

A close-up photograph of a woman with long brown hair hugging a young girl with dark hair tied in a ponytail. The woman is looking down at the girl with a gentle expression. The girl is wearing a dark blue hoodie and has her eyes closed, resting her head against the woman. The background is softly blurred, suggesting an indoor setting.

Legal Aid and the Family
Saving What's Important



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Introduction

The Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO) removes almost all public funding for private family law cases.

The current proposals will reduce access to justice for the poorest and most vulnerable groups in society. If enacted, LASPO could result in children losing contact with parents or being exposed to unsafe contact arrangements, and put victims of domestic violence at further risk of abuse. By the government's own admission, the reforms will cost the state more than the Ministry of Justice will save in the short term.

This briefing proposes changes to the Bill to help to secure legal aid provision for those families most in need. It focuses on the definition of domestic violence and gateway criteria, and non-court forms of dispute resolution. It also identifies potential savings to the legal aid budget.

Gingerbread, Resolution, Rights of Women and the National Federation of Women's Institutes work daily with those who will be affected by LASPO. We hold grave concerns that the Bill will lead to:

- victims of domestic violence being forced to confront their abusers without legal representation
- children exposed to prolonged emotional and financial instability

This briefing shows the effect that these changes will have.

Gingerbread

Gingerbread is the national charity working with single parent families. We provide expert information and advice, along with membership and training opportunities, to single parents and their families, and campaign against poverty, disadvantage and stigma to promote fair and equal treatment and opportunity for them.

Resolution

Resolution, formerly known as the Solicitors Family Law Association (SFLA), is an organisation of 6,000 family lawyers, mediators, collaborative lawyers and others who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for improvements to the family justice system.

Rights of Women

Rights of Women is a voluntary organisation committed to informing, educating and empowering women concerning their legal rights by providing free, confidential legal advice, accessible and timely publications and training. We campaign to ensure that women's voices are heard and law and policy meets all women's needs.

The National Federation of Women's Institutes

The NFWI is the largest voluntary women's organisation in the UK with more than 210,000 members in 7,500 WI's. The NFWI was established in 1915. The organisation plays a unique role in enabling women to develop new skills, giving them opportunities to campaign on issues that matter to them and their communities, and provides wide-ranging activities for members to get involved in.

LASPO and Domestic Violence

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

Domestic violence survivor, NFWI research, Oct 2011

'If domestic violence is involved, the government believe that legal aid should be provided.'

Jonathan Djanogly, Commons Debate at Report Stage, 31 Oct 2011

It has been widely reported that women who have experienced domestic violence will still be eligible for legal aid in private family law cases, but this is not accurate. Legal aid is a vital, life-saving resource for women who experience domestic violence, but many will be left without support.

The reforms as they stand will make it harder for women to access legal aid after experiencing domestic violence, and will undermine wider government commitments to tackle violence against women and improve access to justice.

The definition of domestic violence used in the Bill must be consistent with wider government policy

A comprehensive definition, linked to wider government policy, must be included in the Bill.


The cross-government definition of domestic violence used by the Home Office, Ministry of Justice, UK Border Agency, Crown Prosecution Service and the Association of Chief Police Officers (ACPO)¹ must be used in the Bill. Including this definition would facilitate the delivery of coherent services, link with the cross-government Violence Against Women and Girls Action Plan (March 2011) and help women who have experienced violence to get the help they need.

The government suggests that adopting the existing cross-government definition would allow cases that are somehow not genuine cases of domestic violence to qualify for legal aid. However the government already uses these criteria to allow women to access services, meaning that many who are already known to be victims will miss out on legal help.

The evidence gateways fail to reflect women's experiences

Even more importantly, as the proposals currently stand, the gateway criteria to allow domestic violence survivors access to legal aid in private family law cases are extremely restrictive. Many will be denied justice because they haven't taken criminal or civil proceedings against their abuser. One woman who took part in the research conducted by the NFWI said:

'I've never reported any incidence of violence with my ex-partner.... Social Services were involved so I reported it to them. I never saw the police as an option because I didn't think they could help abused women.'



This woman, and many others, would not be eligible for legal aid under the proposals. Violence against women is a hidden crime; NFWI research in 2009 found that one third of respondents who had experienced abuse told no one about their experience², and 79% of professionals who work on violence against women issues surveyed by Rights of Women in 2011 said that the women they work with do not routinely report to the police.

Although the government has suggested that the inclusion of survivors who have been referred to Multi-Agency Risk Assessment Conferences (MARAC) will capture those who do not report to statutory agencies, this is insufficient. Women's Aid Federation of England's Annual Survey in 2010 found that just 19% of women in refuge had been referred to a MARAC³.

The gateway criteria must reflect the kind of evidence a survivor is likely to have and include documentation from sources such as specialist domestic violence organisations, healthcare providers or social services.

The government has proposed to deal with these evidence gateways in secondary legislation or guidance. However this issue is of vital importance and must be subject to parliamentary scrutiny.

We are therefore calling for the gateways to be dealt with in primary legislation and widened to reflect women's experiences more accurately.

Litigants in Person

If fewer people are able to access legal aid, more will be forced to represent themselves in court as litigants in person. This presents a number of issues for women who have experienced domestic violence, especially if they are forced to cross-examine or be cross-examined by the alleged perpetrator. This makes it even more important that legal aid is protected for women who experience domestic violence to ensure that the victim is represented in proceedings.

