

# A Response to: The Reform of Publicly Funded Legal Representation In The Civil And Family Courts

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## Introduction

1.1 The Women's Support Network (WSN) welcomes the opportunity to respond to this consultation.

1.2 The Women's Support Network (WSN), established in 1989, is a regional organisation that works across all areas of Northern Ireland. It includes in its membership community-based women's centres, groups and organisations, with a concentration in disadvantaged areas. WSN is a charitable and feminist organisation, which adopts a community development approach. It provides a range of support and services to 63 community-based women's centres, projects and infrastructure groups and 26 associate members drawn from across the community and voluntary sector who support women, families and communities. (see Appendix 1).

1.3 Our members provide a wide range of women-centred front-line services across Northern Ireland, including:

- Specialist Advice
- Childcare and Family Support
- Counselling, Support and Advocacy
- Complementary Therapies
- Training & Education
- Health & Wellbeing Programmes
- Personal Development & Employment Support
- Volunteering, Leadership & Empowerment

1.4 WSN aims to achieve social, political and economic justice through the promotion of the autonomous organisation of women. The Network aims to strengthen the collective voice of women's groups and to promote and develop networking opportunities, to enable collective action and to impact upon policy and decision-making processes. WSN provides an accessible, feminist, relevant and high quality support service and resource for its

member groups. The Network is also an important information resource on issues relevant to community-based women's organisations and for other infrastructure groups, nationally and internationally.

1.5 Over the past 30+ years, the community-based women's sector has developed a range of front-line services such as childcare, support, advice, and education & training, in response to the needs they identified at a grass-roots level. Women's groups continue to meet the particular needs of women and their children living in areas considered to be some of those most affected by the conflict, and recognised as some of the most disadvantaged areas across Northern Ireland today.

1.6 Network members are actively engaged with their local communities, cross-community initiatives and regional structures throughout Northern Ireland.

## **2. Comments**

2.1 The Women's Support Network (WSN), as an organisation representing women's centres, projects and infrastructure groups drawn from across the Northern Irish community, welcomes the opportunity to respond to the proposed reform of publicly funded legal representation in the Civil and Family Courts.

2.2 WSN understands the desire of the Department of Justice to bring legal aid within the budget, in line with the strategic objectives outlined in the Review of Access to Justice in Northern Ireland; the Network further appreciates the need to update and reformulate the current system, in order to create appropriate but cost-effective levels of representation, in light of the ever-changing nature of society and the increasingly rigid budget resulting from challenging economic times.

2.3 At the outset, it is worthwhile to reflect on the importance of the legal aid system, in that it has a multifarious range of purposes, the fundamental aims of which are to uphold the principles of justice and equality. The existence of the system continues to give real depth to our understanding of Human Rights and ensures that every individual has, if necessary, access to the Courts, to defend his/her rights in a fair and impartial setting. In fact, at the heart of any legal aid system is the recognition that its role is to guard against the possibility of social exclusion and marginalisation as a result of poverty, status, race or sex. For many vulnerable women in Northern Ireland, legal aid is often the only viable source of protection and support, offering justice regardless of background, status or income.

2.4 At this juncture, it is important to note that the PSNI statistics for 2009/10 indicate that there were more recorded crimes with a domestic motivation (9,903) than the combined total of all other crimes (9,864). Furthermore, 76% of adult victims of domestic crimes recorded by the PSNI in 2010/11 were female. In these types of cases, which appear to be so prevalent in current society, the importance of having a comprehensive, easy-to-access, properly supported civil legal aid system, which is instrumental in providing these women with the option of a Civil Protection Order or Occupation Orders to keep a spouse out of the family home, is essential.

2.5 What is disappointing about the document under discussion is the obvious absence of a specific reference to women, their position in society and the effect these changes will be likely to have on their lives. The gender-neutral approach in this instance is inappropriate: it fails to recognise the reality that women, as the primary caregivers, will be heavily involved in many of the cases requiring civil legal aid. In essence, women will be involved in cases relating, not only to themselves specifically, but also to their children and/or dependents. In fact, it has been suggested that 'it is important to continue to challenge how we deliver services and interventions for women and to identify new and more creative approaches if we are successfully to

address women's complex and multiple needs' (Corston, 2007). Moreover, Corston, in this same report, stresses that equal outcomes for women sometimes require different services and policies from those applied to men, and goes on to illustrate the point by enumerating fundamental differences between men and women in the justice system as follows:

- the biological difference between men and women generates different social and personal consequences;
- coercion and abuse by men channel some women into criminal activity;
- mental health problems are far more prevalent among women.

