



Federation Northern Ireland

## **RESPONSE TO**

# **The Northern Ireland Legal Services Commission**

## **Consultation on The Northern Ireland Funding Code**

### **October 2009**

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. 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. 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. Women's Aid Statistics (2007 - 2008)**

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 1102 women and 896 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 24 Hour Domestic Violence Helpline managed 24,153 calls.

- 2,205 women and 1,831 children accessed the Floating Support service supporting women in their own home.
- 2,767 children and young people accessed protection and support services.
- Move-on houses for women and children leaving refuges.

#### **4. 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”;
- Domestic Violence is a crime. PSNI statistics for 2008/09 indicate that there were more recorded crimes with a domestic motivation (9,211) than the combined total of all the following crimes (9,155). These include all recorded sexual offences (1,943), robbery (650), armed robbery (508), hijacking (125), theft or unauthorised taking of a motor vehicle (2,954), arson (2,002) dangerous driving (746), handling stolen goods (220) and offences under anti-terrorism legislation (7).
- PSNI Statistics for 08/09 indicate that they responded to a domestic incident every 22 minutes of every day of the year.
- The number of all recorded offences of murder in Northern Ireland in 08/09 total 24. Those classed as having a domestic motivation total 7. Therefore, 29.2% of all murders in Northern Ireland in 08/09 had a domestic motivation.
- There were 381 rapes and 23 attempted rapes in Northern Ireland in the period 2008/09.

(Source: PSNI Statistics 2008/09)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.
- 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 2007/08 were female.\*
- Over 30% of all domestic violence starts during pregnancy.\*\*
- 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.

(\*NIO Statistics & Research Branch Bulletin 16/2008 “Experience of Domestic Violence: Findings from the 2007/08 Northern Ireland Crime Survey, 2008, pg.2. N.B. “Adult” defined as aged 17 and over)

(\*\* Women’s Aid Federation NI)

Women’s Aid Federation NI welcomes the publication of this consultation on The Northern Ireland Funding Code and the opportunity to comment upon it on behalf of our members.

### **General Comments:**

- We would wish to begin our response by acknowledging and welcoming the decision to recognise domestic violence proceedings specifically, as one of the categories to be given higher priority in the context of funding legally aided services in Northern Ireland. (Consultation Paper on the Proposed Procedures, Pg.2)
- We would however contend that domestic violence should be considered in the top band together with Special Children Order proceedings and proceedings where the individual’s freedom is at risk. There is a possibility of immediate risk of harm or even death should an order not be granted in cases involving domestic violence.
- In respect of the priority given to civil proceedings where the client is at real and immediate risk of loss of life or liberty, we have concerns that this may prove beneficial to the perpetrator of domestic violence in many instances and would seek clarification on whether this will be of benefit to women seeking Non-Molestation Orders.

- In the context of the Consultation Paper on the Proposed Criteria, we intend to confine our comments largely to the contents of Chapter 3: Criteria for Family Cases (Pages 14-17) as we feel that this Chapter has the greatest bearing for the women and children who use our services.

### **Help At Court**

- However, in respect of Chapter 2: General Funding Code and Levels of Service, (2.10, Pg.11) we would wish to take the opportunity to welcome the introduction of the category “Help at Court”.
- Women leaving violent and abusive relationships often have no or limited access to benefits, experience delays in the processing of benefit applications, or other financial resources. As such debts can accumulate such as rent arrears etc, which may subsequently arise in the Small Claims Court.
- It would be of assistance to women in these circumstances to extend legal aid to cover their representation at said proceedings.

### **The “No Delay” Principle**

- From our experience we know that lengthy proceedings and excessive delays can be an enormously stressful burden for women and children. We acknowledge the stated commitment to progress contested family case proceedings in accordance with the “no delay” principle and would urge that this is translated into practice. (3.3, Pg.14)

### **Access to Justice for Women Who Have Experienced Domestic Violence**

- Women’s Aid considers it intolerable that women who have experienced domestic violence in Northern Ireland are forced to choose between discharging their financial responsibilities and seeking protection for themselves and their families. Our organisation strongly supports the principle that a financial eligibility test for access to civil legal aid should not prevent access to justice for women and their children experiencing domestic violence.
- We are both deeply concerned and disappointed that the consultation document does not take the opportunity to address the provision of Legal Aid for women seeking Non-Molestation Orders and occupation orders in Northern Ireland as a specific category.

