

Evidencing domestic violence: nearly 3 years on

Since the introduction of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) on 1 April 2013 we have been monitoring the impact of the legal aid regulations on the ability of women affected by violence to access family law legal aid. Our research has consistently found that despite amendments to the regulations in April 2014, about 40% of women are being denied access to legal advice and representation to engage in family law proceedings. These family law proceedings have the potential to secure safety from violence for them and their children. This means that nearly half of the women the UK Government¹ expressly sought to protect from the removal of family law legal aid remain unprotected.

1. Summary of our findings and recommendations

Nearly 3 years since the introduction of the domestic violence evidence criteria, too many women affected by domestic violence continue to be denied access to legal advice and representation in the family courts.

- 37% of women responding to the survey who had experienced or were experiencing domestic violence did not have the prescribed forms of evidence to access family law legal aid
- 23% of women responding would have had one or more of the prescribed forms of evidence if the two year time limit on those forms of evidence was not in place
- The most common form of evidence available to women is one of the forms of evidence introduced in April 2014: a referral to a domestic violence support organisation by a health professional (18%)
- The other most common forms of evidence include: evidence from a medical professional (16%); evidence of a protective injunction (14%); and evidence from social services (14%)
- 71% of respondents said it was difficult (37%) or very difficult (35%) to find a legal aid solicitor in their area
- 34% of respondents were having to travel between 6 and 15 miles to find a legal aid solicitor. 23% had to travel more than 15 miles
- 53% of respondents took no action in relation to their family law problem as a result of not being able to apply for legal aid. 29% paid a solicitor privately and 28% represented themselves at court

Despite amendments to the prescribed evidence, these findings demonstrate that the legal aid regulations continue to act as a dangerous barrier for women. Too many women at risk of violence are still unable to access legal advice and representation on family law remedies that could afford them safety and justice. Rights of Women, Women's Aid Federation of England and Welsh Women's Aid again call upon the UK Government to urgently review the legal aid regulations to ensure that they match women's lived experience of domestic violence in all its forms and afford them the protection that was intended.

¹ This report addresses the impact of the legal aid regulations as they affect women in England and Wales only.

2. Background to the research

On 1 April 2013 the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect removing legal aid for the majority of private family law matters. Accompanying LASPO, the Civil Legal Aid (Procedure) Regulations 2012² introduced criteria whereby legal aid for private family matters which would otherwise be outside the scope of the legal aid scheme could still be available for those affected by domestic violence. Legal aid is only available if survivors can provide prescribed evidence that they have experienced domestic violence.³

In March 2014 our research report, *Evidencing domestic violence: a year on* demonstrated that in the first year after the implementation of the domestic violence evidence gateway, 43% of women did not have the prescribed forms of evidence to access family law legal aid. The report described the devastating impact that not having access to legal aid was having on women.³

On 22 April 2014 the legal aid regulations were amended to extend the evidence criteria for applying for family law legal aid to include new and amended forms of evidence including evidence that a perpetrator is on police bail, evidence of refused admission to a refuge due to insufficient accommodation and evidence of a domestic violence protection notice. However, in November 2014 our further research report, *Evidencing domestic violence: reviewing the amended regulations*, demonstrated that despite these important amendments 38% of women still did not have the prescribed forms of evidence and were thus ineligible for family law legal aid.

Nearly 3 years on from the introduction of LASPO and nearly 2 years after the amendments to the regulations, this latest research demonstrates the continuing impact of the legal aid regulations on women affected by domestic violence.

3. Overview of the research

This report is based on responses to a revised survey undertaken following the introduction of amendments to the legal aid regulations in April 2014. Responses to an online survey, *Monitoring the legal aid gateways III*, were collected between 22 April 2014 and 30 November 2015. This survey was circulated via Rights of Women's website and to member services of both Women's Aid Federation of England and Welsh Women's Aid as well as via partner organisations and social media. The survey received 239 responses.

4. Research findings

4.1 Types of legal problems

Respondents to the survey identified the most common legal issue women sought advice and representation on was child contact (61%). However, the multiple responses demonstrate that respondents had a range of family law issues on which they required legal advice and representation in the aftermath of domestic violence. These figures are

² See Regulation 33, Civil Legal Aid (Procedure) Regulations 2012

<http://www.legislation.gov.uk/ukxi/2012/3098/regulation/33/made>

³ For a full explanation of the domestic violence evidence gateway criteria for family law legal aid see <http://rightsofwomen.org.uk/get-information/family-law/family-law-legal-aid/> ³ See <http://rightsofwomen.org.uk/policy-and-research/research-and-reports/#Legal%20aid>

consistent with the responses reported in *Evidencing domestic violence: a year on* and *Evidencing domestic violence: reviewing the amended regulations*.

