



Consultation response to

**Proposals for the Reform of Financial
Eligibility for Civil and Criminal Legal Aid**

Department of Justice

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*Open to **all women and men** affected by domestic violence*

Contents

Section		Page
1	Introduction	3
2	Core work of Women's Aid	3
3	Women's Aid statistics (2011 - 12)	4
4	Additional Women's Aid statistical data	4
5	Statistics: Domestic violence and violence against women	4
6	Domestic violence: Crime statistics	5
7	Consultation response	6
8	Executive Summary – General Points	6
9	Civil Legal Aid Means Test	8
10	Criminal Legal Aid Threshold Limits	12
11	Legal Advice and Assistance (the Green Form scheme)	12
12	Contact Details	13

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 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.

Throughout this consultation response, the term "Women's Aid" is used to reflect the overall Women's Aid movement in Northern Ireland, which is made up of our local Women's Aid groups and Women's Aid Federation. The local groups are all members of Women's Aid Federation Northern Ireland. Each Women's Aid group offers a range of specialist services to women, children and young people who have experienced domestic violence.

3.0 Women's Aid statistics (2011-2012)

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 831 women and 586 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 3,663 women and 4,152 children accessed the Floating Support service, and a further 1,909 women accessed other Women's Aid outreach services, enabling women to access support whilst remaining in their own homes and communities.
- Move-on houses for women and children leaving refuges.
- The 24 Hour Domestic Violence Helpline, open to all women and men affected by domestic violence, managed 43,949 calls.

4.0 Additional Women's Aid statistical data

- Since 1999, Women's Aid across Northern Ireland gave refuge to 15,545 women and 14,942 children and young people.
- During the last 17 years Women's Aid Federation Northern Ireland managed 326,809 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 DOJ, 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, 75% of adult victims of domestic crimes recorded by the PSNI in 2009/10 were female.¹
- Over 30% of all domestic violence starts during pregnancy.²

¹Findings from the PSNI Crime Statistics Report 2010/11 N.B. “Adult” defined as aged 18 and over

6.0 Domestic violence: Crime statistics (Source: PSNI Statistics 2011/12)

- Domestic Violence is a crime. PSNI statistics for 2011/12 indicate that there were more recorded crimes with a domestic motivation (10,387) than the combined total of all the following crimes (10,327) – all recorded sexual offences (1,836), shoplifting (6,201) and theft of a motor vehicle (2,290).
- PSNI Statistics for 11/12 indicate that they responded to a domestic incident every 21 minutes of every day of the year.
- The total of 10,387 crimes with a domestic motivation in 11/12 represents an average of approximately 1 domestic crime every 51 minutes in Northern Ireland.
- The number of all recorded offences of murder in Northern Ireland in 11/12 total 16. Those classed as having a domestic motivation total 3. Therefore, 19% of all murders in Northern Ireland in 11/12 had a domestic motivation.
- There were 553 rapes (including attempted Rapes) in Northern Ireland in the period 2011/12.

(Source: PSNI Statistics 2011/12)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.

7.0 Consultation response

- Women's Aid Federation Northern Ireland welcomes the publication of the *Proposals for the Reform of Financial Eligibility for Civil and Criminal Legal Aid*, and the opportunity to comment on it on behalf of our local groups.
- While we recognise that this consultation covers the impact of reforms across all of society, our comments are focussed on the unique impact that they may have on victims of domestic violence.

8.0 Executive Summary - General points

- Women's Aid recognises that reforms and savings must be made within the legal aid system, and that the per capita spend on legal aid, in particular civil legal aid, in Northern Ireland is much higher compared to that in England and Wales.
- However, we strongly urge that these reforms do not impact negatively upon victims of domestic violence and their families. It is a fundamental human right for women and children to live free from the threat of domestic violence. We believe that it is society's responsibility to take action to protect victims and bring perpetrators to justice – this includes ensuring that a victim is able to access justice. Every domestic violence victim should be eligible for financial support from the state given the intimate nature of domestic violence, and the impact that this violence has on victims, their children, family and community. Finance should never be a barrier to accessing protection and support from the courts, whether it's to secure a non-molestation order, occupation order or injunction, to engage in child contact proceedings to protect children, or any other relevant court proceeding.
- It is well-established that financial abuse is one way in which a perpetrator controls and abuses his victim. Many victims of domestic violence are completely financially dependent on their abuser, either because the severity of abuse has forced them out of work, or because the perpetrator controls all incoming household funds. Due to the prevalence of financial abuse, it is essential that legal aid is available to all those who suffer domestic violence without conditions or contributions, to enable them to access the courts without financial impediment and in spite of the financial abuse that they are suffering.

