nicola Sharp-Jeffs, Kathryn Royal and Keith Gibson (September 2023) Seen yet sidelined: How economic abuse is reflected and responded to within successful prosecutions of the Controlling or Coercive Behaviour Offence

8 Resolution – Vision for Family Justice November 2023

9 The Crime Survey for England and Wales year ending March 2022

10 Nicola Sharp-Jeffs (2022) Understanding and responding to economic abuse (page 127)

11 Sharp-Jeffs, N. (2021). Understanding the economics of abuse: an assessment of the economic abuse definition within the Domestic Abuse Bill. Journal of Gender-Based Violence

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50 Failure Demand is demand caused by a failure to do something. Customers, or in this case the party who is having problems with getting the court order enacted, come back, making further demands. This consumes more Court time unnecessarily because the order was not effective

51 The law makes a clear distinction between real property and personal property. Real property is immovable. It includes the land, everything that is permanently attached to it, and the rights that "run with" the land. Personal property, on the other hand, is movable

52 Schedule 1 Children Act 1989

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