



## Evidence to: Civil Legal Aid Review

### About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

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. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

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

### Rights of Women's Evidence

Before answering the specific questions asked in the call for evidence 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.

We frequently come into contact with women who interact with Civil Legal Aid as part of our immigration and family law services, and so our evidence predominantly relates to these areas of law. We are aware that legal aid providers and their representative bodies will be responding with details about issues relevant to providers. We have focused our evidence on the impact on women who need legal aid, particularly women who are survivors of VAWG.

Rights of Women has given evidence and responded to several other consultations relating to civil legal aid including:

- [Evidence to the Bach Commission on access to justice \(2016\)](#)
- [Submission to the Government post-implementation review of LASPO \(2018\)](#)
- [Response to the Justice Committee's future of legal aid inquiry \(2020\)](#)
- [Response to the consultation on the legal aid means test review \(2022\)](#)

## Overarching questions

### 1. Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes?

We would echo the concerns raised by a wide range of organisations including the legal aid sector, not for profit advice and voluntary organisations, academics, and independent think tanks over recent years about the sustainability of the legal aid sector, inaccessibility of legal aid and the inefficiencies of the current system, in particular the excessive administrative burden to legal aid providers working under a legal aid contract and the poor level of fees paid for certain categories of legal aid work.

There are currently not enough providers meeting the need for legal services. The fixed fee structure means that providers end up making a loss on more complex, time-demanding cases. These two issues combined mean that providers are incentivized to take on as many cases as possible and despite working long hours they are not able to give the cases the attention they need and deserve. It is our view that the current civil legal aid system diminishes the quality of service providers are able to provide to clients, and places them at significant disadvantage compared to those who can afford to pay for legal services.

Some suggestions for improvement include:

- Create a new model of compensation that leads to an increase in the number of providers, attracts and retains a sufficient number of solicitors and barristers and enables them to provide the high standard of service required from clients who are often vulnerable and have complex needs.
- Reduce administrative burden placed on clients and providers related to preparing applications for legal aid and billing.
- Relax limitations, including cost limitations, placed on legal aid certificates to reduce delays and work required to extend them.

One of the biggest barriers to accessing civil legal aid for survivors of domestic abuse is the means test which is not fit for purpose<sup>1</sup>. Phase 2 of the changes to be introduced as a result of the means test review must happen as soon as possible and we recommend a further review looking specifically at whether the new means test results in a cohort of women who are still not eligible for legal aid but cannot afford to pay for legal services.

Whilst this review is not specifically looking at areas of law which should or should not be in scope for legal aid, the impact that the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) cannot be ignored. It has significantly reduced access to justice for those who cannot afford to pay for legal services. We recommend a return to the pre-LASPO position whereby all civil legal services were in scope, unless specifically excluded, to enable practitioners to deliver holistic services.

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<sup>1</sup> See our [Response to the consultation on the legal aid means test review \(2022\)](#)

## 1.1. Do you have any suggestions of changes – both short-term and longer-term changes – that could improve each of the following categories of law?

### a. Family

One of the many attacks on access to justice introduced by LASPO is that legal aid is only available for most areas of private family law if the applicant is able to produce evidence of domestic abuse. It continues to be our position that the legislation unjustifiably prevents survivors of domestic abuse from accessing legal aid if they are unable to produce one of the stipulated types of evidence.

It is also still the case that a large number of survivors are left to navigate a complicated and traumatising family justice system alone because they are deemed financially ineligible for legal aid but cannot afford to pay for lawyers.

#### Providing evidence of domestic abuse and evidence of means

Those who are eligible for family law legal aid must provide the Legal Aid Agency with documentary evidence of domestic abuse and evidence of their means. We have set out below some examples of the issues encountered by survivors:

- We have heard of instances where applications were refused because the wording of the letter from the relevant professional (the evidence of domestic abuse) did not exactly match the form of wording set out in the Ministry of Justice's [sample letters](#). This was despite the information required by legislation being in the letter.
- The time it takes to obtain evidence can cause delays in obtaining legal aid. This may mean that hearings have to be adjourned, causing extra delay and cost to HMCTS. Survivors have had to proceed unsupported for part of their cases and experience the harms which LASPO was seeking to avoid by making legal aid available to some survivors of domestic abuse.
- Some survivors need extra support in obtaining evidence. Examples include:
  - reasons related to the survivor's ability
  - the organisation that could provide the evidence no longer exists or is not responding to the request
  - the organisation may not have retained the survivor's information which may mean they are unable to provide evidence
  - the survivor is unable to access the information or documents without putting herself in danger or the perpetrator is preventing access

Legal aid providers are not paid to help survivors obtain the evidence and we are not aware of any organisations specifically funded to provide this support.

Suggestions for improvement include:

- Introduce guidance which clearly states that evidence of domestic abuse must provide sufficient information to satisfy the Legal Aid Agency that the requirements in the Civil Legal Aid (Procedure) Regulations 2012 are met, but do not have to follow a specific form of wording.

- If urgent work is required, enable legal aid providers to provide services to survivors of domestic abuse pending acquisition of evidence of domestic abuse and evidence of means, and pending the outcome of an application for legal aid. Legal Aid providers must have confidence that they will be paid regardless of the outcome of the legal aid application, otherwise they will not take the risk of doing the work.
- If the current scope limitations remain in place, fund legal aid lawyers or a service to help survivors obtain evidence of domestic abuse and evidence of means for the purposes of obtaining legal aid.

### Lack of Qualified Legal Representatives (QLRs)

Whilst measures introduced by the Domestic Abuse Act 2021 (the DA Act) to prevent the direct cross-examination of victims of domestic abuse in the family court were welcomed, the measures do not appear to have been working successfully in practice.

For cases which started after 21 July 2022, survivors and perpetrators of domestic abuse are prohibited from directly cross-examining one another. The DA Act made provision for QLRs to be appointed to conduct the cross-examination if there was no other appropriate person to do so. The QLR scheme relies upon solicitors and barristers undertaking the relevant training and signing up to be on a list of QLRs. However, far too few lawyers have signed up to be QLRs. We have been hearing from survivors, lawyers, and other professionals all over the country that finding a QLR to conduct cross-examination has not been possible due to a lack of QLRs. We understand that this is partly related to necessary training not being widely available, but also largely to do with the fees for this work being insufficient. Lawyers cannot be expected to conduct this work at a loss.

