

LEGAL AID IS A LIFELINE: WOMEN SPEAK OUT ON THE LEGAL AID REFORMS

**Incorporating a literature review
by Dr Aisha Gill**

HUMAN RIGHTS AND CIVIL LEGAL AID

The case for providing funding for civil cases
involving victims of domestic violence

Acknowledgements

Thank you to the following for making this research project and publication possible.

The focus group consultation team and research advisory group: Dr Aisha Gill, Reader in Criminology at the University of Roehampton; Eleri Butler, Domestic Violence Strategy Co-ordinator, Brighton and Hove Council; Emma Scott, Director, and Katherine Perks, Policy and Public Affairs Officer, Rights of Women; Deborah McIlveen, Policy and Services Manager, Women's Aid; and Steve Hynes, Director, Legal Action Group.

The Legal Action Group for commissioning this research with the support of the Barings Foundation.

The women's services who helped to identify and support the service users who attended the focus groups and undertook further consultation enabling a wider range of views to inform the recommendations of this report: Angie Stewart, Cambridge Women's Aid; Jess Taylor and Rebecca Vagil, Rise Brighton; Nesta Lloyd Jones, Welsh Women's Aid and Mwenya Chimba, Black Association of Women Step Out (BAWSO).

The Board of the National Federation of Women's Institutes, in particular Ruth Bond, NFWI Chair and Marylyn Haines Evans, Chair of the Public Affairs Committee, and the staff team; project lead, Sophie Howes, Research and Campaigns Officer; Yetundé Akintola, Research and Campaigns Assistant; Charlotte Fiander, Head of PR; Rachel Barber, Head of Public Affairs; and Jana Osborne, General Secretary.

Finally, and most importantly, thank you to the women who attended the focus groups. These women shared difficult and often traumatic experiences to make this report possible, showing generosity with both their time, and in speaking so openly about such personal and often harrowing experiences. The challenge is to draw on these experiences and ensure lessons are learned for the future.

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Foreword



Legal Aid reforms will reduce women's access to justice.

The NFWI's campaigns and educational work has long been at the heart of the organisation. At a glance, the issues that the NFWI has spoken out on are as diverse as the membership itself, yet further analysis reveals a common thread. At the heart of the WI's campaigning activity is a strong appreciation of the need for social justice, combined with a willingness to take action to achieve it.

This research has arisen from a growing concern amongst WI members about women's access to justice. The reforms set out in the Legal Aid, Sentencing and Punishment of Offenders Bill (the Bill) will significantly reduce women's access to legal aid. The NFWI is concerned that the impact these reforms will have on women who have experienced domestic violence has not been fully considered.

The report that follows contains a powerful set of voices which offer a valuable insight into the consequences of the proposed legal aid reform. It offers an assessment of the complex range of issues faced by victims of domestic violence while highlighting many of the gaps in the current system. It does not make for comfortable reading.

Two key themes have emerged from our research.

Firstly, the report paints a clear picture of a support system which plays an absolutely fundamental role in facilitating access to justice for some of the most vulnerable groups in our society. The message from the women who took part in our research was clear: access to legal aid is a vital life saving resource for women who have experienced domestic violence and, if anything, we should be widening access to justice and support for these women not reducing it.

Secondly, our research demonstrates that the proposals set out in the Bill represent a real threat to the principles of fairness and equality which are the core of our justice system. The Bill is problematic in a number of ways: it presents obstacles for women trying to access legal aid after experiencing domestic violence, and despite reassurances from government that these women will still have access to legal aid, our research shows many victims of domestic violence will be left without support.

What is also clear from the findings of this research is the extent to which this Bill will undermine wider government commitments to tackle violence against women and improve women's access to justice. Following our campaign on violence against women in 2008, the NFWI welcomed the publication of the Call to End Violence Against Women and Girls Action Plan in spring 2011, which sets out a cross-government strategy for preventing and responding to violence against women. Furthermore, the government is in the midst of conducting the Family Justice Review: a wholesale review of the family justice system looking at how to make the system simpler, fairer and more cost-effective, whilst continuing to protect children and vulnerable adults from risk of harm. These commitments will undoubtedly be compromised if reforms to the legal aid

system are allowed to progress in their current form.

In drafting this Bill, the government has failed to adequately understand the complexities of domestic violence. As a result, the Bill fails to reflect the reality of women's lives. Our research highlights some of the key problems with the Bill and suggests ways in which the legal aid reforms could be improved.

It is not too late to think again on these proposals. We urge the government to listen to what women are telling them and amend the Bill before it leaves vulnerable women without support.

A handwritten signature in black ink that reads "Ruth Bond". The signature is written in a cursive, flowing style.

Ruth Bond
NFWI Chair

Executive Summary

The National Federation of Women's Institutes (NFWI) is the largest women's organisation in the UK, with some 210,000 members in 6,500 Women's Institutes across England, Wales and the Islands. The NFWI is an educational, social, non-party political and non-sectarian organisation with an unrivalled reputation as a voice of reason and intelligence on issues that matter to women and their communities.

In response to concerns about the reforms laid out in the Legal Aid, Sentencing, and Punishment of Offenders Bill, the NFWI has conducted research into violence against women and legal aid. The objective of the research was to better understand the issues surrounding women's access to justice by conducting a review of existing literature and by carrying out primary research into women's experiences of legal aid.

The research has two parts:

- 1 Legal aid is a lifeline: women speak out on the legal aid reforms – findings from a series of focus groups with women who have experienced domestic violence.
- 2 Human Rights and Civil Legal Aid: the case for providing funding for civil cases involving victims of domestic violence – a literature review.

The literature review, conducted by Dr Aisha Gill (University of Roehampton), provides an overview of the policy context surrounding women's access to justice, as well as exploring the potential impact the reforms laid out in the Bill will have on women who experience domestic violence. The report from the focus groups provides a valuable insight into women's experiences of legal aid, as well as their views on the proposed changes to the legal aid system.

What follows is a summary of the key issues raised by women at the focus groups and recommendations for government:

Women need advice in many areas of law

Women who have experienced domestic violence should be able to access legal advice for issues other than family law:

I received legal aid for divorce and to have contact with my child. I haven't had legal aid with housing or benefits but it is possible that I will have to in the future. The short term need has been to get legal aid for divorce and child contact but in the long term I may need legal aid for welfare benefits or for housing.

One of the main areas of law women needed help with was immigration: this is particularly important as this advice is not available anywhere else.

(Support worker) We are really concerned about what the women we support will do if

*This report
provides insights
into women's
experiences of
legal aid and views
on the proposed
changes.*

they take away legal aid for immigration. We are not legally trained; furthermore, it's illegal for untrained people to provide advice on immigration issues. What will happen to these women, where will they go? The idea that these women could go through the process alone is laughable, lots of the women we support don't speak English.

Further evidence:

Women's Access to Justice: A Research Report (Rights of Women, 2011) 24% of women who responded had accessed legal aid for problems with housing, 28% for problems with employment, 17% for problems with welfare benefits, and 16% for problems with debt and financial issues.

Recommendation:

The government must ensure that women who have experienced violence have access to legal advice for a wide range of issues, including many of the areas of law that the government are proposing to remove from the scope of legal aid.

Women do not feel able to represent themselves in court

Women who have experienced domestic violence do not feel able to represent themselves in court:

They need to understand that women cannot just pitch up at court and represent themselves.

Many women would not have gone to court without legal representation:

If I didn't have legal representation there for me as some kind of backbone, I would've felt like I couldn't have actually gone to court.

Many women would not feel safe going to court without legal representation:

If I was represented I would feel safer than not being represented. I wouldn't be able to answer his questions, I would not want to talk to him, I would want to tell my solicitor to respond to him and say what I am thinking.

Women who had experience of representing themselves found the experience traumatic and found they lacked the skills or expertise to negotiate the legal system alone:

I represented myself for an entire year in the family court last year. And having gone through three years of domestic violence, and stalking post-separation, the family court was the worst experience of my life. It was absolutely shocking, really shocking.

Further evidence:

Women's Access to Justice: A Research Report¹ (Rights of Women, 2011) 89% of individual women and 97% of professionals who work with victims of domestic violence did not think a woman who had experienced violence should represent herself in court.

¹ Rights of Women, 2011. Available at http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf

Recommendation

The government must ensure that vulnerable women who have experienced violence receive legal aid so they can resolve issues relating to themselves and their children and rebuild their lives after experiencing violence.

The eligibility criteria for legal aid must reflect women's experiences

The proposed eligibility criteria for women to access legal aid in family cases fails to reflect women's experiences of domestic violence. Many women do not disclose domestic violence, and certain types of abuse such as psychological and sexual violence are extremely difficult to prove:

For a lot of women to pick up the phone and to ring the police that takes a lot. Like with me for the last like 12 years with him I think there is like 18 incidents. But that's not even a little bit of what he's done ... some women don't even ring the police, they're not going to have that evidence.

The evidence criteria is only one version: it's not the violence that you don't see, the emotional, and psychological abuse is not reflected at all.

Many women thought that a wider range of services should be able to provide evidence of women's experiences in order for women to access legal aid:

Why couldn't agencies that were a lot closer to families, like health visitors or social workers, why couldn't they provide evidence for you?

The restrictive 12-month time frame that applies to some of the evidence criteria fails to reflect women's experiences of domestic violence:

He will always be a risk to me and my children and to women generally. So this is just completely ridiculous and hugely misunderstood. I would love to know who the government are getting their advice from ... In my case, yes, I could've shown all that evidence had it been last year. Next year I can't because it'll all be out of date.

Further evidence:

Women's Aid Annual Survey (2010) 70% of women in refuges had called the police at least once, of those who did call the police, only 15% had a conviction against their abuser².

Recommendations:

The government must include a comprehensive definition of domestic violence in the Bill that adheres to wider government policy, such as the definition used by the Association of Chief Police Officers³.

The government must widen the gateways to include evidence that more accurately reflects women's experiences, for example, evidence provided from violence against women support services, or from health services.

The government must abolish the 12-month time frame that applies to some of the evidence criteria as it fails to reflect the high levels of post-separation violence experienced by victims of domestic violence.

2 Women's Aid Federation of England Annual Survey of Domestic Violence Services 2009-10, Barron J, Womens Aid Federation of England, 2011

3 ACPO defines domestic violence as "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality."

Women are concerned about alternatives to court

Women felt that their safety would be compromised if they had been required to participate in mediation::

Surely if the judge sees how bad the violence is, and how scared you are, and all the reports, surely they wouldn't want you to sit in a room, because I couldn't sit in a room with him. I'd fall apart.

Mediation is never appropriate in cases involving domestic violence because of the unequal power dynamics that are present in situations involving abuse:

I think mediation is only a road that would work if you're with a partner and things are not working but you still love each other. When they beat you, control you, make you think you're going crazy ... mediation is not for women that live with a control freak because it gives them back the control.

Women who had experience of going to mediation unanimously told us it had not worked:

I have been sent to mediation by the judge because he felt that our problem was communication ... I made the mediator aware that there was an issue with domestic abuse and it is quite widely recognised that mediation is not appropriate when there is an allegation of domestic violence. I think that mediation is suitable in all sorts of cases but not in cases of domestic violence because you're never going to be comfortable sitting in the same room with somebody that has made your life a misery.

Further evidence:

Women's Access to Justice: A Research Report (Rights of Women, 2011) 66% of individual women and 80% of professionals who work with victims of domestic violence thought mediation was not appropriate in cases involving domestic violence.

Recommendation

The government must put appropriate safeguards in place to ensure that women who have experienced domestic violence are not required to take part in mediation.

Women have concerns about accessing legal advice via a telephone helpline

Women unanimously told us the telephone helpline was not appropriate in cases of domestic violence:

What are they going to do next? Are they going to email injunctions? Is that what they're going to do? They're cutting out the paperwork, all the jobs and whatever, but people should be paid to do this job because women are at risk, women are in danger, you cannot do this, it's ridiculous.

Women were concerned about the quality of advice they would be receiving via the telephone helpline, particularly as the operators will not be legally trained:

Surely if the judge sees how bad the violence is... how scared you are, and all the reports, surely they wouldn't want you to sit in a room, because I couldn't sit in a room with him. I'd fall apart.

I don't think that an unqualified telephone operator can tell you whether that case that you have just rung up about has any chance of success and whether it should be given any legal aid to start with.

Women identified a number of access problems for certain groups of women, including disabled women and women who do not speak English:

What about women with a learning impairment, have they thought about issues around disability?

Women wanted to access legal advice face-to-face where they get the chance to sit down with a lawyer and explain the details of their case:

You don't feel confident to tell people what happened over the phone because you don't know who you're speaking to. When I phoned up (for legal advice) the lady said: "Can you tell me what happened?" I said: "I can't. I need to come over to see you."

Further evidence:

Women's Access to Justice: A Research Report (Rights of Women, 2011) 68% of women who responded would not feel confident discussing a legal problem with an operator over the telephone.

Recommendation

The government must ensure that women who have experienced domestic violence have access to face-to-face legal advice from qualified legal professionals.

Women highly value access to legal aid

All the women we spoke to valued access to legal aid very highly. Women equated access to legal aid with safety and protection for themselves and their children. Women identified a number of consequences of not being able to access legal aid: most notably that denying women access to legal aid will create another barrier for women trying to leave violent relationships, and for some women this could mean the difference between life and death. As one woman told us:

From my point of view it's freedom. It's freedom to get away, to lead your life, and protection. Because what do I have to do? I might be living with him and then I'll let him carry on, kill me, and then would they be happy when I'm on News at Ten and they could've done something about it. They'll wait 'til someone dies.

Introduction

About the National Federation of Women's Institutes

The National Federation of Women's Institutes (NFWI) is an educational, social, non-party political and non-sectarian organisation. It was established to ensure that women are able to take an effective part in their community, to learn together, widen their horizons, improve and develop the quality of their lives and those of their communities and together influence local, national and international affairs. The WI has an unrivalled reputation as a voice of reason, integrity and intelligence on issues that matter to women and their communities. The WI is the largest women's organisation in the UK with some 210,000 members in 6,500 Women's Institutes across England, Wales and the Islands.

The NFWI has a long history of campaigning on a diverse range of issues. The first NFWI mandate was passed in 1918, and since then the organisation has accumulated a wide-ranging portfolio of policy concerns on a local, national and international level.

The NFWI first campaigned for the protection of the legal aid system in 1994 when members at that year's AGM passed a resolution on maintaining access to legal aid and the court system. More recently the NFWI launched a high-profile campaign calling for an end to violence against women.

Context for research into violence against women and legal aid

In November 2010, the Ministry of Justice published a consultation, Proposals for the Reform of Legal Aid in England in Wales, in which the government said: "The proposals represent a radical, wide-ranging and ambitious programme of reform which aims to ensure that legal aid is targeted to those who need it most, for those cases in which legal advice or representation is justified". The reforms laid out in the consultation will reduce government spending on legal aid by £350 million. In order to make these savings, significant changes will be made, both in terms of who will be eligible for legal aid and the type of law covered by legal aid.

Over 5,000 responses were received to the consultation; a wide range of organisations from across different sectors opposed the proposals.

