



**Evidence for Joint Committee on Human Rights Inquiry into:
*Human Rights: attitudes to enforcement***

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Access to resources

Our answers relate to these questions under this section:

- Is there the access to justice needed to enforce human rights?
- What effect has the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) had on the ability of individuals to access the courts as a means of enforcing their human rights?

Family law

1. Within the context of family law, the human rights most likely to be engaged are the right to private and family life and the right to a fair trial.

Access to justice for victims of domestic violence via the 'Domestic Violence Legal Aid Gateway' in private Family law matters

2. The Civil Legal Aid (Procedure)(Amendment)(No 2) Regulations 2017 came into force on 8th January 2018. It amends Schedule 1 of Civil Legal Aid (Procedure) Regulations 2012. Schedule 1 is where the list of acceptable evidence of domestic violence can be found. These regulations have expanded the list of evidence that will be accepted by the Legal Aid Agency ('the LAA'). Significantly, the time limits on evidence have been removed, evidence will be accepted from domestic violence support services and evidence relating to abuse of third parties will be accepted to show that the applicant is at risk of domestic violence from the perpetrator. The effect of the changes on widening the ability of victims of domestic violence to access justice remains to be seen but we hold concerns about the changes in fact reducing that access in certain circumstances, summarised below.

3. We are concerned about reduced access to justice for migrant women survivors of domestic violence under the amended gateway regulations. Paragraph 20 of Schedule 1 enables a victim to provide a letter from the Home Office confirming that they have been granted leave to remain in the UK as a victim of domestic violence. However, the leave to remain has to have been granted under paragraph 289B of the Immigration Rules. This provision only applied to applications prior to July 2012. It appears to us that this must be an error in the drafting of the regulations as it could not possibly be the intention that migrant women (who have proven to the Home Office that they are the victims of domestic violence) would be denied legal aid for family cases simply because their leave to remain fell under a different provision. This paragraph needs urgent redrafting to read, "*a letter from the Secretary of State for the Home Department confirming that A has been granted leave to remain in the United Kingdom as a victim of domestic violence.*" This includes leave granted under the old rules, the current rules, outside the rules and will remain applicable if the rules are changed in the future.

4. We are concerned about access to justice for women providing evidence of domestic violence via a health professional under the amended gateway regulations. The definition of "appropriate health professional" has been expanded to include more professionals than previously. The intention is to alleviate the heavy reliance on GPs who often charge for letters. However, it does not include substance misuse workers, allied health professionals or British Association for Counselling and Psychotherapy accredited counsellors or psychologists.

5. The evidence required from domestic violence support services (DVSS) is contradictory and overly onerous. Paragraphs 14 and 15 of Schedule 1 recognise the specialism of Independent Domestic or Sexual Violence Advocates (IDVAs and ISVAs respectively) [see additional note under point 2.8] by enabling them to provide a letter stating that they are providing support to the applicant. This is a positive

change. However, the requirement placed on domestic violence support services generally in paragraph 17 Schedule 1 are much more extensive. They are required not only to provide background to the organisation but a statement as to the reasonable professional judgment of the author about the risk posed to the victim, a description of the matters relied upon to support that judgment, a description of the support provided and a statement of the reason why the victim needed that support. We see no reason why the criteria should vary so widely. All frontline staff, whether IDVAs, ISVAs, outreach workers or refuge workers are specialist domestic violence workers and a letter that they are providing support ought to be sufficient for all types of workers. Furthermore, we are concerned that the criteria in paragraph 17 are overly onerous and that organisations may lack the capacity to provide this evidence. There is no other evidence in the new regulations that requires this amount of information and we question the intention behind this and its impact on the ability of survivors to access justice as a result.

6. It is also concerning that one form of evidence that was included in the previous regulations has been omitted; that is 'a letter from a refuge confirming that the applicant was accommodated there as a result of domestic violence'. Although a refuge would be able to provide a letter under paragraph 17 as a DVSS, they will now be required to include a large amount of information in those letters, leaving it harder for victims to obtain this evidence. There is no reason why this evidence should have been removed from Schedule 1 as a specific type of evidence.

