

## **Eaves' response to the consultation 'Proposals for the Reform of Legal Aid in England and Wales'**

**February 2011**

### **About Eaves**

Eaves is a London-based charity established in 1977, that provides high quality housing and support to vulnerable women. We also carry out research, advocacy and campaigning to prevent all forms of violence against women. At Eaves, we put the needs of women first. We are determined to give a voice to the most excluded women in society and provide direct, innovative services to support and empower women to help themselves. There are different projects run by Eaves.

### **The Lilith Project**

Lilith Research & Development have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative change and to working directly with women who have experienced sexual violence.

- **Sexual Violence Action and Awareness Network (SVAAN)** – Under the Lilith Project we co-ordinate the SVAAN Network – a network of **68 organisations** working with women and girls who have experienced sexual violence. The network began in 2003 as a support network for the voluntary sector.

***Please Note - On the 27<sup>th</sup> of January 2011 we had a meeting with our network members on the proposed changes to the legal aid scheme. Most of the concerns that we have raised in this consultation response are shared by our network members.***

### **The Scarlet Centre**

The Scarlet Centre is an Eaves service providing advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

### **The Poppy Project**

The POPPY Project provides support, accommodation and advocacy for women trafficked into domestic slavery and sexual exploitation in the UK. We have 54 bed spaces throughout England and Wales. We also run an outreach service which works with women who cannot be housed in Poppy accommodation, either because there is no room for her or she does not meet the criteria for support set by Poppy's funder, the Office for Criminal Justice Reform (reporting to the Ministry of Justice)

### **The Serafina Project**

Formerly Eaves Women's Aid, The Serafina Project provides support and accommodation for women (and their children) fleeing domestic violence. We provide bed spaces in Westminster in comfortable and safe environments where a full range of support provided, including help accessing benefits and legal advice.

### **The Sojourner Project**

The Sojourner Project is a pilot scheme run by Eaves and funded by the Home Office. It is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule. It will run until 2 July.

**To find out more about our work please visit our website on [www.eaves4women.co.uk](http://www.eaves4women.co.uk)**

### **Summary**

Eaves oppose the proposed changes in the provision of legal aid for the following reasons:

- The changes are **discriminatory on women**, the disabled, the poor, and the marginalised and vulnerable group of society.
- Legal aid is an essential safeguard against **inequality** and this reform will undermine that and actually exacerbate inequality.
- Women and vulnerable groups will be **further victimised** by the absence of legal aid by way of advice and representation.
- The indication that most of these vulnerable groups including women we work with will be able to represent themselves is **impractical** due to the voluminous and extremely complicated nature of the areas of law which are being excluded from legal aid under the proposal.
- Access to justice lies at the heart of **human rights protection**. Without access justice human rights can be rendered meaningless and human rights are only effective if they can be enforced. The proposal is in breach of different human rights principles including:
  - o Right to family and private life- *Article 8 of the European Convention on Human Rights (ECHR)*

- The best interest of the child and right of the child to have family relationships - *Article 3, 8 & 9 of the Convention on the Rights of the Child.*
  - The right to have equal treatment before the courts and tribunals- *Article 14 of the Covenant on Civil and Political Rights*
  - The responsibility of the state to protect the fundamental group unit of society, the family - *Article 23 of the Covenant on Civil and Political Rights and Article 16 of the Universal Declaration of Human Rights*
  - Right to a fair trial - *Article 6 of EHCR*
- With so many organisations **losing their funding** and local authorities facing **huge cuts** no one will be there to take the extra work and many will be left with little or no support.
  - Eaves response should be read in conjunction with the responses of ROW and ILPA which we have read and totally endorse.
  - We feel strongly that these proposals if enacted will result in grave injustice and a failure to fulfil our obligations to provide equal, viable access to justice.
  - It is difficult to resist the conclusion that these proposals choose to provide utter impunity for the waste, bureaucracy, poor decision making and bad practice in Government departments and instead to simply close down access to justice for the most vulnerable, marginalised and discriminated.

## **Scope**

***Question 1: Do you agree with the proposals to retain the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation document within the scope of the civil and family legal aid scheme?***

We **agree** that the areas identified as eligible for legal aid should be retained.

### **- Asylum**

Though we agree on the proposal to retail legal aid on asylum cases, we are concerned about the separate MoJ consultation to introduce fees on appeal of asylum cases. As this proposal shows, these groups of people are considered particularly vulnerable and hence we don't understand the justification to charge the same group of people fees in appeal cases. This would in effect deny them their fundamental right of access to justice, which includes the right to appeal, since many might waive their rights simply because they can't afford the fees.

On a related issue, when application for asylum is successful and a person gets a refugee status, he/she have the right to apply for their family members to join them in the UK. However, under the proposal, this is classified under immigration cases, which is exempted from legal aid. We believe this would have a negative effect on the right of family life, where families might be forced to live separately; children separated from their parents and partners

separated from each other due to lack of assistance from the state in the forms of legal representation. This will also disproportionately impact on women. In many cases where the male partner successfully claims asylum if he cannot then bring about family reunification then his wife is abandoned, may become destitute and can become vilified, ostracized and vulnerable to abuse.

We are also concerned with the exemption of advice on application for **asylum-support** including provision of accommodation to asylum seekers and their dependants which would leave many destitute (*Discussed in detail further in this document*).

#### - **Domestic violence**

##### Definition of domestic violence

Though we agree with the proposal to retain legal aid for family law cases when domestic violence and forced marriage is involved, we believe that issues arising in family disputes when domestic violence and forced marriage are not involved are also very significant that they entail the involvement of Government by way of assistance in legal advice and representation.

The consultation states,

*“In domestic violence cases involving, for example, non-molestation orders and occupation orders, the victim is at risk of **physical harm** and we therefore view these proceedings as at the high end of the spectrum in terms of importance of the issues at stake.”*

We are really concerned that domestic violence is recognised only as physical in this proposal.

Domestic violence is **“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.”**<sup>1</sup> The proposal doesn't seem to recognise that domestic violence is manifested in different ways and a range of controlling and coercive behaviours, which are used by a person to maintain control over another. It is in many cases a cumulative and interlinked forms of abuse which have physical, psychological, sexual, emotional or/and financial nature.

