



30th April 2014

Refuge submission to the Justice Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Introduction

Refuge opened the world's first safe house for women and children fleeing domestic violence in 1971. We are now the country's largest single provider of specialist domestic violence services and the leading voice in the campaign against domestic violence, supporting 3,000 women and children on any given day. Our services include a network of refuges, community outreach, child support workers, Independent Domestic Violence Advocacy, the National Domestic Violence Helpline (run in partnership with Women's Aid) and the Gaia Centre, a pioneering service which supports victims of all forms of gender violence. As well as providing life-saving and life-changing services Refuge also campaigns for improvements to national policy and legislation to better meet the needs of abused women and children. Refuge played an integral role in the recent HMIC inspection of the national police response to domestic violence, and we continue to work alongside a number of families who have lost loved ones to this horrific crime to campaign for urgent improvements to be made to the police and state response to domestic violence.

Executive summary

Refuge is encouraged that the Government recently extended the evidential requirements for legal aid applications. However, we are concerned that barriers still exist which will prevent women from accessing legal aid, and we recommend that action is taken to further widen the 'gateway' to legal aid for victims of domestic violence (specific recommendations are included below). 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 rests heavily on demonstrating direct child abuse – a strategy which fails to recognise that witnessing domestic violence is itself a form of harm to children (and is enshrined in legislation as such).

To what extent are victims of domestic violence able to satisfy the eligibility and evidential requirements for a successful legal aid application?

New legal aid reforms were implemented in April 2013. One year on, Refuge is concerned that many victims of domestic violence are still unable to satisfy the eligibility criteria for a successful legal aid application. Findings from a survey published by Rights of Women in August 2013 showed that in the first four months after the implementation of the 'domestic violence evidence gateway', 50% of respondents did not have the prescribed forms of evidence to access family law legal aid, and that 60.5% of respondents took no action in relation to their family law problem as a result of not being able

to apply for legal aid¹. An updated version of this survey, carried out between December 2013 and March 2014, found further evidence of significant barriers preventing victims of domestic violence from accessing legal aid².

Anecdotal evidence from Refuge's own service users also indicates that women who have experienced domestic violence are struggling to access legal aid under the new reforms. A small sample of case studies are included below in order to illustrate this problem (please note: all names have been changed).

Mary

- Mary sought support from Refuge in 2013 having been stalked, abused and harassed by her ex-husband. She had left him more than 5 years ago but had never divorced
- He had threatened to "snap her jaw in two" and sent her 117 abusive messages and calls in three days before she accessed a refuge
- With Refuge's support Mary immediately applied for an injunction against her ex-husband through NCDV and she was also provided with a solicitor. A non-molestation order was issued which the perpetrator appealed against
- Her solicitor told her that legal aid had been refused because she had not reported the abuse to the police
- Her solicitor questioned this and managed to obtain legal aid for her, but this took several weeks during which Mary was very worried about her safety

Anita

- Anita's immigration status is insecure. She is on 3-year discretionary leave to remain, due to end in August 2014
- She is married to a British citizen who uses their marriage as a means of continuing to controlling her
- She has already left the relationship and wishes to divorce him due to his abusive behaviour
- Anita has been advised by a solicitor that she would not qualify for legal aid for the divorce
- The solicitor stated the reason for this was that "she does not appear to have grounds"
- Anita's Independent Domestic Violence Advocate (IDVA) has asked the solicitor for a fuller explanation
- The solicitor has advised that the divorce costs would be around £1,100 at a minimum

Asha

- Asha contacted Refuge for support in 2013 after experiencing 5 years of abuse from her partner. He had physically abused her, including throwing a remote control and an ash tray at her, and threatened to kill her
- He was extremely controlling and told her how to dress, what to eat, who to speak to
- Asha's partner absconded with their two children after an abusive incident where the police attended and her partner made them believe he was the victim
- The police did not take a statement from Asha and did not take into account that her partner had previous convictions (which she told them). Asha made a complaint to the police about this incident but it was not upheld
- Asha contacted Refuge and one of our IDVAs managed to get a free initial consultation with a solicitor to try and get an emergency residence order and return the children to her care
- She was told that she did not qualify for legal aid because she is in work
- She was told that the case would cost around £20,000 and she would not get her children back for months
- As a result, Asha has resumed her relationship with the perpetrator against her wishes in order to get her children back. She felt that she had no other choice

¹ http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_domestic_violence_II.pdf

² http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_domestic_violence_III.pdf

- Asha has disengaged from the support she was receiving from her IDVA. Her level of risk will have significantly increased because her partner will now know that she felt she had no choice but to return to him

Impact of legal aid reforms

The impacts of women being denied access to legal aid are severe. Women are being left with a stark choice between returning to their abuser and representing themselves in court - or else accumulating debt in order to pay for representation. If abused women who are denied legal aid are forced to represent themselves in child related 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. Or they may return in circumstances where the perpetrator has abducted or retained the children, which would place both the mother and her children at risk.

