

Appendix 28: Legal aid (See Article 15)

Currently, legal aid enables women who cannot afford to pay for legal advice and representation to get protection from domestic violence (DV) in the civil courts; end a violent or abusive relationship; access welfare benefits and housing support that they are entitled to (including challenging legally incorrect refusals); protect their children from violence or abuse; and resolve any immigration law problems that they have. The difference that legal aid can make to a woman's safety cannot be underestimated.¹ Access to legal aid is a vital life saving resource for women who have experienced violence and the Government should be widening access to justice and support for these women not reducing it.

In reply to calls for the retention of legal aid, the Government's answer was that it cost too much. The Government sought to save £350m from the cuts to legal aid. Under the terms of CEDAW General Recommendation 28,² the UK state is not applying due diligence to ensure *de facto* equality, nor is it financially prioritising the UK State obligations to the disadvantaged, who are doubly victimised by being left without access to justice.

A disproportionate impact on women

Cuts to legal aid and other funding for legal advice are likely to have disproportionate effects on a range of vulnerable groups, as the vast majority of those who receive legal aid are the poorest and most disadvantaged.³ Cuts to civil legal aid for welfare benefits, employment tribunals and debt advice will make it difficult for disabled people to appeal a decision about their benefits.⁴

In all the affected categories of law, women are more likely than men to be affected by the changes to civil legal aid: in 2010 some 62.2% of applications for civil legal aid were made by women.⁵ Women make up:

- 65% of those who will no longer receive legal aid for family law cases
- 60% of those in housing cases
- 73% of those in education cases (often bringing a case on behalf of a child).⁶

¹ Rights of Women (2011) *Women's Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

² CEDAW General Recommendation No. 28 The Core Obligations of States Parties under Article 2 of CEDAW (forty-seventh session, 2010) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>

³ "The vast majority (97%) of community legal aid recipients in 2008-09 were in the bottom two income quintiles, with almost 80% in the bottom quintile and a further 17% in the second bottom quintile for Legal Help" see Ministry of Justice (2010) *Legal Aid Reform in England and Wales: cumulative legal aid reform proposals*, p. 11 <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

⁴ Inclusion London. (2011) 'Don't cut access to justice', Inclusion London, <http://www.inclusionlondon.co.uk/dont-cut-access-to-justice> Accessed: 15/04/2012

⁵ Rights of Women (2010) *Briefing on the Ministry of Justice Proposed Changes to Legal Aid*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Rights_of_Women_briefing_on_Ministry_of_Justice_proposed_changes_to_legal_aid.pdf

Calls to the Community Legal Advice Helpline⁷ show that in the area of family law, approximately twice as many women as men seek advice. Therefore as the majority of those accessing family law remedies via legal aid are women (especially in relation to DV) this is arguably the most discriminatory piece of legislation enacted since the last UK State enquiry, and is in direct contravention of UK obligations under various CEDAW Articles. There is no mention of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁸ (LASPO) in the UK State report, yet its introduction lays waste to access to justice in the UK, and fundamentally breaches CEDAW and other international convention obligations.⁹

The cuts to legal aid threaten the very existence of a publicly funded system of justice, and are likely to affect the rule of law itself, as tribunals and courts face increasing numbers of appellants and applicants acting in person or with inexperienced advisers unable to present the best legal arguments, which will ultimately lead to poorer quality legal judgments even in the higher courts.

The Government's own Equality Impact Assessments¹⁰ indicate that 56% of the cuts will be borne by women.¹¹ The disproportionate impact will be particularly acute in the areas of education (72%), family law (63%), public law (63%) and housing (61%).¹² The statistics provided are not sufficiently detailed to enable a clear assessment of the impact on, for example, Black, Asian and minority ethnic (BAME) women or women with a disability and this information did not influence the final Act. The UK Government has ignored a record number of negative consultation responses from the senior Judiciary, women's and human rights organisations, interested professional organisations and NGOs. Against this overwhelming demonstration of concern, the UK State admits that its equality impact assessment in relation to the Act has been severely limited, and lacking in quality.

