

Evidencing domestic violence: a barrier to family law legal aid

On 1 April 2013 the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect removing legal aid for the majority of private family law matters. Accompanying LASPO, the Civil Legal Aid (Procedure) Regulations 2012¹ introduced criteria whereby legal aid for private family matters which would otherwise be outside the scope of the legal aid scheme could still be available for those affected by domestic violence. Legal aid would be available if survivors could provide prescribed evidence that they had experienced domestic violence.²

Prior to the implementation of LASPO and its accompanying regulations, Rights of Women, with Women's Aid England and Welsh Women's Aid, had expressed very serious concerns that the prescribed and exhaustive list of evidence criteria would mean that many women who had experienced or continued to experience domestic violence would not be able to satisfy the regulations and the gateway to family law legal aid. Our research with Welsh Women's Aid, *Evidencing domestic violence: the facts*³ published during the passage of LASPO through Parliament demonstrated that 54.4% of women accessing Welsh Women's Aid's member services as survivors of domestic violence would not meet the evidence criteria (as then proposed⁴).

Following the implementation of LASPO we have undertaken further research to establish the impact of the domestic violence evidence gateway on survivors of domestic violence to understand its impact on women's ability to access advice and representation in private family law cases.

Our findings show that the legal aid regulations are restricting access to legal advice and representation to women affected by domestic violence, women whom the Government has expressly sought to protect from the removal of family law from the scope of legal aid.

1. Key findings

- Half of all women in both surveys who had experienced or were experiencing domestic violence did not have the prescribed forms of evidence to access family law legal aid. This reflects the findings of our earlier research on the gateways.
- 16.7% of respondents to our survey had to pay over £50 to obtain copies of the required evidence.
- 37.5% of respondents had to wait longer than 2 weeks to get copies of their evidence.

¹ See Regulation 33, Civil Legal Aid (Procedure) Regulations 2012
<http://www.legislation.gov.uk/ukxi/2012/3098/regulation/33/made>

² For full details see Rights of Women's briefing
http://www.rightsofwomen.org.uk/pdfs/Legal/Briefing_for_WA_WWA_members.pdf

³ See http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_dv_the_facts.pdf

⁴ The evidence criteria was subsequently broadened to include undertakings, admission to a refuge and report from a health professional

- 60.5% of respondents took no action in relation to their family law problem as a result of not being able to apply for legal aid. 23.7% paid a solicitor privately and 15.8% represented themselves at court.

2. Overview of the research

Over the first three months of the operation of the new regulations Rights of Women captured data in respect of their impact on survivors in two ways:-

1. **Online survey:** an online survey, *Monitoring the legal aid gateways*, was developed and circulated via Rights of Women's website and to member services of both Women's Aid England and Welsh Women's Aid. The survey received 141 responses between 1 April and 31 July 2013.
2. **Survey of Rights of Women advice line callers:** between 1 April and 31 July 2013 Rights of Women's specialist legal advisers⁵ advising on our family law advice line were asked to assess callers' eligibility for legal aid under the new regulations. Data from 236 callers was taken during this period.

3. Monitoring the legal aid gateways survey

Types of legal problems

Respondents to the survey were asked in which area of family law they required legal advice and representation. The most common legal issue was child contact (72.1%) but the responses demonstrate that women had a range of family law issues in which they required legal advice and representation.

To help us identify the kind of legal problem(s) you have, please tell us about the type of case you needed legal advice and representation for. Please tick all that apply.

Answer Options	Response Percent	Response Count
Child contact	72.1%	101
Residence orders	49.3%	69
Other issues relating to children	39.3%	55
Child maintenance and financial support for children	35.0%	49
Divorce	49.3%	69
Financial arrangements after divorce	32.1%	45
<i>answered question</i>		140
<i>skipped question</i>		1

Forms of evidence

Half of respondents (49.5%) did not have any of the forms of prescribed evidence in order to apply for family law legal aid. Of those women who did have one (or more) of the forms of evidence, the most common forms of evidence was evidence of a referral to a MARAC (19.2%) followed by evidence from social services (18.2%). Evidence from a health professional and of an injunction order (non-molestation order, occupation order or forced marriage protection order) were the next most common form of evidence, both at 14.1%. The least common form of evidence was an undertaking (2%).

