



Federation Northern Ireland

# The Northern Ireland Courts & Tribunals Service

---

## Access to Justice Review Northern Ireland

---

December 2011

---

---

**Women's Aid Federation Northern Ireland**

129 University Street  
BELFAST BT7 1HP

Tel: 02890 249041

Fax: 02890 239296

General Email: [info@womensaidni.org](mailto:info@womensaidni.org)

Website: [www.womensaidni.org](http://www.womensaidni.org)

24 Hour Domestic Violence Helpline - 0800 917 1414

---

## **Core Work of Women's Aid: Background Information & Statistics**

### **1.0 Introduction**

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic violence and providing services for women and children. We recognise domestic violence as one form of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic violence and, through our work, promote healthy and non-abusive relationships.

### **2.0 Core Work of Women's Aid**

The core work of Women's Aid in Northern Ireland, including Women's Aid Federation Northern Ireland and the 10 local Women's Aid groups is:

- To provide refuge accommodation to women and their children suffering mental, physical or sexual abuse within the home.
- To run the 24 Hour Domestic Violence Helpline.
- To provide a range of support services to enable women who are leaving a violent situation to rebuild their lives and the lives of their children.
- To provide a range of support services to children and young people who have experienced domestic violence.
- To run preventative education programmes in schools and other settings.
- To educate and inform the public, media, police, courts, social services and other agencies of the impact and effects of domestic violence.
- To advise and support all relevant agencies in the development of domestic violence policies, protocols and service delivery.
- To work in partnership with all relevant agencies to ensure a joined up response to domestic violence.

### **3.0 Women's Aid Statistics (2010 - 2011)**

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 1058 women and 754 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 3,450 women and 3,739 children accessed the Floating Support service enabling women to access support whilst remaining in their own homes and communities.
- Move-on houses for women and children leaving refuges.
- In 2010/11 the 24 Hour Domestic Violence Helpline, open to anyone affected by domestic violence, managed 38,296 calls. This represented an increase of 18% on 2009/10.

### **4.0 Additional Women's Aid Statistical Data**

- Since 1999, Women's Aid across Northern Ireland gave refuge to 14,714 women and 14,356 children and young people.
- During the last 16 years Women's Aid Federation Northern Ireland managed 282,860 calls to the 24 Hour Domestic Violence Helpline.

### **5.0 Statistics: Domestic Violence & Violence Against Women**

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”;
- The joint NIO, DHSSPS Strategy “Tackling Violence at Home” estimates that the cost of domestic violence in Northern Ireland, including the potential loss of economic output, could amount to £180 million each year.
- UNICEF research released in 2006, showing per capita incidence, indicates that there are up to 32,000 children and young people living with domestic violence in Northern Ireland.
- Where the gender of the victim was known, 76% of adult victims of domestic crimes recorded by the PSNI in 2010/11 were female.\*
- Over 30% of all domestic violence starts during pregnancy. \*\*

## 6.0 Domestic Violence: Crime Statistics

- Domestic Violence is a crime. PSNI statistics for 2010/11 indicate that there were more recorded crimes with a domestic motivation (9,546) than the combined total of all the following crimes (9,471). These include all recorded sexual offences (2,120), robbery (622), armed robbery (562), hijacking (122), theft or unauthorised taking of a motor vehicle (2719), arson (1884) dangerous driving (699), handling stolen goods (194) and offences under anti-terrorism legislation (19).
- PSNI Statistics for 10/11 indicate that they responded to a domestic incident every 23 minutes of every day of the year.
- The total of 9,546 crimes with a domestic motivation in 10/11 represents an average of approximately 1 domestic crime every 60 minutes in Northern Ireland.
- The number of all recorded offences of murder in Northern Ireland in 10/11 total 20. Those classed as having a domestic motivation total 7. Therefore, 35% of all murders in Northern Ireland in 10/11 had a domestic motivation.
- There were 550 rapes (including attempted Rapes) in Northern Ireland in the period 2010/11.

(Source: PSNI Statistics 2010/11)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.
- Violence Against Women is not limited to domestic violence, it includes amongst other crimes murder, rape, sexual assault, sexual exploitation, trafficking, sexual stalking and sexual harassment.

