



Transforming legal aid: delivering a more credible and efficient system

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Understanding and supporting
women and their organisations

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About the Women's Resource Centre

WRC is a unique charity which supports women's organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women's not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

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Introduction

Transforming Legal Aid... consults on a new series of proposals for reform that follow on from the recently introduced Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The LASPO Act was highly controversial and affected the majority of areas that were previously covered by legal aid. Many cases have now been removed from the scope of legal aid, including within private family law, immigration, debt and housing law. Only the highest risk cases will still be covered, such as cases involving incidents of domestic violence and/or mental health issues. The Government expect to save up to £320m from the changes made within the new Act and plan to save a further £220m if the reforms proposed in this consultation are implemented.

Women's Resource Centre is very concerned that the Ministry of Justice (MoJ) has devised a new set of proposals that will further dismantle the UK's legal aid system. This is a large scale consultation, covering a wide range of reforms across different areas of legal aid, including thresholds for eligibility, a residence test for civil legal aid, competition in criminal legal aid and cutting fees in civil and criminal legal aid. If implemented, these further reforms will reinforce existing barriers to women's access to legal aid and could therefore put women's access to justice at risk.

Eligibility, Scope and Merits

Proposals in this section of the consultation support the Government's aims to save money and restrict legal aid to cases that deal with 'serious' issues that justify the use of public funds. Proposals for reform include:

Restricting the scope of legal aid for prison law

Criminal legal aid is currently available to prisoners who need advice and support on issues including treatment, sentencing, disciplinary matters and Parole Board reviews. Legal aid applications are also subject to a merits and means test. There is an internal prisoner complaints system for issues around treatment or conditions in the prison. Legal aid support is given only in cases where the complaints system cannot be used, such as if the prisoner has mental health issues.

The MoJ propose to restrict the scope of advice and assistance to prison law cases that:

- Involve the determination of charges for the purposes of Article 6 (right to a fair trial) of the European Convention of Human Rights
- Engage Article 5 (right to have ongoing detention reviewed) of the European Convention
- Require legal representation as a result of successful application of the 'Tarrant' criteria, i.e. the seriousness of the charge, potential procedural difficulties, reasons of fairness to prisoners or staff etc.

The MoJ believe that the current internal complaints system is a more efficient way to resolve issues. However, the MoJ expect that legal aid would still be available for Parole Board reviews, disciplinary and some sentencing cases.

Women prisoners are one of the most vulnerable groups in society. They have little power to challenge unfair decisions made about their treatment in prison. Women

prisoners will be disproportionately affected by the proposed changes as they are subject to higher rates of disciplinary proceedings than men¹. Cutting prisoner's access to legal aid further restricts their right to fair treatment as they are likely to need assistance to access existing complaints procedures. It is vital for women prisoners to receive adequate and appropriate support to challenge disciplinary proceedings and final decisions if they have been conducted unfairly.

Imposing a financial eligibility threshold in the Crown Court

Under the current system, criminal legal aid is granted in Crown Court to all defendants regardless of income, who then pay back a contribution of these costs, which is means tested. In Magistrate's Court, defendants with a disposable income over £3,398 are not eligible for legal aid, although specific cases can be included under hardship grounds.

In this consultation, the MoJ proposes to introduce a financial eligibility threshold of £37,500 disposable household income to all criminal cases in Crown Court. Therefore, defendants in the Crown Court with a higher disposable income than this amount will not be eligible for legal aid and will have to buy legal services privately, unless they can demonstrate that they cannot afford to pay for their defence.

Women's Resource Centre believes that more clarification is needed on the details of this proposal. For example, how will disposable income be assessed and using what criteria? What evidence must be provided to prove that a claimant is unable to pay for their defence?

WRC is particularly concerned that this proposal may impact negatively on women in an abusive relationship. Victims of domestic violence may be dissuaded from pursuing a case against their perpetrator if their own financial stability is linked to that of their partner, who would have to pay privately for legal services.

Introducing a residency test

Current legislation makes legal aid available with no nationality or residence restrictions. If a case is taking place in England or Wales, foreign nationals can apply for civil legal aid whether they have a temporary visa or indefinite leave to remain in the UK.

The MoJ is proposing to introduce a residence test for applicants of civil legal aid in England and Wales. In order to 'pass' the residence test, applicants must:

1. Be lawfully resident in the UK at the time of application for civil legal aid.
2. Have lived in the UK for 12 consecutive months either at the point of application or in the past.

The residence test would be carried out by the legal aid provider processing the civil aid application. Exceptions to the test would include armed forces personnel and asylum seekers.

