

# Women's Policy Group NI

## WPG NI Response to Foundational Review of Civil Legal Services

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## **1. Introduction:**

The Women's Policy Group (WPG) is a group of policy experts and practitioners who advocate collectively for women and girls by promoting gender equality through an intersectional feminist lens. We challenge systemic injustice and discrimination affecting women and girls by informing society and influencing policy and law. Our work is informed by women and girls' lived experiences and rooted in international human rights law.

The WPG is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQ+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals. Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. The WPG is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level.

If you have any questions or queries about this response, or would like to discuss this evidence further with the WPG, please contact Elaine Crory, Women's Sector Lobbyist at [elaine.croy@wrda.net](mailto:elaine.croy@wrda.net)

This response was prepared by the following WPG members:

- Elaine Crory – Women's Resource and Development Agency
- Meghan Hoyt - Women's Resource and Development Agency
- Karen Devlin - Women's Aid Federation NI
- Jonna Monaghan, Women's Platform

Please note that this response also includes evidence from other WPG work, compiled by a range of WPG members, and not all member organisations have specific policy positions on all the areas covered in this response.

### 1.1 Endorsements

The WPG would like to endorse the response submitted to this call for evidence by Women's Aid Federation NI

## 2. Past Consultations Responses, Evidence Submissions and Briefings:

The WPG has published a wide range of evidence through various evidence submissions, public consultation responses and specific briefings on issues relating to violence against women and girls and the legal system. Responses made by the WPG, and some of our members, in relation to these issues include:

Primary Research:

- WPG NI Primary Research (2023) into VAWG in Northern Ireland (Attitudes and Reporting VAWG)<sup>1</sup>
- WPG NI Primary Research (2022) into VAWG in Northern Ireland (Scope, scale and prevalence of VAWG)<sup>2</sup>
- WPG NI Primary Research (2021) on the impact of the pandemic on women and girls in Northern Ireland<sup>3</sup>

Consultation Responses:

- WPG NI (2023) Response to Westminster Women & Equalities Committee Inquiry into the Escalation of VAWG<sup>4</sup>
- WPG NI (2021) Response to Protection from Stalking Bill<sup>5</sup>
- WPG NI (2023) Response to the Department of Justice (DoJ)/ Department of Health (DoH) Draft Domestic and Sexual Abuse Strategy<sup>6</sup>
- WPG NI (2021) Written evidence submission and oral evidence presentation on DoJ Justice (Sexual Exploitation and Trafficking Bill) <sup>7</sup>
- WPG NI (2022) Response to Home Affairs Inquiry into Spiking<sup>8</sup>
- WPG NI (2021) Submission on the Safe Leave Bill<sup>9</sup>,

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<sup>1</sup> <https://wrda.net/wp-content/uploads/2023/09/AfterViolenceWPGPrimaryResearch.pdf>

<sup>2</sup> <https://wrda.net/wp-content/uploads/2022/04/WPG-VAWG-Research-Report.pdf>

<sup>3</sup> <https://wrda.net/wp-content/uploads/2021/07/WPG-Feminist-Recovery-Plan-Research-Report-Womens-Voices-at-the-Core.pdf>

<sup>4</sup> <https://wrda.net/wp-content/uploads/2023/09/WPG-response-to-Westminster-Enquiry-on-Escalation-of-VAWG.pdf>

<sup>5</sup> <https://wrda.net/wp-content/uploads/2021/04/WPG-Joint-Submission-Protection-from-Stalking-Bill-16-04-2021.pdf>

<sup>6</sup> <https://wrda.net/wp-content/uploads/2023/05/WPG-Response-to-DSA-Strategy-.pdf>

<sup>7</sup> WPG Justice (Sexual Exploitation and Trafficking Bill) written evidence submission and oral evidence presentation: <https://wrda.net/wp-content/uploads/2021/09/WPG-Written-Evidence-Submission-to-Justice-Sexual-Exploitation-and-Trafficking-Victims-Bill-24-September-2021-1.pdf>

<sup>8</sup> WPG Response to Home Affairs Committee into Inquiry into Spiking (2022): <https://wrda.net/wp-content/uploads/2022/01/WPG-response-to-Spiking-Inquiry.pdf>

<sup>9</sup> WPG Response to Safe Leave Bill (2021): <https://wrda.net/wp-content/uploads/2021/12/WPG-Response-to-Safe-Leave-Bill-Dec-21.pdf>

- WPG NI (2021) Submission to Justice Committee on Fatal and Non-Fatal Strangulation<sup>10</sup>,
- WPG NI (2021) Briefing on Treating Misogyny as a Statutory Aggravator in the Hate Crime Review<sup>11</sup>,
- WPG NI (2020) Evidence submission to the Committee on the Domestic Abuse and Civil Proceedings Bill<sup>12</sup>.
- WPG NI (2020) Response to the Independent Hate Crime Legislation Review Consultation<sup>13</sup>,
- WPG NI (2021) Response to the Department of Justice Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse<sup>14</sup>,
- WPG NI (2021) Response to Private Members' Bill Consultation on Paid Domestic Abuse Leave<sup>15</sup>,
- WPG NI (2021) Response to Department of Justice Public Consultation on Consent to Harm for Sexual Gratification: Not a Defence<sup>16</sup>
- WPG NI (2022) Response to Call for Views on TEO EVAWG Strategy
- WPG NI (2021) Enhancing Legal Protections for Victims of Domestic Abuse<sup>17</sup>
- WPG NI (2022) Response to Joint Call for Views: New Strategies: Domestic and Sexual Abuse Strategy (DOJ, DOH) Violence Against Women and Girls Strategy (TEO)<sup>18</sup>
- WPG NI (2023) Response to TEO Ending VAWG: Experiences and Attitudes of 16-year-olds in Northern Ireland report – Readership Survey<sup>19</sup>

