



UNDERSTANDING & SUPPORTING WOMEN'S ORGANISATIONS

WRC is the leading national umbrella organisation for the women's sector in the UK. We support our membership of over 500 women's organisations to continue to deliver, often life-saving, services to some of the most marginalised women in our society. We achieve this in three ways:

- ➔ Organisational development and change
- ➔ Engagement for social change
- ➔ Collaboration for change

Our membership is vast, including women's health advocates, rape crisis centres, domestic violence refuges, women's employment centres, and more. Many organisations are very small with limited resources and income.

Our members include: Rape Crisis England and Wales, Refuge, Sheffield Women's Counselling Therapy Service, Women in Prison, Women's Aid, Brighton Women's Centre, Choice in Hackney and Breast Cancer UK.

CEDAW SHADOW REPORT

Legal Aid Reforms and Women's Access to Justice

Shadow Report to the UN Committee on the Elimination of Discrimination against Women:
Follow up procedure: Report on behalf of Women's Resource Centre (WRC) and partner NGOs.

Introduction

1. The Women's Resource Centre was the umbrella organisation in the preparation of the shadow report for the examination of Great Britain and Northern Ireland in 2013
2. Consequent to that report this submission provides information for its follow up procedure on the 2013 concluding observations to United Kingdom (UK) on Legal Aid and access to justice (para 24), focussing on the impact of the Legal Aid Sentencing and Punishment of Offenders Act 2002 (LASPO) on access to justice.
3. This report aims to assist the CEDAW Committee to evaluate the net effect of the progress reported in the government response, to correct inaccuracies in the UK report dated the 7th March 2016 and to highlight issues which disproportionately impact on women. It also underlines the impact of some of the reforms in the Legal Aid system which impact Access to Justice. No Government data is available on the impact of the LASPO reforms to the availability of Access to Justice.
4. CEDAW's concluding determination in 2013 at paragraph 68 is the focus of this response. Of particular concern to the women's sector is schedule one of LASPO which excludes all forms of private family law from the Legal Aid litigation concerning, inter alia, divorce, property disputes, housing, immigration matters and issues concerning disputes between parents and other family members about their children. The Commissioners also noted with concern a proposed Residence Test (RT), introduction of Court fees for Employment Appeal Tribunals a potential reliance on informal community arbitration systems including faith based tribunals as a result.

Subsequent Action Taken by the Government, NGO's and other Actors since the concluding observations of 2013

5. 22nd April 2014: Legal Aid regulations were amended to extend the evidence criteria for applying for Family Law Legal Aid. These introduced new forms of evidence including evidence that a perpetrator is on police bail, admission to a refuge (due to insufficient accommodation available) and a referral to a domestic violence organisation by a health professional.

6. Existing forms of evidence were widened to increase their practical application. These include the new Police provisions of domestic violence protection notices and Orders and removal of the 24 hour time period for admission to a refuge.¹
7. Rights of Women and Women's Aid of England and Wales have engaged in research into the ability of victims of violence to obtain the necessary evidence to meet the domestic violence evidence gateway threshold in order to obtain Legal Aid. They reported in March 2014, November 2014 and December 2015.²
8. There have been two Cross Party Government Select Committee enquiries and reports on LASPO/ access to justice: the report of the Justice Committee published on the 12th March 2015³ and the report of the Public Accounts Committee⁴
9. The Legal Aid authority have published quarterly statistics⁵ concerning the take up of Legal Aid both for Legal Help cases (limited Legal Aid work done outside of Court) and certificated work (more extensive including litigation). The most recent of these reports was published in December 2015. The report January to March 2016 will not be available until the 30th June 2016.
10. There have been a series of successful legal challenges to LASPO including The Residence test, Exceptional funding, domestic violence regulations, and "no permission / no payment" for Judicial Review cases. In each, the Applicants were supported by the Public Law Project and the Law Society and most work undertaken in challenging LASPO was done Pro bono. On each of these cases the Respondent was the U Government, who spent significant public money in defending the cuts.

Judicial Review

11. Judicial Review (JR) is the means used by individuals to challenge Statutory bodies and the Government. See para 13 of the Government report, March 2016. The UK make no mention of the changes to Civil Legal Aid payment rules, amended in 2014⁶ making payment for work done on applications for permission (part 1) in judicial review claims conditional on the grounds of permission being granted to take the review forward. Refusal of permission meant that the solicitor acting on behalf of the Applicant would not get paid, or payment discretionary in the gift of the Legal Aid Agency
JR cases are prepared in full, prior to application to the "Permission Judge".

¹ Evidencing domestic violence: reviewing the amended regulations Rights of Women and Women's Aid
<http://rightsofwomen.org.uk/policy-and-research/research-and-reports/> (p2)

² <http://rightsofwomen.org.uk/policy-and-research/research-and-reports/>

³ House of Commons Justice Committee impact of changes to civil Legal Aid under part 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012: eighth report of session 2014 to 2015: HC311. 12th March 2015

⁴ House of Commons Committee of Public Accounts: implementing reforms to Civil Legal Aid: 36th report of session 2014 to 2015: HC808; hereafter referred to as Public Accounts Committee report and the Justice Committee report.

⁵ <https://www.gov.uk/government/statistic/a-guide-to-legal-aid-statistics-in-england-and-wales>

⁶ The civil Legal Aid (remunerations) (amendment) (number 3) regulation 2014S1 number 607

12. A Legal Aid solicitors group and the Public Law project⁷ JR'd the payment regulations as ultra vires, contrary to the statutory purpose of LASPO. If the challenge had not succeeded, further JRs would have been deterred. All of the Legal challenges to LASPO have been by JR.

Residence Test

13. The UK report justifies the proposed Residence Test (RT) (parra10 to 12) which would deny Legal Aid to anyone who did not have a "strong connection with the United Kingdom". Paragraph 12 records the Government's successful appeal against the Judicial Review brought by the Public Law Project in October 2015. This was overturned on further appeal to the Supreme Court, on the 19th April 2016 and the RT was ruled to be unlawful. The Justices unanimously ruled that the Lord Chancellor was "acting in a legal vacuum and without parliamentary authority".⁸

Exceptional Case Funding

14. Andrew Tucker from the Ministry of Justice (MOJ) gave evidence to the CEDAW Commission in July 2013 that the Exceptional Case Funding Scheme (ECF) was "the safety net" available specifically to victims of domestic violence where they were unable to provide one of the evidence forms accepted by the Legal Aid Authority (LAA) to passport the victim of violence to access Legal Aid for private Family Law matters. These evidence forms are found in LASPO 2012 – evidence requirements for private Family Law matters.⁹
15. The Justice Committee report¹⁰ shows the LAA expected to receive 5,000 to 7,000 applications for ECF of which around an estimated 3,700 (53%) would be granted. Legal Aid Agency report April 2013 to September 2014 (representing the first 18 months of LASPO) only 2,090 applications were made, only 151 (7.2%) were granted. Mostly for representation in inquest cases following the death of a relevant. 21 were for family law cases, 22 for immigration and 2 for housing. This trend has continued. The Justice Committee recorded "We heard of a number of cases where on the facts available it would appear surprising exceptional funding was not granted". E.G. refusal of an illiterate women with a learning disability, hearing and speech difficulties who faced a hearing to decide if she could continue to see her child or not. The report also quoted a number of cases where the Applicant was a party to litigation, but lacked Litigation capacity, and yet were refused.
16. In LAA statistics 2014 to 2015, 1,172 applications were made for ECF out of which only 18% were granted, or 214. 97 of those were for inquests.
17. In addition, the Justice Committee recorded:

⁷ R (Ben Hoare Bell and other) v Lord Chancellor [2015] EWHC523(Admin)

⁸ <http://www.publiclawproject.org.uk/> (the written Judgement is not yet available)

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253451/evidence-requirements.pdf

¹⁰ www.publications.parliament.uk->cmjust 12th March 2015 (paragraph 31)

- that there was a lack of specialist knowledge in the LAA team dealing with applications, and the forms are extremely complex and there is inadequate training for those administering the system.
- The ECF forms take between 3 and 4 hours to complete. One expert told the enquiry that it took a “very experienced case worker 6 hours to make the application” and it is simply not financially viable. This is unfunded work building in disincentive to practitioners to undertake applications for exceptional case funding.