(\*Findings from the PSNI Crime Statistics Report 2010/11 N.B. "Adult" defined as aged 18 and over)

(\*\* Women's Aid Federation NI)

## **7.0. Comments**

### **Access to Justice Review:**

- 7.1 Women's Aid Federation Northern Ireland welcomes the publication of the Access to Justice Review Northern Ireland Report and the opportunity to comment upon it on behalf of our ten local groups.
- 7.2. On Thursday 20<sup>th</sup> January 2011 representatives from our local groups met with Mr Jim Daniell and his colleagues from the Review Team to discuss access to justice in Northern Ireland and to highlight specific matters of concern identified by our organisation and the women who use our services. The following comments reflect the collective views of the representatives of our local groups.
- 7.3. We would wish to preface our comments by supporting the Review Team's suggestion to the Minister that the Department of Justice and Legal Services Commission establish a joint task force to manage small teams with policy and project management expertise and that will each take ownership of the groups of related action points (Recommendation 1, Pg.137). We feel that this represents a productive approach.

### **Issues Identified by Women's Aid:**

#### **8.0. Guiding Principles:**

- 8.1. Our local groups support many of the guiding principles underpinning the review and welcome the objective that the final report will explore many of these issues in greater detail.
- 8.2. In particular we feel that the aspiration to "fair and equal access to justice as contained in point 2.2 (Pg.17) of the document, is extremely positive, as is the statement in point 2.13 (Pg.19) in respect of Legal Aid provision, specifically, that "It is important that Legal Aid is viewed as an integral and important component of the Executive's strategy for safeguarding and supporting the vulnerable in society and targeting economic and social need." This is a view with which Women's Aid fully concurs.
- 8.3. We further welcome the embracing of human rights imperatives and the recognition of the need for a high quality, efficient and independent legal profession as being, "of critical importance in sustaining access to justice and the rule of law, now and into the future" (Point 2.12, Pg.19)

#### **Delays in the System**

- 8.4. Our organisation had raised some significant concerns regarding delays in the system with the Access to Justice Review team and therefore we welcome the recognition contained in the report of that, "those responsible for

developing policy on access to justice and delivering legal aid services should be committed to supporting the efficient workings of the justice system and in particular to minimising delay.” (Point 2.10, Pg.19) We further support the recommendation that the processes for decision-making on the grant of legal aid are streamlined and efficient and also that structures, quality assurance and the policy framework should reinforce the efforts of the judiciary in case management. (Point 2.10, Pg.19)

- 8.5. It is the experience of Women’s Aid that the consequences of protracted proceedings can be enormously damaging, particularly to the ability of the victim to retain confidence in the system and to remain within the process.
- 8.6. It is also important to note that perpetrators of domestic violence often utilise the legal process to further exert power and control and to continue to abuse their victim through intentionally delaying, frustrating and subverting the process. This is particularly evident where the perpetrator is in receipt of Legal Aid and the victim is not. Financial Abuse is also a noted characteristic of domestic violence.
- 8.7. Women’s Aid would therefore welcome greater steps to ensure that costs and/or financial penalties are imposed where there is demonstrable evidence of a clear and deliberate attempt to unnecessarily obstruct and delay the legal process.
- 8.8. We fully concur with the recommendation 10 (Pg.137) that there is a pressing need for the development of a reliable mechanism for measuring and recording average costs in Northern Ireland and that this represents a critical part of the value for money equation and a meaningful means of benchmarking against other jurisdictions.
- 8.9. It is also our view that the timely and concise availability of information on court dates, times and the necessity to attend, would substantially improve delays in the system. Frequently, women using our services have expressed their concern that this information is slow to appear and in some cases either does not arrive, or is unclear or inaccurate. Women have reported being sent to the wrong court building and arriving for proceedings only to be told that their appearance is not required.
- 8.10. This is not only an additional unnecessary strain for individuals at a vulnerable time in their lives but also imposes practical and financial constraints in respect of ensuring childcare and transportation. Transport availability and costs can be particularly problematic for those living in rural areas in Northern Ireland.
- 8.11. Further, we would wish to highlight the scheduling of cases in court and to request that improvements be made in this area. It is not uncommon for women to attend court first thing in the morning, only to find that they are still waiting for proceedings to commence, in the late afternoon. In addition to being deeply frustrating, this presents particular difficulties for women with young children and for those with caring responsibilities.