##### Restrictive Requirements

We are also concerned that the eligibility requirements under the proposal are very restrictive even in the presence of domestic violence. When there is domestic violence and for cases of ancillary relief or private law children and family proceedings, legal aid is only available:

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<sup>1</sup> CPS Policy for Prosecuting Cases of Domestic Violence – March 2009

- where the Legal Service Commission is funding ongoing domestic violence (or forced marriage) proceedings brought by the applicant for legal aid, or has funded such proceedings **within the last twelve months and an order was made**, arising from the same relationship;
- where there are ongoing domestic violence (or forced marriage) proceedings brought by the applicant for legal aid, where the applicant has funded proceedings privately or has acted as a litigant in person, or where there have been such proceedings **in the last twelve months and an order was made**, arising from the same relationship;
- where **there is a non-molestation order, occupation order, forced marriage protection order or other protective injunction in place against the applicant's ex-partner** (or in the case of forced marriage, against any other person); and
- where the applicant's **partner has been convicted of a criminal offence concerning violence or abuse towards their family** (unless the conviction is spent).

These requirements are really onerous and restrictive on victims of domestic violence and forced marriage. These requirements also don't manifest the realities of domestic violence and its impact on women that we work with.

For instance, a recent survey by Rights of Women revealed that out of **191 women that responded to a survey who said they have experienced violence, 94 (53.4%)<sup>2</sup>** said they haven't reported the violence to police or they haven't applied to courts for any domestic violence injunction.

Professionals who support women who have experienced violence also were asked a similar question, if women experiencing gender-based violence routinely report the violence to the police or apply for injunctions, **79.2% of the ones who responded said 'No'**.

In accordance with the proposal many women who are actually victims of crime including domestic violence would not be able to access legal aid simply because they haven't reported the case to the police or haven't applied for an injunction. Even when a crime was reported it might be impossible to gain access to legal aid just because the perpetrator was not convicted.

Even worse **BMER women** might not be able to know the help available out there, due to language barriers and the stigma and shame attached to reporting crimes of sexual nature.

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<sup>2</sup> Women's Access to Justice: A research report – Rights of Women, February 2011. [www.rightsofwomen.org.uk/pdfs/surveys/Womens\\_Access\\_to\\_Justice-a\\_research\\_report\\_KP\\_comments.pdf](http://www.rightsofwomen.org.uk/pdfs/surveys/Womens_Access_to_Justice-a_research_report_KP_comments.pdf)

**Hence, we don't believe any requirement for evidence to show the existence of domestic violence is workable, fair or legal.**

### Cohabiting

The proposal also does not cover cases when the parties are cohabiting or are in civil partnership. By not making legal aid available to cohabittees experiencing violence to enable them to resolve issues in relation to their property, the consultation is proposing to discriminate against those who choose not to marry or enter into a civil partnership.

***Question 2: Do you agree with the proposal to make changes to court powers in ancillary relief cases to enable the Court to make interim lump sum orders against a party who has the means to fund the costs of representation for the other party? Please give reasons.***

Though it might be considered reasonable to grant some power to courts to make interim lump sum orders against a party who has means to fund costs as opposed to making the party who can't afford pay, **we strongly oppose it if it would be substituting legal aid.**

We are further concerned that this might create further **hostility** between parties and will hinder further amicable agreements between the parties as regards child care, maintenance, etc.

It will also significantly **reduce the amount** of money parties would be left to partition by the end of the proceedings which might have a harmful effect on the party who is particularly vulnerable.

Besides with the proposal threatening to remove legal aid in financial relief proceedings it's **unlikely for an applicant to know and exercise her/his right** to apply for an interim lump sum payment.

***Question 3: Do you agree with the proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme? Please give reasons.***

We **do not agree** with the proposed exclusion from legal aid of cases and proceedings listed in these paragraphs. Please see our reasons below.

#### **- Asylum support cases**

Vulnerability was one of the reasons provided for retaining legal aid to asylum applications cases in this proposal. If vulnerability is recognised, as it should be, an important requirement to retain legal aid in asylum applications, the same argument should be applied here since we are talking about the same group of people.

Asylum support application is not as simple as is portrayed in this consultation especially when the person claiming the support is extremely vulnerable,

destitute, does not speak/understand English (all documents are in English). It's even more stressful when a woman is pregnant, have children, or when a person is traumatised due to rape, sexual assault or torture they experienced in their country of origin or the UK. Most of these people are fleeing conflict zones or countries with a well-documented record on human rights abuses.

Asylum support is financial and other support given by the Government if a person is an asylum seeker and he/she is homeless or without money to buy food other basic necessities. The applications are made to UKBA and the agency can decide to provide or refuse support. If UKBA decide to refuse to provide someone with support or if they decide to stop supporting someone, that person has the right to appeal against that decision. This is known as an **asylum support appeal**.

According to Asylum Support Appeals Project (ASAP), a charity specialising in asylum support law, one of the barriers for applicants is the large and unreasonable amount of evidence requested from the UKBA of asylum seekers to back up their support applications. This was shown in a case of a woman supported by ASAP.

### Case

*This woman was refused support twice on the grounds that there was insufficient evidence to prove she was homeless at the asylum support tribunal. The woman was single and had a baby. She had been staying with friends but they were unable to accommodate her any longer after the birth of her child because it was too much of a financial burden. She applied for support on the grounds that she had a fresh asylum claim outstanding and was destitute, providing evidence of her asylum claim, a letter from her friend detailing why she couldn't support her any longer, a character reference from her GP and the birth certificate of her child. However, her application was turned down on the basis that the friend who had supported her had not stated exactly when they would be terminating their help. She then gathered further statements from her friends as to why they could not help any longer and resubmitted her application but this was again rejected by the UKBA. She appealed this time and was represented by ASAP at the asylum support tribunal. She won her appeal.<sup>3</sup>*

There is already a huge concern that the UK's asylum support system fails to provide adequate, timely and consistent financial support and accommodation to people seeking asylum in the UK.<sup>4</sup> Furthermore, when they are denied asylum support and have no legal advice or representation to challenge that decision they are often forced into **destitution and are left vulnerable to exploitation** since by law they are not allowed to work and often have no means of supporting themselves.

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<sup>3</sup> Asylum Support Appeals Project - Annual Report 2009/2010

<sup>4</sup> Asylum Support Partnership Group - Response to the UKBA consultation Reforming Asylum Support: effective support for those with protection needs, January 2010

In 2009 in a response given by Citizen Advice Bureau to the Work and Pensions Committee inquiry on decision making and appeals in the benefits system, it was stated that there is a significant body of evidence that **legal representation at a tribunal hearing for asylum support has a significant impact on the decisions made.**

Legal representation increased the chances of success from 39% to between 61 and 71 % in the First-Tier Tribunal, a 'representation premium' of between 22 and 32%.<sup>5</sup> The report urged the Government to fund legal representation at asylum support tribunal hearings, in order to ensure sound and reliable decision making for this vulnerable group.