¹ Women in Prison, Statistics about women in prison, <http://www.womeninprison.org.uk/statistics.php> Accessed 23/05/2013

WRC is very concerned about the impact of this proposal on women with insecure immigration status who have experienced violence and need access to legal aid to ensure safe removal of themselves and dependants from an abusive situation. We find it particularly surprising that this policy has been suggested when women who have experienced violence are excluded from many of the new restrictions within the LASPO Act. We urge the MoJ to extend the exemptions that exist in the LASPO Act for women fleeing domestic and sexual violence to the proposals in this consultation.

This proposal is potentially dangerous for women with no recourse to public funds who have experienced violence. For these women, access to legal aid, which they are currently entitled to despite restricted access to benefits, may be the only access they have to justice. Legal aid is a life saving resource, which enables a woman in a violent relationship to protect herself and any dependants by applying for protection orders, securing safe accommodation, and if necessary, securing her immigration status.

We are also concerned at the statements made within this section of the document about immigrants' access to legal aid, such as;

"Individuals with little or no connection to this country are currently able to claim legal aid to bring civil legal actions at UK taxpayers' expense... the availability of legal aid for cases brought in this country, irrespective of the person's connection with this country, may encourage people to bring disputes here."

There is no evidence supplied with the consultation document to support these claims, which implies that this proposal is a knee-jerk reaction to political and media influenced perceptions of immigrants. We are very concerned that this group of vulnerable people have been targeted, when the potential savings to be made from introducing this test are marginal.

Paying for permission work in judicial review cases

Legal aid is currently available for most judicial review cases that have permission from the High Court to proceed. A case will only be given permission to proceed if it is seen to be 'arguable' and requires a full investigation in court.

The MOJ propose that legal aid providers should only be paid for their work if a case is granted permission to proceed.

Judicial reviews are a vital tool for women's organisations to hold local authorities to account. Under these proposals, the financial risk of taking on the preparation work for judicial review cases passes on to lawyers, meaning that many will be unable to continue this work. Therefore, organisations will find it increasingly difficult to find a lawyer willing to take on their case. As a result, they will be less able to hold public bodies to account, which risks perpetuating unlawful practices of local and public authorities.

Civil merits test – removing legal aid for borderline cases

To qualify for legal aid, applicants must usually meet a number of criteria, including the expected costs of the case, possibility of success and outcomes sought from

the case. Cases will be marked on a scale of chances of success at the final hearing, from poor to very good. Cases that are seen to have over 50% chance of success usually receive legal aid. A small number of cases that are 'borderline' are also granted legal aid, such as those related to housing or family cases, or a case with 'special features', i.e. with a significant wider public interest.

The consultation proposes to abolish the provision of civil legal aid for all borderline cases, including asylum cases. These cases would be treated in the same way as those categorised as having a poor chance of success and would not be eligible for legal aid.

As borderline cases that are currently granted legal aid are often serious cases that affect women and their families, such as in housing or family law, removing these important cases from legal aid could have a devastating impact. These cases often act as a test case, with wider impacts on human rights or other legal decisions, as well as guiding local authorities on how to meet their legal obligations.

Introducing Competition in the Criminal Legal Aid Market

This part of the consultation impacts more directly on legal service providers than women's organisations and their beneficiaries. However, there will of course be indirect consequences of introducing a competitive model on the relationship between legal advice services and women applicants for legal aid. In particular, WRC is concerned at the potential impact of proposals to remove a choice of legal representative for clients in criminal cases.

A client's choice of who represents them in criminal cases is essential to ensure the high quality of services available for defendants. For many women in the criminal justice system, developing an ongoing relationship with a trusted legal representative is essential to decisions made during the case.

Domestic or sexual violence is often an important factor in the experiences of women in the criminal justice system, many of whom may have been coerced into committing an offence by the perpetrator or as a consequence of his violent behaviour. It is essential for these women to be supported by a legal representative who understands the complexities of cases where domestic or sexual violence is a factor. Under the current system, women can make sure of appropriate representation by carefully selecting their legal services. However, if this proposal was implemented, there would be no guarantee that the solicitor allocated to them would have the required knowledge to be able to advise their client effectively.

The proposed changes to legal aid will impact on us all as women's organisations, either directly when we want to use judicial review to challenge unfair decisions, or when we are supporting women who may have to navigate the daunting criminal or civil law system with as much legal assistance as they can afford.

It is vital that we as a sector respond to this consultation and tell the Ministry of Justice that these proposals will cost the Government more money in the long term by undermining the justice system in England and Wales by chipping away at its foundations. Women's Resource Centre will be drawing on Right's of Women's template response (www.rightsofwomen.org.uk) to respond to this consultation

and urge our members to do the same if you do not have capacity to draft your own response.