⁵ Rights of Women's legal advisers are all qualified solicitors and barristers specialising in family law

Which of the following forms of evidence did you have in order to apply for legal aid?		
Answer Options	Response Percent	Response Count
An unspent criminal conviction against my abuser for a domestic violence related criminal offence	6.1%	6
A caution against my abuser for a domestic violence related offence in the past 2 years	12.1%	12
Evidence of ongoing criminal proceedings in relation to my abuser and his violence against me	8.1%	8
A non-molestation/occupation/forced marriage/restraining order against my abuser	14.1%	14
A non-molestation/occupation/forced marriage/restraining order against my abuser which had expired but was made in the past 2 years	6.1%	6
An undertaking given by my abuser within the past 2 years where I did not give a cross undertaking	2.0%	2
Evidence of my referral to a MARAC (Multi Agency Risk Assessment Conference) as a high risk victim of domestic violence within the past 2 years and where there is a plan in place	19.2%	19
A finding of fact made in family proceedings within the past 2 years that my abuser was violent to me	6.1%	6
Evidence from a doctor, nurse or midwife that they examined me within the past 2 years about an injury or condition I had as a result of domestic violence	14.1%	14
Evidence from Social Services that they have assessed me as being at risk of or experiencing domestic violence within the past 2 years	18.2%	18
Evidence from a women's refuge that I stayed there for more than 24 hours in the past 2 years	13.1%	13
I did not have any evidence and could not apply	49.5%	49
	answered question	99
	skipped question	42

Obtaining evidence

Of the respondents who answered the question 50% (27) did not have a copy of the evidence of domestic violence and of those 50% (13) did not know who to ask to obtain the evidence. One woman commented "Im lost in finding out how to obtain all of these things" (sic). When asked how they found out who to ask for information about obtaining the evidence 60% (6) had found out via the internet.

Whilst 77.8% of respondents did not have to pay for the evidence they required, 16.7% had to pay over £50 to obtain theirs and 37.5% of respondents had to wait longer than 2 weeks to get their evidence. One respondent commented "I never got

the information from the MARAC and I lost the Legal Aid funding.” However, 37.6% only had to wait 3 days or less for a copy of their evidence.

Impact of not being eligible for legal aid

60.5% of respondents who answered the question (38) did nothing as a result of not being able to apply for legal aid. 23.7% paid a solicitor privately and 15.8% represented themselves at court. Comments from respondents included “[I] had to borrow money from friends to pay for [legal advice and representation]”, “I am trying to go for divorce but cannot as I cant afford a solicitor” (sic) and “I will have to represent myself”. One respondent commented that she had funded her legal advice and representation “by borrowing money of family and friends”.

As a result of not being able to apply for legal aid, what did you do?		
Answer Options	Response Percent	Response Count
I paid a solicitor privately	23.7%	9
I represented myself at court	15.8%	6
I did nothing	60.5%	23
Other (please specify)		7
	answered question	38
	skipped question	103

Access to a legal aid solicitor

We are concerned that the removal of the majority of private family law from the scope of legal aid will have an impact on the number of firms offering family law legal aid and therefore their accessibility to women affected by violence. 31.1% of respondents to the survey found it very difficult to find a legal aid solicitor dealing with family law in their area with 52.2% having to travel over 6 miles. Of those 26.1% had to travel over 15 miles. One respondent commented “(b)ecause it was far for me to go and cost to much I didn't attend my appointment” (sic).

Comments on the impact of the changes to legal aid

Respondents to the survey were asked to make any final comments on the affect the legal aid changes had on them.

Respondents commented on the difficulties in obtaining evidence and particularly of emotional abuse.

“Having the proof in place about the domestic abuse is difficult as I didn't talk to anyone about this before my support worker. This meant that because I had never called the Police I found it hard to get Legal Aid.”

“I believe that these changes will keep many women in marriages/relationships that are emotionally abusive. A situation in which many of us wish we had been beaten up so that we have evidence of the pain that has been inflicted upon us by the emotional tearing down of us as person.”

“I have no physical evidence, it was sexual emotional & mental abuse so am not entitled to any extra help”

Another expressed her concerns about the impact of the 24 month time limit on some of the forms of evidence.

"I am really concerned that if my ex starts legal proceedings again later down the line, the evidence that I do have will be too old for me to be eligible for legal aid again. I don't understand why they put time limits on the evidence; surely if someone has once abused you, that still stands five years later? The new system seems unnecessarily convoluted."

Many respondents reported that the changes meant that they were at continued risk of abuse from their perpetrator and that they had an impact on both their own and their children's physical and mental health.

"They make me as abused today as I ever was when living with him"

"Make me feel at increased risk and more vulnerable."

"I NOW FEEL IN DANGER !"

"Being in such an awful situation and trying to cope with abuse and caring for my children is really hard, having this additional obstacle in my way just acted as another barrier to getting some support which in turn has made it easier for my husband to continue to be abusive for longer. I understand the need for budget cuts and control over public spending but please don't make already very difficult situations even harder for victims"

"This has given my husband even greater control over me and now I feel completely at his mercy... My husband thanks the government from the bottom of his heart for allowing him to carry out his entrapment with confidence in knowing that his wife cant do a dam thing about it, as she's stuck in no mans land."