Furthermore, the Department of Justice in Northern Ireland, too, has recognised that the needs of men and women differ, in certain circumstances. In 'A Strategy To Manage Women Offenders And Those Vulnerable To Offending Behaviour' 2010-2013', the Department of Justice states that 'the problems encountered by women are often complex, and differ in type and severity from those experienced by men. Therefore, if there is an acknowledgment that female offenders need to be catered for in a way that is distinct from male offenders, then it is fair to argue that when seeking civil legal aid, women will once again undoubtedly have different needs and face different problems from those of their male counterparts. Thus, the decision to reform the civil legal aid system can only be considered, when the potentially negative impact it could have specifically on women, is properly investigated and addressed and the document is redrafted to avoid gender neutrality.

2.6 The WSN both acknowledges and sympathies with the fact that it is due to the current financial pressures - the release of continuous data suggesting that the UK is heading for a 'treble dip', with GDP shrinking again in 2013 and the reality that there will be a shortage of revenue - that the Department is obliged to find alternative approaches to the civil legal aid system and thus, has put forward these proposals for consultation. However, currently, the

legal aid system is being restricted more to those most in need of help and guidance, while other voices go unheard. Any proposed reform must take due cognisance of the potentially detrimental effect it is likely to have on the lives of women, particularly on those from disadvantaged areas who lack the means and possibly the know-how to even access civil legal aid, but who need the best assistance and highest quality representation which the State can offer, to ensure that a fair hearing will be provided and an acceptable, unprejudiced outcome achieved.

2.7 Currently, one person in five is living in poverty in Northern Ireland. During the period 2009-2011, 34% of working adults were not in paid employment. 77% percent of part-time jobs are currently held by women. Furthermore, there has been clear indication that women and children will bear the financial burden of the cuts in welfare due to reform. The disquieting elements for women of the Bill are as follows: the introduction of Universal Credit; Bedroom Tax; the change in Sickness Benefit; the introduction of Personal Independence Payment and cuts to Child Benefit. The subsequent outcome of these reforms must, inevitably, be an augmentation in the numbers of women and their families living in poverty. Bearing this stark reality in mind, any decision to reduce the use of junior and senior counsel or to decide that the same level of representation is not appropriate for each side, must be taken with real regard for the fact that these individuals, though unable to pay privately for legal instruction, are entitled to the same standard of aid as any citizen in our society. It is also vital to remember that the consequences of divorce, for example, on a woman's financial status, can often be devastating. Irrespective of assessments of overall assets, costs incurred in relocation, to mention but one such consequence, may render her unable to sustain any additional financial burdens.

2.8 Barristers continue to reject the claim that their role in civil cases to do with divorce, domestic violence, or custody battles is unnecessary. In fact,

according to Denise McBride QC, the deputy chair of the Bar Council for Northern Ireland, many of the civil cases involve 'dealing with some of the most vulnerable people in society and they are facing the might of the State - for example if the State decides to take a child into care'. In attempting to take a case against the State or in defending one's role as a parent in the eyes of the State, the importance of upholding the principle of the Separation of Powers and ensuring that impartial and appropriate representation is available, becomes of paramount importance, if we are to believe our society is wholly democratic in nature and underpinned by equality and respect. In the judgment of the Divisional Court (2000) regarding the judicial review of the nature of legal aid contracting (R v Legal Aid Board and another ex parte Mackintosh Duncan), the Court was concerned that the introduction of budget restrictions might lead to impediments to access to justice particularly for those clients who were most socially excluded. Mr Mulholland, too, speaking at the second annual Bar Council of Northern Ireland Conference at the Royal Courts of Justice in Belfast, further compounded this argument by saying: " if you are in danger of losing your liberty, your children, your right to decide your own future, your home or your reputation - recourse to the law should be an option". The Law Society too has raised serious concerns that the reforms could have an adverse effect on family cases involving children, which account for the highest amount of civil legal aid payments.

2.9 To overhaul a system without sufficient regard to the many possible, unforeseen consequences that could result, will inevitably lead to an undermining of the whole legal structure and the introduction of a two-tier system of justice. The cause at issue here is the survival of an independent system of justice, available to the general public equally, regardless of currency, class or creed.

3.0 The WSN would like clarification on a number of phrases. The document makes reference to the fact that counsel may be sought in 'exceptional circumstances'. This is illustrated by suggesting, as an example, cases where

there might be allegations about ‘serious’ sexual or physical abuse. Is the inference, therefore, that there are cases which might be considered less serious examples of sexual or physical abuse and thus not entitled to counsel in Family Proceedings Courts? Such an idea is as frightening as it is repugnant. We would also like further clarification with regard to what would constitute a complex matter of law and what type of case would be considered ‘wholly different from the norm’. Is there a specific set of criteria used to evaluate whether issues could be reasonably presented by junior counsel? Such language is disquieting, introducing, as it does, a suggestion of graded availability of services based on perceptions of gravity or complexity. Once again, the fear of a weakening of the justice system informs the WSN queries here.