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<sup>10</sup> WPG Response to Non-fatal Strangulation Public Consultation (2021): <https://wrda.net/wp-content/uploads/2021/09/WPG-response-to-NFS.docx.pdf>

<sup>11</sup> WPG Response to Department of Justice Response to Hate Crime Review (2021): <https://wrda.net/wp-content/uploads/2021/12/WPG-Summary-Response-to-DoJ-Response-to-Hate-Crime-Review-Dec-2021-.pdf>

<sup>12</sup> WPG Evidence Submission to Justice Committee (2020) Domestic Abuse and Family Proceedings Bill: <https://wrda.net/wp-content/uploads/2020/06/WPG-NI-Evidence-Submission-to-Justice-Committee-05.06.20.pdf>

<sup>13</sup> WPG (April 2020) Hate Crime Legislation Independent Review Consultation Response: <https://wrda.net/wp-content/uploads/2020/12/WPG-Hate-Crime-Consultation-Review-Response-30.04.20-Updated.pdf>

<sup>14</sup> WPG (February 2021) Response to DOJ Consultation on Enhancing Legal Protections for Victims of Domestic Abuse: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

<sup>15</sup> WPG (January 2021) Response to Private Members' Bill on Paid Leave for Victims of Domestic Abuse: <https://wrda.net/wp-content/uploads/2021/01/WPG-Response-to-PMB-Consultation-Paid-Domestic-Abuse-Leave-Jan-21.pdf>

<sup>16</sup> WPG (January 2021) Response to DOJ Consultation on Consent to Serious Harm for Sexual Gratification - Not a Defence: <https://wrda.net/wp-content/uploads/2021/01/Consent-to-harm-for-sexual-gratification-not-a-defence-by-WPG.pdf>

<sup>17</sup> WPG, 2021, Enhancing Legal Protections for Victims of Domestic Abuse. Available at: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

<sup>18</sup> <https://wrda.net/wp-content/uploads/2022/03/WPG-Response-to-Call-for-Views-New-Strategies-Domestic-and-Sexual-Abuse-and-VAWG-Mar-22.pdf>

<sup>19</sup> <https://wrda.net/wp-content/uploads/2023/04/WPG-Response-TEO-VAWG-Research-Report.pdf>

### **3. General Comments on the Civil Legal Aid Review Consultation**

The position of the Women's Policy Group NI is that access to justice is a fundamental right, and there is a duty on the state to ensure access to it, even if that means expense.

At present, legal aid is available but requires an exacting test to secure it, may require a financial contribution that can be an impossible financial burden, and even after that it is difficult to secure a good solicitor who will accept legal aid and can deliver a quality and sensitive service.

Because of women's economic disadvantage in comparison to men, and because the kinds of cases where civil legal aid may be needed, particularly matters related to family separation, solicitors to help secure protection orders in cases of domestic abuse, and similar kinds of cases, this issue has a distinct impact on women and especially on women who are survivors of VAWG.

For these reasons, we believe that widening eligibility, reducing financial burdens, and securing good quality services are imperative.

In the last number of years, the WPG has carried out a variety of pieces of research that feed directly into the issue raised here; both access to justice and quality of experience in the justice system. We also work closely with Women's Aid who have carried out extensive focus groups with their service users in preparation for this, and it is clear to us that reform is needed.

#### **3.1 Human Rights Considerations**

The UK also has obligations in international law to recognise gender based violence against women as a specific human rights issue. As a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UK is required to take action on domestic abuse, which the Convention defines as a barrier to women and girls enjoying their full human rights.<sup>20</sup> The overall aim of CEDAW is to strengthen gender equality, and the CEDAW Committee has highlighted the importance of action on domestic abuse in their Concluding Observations to all recent periodic reports submitted by the UK.<sup>21</sup>

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<sup>20</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

<sup>21</sup> [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

The UK is also a member of the Council of Europe, which integrates gender equality as one of its policy goals. The Council has adopted Standards for Gender Equality, which set out a list of measures to be taken across policy areas, including violence against women. The Standards state that 'Violence against women is one of the most serious violations of human rights and fundamental freedoms of women and an obstacle to the enjoyment of those rights and freedoms. Furthermore, violence against women is a waste of capacities and resources for economic and social development; it is also one of the means by which women are forced into a subordinate position compared with men and is, therefore, a decisive impediment to the achievement of gender equality'. In 2011, the Council adopted the Istanbul Convention of preventing violence against women and combating domestic violence, which sets out clear standards for states to put in place<sup>22</sup>. The convention includes an extensive pillar of protection and support for victims and survivors, and emphasises that states are required to provide financial support for victims and survivors, for all types of violence including stalking and domestic abuse, as well as sexual harassment and violence. Compliance with requirements is essential to enable states to ratify the Convention; the UK ratified the Convention in 2022 and the Council of Europe expert Committee on violence against women is currently undertaking a baseline assessment of the UK, expected to be finalised by the end of 2024. This baseline assessment will set out recommendations for the UK, which are binding on the UK as a member of the Council of Europe and the European Convention on Human Rights, and will be used to assess UK performance over future years. .