In June 2011, the government published the Legal Aid, Sentencing and Punishment of Offenders Bill (the Bill). The proposals in this Bill are largely unchanged from those set out in the initial consultation. Since the publication of the Bill, the government have made minor concessions, for example, the government acknowledged that women who have experienced domestic violence and need help with immigration law are particularly vulnerable, by bringing immigration cases brought under the domestic violence rule (where women who have experienced domestic violence can apply for indefinite leave to remain in the UK) back into the scope of legal aid.

The NFWI is the largest women's organisation in the UK with some 210,000 members in 6,500 institutes.

The NFWI remains extremely concerned that the apparent provision given to victims of domestic violence fails to reflect the reality of womens' lives.

However, the Bill remains problematic in a number of ways and the impact of the reforms on women who have experienced violence remains a serious concern.

A brief outline of how the proposals will affect women who experience domestic violence

The government has claimed that victims of domestic violence will still be able to access legal aid, at least in certain areas of family law. The NFWI, along with many other women's organisations, remains extremely concerned that the apparent provision given to victims of domestic violence fails to reflect the reality of women's lives and in practice will leave vulnerable women without access to legal aid.

Women who experience domestic violence will have to provide one of the following forms of evidence in order to access legal aid:

- a non-molestation order, occupation order, forced marriage protection order or other protective injunction is either in place or has been made in the last 12 months
- there is a criminal conviction for a domestic violence offence by the other party towards the applicant for funding (unless the conviction is spent)
- there are ongoing criminal proceedings for a domestic violence offence by the other party towards the applicant for funding (within the last 12 months)
- the victim has been referred to a Multi-Agency Risk Assessment Conference (as a high risk victim of domestic violence) and a plan has been put in place to protect them from violence by the other party (within the last 12 months)
- a Child Protection Plan has been put in place in place to protect the child who is the subject of the proceedings from abuse by or including abuse by the person from whom the protective party is seeking to protect the child
- there has been a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm to the victim (within the last 12 months)

These forms of evidence are known as the 'gateways'. Many of the gateways are restricted by a 12-month time frame; the proceedings must have taken place in the last 12 months in order for the victim to use these proceedings as evidence to access legal aid.

Women who experience domestic violence will only be able to access legal aid in certain areas of family law

Women who experience domestic violence (and are able to satisfy one of the gateways outlined above) will be able to access legal aid for the following:

- ancillary relief (help from the courts to resolve financial issues following the end of a marriage or civil partnership)
- private law family and children cases (including child contact and residence cases)

Housing (except in cases of homelessness), education, employment, debt, welfare benefits, medical negligence and immigration (except asylum cases and cases under the domestic violence rule) will all be excluded from the legal aid system.

About the focus groups

The Legal Action Group commissioned the NFWI to carry out research into violence against women and legal aid. As part of this research, the NFWI carried out a series of focus groups with women who have experienced domestic violence.

The aim of the focus groups was to improve the evidence base on women's experiences of using or applying for legal aid in the context of domestic violence and to seek their views on the proposals to reform the legal aid system contained in the Bill.

The groups were held in Cambridge, Brighton, and South Wales during August and September 2011. They were attended by 27 women in total. Three of the four focus groups were co-facilitated by Dr Aisha Gill (University of Roehampton) and Eleri Butler (Brighton and Hove City Council). An additional focus group in South Wales was facilitated by Nesta Lloyd Jones (Welsh Women's Aid). The following organisations supported us:

Focus Group 1 – Cambridge Women's Aid

Cambridge Women's Aid (CWA) offers information, advice and ongoing practical and emotional support in strictest confidence to women experiencing domestic abuse. CWA offers a range of outreach services to women who have experienced violence as well as providing emergency refuge accommodation. CWA is part of the Women's Aid Federation England Network.

Contact: Angie Stewart – angie@cambridgewa.org.uk

Focus Group 2 – Rise

Rise is a charity that supports women, children and young people affected by domestic abuse in Brighton & Hove and across West Sussex. Rise services include: refuge accommodation, resettlement, crisis appointments, helpline, counselling, housing, legal and financial advice, support groups, play therapy, one-to-one support and training, preventative education, and a specialist LGBT service. Rise stands for Refuge, Information, Support and Education.

Contact: Jess Taylor – jess.taylor@riseuk.org.uk

Focus Groups 3 and 4 – Welsh Women's Aid / Black Association of Women Step Out

Welsh Women's Aid (WWA) is the national umbrella organisation representing local Women's Aid Groups situated throughout Wales. WWA member groups provide direct services for women and children who have experienced or are experiencing domestic abuse.

Contact: Nesta Lloyd-Jones – nestalloydjones@welshwomensaid.org.uk

Black Association of Women Step Out (BAWSO) provide services to Black and Minority Ethnic (BME) communities in Wales. Specialist and holistic support

The research aims to improve the evidence base on women's experience of using Legal Aid following domestic violence.

is provided to people with complex needs through refuge, floating support, outreach and resettlement, and interpretation services. BAWSO also provides support to people who have been trafficked, experiencing or at risk of forced marriage, and Female Genital Mutilation.

Contact: Mwenya Chimba – mwenya@bawso.org.uk

Questions the groups were asked to consider included, for example:

Experiences of using legal aid:

- Which areas of law did you need help with when you accessed legal aid?
- If you were unable to access legal aid did you take any further action to resolve the problem?
- If you have been to court, how did you find this experience?
- How do you think access to legal aid affected the case outcome?

Feedback on the government proposals:

- Do you think the gateways (evidence) are the right ones?
- Do you think the 12-month time frame is reflective of women's experiences?
- What do you think the impact would be of not receiving legal aid?
- How would you most like to access legal advice?

This report provides a summary of the issues raised by women who participated in the focus groups to inform debate on the Legal Aid, Sentencing, and Punishment of Offenders Bill.

The value of legal aid and the consequences of not receiving legal aid

When we asked women about what legal aid meant for them, they overwhelmingly said that **access to legal aid provided them with safety and protection:**

At the end of the day it boils down to safety, if you can't take them to court and the government are saying you need to sort this out between yourselves, if you're feeling vulnerable, how much can you take on that person one-to-one? You absolutely don't want anything to do with them. If you don't do it, you're scared they're going to attack you. I don't understand how they're expecting you to sort it out between yourselves –you're obviously there (starting legal proceedings) because you can't sort it out between yourselves. FG1

I personally feel a sense of security; I feel more secure and more safe with that protection in order. If that was not there I don't know what would happen. I don't really understand it all. I have not been in touch with them (perpetrators) but this gives me added security and protection. I wouldn't like to know what could have happened without legal aid. FG4

Many women said that **without access to legal aid women will stay in abusive relationships:**

She (mother) went forward with it (legal proceedings) because we saw that as the only way out of her relationship and me being in the family home. So what I mean by she had power from legal aid is that she wouldn't have ever been able to do that and so we would never have that one step out of the house. We'd still be there now. FG3

You'd stay in that relationship. You'd stay because you just can't afford to do it, how are you going to afford a £25 solicitor letter if your ex-partner is supporting you in the outside world, but on the other side he's just controlling your money, you have no money. How are you going to do that? I don't understand how they expect you to. You'd just stay with him. FG1

Speaking personally I would not have left because I wouldn't have had any way to – I wouldn't have seen any way to do that. It's hard to put into words, but I think if we didn't have access to the help that we do have, nobody would report it anymore, nobody – everybody would think that it would go back in time to, you know, saying it's just a domestic, you know, we'd have to all deal with it ourselves and a lot of women would be in a very bad situation. FG3

I would not have left because I wouldn't have had any way to – I wouldn't have seen any way to do that.

Legal aid is a lifeline – it's hard to get out, and it's hard to stay out... without it you'll go back... you haven't got that support.

Legal aid is a lifeline – it's hard to get out, and it's hard to stay out, and without it (legal aid) you'll go back to him, because you haven't got that support. It would be fighting a losing battle. FG1

Many women highlighted that if women are denied access to the legal advice they need in order to leave a violent relationship, **more women will be killed by violent partners:**

From my point of view it's freedom. It's freedom to get away, to lead your life, and protection. Because what do I have to do? I might be living with him and then I'll let him carry on, kill me, and then would they be happy when I'm on News at Ten and they could've done something about it. They'll wait 'til someone dies. FG2

How many women are either going to go off their head or are never going to leave and, God forbid, the ultimate thing happens to them? What are the government going to think of their reforms then? FG3

Some women said that **without access to legal aid they would have remained in abusive situations that would ultimately have led to them taking their own lives:**

Without legal aid lots of women will have committed suicide. There was a time when I was just in my house and I thank God that I didn't do it. I was holding a knife in my hand, I was crying, I was wet, all my clothes were wet and I was crying. I wanted to stab myself because I didn't know who to talk to; I don't know where to go. And my son was like, "Mummy, what are you going to do with that knife?" ... he was the only thing that was left, I thought I love my son, I love my son. I didn't want to leave my son. If legal aid was not there, I don't know what would have happened to me and my son by now. FG3

I would have killed myself. I could not have left without knowing I could get child contact. I would have remained and then that would have led to me committing suicide or him killing me. FG4

Women also said that it wasn't just their safety but it was **the safety of their children that depended on access to legal aid:**

With children it's about their safety, with the contact centre, if I didn't have access to legal aid I wouldn't be able to go to that or to get that far, so it's their safety as well. FG1

Without access to legal aid I probably would have just given in and put myself at risk and put the children at risk. FG1

Women were asked to consider what they would have done if they hadn't been able to access legal aid. Some women felt that **they would have been forced to negotiate with the perpetrator which would have compromised their safety:**

Oh God, if I couldn't get it then I would've had to come to some kind of arrangement with my husband about contact with the children and because he's quite

dominating and controlling ... I would've caved in, I would have given in to pressure. As it was I could use a third party and maintain my safety. FG1

If I hadn't been able to have the solicitor that I got I would have given in as well because I don't think I've ever had a proper conversation with my ex-husband, not one where we've participated and listened to the other's opinion. I mean we've been married but he said to me it's my way or no way, he really meant it over everything, I mean absolutely everything. FG1

For other women **the financial impact of paying for legal advice would have deterred them from seeking help:**

There is the financial side as well, when you're in refuge you're saving up money to then buy possessions for your new house, so to take on a debt of trying to divorce a man and sort out solicitor's letters and things: that would have been horrendous. I couldn't have done that and set up a new home. I couldn't have done it. FG1

It's the financial support as well because otherwise how are you going to afford it? In your head you would think well, I can't afford to make a complaint, I can't afford to go to the police, because of the implications on me and my children. I'll lose my house, my home, I'll have no money and how am I going to afford to take him to court? FG1

Other women felt that **reducing women's access to legal aid undermines other attempts by the government to improve responses to violence against women and has consequences for gender equality more widely:**

When you think of the specialist domestic violence courts and all the effort that's been put in to build those up and then they are taking away access to legal aid. FG3

I feel as though we're going backwards again; you're giving them (perpetrators) a carte blanche to do what as they want and actually not to treat all of us as human beings on an equal level. FG1

I think this is a tool to victimise women and disempower them and put their children at risk. FG2

Some women who took part in the focus groups had been unable to access legal aid or had been asked to pay a contribution towards their legal costs that they couldn't afford. These women said that **being unable to access legal aid left them feeling unsupported and unable to resolve problems that had arisen from their experience of domestic violence:**

They're not doing anything for us; they're not helping us at all. This is why so many women do stay in violent relationships because they're too scared to get out of them, to actually leave, you know, if they haven't got any help. And it took me 11 years to get out and I'm still fighting that battle now because there isn't the help or the legal aid to help you. FG2

So me not being able to access legal aid has been the difference between freedom and prison, because that is what this place is for me. Prison. The only reason I'm here (the UK) is because I have this little girl with him. Although he's not good for her she has to

When you think of the specialist domestic violence courts and all the effort that's been put in to build those up and then they are taking away access to legal aid.

have a relationship with him. So that is the difference that (not having) legal aid has made in my particular case, the difference between freedom and a prison. FG2

And I was told by the solicitor get a non-molestation order, get a prohibited steps order which I got. It was emergency legal aid. I've never left my husband, so it was new to me. All of a sudden I've got this bill saying that I would be paying £70 a month until the papers are served on him. I just can't afford £70, I've got two children and I don't get anything off him ... I'm getting letters off his solicitors saying do this, do that. Where am I supposed to get this money? FG2

Acting as a litigant in person

One of the consequences of the proposed reforms is that there will be an increasing number of litigants in person in the legal system. This presents a number of issues for women who have experienced domestic violence. For some women this may mean they will be required to represent themselves in legal proceedings if they are unable to satisfy the evidence gateways. An increasing number of women will find that they will be subject to cross-examination in court by the perpetrator who is representing himself. We asked women for their views on these issues, and also about their experiences of going to court.

Women spoke of **the high levels of trauma they experienced going to court:**

I left my house seven months ago and I've had no contact with him, that's the way I want it to stay. I don't want to see him, I don't want to speak to him. He's taking me to court regarding the children and it's a horrible experience. I'm trying to come across strong to him, I'm not looking at him, I'm not talking to him, but it's scary, it's horrible being in that atmosphere with him. FG1

My experience of going to court was awful. We weren't allowed to go anywhere until we actually made our appearance in court and then didn't really have any information beforehand; I didn't know that my dad was going to be in there and it broke me when I walked in, you know, I nearly crumbled and ended up not telling the full story because I couldn't think straight, you know. FG3

They don't realise what this man is capable of. And there's no emotion in a courtroom, there is no understanding from the judge about what it was like for me on the stand. There was no understanding at all that actually this man absolutely terrifies me. I couldn't even look at him. FG1

Women were asked about their views on cross-examination from litigants in person. All the women we spoke to felt strongly that **cross-examination by a**

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litigant in person in cases involving domestic violence is wholly inappropriate and should be prevented.

Many women said **they would not have been able to participate fully in the proceedings if the perpetrator had been given the opportunity to cross-examine them:**

If somebody's raped you, if somebody's physically and mentally abused you, how confident are you going to be when you're been cross-examined by them, you can't think straight. FG1

I think that person, if you've been in a very dominating relationship for so long, they know you so well. Especially if you've not long left, you haven't managed to rebuild your life again, so they will be able to rip you to pieces on that stand because they know every single button to press, they know everything to say to make you crack because they've been so used to doing it. It's not until years later when you start really rebuilding yourself that you can actually be strong enough to stand and be cross-examined, even then it still wouldn't be a nice experience. FG1

The whole atmosphere of being cross-examined – it's bad enough already, you're a nervous wreck and you know this has implications as well, you know whatever you say in court is going to affect your children. FG1

Being in court together is quite a horrendous experience, just their presence there, if they were actually talking to you or trying to cross-examine you, I can't imagine. FG1

One woman had experience of being cross-examined by a perpetrator and confirmed that this experience had been hugely traumatic for her:

It's been horrendous. This time last Tuesday I was actually being cross-examined by my ex-husband. He was removed from home with an hour's notice by a judge and I then had to spend two hours being cross-examined by him and he was sitting closer to me than you are now and it was just horrific. Really horrific. FG1

Women were asked about any experiences of acting as a litigant in person and whether they think they could have represented themselves. Women unanimously told us that **they would not have been able to act as a litigant in person in their case:**

They need to understand that women cannot just pitch up at court and represent themselves. FG2

Some women said they would not feel safe going to court without legal representation:

If I was represented I would feel safer than not being represented. I wouldn't be able to answer his questions, I would not want to talk to him, I would want to tell my solicitor to respond to him and say what I am thinking. FG4

Other women said **they would not have gone to court without legal representation:**

If I didn't have legal representation there for me as some kind of backbone, I would've felt like I couldn't have actually gone to court.