**Women will be disproportionately affected** if legal aid is withdrawn from asylum support because of their economic inequality as well as their vulnerability. According to a report by ASAP women asylum seekers often struggle to cope with difficulties related to their gender. Many of these women have suffered sexual violence either in their own countries or the UK, including rape and domestic violence. Many suffer from physical and mental health problems as a result, and have post- traumatic stress disorder or depression. Some may be pregnant or struggling to bring up children on their own.<sup>6</sup>

- **Clinical negligence**

The reason given for the exclusion here is that alternative sources of funding such as the CFAs are available for cases of clinical negligence. However the proposal itself admits that clients in some cases such as obstetrics cases may find it hard to secure funding under a CFA. This clearly raises the issue of discrepancy when addressing these gross misconducts which affects a person's right to health. It will also have a disproportionate impact on women which could be in breach of MOJ's duties under equality laws.

We are really concerned that the proposal even after acknowledging that litigants in this cases might have suffered severe injuries and are vulnerable where they are suffering from serious disabilities as a result of their medical conditions, it didn't mention alternative means or solutions for the problem.

- **Legal Help for the Criminal Injuries Compensation Authority**

The justice system recognises the importance of criminal injuries compensation as part of a possible redress for the victim of crimes such as the horrendous crime of sexual violence. In most cases the perpetrator does not have the means to financially compensating the victim so the Government provides some form of financial compensation to the victim in recognition of the personal injury sustained and of the traumatic ordeal the victim experienced.

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<sup>5</sup> Response to the Work and Pensions Committee inquiry: Decision making and appeals in the benefits system, Citizens Advice Bureau, September 2009

<sup>6</sup> Asylum Support Appeals Project - Annual Report 2009/2010



This compensation is crucial to the victim, who is usually very vulnerable. It empowers them, through financial help which might help them to move on. Criminal redress is not achieved only by conviction of the perpetrator – it's also about helping the victim to move on and build their lives. There could not be any justification to exclude legal aid which enables victims to attain this very basic right. The proposal itself admits,

*“We recognise that some of the people making these applications may be vulnerable if the injury they suffered was serious or traumatizing”*

Another reason stated under the proposal for exclusion is that the CIC application process is a relatively straightforward one, for which legal expertise should not be required. It states that applications can be made either online or by telephone in no more than thirty minutes. It also states, some voluntary sector organisations, such as Rape Crisis and Women's Aid, also offer help to some victims of crime with the application process.

**This proposal unduly assumes that all victims of violent crime have access to and knowledge of the use of internet or computers and have the necessary information to make CIC application either online or by telephone.**

As an organisation working with women who are victims of sexual and physical abuse we strongly disagree with this assumption. **Victims of crime are very vulnerable and the trauma would be exacerbated by the lack of support during the application process.**

Without the necessary legal support the victim would not even have the information about the possibility of monetary compensation in many cases. Even when they do have the information they need assistance to have realistic expectations of the compensation, and also be supported during the court process (which can be very long).

If the proposal is implemented there will not be support available for those with **mental or physical health problems** or those who are **illiterate**.

With the current economic climate where many organisations are losing their funding and are being closed it would be difficult to expect that voluntary sector organisations will be addressing the gaps.

### Trafficked women

Under this proposal the UK would be in breaching of its duties under the Council of Europe Convention on Action against Trafficking in Human Beings, by putting the onerous of legal representation on the victim of trafficking for criminal compensation. Article 15 of the Convention states:

*1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant*

*judicial and administrative proceedings in a language which they can understand.*

**2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.**

**3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators...**

#### - **Employment**

The proposal is to exclude all employment matters from the remits of legal aid, which includes, unfair and wrongful dismissal, redundancy, employment contracts, wage issues, etc.

Though these cases are in relation to monetary damages or earning potential, as mentioned in the proposal as reasons for exclusion, these are mostly cases between financially unequal parties and could lead to gross breach of person's rights especially in the absence of assistance in legal representation and advice.

**Women are bound to be disproportionately affected by withdrawing legal aid in employment cases.** Below is some statistics which shows the current reality in the UK.

- The average pay gap between women and men is 17.1% for those working full-time and 22.5% when those working part-time workers are included. The gap is even larger for ethnic minority women.<sup>7</sup>
- Each year an estimated 440,000 women lose out on pay or promotion as a result of pregnancy.
- The Equal Opportunities Commission (EOC) estimated that 30,000 women a year lost their jobs as a result of becoming pregnant.
- A third of all mothers in one study moved from a supervisory to non-supervisory role after childbirth, with lone mothers most likely to make this downward move.
- Over two-thirds of recruitment agencies had been asked by clients to avoid hiring pregnant women or those of childbearing age.
- Over 80% of employers would like to ask female applicants about their plans for a family. Ethnic minority women are particularly likely to be asked such questions.

In this kind of an environment where women are treated unfairly day in and day out it would be easy to imagine how the problems would get worse when a woman can not access legal advice and representation when faced with these problems. We believe that it is the responsibility of the Government to support women and other vulnerable groups by making legal advice and representation available when they are unfairly dismissed from their jobs, when employers refuse to pay their wages, etc.

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<sup>7</sup> Not having it all: How motherhood reduces women's pay and employment prospect, Fawcett Society, July 2009

## Trafficked Women

This will particularly have an impact on the women we work with who are trafficked for domestic servitude to the UK and abused by their employers. Perhaps the case stated below can shade a light on how sometimes it could be impossible for a person to go through employment tribunals and represent themselves.

