

Evidencing domestic violence: a year on

One year after the implementation of the new legal aid regulations requiring evidence of domestic violence in order to apply for family law legal aid, this research shows that the legal aid regulations continue to restrict access to legal advice and representation to women affected by domestic violence and deny access to safety and justice to the very women whom the Government expressly sought to protect from the removal of family law from the scope of the legal aid scheme.

1. Summary of our findings and recommendations

This report demonstrates the very significant barriers which women affected by violence experience in accessing family law legal aid.

- 43% 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.
- Of those who did have evidence the most common forms were evidence from a health professional, of referral to a MARAC and an assessment by social services.
- 33% of respondents were having to travel between 5 and 15 miles to find a legal aid solicitor. 13% had to travel more than 15 miles.
- 23% of respondents had to wait longer than 2 weeks to get copies of their evidence.
- 46.5% of respondents took no action in relation to their family law problem as a result of not being able to apply for legal aid. 32.1% paid a solicitor privately and 25% represented themselves at court.

Rights of Women, Women's Aid Federation of England and Welsh Women's Aid make 2 key recommendations to improve women's ability to access legal advice and representation in vital family law proceedings to enable them to safe and equal futures for themselves and their families

- The evidence criteria must be extended to include other forms of evidence 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 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 this way the Government will go some way further to achieving their aim to protect women affected by violence and to provide them with access to family law legal aid.

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 2012¹ 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 would be available if survivors could provide prescribed evidence that they had experienced domestic violence.²

Prior to the implementation of LASPO and its accompanying regulations, Rights of Women, with Women's Aid Federation of England and Welsh Women's Aid, had expressed very serious concerns that the prescribed and exhaustive list of evidence criteria would mean that many women who had experienced or continued to experience domestic violence would not be able to satisfy the regulations and the gateway to family law legal aid. Our research with Welsh Women's Aid, *Evidencing domestic violence: the facts*³ published during the passage of LASPO through Parliament demonstrated that 54.4% of women accessing Welsh Women's Aid's member services as survivors of domestic violence would not meet the evidence criteria (as then proposed⁴).

In August 2013 a further research report, *Evidencing domestic violence: a barrier to family law legal aid*⁵ demonstrated that in the first 4 months after the implementation of the domestic violence evidence gateway 50% of women did not have the prescribed forms of evidence to access family law legal aid and described the devastating impact that not having access to legal aid was having on women.

3. Overview of the research

Between December 2013 and March 2014 Rights of Women developed a new online survey, *Monitoring the legal aid gateways II*, building on the survey previously conducted and reported in *Evidencing domestic violence: a barrier to family law legal aid*. 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 117 responses between 1 December 2013 and 3 March 2014.

4. Research findings

4.1 Types of legal problems

Respondents to the survey were asked in which area of family law they required legal advice and representation. The most common legal issue was child contact (70.1%) but the multiple responses demonstrate that women had a range of family law issues

¹ See Regulation 33, Civil Legal Aid (Procedure) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/3098/regulation/33/made>

² For full details see Rights of Women's briefing
http://www.rightsofwomen.org.uk/pdfs/Legal/Briefing_for_WA_WWA_members.pdf

³ See http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_dv_the_facts.pdf

⁴ The evidence criteria was subsequently broadened to include undertakings, admission to a refuge and report from a health professional

⁵ See http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_domestic_violence_II.pdf

in which they required legal advice and representation in the aftermath of domestic violence. These figures are broadly consistent with the responses reported in *Evidencing domestic violence: a barrier to family law legal aid*.