One woman who took part in the NFWI research told us:

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

Cases involving litigants in person are slower than cases where both parties are represented. Slow cases are more traumatic for those involved and put an additional burden on the already pressured family court system.

1 These agencies define domestic violence as “any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”

2 Violence Against Women in Rural and Urban Areas, McCarry and Williamson, 2009

3 Sample of 601 women in refuge accommodation in a one day snapshot. Women's Aid Federation of England, 2011.

Resolving Disputes

The Bill means that, in nearly all cases, separated parents will no longer receive public funds for legal advice and representation to help resolve disputes concerning children and financial matters. The exception to this is where there is evidence of domestic violence or child safety concerns. It is unwise to withdraw legal aid for advice when the evidence clearly shows that representation where necessary makes a significant contribution to successful dispute resolution.

The removal of legal aid for advice and representation for private family law only serves as a blunt instrument to decrease numbers of litigated cases, rather than ensuring parents and children get access to appropriate help and support which reflect their specific circumstances. More parents will simply give up trying to resolve their dispute. This cannot be construed as a desirable outcome or in the best interests of children.

Mediation

For parents who do not meet the domestic violence gateway criteria, the Bill retains provision for legally-aided mediation for private family law. Whilst this is welcome, it is by no means clear that mediation guarantees practicable, enforceable and sustainable contact and financial agreements in all legally-aided cases⁴. Mediation is not suitable for all cases, including instances where there is a point requiring adjudication or an imbalance of power between the parties. This could occur, for example, in cases involving domestic violence which do not satisfy the evidence gateways, or where there is a high level of conflict.

Unsustainable and inequitable agreements; arrangements that could compromise the safety of children; or those that fail to secure adequate financial support can be the result where one or more parties do not engage in mediation in good faith.

Research into the impact of the proposed reforms has shown that individuals who do not have access to a legal professional will give up seeking a satisfactory conclusion five and half times more often than those who received legal advice⁵. Separated families living with unresolved disputes over their children or financial matters will be an unintended consequence of the reforms. This is unacceptable and could have long term implications on the emotional and material well-being of children.

Legal aid must be made available in defined circumstances where mediation is attempted and fails (partially or completely), or is deemed unsuitable at assessment.

Collaborative Law

LASPO doesn't leave open the option of funding other non-court dispute resolution services. Collaborative law is a dispute resolution mechanism that allows both partners to be represented by lawyers, while meeting face to face to receive advice and discuss solutions in the interests of the family. Collaborative law can be a very effective process, as it allows separating couples to talk through their difficulties with the support of their lawyers, but having agreed that they will not instruct the lawyers to go to court. It can allow disputes to be resolved outside of the court room, even when mediation is not suitable.

All collaborative lawyers are members of Resolution, and their clients are helped to resolve their own disputes with legal support, allowing lasting settlements to be agreed and taking pressure off family courts.

LASPO should make it clear that collaborative law will be funded where appropriate or safeguard the option of funding of collaborative law or other non-court dispute resolution services in the future.

Counting the Cost

The Bill is designed to save money - but may simply shift spending around government and could even increase total costs. Citizens Advice estimates that in some circumstances every £1 spent by the state on legal aid can save taxpayers £8 spending elsewhere⁶. These costs can mount up when inappropriate financial settlements are agreed, forcing families to rely on social housing or the benefit system.

Steps could be taken to ameliorate this cost, allowing funding to be retained for the most vulnerable, rather than simply moving the vast majority of family law from scope:

The Statutory Charge

For example, the statutory charge recovers legal aid funding in certain cases when the recipient is able to pay. Extending this to other private family law cases, and to the costs of mediation, in certain circumstances, could offset the costs of funding legal representation for the most vulnerable.

Resolution therefore suggests the consideration of the extension of the statutory charge to other family cases and mediation when the legally aided person is able to pay.

Interim Payments

LASPO will allow courts to force one party to pay for the other's legal representation, in financial relief cases following marital or civil partnership breakdown where there is an imbalance of assets. This is a sensible step to ensure that as many people as possible are represented and can secure fair settlements without recourse to legal aid, and it is important that those eligible are able to access it. Legal aid should be available to help the interim payments to be secured, and could be repayable from the interim payment or their financial settlement.

Preventing Abductions

The government has retained legal aid for international child abduction, due to the serious and potentially damaging impact. However, if a child has been removed, or a threat has been made to remove a child from the parent with care to another part of the UK, legal aid will not be available to make appropriate orders to have the child returned or to protect against abduction, unless the parent with care satisfies the domestic violence gateway criteria, or the child abuse gateway applies.

The police will not return a child to the parent with care unless such orders are in place. This means that many parents will face this distressing situation on their own, and if a child is not returned swiftly they may be taken outside the UK - an avoidable, expensive and traumatic situation.

Legal aid should be available to prevent and respond to the domestic abduction of a child, to prevent unnecessarily expensive and traumatic escalations.

⁴ Evidence on the success of family mediation is mixed. See: Legal Services Commission (2010) In-court mediation for family disputes. Ministry of Justice Briefing: Improving Public Awareness and Take-up of Family Mediation

⁵ Bradley, L. (2011) Cutting legal aid: advice sources and outcomes in civil justice. London: The strategic society centre.

⁶ Citizens Advice, Towards a Business Case for Legal Aid, July 2010

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Single parents, equal families

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