### Case

*Annie\* was trafficked from Nigeria and exploited in domestic servitude. She came to the UK in 2009 on a domestic worker visa which was arranged and paid for by one of her traffickers. Prior to this she had been exploited in child labour from the age of 14 as a “house girl”, in return for sporadic access to education, paid for by the grandmother of her employer/ trafficker in the UK.*

*When coming to the UK she was promised £50 a month which would be sent back to Nigeria to care for her child. **She was told her job was to care for her employers children.** She was also told she would have ample time off to be able to work another job in order to save money for her child’s future. When she arrived in the UK she was made to work for up to **16 to 18 hours a day, everyday with no days off or proper rest breaks.** She cared for the children, one of which was a baby, and **did all the domestic work for the household.** She was also taken to her employer’s mother’s house twice a week to complete domestic work there.*

*Annie’s **freedom of movement was restricted** and she had no private space. She shared a bed with the youngest child in the same room as the elder child. When she asked her employer about being able to have time off to get another job, as this was the main pull for her to come to the UK, her employer became threatening, **verbally and physically abusive** towards her which escalated around the time they were due to renew her domestic worker visa. Her treatment became worse to the point that she was beaten by both her employers and **threatened to kill her and her child if she returned to Nigeria.***

*Annie was then thrown out of the house in April 2009. She went to Kalayaan<sup>8</sup> in July 2009 and told them her story. Realising that she needs immigration and employment advice they linked her to solicitors working in immigration and employment matter on legal aid. In December 2009 Annie was accepted into support and accommodation by the Poppy Project. **Annie needed her solicitors to represent her to the Home Office for her immigration matters and give her advice with regard to her employment matters.** Her domestic worker visa had expired and her solicitors advised, represented and*

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\* Not her real name

<sup>8</sup> Kalayaan is the only organisation in the UK providing support services to migrant domestic workers.

assisted her throughout the National Referral Mechanism (NRM)<sup>9</sup> process.

In September 2009 her solicitor submitted a statement of claim to the employment tribunal and sent a statutory grievance to her former employers. Annie's employment tribunal was in April 2010. Her traffickers/ employers represented themselves in the employment tribunal. They are highly educated people. **This was extremely distressing for Annie as she was cross examined by her employer/ trafficker.** If Annie had not had legal representation she would have been representing herself against her employers. Annie has no knowledge of employment law, exemplified by the fact she did not know her own employment rights under her domestic worker visa.

**Annie won her employment tribunal and was awarded £51, 274.69.** This would not have been possible without the legal representation and advice she got through legal aid. However, Annie has **not yet received any of the money she was awarded by the employment tribunal as the process of enforcement also requires legal representation and legal aid** if the respondents do not willing give the money to the claimant, which is the case in many employment cases. She is now being represented by solicitors for the enforcement of the tribunal award; she is doing this via legal aid.

Annie receives £60 weekly from the Poppy project and this is her sole income, she has no other means of income. **She would not be able to pay for legal representation.** The Poppy project support workers are not OISC certified and would not be able to give any legal advice in regards to employment or immigration.

Annie was also given a positive conclusive grounds decision through the National Referral Mechanism, after an initial negative conclusive grounds decision was reconsidered by the case owner at the Home Office. Her solicitor represented her throughout the process of reconsideration, without this she would have retained a negative conclusive grounds decision. Her solicitor is now representing her through the process of judicial review with the aim of being awarded a residents permit to enable her to recover from her experience and be able to remain in the UK for the enforcement of her employment tribunal. This would not have been possible without legal representation through legal aid.

Annie is also trying to apply for a leave outside of the immigration rules<sup>10</sup> for a domestic worker visa. **She has also now found a new**

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<sup>9</sup> NRM is a system where voluntary organisations, local authorities, police agencies and others, could collaborate in the tasks of identifying people who had been trafficked and ensure they received the appropriate support.

<sup>10</sup>Leave Outside the Immigration Rules - Where it is not possible to grant leave under the Immigration Rules, or to grant asylum or Humanitarian Protection or Discretionary Leave, any other leave to enter

**employer. This also would not have been possible without legal representation.** Her solicitor wrote a letter explaining her visa situation which assisted her employers in making a decision to agree to employ her as they knew she did not have a visa or permission to work in the UK. Her solicitor liaised with her employers with regards to her contract of employment and throughout the visa application process thus ensuring Annie would not be in an exploitative situation and that the application would be submitted correctly.

Removing legal aid from all employment cases would leave the most vulnerable with inadequate support to access justice. Solicitors working pro bono are already flooded by cases which are not dealt with under the current legal aid system.

#### - **Housing**

Under the proposal housing matters which don't directly concern homelessness are excluded. The reason given in the proposal is:

*“Many of these cases are simply about money or property, improvements to property, or access to property, and we consider that these issues are not of high importance when compared, for example, with fundamental issues such as homelessness.”*

**We believe that housing cases are actually of high importance, given the potential impact on the life, safety, health and well-being of individuals.** Housing issues could in so many cases be a matter of life and death especially when **women and children are fleeing violence and need to be re-housed.**

The segment of society that are going to be affected with this change are most likely to be the most vulnerable, disabled and marginalised.

The following cases of our service users show the complexity, the interconnectedness of different legal issues in such cases and the vulnerability of the clients.

#### Case One

*Yoland\*, one of our service users whose licence expired in the Sojourner refuge had to be re-housed. One of our case workers approached a London council Homeless Persons Unit for an assessment for this woman. The manager of the borough HPU refused to give an assessment advising the case worker that ‘with all due respect your opinion of what is vulnerable is irrelevant; the resettlement team see her as not a priority and she will not given an assessment.’*

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or remain outside the Immigration Rules must be granted under a further category ‘Leave Outside the Rules’ (LOTR).

\* Not her real name

*The caseworker who has some knowledge surrounding the Housing Act and the council's responsibility to assess or accommodate until an assessment can be completed, tried to advise the council around their responsibility to avoid 'gate keeping' services. This however made no impact to the decision by the council.*

*Yolanda had only recently started to receive benefits and had neither money nor savings to pay for any legal advice. Her case worker approached a legal aid solicitor who was able to ensure that she got a date for a homelessness assessment and was temporarily accommodated by the council until that date. After the assessment the council found she is actually in priority need of housing.*

*Without the help from the legal aid solicitor the manager of HPU would not have offered an assessment. Despite the knowledge and training the case worker had she wasn't able to further make the council recognise the risk and assess the situation.*

## Case Two

*Adita\* a service user in our Scarlet Centre needed desperate help with housing when leaving a refuge. Adita and her son were fleeing domestic violence and 'honour' based violence from her ex-husband and his family in London.*

*Her case was further complicated since her son was subject to a child protection plan which was monitored by a certain London Borough social services unit. Social services were concerned about the welfare of the child since he had a number of health and behavioural issues, his development was slow and threats had been made to the mothers' and sons' life.*

*Adita who felt really isolated and lonely in London wanted to be housed (outside London) near her family. She was also concerned about the risk of violence from her ex and his family who live in London.*

*However, social services in the London borough that her son was under protection plan were preventing her from moving to a city outside London. Any attempt made to leave London would result in social services starting legal proceedings to take the child into care which Adita didn't want.*

*She voiced her concerns repeatedly with social services which didn't make any change. This might be partially due to the fact that English was not Adita's first language and she had learning difficulties.*

*At the same time since she made a homelessness application to two different cities a dispute had started between a housing units in the*

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\* Not her real name

*London borough she was living in and the outside London city around a number of legal technicalities surrounding Adita's 'local connection'. These boroughs have dealt with her application incorrectly which could have forced her to end up on the streets.*

*A legal aid solicitor had to interfere in this case. Finally a legal aid firm who dealt with housing and family law addressed Adita's issues holistically. The risk around her son was reassessed and she was given permission by the London borough social services to move out of London.*

**- Immigration (where the individual is not detained)**

Choice seems to be one of the reasons given for excluding legal aid provision for immigration cases under the consultation. However, immigration cases are not always simply about choice; these cases are mostly complex and linked to fundamental freedoms of a person.

