



A response to

Access to Justice 2 Review

Department of Justice

February 2016

Women's Aid Federation Northern Ireland

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Freephone from all landlines and mobiles. Translation service available.

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

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 and sexual 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 (2014-15)

- 932 women and 689 children sought refuge.
- 71 women in refuge were supported during their pregnancies and 13 babies were born to women in refuge.
- 3,567 women with 4,186 children accessed the Floating Support service, and a further 2,395 women accessed other Women's Aid outreach services, enabling women to access support whilst remaining in their own homes and communities.
- 2,046 women participated in a range of group work and personal development programme including *Journey to Freedom* and *You and Me, Mum*.
- 352 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 129 children were referred to the Women's Safety Worker.
- The 24 Hour Domestic & Sexual Violence Helpline, open to all women and men affected by domestic & sexual violence, managed 34,420 calls.
- 161 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 18,356 women and 16,924 children and young people.
- Between 1995 – 2015, 463,855 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.
- 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
- Over 30% of all domestic violence starts during pregnancy.²

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

6.0 Domestic & Sexual Violence: Crime statistics (Source: PSNI Statistics 2014/15)

- Domestic Violence is a crime. PSNI statistics for 2014/15 indicate that there were over two and a half times more recorded crimes with a domestic motivation (13,426) than drug offences (8,937).
- Domestic abuse crimes (13,426) represented 13% of the overall crime in Northern Ireland (105,072).
- Police responded to 28,287 incidents with a domestic motivation – that’s one domestic incident every 19 minutes of every day of the year.
- The number of all recorded offences of murder in Northern Ireland in 14/15 was 16. Those classed as having a domestic motivation totalled 6. Therefore, 37.5% of all murders in Northern Ireland in 14/15 had a domestic motivation.
- Between January 2010 and March 2015, 8,363 Multi Agency Risk Assessment Conference (MARAC) cases were discussed. In 7,955 of these cases the victims were female. 10,856 children were living in the same household as these victims and their abusers.
- There were 737 rapes (including attempted Rapes) in Northern Ireland in the period 2014/15.

(Source: PSNI Statistics 2014/15; PSNI MARAC Steering Group)

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

General Comments

- Women’s Aid Federation Northern Ireland welcomes the publication of A Strategy for Access To Justice (Report of Access to Justice 2) and the opportunity to comment on it on behalf of our 9 local Women’s Aid groups.
- Our comments are specifically focused on the aspects of the Access to Justice Review which are directly pertinent to victims of domestic and sexual violence.
- Women’s Aid welcomes that domestic violence has been identified throughout the review as being a top priority issue in terms of ensuring access to justice for victims and their children across all aspects of the justice system. We would point out that many domestic violence victims have difficulties in accessing legal aid already. When one considers the importance of the whole gamut of family law remedies to help domestic violence victims and their children leave a perpetrator and ensure their safety, it is clear that further restricting legal aid for domestic violence victims would hamper justice. While emergency orders such as non-molestation orders may provide emergency safety for a victim of domestic violence, the struggle of victims does not end there. They require other legal support to shield themselves from perpetrators who wish to gain access to them, in the form of divorce or child contact proceedings.
- We support the prioritisation of ensuring a fair, just and safer community, and the aim of the review to safeguard the interests of the vulnerable. Victims of domestic violence are vulnerable due to the abuse they suffer. While they may not be “vulnerable adults” in a permanent sense, they have a transitory vulnerability that is shaped by the abuse they experience. They are, in adult safeguarding language, adults at risk of harm. This risk of harm extends to their ability to access justice. Victims of domestic violence rely on criminal, civil and family court means to protect themselves and their children from abusers and extricate themselves from abusive relationships.
- As stated throughout the document, legal aid may be the only practical means of enforcing basic legal rights for domestic violence victims. They may be unable to afford legal fees due to financial abuse previously or presently suffered, poverty as a consequence of leaving a relationship, or their inability to work due to the physical and psychological impact of abuse experienced³.
- We are encouraged that the review does not recommend the approach taken in England & Wales to prioritise removing types of case from scope of legal aid, and that it highlights family civil law as a high priority for legal aid. At 2.13 the report makes the valid point

³ This includes situations where victims experience long term illnesses as a result of abuse, where victims have lost their job due to the impact of abuse, or where victims have left a job due to demands of an abuser.

