

## **Evidencing domestic violence: the facts**

### **Legal Aid, Sentencing and Punishment of Offenders Bill**

The Government has committed to retain legal aid for domestic violence victims in private family law matters. Yet research conducted by Rights of Women and Welsh Women's Aid shows that at least 46% of domestic violence victims will not be eligible for legal aid because of the dangerously restrictive forms of evidence that they will be required to produce.

This research demonstrates incontrovertibly that if the Government is to stand by its commitment to ensure that legal aid is retained for domestic violence victims in private family law proceedings, the domestic violence gateway criteria must be widened to better reflect the range of routes that women take to safety and the kind of evidence they might have. This must include evidence from specialist domestic violence organisations, health services and social services.

### **Overview**

Welsh Women's Aid member groups surveyed their service users for one week between 15 and 21 December 2011 to ascertain what forms of evidence domestic violence survivors might have to corroborate their experience of violence. 324 women receiving one or more services from Women's Aid groups including refuge support, floating support, outreach and drop in services as a victim of domestic violence were surveyed.<sup>1</sup>

Women were asked whether they had a number of different forms of evidence. The list of questions included the forms of evidence that the Government has proposed to require of domestic violence victims before they will qualify for legal aid as a victim of domestic violence in private family law matters.<sup>2</sup> It also included additional forms of evidence which specialist violence against women organisations consider should be included if the domestic violence gateway criteria are to capture as many domestic violence victims as possible who are at risk of harm and in need of legal support.<sup>3</sup>

### **The research shows that of the 324 women who are already in receipt of specialist support as a victim of domestic violence:**

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<sup>1</sup> 74 were in refuge, 165 receiving floating support, 51 receiving outreach services, and 17 were receiving drop in services as victims of domestic violence. 23 service users did not fill in which service they were receiving. See Annex 1 for a copy of the research proforma.

<sup>2</sup> Ministry of Justice, Legal Aid Reform in England and Wales, the Government Response, June 2011, <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>.

<sup>3</sup> Those additional criteria, in addition to the Government's proposed criteria, have been put down in Amendment 46 in the names of Baroness Scotland, Baroness Butler-Sloss, Lord Bishop of Leicester and Lord Blair for the House of Lords Committee Stage debate concerning the Legal Aid, Sentencing and Punishment of Offenders Bill.

- **46%**<sup>4</sup> would not have any of the evidence that the Government has proposed to require of them and would therefore not be eligible for legal aid to resolve their family law problem.
- **54.4%**<sup>5</sup> would not have any of the evidence that the Government has proposed to require of them if the 12 month time limit for evidence was also applied.
- **19%** had no corroborating evidence other than that from a Welsh Women's Aid member group.<sup>6</sup>
- **99%** had reported at least one incident to the police and/or the police had attended an incident involving domestic violence yet only **8.3%** would be able to prove that there had been ongoing criminal proceedings in the last twelve months.
- A wide range of statutory and voluntary sector professionals and agencies were reported to have been aware of the domestic violence but under current proposals much of this evidence would not be accepted by the Government.

Please refer to **Annexes A, B and C** for a full breakdown of the data collected.

## **Analysis**

### **A non-exhaustive list of eligible evidence is needed**

A non-exhaustive list of eligible evidence must be incorporated into the domestic violence gateway in order for the gateway to have a realistic chance of retaining legal aid for those who need it to protect themselves and their children from domestic violence.

Although almost half (46%) of the respondents would not qualify for the Government's proposed domestic violence gateway, all could provide corroborating evidence that they were receiving support as a domestic violence victim from a specialist agency (a Welsh Women's Aid member group). This demonstrates that unless other well-founded documentary evidence of domestic violence is accepted, women already known to be at risk of harm and in receipt of services as a domestic violence survivor from at least one agency will not be able to access legal aid.

79.9% of cases of respondents reported that in addition to receiving support from a Welsh Women's Aid member group, another voluntary or statutory sector professional/agency not captured in the Government's gateway criteria knew about the domestic violence they had experienced:

- 61.4% had reported at least one incident of violence to the police;
- In 57.8% of cases the police had attended an incident involving the domestic violence;
- 52.2% had discussed the violence with their GP;
- In 49.1% of cases a social services department was aware of the domestic violence or child abuse.

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<sup>4</sup> 148 of 324 respondents would not be eligible for legal aid under the proposed gateways if the 12-month time limit was not applied.

<sup>5</sup> 176 of the 324 women surveyed would not be eligible for the proposed gateways if the 12 month time limit were applied.