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) places an obligation on the UK as a State Party to ensure that discrimination against women is prohibited in law and that action to prevent and address discrimination is taken at the policy level.<sup>23</sup> This includes violence against women and girls, and the CEDAW Committee has raised issues in relation to Northern Ireland, as outlined above.

CEDAW General Recommendation 35<sup>24</sup> specifically focuses on gender based violence, and provides guidance on interpretation and implementation of CEDAW in this regard. The CEDAW Committee holds that 'Women's right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal

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<sup>22</sup> [Council of Europe Convention on the prevention and combating violence against women and girls](#)

<sup>23</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

<sup>24</sup> CEDAW Committee (67<sup>th</sup> session, 2017 ) [General Recommendation 35 on gender based violence against women](#)

protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association'<sup>25</sup>. The Recommendation explicitly includes psychological, sexual, economic and physical harm as well as threats of such acts, harassment, coercion and arbitrary deprivation of liberty in its scope of gender based violence. It also emphasises access to justice for victims and survivors, including financial support, where necessary.

The Recommendation clarifies the CEDAW provisions and states that laws prohibiting gender based violence should include sanctions for perpetrators and reparations for victims.<sup>26</sup> It further notes that 'all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law', and that capacity building is required to ensure that women's right to equality is not affected by the application of preconceived and stereotyped notions of what gender based violence is, how women do and should react and the standard of proof required in proceedings<sup>27</sup>. This includes provision of appropriate, adequate and well informed Legal Aid decisions.

#### **4. Response to Consultation Questions**

*Note: Part 1 of the consultation is designed for people with direct experience of justice issues (the final three questions of Part 1 might be answerable?? I have added them below to be considered)*

##### **Question 16: Did you feel justice had, or had not, been achieved when your case ended?**

The Women's Policy Group is not an individual, and as such has not had direct experience of a case. That said, we have carried out research on the issues associated with this consultation, particularly our 2023 research report, After Violence, which focuses on the experience of women who have engaged with the justice system after experiencing violence against women and girls (VAWG). We have also consulted with our colleagues at Women's Aid in preparation for responding to this consultation. In

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<sup>25</sup> Ibidem.p.6

<sup>26</sup> Ibidem, p. 10

<sup>27</sup> Ibidem p.11

addition, we ran an online survey to help to answer some of the very specific questions asked here, and although replies were very low, it has assisted in our preparation.

In our *After Violence*<sup>28</sup> research, 54.5% of women who engaged with the courts reported that they were not satisfied with the outcome, compared with 18% who were satisfied with the outcome. Only 9% of women think that courts in Northern Ireland take VAWG seriously. 65% of the respondents had specific experience of domestic abuse, and of those 63% of domestic abuse victims who reported it to the police or took legal action said that this was a negative experience.

Many people who come into contact with the justice system report finding it difficult to navigate, expensive to engage with and confusing. In Women's Aid's research to respond to this consultation, many relied on information from friends or even members of online groups eg on Facebook. The issue is larger than individual cases; the evidence indicates that the issues are systemic.

**Question 17: What information can you tell us that you feel we should include in our impact assessments (Equality, Rural Needs, Children and Young People)?**

All impact assessments should be based on data and on the widest possible range of data. This includes statistics from NISRA, the wide range of data gathered by the Expert Panels for the draft Social Inclusion Strategies (particularly the Anti-Poverty Strategy and the Gender Equality Strategy) in the last mandate, and on data from within DoJ on successful and unsuccessful applications for civil legal aid.

These should be parsed by all Section 75 criteria, particularly gender, dependency status, ethnic minority status. They should also be parsed regionally and use the most precise geography possible to determine the extent of impact in different areas in Northern Ireland, identifying areas for improvement.

Finance is the main driver behind the need for legal aid, and DoJ should bear in mind the significant impact that gender has on a person's financial status, particularly after a relationship has ended and a family separates.

Finally, all of these issues should be looked at intersectionally, determining whether there is, for example, a particular impact on women with dependent children, ethnic minority women, rural women, etc. This is often missing from impact assessments and

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<sup>28</sup> Women's Policy Group NI, *After Violence: Attitudes and Reporting of Violence Against Women & Girls*, 2023. Available at: <https://wrda.net/wp-content/uploads/2023/12/After-Violence-WPG-Research-Report.pdf>



would greatly improve their quality. Where impacts are found, and when they are determined to be significant, remedies should be put in place to alleviate them.

**Question 18: What do you see as the biggest barriers and challenges to people accessing civil legal services?**

Please tick all that are acceptable.

- Lack of legal service providers in some areas of Northern Ireland
- Lack of public understanding of the law/rights
- Lack of solicitors providing legal aid
- Complexity of legal processes
- Lack of understanding of legal processes
- Court delays (including pre-Covid)
- Issues with the legal aid system
- Other

Possibly the most significant barrier is the lack of solicitors willing to take legal aid cases. This is particularly true in rural areas of Northern Ireland, and more generally an issue outside of Belfast, even including larger towns.