that “there are some situations where reliance only on a detailed exceptional funding process would be unworkable, as well as unfair or unsafe. Emergency domestic violence cases are an obvious example.” (2.13, at p25). Women’s Aid would go further and include any instance where a victim of domestic violence had to ‘prove’ their abuse in order to access legal aid, if proceedings were related to the abuse suffered.⁴ Since changes to the legal aid regime were implemented in England and Wales, domestic violence victims have found it extremely difficult to access justice and legal aid. This is in spite of the domestic violence exemption. The requirements of proof of abuse not only barred those who had never contacted police or support agencies, they also shut out many of those who were well-known to expert support organisations as victims of abuse but who did not possess the right type of evidence to be eligible. It is well documented that it takes 35 instances of abuse before a woman will seek help, and this new legal aid regime is failing every one of those women who has not yet reached out for help. The restrictions to legal aid for domestic violence victims have now been held by the UK Court of Appeal to be invalid.⁵

- Women’s Aid urges the Department to follow the lead of this review and accord access to justice for victims of domestic violence the highest priority in all forms of access to justice.

Mediation

- Expert research has confirmed time and again that mediation or other forms of Alternative Dispute Resolution (ADR) are “unlikely to redress the unequal power balance between abuser and victim and may lead to unworkable agreements that place women and children in further danger.”⁶ Poignantly, mediation has been described as “just another arena to be bullied in”⁷ in research.
- Similar issues have been raised about other forms of alternative dispute resolution where participants must be in the same room, such as collaborative law, and regarding shuttle mediation where participants are in different rooms. We echo the concerns of the Bar Council that *“Shuttle mediation’ whereby the parties sit in separate rooms and mediator goes between both parties may not work in cases of domestic violence as the mediator will not have the time to uncover and rectify years of abuse and gain the victim’s trust.*

⁴ This would include protection orders, contact proceedings, divorce proceedings, or any court proceedings that are related to a victim attempting to remove themselves from an abusive relationship and prevent a perpetrator from accessing them and their children in order to perpetrate further abuse.

⁵ <https://www.judiciary.gov.uk/wp-content/uploads/2016/02/queen-v-sos-rights-of-women-judgment.pdf>

⁶ Hester, Pearson & Radford, Family court welfare and voluntary sector mediation in relation to domestic violence, Social Policy Research 117, June 1997.

⁷ https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/Mapping_Paths_to_Family_Justice_Briefing_Paper_23_06_14.pdf

The system has let them down and it has let them down again by making them engage in mediation with their abuser.”

- Women’s Aid is of the view that mediation is inappropriate in all instances of family court interaction, including divorce. We are encouraged by the report’s acknowledgment that mediation is not appropriate where domestic violence has occurred in a relationship.
- While “legal aid for private law family proceedings should be more about solving problems and less about following legal processes”, in certain circumstances like where a relationship has been abusive, it is not possible to ‘solve’ the problem of abuse and have an amicable settlement. Processes should therefore be in place to protect victims of domestic violence, and the system should prioritise the safety and access to justice of victims of domestic violence.
- Domestic violence is by nature a zero-sum relationship where ‘compromise and settlement’ usually means that the person with all the power, the abuser, forces a result that is in their favour to the detriment of the victim. This is not justice. Furthermore, the process of sitting in a room attempting to mediate with a person who has controlled, manipulated and abused is abusive itself.
- Abuse does not necessarily end the day someone flees their home, nor does its impact. Women’s Aid statistics for 2014-15 show that many of the women we support are continuing to face abusive behaviour from perpetrators even after the relationship has ended. Of the women who stayed in our refuges, 35% of perpetrators were ex-husbands, partners or boyfriends. In the case of women who accessed outreach services, 53.8% of perpetrators were ex-husbands, partners or boyfriends. It is possible for victims to break free from their perpetrator and build a new life, but this requires the support and commitment of statutory and voluntary agencies, and systems and processes that do not lock victims into abusive relationships or give opportunities for perpetrators to commit further abuse.
- If mediation is to be used on a wider basis in family law as per the recommendations of this report, there must be a robust system for ensuring that domestic violence victims are exempt, not just in theory but in practice. This requires effective screening out of abuse cases at pre-mediation stage.⁸ That is not easily achieved - domestic violence practitioners in jurisdictions where mediation is established cite a number of ways in which domestic violence victims are being failed. These include lack of expertise among those screening to identify domestic violence; lack of understanding of judges, solicitors and other justice agents that mediation isn’t appropriate where domestic violence exists

⁸ Hester et al 1997; Piper & Kaganas 1997

in a relationship; absence of other options where there is no legal aid available; failure to create an environment where a victim is comfortable enough to disclose abuse before mediation; and professional mediators being pre-disposed to 'sell' mediation over other forms of dispute resolution⁹ at assessment stage. These pitfalls must be overcome to ensure that domestic violence victims are exempt from mediation in practice. There must also be clear guidelines that exempt victims from mediation even if the abuse was not physical, and even if there is no evidence from police or medical staff about that abuse.