<sup>6</sup> 61 out of 324 respondents would not have any corroborating evidence other than that from a Welsh Women's Aid member group.

**Annex B** presents a full list of the range of other statutory and voluntary sector agencies and professionals that were reported to know about the domestic violence, which included a range of health, education and local authority professionals as well as a diverse range of voluntary sector support and advice agencies.

### **Often there will be no corroborating evidence of domestic violence despite the risk of harm**

Critically, 19% of respondents to the survey would have no corroborating evidence other than that from a Welsh Women's Aid member group.<sup>7</sup> This statistic is striking because it exposes the hidden nature of domestic violence and cautions against setting out an exhaustive list of evidence which domestic violence victims must be able to provide in order to qualify for legal aid. It is particularly striking as women receiving services from a Welsh Women's Aid member group are more likely than other survivors to have reported their experience to another voluntary or statutory agency because of the critical referral role Women's Aid groups play. Often there will be no corroborating evidence of the domestic violence a woman has experienced. The results of this survey therefore are limited because they do not include women who have not contacted a specialist domestic violence organisation; such women are even less likely to have the evidence required under the current proposals.

### **The gateways must reflect the reality of domestic violence and barriers to effective statutory responses**

It is crucial that the domestic violence gateways reflect the reality of domestic violence and barriers to effective statutory and voluntary sector responses. For example, although the proposed domestic violence gateway would permit those cases where there is evidence of ongoing criminal proceedings in the last twelve months, it does not take into account the low charging and conviction rates for domestic violence offences.<sup>8</sup>

The survey results show that 99% of respondents (a surprisingly high number) had reported at least one incident to the police and/or the police had attended an incident involving domestic violence. Yet in only 8.3% of cases where the woman had reported an incident to the police on at least one occasion or the police had attended an incident would the respondent be able to prove that there had been ongoing criminal proceedings in the last twelve months. This problem, which is linked to high attrition rates in domestic violence cases, was also reflected in Women's Aid Federation of England and Wales' (WAFE) 2010 annual survey of women accommodated in refuges.<sup>9</sup> That survey found that whilst the majority (70%) of women residents had at some point called the police because of the domestic violence, of those who had reported offences to the police at least once, the vast majority (76%) said the perpetrator was not currently being prosecuted.<sup>10</sup> The WAFE survey also underscored the under-reported nature of domestic violence incidents;

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<sup>7</sup> 61 out of 324 respondents would not have any corroborating evidence other than that from a Welsh Women's Aid member group.

<sup>8</sup> For example, Women's Aid Federation of England and Wales' annual survey (2010) of women accommodated in refuges (based on a sample of 601 women accommodated in refuge, in a one-day snapshot) found that the conviction rate for domestic violence offences reported to the police and had led women to flee into refuge was 15%. See: Women's Aid Federation of England (WAFE), Annual Survey, 2010.

<sup>9</sup> *Ibid.*

<sup>10</sup> 313 out of 414 women said the perpetrator was not currently being prosecuted and a further 21 informants (5%) did not know.

the majority of respondents did not report the abuse the first time it occurred, but more typically did so after they had been assaulted between three and five times.

## **Annex A: percentages of women who would meet the Government's proposed domestic violence gateway criteria**

Just 54% of women surveyed reported that they would have at least one of the forms of evidence that the Government has proposed to require of domestic violence victims under the legal aid proposals. This percentage reduced to 45.6% when the 12 month time limit proposed by Government was taken into consideration.

The table below presents the percentage of women respondents who would be able to provide each of the proposed forms of evidence; in many cases the respondent had more than one form of evidence whilst others had none.

	<b>1</b>	<b>2</b>	<b>3</b>
<b>Domestic violence gateway criteria (proposed in Government White Paper)<sup>11</sup></b>	% of women responded yes (without reference to the 12 month time frame)	% of women who responded yes to column 1 who would meet the 12 month time frame	% of women who would qualify for legal aid if 12 month time frame applied
1. A non-molestation order, occupation order, forced marriage protection order or other protective injunction has been put in place in respect of the domestic violence.	25.3%	Yes: 75.3% No: 16% Not known: 8.6%	18.8%
2. There have been criminal proceedings for a domestic violence offence or for a child abuse offence against the abuser. <sup>12</sup>	33.4%	Yes: 25% No: 18.5% Not known: 56.5%	8.33%
3. There has been a criminal conviction for a domestic violence offence or for a child abuse offence against the abuser (that has not been spent).	21.5%		
4. She has been referred to a Multi-Agency Risk Assessment Conference (as a high risk victim of domestic violence) and a plan has been put in place to protect her from violence.	36.4%	Yes: 83.8% No: 10.3% Not known: 6%	30.2%
5. A local authority has put a Child Protection Plan in place to protect her children from abuse by her abuser.	19%	Yes: 83.6% No: 11.5% Not known: 4.9%	15.7%
6. The family courts have made a			

<sup>11</sup> Ministry of Justice, Reform of Legal Aid in England and Wales: the Government Response, June 2011.

