

Legal Aid: Briefing on the Post Implementation Review of Part 1 of LASPO and the new Legal Support Action Plan

8 February 2019

Following publication of the [Post Implementation Review of Part 1 of LASPO](#) and the new [Legal Support Action Plan](#) by the Government on 7 February 2019, this briefing summarises the initial response from the women’s legal rights charity Rights of Women.

For clarity, our response here follows on from the evidence and related recommendations we provided in our detailed [submission to the LASPO Review](#) in September 2018.

SCOPE

Family Law

The review confirms that changes to scope for family law legal aid have resulted in the Government exceeding its targets for saving money but have had limited success in achieving its aims to target legal aid at those who need it most and discouraging unnecessary and adversarial litigation.

We welcome proposals to expand the scope of legal aid to cover special guardianship orders in private family law. However, this is a very tiny widening of scope for family law legal aid and will not help the vast majority of litigants currently being denied access to family law justice. We note that the Government is working with The Law Society to explore alternative models for delivering family legal aid and consider the support available to victims of domestic violence. We look forward to further updates on this and the opportunity to provide input.

Domestic Violence Legal Aid Gateway

We are pleased that the Government has acknowledged our concerns about the lack of awareness of the domestic violence gateway and the types of evidence that can help survivors access family law legal aid. We look forward to seeing how this will be incorporated into the Government’s campaign to improve awareness of how people can access legal support later this year.

Whilst campaigning to raise awareness of the domestic violence gateway is important, ensuring that the gateway works for survivors is also crucial. A number of our [recommendations on how the Civil Legal Aid \(Procedure\) Regulations could be improved](#) are still outstanding. We hope to hear more from the Government on amendments to the list of evidence that can be accepted as evidence of domestic violence in the future.

It is disappointing that there is no plan to address the fact that survivors can only obtain legal aid if they have evidence that they reported the abuse to a professional or service¹ such as a medical professional, the police or a domestic abuse service. It is well recognised that many survivors never

¹ Aside from the exception for economic abuse, all other forms of domestic abuse require third-party evidence

report the abuse they experience to a professional. These are some of the most vulnerable women in our society and most in need of legal representation, yet they are being left to fall through a gap in the system.

Immigration Law

We welcome bringing into scope legal aid for immigration matters for separated children.

We are disappointed that the review doesn't go far enough to protect victims of domestic violence (DV). We recommended that scope be extended to enable all victims of DV who are dependent on EU nationals to be able to access legal aid to apply for resident documentation. We also recommended that trafficked women be able to access legal aid before being referred into the National Referral Mechanism rather than at the point of a conclusive reasonable grounds decision. Many women will continue to be denied legal aid and may be forced to remain with perpetrators to protect their immigration status which carries the risk of further abuse and trauma.

We are disappointed that our recommendation to obtain the views of the Home Office and Tribunal to review legal aid for human rights and EU claims has not been prioritised.

ELIGIBILITY

Whilst we welcome the review of the wider eligibility scheme (which was beyond the remit of the LASPO review), we are disappointed that no immediate action is being taken to reverse the measures that were introduced by LASPO. Evidence provided by various stakeholders showed that the changes to capital and contributions by LASPO have resulted in:

- individuals who cannot afford to pay for legal advice privately being ineligible for legal aid, and
- increased contributions deterring women from applying for protection from domestic abuse.

Delaying changes to the capital assessment for those on passporting benefits, contributions and caps on the subject matter of dispute will mean that many women and children will continue to be unable to access justice and potentially remain in abusive relationships for longer.

Our submission to the Government's review highlighted the many ways in which the means test is not fit for purpose, particularly for survivors of domestic violence. The concerns we raised alongside similar issues highlighted by other organisations have led to the Government announcing a comprehensive review of the legal aid eligibility scheme. We await further announcements as to how the experiences of women survivors, migrant women and women facing multiple barriers are considered as part of the review.

EXCEPTIONAL CASE FUNDING SCHEME

We are pleased to see that the Government recognises the Exceptional Case Funding (ECF) scheme is in need of reform and in particular the acknowledgement that it "*will also work with legal professionals and the advice sector to explore opportunities to simplify the ECF scheme and ensure it works as effectively as possible.*"

In addition to announcing that it will consider simplifying the ECF scheme and assessing whether a new urgent case procedure is needed it has also committed to improving the speed of ECF decision-making.

We refer the Government to our research report [Accessible or beyond reach? Navigating the Exceptional Case Funding Scheme without a lawyer](#) [published 8 February 2019] which provides a detailed analysis of the ECF scheme's accessibility for women survivors of domestic and sexual violence and abuse.

Our report's findings provide an evidence-based consideration of the matters the Government has identified it wishes to address including its inaccessibility to individuals, chronic delays in decision making and an urgent case procedure that is not fit for purpose.

We are hopeful that this will assist the Government in taking the necessary steps swiftly and effectively to overhaul the ECF scheme and improve access to justice without delay.

EARLY ADVICE

The Ministry of Justice (MOJ) have stated their commitment to ensuring that people can access the right legal support at the right time and as early as possible. They have stated there is limited data as to what works best and for whom, hence they are proposing a pilot that evaluates the effectiveness of face-to-face advice provision versus technological solutions whilst "*bearing in mind costs*". We are concerned this pilot is too narrow in its proposed delivery approach to either effectively assess or address the needs of individuals. Cost effectiveness will come from savings made by the provision of early advice, but to have the desired impact it is essential that any model is accessible to all particularly those who are vulnerable or have multiple needs. Our recommended minimum requirements for an effective and inclusive early advice model are that it should:

- be delivered by qualified legal professionals
- avoid concentrating provision through a telephone service alone as this is not accessible for vulnerable users
- offer access to face-to-face support
- include disbursements for interpreters or intermediaries
- be genuinely available across the whole of England and Wales.

IMPROVING DECISION MAKING OF GOVERNMENT DEPARTMENTS

We welcome the fact that the Government have agreed to implement measures to improve decision making by government departments and urge that this is done swiftly. We discussed at length in our submission the impact this can have on migrant women who have wrongly been refused benefits.

CHALLENGES IN SUSTAINABILITY TO LEGAL AID PROVIDERS

We also welcome the MOJ's proposals to ease administrative burdens on legal aid providers and their commitment to sustain current providers and attract new quality advisers. However, we are disappointed that the MOJ, in Part 1 of the Post-Implementation Review document have stated that they will consider reviewing provider fees after the pilot has been evaluated. They have also stated that the current market is sustainable. This runs the risk of more experienced providers leaving the market if fees are not increased which will further reduce access to advice for the general public and our women beneficiaries.