These changes will have a devastating effect on migrants' access to justice; they will also profoundly affect the BME communities living in the UK in areas such as family reunion, citizenship advice and deportation.

It is hard to fill this gap by voluntary sector organisations since organisations providing free legal advice in the immigration field are very few because of the rigorous accreditation requirements needed to offer immigration advice. Besides, they are already overwhelmed by the volume of legal need and the lack of funding affecting them massively.

The consultation document rightly emphasises the importance of holding Government bodies, including the UKBA in this case, to account by an individual who feels that an exercise of a power by an authority has violated his or her rights. It states, 'this is how individuals can seek to check the exercise of executive power by appeal to the judiciary'. It is unclear how this could be achieved under the proposed reform.

We are pleased that the proposal recognises the importance of providing immigration legal advice and representation to a person to be deported or removed from the UK, who is detained and is specifically seeking to challenge their detention, or is on bail and seeking a variation or extension of their bail, or is facing forfeiture of their bail.

**However, it's equally important that legal aid is available before situations escalate to detention and deportation due to lack of adequate legal advice and representation.**

Removal of immigration from the scope of legal aid will also have the effect of decimating solicitors' firms specialising in immigration law, and law centres might be forced to close as a result of these measures since most of their funding comes from legal aid.

## What does this mean to the women victims of domestic violence with no recourse to public funds?

The Sojourner Project is a scheme running since 2009 by Eaves and funded by the Home Office. The project is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule.<sup>11</sup>

Under this project women with no recourse to public funds who are victims of domestic violence are assisted to be granted an extension to stay in the UK under the Domestic Violence Rule. These cases are immigration cases and are quite complicated. Without legal aid; advice and representation, women will be forced to represent themselves and making a DIY application, would render their cases almost certainly doomed to fail.

To illustrate - see briefly cases of three women who are supported by the Sojourner Project.

### Cases

*Andrea\*, Cuban, Chiya\*, Japanese and Najat\*, Turkish - All three who are victims of domestic violence, all three women who had very limited command of English.*

*To apply for ILR under Domestic Violence Rule all three women required a psychiatric report and medical reports which, as well as costing money paid for by Legal Aid, needed the help of an advocate to access them. They also needed assistance to access police reports.*

*Najat had an interview with a domestic violence specialist in order to strengthen her case, the cost of which was also covered by Legal Aid. She could not have known where to find a domestic violence specialist herself or that it would strengthen her case to have evidence from one either.*

*What's also very striking is that **all three women were not successful in their initial application.** Besides, their **appeals took a lot of time since it was adjourned on a number of occasions.** Without legal aid, the advice and representation of legal professionals and others they could have not been able to follow their cases through.*

***The immigration process was not simple for these women; rather as always, it is surrounded with professional mystique which is impenetrable by lay people especially with a language barrier and the experience of violence they went through.***

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<sup>11</sup> For further information visit the following website  
[www.eaves4women.co.uk/Sojourner/Sojourner.php](http://www.eaves4women.co.uk/Sojourner/Sojourner.php)

\* Not their real names



## **What does this mean to women who are victims of trafficking?**

As in the case of Annie (mentioned above under the section 'employment') women who are trafficked into the UK would find it impossible to represent themselves in courts for immigration cases. **Annie was only granted a positive decision through the National Referral Mechanism, on re-application after her solicitor represented her throughout the process of reconsideration.**

Her case is still on where her legal aid solicitor is representing her through the process of judicial review for residents permit application. This would not have been possible without legal representation through legal aid.

By removing legal aid the UK would breach its obligation under the **Council of Europe Convention on Action against Trafficking in Human Beings**

Article 14 of the Convention states that:

*“Each Party shall issue a renewable residence permit to victims if... the competent authority considers that their stay is necessary owing to their personal situation; or the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”*

Article 15 follows to state that:

*“Each Party shall provide...for **the right to legal assistance and to free legal aid for victims** under the conditions provided by its internal law.”*

- **Family Law: Ancillary relief (where domestic violence is not present)**

The proposal states cases of family law related to ancillary relief when there is no domestic violence involved; will not be eligible for legal aid. This includes advice and representation in legal actions relating to – disputes about the division of financial assets, application for lump sum payment or maintenance, transfer of tenancy and divorce following relationship breakdown.

It's obvious that relationship break-down is a difficult and emotional time. Along with the break up also comes the added worry about dealing with the costs associated with the divorce or separation. Related issues like ancillary relief, organisation of maintenance payments, custody and access to children are legally distinct issues from the separation, and are treated separately and cost a lot of money.

Reaching agreements involving the financial allocation of assets, payments of maintenance and custody/access of children are often very complicated and tricky. If there is no legal representation or advice to negotiate these issues on behalf of, especially a vulnerable party, the result could be devastating.

**This will have an even higher impact on women.** Research has shown that there is a correlation between relationship break-downs and being in arrears and women are much more affected by this than men.<sup>12</sup>

An analysis of the issue by Fawcett<sup>13</sup> found, that women feel the economic shocks to a greater extent than men when relationships break-down and the result is more long-lasting for women than men. This report also cites another finding indicating that 68% of divorced and 76% of separated women has less than 1,500 savings, compared to 51% of divorced and 58% of separated men.<sup>14</sup> Moreover, 18% of divorced women and 23% of separated women are in arrears, compared to 12% of divorced men and 16% of separated men.<sup>15</sup>

The evidence shows that financial implication of relationship breakdown is far more severe on women than men. Without legal advice and representation these women will not be able to settle disputes on division of financial assets, maintenance, etc. **We strongly oppose the removal of legal aid from this area of law.**

- **Family Law: Children and family case (where domestic violence is not present)**

The proposed areas to be excluded from legal aid include advice and representation in legal actions relating to disputes about contact and residence of children, injunction against ex-partners, prohibited step orders.