I represented myself for an entire year in the family court last year... after three years of domestic violence and stalking post-separation, the family court was the worst experience of my life. It was absolutely shocking, really shocking.

If I didn't have legal representation there for me as some kind of backbone, I would've felt like I couldn't have actually gone to court. FG3

I felt vulnerable basically ... I think just having someone else there with you makes a big difference because I wouldn't have done it if I hadn't had that support. If I'd have felt that I had to pay for everything and take him to court on my own then I would've just thought, I'll just have to get on with it. FG3

Some women had experience of representing themselves in legal proceedings. These women told us that **acting as a litigant in person had been a traumatic experience and they lacked the skills or expertise to negotiate the legal system alone:**

I represented myself for an entire year in the family court last year. And having gone through three years of domestic violence and stalking post-separation, the family court was the worst experience of my life. It was absolutely shocking, really shocking. FG3

His barrister kept coming up to me and talking to me and I didn't understand. He made me feel stupid. I had my own little folder. I felt very little. FG3

I don't have the vocabulary; I can't sit there writing letters and whatever. So how do I do that, I'm going through the whole process and I'm falling through the system. FG3

Women from another country or with English as a second language face particular challenges:

I would find it very difficult to understand what would be happening in court, I do not speak English well, I would need an interpreter. The court process here is very different and I would not know how to get through it without my support worker and access to legal aid. FG4

I couldn't do it without help. I don't know the UK legal system. FG4

Women who had accessed legal aid for immigration were very clear that **they would not have been able to negotiate immigration proceedings alone:**

There is no way I would have been able to navigate the system alone. My solicitor has been so helpful, I don't know what I would have done without him, and I feel more confident knowing I have access to legal aid. FG3

I didn't know anything about the immigration system; I could never have done it without help. I didn't know anything about the time frames you have or anything, and there is hardly any information out there. FG3

I know of a lot of women from my community who have got married to men and they're from a different country, if they take away the immigration side of things, these women are coming into families that are dominating, they don't know anyone in this country, they don't know the legal system and they can't speak English. How are these women going to sort things out without help? FG1

Areas of law women need help with

The majority of women who participated in the focus groups and had accessed legal aid needed advice on family law issues. However, women did access legal aid for a number of other issues including housing and immigration. Women told us that **women who have experienced domestic violence should be able to access legal advice for issues other than family law:**

For me, it's been two years that I've been constantly using legal aid because we've been trying to work out contact with the children and along with that there have been problems with housing. FG1

Women told us that although **help with family law issues is important initially, help with other areas of law is important in the long term:**

I received legal aid for divorce and to have contact with my child. I haven't had legal aid with housing or benefits but it is possible that I will have to in the future. The short term need has been to get legal aid for divorce and child contact but in the long term I may need legal aid for welfare benefits or for housing. FG4

One of the main areas of law women needed help with was immigration – this was particularly important as this advice isn't available anywhere else:

I was six months pregnant, he beat me up, broke all the lights in the house, and left. There was nothing I could do because then I don't have my status in the country, he was the one that brought me here. If I hadn't been able to access legal aid to get indefinite leave to remain I don't know what I would have done. FG3

My husband brought me here and he didn't treat me well. He refused to sign my papers so I could stay. Legal aid helped me stay in this country, I have nobody here, without legal aid I don't know where I would be. FG3

I got legal aid for my divorce and to apply for indefinite leave to remain, both of these changed my life. FG4

(Support worker) We are really concerned about what the women we support will do if they take away legal aid for immigration. We are not legally trained; furthermore, it's illegal for untrained people to provide advice on immigration issues. What will happen to these women, where will they go? The idea that these women could go through the process alone is laughable, lots of the women we support don't speak English. FG3

We are really concerned about what the women we support will do if they take away legal aid for immigration.

Gateways to legal aid

As the proposals currently stand, women will have to provide one of the following types of evidence in order to access legal aid:

- a non-molestation order, occupation order, forced marriage protection order or other protective injunction is either in place or has been made in the last 12 months
- there is a criminal conviction for a domestic violence offence by the other party towards the applicant for funding (unless the conviction is spent)
- there are ongoing criminal proceedings for a domestic violence offence by the other party towards the applicant for funding (within the last 12 months)
- the victim has been referred to a Multi-Agency Risk Assessment Conference (MARAC) (as a high risk victim of domestic violence) and a plan has been put in place to protect them from violence by the other party (within the last 12 months)
- a Child Protection Plan has been put in place in place to protect the child who is the subject of the proceedings from abuse by or including abuse by the person from whom the protective party is seeking to protect the child
- there has been a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm to the victim (within the last 12 months)

These forms of evidence are referred to as 'gateways'. Women raised a number of issues when we discussed the gateways and time frames with them in the focus groups:

Women told us that ***the gateways fail to reflect women's experiences of domestic violence:***

The conditions are too strict, they're too narrow-minded and they're too strict. It will keep women in situations of abuse. FG3

It is one word against another and that is very difficult to prove to the police or other agencies. FG4

All the time it's about having to prove what happened to you, isn't it, all the time you're having to do that. FG1

I mean everything that's written there (gateways) is based on ignorance. Total ignorance of what true domestic abuse is really about. FG1

Women highlighted that ***very few women who have experienced domestic violence have a conviction against the perpetrator:***

It will keep women in situations of abuse.

Even people that do ring the police, the statistics of how many actually get a conviction is really low and I was just lucky to have a conviction when I went into refuge and I was with him for eight years, the police had been called so many times, I'd been in and out of hospital because of him, I always dropped charges, I was petrified to take it further. FG1

I think it's such a low percentage of people that actually get a conviction, it's so low, you're looking at such a tiny percentage of people that actually suffer domestic violence. FG1

Some women said that **they would not be able to provide any of the evidence required in the proposals despite experiencing domestic violence:**

It's really hard to get this evidence. In my case I have never had any of this. It doesn't mean that what I have experienced in the last two years hasn't been mind-blowingly awful. FG2

He was a psychopath and I was in intensive care for three weeks and he threatens you doesn't he, that the children will be taken away, so you stay because you're frightened to lose the children, so you stay for that purpose, you get brainwashed. The thing about this is they also rape you, they drag you about, they tie you up, but you may not have the scars, but it's there. FG1

I've never reported any incidence of violence with my ex-partner, the only time that I started reporting it is when I got pregnant. And Social Services were involved so I reported it to them. I never saw the police as an option because I didn't think they could help abused women. FG3

One woman highlighted that women are not always told they have been referred to a MARAC (Multi-Agency Risk Assessment Conference):

I never knew I had a MARAC. I never knew, it wasn't until he came out of prison recently that it was brought up, 'oh the last MARAC case back in la la la', and I'm thinking no one told me that they went to do that and the IDVA (Independent Domestic Violence Advisor) who'd been working with me, she had so much information on me from that meeting that I didn't know, so had it gone to court I wouldn't even have known it existed. I wouldn't have been able to say actually no, I do have a MARAC. FG1

Many women highlighted that **the gateways fail to reflect the fact that certain types of abuse, such as psychological and sexual violence, are extremely difficult to prove:**

If you've been with someone for 13, 14, 15 years, they don't do things that you've got any proof of: the mental abuse, how can you prove that? There is no way. You sound like a complete nutcase when you go there and you say he used to put the iron in the fridge so I couldn't find it and then tell me that I've done it, that I'm losing the plot. How can you prove that and you don't go and bother the police about little things they're doing or abusive things that don't leave marks, they just completely brainwash you into thinking you are losing the plot. But if there is no proof, how do you prove that? FG1

I've never reported any incidence of violence with my ex-partner... I never saw the police as an option because I didn't think they could help abused women.

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The evidence criteria is only one version: it's not the violence that you don't see, the emotional, and psychological abuse is not reflected at all. FG1

I have left, but my husband does not admit he has done anything wrong. I need to prove it. If he hit me you have bruises and can prove it, but my husband does not hit me but treats me like a servant and treats me badly, he does not talk to me, looks at me horribly, I can't prove that and he says he does not do that and says 'I love my wife' so how can I prove that? FG4

Rape within a relationship is so hard to prove. FG1

You're taking this taboo subject and you're blowing it up and then you're saying I don't want him to do this to me. It's such a huge thing, it's such an embarrassing subject, you don't talk about it, because it's something that's private between you and your husband, what's done behind closed doors. You don't openly talk of it: it's about a respect thing, a shame thing. FG1

How on earth could I actually say how this child was conceived, in a court room, with him sitting there, his mother right next to him, looking as though she wanted to kill me, I just couldn't, I just couldn't. FG1

Many women highlighted *how difficult it is for women to come forward and disclose domestic violence in the first place:*

In some ways, the criteria actually doesn't reflect women's experiences of having to muster up that courage and leave and for some women, that might take years. FG1

For a lot of women to pick up the phone and to ring the police that takes a lot. Like with me for the last like 12 years with him I think there is like 18 incidents. But that's not even a little bit of what he's done, that's been if I've been able to get to the phone, and then there is this fear that if you ring the police your children will be taken off you because of Social Services. So some women don't even ring the police, they're not going to have that evidence. FG3

My fear was that he was in such an almost heightened sense of rage and they would have sent him home to me. So you get someone who is in this rage anyway because he's done something horrendous, in my case I had put some baby Winnie the Pooh spoons in my cup to set him off; he would have been taken off to the police station, kept in overnight, then they would have sent him home to me. FG1

A lot of women don't even ring the police; they suffer for years and years and years, before they have the courage to even ring the police. FG3

There are two sides to a story and my parents told them a completely different side. I have scars on my hands and they said it was not self harm and I just hurt myself on glass or whatever. They made me feel stupid, made me out to be mad or something and the social workers believed them. FG4

Many groups of women face additional barriers to disclosing violence and abuse and providing 'evidence' of the abuse they have experienced will be even more difficult:

I came here two months ago. I came here and my husband's family were no good to me. He took my passport and said he would send me back to Pakistan and I contacted police because of the fighting and he tried to strangle me. Police came and looked and saw scratches, I went to police station and told them he has taken my passport. The police contacted BAWSO and BAWSO supported me. Through BAWSO supporting me I was able to leave, my husband was not charged and is walking free. I have not been to court for the abuse, there is nothing. FG4

I know from my community that for women from black, minority, ethnic backgrounds, it's because of obviously factors like religion and culture, it's very difficult for them to come out and say it. Sometimes it takes a neighbour calling the police or sometimes a few incidents where relatives actually report because the woman is actually discouraged from reporting incidents to the police. FG1

(Support worker) Many of the women we support have moved from England to Wales and due to the fact that they have moved and they are being supported by BAWSO they no longer had to contact the police because the risk to them was no longer as high. This is going to be an issue for many women moving location, especially black, minority, ethnic women who need to flee because of honour issues. FG4

The women we spoke to felt strongly that the gateways laid out in the reforms are too restrictive and will prevent women who have experienced domestic violence from accessing legal aid. **Many women thought that a wider range of services should be able to provide evidence of women's experiences in order for women to access legal aid:**

Women's Aid should be able to refer you, you don't come to Women's Aid unless you've got a reason to be there. You don't just turn up here for the sake it. We're all here because of domestic violence. FG3

Your support workers should be able to provide evidence for you. I have a domestic abuse officer, I have a witness care officer, victim support and all these people they make an appointment and come to my home and see that I don't play games: I've clearly experienced domestic violence. FG3

Why couldn't agencies that were a lot closer to families, like health visitors or social workers, why couldn't they provide evidence for you? FG2

Some of the women who attended the focus groups had provided evidence of the abuse they had experienced in order to apply for leave to remain under the domestic violence immigration rule. They told us about this experience of collecting evidence and women agreed that **the forms of evidence used for the domestic violence rule more accurately reflected women's experiences and this model could be used in the legal aid system:**

(Through a support worker) It's anything that you have really that evidences the violence and the abuse that was going on. So, she had a next-door neighbour who lived where they lived and because she used to go next door to seek refuge and things like that. So she wrote a letter explaining everything and she also had some friends who gave supporting evidence. FG3

Why couldn't agencies that were a lot closer to families, like health visitors or social workers, why couldn't they provide evidence for you?

(Through a support worker) There wasn't any evidence from doctors, she was really afraid to go to doctors, she was discouraged to go to doctors really and things like that. So obviously it was hard to get any support. But there were other people who did know what she was going through who were willing to give evidence. And obviously we (VAW support service) also gave our supporting evidence that we were providing support and so on. FG3

Women told us that **the 12-month time frame failed to reflect their experiences of domestic violence**. For most women there had not been a clear end to the violence they had experienced and the vast majority of women had experienced some form of post-separation violence.

That's because judges think that once you've split it finishes. And it doesn't. It's a long journey. FG1

The police were called to the house over two years ago, so I wouldn't have been given legal aid. If this had been in place now, I wouldn't have been able to get the injunction, even though if they look at all the police records, it's been going on for 10 years. Because of the lack of evidence, because of that 12-month period. FG1

By November this year, my case will be 12 months old, does that now mean he is not a psychopath? It's just shit. FG2

He will always be a risk to me and my children and to women generally. So this is just completely ridiculous and hugely misunderstood. I would love to know who the government are getting their advice from. Who are they – it's just ridiculous. The things here (gateways) show an unbelievable lack of understanding of domestic violence. In my case, yes, I could've shown all that evidence had it been last year. Next year I can't because it'll all be out of date. However, my case is very clear-cut and straightforward. For many, many women, they're too scared to go to the police. FG2

Many women felt that they **would not have been ready to pursue legal proceedings within 12 months of leaving a violent relationship**:

I'd feel more vulnerable if I only had 12 months to access legal aid. If I was told you've only got 12 months for legal aid, I'd feel that if I'm not ready go forward with it, and then after that 12 months was up, I'd feel that I wouldn't be able to do it because I wouldn't have the legal aid there. FG1

My husband raped me two years ago and I fled two days later with my children and I immediately went into refuge, survival mode. I needed a home; I needed to sort out money. I couldn't have been producing evidence in 12 months, I mean it's taken me two years effectively to leave my home and then be in a situation where I am now, where I have a new house, you know, furniture, sorted out my garden, the children's schools and everything. It's been two years, not 12 months. FG1

Other **women felt they would have put themselves more at risk if they had started legal proceedings straight away**:

I think I would have put myself into a much more dangerous situation because by the time we had to run through the solicitors and everything else, time had passed:

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he had calmed a little, by the time I then started letting him have the contact it was a good six or eight months. It still didn't work out, but it would have been even worse had it been from the very beginning. FG1

Other **women who were able to satisfy the gateways found it astonishing that this evidence would only be valid for 12 months:**

I've had a MARAC probably three or four months ago. I was with him for seven years: we split for six, you know, so 13-odd years of history between us, that will just be completely dismissed if he comes in and finally gets a solicitor on the 12th hour. You know, on that 12th month I mean it would just be absolutely ridiculous that nothing will count. FG1

Well, okay, in my case if he reappplies to see the children next year because his suspended sentence will be up by then as well, none of this – I've got this much evidence and I won't be able to submit any of it. It's all historical, or hysterical really. It's ridiculous because what happened to me for three years of mine and my children's lives ... I have been in and out of police stations, making statements, police turning up all over the place all of the time. If we have to start from scratch and he gets a completely clean bill once you get into the family court it's ridiculous. These people who are making these decisions, perhaps they'd like to hear my case. FG2

Some women said that **if perpetrators were aware of the 12-month time frame they would use this as a way to continue the abuse:**

It's an absolute gift. It's a gift for perpetrators to say, 'keep my nose clean for 12 months'. Because they're so controlling and controlled that they will manipulate anything that they possibly can. FG2

Many women reported **experiencing high levels of post-separation violence and harassment, and felt that the 12-month time frame fails to reflect this:**

He tried to kill me – he attacked me with a knife and he tried to break my neck just after I put the kids to bed. I bit him really hard which released his grip and he left the house and I rang 999. And then literally for three years after, he stalked me and my family. He stalked me from prison by sending hundreds and hundreds of letters to everybody I knew ... it just went on and on. FG2

He stalked me. I'd have to get the bus into town and get the train into work and he'd know my routine. And he would be stalking me on my way ... he'd be jumping out from bushes and stuff like that. And I had to have someone with me escorting me everywhere. If I wanted to just wander around town on a Saturday afternoon and just have a bit of time to myself, I couldn't do it because he would just be stalking me and following me and I just felt so much at risk that I didn't feel safe anymore because I felt I just had to go everywhere with someone else. I felt that my life had been taken away because of him. FG3

Often this violence would go unreported to the police or the police would fail to take the violence seriously:

It's a gift for perpetrators to say, 'keep my nose clean for 12 months'. Because they're so controlling and controlled that they will manipulate anything that they possibly can.