A related issue is that those solicitors who are willing to take on the cases are often not particularly well trained in handling some of the issues that tend to arise, particularly with regards to survivors of domestic abuse. This can lead to survivors feeling misunderstood, belittled or even under-represented, and many fear switching to other solicitors (even where such an option is available to them) for fear of being black-balled, as they are aware that many solicitors do not want to handle each other's cases once they have begun. This relates to another issue reported to Women's Aid; not knowing how to complain about a solicitor was a common complaint. A clear method to complain should be provided and outlined, and additional training should be required before solicitors can offer their services in this field.

Other issues related to barriers placed there by the state. People in receipt of legal aid are often trapped in lengthy cases and during that time they are afraid to increase their earnings or accept promotions in case they lose legal aid. People in employment who have to contribute towards the costs are often kept in poverty by the length of cases and the disproportionately high amount they have to contribute on a relatively low income. As mentioned above, the process of applying, particularly the financial means test, is arduous and many find it humiliating - regardless of whether or not they qualify.

**Question 19: People can currently access legal aid without passing a financial eligibility test if they receive income-related benefits.** These include income-based Universal Credit, Income Support and Pension Credit, for example. This is called benefits 'passporting'. People in receipt of other benefits, those payable to people with disabilities, to carers, and to immigrants, for example, aren't 'passporting' in this way, and must pass a financial eligibility test. Bearing in mind the potential cost, do you think that more benefits should be 'passporting', or fewer, or none? Or is the balance currently about right?

The Women's Policy Group argues that a greater range of benefits should be "passporting" including all of those listed above. There is no obvious reason why, if the state deems that a person deserves and needs a benefit, another part of the state apparatus should suggest that they do not. Further, evidence suggests that the need to apply via the financial eligibility test is both arduous and complicated and also humiliating.

Fundamentally, since civil legal aid covers issues such as protection orders, non-molestation orders, access to family courts and other measures designed to protect people from abusers, these measures should be provided by the state for free. Not only is it a cost-effective measure in the long run, but more importantly people should not have to pay for their own safety and protection. This is a positive obligation on the state under the ECHR, an issue explored in more detail in section 3 above.

Incidentally, the use of the word "immigrants" above should be reconsidered; it implies that all immigrants, irrespective of circumstances, are entitled to a particular benefit. At a time when far right narratives are gaining ground, this is a misconception that the DoJ should endeavour not to encourage.

## Part 2

**Question 20: Conditional Fee Agreements (ie 'No Win, No Fee' claims) are not available in Northern Ireland. What information can you provide us on why you think they should or should not be allowed here.** If you think they should, please provide us with information on whether you think the money recoverable by your solicitor from your damages should be capped at a certain amount.

It is not at all clear why Northern Ireland does not have the same approach as GB with regard to conditional fee agreements, including the amount recoverable by solicitors (capped at 25%).

We do not have specific information on how these work in GB, but would recommend that DoJ approach the Law Society regarding their current approach.

**Question 21: In looking at reviewing civil legal aid, the following key areas will be reviewed:**

- 1) The range of services available through legal aid
- 2) The Financial Means Test
- 3) The Merits Test
- 4) Rates of pay for Solicitors and Barristers
- 5) What people pay towards the cost of their help
- 6) Alternatives to solicitors and the courts

Do you think making changes to any of these areas could have improved your access to justice?

The Women's Policy Group is not an individual, and as such has not had direct experience of a case. That said, we have carried out research on the issues associated with this consultation, particularly our 2023 research report, *After Violence*, which focuses on the experience of women who have engaged with the justice system after experiencing violence against women and girls (VAWG). We have also consulted with our colleagues at Women's Aid in preparation for responding to this consultation. In addition, we ran an online survey to help to answer some of the very specific questions asked here, and although replies were very low, it has assisted in our preparation.

From this work the most relevant areas for reform highlighted were:

**The Financial Means Test:** in addition to excluding some people who should be eligible for assistance, it is arduous and humiliating. It also touches on another concern: fundamentally people should not have to pay for their own protection and safety.

**Rates of Pay for Solicitors and Barristers:** this seems to influence both the numbers of solicitors who are willing to take on these cases, and may also impact the quality of solicitors. The ideal solution is to increase the rates of pay but to include a condition whereby specialist training is provided, perhaps with requirements for continuous professional development, so that both individuals using their services and the general public can be confident that we are getting the best possible use from the investment of public money.

**What People Pay Towards the Cost of Their Help:** According to research from Women's Aid, those who are working are required to contribute at a rate that often keeps them in low wages and even in poverty. People who know that their case will be long are disincentivised to take on additional work or accept promotions because

they would immediately be expected to pay more, and end up worse off. The WPG takes the view that requiring people to contribute large sums of money to ensure their own safety, the safety of their children or access to their children is not serving the ends of justice.

Recognising financial pressures, it remains contrary to fairness and justice for people to have to pay for justice, or for safety. There is a human rights based argument that the state should take on the cost and burden of ensuring safety at the very minimum. A consultation was carried out in 2021 on DAPOs and DAPNs<sup>29</sup> that would see police do the administrative work and the state bear the cost of protection orders; this should be acted upon as soon as practicable.

