

Evidence to the Bach Commission on Access to Justice

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Topic 1: The current state of access to justice

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2. **In a sentence, what are your biggest concerns about the state of access to justice? please provide up to three answers**
 - Domestic violence survivors are unable to access legal aid in family law cases either because they do not have the required evidence of the domestic violence or because they are financially ineligible for legal aid but cannot to afford to pay privately.

 - It has become too difficult and unaffordable for many law firms to continue to provide legal aid. This has led to legal aid deserts throughout the country.

 - Only survivors of domestic violence are deemed to need legal advice and representation. Other vulnerabilities are not taken into account. Women with disabilities, mental or physical illness, language, educational, financial and social barriers are not deemed to require legal advice or representation in order to conduct litigation. It is unconscionable that a destitute woman who does not understand English should be required to draft her own evidence or be expected to understand and comply with orders of the court.

3. How does Rights of Women's work intersect with the question of access to justice and how does current policy enable and undermine access to justice?

We hear first-hand the impact that LASPO has had on women in the family courts. We have conducted and published extensive research on the way in which LASPO has prevented domestic violence survivors from accessing legal aid. We draw on our most recent research report [Evidencing domestic violence: nearly 3 years on](#) in our evidence below. Since this research was published, the Court of Appeal found in favour of our legal challenge to Regulation 33 of LASPO. The Court of Appeal ruled that the 24 month time limit is unlawful. The [judgment \(\[2016\] EWCA Civ 91\)](#) (the Judgment) also requires the Ministry of Justice to add a form or forms of evidence to the list of domestic violence evidence which will allow victims/survivors of financial abuse to apply for family law legal aid.

Since the Judgment the Parliamentary Under-Secretary of State for Justice has confirmed that the Ministry of Justice is gathering data to inform new regulations, and Rights of Women welcomes this move. In the meantime temporary regulations have been laid and the Legal Aid Agency has provided new guidance effective from 25 April 2016.

The barriers to access to justice are numerous and significant. Whilst the redrafting of Regulation 33 may be helpful, it is not on any view going to be sufficient to provide access to legal advice and representation to those in need.

Through our research and experience and analysis of current law and policy, the following issues are of particular concern:

Evidencing domestic violence:

Our research shows that the list of acceptable evidence is too restrictive. Prior to the Judgment, most of the forms of evidence were subject to an arbitrary 24 month time limit, though perpetrators may remain a lifelong threat to their victims. Our evidence showed that 23% of women would have had one or more of the prescribed forms of evidence if the two year time limit was not in place. Disappointingly and despite the clear ruling of the Court of Appeal a new, albeit longer, time limit of 5 years has been introduced by the new interim regulations. This will mean that women with evidence of domestic violence continue to be denied access to justice due to an arbitrary time limit.

Helpfully, the new guidance to the interim regulations provides the Legal Aid Agency with discretion to accept a range of forms of evidence for survivors of financial abuse, including a letter from a domestic violence support organisation or a narrative statement setting out details of the abuse and why documentary evidence is not available. This approach is something we think should be extended to all other forms of abuse, not just financial abuse.

Our research shows that even with the 24 month time limit removed, 14% of domestic violence victims/survivors will not have the required documentation to evidence domestic violence. The regulations do not identify as victims of abuse those women who are seeking to leave long term coercive and controlling relationships where the abuse has not been reported to the police or where it has been reported but the police have considered they do not have enough evidence to pursue the allegations.

The means test:

The gap between those who are financially eligible for legal aid and those who can afford to pay privately is huge.

“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”¹

Income: When determining whether someone has the disposable income to pay privately, the Legal Aid Agency (‘the LAA’) calculates their gross income and deducts their outgoings. However, when calculating gross income, the LAA includes child benefit and child maintenance (which should be spent on the children and not on parents’ legal fees) and student loans for university and college fees.

Conversely, many unavoidable living costs such as food, utilities and council tax are not deducted as outgoings. Employment related costs are capped at £45 per month, (in reality the cost of travel to work is often far higher) and rent for people without dependants is capped at £545, which is unrealistic across many parts of the UK.

In short, the LAA makes completely unrealistic calculations to establish who has the income to pay privately for their own legal fees, and who should be granted legal aid.

Capital: Applicants, including those on benefits, are also assessed on their capital. The applicant’s home forms part of the calculation. The mortgage is deducted, but only up to the value of £100,000. The LAA will disregard £100,000 of the value of the main home that the applicant lives in (known as the equity disregard).

Example: Susie’s only source of income is benefits and she has no savings, but her house is worth £210,000. Her mortgage is £110,000.

Value of home:	£210,000
Mortgage (capped at £100k):	£100,000
Equity disregard:	£100,000
Amount to count towards total equity:	£10,000

Susie is therefore ineligible for legal aid.

For applicants who live in areas such as London where house prices are high, the mortgage is likely to be far higher than £100,000 and so their ‘disposable capital’ will be disproportionately high. For many people, their home is the only capital they have. For a woman on low or no income, her choices are either to sell the home (making herself and her children homeless) to pay for legal fees, or face her abuser alone in court.

Contributions: Even those who are eligible for legal aid may still have to pay something towards their legal costs. Many applicants are asked to pay a contribution from their income or capital. Given the problems highlighted in the way disposable income and capital are calculated, the contributions applicants are expected to pay are often unaffordable and result in the applicant losing or refusing legal aid.