I have tried everything. I have tried being cold, I have tried to ignore him. One day I decided okay none of this is working, call the police and then the police said, 'Oh, we're really sorry, we feel for you but there is nothing we can do. He needs to do three incidents every month'. And he was careful enough not to do three. He would break the windows today and just wait a month and then slash my tyres and things like that. So he was always careful enough not to have enough incidents or for me to be able to prove them so that he would then get into trouble, you see. FG2

And all the while he broke my windscreen, he slashed my tyres, locked up the child in the car, wouldn't let her out until he had a good shout and scream at me. Kicked my car door. The police was called and they said, 'It's all very recent, it's all very raw, you know, that's what happens when people split up'. I don't think it does. I didn't go vandalising his property or anything even though I left with what I had on and he never returned my things. FG2

Alternatives to court

The government has said that one of the motivations behind the reforms to the legal aid system is that people resort to going to court too easily and access to legal aid encourages this. By reducing access to legal aid, the government believes people will be encouraged to consider alternative ways to resolve disputes, which don't involve the court system. Although it is widely documented that mediation is not appropriate in cases involving domestic violence, and the government has said that women who have experienced domestic violence will not be required to take part in mediation, it is highly likely some women will be forced down this route as the gateways for accessing legal aid in cases involving domestic violence are so restrictive.

We spoke to women about their views on mediation and any experiences women had of using mediation. Women who had experience of mediation unanimously told us that it had not worked in their case. Those women who had gone to court unanimously said that they would not have felt safe trying to mediate with the perpetrator, furthermore, women told us they would not have felt able to participate fully in the mediation process because of the abusive and controlling dynamics of the relationship.

Women said that ***their safety would be compromised if they had been required to participate in mediation:***

I would not be able to say anything to him. I can't say anything to him. I have to keep myself safe. I would be scared for myself. FG4

Surely if the judge sees how bad the violence is, and how scared you are, and all the reports, surely they wouldn't want you to sit in a room, because I couldn't sit in a room with him. I'd fall apart. FG2

If I had to be there in the same room as him, talking with him, and trying to come to some sort of agreement, I would feel so scared because even if we weren't talking face-to-face I would still be scared because he's so demanding in his views and he doesn't take no for an answer. He doesn't agree to meet halfway. I talk to people and I can come to some sort of halfway agreement, but he's not like that. I just don't think mediation would work because he would be so set in his ways and I'd be trying to meet halfway and I think I'd just get so upset and I'd be so scared of him. FG3

Many women felt strongly that **mediation is never appropriate in cases involving domestic violence because of the unequal power dynamics that are present in situations involving abuse:**

How can you express the effects of the abuse to an abuser? You are not starting on an equal footing. FG4

It's not as if we're trying to resurrect a relationship with these partners, is it? It strikes me that mediation has got a lot to do with – even if you aren't going to have an involved relationship that you are acknowledging that you're going to have some contact, some communication with this person in the future about the children or whatever and for many of us that's not possible. FG2

It's assumed that we're all in normal relationships. We're not. FG2

Other women **expressed frustration that mediation is often seen as a necessary step in the family court process:**

I think the linear aspect of the family court process – almost like a map, you've got to go here before you can go here. There's no room for manoeuvre. Actually for many women categorically mediation doesn't work. FG2

Many women felt that **mediation would be used by perpetrators as a way to continue the abuse:**

I was just thinking that mediation would be very similar to the situation I've got with my violent ex-partner. He has contact with my daughter, supervised by my social worker. And it just turns into chaos every time because he sees it as a way to get to me. He would love the chance to go into mediation because that would be an ongoing way to control me. FG3

He broke the bail conditions twice after he smashed my face. He's sending me Valentine cards, sends me flowers and all this crap. So this will be more than welcome opportunity for people like him. He would be more than happy. FG3

Almost every man who's controlled a woman and abused a woman is going to love the opportunity to carry on the control. FG3

I think mediation is only a road that would work if you're with a partner and things

How can you express the effects of the abuse to an abuser? You are not starting on an equal footing.

I think that mediation is suitable in all sorts of cases but not in cases of domestic violence, because you're never going to be comfortable sitting in the same room with somebody that has made your life a misery.

are not working but you still love each other. When they beat you, control you, make you think you're going crazy ... mediation is not for women that live with a control freak because it gives them back the control. FG3

Women who had experience of going to mediation unanimously told us it had not worked:

I have been sent to mediation by the judge because he felt that our problem was communication ... I made the mediator aware that there was an issue with domestic abuse and it is quite widely recognised that mediation is not appropriate when there is an allegation of domestic violence. I think that mediation is suitable in all sorts of cases but not in cases of domestic violence, because you're never going to be comfortable sitting in the same room with somebody that has made your life a misery. FG2

My ex-partner put in place mediation for us, independently and funded it himself. I turned up to two sessions with a black eye, one session with a completely flat nose and he spent the time explaining to her how accident-prone I was. FG2

Another woman had tried mediation but found the process extremely expensive and was unable to reach an agreement with her abusive ex-partner:

I tried to keep this out of court as much as I could do, I tried to go to mediation, hoping that it would be cheaper but when it actually came down to it, it was such an expensive procedure, but I did actually go. But in the end I needed a solicitor. If you haven't got the help of a solicitor, you can't negotiate with these people because they haven't got the ability to actually listen, so I would have given in and I would have just gone back and heaven only knows what state I would have been in now. FG1

Telephone helpline

The government is proposing introducing a telephone helpline, which will be the single access point to the civil legal aid scheme. Anybody needing help from the civil legal aid scheme will have to call the helpline and speak to an operator, who will assess whether that person is eligible for any further help. We sought women's views on the telephone helpline and their views on how they would most like to access legal advice.

Women felt strongly that **the telephone helpline was not appropriate in cases of domestic violence:**

You would have to talk to different people. And then you have to relive that experience again. I don't want to do that. FG1

What are they going to do next? Are they going to email injunctions? Is that what they're going to do? They're cutting out the paperwork, all the jobs and whatever, but people should be paid to do this job because women are at risk, women are in danger, you cannot do this, it's ridiculous. FG1

Is it going to be like, if you've been raped, press one, if you've been abused, press two...? FG1

You're never going to be able to get over on the phone to somebody you don't know what has just happened to you. And they're never going to be able to understand if you're sobbing and crying, which happens. They're not going to be able to understand you. You're on the phone. And in the end you are going to think 'I can't do this'. And you're going to put the phone down. FG3

Women were **concerned that the telephone operators will not be legally trained:**

I don't think that an unqualified telephone operator can tell you whether that case that you have just rung up about has any chance of success and whether it should be given any legal aid to start with. FG2

For me, it's about getting the right person on the other end of the phone at that point, because you know, it's about that ignorance thing, it just takes the wrong person on the wrong day when you've just got through to that person, who does not understand domestic violence. FG2

Others were **concerned about the quality of advice they would be receiving:**

People are going to get really poor quality advice and assessment because you need to bring the details and the evidence in so that they can assess your case. FG2

Women were concerned that **for many women who are experiencing domestic violence, accessing a phone can be difficult:**

*What are they going to do next?
Are they going to email injunctions?*

How many women are allowed to have a mobile when they're in a controlling relationship? Your mobile calls are monitored. And you're expected to make this phone call whilst still living in the same house as that person: it's going to come up on the bill, and you know what, you're going to get battered for it. FG1

Is it going to be like phoning British Gas, are you ever going to get through? Sit on the phone you're not supposed to use, I can't count the number of mobile phones I've had stamped on and smashed. It's an absolute nonsense. FG3

Women **identified a number of access problems for certain groups of women:**

What about women with a learning impairment, have they thought about issues around disability? FG1

Having legal information over the phone would be very difficult for me, I would not understand it and neither would she (another participant who did not speak English) because she needs an interpreter. FG4

Women unanimously told us they **wanted to access legal advice face-to-face where they get the chance to sit down with a lawyer and explain the details of their case:**

Me personally, I'd like to be able to see a lawyer, for them to help you, to see a lawyer and get advice that way. FG3

I'm not good on phones either. I'm not good at talking to people I don't know on the phone, I'd want to see someone. FG3

When you speak to someone face-to-face you can pick my emotions up and I can try to bring you in my picture, not just to be a listener. FG3

You don't feel confident to tell people what happened over the phone because you don't know who you're speaking to. When I phoned up (for legal advice) the lady said: "Can you tell me what happened?" I said: "I can't. I need to come over to see you." FG3

*You don't feel
confident to tell
people what
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Conclusion

This report reflects the views and recommendations of 27 women who attended the focus groups held as part of the NFWI research into violence against women and legal aid, to inform the development of the Bill.

What follows is a summary of the key issues raised by women who participated:

The value of legal aid and the consequences of not receiving legal aid

- Access to legal aid provides women and children with safety and protection.
- Without access to legal aid women will stay in abusive relationships: as a result, more women will be killed by violent partners and there will be an increase in suicides.
- Without access to legal aid women will be forced to negotiate with the perpetrator, which will compromise their safety.
- The financial impact of paying for legal advice will deter women from seeking help.
- Reducing women's access to legal aid undermines other attempts by the government to improve responses to violence against women and has consequences for gender equality more widely.
- Women who were unable to access legal aid felt unsupported and unable to resolve problems that had arisen from their experience of domestic violence.

Acting as a litigant in person

- Women experienced high levels of trauma going to court.
- Cross-examination by a litigant in person in cases involving domestic violence is wholly inappropriate and should be prevented.
- Women would not have been able to participate fully in the proceedings if the perpetrator had been given the opportunity to cross-examine them.
- Women would not have been able to act as a litigant in person in their case.
- Many women would not feel safe going to court without legal representation.
- Many women would not have gone to court without legal representation.
- Women who had experience of acting as a litigant in person found the experience traumatic and found they lacked the skills or expertise to negotiate the legal system alone.
- Women who had accessed legal aid for issues around immigration said they would not have been able to negotiate immigration proceedings alone.

Areas of law women need help with

- Women who have experienced domestic violence should be able to access legal advice for issues other than family law.
- Help with family law issues is important initially, but help with other areas of law is important in the long term.
- One of the main areas of law women needed help with was immigration: this is particularly important as this advice is not available anywhere else.

Access to legal aid provides women and children with safety and protection.

The gateways fail to reflect women's experiences of domestic violence.

Gateways to legal aid

- The gateways fail to reflect women's experiences of domestic violence.
- Very few women who have experienced domestic violence have a conviction against the perpetrator.
- Some women were unable to provide any of the evidence required in the proposals despite experiencing domestic violence.
- The gateways fail to reflect the fact that certain types of abuse, such as psychological and sexual violence, are extremely difficult to prove.
- The gateways fail to reflect how difficult it is for women to come forward and disclose domestic violence in the first place.
- Many groups of women, for example disabled women and black, minority, ethnic women face additional barriers to disclosing violence and abuse and providing 'evidence' of the abuse they have experienced will be even more difficult.
- Many women thought that a wider range of services should be able to provide evidence of women's experiences in order for women to access legal aid.
- The forms of evidence used for the domestic violence rule more accurately reflected women's experiences and this model should be used in the legal aid system.
- The 12-month time frame failed to reflect women's experiences of domestic violence.
- Many women would not have been ready to pursue legal proceedings within 12 months of leaving a violent relationship.
- Women felt they would have put themselves more at risk if they had started legal proceedings straight away.
- Women who were able to satisfy the gateways found it astonishing that this evidence would only be valid for 12 months.
- Women thought that if perpetrators were aware of the 12 month time frame they would use this as a way to continue the abuse.
- Women reported experiencing high levels of post-separation violence and harassment and felt that the 12-month time frame fails to reflect this.

Alternatives to court

- Women felt that their safety would be compromised if they had been required to participate in mediation.
- Mediation is never appropriate in cases involving domestic violence because of the unequal power dynamics that are present in situations involving abuse.
- Women expressed frustration that mediation is being seen as a necessary step in the family court process.
- Mediation could be used by perpetrators as a way to continue the abuse.
- Women who had experience of going to mediation unanimously told us it had not worked.

Telephone Helpline

- Women unanimously told us the telephone helpline was not appropriate in cases of domestic violence.
- Women were concerned that the telephone operators will not be legally trained.
- Women were concerned about the quality of advice they would receive via the telephone helpline.
- For many women who are experiencing domestic violence, accessing a phone can be difficult.
- Women identified a number of access problems for certain groups of women, including disabled women and women who do not speak English.
- Women wanted to access legal advice face-to-face where they get the chance to sit down with a lawyer and explain the details of their case.

Women unanimously told us the telephone helpline was not appropriate in cases of domestic violence.

Literature review commissioned
by the National Federation of
Women's Institutes



HUMAN RIGHTS AND CIVIL LEGAL AID

The case for providing funding for civil cases involving
victims of domestic violence

Dr Aisha Gill
University of Roehampton

Human Rights and Civil Legal Aid:

The case for providing funding for civil cases involving victims of domestic violence

Dr Aisha Gill *
University of Roehampton

Introduction

The British legal system can be a minefield for women who have experienced domestic violence. The current socio-political context restricts the routes via which legal services can be accessed to an underfunded means-tested program – Legal aid – and the self-funded route. As there are few low-cost or free alternatives, there is a significant gap in services. To date, little research has been conducted on domestic violence victims' use of, and access to, legal aid in the UK. However, providing access to justice for women who have experienced gender-based violence has a wide array of benefits, not least among them access to justice for their children.

The overarching aims of this literature review is to explore (i) the consequences of denying women legal aid and (ii) victims' and service providers' experiences of the system. To do so, the literature review examines the experiences of women who have accessed legal aid in relation to experiences of domestic violence and also the experiences of those who have turned to other options. As well as discussing outcomes, the study commissioned by NFWI also illuminates the core issues of access and process associated with the four key research objectives: the study explores

- 1 The types of issues women need legal help with after experiencing violence.
- 2 Whether the eligibility criteria set out in the proposed legal aid Sentencing and Punishment of Offenders Bill adequately reflects women's experiences.
- 3 Whether restricting the timeframe for victims to provide evidence of eligibility for legal aid under the domestic violence rule to twelve months, as proposed in the Bill, reflects women's needs and experiences.
- 4 The value women place on being able to access legal aid after experiencing violence and the consequences of not being able to access this form of support.

