



Women's Access to Justice: a research report

FOREWORD

Women's ability to obtain and benefit from their legal rights and remedies is dependent upon their ability to access legal information, advice and representation. Women experiencing violence may need advice on how they can protect themselves from violence by seeking non-molestation or occupation orders; how to divide joint assets and debts following relationship breakdown; deal with the family home; make arrangements for child contact and organise child maintenance. Women at risk of specific forms of violence against women that disproportionately affect Black, Minority Ethnic and Refugee and asylum-seeking women (such as forced marriage, dowry-related violence and female genital mutilation) may need additional specialist legal advice on these issues.

The provision of legal advice is a fundamental part of the right to a fair trial under Article 6 of the European Convention on Human Rights¹. The United Kingdom (UK) has also 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 1995.² As violence against women is both a cause and a consequence of women's inequality, the ability to access free or low cost legal advice is particularly important for women who are more likely to experience economic disadvantage and be less likely to be able to pay for legal advice. Women may also be prevented from accessing advice services for practical reasons, for example, because they are still living with a perpetrator of violence or are unable to arrange child care. Amnesty International states that "poverty and marginalisation are both causes and consequences of violence against women. It is extremely difficult for women living in poverty to escape

¹ See for example *Airey v. Ireland* [1979] ECHR 3 and *Steel and Morris v. UK* [2005] ECHR 103

² Beijing Platform for Action, Strategic Objective D.1, para 125 (a) and I(1), para 232 (n). The UK is also a State party to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The treaty body responsible for monitoring the UK's obligations under that treaty 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". See, 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*.

abusive situations, to obtain protection and access the criminal justice system to seek redress”³.

This research, which was carried out while the Ministry of Justice consulted on the future of legal aid, makes the case for legal aid as an essential tool for women seeking protection for themselves and their children from violence. What was particularly striking to me when I read respondents’ comments was just how far people’s experiences of legal aid differ from its portrayal in contemporary political debate. Rather than “fat cat lawyers” and “feckless clients”, this research gives voice to individuals who were protected from violence as a result of legally aided advice and representation; professionals who relied on their service-users being able to access legal aid to resolve problems that they could not; and lawyers who worked to secure the rights of some of the most vulnerable and disadvantaged people in our society. Our research also graphically illustrates problems with the current legal aid system, as women who are currently ineligible for advice and representation are prevented from taking action to resolve their legal problems.

The research therefore makes a case for reform, but not the reform that the Ministry of Justice proposes. Rather than a cost-cutting exercise that threatens the very existence of our publicly funded system of justice, what is needed is increased access to legal advice and representation, and with it, increased access to justice. Put simply, without this women will continue to be unsafe, discriminated against and unequal in our society.

Emma Scott
Director

4 February 2011

³ *It's in our hands to Stop Violence Against Women*, Amnesty International, 2004, page 15

CHAPTER 1

INTRODUCTION

The context

Over the past 35 years Rights of Women⁴ has been providing women with free legal advice and information on a range of legal issues, including family law and domestic violence, criminal law and sexual violence and immigration and asylum law. Throughout that time the women who have contacted us have described a range of encounters with the civil and criminal justice systems. Central to those experiences though, has been legal aid.

We know that legal aid is a vital, lifesaving resource. Legal aid enables some women who cannot afford to pay for legal advice and representation to get protection from domestic violence in the civil courts; end a violent or abusive relationship; access welfare benefits and housing support that they are entitled to; protect their children from violence or abuse; and, resolve any immigration law problems that they have. The difference that legal aid can make to a woman's safety cannot be underestimated, as one respondent to our legal aid survey for individual women told us:

“Legal aid enabled me to resolve legally and permanently the issues around violence and emotional abuse which had been plaguing myself and my son for years. Legal aid made it possible for me to stand up to my ex partner with the full weight of the law behind me. Since that time I have experienced no abuse and the contact issues have also been resolved.”

Another respondent said:

“Access to Legal aid gave me the confidence not to remain in a very, very, very, very, very, very, very bad life-threatening marriage. I was able to protect myself as a result. Yes, I was helped by legal aid”.

⁴ Celebrating our 35th anniversary this year, Rights of Women work's to secure justice, equality and respect for all women. Our mission is to advise, educate and empower women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Over the years changes to the way that legal aid has operated have been a cause for concern. Changes to the financial eligibility rules have made it harder and harder for those on a low income to qualify for legal aid⁵ while changes to the contracts given to providers have resulted in a steady decrease in the number of solicitors firms and law centres doing legal aid work. Between 1997 and 2005 the legal aid budget rose from £1.5 billion to £2.1 billion a year, yet spending on civil legal aid fell by 24%.⁶ Research published in 2005 indicated that the number of solicitors' firms and advice agencies undertaking publicly funded family law work had decreased by 25% over four years.⁷ The picture is even worse when it comes to immigration and asylum law as a number of high-quality providers, including those in the not-for-profit sector, have had to stop doing publicly funded work. Last year, for example, saw Refugee and Migrant Justice going into administration and the award winning Devon Law Centre closing. Rights of Women is particularly concerned about civil legal aid as any changes made to the civil legal aid system disproportionately affect women. Figures from the Legal Services Commission show that more women than men apply for civil legal aid.⁸

In 2007 our concerns about the affects of the eligibility rules for civil legal aid on particularly vulnerable women, such as Black, Minority Ethnic, Refugee and asylum-seeking women⁹ (BMER women) lead us to carry out research into this group's experiences of applying for and receiving legal aid in relation to family law issues. Between April and November 2007 we surveyed the views of 327 BMER women who contacted our legal advice lines¹⁰ Survey questions focussed on eligibility for legal aid and the impact of either paying a contribution or being found ineligible. The women surveyed had sought legal advice on a range of family law issues. 35.5% of calls were about domestic violence.¹¹ Of the women surveyed who had applied for legal aid, 41.7% were eligible for either Legal Help and/or Legal Representation. 58.3% of the BMER women applying for legal aid we surveyed were found to be ineligible. When asked about the consequences of not receiving legal aid, a significant proportion of our BMER service users reported that they were either representing themselves (57.8%) or considering

⁵ To see the current financial eligibility rules see www.legalservices.gov.uk/docs/civil_contracting/keycard46.pdf

⁶ Department of Constitutional Affairs, *A Fairer Deal for Legal Aid*, July 2005, page 16.

⁷ Department of Constitutional Affairs, *A Fairer Deal for Legal Aid*, July 2005.

⁸ In 2005/2006 62.2% of 154,153 applications for civil representation in family matters were made by women (and 37.8% by men); Legal Services Commission, *Equalities Annual Report 2005/6*, published June 2007.

⁹ See for example *Poverty pathways: ethnic minority women's livelihoods*, Z Moosa and J Woodroffe, Oxfam and the Fawcett Society, June 2009 and *Women's financial assets and debts*, The Fawcett Society, November 2007.

¹⁰ This research was published in Rights of Women's recent publication *Measuring Up? UK compliance with international commitments on violence against women*.

¹¹ In 2006-7 the top five issues callers to our general legal advice line called about were Children Act proceedings (private), which includes issues such as child contact and residence (45.7%); domestic violence (36.8%); divorce and judicial separation (29.9%); ancillary relief/division of property following relationship breakdown (27%); and child support (6.8%).

doing so (33.3%). Strikingly 45.2% of respondents had been deterred from taking legal proceedings while 14.3% were considering not taking legal action. While this survey focussed on eligibility, the results show that when women are unable to access free or low cost specialist legal advice they are deterred from taking legal action, even if they are experiencing violence.

Legal aid, access to justice and international human rights law

The right to a fair trial is set out in Article 6 of the European Convention on Human Rights (ECHR) which is incorporated into UK law through the Human Rights Act 1998 (HRA). The right to a fair trial and the ability of an individual to access a court and the protection of the law are fundamental human rights which are inextricably linked with the protection of other fundamental human rights, such as the right not to be subject to inhuman and degrading treatment (Article 3 ECHR) and to respect for private and family life (Article 8 ECHR).

The right to a fair trial under the HRA (Article 6(1) ECHR) states that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

Often discussions about Article 6 and legal aid focus on the criminal law; however, the right to a fair trial and legal aid also apply to civil law issues, including areas such as family law. The European Court of Human Rights has determined that the ability to access legal aid is central to this right.

In the case of Airey v Ireland [1979]¹² the European Court of Human Rights held that a failure to provide legal aid to enable a victim of domestic violence to get a judicial separation from her husband violated Article 6(1) ECHR. Importantly, in this case the European Court of Human Rights articulated the important principle that ECHR is not about “theoretical or illusory” rights, but rather these rights must be “practical and effective”. In relation to Article 6 the Court said this principle “is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial”.

The Court recognised that while Article 6 does not require blanket access to legal aid for all civil cases, legal aid may nonetheless be required in certain circumstances to ensure the fairness of proceedings:

¹² Airey v. Ireland [1979] ECHR 3

“Article 6 para. 1... may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.”

Interestingly, the European Court of Human Rights rejected self-representation as a sufficient guarantee of Mrs Airey's human rights:

“The Government contend that the application does enjoy access to the High Court since she is free to go before that court without the assistance of a lawyer. The Court does not regard this possibility, of itself, as conclusive of the matter. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective... It must therefore be ascertained whether Mrs. Airey's appearance before the High Court without the assistance of a lawyer would be effective, in the sense of whether she would be able to present her case properly and satisfactorily.”

The Court went on to examine the proceedings and their complexity and concluded that it was “most improbable” that someone in Mrs Airey's position could effectively present her own case. Therefore in this case it was held that access to legal aid was required to ensure that Mrs Airey's right to a fair trial was not infringed.

In *Steel and Morris v UK* [2005]¹³ the Court acknowledged that restrictions can be placed on the right of access to the courts, provided that these are pursuing a legitimate aim and are proportionate. It therefore, *may* “be acceptable to impose conditions on the grant of legal aid based, inter alia, on the financial situation of the litigant or his or her prospects of success in the proceedings”. However, the Court also noted that legal aid was not required “as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary” (emphasis added). The Court set out several factors for determining whether a civil case requires legal aid in order to meet the standard of a fair trial set out in Article 6:

“The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend inter alia upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity represent him or herself effectively”

13 See *Steel and Morris v. UK* [2005] ECHR 103

The Court went on to examine the complexity of the relevant proceedings before concluding that the denial of legal aid to the applicants deprived them of the opportunity to present their case effectively and contributed to an unacceptable inequality of arms which violated Article 6 ECHR.

Rights of Women believes that it is clear from the case-law discussed that the right to a fair trial in civil cases requires legal aid be provided in complex cases that engage Convention rights. Whilst the Court makes clear that that ability of an individual to represent themselves in simple and straightforward proceedings is sufficient to prevent a breach of their Article 6 rights, it is also clear that legal aid *must* be provided in cases that are complex, where legal aid is necessary to enable effective access to a court. In determining complexity, consideration has to be given not just to the relevant law and procedure, but also to the capacity of the individual concerned.

Proposals for the Reform of Legal Aid in England and Wales

It is against this backdrop that, on 15th November 2010, the Ministry of Justice announced a consultation on the ‘reform’ of legal aid in England and Wales. However, rather than dealing with any of the problems identified above, it is instead proposing radical changes which, if implemented, threaten the very existence of the legal aid system in England and Wales.

