Refuge response to Ministry of Justice  
Transforming Legal Aid: Delivering a more credible and efficient system  
4 June 2013

Introduction

Refuge opened the world’s first refuge in 1971 and is now the country’s largest single provider of specialist domestic violence services. On any one day, around 2,800 women and children access Refuge’s services. These services include:

- Freephone 24 Hour National Domestic Violence Helpline: Run in partnership between Refuge and Women’s Aid
- Refuge accommodation: Refuge runs 45 refuges across 16 local authority areas
- Floating support: Working with women who are either still living with their abuser and/or those who have left their abuser and require support
- Community outreach: Refuge supports women from ethnic minority groups, including Vietnamese and East European women from Bulgaria, Poland and Romania
- Independent advocacy: Refuge’s independent domestic violence advocates operate across London and Coventry and Warrington, supporting women through the civil and criminal courts
- Prevention and education: Refuge works to influence the Government’s response to domestic violence and raise public awareness of the issue

Refuge’s response

Whilst Refuge is pleased that domestic violence cases are to remain within scope for legal aid funding, we are less pleased with the degree of evidence required to obtain it. Domestic violence remains an under reported and under estimated crime. The vast majority of women do not report or disclose the abuse they suffer and so there is often no evidence of the kind required by legal aid, to submit. On this basis, it appears that women who can offer only their own and/or their children’s accounts of the domestic violence experienced, will have to either fund their own case or remain at risk.

Refuge is concerned further that the qualifying evidence from a domestic violence agency includes the requirement that the victim must have stayed in a refuge for 24 hours or more. This excludes women who may

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1 Evidence of criminal convictions for a domestic violence offence; evidence of a police caution for a domestic violence offence; evidence of on-going criminal proceedings for a domestic offence; evidence of a protective injunction; an undertaking given in place of a protective injunction; evidence of being subject to a Multi-Agency-Risk-Assessment-Conference (MARAC); finding of fact of domestic violence by a court; letter from a doctor or nurse confirming injuries or condition consistent with domestic violence; evidence from social services confirming domestic violence; evidence from a domestic violence support organisation confirming a 24 hour stay in a refuge due to domestic violence. [www.justice.gov.uk/legal-aid-for-private-family-matters/legal-aid-divorcing-separating-abusive-partner](http://www.justice.gov.uk/legal-aid-for-private-family-matters/legal-aid-divorcing-separating-abusive-partner)
have used specialist domestic violence services but not completed an overnight stay and/or not made a disclosure to any other agency/professional. This requirement also fails to recognise that severe cuts to domestic violence charities, such as Refuge, means that services are closing and more and more abused women and children must be turned away. Refuge is also concerned that in order to obtain legal aid when a child is at risk of abuse from a domestic violence perpetrator, the evidence required includes only a protective injunction.

Refuge has raised consistently over many years, concerns about the risk of harm to the children from domestic violence perpetrators during child contact visits. We carried out a survey of our clients in September 2011, focusing on their need for and use of, legal aid in family matters; the results formed the basis for our response to the Family Justice Review (attached). At that time, 95% of Refuge’s clients had needed and obtained legal aid to pursue a case in the family court, the majority of which involved child contact proceedings. Child contact remains an important and high risk issue for many of our clients today and we are deeply worried that the proposed changes may place vulnerable women and children in danger.

It is widely accepted that risk increases prior to and following separation from a domestic violence perpetrator and the possibility of lethal harm intensifies. We know that in the UK, around two women are killed by a current or former partner every week; between 2000 and 2012 1,167 women were killed by a current or ex-partner. The children of abused women are at similar risk of homicide or serious harm from domestic violence perpetrators. Analysis of serious case reviews found that domestic violence was a factor in the lives of 63% (n88) children who were seriously harmed or killed between 2009-2011. Faced with these disturbing statistics, surely we should be making it easier, not harder for abused women and children to obtain the protection they deserve?

Consultation questions

Q1. Do you agree with the proposal that criminal legal aid for prison law matters should be restricted to the proposed criteria? Please give reasons.

Refuge agrees with the proposition at 3.4 ‘We believe that criminal legal aid advice and assistance should be available, subject to merits and means, for any prison law case which involves the determination of a criminal charge, or which affects the individual’s on-going detention and where liberty is at stake, or which meets the criteria set out in case law (see paragraph 3.14)’.