**Question 22: The next five questions outline some of the ways in which we might try to improve legal aid. Please indicate which policy areas you think are the most important by ranking them in order from ‘Top Priority’ to ‘Least Important’** (please only use each ranking once):

**Policy Driver 1: Prioritise the Proportion of the population financially eligible for civil legal aid by reviewing the means testing criteria.** Changing financial eligibility rules could result in more people being entitled to access legal aid. However, to do this, the Department might have to make savings in other areas of civil legal aid, such as through reducing scope, remuneration fees or increasing the contributions payable by applicants. How important is this policy driver in enhancing access to justice for people? Please note that you can only use each ranking once.

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Fundamentally these are mechanisms that are used to access justice, which should be available to everyone who needs it, so increasing accessibility is vitally important.

**Policy Driver 2: Focus legal aid on the most impactful cases by reviewing merits testing.** Changing the merits tests could help focus legal aid on people you need it most. It could also free resources and help avoid unnecessary court action to enhance

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<sup>29</sup> WPG, 2021, Enhancing Legal Protections for Victims of Domestic Abuse. Available at: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

justice in other ways; for example, by expanding legal aid or by finding alternative forms of dispute resolution. How important is this policy driver in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

A merits test is already applied in these cases and it is not clear how changing the merits test would work to better deliver justice. The merits test does not seem to focus on “deserving” cases as suggested above, but on cases where success is likely - these are not necessarily the individuals who need it most.

**Policy Driver 3: Prioritise rates of pay for solicitors and barristers. Increasing remuneration rates for solicitors and barristers could require resources to be diverted from other areas of civil legal aid reform.** It may be necessary in order to support recruitment and retention of legal aid providers and could encourage more solicitors to do legal aid work. How important is this policy driver in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

This does seem to be one of the biggest barriers at the moment to accessing legal aid. The WPG believes that any increase should ideally come with specialised training for those who will be taking on sensitive cases from vulnerable and often abused individuals, to ensure that they are handled carefully and with a trauma informed lens.

**Policy Driver 4: Prioritise maximising the range of services available through civil legal aid (scope):** Increasing scope could help extend civil legal aid to areas of advice and representation not currently covered under the civil legal aid scheme. However, this could require additional resources to be moved from other areas of civil legal aid. Decreasing scope could restrict the range of areas covered by civil legal aid. How important is this policy driver in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this is?

The WPG believes that there is a strong argument for leaving the scope as it is, making sure that works well, and then increasing scope as means allow. This is partially because there are already too few solicitors who will take these cases on

and significant concerns about the system as it stands. Once it works well, increasing the areas within scope is worth consideration in a separate consultation.

**Policy Driver 5: Prioritise the contributions paid by recipients of civil legal aid. Increasing contributions could allow for resources to be directed towards enhancing other areas of civil legal aid, such as increasing the scope of civil legal aid, increasing financial eligibility thresholds or remuneration rates payable to solicitors and barristers.** However, decreasing contributions may mean savings having to be identified from other areas of civil legal aid. How important is this policy driver in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this is?

This is a confusing question, or at least set out in a confusing way; decreasing contributions is different to leaving them as they are, an option that is not outlined here. It is not clear to us if this is an option DoJ is considering.

It also seems that increasing the financial eligibility threshold and the required contribution achieves the same ends, but if these are the possibilities being considered they should be laid out clearly and respondents should be asked which possible approach is best.

Ultimately, the WPG believes that justice and safety are not something that citizens should have to pay to access, and as such we believe asking people to pay more is the last option that DoJ should consider in these cases.

**Question 23:** In this section, we are providing you with 26 potential opportunities for reform and are asking you to grade these in terms of where you believe reform could be directed to enhance access to justice and value for money.

As we are looking for an indication of where you believe reform is most needed, we are asking you to rank these as (1) Top Priority, (2) Important, (3) Fairly Important, (4) Slightly Important, and (5) Least Important. In this section, it is possible to give the same ranking to several potential opportunities for reform. This will allow the Department to assess the responses received and develop our policy before deciding which, if any, reform opportunities to progress.

**Draft Reform Opportunity 1: Civil Remuneration Levels:** Conduct a review of levels of remuneration for solicitors and barristers within the Remuneration Order (Northern Ireland) 2015, addressing the Department's statutory obligations and

applying, among the factors that are relevant, the criteria set out at Article 47 of the Access to Justice Order 2003. It is anticipated that such a review, if actioned, will build on learning from the ongoing review of criminal legal aid remuneration. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

As outlined above, this seems to be an important driver in increasing the number of solicitors available and thus will have a knock on effect of increasing access to justice. With that said, we believe that solicitors should have to undergo training to ensure that they are handling these cases as sensitively as their nature demands.

**Draft Reform Opportunity 2: Structures for Civil Remuneration Conduct** a review of the structures used for civil remuneration considering, among the factors that are relevant, the criteria at Article 47 of the Access to Justice Order 2003, with a view to identifying opportunities that could improve fairness, efficiency, transparency, and predictability of remuneration. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

There is a need to ensure the best possible access to justice for the maximum number of people, ensuring fairness, efficiency and transparency. At present, users of Women's Aid services report learning these things through word of mouth, which suggests a lack of knowledge and a lack of transparency.