18. A JR has successfully challenged ECF¹¹. At a successful appeal to the Supreme Court the ECF was found to be ‘not unlawful’, but to be extremely complex. The Government continue to say that ECF can be accessed directly by litigants in person on the website”.

19. The numbers of successful ECF cases show that this is in no way a safety net. There was no right to appeal a refusal of ECF, no payment for the necessary preparatory work and that applications were far too complex for litigants in person. Revised guidance from Lord Chancellor has still not been published following a further hearing on ECF brought before the Administrative Court in July 2015¹².

20. Domestic Violence Gateway Evidence Requirements

21. This is referred to in the UK state response paragraphs 6 to 8 in which the UK restate that Legal Aid has been restricted to make sure that “funding is available for those who need it most, namely victims of domestic violence.” The report records where there is *objective evidence of domestic violence or child abuse Legal Aid remains available. This is because the UK has prioritised protecting victims of domestic violence from potential disadvantage of facing their abuser in Court*”.

22. From the initial consultation pre LASPO 2012, the women’s sector has responded in numbers, providing written evidence and case studies on the DV evidence requirements. The first consultation paper on LASPO received well over 5,000 responses from concerned stakeholders. From the outset the response has been consistent that the types of proof required as set out in schedule one of LASPO¹³ bore little or no relation to the experience of victims of VAW, who in significant numbers were unable to obtain requisite proof.¹⁴ The committee recommended “the introduction of a catch all clause giving the LAA discretion to grant Legal Aid to a victim VAW who does not fit within the current criteria.” The committee also raised concern about the domestic violence 24-month time limit after which the evidence is said to expire. The committee also acknowledged (paragraph 70) poor knowledge of domestic violence by frontline Police, health professionals and social

¹¹ R (Gudanavicieme) v The Lord Chancellor [2014] EWCA (CIV)

¹² ISV (1) Director of Legal Aid case work (2) Lord Chancellor [2015] EWHC 1965 (Admin)

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523451/evidence-requirements.pdf parra 68.

care professionals.¹⁵ Impacting these types of evidence, as evidenced repeatedly by the Women's sector

23. A report prepared in 2016 by Her Majesty's Inspectorate of Constabulary (HMIC) recorded that the police were failing to identify /assist victims of domestic violence.¹⁶ The emphasis placed on convictions, cautions, bail and other criminal indicators of VAW shows little account Government's own research which shows that victims of VAW rarely report to the police. The real experts who could properly identify and passport victims of domestic violence are the front line domestic services in the women's sector and experienced family law specialists. To date neither of these types of evidence (which are easily available, unlike most approved forms) have been accepted by the MOJ/LAA in domestic violence evidence regulations save for in very exceptional circumstances.¹⁷
24. Of the types of evidence available, the four reports produced by Women's Aid/Rights of Women¹⁸ record significant numbers of victims of abuse who are unable to provide the prescribed forms of evidence in order to access family law Legal Aid. The first report¹⁹ recorded that half of all women surveyed did not have the prescribed form of evidence to access family law Legal Aid. Their report of November 2014 recorded 38% of women responding did not have the prescribed forms of evidence. In the most recent report dated December 2015 which collected data after the minor changes to the regulations recorded the LAA, April 2014, still 37% of women did not have the prescribed forms of evidence to access family Legal Aid.
25. Major Legal Aid providers/solicitors recently told the MOJ²⁰ that the medical profession are not expert VAW: they have three minutes per patient, so no time to assess. The biggest surgery in Portsmouth will no longer provide gateway DV proof letters for "fear of legal complications". It seems that their Governing body was not consulted prior to LASPO. Solicitors from Newcastle, Teesside, the Midlands and Portsmouth gave evidence to the Ministry of Justice²¹ that Health Visitors are "not allowed to provide DV letters without permission from their legal department". The UK comments at paragraph 8 of the March 2016 report that they have "worked with professional organisations representing GP's and other health professionals as well as the police to ensure that they are equipped to provide evidence..." is seriously questionable.

The Current Position with Domestic Violence Gateway Evidence

26. In the CEDAW determination July 2013, the commissioners recommended regular reviews as to the availability of Legal Aid for victims of violence against women. The UK had undertaken no such review until the conclusion of a very long running Judicial Review

¹⁵ IBID (paragraph 71)

¹⁶ To be added later

¹⁷ **MoJ Legal Aid interim regulations June 2016**

¹⁸ <http://rightsofwomen.org.uk/policy-and-research/research-and-reports/>

¹⁹ August 2013 – 1- key findings

²⁰ Focus group meeting – Impact of domestic violence regulations – 10th June 2016

²¹ IBID

concerning the domestic violence gateway evidence brought by Rights of Women. (ROW)²² This JR concerned two aspects of domestic violence evidence regulations: the 24-month time limit after which evidence expires (which could conceivably happen mid case) and the fact that none of the types of acceptable evidence were relevant to financial abuse. A further concern was the inability to accept evidence that had been out with the prescribed forms.

27. The leading Judgement given by Lord Justice Longmore found on behalf of ROW and concluded that the 24-month time limit on evidence was arbitrary, and that there were many occasions when the risk exceeded 24 months, and there was no justifiable reason for the 24 month cut off point, and that acceptable evidence must be extended to include proof of Financial abuse

February 2016: Ministry of Justice/LAA domestic Violence Regulations Working Group

28. The MOJ established a small working group to consider amendments to domestic violence evidence requirements, consisting of ROW, Resolution, the Law Society and the LAA. A series of meetings took place during which the case was forcefully made out for DV NGOs and specialist lawyers to be trusted to passport victims of VAW for Legal aid.
29. The Ministry of Justice announced interim regulations which extended the time limit on the expiry of DV evidence to 5 years/60 months against advice of non-Government participants. The MOJ's rationale was that they wanted to test out a new time frame so that the "flood gates would not open" to victims of VAW hitherto excluded from legal aid.
30. The MOJ also launched a research project to be undertaken seeking input from Lawyers and NGO's via questionnaire re domestic violence regulations, and the ease with which types of proof can be obtained.²³ This will include two small focus groups with major Legal Aid family law providers as well as inviting evidence and contributions from the women's sector/DV NGO's.
31. Evidence given by NGOs has consistently warned that there are groups of women who are significantly more vulnerable than others. Women from the migrant / BME communities for a wealth of reasons find it more difficult to obtain evidence of their financial situation and prove domestic abuse; – see annex 1 – the report prepared by Southall Black Sisters to the MOJ.
32. Similarly, intersectionality discriminated against are women with disabilities as identified by the Justice Committee Also, the report to the Human Rights Commission concerning domestic abuse and the barriers to accessing help, procured by Stay Safe East and Sisters of Frida is appended at Annex 2. This clearly demonstrates the intersectional impact of domestic violence on women living with disabilities and their ability to access help.

