Cymorth i Ferched Cymru
Welsh Women's Aid
Rhoi Merched a Phlant yn Gyntaf
Putting Women & Children First

RIGHTS of WOMEN
helping women through the law

women's aid
until women & children are safe

Evidencing domestic violence: reviewing the amended regulations

Six months after the amendment of the domestic violence evidence criteria in April 2014, our continuing 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 that the domestic violence evidence criteria continues to prove a barrier to accessing family law legal aid for women affected by violence.

- 38% 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.
- One of the most common forms of evidence now includes one of the new forms of evidence; referral to a domestic violence support organisation by a health professional (20%).
- 75% of respondents said it was difficult (40.7%) or very difficult (34.3%) to find a legal aid solicitor in their area.
- 33% of respondents were having to travel between 5 and 15 miles to find a legal aid solicitor. 23% had to travel more than 15 miles.
- 58% of respondents took no action in relation to their family law problem as a result of not being able to apply for legal aid. 26% paid a solicitor privately and 26% represented themselves at court.

Rights of Women, Women's Aid Federation of England and Welsh Women's Aid have welcomed the Government's commitment to actively reviewing the legal aid regulations and the changes introduced in April. Although this research indicates that the amendments and additions to the evidence criteria have made a very slight difference to women's ability to access family law legal aid, the fact that 38% of women remain unable to evidence domestic violence in accordance with the amended evidence criteria demonstrates that it remains far too restrictive.

Once again we call on the Government to review the regulations, listen to experiences of women affected by violence and the organisations who support them and extend the regulations further to fully reflect the forms of evidence women are able to obtain.

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 2012[1] 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 had experienced domestic violence.[2]

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 and 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. These included new 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 referral to a domestic violence organisation by a health professional. Existing forms of evidence were also amended to widen and increase their practical application. These include the addition of new domestic violence protection notices and orders introduced since the implementation of the regulations and the removal of the 24 hour time period for admission to a refuge.

These are important extensions to the availability of family law legal aid but we do not believe they go far enough to reflect the lived reality of women affected by violence and the routes they seek to find safety from abusive relationships.

3. Overview of the research

Between 22 April and 22 October 2014 Rights of Women undertook a new online survey, *Monitoring the legal aid gateways III*, building on the surveys previously conducted and reported in *Evidencing domestic violence: a barrier to family law legal aid* and *Evidencing domestic violence: a year on.*[3] 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 182 responses.

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

[2] 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

[3] Ibid

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 (63.6%). 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 consistent with the responses reported in *Evidencing domestic violence: a barrier to family law legal aid* and *Evidencing domestic violence: a year on.*

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	63.6%	89
Residence orders	37.9%	53
Other issues relating to children	36.4%	51
Child maintenance and financial support for children	43.6%	61
Divorce	39.3%	55
Financial arrangements after divorce	33.6%	47
answered question		140
skipped question		42

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 (54.9%) identified a solicitor as having assessed their eligibility for legal aid. This is a significant reduction from 73.8% of respondents in *Evidencing domestic violence: a year on* and perhaps further evidence of the increasing challenges women face in finding a legal aid solicitor.

31% 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.* Only 4.1% identified the Legal Aid Agency website or helpline as the source of their assessment. 27% found out through advice and support organisations or family and friends.

We asked respondents *How easy or difficult was it to find a legal aid solicitor in your area?* 40.7% said it was difficult. 34.3% said it was very difficult. This compares to 31.3% of respondents saying it was difficult and 27.5% very difficult in *Evidencing domestic violence: a year on* and demonstrates the increasing challenge women face in obtaining family law advice and representation. 32.9% of respondents had to travel between 5 and 15 miles to find a solicitor, with a further 23.1% having to travel more than 15 miles. This demonstrates a significant increase in the number of miles women have to travel to obtain advice from 46.1% travelling more than 5 miles in *Evidencing domestic violence: a year on* to 56.1% in this reporting period.

4.4 Financial eligibility for legal aid

Although not its primary focus this research also demonstrates the impact of the means test on women's ability to access family law legal aid. 31.9% of women responding to the survey were ineligible for legal aid because their disposable income was above the allowed limits. 13.9% 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 these responses from two of the respondents.

