

Focus on women

Issue 1 Spring 2005

Rights of Women is pleased to bring you the first edition of our new policy newsletter *Focus on Women*.

Rights of Women is an Industrial and Provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights. We are a membership organisation.

The purpose of this newsletter is to update the women's sector on developments in the law, government consultations and other issues of concern to women. We hope this information will encourage voluntary groups to be even more pro-active in responding to government policy affecting women.

We are indebted to the Big Lottery Fund who have provided us with the funding enabling us to launch this initiative.

There will be three editions of *Focus on Women* produced each year. We would welcome your feedback. Any comments should be sent to Heather Beckwith, our Policy Officer, at Heather@row.org.uk

Meanwhile, we hope you find this newsletter interesting and informative. In addition to our policy work, Rights of Women produces publications, runs training courses and organises conferences on issues concerning women and the law. Further details are available on our website at www.rightsofwomen.org.uk.

Ranjit Kaur
Director, Rights of Women

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Legal Aid or Lottery?

Legal Aid has been in a deepening crisis for significant years. However, the problem has now reached near proportionate heights.

The Legal Services Commission is proposing a number of changes to the criteria used in deciding whether a person is eligible for public funding or not. Rights of Women is particularly concerned about the effect these proposals will have on women and the potentially dire situation that it could leave them in.

If the proposals do go ahead as stated, there will be very few people who are actually entitled to public funding and women may increasingly find themselves trapped in a violent and abusive relationship without any means of getting out. There are two reasons for this; firstly, they may not be able to afford an injunction which can cost anywhere in the region of £2,000. This, in addition to the cost of instructing a solicitor for other issues may be very expensive and without legal aid, women simply may not be able to. Secondly is the fact that an increasing number of legal aid practitioners are moving away from legal aid work. This is therefore leading to difficulty in finding a legal aid lawyer even when they are one of the few women that does meet the criteria.

Main proposals which will affect women

The income criteria – this will align the criteria used for legal help with that of legal representation. Presently a woman who does not qualify for legal help may still qualify for legal representation. This will no longer be the case if the proposals go ahead as planned and consequently many women will be discriminated against. With the increase in the availability of other benefits such as Working Family tax Credit and Child Tax Credit, many women will automatically be above the income

threshold for any type of funding assistance. Women with children on a low paid salary or working part time may be ineligible for legal assistance of any sort and therefore denied access to justice.

Where a woman has a financial interest in a property such as the family home, this may subsequently affect her ability to qualify for legal aid. In reality, she may not be able to realise the capital in the home or where able to, this money has to be used to fund accommodation for herself and any dependent children and not for court proceedings.

We would like the Legal Services Commission (LSC) to take account of this when considering the financial criteria and take action to reflect the fact that although on paper, some women may appear to have funds, this may not be the case in reality.

The LSC propose that people rely on private funding arrangements; ie women would have to take out special loans themselves to fund legal advice and representation. Failure to do so may result in refusals of funding from the Legal Aid Board. Again, the problem here is that women will be left to repay the loan with interest, at a difficult time in her life, having just separated from a partner.

A further major and dramatic proposal is the categorisation of certain cases as “low priority” and then subsequently removing this category of cases from the scope of public funding. This proposal could feasibly have the most substantial effect on the everyday lives of numerous women wishing to commence court proceedings for divorce and change of name deeds. If matters such as these are considered to be low priority, this could have the effect of limiting the ability of a woman to start a new life. She may be unable to pay for divorce proceedings and may not feel adequately confident to draft her own petition without legal advice. Without that advice she may not be fully aware of the legal differences between and consequences of a judicial separation compared with a divorce. Name change can

prove invaluable in situations where a woman who is trying to start a new life in a new community. Members of families have been known to go to extreme measures to track down women. Changing her name will obviously make it more difficult for the family to find her and give women that chance to begin a new life without the fear of her family and friends finding her.