²² R (on the application of Rights of Women) [2016] EWCA CIV91

Paragraph 43 (i – vii)

²³ Questionnaire Annexed

33. The MOJ have been encouraged in their research to seek evidence widely from women's sector Issues of extreme vulnerability in relation to BME women, women with physical and learning disabilities have been raised with them throughout the working group and the focus group meetings.
34. The questionnaire was distributed widely on the 10th June 2016 with a completion deadline of the 1st July 2016.
35. In addition, the Labour Party has commissioned its own extensive enquiry into the impact of LASPO as the Government has as yet declined to do so.
36. **For these reasons this shadow report can only be presented as an interim report and the issue will need to be further examined at the next UK state examination.**

Additional assistance with Legal Advice

37. At paragraph 20 of their report the UK list new support for litigants in person (LIPs) in particular "prioritising the provision of legal support through the coordination of local support and expertise via the Public Support Unit.(PSU)" The JC report²⁴ noted that the government had announced a £2 million package over 2 year to help litigants in person including the PSUs in Court, the impact of which is not known.
38. In the Public Accounts Committee report²⁵ it has also reported very unfavourably on LASPO. And highlighted the insufficiency of impact on the increased cost of cases by LIPs

Mediation

39. The Justice Committee heard that the provision of evidence from the Government that mediation Legal Aid as was "a key factor in the decision to remove Legal Aid from private family proceedings." In order to divert from the Court process and give alternative options to resolve private family disputes.
40. MOJ told the JC that they estimated that there would be an additional 9,000 mediation referrals a year. In fact, mediation numbers declined by 17,246 referrals in the year following LASPO, a fall of 56% as evidenced by the National Audit Office report (see below), who estimated an under spend on mediation in the year 2013 to 2014 of around 20 million.
41. What the government failed to understand was that the majority of referrals to mediation come from solicitors previously funded at an early stage in proceedings, and no longer available.

²⁴ Justice Committee report (parra 115)

²⁵ House of Commons Committee of Public Accounts implementing reforms to civil Legal Aid: 36th report of session 214 to 215 HC808 (19th January 2015)

42. New legislation in 2014²⁶ required litigants in person to attend mandatory mediation before being permitted to apply to the family court. In theory, victims of VAG. are excused. In practice, the applicant has to prove the same as the criteria as in the domestic violence gateway evidence for LASPO resulting in similar numbers of women unable to prove eligibility, thereby having to attend mediation with their abuser on issues concerning their children and matrimonial finances.

Protection of Women through the Informal Community Arbitration System, Especially those that violate their rights under the convention

43. At paragraphs 22 to 24 of the UK State report they discuss the need for alternate dispute resolution as a necessity. This does not assist women from faith communities (see the report of SBS – Annex 1) who because of intersectional discrimination are unable to provide financial evidence for a means tested Legal Aid or evidence of proof of violence to access civil Legal Aid for family matters and who are then left with the alternative option of faith Tribunals or Sharia Courts.

44. It is meaningless for the government to state that any victim who feels that they have been coerced in to resolution of a particular family dispute via a faith arbitration has the cause to refer the matter to the UK Courts when there is no funding available for this and these are the very women who are going to be the most vulnerable.

Support for victims/witnesses UK report 16-18

45. It is difficult to endorse these measures as effective when there is significant evidence of the decimation in women's sector specialist services. There is significant evidence that specialist women's NGOs are being closed with funding going instead to generic services.

46. The government's own impact assessment prior to the introduction of LASPO and subsequent government statistics (see below) concur that women are far more dependent on legal aid for family matters than men, so it is an improbable argument of the Government that women are not severely impacted, with many more severely impacted than others due to the intersectional nature of discrimination.

47. Further, significant court closures throughout England and Wales mean that victims of VAW are having to travel further both to see solicitors and to attend court. Because of the increased demand for fewer resources in the court of state, special measures such as separate waiting areas which once were available are no longer in place.

48. Julie Bishop gave evidence to the Public Accounts Committee²⁷ that 9 law centres (or 1 in 6 members of the law centre network of which she is director) and 10 advice centres run by Shelter have closed down following the implementation of LASPO. Ms Bishop

²⁶ Children and Families Act 2014 (section 10(1))

²⁷ Paragraph 79

went on to say that more would close due to cuts to local authority spending. Those continuing are “significantly reduced in their capacity to assist”.

49. The Citizen’s Advice Bureau gave evidence to the Justice Committee²⁸ that they had seen an increase of 72% since the implementation of LASPO and the National Audit Office noted that 70% of not for profit providers could meet only half or less of the increased demand for legal help from people who could no longer access legal aid as a result of LASPO.
50. There is little data available evidence the increased demand on NGO’s and the reduction in the services they are able to offer as a result of the cuts but this is easy to evidence anecdotally.
51. Evidence of cost shifting to other parts of public funding and to individuals shows the main justifying factors for LASPO – financial saving - has failed. LASPO aimed to save £350 million per year from civil legal aid spend. There is significant evidence that rigorous restrictions of domestic violence evidence requirements exclude at the time of the Women’s Aid/ROW most recent research 38% of victims of VAW. Both Public Accounts Committee and the Justice Committee reported a significant under-spend on legal aid, well above what was intended by the MOJ.²⁹ The National audit figures record that the higher than expected saving was 326,004 fewer cases under the legal help (limited legal advice in the office) and would have been expected and 36,537 fewer cases going to court than expected and stated that the MOJ was on track to exceed spending reduction forecasts by in excess of £32 million.
52. Possible reasons as to why this is the case are legion. Gillian Guy from the Citizen’s Advice Bureau told the Justice Committee that “the legal aid eligibility system was so complex that it could be described as a technical minefield”.³⁰
53. The Justice Committee also recorded evidence of unnecessary complexity of legal aid application forms and recommended change³¹ warning “failure to do so runs the risk that legal aid providers were not to take on an individual who is eligible for public funding potentially denying that person access to justice”.
54. The did not accept the MOJ’s evidence that the under-spend was as a result of NGOs picking up those who were ineligible, and noted the extent to which not for profit organisations have been decimated by funding cuts, and are struggling to meet the increased demand. The Justice Committee concluded “*the Ministry of Justice needs to appreciate that a significant and unexpected saving in the civil legal aid budget requires an immediate investigation as it may indicate a significant impairment of access to justice.*” Those contributing to this report would say that that is undoubtedly true and that what is known at this stage is the tip of the iceberg.

²⁸ Justice Committee report (paragraph 80)

²⁹ Justice Committee report (paragraph 12)

³⁰ Justice Committee report (paragraph 14)

³¹ Justice Committee report (paragraph 19)

55. Both the Justice Committee and Public Accounts Committee agreed that the Ministry of Justice had saved money from their own budget but the Justice Committee recorded³² the MOJ's failure to research the impact of legal aid on other parts of the system before enacting LASPO. This was echoed by the National Audit Office³³ - cost shifting is impacting the health service, increased costs of detaining people under immigration regulations, the costs of social services having to step into family crisis situations. The JC noted poor decision making at government departments, the consequence being failure to achieve justice for the individual, plus increased costs to the MOJ through increased court time, increased costs of the new administration of legal aid by the legal aid.³⁴ The Justice Committee stated that the MOJ to deal with the public money responsibly and stated that *"the LAA failed to give sufficient weight to its vital role in ensuring access to justice, noting that assessment of means and merits in a case emergency risk that those needing urgent legal aid may not be helped in time."*
56. This is an ongoing problem and the chronic inability of the online legal aid application system to cope with the volume of applications, non-legal staff are making judicial decisions at the LAA (that a matter is not an emergency/a case has no merits, sometimes even a determination on a legal statute) delay of 20 working days to consider means that it is impossible for victims of VAW to access urgent help This is seriously placing vulnerable women and children at risk of significant harm. The response by the LAA is that they cannot cope with the volume of work.³⁵

Increased court and tribunal fees.

