

Legal aid cuts and domestic violence against women:

A guide to gathering evidence to send to the UN

Introduction

What has been the impact of the civil legal aid cuts contained in LASPO (Legal Aid, Sentencing and Punishment of Offenders Act) on the lives of women in the UK? LASPO cut civil legal aid in a number of areas such as education, housing and family law. The cuts came into effect in April 2013. This was the year that the UK government reported to the United Nations Committee - the guardian to the Convention on the Elimination of Discrimination Against Women (CEDAW)¹, an international human rights convention which the UK is a signatory to. Civil society, led by the [Women's Resource Centre](#), prepared an evidence-based report (called a shadow report) which acts as a 'shadow' to the official report submitted by the UK Government². The UN Committee found this shadow report enormously helpful. Since the Government doesn't always paint the whole picture, the evidence-based nature of the shadow report means that a fuller picture is provided.

The UN CEDAW Committee has asked the UK Government and the authors of the shadow report to report back earlier than usual because they are so worried about the impact of the civil legal aid cuts, in particular on violence against women and whether women can access justice.

Focus on Family Law

The evidence gathering is focussing on family law (public and private), such as contact and residence disputes which were taken out of scope of legal aid.

When the changes were made under LASPO, the Government promised that there would be a gateway to ensure that victims of violence would still be able to access legal aid, provided they could meet certain requirements and demonstrate that they were a victim of domestic violence.

In March 2015, the Justice Committee reported figures from Rights of Women that 39% of women who were eligible for legal aid through the domestic violence gateway were unable to access it because of barriers caused by some of the regulations attached to the gateway. These include the fact that evidence must demonstrate that violence has taken place in the last 24 months, and that letters must be obtained from a GP, for which there is a £50 charge³.

Those working with victims of all forms of violence against women are currently preparing the shadow report to submit to the UN Committee. The concern is that the gateway is denying victims of violence access to justice. To help with this report, the working party preparing the report (led by Cris McCurley, Partner at Ben Hoare Bell) needs your help. What is needed is empirical evidence that victims of violence are still unable to obtain the proof necessary to qualify for legal aid.

-
- 1 Link to CEDAW Committee – <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.asp> UK government report to CEDAW Committee
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2f7&Lang=en, CEDAW Committee Concluding Observations
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/7&Lang=en
 - 2 Women's Equality in the UK: A Health Check, Women's Resource Centre
<http://thewomensresourcecentre.org.uk/our-work/cedaw/cedaw-shadow-report/>
 - 3 Paragraph 65, page 27 of Justice Committee Report March 2015 at
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

The LASPO definition of domestic violence is:

'an incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other'⁴.)

The evidence required has to show that the client was or is at risk of being a victim of domestic violence from the family relationship.

What will be done with the evidence?

The working group will compile the evidence gathered into a report to send to the UN CEDAW Committee and will publish the report in the UK for everyone to read.

What about revealing the details of vulnerable women and their families?

The working group is looking for case studies: real life examples of how victims of violence have been affected by these cuts and the gateway. Many of the women featured in the case studies may be vulnerable and may not wish to have their details disclosed to the Committee or published in a report. Additionally, there may be further risk of violence if they do so.

The case studies can be anonymised by using the initials of the client. What the working group will require is the details of the person and organisation providing the details. If you have questions about this, please contact Cris McCurley or Smita Shah.

Is actual documentary proof required or simply the stories?

Actual documentary proof is not required, just the stories of what has happened with as much detail as possible. The stories may come from your own case files, documentation or case notes, or people you know.

Forms

This guide is to accompany two forms: one is aimed at lawyers and one is aimed at civil society or non-governmental organisations. The two forms ask similar questions and require you and your organisation to fill in the details. This guide is to assist in that process.

[Form for lawyers](#)

[Form for NGOs](#)

Please return them to Cris McCurley at Ben Hoare Bell at: CrisMcCurley@benhoarebell.co.uk

GUIDE TO FORMS

Date:

This should be the date on which the client was seen.