By placing this study within the theoretical framework of feminist legal theory, insight is also shed on potential public policy remedies that could help to address these problems. This provides an opportunity to examine the possible impact of

To date, little research has been conducted on domestic violence victims' use of, and access to, Legal Aid in the UK.

the proposed changes that the legal aid Sentencing and Punishment of Offenders Bill, which will have its next reading in Parliament in Autumn 2011, would bring about.

Women face many barriers when attempting to access civil legal remedies for domestic violence, not least among them the pervasive lack of resources and the fact that the process involved is characterised by inconsistency and a lack of coordination: this often leads to less than optimal outcomes, as seen in the case studies in the findings section of this report. Women may go from service provider to service provider before their needs are met and many abandon the pursuit of legal redress completely. Although legal aid services are a necessary component of any comprehensive solution to the problems that victims of domestic violence face, the current system fails to provide sufficient resources to meet victims' needs. The significant benefits of access to legal aid demonstrate the importance of using public policy to address the injustices that result from this gap in provision. In order to resolve these problems, it will be necessary to examine and restructure the UK's system of legal aid in ways that do not undermine women's access to justice, support and assistance: this, in turn, will necessitate the development of a nuanced approach aimed at designing comprehensive, holistic policy responses to this complex problem.

The significant benefits of access to legal aid demonstrate the importance of using public policy to address the injustices that result from this gap in provision. In order to resolve these problems, it will be necessary to examine and restructure the UK's system of legal aid in ways that do not undermine women's access to justice, support and assistance: this, in turn, will necessitate the development of a nuanced approach aimed at designing comprehensive, holistic policy responses to this complex problem.

Changes to the legal aid system

Legal aid expenditure was around £2.1 billion in 2008/09: this represented approximately 25% of the Ministry of Justice's budget. Approximately £1.2 billion was spent on legal aid for criminal cases and the remaining £0.9 billion was spent on legal aid for civil cases, including private family matters. Legal aid may take the form of pre-court advisory support (i.e. legal 'help') or court-based support (i.e. legal representation). The modern legal aid scheme was established in 1949 with a laudable aim: to provide equality of access to justice and the right to representation before the law. While this right is not explicitly enshrined in law, some interpret relevant national and international instruments as implying that this is a right in cases where free access to legal services is necessary to ensure the effective exercise of other rights (see, for example, the discussion of *Airey v UK* on page 15).¹ However, because the law does not speak explicitly and directly to this right, the provision of legal aid in individual countries is susceptible to the ebb and flow of political influences. In Britain, only a decade after the creation of the Access to Justice Act (1999), the delivery of legal aid and the legal aid budget is once again under review (Harker and Sandbach, 2011).

On 21 June 2011, the Government announced the publication of the legal aid Sentencing and Punishment of Offenders Bill. The Bill, if it becomes law, will abolish legal aid for welfare benefits appeals, immigration applications, child contact and residence disputes, clinical negligence claims, employment disputes, a substantial number of housing and debt cases, and a range of other issues.² Alongside the Bill, the Coalition Government is pressing ahead with plans to cut £290 million from the budget, despite opposition from lawyers and campaigners (Legal Action Group, 2011; Robin, 2011; Rights of Women [ROW], 2011). Currently anyone with disposable assets of less than £8,000 can qualify for legal aid but the threshold may be lowered to £1,000; therefore, some 600,000 cases will no longer be funded if the full package goes through Parliament in autumn 2011. The tightening up of the restrictions on eligibility for will also mean that all those with £1000 in savings or a disposable monthly income of over £316 will have to contribute to the costs of their legal assistance. Moreover anyone, even those receiving benefits, with capital in excess of £8,000, or a disposable monthly income of over £733, will be ineligible. The tougher eligibility requirements will mean that only the very poorest will be able to access legal aid: individuals with modest means will face the prospect of significant legal bills or having to represent themselves. Indeed, many will not have the resources to pay privately and have no choice but to self-represent.

In many civil cases involving women who have been victims of domestic violence (e.g. child contact cases), it is the abusive party who institutes proceedings: under the Bill, victims will have to choose between engaging private legal services at significant cost or risking detrimental outcomes for themselves and their children, despite the fact that they have not sought to engage with the courts. Not only will this deter many women from seeking legal redress by bringing their own cases (Liberty, 2011), it will substantially increase the stress involved in proceedings started by an abusive spouse or partner. Thus, these cuts will place further barriers in the way of equal access to justice.

Moreover, a recent study by the Ministry of Justice (Williams, 2011) found that

¹ *Airey v. Ireland* (6289/73) [1979] ECHR 3 (9 October 1979)

² This is not an exhaustive list of areas affected by the cuts: for a more detailed exploration of the potential impact of the Bill, see <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>

These cuts will place further barriers in the way of equal access to justice.

The Bill will fundamentally change the way people access legal services by channelling all enquiries through a telephone advice line.

although there was limited research on civil and family litigants who present their cases in person (i.e. without legal representation), the literature review conducted by Williams (2011) suggests that litigants in person tend to be younger, and have lower incomes and educational levels, than those who obtain legal representation. Reasons for not obtaining representation included funding difficulties and the belief that cases were simple enough to be heard without a lawyer. Williams's review also highlighted that family cases without representatives were less likely to settle, leading to increased case duration. Critically, she found that lack of legal representation negatively affected the majority of case outcomes she examined (Williams, 2011: 1).

Therefore, many NGOs have serious concerns about the proposals, not least in relation to the potential impact on choice of representation: in addition to the cuts, the Bill will take away clients' ability to choose which solicitor or adviser they instruct. This lack of choice is particularly worrying given that no information is provided about the level of training or qualifications required for those channelling requests for legal advice and assistance, despite the fact that legal issues are often complex and individual situations may span several areas of law, requiring a combination of specialisms. Moreover, these measures are at odds with the Government's ethos regarding personal choice in other key areas (e.g. as regards where to live and where to work).

The Bill also sets out plans to fundamentally change the way people access legal services by channelling all enquiries through a telephone advice line. Indeed, it will introduce a mandatory telephone advice service (in place of in person visits) for the most vulnerable people in Special Educational Needs cases, discrimination claims and community care work. Little detail is given about how this system will work in practice and so little recognition has been accorded to the fact that the telephone helpline may create another barrier to women seeking help after experiencing violence. For example, it may exclude women with a limited grasp of English. Moreover, the proposal fails to recognise how difficult disclosure can be for victims of domestic violence. Thus, plans to roll out a 'one stop' telephone advice service are likely to compromise the interests of some of the people most in need of help (Liberty, 2011). The Women's Resource Centre (2011) has posed a number of important questions about these issues that have yet to be addressed:

- What training will operators have in violence against women issues?
- How will operators identify cases where abuse is on-going if victims do not identify their experiences as abusive or violent?
- What safeguards will be put in place to ensure that emergency advice is available?
- What about those who are unable to make a call in private?
- How will referrals to specialist advice services be managed and what form will they take? (For instance, will referrals be made to specialist solicitors?)
- How will these services be procured and what will the costs be?

The Bill will also drastically limit the availability of civil legal aid, though provision will remain for criminal cases and for representation in Employment Appeals Tribunals for claims under the Equality Act 2010. Similarly, in response to consultations and submissions regarding the high number of people with

disabilities needing access to Special Educational Needs Tribunals, some special educational needs matters will remain within scope of civil legal aid. Legal aid will remain available for judicial review applications, though it will be restricted in immigration cases to individuals who will benefit directly from a case. However, legal aid will be removed for all advice and assistance relating to

- welfare benefits,
- clinical negligence,
- personal injury,
- debt,
- divorce,
- employment,
- immigration (except asylum and applications under the domestic violence rule), and
- housing (unless a person is facing homelessness).

This is not an exhaustive list: legal aid will also be removed from those seeking compensation under the Criminal Injuries Compensation Scheme. In private family matters, legal aid will no longer be available unless there is an issue of domestic violence, as explored below, though it is currently available for advice, representation and mediation in a range of disputes arising from relationship breakdown: these include

- orders for child contact and/or residence agreements,
- parental responsibility orders,
- prohibited steps or specific issue orders,
- parenting orders,
- adoption,
- financial relief proceedings, and
- divorce, judicial separation, nullity proceedings and the dissolution of civil partnerships.

On 19 July 2011 legal aid Minister, Jonathan Djanogly MP, stated that “There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardizing their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a Government amendment to bring such cases into scope at a later stage.”³ However, despite this early ‘victory’, concerns remain over the possibility that many women will be at greater risk of violence and abuse following the cuts, including (i) individuals who have been trafficked into the UK for the purposes of sexual and other exploitation, (ii) migrant domestic workers, (iii) women challenging decisions in relation to ‘cash only’ asylum support (because legal aid will be retained for advice and assistance only in claims for support that include claims for accommodation), and (iv) women with refugee leave or humanitarian protection seeking reunification with children and other close family members who remain in the country of origin.

In relation to domestic violence, the Government intends the following circumstances to be accepted as evidence qualifying the victim for civil legal aid.

³ See full speech: <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/110719/pm/110719s01.htm>

4 Rights of Women, (2010) *Women's Access to Justice: A Research Report*, ROW: London

5 Women's Aid and Rights of Women's Template Response to the Interim Report of the Family Justice Review, June 2011: 24.

6 See: http://www.rightsofwomen.org.uk/pdfs/Policy/Rights_of_Women_and_Womens_Aid_response_FJR_20_June_2011.pdf

Furthermore, where there is evidence of child abuse, legal aid will be available for disputes about children for the party seeking to protect the child.

The fact that the domestic violence rule provides for eligible applicants to access legal help in relation to ancillary relief (i.e. help from the courts to resolve financial issues following the end of a marriage or civil partnership) and also private law family and children cases, shows that the Bill recognises the fact that women need help after experiencing violence with a wide range of issues if they are to rebuild their lives and support their children. Indeed, recent research by ROW (2010) found that 24% of domestic violence victims have legal problems concerning their children, 33% have legal needs concerning divorce, 24% have legal needs concerning housing, and 14% need help obtaining domestic violence-related injunctions and/or protection orders.⁴ However, obtaining effective protection in the fullest sense of the word is far more complicated and often requires complicated legal advice spanning several areas of law. Critically, although the Bill recognises the need for legal aid to cover these areas, it fails to address the fact that the eligibility requirements will prevent many victims with legitimate needs and claims from qualifying (Ministry of Justice, 2011). Moreover, restricting the availability of legal aid to certain family law issues, even for domestic violence victims, fails to reflect some of the most serious problems women face when they leave a violent relationship: crucially, legal advice on welfare benefits and debt will not be available under legal aid. Thus, the proposed cuts to legal aid may well increase the risk of women staying in abusive relationships (Wren, 2011).

The President of the Family Division of the High Court, Sir Nicholas Wall, has argued that cutting legal aid in family work will also increase delays in the family courts as, without lawyers, parties will struggle to prepare and present their cases effectively because most lay people lack both a solid understanding of which arguments courts need to hear and experience in making arguments succinctly. However, the Government has claimed that people resort to court proceedings too easily and, thus, part of the reason for reducing access to legal aid is to encourage people to look at alternatives to court (Hill, 2011).

For this reason, the Interim Report of the Family Justice Review proposes to make it compulsory (with limited exceptions) for all parties seeking to litigate in family law cases to be assessed by a mediator with regard to their suitability for attendance at a Parenting Information Programme and/or a dispute resolution service, such as mediation. These mediators will, thus, act as gatekeepers, assessing “whether there are risks of domestic violence, imbalance between the parties or child protection issues that require immediate diversion to the court process.” The proposal thus intends that only “a minority of cases will require court determination, namely those with significant complexity... or where there are serious welfare concerns.”⁵ Both Women's Aid and Rights of Women (ROW) agree that mediation *can* be effective in family law disputes; they also welcome the recognition that an imbalance of power between parties may render mediation inappropriate. However, they stress that any case involving domestic violence poses serious welfare concerns both to adult parties and any children given the strong links between domestic violence and child abuse.⁶

Moreover, mediation can place victims at further risk as it gives perpetrators opportunities for continued contact and, thus, for further abuse: this, in turn, often results in victims feeling unable to take part fully in mediation processes due to fear of reprisals (Baksi, 2011). Furthermore, as women often do not disclose their experiences of abuse, mediation is regularly offered in cases where abuse is still occurring, making this an inappropriate alternative to court proceedings. Thus, although the Government is keen to encourage mediation, it is effective in only a limited number of cases. Many people will continue to need to go to court after or instead of mediation, with or without a lawyer. Indeed, involving lawyers can reduce the number of family cases that go to court. First, they help to negotiate the vast majority of cases so that agreement is reached before the case proceeds to court: for instance, only 10% of disputes over children's residence and child contact are taken to court. Second, family lawyers are able to manage their clients' expectations, helping them to understand what the courts can and cannot do for them (Hill, 2011).

However, perhaps the most crucial issue of all in terms of the proposed cuts is that under the new system victims of domestic violence will need to provide suitable evidence that they have experienced abuse in order to access civil legal aid: knowing what evidence is needed and how to obtain it is far from straightforward, but help will no longer be available for this part of the process. When the National Federation of the Women's Institutes (NFWI) and Rights of Women (ROW) gave evidence in July 2011 to the Public Bill Committee, they drew attention to the lack of understanding amongst members of parliament about violence against women, including domestic violence, and the fact that many women do not report abuse. Indeed, research commissioned by the NFWI in 2009 found that a third of respondents who had experienced abuse told no one: of those who did tell someone, just 30.4% of victims in rural areas and 27.6% of those in urban areas had told the police (McCarry and Williamson, 2009). Furthermore, the Women's Aid annual survey for 2010 found that although 70% of women in refuges had called the police at least once, only 15% had obtained convictions against their abusers: moreover, the vast majority of the women who had called the police (313 out of 414) said the perpetrator of their abuse was not currently being prosecuted.

Here, the issue of the new 12-month timeframe is critical as it renders many women with real and pressing needs ineligible for support: as discussed above, proceedings or orders against the perpetrator (e.g. a relevant non-molestation, occupation or forced marriage protection order) must either be currently in place, or have been made in the past 12 months, for the victim to be eligible to claim civil legal aid. This fails to reflect the reality of women's experiences, particularly the fact that many can only bring themselves to report abuse after a significant delay. Crucially, concerns about potential further abuse (e.g. when a non-molestation order expires) cannot be presented as 'evidence' in applications for legal aid despite the fact that victims may well need legal aid to pursue the means to ensure their continued safety. Moreover, many problems that require legal aid continue to affect women more than 12 months after particular incidents of violence. For instance, many women experience post-separation harassment and even violence: ex-partners often track victims down by starting child contact proceedings, thus actively using the court system to continue the abuse (Thiara and Gill, 2011).

The definition of domestic violence employed in the Bill recognises both physical

Although 70% of women in refuges had called the police at least once, only 15% had obtained convictions against their abusers.