57. Court issue fees for divorce have increased 34% to £410 then to £550 from March 2016. As women are the petitioners in 65% of divorce cases³⁶ this represents an increase in fees over 10 years up to 2016 of £370. This represents a profit of £270 per divorce to the MOJ.
58. Victims of VAW can obtain a fee exemption, but the proof required is the same proof as for domestic violence gateway evidence for LASPO. Women with no recourse to public funds will have no option but to stay in abusive marriages or to use alternative/safe arbitration when they cannot evidence domestic violence.
59. Other financial evidence requirements for LASPO also discriminate under Article 15 of CEDAW. A woman fleeing her former home which she owns with the perpetrator, is likely to be assessed as having a second home by the LAA and put her out of financial eligibility therefore denying her legal aid at a time when she is most vulnerable.

³² Justice Committee report (paragraph 164)

³³ Justice Committee report (paragraph 134)

³⁴ Justice Committee report (paragraph 178)

³⁵ Oral evidence given to the MOJ by domestic violence specialist lawyers at the focus groups on 10th and 17th June 2016.

³⁶ Office for National Statistics (2014) Divorce in England and Wales (footnote 32).

Employment tribunal fees

60. We adopt the findings of the Equality and Human Rights Commission response to the shadow report, paragraphs 34 to 40.

Assessing financial eligibility

61. Many victims of violence are unable to evidence their means. Southall Black Sisters record at Annex 1 many reasons why this is the case for BME women.
62. In the findings of the Public Accounts Committee assessment report on LASPO, the summary states:
“The Ministry of Justice (the Ministry) say as follows is on track to make a significant and rapid reduction to the amount it spends on civil legal aid. However, it introduced major changes on the basis of no evidence in many areas, and without making good use of the evidence it did have in other areas. It has been slow to fill the considerable gaps in its understanding and has not properly assessed the full impact of the reform. Almost two years after the reforms the Ministry is still playing catch up: it does not know if those still eligible are able to access legal aid; it does not understand the link between the price it pays for legal aid and the quality of advice being given. Perhaps the most worrying of all, it does not understand and has shown little interest in, the knock-on costs of the reforms across the public sector. It therefore does not know whether the projected £300 million saving reduction on its own budget is outweighed by additional costs elsewhere. The department therefore does not know whether the savings and civil legal aid budget represent value for money.”
63. On the basis that women access family legal aid in far greater numbers than men, it was determined that the enquiry in 2013 that urgent changes had to be made by the government in order to ensure compliance with CEDAW Articles 15 and 16. To date these changes have not been laid and victims of domestic abuse are still unable to access legal aid in spite of the government’s protests to the contrary.
64. The impact on front line NGO’s is considerable. Morale is low, stress is high and there is a significant feeling that women and children at risk of serious violence are being significantly failed as a result of LASPO.

Our recommendations

65. There should be no requirement on evidence of proof of domestic violence. Legal aid is already means and merits tested.
66. The ECF scheme must be simplified and the threshold lowered to become a genuine safety net with funded advice to make the application on human Rights grounds

67. The CCMS (the online application system for legal aid) should be overhauled or completely scrapped. At the very least, emergency procedure rules must be reinstated, the ability to deal with more than one application at once must be reinstated. The ability to use discretion by case workers where common sense dictates it necessary
68. The waiving of financial evidence for means assessment must be genuinely introduced where there is inability to produce financial proof.
69. Proof of evidence (If retained) must include a letter from a domestic violence front line agency, an assessed statement by a domestic violence specialist solicitor.
70. Indefinite leave to remain granted under the Immigration and Domestic Violence Concession, must be accepted as good proof of violence, Evidence of more than one call out to the police for domestic violence incidents on the police log should be accepted as evidence
71. All changes in domestic violence regulation evidence should be applied to mediation and to court fee waiver.
72. Judicial Review cases brought which relate to challenges to unlawful administration decisions in relation to women's rights should not be prevented. In order to achieve this, legal aid should be reinstated for pre-issue preparation of legal aid applications for Judicial Review.
73. The payment of court issue fees should be means tested and waived for those with limited means.



Appendix 1: Southall Black Sisters



Southall Black Sisters

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Richard Heaton,

Permanent Secretary

Ministry of Justice

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10 May 2016

Dear Mr Heaton,

Domestic Violence and Legal Aid

As a specialist organisation, we write to you to draw your attention to our ongoing concerns about the experiences of black and minority (BME) women and their lack of access to legal aid, in the face of domestic and other forms of gender based violence.

Our fear is that despite the introduction of new regulations pursuant to the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act (2012), the domestic violence evidence requirements or 'gateway criteria' for private law family proceedings will continue to impede a significant number of BME women from accessing legal aid. Legal advice and representation is vital to enable such women to obtain a divorce from their abusive husbands or settle arrangements regarding finances and children, without which they cannot hope to exit from violence or lead self-sufficient lives. Our fear is that without access to legal aid, many BME women will be denied access to justice.

Part of the previous government's rationale for introducing LASPO was that the legal aid system had lost credibility with the public. We were, and continue to be, at a loss in understanding why it is assumed that the legal aid system has lost credibility with the 'public' when no evidence of this has been provided. On the contrary, our users, who represent some of the most vulnerable and powerless sections of the 'public', had nothing but the highest respect and gratitude for the legal aid system that existed prior to LASPO. It provided them with a critical safety net and access to justice in circumstances where they face some of the worst forms of abuse, exploitation and discrimination in our society. Post-LASPO, we are concerned that their confidence in the legal system has been seriously dented because they are now excluded from accessing legal aid.

We are aware that in February this year, as a result of a successful legal challenge by Rights of Women, the legal aid 'gateway criteria' for domestic violence was found to be unlawful by the Court of Appeal. Following this outcome, we understand that the government agreed to review the evidential threshold required to access legal aid which included reviewing the



requirement of evidence of domestic violence to be dated within the last 2 years, and to consider putting into place a mechanism for proving financial abuse.

We have recently learnt that the Lord Chancellor has issued new regulations¹ which allows for evidence of domestic violence to be dated within the last 5 years and they make provision for evidence of financial abuse to be submitted. We are also aware that the government has stated that it will also 'review the needs of victims of domestic abuse with a view to developing "evidence based" replacement regulations in the long term.'

We are disappointed and concerned that prior to issuing the new regulations, the government did not seek to consult relevant specialist organisations and practitioners in the UK who deal with domestic violence cases. We believe that this consultation is necessary to ensure that the new regulations are informed, appropriate and do not exclude any victim of domestic violence from accessing legal aid.

In our view, this lack of access to legal aid has resulted in discriminatory and unequal outcomes for BME women. Notwithstanding the new regulations, we urge the Ministry of Justice to carry out a proper and extensive review on the 'evidential threshold' required in domestic violence cases based on proper consultations with relevant women's organisations, professionals and experts, so that the legal aid is not denied to those who need it most.

We outline our concerns in more detail below.

About Southall Black Sisters

For the past 30 years, Southall Black Sisters (SBS) has provided advocacy and support to BME women who make up some of the most marginalised and disadvantaged sections of our society and are therefore often very 'hard to reach'. Many arrive at SBS having experienced general and culturally specific forms of violence and abuse and related problems of homelessness, mental illness, poverty and insecure immigration status. Whilst based in West London, an area with a large South Asian population, we have a national reach. The bulk of our work is directed at assisting women and children to obtain effective protection and to assert their fundamental human rights. Through front line advice and advocacy work, we assist on average 3000 women a year to access housing, welfare support and mental health services and legal advice and representation in family, immigration, criminal, community care and other legal proceedings. Our work by its very nature addresses issues of multiple or intersectional discrimination, involving the simultaneous experience of race, gender and other forms of inequality.