- If the system is not robust, victims will be failed. The Mapping Paths to Family Justice report gives several pertinent real-life examples of how this can happen:

Sara went to a solicitor for divorce and a DV injunction but was told an injunction was not possible because the abuse was not physical. Her solicitor sent her to mediation 'to save costs' but told her to ask for separate rooms. At the intake session her ex-husband arrived first and insisted they be seen together; "I was so scared I just said yes".¹⁰

Tilda, whose partner had been violent and recently threatened her with a car jack, was referred to a solicitor by a domestic violence service. The solicitor then referred her to mediation, where she had a joint intake where she felt unable to disclose the violence.¹¹

Iris had refused mediation due to physical violence during the relationship. At a review hearing at court, the judge ordered the couple to attend mediation to sort out their financial dispute.¹²

- There is also a cost argument here. Research has shown that there is a clear correlation between violence or coercion and failed mediation. If mediation fails and a court process is then required, this can mean more cost to the public purse, not less.
- Regarding the recommendation that family legal aid can be refused if mediation is not attempted, there needs to be complete clarity that this does not apply in domestic violence cases. There should be clear processes for how this exemption will work, and a commitment that evidence will not be required for domestic violence victims to overrule legal aid refusal, given the difficulties that many victims would have in obtaining it.

⁹ Mapping Paths to Family Justice, p 5.

¹⁰ Case study cited in Mapping Paths to Family Justice from 2010

¹¹ Case study from 2012, Mapping Paths to Family Justice report

¹² Case study from 2010, Mapping Paths to Family Justice report

Divorce

- In cases of abuse, divorce is one of the legal tools available to married victims to extricate themselves from an abusive relationship. It is therefore concerning that this report recommends removal of representation at divorce proceedings from the legal aid regime. Victims of domestic violence who are married to their perpetrator rely on the courts to extricate themselves from their abusive relationships, and put an end to the legally-held power that a perpetrator has over a victim through marriage.
- As the report rightly states, mediation is not appropriate in domestic violence cases. Therefore this option is not open to domestic violence victims. If a divorce case has to go to court, what support will be available to domestic violence victims to ensure that they do not have to represent themselves and face their perpetrators in court directly?
- We note that there are a number of recommendations relating to divorce, and we would suggest that if legal aid is to be curtailed for divorce proceedings, all the other recommendations must be implemented at the same time. If a victim of domestic violence cannot get legal aid funding to go to court to legally end their abusive marriage, this may at least be mitigated if it is easier to obtain a divorce in this jurisdiction and if there is not a requirement to go to court and face your perpetrator in person in an adversarial court hearing.

Family Law & Legal Aid

- Women's Aid is encouraged that this report recognises the serious shortcomings of the legal aid regime in England & Wales, and its impact on the ability of domestic violence victims to access justice. Women's Aid supports the approach not to remove elements of family law from scope of legal aid. It is imperative that we are not left with a system where, due to legal aid cuts, a domestic violence victim has self-represent in court and face her perpetrator in court directly, or feels that she cannot go to court at all to get the justice she deserves. We also agree that a system whereby victims have to 'prove' their abuse is unworkable and does not reflect the reality of domestic violence. Practitioners in England & Wales have found that the evidential burden to 'prove' that someone is a victim of domestic violence in order to receive legal aid is a significant barrier to accessing justice. Many victims simply do not have the evidence required, such as police reports or doctors letters. Even those who do may not even be able to afford the cost of paying the discretionary charge for a doctor's letter.
- We urge that the domestic violence legal aid exceptional criteria for non-molestation orders remains in place as it is an invaluable aid to those in need of urgent protection.