7. The provisions in Reg 42(1)(k) of Civil Legal Aid (Procedure) Regulations 2012 have also been amended. This regulation relates to when the LAA may withdraw legal aid. The new regulations have added the power to withdraw funding on receipt of a letter from a public authority which confirms that there has not been domestic violence or that the applicant was not at risk of domestic violence (Reg 42(1)(k)(vi)). However, this power only applies in relation to contesting original evidence of domestic violence provided by a housing authority or domestic violence support service. The inclusion of this power for public authorities to effectively override evidence provided by domestic violence support services lacks any recognition or understanding of the fact that domestic violence support services are the most appropriate organisations to assess risk and provide evidence that someone is the victim of or at risk from domestic violence. As the experts, it is concerning that their professional opinion can be undermined by a non-expert public authority. Further to the point above about the information that DVSS are asked to provide in their letters, it is very concerning that a simple letter from a non-expert public authority could undermine the detailed evidence from a DVSS in its entirety. We do not see how this would be possible without the LAA making a quasi-judicial decision about the veracity of the evidence from the DVSS.

8. Another example of what we assume is an error in drafting the regulations is that they refer to IDVAs and ISVA as "independent domestic/sexual violence advisors" when they are, in fact, "independent domestic/sexual violence advocates". We note the Ministry of Justice has agreed that letters from independent domestic/sexual violence advocates will be accepted under this paragraph. However, errors such as

these in legislation can cause unnecessary confusion about rights within the law therefore affecting access to justice.

Other barriers to accessing family justice

9. The rise in the number of unrepresented parties in the family courts has led to a number of barriers to accessing justice. The most obvious of which is the rise in cross-examination of victims of domestic violence by unrepresented perpetrators. There has been a significant rise in unrepresented parties in the Family Court since the introduction of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Between January and September 2017, Ministry of Justice research showed that 3,234 victims of domestic abuse had no legal representation in at least one hearing, 147% more than same period in 2012. Details of the most recent statistics can be found [here](#). The Government accepts that the cross-examination of victims of domestic violence in the Family Courts is unacceptable and had intended to legislate to improve the situation before the general election 2017. The Prison and Courts Bill fell with the dissolution of parliament ahead of the general election.

10. The consequences on a party's ability to exercise their right to a fair trial when being cross-examined by the perpetrator of abuse should be obvious and, yet, this is still happening in the Family Court. In the criminal courts, there is a system in place through which a legal aid solicitor is appointed to conduct cross-examination on behalf of a defendant in cases of domestic violence. We see no reason why this system cannot simply be replicated in the family courts.

11. The lack of early legal help has also contributed to the rise on unrepresented parties. Where people are able to access legal advice before making an application to court, this enables them to understand what rights are engaged and make informed decisions about enforcing those rights. The reintroduction of legal help would also have the effect of increasing the uptake of mediation in family law cases, as solicitors were the main referral mechanism to mediation prior to the introduction of LASPO. Although there will always be cases, in particular, where there is domestic violence, where mediation or alternatives to court are not appropriate, it is appropriate in many other cases. In those cases where it is appropriate, it is reasonable to conclude that individuals can best exercise and enforce their rights appropriately when they have had legal advice to understand the agreements they reach. Where it is not possible to reach agreement, the availability of early legal help to individuals will assist them in understanding how to enforce their rights through the courts.

Legal aid eligibility assessments

12. The ability of an individual to access justice and enforce aspects of their human rights through civil legal procedures is severely undermined by the means test for civil legal aid. Ample evidence exists demonstrating that the calculations applied are unrealistic and ultimately unfair. The impact of this is that those on a low income

are frequently assessed as being able to make a contribution, which in reality they cannot afford.

"I earn a low income, yet I've been assessed as having too much disposable income (they don't take into account living costs for utilities etc...) and when you aren't eligible you're expected to pay full solicitors costs - there's no help anywhere in between. I've had to face my violent ex-partner in court twice now, and will have to continue to do so as I simply cannot afford costs"¹

13. To address this we recommend that (in addition to increasing scope), the means test should be fully revised to make it fair to avoid the anomalies that exist currently, for example with the capital test in relation to the inclusion of the home. We know from our work that for many women survivors of violence, their home is the only capital they have. For a woman on low or no income, her choices are either to sell the home (making herself and her children, where relevant, homeless) to pay for legal fees, or face her abuser alone in court. Additionally, prospective legal aid applicants with meritorious cases, in receipt of benefits should be passported through with no capital assessments.