8.12 It is in this context that we commend the Review Team for drawing the Minister's attention to continuing concerns about delay in the civil and criminal justice systems (Point 2.16, Pg.20) and urge that this matter be addressed as a priority.

## **9.0 Civil Legal Aid**

### **Access to Justice**

9.1. For some considerable time, Women's Aid has consistently expressed to Government, our serious concern that many women in Northern Ireland have found themselves unable to access Legal Aid for Non-Molestation Order proceedings in cases involving domestic violence.

9.2. As a direct result of the prohibitive financial eligibility criteria for Civil Legal Aid under the Green Form Scheme, women deemed ineligible were being forced to make an intolerable choice between seeking protection under the law for themselves and their families and ensuring their financial stability and avoiding debt.

9.3. Whilst Women's Aid maintains that those who have experienced domestic violence should be able to access protective orders free of charge, we fully supported and welcomed the Minister's announcement of 30<sup>th</sup> December 2010, removing the upper earnings and capital limits for persons applying for Legal Aid in non-molestation order proceedings.

9.4. It is our view that this decision represented an enormously positive and progressive approach has the potential to make a demonstrable difference to the ability of those who have experienced domestic violence, to access justice in Northern Ireland.

### **Magistrates Courts**

9.5. We support the Review Team's recommendation (13, Pg. 138) that the Department of Justice and the Legal Services Commission should plan to implement a fixed means test in the Magistrates Court and that they, "should pay particular attention to introducing efficient business processes...and ensuring that the business of the courts is not impeded."

9.6. This has the potential to simplify the process and provide much greater clarity. It is essential however that the test is proportionate and appropriate and does not serve to further financially disadvantage the most vulnerable, including victims of domestic and sexual violence, seeking legal protection for themselves and their families.

9.7. We would therefore welcome greater detail in this respect and the opportunity to engage with the Department of Justice and the Legal Services Commission on any future plans and proposals.

- 9.8. Women's Aid also sees considerable merit in recommendation 15 (Pg.138) which suggests that as part of planning for the implementation of the fixed means test, the suitability and operation of the provisions in legislation, for defraying the costs of privately funded defendants who are acquitted or where the case is dropped, should be researched.
- 9.9. Our organisation would contend that any research in this area should also consider the award of costs in cases where it is clear that unnecessary delay has taken place and/or where there is evidence of an attempt by any party to the proceedings, to delay or subvert the process.
- 9.10. Women's Aid also supports recommendation 16 (Pg.138) that the Department of Justice Consults with the Legal profession and the Judiciary about the production of clear objective criteria for identifying those cases in the Magistrates Court which merit certification for counsel by virtue of their unusual gravity or complexity.
- 9.11. We concur with recommendation 17 (Pg.138) that the review should analyse the cause of the rise in the average costs for magistrates' courts cases and to the extent that the increase is attributable to the 2009 Rules, that some corrective action is considered.

#### **Civil Legal Aid – Draft Funding Code**

- 9.12. Our organisation welcomes the endorsement of the prioritisation proposed for the Draft Funding Code with its classification of special children order proceedings where the child is at risk as being a top priority and the identification of domestic violence as a high priority matter. (Recommendation 40, Pg.141)
- 9.13. We further support the view that it is essential that any future research onto legal needs in Northern Ireland, should be supplemented by an assessment of the legal needs of children and young people with particular attention to accessibility of advice and assistance, the way in which it is delivered and their experience of the justice system as it effects them. (Recommendation 42, Pg. 141)
- 9.14. Women's Aid would strongly suggest that any research in this area should explore the experiences of children and young people who have experienced domestic violence and our organisation would welcome the opportunity to engage in this process.