To help us identify the kind of legal problem(s) you have, please tell us about the type of case you needed legal advice and representation for. Please tick all that apply.

Answer Options	Response Percent	Response Count
Child contact	61.4%	108
Residence orders	39.8%	70
Other issues relating to children	38.6%	68
Child maintenance and financial support for children	44.3%	78
Divorce	43.2%	76
Financial arrangements after divorce	35.8%	63
	<i>answered question</i>	176
	<i>skipped question</i>	63

4.2 Location of respondents

Respondents were asked to identify their location. Responses demonstrate a broad spread of responses from throughout England and Wales and from both rural and urban areas. See Appendix A.

4.3 Assessment of eligibility for legal aid and access to legal aid solicitors

The majority of respondents (52%) identified a solicitor as having assessed their eligibility for legal aid. This is consistent with the findings in *Evidencing domestic violence: reviewing the amended regulations* and demonstrates continuing challenges for women in finding a legal aid solicitor and growing reliance upon sources of advice such as CABx and women's organisations. 32% of respondents reported that they had found out about their eligibility for legal aid by themselves. Compared with 15% in *Evidencing domestic violence: a year on* in 2014, these findings demonstrate a growing self-reliance for many women. Only 4.6% identified the Legal Aid Agency website or helpline as the source of their assessment.

We asked respondents *How easy or difficult was it to find a legal aid solicitor in your area?* 36.8% said it was difficult. 34.6% said it was very difficult. This is consistent with the findings of our earlier research and demonstrates a significant barrier for women in obtaining family law advice and representation. 34.2% of respondents had to travel between 6 and 15 miles to find a solicitor, with a further 22.5% having to travel more than 15 miles. This remains consistent with the findings of *Evidencing domestic violence: reviewing the amended regulations*.

4.4 Financial eligibility for legal aid

Although this research does not focus on the impact of the means test on women's ability to access family law legal aid, our findings demonstrate that this too creates a further barrier to legal aid for women. 29% of women responding to the survey were ineligible for legal aid because their disposable income was above the allowed limits. 20.4% were ineligible because they had capital or savings above the allowed limits.

The feelings of despair and injustice amongst respondents as a result of their financial ineligibility is very clear.

“I work long hours. I look after my child. I have to organise child care in order to go to work. I pay high taxes. I can’t afford a solicitor so I will never be protected.”

“It is stressful enough coping with domestic abuse without the work of not being able to afford to resolve issues through a solicitor to limit contact between you. If people can’t afford to pay for legal help you will never be able to break the cycle. I feel this is unfair.”

“My income might be higher than the income for legal aid eligibility but I have many bills to pay. My income hardly covers them. I have no money left to get a solicitor.”

4.5 Evidence of domestic violence

This research shows that 37% of respondents reported that they did not have any of the required forms of evidence of domestic violence in order to apply for family law legal aid.

This is consistent with the findings of *Evidencing domestic violence: reviewing the amended regulations*. The increase of women able to access legal aid since 2014⁴ would appear to be as a result of the introduction of a new form of evidence in 2014; evidence of referral to a domestic violence support organisation by a health professional. From this survey we know that this is now the most common form of evidence available to women at 17.8%.

Which of the following forms of evidence of domestic violence did you have in order to apply for legal aid?		
Answer Options	Response Percent	Response Count
Evidence your abuser is on police bail for a domestic violence related offence	6.8%	5
An unspent criminal conviction against my abuser for a domestic violence related criminal offence	1.4%	1
A caution against my abuser for a domestic violence related offence in the past 2 years	1.4%	1
A bind over order made against your abuser for a domestic violence related offence within the past two years	1.4%	1
Evidence of ongoing criminal proceedings in relation to my abuser and his violence against me	4.1%	3
A current protective injunction against my abuser (this could be a non-molestation order, occupation order, forced marriage protection order, restraining order, domestic violence protection notice or domestic violence protection order)	13.7%	10
A protective injunction (non-molestation order, occupation order, forced marriage protection order, restraining order, domestic violence protection notice or domestic violence protection order) against my abuser which had expired but was made in the past 2 years	8.2%	6
An undertaking given by my abuser within the past 2 years where I did not give a cross undertaking	1.4%	1
Evidence of my referral to a MARAC (Multi Agency Risk Assessment Conference) as a high risk victim of domestic violence within the past 2 years and where there is a plan in place	6.8%	5