#### **4. Recommendations**

4.1 The WSN believes that greater emphasis should be placed on tackling the waste in legal aid caused by Government departments, rather than on finding ways to reduce funded legal representation. The organisation sees this representation as essential, especially for women as the primary caregivers in society. Depriving them of such legal representation, or making it difficult to access – which can be tantamount to the same thing – is a clear injustice which will only serve to demonstrate the government’s indifference to the plight of those most disadvantaged in society. What is to be avoided at all costs is a perception that there is to be a two-tiered legal system, with access for the less well-off restricted to the lower tier. Some of the mooted changes lend themselves to such a perception. Therefore, rather than seeking savings, which are inimical to hard-pressed and vulnerable sectors, government departments would do well to seek to stop the waste of funds caused primarily by others (maybe other departments) outside the control of legal aid barristers and solicitors, and to insist that those responsible for the

waste be made to fund it. There is surely room for the view that existing monies could be better spent.

4.2 As is clear, no doubt, from the foregoing discussion, the network would also recommend that the creation of a special category for women seeking legal aid be given consideration, in light of the particular burdens they carry and the special needs arising from the biological differences between them and their male counterparts, as outlined by Corston. The implementation of such a reform would constitute a major step forward in the legal system.

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## MEMBERSHIP 2013

	<b>WSN MEMBERSHIP 2013</b> <b><u>Member Groups</u></b>
1	All Ireland Mother's Union
2	An Munia Tober (Travellers)
3	Antrim & Ballymena Women's Aid
4	Ardmonagh Women's Group
5	ATLAS Women's Centre
6	Al Nisa Women's Group
7	Ballybeen Women's Centre
8	Centre for Health & Wellbeing (Ballymurphy Women's Group)
9	Belfast & Lisburn Women's Aid
10	Belvoir Women's Improvement Group
11	Carrickfergus Women's Forum
12	Carew II
13	Causeway Women's Aid
14	Chrysalis Women's Centre
15	Clan Mor Women's Group (Sure Start)
16	Derry Well Woman
17	Derry Women's Centre
18	Falls Women's Centre
19	First Steps Women's Group
20	Footprints Women's Centre
21	Foyle Women's Aid
22	Foyle Women's Information Network
23	Grace NI
24	Granaghant District Women's Group
25	Greenway Women's Centre
26	Kilcooley Women's Centre
27	HERE NI
28	Lesbian Line
29	Lenadoon Women's Group
30	Ligoneil Family Centre
31	Link Women's Group
32	Manor Women's Group
33	Markets Women's Group
34	NI Women's Aid Federation
35	NI Women's European Platform
36	Fermanagh Women's Network
37	Newry & Mourne Women
38	Newtownabbey Women's Group
39	Older Women's Network NI
40	Omagh Women's Aid
41	Rape Crisis Centre
42	Rasharkin Women's Group
43	Shankill Women's Centre
44	Strabane & Lifford Women's Centre
45	Strathfoyle Women's Centre
46	The Learning Lodge
47	Voices Women's Group

48	Waterside Women's Centre
49	Windsor Women's Centre
50	Women Connect Project
51	Women into Politics
52	Women's Information Group
53	Women's TEC
54	Women 2 Gather
55	Women's Resource & Development Agency
56	WISPA (Women in Sport & Physical Activity)
57	Ardcarn Women's Group
58	OIYIN Women's Group
59	Mossley Women's Institute
60	Mount Vernon Women's Group
61	Coole New Opportunities
62	North Belfast Womens Initiative & Support Project
63	Congo Tears
64	Masimanyane ma Afrika (formerly NandiJ Project)
65	Learning through Engagement Programme (LINC)
66	Ballymote Women's Group
67	Women's Support Group (HIV Centre)
68	Women's Group (RNIB)
69	Women's Education Project (Ashton Centre)
70	Matt Talbot Women's Group
	<b>Associate Members</b>
1.	Ballymena Community Forum
2.	CiNI
3.	Community Relations Forum
4.	East Belfast Community Partnership
5.	Employers for Childcare
6.	Mencap
7.	National Women's Council of Ireland
8.	Playboard
9.	Good Morning Newtownabbey
10.	Monkstown Community Association
11.	WAVE Trauma Centre
12.	WEA
13.	Parents Advice Centre
14.	Templemore Community Action Group
15.	Gingerbread
16.	Larne Community Development Project
17.	Community First Coaching
18.	Changing Faces
19.	Sands NI
20.	Women on Track
21.	Council for the Homeless NI