



A response to

Scope of Civil Legal Aid

Department of Justice NI

27 January 2015

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24 Hour Domestic & Sexual Violence Helpline

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Text **support** to 07797 805 839

Freephone from all landlines and mobiles. Translation service available.

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

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1. Women's Aid Information & Statistics

1.0 Introduction

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic and sexual violence and providing services for women and children. We recognise domestic and sexual violence as forms of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic and sexual 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 & Sexual Violence Helpline.
-) To provide a range of support services to enable women who are affected by domestic and/or sexual violence 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 or sexual 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 and sexual 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 and sexual 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. All local Women's Aid groups are 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 (2013-14)

-) 999 women and 747 children sought refuge.
-) 59 women in refuge were supported during their pregnancies and 15 babies were born to women in refuge.
-) 1,084 one to one support sessions were held with children and young people in refuge.
-) 3,558 women with 4,869 children accessed the Floating Support service, and a further 1,662 women accessed other Women's Aid outreach services, enabling women to access support whilst remaining in their own homes and communities.
-) 1,554 women participated in a range of group work and personal development programme including *Journey to Freedom* and *You and Me, Mum*.
-) 375 women accessed support from a Women's Aid Women's Safety Worker while their partners or ex partners were undertaking the IDAP perpetrators programme provided by Probation Board Northern Ireland. An additional 128 children were referred to the Women's Safety Worker in 2013-14.
-) The 24 Hour Domestic & Sexual Violence Helpline, open to all women and men affected by domestic & sexual violence, managed 55,029 calls.
-) 150 teachers were trained to deliver the Helping Hands programme in primary schools.

4.0 Additional Women's Aid statistical data

-) Since 1999, Women's Aid across Northern Ireland gave refuge to 17,424 women and 16,235 children and young people.
-) Between 1995 – 2014, 429,435 calls were managed by the 24 Hour Domestic & Sexual 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.

- J Where the gender of the victim was known, 72% of adult victims of domestic crimes recorded by the PSNI in 2012/13 were female.¹
- J Over 30% of all domestic violence starts during pregnancy.²

6.0 Domestic & Sexual Violence: Crime statistics (Source: PSNI Statistics 2013/14)

- J Domestic Violence is a crime. PSNI statistics for 2013/14 indicate that there were more recorded crimes with a domestic motivation (12,720) than the combined total of all the following crimes (12,079) – possession of drugs (3764), shoplifting (6,372) and theft of a motor vehicle (1,943).
- J PSNI Statistics for 13/14 indicate that they responded to a domestic incident every 19 minutes of every day of the year.
- J The total of 12,720 crimes with a domestic motivation in 13/14 represents an average of approximately 1 domestic crime every 41 minutes in Northern Ireland.
- J The number of all recorded offences of murder in Northern Ireland in 13/14 total 17. Those classed as having a domestic motivation total 7. Therefore, 41% of all murders in Northern Ireland in 13/14 had a domestic motivation.
- J There were 550 rapes (including attempted Rapes) in Northern Ireland in the period 2013/14.

(Source: PSNI Statistics 2013/14)

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

¹Findings from the PSNI Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2012/13 N.B. "Adult" defined as aged 18 and over