The measures introduced by the DA Act were rooted in an acceptance that direct cross-examination is deeply harmful and re-traumatising for survivors of domestic abuse. However, unless the QLR scheme is properly funded, the protection purportedly offered by the measures in the DA Act is theoretical only. We suggest the following changes are introduced:

- Lawyers are consulted as to the level of fees necessary to conduct the role of a QLR, and amend the fees accordingly.
- Work is undertaken with urgency to increase the number of QLRs.
- Funding is provided to appropriate organisations to run the necessary training.
- The Ministry of Justice monitors and publishes progress on the implementation of the provisions intended to protect survivors of domestic abuse from the harms associated with cross examination including (but not limited to):
  - the number of QLRs available across each region
  - the number of cases where QLRs were used
  - the number of cases where QLRs were required but none were available and what happened in those cases.

### **d. Immigration and Asylum**

Rights of Women are not legal aid contract holders although our immigration team of four lawyers have over 40 years of combined experience of working in the legal aid sector, most of that experience has been in the field of immigration legal aid. One of our current staff

members has very recent supervisory experience of immigration legal aid, having left the legal aid sector less than 18 months ago. We also sit on various forums, share spaces with legal aid providers as well as hearing from the vulnerable women that access our services on the challenges they face in accessing legal representation. We are well versed with the challenges of both legal aid providers and of individuals who require access to legal aid and are unable to access it.

We have seen a substantial increase in the need for asylum advice and representation for vulnerable women on our immigration advice lines, with an increase from 11% to 25% in the last 4 years. Approximately 55% of callers to these advice lines require advice on legal aid eligibility.

The Westminster Commission on Legal Aid's<sup>2</sup> recommendations for reform to the legal aid system is an excellent starting point. We recommend that an action plan addressing, short, medium and long term objectives is introduced without further delay.

In previous consultations we have advocated for changes in scope to legal aid to enable all victims of domestic abuse to access early immigration advice. The Westminster Commission on Legal Aid<sup>3</sup> had also recommended that some areas of law taken out of scope by LASPO should be brought back into scope without further delay.

Rights of Women's priorities in the context of the immigration legal aid landscape have changed over the last few years due to the further erosion of legal aid and for the reasons set out above. We will continue to advocate for these changes but acknowledge that the current system needs to be fixed before changes to scope can be introduced.

## **f. Discrimination**

Since 2019, Rights of Women has provided free legal advice to women who have experienced sexual harassment in the workplace. This extends to overlapping issues including most commonly sex, race and disability harassment and discrimination, victimisation and dismissal related to discrimination. We are the only specialist providing this type of advice in England and Wales, and free discrimination legal advice is scarce.

We are aware that even very low-paid working women who use our advice service are not eligible and do not pass the means test, it is has become a rarity to qualify. This is particularly egregious since the discrimination experienced often has a direct impact on a person's income, whether that be due to short or long-term sick leave, dismissal, redundancy, resignation or demotion connected to the discrimination, meaning they are even less likely to be in a financial position to pay privately for legal aid advice. This means many victims of discrimination will never receive any legal advice at all. Legal aid is not available for representation at the Employment Tribunal and therefore seeking justice through the Tribunals is prohibitively expensive for many. For some, the compensation awards may not justify the time and cost involved. For example, the median sex discrimination claim for 2022/2023 was £11,177<sup>4</sup>.

This means that victims of sexual harassment in the workplace (which can include sexual assault, rape, domestic abuse other gender-based violence at the hands of work colleagues) have no choice but to self-represent in the Employment Tribunal, since legal aid is not available for representation in the Employment Tribunal. Many women report to us being

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2. [Westminster Commission | APPG AccessToJustice \(appg-access-to-justice.co.uk\)](https://www.access-to-justice.org.uk/)

3. [Westminster Commission | APPG AccessToJustice \(appg-access-to-justice.co.uk\)](https://www.access-to-justice.org.uk/)

4. <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023>

subjected to traumatising cross-examination by barristers and even perpetrators. There are limited safeguards against this treatment in the Employment Tribunal compared to other courts, which have taken strides to recognise the barriers for survivors to participate in the justice system. It should be recognised that this type of situation is where legal aid for representation is appropriate and necessary.

While we do not have a legal aid contract, many of our employment law volunteers have no experience of discrimination legal aid work, as this type of work has been close to completely decimated. This has meant that the latest generation of employment lawyers have no familiarity with it, having only advised employers and therefore cannot advise about discrimination legal aid with confidence or experience. The remaining provision is so small that it has been neglected altogether from recent data collection on legal aid deserts by the Law Society<sup>5</sup> and LexisNexis<sup>6</sup>. This is despite the Resolution Foundation estimating that 8.3 million people experienced discrimination in the workplace in 2022<sup>7</sup>.

The 2019 Equality and Human Rights Commission (EHRC) inquiry into discrimination legal aid details at length the under-provision and take-up of discrimination legal aid and the determinantal impact this had had on access to justice<sup>8</sup>. It was highlighted again recently by the Women's Budget Group<sup>9</sup> and how this has particularly disadvantaged women. Some changes that are required include:

- Increase legal aid discrimination providers and implement the recommendations from the EHRC inquiry 2019.
- ACAS and the EHRC to assist and signposting people to the Civil Legal Agency, as knowledge of accessibility to discrimination legal aid is minimal.

#### **4. What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system?**

There is a risk that there will be no legal aid system at all if no changes are made. We are in danger of losing highly experienced immigration legal aid lawyers within the next 5 years as highlighted in the recently published review of civil legal aid reform survey<sup>10</sup>. The system is in need of total reform.

For all areas of civil legal aid, a new model for funding legal aid providers must be viable, sustainable and fair. It must also enable legal aid providers to provide a trauma informed service, which means being able to give each a client the sufficient time and attention they require. It is crucial that changes are brought in following an effective and proper consultative process with legal aid lawyers.

There also needs to be a concerted effort to attract newly qualified lawyers to legal aid practice. Legal aid lawyers do this work because of their interest in social justice, not for the salary which has always been much lower than the private sector. However, a lack of investment into civil legal aid for decades sends a clear signal to lawyers that salaries will

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<sup>5</sup> <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

<sup>6</sup> <https://www.lexisnexis.co.uk/research-and-reports/legal-aid-deserts-report.html>

<sup>7</sup> <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

<sup>8</sup> <https://www.equalityhumanrights.com/our-work/inquiries-and-investigations/inquiry-legal-aid-victims-discrimination>

<sup>9</sup> <https://wbg.org.uk/analysis/reports/gender-gaps-in-access-to-civil-legal-justice/>

<sup>10</sup> <https://www.gov.uk/government/publications/review-of-civil-legal-aid-provider-survey-report>

continue to decline and they will struggle to meet their own cost of living, which makes it difficult for providers to attract newly qualified or perspective legal aid lawyers.

Ultimately if improvements are not made, the number of providers will continue to decrease, the quality of service will continue to deteriorate, and legal aid will be available in theory but not in reality.