These are very complex and important areas of law. Just for issues relating to disputes concerning children under the age of 16 for instance, there are a range of orders; Residence Orders, Contact Orders, Specific Issue Orders, Prohibited Steps Orders and Parental Responsibility Order.

**These are also very sensitive and personal areas of a person's family life including the best interest of the child which should rather be considered as a priority.**

Article 3 of the Convention on the Rights of the Child, states,

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**"*

There is no mention of such responsibility of the Government under the consultation.

Article 8 of the Convention states,

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<sup>12</sup> Fawcett Society Briefing on Women and Debts, August 2007

<sup>13</sup> [www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)

<sup>14</sup> Women's Financial Assets and Debts, Fawcett Society, November 2007

<sup>15</sup> Ibid

*“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and **family relations** as recognised by law without unlawful interference.*

Article 9 further explains,

*“States Parties shall ensure that a **child shall not be separated from his or her parents** against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...*

*States Parties shall respect the right of the **child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis**, except if it is contrary to the child's best interests.”*

**Without legal aid and proper legal advice and representation it would be impossible for many to ensure their right to family life and the UK government would be in breach of its international human rights obligations.**

The consultation document states that,

*“The Government believes that, wherever possible, it would be in the best interest of those involved in private law family cases to take a more direct role in their resolution, using mediation and keeping court proceedings to the minimum necessary.”*

This is however the current reality. **Most parents who apply to court for a contact order try mediation first.** The courts generally like to see that the parents have attempted to resolve the problems themselves. **In most instances, legal aid is granted where mediation has been tried and failed.**

### Case

*Vicky, a woman with mental health problems and who experienced domestic violence from her ex husband, is one of our service users. **[Unfortunately, the domestic violence she experienced would not be considered according to this consultation document since she didn't report it to the police, as she was very afraid and had language and culture barriers. Her ex was also using her mental health problems against her and so she didn't want to inform anyone in authority].***

*When the relationship broke-down, the ex was granted a residency order for their son and she was allowed supervised contact (with the help of legal aid) for a while; which was then changed to indirect*

*contact (letters, reports, etc). After a while though, she couldn't see her son because her ex did not adhere to the rulings. Through this process Vicky has made contributions to her legal costs, since she was working part-time at the time of the hearing.*

*Vicky has not seen her son for 7 years now and the indirect contact has been very sporadic. Last year she applied again to the courts for supervised contact. She had provided evidence that for the past year and a half she has been accessing therapy. She has also submitted psychiatric reports showing that for the benefit of her child, they should be allowed to have some sort of contact again.*

*Vicky lives in London. However, since her ex and her son live in Sheffield, she has to travel to and forth and cover her travel and accommodation cost to attend the court hearings in Sheffield.*

*Even if Vicky is on incapacity benefit she makes contributions every month towards the legal cost.*

**The consultation document has not taken into account the situation of people with mental health problems and learning disability and their ability to represent themselves or appreciate the legal and practical implications of these issues.**

**- Welfare benefits**

The reason for excluding legal aid stated on the consultation response is,

*“We consider that these issues are of **lower objective importance (because they are essentially about financial entitlement)**, than, for example, fundamental issues concerning safety or liberty. While **we recognise that the class of individuals bringing these cases is more likely to report being ill or disabled** in comparison with the civil legal aid client base as a whole, we have also taken into account the fact that the **accessible, inquisitorial, and user-friendly nature of the tribunal** means that appellants can generally present their case without assistance.”*

Individuals seeking legal aid for welfare benefits such as disability living allowance, incapacity benefit and housing benefit, are, as admitted by the proposal the most vulnerable. Besides, applications and tribunals are not as accessible, simple and 'user friendly' for this group as has been portrayed in this document.

A recent official House of Commons report<sup>16</sup> by the Work and Pensions Committee illustrates this in detail. Below are some of the points stated in the report which shows the complexity:

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<sup>16</sup> 'Decision making and appeals in the benefits system' (Second Report of Session 2009–10), Work and Pensions Committee  
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/313/313.pdf>

- The “undue complexity” of the benefits system complicates the decision making process from the outset and makes it more difficult for claimants to know what they may be entitled to. It illustrates by giving example of a case - *Mrs U in July 2006, was misled about whether she could claim Jobseeker’s Allowance because the Jobcentre Plus adviser did not understand, the “linking rules” that would apply. **This complaint took over two years to reach a resolution, over three years after the original complaint was made.***
- The report also highlights a concern by Citizen Advice Bureau that, decisions of whether to award benefits for disability and sickness, such as Incapacity Benefit (IB), Employment and Support Allowance (ESA), Disability Living Allowance (DLA) and Attendance Allowance (AA) are complex. **Claimants of these benefits must satisfy a medical assessment, which involves a greater degree of discretion and subsequently which makes them more susceptible to error.**
- **Claim forms for some benefits are too long and can be difficult for claimants to understand, resulting in incorrect or incomplete information being provided, thereby increasing the likelihood of errors in decision making.** The report quotes Dr Mark Baker, Head of Social Research and Policy at the Royal National Institute for the Deaf (RNID), who emphasised the difficulties some claimants face in completing the **58-page Disability Living Allowance claim form**, noting that many find it “utterly mystifying”.
- The findings of the President of Appeals Report 2007–08, states that, **of all the Disability Living Allowance (DLA) and Attendance Allowance (AA) cases that are presented to appeals tribunals, 40% are overturned.**
- The report also echoed the concern of a number of organisations and individuals who said the appeal process could be a stressful experience for so many. Action Group argued that **some of their clients had found the tribunal “scary, confusing and distressing”.**

**Taking the facts stated above into account and the vulnerability of this group we strongly disagree with the proposal to remove legal aid from this area of law.**

### Case

*Rachael\* who is one of our service users has mental health issues which made it difficult for her manage her benefits and as a result got into large Housing benefit rent arrears. She was referred to a legal aid solicitor who was able to support her with a housing benefit appeal and a request to a council for a one off payment on compassionate grounds. This has reduced her debt significantly and is allowing her to remain housed in the private rented sector where she is currently living.*

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\* Not her real name

- **Debt**

The proposal is to remove all legal aid in relation to debt unless a person is at immediate risk of homelessness. The reason given for the exclusion is:

*“We consider that, in general, **financial issues, important though they are for the individual, have a lower objective importance in terms of legal aid funding** when considered against cases involving fundamental issues such as safety and liberty, and this therefore makes the provision of publicly funded legal services less likely to be justified.... **While we recognise that the class of individuals involved in these cases is more likely to report being ill or disabled ...there are many alternative sources of help with debt issues**”.*

In a statement in response to this consultation and the Government’s reasoning around alternative funding, Community Links, an organisation which provides advice services in the London borough of Newham for 30 years, states, **“Government suggests clients could access alternative support** from organisations in the voluntary sector, like Community Links, **but much of this work is actually funded by legal aid”**.<sup>17</sup>

Over 30% of clients assisted by Community Links have some form of physical or mental disability and are amongst the most vulnerable people in the borough. Very few of their clients have internet access, and many speak English as a second language.<sup>18</sup>

**The proposal to remove debts issue would have a much more devastating effect on women because women are more likely to experience poverty than men and be over-indebted.**

- Research shows women were most likely to have debts associated with poverty.<sup>19</sup>
- They are also more likely to experience some of the factors that are associated with being in debt - more than 90% of lone parents are women, women’s incomes are lower than men’s and women are more likely to be carers and/or working part-time. Women’s earning patterns fluctuate more than men’s, mainly due to their caring responsibilities.<sup>20</sup>
- Black and Mixed Race women are considerably more likely to be in arrears than other women. This may be because Black and Mixed Race women are also more likely than other women to be lone parents and to be on lower incomes.<sup>21</sup>

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<sup>17</sup> Legal aid and social welfare advice - A briefing on the impact legal aid proposals will have on Community Links’ advice work, Community Links, [www.community-links.org](http://www.community-links.org)

<sup>18</sup> Ibid

<sup>19</sup> ‘In too deep’ Citizens Advice Bureau clients’ experience of debt – March 2003

<sup>20</sup> Fawcett Society Briefing on Women and Debts – August 2007

<sup>21</sup> Fawcett Society Briefing on Women and Debts – August 2007

**Debt problems, through time, could lead to risk of being homeless if they are not dealt with expeditiously.**

**Quick and effective interventions before the problem escalate to homelessness is most cost effective.**

- **Higher courts: Court of Appeal, Supreme Court and references to the European Court of Justice**

The consultation proposes to remove legal aid for appeal for all cases where the category of law will no more be in the scope of the legal aid under this proposal. This includes appeal for - asylum support, clinical negligence, compensation claims from the Criminal Injuries Compensation Authority, debt, education, employment, family law (financial relief and private child law), housing, immigration and welfare benefits.

As discussed above all the reasons we stated to oppose the removal of legal aid to the cases on the initial stages will equally apply in cases of appeal. Besides, it very difficult to think a case that went to this level that did not involve a complex legal issue. It is not reasonable to expect people to represent themselves at this level of hearing even when there are no vulnerability issues.

***Question 4: Do you agree with the Government's proposals to introduce a new scheme for funding individual cases excluded from the proposed scope, which will only generally provide funding where the provision of some level of legal aid is necessary to meet domestic and international legal obligations (including those under the European Convention on Human Rights) or where there is a significant wider public interest in funding Legal Representation for inquest cases? Please give reasons.***

First of all we do not agree that with the proposal to exclude such a vast area of law from the scope of legal aid.

However, in circumstances where an area is excluded from legal aid; **the current system properly addresses this gap by giving the Lord Chancellor the power to grant civil legal aid in an individual case** which is excluded from the scope of the civil legal aid scheme where there is

- a 'significant wider public interest',
- the case is of 'overwhelming importance to the client' and
- there is convincing evidence that there are other exceptional circumstances such that without public funding for representation it would be practically impossible for the client to bring or defend the proceedings.

**This power should be retained and we don't agree with the proposed change of introducing a new scheme.**

**Question 5: Do you agree with the Government's proposal to amend the merits criteria for civil legal aid so that funding can be refused in any individual civil case which is suitable for an alternative source of funding, such as a Conditional Fee Arrangement? Please give reasons.**

The exemption criteria should be the actual receipt of alternative funding rather than the case being just suitable for alternative funding, since even if in cases were the case might seem suitable for AF, a person might not be able to access that for different reasons.

**Question 6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid on litigants in person and the conduct of proceedings.**

- **Litigants with no professional capacity will be forced to deal with often quite complicated legal issues and cases on their own.**

A judgment in the Court of Appeal following appeal from an Employment Appeal Tribunal, *Dr Claudius D'Silva -v- Manchester Metropolitan University*<sup>22</sup> shows how litigants in person could be problematic.

Para 43 states:

*The other difficulties in the way of a successful bias challenge by Dr D'Silva flow from points made in the appeal tribunal's judgment in the present case. Through no fault of their own, most lay litigants do not have a proper understanding of the legal process, or the way in which tribunal hearings are ordinarily conducted. They will usually be passionately wedded to what they would perceive as the unanswerable rightness of their own case; and many of them will or may regard any and every reaction from the tribunal that they may perceive as questioning their case, or as controlling the manner in which they wish to advance it, as displaying hostility towards the case and bias in favour of the opposite one. In many cases such litigants are merely mis-reading the perfectly ordinary, and impartial, conduct of a hearing in accordance with well-practised procedures*

The courts, with procedures originally designed by and for lawyers, are a problem for litigants in person. **"Only too often the litigant in person is regarded as a problem for judges and for the court system ... The true problem is the court system and its procedures which are still too often inaccessible and incomprehensible for ordinary people."**<sup>23</sup>

The main difficulty is also the **complexity of the substantive law** of England and Wales. Although lay people may be very capable of putting forward facts, it may be unrealistic to expect them to be aware of and understand legal

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<sup>22</sup>Read the full transcript here <http://www.bailii.org/ew/cases/EWCA/Civ/2011/36.html>

<sup>23</sup> Litigant in Person - Judicial Studies Board Journal, 2002, Issue 15, quoting Lord Woolf Report – (*Access to Justice, Interim Report* p119) [www.nicmadge.co.uk/litigants\\_in\\_person.php](http://www.nicmadge.co.uk/litigants_in_person.php)



complexities without good legal advice and when they do understand it, they may find that it does not always conform with what they think is “justice”.<sup>24</sup>

- **This will have negative impact on poor outcomes, lack access to justice and just representation especially when the opponent has legal representation.**

Conducting a hearing at which one or both parties are unrepresented presents a difficult challenge to judges who are more used to hearing cases presented by legally qualified advocates. Many judges feel anxious to assist an unrepresented party in identifying the relevant issues, but there has been a traditional reluctance to “enter the ring” for fear of compromising the judges’ role as impartial adjudicators.<sup>25</sup>

A report shows that unrepresented litigants were at a significant disadvantage since they struggled with paperwork, evidence, procedural steps and handling hearings in court.