#### **10.0. Advice, the Voluntary Sector and Partnership**

- 10.1 Women's Aid welcomes some of the innovative approaches to the provision of legal advice services as outlined for consideration in the discussion document. We also support the cross departmental approach being suggested, in respect of developing an advice and support model.

- 10.2. We fully support the recommendation (44, Pg.141) that the advice services provided by the Housing Rights Service should be sustained in place and consideration given to whether lessons learnt from its operation might be applicable in other contexts.
- 10.2. Women's Aid is also encouraged by recommendation 45, (Pg.141) which suggests that the Law Society should be proactive in operating its waiver in a way that facilitates voluntary sector bodies in employing solicitors able to give advice to third parties, while ensuring that the necessary client protection arrangements are in place.
- 10.3. It is enormously positive that the review team has specifically recommended that subject to the exclusions contained in Schedule 2 of the Access to Justice (NI) Order 2003, it should remain possible for a person, regardless of means to secure advice and assistance on any point of Northern Ireland Law provided that, if the advice is publically funded, it secures demonstrable benefit for the client who, if in funds, could have been expected to want to pay for it privately. (Recommendation 46, Pg.142)
- 10.4. In respect of recommendation 48, we would refer to our comments on mediation and alternative dispute resolution contained in point 11.0.
- 10.5. Our organisation fully endorses the view that recipients of funding for legal advice services, including solicitors and the voluntary or private sector, should commit to providing a limited period of free advice to all who approach them regardless of means. (Recommendation 53, Pg. 142)
- 10.6. We further concur with the stated belief that it is reasonable to review the structure and rates of payments for legal advice and assistance, or legal help, to ensure a system that is straightforward to administer and through standard rates, fairly reflects the level of service in cases that extend beyond the period of free advice. We would also contend that this is also likely to improve transparency for service users. (Recommendation, 54, Pg. 142)
- 10.7. To this end, we also agree that the Department of Justice should be a member of the DSD led Government Advice and Information Group and that they should prepare guidance on the availability of sources of generalist and specialist advice for use by advice organisations and solicitors in considering whether they refer or signpost clients to other providers appropriate to their needs. (Recommendation, 57, Pg. 143)

## **11.0. Mediation and Alternative Dispute Resolution**

- 11.1. Women's Aid notes the considerable focus on Mediation and Alternative dispute resolution contained in the Review document. Whilst Women's Aid fully recognises and acknowledges the potential benefits of mediation and alternative dispute resolution in certain types of case, we have serious concerns regarding its use in cases involving domestic violence given both the nature and gravity of the crime and are deeply opposed to this type of approach in this context.

- 11.2. Our organisation would also strongly reject and oppose any attempt to introduce incentives to mediation in cases involving domestic violence. In utilising incentives to what must be a voluntary process, we would be extremely concerned that those who have experienced domestic violence would come under pressure to engage in a process, which may be contrary to their safety and best interests. In this context we feel that recommendation 66 (Pg.144) needs to be clarified particularly in respect of financial incentives to encourage mediation in publically funded cases.
- 11.3. We would also seek clarification as to the consequences of rejecting mediation. It would be utterly unacceptable to Women's Aid that a decision not to engage in mediation could be used against a victim of domestic violence during legal proceedings, for example, to suggest that they were being obstructive or uncooperative.
- 11.4. We do however recognise that there may be merit in the use of carefully conducted mediation in cases involving child contact disputes, where there has been a history of domestic violence. However, it is the view of Women's Aid that extensive and accredited training, stringent safeguards and appropriate support mechanisms would be required throughout the process and potentially beyond.
- 11.5. Women's Aid would also wish to state our continued opposition to any use of community restorative justice in cases of domestic violence. This is in our view, potentially contrary to the safety and well-being of victims and their families. It could also serve to compromise the safety and co-operation of witnesses and thereby act against the interests of justice