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	70.1%	61
Residence orders	39.1%	34
Other issues relating to children	28.7%	25
Child maintenance and financial support for children	39.1%	34
Divorce	43.7%	38
Financial arrangements after divorce	32.2%	28
<i>answered question</i>		87
<i>skipped question</i>		30

4.2 Location of respondents

This revised survey asked the respondents 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 (73.8%) identified a solicitor as having assessed their eligibility for legal aid. 15% of respondents reported that they had found out for themselves and 8.8% identified the Legal Aid Agency website or helpline as the source of their assessment. This demonstrates that solicitors are by far the greatest source of information as to eligibility for legal aid and therefore it is vital to women's ability to access the legal aid scheme that they have an accurate understanding and appropriate response to the regulations and their impact on women affected by violence.

However, in response to the question *How easy or difficult was it to find a legal aid solicitor in your area?* 31.3% of respondents said it was difficult and a further 27.5% said it was very difficult. Although 53.9% of respondents were able to find a legal aid solicitor within 5 miles of their home, 32.9% had to travel between 5 and 15 miles to seek advice, with 13.2% having to travel more than 15 miles. The survey does not identify in which area these difficulties arose but these responses clearly indicate that access to legal aid solicitors is a significant challenge and that many women are being required to travel significant distances to see a solicitor.

4.4 Financial eligibility for legal aid

Although our survey was not intended to capture specific data on the impact of the means test for legal aid, we remain concerned about its impact on women. 26.5% of women responding to the survey were ineligible because their disposable income was above the allowed limits. 11.8% were ineligible because they had capital or savings above the allowed limits. The impact of paying for representation on women's ability to secure safe and equal futures for themselves and their children is clearly demonstrated in this response from one of the respondents.

“Because I had more than £6,000.00 of savings, and more than £60,000.00 of equity in a property, I got nothing!!!! But I've now spent over £26,000.00 on solicitors fees.... In the past three years....”

4.5 Evidence of domestic violence

Although the number of respondents who did not have any of the forms of prescribed evidence in order to apply for family law legal aid had reduced slightly in this sample from the sample reported in *Evidencing domestic violence: a barrier to family law legal aid*, 42.9% 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.

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
An unspent criminal conviction against my abuser for a domestic violence related criminal offence	0.0%	0
A caution against my abuser for a domestic violence related offence in the past 2 years	8.2%	4
Evidence of ongoing criminal proceedings in relation to my abuser and his violence against me	6.1%	3
A non-molestation/occupation/forced marriage/restraining order against my abuser	10.2%	5
A non-molestation/occupation/forced marriage/restraining order against my abuser which had expired but was made in the past 2 years	6.1%	3
An undertaking given by my abuser within the past 2 years where I did not give a cross undertaking	2.0%	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	14.3%	7
A finding of fact made in family proceedings within the past 2 years that my abuser was violent to me	4.1%	2
Evidence from a doctor, nurse or midwife that they examined me within the past 2 years about an injury or condition I had as a result of domestic violence	18.4%	9
Evidence from Social Services that they have assessed me as being at risk of or experiencing domestic violence within the past 2 years	14.3%	7
Evidence from a women's refuge that I stayed there for more than 24 hours in the past 2 years	8.2%	4
I did not have any of the above evidence and could not apply	42.9%	21
<i>answered question</i>		49
<i>skipped question</i>		68

Of those women who did have one (or more) of the forms of evidence, the most common forms of evidence was evidence from a doctor, nurse or midwife of an injury or condition resulting from domestic violence, followed by evidence of a referral to a MARAC (14.3%) and evidence from social services (14.3%). The least common forms of evidence were criminal convictions (0%), undertakings (2%) and findings of fact in family proceedings (4.1%).

These responses indicate a slight increase in the use of evidence from health professionals as a gateway to family law legal aid and therefore identifying them as

important gatekeepers to the legal aid scheme. It is therefore vital that these professionals, like solicitors, are adequately equipped with the knowledge and understanding of both the requirements of the regulations and of domestic violence in general. One respondent identified issues in respect of the willingness of health professionals to produce the required evidence and in the quality of the evidence produced.

“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.”

Respondents also identified the challenges of evidencing non-physical forms of violence.