"I am a low earner & single parent who at the moment has almost £5000 legal fees on credit cards, have a further £2300 to pay & £1000-£2000 more accumulating. I earn £7722 a year, have 2 children to support and don't know how I will ever pay this debt"

"I earn a low income, yet I've been assessed as having too much disposable income (they don't take into account living costs for utilities etc...) and when you aren't eligible you're expected to pay full solicitors costs - there's no help anywhere in between. I've had to face my violent ex partner in court twice now, and will have to continue to do so as I simply cannot afford costs"

4.5 Evidence of domestic violence

The number of respondents who did not have any of the forms of prescribed evidence in order to apply for family law legal aid has reduced slightly in this sample from the sample reported in *Evidencing domestic violence: a barrier to family law legal aid* (43%). 37.7% 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**
Evidence your abuser is on police bail for a domestic violence related offence	6.6%	4
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	0.0%	0
A bind over order made against your abuser for a domestic violence related offence within the past two years	1.6%	1
Evidence of ongoing criminal proceedings in relation to my abuser and his violence against me	0.0%	0
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 notice)	9.8%	6

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	6.6%	4
An undertaking given by my abuser within the past 2 years where I did not give a cross undertaking	0.0%	0
Evidence of my referral to a MARAC (Multi Agency Rick Assessment Conference) as a high risk victim of domestic violence within the past 2 years and where there is a plan in place	8.2%	5
A finding of fact made in family proceedings within the past 2 years that my abuser was violent to me	1.6%	1
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	18.0%	11
Evidence from Social Services that they have assessed me as being at risk of or experiencing domestic violence within the past 2 years	13.1%	8
Evidence from a women's refuge that I stayed there within the past 2 years	6.6%	4
Evidence from a domestic violence support organisation that you had been refused admission to a refuge because there was insufficient accommodation	4.9%	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	19.7%	12
I did not have any of the above evidence and could not apply	37.7%	23
I would have had one or more of the above evidence if the two year time limit did not apply	23.0%	14
	answered question	**61**
	skipped question	**121**

Of those women who did have one (or more) of the forms of evidence, two of the most common forms of evidence remain evidence from a doctor, nurse or midwife of an injury or condition resulting from domestic violence (18%) and evidence from social services (13%). However, it is a new form of evidence – evidence of referral to a domestic violence support organisation by a health professional represents the evidence women are most likely to have at 19.7%.

Criminal justice remedies remain the lowest of the available forms of evidence to women: evidence of an unspent conviction (0%); evidence of ongoing criminal proceedings (0%); and evidence of a caution (0%). However, the introduction of two new forms of criminal justice evidence - evidence that a perpetrator is on police bail or evidence that he has been subject to a bind over order in relation to domestic violence - do appear to have increased women's access to family law legal aid. Together they account for 8.2% of the available forms of evidence to women.

Again we asked women what alternative forms of evidence they might have 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	34.4%	11
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	18.8%	6
Evidence from the police confirming that I have called them as a result of domestic violence	46.9%	15
A letter from friends, family members or neighbours who have witnessed an incident of domestic violence	37.5%	12
A letter from a counsellor confirming I have received or am receiving counselling as a result of domestic violence	18.8%	6
A copy of my divorce petition confirming that my marriage broke down as a result of domestic violence	12.5%	4
Other (please specify)		17
	answered question	32
	skipped question	150

Their answers reflect the less formal, often non-statutory routes women take to 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 (34.4%); evidence of having called either the National Domestic Violence Helpline or All Wales Domestic Abuse and Sexual Violence Helpline (18.8%); or a letter from a counsellor confirming receipt of counselling as a result of domestic violence (18.8%). 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 46.9%, reflecting the attrition rate in the prosecution of domestic violence cases. Extending the evidence criteria to include these forms of evidence would have a very significant impact on women's ability to access family law legal aid.

However, in her response one respondent continued to identify the fundamental challenge presented by a restrictive list of evidence criteria saying *"the criteria to "prove" domestic abuse is still high and it is difficult to cross that even if the abuse has taken place - so many victims do not report the abuse as is well researched and documented".* We continue to argue that a more extensive list following the precedent of the evidence criteria list for applications under the domestic violence rule in the immigration rules would ensure that both the formal and informal routes women take to safety are reflected and that the most vulnerable are protected. There is precedent in the Immigration Rules of a more open and extensive list of evidence of domestic violence.[4]

[4] Paragraph 34 of the Immigration Rules

4.6 Obtaining evidence

We asked respondents to comment on the availability of the required evidence. Of the respondents who answered the question 46.2% did not have a copy of the evidence of domestic violence prior to applying for legal aid and of those 68.8% did not know who to ask to obtain the evidence. The majority of respondents (55.6%) relied upon the internet for information about how to get it.

Obtaining the evidence also presents considerable barriers for women in applying for family law legal aid. Although 73.9% respondents were able to obtain the evidence without charge, 17.4% had to pay over £20 for the evidence with 8.7% paying over £50. The majority of respondents were able to obtain the evidence either the same day or within 7 days. However, 31.8% of respondents had to wait more than 7 days to get it.

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. 58% of respondents who answered the question said they did nothing as a result of not being able to apply for legal aid. 26.1% paid a solicitor privately and 26.1 represented themselves at court.

Respondents very vividly described the impact that ineligibility for legal aid had upon them and the ongoing risks of violence it exposed them to.

"The law leaves me in a situation where my ex can come round when he wants to, text me, phone me and as long as he doesn't swear, make threats or hit me (and preferably mentions his need to see his son) I can't stop him. I and my kids are constantly frightened, living in lock down conditions and there is nothing we can do. ' It's hard to keep going. I have been and am suicidal. I can't cope. But there is no help."