The proposals intend to re-focus public funding away from litigation and towards resolving cases out of court. Put more simply, there will be a push towards mediation, with the possibility of legal aid being drastically cut or lost entirely if mediation is not attempted. Rights of Women are particularly concerned about this proposal, especially in the context of domestic violence issues. There is often a strong power imbalance operating in relationships where there is an element of domestic violence and for this reason, we feel that the pressure of legal aid being denied due to a failure or refusal to mediate, in addition to external pressure from members of family or community, could result in many cases not coming to court.

With regards to mediation, we believe there must be exemptions to this rule including cases involving domestic violence. Furthermore, women whose first language is not English will need the benefit of completely independent interpreters. The interpreters need to have a full understanding of the culture and the community. When, as often is the case, close relatives or elders of the community who may have distant ties with the family are used, they can often side with tradition and sometimes end up putting added pressure on the woman to “think again” about what she is doing or may “unintentionally” let sensitive and confidential information get back to people who should not have that information.

The final proposal which we feel is of particular concern to women is the requirement of NI numbers for public funding applications. Women who do not yet have full immigration status may be unfairly discriminated against and may be

worried that any complaint they make may leave them susceptible to being deported. Without an NI number they will not however, be eligible for public funding.

It is already extremely difficult to find a legal aid solicitor. In fact in certain areas, for example, in Leicester, it is near on impossible. Therefore women have to travel for miles to access a solicitor. This is extremely difficult and impractical especially when she also has child care dependent responsibilities, has a disability or is on benefits or a low income.

We believe these proposals will have a damaging effect on women’s ability to access justice. Accordingly we urge women’s groups and their service users to write to their respective MPs to express concern.

The result of proposals is that many women will face serious difficulties in accessing justice and as a result may find themselves trapped in an abusive relationship or unable to move forward in their lives.

Since this article was written, the Government has published a summary of their proposals in response to the Legal Services Commission’s consultation paper *New Focus For Civil Legal Aid*. Details of these proposals and Rights of Women’s views on them can be found on our website www.rightsofwomen.org.uk.

Freedom of Information Act 2004

The Freedom of Information Act came into effect on 1st January 2005.

It aims to create a new era by providing an environment in which everyone will be able to

access information which falls within the public domain, *unless* it would be against the public interest or harm one or more of the following specified interests. Reasons for refusing access to information could include international security, defence and international relations; law enforcement; personal privacy; commercial confidentiality; the safety of the individual, the public and the environment; information supplied in confidence to public authorities.

This in effect means that everything is public unless it falls into specified exempted cases

Subject to the exemptions, any person who makes a request to a public authority for that information, must be informed whether the public authority holds that information. If it does, that information must be supplied, subject to certain conditions.

Any public authority which has functions in England, Wales or Northern Ireland can be asked by a member of the public to provide any information which they hold.

A definition and a comprehensive list of public authorities is set out in Schedule 1 of the Act and also includes those bodies designated as such by s5 and s6. For example, local authorities, NHS Trusts, Broadcasting Standards Commission, Transport Departments and water companies will all fall under this definition.

What effect will this have on our service users?

The type and scope of information which could be requested and obtained is limitless.

The basis of the Act is that everyone will have a “Right to Know”. This will apply to any individual of any nationality or place of residence and this will also apply to organisations, companies and other public authorities.

“Information” has been defined very broadly.

Some common requests from individuals could include the following:

- information which affects their daily lives, including access to internal files held by NHS, police and local Government.
- information about the safety record of individual hospitals, the cost of medical procedures and health spending priorities.
- Information about applications for social security and refusals of such applications.
- Information on schools including spending priorities, maintenance and suspension rates.
- Information about the police including records on crime fighting, staffing, response times and clear up rates.

This information will prove invaluable to the numerous women who are mothers, carers are disabled or are on a low paid salary or benefits and can often be unaware about where to obtain information on traditionally confidential matters, about which they may feel they have a right to know. It may also assist women by enabling them to have access to more information and hence be better prepared for any subsequent involvement with a public body.

The concern is that what occurred in the USA where there is a similar Act in operation, could happen over here too. The business world could actually become the real beneficiaries of the Act and take advantage of the legislation in order to obtain inside knowledge of their competitors.

Although people could get some of this information prior to the Act coming into force, eg access to personal medical files, the new Act will broaden accessibility to many more services and information.