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2 www.guardian.co.uk/society/2012/jan/31/domestic-violence-victims-risk-cuts
3 Evidence of criminal convictions for a child abuse offence; evidence of a police caution for a child abuse offence; evidence of on going criminal proceedings for a child abuse offence; evidence of a protective injunction; a finding of fact of child abuse by a court; evidence from social services confirming child abuse; evidence of application for a protective injunction with a prohibited steps order. www.justice.gov.uk/legal-aid-for-private-family-matters/legal-aid-child-at-risk-of-abuse-from-partner
6 Questions relevant to Refuge’s work with abused women and children have been answered only
Refuge does not agree with the proposed exclusions and believes that access to justice must remain the right of all. A considerable proportion of the female prison population have suffered domestic or sexual violence. The links between exposure to domestic violence and or experiences of direct abuse are well known amongst young offenders held in custody. Other vulnerable groups such as those with learning difficulties, mental health issues, as well as those who do not speak English, may also find themselves amongst the prison population. Refuge believes it is vital that all individuals are able to access legal aid and instruct a legal representative of their own choosing, if litigation becomes necessary.

2) Imposing a financial eligibility threshold in the Crown Court

Q2. Do you agree with the proposal to introduce a financial eligibility threshold on applications for legal aid in the Crown Court? Please give reasons.

No. Refuge believes there may be several unintended consequences arising from this proposal, not least that domestic violence perpetrators may be forced to defend themselves if they are unable to access legal aid. This may lead to vulnerable and intimidated witnesses associated with the victim being cross examined by perpetrators during the course of legal proceedings. If abused women are denied legal aid and have no alternative but to represent themselves in child contact proceedings and face their abuser in court, it is likely they will instead come to informal arrangements with perpetrators and send their children to contact visits, placing them both at potential risk.

Q3. Do you agree that the proposed threshold is set an appropriate level? Please give reasons.

No. See Q2.

Q4. Do you agree with the proposed approach for limiting legal aid to those with a strong connection with the UK? Please give reasons.

Refuge does not agree that there is any justification or legal basis on which to deny access to legal aid for individuals without a strong connection to the UK. Denying access to justice for specific groups is grossly

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7 “One in three women in prison report having experienced sexual abuse and over half have suffered domestic abuse. The Bradford Rape Crisis & Sexual Abuse Survivors Service in their annual report (2007-08) noted that 81.7 percent of women they have seen at HMP & YOI New Hall during the year in the provision of their women’s counselling service have suffered domestic violence or sexual abuse.” (2009) Engendering Justice – from Policy to Practice. Final report of the Commission on Women and the Criminal Justice System. The Fawcett Society. www.fawcettsociety.org.uk/wp-content/uploads/2013/03/Engendering-Justice-from-Policy-to-Practice.pdf

8 “anywhere between 33% and 92% of children in custody had experienced some form of maltreatment, and the figure in relation to sexual abuse among girls in custody was particularly noticeable”. (2008) A Literature Review into Children Abused and/or Neglected Prior Custody Day, C., Hibbert, P. Cadman. S. www.yjb.gov.uk/publications/Resources/Downloads/Abused%20prior%20to%20custody.pdf

9 Victims of domestic and sexual violence are considered vulnerable and are protected from cross-examination by defendants/perpetrators. There are no guidelines in the current proposals to indicate how such protections might continue if the number of litigants in person increases in these cases.
unacceptable. Such a proposal can only serve to disadvantage further many of the vulnerable groups\textsuperscript{10} the government has pledged to support and protect.

Refuge believes the proposed conditions - that the applicant is both lawfully resident and has a history of 12 month continuous residence in the UK - have the potential to cause further harm to already traumatised individuals. For example, victims of domestic violence, victims of forced marriage, trafficked persons and vulnerable children are likely to need immediate assistance once their status has been disclosed, unfortunately such disclosure might not occur until after their asylum application has failed.

It is clear in the literature and widely accepted by those working in the field that traumatised women and children do not disclose experiences of abuse easily. Such difficulties can be compounded for non-British nationals who are likely to feel intimidated during initial immigration interviews (especially if the interviewer is male) by feelings of stigma, shame, fear of authority, cultural background and/or fears of reprisals from abusers/traffickers. The psychological effects of trauma can also create difficulties in recounting events relevant to an asylum claim. It is generally accepted that traumatic memory is essentially very different from other forms of memory which we are able to recall and convey in verbal form.