"It's made things even harder, when I have had to find courage to speak about what's happened on top of that being denied the legal aid and terrified about going to court, only thing I can do is speak to women's aid etc to be there to support me"

"We couldn't get legal aid so the final straw was yesterday that my ex partner turned up unannounced and was abusive and aggressive to me in front of my child then refused to move, this resulted in the police turning up and telling them to move. Its the emotional well being of my children and how it impacts on them that I have concerns, he can try and do what he wants to me but the children shouldn't have to see this. My 5 and 7 year old have been through enough."

Others reported the emotional and financial costs of being forced to deal with proceedings directly themselves.

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

“It's impossible for woman fleeing domestic abuse 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. My husband refuses to engage in mediation or to resolve matters. He's only paying a fraction of child maintenance. I simply cannot afford to take him to court and continue to provide for myself and my children.”

“It is stressful enough coping with domestic abuse without the worry 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 very unfair.”

“I'm in a legal 'black hole' I don't qualify for legal aid and cannot afford a solicitor. So after years of sexual and emotional abuse I am left do deal with my son's father (the perpetrator) alone. How can this be right? Where do I go? Women's aid have been brilliant but I need legal advice.”

5. Conclusions and recommendations

This analysis of the amendments to the legal aid regulations demonstrates that by broadening the domestic violence evidence criteria the Government has made a step towards its promise to make family law legal aid available for those affected by domestic violence. The responses to our survey show that in particular one of the new forms of evidence, evidence of referral to a domestic violence organisation by a health professional, is enabling women to access family law legal aid.

However, 38% of women unable to evidence domestic violence is still too many. Despite the amendments the evidence criteria remains too restrictive and continues to deny women affected by violence access to the legal remedies which would afford them safety. The increase in women choosing to do nothing as a result of being ineligible for legal aid is of particular concern, because we know the devastating and sometimes fatal consequences that this can have.

This research demonstrates that with further amendments to the regulations the Government could make further progress towards their expressed intention to make family law legal aid available to those affected by domestic violence. By going further in reflecting the forms of evidence which women tell us they could present of domestic violence and by mirroring the forms of evidence of domestic violence required in other areas of law, the Government can achieve this aim.

Although not its primary purpose, this research also appears to demonstrate increasing challenges for women in finding legal aid solicitors. This could be evidence of a reduction in the number of legal aid providers in England Wales as the impact of the new and reduced legal aid scheme is being felt. Of greatest concern to us is the very fundamental barrier this presents to women in being able to access what is already a very restrictive scheme.

Rights of Women, Women’s Aid Federation of England and Welsh Women’s Aid call on the Government to:-

1. Further review and amend the legal aid regulations to extend the forms of evidence required to apply for family law legal aid 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.

Without ensuring access to family law legal aid women remain unable to access the remedies which afford themselves and their children safety and justice and the Government fails in its expressed commitment to protect them.

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Appendix A: Location of survey respondents

What area do you live in?		
Answer Options	Response Percent	Response Count
Bedfordshire	0.0%	0
Berkshire	3.1%	4
Buckinghamshire	1.5%	2
Cambridgeshire	1.5%	2
Cheshire	5.3%	7
Cornwall	1.5%	2
Cumberland	0.0%	0
Derbyshire	0.0%	0
Devon	3.1%	4
Dorset	1.5%	2
County Durham	0.8%	1
Essex	3.8%	5
Gloucestershire	0.0%	0
Hampshire	3.8%	5
Herefordshire	3.8%	5
Hertfordshire	2.3%	3
Kent	6.1%	8
Lancashire	1.5%	2
Leicestershire	3.8%	5
Lincolnshire	2.3%	3
London	17.6%	23
Middlesex	3.1%	4
Northumberland	0.0%	0
Norfolk	0.8%	1
Northamptonshire	2.3%	3
Nottinghamshire	3.8%	5
Oxfordshire	0.8%	1
Rutland	0.0%	0
Shropshire	0.0%	0
Suffolk	3.1%	4
Somerset	1.5%	2
Surrey	2.3%	3
East Sussex	0.0%	0
West Sussex	3.1%	4
Staffordshire	0.0%	0
Warwickshire	1.5%	2
Westmorland	0.8%	1
Wiltshire	0.8%	1
Worcestershire	1.5%	2
Yorkshire	6.1%	8
Anglesey	0.8%	1
Breconshire	0.0%	0
Caernarvonshire	0.0%	0

Cardiganshire	0.0%	0
Carmarthenshire	1.5%	2
Denbeighshire	0.8%	1
Flintshire	0.8%	1
Glamorgan	1.5%	2
Merionethshire	0.0%	0
Monmouthshire	0.0%	0
Montgomeryshire	0.0%	0
Pembrokeshire	0.0%	0
Radnorshire	0.0%	0
	answered question	131
	skipped question	51