The proposals include:

- Changing the legal aid scheme so the legal aid will no longer be available to deal with certain types of legal problems including:
 - (a) private children law (including applications for contact and residence);
 - (b) financial relief (dividing assets on divorce),
 - (c) immigration law (including applications under the domestic violence rule or in relation to someone’s private and family life);
 - (d) housing law and debt (other than when a person’s home is at risk); and
 - (e) welfare benefits law.
- Changing the rules on eligibility to make it more difficult to financially qualify for legal aid (including for those on welfare benefits) and to increase the level of financial contributions to legal fees that have to be made by those who are still eligible.
- Reducing the amounts paid to lawyers.
- Changing how legally aided legal advice is accessed so that women will no longer be able to approach solicitors directly for advice. Instead there will be a single point of access to legally aided legal advice through a telephone line.¹⁴

An evidence based approach

¹⁴ You can read the full consultation here www.justice.gov.uk/consultations/legal-aid-reform-151110.htm. Rights of Women has also produced a guide to the proposals which is available here www.rightsofwomen.org.uk/policy.php.

In order to ensure that Rights of Women's response to the consultation was evidence-based and that our conclusions represented the views of the individual women and the professionals we work with, we decided to carry out further research into both the current operation of civil legal aid and the reform proposals. To do this we created three surveys on legal aid and access to justice which were available to complete on our website between 17 December 2010 and 31 January 2011. We developed specific surveys to capture the experiences of:

- individual women;
- professionals who work on violence against women issues; and,
- legal professionals.

We publicised the surveys using our website, Facebook and Twitter, as well as through our advice line, training and events. The questions asked were open and neutral and in most cases, came with the opportunity to clarify or explain an answer. In total, just under one thousand people responded to our surveys. Their answers make for uncomfortable but inspiring reading, explaining as they do, the barriers women face leaving violent and abusive relationships and how receiving legal advice and representation can make the difference between acting to resolve a legal issue or not. The following chapters set out our findings and make an unanswerable case for legal aid.

CHAPTER 2

SURVEY OF INDIVIDUAL WOMEN

The first survey that we developed was designed to capture the views of individual women. They were asked for their views on the current legal aid system, how they had resolved legal problems that they had and what they thought about the Ministry of Justice's proposals for the reform of legal aid. In addition to asking about whether or not they had experienced violence, we asked respondents for their views on, and experiences of, mediation and self-representation.

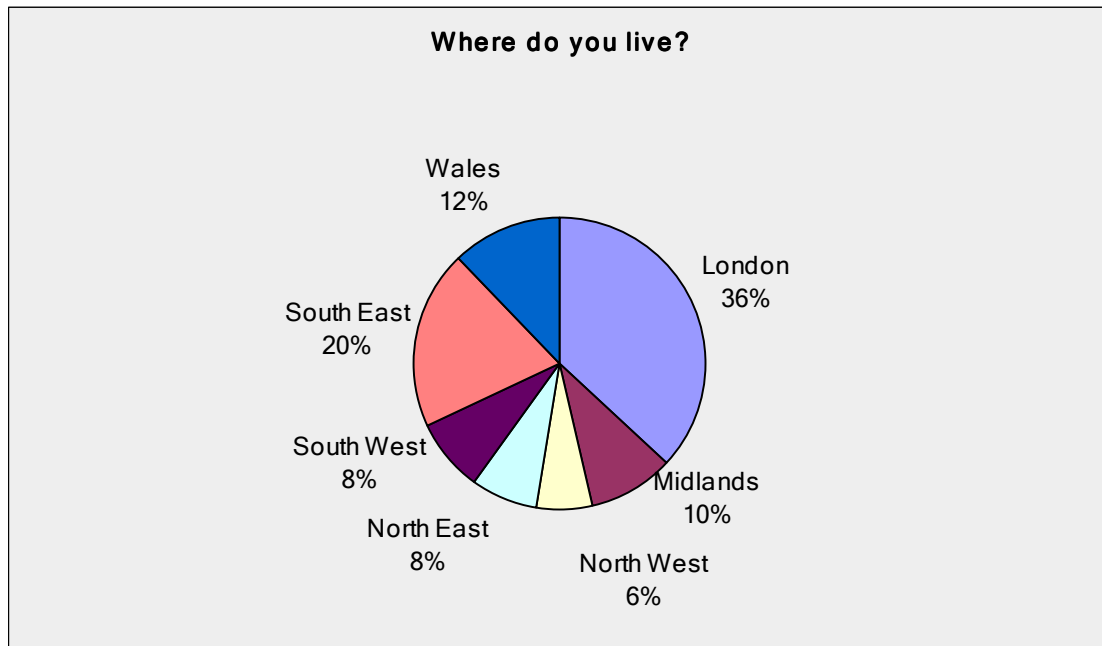
The respondents

336 women answered our survey for individual women. The diversity of respondents reflected the diversity of our service users as respondents came from a variety of backgrounds across England and Wales. A considerable proportion of respondents identified as having more than one protected characteristic. This is significant because under the existing gender, race and disability duties and the new Public Sector Equality Duty that will come into force in April 2011, the Ministry of Justice must pay due regard to the impact that the proposals will have on different equality groups. The Equality Act 2010 places obligations on public authorities, such as the Ministry of Justice, to have "due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it."¹⁵ In particular this involves having due regard to the need to -

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

¹⁵ For the purposes of the Equality Act 2010, the relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Respondents came from a diverse range of backgrounds:



How would you describe your ethnic origin?

White

Answer Options	English	Other British	Irish	Any other White background (please type in other)	Response Count
Choose one	129	32	9	20	190

Asian or Asian British

Answer Options	Indian	Pakistani	Bangladeshi	Any other Asian background (please type in other)	Response Count
Choose one	5	0	0	1	6

Black or Black British				
Answer Options	Caribbean	African	Any other Black background (please type in other)	Response Count
Choose one	2	4	1	7

Chinese		
Answer Options	Chinese	Response Count
Choose one	1	1

Mixed					
Answer Options	White and Black Caribbean	White and Black African	White and Asian	Any other Mixed background (please type in other)	Response Count
Choose one	0	1	2	6	9

					Question Totals
other (please specify)					36
answered question					212
skipped question					124

How would you describe your sexual orientation?		
Answer Options	Response Percent	Response Count
Heterosexual	86.4%	190
Bisexual	7.7%	17
Lesbian	5.9%	13
answered question		220
skipped question		116

Do you consider yourself as having a disability?		
Answer Options	Response Percent	Response Count
Yes	14.5%	32
No	85.5%	188

<i>answered question</i>	220
<i>skipped question</i>	116

Violence against women

Violence against women is:

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 in private life.

This definition, adopted by the Government,¹⁶ comes from the United Nations (UN) Declaration on the Elimination of Violence against Women (1993).¹⁷ It includes domestic violence (including physical, sexual and psychological violence), sexual violence, sexual exploitation, forced marriage, female genital mutilation, trafficking and so-called ‘honour-based’ violence. The definition applies regardless of the immigration status of the woman concerned.

As Rights of Women is particularly concerned about the impact of the proposals on women who are experiencing, or at risk of experiencing violence we first asked the respondents whether or not they had experienced violence.

Have you ever experienced any violence?		
Answer Options	Response Percent	Response Count
Yes	57.7%	191
No	42.3%	140
<i>answered question</i>		331
<i>skipped question</i>		5

For those who answered ‘yes’ to question 1, we asked what of violence the respondent had experienced.

What forms of violence have you experienced? Tick as many as apply.		
Answer Options	Response Percent	Response Count
Child abuse	25.3%	44
Domestic violence / domestic abuse	81.6%	142
Forced marriage	0.6%	1

¹⁶ See HM Government, Call to End Violence against Women and Girls, Strategic Vision, November 2010, p5.

¹⁷ Declaration on the Elimination of Violence against Women, adopted by UN General Assembly resolution No. 48/104, 20 December 1993.

Female genital mutilation	1.1%	2
Harassment	42.0%	73
So-called 'honour-based' violence	0.0%	0
Sexual exploitation (e.g. prostitution and pornography)	2.9%	5
Sexual harassment in the workplace	11.5%	20
Sexual violence	31.0%	54
Stalking	21.3%	37
Trafficking	0.0%	0
other (please specify)		8
answered question		174
skipped question		162

Respondents to "other" were invited to explain what violence they had experienced, respondents disclosed experiencing:

- rape;
- sexual harassment in a university;
- violence from the police; and
- witness harassment / intimidation.

The high level of gender-based violence experienced by respondents is in part explained by self-selection, as the surveys were on our website and so are were likely to be encountered by women searching for legal information and advice on violence against women issues. However, the fact that such a high proportion of women looking for legal advice and representation do identify as having experienced violence illustrates the vulnerability of the legal aid client group as a whole and the importance of legal aid and access to the courts as a remedy for those experiencing gender-based violence.

Women who stated that they had experienced violence were also asked if they had reported that violence to the police or applied to the courts for a domestic violence injunction (such as a non-molestation order or occupation order). We asked this question because under the Ministry of Justice's proposals, having a domestic violence injunction or a conviction for a domestic violence offence are the "gateways" which will enable women experiencing violence to receive legal aid for related family law proceedings.

Did you report that violence to the police or apply to the courts for a domestic violence injunction (such as a non-molestation order or occupation order)?		
Answer Options	Response Percent	Response Count
Yes	46.6%	82
No	53.4%	94
Please comment		58
answered question		176

All respondents were asked for their comments on this question. Respondents made a range of comments including:

“I did not realise help was available and did not believe the treatment i was suffering warranted help- I blamed myself”

“Reported to the police. Harassment notice given but police do not act upon it after if further reports are made. When claims of domestic abuse are made to the police if the abuse is not physical the police are not interested.”

“My partner was emotionally, physically and sexually abusive. He would tell me that the police would not take me seriously and it would be his word against mine. He made much of the fact that husbands are never convicted of rape of their wives in this country.”

“I'm a 46-yr old mum of 3; I've always felt that probably no-one would believe me ("why are you still with him?" etc, etc).”

We asked all respondents whether or not they thought that a woman experiencing violence should represent herself in legal proceedings and why they held the view that they did. 89% of respondents did not think a woman experiencing violence should represent herself in court.

Do you think that a woman experiencing violence should represent herself in legal proceedings? This may be, for example, because she is no longer financially eligible for legal aid, because she does not have sufficient evidence of the domestic violence she is experiencing (for private children law or financial relief cases) or because legal aid is no longer available for this area of law (employment or immigration law).

Answer Options	Response Percent	Response Count
Yes	4.1%	10
No	88.5%	216
Don't know	7.4%	18
Please comment		122
answered question		244
skipped question		92

Respondents comments included:

“Speaking from personal experience, at the times when i needed help the most, i don't think i would have been mentally/emotionally strong enough

to represent myself as it is more often the case that at times like this you are at your lowest point and often have very little resolve left which is something i know due to past experiences you need plenty of. Women should not be expected to confront (which they obviously would in some cases) their abusers, if this were the case i fear many woman would be unable to do so. Either way, i think this would have a long reaching affect on them and their children.”

“I couldn't represent myself at all. I could not face my ex-husband, who had declined legal aid because his solicitor was a woman. I could never endure 18 months of debate with him. Even with my barrister and his assistant present, he was intimidating.”

“I was absolutely terrified in court - my soon to be ex husband was present and I would have found it very difficult if not impossible to speak. I imagine this must be the case for many women.”

We then asked what criteria respondents thought should be developed to ensure that women experiencing domestic violence are able to receive legal aid for related family law proceedings (such as private children law and financial relief proceedings). 151 respondents answered this question (185 did not). Respondents made a number of suggestions, the majority of which concerned the provision of supporting evidence from a professional in the statutory sector to whom a woman had disclosed experiencing violence (such as a GP or social worker) or from a specialist violence against women organisation. Respondents suggestions included:

“I guess evidence, but I didn't report anything to police so there was no evidence from them. However I did report to my GP and a charity org, so this should be sufficient. They also need to ensure that a woman has the means to represent herself (i.e. language, no physical or mental health problems), but I believe anyone experiencing any form of violence would find it difficult to represent themselves. As it stands there is a financial means test, this should still be the case.”