7 Record of Public Bill Committee debate on Legal Aid Sentencing and Punishment of Offenders Bill 6th September: page - 351 and 365.

The Bill's definition of domestic violence is not comprehensive, neither is it in line with the definitions used by other government bodies, including the Home Office.

and mental abuse, including “(a) sexual abuse, and (b) abuse in the form of violence, neglect, maltreatment and exploitation” (Schedule 1: Civil legal services, Part 1: Services, Section 10, Paragraph 35). However, this definition is not comprehensive, neither is it in line with the definitions used by other government bodies, including the Home Office, the Crown Prosecution Service, and the Association of Chief Police Officers. For instance, the Association of Chief Police Officers, in line with international standards, defines domestic violence as “Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial, or emotional) between adults who are or who have been intimate partners or family members, regardless of gender or sexuality.” Many stakeholders have called for the definition employed in the Bill to be revised to bring it into line with broader government policy, including the Cross-Government Violence Against Women and Girls Action Plan (March 2011).

As of the time of writing (i.e. October 2011), the Government has resisted attempts to amend the Bill with regard to the definition of domestic violence and with regard to calls for widen the eligibility criteria to include victims who have either used a refuge or other service in connection with an incidence of domestic violence.⁷ However, although the Ministry of Justice recently published a Green Paper reviewing the potential impact of the Bill, this document fails to address some of the more complex issues associated with legal aid provision, seeking wholesale cuts rather than looking at where savings could be made by a more intelligent allocation of resources. For instance, money is regularly wasted through experts' extortionate fees, chaotic court listing systems, excessive bureaucracy and complex regulations. However, the Green Paper does recognise that there has been a planning blight with regard to legal aid: indeed, there have been thirty-six separate consultations since 2006. The people who have suffered most are those whom the Government has rightly identified as also suffering the worst effects of various forms of social exclusion: the unemployed, asylum seekers, people for whom English is not a first language and people with physical disabilities, learning difficulties or mental health problems.

Moreover, in real terms, legal aid has already been reduced significantly: it is estimated that the amount of legal aid granted has been reduced by 60% over the past 10 years (Equality and Diversity Forum, 2011). The further 10% decrease proposed in the Bill will impact not only those seeking legal aid, but also those working in this area of the law. The cuts may well drive many experienced, hard-working and committed practitioners out of the field to the detriment of the legal services generally as, from October 2011, the fees paid to legal aid lawyers will be reduced: thus, it will not be viable for many firms to continue working on legal aid matters. There is a real risk that this will create ‘advice deserts’: areas of the country where individuals are unable to get legal advice unless they can afford to pay privately (Black Association of Women Step Out [BAWSO], 2011; Liberty, 2011). The clamp down on remuneration of already poorly paid professionals will also mean that legal aid work becomes more and more the domain of the most junior and the least qualified members of the profession, diminishing the quality of services.

In June 2011, Linda Lee, then president of the Law Society, claimed that the proposals would be a “disaster for the public” because they would prevent people turning to the justice system and, thus, restrict access to justice (Cf. Robins,

2010). While the issue of legal aid does not engage voters, for many of the most disadvantaged people in society it is a life-line (Smith, 2011), as shown in the case studies described in the findings section. Michael Mansfield, QC, succinctly states the importance of protecting this vital public service: “There is, however, a desperate and urgent need to provide a sustainable method of ensuring a fair distribution of legal services to those most at risk” (Cf. Robins, 2010: 9).

Legal Aid and human rights

Human rights standards place emphasis on due process and fairness. The right to a fair trial, the right to legal assistance, and the right to have criminal charges determined by an independent and impartial tribunal are all enshrined in the European Convention on Human Rights (ECHR), as is the presumption of innocence. The ECHR also requires defendants to be placed on an equal footing with the prosecution in relation to the presentation of criminal cases. For instance, Article 6 (Right to a Fair Trial) provides that any individual charged with a criminal offence has a number of minimum rights, including the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require” (Article 6(c)).

No similarly explicit requirement exists for civil legal assistance, but the European Court of Human Rights (ECtHR), though the case-law it has established, has suggested that Article 6 of the ECHR should be regarded as referring to both criminal and civil cases. For instance, in *Airey v Ireland*⁸ the court held that Article 6 “may compel states to provide legal assistance when it is indispensable for effective access to the courts, either because legal representation is mandatory under domestic law or because of the complexity of [the] procedure or case.” This landmark case concerned an Irish woman who sought a divorce from her husband but lacked the resources to hire a lawyer to represent her. She asked the court to provide free legal advice, but was refused. She appealed the decision and lost. As Ireland is a signatory to the ECHR, she was able to appeal again – this time successfully – to the ECtHR. In its judgment, the ECtHR issued a powerful statement about governments’ affirmative obligations to provide equal access to justice for lower income individuals:

The Convention is intended to guarantee not only rights that are ‘theoretical or illusory’ but rights that are effective. This is particularly so of the right to access to the courts in view of the prominent place held in a democratic society by the right to fair trial ... [T]he possibility to appear in person before the [court] does not provide the applicant with an effective right of access[.]⁹

Thus, while the ECHR does not guarantee litigants a right to free legal advice in so many words, Article 6 guarantees all civil litigants a fair hearing, recognising that the ability to access legal advice and representation is a vital part of the right to a fair trial.

The argument for supporting the right to counsel in civil cases is universal and transcends borders, continents, and national constitutions, finding expression

⁸ *Airey v. Ireland* (6289/73) [1979] ECHR 3 (9 October 1979)

The argument for supporting the right to counsel in civil cases is universal and transcends borders, continents, and national constitutions.

10 Airey v. Ireland (6289/73) [1979] ECHR 3 (9 October 1979)

11 Beijing Platform for Action, Strategic Objective D.1, para.125 (a) and I (1), para. 232 n).

12 UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. See: <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>

13 Moorhead, R., Robinson, M. (2006) A trouble shared – legal problems clusters in solicitors’ and advice agencies, Cardiff Law School and Matrix Research Consultancy. See: <http://www.law.cf.ac.uk/research/pubs/repository/1592.pdf>

14 Steel and Morris v. UK [2005] ECHR 103.

in a 1978 resolution passed by the Council of Europe’s Committee of Ministers:¹⁰

Considering that the right of access to justice and to a fair hearing, as guaranteed under Article 6 of the European Convention on Human Rights, is an essential feature of any democratic society ... the provision of legal aid should no longer be regarded as a charity to indigent persons but as an obligation of the community as a whole ... No one should be prevented by economic obstacles from pursuing or defending his rights before any court determining civil, commercial, administrative, social or physical matters[.]

Access to justice is a necessary condition for a democratic society based on the rule of law; however, as the ECtHR has argued, if this is to be an “effective”, and not merely “theoretical and illusory” right, then those who are unable to afford a lawyer must also have the right to some form of legal aid since all ECHR States Parties have national and international obligations to support individuals’ rights in relation to their own laws and systems of justice. For instance, ROW (2010) has argued that the UK committed to the provision of free or low-cost legal aid when it signed the Beijing Declaration adopting the Beijing Platform for Action at the Fourth World Conference on Women in 1995.¹¹

The UK is also a State Party to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which provides universal standards for the fair and equal treatment of women. The treaty body responsible for monitoring States Parties’ obligations under the CEDAW has asserted that “States Parties must ... ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal where appropriate”.¹² Thus, the CEDAW obligates States Parties to work towards the substantive equality of men and women: it is not enough for a country to have laws and policies that apply equally to both sexes. These laws and policies must lead to real and effective equality. As women are economically disadvantaged and disproportionately rely on legal aid the removal of funding for advice and representation will lead to inequality (Legal Services Commission, 2011; Ministry of Justice, 2010). Moreover, as discussed above, many women experiencing domestic violence also face a cluster of legal problems concerned with housing, debt and welfare benefits: cutting advice in these areas of law will create a further hurdle for women to overcome when seeking to leave violent partners (Moorhead and Robinson, 2006: 29).¹³

In *Steel and Morris v UK* (2005)¹⁴ the ECtHR acknowledged that restrictions can be placed on the right of access to the courts, but only if these are pursuant to a legitimate aim and are proportionate. The case dealt with several issues: whether the unavailability of legal aid for defamation meant that the applicants had been denied their right to a fair trial under Article 6(2) of the ECHR, and whether the proceedings infringed Article 10 (freedom of expression). The European Court of Human Rights found that both Articles had been violated because denying the applicants legal aid had deprived them of the opportunity to present their case effectively before the court and had therefore contributed to an unacceptable ‘inequality of arms’. However, the Court also held that States Parties are free to decide how these rights should be upheld, arguing further that legal aid is one

means but that whether it is necessary will depend on the facts of individual cases. In *Steel and Morris v UK*, the applicants were defending their right to freedom of expression, the financial consequences were significant, and the case was highly complex, both factually and legally; therefore, the ECtHR held that the provision of some form of legal aid was merited.

Miles, writing specifically about Article 6 and legal aid, gives an excellent overview of the ECHR case-law in this area (Miles, 2011). For example, in examining *Airey v. Ireland* (1979) she argues (2011: 5) that the case

requires us in particular to consider, inter alia (1) whether this litigant in person can cope with the relevant substantive law; (2) whether this litigant in person can cope with the procedural rules; (3) whether expert or other witnesses will be required, and whether this litigant in person can manage the resulting additional procedural burdens and practical challenges inherent in examining and cross-examining those witnesses; and crucially (4) whether this litigant in person will have the emotional detachment necessary to represent him or herself effectively, bearing in mind [the ECtHR's] acknowledgement of the fraught nature of family proceedings and that judicial assistance and the latitude afforded to litigants in person will not necessarily be enough to cure any or all of the difficulties arising. (Miles, 2011: 1008)¹⁵

These considerations are absent from the Government's response to the legal aid consultation and the Equality Impact Assessment (EIA): the vulnerability of litigants in person is not addressed by the proposals despite the fact that entire areas of law are to be removed from the scope of legal aid without regard for the capacity of the lay persons to litigate effectively. Although there are limited exceptions (e.g. for domestic violence and special educational needs cases), even these do not go far enough in addressing the reality of the difficulties facing those who may seek legal aid under these rules. Indeed, in relation to the capacity to self-represent, the ECtHR remarked in *Airey v. Ireland* that "marital disputes often entail an emotional involvement that is scarcely compatible with the degree of objectivity required by advocacy in court" (Miles, 2011: 1008-9).

Legal Aid and domestic violence

Over the last three decades, the connections between different forms of inequality, and between human rights and various forms of violence against women (VAW), have received increasing attention within both scholarly circles and policy debates about the role of the law in tackling these issues (Right of Women, 2011). Many human rights laws apply not only to the use of violence by states but also violence that is perpetrated by private individuals (i.e. non-state actors): this includes violence targeted at, or experienced disproportionately by, members of disadvantaged or vulnerable social groups. The definition of VAW employed in the CEDAW speaks explicitly of "violence directed at a woman because she is a woman or violence that affects women disproportionately".¹⁶ Critically, the definition does not refer simply to violent acts against women but allows for exploration of the interrelatedness and the situatedness of different manifestations of VAW. Similarly, Article 1 of the UN Declaration on the Elimination of Violence against Women defines VAW as

¹⁵ Miles, J. (2011) Legal Aid, Article 6 and 'Exceptional Funding' under the Legal Aid Bill 2011, *Family Law*: Vol. 41: 1003-1009.

¹⁶ See: http://www.endviolenceagainstwomen.org.uk/pages/the_facts.html

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Thus, according to this definition, VAW comprises a continuum of violence and abuse: Kelly (1988) describes this as ranging from harassment and psychological abuse to murder.

In the UK, debates on domestic violence have resulted in VAW becoming the focus of significant political, media and policy attention. Feminists have been instrumental in bringing the problem to light, arguing that VAW should be understood as part of a broader pattern of domination and control of women by men (Dasgupta, 2002; Stark, 2007; Anderson, 2009). Although it is common for the terms 'violence against women', 'gendered violence' and 'gender-based violence' to be used interchangeably (as in this paper), feminists have argued, in recent years, for the adoption of the term 'violence against women' (Horvath and Kelly, 2007): their argument hinges on the fact that this would focus attention on the gendered nature of many forms of domestic violence (Walby and Allen, 2004) and the fact that these exist within a complex continuum of violence constituted by multiple forms of inequality, including gender, race and class (Kelly, 2010; Thiara and Gill, 2010).

It is becoming increasingly common for feminists and human rights activists to use international laws and covenants to hold governments accountable in individual cases of VAW, drawing attention to states' multifaceted obligations to protect women from violence and to ensure the full and free exercise of their fundamental human rights (Sen, Humphreys and Kelly, 2003). Some of the secrecy that previously shrouded the issue has been dissipated by these efforts and, as a result, public and professional awareness and understanding of VAW has been enhanced. This is a major success, though the shame and silence that continues to surround domestic violence, and rape in particular, mean that many women still decide not to report incidents of abuse.

Estimates of the extent of VAW vary because of this under-reporting. Variations in how different forms of VAW are defined make it even more difficult to obtain accurate statistics: for instance, the prevalence of forced marriage and of murders committed in the name of 'family honour' has been heavily contested. However, data from the British Crime Survey suggest that nearly 1 million women experience at least one incident of domestic abuse each year, while close to 10,000 women are sexually assaulted every week (Kershaw, et al., 2008) and at least 750,000 children witness domestic violence every year (Department of Health, 2002). Analysis of statistics concerning the extent of VAW reveals that no class or ethnic group is exempt from gendered forms of violence; this finding has long served to emphasise the commonalities in women's experiences of gendered violence. At the same time, the diversity in women's experiences of violence is increasingly being recognised by academics, practitioners and policy-makers as a vital element in the design of preventive measures

*Nearly 1 million
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Crime Survey)*

and the construction of effective methods to support victims. The provision of sufficient legal aid, and other support in accessing justice, is key to both of these goals.

Domestic violence and access to justice

Campaigners' efforts to use the law to shape public policy, and to redefine how the law conceptualises certain social problems, have led to major changes in how society, and the justice system in particular, responds to victims of VAW (Dobash and Dobash, 2001; Lewis, 2004). Historically, the law framed women as the property of their husbands and supported a man's right to control his wife with physical force, if he deemed this necessary (Dobash and Dobash, 2001; Schneider, 2000). Since the 1970s, the women's movement has campaigned for new definitions of domestic violence, arguing that the issue should be framed as a public, rather than private, problem (Schneider, 2000). By changing laws concerned with domestic violence, women's rights have been redefined to include the right to live free from violence (Schneider, 2000).

Both civil and criminal laws may be invoked in response to domestic violence. Key among the relevant civil laws are those that address women's immediate safety needs (e.g. mandatory arrest laws and laws regarding protection orders). However, a wide range of other areas of civil law are also critical with regard to the long-term needs of victims. Laws concerned with divorce, child support, child custody, and child contact impact a woman's ability to disentangle herself from a relationship marked by violence; they also define the parameters of acceptable interactions with abusers when interaction is impossible to avoid (i.e. when an abusive partner has been granted child contact).

Policy-makers have reviewed how legal theorists, social scientists and political activists have interpreted these laws in seeking to understand the issue of domestic violence so that effective responses may be formulated. The feminist public policy approach argues that remedies within the civil legal system help to define domestic violence as a matter of public concern through the creation of public sanctions (Goodman and Epstein, 2005). Moreover, using the civil legal system rather than the criminal system to achieve justice shifts the purview of solutions towards victims' needs and away from the punitive measures, centred on offenders, of the criminal justice system (Goodman and Epstein, 2005). Feminist theory suggests that focusing on women's experiences of the legal system is the next step in the development of more effective public policy solutions (Jordan, 2004).