⁶ Ministry of Justice (2010) *Legal Aid Reform: scope changes*. p.46
<http://webarchive.nationalarchives.gov.uk/2011121205348/http://www.justice.gov.uk/consultation/legal-aid-reform.htm>

⁷ CLA Helpline 2010-2011, 8686 calls were from men; 15528 from women. Legal Services Commission (2012) Equality and Diversity Information for Community Legal Advice Helpline 2010-2011 http://ftp.legalservices.gov.uk/docs/about_us_main/LSC-Equality-and-Diversity-Information-about-CLA-Users-Jan-2012.pdf

⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012
<http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/part/1/enacted>

⁹ For example The Beijing Platform for Action calls on Governments to "strengthen existing or establish readily available and free or affordable alternative administrative mechanisms and legal aid programmes to assist disadvantaged women seeking redress for violation of their rights". The provision of legal advice is a fundamental part of the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR) which is incorporated into UK law through the Human Rights Act 1998. The right to a fair trial and the ability of an individual to access a court and the protection of the law are fundamental human rights which are inextricably linked with the protection of other fundamental human rights, such as the right not to be subject to inhuman and degrading treatment (Article 3 ECHR) and to respect for private and family life (Article 8 ECHR).

¹⁰ Ministry of Justice (2010) *Legal Aid Reform in England and Wales: cumulative legal aid reform proposals*, p. 11.
<http://webarchive.nationalarchives.gov.uk/2011121205348/http://www.justice.gov.uk/consultation/legal-aid-reform.htm>

¹¹ Ministry of Justice (2011) *Reform of Legal Aid in England and Wales: Equality Impact Assessment* <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>, Table 1, p.127.

¹² Ministry of Justice (2011) *Reform of Legal Aid in England and Wales: Equality Impact Assessment* <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>, Table 4, p.128.

In addition, intersectional discrimination is immediately apparent for BAME women who experience discriminatory cultural practices. Women who are chaperoned, refused freedom of movement, financial independence and education, will have little or no opportunity to report to the police, or their GP, or access refuge provision, and are doubly vulnerable to loss of access to Convention rights and justice. Those with 'no recourse to public funds' (See Article 9 and Appendix: 8) will face further barriers in obtaining any legal redress.

The severe limits imposed on immigration legal aid under LASPO also mean that only those who can afford to pay for legal advice will be in a position to challenge poor UK Border Agency (UKBA) decision making in relation to rights to family life, 'best interests of the child' and European Economic Area (EEA) rights. Many vulnerable women, who may well have meritorious legal grounds for remaining in the UK, face being removed – without their children in many cases - and with no ability to ask the court for justice.

Without the means to enforce domestic and Convention rights, the rights themselves are ineffective. With no ability to bring a case against an abusing partner to court, with no legal help to obtain benefits and housing, with no legal help to understand immigration rights or challenge poor or unlawful UKBA decisions, and without the ability to exhaust domestic remedies, access to the CEDAW Optional Protocol is denied so there is no further redress available.

The legal aid cuts

From 1 April 2013 the following changes were introduced in key areas of law for women:¹³

- **Debt** – legal aid for debt advice will be removed from the scope of the legal aid scheme except where a person's home is at 'immediate risk'
- **Welfare benefits** – legal aid will be removed from scope for all welfare benefits advice including appeals against decisions, for example, to refuse Employment and Support Allowance (ESA) or to reduce or suspend benefit payments or tax credits and appeals around Universal Credit will not be covered (See Article 13)
- **Education** – legal aid for education law advice will be removed. This will cover issues like appeals against exclusions or admissions, bullying or disability discrimination (See Article 10)
- **Employment** – legal aid for employment law advice will be removed except for cases of discrimination (See Article 11)
- **Family law** – legal aid will be removed for all cases except applications for protective injunctions for DV or forced marriage and for divorce, financial and children cases where the applicant can provide specific evidence of violence (See Article 16)
- **Housing** – legal aid for housing law advice will be removed for all cases except homelessness or serious disrepair threatening health, or for people facing eviction (See Appendix: 26)

¹³ More information on the impact on these areas of social welfare law issues can be found as part of the Low Commission at Low Commission, Documents/Consultation <http://www.lowcommission.org.uk/Documents-Consultation> Accessed 21/05/2013

- **Immigration** – legal aid for immigration law advice will be removed for all cases except claims for international protection (Refugee Convention,¹⁴ Article 3 European Convention on Human Rights¹⁵ (ECHR) and Article 15 EU Qualification Directive¹⁶); applications for Indefinite Leave to Remain under the Domestic Violence Rule; and for victims of trafficking who have been formally identified by the National Referral Mechanism (See Article 9)
- **Medical negligence** – legal aid for medical negligence claims will be removed, except for cases with new born babies or babies in the womb (See Article 12)

The cuts to legal aid introduced in the LASPO Act 2012 will in particular significantly reduce the ability of women experiencing violence to access legal remedies which could ensure they are able to get the legal help and support they need to escape that violence and to provide a safe future for themselves and their children.