⁴ 43% reported not having the required evidence in *Evidencing domestic violence: a barrier to family law legal aid*

A finding of fact made in family proceedings within the past 2 years that my abuser was violent to me	4.1%	3
Evidence from a doctor, nurse, midwife or licenced psychologist that they examined me within the past 2 years about an injury or condition I had as a result of domestic violence	16.4%	12
Evidence from Social Services that they have assessed me as being at risk of or experiencing domestic violence within the past 2 years	13.7%	10
Evidence from a women's refuge that I stayed there within the past 2 years	6.8%	5
Evidence from a domestic violence support organisation that you had been refused admission to a refuge because there was insufficient accommodation	4.1%	3
Evidence to confirm that you were referred to a domestic violence support organisation by a health professional (doctor, nurse, midwife or licenced psychologist) within the past two years	17.8%	13
I did not have any of the above evidence and could not apply	37.0%	27
I would have had one or more of the above evidence if the two year time limit did not apply	23.3%	17
	answered question	73
	skipped question	166

Of those women who had one (or more) of the forms of evidence, the next most common forms of evidence remain evidence from a doctor, nurse or midwife of an injury or condition resulting from domestic violence (16.4%), evidence of a protective injunction (13.7%) and evidence from social services (13.7%).

Evidence of criminal justice remedies remain amongst the lowest of the available forms of evidence to women: evidence of an unspent conviction (1.4%); evidence of a bindover for a domestic violence related offence (1.4%); and evidence of a caution (1.4%). However, the new evidence that a perpetrator is on police bail has increased to 6.8%. Evidence of ongoing criminal proceedings has also increased to 4.8%.

Responses to the survey also reveal a worrying lack of awareness amongst professionals of the evidence criteria. This lack of awareness leads to, at best, delays in obtaining legal aid, or at worst, denial of legal aid where an applicant should have been eligible. One respondent revealed that her own solicitor appeared to be unclear about what evidence could be used to make an application.

"I have been categorised as high risk by social services yet I was also refused legal aid by a solicitor."

Respondents repeatedly talk about the way in which the prescribed list of evidence present a barrier to them in applying for family law legal aid and that the list simply does not reflect the reality of the evidence of domestic violence available to them. They also talked about the impact of the 2 year time limit for evidence.

"I did report it to the police but did not press charges at the time, so had no evidence."

"[I was] not eligible due to the abuse being over 2 years ago and no documentation."

Respondents talked specifically about the challenges of evidencing non-physical forms of violence.

“I would be eligible for legal aid financially but didn’t qualify as it is emotional/financial/psychological abuse, not violent.”

“I could not prove the mental abuse I have received from my ex over the past 10 years. You do not know that have been abused mentally until you are away from the situation. I did not tell anyone what was going on for years therefore had no proof from doctors etc. The police were not helpful and did not want to get involved.”

One respondent also demonstrates that the reality for many women experiencing violence is that they do not come to the attention of professionals or seek criminal justice or other remedies.

“[I am] not eligible as no police reference, not noted on the system. Even though I have a very low income, no house, no land, no savings and because my child is not on social services list, there is no legal aid for me. The Government does not understand that women do not always report. For example I had the strength to leave my ex after my daughter was born. It’s not until 3 years later I started to deal with it and talk about it.”

We asked women what alternative forms of evidence they might have had of domestic violence in order to apply for legal aid.

If you did not have any of the required forms of evidence of domestic violence, which of the following did you have instead?		
Answer Options	Response Percent	Response Count
A letter from a domestic violence support organisation confirming I am receiving advice and support as a result of domestic violence	34.1%	14
A letter confirming that I have called the National Domestic Violence Helpline or All Wales Domestic Abuse and Sexual Violence Helpline for advice as a result of domestic violence	22.0%	9
Evidence from the police confirming that I have called them as a result of domestic violence	51.2%	21
A letter from friends, family members or neighbours who have witnessed an incident of domestic violence	36.6%	15
A letter from a counsellor confirming I have received or am receiving counselling as a result of domestic violence	19.5%	8
A copy of my divorce petition confirming that my marriage broke down as a result of domestic violence	12.2%	5
Other (please specify)		19
	answered question	41
	skipped question	198

Their answers continue to reflect the less formal, often non-statutory routes that women take to find safety from violence. The most popular alternative forms of evidence continue to be evidence of the receipt of support from specialist domestic violence services: a letter from a domestic violence support organisation confirming receipt of advice and support as a result of domestic violence (34.1%); evidence of having called either the National Domestic

Violence Helpline or All Wales Domestic Abuse and Sexual Violence Helpline (22%); or a letter from a counsellor confirming receipt of counselling as a result of domestic violence (19.5%).