The domestic violence gateway criteria – our concerns in detail

Notwithstanding the new regulations on domestic violence for legal aid that have extended the time limit from 2 to 5 years and introduced a mechanism for proving financial abuse, our concern is that the domestic violence evidential threshold will still remain too high for many BME women to meet. The result will actually be to defeat the very purpose of the 'gateway criteria' that was introduced in LASPO. Clearly, it was introduced as a concession to keep victims of domestic violence within the scope of legal aid in private family law cases. We are concerned that the 'gateway criteria' for proving domestic violence remains too

¹ Civil Legal Aid (Procedure) (Amendment) Regulations 2016

narrow and prescriptive. It is particularly discriminatory towards BME women whose specific circumstances are such that they are unlikely to have any of the prescribed forms of evidence required. Many will be left without access to legal aid and therefore justice.

One problem is that the 'gateway criteria' consists of a strictly prescribed and closed list of acceptable evidence that fails to reflect the social realities of BME women in particular, who often face formidable additional obstacles that prevent them from exiting abuse or reporting it to outside bodies. Another problem is that the regulations do not reflect the difficulties that women face in proving non-physical forms of abuse such as psychological abuse and coercive control. A third problem is that the 5 year validity period for evidence of domestic violence remains an illogical and arbitrary cut off point that simply does not reflect the reality of women's experiences of violence which often goes unreported over many months and years, and continues after separation.

What makes the domestic violence 'gateway criteria' particularly irrational is that there is no consistency between government departments as to what evidence is sufficient to demonstrate domestic violence. For example, the evidence that is acceptable to the Home Office to allow a woman to obtain Indefinite Leave to Remain (ILR) under the Domestic Violence Rule in immigration cases is not considered sufficient by the Legal Aid Agency (LAA) for the purposes of private family proceedings. We fail to understand the logic in the LAA not accepting a grant of ILR under the Domestic Violence Rule for legal aid purposes, when ILR is granted by the Home Office only on the basis that the victim has experienced domestic violence that is backed by evidence of domestic violence and is accepted by the Home Office.

Our experience is that the domestic violence 'gateway criteria' has a disproportionate impact on many BME women, since their circumstances are often such that they are less likely to be able to satisfy the high evidential threshold required. We do not believe that the new regulations will address this problem. Whilst all women face considerable obstacles in leaving a violent relationship, BME women face multiple barriers in reporting their experiences. Social, religious and cultural factors (such as shame and fear) inhibit their access to services; cultural relativism can prevent effective institutional responses and investigation; racism and prejudice can also undermine the administration of justice and stigmatisation and isolation can prohibit their effective integration into the wider society.

In addition, in a significant number of cases, abused women with insecure immigration status find it difficult to report their experiences of domestic violence and other forms of harm for fear of deportation and destitution. Many such women tell similar stories of violence, domestic servitude, imprisonment, acute isolation, rape, abandonment and neglect. Most have their immigration and other essential documents taken away from them by their abusers, adding to their sense of insecurity. Another common feature of their accounts is the frequent threats made by their abusers to report them to the immigration authorities. In almost all cases, the aim of their abusers is to keep them in a state of fear and uncertainty and to prevent them from reporting their experiences and from obtaining help and support. These women also face intense isolation and lack knowledge of the legal and welfare system. Indeed, it is precisely in recognition of these circumstances that the Domestic Violence Rule in immigration law was introduced and explains why there is recognition of insecure immigration status as a major 'risk factor' that can heighten women's vulnerability to violence and abuse.²

² Guidance on Investigating Domestic Abuse (2008) ACPO/NPIA

Even when women report to outside agencies, they do not always receive the assistance to which they are entitled. Refuge spaces are at a premium and cannot meet growing demands, especially from BME women with immigration problems. Further, such refuges are not always willing to confirm refusal of admission on this basis. This problem is compounded by the lack of specialist refuges and organisations for BME women because they have closed, or are threatened with closure, due to funding regimes that favour more generic services.

In many instances, women are also failed by the police and social services when reporting domestic violence. For instance, we highlighted the problems encountered with the police to Her Majesty's Inspectorate of Constabulary (HMIC) who conducted a review of police response to domestic violence. The findings of that review echoed some of our concerns and concluded that the response from many police forces is 'alarming and ineffective.'³

In summary, despite recent changes to the 'gateway criteria' in domestic violence cases, a significant number of BME women in particular are unable to evidence domestic violence in family cases because:

- i. often, BME women do not recognise that the abuse and oppression they are suffering constitutes domestic violence and so do not report their experiences to any outside body;
- ii. within close knit BME communities where the stranglehold of religion and culture is particularly strong, the notions of shame or dishonour can act as major constraining factors that prevent women from disclosing domestic violence or other forms of abuse to outside agencies;
- iii. many women have an inherent distrust in, and low expectations of, the police and other officials in authority which prevents many of them from making reports to such bodies;
- iv. many are imprisoned in their own homes and/or are ignorant of their rights and/or do not know how to navigate the legal and welfare system and are therefore unable to seek help and support;
- v. they fear isolation and destitution and so stay in abusive relationships;
- vi. they fear violent reprisals or deportations in circumstances where their immigration status is insecure or they are afraid of a family/community backlash and so do not report to any professionals or statutory agencies;
- vii. professionals and statutory agencies may not recognise or accurately record domestic violence;
- viii. the closed and strictly prescribed list of 'evidence' required by the LAA to prove domestic violence, means that even where women do have some evidence, it is rejected unless it is in the prescribed form;
- ix. there are inconsistencies between government agencies as to what constitutes domestic violence and what forms of evidence of domestic violence will be accepted;
- x. they have difficulties in providing evidence that relates to incidents of domestic violence suffered abroad;

³ HMIC 'Everyone's business: Improving the police response to domestic abuse,' 2014. SBS submission to the HMIC dated February 2014 is available at SBS.

- xi. there is a failure on the part of the LAA to recognise certain forms of domestic violence such as transnational marriage abandonment and financial and emotional abuse which are in any event difficult to evidence.

The following are just some case examples of the problems highlighted above:

Shame as a constraining factor

1. *Ms G is of North African descent. She is currently involved in child arrangements proceedings in relation to her young sons. She suffered domestic abuse both during and after her marriage, from her former husband, including post-separation stalking-type behaviour. She had informed the police about her ex-husband's behaviour on a number of occasions but frustrated by the lack of an adequate police response, she declined to make further reports to the police. Ms G commented that calling the police again and again was becoming a point of deep discomfort, embarrassment and shame for her within her local community. She did not want her community to constantly see police officers coming to her home. She said that she was receiving unwanted attention from neighbours and was afraid of being stigmatised as the "the kind of family" which "attracts police attention". She therefore stopped reporting problems to the police.*

Women not recognising that they are the victims of domestic violence

2. *Ms N left her abusive husband in August 2013. She didn't report her experience as much of the abuse was verbal and emotional and she wasn't aware that this constituted abuse. She developed mental health problems and as a result, her husband was granted residence of their 2 children. Ms N was desperate to maintain contact with her children and therefore approached a solicitor to apply for a contact order. The solicitor informed her that she would not be eligible for legal aid as she did not have evidence to prove domestic violence as required by the domestic violence 'gateway criteria' and because there were problems in respect of her financial eligibility. Her solicitor therefore asked her for £6000 to conduct the case. Ms N borrowed this money to pay for the solicitor privately and was granted a contact order in November 2013 giving her monthly contact with the children, facilitated by her brother-in-law. However, following the grant of the contact order, Ms N's brother-in-law and husband failed to adhere to the terms of the order. When she approached her solicitor for help to enforce the contact order, she was told that she had to make further payments to cover his costs. Ms N could not afford to make further payments as she had already borrowed money and was not working. She tried writing to the court directly to ask for help to enforce the contact order, but received a response recommending that she seek advice from a solicitor. As a result, since 2014, her contact with her children became increasingly irregular and disrupted, causing her to become depressed and anxious. Ms N also sought advice from her solicitor regarding divorce, but could not afford the fees to pay for this.*

In January 2016, Ms N came to SBS requesting help and advice with her child contact and divorce matters. She was referred to our family law advice surgery and was told that she would not be eligible for legal aid for divorce or child contact. The solicitor could only suggest that Ms N pursue a divorce herself and look for interim maintenance/a financial settlement in order to fund a private solicitor to assist with her child contact matter.