“Evidence of having contacted services in relation to violence. This could include contacting support services such as Women's Aid or having called the police. The threshold for having perpetrators convicted is too high to be met in many cases.”

“A woman who has evidence of reporting violence to police, to support services (Women's Aid, Social Services, MARAC attendance) should be supported with legal aid.”

“Her own statement or a referral from a specialist women's organisation.”

Other respondents rejected the idea of introducing a requirement for evidence of domestic violence:

“The proposal to make DV a reason for accessing legal aid risks the perverse outcome of perpetuating the culture of disbelief about violence against women. I think the only solution is to retain a much broader entitlement to legal aid in relation to divorce especially access to children.”

Respondents were then asked whether they thought mediation was appropriate in domestic violence cases. 66% of respondents thought that mediation was not appropriate.

Do you think mediation with a former partner on issues following relationship breakdown (such as child contact or financial issues) is appropriate in domestic violence cases?		
Answer Options	Response Percent	Response Count
Yes	17.5%	42
No	66.3%	159
Don't know	16.3%	39
Please comment		132
answered question		240
skipped question		96

Respondents gave a variety of reasons for their answer including:

“Abuse is about manipulation and pressure and the victim will know what the perpetrator means when he says or does certain things to do this without the mediator being aware of what is going on no matter how highly trained they are in "picking things up””.

“In the vast majority of cases this will not be appropriate. Mediation works well when there is an equal power balance between the parties and the woman is not intimidated.”

“Frightened and scared to confront partner even with someone else there.”

“Having to enter into dialogue with an abusive ex partner is highly dangerous and will lead to further abuse for the woman and her children. The perpetrator will use the mediation to continue to control his victim.”

“no, my own experience ended up with me being abused further”

The telephone helpline

Other proposals in the consultation relate to the introduction of a telephone helpline as a single gateway for all civil legal aid cases. The consultation suggests that many applicants would prefer to get advice over the telephone rather than in person. We asked our respondents whether or not this was the case and 67.5% felt that they would not feel confident talking to an operator about their legal problem.

Would you feel confident talking to an operator (not a lawyer) about any legal problem that you had?		
Answer Options	Response Percent	Response Count
Yes	15.0%	35
No	67.5%	158
Don't know	17.5%	41
Please comment		115
answered question		234
skipped question		102

The majority of those who commented were concerned about the ability of women to disclose violence and other discrimination to someone unknown and possibly untrained, over the phone. As one responded said:

“Difficult to trust someone on phone with highly personal detail such as sexual abuse.”

Another stated that:

“Some women do not have access to a phone and others would not consider this a safe option. For some women, being able to choose a female lawyer is imperative.”

The ability of women to be able to use the helpline was also questioned by one caller who said:

“i maybe wouldn't explain my situation properly whereas a solicitor asks you specific questions in order to assess your situation”.

We then asked whether or not the respondent would be able to fully understand and act on legal advice that they received over the telephone (rather during a face-to-face meeting with a solicitor) and how the respondent would most like to receive legal advice.

Do you think you would be able to fully understand and act on legal advice that you received over the telephone (rather than during a face-to-face meeting with a solicitor)?

Answer Options	Response Percent	Response Count
Yes	14.8%	35
No	65.7%	155
Don't know	19.5%	46
Please comment		100
answered question		236
skipped question		100

Respondents' comments included:

"I wouldn't be confident that I'd taken everything in. It seems okay when you are talking to someone but once the phone is put down your back on your own. It's not a time when you feel confident about doing anything, let alone something as complex and important (if your children are at stake). Advice is one thing, taking the action is another."

"A lot would depend on my mental well being. The trauma of fleeing my home and living in a woman's refuge with my children, etc on top of the mental and physical scars of DV would weigh heavily on how I would respond to legal advice over the phone."

The ability of applicants to exercise choice was also emphasised by many respondents, including one who said:

"depends on various things - the nature of the problem and the ability of the adviser. It should be up to the person needing the advice, not the government!"

The vast majority of respondents, 93%, said that they would most like to receive legal advice in person from a solicitor or other qualified advisor.

How would you most like to receive legal advice (tick one)		
Answer Options	Response Percent	Response Count
In person	93.2%	220
Over the phone	2.5%	6
Via the internet	2.5%	6
Information pamphlets	1.7%	4
answered question		236
skipped question		100

We then asked respondents how would they would rate the impact of not being

able to contact a solicitor or advisor directly (because they had to go through the helpline) on a scale of 1-5 with 1 being no impact and 5 being a very significant (negative) impact.

How would you rate the impact of not being able to contact a solicitor or advisor directly (because you have to go through the helpline)?						
Answer Options	No impact	Some impact	Significant (negative) impact	Very significant (negative) impact	Rating Average	Response Count
Not being able to contact a solicitor or legal advisor directly will have	1	23	71	139	3.49	234
answered question						234
skipped question						102

Strikingly, 91% of those surveyed thought that being able to access face-to-face advice from a solicitor was extremely important, particularly for women experiencing violence.

How important is being able to access face-to-face, specialist, legal advice to women, particularly women experiencing violence?		
Answer Options	Response Percent	Response Count
Extremely important	91.4%	212
Important	8.2%	19
Not very important	0.4%	1
Not important at all	0.0%	0
Please comment		82
answered question		232
skipped question		104

To gain an understanding of where women would go for advice if they were unable to speak to a legal aid solicitor we asked where applicants would go for advice if legal aid was no longer available for the problem that they had or if they were ineligible for it.

If you were unable to get legal advice from a legal aid solicitor where would you go for advice? (Tick all that apply.)

Answer Options	Response Percent	Response Count
Citizens Advice Bureau	83.3%	194
Children's centre	23.2%	54
Law Centre	50.2%	117
Member of Parliament (including MWAG)	16.3%	38
Refugee Community Organisation	9.9%	23
Rights of Women	51.1%	119
Specialist violence against women organisation	65.7%	153
Specialist disability organization	9.9%	23
Specialist BMER (Black, Minority Ethnic, Refugee or asylum-seeker) organization	7.7%	18
Specialist age organisation (e.g. for young people or older people)	9.4%	22
Specialist sexual orientation organisation	9.4%	22
Other specialist organisations (such as Shelter or Cymorth Cymru)	17.2%	40
other (please specify)		22
	answered question	233
	skipped question	103

It is of concern that so many applicants would contact a Law Centre or Citizens Advice Bureau, given the financial dependence of those organisations on legal aid contracts and statutory funding. Birmingham Citizens Advice Bureau announced in January 2011 that it faces the closure of its five branches due to the withdrawal of statutory funding.¹⁸ Similarly, the dependence of respondents on specialist violence against women organisations shows the importance of those organisations to women experiencing violence, but not how those organisations would be able to meet the increased demand for their services. In relation to Rights of Women for example, we know that we are already unable to meet the high demand for our services. Our advice lines supported 1573 women in 2009-2010. However, according to our BT Call Monitoring statistics in 2007 we received over 90,000 attempted calls. In 2009-2010 we had nearly 259,000 visits to our website and nearly 242,000 downloads of our free legal information. Rights of Women would therefore be unable to meet the increased demand for our advice line services which the proposals, if implemented, would cause.

Most alarming however, was the respondent who when asked to specify which "other" place she would go to for advice simply stated:

"I would not know where to go".

¹⁸ www.bbc.co.uk/news/uk-england-birmingham-12279218

Respondents who had experience of legal problems to resolve

The next part of the survey for individual women focussed on those who had experience of a legal problem to resolve. 64% of respondents to the survey had experience of a legal problem and 56% of those received legal aid to deal with it. Respondents had experience of a range of legal problems that they had received legally aided advice and/or representation with.

Please tick the area(s) of law that you received legally aided help with		
Answer Options	Response Percent	Response Count
Asylum	0.0%	0
Asylum-support law (financial support for women asylum seekers)	1.2%	1
Criminal law (reporting offences to the police, support through criminal proceedings)	17.6%	15
Criminal Injuries Compensation	3.5%	3
Debt and financial issues	8.2%	7
Domestic violence injunctions (non-molestation order, occupation order, forced marriage protection order or restraining order)	37.6%	32
Divorce or civil partnership dissolution	41.2%	35
Employment	1.2%	1
Housing	18.8%	16
Immigration (including the domestic violence rule, regularising immigration status and the rights of EEA nationals and their family members)	2.4%	2
Private children law (e.g. child contact, residence or parental responsibility)	45.9%	39
Public children law (local authority action in relation to children)	3.5%	3
Relationship breakdown of cohabittees (whether opposite-sex or same-sex relationships)	14.1%	12
Welfare benefits	8.2%	7
other (please specify)		6
answered question		85
skipped question		251

Many of those who had received legal aid had to pay a financial contribution to it:

If you received legal aid, did you have to pay a financial contribution to your case or did you have to pay the statutory charge from your settlement?		
Answer Options	Response Percent	Response Count
Yes	35.3%	30
No	51.8%	44
Don't know	12.9%	11
answered question		85
skipped question		251

It is clear that the impact of making a financial contribution had a very significant negative impact on the majority of those who had to pay it:

If you did have to pay a financial contribution or pay the statutory charge how would you rate the impact. The impact could relate to any aspect of your financial security.						
Answer Options	No impact	Some impact	Significant (negative) impact	Very significant (negative) impact	Rating Average	Response Count
There has been	5	11	16	32	3.17	64
answered question						64
skipped question						272

Women who were not eligible for legal aid also had a range of different legal problems.

What area(s) of law did you have a problem with? Please tick all those that apply.		
Answer Options	Response Percent	Response Count
Asylum	1.7%	1
Asylum-support law (financial support for women asylum seekers)	0.0%	0
Criminal law (reporting offences to the police, support through criminal proceedings)	12.1%	7

Criminal Injuries Compensation	6.9%	4
Debt and financial issues	15.5%	9
Domestic violence injunctions (non-molestation order, occupation order, forced marriage protection order or restraining order)	13.8%	8
Divorce or civil partnership dissolution	32.8%	19
Employment	27.6%	16
Housing	24.1%	14
Immigration (including the domestic violence rule, regularising immigration status and the rights of EEA nationals and their family members)	5.2%	3
Private children law (e.g. child contact, residence or parental responsibility)	24.1%	14
Public children law (local authority action in relation to children)	0.0%	0
Relationship breakdown of cohabittees (whether opposite-sex or same-sex relationships)	10.3%	6
Welfare benefits	17.2%	10
answered question		58
skipped question		278

Given that the intention of the proposals is to reduce the number of people who will be able to get legal aid, it is telling that not receiving legal aid (under the current legal aid system) had a significant or very significant negative impact on the health, safety and wellbeing of the majority of respondents.

How would you rate the impact of not receiving legal aid? The impact could relate to your health, safety and wellbeing.						
Answer Options	No impact	Some impact	Significant (negative) impact	Very significant (negative) impact	Rating Average	Response Count
There has been	4	12	14	30	3.17	60
Please comment						21
answered question						60
skipped question						276

Of most concern is the number of women who were deterred from taking any action, or took no action in relation to their legal problem because they were ineligible for legal aid. This is particularly worrying because, as is set out above, 58% of respondents identified as having experienced violence.

Has not receiving legal aid lead to the following? Please indicate yes or no to each.			
Answer Options	Yes	No	Response Count
You paying privately for advice and representation	33	21	54
You getting advice or representation from another source (such as a charity/law centre/CAB)	27	20	47
You representing yourself	21	24	45
You being deterred from taking any action about the problem	36	16	52
You taking no action in relation to the problem	21	23	44
other (please specify)			0
	answered question		62
	skipped question		274

Respondents who were unable to access legal aid had a variety of experiences which were overwhelmingly negative. While some respondents were able to represent themselves, others took no action:

“Affecting my health and mental well being. Only at the start of the proceedings so haven't dealt with it fully yet. It has left me feeling scared and emotionally not well having to deal with this myself.