## **12.0 Family and Children**

- 12.1. We agree with recommendation 79, (Pg.145) that whilst private family law should remain within scope for the financially eligible, legal aid needs to be structured in a way that facilitates resolution but does not involve the taxpayer in funding parties to use the courts as a means of perpetuating and exacerbating disputes. Women's Aid would add that the court system should not be used as a means of perpetrating abuse whether financial, emotional or psychological.
- 12.2. Whilst we agree that legal aid should incorporate disincentives against protracted court proceeding and against issues being brought back to court unnecessarily, care should be taken when incentivising early agreement, particularly in cases of domestic violence where as a result of the abuse they have sustained, frequently over a protracted period, the victim may feel coerced into agreement. (Recommendation, 80, Pg.145)
- 12.3. Women's Aid fully supports the view that the time is now right for a fundamental review of family justice in Northern Ireland which could be carried out under the auspices of the interested departments and/or the Northern Ireland Law Commission and that this review should commence as soon as

the Norgrove Review reports. We further agree that it should be time limited with clear terms of reference. (Recommendation 89, P.146)

### **13.0. Financial Eligibility for Civil Legal Aid**

13.1. In respect of recommendation 121, (Pg.150) our organisation agrees that it is important that the applicability of the Scottish civil legal aid eligibility and contributions arrangements to Northern Ireland, is included in the modelling exercise, focusing on the consequences of raising eligibility limits while significantly increasing levels of contributions for those at the higher levels of disposable income.

### **14.0. Conclusion – Additional Issues for Consideration**

#### **Early Guilty Pleas**

11.1 Women's Aid is of the opinion that more pro-active identification of cases where there is a potential for an early guilty plea, could be very beneficial for those who have experienced domestic violence.

11.2. We would however add the caveat that there is a necessity for clear sentencing guidelines to be in place outlining the extent of any reduction in sentence for an early guilty plea. Similarly we remain strongly of the view that too often in cases involving domestic violence the sentence is not commensurate with the crime. The court should avoid giving the impression to convicted perpetrators of domestic violence and to the wider public, that an early guilty plea reduces the gravity of the offence or the seriousness with which the court views it. It should have no impact on the punitive nature of the sentence rendered.

#### **Interests of Victims**

12.0. Women's Aid does not hold the view that the interests of Victims can be pursued solely through the Department of Justice's Code of Practice for Victims, consultation.

12.1. It is our contention that the care and treatment of victims at every stage of the criminal justice process is vital to ensuring access to justice. This requires an integrated, consistent multi-agency approach which endeavours to ensure that wherever and whenever possible there is a continuity of care for victims.

12.2. This is ultimately in the best interests of all parties involved in the process. Enhanced care and consideration for the needs of victims can improve public confidence in the system and in reporting.

12.3. The delivery of clear and concise information, including decisions by the PPS in respect of prosecution and adjudications on Bail applications and rigorous risk assessment procedures, can help not only to reassure and to enhance safety but also to keep the victim and witnesses willingly and co-operatively

engaged in the process. Similarly, more effective court management can avoid stressful, costly and unnecessary delays.

### **Professional Standards for Legal Practitioners**

- 13.0. Women's Aid recognises that there are some excellent examples of best practice on the part of legal professionals in Northern Ireland.
- 13.1. We would however welcome the establishment of best practice, particularly in the area of family law and as such, we fully support efforts to ensure quality service provision.
- 13.2. We also support the proposal to introduce a statutory register for practitioners wishing to provide legally aided services.
- 13.3 Women's Aid is however deeply concerned by reports, particularly from England and Wales of "Legal Aid Deserts" in which it is virtually impossible or impractical to access a legally aided solicitor.
- 13.4. We would urge that any proposed changes to legal aid consider the need to ensure adequate levels of service provision across Northern Ireland. A failure to do so is contrary to the interests of justice.
- 13.3. In respect of domestic violence, our organisation remains of the strong opinion that Legal Practitioners at all levels should engage in domestic violence awareness training and that this training should be embedded in their programmes of continuing professional development.

For further information about this response contact:

Annie Campbell  
Director  
Women's Aid Federation Northern Ireland  
129 University Street  
BELFAST  
BT7 1HP  
Tel: 028 9024 9041

Website: [www.womensaidni.org](http://www.womensaidni.org)

24 Hour Domestic Violence Helpline - 0800 917 1414  
open to anyone affected by domestic violence