14. Applicants seeking injunctions such as non-molestation orders and forced marriage protection orders need not provide evidence of domestic violence. They are, however, still subject to the financial eligibility test. Therefore women affected by violence with very low income are often required to make unaffordable contributions towards their legal aid.

15. Gathering evidence of means: Many applicants, especially those fleeing domestic violence, do not have access to the evidence required, resulting in the refusal of legal aid.

Immigration law

16. Regrettably, in the immigration context, human rights have been heavily eroded since 2010 when the Government introduced a 'hostile environment' policy for migrants. This has increased with changes to immigration law and policy.

17. The legal and political landscape in which Rights of Women has been operating over the last 10 years has presented challenges in upholding the human rights of our vulnerable client group. The women that we support are extremely vulnerable having experienced or being at risk of experiencing gender-based violence. Additionally, many of them have insecure immigration status. Some of these women experience additional vulnerability and discrimination in relation to having multiple needs including those related to disability, trauma and mental health issues. In our

¹ Comments by women responding to a Rights of Women's survey about legal aid. See full report: <http://rightsofwomen.org.uk/wp-content/uploads/2014/09/Evidencing-domestic-violence-V.pdf>

experience the current human rights framework is not working to protect their rights.

18. Cuts enacted through LASPO have contributed to creating advice deserts that have effectively turned the right to access to justice into a geographical lottery in some instances. We frequently hear from women on our immigration advice line that they cannot secure legal advice or representation because there are no legal advisers in their locality. The National Audit Office have reported that there may be a substantial number of advice deserts in England and Wales.

19. LASPO has had a disproportionate effect on our client group as many callers to our advice line are unable to access legal aid as their matter is no longer in scope. Many of our callers are destitute, homeless or on the verge of becoming so if they leave their partners who have subjected them to abuse. They do not have the resources to pay for legal advice or application/court fees. Women may choose to remain with the perpetrator despite the risk of further abuse as leaving the perpetrator could lead to destitution and/or homelessness.

20. Access to justice has been curbed by the loss of appeal rights for those applying for settlement based on the domestic violence (DV) rule. Appeal rights were limited by changes brought in by the Immigration Act 2014. A person asserting that a refusal of their immigration application will be a breach of their human rights is entitled to appeal their decision. The Home Office have indicated that they consider applications under the family member rules to be human right decisions with DV settlement applications being specifically excluded under Appendix AR (administrative review) of the immigration rules. An applicant refused settlement under the DV rule has been able to, since the 6th April 2015, apply for an administrative review of the Home Office decision only but has not been entitled to a full appeal at Tribunal, which carries a higher level of scrutiny in our view. We contend that all domestic violence settlement cases are human rights claims, engaging Article 8 ECHR automatically and potentially Article 3 ECHR. Therefore the loss of appeal rights is potentially a breach of human rights in relation to preserving the applicant's physical and moral integrity [Article 8] and potentially protecting the applicant from torture and inhuman and degrading treatment [Article 3]. We would urge that appeal rights be reinstated for victims of domestic abuse whose applications for settlement are refused under the DV rule as this would ensure compliance with the UK's human rights obligations in general and commitments under various international instruments including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Exceptional Case Funding (ECF) – Immigration and Family law context

21. Rights of Women have been undertaking exceptional case funding cases over the last year and have developed expertise in this area. In our view the system is not fit for purpose and denies access to justice on human rights grounds.

22. Our view is that the application form is far too complex for a layperson to complete. Our clients are particularly vulnerable as a result of the abuse that they have experienced and the many of them have limited English and are not able to engage with the application process.

23. In our experience solicitors with legal aid contracts are refusing to apply for exceptional case funding either because they don't have the capacity to take on cases or they are concerned about costs risks as costs cannot be recovered for unsuccessful applications. The application process is also extremely labour intensive and firms have no incentive to complete them. We have also found it challenging to secure representation for those clients who have been granted exceptional case funding.

24. We advise that the scope of legal aid be amended to enable vulnerable individuals to access legal aid, including victims of domestic violence regardless of their immigration status or the status of their sponsor if they have one, children, those applying for family reunion and individuals presenting with mental health and trauma issues.

Submitted by Rights of Women, February 2018

Contact details: info@row.org.uk / 02072516575