“I gave up and did not pursue the matter”.

“As above. I used all of my personal resources until I had none. I was forced to resign from work as he also worked there and returned. I left my home and lodged with a parent in another county...”

In contrast, those who received legal aid were able to make progress with their legal problems, although having to pay a contribution caused significant hardship for many applicants:

“I left a controlling and abusive ex-husband who it then transpired was a child abuser something for which he was later prosecuted and sentenced to 10 years imprisonment. I had 2 young children at the time, I then had to spend about 6 years fighting his various applications for contact with our children, despite the severity of the charges he was convicted for. Without the support of legal aid I would have found it impossible to fund my legal bills. This would have placed my two young daughters at a very real risk of future abuse.”

This case is particularly telling in the light of the Ministry of Justice's proposed "gateways" for domestic violence and relating family law proceedings as the respondent had no evidence of the risk that the perpetrator posed to her and her children until after she had separated from him. Cases like these show the complexity of some of the legal and practical issues involved in domestic violence cases and the importance of individuals being able to access legally aided advice and representation.

Other respondents commented:

"I received partial legal aid when going through a court case regarding domestic violence, and family issues, child contact etc. I paid a substantial contribution towards it, and being a single parent, who had experienced domestic violence, I thought the fact I had to pay disgusting. I was after all, a victim of abuse. He on the other hand, was represented by a charity, and paid nothing. The amount I paid reduced my monthly income substantially, in fact, I paid more in contributions than my ex partner paid in child support. It was a farce, and put myself and my son in serious financial hardship."

"I received legal aid for my divorce, my financial settlement, and contact arrangements for the children, my case was very very complex, with the court of protection involved, it took almost 5 years to resolve, how could an operator deal with that."

"I have and am currently still getting it. Started off with DV...then contact orders, residence orders, several restraining orders....been 3 and half years of legal aid. I was on Income Support. I did a few months of part-time work and am being assessed on this and if it will affect my legal aid certificate."

"If I had not had the help I received from my solicitor, I would not be here today, I feel that legal aid is important especially to women trying to leave violent partners or seeking orders from the court to protect themselves and their children"

To conclude our survey of individual women we asked respondents what they thought the overall effects of the proposals, if implemented, would be. None of the 179 women who answered this question identified any positive effects. Their answers should make difficult reading for the Ministry of Justice:

"A devastating effect. It will be a dangerous situation for abused women, they will stay with abusive partners or they will flee a home when they are the ones that deserve to stay in it. Their children will be forced to move to refuge's whilst the perpetrator is free to remain in the home. Family judges

won't have the capacity and neither will the court staff to be dealing with so many litigants in person.”

“Whilst not all women who are abused are impoverished, all women who are abused have the right to protect themselves and their children, indeed they have a duty to remove their children from harm's way. Knowing that there exists a system that allows them to take legal action and ask for legal protection at minimum cost, offers women a lifeline, and their children the chance of a better life. Removing that system allows the abuser to continue to terrorise vulnerable adults and children, and therefore the system becomes equally abusive as the perpetrator.”

“The proposals are shocking and demonstrate a complete lack of understanding of the issues and specific needs of women going through domestic violence. One of the major factors which keeps women in violent relationships is their lack of financial independence. These proposals will only worsen the situation for women whose only hope of freedom from violence is being able to get financial support to help them take legal action. It will further entrench domestic violence in our society and presents male perpetrators with yet another excuse for getting away with violence.”

“The legal aid cuts will have the effect of restricting access to justice which means fewer women will seek legal protection. Already, the number of cases reported does not accurately reflect the number of instances of violence. Making it more difficult and expensive to seek that legal help will reduce the number of cases further. By cutting Legal Aid the government is silencing women and breaching their right to a fair hearing.”

“These proposals if implemented will result in deaths of women and children.”

CHAPTER 3

SURVEY OF PROFESSIONALS WHO RESPOND TO VIOLENCE AGAINST WOMEN

In addition to seeking the views of individual women on legal aid, Rights of Women thought it was important to ask professionals who work on violence against women issues (such as workers in a women's refuge or social workers) for their opinion of both how the current legal aid system operates and what effect the proposals, if implemented, would have. The views of these professionals is important as they are often on the 'front line' when it comes to identifying and responding to violence against women and because they understand how legal proceedings go alongside other non-legal remedies for women experiencing violence. This group, who are not funded by legal aid and come from both the statutory and voluntary sectors, are also able to reach impartial conclusions on the reforms and their consequences, as unlike the individuals or legal professionals surveyed, they have no personal or organisational interest in the legal aid system.

Rights of Women developed this survey in partnership with Welsh Women's Aid.¹⁹ The professionals who responded to the survey came from a variety of backgrounds, work across England and Wales and respond to a number of different forms of gender-based violence.

In what area do you work?		
Answer Options	Response Percent	Response Count
Statutory Sector (e.g. police officer, social worker, domestic violence / abuse coordinator, teacher)	29.0%	103
Specialist voluntary sector violence against women organisation (e.g. outreach worker or refuge worker for Women's Aid or another women's organisation, IDVA or ISVA, domestic violence or abuse co-ordinator).	55.8%	198
Other voluntary sector organisation (e.g. Victim Support)	15.2%	54
	answered question	355
	skipped question	12

¹⁹ www.welshwomensaid.org

Respondents were invited to say which organisation they worked for and included:

- workers of local Women's Aids across England and Wales (including staff who worked with women in refuge and outreach / floating support workers);
- workers in Rape Crisis organisations across England and Wales;
- workers from specialist BMER organisations including Southall Black Sisters, the Latin American Women's Rights Service, Apna Haq and BAWSO as well as staff from Refugee Community Organisations;
- workers from organisations who respond to specific forms of violence against women, including the POPPY Project and Kalayaan;
- domestic violence co-ordinators and the chairs of local Multi Agency Risk Assessment Conferences;
- workers from other organisations that work on violence against women issues, such as Victim Support and children's charities;
- police officers;
- social workers;
- CAFCASS officers (the Children and Family Courts Advisory Service); and,
- probation officers.

The range and depth of knowledge and expertise of the respondents to this survey is therefore considerable and gives a breadth of insight into gender-based violence and the legal and non-legal responses to it.

What region does your organisation provide services in?		
Answer Options	Response Percent	Response Count
London	31.7%	84
Midlands	11.7%	31
North West	15.8%	42
North East	13.6%	36
South West	13.2%	35
South East	30.9%	82
Wales	21.5%	57
<i>answered question</i>		265
<i>skipped question</i>		102

What forms of violence against women do you respond to in your work? Tick as many as apply.		
Answer Options	Response Percent	Response Count
Child abuse	60.5%	222
Domestic violence / domestic abuse	95.9%	352

Forced marriage	61.0%	224
Female genital mutilation	36.5%	134
Harassment	67.8%	249
So-called 'honour-based' violence	58.3%	214
Sexual exploitation (e.g. prostitution and pornography)	48.2%	177
Sexual harassment in the workplace	20.2%	74
Sexual violence	75.5%	277
Stalking	56.4%	207
Trafficking	30.8%	113
Other (please state)	4.4%	16
other (please specify)		19
answered question		367
skipped question		0

Respondents who specified other forms of violence referred to women who self-harmed or were at risk of suicide and women who abused substances (including alcohol and drugs) as a result of the violence that they had experienced.

Domestic violence and legal aid for related family proceedings

The first questions we asked were designed to see if the “gateways” proposed by the Ministry of Justice to determine when victims of domestic violence should be entitled to legal aid in related family proceedings (such as children law or financial relief proceedings) would enable those who needed protection from the courts to receive it.

In your experience do women experiencing gender-based violence routinely report the violence to the police or apply to the courts for a domestic violence injunction?		
Answer Options	Response Percent	Response Count
Yes	15.7%	49
No	79.2%	247
Don't know	5.1%	16
Please comment		136
answered question		312
skipped question		55
What percentage of the women that you support have a domestic violence injunction (either now or at some point within the last 12 months) or have had the perpetrator of violence convicted of a criminal offence? Please estimate if necessary.		
Answer Options	Response Percent	Response Count
Between 0-5%	25.7%	76
6-10%	14.2%	42

11-15%	8.4%	25
16-20%	8.8%	26
21-25%	6.8%	20
26-30%	6.4%	19
31-35%	4.1%	12
36-40%	5.1%	15
41-45%	2.4%	7
46-50%	2.4%	7
51-55%	4.4%	13
56-60%	1.7%	5
61-65%	2.4%	7
66-70%	0.3%	1
71-75%	1.7%	5
76-80%	1.0%	3
81-85%	1.7%	5
86-90%	1.0%	3
91-95%	0.3%	1
96-100%	1.4%	4
answered question		296
skipped question		71

Respondents gave a number of reasons for their answer:

“Domestic abuse is significantly under-reported due to shame, stigma, fear etc and this would equally apply to sexual violence.”

“Many of the women using our services have found safety by leaving the area so their (mainly male) partner cannot find them. They fear that to proceed with police action or to go through the courts would antagonise him or potentially alert him to their whereabouts during this high risk time. They will normally wait for him to use the courts to find them and to request child contact. At this point they will engage with the courts to resolve this difficult and potentially dangerous situation but will need professional legal support to do so safely.”

“Asking for 'proof' of gendered-based violence will always cause problems. While some women will report to the police, many others will not. Narrowing 'proof' down to the existence of either an injunction or a criminal conviction is not helpful, too restrictive and doesn't take into account all the ways in which women will seek to make themselves safe. Many women will not apply for an injunction on the basis that they don't feel it is right for them, and many perpetrators will not be convicted even if an incident is reported to the police. Asking for proof in this way colludes with & reinforces the idea that a) if there's no physical violence then it's not actually abusive and b) that a large number of women who allege abuse are lying. Non-molestation orders can be difficult to obtain without recent

violence - what is someone experiencing emotional/psychological abuse supposed to do to provide the 'proof' required?"

Many respondents expressed concern about the effect of the proposed "gateways" on particularly vulnerable women, such as BMER women and women with an insecure immigration status:

"Many women are not aware of the support available to them through the police and/or courts. Also women who have been trafficked or are seeking asylum for other reasons have fear of being immediately detained if they report offences."

"Women from some minority ethnic groups also face the problem of having to go against the prevailing views of their community to involve legal authorities. The idea of having to have had legal involvement in the prior 12 months will just make things harder for these women and could prevent them from accessing the support that they need."

Respondents were invited to suggest appropriate gateways if they did not agree with those proposed by the Ministry of Justice. Some respondents rejected outright any suggestion that evidence of violence should be required of applicants for legal aid. Others made specific suggestions including:

- evidence from specialist violence against women organisations;
- evidence from professionals who respond to violence against women such as the police or local authority;
- evidence from GPs, counsellors, health visitors, midwives and other health professionals.

Respondents stressed that any evidential requirements must adequately reflect the lived experiences of the women they support. One respondent made the point that:

"Women do not enter a legal process without very, very good reason. The psychological, emotional trauma associated with this process is not something taken lightly. Accessing support and asking for legal support should be evidence enough"

Another stated:

"As wide a range of evidence as possible - to reflect the fact that most women do not report to the police or seek protection from the courts when they experience violence. Potential sources of evidence required should include documentation from GPs and other health practitioners (counsellors, midwives etc) as well as documentation from specialist voluntary and community sector organisations, for example, women's refuges and outreach and support services."

Self-representation and mediation

The Ministry of Justice states that in many cases either mediation or self-representation are appropriate alternatives to the provision of legally aided legal advice and representation. These alternatives were roundly rejected by respondents to this survey.