"[The changes] put additional stress and anxiety on me that I did not need as things were already very stressful for me at the time. It just added to my fears and uncertainties."

"I now can not fight for my children to get them away from their abusive father or for my financial settlement after our divorce, which in turn has left me in an dire financial state and I am thinking more and more of taking my own life, please help us"

"I cant get any help and make my and my children's life safe without legal aid."

In terms of the impact on the outcomes of women's cases, the following comments demonstrate the very distressing reality of not having access to legal advice and representation.

"I have lost my home, and my son"

"I lost my daughter because I could not afford to pay for an appeal against a decision about residency"

Respondents also commented that the changes had forced them into representing themselves in proceedings, causing them to come into direct contact with their perpetrator.

"I now have to go to court representing myself as I do not wish to put myself into debt so I can get stability for my children."

"Due to having to represent myself and the other party having legal representative I had to have unwanted contact with the other party and felt frightened and intimidated by this"

Some also talked about the economic impact on them of having to pay for legal advice and representation.

"[I] cannot afford to live as it is, having to beg money for legal fees has put me under more pressure in having to pay them back whilst protecting a vulnerable child, finding food, keeping us off the streets and dealing with a violent alcoholic abuser who is still molesting us. Where is the promised support for the victim in all this? The justice system caters for perpetrators at all costs."

"If a woman cannot afford a lawyer then her rights are restricted and once again she falls minor to a richer man even if he is a criminal."

Financial eligibility

This survey was not intended to capture data in relation to respondents' financial eligibility for legal aid but some of the respondents who completed it commented on their financial eligibility and the impact that this had on them.

"I cannot get legal aid because I have too much money coming into my household each month but to enable me to pay a solicitor I would have to cancel some outgoings. I would love to earn more money but cannot as I have younger children and believe I should be there for them so cannot work full-time."

"Due to being a student I did not qualify for Legal Aid, even though my student loan was needed to cover costs for University."

"I have been told i have to pay £700 to get legal aid but they have not assessed my bank statements correctly as they say i have a lot more money than i have. i am a single mum on benefits i don't receive maintenance and when i got the letter saying i had to find £700 i just wanted to die. it means i will now have to face my very high risk stalker (been to MARAC 3 times and am now being referred to the stalking clinic as he is still stalking me) in court on my own without legal representation because i do not have the money legal aid are asking for."

One respondent commented that she was caught between the financial eligibility criteria and the domestic violence gateway.

"My legal aid was refused as I was £30 over the limit due to my parents giving me money to clear a debt. I was told I could apply again in 3 months but my evidence of DV is then out of date"

4. Rights of Women's advice line callers and the legal aid gateways

Types of legal problems

Legal advisers were asked to identify in which area of family law the advice line caller required legal advice and representation. The majority of callers required legal advice and representation on private law children matters (61.9%) but the responses again

demonstrated that women had a range of family law issues including divorce (38.6%) and finances (30.7%).

Legal advisers were also asked to identify whether the caller had experienced domestic violence (including, emotional, financial, psychological, physical, sexual abuse and harassment). 68.1% of responses indicated that the caller had experienced domestic violence.

Financial eligibility

Legal advisers were asked to identify whether the caller had been financially eligible for legal aid prior to 1 April 2013 and whether she was currently eligible.

Would the caller have been financially eligible for legal aid before April 2013?		
Answer Options	Response Percent	Response Count
Yes	44.7%	97
No	36.9%	80
Not sure	18.4%	40
<i>answered question</i>		217
<i>skipped question</i>		19

Does the caller fulfil the current financial eligibility criteria?		
Answer Options	Response Percent	Response Count
Yes	38.2%	65
No	37.1%	63
Not sure	24.7%	42
<i>answered question</i>		170
<i>skipped question</i>		66

Evidence of domestic violence

Of those callers who would meet the financial eligibility criteria for legal aid, legal advisers were asked to assess whether the caller would have the prescribed evidence to meet the domestic violence gateway. 51.8% of responses indicated that callers would not have the prescribed evidence in order to apply for family law legal aid. 13.1% were unable to make an assessment based on the information provided by the caller.

Does the caller meet the evidential gateway criteria for domestic violence?		
Answer Options	Response Percent	Response Count
Yes	35.1%	59
No	51.8%	87
Not sure	13.1%	22
<i>answered question</i>		168
<i>skipped question</i>		68

Legal advisers were asked to give a reason as to why the caller did not meet the evidence criteria. The most common reasons given was that she had none of the

prescribed evidence in order to apply for legal aid or that her evidence was more than 24 months old.