However, as Ms N had never reported the domestic violence to an outside agency, she was not eligible for legal aid for her divorce. As a result, Ms N's divorce and child contact matters remain outstanding. She has not been able to achieve a clean break from her abusive husband and cannot therefore achieve independence or move forward in her life. More importantly, she has not been able to see her children regularly, causing her considerable anxiety and trauma.

3. Ms R, an Indian national, was married for 17 years and has one daughter, aged 9. She lived with her husband and daughter in a house owned by her mother-in-law in the UK. Throughout the course of her marriage, Ms R experienced verbal and emotional abuse from her husband as well as 5 separate incidents of physical violence.

Although Ms R did not describe herself as a victim of domestic violence when she accessed our services, we were quickly able to identify that what she had experienced was domestic violence. Her husband frequently humiliated her and told her she was 'useless' as a woman and mother, and that everything she did was wrong. Her husband would refer to her as 'a dog from India'. He told their child, 'here's a lesson for you, never feed the dogs in India'. He also compared her to an 'elderly pet' and said that as such his family could not get rid of her or throw her out. Ms R's husband told her she looked like a 'tramp' and said that he would have to pay someone to have sex with her. Ms R wasn't allowed to eat with the family and her mother-in-law also joined in the abuse. She was also subject to considerable financial control. Her husband earned over £100,000 a year, had multiple assets and educated their daughter in a private school but Ms R was only given a small allowance by her husband which was insufficient to meet her personal needs. Mrs R's husband had also persuaded her to sign documents which transferred their joint assets into the names of his various family members. It appears that this was a deliberate act to prevent her from making a claim for financial remedies if they divorced.

Mrs R did not report her husband or her mother-in-law's abusive behaviour to anyone outside the family. She was not even aware that the verbal and emotional violence that she was subjected to constituted domestic violence. She was also desperate to maintain the façade of her marriage for the sake of her daughter; she wanted to remain in the same house as her daughter despite the misery of her own situation.

On 5 April, Mrs R's husband locked her out of the house and told her to find somewhere else to live. She managed to secure a single room with the help of her employers and has been living there ever since.

Since being thrown out of the family home, Ms R has only been given minimal contact with her daughter, which has always taken place on her husband's terms. He will not allow her overnight contact with her daughter. This has been extremely distressing for Mrs R, who ultimately would like to have residence/shared residence of her daughter.

Mrs R's husband has also provided her with a lump sum payment of £1500 as a gesture of 'goodwill' but which was in reality an attempt to prevent her from making any financial demands on him. He does not feel that it is his responsibility to provide her with adequate maintenance. He has also offered her £50,000 if she agrees to 'disappear' and to waive her rights to their daughter including seeking residence or shared residence. He has also tried to persuade her to sign letters admitting that she is 'mad'. Ms R is so terrified of having to return to India without her daughter that she has been prepared to sign such documents to appease her husband.

Ms R has required considerable support and assistance in understanding that the degrading and humiliating experiences to which she was subjected, constitutes domestic violence. What is particularly sinister about her situation is the way in which her husband has controlled her by perpetrating serious financial abuse that has involved trying to pay her off in return for waiving her rights to her daughter, by denying her maintenance and by obtaining her signature for the transfer of property in a bid to prevent her from making any financial claims against him in the future. It is difficult to see how this level of financial abuse can be evidenced even under the new regulations for the 'gateway criteria' except through a witness statement from Ms R which, we fear, will not be considered as acceptable evidence.

State agencies failing to recognise and accurately record domestic violence

- Ms P's in-laws and husband subjected her to ongoing abuse and she eventually developed serious health conditions for which she needed urgent access to medical care. For two years, she was in and out of hospitals. At one stage, her in-laws visited her in the hospital and told her that she would never recover and she was better off dead. As a result, she became suicidal and she was kept on 'suicide watch' by a nurse. She was discharged from the hospital and returned to the matrimonial home. There she was kept in a shed in the back of the house which led to deterioration in her health. She was kept in the shed for one year even though all the professionals involved knew about her home circumstances. Her father eventually contacted SBS and we managed to get her out of the matrimonial home. Ms P cannot apply for legal aid for divorce and make claims for financial support or relief because none of the professionals involved recognised her situation as a case of domestic violence. For example, the hospital recorded her experiences as 'family problems'. Without proper recording of domestic violence, Ms P cannot obtain the evidence needed to obtain legal aid and to pursue legal remedies for the abuse she suffered.*

No consistency between governments departments as to what evidence is sufficient to demonstrate domestic violence

- Ms J, an Indian national married her British husband and joined him and his family in the UK, on a spousal visa. Shortly after arriving in the UK, her husband's behaviour towards her changed. Ms J was subjected to domestic servitude and physical and sexual abuse. Her mother-in-law expected her to wake up early to perform all the household chores and she was forbidden from speaking to her family and friends. Ms J was told to work to maintain her husband, but her wages went straight into a joint account to which she had no access. If Ms J protested against her ill-treatment, she was assaulted by her in-laws and husband. Eventually, she was prevented from going to work and was instead locked in the home.*

Unable to tolerate the abuse, Ms J took an overdose of painkillers. She was kept in hospital and then discharged back to her marital home as she had nowhere else to go and had no money. She was imprisoned in the home by her husband and mother-in-law and taunted for attempting to take her own life. However on one occasion, Ms J's mother-in-law failed to lock the front door securely and Ms J took the opportunity to escape. She was referred to SBS for support and was identified as high risk and vulnerable due to her insecure immigration status, suicidal ideation and heightened sense of isolation. She made a successful application for indefinite leave to remain under the Domestic Violence Rule, for

which she was granted legal aid. She then tried to instruct family lawyers to apply for a divorce but was refused because she did not have the prescribed evidence of domestic violence required by the legal aid regulations. Her evidence, which consisted of a grant of ILR under the Domestic Violence Rule, a supporting letter from Southall Black Sisters and confirmation of a report of domestic violence from the Metropolitan Police, were all rejected.

In respect of the last case, we fail to understand the logic in the LAA not accepting a grant of ILR under the Domestic Violence Rule for legal aid purposes, when ILR is granted by the Home Office only on the basis that the victims have experienced domestic violence and have provided evidence that has been accepted and assessed by the Home Office.

As a result of this and other difficulties encountered by BME women, we find that increasingly, abused BME women are giving up on taking legal action or are turning to family or community members or forums and high interest loan companies to obtain funds to pay for legal advice. At times these family and community members and forums can become risk factors when they seek to mediate and reconcile parties without regard to domestic violence. In the case of loan companies our users often fall victim to a spiral of debt, which only increases their vulnerability and risk of further abuse and exploitation.

In the light of our experiences, we are of the view that the domestic violence 'gateway criteria' is unfair and unnecessary. However If it is retained then it should not matter what type of evidence of domestic violence is presented, as long as coherent evidence is provided.

We believe access to justice to be about more than just access to legal advice and representation, although these are fundamental aspects. It is also about fair and equal access to services which enable ordinary people to uphold their legal rights, hold institutions to account and achieve fair outcomes.

We therefore urge the Ministry of Justice, at the very least, to embark on a proper consultation in respect of the domestic violence 'gateway criteria' and to take account of the multiple barriers to accessing legal aid that we have outlined above. We urge the Ministry of Justice to meet with us to ensure that the measures put into place, following the Court of Appeal decision on the 'gateway criteria' in February this year, is effective and non-discriminatory in outcome.

We would also be willing to meet with your department to discuss the contents of this letter further.

We look forward to your response.