Do you think mediation with a former partner on issues following relationship breakdown (such as child contact or financial issues) is appropriate in domestic violence cases?		
Answer Options	Response Percent	Response Count
Yes	9.1%	28
No	79.5%	244
Don't know	11.4%	35
Please comment		182
answered question		307
skipped question		60

Respondents valued mediation as a tool for resolving issues following relationship breakdown but rejected it as appropriate in domestic violence cases. Some respondents made specific reference to women's safety if mediation is used in forced marriage or honour-based violence cases. Comments from respondents included:

“Mediation sounds like a good idea but not within the context of domestic violence. Mediation relies of some level of equality and this is totally missing in cases of abuse. Children and money have often been used as ways to abuse a women when in the relationship so they will be used when the relationship is over. The very idea of 'mediation' and having to sit in the room with ex-partners is terrifying for many women.”

“Due to the dynamics of abuse, this would be used as a means further control over the woman, presenting very real safety issues/concerns - following a woman home, accessing new names/addresses - after a woman has fled. Mediators would not be as adept at dealing with high risk cases especially where child contact could result in homicide.”

“There is too much opportunity for the perpetrator to manipulate the situation. For many clients, just having to be in the same room as their perpetrator creates an atmosphere where they feel unable to fully participate or express their views. The intimidation may well not even be visible to others in the room - the perpetrator may do nothing tangible but it can still be a very unbalanced environment when you take into account what the woman has experienced. Often the intimidation that occurs within

a mediation setting is wordless and wouldn't necessarily be noticeable to a mediator (no matter how well trained they are). Not all clients are able to vocalise this.”

Respondents were asked for their views on the Ministry of Justice’s proposals to remove a number of areas of law from the scope of legal aid. Respondents were very concerned about the potential effects of the proposed changes on vulnerable women who they felt would be unable to represent themselves adequately in proceedings related to these areas of law.

Do you think that women experiencing gender-based violence would be able to adequately prepare their cases and represent themselves if they had problems in any of these areas of law?		
Answer Options	Response Percent	Response Count
Yes	2.7%	8
No	97.3%	285
Please comment if relevant to your work		141
answered question		293
skipped question		74

Respondents highlighted the myriad of consequences that experiencing domestic violence can have:

“Women who have suffered domestic abuse often suffer severe long term physical and mental health difficulties. These can include the following although this list is not exhaustive, but highlights difficulties women I have worked with have experienced, and I have only worked in this sector for 6 months. Depression, anxiety, agoraphobia, panic attacks, lack of confidence, lack of motivation, stress, insomnia, lack of concentration, plus knock on effects from any physical injuries. I support one woman who suffered a head injury and has frequent headaches, dizzy spells, falls and trips, an inter-cerebral bleed and has been told that it could take up to 7 years to heal”

Other respondents were particularly concerned about the removal of family law and immigration law from the scope of legal aid:

““Courts are formal environments. The practices, language and conventions of the court are not something that any non lawyer can be expected to understand and navigate. To expect women who have been through the trauma of gender based violence and who are now trying to rebuild their lives, with all the challenges that entails, to be able to prepare their case and represent themselves in court is unrealistic. Moreover in the case of women who do not have a strong grasp of English or those

who are not familiar with the roman alphabet, it would be entirely impossible.”

“.....Women who have experienced gender based violence are often traumatised with low confidence and self esteem significantly impacting upon their ability to advocate for themselves. In addition there are often co-presenting issues as a result of the abuse experienced such as mental ill health and/or problematic substance use. In addition many of our clients would not feel that they had sufficient education, knowledge or skills to self represent or prepare their cases. In relation to immigration law there are often additional barriers such as English as an additional language, and immigration law in particular is extremely complex.”

“A small minority of women may be able to represent themselves and do - but in my experience of over 110 cases per year only 1-2 manage this and then need some support to compose statements/paperwork etc...”

“A woman who has immigration issues may not have English as their first language making it impossible for her to prepare her case and represent herself. Women may also not be aware of her rights or that she even has any. Also she could have come from a culture which does not promote women being at the forefront in this way which would make women not fight for their cases causing them to overstay, possibly go underground or face deportation.”

“Essentially, women would be much less likely to be able to leave their abusive partner. The impact of being unable to get legal aid for immigration law problems could leave the woman with a choice between staying with her violence partner, and destitution. Immigration law is a complex area of law and women face additional barriers due to e.g. language barriers. Perpetrators of violence sometimes get the woman to stay with them by using her fears about immigration to instil fear and maintain control, e.g. telling her she will get deported if she tells anyone. Many of these women are far from being in a financial position to be able to pay for legal representation, and new immigrants will have to grapple with the complexities of a legal process which many UK-born civilians would find it difficult to understand, let alone with the added difficulties of language barriers and the decreased confidence and self-worth that is standard in victims of gender-based violence. The likely impacts would be devastating for these women.”

Concerns were raised about the impact of the proposal to remove immigration law from the scope of legal aid on the Sojourner Project²⁰ and local authorities who support women experiencing violence who have no recourse to public funds.

²⁰ <http://www.eaves4women.co.uk/Sojourner/Sojourner.php>

Respondents were also concerned that without the ability to resolve their immigration status women would be at risk of exploitation:

“Women would not be able to make claims for ILR. In addition women with NRPF have great difficulty securing funding for their refuge accommodation and living costs. What money is secured is generally very meagre and will not cover the cost of legal advice. I have been advised by the local authority immigration and asylum unit that case costs could range from £1000 to £3000 pounds. In addition to this the time restraints of applying for ILR under the Sojourner Project using DV rules are short and will mean that case costs increase as legal advisers carry out a lot of work in a concentrated manner.”

“Many of our clients come to the UK on spousal visas. When the relationship breaks down, a woman will often wish to remain in the UK, because she has children here or because if she returns to her country of origin she may face violence and discrimination as a woman who has left her husband. In these cases, the woman will need to apply for indefinite leave to remain under the domestic violence rule. If she has no recourse to public funds and has gone into a refuge through the Sojourner Project, she has to do this in just 20 days. The process is complex, and the time limits are challenging, especially at a time when the woman will already be having a lot of upheaval in her life. If she were not able to get legal aid, many clients would find this process extremely difficult to manage. Moreover, given that an extremely high proportion of applications are rejected first time round, she may need to appeal the initial decision. If she did not have legal aid to support her in doing this, a woman could end up having her application unfairly rejected.”

“Many women will be destitute and vulnerable to sex work and trafficking and other forms of exploitation - they and their children will be forced to remain in violence relationships, particularly for women with no recourse.”

Alternative sources of advice and representation

Respondents also rejected the idea that the women they supported would be able to pay privately for advice and representation.

What percentage of the women that you support have a domestic violence injunction (either now or at some point within the last 12 months) or have had the perpetrator of violence convicted of a criminal offence? Please estimate if necessary.		
Answer Options	Response Percent	Response Count
Between 0-5%	25.7%	76

6-10%	14.2%	42
11-15%	8.4%	25
16-20%	8.8%	26
21-25%	6.8%	20
26-30%	6.4%	19
31-35%	4.1%	12
36-40%	5.1%	15
41-45%	2.4%	7
46-50%	2.4%	7
51-55%	4.4%	13
56-60%	1.7%	5
61-65%	2.4%	7
66-70%	0.3%	1
71-75%	1.7%	5
76-80%	1.0%	3
81-85%	1.7%	5
86-90%	1.0%	3
91-95%	0.3%	1
96-100%	1.4%	4
answered question		296
skipped question		71

The helpline

Respondents were sceptical about the introduction of a helpline as a single gateway for civil legal aid cases.

Do you think an operator (not a lawyer) on a generic telephone helpline would be able to identify and respond appropriately to violence against women issues?		
Answer Options	Response Percent	Response Count
Yes	6.2%	17
No	76.8%	212
Don't know	17.0%	47
Please comment		164
answered question		276
skipped question		91

Many respondents drew on their own experiences to question whether or not a helpline operator could identify and respond to violence against women issues:

“Goodness, it is hard enough for skilled rape crisis workers to respond well to women in these areas!”

“Violence against women is a complex and sensitive issue which requires a nuanced understanding of the dynamics within controlling relationships (in the example of domestic abuse) and the feelings, emotions, fears and concerns of the victim/survivor (in all forms of violence against women). I would be very sceptical regarding the suitability of a generic operator to be able to provide a quality service to a woman who has experienced gender-based violence; a non-specialist could indeed make the situation worse through a lack of understanding of e.g. the power and control dynamics within abusive relationships, the difficulty of disclosing abuse to anybody, and the shame and fear which gender-based violence can instil in its victims.”

Many respondents identified the helpline as an additional barrier to be overcome by those experiencing violence:

“I think that helplines can be useful, however I'm concerned that 'operators' will act as 'gatekeepers' and this will deny some women access to the specialist support and advice they need. Getting through to a lawyer will depend on the eloquence of the victim, and not all victims are able to express themselves easily, over the phone or otherwise. Getting the right advice is difficult for victims. Skilled practitioner and lawyers are able to 'read' people, ask the right questions, pick up on clues and dig deeper to gain a fuller understanding of someone's situation. Only then can the right advice be given. All this will be lost, leaving vulnerable people without the advice that they need when they need it.”

Respondents were asked whether or not they thought that the women they support would be able to understand advice they received over the telephone.

Do you think that the women that you support would be able to fully understand and act on legal advice that they received over the telephone (rather during a face-to-face meeting with a solicitor)?		
Answer Options	Response Percent	Response Count
Yes	5.5%	15
No	78.8%	215
Don't know	15.8%	43
Please comment		144
answered question		273
skipped question		94

“Some women might be able to fully understand and act on legal advice over the phone but some women would definitely not be able to fully understand and act on legal advice over the phone. Most women would clearly rather a face to face meeting. We know this as we hold a Solicitors

Surgery in our Unit on a fortnightly basis. Women have appointments with the Solicitors and only as a last resort will they agree to a telephone consultation.”

“In my experience, many perfectly able women, (no linguistic, disability, cultural barriers) take in very little of their first legal consultations accurately. At CAFCASS, I regularly ‘re-explain’ basic legal advice already ‘received’, repeatedly to ensure full understanding.”

Many respondents highlighted practical problems with this proposal:

“Also what happens to women where the perpetrator controls the telephone??????? Where they cannot even go to the bathroom, doctors or children’s school unaccompanied and where they can only use the telephone on loud speaker and when the perpetrator is out they remove and take the handset (yes a real case). How would those women obtain any advice? Utterly and completely inadequate. Why don’t those people considering these changes speak to some REAL victims, such as those in REFUGE before they make decisions that could have devastating consequences for the most vulnerable women and children?”

How would the women that you support most prefer to receive legal advice? Tick one.		
Answer Options	Response Percent	Response Count
In person	97.0%	257
Over the phone	3.0%	8
Via the internet	0.0%	0
Information pamphlets	0.0%	0
answered question		265
skipped question		102

If the woman you supported was unable to get advice from a legal aid lawyer, where would you refer her to for advice? Tick all that apply.		
Answer Options	Response Percent	Response Count
Citizens Advice Bureau	83.5%	227
Children’s centre	29.0%	79
Law Centre	60.7%	165
Member of Parliament (including MWAG)	23.9%	65
Refugee Community Organisation	46.0%	125
Rights of Women	70.2%	191
Specialist violence against women organisation	77.9%	212
Specialist disability organisation	36.0%	98

Specialist BMER (Black, Minority Ethnic, Refugee or asylum-seeker) organisation	64.0%	174
Specialist age organisation (e.g. for young people or older people)	36.4%	99
Specialist sexual orientation organisation	42.3%	115
Other specialist organisations (such as Shelter or Cymorth Cymru)	53.7%	146
Other (please state)	6.3%	17
other (please specify)		22
answered question		272
skipped question		95

One respondent suggested that they would refer clients to their local law centre but that it had recently closed.

