



Rights of Women's evidence to the Justice Select Committee on the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

About Rights of Women

1. Rights of Women¹ works to secure justice, equality and respect for all women. Our mission is to advise, educate and empower women by:
 - Providing women with free, confidential legal advice by specialist women solicitors and barristers.
 - Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
 - Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Summary

2. The changes to civil legal aid introduced in April 2013 are denying access to justice to women experiencing violence, contradict the Government's commitment to end violence against women and girls² and fail to meet obligations under domestic and international human rights law to respond to violence against women with due diligence.

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3. Legal aid is a vital tool for the protection of women from violence.³ It has enabled women experiencing violence to protect themselves and their children through protective orders, securing safe accommodation, making arrangements for children, ending a violent relationship and, if necessary, regularising immigration status.
4. In this evidence we have limited our response to the questions posed by the Committee on which we have the most experience. Specifically, we will address the impact of the changes to civil legal aid on women who have experienced or are at risk of experiencing violence including those with an insecure immigration status.

¹ Rights of Women is a registered charity 1147913 and Company Limited by Guarantee. For more information visit www.rightsofwomen.org.uk

² *A Call to End Violence against Women and Girls: strategic vision*, Home Office, November 2010

³ *Womens' Access to Justice: A research report*, Rights of Women, 2011.

5. We would like to draw the Committee's attention to obligations that the UK has under international law to protect women from violence and secure access to justice, particularly under the Convention on the Elimination of all Forms of Discrimination against Women and the specific recommendations made by the Committee on legal aid and violence against women, in the *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland* to which to Government is due to report again in 2015⁴

Family law

6. Before the implementation of LASPO we, with the Women's Aid Federation of England and Welsh Women's Aid, expressed concerns about requiring applicants to produce evidence of the violence they had experienced in order to access legal aid. *Evidencing domestic violence: the facts* demonstrated that 54% of women accessing Welsh Women's Aid's member services as survivors of domestic violence would not meet the criteria (as then proposed).⁵
7. Following the implementation of LASPO, *Evidencing domestic violence: a barrier to family law legal aid*, demonstrated that in the first 4 months of the domestic violence evidence gateway 50% of women experiencing violence did not have the prescribed forms of evidence to access family law legal aid. These women described the devastating impact that not having access to legal aid had on them and their children.⁶
8. *Evidencing domestic violence: a year on*⁷ demonstrates the significant barriers which women affected by violence experience in accessing family law legal aid. 43.7% of respondents to our survey needed legal advice on divorce, 32.2% on financial arrangements, 39.1% on child maintenance, 70.1% on child contact orders, 39.1% on residence orders and 28.7% on other issues relating to children. This demonstrates that women need to access multiple legal remedies to enable them to make safe arrangements for themselves and their children following the end of a violent relationship. All of these areas of law are now out of scope of the legal aid scheme except for those who can appropriately evidence domestic violence.
9. 42.9% of women responding to the survey who had experienced or were experiencing domestic violence said they did not have the prescribed forms of evidence to benefit from family law legal aid. The devastating impact of the criteria were demonstrated in the responses received on the action or inaction women took as a result of being ineligible. 46.5% of respondents reported that they took no action in relation to their family law problem. One respondent wrote "*I can't take him to court, I don't have the*

⁴ *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland* Adopted by the Convention on the Elimination of All Forms of Discrimination against Women Committee at its fifty-fifth session (8-26 July 2013) CEDAW/C/GBR/CO/7.

⁵ *Evidencing domestic violence: the facts*, Rights of Women and Welsh Women's Aid, January 2012

⁶ *Evidencing domestic violence: a barrier to family law legal aid*, Rights of Women, Women's Aid Federation England and Welsh Women's Aid, August 2013

⁷ *Evidencing domestic violence: a year on*, Rights of Women, Women's Aid Federation England and Welsh Women's Aid, March 2014

funds so myself and my children and stuck in an unhealthy marriage, he tells me to leave without the children.” 25% of respondents reported that they represented themselves. The stark reality of doing so was demonstrated by one respondent who wrote “I cannot protect my daughter without being cross examined by my abuser in court. This is not right.” 32.1% of respondents reported that they had to pay a solicitor privately; one respondent wrote “I am now in significant debt having had to remortgage my house to pay solicitors fees”.