The changes will prevent women from seeking face-to-face advice from a specialist lawyer. In categories of law where legal aid is to be retained, fewer people will be financially eligible, and many will have to pay a large financial contribution. Because whole areas of law have been removed from the scope of legal aid, the changes will force individuals to represent themselves in legal proceedings long recognised as among the most complex,¹⁷ against obdurate institutional defendants, such as the Department of Work and Pensions and UKBA, who can afford the best lawyers.¹⁸

Family law

Women need access to legal aid to ensure protection for themselves and their children after relationship breakdown. Lack of access to legal aid constitutes another barrier for women trying to leave violent relationships, which for some women could mean life or death.¹⁹

Case study:²⁰

“Legal aid enabled me to resolve legally and permanently the issues around violence and emotional abuse which had been plaguing myself and my son for

¹⁴ Refugee Convention <http://www.unhcr.org/pages/49da0e466.html>

¹⁵ European Convention on Human Rights http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf

¹⁶ European Union Qualification Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

¹⁷ Citizen’s Advice (2012) Briefing: Legal Aid Sentencing and Punishment of Offenders Bill House of Lords Report Stage <http://tinyurl.com/qbrppj>

¹⁸ Rights of Women (2011) *Women’s Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

¹⁹ National Federation of Women’s Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

²⁰ Rights of Women (2011) *Women’s Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

years. Legal aid made it possible for me to stand up to my ex partner with the full weight of the law behind me. Since that time I have experienced no abuse and the contact issues have also been resolved."

Whilst the LASPO Act retains legal aid for applications for protective injunctions for DV and forced marriage it removes it for private family matters including divorce and financial settlement and applications about children, unless the applicant can provide evidence of DV.

Only victims of DV who are able to provide the following evidence will be eligible for family law legal aid:

- an unspent conviction for a DV offence against them
- a caution for a DV offence against them within the past 24 months
- confirmation of ongoing criminal proceedings in respect of a DV offence (only after charge as investigation is insufficient)
- a protective injunction for DV or forced marriage in force or having been made within the past 24 months
- an undertaking given in respect of DV in force or having been made within the past 24 months (and where no cross undertaking has been given)
- a referral to a Multi Agency Risk Assessment Conference as a high risk victim of DV and a plan in place within the past 24 months
- a report from a doctor, nurse or midwife in respect of an injury or condition consistent with DV within the past 24 months
- a report from Social Services that there had been an assessment of DV within the past 24 months
- a letter from a refuge confirming admission for a period of more than 24 hours within the past 24 months.

This eligibility criteria to access legal aid in family cases fails to reflect women's experiences of violence and in practice will leave vulnerable women without access to legal support. Guidance on the regulations and how to access them will only be available in English and online, thus excluding the most vulnerable women fleeing violence who cannot access online services through lack of mental capacity, language skills, or lack of secure accommodation. It also fails to appreciate the financial implications (and implication for access to justice) where women have to buy their own evidence, even when on benefits or with 'no recourse to public funds'. They will have to pay for an accredited translation of a foreign conviction, £50 for a letter from their GP and £60 for a memorandum of conviction. The Ministry of Justice say that this is non-negotiable and is a ministerial decision as it is believed that this is affordable.