The importance of legal aid to women experiencing violence

How important is being able to access face-to-face, specialist, legal advice to women experiencing violence?		
Answer Options	Response Percent	Response Count
Extremely important	93.8%	258
Important	5.1%	14
Not very important	1.1%	3
Not important at all	0.0%	0
Please comment		82
answered question		275
skipped question		92

Respondents were finally asked for their overall conclusions about the proposals and the effects that they would have, if implemented, on women experiencing violence. Overwhelmingly respondents argued that the proposals would place women and children's lives at risk:

“Overall, these proposals will have a devastating impact on women's ability to protect themselves and their families from violence. They will create a divide between the "haves" and "have-nots", with economically better-off women able to access justice and all other women being unable to access justice, unable to live a life free from fear and abuse, and unable to protect their children. These proposals will put the wellbeing, safety and ultimately lives of vulnerable women and children at risk.”

Respondents expressed particular concern about the position of BMER women and women with disabilities:

“These proposals are extremely ill conceived and fail to take into account the debilitating impact of violence on women's ability to navigate complex

systems when they are at their most vulnerable, particularly women who do not have English as a first language, women who have NRPF, women with mental health issues and so on. Because of the disproportionate effect these proposals will have on women, I believe they will put the government in breach of CEDAW.”

The knock-on effects of the proposals on other organisations were also highlighted by many respondents:

“...Referrals to children’s services will increase and this will in the long term place pressure on all statutory services and charitable agencies as they will be unable to cope with demand.”

Women who have been helped by legal aid

Finally, we asked respondents for examples of cases where women had been helped by legal aid. As with the responses to this question from individual women and legal professionals, the answers to this question were both moving and inspiring. The following is a small but representative sample of some of the stories told:

“One of the women I supported was thrown out of the family home with nothing, not even her baby’s clothes. Her husband is a wealthy man with several properties and in a high income bracket. He stole all her money from her account before he threw her out. She needed legal aid to get her money back; she needed legal aid to help her with her asylum claim. If she could not access either of these we would be affectively supporting her ex-husband in his abuse.”

“My client S was destitute in the UK and a stateless person. Legal Aid allowed her to get good quality professional representation to get status in the UK and to become fully part of the community she has been contributing to for 14 years. She is now pursuing work and training goals and has moved away from homelessness.”

“A lady from South Africa had experienced domestic abuse over many years, part of the abuse being around immigration issues and her partners control as a result of her being in the country as a dependant of his. The visa's were due to run out in a couple of weeks time and her husband had not applied for an extension, her feeling being that he intends to remain here illegally when it runs out. She has a job and children who are settled here but as a result of the abuse she is no longer safe to remain with her husband. Through a legal aid solicitor she was able to receive all the information and guidance she needed in order to apply to remain in her own right... As a result she was able to submit an application and was able to remain in the country and working whilst the application was decided.

Without legal aid immigration advice she would have been in great danger as she would have had to remain with her husband, would have lost her job and potentially had to leave to return to South Africa where she has no relatives or support.”

“A client came into refuge extremely at risk from her perp if he was to find her or the children... This lady had suffered extreme physical, emotional, sexual and financial abuse for over 8 yrs... These children had seen the physical and extreme battery he regularly dealt out to her, and the effects of this. They lacked normal socialisation, as she was not allowed to go out...he destroyed their flat regularly...The second child he suggested was not his and accused her of it being someone else, to the degree that he tried to cut it out of her during pregnancy, and when born he never acknowledged it and the mother never left the baby alone for fear of what he would do. When she eventually came to us, we arranged for a Solicitor to come out to see her. Due to his record and the history they applied straight away for a residency order, the process took some time and was granted. The whole case had to go via CAFCASS etc, he requested DNA test for second child but never followed through - using it as a tool for manipulation over the court process. The whole thing took over 18mths to resolve fully as the court had to give him opportunity to prove himself and ordered him to attend various parenting courses etc. He eventually messed it up himself and she is now free, safe etc and he is in prison for other offences. This does not mean that he will not try again in the future and she will not need the help again. The child used to tell me that his Dad tried to kill his mum and described how he had dragged her up the road by her hair screaming and many other things...”

“‘Vicky’ is a domestic worker from India. She came to the UK one and a half years ago, accompanying the sister of her previous employer as a nanny and cleaner. It had been a difficult decision to leave India and her two young children but she had been assured that she would be paid £450 a month, more than double her Indian earnings and by sending this money home she hoped that her children would be able to complete their education and not have to make the same difficult decisions as her.

When Vicky first arrived in the UK she was only paid £200/month for the first six months. She didn’t question this as she was slightly confused about the exchange rates and she didn’t want to show too much disrespect to her employers. However when a close family member needed an urgent operation and asked to borrow money for this Vicky asked for her salary and was told by her employers that their outgoings in the UK were too high for them to pay her any more. Vicky was unhappy but felt unable to challenge them. After 8 months they stopped paying her altogether. Vicky protested the first time her salary was unpaid but was told that she was ‘illegal’ in this country and her employers were spending

a lot of money trying to sort out her status so she should not complain. By the time Vicky ran away in desperation she had not been paid at all for 10 months. During this time she had no regular day off, worked 13 hour + days and shared a room with the children. She was frantic with worry about her family whom she had been unable to send any money to at all during this time.

When Vicky came to Kalayaan and told us her story we thought it likely that she might need immigration and employment advice on legal aid. If her employer had let her visa expire without her knowledge as they told her they had done, Vicky would have needed a solicitor to represent her to the Home Office. Fortunately, in Vicky's case, the employers were lying to her and her visa had been renewed. Vicky did however want to try and get some of her unpaid wages from her employers and we referred her to a legal aid employment solicitor. In the end Vicky and her employers 'settled' and she secured a lump sum to send to her children in India. Without legal representation it is very unlikely that the employers would have agreed to pay Vicky any of her unpaid wages."

Many respondents were unable to identify a single case; this is best summed up by the following comment:

"In 2009/10 we dealt with 1811 referrals (from three local authority areas). Through the current legal aid scheme we are able to provide women with a drop in legal advice clinic at our offices, the nearest legal aid firm is almost an hour away for some women and would therefore be impossible to reach. This scheme has enabled us to help 100's of women who would not have been able to access support before - it is under threat due to these changes. The safety of women and children is being put at significant risk should these measures go through. Sorry I don't have one case study I have hundreds!"

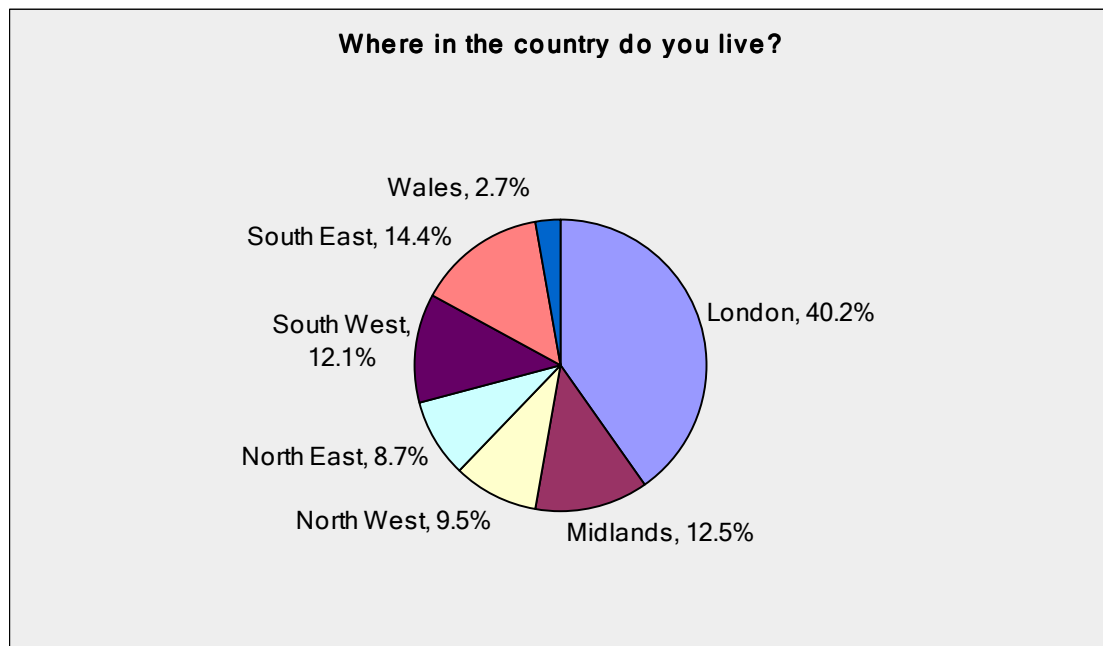
CHAPTER 4

SURVEY OF LEGAL PROFESSIONALS

The legal professionals surveyed

Rights of Women's final survey was of legal professionals. 264 legal professionals answered this survey. Respondents came from all parts of the legal profession and included a judge, barristers, solicitors, immigration advisors, trainee solicitors and pupils and advice workers in Citizen's Advice Bureaux. They came from across England and Wales and undertook a mixture of publicly funded and private client work.

Are you a:		
Answer Options	Response Percent	Response Count
Barrister	47.5%	112
Immigration advisor	5.5%	13
Judge	0.4%	1
Solicitor	47.0%	111
other (please specify e.g. legal advisor at a CAB or law centre)		29
answered question		236
skipped question		28



Are your clients mostly		
Answer Options	Response Percent	Response Count
Legal aid	87.1%	222
Privately funded	12.9%	33
answered question		255
skipped question		9

Respondents advised / represented clients in a number of areas of law.

What areas of law do you, your firm, chambers or organisation advise on? Tick as many as apply.		
Answer Options	Response Percent	Response Count
Asylum	23.8%	62
Asylum-support law	10.3%	27
Criminal law	33.3%	87
Criminal Injuries Compensation	13.4%	35
Debt and financial issues	23.8%	62
Domestic violence injunctions	77.8%	203
Divorce or civil partnership dissolution	74.7%	195
Housing and homelessness	33.7%	88
Immigration	28.7%	75
Private children law	82.4%	215
Public children law	72.8%	190
Relationship breakdown of cohabittees	72.0%	188
Welfare Benefits	19.2%	50
other (please specify)		35
answered question		261
skipped question		3

Legal responses to violence against women

91.4% of respondents to this survey advised women who experienced gender-based violence; these respondents had to advise women on a number of different forms of violence against women.

What form(s) of violence have you encountered in your work? Tick as many as apply.		
Answer Options	Response Percent	Response Count
Child abuse	86.7%	202

Domestic violence / domestic abuse	99.6%	232
Forced marriage	41.6%	97
Female genital mutilation	24.0%	56
Harassment	92.3%	215
So-called 'honour-based' violence	40.3%	94
Sexual exploitation (e.g. prostitution and pornography)	51.5%	120
Sexual harassment in the workplace	17.2%	40
Sexual violence	82.0%	191
Stalking	65.2%	152
Trafficking	22.7%	53
other (please specify)		2
answered question		233
skipped question		31

Respondents asserted that women experiencing gender-based violence required legal advice on a range of different legal issues, not simply domestic violence injunctions or other protection orders. The legal professionals surveyed appear to endorse the views of other professionals who respond to violence against women issues (see Chapter 3) that violence against women is complex and may require a variety of different legal responses.

What areas of law do you think women experiencing gender-based violence may need advice on? Tick as many as apply.		
Answer Options	Response Percent	Response Count
Asylum	75.3%	189
Asylum-support law	61.4%	154
Criminal law	74.5%	187
Criminal Injuries Compensation	62.2%	156
Debt and financial issues	75.3%	189
Domestic violence injunctions	98.8%	248
Divorce or civil partnership dissolution	94.4%	237
Employment	45.4%	114
Housing	86.9%	218
Immigration	75.3%	189
Private children law	95.2%	239
Public children law	87.6%	220
Relationship breakdown of cohabitantes	92.0%	231
Welfare benefits	82.5%	207
other (please specify)		8
answered question		251
skipped question		13

Alternatives to legal aid: self-representation and mediation

97% of respondents thought that a woman experiencing violence should not represent herself in legal proceedings.