Recent media reports have also indicated that some women are at risk of being questioned in court by their abusers, who have been forced to represent themselves after being refused legal aid³.

Amended evidence for legal aid

Refuge is pleased that the Government has recently widened the list of evidence required by victims of domestic violence to qualify for legal aid⁴. We are encouraged that action has been taken to address the concerns of many organisations supporting victims of domestic violence, and we will continue to monitor the experience of women and children using our services in order to gauge the impacts of this expanded 'gateway'.

We do, however, have concerns that many victims of domestic violence will still not have access to the prescribed evidence, and that those women who can offer only their own and/or their children's accounts of the domestic violence they experienced will have to either fund their own case or remain at risk. Refuge would emphasise that domestic violence is a significantly under-reported and under-estimated crime. It takes place in private and is often a closely guarded secret for the women and children it affects. The vast majority of women and children do not report or disclose the abuse they suffer to the police or other statutory agencies, and will therefore lack access to many of the forms of evidence prescribed.

Refuge is pleased that some of the criteria relate to evidence that can be submitted by domestic violence support agencies. These include:

- Where women have been referred to a Multi-Agency Risk Assessment Conference as a victim of domestic violence and a plan is in place within the past 2 years

³ <http://www.mirror.co.uk/news/uk-news/woman-grilled-court-alleged-rapist-3434274>

⁴ <http://www.justice.gov.uk/legal-aid-for-private-family-matters/legal-aid-divorcing-separating-abusive-partner#bail>

- They have a letter from a refuge confirming that they stayed there for a period of more than 24 hours within the past 2 years
- They have evidence from a domestic violence support service where they have been referred by a health professional
- They have been unable to access refuge due to insufficient accommodation

Refuge recommends that this criteria be further widened to include a letter from a domestic violence service confirming that the applicant sought and obtained support as a result of experiencing domestic violence, and where she was referred by *any* agency or as a self-referral ie. not just by a health professional. Women are frequently referred to domestic violence agencies by a wide range of agencies, including the police, social services, housing departments as well as health professionals. It is vital that the evidence criteria reflects this, and does not unnecessarily restrict women's access to legal aid by relying solely on referrals from the health sector.

Refuge also believes that evidence from domestic violence support services should be admissible by *any* domestic violence service, not just refuges. These services should include: outreach services, helplines, Independent Domestic and Sexual Violence Advocacy services etc. Refuge echoes the recommendation of Rights of Women that those acting as 'gatekeepers' to legal aid for victims of domestic violence (eg. health professionals, solicitors, social services etc.) should receive specialist training and guidance on domestic violence so that they are properly equipped to assess eligibility and support women seeking legal aid by providing swift and accurate forms of evidence⁵.

Refuge is concerned 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 have used specialist domestic violence services but not completed an overnight stay and/or not made a disclosure to any other agency/professional.

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 required⁶ rests heavily on demonstrating direct child abuse. Only two of the admissible forms of evidence relate to domestic violence experienced by the mother (evidence of a protective injunction and evidence of an application for a protective injunction with a prohibited steps order). This strategy fails to recognise the fact that witnessing domestic violence is *itself* a form of harm to children – and is enshrined in legislation as such. In 2005, for example, Section 120 of the Adoption and Children Act 2002 was introduced, extending the legal definition of 'significant harm' to children to include the harm caused by seeing or hearing the ill treatment of another. In light of this, it is concerning that access to legal aid for cases where a child is at risk of abuse is so dependent

⁵ The 2014 Rights of Women survey found that the most common forms were evidence from a health professional, a referral to a Multi-Agency Risk Assessment Conference (MARAC) and an assessment by social services

⁶ Evidence of criminal conviction for a child abuse offence; evidence of a police caution for a child abuse offence; evidence of police bail for a child abuse offence; evidence of ongoing 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

on proving direct child abuse, and that the other forms of evidence available to women experiencing domestic violence are not available to pursue a case to protect children at risk. Refuge is concerned that this approach places the presumption of contact with fathers (even violent and abusive fathers) before a child's right to safety and protection.

Refuge has raised consistently over many years concerns about the risk of harm to children from domestic violence perpetrators during child contact visits. We carried out a survey of our clients in September 2010, focusing on their need for and use of, legal aid in family matters. 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 legal aid reform 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. 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 2009-2011⁷. 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?

⁷ New Learning from Serious Case Reviews: A two year report for 2009-2011. Brandon M, Sidebotham P, Bailey S, Belderson P, Hawley C, Ellis C, Megson M.