The regulations only allow for evidence of convictions between the parties. Thus a woman who is threatened with rape/murder by a new partner with convictions against a previous partner/child will not be able to use those convictions as evidence. The Government has rejected an appeal that women and children accessing outreach DV services from refuges, Independent Domestic Violence Advisors (IDVAs) and other service providers should be allowed to use this as evidence of abuse. This also ignores that fact that refuge spaces are being cut due to Local Authority funding cuts and the fact that women who are not in refuges are more vulnerable. ([See Appendix: 5 and General Recommendation 19](#))

The Government has failed to adequately understand the complexities of DV.²¹ Worryingly, a House of Lords debate on the DV regulations revealed that Lord McNally, the engineer of LASPO, did not understand the consequences of what his Act has done to victims of DV.²² The evidence criteria does not reflect the fact that only a small percentage of incidents of DV reported to the police result in charge or conviction and, indeed, that many women choose not to report to the police. Research shows that a woman may experience as many as 35 incidents of violence before she contacts the police. Although evidence that a woman is or has been in a refuge will be accepted as evidence, we know that the vast majority of women who approach women's support organisations do not enter their refuges, but are supported through outreach and other services. Imposing a time limit on the evidence also shows a complete misunderstanding of DV and the ongoing risks to victims.²³

Case study:²⁴

"He will always be a risk to me and my children and to women generally. So this is just completely ridiculous and hugely misunderstood. I would love to know who the Government are getting their advice from ...In my case, yes, I could've shown all that evidence had it been last year. Next year I can't because it'll all be out of date."

Research conducted during the passage of the LASPO Bill through Parliament showed that the evidence criteria (as it was then drafted) could exclude as many as 45% of survivors of DV from accessing legal aid in family law cases.²⁵ The evidence criteria therefore discriminates against those unable to present the required evidence, leaving them with no option but to either represent themselves in proceedings or take no legal action. 90% of individual women and 97% of professionals who work with survivors of DV do not think a woman who has experienced violence should represent herself in court.²⁶

Case study:²⁷

"If I didn't have legal representation there for me as some kind of backbone, I would've felt like I couldn't have actually gone to court."

²¹ National Federation of Women's Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

²² Lords Hansard (2013) House of Lords debate, Civil Legal Aid (procedure) regulations 2012, motion to regret, Column 1105, 27th March 2013 <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130327-0001.htm#13032735001373>

²³ Hynes, S. (2012) 'Legal aid for domestic violence victims should not be decided on luck', *The Guardian*, 27th April 2012 <http://www.guardian.co.uk/law/2012/apr/27/legal-aid-lords-domestic-violence-luck>

²⁴ National Federation of Women's Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

²⁵ Rights of Women (2012) *Evidencing domestic violence: the facts* http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_dv_the_facts.pdf

²⁶ Rights of Women (2011) *Women's Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

²⁷ National Federation of Women's Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

Case study:²⁸

"I represented myself for an entire year in the family court last year. And having gone through three years of domestic violence, and stalking post-separation, the family court was the worst experience of my life. It was absolutely shocking, really shocking."

Women facing family court proceedings in family cases will be especially disadvantaged. In the vast majority of such cases, legal aid will only be available for mediation, which in many instances will be inappropriate, or impossible if the other party refuses to participate. There will be an exception where a parent or child has been the victim of abuse, but this is so narrowly defined that it is estimated that 70%+ of victims of domestic abuse will not be covered.²⁹ And even if they were able to obtain representation, they would be expected to face an unrepresented perpetrator in court. The potential for outcomes that endanger the safety and wellbeing of women and children is of enormous concern.

Immigration law

Under the LASPO Act there will be no legal aid for immigration advice on, in particular, applications under Article 8 ECHR (right to family and private life) and/or UN Rights of the Child³⁰/section 55 Borders, Immigration and Citizenship Act 2009³¹ ('best interests of the child'), or applications based on recent European Union legal judgments.³² For those in immigration detention, legal aid will remain available to advise about unlawful detention but not the underlying immigration issue which has led to the detention.

Case study:³³

"We are really concerned about what the women we support will do if they take away legal aid for immigration. We are not legally trained; furthermore, it's illegal for untrained people to provide advice on immigration issues. What will happen to these women, where will they go? The idea that these women could go through the process alone is laughable, lots of the women we support don't speak English."

Support worker

²⁸ National Federation of Women's Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

²⁹ Rights of Women (2011) *Women's Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf, p.24.

³⁰ Convention on the Rights of the Child (CRC) www.unicef.org/crc/

³¹ Borders, Citizenship and Immigration Act 2009 <http://www.legislation.gov.uk/ukpga/2009/11/contents>

³² Zhu and Chen, Case C-200/02 CJEU 19 October 2004, Teixeira (European citizenship) [2010] EUECJ C-480/08, Ibrahim (European citizenship) [2010] EUECJ C-310/08 Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09. See also, Lassel v SS Work and Pensions C-162/09, Dias C325/09; Ziolkowski and Szeja and Others C424/10 and C425/10; Shirley McCarthy v SSHD C434/09 for other relevant EU and EU law related judgments.