**Draft Reform Opportunity 3 Conditional Fee Agreements:** Undertake an assessment of the benefits and risks of introducing conditional fee agreements in Northern Ireland as an alternative form of support to legal aid. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Since many people are not aware that Conditional Fee Agreements are illegal in Northern Ireland, but are aware that they exist elsewhere, there is a public good in reviewing the reasons why this is, and whether or not this approach is desirable or financially sustainable.

**Draft Reform Opportunity 4: Operation of the Statutory Charge:** Conduct a review of the operation of the Statutory Charge to ensure fairness, efficiency and to support sustainability of the legal aid fund. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

The WPG takes the position that the Statutory Charge should be reexamined in light of the stress that it places on those who can barely afford it and are therefore unable to access justice as a result. There are those whose financial means are such that the Charge is not a barrier in a meaningful way, and while we advocate for the removal of all barriers, we recognise that this is not on the table at present; as such we advocate for reconsidering the Charge and perhaps introducing tiers, alongside the reconsideration of the Financial Means Test.

**Draft Reform Opportunity 5 Merits Testing:** Conduct a review of the merits test to identify any opportunities where resources could be better directed to have the greatest impact on access to justice and increase efficiency and fairness. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

While we want to ensure that public money is spent wisely, there is already a merits test and it is unclear how it would be revised in a way that would not bias it against difficult but worthy cases.

**Draft Reform Opportunity 6: Financial Eligibility Testing:** Conduct a review of financial eligibility testing and benefits passporting to focus the provision of civil



legal services on those who need them most and ensure efficiency, fairness, transparency, and predictability in the decision-making process. This could include considering areas where legal aid applications should have the means tests disregarded such as in the way they currently are for domestic abuse victims applying for non-molestation orders or in response to Article 8 (Children Order) 1995 proceedings brought against them by their abuser. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

The WPG considers this top priority because at present the financial eligibility test locks too many people out from accessing justice and prevents them ensuring their safety. Even in cases where a person is eligible, they may have to make a contribution that makes it fundamentally unaffordable.

If the end goal is to ensure justice is accessible, this review is vital and should aim to remove barriers for as many people as possible.

**Draft Reform Opportunity 7: Contributions:** Conduct a review of contributions payable by an assisted person towards the costs of their own representation to deliver fair outcomes, enabling people to access legal aid, based on what they can afford to contribute towards their legal costs, with a view to ensuring fairness, efficiency, and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

At present financial contributions can be arduous and can result in the person ending up in financial stress, debt or even poverty in order to access justice. This should never be the case and it is important that any contributions required are drawn only from those with significant cash reserves if at all - financial stress should not be the price of justice.

**Draft Reform Opportunity 8 Integrated Support:** Explore opportunities to build a system of integrated support for people with diverse access to justice needs to provide them with a coordinated set of advice, representation, and other forms of

assistance, in an accessible way. Early opportunities to test this model might include advice on housing, debt and ejection, immigration, and private family law. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

This is very important because it is presently difficult to secure advice and information, with people tending to turn to friends and even to groups on Facebook and other social media channels. Wrap around, integrated support would not just be valuable, it could assist in saving lives.

**Draft Reform Opportunity 9 Advisory Services:** Conduct a review of advisory services available through legal aid and elsewhere to consider how access to justice could be enhanced, and duplication avoided, through complementary and effective co-ordination between service providers in different sectors. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

While this seems to be valuable, the option presented in Opportunity 8 above would seem to serve the same ends but more thoroughly and better; therefore we have ranked this lower.

**Draft Reform Opportunity 10 Scope:** Conduct a review of the scope of civil legal services to ensure public funding does not displace private funding and to seek opportunities to redirect resources towards any currently areas of unmet need. This could include exploring the benefits and risks of expanding the scope of civil legal services to include representation in, for example, SENDIST, Employment and Industrial Tribunals Cases. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

As outlined above, we believe that it is best to ensure the system is working well and efficiently, including that more solicitors are available to take the cases, before

increasing the scope. Increasing the scope would be welcome eventually, but at present it would put strain on the kinds of cases that are already within scope.

**Draft Reform Opportunity 11 Limited Certificates:** Conduct a policy process to consider the benefits and risks of increasing the use of limited certificates to maintain oversight of ongoing legal aid cases in a way that improves accountability, efficiency, and fairness, and helps focus resources on the cases with the greatest impact. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Limited Certificates allow for more information to be gathered in order to assess applications for Legal Aid, and as such they are beneficial, with that said, the evidence gathering process is arduous and as such it is valuable to consider both the benefits and risks of increasing their use.

**Draft Reform Opportunity 12 Legal Aid Repayment Schemes:** Assess the benefits and risks of requiring people who benefit from legal aid to repay the cost of their legal aid over time, including the conditions and exceptions that might apply to such a scheme. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Fundamentally, a person should not have to go into debt in order to access justice, particularly when their safety and even lives may be on the line if they do not access legal aid. This is a dangerous approach to justice.

**Draft Reform Opportunity 13 Asylum and Immigration:** Conduct a focused review into access to justice for people with immigration or asylum issues to identify opportunities to improve access to justice and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Provided that this review is focused specifically on enhancing access to justice on these issues, then it is very important that it is carried out.