<sup>12</sup> Respondents were asked to tick yes if there had been an arrest, police investigation or prosecution. Respondents were asked not to tick yes if there had only been a report to the police or police attendance at scene but no proceedings had ensued.

finding of fact that there has been domestic violence giving rise to the risk of harm to her.	13.1%	Yes: 81% No: 16.7% Not known: 2.4%	10.5%
7. The family courts have made a finding of fact that there has been child abuse.	5.0%	Yes: 58.8% No: 41.2% Not known: 0%	28%
<b>8. At least one of the proposed domestic violence gateway criteria could be met</b>	<b>54%</b>		<b>45.6%</b>

## Annex B

### Percentage of women who would meet the additional criteria proposed by violence against women specialists

Respondents were also asked to provide information on other forms of evidence they might have which the Government does not currently propose to accept. We are calling for this list of additional forms of evidence (or domestic violence gateway criteria) to be included in the Bill. The list has been proposed in Amendment 46, to be moved in House of Lords Committee under the name of Baroness Scotland, Baroness Butler-Sloss, Lord Bishop of Leicester and Lord Blair.

<b>Additional gateway criteria</b>	<b>% of women responded yes</b>
<b>9. Undertakings</b> Her abuser has made an undertaking to the court not to abuse/ harass/ threaten her.	13.7%
<b>10. Police report</b> She reported an incident of domestic violence to the police.	61.4%
<b>11. Police attendance at incident</b> The police attended an incident involving the domestic violence.	57.8%
<b>12. GP records</b> Has she discussed the domestic violence with her GP.	52.2%
<b>13. Other medical records</b> She has discussed the domestic violence with a medical professional other than her GP.	26.6%
<b>14. Social services records</b> A social services department is aware of the domestic violence or child abuse.	49.1%
<b>16. An agency other than Welsh Women's Aid knows about the violence</b>	79.9%
<b>15. Other documentary evidence</b> Another voluntary or statutory agency not listed above knows about the domestic violence (including a Welsh Women's Aid member group).	100%

## **Annex C**

### **Other documentary evidence of domestic violence**

Respondents were asked to name any other voluntary or statutory agency that was aware of the domestic violence.

### **Other statutory agencies or professionals aware of the violence**

Benefit Advisor/benefits agency; CAF/CASS Cymru; College; Communities First; Drug and Alcohol Services/Unit; Department for Work and Pensions; Education Authority/department; Family Contact Centre; Health visitor; Homeless Department; Hospital; Housing/ Housing Services; Housing Benefit Department; Independent Domestic Violence Advisor; Local Housing Authority; Mental health services/team; New Pathways (SARCs in Wales); Nurse; Parenting Team at the Local Authority; Probation Services; Public Protection Unit (PPU, police) Social Services; School; School health visitor; University; West Wales Substance Misuse; Women's Safety Unit; Youth offending services.

### **Other non-statutory agencies or professionals aware of the violence**

Action for Children; Age Concern; Barnados; Black Association of Women Step Out (BAWSO); Caer Las; Chinese Community Centre; Citizens Advice Bureau; Children's Centre; De Gwynedd Domestic Abuse Service; FACT; Genesis; Gisda; Home Start; Hafan Cymru; Health Trust Project; Hope House; Kaleidoscope; Independent Domestic Abuse Services (IDAS); MIND; NSPCC; Other women's Aid groups; Relate; Shelter; Swansea drugs project; Swansea Young Single Homeless Project (SYSHP); Turning Point; Victim Support; West Glamorgan Council on Alcohol and Drug Abuse Limited (WGCADA); Women's Centre.

### **Informal networks aware of the violence**

A number of respondents also reported that they had disclosed the domestic violence to informal networks, including their church; counsellor; family; landlord; solicitor and work/employer.

For further information please contact Katherine Perks, Policy and Public Affairs Officer or Emma Scott, Director at Rights of Women on 020 7251 6575.