Schneider (2000) claims that the law works on many levels and that these are not necessarily tied directly to the outcomes of individual cases. The law may provide victims with tangible outcomes that help them to live independently of their abusers, but they also frame the rights of women in the broader cultural and political context in both positive and negative ways: "The assertion of rights claims and the use of rights discourse[s] help women to overcome the pervasive sense of...personal blame that has perpetuated women's subordination in public and private spheres alike" (2000: 40). Schneider (2000) also recognises that the relationship between law and policy

does not necessarily lead to linear developments, nor does it necessarily always have positive outcomes. The tensions inherent in the interplay of law, policy, and culture may advance women's rights, but they may also give rise to resistance, backlashes, and unintended consequences. As Schneider notes, "while new laws can be vehicles for changing social attitudes, the persistence of these very social attitudes can impair the meaningful implementation of legal reforms" (2000: 189). Schneider (2000) illustrates these claims through examining the advantages and disadvantages of the mandatory arrest policy that forces police officers responding to domestic violence calls to arrest the purported abuser whether or not the victim wants to press charges; while the policy successfully criminalises domestic violence, sending a public message that it will not be tolerated, it also denies victims the opportunity to make their own decisions about how abusers should be dealt with. Schneider therefore cautions (2000: 37) that

Law-making and the assertion of rights must be understood as part of a larger process of change; a political struggle may be so fixed on law-making, rights discourse[s], or winning rights in courts that it will not move beyond rights and will paralyze political debate and growth.

The law is a tool that can be used strategically to initiate social and political change, including through the redefinition of social norms concerning violence. However, the law alone is not a powerful enough tool to solve complex social problems like domestic violence (Schneider, 2000). Schneider argues that domestic violence needs to be framed within the context of gender inequality (2000: 197): "The identification of intimate violence ... as gendered, as affecting women's freedom, citizenship, and autonomy, and as fundamental to women's equality, revives the core precept of the battered women's movement".

Although the legal system can have both positive and negative results for the women who choose to engage with it, the positives can often be enhanced and increased, while the negatives can be decreased, through the provision of adequate legal services. The positive aspects of using the legal system centre on women asserting themselves as equal players. Benefits include increasing the legitimacy of women's claims, increasing victims' power within abusive relationships, and focusing the responsibility for abuse on abusers: furthermore, at least in theory, courts are places where female victims are on an equal footing with male abusers (Schneider, 2000). Several studies have documented the benefits of legal services, especially advocacy, for survivors of domestic violence. Farmer and Tiefenthaler (2003) found lower rates of reported abuse in countries with better provision of legal services. They concluded that the provision of legal services, and the creation of measures designed to increase the economic power of women, were critical in long-term efforts to tackle domestic violence, while shelters and counselling were important short-term remedies. Farmer and Tiefenthaler (2003) also found that participants who had received the services of an advocate during a ten-week intervention were more successful in obtaining resources, and also experienced both increased social support and a higher quality of life, than the control group.

Other benefits of providing legal support for victims of domestic violence include protecting children, transferring children from state custody to the custody of

their non-abusive parent, preventing children from continuing to be raised in violent households, and fostering more positive interactions between victims and their children. Researchers at the Brennan Centre for Justice (New York University School of Law) developed a working paper reviewing both published and unpublished studies concerning the benefits of state-funded civil legal services for low-income residents (Abel and Vignola, 2010); among these were (i) an increased flow of federal dollars to New York State through federal grants and through an increase in eligible participants in federal welfare programmes, (ii) increases in the collection of child support payments (which, in turn, provided greater financial security for mothers) and (iii) reductions in the incidence of domestic violence. One of the unpublished studies cited demonstrated that when civil legal aid resources were increased in the south-west region of Virginia, the rate of requests for protection orders fell 35.5% compared with a 16.2% decrease State-wide (Abel and Vignola, 2010).

However, there is also evidence that the legal system can be detrimental to women. First, by engaging with the legal system, a woman transfers power to the state in seeking to resolve her problems (Fuller, 2007). In addition, actors within the system can be dismissive of victims' experiences, appear uncaring and/or be biased against victims (Fuller, 2007). In some cases, this can represent – or at least be perceived as representing – another form of abuse (Fuller, 2007). Whether using the legal system produces positive, negative or mixed results, there are significant patterns in women's help-seeking behaviour that have significant implications with regard to the effective provision of support. Women often seek help many times during the process of extricating themselves from an abusive relationship. Moreover, those who use the legal system often seek a variety of other forms of support: indeed, engagement with the legal system tends to correlate significantly with engagement with other services (ROW, 2011). Thus, a holistic, cohesive system of support would be far more effective in meeting women's needs than the existing, splintered one.

It is in this context that arguments about legal assistance have begun to focus on a rights approach to the provision of services. Kilpatrick (2004) suggests that there are advantages to prioritising victims' rights within the context of public policy as violent crime costs society dearly in many ways. These costs could be reduced if victims received effective access to support services. Kilpatrick (2004) goes on to argue that providing services to victims in a timely fashion could reduce the impact of crime on victims, which would reduce subsequent costs to society. While Kilpatrick's research centres on victims in criminal cases, this argument is also relevant to services associated with civil remedies: in addition to decreasing costs by reducing the impact of the violence on the victim, services associated with civil remedies might prevent further violent incidents. For example, the receipt of legal aid may allow victims to reach quicker resolutions with regard to obtaining a divorce from an abusive partner. It may also enable them to resolve issues around child custody and child contact, potentially limiting contentious interactions and, thus, preventing opportunities for further abuse. In addition, legal assistance may allow victims to obtain protection orders and/or court orders mandating that abusers seek treatment.

In December 2010, ROW examined the impact of the proposed legal aid cuts on their clients. In exploring women's views on the value of legal aid, they found that

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many of those who were not able to access legal aid were deterred from taking legal action, even when they had serious problems. However, some women do not have a choice about getting involved in legal proceedings: it is not uncommon for perpetrators to initiate them (ROW, 2011). The study concluded that “what is needed is increased access to legal advice and representation, and with it, increased access to justice” rather than scaling back women’s access to legal advice (2011: 2). In addition to violating women’s human rights by effectively denying them access to legal services, ROW argued that providing insufficient funding and resources to assist women through the criminal justice system denies them due process.

The study also demonstrated that women who cannot afford to hire lawyer are at a distinct procedural disadvantage in several ways: for instance, many women are unaware of their legal rights. As access to advice and representation are key to successful outcomes, the ability to self-fund in the absence of free legal aid is critical. However, the long-term financial impact of separation on women is substantial. Twenty-seven percent of separated and divorced women live in poverty: a rate almost three times that of their former partners.¹⁷ As there is also a significant salary gap between men and women, abusers often have access to more financial resources, enabling them to obtain not only some legal advice but exceptionally good advice: thus, male abusers can often outspend female victims (Sharp, 2009). In some cases, abusers use their superior access to legal services to attempt to manipulate the court system by filing ungrounded counter-claims against victims (ROW, 2011). Lack of legal representation also puts victims at greater risk of being manipulated by abusers’ lawyers with regard to custody and visitation agreements (Thiara and Gill, 2011). Therefore, the Committee on the Elimination of Discrimination against Women has expressed concerns about the economic consequences of divorce in the UK and has requested that the British Government include the results of research into this issue in its next report.¹⁸

The literature reveals that female victims of domestic violence face several key barriers to access to civil legal services, not least among them the fact that demand far exceeds supply (Robins, 2011). However, to date there have been few empirical studies on the impact of cuts to legal aid in the UK so evidence needs to be sought from other countries. A 1994 study by the American Bar Association found that legal needs are not met in 80% of cases involving low-income Americans (Derocher, 2008). The most recent study of access to justice in Massachusetts (Massachusetts Access to Justice Commission [MAJC], 2007) found that civil legal needs in the State far outweigh service provision: more than half of the people who qualify for low-income legal assistance programmes do not receive the help they need because of inadequate funding (MAJC, 2007). The study, echoing the earlier findings of the American Bar Association, also reported that people with moderate incomes face difficulties in obtaining adequate legal assistance (Maytal, 2008; MAJC, 2007). Critically, the MAJC study found that women who had experienced domestic violence had access to trained legal advocates in less than half of the courts in the State (Maytal, 2008).

Many people who need civil legal services are not able to access a lawyer because they cannot afford to hire one (ROW, 2010). As discussed above, women are often at a distinct economic disadvantage relative to men in this regard due to lack of equal pay for equal work and barriers to career advancement (Fawcett, 2010). For

17 'Marital splits and income changes over the longer term' Stephen P. Jenkins, Institute for Social and Economic Research University of Essex, Feb 2008. Available at www.iser.essex.ac.uk/publications/working-papers/iser/2008-07.pdf

18 Concluding observations of the UK's fifth and sixth period reports of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/UK/CO/6, paras 290-291.

this reason, the End Violence Against Women Coalition has advocated for community-based solutions to the lack of free civil legal services. Options for female victims who cannot afford lawyers include pro bono legal services and phone-lines, such as the one provided by ROW, that offer information and community-based legal services. However, funding for these services is also being cut, despite the fact that there appears to be an assumption in the Bill that the voluntary and community sector will be a source of advice and support for those who will no longer be able to access legal aid. While the voluntary and community sector is, indeed, well-placed to provide some types of support and advice regarding legal issues, many of the relevant organisations are facing uncertain times due to the funding crisis and some have already been forced to close their doors. For instance, at least a third of law centres will close if government plans to cut legal aid funding go ahead in October 2011: Julie Bishop, director of the Law Centres Federation, has stated that 18 of the 56 law centres nationwide are particularly vulnerable because legal aid accounts for more than 60% of their revenue (Rayner and Baksi, 2011). Thus, these organisations are not in a position to step into the breach and provide services that might mitigate the impact of the proposed legal aid cuts.¹⁹

Migrants, refugees, and black and minority ethnic women

The proposed legal aid cuts will have a direct and profound impact on those seeking and those granted international protection in the UK, including people who have been traumatised by exposure to persecutory ill-treatment in their country of origin. According to the Refugee Convention, a refugee is someone who is outside their country of origin because of a well-founded fear of persecution their owing to their race, religion, nationality, political opinion or membership of a particular social group. However, despite the fact that the right to found a family is enshrined in numerous national and international instruments (sometimes under the label of 'the right to family life'), the implications of this right for refugees separated from their families is often ignored. Indeed, the Green Paper explicitly excludes refugee family reunion matters from the scope of legal aid.

Similarly, those trafficked into the UK for the purposes of sexual exploitation, slavery, servitude and forced labour will no longer be able entitled to legal aid in order to resolve their immigration status (Liberty, 2011);²⁰ these individuals will also no longer be eligible for legal aid in relation to their participation in the National Referral Mechanism (NRM), though they are currently eligible for legal aid in relation to other immigration matters (e.g. applications to work, study or remain in the UK on the basis of their private and family life). Perhaps a more pertinent point for women who have been trafficked is that employment issues, compensation claims and refugee family reunion matters will no longer fall within the scope of legal aid despite the fact that proceedings relating to these issues are often very complex and require considerable preparation. A trafficked woman's ability to return home is heavily dependent on her ability to fund her return: if she has suffered criminal injuries through being trafficked, her ability to claim criminal injuries compensation (or reclaim lost earnings through an employment tribunal) would be a significant factor in enabling this. However, without legal aid to navigate the system, pursuing legal redress may be all but impossible for many of these vulnerable women, some of whom may well have a

19 Also worthy of note is the complicating factor in immigration law that those offering legal advice must be a regulated solicitor, barrister or legal executive (or European equivalent) or exempted by Ministerial Order, be registered with the Office of the Immigration Services Commissioner (the OISC) or be exempt from registration. Those who give immigration law advice and are not allowed by law to do so are committing a criminal offence under the Immigration and Asylum Act 1999.

20 For an examination of the quality (or lack thereof) of UK Border Agency decision-making in women's cases, see: Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women's asylum claims*, Asylum Aid: London.

diminished capacity to self represent arising from trauma connected to their experiences of gender-based violence.

With regard to immigration cases, there are often particularly difficult ‘equality of arms’ issues (i.e. issues associated with rights based on the principle that neither party in civil or criminal cases should be procedurally disadvantaged) that are not present in other areas of civil law; for instance, an individual involved in immigration proceedings is pitted against the UK Border Agency rather than another individual. The disparity in resources between an unrepresented litigant (who may not speak English or have a support network) and a government department are considerable and often result in substantive inequality. While immigration judges do as much as they can to ensure fairness to a litigant in person, they can only make a decision on the basis of the evidence presented: however, a litigant in person is less likely than a person who has legal advice and representation to be able to prepare the evidence needed to successfully present their case. Moreover, even if an immigration case succeeds before the First-Tier Tribunal, the Home Office can appeal the decision: in these instances, individuals will be expected to pay for private representation or represent themselves under the Bill, even though they are not appealing the decision at stake.

Research undertaken on behalf of Refugee and Migrant Justice (in partnership with Asylum Aid and the Immigration Advisory Service) by City University and the Information Centre about Asylum and Refugees demonstrates that the quality of legal representation is of paramount importance to asylum seekers, whose cases routinely raise issues of life and liberty (Gibbs, 2011: 4):

While it is clear that quality work costs, this review has found evidence that poor quality work costs much more in the longer term both to the public purse and in human terms to individual asylum applicants. The Legal Services Commission's Graduated Fee Scheme pays for legal aid work through a series of fixed fees. The evidence suggests that these fixed fees, combined with the low threshold level of quality at which legal aid providers can enter and operate in the UK market for asylum advice, may be designed to incentivise efficiency but in fact are likely to cost more in the long term.²¹

In the 2010 case of *AA (Nigeria) v Secretary of State for the Home Department*,²² Lord Justice Longmore commented at length on the complexity of immigration law and the fact that it is all but impossible for litigants to make their own initial applications, let alone represent themselves at immigration tribunals. Conversely, the Green Paper on the proposed Legal Aid Bill suggests that immigration tribunals are non-adversarial and therefore applicants should be able to represent themselves: the Green Paper goes on to suggest that since it is applicants' choice to come to the UK, they are less worthy of State-funded legal help than ‘victims’. This betrays a fundamental misunderstanding of the lives of many of those who come to the UK as spouses and who, thus, have no recourse to public funding for the first two years of their stay and also no rights regarding residence. While the Government has now agreed to create a domestic violence exception in recognition of these problems, many migrants who apply for discretionary leave because of domestic violence (e.g. those on student visas and migrant domestic workers) will still not be eligible for legal aid, despite the fact that the Government recognises these groups of women as extremely vulnerable to exploitation and abuse.²³

²¹ See http://www.migrantsrights.org.uk/files/news/Justice_at_Risk.pdf

²² *AA (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 773.