“The characteristic of traumatic memories is that they are fragments, usually sensory impressions; they may be images, sensations, smells or emotional states.....These types of memories are usually not evoked at will as normal memory can be searched for and produced, but they are provoked by triggers, or reminders of the event. This means that when someone is interviewed and asked about an experience that was traumatic, and has only, or largely, memories of this fragmentary type, they are unlikely to be able to produce a coherent verbal narrative, quite simply because no complete verbal narrative of their experience exists\textsuperscript{11}”

This difference in the way that traumatic memories are processed, stored and recalled presents particular difficulties during interview or assessment as “The interviewee will report only fragments and impressions, which are likely, incidentally, to evoke the feelings that were felt at the time of the original experience – which may be fear, distress, shame, humiliation, guilt or anger\textsuperscript{12}.” These accompanying feelings are likely to create further difficulties, in that the interviewee may revert to established coping mechanisms, such as detachment and avoidance in order to defend against the overwhelming power of these feelings. Given the combination of psychological defence, fear of authority and feelings of shame suffered by many abused women and children seeking asylum, it is little wonder so many experience difficulty in disclosing fully their abusive experiences

\textsuperscript{10} adult victims of domestic violence; children of domestic violence perpetrators: victims of forced marriage who have been brought to the UK; parents of children who are abducted from the UK; parents of children who are involved in care proceedings; women who are in the UK lawfully (including migrant domestic workers, European citizens and their family members); British women who have fled abusive relationships in other countries and who are returning to the UK to seek safety; Children of women who have fled abusive relationships in other countries and are returning to the UK to seek safety; Stranded spouses (women married to British men who are coerced or deceived into leaving the UK and then prevented from returning); women who have been trafficked for sexual and other forms of exploitation; abused women and or children who are failed asylum seekers; age disputed failed asylum seekers; babies aged below one year

\textsuperscript{11} Herlihy, J & Turner, S (2006) Should discrepant accounts by asylum seekers be taken as proof of deceit?

\textsuperscript{12} Ibid
during initial immigration interviews, unfortunately this can result in a failure to grant asylum. Refuge is further disturbed by the proposal at 3.57 that successful asylum seekers, who may have waited months or even years before such status is granted, must wait a further 12 months to obtain legal aid for any new civil matters.

Refuge also has some concerns about the status of babies under one year, who may need their own representation to secure protection from a domestic violence perpetrator. Does the one year test mean that all babies, below the age of one year, will not be eligible for legal aid? And what of British children born abroad whose mothers have fled to the UK to escape a domestic violence perpetrator? Would they have to wait 12 months after arriving in the UK before they were able to access legal aid? Surely the government does not wish to deny these individuals access to justice and protection?

The idea that any legal challenge to a decision of the State, regarding for example an erroneous age assessment, failed asylum claim or refusal to accept that an individual is a victim of trafficking or domestic violence, can only be made after one year of continuous UK residence is unacceptable, not least because once a year has elapsed, the applicant will be out of time to bring a claim under Judicial Review, which currently has a limit of 3 months, or under the ECHA legislation, which currently has a limit of 1 year.

Q5. Do you agree with the proposal that providers should only be paid for work carried out on an application for judicial review, including a request for reconsideration of the application at a hearing, the renewal hearing, or an onward permission appeal to the Court of Appeal, if permission is granted by the Court (but that reasonable disbursements should be payable in any event)? Please give reasons.

NO. The process of Judicial Review is vitally important in challenging any potentially unlawful actions and/or decisions of the State. JR is known to be a very costly process, as such legal aid is necessary for the majority of ordinary citizens who wish to bring a case against the State. This proposal jeopardises payment to lawyers for work on cases conceded by the local or public authority prior to permission being sought, as well as cases which are refused permission. If providers are only paid for work carried out on an application unless and until permission for JR is granted, they may increasingly refuse to take on cases which at first sight appear weak or borderline. This is likely to include many of the vulnerable groups referred to above.

Q6. Do you agree with the proposal that legal aid should be removed for all cases assessed as having “borderline” prospects of success? Please give reasons.

NO. Cases involving domestic violence and other forms of violence and abuse against women and children can be complex and this complexity tends to increase when combined with additional issues such as
immigration. Add to this the difficulty described above in obtaining full and detailed disclosures from victims at an early stage and it seems unlikely that all available evidence in the case will have been disclosed and or uncovered at the permission stage.

[Ends]