Applicants seeking injunctions such as non-molestation orders and forced marriage protection orders need not provide evidence of domestic violence. They are, however, still subject to the

¹ Comment by a woman responding to Rights of Women’s survey. See full report: <http://rightsofwomen.org.uk/policy-and-research/research-and-reports/#Legal%20aid>

financial eligibility test. Therefore women affected by violence with very low income and capital are often required to make unaffordable contributions towards their legal aid.

Example²: Nina has one child. Her total monthly income is £1,200 and she pays £500 per month in rent. After deducting rent, council tax, utility bills, travel costs, groceries, and other essential expenses for the child, Nina has about £20 left over at the end of the month. Any money left over is normally all spent on irregular items such as school trips, replacing household goods or clothing. She has some debt as she is struggling financially.

However, the LAA has assessed her disposable income as £363.51 per month.

Total income:	£1,200
Rent:	- £500
Travel expenses (fixed amount):	- £45
1 Dependent child (fixed amount):	- <u>£291.49</u>
Total disposable income:	£363.51

Nina is eligible for legal aid but will need to pay a monthly contribution of **£18.38** towards her legal aid.

The National Centre for Domestic Violence (NCDV) collated data on legal aid eligibility during October and November 2014. The data showed that one in five of the 2,026 callers to the NCDV helpline who wished to apply for a non-molestation order, were unable to proceed with their application because they could not afford the legal aid contributions.

Gathering evidence of means: Applicants are required to provide evidence of their means such as bank statements, wage slips, benefit letters, mortgage or rent statements and childcare receipts³. Many applicants, especially those fleeing domestic violence, do not have access to that evidence, resulting in the refusal of legal aid.

Availability of legal aid solicitors:

According to the Ministry of Justice's statistics, there has been a 20% drop in the number of civil legal aid providers from April-June 2012 to Jan-March 2015⁴. Many firms and organisations have stopped or reduced the legal aid work they take on. One reason for this is that the fixed fees that they receive for the work are so low that legal aid work is not financially viable for them as a business.

The knock on effect of this is that even women who are eligible for legal aid are finding it increasingly difficult to find a solicitor to represent them. 75% of respondents to our survey 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.

² The figures in this example are for illustration purposes only

³ The evidence has to be for a specific period, normally covering the 3 month period up to the date of the application

⁴ *Legal Aid Statistics in England and Wales January to March 2015*, Ministry of Justice

Topic 2: Transforming our justice system

4. In a sentence, what practical steps could be taken to ensure access to justice for all was a reality? Please provide up to three answers

- Amend the domestic violence evidence criteria so that it mirrors that contained in the immigration rules and so that it includes letters from specialist support organisations assessing the applicant as having experienced domestic violence.
- Amend the domestic violence evidence criteria to give the Legal Aid Agency discretion to grant legal aid to survivors of domestic violence based on a narrative statement where no documentary evidence is available.
- Amend the means test so that it bases its calculations on the applicant's actual financial circumstances and so that it does not take into account capital in a property.
- Review the legal aid scheme so that it is affordable for law firms to undertake legally aided work to an acceptable standard.
- Extend legal aid to people with other vulnerabilities including illnesses, disabilities and language barriers.

5. Please outline in more detail ideas for practical solutions to the crisis in access to justice. These could range from minor alterations to radical overhauling in our justice system.

Domestic violence evidence:

The Government must undertake a further review and amend the legal aid regulations to extend the list of acceptable evidences required to apply for family law legal aid (and we are pleased that the Government has indicated that this review is now taking place). The list should reflect the evidence women tell us is available to them and should mirror other policy areas such as the Immigration Rules. The evidence checklist should include letters of support from independent domestic violence advocates and from charities and organisations who specialise in supporting survivors of domestic violence. The people who work at specialist domestic violence charities and organisations are qualified to assess whether a person has experienced domestic violence and they should be taken at their word.

There will be cases where a survivor is not able to provide any documentary evidence, particularly those who have experienced non-physical forms of domestic violence. The Legal Aid Agency should have a discretion to provide legal aid to a survivor of domestic violence based on a narrative statement, which can include an explanation as to why she is not able to provide one of the forms of evidence included in the list. She should be permitted to attach other forms of evidence which may corroborate her narrative statement, such as statements from witnesses.

Improving the means test:

- Review and amend the income and capital thresholds so that survivors who cannot afford to pay privately can access legal aid
- Child benefit, child maintenance and student loans be disregarded as income when calculating gross income
- The income test should take into account realistic personal expenditure
- Remove or amend the caps on rent, mortgage payments, mortgage disregard and equity disregard to reflect current housing costs. These should be regularly reviewed.

- Equity in property should be completely discounted if the applicant a) lives in the property b) lived in the property and fled it due to domestic violence c) jointly owns the property and the other owner is unwilling to sell, or d) does not have access to the capital for some reason.
- There be a discretion to waive the evidence of means requirements for survivors of domestic violence

Availability of legal aid solicitors:

Urgently review the impact of the current legal aid scheme and rates on the availability of publicly funded legal advice and representation in England and Wales.

Rights of Women

28th April 2016