Evidence of a police call out as a result of a domestic violence incident also continues to be one of the most common alternative forms of evidence at 51.2%, reflecting the attrition rate in the prosecution of domestic violence cases. Responses to this question demonstrate that a further extension of the forms of evidence could more realistically reflect the forms of evidence more readily available to women and which better reflect the routes they take to seek safety.

We continue to call for a more extensive list and to urge the UK Government to take an approach to evidencing domestic violence more consistent with other areas of law and policy. We argue that the evidence criteria list used for applications under the domestic violence rule in the Immigration Rules, would better ensure that both the formal and informal routes women take to safety are reflected and that the most vulnerable are protected. The Immigration Rules allow for a more extensive list of evidence of domestic violence which reflect women's responses on the evidence that is actually available to them.⁵

4.6 Obtaining evidence

We asked respondents to comment on the availability of the required evidence. Of the respondents who answered the question 45.7% did not have a copy of the evidence of domestic violence prior to applying for legal aid and of those 73.7% did not know who to ask to obtain the evidence. The majority of respondents (45.5%) relied upon the internet for information about how to get it, again demonstrating a self-reliance in making their application for legal aid.

Obtaining the evidence also presents considerable barriers for women in applying for family law legal aid. Although 77.8% of respondents were able to obtain the evidence without charge, 7.4% had to pay between £21 and £50 for the evidence with another 7.4% paying over £50. The majority of respondents were able to obtain the evidence either the same day or within 7 days. However, 28% of respondents had to wait more than 7 days to receive it.

One respondent talked about the delay caused in her application for legal aid, by statutory bodies.

"The delay was due to the fact that the police stated they didn't hold any of the evidence and eventually the Crown Court had the evidence but had lost it. It was eventually produced."

This example demonstrates the significant challenges and the different agencies that applicants have to chase in order to obtain their evidence, and how time-consuming this must be. We are concerned that less resilient women will find the process of obtaining their evidence overwhelming and impossible.

4.7 Impact of not being eligible for legal aid

This research continues to demonstrate the devastating impact that not being able to access family law legal aid has on women affected by violence. 52.8% of respondents who

⁵ Paragraph 34 of the Immigration Rules

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261565/dv-victims-settlement.pdf

answered the question said they did nothing as a result of not being able to apply for legal aid. For one respondent this meant that she stayed in her abusive relationship.

"[I] continued to live with [my] partner in the hope that things would get better."

29.2% paid a solicitor privately.

Respondents describe the very difficult financial choices they had to make due to their ineligibility for legal aid.

"I am a low earner and single parent who at the moment has almost £5000 legal fees on credit cards, have a further £2300 to pay and £1000-2000 more accumulating. I don't know how I will ever pay this debt."

"[I] had to borrow money to pay privately."

"I am currently in debt as I couldn't afford a solicitor but needed a divorce due to domestic violence."

"So far I have incurred £15,000 in legal costs and am back in court again regarding custody and school moves for our youngest child."

28.1% of respondents represented themselves at court. Respondents vividly describe the trauma of being in court unrepresented.

"I represented myself in court and had to go against the man who raped me."

"It was a truly traumatic experience having to face him so soon after the assault."

Women also describe how their lack of understanding of the law and the family justice system put them at significant disadvantage, particularly in proceedings with a represented party.

"I looked stupid in court. I was humiliated in court through my lack of knowledge and felt more like a criminal than a victim in court."

"I am doing my best to represent myself, while the other party's solicitor is pulling all sorts of stunts and legal jargon that I know nothing about."

Multiple responses to this question illustrate that women's ability to be represented in proceedings often changes depending on their ability to pay privately and so they fluctuate from being represented to representing themselves.

"[I] have paid for legal advice over the last 3 years but currently am having to represent myself at court which I am finding very difficult."