Details of client/gender:

Both forms ask for the initials of the client to ensure that they cannot be identified. The form also asks for

4 [Link to regs 33 and paragraph 2.2](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345515/legal-aid-evidence-for-private-family-law-matters.pdf)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345515/legal-aid-evidence-for-private-family-law-matters.pdf

the gender of the individual whose case you are setting out on the form.

Have they previously seen a solicitor?

Before the client/individual came to see you and/or your organisation/law firm, had they seen a solicitor? How about a Citizens' Advice Bureau, law centre or a direct access-qualified barrister? If so, please specify what they told you about this, who they saw, and when.

Type of Proof Attempted

The kinds of proof women will need to produce will be the following:

- Proof of a conviction, police caution, or ongoing criminal proceedings for a domestic violence offence. These are found in [this document](#). - However, for the purpose of this exercise, the woman will need to have obtained a letter from the police or Crown Prosecution Service setting out the details of a conviction, caution or ongoing criminal proceedings
- A protective injunction – the court order of the injunction itself
- An undertaking given by perpetrator in court, or, where there is not an equivalent, an undertaking given by the applicant (an undertaking is a court form that has been filled out by the perpetrator or lawyer/clerk at court).
- Letter from the Chair of a Multi-Agency Risk Assessment Conference (MARAC) – this is a very specific letter outlining the details of why, when and for what purpose the MARAC was convened. The letter can be obtained from the Chair or through the assistance of a Domestic Violence Officer who may have been appointed as a result of the MARAC being convened. These are usually only convened where there has been a referral from a gateway agency and the case is serious enough to cross the threshold for a MARAC
- A finding of fact in a court of domestic violence – this will usually be in the form of a judgment or an extract of a judgment from the civil courts, usually the family court. This will need to be obtained by the person who is involved in the case and may need to approach the court to obtain a transcript
- A letter from a defined health professional such as GP, nurse or psychologist
- Evidence from social services of domestic violence
- Evidence from a refuge detailing a stay in their facilities or being refused a stay due to the facilities being full
- Recent convictions which fall within the two-year period
- Police bail/ police bail for domestic violence/bindover/for a domestic violence offence
- Evidence of a referral to a domestic violence support service from a health care professional, again in the form of a letter

Most of these will be in the form of a letter and must satisfy the requirement that they refer to an incident (or incidents) of domestic violence which took place within the last two years. It would be helpful to set out the steps taken to obtain the proof, how long it took to obtain and whether it was relatively easy or difficult. It would also be helpful to know whether there was a delay, if so, why, and what the impact of the delay was upon the woman.

Did the client have to pay for the evidence?

If they did, how did they pay for it? If they couldn't, why and what was the consequence of this?

Reason not possible to obtain:

Please set out the reasons for not obtaining the evidence. Again, there may be some overlap with the above, such as delays in obtaining the evidence, language or other barriers, administrative hurdles and not being believed by professionals.

It would be helpful to know what the outcome of the above was

For example, was the woman able to obtain the evidence (and, therefore, legal aid) initially only to have it

rejected or questioned mid-proceedings resulting in a loss of legal aid? For women trying to obtain evidence of coercive, controlling and financially-controlling behaviour – were they able to do this?

Specify if the evidence has expired as more than 24 months had passed:

Was the evidence or letter out of date and/or were the incidents more than 24 months old? What was the consequence of this?

What other funding options were available to the client?

Outcome:

What happened to the client?

It's not set out on the form but please put your name, organisation or entity you represent and your address and contact details. We do not require this information about the client or case study.

If you have any question please contact: Cris McCurley at CrisMcCurley@benhoarebell.co.uk or Smita Shah at smitas@gclaw.co.uk

Please return all forms to Cris McCurley.

Thank you for your assistance and co-operation.

Smita Shah
Garden Court Chambers