- We are additionally concerned that the document does not address the additional challenges that women with no recourse to public funds face in producing evidence of their financial eligibility for legal aid.
- These are particularly significant omission in the context of the stated objective of prioritising domestic violence proceedings.
- The overall cost of seeking a Non-Molestation Order can be prohibitive for women who are not deemed eligible for Legal Aid.
- Similarly, it is our experience that some women in receipt of benefits are unable to obtain legal aid.
- Legal representatives and service users have reported to us that the cost of obtaining a full Non-Molestation Order, if the matter is contested in court, can amount to as much as £1,000.
- To compound this financial burden, the full order must be sought within two weeks of the Ex-Parte order being granted.
- This has resulted in many women either deciding not to seek an order, or not pursuing the full order due to a lack of funds.
- Women's Aid would request that the issue of legal aid for Non-Molestation Orders, in cases involving domestic violence should be reviewed as a matter of urgency, with an automatic entitlement to legal aid in these cases being established.
- As a step in this direction we would request that the possibility of granting a waiver should be explored, constructed in such a way as to ensure no woman is prevented from seeking an order due to lack of funds.
- We note that in Scotland, effective from the Spring of 2009, the upper disposable income threshold for civil legal aid was increased to £25,000 with a tapered system for those with annual disposable incomes of between £10,306 and £25,000 and suggest the system there could be investigated.
- Whilst we would welcome a decision to increase the disposable income threshold, Women's Aid feels that any such proposal should recognise the changed and often uncertain financial circumstances of women leaving violent and abusive relationships. As such we would request that the criteria should exclude joint assets from any assessment of disposable income. Women leaving abusive relationships seldom have access to these funds.

- We are also interested in Part IV of the Family Law Act 1996 as pertains to England and Wales. This allowed for a more holistic response to domestic violence.
- In particular Section 60 of the Act offered the opportunity to pilot new powers for third parties to take out injunctions on behalf of women and with their consent. This is an interesting proposal which we feel should be explored further.

## **Mediation**

- In respect of the signalled commitment on the part of the Commission to adopt Family Mediation and Help with Mediation in the context of Family Cases (3.2, Pg.14), we have deep concerns about this practice if it is to be applied in the context of domestic violence.
- This is a critical matter of ensuring the safety of women who have experienced domestic violence and also the safety and well-being of their children. It is our strong opinion that mediation in the context of domestic violence cases is entirely inappropriate.
- We would seek greater clarification on the specific detail of the Mediation process.
- In addition to our aforementioned concerns, we would be opposed to any process which did not ensure the strict confidentiality of the information shared by the participants.
- We would also seek clarification on the training process and procedures for those facilitating mediation sessions.
- It is our view that it is essential that these individuals be appropriately trained in domestic violence awareness and can signpost individuals to support services where necessary.
- We note the comment in 3.2 (Pg.14) that, “The Commission understands that Northern Ireland has insufficient mediators to allow for mandatory pre-proceedings mediation at this time.”
- Women’s Aid would seek assurances that in cases involving domestic violence, mediation will not be mandatory and an exemption from the process will be made available without prejudice.
- In the current dispensation, the consultation document states that, “Family Help Higher or Legal Representation will not be refused on the grounds of failure to attempt settlement if the client is genuinely and urgently in need

of representation; or that any delay will cause a significant risk of a miscarriage of justice, or unreasonable hardship to the client; or irretrievable problems in handling the case; or there will be a risk to the life, liberty or physical safety of the client or his or her family.” (3.10, Pg.17)

- We welcome this stipulation however we are of the strong opinion that this approach should apply irrespective of the type of legal aid sought. We would cite the example of satellite litigation where a woman may be engaged in a domestic violence case but may also be seeking child contact/residence.

### **Child Contact/Residence**

- In the context of child contact/residence, we are anxious that the Commission should recognise the particular circumstances of contact proceedings where there is a history of domestic violence.
- The impact on children and young people of witnessing domestic violence and the correlation between acts of violence and abuse on the mother and similar acts perpetrated on the children has been extensively explored and recognized in statistical data and research.
- Kaur (2002)<sup>1</sup> cites data from Social Services in Merseyside (1999) which indicated that domestic violence was a feature in approximately 40-50% of cases that are brought to the attention of child protection case conferences.
- We would cite the practice in Australia as noted in the above article, of conducting a welfare check which instructs the court to consider the need to protect the child from physical or psychological harm caused, or that may be caused, by any family violence involving a child or a member of her family.<sup>2</sup>
- We are of the view that in such cases the female applicant should be automatically entitled to Family Help Higher and to Legal Representation.
- Finally, we contend that Junior Counsel should be granted as standard procedure in such cases.

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<sup>1</sup>Kaur, R (2002); Contact, Domestic Violence and Risk Assessment:  
[http://www.rightsofwomen.org.uk/pdfs/speech\\_rk\\_121102.pdf](http://www.rightsofwomen.org.uk/pdfs/speech_rk_121102.pdf)

<sup>2</sup> Family Law Act (Australia) 1975: Sections 60CF & 60CG:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/fla1975114/](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/)

**For further information about this response contact:**

**Gillian Clifford  
Policy & Information Worker  
Women's Aid Federation Northern Ireland  
129 University Street  
BELFAST BT7 1HP  
Tel: 028 9024 9041**

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