Do you think that a woman experiencing violence should represent herself in legal proceedings? This may be, for example, because she is no longer financially eligible for legal aid, because she does not have sufficient evidence of the domestic violence she is experiencing (for private children law or financial relief cases) or because the area of law is no longer in scope (employment or immigration law).

Answer Options	Response Percent	Response Count
Yes	1.4%	3
No	96.7%	205
Don't know	1.9%	4
Please comment		107
answered question		212
skipped question		52

Respondents had a variety of reasons for their views:

“Most of my clients are terrified of the law (largely as representing a bigger, more fearsome system than even her husband), terrified of the (usually male) judge / barrister / clerks, terrified of speaking openly and loudly enough and terrified of losing the case. Seeing an abuser in court can leave a woman too scared to speak, quite literally. Being shouted at to speak up doesn't help. Lack of English skills and lack of understanding of legal proceedings are an impediment. In immigration cases, even the Court of Appeal has commented that the Rules can be impenetrable; without a lawyer, how are women supposed to represent themselves?”

“A victim of abuse is unable to advocate for herself, if she had been, she would not be in the situation in the first place! Almost universally my clients who are the victims of abuse, when seeing their abuser again at court, revert to the previous pattern of behaviour, with the abuser gaining the upper hand merely by being present, a victim simply does not have the capacity, the insight or the fortitude to stand up to the abuser directly, cross examine and be cross examined by her abuser, and is often unsure whether to go to court in the first place. By making a victim of abuse revisit the horrors of the abuse she has escaped from, alone in court, in my opinion is abusive in itself. It cannot result in a fair hearing, in fact will result in untold mistrials, and cause the perpetrator to cause more harm to the family through judicial sanction. The court will not decide cases based on clear evidence, but the evidence that happens to become available. In other words deciding in a vacuum, without full facts. It takes 5 plus years

to qualify as a Barrister, and many more to understand the nuances of family law, for a lay person to be conducting her own trial will lead to mockery of the whole system.”

“In my experience of dealing with victims of domestic violence, around 10 years, it is clear that the majority of the victims of domestic violence have benefited from being represented in legal proceedings, many are simply unable to even face their abusers in court let alone attempt to advocate as a litigant in person. In addition even without the proposed changes to the legal aid system there are a growing number of perpetrators of violence who are not legally represented and the idea of a victim having to act in person and deal directly with the person who has abused them is frankly a absolute failure to protect the victim and leaves the victim open to a real risk of yet further abuse.”

Respondents were asked what criteria should be developed to ensure that women experiencing domestic violence are able to receive legal aid for related family law proceedings (such as private children law and financial relief proceedings). The majority of respondents rejected the imposition of any criteria and argued that those advocated by the Ministry of Justice were too restrictive:

“The suggested requirement that there have actually been an injunction or conviction within 12 months is too onerous. There will be cases that were resolved on undertakings. There will be others where the CPS decided not to prosecute because of evidential difficulties - the criminal burden of proof is a tougher one and the lack of independent evidence often leads to this conclusion. The existing test is thought to work well.”

“Often women have difficulty in providing evidence that they have been subjected to domestic violence and are often asked to produce evidence that they simply do not have. This is a difficult thing to provide a criteria on as circumstances often vary.”

Other respondents argued for broader criteria to ensure that those who had made contact with the police or other support services would be able to get advice and representation. Interestingly, many respondents argued that having a “gateway” for domestic violence cases was problematic as there might be many reasons why a person needed legal advice:

“I think that all women (and men) subject to financial eligibility should be entitled to legal aid as family issues often concern some inequality in relationships and this needs to be protected against by independent representation.”

Respondents were also asked for their views on mediation in domestic violence cases.

Do you think mediation with a former partner on issues following relationship breakdown (such as child contact or financial issues) is appropriate in domestic violence cases?		
Answer Options	Response Percent	Response Count
Yes	16.0%	33
No	69.9%	144
Don't know	14.1%	29
Please comment		136
answered question		206
skipped question		58

It is interesting that mediation was thought to be less appropriate in domestic violence cases by legal professionals than individual women (66% of whom thought it was not appropriate). This could be because the legal professionals were able to identify risks to their client's interests that they themselves could not perceive.

Do you think that access to mediation alone in private children cases and following relationship breakdown is a realistic alternative to legal advice and representation?		
Answer Options	Response Percent	Response Count
Yes	5.7%	12
No	90.9%	190
Don't know	3.3%	7
Please comment		114
answered question		209
skipped question		55

Whilst legal professionals rejected the idea that offering mediation alone was sufficient, it was clear from all the responses to this question that this was not because of a failure to appreciate the benefits of mediation, but an appreciation of the types of cases where mediation would not be useful or appropriate:

“....I have been a firm advocate of mediation my entire career as have most family law solicitors I know. We had pioneering mediation services in the field of children mediation locally and are heavy referrers but as mediation has become universal the quality of that mediation appears to be more hit and miss. The reality is that we refer those cases to mediation that can mediate, settle via legal advice many of those that can't and take only a small proportion of those most difficult cases or urgent cases to Court mostly where there are complicating risk and welfare issues for the child such as social work involvement, parental drug and alcohol issues, mistreatment of child and / or partner, sexual abuse or other abuse or

major irreconcilable conflict in relation to upbringing eg move abroad or not.”

Areas of law that are to be removed from the scope of legal aid

Respondents were asked for their views on the areas of law that are proposed to be removed from the scope of legal aid and whether or not women experiencing violence would be able to represent themselves if they had a legal problem in one of these areas of law.

Do you think that women experiencing gender-based violence would be able to adequately prepare their cases and represent themselves if they had problems in any of these areas of law?		
Answer Options	Response Percent	Response Count
Yes	2.5%	5
No	97.5%	192
Please comment		108
<i>answered question</i>		197

Respondents were then asked for their views of the consequences of clients not being able to get legal aid for problems in these areas of law. Respondents concerned with the removal of immigration law advice argued that the consequences of removing this area of law from scope would be “appalling” and “disastrous” for the individuals involved. As one respondent explained:

“... 48% of [immigration] appeals succeeded at the Tribunal in 2009. Without legal advice, clients will not know what documents to collate. They will not know what case-law to rely on or how to apply it. They will not recognise alternative routes to their aims and they will not be able to interpret the effects of human rights legislation on immigration law.”

Respondents were less concerned about the removal of most employment law from the scope of legal aid as they considered the vulnerability issues to be less than with other areas of law, such as immigration law or welfare benefits. However, one respondent made the point that:

“Levels of exploitation would probably increase. Cases would not be pursued. Employers would be more like to break the law.”

The vulnerability of those in receipt of welfare benefits was highlighted by many respondents:

“Clients we represent are mostly vulnerable adults who are unable to represent themselves effectively - those with disabilities, mental health illnesses or language barriers. For them to live a decent life - ie provide

themselves and their children with the basic needs - they need legal aid representation for them to receive welfare benefits.”

“Many of my clients live on very low income levels and ensuring that they are able to claim the correct benefits and resolve disputes about which parent is entitled to claim child benefit and tax credits is crucial to their ability to sustain basic care of their children. Often residence applications are made because of imminent or actual eviction of the parent with care, or fail because of the financial and housing instability of the parent applying.”

The telephone helpline

The idea that a telephone helpline would be able to identify and respond to callers with complex legal problems was comprehensively rejected by the respondents.

Do you feel confident that an operator (not a lawyer) would be able to identify and respond appropriately to individuals with complex legal problems?		
Answer Options	Response Percent	Response Count
Yes	3.0%	6
No	92.9%	183
Don't know	4.1%	8
Please comment		110
answered question		197
skipped question		67

Respondents highlighted the level of knowledge and skill that was required to deal with violence against women and other complex legal issues.

Respondents were also concerned about those who were vulnerable, for example, one respondent said:

“This excludes women who don't speak English. It excludes women with mental health problems and with disabilities such as learning disabilities who can't articulate their exact problem. This is a particularly silly solution, because it ensures that only those who have already been able to identify their legal problem and articulate it will be able to access a lawyer. Those who need one most won't even get past the telephone stage!”

Respondents stressed the importance of clients having choice as to how to access legal advice and the ability of lawyers to concentrate resources on those clients who needed them the most. Respondents were also concerned about the ability of clients to understand advice that is only given over the telephone.

Do you think clients would you be able to fully understand and act on legal advice that they received over the telephone (rather during a face-to-face meeting)?

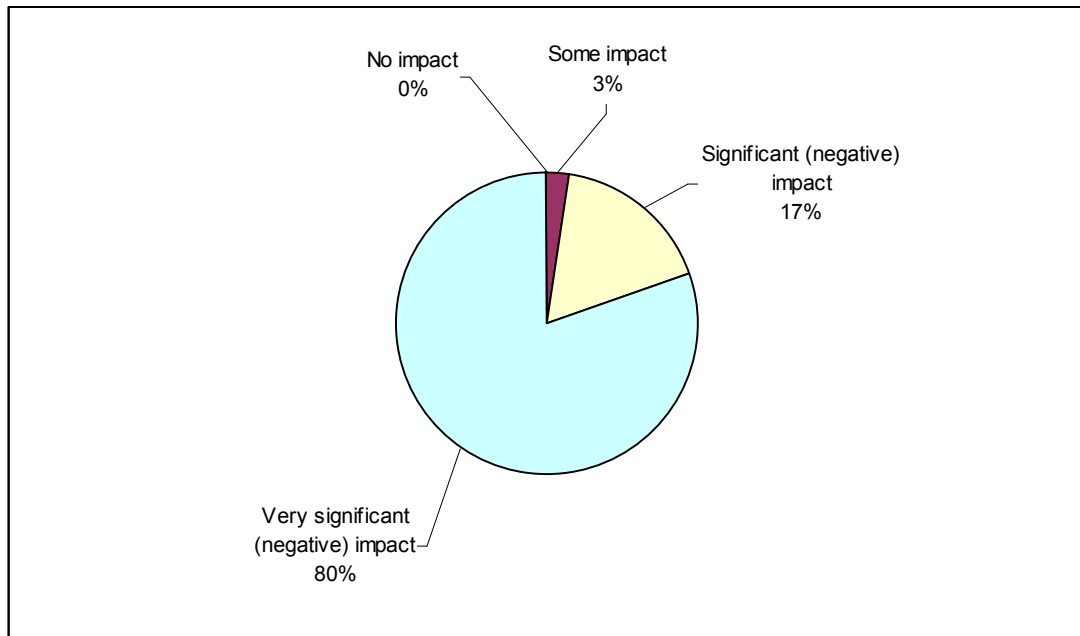
Answer Options	Response Percent	Response Count
Yes	9.8%	19
No	75.8%	147
Don't know	15.5%	30
Please comment		114
answered question		194
skipped question		70

As one respondent observed:

“Even with face to face advice it often requires letters and further meetings before clients understand the issues, especially if English is not their first language.”

Overall, the vast majority of respondents rated the impact on their clients of not being able to contact a solicitor or advisor directly as very significant.

Respondents were asked: **How would you rate the impact on your clients of not being able to contact a solicitor or advisor directly. The impact could be on any aspect of their ability to access justice:**



Self representation and legal proceedings

The consultation suggests that individuals who are no longer able to get legal aid would be able to adequately represent themselves. Whilst this is of particular concern when a woman has experienced violence, legal professionals had other concerns about litigants in person and the effects of increasing numbers of people representing themselves on the courts.