A judge summarizes this saying, “***A person is at a disadvantage to somebody who’s represented, because the judge is on the same wavelength as the solicitor or counsel who represents the represented person, and doesn’t have the same difficulty as he does in understanding the litigant in person. Certainly, counsel and solicitors make the judge’s life very much easier.***”<sup>26</sup>

- **It would create unnecessary delays and additional costs to courts**
- **Many will just waive their fundamental right of access to justice and to be heard in a court of law simply because they can’t afford it.**

In the survey<sup>27</sup> by Rights of Women (mentioned earlier) respondents were asked ‘*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).*’

Individual women response - 88.5% (216 of 244) said ‘No’.

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<sup>24</sup> Litigant in Person - Judicial Studies Board Journal, 2002, Issue 15  
[www.nicmadge.co.uk/litigants\\_in\\_person.php](http://www.nicmadge.co.uk/litigants_in_person.php)

<sup>25</sup> Litigant in Person - Judicial Studies Board Journal, 2002, Issue 15, quoting Lord Woolf Report – (*Access to Justice, Interim Report* p131) [www.nicmadge.co.uk/litigants\\_in\\_person.php](http://www.nicmadge.co.uk/litigants_in_person.php)

<sup>26</sup> Litigants in person - Unrepresented litigants in first instance proceedings, Professor Richard Moorhead and Mark Sefton, Cardiff University, March 2005

<sup>27</sup> Women’s Access to Justice: A research report – Rights of Women, February 2011  
[www.rightsofwomen.org.uk/pdfs/surveys/Womens\\_Access\\_to\\_Justice-a\\_research\\_report\\_KP\\_comments.pdf](http://www.rightsofwomen.org.uk/pdfs/surveys/Womens_Access_to_Justice-a_research_report_KP_comments.pdf)

Professionals working on areas of violence against women response - 97.3% (285 of 293) responded 'No'

- **It will further reinforce inequality between the haves and the have-nots.**

**Question 7: Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice? Please give reasons.**

**Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel? Please give reasons.**

**Question 9: What factors should be taken into account when devising the criteria for determining when face to face advice will be required?**

**Question 10: Which organisations should work strategically with Community Legal Advice and what form should this joint working take?**

**Question 11: Do you agree that the Legal Services Commission should offer access to paid advice services for ineligible clients through the Community Legal Advice helpline? Please give reasons.**

We **do not agree** that the Community Legal Advice helpline should be established as the single 'gateway' to access civil legal aid advice. Also we do not agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel. We also do not agree that the Legal Services Commission should offer access to paid advice services for ineligible clients through the Community Legal Advice helpline.

We welcome the establishment of an additional helpline if it's complementary to face-to-face advice. We strongly oppose for an operator (who is not a legal professional) would assess what legal problems a caller had and whether he or she was eligible for Legal Aid.

What the proposal states is that:

- the operator would discuss issues with the caller
- identify if he/she is eligible for legal aid;
- identify if the problems required specialist legal advice and
- then transfer the call to a specialist adviser.

Individuals who come to get legal advice for almost always complicated and stressful cases **need access to an adviser whom they can be satisfied understands their concerns and can advise them well in a face to face**

**meeting.** Telephone conversation could not assure a caller if he/she has been understood or if he/she has understood what the operator said.

In the Rights of Women survey, 91% of professionals (not legal professionals) who work on issues of violence against women responded that it's extremely important to have a face-to-face advice with a solicitor particularly if the woman has experienced violence.<sup>28</sup>

Face to face meetings are also important for the legal adviser to see important documents in assessing the case which is impossible through telephone conversations.

In many cases a caller might not be willing or able to **discuss sensitive and critical information** over the telephone, such as sexual abuse. Women for instance might not be comfortable telling the caller about an abuse. **Some victims of domestic violence have no access to telephone.**

Its not also clear weather the operator is the appropriate person for a woman to talk to about these sensitive issues. Is the operator trained to handle these cases? Is it a man answering the call to assist a vulnerable woman? Does he/she understand the language the victim is speaking? What happens if the operator doesn't? All this are unanswered questions.

Incorrect assessment by the operator over the entitlement to legal aid or the complex problems would mean that some people who are entitled to legal aid do not receive it; and others who are not entitled to it and do not need it having their time wasted (and at legal aid expense) by being referred unnecessarily.

**A proposal to have a single helpline as a gateway is neither cost-effective nor problem solving.** It could lead people problems becoming far more complicated, lasting much longer and ultimately becoming much more expensive to sort out

***Question 49: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?***

***Question 50: Do you agree that we correctly identified the extent of the impacts under these proposals?***

***Question 51: Are there forms of mitigation in relation to client impacts that we have not considered?***

The Equality Impact Assessment (EIA) done by MoJ clearly shows that the proposals are likely to disproportionately impact women, disabled people and BAMER communities, which if it goes ahead would breach MoJ's equality duties.

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<sup>28</sup> Women's Access to Justice: A research report – Rights of Women, February 2011  
[www.rightsofwomen.org.uk/pdfs/surveys/Womens\\_Access\\_to\\_Justice-a\\_research\\_report\\_KP\\_comments.pdf](http://www.rightsofwomen.org.uk/pdfs/surveys/Womens_Access_to_Justice-a_research_report_KP_comments.pdf)

**Article 149 of the Equality Act 2010 clearly states Public sector equality duty:**

*(1) A public authority must, in the exercise of its functions, have **due regard** to the need to—*

*(a) **eliminate discrimination, harassment, victimisation** and any other conduct that is prohibited by or under this Act;*

*(b) **advance equality of opportunity between persons** who share a relevant protected characteristic and persons who do not share it...*

*(3) Having 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 involves having due regard, in particular, 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...*

The relevant protected characteristics are age; disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are the people who are identified by the consultation and our response that would be more affected by the proposed changes.

### **Conclusion**

For the most vulnerable and marginalised in society access to justice will mean the provision of legal aid. If legal aid provision is threatened as it is stated in this proposal fewer and fewer people will have access to justice and a good part of society, who are vulnerable and marginalised will become unable to enforce even their basic rights.

We believe that it's better to address the underlining issues and encourage greater efficiency within the system and penalise poor decision making by public bodies, thus preventing a significant number of legal aid cases arising in the first place.

**February 14, 2011**

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