³³ National Federation of Women's Institutes (2011) *Legal Aid is a Lifeline: Women speak out on the legal aid reforms*. NFWI: London <http://thewi.org.uk/campaigns/current-campaigns-and-initiatives/no-more-violence-against-women/take-action>

Welfare benefits, housing and debt (See Article 13)

Women who are in, or who have left, violent relationships may also need legal advice for a number of other issues including debt, housing and welfare benefits. Research has found that 24% of women who have accessed legal aid for DV remedies have also accessed legal aid for problems with housing, 28% for problems with employment, 17% for problems with welfare benefits, and 16% for problems with debt and financial crisis.³⁴

Welfare benefits advice support is removed except for upper tribunal appeals. Because there is unlikely to be any significant private fee-paying provision of advice and representation in welfare benefits, this may well effectively remove welfare benefits litigation from the higher courts, as such cases will not reach the upper tribunal appeal stage unless advice is given at an earlier stage both to identify the often complex legal issues at stake, and to progress through the lower tribunals. Thus the most vulnerable women will be denied redress under CEDAW Article 13.

A reduction in providers

Changes to the financial eligibility rules over recent years have made it progressively harder for those on a low income to qualify for legal aid while changes to the contracts given to providers have resulted in a steady decrease in the number of solicitors firms and law centres doing legal aid work.³⁵ It is feared that the removal from scope of several entire areas of law will discourage many legal providers from tendering for new legal aid contracts. In particular, it is likely that removal of immigration from scope will significantly reduce the number of providers able to continue to provide a service to asylum applicants. It is feared that the combination of loss of legal aid work and other public expenditure cuts will result in the closure of many specialist providers such as Law Centres, and also many general advice centres including Citizens Advice Bureaux.³⁶

Changes to civil legal aid will affect what can be covered by legal aid; who will be able to receive legal aid; how you get legal advice; and how much legal advisors are paid for doing the work. People on benefits will no longer be automatically entitled to legal aid. Everyone will have their savings and assets assessed and those with assets and income over £300 will have to pay towards legal costs even though this is a very low threshold. People needing legal aid will have to call a telephone advice line for a referral rather than approach solicitors directly. The amount paid to lawyers for giving advice will be reduced by 10% and rates will then be frozen until 2015. This is following a period of some 15 years in which legal aid rates had not been increased – which itself had led to many legal aid providers, especially in major legal areas such as immigration, abandoning the sector or restricting

³⁴ Rights of Women (2011) *Women's Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

³⁵ Rights of Women (2011) *Women's Access to Justice: A research report*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

³⁶ Citizen's Advice Bureau (2012) 'Press release: Legal aid cuts will have devastating impact on CAB network says CEO', Citizens Advice website, 6th March 2012 http://www.citizensadvice.org.uk/press_20120306

themselves to privately-paid work. Plans to cut debt advice from Citizens Advice Bureaux were averted by emergency 12 month funding from 2010-2011 but there are currently no plans to fund the service further. Local Authorities are also cutting the funding to legal and other advice services. Voluntary organisations that do not provide legal advice themselves but refer on to specialist services will also be affected by these changes as they may find themselves with clients they are unable to help.

Recommendations:

- **The Government must widen the gateways to justice to include evidence that more accurately reflects women's experiences, for example, evidence provided from VAWG support services, or from health services**
- **The Government must abolish the 12 month time frame that applies to some of the evidence criteria for legal aid support as it fails to reflect the high levels of post separation violence experienced by many women (See Appendix: 30)**
- **The Government must put appropriate safeguards in place to ensure that women who have experienced violence are not required to take part in mediation as this is not appropriate**
- **The Government must not require women to buy evidence of domestic violence in order to qualify for legal aid, especially where they are on limited funds, or have 'no recourse to public funds'**
- **The Government must amend the regulations in order to accept evidence of convictions and findings of violence by a perpetrator against any victim, adult or child**
- **Evidence of domestic violence should be widened to include those accessing outreach refuge support, or IDVA support**