“i have no evidence, its emotional and financial abuse. i cant see a way to prove this”

We asked women what alternative evidence they might have had of domestic violence in order to apply for legal aid. The most popular forms of evidence were evidence of a police call out as a result of domestic violence (54.5%) and evidence of support received from a domestic violence support organisation (45.5%). 9.1% of respondents would have had evidence of having called either the National Domestic Violence Helpline or All Wales Domestic Abuse and Sexual Violence Helpline.

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	45.5%	10
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	9.1%	2
Evidence from the police confirming that I have called them as a result of domestic violence	54.5%	12
A letter from friends, family members or neighbours who have witnessed an incident of domestic violence	4.5%	1
A letter from a counsellor confirming I have received or am receiving counselling as a result of domestic violence	27.3%	6
A copy of my divorce petition confirming that my marriage broke down as a result of domestic violence	13.6%	3
Other (please specify)		8
	answered question	22
	skipped question	95

4.6 Obtaining evidence

Of the respondents who answered the question 62.1% did not have a copy of the evidence of domestic violence prior to applying for legal aid and of those 77.8% did not know who to ask to obtain the evidence.

Whilst 87.5% of respondents reported that they did not have to pay for the evidence they required, 4.2% had to pay over £50 to obtain theirs. The majority of respondents were able to obtain the evidence either the same day or within 7 days. However, 22.7% of respondents had to wait longer than 2 weeks to get it. One respondent reported problems in the delay in getting the evidence and in the quality of that evidence when received.

"[It took] 3 weeks -they said it would be sent directly to her but was sent to IDVA after it was chased up. Wording was then wrong when the letter was received."

4.7 Impact of not being eligible for legal aid

46.4% of respondents who answered the question did nothing as a result of not being able to apply for legal aid. 32.1% paid a solicitor privately and 25% represented themselves at court.

Respondents reported the barriers to accessing legal remedies which ineligibility for legal aid placed in their way and how it left them trapped in abusive situations, experiencing further violence.

"i cant take him to court, i dont have the funds so myself and my children are stuck in an unhealthy marriage, he tells me to leave without children"

"I want to apply for a divorce but have been told it will be complex so I need a solicitor but I cannot afford to get one. I want to sort out child contact as my kids are at risk from my husband, but cannot afford to do that. I want to get a court order for payments so my children do not suffer because I cannot afford clothing for them, but without legal aid I cannot do this. This is having a detrimental impact on the children and myself. I am living in limbo because I cannot afford to do anything about it."

"I am unable to keep my children safe because I was financially abused by my husband to the point where I have no money to pay a solicitor properly. The changes to legal aid have ensured that my husband is able to financially abuse me into a position I cannot escape from and he has the full backing of the state."

One respondent described the consequences which this had for her family and the need for the state to intervene as a result.

"In trying to avoid costs my daughter has been at risk of harm and children's services have three times had to intervene."

Others reported the dangers and inequality of arms this placed them in when faced with representing themselves in court against a perpetrator in person or a perpetrator with representation.

"I cannot protect my daughter without being cross examined by my abuser in court. This is not right."

"Been representing myself in court since May 2013. The other party has a fully paid solicitor to represent him because he can afford to"

The financial consequences of not being eligible for legal aid and paying a solicitor privately were also reported by some respondents.

“I am now in significant debt having had to remortgage my house to pay solicitors fees as, although my wages are above the LA threshold my outgoings have increased due to having to fund childcare and change my job to travel further to get away from my violent ex partner”

5. Conclusions and recommendations

This further research supports our previous research findings and demonstrates that women affected by domestic violence continue to be denied access to the legal remedies which would enable them to secure safe and equal futures for themselves and their children. It demonstrates that women are having to make very stark choices between staying in abusive relationships and representing themselves in complex legal proceedings or getting into debt to pay for representation.