²³ See statement from the Legal Aid Minister, Jonathan Djanogly MP: <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/110719/pm/110719s01.htm>

Migrant and refugee women from black and minority ethnic (BME) communities face specific hurdles to leaving violent relationships. Abusers may use the threat of deportation to deter victims from reporting crimes: indeed, even without threats from abusers many migrant women fear that calls to the police and other help-seeking behaviour may lead to deportation (Southall Black Sisters, 2010; Imkaan, 2008). Over the last two decades, Southall Black Sisters and ROW have advised and supported hundreds of migrant spouses who have suffered horrific abuse at the hands of their partners, husbands and/or in-laws. Some of the most vulnerable victims find themselves in situations where they are refused all access to the outside world: telephoning the police for help is impossible. They may also be chaperoned at all times, refused permission to learn or speak English, and misinformed about their legal and human rights. The fact that migrant women may not be aware of the protections and services offered to abused women in the UK is an additional complicating factor, though it is worth noting that not all British citizens are well informed of their rights or the support available. However, migrants, unlike citizens, may also not know that domestic violence is a prosecutable crime in Britain and that there are laws specifically designed to protect not just victims in general but migrant victims specifically.

Furthermore, migrant women who do seek help face additional barriers that British-born women do not: these may include language barriers, animosity between their community and criminal justice system representatives, and stereotypes that suggest that violence is a normal part of life in minority communities (Gill and Anitha, 2011). These barriers have an impact on the needs of these women. For instance, in their needs assessment study, Thiara and Gill (2011) found that South Asian women often use informal methods of seeking help, such as talking to other women about abuse or seeking help from religious officials, either before seeking help from the State or in place of this: indeed, approximately half the women in the study had talked to either their mothers, sisters, or other women friends about the abuse before going to the police or social service agencies (Thiara and Gill, 2011). Moreover, the two services that ranked highest on participants' lists of needs were legal services and economic support. However, the high cost of legal services and the limited availability of free legal advice were significant barriers to victims' attempts to seek help (Thiara and Gill, 2011).

Significant advances have been achieved over the last ten to fifteen years regarding the protections that are available to migrant women. However, as immigration legislation remains very complicated, legal expertise is needed to access and successfully use most of the remedies available to migrant victims of domestic violence. As such, there is limited research data regarding the use of legal services by this population. On the other hand, the experiences of BME victims of domestic violence have been the subject of a significant amount of research. However, there are a number of critical limitations to much of this research: a significant number of the studies concerned with gender inequality and VAW have ignored the role of ethnicity, while research on ethnicity has tended to contrast BME men with white men, rather than also looking at the impact of gender (Cf. Gill, 2004). Thus, women are often treated as a homogeneous group.

Migrant women who do seek help face additional barriers that British-born women do not: these may include language barriers, animosity between their community and criminal justice system representatives, and stereotypes that suggest that violence is a normal part of life in minority communities.

The need for an approach that recognises the intersection and interaction of different forms of inequality is clear.

Despite the paucity of research in this area, a number of studies have suggested that BME women who experience domestic violence are doubly victimised: first, by their partners and then by society, which does not provide support and interventions adequate to their specific needs (Newham Asian Women's Project, 2008; Mama, 2000). Intersectional research has suggested that class, race and gender oppression interact to create the conditions under which violence occurs: it also hampers BME women's efforts to escape from these situations (Mama, 2000: 55). For instance, Anitha (2010) found that women who have immigrated to the UK with their spouse are often isolated from their own family, find themselves economically dependent on their husbands, and lack the financial means to return to their country of origin in order to escape the abuse (see also Southall Black Sisters, 2010). Furthermore, migrant women may face particularly harsh criticism for leaving their husbands or asking for a divorce due to the cultural norms prevailing in their communities, especially if these communities are patriarchal (Gill, 2004).

If the proposed legal aid changes go ahead, migrant women are more likely to be disproportionately affected by the proposals because they are both less likely to be able to afford a solicitor and more likely to face increased barriers to self-representation. Migrants seeking legal aid make much the same claims and arguments as those who raise domestic violence, gender-based violence or honour violence issues in asylum cases: in both instances, applicants identify the risk of physical harm, their vulnerability, their experiences of trauma, and their inability to self-represent or pay privately as key difficulties. It is perhaps partly in recognition of this fact that the Government has recently extended the Sojourner Project to provide (i) funding for safe accommodation for women who have no recourse to public funds and (ii) assistance in making immigration applications. However, this is part of a broader pattern of inconsistency: immigration law is often highly contradictory because the UK Government is simultaneously concerned with protecting individual human rights and with creating and enforcing immigration controls and restrictions. Thus, some women who experience domestic violence will find that their claims remain outside the scope of the proposed eligibility criteria for legal aid, despite the recent inclusion of a domestic violence exception in the Bill: those most keenly affected will include the spouses of men who themselves have limited leave to remain in the UK, the partners of refugees or those with Humanitarian Protection (HP) who do not have refugee leave or HP themselves, and those with leave in other categories (e.g. students, workers who are in a relationship with a British citizen, and migrant domestic workers),.

Thus, while changes to the statutory framework aimed at tackling VAW have started to close gaps in both legislation and provision, ensuring that some migrant women fleeing domestic violence have sufficient support to allow them to leave abusive relationships, these efforts need to be extended if all women are to receive effective assistance. Vitally, avenues via which migrant women may be allowed to stay in the UK on the grounds of domestic violence must be provided and safeguarded. Furthermore, the State must recognise that only policies and practical measures that address the economic realities facing migrant women (i.e. by helping them to achieve financial independence) will provide BME women with viable avenues for leaving abusive spouses. The need for an approach that recognises the intersection and interaction of different

forms of inequality is especially clear here: while one piece of legislation may offer assistance to migrants affected by VAW, other pieces prevent them from taking up this assistance since the law, as a whole, does not currently speak to the complexities of the problems facing these women.²⁴

The provision of effective support and assistance depends on women's individual circumstances being understood by professionals working on the front-line: race, culture, socio-economic status, and language are particularly important in this regard. Acknowledging the effect of these factors on an abused woman's assessment of her options is a key part of any effective solution: this is especially significant in light of recent research that indicates that BME women are less likely than white women to access statutory services. Key among their reasons for not seeking help are fear of racism and the desire to avoid reinforcing stereotypes about their communities (Batsleer et al., 2002). In this context, it is particularly worrying that policy-makers' recent emphasis on community cohesion agendas has led to the closure of many domestic violence services that cater specifically to the needs of BME women as it is precisely these organisations that have the expertise to understand and address the complex, intersecting needs and difficulties of these women. These closures threaten the only routes via which many BME women are willing and/or able to seek support in resisting coercion and violence within their families and communities (Gill and Anitha, 2011).

Summary

Since May 2010, the Coalition Government has made significant efforts to respond more effectively to VAW. However, applying cuts to legal aid in the manner proposed by the legal aid, Sentencing and Punishment of Offenders Bill 2011, and its explanatory documents, threatens to undo all this good work. Entire areas of law will be removed from the scope of legal aid without reference to the capacity of litigants to self-represent or self-fund, though the recent inclusion of a domestic violence exception in relation to immigration, is an important improvement. However, more remains to be done: many victims will still not be eligible under the rule as it fails to take into account the complexities of the problems that potential claimants face.

Domestic violence is a complex problem that requires a multi-dimensional approach: although domestic violence takes place in private, it has public consequences, not least with regard to the fact that it violates individuals' fundamental human rights, undermines their dignity and equality, and encourages the continued subordination of women and their children. To fully address the issue of VAW, the Government must adopt a multi-faceted strategy that reflects an awareness of the interlocking structural and contextual factors that underlie this problem. A more complex, nuanced understanding would reveal the vital importance of reconsidering proposals to deny full legal aid to victims of domestic violence seeking civil remedies.

To rectify these problems, the Association of Chief Police Officers' definition of domestic violence should be adopted and the eligibility criteria for the domestic violence rule extended. At present, the proposals contradict wider government

24 It should be noted that there is no explicit reference in the Legal Aid proposals about the Coalition Government's own strategy on violence against women.

Domestic violence is a complex problem that requires a multi-dimensional approach: although domestic violence takes place in private, it has public consequences.

In exploring the possible extent of the impact of the Bill, the Ministry of Justice has failed to rigorously address the disproportionate negative effects it will have on some of the most disadvantaged and vulnerable members of society.

25 See: <http://www.homeoffice.gov.uk/crime/violence-against-women-girls/strategic-vision/>

policy concerned with protecting women and girls from violence. The Cross-Government Action Plan on Violence Against Women, published in March 2011, commits the Government to “take action to reduce the risk to women and girls who are victims of these crimes and ensure perpetrators are brought to justice.”²⁵ However, if the Bill proceeds as stands, it will place women (and their children) at greater risk by making it harder for them both to leave violent relationships and to resolve issues relating to their children. Thus, it will act against the Government’s stated aim of promoting gender equality: indeed, the proposals may well serve to further entrench women’s inequality by undermining efforts to combat VAW and to promote women’s economic equality, particularly in relation to employment.

In exploring the possible extent of the impact of the Bill, the Ministry of Justice has failed to rigorously address the disproportionate negative effects it will have on some of the most disadvantaged and vulnerable members of society. For example, data concerning the high success rate of appeals concerning women’s asylum claims underscores the poor quality of UK Border Agency decision-making processes in relation to these claims; however, this obvious area of need has not been addressed in current impact assessments. Similarly, although the Bill is likely to have a particularly adverse impact on those who are disadvantaged in more than one way, this issue has yet to be tackled. Critically, the proposals fail to recognise that women are more likely to be unable to pay for legal advice and representation and, as a result, they will be disproportionately affected. The Equality Impact Assessment attached to the consultation acknowledges this but offers no ideas about how these problems might be mitigated. Moreover, the Ministry of Justice has recognised that there is a lack of reliable, disaggregated data concerning the legal aid client group: in the absence of efforts to remedy this, a meaningful equality impact assessment cannot be conducted. Therefore, the Bill may breach the UK’s obligations under both national legislation (e.g. the Equality Act 2010) and international instruments (e.g. the CEDAW).

Note

Literature review commissioned by the National Federation of Women’s Institutes

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Appendix A

Methodology and protocol used for focus groups

An introductory letter containing background information about the research and a protocol for the focus group were sent out to the agencies that agreed to make contact with women and to encourage their attendance at groups. Equality monitoring forms were used at the end of each group, asking women to anonymously record information about their age, their ethnicity, their gender identity, their sexuality and their religion and belief.

Women's safety before, during and after the groups was of paramount concern to us. We ensured that women who attended groups were in contact with local support services, should they need support during or following the group discussion. All the groups were women-only, and ground rules were negotiated at the start to maximise women's feeling of safety in the group. For example, women were encouraged to only use first names, and there was an opportunity to take time out from the discussion at any time, if women needed to do so.

Facilitators made it clear at each group that all contributions would be non-attributable and treated as confidential, and that feedback would only be reported in an anonymous manner. The discussion was recorded in writing and, with prior agreement by attendees, recorded on a digital tape recorder for the purpose of cross-referencing with handwritten notes, to ensure the final report was an accurate reflection of the discussions. As stated in the protocol, all tapes and notes were held securely until their disposal after completion of the report.

In recognition of the importance of women's experience and the time they had taken to participate in the group, we reimbursed every woman who participated in a focus group for their time and to cover any incidental expenses they might have incurred, by offering them £20 as a token of thanks. We also ensured that women's services that supported us in the organising of these events (for example, by providing venues or refreshments) were reimbursed accordingly so that the financial and administrative burden on women's services was minimal.

Finally, we made a commitment to women attending that a copy of the report would be sent back to those services that helped us organise the group, so that they could see the outcome of the research.

Focus group protocol

1 Purpose of the focus group

To responsibly record the views of women who have experienced violence and used legal aid, to inform the development of the Bill, published in June 2011. The NFWI is committed to hearing the views of women from diverse

backgrounds and experiences. In particular, we want to hear about women's experiences of using legal aid after experiencing violence and what they think about the government proposals.

2 Purpose of this protocol

To provide information on what can be expected from the focus group and to ensure those wishing to attend these focus groups are not harmed or endangered in any way as a result.

3 Contacting women to attend the consultation focus groups

The NFWI will use its existing contacts with specialist services in order to gather the names of women who have voluntarily expressed an interest in attending any of the consultation focus groups. The NFWI will hold these names in its office and will not, under any circumstances, share these with any other agency or use them for any future consultations, unless express permission is provided from an individual woman. If so, the NFWI will only do this in the way that is dictated as safe by that woman.

4 Who will be at each consultation event

These are women-only focus groups. At each focus group there will be:

- (Approximately) between eight to 10 women;
- Two facilitators, to guide the process and ensure women get a chance to contribute to the consultation;
- NFWI staff members to oversee the logistics of the day and to transcribe proceedings (up to two depending on group numbers);
- Interpreters (as required).

All of these people listed above are committed to and bound by this protocol.

5 Format for the consultation focus groups

The focus groups will last for approximately 2 to 2.5 hours. Refreshments will be available on arrival and where appropriate a sandwich lunch will also be provided. Each focus group will broadly follow a programme such as that outlined below, although groups will be sufficiently flexible in response to women's needs and circumstances:

Approx. times

20 minutes Welcome / introductions / about the reforms

40 minutes Discussion – feedback on reforms

40 minutes Discussion – women's experiences of using legal aid

20 minutes Round-up and close

A verbal outline of the proposed reforms to the legal aid system will be provided. All additional content will also be verbally presented and collected. There will be no requirements for the women to read or write unless they wish to. Should any of those women who attend the focus groups offer advice on how the programme might work better, the NFWI will consider this and alter it where necessary.

The focus groups have not been designed to act as a 'support group' for the women in attendance. However, the NFWI has ensured that women who attend are in contact with local support services, should they need support following the

group. The facilitators will also have on hand a list of agencies that can offer support and guidance following each event.

6 Access to the consultation

The NFWI will only book venues for the consultation focus groups which are accessible. Signers and interpreters will be provided where necessary. To assist with the costs that may be incurred, the NFWI will be providing women attending the focus groups with a small cash reimbursement, as a token of thanks.

The NFWI aims to hear the views of women from diverse backgrounds and experiences. Women attending will be encouraged to complete equality monitoring forms after each event (this will be voluntary) in order for the NFWI to make sure we invite a range of women to attend and participate – not just those who can easily make their voices heard.

7 Recording and storage of material collected at the focus groups.

In order to accurately reflect women's views, the NFWI will need to record key issues arising from the focus groups. Information will be recorded in written form although if necessary, and only if agreed by all attendees, a back-up in the form of a tape recording may be used. It should be noted that any tapes made of proceedings will only be used to cross-reference any written material. Should any of the women in attendance specifically object to this, written recording only will be used.

There will be ground rules for 'no use of surnames' in order to allow the women to feel more comfortable in sharing their information. The NFWI will use the feedback from the focus groups to publish a report to inform the development of the Bill.

All written material and tapes will be held in a locked filing cabinet in the NFWI office. It will not, under any circumstances, be shared with any other agency, nor will it be used for any other purpose than to feed in to the development of the Bill. The NFWI will retain this information until the Bill is finalised. Following this, the material will be destroyed.

8 Use we will make of the consultation material

The NFWI will be producing a report summarising the key findings from the focus groups. Women who attend these focus groups will not have the opportunity to comment on this report due to the tight time frames of the research project. However, the NFWI commit to providing timely feedback to focus group participants by distributing the finished report to the organisations involved in the research, so women can view the outcome of this project if they wish.

Thank you very much for your help.

Please contact the NFWI by emailing s.howes@nfwl.org.uk or calling 0207 371 9300 ext 238.



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