**Draft Reform Opportunity 14 Separating Families:** Conduct a focused review into access to justice for people experiencing marital/civil partnership breakdown and separation to identify opportunities to improve access to justice and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Ensuring access to civil legal aid during marital or civil partnership breakdown is particularly critical for many women. Research indicates outcomes for women, particularly those experiencing domestic violence, are improved when represented by a civil legal aid solicitor in matters of family law such as divorce, separation, custody orders and child support payments.<sup>30</sup> Significantly, established research suggests that levels of domestic violence actually decreased in proportion with access to civil legal aid in situations of relationship breakdown.<sup>31</sup> It should be noted that though the period of marital/civil partnership breakdown is particularly significant, many women require ongoing, specialised assistance to address continuing issues stemming from relationship breakdown, and reforms should reflect this reality. For example, women must continue to access civil legal services to address expiring custody agreements, changes to child support payments or protective orders.

**Draft Reform Opportunity 15: Victims of Crime** Conduct a review of the access to justice needs of victims of crime and to explore effective and opportunities to support access to justice and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

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<sup>30</sup> Lee, J. & Backes, B. (2018) 'Civil Legal Aid and Domestic Violence: a review of the literature and promising directions'. *Journal of Family Violence*. Vol: 33 pp. 421 - 433.

<sup>31</sup> Farmer, A. & Tiefenthaler, J. (2008) 'Explaining the Recent Decline in Domestic Violence' *Contemporary Economic Policy*. Vol:21 (2) pp. 158 - 172.

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

The WPG welcomes a review into the barriers victims of crime face in accessing justice, particularly as legal aid in civil matters is so often needed by survivors of domestic abuse, including financial abuse, for whom it might be the only possibility of accessing justice. However, as the scope of the review is not indicated, it is difficult to assess what impact it might have. From a gendered perspective, the WPG would be interested in a review that ensured a specific focus on the specific access to justice issues that impact women and girls.

**Draft Reform Opportunity 16 Domestic Abuse Waiver:** Conduct a focused review of the discretionary domestic abuse waiver under section 28 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

As discussed in above (Opportunity 14) access to civil legal representation is particularly critical for women experiencing domestic abuse while navigating marital or civil partnership breakdown. However, more broadly, the academic research is clear that the benefits of access to civil legal aid for women experiencing domestic violence go beyond situations of marital breakdown and are vast and sustained. Access to civil legal aid improves outcomes for women (and their dependent children) who are experiencing domestic violence in a range of ways. There is evidence that access to civil legal aid contributes to a decrease in the number of violent incidents that women experience; a reduction in incidents of stalking experienced; improved psychological well-being and better economic self-sufficiency.<sup>32</sup> With this context in mind, the discretionary domestic abuse waiver is a vital mechanism through which vulnerable women access legal services. A review should ensure that it is functioning correctly and allowing the widest possible access.

**Draft Reform Opportunity 17 Access to Justice for prisoners:** Conduct a review of the range of issues impacting on access to justice experienced by prisoners and by

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<sup>32</sup> Copps Hartley, C. & Renner, L. (2016) 'The Long-term Influence of Civil Legal Services on Battered Women' Report: National Institute of Justice. US Department of Justice.

children and young people in contact with the youth justice system. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Incarcerated people “are some of the most vulnerable and disenfranchised members of society”.<sup>33</sup> Women offenders disproportionately display multiple disadvantages, including significant socio-economic deprivation, limited educational qualifications, experiences of homelessness, and/or domestic and sexual violence.<sup>34</sup> There is considerable research highlighting the value of ensuring the civil legal needs of prisoners are met, resulting in a reduction in recidivism by resolving outstanding civil legal issues prior to release.<sup>35</sup> In order to ensure equitable access to justice, it is critical to understand and address the issues impacting access to justice experienced by prisoners.

**Draft Reform Opportunity 18 Accountability and Governance:** Conduct a review of the accountability and governance structures that apply to suppliers of civil legal services to identify opportunities to give improved confidence to civil society and to the Assembly about the quality-of-service provision, impact and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Confidence in the provision of civil legal aid services is important. To ensure equitable access to justice, it is critical that the public have confidence that civil legal aid services are being delivered at a similar quality across Northern Ireland. A scope report from 2019 is striking in its assessment of the service provision.<sup>36</sup> The report

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<sup>33</sup> Lin, B., Clancey, G. & Metcalf, L. (2021) ‘The Role of Legal Aid NSW in addressing the civil legal needs of participants in High Intensity Units in prisons’ *Current Issues in Criminal Justice*. Vol: 33 (4) pp. 417 - 437.

<sup>34</sup> McNaul, G. (2017) ‘Post-Corston reflections on remanded women’s experiences in Northern Ireland’ in Moore, L., Scranton, P. & Wahidin, A. (eds) *Women’s Imprisonment and the Case for Abolition*. Routledge: London.

<sup>35</sup> Ibid n 7.

<sup>36</sup> Barrett, H. (2019) ‘A scoping study into the use of Contracting for the provision of Legal Aid in Northern Ireland’

found there were no agreed outcomes for Legal Aid provision, including the number of providers needed and the quality of the service provided. As such, the report concluded that it would be impossible to assess whether the Legal Aid provision provides value for money as there is no agreed standard. Two particularly worrying findings from the report were the geographical concentration of firms providing Legal Aid (in Belfast), and the difficulty in ensuring that a Legal Aid solicitor had the necessary level of expertise before taking a case.

It is imperative that this lack of consistency is addressed to improve access to justice.