**5. What do you think are the possible downstream benefits of civil legal aid? The term ‘downstream benefits’ is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation. Please provide any specific evidence or data you have that supports your response.**

The impact of the broken legal aid system on the voluntary sector has been considerable. Funders from charitable trusts and foundations have always been clear and rightly so that their funding is not a direct replacement for legal aid funding and should be complementary to it. However, as seen from the types of additional support provided to our immigration clients below it is not always possible to draw a line between the two. The downstream benefits of immigration legal aid will mean that the burden on the voluntary advice sector which is at breaking point will be reduced.

Additionally vulnerable migrant women escaping abusive relationships will be able to regularise their immigration status if they are able to access legal aid. This is essential in providing a gateway to accessing essential services such as healthcare, benefits, housing and work. The ability to access legal aid and secure status will also mean that vulnerable women do not become subject to the full force of the hostile environment and be at risk of falling into destitution, homelessness or being forced to stay with the abuser. No-one should be forced to make such choices. We are concerned that undocumented migrant women experiencing abuse will not be afforded this benefit and will continue to suffer in silence.

There are many benefits that survivors involved in family law disputes can gain from having a lawyer representing them, and for many women this can only happen through legal aid. The benefits include advising survivors on their options to be able to leave an abusive relationship, shortening the time it takes to resolve cases, limiting opportunities for perpetrators to use court proceedings to directly communicate with and abuse survivors, helping courts understand the abuse their client experienced, challenging reports and decisions and helping to ensure the law is used to protect survivors and children. Helping survivors achieve safety as quickly as possible result in savings to HMCTS, police and crime departments, health departments and local authorities.

Having access to legal advice and representation to resolve their housing, children, separation and immigration issues will reduce the burden placed on domestic abuse support services who are not resourced or equipped to provide legal support, and reduce reliance on refugees and other support.

## Fees

### 6. What are your views on the incentives created by the structure of the current fee system?

#### Immigration

There is no financial incentive for law firms without immigration legal aid contracts to bid for immigration contracts. The legal aid system, although on its knees, has not completely collapsed due to the sheer commitment of established and experienced legal aid lawyers who have desperately tried to make the system work within the boundaries set by the Government. This declining cohort of immigration lawyers feel a moral obligation to continue undertaking legal aid work regardless of the negative impact on their organisation or their mental health.

Currently legal aid work is having to be substantially subsidised by other fee paying work to make it financially viable. The legal aid sector is overworked and underpaid and there is no incentive for newly qualified lawyers to continue to focus on legal aid work when there are far easier ways of earning an income.

#### Family

We are aware that legal aid providers and their representative organisations will be preparing a fuller response. We have focused our response to this question on the impact that the current fee system has on women.

As we have stated elsewhere we believe the current fee structure has reduced the number of providers, which makes it harder to find a provider willing to take on the case. We also hear accounts of survivors who are dissatisfied with their legal aid lawyer, and we believe this is because the current fee structure does not enable providers to give these vulnerable clients the attention they need.

We receive calls to our family law advice line from survivors who already have a legal aid provider assisting them, but they still felt the need to contact our service. The most common issues they raise are:

- Poor communication - they have been trying to contact their lawyer for an update or advice but have received no response.
- Unavailability – their lawyer is always away from the office and does not have time to meet with the survivor prior to hearings, so the only time they are able to discuss their case with their lawyer is at the hearing itself.
- Their lawyer has failed to meet a court deadline and the survivor feels her case has suffered as a result.
- Their lawyer is not taking the time to listen to the survivor's experiences of domestic abuse, or is minimising the impact of domestic abuse, to get the case settled.
- The lawyer is not doing anything to advance the survivor's case or challenging the perpetrator who is using the children and court proceedings as a means to continue abuse.
- Their lawyer has failed to include important evidence in their witness statement and sometimes the survivor is criticising for not mentioning or including that evidence earlier even though they told their lawyer about it.



- The solicitor or barrister who represents the survivor at the hearing is not sufficiently prepared and has not taken full instructions, they fail to respond accurately or sufficiently to questions from the judge or submissions put by the other party, and this leads to poor outcomes for the survivor.

These experiences with their own lawyer compound the trauma survivors have already experienced. They are contrary to a trauma informed approach.

Examples of comments that our callers have made about their legal aid provider include :

*A survivor of domestic abuse: "I feel like my solicitor is always on their side. Legal aid solicitor. She is not really helping me. Doesn't really understand what I'm going through. Feels like oh it's legal aid she's not paying. I don't know how to stand up for myself. Once I was in tears, she had no compassion and she just hope you have a good day."*

*A homeless woman applying for non-molestation and occupation order: "I have to call my solicitor every day to get update. Just days of waiting with no information."*

*A caller who has been unable to change to a new legal aid provider: "Now, I don't want another not good lawyer. I don't want legal aid lawyer, I want something I can talk to before, prepare a good position statement like my ex's dad."*

*An advisor's comments on the caller they spoke to: "She is not happy with her solicitor and barrister, they are legal aid. They are not communicating with her...One of the witness statements for her was not allowed as there was no statement of truth..."*

*Another advisor's comments: "Caller is going through a divorce. It has been going on for 2 years. She has a legal aid solicitor but she is frustrated with them for being slow / always out of the office."*

*A caller seeking urgent advice: "The hearing is next week. I was waiting to hear back from my solicitor. I don't know if they usually help with this. She sent docs so she can claim legal aid. Never got back to me. They now say she is on annual leave until [a date which is after the hearing]."*

*A survivor of domestic abuse: "Non-molestation order - I had a solicitor for that. Thing is they are taking so long in communicating with me I wanted to get the transfer of tenancy myself because I am struggling to get hold of them."*

Sadly, we very occasionally here from survivors that feel they would have been better off with no lawyer at all than using their legal aid lawyer.

None of this is meant to be a criticism of legal aid providers. Many of the advisors at Rights of Women have provided legal aid family law services in the past and we regularly interact with current legal aid practitioners. We know that the vast majority of providers are working hard for incredibly long hours and want to provide the best service they can to their clients. The reality is that the current fee structures, issues with lawyer retention, and a crumbling court service means that legal aid providers are struggling and the system is not enabling them to provide an adequate level of service.

We suggest the following improvement:

Legal Aid Providers are funded in a way that enables not just financial viability but also a safe and acceptable quality of service to survivors of domestic abuse.

### 6.1. Do you think these support the effective resolution of problems at the earliest point?

No. They support problems festering until they reach crisis, they encourage litigation or unsafe mediation, and they support a poor quality of service for clients.

### 6.2. How could the system be structured better?

We broadly support the recommendations of the Westminster Commission<sup>11</sup> on improving the sustainability and sufficiency of the legal aid sector.

## User needs

### 9. What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid? Please provide any specific evidence or data you have that supports your response.