10. We have welcomed the Government’s commitment to an ongoing review of the impact of the gateway criteria and the amendments to regulation 33 introduced on 22 April 2014. However, we submit that the revised evidential requirements still do not reflect the lived reality of women affected by violence and the routes they seek to find safety. For example, *Picking up the pieces: domestic violence and child contact* demonstrated that the risks of further violence continued post separation and even following the making of a contact order⁸ yet the 24 month time limit on the majority of the evidence required for the gateway does not take this into account. Whether or not a woman has children, she may remain at risk of further violence and abuse from her perpetrator for many years after the relationship has ended.
11. Our research into the gateways also highlighted the very significant challenges women faced in evidencing non-physical forms of violence; forms of violence including coercive control which are now included in the Cross-Government definition of domestic violence.⁹ As one respondent said *“I have no evidence, its emotional and financial abuse. I can’t see a way to prove this.”*
12. Our survey also reveals the considerable challenges women face obtaining supporting evidence. 62.1 % of respondents were not already in possession of the evidence they required. 77.8% of those respondents reported that they did not know who to ask to obtain a copy of it. 22.7% of respondents had to wait longer than 2 weeks to receive a copy of the required evidence from the relevant agency. Our research revealed that health and social care professionals are the primary gatekeepers to the legal aid scheme and yet they are often ill-informed of the evidence criteria. One respondent commented *“My mid-wife even though she knew that I was experiencing harassment and domestic violence during my pregnancy would not provide the letter for the legal aid criteria. She produced a document that did not meet the legal aid strict funding criteria. I feel really let down by the healthcare profession.”*
13. More generally, our survey revealed the challenges women affected by violence face in finding a family law legal aid provider. 31.3% of respondents reported that finding a legal aid solicitor in her area was difficult with a further 27.5% reporting it to be very difficult. 33% of respondents reported having to travel between 5 and 15 miles to find a legal aid solicitor. 13% had to travel more than 15 miles. These findings are corroborated by the experiences of the women we advise directly on our specialist legal advice lines and

⁸ *Picking up the pieces: domestic violence and child contact*, Rights of Women and CWASU, November 2012

⁹ *A Call to End Violence against Women and Girls: Action Plan 2013*, Home Office, March 2013

those of our advisors (all solicitors and barristers with expertise in the relevant areas of law) who are finding it increasingly difficult to find solicitors firms with family law contracts to signpost eligible callers to.

14. Our report makes two key recommendations, the implementation of which, we submit, are necessary if the Government wishes to achieve its stated aim of protecting all women affected by violence:
 - The evidence criteria must be extended to include forms of evidence women tell us they are most likely to have including evidence from a domestic violence support organisation, from a counsellor and of police call out(s) in response to domestic violence incidents
 - Training, guidance and awareness raising of the evidence criteria must be improved in order to improve the responses of the gatekeepers (including solicitors, health professionals and other statutory services) to ensure that women affected by violence are appropriately assessed for eligibility for legal aid and supported to obtain the appropriate evidence in a timely way

Immigration law

15. Rights of Women has grave concerns about the impact that the removal of the majority of immigration law from the scope of legal aid has had on migrant women experiencing violence. Whilst legal aid remains available for applications under the Domestic Violence Rule and its European law equivalent, the majority of women that we advise who have an insecure immigration status and who are experiencing VAWG are not able to benefit from these rules and are therefore unable to access legal advice and representation (even if their case involves VAWG and they have a valid basis for remaining in the UK).¹⁰
16. The removal of most of immigration law from the scope of legal aid has a disproportionate impact on women. This is because women's immigration status is generally considered less important because they engage with the community less if they are not working or in education. Women and particularly migrant women are more likely to lack the literacy and language skills necessary to complete complex immigration forms. For women within families, this increases their dependency on the family members with immigration status. Women are also more likely to be single parents and therefore find themselves needing to fund immigration advice whilst also paying for food, rent and other basic needs.
17. In the three months since January 2014, Rights of Women found that between one third and half of the women that we advise on immigration and asylum law were no longer eligible for legal aid but who would have been eligible before the implementation of LASPO 2012. The majority of these cases related to family and private life. In March 2014 we advised 26 callers, of whom 11 were no longer eligible for legal aid. This included one woman from the USA who had been in the UK since 2007. She had arrived as a visitor to

¹⁰ *Silent Voices Speak: strategies for protection migrant women from violence and abuse*, C Briddick, Rights of Women (2011)

see her boyfriend, bringing her son from a previous relationship with her. She married her boyfriend while in the UK and he continually promised that he would 'sort out' her immigration status. Following the birth of their daughter in 2010 and having experienced physical violence during her pregnancy, the relationship ended. However, the caller was unable to leave her husband because she had no immigration status or way of resolving her immigration law issues. She was unable to return to the USA because her former partner did not give his permission for their daughter to go with her and a court order was in place. The family case was stayed pending resolution of her immigration status. The caller remains completely financially depending on her former partner, with whom she continues to live and from whom she continues experience violence. This caller is an example of the many women we advise and support who are now ineligible for legal aid despite experiencing violence.