"I write my own final statement and paid for a barrister."

These respondents sum up the absence of choices for so many women who are ineligible for legal aid.

"It's impossible for women fleeing domestic violence to deal with legal matters without legal aid. Solicitors' costs are extortionate. So many women like myself don't report coercive

control or financial abuse. I am in a no win situation. Without legal aid or financial support I can't finalise my divorce and put an end to the abuse."

"It's made things even harder, when I have had to find the courage to speak about what's happened on top of that I have been denied legal aid and am terrified about going to court. The only thing I can do is speak to Women's Aid to support me."

Women describe the impact of not being eligible for legal aid on the safety and health of both themselves and their children and the ongoing abuse they experience.

"Not being able to afford legal advice and be represented properly has hugely affected mine and my children's health and wellbeing. We are still suffering abuse indirectly 18 months after leaving."

"My ex is very clever and controlling and even now after I made an application and am going to court to sort out child arrangements he still continues to try and control my life and uses the children to get at me as this is the last bit of control he has."

5. Conclusions and recommendations

This continuing analysis of the legal aid regulations demonstrates that still too many women are unable to evidence domestic violence as a result of the prescriptive list of evidence set out in the legal aid regulations. Attempts to make that list broader and more inclusive have not led to any significant increase in the number of women able to apply for family law legal aid.

This report demonstrates the urgent need for a further review and revision of the regulations to truly enable women affected by domestic violence to access the legal advice and representation they desperately need to protect themselves and their children from further violence and to rebuild their lives. These women face not only the inequity of navigating the family justice system without specialist legal support, leading to unfair and unsafe outcomes, but also a continuing risk of further devastating and potentially fatal violence.

With the implementation of a new criminal offence of coercive control on 29 December 2015 the Government has demonstrated its continuing commitment to addressing domestic violence in all its forms. Yet the legal aid regulations continue to dangerously disadvantage women who are unable to meet their strict requirements. Rights of Women, Women's Aid Federation of England and Welsh Women's Aid again call on the Government to:-

1. Further review and amend the family law legal aid regulations to extend the forms of evidence required to better reflect the evidence women tell us is available to them.
2. Urgently review the impact of the recent changes to the legal aid scheme on the availability of publicly funded legal advice and representation in England and Wales.

In failing to do so the UK Government risks failing in its expressed commitment to protect those experiencing or at risk of experiencing domestic violence in the family justice system.

Appendix A: Location of survey respondents

What area do you live in?		
Answer Options	Response Percent	Response Count
Bedfordshire	0.0%	0
Berkshire	2.4%	4
Buckinghamshire	1.2%	2
Cambridgeshire	1.2%	2
Cheshire	5.4%	9
Cornwall	1.2%	2
Cumberland	0.0%	0
Derbyshire	0.0%	0
Devon	2.4%	4
Dorset	1.2%	2
County Durham	0.6%	1
Essex	4.2%	7
Gloucestershire	0.0%	0
Hampshire	4.2%	7
Herefordshire	3.0%	5
Hertfordshire	2.4%	4
Kent	4.8%	8
Lancashire	1.2%	2
Leicestershire	3.6%	6
Lincolnshire	1.8%	3
London	21.0%	35
Middlesex	2.4%	4
Northumberland	0.0%	0
Norfolk	1.2%	2
Northamptonshire	1.8%	3
Nottinghamshire	3.6%	6
Oxfordshire	1.8%	3
Rutland	0.0%	0
Shropshire	0.0%	0
Suffolk	2.4%	4
Somerset	1.2%	2
Surrey	4.8%	8
East Sussex	0.0%	0
West Sussex	2.4%	4
Staffordshire	0.0%	0
Warwickshire	1.8%	3
Westmorland	0.6%	1
Wiltshire	0.6%	1
Worcestershire	1.8%	3
Yorkshire	7.2%	12
Anglesey	0.6%	1
Breconshire	0.0%	0
Caernarvonshire	0.0%	0
Cardiganshire	0.0%	0
Carmarthenshire	1.2%	2
Denbighshire	0.6%	1
Flintshire	0.6%	1
Glamorgan	1.8%	3

Merionethshire	0.0%	0
Monmouthshire	0.0%	0
Montgomeryshire	0.0%	0
Pembrokeshire	0.0%	0
Radnorshire	0.0%	0
	<i>answered question</i>	167
	<i>skipped question</i>	72