#### Family

Here is a list of the barriers and obstacles women who contact our family law advice lines commonly encounter when attempting to access civil legal aid:

1. **Working out whether they have a legal issue:** Many of the women we speak to want to know what the law is in relation to their safety, separation, finances, property and children. They often haven't approached a law firm because they might not know there is a legal issue that requires a lawyer. Rights of Women can provide this advice to the women we speak to, but there are many women who either don't know about our service or not able to get through to an advisor.
2. **Not knowing about legal aid:** The vast majority of our callers cannot afford to pay for legal advice which increases levels of stress and fear. Many callers either don't know about legal aid or have a very limited understanding of what it is. Rights of Women can provide this information to the women we speak to, but information on legal aid is not easily accessible for the public.
3. **Working out whether they are eligible for legal aid:** Eligibility criteria are too complicated for many women to navigate without advice. This is compounded by misinformation women receive online, from friends or professionals outside the legal aid sector, and occasionally even from lawyers within the legal aid sector.
4. **Finding a legal aid provider willing to take on the case:** We are frequently asked to advise on how to go about finding a legal aid lawyer. The .gov website (<https://find-legal-advice.justice.gov.uk/>) is helpful in finding local legal aid providers, but many people do not know about it and it's not possible to select providers that have specialist accreditations for domestic abuse. The number of providers are dwindling which makes finding a provider harder. Women tell us that they have contacted a few firms but they have either not heard back from them or were told they do not have capacity. We are not aware of any firms that open Legal Helps for divorce.

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<sup>11</sup> [Westminster Commission | APPG Access To Justice \(appg-access-to-justice.co.uk\)](https://www.appg-access-to-justice.co.uk/)

## 5. Evidencing domestic abuse:

- I. Survivors are often unaware of this eligibility requirement, or what types of evidence will be accepted. If it is not immediately obvious from their initial account that they will have a particular form of evidence then going through the whole list to check if the caller might have each one is a long and arduous task. Sometimes the only evidence callers have are reports to police which have been 'NFA'd' (no further action), pictures of bruises, or accounts from non-professional witnesses. Our advisors have the excruciating task of explaining these will not be considered as evidence of domestic abuse for the purposes of legal aid and they are not eligible.
- II. Survivors who have never reported to a professional don't have evidence, particularly if the behaviour was coercive and controlling.
- III. A survivor who has been in contact with a professional that can provide evidence of domestic abuse must then remember which service they used. This can be difficult, particularly for women with multiple needs who have to access a number of services.
- IV. The survivor must then find the contact details for the service.
- V. The survivor must then ask the service for the letter evidencing legal aid.
- VI. The survivor must chase the service if they do not receive a response.
- VII. The survivor must then forward the letter to the legal aid provider.
- VIII. If the legal aid provider or Legal Aid Agency say the letter is not sufficient, normally because it does not follow an exact form of working, the survivor must go back to the service to request the letter again.
- IX. There are further complications if the service is no longer in operation, or the service has not retained records relating the survivor.

**6. Evidencing means:** For clients with passporting benefits and no capital this is usually fairly straightforward. All other clients must gather bank statements, wage slips, accounts etc. This is further complicated if they are self-employed, or their wage varies. Sometimes people end up going round in circles because the evidence they initially provide has gaps and they have to go about finding the missing information, but by the time they find that the evidence has gone out of the computation period, and they have to provide more up to date information which has gaps so they to find the missing information etc. The system is not designed for people who are struggling with mental health and other issues, abuse and those with multiple and complex needs even though these are the people the system is meant to be serving. It is also time consuming and an unnecessary use of time to have to explain every single payment in and out no matter how small if it isn't obvious on a bank statement.

**7. Perpetrator preventing access to evidence of means:** This may be because the documents or information are in the perpetrator's possession, the survivor has fled the home, the perpetrator has changed passwords, the survivor is too afraid to access the evidence, or a number of other reasons.

**8. Trapped capital:** We receive calls from survivors who pass the income stage of the means test, but fail the capital stage because of property they own with the

perpetrator. They are not able to access the capital to pay for their legal fees because either the perpetrator would not consent, or they would be making themselves homeless, or both. The case of [R \(oao GR\) v Director Of Legal Aid Casework \[2020\] EWHC 3140 \(Admin\)](#) established that the Director has the discretion to value assets other than money as 'nil' or at an equitable basis when determining eligibility for legal aid. Despite this, women we speak to continue to tell us that they have not been able to access legal aid due to trapped capital, either because the legal aid providers they approached did not know about the case, or because they are not willing to try to ask the Legal Aid Agency to use the discretion, or because the legal aid provider tried asking the Director to use the discretion and the application was refused.

- 9. Reporting to the police:** A common barrier for women seeking non-molestation orders and occupation orders is that they have been told they must report to the police first. There are many reasons why survivors cannot or do not want to report to the police – for example they may have had negative experiences with the police in the past, criminalising the perpetrator is not something the survivor seeks and may be detrimental to the family financially, they may be afraid of how they might be perceived if they report to the police, the perpetrator has connections with the police, or the criminal justice system is just not what they feel is best solution for their family. Migrant women might not want to report to the police because they fear this will result in immigration enforcement and are therefore at an even higher risk of having to continue experiencing abuse. We are aware that the guidance allows the Legal Aid Agency to make exceptions but many legal aid providers take the stance that they will not apply for legal aid unless the survivor has reported to the police, presumably because their experiences have led them to believe the application will be rejected. We suggest that this element of the merits criteria is unjustified and should be removed.
- 10. Statutory charge:** If the survivor's case involves finance or property and she is advised that the statutory charge might apply, she must then decide whether to proceed with an application for legal aid knowing that she must pay it back with significantly high levels of interest and the hardship this will cause her in the future.
- 11. Contributions:** Contributions are often unaffordable for survivors because the means test is not fit for purpose.
- 12. Delay:** The length of time it takes to gather the evidence, for the provider to submit the legal aid application, for the legal aid agency to make a decision places the safety of survivors at risk if they are unable to apply for orders quickly or have to self-represent pending the outcome of the application.
- 13. Limitations:** The delay in extending limitations causes similar issues as those listed in 12. above. In addition, we strongly suggest that limitations which lead to survivors of domestic abuse being advised that they must accept recommendations of experts or Cafcass otherwise they will lose their legal aid be removed altogether. Experts and professionals do not always get it right, especially if their understanding of domestic abuse is lacking, and this will only improve if lawyers are able and willing to challenge experts. Limitations on legal aid certificates are part of the reasons why survivors are being told by their own lawyers that they should not raise domestic abuse, or that they should accept unsafe arrangements and this must change.