18. In addition to offering telephone advice, Rights of Women provides training on immigration law around the country, as well as workshops for refugee and asylum seeking women. These provide us with a unique opportunity to speak to other organisations, including local authorities, women's support groups and refuges as well as women with insecure immigration status. Many organisations outside London report a lack of expert advice for the women they support. In Yorkshire a number of women who attended two workshops for asylum-seeking women were unable to access legal advice once they exhausted their appeal rights even where their circumstances had changed.. Similarly, women who call our advice line have often spoken to a number of legal aid solicitors prior to making an application for asylum, with one woman having to travel up to two hours across London because there were no legal aid suppliers with asylum matter starts available closer to where she was staying.
19. A number of the women we advise require more advice and support than we are able to give. The situations in which women find themselves frequently have a number of unusual features, which means that they require more than completing an application form to the Home Office. We have received a number of calls from women who have experienced domestic violence which has resulted in arrest of the perpetrator and these women are awaiting a court date to give evidence, or are involved in family court proceedings. However, their insecure immigration status means that they may not be able to remain in the UK legally to participate in proceedings. They need to extend their stay but there are no immigration rules that relate to remaining in the UK for this purpose so there is no straightforward application that can be made.
20. Many women would benefit from additional written representations being made but are unsure how to do this or have no knowledge of the case law or legislation they would need to rely on. In January 2014 we advised 17 callers, 6 of whom were ineligible for legal aid under LASPO 2012 (but would previously have been eligible). This included a woman from Iraq who had come with her British husband and three British children to visit her husband's parents in the UK. The family normally lived in Dubai where the husband had been working and so the caller had only applied for a visit visa to accompany her British citizen family. However, on arrival in the UK, her husband's parents had fallen ill and they had decided to settle here to care for them. For complex factual reasons this caller urgently needed legal advice to assist her with a complex

application and additional written submissions, issues that are outside the scope of our services. The family were unable to pay for legal advice. In these situations, we believe that it is likely that women and families will simply give up, and not take any steps in respect of their immigration status.

21. Further, as a result of changes to family migration requirements, we are advising a small but growing number of women who come to the UK on visit visas, rather than as spouses of British citizens, or other dependants. Where they are victims of violence, they are frequently coerced by their partners into remaining in the UK past the expiry of their visa, and if they experience violence are then unable to access services or assistance. In April we advised an Iranian woman who had come to the UK as a visitor to spend time with her student husband. He had attacked her and she had called the police. This resulted in his arrest and she was due to give evidence against him in a criminal court, however the court date was outside the expiry of her visit visa. She was not given any advice or assistance about how to remain in the UK but was told by the police that she was under an obligation to attend the criminal trial and give evidence. She was unable to benefit from legal aid to assist her deal with situation.
22. Exceptional case funding was introduced with LASPO as an opportunity to obtain legal aid in cases which fell outside of the scope of the new legal aid scheme but where failure to provide legal aid would constitute a breach of the applicants Convention rights in accordance with the Human Rights Act 1998. This scheme purported to provide an important safety net for vulnerable people including women affected by violence and those with an insecure immigration status.
23. However, the experiences of women contacting our telephone advice services demonstrate that the scheme does not provide such a safety net as women report being unable to access it or benefit from it. Indeed, statistics published by the Ministry of Justice on the first 9 months of the scheme illustrate that the grant of exceptional case funding is extremely rare. Of the 617 applications received in respect of family law cases only 8 were granted in that period and of 189 applications in respect of immigration law cases only 3 were granted. Of the total of 1151 applications across all areas of law only 35 were granted; only 3% of applications.

Residence test

24. Rights of Women reiterates evidence already submitted to this Committee and the Joint Committee on Human Rights¹¹ in relation to the proposed 'residence test' which we believe is a threat to the rule of law and the principle of equality before the law. It is unacceptable to deny, *de facto*, any group of people access to the courts and therefore to justice.

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¹¹ Rights of Women's evidence to the Joint Committee on Human Rights
www.rightsofwomen.org.uk/pdfs/Policy/Rights_of_Womens-evidence_to_the_JCHR_on_legal_aid.pdf

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