**Draft Reform Opportunity 19 Expenditure Controls:** Explore the potential to move from using payment times to using merits testing to control expenditure on legal aid, specifically by responding to anticipated over or under spends in future budget years by making specific, clear changes to merits tests applied to specific categories of cases. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

The WPG has grave concerns about changing the merits test from a test about the relative merits of the case to one connected with budgets. This is contrary to the ends of justice, and people should not face different standards on the basis of their ability to pay. Moreover it is dangerous to suggest this without very clear outlines of what is meant in terms of categories of cases and with regards to how the merits test would or could be changed.

**Draft Reform Opportunity 20: Decision Making and Appeals:** Conduct a review of the processes for decision making and appeals of decisions made by the Legal Services Agency to identify opportunities to improve the quality, consistency, transparency, speed, fairness and predictability of decisions. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

It is undoubtedly important to ensure good governance and efficiency is practised within the organisation with responsibility for the administration of the legal aid

system. The Legal Services Agency Framework<sup>37</sup> sets out the roles and responsibilities of the Legal Services Agency. The document details the accountability measure already in place, including the provision of assurance to the Assembly of its stewardship and annual report of the Agency's accounts. With these mechanisms already in place, there should be a fairly accurate picture of the work of the Agency and other reform opportunities outlined by this consultation should take precedence.

**Draft Reform Opportunity 21: Debt Recovery:** Conduct a review to consider expanding the powers of the Legal Services Agency to recover debts from assisted persons arising from arrears of contributions or the statutory charge. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

While it is difficult, absent data on the degree of arrears that exist at present, to say what kind of impact this would make on DoJ's finances, and how significant an issue arrears is, it does not appear to us to be a significant priority at this time.

**Draft Reform Opportunity 22 Expert Witnesses:** Conduct a review into issues affecting the availability of expert witnesses in civil court proceedings and to make recommendations for reform. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Currently expert witnesses are funded as part of the legal aid budget. According to the 2014 Consultation Document<sup>38</sup> the exact cost of expert witnesses is difficult to calculate, however it was estimated to be 3% of the total legal aid budget (approx £3 million). While it would be good practice to review this consultation and get an up-

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<sup>37</sup> [LSANI Framework Document - July 2021 \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/lsani-framework-document-july-2021)

<sup>38</sup> [Expert Witnesses - Version Issued 12 November 2014 \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/expert-witnesses-version-issued-12-november-2014)



to-date picture of spending on expert witnesses, given the small percentages involved, WPG does not see it as a reform priority.

The WPG does, however, have grave concerns about the nature of some expert witnesses, the process by which they are given this status and there are credible concerns that many profess knowledge that they lack on key issues, and expound theories as fact, particularly with regard to parental alienation. This aspect of the process needs to be examined, but it is not clear that this is the scope intended in this suggestion.

**Draft Reform Opportunity 23 Expert Witnesses General Authority:** Expand the use of general authorities for the appointment of expert witnesses, building on the pilot scheme for psychiatrists and psychologists in Article 8 Children Order (Northern Ireland) 1995 cases in the Family Proceedings Court. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

The pilot scheme is a useful intervention aimed at creating a more flexible, streamlined approach to using psychiatrists and psychologists in Family Court for Public Law Children Order cases.<sup>39</sup> The WPG recognises this, but does not see this as a top priority for reform.

**Draft Reform Opportunity 24 Exceptional Funding:** To conduct a review of the provisions in the civil legal aid framework on exceptional funding to identify opportunities to improve fairness, efficiency, access to justice, and value for money. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

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<sup>39</sup> [LSANI General Authority - Expert Witnesses in Public Law Children Order Cases in Family Proceedings Court - January 2021 \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/lsani-general-authority-expert-witnesses-in-public-law-children-order-cases-in-family-proceedings-court-january-2021)

Exceptional Funding is a significant form of assistance for exceptional cases and should be maximised where possible, a review would be helpful to ensure that it is reaching the people that it needs to with the greatest possible efficiency.

**Draft Reform Opportunity 25: Pro Bono Costs Orders:** Explore the potential impact of pro bono costs orders as a mechanism for enabling civil society to access to justice. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

Pro bono cost orders could be a useful mechanism to encourage more solicitors to consider taking pro bono cases and could therefore enhance access to justice for people who need it. A costs / benefits analysis would be helpful.

**Draft Reform Opportunity 26 Section 75, Northern Ireland Act 1998:** Establish an effective mechanism for gathering and analysing section 75 data on legal aid provision and access to justice needs. How important do you think this draft reform opportunity is in enhancing access to justice for people?

Top Priority  Important  Fairly Important  Slightly Important  Least Important

Why do you think this?

We urgently need better data and disaggregated data on the need for legal aid and those who access it - as well as those who are refused. This should be a first order of business, in order to help prioritise the order in which the other options should best be explored.

**Question 24:** And, finally, is there anything else you feel would have helped or improved your experience of accessing legal advice and assistance in court?

Everything else that we need to include is covered in section 3 above; in short, legal aid should be available to the maximum number of people possible, as access to justice should not be based on income.

Priority actions should be aimed around increasing the availability of legal aid and ensuring its quality, and this may include requiring specialised training and CPD for solicitors who can access the funds to deliver legal aid.

*ENDS*

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