The women’s experiences of accessing legal aid through the domestic violence evidence gateways are shown to be significantly dependent on the response of the solicitors to whom they go to assess their eligibility and to those to whom they go to obtain their evidence, primarily health professionals and statutory services. This sample of women highlighted difficulties in obtaining evidence in a timely fashion and in the quality of the evidence when received. The response of these agencies, as gatekeepers of the legal aid scheme, to women affected by violence is vital.

Rights of Women, Women’s Aid Federation of England and Welsh Women’s Aid make the following recommendations to improve women’s ability to access legal advice and representation in vital family law proceedings to enable them to safe and equal futures for themselves and their families:-

1. Reflecting the 3 forms of evidence most identified by respondents to the survey as available to them, Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012 should be amended to include the following evidence:-
 - A letter from a domestic violence support organisation confirming that the applicant for legal aid has sought advice and support in relation to domestic violence (this could include local domestic violence outreach services including but not limited to members of Women’s Aid Federation of England and Welsh Women’s Aid, Independent Domestic Violence Advisor and Independent Sexual Violence Advisor services, local and national domestic violence helpline services and statutory services)
 - A letter from the police confirming that they have responded to a call or calls in response to an allegation of domestic violence perpetrated against the applicant for legal aid
 - A letter from a counsellor confirming the applicant for legal aid is receiving or has received counselling or other therapeutic support in respect of her experience of domestic violence
2. Responding to the challenges women experienced in obtaining evidence of domestic violence, there must be an improvement in the responses of those who act as gatekeepers to the legal aid scheme. This report clearly identifies solicitors, health professionals and other statutory services as key to assessing eligibility for legal aid and providing the evidence required to apply. Improved guidance, training and awareness raising from the Ministry of

Justice is needed to enable women affected by violence to be properly assessed in respect of their eligibility for legal aid and to obtain the necessary evidence to apply.

Only in this way will the Government move towards their aim to protect women affected by violence and to provide them with access to family law legal aid and therefore to the family law remedies which enable them to find safety and justice at the end of a violent relationship.

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Appendix A: Location of survey respondents

What area do you live in?

Answer Options	Response Percent	Response Count
Bedfordshire	1.2%	1
Berkshire	1.2%	1
Buckinghamshire	2.4%	2
Cambridgeshire	1.2%	1
Cheshire	0.0%	0
Cornwall	2.4%	2
Cumberland	1.2%	1
Derbyshire	1.2%	1
Devon	6.0%	5
Dorset	1.2%	1
County Durham	3.6%	3
Essex	6.0%	5
Gloucestershire	1.2%	1
Hampshire	3.6%	3
Herefordshire	1.2%	1
Hertfordshire	4.8%	4
Kent	2.4%	2
Lancashire	2.4%	2
Leicestershire	0.0%	0
Lincolnshire	2.4%	2
London	12.0%	10
Middlesex	0.0%	0
Northumberland	2.4%	2
Norfolk	0.0%	0
Northamptonshire	0.0%	0
Nottinghamshire	3.6%	3
Oxfordshire	1.2%	1
Rutland	0.0%	0
Shropshire	0.0%	0
Suffolk	0.0%	0
Somerset	1.2%	1
Surrey	2.4%	2
East Sussex	0.0%	0
West Sussex	2.4%	2
Staffordshire	3.6%	3
Warwickshire	1.2%	1
Westmorland	0.0%	0
Wiltshire	2.4%	2
Worcestershire	1.2%	1
Yorkshire	10.8%	9
Anglesey	0.0%	0
Breconshire	0.0%	0
Caernarvonshire	1.2%	1
Cardiganshire	0.0%	0
Carmarthenshire	0.0%	0
Denbeighshire	2.4%	2
Flintshire	0.0%	0
Glamorgan	6.0%	5
Merionethshire	0.0%	0
Monmouthshire	0.0%	0
Montgomeryshire	0.0%	0
Pembrokeshire	0.0%	0

Radnorshire	0.0%	0
	<i>answered question</i>	83
	<i>skipped question</i>	34