## Immigration

In our post implementation review of LASPO response of September 2018<sup>12</sup> we submitted that women applying for indefinite leave to remain (ILR) as victims of domestic abuse were experiencing challenges with accessing legal aid because legal aid lawyers were choosing to take on asylum cases which attracted a higher fixed fee. In recent years advice deserts and capacity issues of legal aid providers have increased further, even in London. This was highlighted in the Wilding report of May 2022, 'Access to Justice'<sup>13</sup> and the Public Law Project's recent report<sup>14</sup>. Advice deserts and a reduction in capacity have aggravated the situation further and now we are hearing from vulnerable women asylum seekers who are having to navigate the asylum system without representation. These are women who are fleeing their countries of origin because they fear serious harm there and risk having their applications refused because they cannot access legal aid. The human cost associated with the stress of not being represented and the impact of a negative outcome on their asylum claim is immeasurable.

The fact that there is a dearth of legal aid providers outside London and London legal aid providers are at full capacity<sup>15</sup> raises serious concerns about access to justice for women survivors of domestic abuse who are eligible to apply under other immigration routes, including under the new Appendix VDA which is a route for victims of domestic abuse to regularise their immigration status. We will refer to this route as 'the domestic violence rule' hereafter. We generally signpost to legal aid providers in the local area where the caller resides and if there are no legal aid providers in their area to London based firms. We have seen a significant rise in repeat calls to our advice lines from women eligible for legal aid because women have been unsuccessful in securing legal advice from the providers that we have signposted them to and are at a loss as to how they are going to tackle their legal issues without representation.

The reality is that applicants with complex immigration cases, both in and out of scope cases require expert evidence in support of their applications/appeals. Inability to access legal aid will mean that they cannot produce essential evidence to support their cases risking negative outcomes. A layperson cannot effectively navigate the immigration application/appeals process, grapple with complex immigration law and prepare court bundles without support. In addition there may be multiple barriers why litigating in person is not a viable option such as illiteracy, language, mental health issues or trauma. We have provided a case study to illustrate this below.

For around 6 years we have been providing an additional support service which straddles our advice and casework service. This is supposed to be a one-off intervention following an advice line call that could make a significant difference to the beneficiary of our service. However we are finding that the types of queries we are having to deal with involve multiple

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<sup>12</sup> <https://www.rightsofwomen.org.uk/wp-content/uploads/2023/12/submission-laspo-pir-final-sept-2018.pdf>

<sup>13</sup> [No access to justice- how legal advice deserts fail refugees, migrants and our communities.pdf \(website-files.com\)](https://www.rightsofwomen.org.uk/wp-content/uploads/2023/12/submission-laspo-pir-final-sept-2018.pdf)

<sup>14</sup> [https://plp150.sharepoint.com/sites/LegalAid2/Shared Documents/Resources/Research & policy outputs/Oceans of Unmet Need Report and Background Briefing/231807 Oceans of unmet need v 3 final \(publiclawproject.org.uk\)](https://plp150.sharepoint.com/sites/LegalAid2/Shared Documents/Resources/Research & policy outputs/Oceans of Unmet Need Report and Background Briefing/231807 Oceans of unmet need v 3 final (publiclawproject.org.uk))

<sup>15</sup> <https://www.phf.org.uk/publications/a-huge-gulf-demand-and-supply-for-immigration-legal-advice-in-london/>

interventions for one individual because a client does not have a legal aid lawyer or any lawyer to support them.

### **Interventions within the first few years of service**

- Further email advice following a call to our advice line on links to applying for a change of conditions application, how to complete the form and eligibility criteria, signposting information.
- Further email advice on how to withdraw an immigration appeal based on a family relationship with an abusive partner following a breakdown of the relationship.
- Further advice on information to be provided to an employer when an application for further leave/permission to stay in the UK was pending. This related to a caller who was concerned that she would lose her job as her employer was not sure whether they could continue to employ her whilst her application for further leave was pending.
- Further advice on how to make a subject access request to the Home Office, links to the relevant gov.uk pages and supporting information to be sent with the request.
- Further email advice on completing a statement of additional grounds form for an asylum seeker without representation and advising on supporting evidence for a caller's asylum claim.

### **Recent interventions**

#### Asylum

##### Case study 1

We supported a woman who was extremely vulnerable and was appeals rights exhausted in relation to her asylum appeal. She had submitted a fresh claim for asylum which had been refused. We supported her to apply for an adjournment and secured her legal representation for her appeal. The adjournment was granted. We also prepared a lengthy chronology of events, after reading her previous decisions and appeal determinations and also identified gaps in evidence. We joined the client at her first appointment with her new representative to answer any questions that they might have. We subsequently learned that her appeal had been dismissed and that some of the evidence that the client had produced in support of her appeal was never submitted and neither was a key witness encouraged to attend Court to give evidence. The representative informed the client that they would not be able to apply for permission to appeal the decision. We tried to secure a representative for the client to submit the permission to appeal (PTA) application but were unable to do so. We then decided that due to her vulnerability we would help her submit the PTA. The client is awaiting a decision on her application.

We advised the client that she should make a complaint about her representative.

We have recently been contacted by this client seeking further support as she has wrongly been informed by the Home Office that she doesn't have a pending application and her asylum support will be discontinued which has exacerbated her mental health condition.

## Case study 2

We recently advised a woman whose asylum appeal had been dismissed by the First Tier Tribunal. She was unrepresented for her appeal. She had not received advice on further appeals and when she called our advice line she was out of time for appealing. We examined her Court bundle and advised her on the merits of applying for permission to appeal out of time and of making further submissions. Perusal of her file was a time consuming task but we agreed to support her due to her vulnerability and inability to access legal advice elsewhere.

## Human Rights complex case – ECF required

### Case study 3

We supported a woman who was very vulnerable with severe mental health issues to submit grounds of appeal in relation to a refused human rights application. We had been trying to secure her representation but were unable to do, the fact that she required representation urgently in the last week of December made it even more challenging. We managed to obtain agreement from a legal aid lawyer that they would apply for ECF for her human rights claim if we could urgently submit her grounds of appeal which we agreed to do because of her fragile mental health. We knew that for this woman to have any chance of succeeding with her human rights appeal she would require expert evidence in the form of a psychiatric report and a country expert report which had been lacking in previous applications.

### Case study 4

We advised a woman asylum seeker who was pregnant and a victim of domestic abuse. Her husband was dependent on her asylum claim. She knew she was in scope for legal aid but had not been able to access a legal aid lawyer. She wasn't aware that she could get section 95 asylum support (she was being supported by the local authority) and she didn't know how to tell the Home Office that she was a victim of domestic abuse and did not want her husband to be dependent on her asylum claim anymore. We provided the woman with written advice with signposting info on asylum support, contacts for the Home Office safeguarding team as well as details of legal aid providers she had not contacted previously.