²Women's Aid Federation Northern Ireland

2. Consultation Response: Summary

- J Women's Aid Federation Northern Ireland welcomes the publication of the consultation on *The Scope of Civil Legal Aid* and the opportunity to comment on it on behalf of our local Women's Aid groups.
- J **Women's Aid believes that all victims of domestic violence should have automatic access to the courts and legal advice and assistance, as of right and without means testing. Domestic violence is, by definition, a threat to the life and liberty of victims. It also often includes financial abuse of victims. This means that while on paper a victim may look like they have disposable income or funds, in practice they do not and are therefore not in a position to bear the cost of legal advice or representation. Leaving an abusive relationship often means a step into poverty for victims and their families – accessing legal protection and assistance should not contribute to further impoverishment and victimisation.**
- J Women's Aid appreciates that strategic decisions about budget have to be made due to the current funding climate, and supports the aim of discouraging unnecessary adversarial litigation at public expense while targeting legal aid to those who need it most. We accept that there are some types of cases that are of higher priority than others, especially those that involve threats to life, liberty or safety of individuals.
- J We note the Department's preference for greater use of alternative dispute resolution and mediation in family law, with adversarial proceedings only being entered into as a last resort. While we recognise the value of such an approach in cases where neither of the parties in question is an abuser, we would stress that in cases where abuse is present mediation is not appropriate. Use of mediation in domestic violence cases is widely regarded as bad practice as it provides perpetrators with a further opportunity to control, manipulate and abuse the victim. In such cases, where contact and residence issues are being resolved, it is necessary to engage in a formal legal process in order to protect victims of abuse.
- J We welcome the Department's commitment to ensure that certain cases are exempted from the legal aid cuts - where a person's life & liberty are in jeopardy, where an individual is engaging in legal proceedings against the State, where child protection issues exist, or where the applicant is a victim of domestic violence. It is clear from the consultation document that the Department is committed to protecting victims of domestic violence, and understands the importance of preserving legal aid for domestic violence victims who are engaging with the family courts.

) It is concerning however that there is no indication in the document as to how the domestic violence exception would operate. Operational detail is crucial to ensure that this exception works in practice. We can look to England & Wales as an example of how domestic violence victims appear to be protected on paper but are being failed in reality, due to evidential requirements that do not reflect the reality of domestic violence. We urge the Department to avoid this scenario at all costs, and ensure that victims of domestic violence are excepted from the cuts to legal aid in private family law cases.

3. Removing Legal Advice & Assistance where Government or advice sector is already providing information

) While we agree that eradicating services where that service already exists is a good cost-saving measure, we have some reservations about the document's analysis of what currently exists in terms of advice provision, and the feasibility of abolishing legal aid for the provision of legal advice in such circumstances.

) Although the community and voluntary sector make a huge contribution to the provision of advice, we urge caution about removing provision of legal aid for legal advice on the premise that such advice is available elsewhere. The advice sector is under immense strain already due to years of progressive cuts to funding – there are many types of advice that organisations like CAB and Advice NI can no longer provide as they do not have the capacity to do so. Given the imminent further changes to welfare provision in Northern Ireland, this situation is likely to become even more strained as more vulnerable people seek advice on how the changes are affecting them.

) In addition, some of the examples in the document of advice provided elsewhere include advice services that may be funded by temporary sources for a limited duration. Removing legal aid in these cases is potentially problematic for a number of reasons. For instance, if an advice service is running a three-year project thanks to funding from Big Lottery Fund, there is no guarantee that this service will be available after that funding period. Women's Aid has already witnessed cases where women were not notified of the existing exception for non-molestation orders by their solicitor, and this exception has been in place since 2012. If the criteria for which types of advice are eligible for legal aid were to change regularly, we can surmise that this would lead to a chaotic situation where people in need are being denied the assistance they are entitled to.

-) We would also point out that other examples of alternative advice in the document are either limited to people in one geographical area (Belfast City Council), or may be too generic to provide tailored legal advice that is relevant and accurate for an individual's specific circumstance (AdviceGuide). While the Adviceguide is invaluable to the many people who use it, it is not always appropriate as an alternative to tailored legal advice from a solicitor. We would also point out that while it is a good idea to encourage more legal professionals to take on work on a *pro bono* basis, not all legal professionals are willing or in a position to be able to do so. It should never be the case that someone is left without recourse to legal advice because legal aid has been removed and they cannot find someone who is willing to assist them on a *pro bono* basis.
-) At 8.2 (page 15), we recommend that the section is amended to state that mediation or Alternative Dispute Resolution should never be promoted if either party has disclosed domestic violence.

4. Removing or Restricting legal aid in Private Family Children Order cases (residence & contact cases)

-) Women's Aid welcomes the commitment in the document to continue to make legal aid routinely available in civil cases where people's life or liberty are at stake, where there is risk of harm to the child, and the specific inclusion of Non-Molestation Orders within these exceptions – we would emphasise that the domestic violence legal aid exception for seeking Non-Molestation Orders is a vital tool in protecting victims and their children from perpetrators of domestic violence.
-) We warmly welcome the proposal to exempt cases involving domestic violence or child abuse from reforms to legal aid for Private Law Children Order cases. However it is not possible to fully support this proposal without first seeing details as to how such an exception would operate in practice.
-) We are encouraged that the Department are willing to "take into account the experience in England and Wales and reflect upon any 'lessons learned'". Our sister organisations Women's Aid Federation England and Welsh Women's Aid³ have closely monitored the effect of legal aid reforms on victims of domestic violence, and have