As the Act becomes more prominent, it is believed that public authorities will find themselves inundated with requests for information about all sorts of information.

There are no limitations on the sort of information that a person can request and the public body will have to provide this information unless it falls under one of the exemptions.

How it will work?

An application or a request for information must be made in writing (this can include emails), describing the information requested and stating the person's name and address. There is no set format and no citizen or residency restrictions.

The public body must respond to the request no later than the 20th working day following receipt of the request.

Where the information requested by an individual may or may not fall under one of the exemptions and the public body has to decide, the 20 day timescale can be extended to one "which is reasonable". However, the public body must still write to the applicant within 20 days of receipt of the request to tell them that a decision is being made about whether this information can be disclosed and providing a date by which the final decision will be made.

There is no need to state why information is needed or what the information is for.

A person can only request information from public authorities as defined and set out in Schedule 1 to the Act and also those bodies designated as such by s5 and companies which have been defined as such, by s6.

As information only has to be provided by a public authority under this Act, it is important to check that the body, is in fact deemed to be such under the Act.

Whether or not the Act results in more official information coming into the public domain, we will have to wait to see but it would appear to be a step in the right direction.

Domestic Violence is a Crime

This Bill finally received its long awaited Royal Assent on 15th November 2004. The Act is heralded as signalling a new era for both the victims of crime and witnesses to crime.

The Act aims to strengthen the rights of victims and witnesses.

Most importantly, the Act contains many new measures which should make it much more straightforward and help give both victims and witnesses to crimes the confidence which is needed to come forward to report crimes of domestic violence. Many of the women callers to our free and confidential advice line have waited many months or sometimes even years before feeling able to speak to somebody about what has happened to them. Any legislation or new initiatives which could improve and ease this process should be viewed as a step in the right direction.

It will make offenders pay towards supporting victims. Money will be recoverable from offenders by the Criminal Injuries Compensation Authority and surcharges will be placed on criminal convictions and fixed penalty notices which will contribute to the Victims Fund.

Below, we have listed some of the most important measures which will be introduced when the Act comes into effect:

- The establishment of an independent Commissioner for Victims
- Installing a Code of Practice which is binding on all criminal justice agencies to ensure the support, protection and information/advice for all victims.

- Strengthening the civil law on Domestic Violence injunctions by amending the Family Law Act 1996 so that cohabiting same-sex couples and couples who do not live together or have children together can apply for non molestation and occupation orders.
- New police powers to deal with breaches of non molestation orders by making it an arrestable criminal offence punishable with up to 5 years in prison.
- Creating a new offence – familial homicide, for causing or allowing the death of a child or vulnerable adult.
- Reform to defences to homicide – including provocation.

We are disappointed to see that the Act still does not contain a statutory definition of domestic violence. We believe the Government has missed an opportunity to implement one despite various groups lobbying for this. Without such a definition, it is unlikely that domestic violence will ever be treated in a uniformed manner or with the seriousness that this crime deserves by the statutory bodies which enforce the law.

An Act of Civilisation

The Civil Partnership Act 2004 received royal assent last year, (17th November 2004). It creates a new legal relationship of civil partnership, and aims to give same sex couples similar rights to those which married couples have. In many countries, partnership registration schemes already exist effectively and efficiently including Denmark, Portugal and Sweden and in some states in the US and Australia.

The Act will provide lesbians (16years old and over) and gay men, who form a civil partnership, with parity of treatment to opposite sex couples who enter into a marriage, regarding a wide range of legal matters.

Registration itself will be a very similar process to marriage. Couples need to give notice of their intention to register at a registry office and will then be able to sign the civil partnerships register 15 days afterwards. As with marriage, if a lesbian couple in a civil partnership decide that their relationship can no longer continue, there will be a formal court based process for dissolving the partnership, with very similar grounds for divorce apart from there is no adultery ground.

Once a couple has registered their partnership, each partner would acquire rights and responsibilities that would reflect the commitment they had made to one and other. A registered civil partnership could only be dissolved formally by a court and upon showing that the relationship had broken down irretrievably. So although the Government has categorically stated that there will not be gay marriages, the civil partnership act in effect brings about all the rights of marriage.