### Case study 5

We advised an asylum seeker whose asylum application had been refused. She contacted us 3 days before her appeal deadline. She had been unable to find representation. We advised her on the phone and followed up our advice by email for the link to submit her appeal and advice on how to complete the appeal form. We also provided her with signposting information for legal aid providers.

## **Victims of domestic abuse and modern slavery being denied legal aid**

Applicants eligible for legal aid paying privately

### Case study 6

We advised a caller about her eligibility to apply for indefinite leave to remain under the domestic violence rule. The caller owned property jointly with her husband and according to our financial assessment she would still qualify for legal aid. We were of the view that the woman's case had excellent merits and she would be able to obtain the evidence of domestic abuse she required in support of her indefinite leave to remain (ILR) application.

Unfortunately we were also aware that the current state of the legal aid sector meant that she would not be able to secure legal representation as domestic rule cases were paid at the lower fixed fee

The fact that her means were quite complex would also be a deterrent to legal aid lawyers to take on her case. We did manage to persuade a lawyer from a women's charity to apply for the destitution domestic violence concession (DDVC) which she did pro-bona in order that the woman could access public funds but they were not able to take on her ILR application as they were at full capacity. The woman ended up instructing a private lawyer for the ILR application.

We also advised the woman about her son's automatic entitlement to British nationality and the high evidential threshold for proving that he was British, based on his particular circumstances and advised her on next steps.

The British nationality matter was out of scope for legal aid and ECF would have been required if she had not been able to access our services.

### Lack of capacity cited as reason not to take on cases

#### Case study 7

We recently advised a professional refuge worker who was very concerned that her client had not been able to access a legal aid lawyer to make an ILR application based on domestic abuse despite having contacted approximately 50 representatives. Her client was running out of time to apply for ILR as her DDVC which was valid for 3 months was shortly due to expire and she was at risk of becoming an overstayer.

#### Case study 8

We advised a woman who had entered the UK as a worker. Her husband was her dependent. On arrival, the caller was prevented from working and was locked in a room by her husband's family. She managed to raise the alarm and was able to escape the household with the support of the police. She was not able to start working after fleeing her husband as her husband was aware of where her workplace was located. She was very distressed about her situation and didn't know where to turn to for advice.

We advised her that she was in breach of her visa conditions as she was not working and would be required to make a different application to stay in the UK or be supported by her employer to change her work location. We advised her to seek further advice from a trafficking charity about the merits of her applying to be recognised as a victim of



trafficking as this would give her access to in scope legal aid and a law firm that could provide specialist advice on skilled work visas.

### Using unregulated advisers/unscrupulous advisers or poor advisers

We hear distressing accounts from callers who have been exploited by unscrupulous advisers and charged exorbitant fees for poor work. We hear of the devastating impact of using unscrupulous advisers from women who call our advice lines. There have been cases of these advisers pocketing fees and not making applications.

Some women pay for private consultations and are given the wrong advice and make applications based on this advice. This may not come to light until much later when their application is refused or they instruct a different adviser or call our advice lines.

We are also concerned about the escalating number of callers who are using community advisers, many of whom are unregulated. We hear from women who are often pressurised into seeking advice and/or representation from a 'so called' community adviser because they belong to the community and everyone else uses them. The woman will often not have the opportunity to ascertain the credentials of the adviser and the quality of the advice given. We are aware that the SRA and Bar Standards Board have produced publicity materials in recent years on identifying legal issues, different types of advisers and what is meant by regulation but unfortunately this information doesn't always reach the intended recipients. Migrant women are unlikely to be aware of the existence of this information unless it is presented in an accessible format and place.

### Case study 9

We advised a woman on her immigration options, one of which was to apply for indefinite leave to remain as a victim of domestic violence. She had been the victim of emotional abuse and coercive control. We advised her on the evidential challenges regarding her application as evidence of domestic abuse was limited. She was also advised on the parent of a child route. We later discovered that she had instructed a lawyer from her church to make an ILR application as a victim of domestic abuse as she had not been able to get a legal aid lawyer. We do not know whether her representative was regulated to provide immigration advice and services.

### Case study 10

This woman had made an application based on private life some years previously which was dealt with incompetently by her lawyer as a result of which she overstayed. She ended up in immigration detention where she attempted suicide. She had a history of suicide in her country of origin and should never have been detained in the first place as this was a breach of Home Office policy. She had also been married to an abusive man who was very controlling; he had kept her in domestic servitude. Her immigration solicitors had not taken any action on either her trafficking or immigration case despite her having received a positive reasonable grounds decision under the national referral mechanism (NRM) several years previously.

We advised her to make a complaint about her solicitors and to make a subject access request to the Home Office. She could then instruct another immigration solicitor to advise on the merits of an asylum or article 8 claim and a discretionary leave application.

She would have been in scope of legal aid to make any immigration application. Her lawyers actually asked her to pay privately for representation on her immigration matter which we advised her was wrong as she was entitled to legal aid.

She did follow our advice and make a complaint about her lawyer but decided to remain with them both she and her support worker had unsuccessfully tried to find another lawyer.

**10. What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs? Please provide any specific evidence or data you have that supports your response.**

Unfortunately there is no choice. We hear frequently from women on our immigration advice lines about the challenges they have in securing legal aid. They are, in fact extremely relieved if they are able to find a legal aid provider to take on their case at all. If they are fortunate enough to secure legal representation they would have no way of ascertaining the quality of the service that the law firm and/or the specific lawyer provide and neither would they be able to ascertain whether the lawyer they have been allocated has any experience of representing vulnerable women who have experienced gender based violence.

The experience of callers to our family law advice line is that they are given a list of law firms but they have no control over who at that firm takes on their case or the level of experience they have, their experience of working with survivors of domestic abuse in a trauma informed way, or their willingness to stand up for the rights of domestic abuse survivors. These are significant limitations to their ability to make an informed decision about which lawyer will best meet their needs. It is unsurprising that survivors can end up losing faith in their lawyer.

Case study 11:

This woman was assigned to a trainee solicitor after approaching the law firm. She was told she is not entitled to legal aid. The trainee solicitor did not try to check whether she was eligible. The woman paid £1000 when she could have got legal aid. She has now been told she might be eligible but might only get Legal Help. The trainee wasn't sure. The trainee then left. She was told someone else will take over her case. That solicitor then went on to make a number of errors when drafting court documents.

The process to change legal aid providers if you are unhappy with them or if the provider decides there is a breakdown in the relationship could be made easier. We have spoken to some survivors who have gone down the route of submitting a complaint, but then find it difficult to find a new provider to take on the case because it is not financially viable to take on the case part way through, from another firm. The survivor is then stuck with the solicitor they have (if they are willing to continue acting for her) or no solicitor at all.