Do you think that individuals representing themselves in court proceedings:				
Answer Options	Yes	No	Don't know	Response Count
Fully understand their situation and their options	3 (2%)	188 (96%)	4 (2%)	195
Are able to adequately understand court proceedings	4 (2.4%)	182 (94%)	8 (4%)	194
Are able to adequately prepare their case	2 (1%)	186 (97%)	4 (2%)	192
Are able to adequately question witnesses	3 (1.5%)	187 (96%)	4 (2%)	194
Are able to adequately make legal arguments	1 (5%)	188 (98%)	3 (1.5%)	192
Please comment				63
answered question				195
skipped question				69

One respondent observed that:

“I struggle to recall any litigant in person who has been able to do anyone of these with even passing competence. It is always extremely difficult for professionals and judges in family law cases where emotions run so high to be faced with litigants in person.”

Another stated:

“I don't wish to suggest that there is no lay person who will do a good job representing themselves. I have seen some truly remarkable women do extremely well when faced with losing their home/their children etc. I therefore would not suggest that this is purely the domain of qualified lawyers. However, in the round, and in general, I do believe that people are generally better served by being represented. I also believe the court is better served, and is assisted by having good arguments presented well, with supporting evidence, and case law of statute where necessary, while irrelevant arguments and bugbears between the parties are kept out.”

Respondents were also concerned about the effects of increasing numbers of litigants in person on the courts.

Do cases involving litigants in person generally:		
Answer Options	Response Percent	Response Count
Take more time?	97.9%	190
Take less time?	1.0%	2
Take the same time as cases where clients are represented?	1.0%	2
answered question		194
skipped question		70

Do you think an increase in the number of litigants in person will:		
Answer Options	Response Percent	Response Count
Increase court costs	97.4%	189
Decrease court costs	0.5%	1
Have no effect on court costs	2.1%	4
answered question		194
skipped question		70

Respondents gave a number of explanations for their answers to these questions, the majority of which related to the increased time they believed it would take for cases to be resolved.

The consequences of the reforms for providers

Rights of Women is concerned that any further reduction in the number of providers of legal aided advice and representation (such as law centres or solicitors firms) calls into question the very existence of a publicly funded system of justice. It is clear that these proposals would, if implemented, further reduce the sources of advice available.

Will you / your firm, chambers or organisation continue to do legally aided work if the proposed changes are implemented?		
Answer Options	Response Percent	Response Count
Yes	38.8%	69
No	13.5%	24
Don't know	48.9%	87
Please comment		75
answered question		178
skipped question		86

Where would you signpost a client who was unable to get legally aided advice or representation or pay privately for it? Tick all that apply.

Answer Options	Response Percent	Response Count
Citizens Advice Bureau	87.4%	160
Children's centre	28.4%	52
Law Centre	69.4%	127
Member of Parliament (including MWAG)	33.3%	61
Refugee Community Organisation	37.2%	68
Rights of Women	45.9%	84
Specialist violence against women organisation	67.2%	123
Specialist disability organisation	37.2%	68
Specialist BMER (Black, Minority Ethnic, Refugee or asylum-seeker) organisation	32.8%	60
Specialist age organisation (e.g. for young people or older people)	31.7%	58
Specialist sexual orientation organisation	31.7%	58
Other specialist organisations (such as Shelter or Cymorth Cymru)	36.6%	67
other (please specify)		21
answered question		183
skipped question		81

Respondents were concerned about the ability of any of the above to meet the increased need for advice that would be caused by the implementation of these proposals. As one respondent noted:

“most of the above are subject to funding cuts and may not continue to exist”

Women who have been helped by legal aid

How important is being able to access face-to-face, specialist, legal advice to vulnerable clients (for example, women experiencing violence or those with disabilities)?		
Answer Options	Response Percent	Response Count
Extremely important	91.0%	172
Important	7.9%	15
Not very important	1.1%	2
Not important at all	0.0%	0
Please comment		30
answered question		189

The most moving responses in this survey were the accounts that legal professionals gave of women who had been helped and protected from violence as a result of legal aid. It is simply not possible to repeat them all here, however, what follows is a representative selection that proves how vital legal aid is; how it can protect women and children from violence; and save lives:

“I have a story of a middle class client who was raped by her husband sustaining broken bones and withdrew the allegation pre trial because of the stigma of the children's father going to prison and constant manipulation by husband.... The CPS were sympathetic and wrote to her saying they felt there were good prospects of success but would withdraw after reading a letter from her. Contact with the children took place throughout notwithstanding the bail conditions. Of course that is when the intimidation started with the father immediately turning up on the doorstep insisting he had every right to. She obtained an injunction via her first solicitors with the benefit of legal aid. Time moved on. The injunction lapsed. The constant wearing down began, the manipulation of the children, the constant pushing for more and more contact and more and more flexibility and the never giving the client peace and the harassing phone calls. The client felt that every solicitor she went to was rubbished by her ex partner and such was her intimidation that she was affected by this. She chose my firm because we were out of the area, perhaps 80 miles away. She travelled for first interview where a very full background was taken and we applied for legal aid. It was a limited issue to define his contact to the contact he was having and to stop him from constantly pushing her for more. In the current climate I can see that failing on a merits standard yet the issue was of huge importance to this client and she could never have taken it alone, neither would mediation have worked as this would simply have encouraged the behaviour complained of, the right on father's behalf to constantly pressurise. With the benefit of legal aid and at only one hearing we secured exactly what our client needed to give her respite and peace of mind and to be able to put the phone down or shut the door..... She gave us permission to use her story when we applied for and recently won the Law Society's Excellence in Client Service award. It was a small victory but one of hundreds of similarly moving and extremely important cases we have represented over the years where the client and children were being emotionally manipulated and suffering continual harassment if not in one format another, over years and where mediation would have actually almost undoubtedly made the problem worse not better.”

“Mrs K was married to a clever and devious man who had buried his assets in offshore trust funds and foreign bank accounts, in an effort originally to defeat the tax authorities and later the family Court. Over the

course of two years, Mrs K's solicitors and I chased this money around the world, running up a six figure legal aid costs bill in the process. However, our search was successful and resulted in a large sum being repatriated to the UK and an Order of the High Court breaking open an offshore trust fund which in reality he controlled. Mrs K was awarded enough money to buy a flat over a florist's shop which she could run, thus taking her off the social security budget and we recovered all her costs from the husband. The net cost to the taxpayer was nil and justice was done."

"I represented a Sikh woman who was nearly bludgeoned to death by her husband. She had been subjected to horrific sexual and physical abuse since giving birth to their only child who was a girl and not the son he desired. Legal aid helped this lady secure a house for herself and the child as part of divorce/financial proceedings together with an injunction once husband was released from prison and a No Contact Order in Children Act Proceedings. Without the benefit of legal aid none of this would have been possible. The lady and her daughter would probably have been forced to flee the area with very little money or return to her home country. The lady suffered from severe PTSD and required therapy which it was possible to secure funding of from the husband as part of the financial case. As a result she was able to continue caring for her daughter and start a new life. This man was such a risk that he has since gone on to allegedly murder another woman."

"I recently represented a Iranian woman who was in the UK on a spouse visa. She was a victim of domestic violence and her marriage broke down. As a result she suffered PTSD, depression and anxiety. She was completely alone in the UK, save for her abusive husband. She called the police following an attack by her husband and was referred to CAB for advice. CAB then referred her to a solicitor for assistance with her divorce proceedings. She was granted legal aid and they helped her gain access to her home and financial support whilst her divorce was going through. The same solicitors also dealt with her immigration appeal through legal aid when her husband informed the Home Office that the marriage had broken down and curtailed her leave. She was severely depressed and found it difficult to assist her lawyers prepare the appeal. She regularly broke down in tears and found the whole process extremely tiring and hopeless. If she was dealing with the matter herself, I am sure she would have given up."

"Client was here as a dependant of an EU Worker. She herself was a non-EU national. She had dependent children. At the time of death her husband was receiving Jobseeker's Allowance. He died abroad. She applied for Income Support and was refused due to the Right to Reside test. The decision was appealed and successful at the First Tier Tribunal. The DWP did not accept the decision and appealed the matter to the

Upper Tribunal. Representations were made and the Upper Tribunal found in her favour. She has now received arrears but was without any payment for nearly three years.”

Perhaps the best comment to end on is that of one legal professional who was unable to identify “just one case”:

“So many. My legal aid clients are some of my most grateful clients. Their lawyers have been their lifeline out of horrendously violent and destructive relationship. Female clients have said to me more than once that they would not have been able to go through it without their legal team. They would have remained in relationships exposing themselves and their children to ever increasing violence.”

Evaluation of the proposals

Respondents were finally asked for their comments on the proposals as a whole. After going through the above answers it is unsurprising that comments were overwhelmingly negative. Respondent’s comments included the following:

“As above, a failing and possibly overburdened legal system; a depletion in the numbers of experienced, high quality legal professionals providing an invaluable service to socially disadvantaged and vulnerable individuals who are unable to adequately represent their own interests; and resulting in infringements of the individuals art 6 and art 8 human rights and a lack of appropriate protection for themselves and their children.”

“Disastrous. This is something like the 30th consultation on legal aid in 3 years. We are exhausted and have just gone through the ridiculous tender process of the last government only to have that successfully judicially reviewed. The government singularly fails to listen to the profession on the costs drivers in legal aid and is destroying the publicly funded legal sector instead of tackling the causes of social injustice and those who have created the economic crisis. The poor and vulnerable being made to bear the brunt of the excesses of the governing classes, further increasing their economic and social disadvantage.”

“The Ministry of Justice's proposals to reform legal aid are arbitrary, ill-considered and will erode quality. The removal of funding for vital areas of law will create advice deserts removing protection for the weakest and most vulnerable members of society. Several proposals will in fact lead to further costs being incurred in both legal aid and in Her Majesty's Court Service. The proposals regarding criminal, family and civil fees will make legal aid uneconomic for many and will result in large numbers of practitioners leaving this practice area. Overall the public will suffer a

reduction in quality of service provided by a profession that will be less representative of the people it serves.

CHAPTER 5

CONCLUSION

Rights of Women would like to thank all those who took the time to answer our surveys. The knowledge and experiences shared by respondents to our surveys have provided an invaluable insight into the experiences of women who face discrimination and gender-based violence and of the vital role that legal aid plays in enabling people to access their rights.

What emerges from this research is a system of legal aid that is meeting the needs of some of the most vulnerable people in our society, as one of the individual women who responded said:

“...Legal aid is not only a necessary tool for victim of domestic violence, it is also a life saving tool both for women and children.”

In 1943 Professor Ernst Joseph Cohn described the need for legal aid:

“The State is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the State to make its machinery work alike, for the rich and the poor.”

However, in 2011 we appear to be faced with proposals from the Ministry of Justice that threaten the very existence of a publicly funded system of justice. These proposals will prevent individuals from seeking face-to-face advice from a specialist; make people less likely to be financially eligible for legal aid, or have to pay an increased contribution; and force individuals to represent themselves in complex legal proceedings if whole areas of law are removed from the scope of legal aid. Strikingly, these proposals commanded absolutely no support from any of our respondents. It is perhaps unsurprising that individual women and legal professionals would have concerns about proposals which would, if implemented, have significant negative consequences for them. What is interesting is that the proposals are rejected as unworkable by those who have no personal or professional interest in legal aid but who have unparalleled knowledge of legal aid as a tool for victims of violence: professionals who work on violence against women issues.

Rights of Women believes that we are now a turning point. We can fight for a publicly funded system of justice that enables people to secure their rights, or we can have a system that will only work for the rich, a system which, like the Ritz Hotel, is available to everyone, everyone that is, who can afford to pay for it.²¹

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²¹ US judge, Judge Sturgess “*Justice is open to everyone in the same way as the Ritz Hotel*”