- It is also essential that any new legal aid criteria recognise that a domestic violence victim cannot be judged by the face value of her 'disposable income' or capital, as she may not actually have any access to these funds even though she technically owns them. If financial abuse is present in a relationship, a woman who appears to own a house, earn a salary, or have savings on paper, may in reality have access to none of it and be completely financially reliant on her abuser.
- Women's Aid firmly supports the government's commitment to eradicating domestic and sexual violence, and the Domestic and Sexual Violence strategies which are in place. We strongly urge that no legal aid reforms should undermine or undo any of the commitments within these strategies, and that all government work should reinforce these strategies and complement their aims. This can also be said for obligations under adult safeguarding and child protection – we urge that any changes to legal aid provision should be in keeping with the government's duty to protect vulnerable adults and children, and that no provision should bar vulnerable adults or children from justice.
- We note that there is no mention within this consultation document of the current legal aid exception for domestic violence victims when applying for non-molestation orders in Magistrates' Courts, under Authorisation 8 under article 10(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. This provides for legal aid for ABWOR in proceedings relating to the Family Homes and Domestic Violence (Northern Ireland) Order 1998, to lower financial impediments to getting non-molestation orders against violent partners or ex-partners. This exception is crucial in providing victims with access to the courts so that they may protect themselves and their children from a violent partner or ex-partner. Women's Aid seeks reassurance that this vital exception will remain unaffected by the proposed reforms. We would also urge that in order to safeguard against the effects of potential financial abuse, all contributions payable under this scheme should be removed.
- Women's Aid urges the Department to introduce specialist domestic violence courts in Northern Ireland. Domestic and sexual violence are exceptional crimes, in which the victim often knows or has an intimate relationship with the perpetrator. As our comments above have demonstrated, there are various unique issues and considerations that must be applied to many types of case if domestic violence exists within the relationship of parties, from criminal cases relating to violence perpetrated to family cases in which a perpetrator may attempt to use the courts to maintain control over his victim via child contact etc. Where legal aid is concerned, having one specialist DV

court would allow for cases to be heard in one setting where there is cognisance of the domestic violence situation, potentially reducing delay in those cases, increasing the effectiveness of the courts, and aiding the identification of those who require legal aid assistance on account of domestic violence.

9.0 Civil Legal Aid Means Test

Do you agree with the proposals to harmonise civil legal aid threshold limits for the new schemes to be introduced under Civil Legal Services?

Do you agree with the broad principles that will be applied to civil legal aid means assessment?

Do you think the introduction of a revised means test for civil legal aid will have a positive impact on access to justice?

- Victims of domestic violence apply for legal aid in various instances. In addition to using legal aid to secure non-molestation orders (governed by Authorisation 8 by the Department of Justice under article 10(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981), victims also avail of legal aid for occupation orders, injunctions (where victim & perpetrator are not married or living together), family proceedings (residence/contact) and also domestic proceedings (maintenance, separation. Full civil legal aid is sought for divorce and also children order proceedings. In very rare circumstances, a victim of domestic violence may apply for civil legal aid to bring a claim for personal injury as a result of domestic violence injuries.
- Domestic violence affects all proceedings that a woman may engage in, not just those directly concerning her need for protection such as non-molestation order applications and criminal proceedings for assault and injury. As domestic violence is connected to all other aspects of that intimate relationship, it is vital that women are able to seek divorce, ensure that children are protected, and prevent perpetrators from imposing control and contact via child contact. In our professional experience, perpetrators use every avenue available to continue abuse and manipulate, including using court proceedings to their advantage. Therefore it is crucial that reform to legal aid does not in any way prohibit victims from being able to access the courts for any proceedings.

- There are several aspects of the proposed reforms that may endanger victims of domestic violence. Extending financial contributions for the duration of a case at paras 5.21 – 5.24, pp 25 & 26), as opposed to for 12 months, is neither feasible nor fair if there has not been a meaningful reduction in case delay across the courts, or it is still possible for another party to cause vexatious delays to the detriment of the party on legal aid. In these instances, a perpetrator may be able to force the party on legal aid to concede or give up a case because they can't afford to keep paying contributions, especially given a victim's financial position as a consequence of financial abuse or the high cost of leaving a relationship and setting up a new home. While we understand the aim of fostering 'private client realism', these proposals do not take into account the realism that is the prevalence of domestic violence in our society – 1 in 4 women are affected by domestic violence in this country, and financial abuse is part of the government's own definition of domestic violence. If these proposals remain as they are, the 'realism' that women in violent relationships will be forced to apply is remaining trapped in that violent relationship without access to justice. If these reforms aim to truly reflect real life, any 'assessment of their financial position' must include the reality of financial abuse and the position that so many women across Northern Ireland are in on account of domestic violence.
- We note that the proposals wish to encourage the pursuit of early resolution, as opposed to allowing cases to go to court because there is no financial disincentive for parties on legal aid (at para 5.9, p 18). While this is a sound aim in general, it may not be appropriate for domestic violence cases. Mediation and other forms of alternative dispute resolution (ADR) are entirely inappropriate in DV relationships. They force the victim into a situation where the perpetrator has access to them, and a chance to manipulate and control them. Women who leave abusive relationships need to be protected from their abusers, so that they may be safe and rebuild their lives. If other forms of resolution are incentivised or pushed due to their financial appeal, this may coerce victims into engaging with their perpetrators, hence endangering them and putting them at risk of being cajoled or coerced back into the relationship.
- Women's Aid notes the provision at paragraph 4.20 (p14) which covers "urgent" cases, including where a claimant or their dependents are at risk of abuse or violence. We support the provision of Emergency Legal Representation in such cases; however, we are concerned that forcing a claimant to agree to incur any expenses, to be assessed at a later date, may discourage them from getting the emergency assistance they need. Again, following on from the points made earlier about financial abuse and other unique financial implications of domestic violence, it is our view that victims

of domestic violence in such emergency circumstances should be automatically eligible for legal aid without the requirement of contributions towards that assistance.