We recommend that:

- Changes be introduced to increase the number of legal aid providers.

- Changes be introduced to make it easier for clients to transfer their legal aid certificate to a new provider.
- The fees should not disadvantage solicitors who take on a transferred certificate.
- Consideration be given to how clients might have more agency over which lawyer is assigned to their case.

**11. Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed? Please provide any specific evidence or data you have that supports your response.**

In our experience callers misunderstand how the legal aid scheme operates. It is not uncommon for us to come across women who do not know how to go about getting a legal aid solicitor, who do not know what legal aid is or that it exists in some cases. The complexity of the eligibility criteria means that almost no women we speak to are able to assess whether they are eligible for legal aid.

**12. How do you think that people receiving civil legal aid can be supported in cases where they have multiple or ‘clustered’ legal issues and some of these are outside of the scope of civil legal aid? Please provide any specific evidence or data you have that supports your response.**

In an ideal world an individual should receive a holistic service and be able to access different types of legal advice in one location. However we know this is not possible due to the development of specialisms and accreditations. This is encouraged by the current model as contracts limit the ability of providers to assist in any way other than the specific area for which the provider has a contract. As a result, legal aid lawyers are encouraged to specialise in narrow areas of law.

It might be useful to have an initial ‘one stop’ advice shop that a person could go to for all their legal problems and to be signposted to different legal aid providers where relevant. The ‘one stop’ scheme should be accessible to everyone including those with protected characteristics. We know that people often have ‘clustered’ problems as reported by the Law Society, their report was referenced in our post implementation review. We reinforce their concerns and our experience of hearing from women on our advice lines is that they often need different types of advice simultaneously. Women who call our immigration advice lines are often in need of family, housing and benefits advice.

The fact that some of the above areas of law were taken out of scope when LASPO came in has been problematic. These matters should be brought back into scope. This is also one of the recommendations in the Westminster Commission on Legal Aid report<sup>16</sup>

Many discrimination cases are likely to have ancillary employment law claims as part of the wider claim, but only discrimination aspects can be supported by legal aid providers. We are aware of examples of providers having no choice but to turn away people due to the complexity of the case and the cross-over with employment law issues. This highlights the problem that has arisen in creating a separation between discrimination and employment law

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<sup>16</sup> [Westminster Commission | APPG AccessToJustice \(appg-access-to-justice.co.uk\)](https://www.access-to-justice.co.uk/)

from the scope of legal aid and it is why employment law should be brought back into scope if discrimination legal aid is to work effectively.

We are aware that the majority of public do not seek help until they are at a crisis point because they have either not identified their problem as a legal one or they do identify their problem as a legal one but cannot afford to pay for legal advice. The Legal Services Board survey on legal needs<sup>17</sup> lays bare the public understanding of the legal landscape. The women that we hear from on our advice lines tend to fall into the latter category.

It is crucial that any information about accessing legal advice and legal aid is made available in a wide range of places that individuals frequent such as GP surgeries, supermarkets, libraries. They may not be aware of gov.uk or justice websites until they make contact with a professional that is able to signpost them to relevant online info links.

### **13. How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved?**

An emerging issue over the last few years is the reluctance of legal aid providers to accept clients who have been granted ECF funding because of capacity. 'In scope' matters take precedence over article 8 'out of scope' matters for the majority of immigration legal aid providers. We are left with a situation of an individual having been granted ECF but no provider to take on the substantive immigration application. We have utilised the services of law clinics in the past to complete ECF applications but are no longer making these referrals as we see this as a pointless exercise.

#### Case study 11

We advised a woman whose British partner coerced her into entering the UK as a visitor promising her marriage and permission to stay in the UK. Upon her arrival to the UK she experienced domestic abuse which went on for 3 years. They had a child together who was British. She was forced to call the police following a physical incident of abuse and obtained a protection order against her partner. Her partner breached the order and also made threats that if she returned to her country of nationality he would kill her and take their child away.

We advised this woman several times. The first time we advised her that she could apply for asylum or on human rights grounds with the human rights grounds being the preferred option. We had advised her that she required ECF in order to make an article 8 application and we signposted her to some legal aid providers.

She contacted us again, a few months later informing us that she had contacted between 30-35 solicitors and none undertook ECF applications and could only take on the matter privately. She was being quoted between £5000 and £6000 for lawyer's fees which she couldn't afford to pay. A private solicitor had finally agreed to take on her case and had agreed to defer payment of their fees until she was able to secure a job.

She was being supported by social services and her church because she had no means to support herself and her young child, as an undocumented individual.

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<sup>17</sup> <https://legalservicesboard.org.uk/news/largest-ever-legal-needs-survey-in-england-and-wales>

## Case study 12

We advised a woman who had separated from her partner due to DV. She had two children, one who lived with her in the UK and was British and another child who lived in her country of nationality and was 17 years of age. We advised her on making an entry clearance application for her son who lived abroad before he turned 18 as he would be subject to stricter immigration rules on becoming an adult. The application would be outside the rules. We advised her on the ECF scheme as her matter was not in scope for legal aid.

When we called her back some months later she was distressed because she hadn't been able to secure representation to make an entry clearance application for her son who had now turned 18. She had approached many organisations to support her with an ECF application but had not been able to secure representation.

Out of desperation she had applied for ECF herself and been granted it but could not secure a legal aid lawyer to make the entry clearance application. She was distressed because her parents who had been caring for her son were now elderly and sick and would be retiring to a care home shortly. The whole experience of looking for lawyers had taken its toll on her mental health.

Our research report *Accessible or beyond reach? Navigating the Exceptional Case Funding Scheme*<sup>18</sup> without a lawyer, published in February 2018 link sets out the inadequacies of the legal aid system and provides a detailed analysis of the ECF scheme's accessibility for women survivors of domestic and sexual violence and abuse for family and immigration legal advice. 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 have yet to see any positive action to reform the ECF scheme. We hope urgent steps are taken to overhaul the ECF scheme and improve access to justice.

The recommendations in our above report are:

- To conduct independent research into the accessibility of the ECF scheme for individual applicants and commit to implementing recommendations. This research must assess the scheme's accessibility for those with multiple vulnerabilities, including, but not limited to survivors of domestic and sexual violence or abuse.
- To conduct independent research into the willingness and ability of legal aid providers to make ECF applications and commit to implementing recommendations.
- To improve information and guidance available to individual applicants.
- To provide a helpline for individual applicants making their own ECF application and ensure interpreting services are available. If the LAA considers it to be a conflict for it to offer this service, an independent service should be commissioned.
- To commit to a helpful and collaborative approach to individual applicants ensuring applications are not rejected as incomplete without assistance being provided by the LAA to remedy any deficiencies.
- To remove the assessment of means and merits for individual applicants and reinstate the option of making provisional grants of ECF. Legal aid providers would

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<sup>18</sup> <https://www.rightsofwomen.org.uk/wp-content/uploads/2023/12/accessible-or-beyond-reach.pdf>

adopt responsibility for the means and merits assessment as usual (whether by using delegated powers or making applications to LAA) and legal aid should be backdated to the date of the provisional grant.