- We are concerned about proposals for increased contributions and lower eligibility limits for civil legal aid. Many of the women we support already find themselves ineligible for legal aid, in spite of having a real need for it. Domestic violence victims are unique in the sense that their abuse can leave them with much less disposable income than others who on paper may be in the same financial position. Financial abuse often results in victims accruing debt created by their abuser, or leaves them without access to funds that technically belong to them. Furthermore, leaving an abusive relationship is a step into poverty - many of the women who arrive at our refuges have had to leave their homes without a single belonging. We are extremely concerned that any further squeezing of eligibility for legal aid may lead to extreme poverty, prevent victims and their families from successfully rebuilding their lives after abuse, or may discourage victims from accessing the courts in the first place due to the prohibitive cost. In England & Wales, organisations such as Women's Aid and Rights of Women have found that many domestic violence victims are being ruled ineligible for legal aid because their income is above the means-testing threshold, in spite of being single parents on low income who were already bearing the financial burden of leaving an abusive relationship.
- We urge that the Department considers a disregards or more lenient eligibility criteria where domestic violence is a factor, or includes a means of taking into consideration the reality of financial abuse and the impact of domestic violence in any financial assessment.

Tandem model

- We are concerned at the prospect of the tandem model being abolished. We are unconvinced by the arguments set out in the report that the rights and best interests of children would be protected without it in the current legal system.
- Solicitors and Guardians ad Litem provide different roles in the process. . It is the role of Guardian to represent the best interests of the child and the lawyer's job to represent the wishes of the child. In cases involving older children, what is perceived to be the best interests of the child is often not what the young person wants, and they instruct solicitor separately to that effect. We believe it is important that the voice and the interests of the child are both effectively represented in such cases.

Public Law proceedings - children hearings

- While we are generally optimistic about a move towards the Scottish system of Children's Hearings, it is by no means a perfect system and there are a number of pitfalls to avoid when establishing a similar model in Northern Ireland.
- There are clear advantages to the Scottish model, among which is that it is a child-centred system that focuses on the best interests of the child whether they are offender or are at risk of harm.
- However, there have been several shortcomings in the Scottish system that have been identified by practitioners, for example through the government-chaired Children's Hearing Improvement Partnership. One of the biggest identified gaps is the absence of mandatory training of lay panel members, to understand domestic violence and how this impacts on a child's safety and wellbeing, either as witness or direct victim of domestic abuse. This is an important issue with the Children's Hearing system, as the lay panel has the power to enforce contact and remove contact, and overrule court orders relating to contact. Given the number of child protection cases where domestic violence is an element, it is essential that those making these important decisions possess an understanding of how child safeguarding and domestic violence are interlinked. Panel members must be able to identify the red flags relating to domestic violence during the course of the hearings, and understand the complex and far-reaching impact of domestic violence on children, so that the outcome can be truly in the best interests of the child.
- Another improvement that could be made in the system is to have a more flexible approach as to what the hearing focuses on. Practitioners in Scotland have identified shortcomings in the Children's Hearing system in picking up and exploring relevant issues other than the specific grounds on which the case was referred. For example, a Children's Hearing may be called due to a child's truancy, yet the truancy is occurring as a consequence of domestic abuse within the household. However, because the referral cites truancy as the main issue for the panel to investigate, they do not make the connection between the abuse occurring in the household or take the abuse into consideration in the course of the hearing. This inevitably leads to a conclusion that is not in the best interests of the child, as the hearing has not adequately explored all the issues that are impacting upon that child.
- Finally, there have been some misgivings about how the Children's Hearing system works in practice to create a safe space for children and young people in certain circumstances. Practitioners have noted that, although there are certain rules in place to protect children from a parent who is a domestic violence perpetrator, these rules are not always followed in practice. Two examples cited of rules being flouted were children not being

placed in the same space or room as a parent who is a domestic violence perpetrator, and certain information being withheld from a parent who is an abuser at the child's request or in the interest of the child.

- We believe that a switch to a system more along the lines of the Scottish Children's Hearing system could be very positive for children and young people in Northern Ireland. However we urge that in considering such a system, government also considers the evidence coming out of Scotland as to what improvements could be made to their model.