Yours sincerely,



Pragna Patel

Director

Southall Black Sisters

CC Shailesh Vara MP

Parliamentary Under-Secretary of State, Minister for the Courts and Legal Aid



Appendix 2: Sisters of Frida/Stay Safe East



**Joint DPO submission on Disabled Women for the
Human Rights Committee's review of the United Kingdom**

June 2015

Introduction

This short submission, jointly prepared by two disabled persons' organisations (DPOs) - Sisters of Frida and Stay Safe East,¹ relates particularly to women with disabilities in the United Kingdom, with the aim of identifying the restrictions they face in the exercise of their rights including the barriers for women with disabilities to benefit from accessible and inclusive services for women victims of violence, including access to justice.

The UK government is a party to all of the UN human rights instruments. In particular, it ratified the ICCPR in 1976, the CEDAW in 1986, and in 2009, the UK Government ratified the Convention on the Rights of People with Disabilities (CRPD)² and the Convention's Optional Protocol in 2010. It is clear that these three treaties intersect and reinforce each other when it comes to the civil and political rights of women with disabilities.

We would like to refer to the list of issues (LOI) and provide further information to help prepare the Committee for its dialogue with the UK government delegation, specifically on:

Violence against women, including domestic violence (arts. 2, 3, 7 and 26)

10. Please report on measures taken, and the impact thereof, to address violence, including domestic violence and rape, against women, including black and ethnic minority women, in particular in the United Kingdom and Bermuda, and to ensure that such acts are effectively investigated, perpetrators are prosecuted and appropriately sanctioned, and victims have access to adequate remedies. Please clarify whether there are plans to introduce domestic violence protection notices or other similar measures, with a view to providing timely and adequate protection to victims in Northern Ireland.

¹ See Annex II for more information about the organisations, authors of this submission (p 8).

² <http://www.un.org/disabilities/countries.asp?navid=12&pid=166>

In the response given by the UK government,³ there was no mention of provision of measures addressing combating violence against women for disabled women.

Research commissioned by Women's Aid⁴ reveals that women with disabilities are more vulnerable to domestic violence than non-disabled women and will often face additional difficulties in attempting to access support. It included the following findings:

- 50% of disabled women have experienced domestic abuse compared with 25% of non-disabled women.
- Disabled women are twice as likely to be assaulted or raped as non-disabled women.
- Both men and women with a limiting illness or disabilities are more likely to experience intimate partner violence.
- Disabled women are likely to have to endure it for longer because appropriate support is not available.
- A study of women who access mental health services identified between 50% and 60% had experienced domestic violence, and up to 20% were currently being abused

There is a paucity of data on women and girls who have experienced domestic abuse and even less on women with disabilities, apart from statistics from Women's Aid report and more recently from the '*Access to Specialised Victim Support Services for Women with Disabilities who have experienced Violence*' a joint European report from Leeds University on the UK. The UK government's response to the List of Issues does not identify any research or collection of data on this issue.

We would like to highlight some barriers faced by disabled women and of those, disabled women from black and ethnic minorities (BME) as identified in the report concluded by the University of Leeds in June 2014 from that report which pertains to the UK.⁵ Through conducting interviews, in particular with many black disabled women and disabled women belonging to an ethnic minority, it explores the intersectional forms of discrimination to which they are subjected based on their gender, disability, race, ethnic background and other layers of their identity.

- 1) Women interviewed for this study experienced different types of violence. Psychological violence, control and isolation, were common experiences. Sometimes this was connected to their impairment, other times it was not. In the majority of cases the perpetrators were intimate partners, and the abuse took place in their private homes.
- 2) Women had different levels of knowledge about their rights. Lack of access was compounded by the way the law segments rights into those related to gender, disability, race, sexuality etc., making it difficult to tell which rights applied to their situation.
- 3) Competition for resources and funding impacted on the ability and willingness of support services to assist disabled women? Service providers anticipated increased demand for resources that accompanied support of disabled women and this acted as a deterrent for some at least. Lack of funding to pay for specific adaptations to premises

³ Replies of the UK government to HRCtee list of issues.pdf p.24

⁴ <http://bit.ly/1L5zxdq>

⁵ <http://www.sociology.leeds.ac.uk/assets/files/research/cds/vadw/Empirical-Report-UK.pdf>

was also highlighted in the interviews and it was felt that if these were made available, it would need to be ring fenced for the purpose.

- 4) Some women were reluctant to access social services for a range of reasons, such as the fear that children might be removed on the basis of assumed incapacity. Issues mentioned included disabling attitudinal barriers from support services, including social services, women's support services and the court and barriers to women's safety. Despite experiencing on-going violence from partners, some women could not access formal or informal support, with safeguarding services reported by some as especially problematic.
- 5) Obstacles arose from perpetrators, family members, people considered to be 'carers' or other individuals as well as those associated with accessing formal or informal support.
For some women, family members perpetrated violence such as in the case of BME Deaf women. Other barriers imposed by BME families included restrictions on the choice of partners and forced marriage, which further led to abuse by women's husbands and in-laws. For some, it was not considered culturally appropriate to ask for external support and challenge the familial arrangement. The 'keep it in the family' philosophy was reported as typical in the Asian community. Another barrier faced was the inability to communicate with members due to lack of knowledge of use of sign language by family members.
- 6) Disabled women had concerns about being left without support, if they decided to leave the perpetrator. However, this idea was reinforced by others who disregarded the possibility that a 'carer' might be the perpetrator of sexual violence. This indicated a disregard for disabled women's sexuality, suggesting that the man was more of a carer than a partner, and conversely a disregard for violence on the basis that the man was somebody who 'cared'. Therefore, getting others to recognise the problem of abuse and violence was very problematic for some. Even if it was recognised, getting action presented further problems.
- 7) However, even in specialist services for Deaf women/women with hearing impairments and minority ethnic women, problems arose with regard to confidentiality. There are only a small pool of sign language and language interpreters in the UK, which may create additional barriers to maintaining privacy and confidentiality. This may especially be problematic for services offered in small communities, and can prevent disabled women from disclosing their stories or actively seeking support.
- 8) Women interviewed had little knowledge about the law and how it was implemented in practice. Often they were not clear about their formal rights under criminal law, or had partial knowledge of the criminal prosecution process. Beyond this many expressed a lack of confidence in dealing with the criminal justice process or were sceptical about the degree to which it could help. Many felt they were disadvantaged compared with non-disabled women. While improvements in recent years were reported, disabled women stated that the police could be judgemental towards disabled women, operate on the basis of mistaken assumptions about women's mental abilities and situations and be unwilling to press charges unless the woman did so herself. They were reported to disbelieve disabled women or to be judgmental of the

coping mechanisms they employed to deal with experiences of sexual abuse. Further, women felt the police hindered their access to justice. Issues of accessibility of the police services to the disabled population and especially the deaf and hearing impaired were also commented on.

Given the findings of this report and the reality of the barriers for women with disabilities in facing violence, we would like to express our concern and request as priority the amendment to the Serious Crime Act 2015 (see Annex I).

There would be serious impact on disabled women as it allows a defence for “carers” accused of the new crime of coercive control to argue that they are acting in their disabled partner’s “best interest” and reduces the maximum sentence for the crime from 14 to 5 years. We believe this is open to challenge under ICCPR, CEDAW and the CRPD.

On the one hand we are happy that women will have the added protection from the new legislation, that part of the Serious Crime Act 2015 will make it illegal for someone to exercise psychological, emotional or financial control over their partner. The law has been welcomed by women’s groups, who have long called for coercive control, which they say is often a prelude to violence, to be recognised as a crime. However, in a context where violence against disabled women is barely addressed within the Criminal Justice system, we believe this amendment Serious Crime Act 2015 Section 76 would put the onus on the victim to prove that the abuser was not acting in her best interest. There are complex issues here related to the disproportionate power relationship and cultural and social stereotypes which impact on what is considered to be in one’s “best interest” and which continue to result in more weight given to the views of partners/carers over those of the individual concerned (all the more so when it concerns a disabled woman).⁶ We see this as an attack on disabled women’s human rights as it does not respect their legal capacity and decision-making on an equal basis with others in violation of Article 16, ICCPR, Article 15, CEDAW and Article 12, CRPD.