- To pay legal aid providers to make ECF applications at a rate commensurate with the time it takes them to prepare an application and irrespective of the outcome of the application.
- To provide detailed and certain guidance in respect of urgent cases including non-exhaustive criteria for determining whether a case is urgent and the procedure.
- To implement an effective triage system that: identifies urgent cases as they are received, makes a decision whether to treat them as urgent and communicates that decision to the applicant.
- To reinstate a telephone line direct to the ECF team and improve response rates and times to queries.
- To clarify and simplify the process for a legal aid provider to commence work after an individual has been granted ECF. In addition to the above, a related recommendation that follows from our findings is:
- To reinstate legal aid for all immigration cases involving human rights and EU rights.

### Discrimination

ECF continues to be unfit for purpose when it comes to discrimination cases. Since 2017/18 (the period up to when the EHRC last highlighted the issue) to 2021/22, only 17 applications for ECF had been made and only 1 has been granted<sup>19</sup>.

This is no doubt connected to how few discrimination legal aid providers there are left, as demonstrated by research from Public Law Project that concludes that most applications are made by providers rather than individuals and means there are 'areas of high activity, such as immigration and family, but other areas, such as discrimination, see little to no applications.'<sup>20</sup>

This means it not possible to comment on how the system is working in relation to discrimination claims as it is not functioning at all. Evidently, the difficulty, complexity and lengthy process involved in making ECF application is not accessible to already overburdened discrimination legal aid providers.

## Use of technology

**14. What are the ways in which technology could be used to improve the delivery of civil legal aid and the sustainability of civil legal aid providers? We are interested in hearing about potential improvements from the perspective of legal aid providers and people that access civil legal aid. Please provide any specific evidence or data you have that supports your response.**

Whilst we are not a legal aid provider, we are a service that advises women on their eligibility for legal aid and the operation of legal aid. As such, we need to be able to access guidance and information relating to legal aid quickly and easily. Some of our lawyers remember a time when there was a 'Civil Legal Aid Manual'. This was one resource that contained

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<sup>19</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023> (tab 8.2)

<sup>20</sup> <https://publiclawproject.org.uk/content/uploads/2020/01/Improving-Exceptional-Case-Funding-Website-Publication-Version-docx.docx.pdf> (page 6)

information and sources for most questions a provider might have relating to the provision of legal aid services. This resource no longer exists.

Currently the information is dispersed on the gov.uk website in an ad hoc way. It can take hours to find the information one needs, and sometimes it's not there at all.

We recommend that a resource similar to the Civil Legal Aid Manual is made available online and kept updated. This resource should be made available to advice services such as Rights of Women, as well as legal aid providers.

Legal aid providers need to be funded sufficiently to enable them to upgrade case management systems to make best use of technology. We would strongly support the use of technology to make case management processes for legal aid lawyers more efficient. We would also support the use of technology to help clients manage documents and to understand processes. However, we would add a note of caution about the expansion of technology to client interactions in a way that makes the service provided to clients less personal and less trauma-informed. The clients accessing legal aid are some of the most vulnerable in society, they need to be able to speak to their solicitor, build a relationship of trust with them and have confidence they will represent their best interests. Any advance in technology within this sphere must be designed with vulnerable clients at the forefront and in the knowledge that whatever is designed will not meet all clients' needs and those who are digitally excluded should not receive a less good service as a result.

#### **16. What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?**

Language, illiteracy, mental health, trauma, IT illiterate are all barriers for users of legal aid. In some cases internet access and ability to use a phone due to lack of credit. For our vulnerable women clients who have experienced domestic abuse it may be the case that the perpetrator controls the individual's phone or laptop and for that reason the woman is unable to use technology.

##### **16.1. Do you think there are any categories of law where the use of technology could be particularly helpful?**

A person's ability to access advice will depend very much on their needs. There needs to be different methods of advice delivery available to meet everyone's needs.

##### **16.2. Do you think there are any categories of law where the use of technology would be particularly challenging?**

Migrant clients are a cohort that might require additional support as many will have language barriers and/or not be proficient with IT. They are likely to have immigration law issues but, as has been highlighted above, will often have other unmet legal needs as well and, as a result, we would not encourage an approach to technology development that was different across different categories of law. Instead, the use of technology across all categories of law must be able to take into account those clients who will struggle to use technology for various reasons.

## Early resolution

### 17. What do you think could be done to encourage early resolution of and/or prevention of disputes through the civil legal aid system?

The Law Society addressed the need for early advice in June 2018<sup>21</sup> as being crucial to prevent legal problems from escalating and causing distress further down the line. The Ministry of Justice (MOJ) gave their commitment to ensuring that people can access the right legal support at the right time, in their post implementation review of LASPO of February 2019.<sup>22</sup> This was after hearing from legal aid providers, voluntary organisations and regulators about the importance of early advice. Despite the commitment, legal aid is still not available to those that need it. Action is required now without further delay to ensure that access to justice is not denied to those in need.

Early advice is crucial when relationships break down due to domestic abuse. We hear frequently from women who misunderstand the impact of relationship breakdown on their immigration status. It is not uncommon for women to wrongly believe that they are able to remain in the UK until their visa runs out. A woman is at risk of having her leave curtailed upon relationship break down because she no longer meets the requirements of the immigration rules. Curtailment of leave will mean that the woman no longer has permission to stay and work in the UK. If a woman, in this situation has not informed the Home Office of relationship breakdown she will be committing a criminal offence by continuing to stay and work in the UK, and if she is working her employer will also be committing an offence and may have to pay a hefty fine and will also be at risk imprisonment<sup>23</sup>. If women do not receive early legal advice they may unknowingly end up committing a criminal offence.

We would suggest different models of advice to ensure that all individuals requiring advice are able to access it.

The 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.

**Rights of Women**

**21 February 2024**

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<sup>21</sup> <https://www.lawsociety.org.uk/topics/research/research-on-the-benefits-of-early-professional-legal-advice>

<sup>22</sup> [www.rightsofwomen.org.uk/wp-content/uploads/2023/12/submission-laspo-pir-final-sept-2018.pdf](http://www.rightsofwomen.org.uk/wp-content/uploads/2023/12/submission-laspo-pir-final-sept-2018.pdf)

<sup>23</sup> <https://www.gov.uk/penalties-for-employing-illegal-workers>



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