- We note that a Pensioner disregard is included in the proposals – we urge that a similar disregard for victims of domestic violence is included as part of the reforms.
- It is unclear within this document how the new categories and levels of service, outlined at 4.15 (page 12) will work in practice. Specifically, it is not clear where assistance for domestic violence will fall, whether into ‘Family Help’ or across all categories. It would be useful if more information and clarification could be provided on this.
- Regarding the Scottish model of legal aid provision (at para 5.6, p 15), we are unclear as to why exactly this option would necessarily raise the legal aid bill. While three quarters of Scottish adults are eligible for legal aid, Scotland is only spending £59 mill on a population of 5.25 million, in contrast to Northern Ireland’s £53 million spend on a population of 1.81 million. This disparity in spend, in spite of greater accessibility in Scotland, is not explained within the document. Women’s Aid urges that the Scottish model is explored in greater detail, in particular how their spend remains low while still offering legal aid to so many in Scotland, with a view to implementing any best practice from the Scottish model that would facilitate greater legal aid access without raising the Northern Irish legal aid bill.
- In relation to the proposal to introduce tapered contributions (para 5.25, p 26), we found that the proposals outlined and the reasoning within the document here were quite difficult to understand and insufficiently explained. For this reason we feel unable to comment on this proposal.
- In respect of Minors’ eligibility (at para 5.29, p 28), it is vital that children are protected and that their rights to justice are preserved. We would therefore urge great caution in any changes that may be made to their legal aid eligibility.

Do you agree that the introduction of UC in Northern Ireland in 2014 provides a good opportunity to reform financial eligibility for civil legal aid?

- Women's Aid is extremely concerned about the means testing implications of the Universal Credit regime, especially if this will result in a woman being assessed on her partner's status or their joint income. Assessing eligibility on the basis of a household instead of the individual does not take into account a woman's individual circumstances. For instance, if a victim of domestic violence is deemed ineligible for legal aid on grounds of the household finances, but due to financial abuse in the relationship she does not have any access to that household money, this is not a true indicator of how much income or money that the woman actually has at her disposal. Basing a person's eligibility for legal aid on an assessment of the household will quite simply put our women at risk, and potentially bar many in abusive relationships from taking steps to leave those relationships with the assistance of the courts. We are strongly opposed to this proposal on this basis. Furthermore, as the Welfare Reform Bill has not yet passed, it is premature to model a new legal aid system on details which have not yet been decided or resolved.

Do you think that a housing equity disregard of £100,000 should be included as part of the civil legal aid means test?

- Regarding the proposed housing equity disregard (para 5.38 – 5.40, pp 31-32), there are issues again if a victim of domestic violence is technically the owner of a home but in practice has no disposable income. It is also difficult to see how someone who is 'cash poor' but has a house would be able to find the money for contributions given the current economy.

Do you have any empirical evidence to suggest that the proposals would have any adverse impact on any of the Section 75 groups?

- As we have already demonstrated, these proposals are likely to affect women and specifically victims of domestic violence (the majority of which are women) negatively and disproportionately. For this reason we would request that a full EQIA of the policy is conducted.

10.0 Criminal Legal Aid Threshold Limits

Do you consider the proposed threshold limits to be reasonable?

Do you think the introduction of a means test into the magistrates' courts will have a positive impact on access to justice?

- Victims of domestic violence as defendants: Where there has been domestic violence in a relationship, it is essential that women accused of crimes relating to their abusive partner are able to access legal aid. It is not uncommon for perpetrators to use the criminal courts against their victims, to maintain control over them or punish them for attempting to leave a relationship. We have come across women who acted in self-defence against their abuser, or acted out of desperation to bring an end to years of abuse, and it is important that these women continue to get access to legal help and counsel.

11.0 Legal Advice and Assistance (the Green Form scheme)

Do you think the proposals put forward will have a positive impact on access to justice?

- The proposed small up front contribution to NILSC may affect domestic violence victims disproportionately – some victims don't even have small amounts of money at their disposal due to financial abuse or the cost of setting up new life. Thus, while these reforms may be reasonable in 'normal' circumstances for applicants who have not suffered domestic violence, they may be prohibitive where domestic violence is involved. Women's Aid would urge the Department to consider a wider exemption of victims of domestic violence from the reforms, covering all cases where that violence is a factor.

12.0 Contact details

For further information about this response please contact:

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