We would also like to point out that no disabled persons’ organisation (DPO) was consulted concerning the drafting of this amendment despite the huge impact of this amendment to disabled women. Only the Women’s Aid’s views were sought - which is a national charity. We have huge respect for the work they, do but they do not and cannot represent the voices of disabled people /women.

Finally, we would like to point out that there is a grave failure to protect disabled women from rape and sexual abuse to the extent that it has been described as the decriminalisation of rape and abuse of disabled women in the judicial system. This has huge consequences for disabled women and violates their right to non-discrimination, effective protection from violence, right to dignity and bodily integrity and access to justice.

Research shows that 18% of women who report rape have a mental health issue. People with mental health issues were 40% less likely to have their case referred to the police for prosecution than people without these difficulties. People with learning difficulties were 67%

⁶ See explanatory notes to Section 76, Annex I :

“This defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse, and by virtue of his or her medical condition, he or she had to be kept at home or compelled to take medication, for his or her own protection or in his or her own best interests. In this context, the person’s behaviour might be considered controlling, but would be reasonable under the circumstances.”

less likely to have their case referred for prosecution.⁷

This means that disabled women are less likely to seek help or redress because acts perpetrated against them are **not** effectively investigated, perpetrators are **not** prosecuted and appropriately sanctioned, and disabled victims have much less access to adequate remedies.

A 2014 study⁸ found that only around 15% of rapes recorded by police as crimes last year resulted in rape charges being brought against a suspect. The research shows that more than 80% of people reporting rape to the Metropolitan Police are vulnerable to sexual attack (women with psychosocial disabilities and women with learning disabilities) but that these same vulnerabilities mean their cases are less likely to result in a suspect being charged.

It was documented that if a victim has mental health problems or is in a current relationship with the suspect then the most likely outcome is that the case will be dropped. Two thirds of rape complaints drop out of the criminal justice system before they are sent to prosecutors, and detectives' decisions on rape cases are rarely subject to outside scrutiny. Unlike the Crown Prosecution Service, the police do not record their reasons for dropping cases consistently and there is no centralised data collection.

Proposed recommendations:

- In consultation with disabled women and their representative organisations, amend the Serious Crime Act 2015, section 76, to remove any reference to “best interest” as a defence for the recognition of non-consensual action against the physical and mental integrity of women as a crime.
- Take urgent steps to train police, health workers, court personnel, judges, lawyers and other interlocutors of victims of violence on communicating with persons with disabilities and on their rights including the risks to which they are exposed on account of multiple and intersectional discrimination. Implement a system to monitor police decisions for dropping cases relating to sexual violence.
- Collect adequate data on women and girls which is systematically disaggregated by age, background, disability, geographical location, etc., across all sectors including protection from violence, access to justice, consultation and political participation, etc.
- In both mainstream legislation and disability-specific legislation, address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse and exploitation in the home, institutions, and the community. Adopt urgent measures to ensure the prosecution of perpetrators, and the accessibility of support services and information for victims with disabilities.
- Intensify measures to disseminate and cultivate accessible information and education for women and girls to recognise forms of violence and inform themselves of their rights in seeking protection, making complaints and obtaining redress.

⁷ <https://www.thebureauinvestigates.com/2014/02/28/rape-has-been-decriminalised-for-the-most-vulnerable-says-senior-met-adviser/>

⁸ <https://www.thebureauinvestigates.com/2014/02/28/revealed-why-the-police-are-failing-most-rape-victims/>



Appendix 3 : Law Centre Network Case Studies

Cris McCurley

Subject:

FW: UN report

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My experience of the items in this draft report concerns Exceptional Case Funding and Domestic Violence Gateway Evidence Requirements.

Exceptional Case Funding

I have looked at one case [which did not proceed] to try and understand the process. It is right that it is a time consuming process. The forms are not the difficulty but it is more the degree of information that you need to gather and process to fit within the test. Essentially in family cases we must show that denial of legal aid would effectively deny the applicant a remedy to a breach of their human rights [plus the usual means and merits tests]

The work involved is pro bono and so if a solicitor decides to take this on they will charge for the work [£600.00 I heard locally]

The statistics on the numbers granted as against applications are hardly encouraging.

DV Gateway Criteria

I have recently completed the MoJ survey on this topic.

This report correctly identifies the difficulties in involving the professionals and agencies such as police and health in providing DV evidence. I have said for some time that GPs are reluctant to do letters and when they do they are frequently non-compliant. I don't have any data as to how many are discouraged by any costs associated with obtaining GP letters. I can however understand that GPs cannot/will not/do not spend the amount of time that is necessary to understand whether the patient/client is a victim of DV. The report suggests that GPs spend 3 mins per patient. My experience is that it will take 30-45 mins to 'discover' the DV history in a private family case. The client would have to be primed before attending her GP to ensure that DV is even discussed.

It is interesting to note the experience of areas where there is 'fear of legal complications'. The GMC website provides guidance on providing DV evidence and I don't recall any warning about this.

It is certainly true that social workers are poorly informed about LASPO and requests for DV evidence. When we do get such evidence it will variously come direct from the SW or from Legal. There doesn't seem to be a set process. We are constantly told that we must go through legal with our requests. It is a bit hit and miss however as to who you direct your request to.

Since 2013 there have been a few gradual changes. These have added to an already complicated list and whilst they may have extended scope marginally they have done nothing to simplify the process.

The 24 month rule was held to be unlawful because it was arbitrary. It was replaced with a 60 month rule. Arbitrary ?

There is an argument to remove the time limit all together. Certainly the MoJ survey asked questions about this. Interestingly the first question on this topic was something like what time period would you put on evidence? [I said 10 years] The next question was 'would you do away with the limitation?' [Which I said yes] How those responses are reported I don't know.

Just a word about **financial eligibility**. Fundamentally the net income limit should be increased. We have had a number of cases where women fall outside the limit when they receive tax credits. We haven't had a case of universal credit but my instinct is that similar problems will arise.

Also we have had a case recently of a client falling foul of capital limits because of her interest in the FMH that she fled. I would think that any capital in the FMH is disregarded.

Recommendations

Removal of DV gateway

Cant see this happening .This sounds like revert to pre LASPO .Politically it won't happen

ECF

Lowering the threshold. Could not disagree with that.

CCMS

Not likely to be scrapped .I would agree with the self-certification of cases and I would say that respondents should not be means tested. Applicants received LA on a non-means and non-merits basis. The same should apply to respondents. They are often fleeing violent relationships and the stakes are very high.

Gateway Evidence

I would agree that we should remove health professionals from the evidence process. They are unwilling and or unable to deal with these cases properly

Clearly indefinite leave to remain under the DV concession should be enough

Letter from a DVSO- Good idea .At the moment it is a letter confirming a referral from a GP .No effective in our patch as most referrals to DVSO s are informal by police officers .DVSO' s are always willing to provide letters where they can

Statement from a DV specialist Solicitor? presumably some criteria for such 'specialism'

Police Logs-I can understand this .Logs can sometimes be vague in identifying the perpetrator

List of Contributors

Women's Resource Centre

My Body Back Project

The Angelou Centre

IC Change

Woman Up!

No More Page Three

Rights of Women

Sisters of Frida

Southall Black Sisters

Rape Crisis England & Wales

Law Centres Network

North East End Violence against Women and girls Network

Special thanks to Chelsea Reidy and Kelsey Marron
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