³ Rights of Women, Welsh Women's Aid & Women's Aid Federation England, *Evidencing Domestic Violence: reviewing the amended regulations (2014)* – <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>

conducted continuous research detailing the effects of the changes on the women they support⁴. Their findings include:

- ⇒ Victims of domestic violence require legal advice and representation for a wide range of family law issues in the aftermath of domestic violence – the most common legal issue is child contact.
- ⇒ The evidential burden to ‘prove’ that someone is a victim of domestic violence in order to receive legal aid under the current system in England & Wales is a significant barrier to accessing legal aid – **38% of women responding to their survey who had experienced / continued to experience domestic violence did not have the prescribed forms of evidence to access family law legal aid.**
- ⇒ Although the Government had made a number of positive changes to the evidence system following the initial review of the legal aid changes, these evidential requirements still left many domestic violence victims without recourse to legal aid. The evidential requirements were found to be out of touch with the reality of domestic violence, and contrary to the well-established knowledge of how victims report domestic violence.
- ⇒ The majority of domestic violence victims who were deemed ineligible for legal aid assistance stated that they had other evidence proving that they were victims of domestic violence. The most common available evidence was:
 - a letter from a domestic violence support organisation or from the National Domestic Violence Helpline confirming that they were receiving support
 - evidence from police who could confirm they had contacted the police due to domestic violence
 - a letter from friends or family confirming that they had witnessed the domestic violence or abuse
 - a letter from a counsellor confirming that the victim was receiving counselling for domestic violence

None of these forms of evidence are allowed under the current system in England & Wales. This contravenes established research and knowledge of how and to whom victims report domestic violence, and leaves many vulnerable victims without recourse to vital legal support. Women’s Aid Federation Northern Ireland is strongly opposed to any reform which would in practice refuse legal aid to extremely vulnerable victims of domestic violence.

⁴ See also research conducted throughout the legal aid amendment process specifically relating to its effect on victims of domestic violence <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Evidencing-DV-the-facts-2012.pdf>; <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Evidencing-DV-a-barrier-2013.pdf>; <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Evidencing-DV-a-year-on-2014.pdf>

- ⇒ Many domestic violence victims were ruled to be ineligible for legal aid because their income was above the means-tested threshold – this is in spite of being single parents on a low income who were also bearing the financial burden of leaving an abusive relationship.
- ⇒ A knock-on effect of the changes to legal aid provision in England & Wales was the difficulty in finding a legal aid solicitor. 75% of respondents to the survey stated that it was either “very difficult” or “difficult” to find a legal aid solicitor, with 23.1% having to travel more than 15 miles to find one.

) In order for a domestic violence exception to work, it must be practically possible for all domestic violence victims to avail of it. Therefore onerous evidential requirements that do not reflect the reality of how victims actually disclose abuse and seek help will only serve to further victimise vulnerable members of society. We would add that any reform should also be tailored to suit the Northern Irish situation, where due to decades of conflict many people from across all communities may still be unwilling or unable to report domestic violence to police or any other government agency.

) We would also wish to point out that there is no evidence that creating a system which works for all victims of domestic violence would create “an incentive for false allegations of domestic violence” (at 11.6, page 29). As with most forms of violence against women, the number of people who are victims that do not report their abuse far outweighs the small number who falsely report that they are victims. It would be irrational and disproportionately cautious to legislate with the primary objective of guarding against a miniscule number of ‘false victims’ instead of to protect the vulnerable majority who desperately need legal and financial assistance to break free from abuse.

) Regarding the alternative proposal to limit multiple applications for the same issue, we would urge that a domestic violence exception should also be included here. It is not uncommon for the women we support to have to go to court to resolve contact and residence issues on multiple occasions, in some cases because their abuser is deliberately attempting to frustrate or draw out the legal process as a means to pressurise their victim to withdraw from proceedings or return to the perpetrator.

5. Contact Details

For further information about this response please contact:

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