Limitations on access to courts

- Women's Aid accepts that unbridled access to courts may not always be a positive thing. In the course of our work we see perpetrators who use court processes as a tool to abuse their victim through vexatious litigation, or take advantage of their access to legal aid and the victim's lack of legal aid. We have witnessed cases where victims of domestic violence are entangled in long, drawn out court proceedings, where perpetrators push the limits of the court through non-attendance leading to multiple adjournments, and repeated or protracted litigation with a view to pressure a victim into submission due to financial constraints. Such behaviour is another form of abuse, deliberately calculated to control and re-establish power over a victim who is trying to remove herself from the abusive relationship.
- On the other hand, in the course of supporting women in our services through court processes, Women's Aid has identified a trend of domestic violence victims who must return to court again and again for valid reason. This may be to enforce a ruling, or to notify the court of changes of an abuser's behaviour that may impact on conditions already imposed by the court, such as child contact arrangements. In such cases it is important that legal aid changes do not present a barrier to such victims seeking justice and protecting themselves and their children.
- As the Bar Council has noted, *"contact arrangements are 'living creatures' which will and do change with time and circumstances. If the parties have not been able to resolve their communication difficulties or there still are adverse circumstances, for example the ongoing impact of domestic violence or abuse, then the ability to re-negotiate the contact arrangements between the parties cannot be achieved and will need the assistance of the Court. It is wrong to assume that persons only come back to court about contact solely because they have legal aid to do so and to assume that they have only come back to Court to thwart the other parties' contact."*

- Regarding the aims of our justice system, Women’s Aid disagrees with the report’s statement at 18.23 that *“one of the aims of such guidance should be to reduce the likelihood of victims having to go through both criminal and civil proceedings.”* Criminal proceedings for domestic violence are already rare, and while a victim shouldn’t have to endure criminal proceedings against their will, the bigger issue in Northern Ireland is that most cases of domestic violence don’t result in convictions of perpetrators. Some of the women we support would like to see their abusers punished for their abuse in criminal courts; however the criminal justice system remains a hostile and confusing environment for victims who have already endured so much. What we would like to see is not a reduction in the likelihood of victims having to go through criminal proceedings, but the criminal justice system becoming more victim-focused so that engagement is less of an ordeal for domestic violence victims.

Improved court efficiency and reduction of delays

- Women’s Aid generally supports the recommendation to move towards a more inquisitorial system of justice, with reduction of ineffective and wasteful court hearings and improved communication between all parties before hearings. We would however offer the caveat that some forms of communication between parties are not appropriate, for example direct contact between perpetrator and victim of domestic violence, as this can be an opportunity for further abuse and re-victimisation.
- We do not agree with the contention at 1.5 (p 20) that delay is something to be used as a mechanism to ensure that people do not access the courts lightly. In our view, the negative impact of delay on the wellbeing of victims and the reticence of victims to access the courts when needed outweighs any benefit in discouraging spurious applications to the courts.
- Women’s Aid supports any initiatives which minimise the amount of time that victims must spend in the presence of their abuser, such as conducting appropriate court business online or via telephone. As with all work in the courts, those who oversee such transactions should be trained to understand issues relating to domestic violence so they are able to react to any ‘red flag’ issues that arise.
- We also welcome the recommendation to reduce the amount of time that victims should have to wait in court buildings for their case to be heard (at 7.18, p 77). Many of the women we support are mothers with child caring responsibilities, many of them understandably without co-parenting support if that other parent is their abuser. It is difficult for them to drop children to school and arrange for childcare in the event that they will be at court all day. This process is set to become even more difficult with the

closure of courthouses and cancelling of lesser used bus routes due to austerity. Longer waiting times also equals a longer opportunity for a perpetrator to intimidate a victim in the court building. This causes significant stress and anxiety to domestic violence victims.

Simplification of processes

- Women's Aid supports the call for all correspondence relating to proceedings to be framed in plain English (Exec Summary, s 21, p 12). Inaccessible legalese and information which is difficult to understand is a major barrier to justice for the women we support. Our women are already anxious and apprehensive about legal proceedings and the prospect of having to face up to an abuser. If they cannot understand what is going on because of inaccessible language this will only add to their stress.

Self-representing litigants

- While we appreciate the reasoning behind this recommendation, we are concerned about the impact on victims of domestic violence. Victims of domestic violence should be protected from self-representing perpetrators, especially where direct questioning and cross-examining of a victim would take place. It would be unconscionable if changes to access to justice resulted in victims of domestic and sexual violence being questioned in person by perpetrators about that abuse and violence, for example in private family law cases.

Obligation for parties to engage with each other prior to a hearing

- Like mediation, this may not be appropriate in cases where domestic violence is present.

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Text support to 07797805839

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