The most important of these new rights will include:

- Joint treatment for income-related benefits
- Joint state pension benefits
- Ability to gain parental responsibility for each other's children
- Immigration recognition
- Exemption from testifying against each other in court
- Hospital visits – partner can be recognised as “next of kin” when partner in hospital
- Recognition under intestacy rules
- Protection from domestic violence
- Rights as a result of a dissolution of the relationship- eg property division,

The irony of the Act is that in many ways it discriminates against opposite sex partners who are cohabiting, as they will still not have the many rights which are being given to same sex couples who have registered their relationship by civil partnership and which are already given to married couples. The Government believes that this is fair because opposite sex couples have the opportunity to obtain legal status for their relationship by getting married.

We hope that the Civil Partnership Act will at long last bring adequate protection and rights for lesbian couples in all aspects of the legal agenda such as adoption rights, lesbian parenting and benefit related rights in the same respect as opposite sex couples.

The Act will come into effect on 6th December 2005. This means that the first civil partnership registration could take place prior to the end of the year on 21st December 2005.

Responding to Government consultation papers

One way in which Rights of Women aims to influence Government policy is through its responses to Government consultation papers. This gives us an opportunity to voice our thoughts and views about specific legal issues and possible new legislation affecting women.

Rights of Women has responded to numerous consultation papers. Our most recent consultation responses (listed below), can be found on our website www.rightsofwomen.org.uk

- A New focus For Civil Legal Aid – Encouraging Early Resolution; Discouraging Unnecessary Litigation
- Domestic Violence and Sentencing
- Parental Separation: Children’s Needs and Parents’ Responsibilities
- The Law Society’s Family Law Protocol
- Broadcasting Courts

We would like to encourage more women’s organisations to become involved in the policy decision making process. A list of current consultation papers which can be responded to can be found at <http://www.row.org.uk/policy.html>. Alternatively we would encourage women’s organisations to endorse Rights of Women’s responses. This can be done by sending a brief letter or email supporting our submissions to the relevant consultation body. Please drop us a line letting us know you have done this.

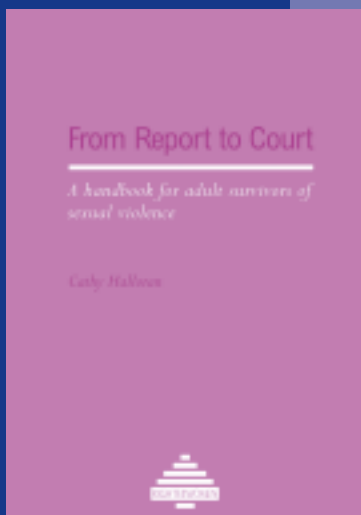
The Noticeboard

New Sexual Violence Legal Advice Line

Rights of Women is pleased to announce the launch of its New Sexual Violence Legal Advice Line. A free confidential telephone legal advice service for individual women and women's organisations dealing with:

- Rape
- Sexual Assault
- Child Sex Offences
- Family Related Sex Offences
- Trafficking
- General Criminal Legal Advice

Our female lawyers can be contacted on 020 7251 8887 (phone) or 020 7490 2562 (Textphone) on Mondays 11am – 1pm and Tuesdays 10am – 12 Noon.



New Publication Launched

Rights of Women

From Report to Court:

A handbook for adult survivors of sexual violence

We were delighted to have launched our latest publication, *From Report to Court: A handbook for adult survivors of sexual violence*. The Launch took place at Portcullis House on Tuesday 3 February. Cathy Halloran, the author of the book, Baroness Patricia Scotland, Minister of State for the Criminal Justice system and Law Reform Vera Baird MP and Kerry-Lyn Stanton Jones from the Croydon Rape and Sexual Abuse Support Centre, all spoke of the importance of having a handbook like this which gave adult survivors of sexual violence an accessible and easy to use guide to the law in addition to practical advice and information.

We would like to thank all our members and others who attended the launch of the publication. If you would like to obtain a copy, you can send a large SAE for 71p to Rights of Women, 52-54 Featherstone Street, London, EC1Y 8RT or it can be downloaded from our website at www.rightsofwomen.org.uk

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