



Live Fear  
Free Helpline

Providing confidential support  
and information on domestic  
abuse, sexual violence and  
violence against women in Wales

Llinell Gymorth  
Byw Heb Ofn

Darparu gwybodaeth a chefnogaeth  
cyfrinachol ynghylch trais domestig,  
trais rhywiol a thrais yn erbyn merched  
yng Nghymru

**0808 80 10 800**



## **WEN Wales Call for Evidence: Women's Access to Solicitors in Wales**

**Deadline:** 17<sup>th</sup> May 2016.

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### **About Us**

Welsh Women's Aid is the national charity in Wales working to prevent domestic abuse and all forms of violence against women and ensure high-quality services for survivors that are needs-led, gender-responsive and holistic.

Established in 1978, we are an umbrella organisation that represents and supports a national federation of 23 local independent charities delivering specialist domestic abuse and violence against women prevention services in Wales, as part of a UK network of provision. These specialist services constitute our core membership, and they provide lifesaving refuges, outreach, and community advocacy and support to survivors of violence and abuse - women, men, children, families - and deliver innovative preventative work in local communities. We also deliver direct services including the Welsh Government funded *Live Fear Free Helpline*; a National Training Service; refuge and advocacy services in Colwyn Bay and Wrexham; and the national *Children Matter* project which supports local services to help children and young people affected by abuse and to deliver preventative STAR group-work in every local authority in Wales.

We have been at the forefront of shaping coordinated community responses and practice in Wales, by campaigning for change and providing advice, consultancy, support and training to deliver policy and service improvements for survivors, families and communities. As a national federation, our policy work, consultancy, training and advocacy is all grounded in the experience of local specialist services and service users. Our success is founded on making sure the experiences and needs of survivors are central to all we do.

### **What barriers do women face currently when they have legal problems?**

Women in Wales can currently face a number of barriers when they have legal problems regarding domestic abuse and other forms of violence against women. The points raised below are a result of information which has been shared with Welsh Women's Aid by survivors, our member services, and interaction with various other organisations in Wales.



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Welsh Women's Aid are particularly concerned about the impact the cuts to Legal Aid have had on women in Wales. A number of issues have been identified, most notably that women who are now over the threshold to get access to legal aid, or who's evidence does not meet the new stricter gateway requirements, are unable to access justice as the fees are, in most cases unaffordable. Some other examples include women who only work part time, and those who are on low incomes and are the sole financial providers for their children. We have been told by our member services that that women in their refuges recently have tended to be part-time workers, which is a reflection of our current economic reality, and as such, those who are particularly vulnerable and in need of legal assistance are now being refused support. Women who are in joint mortgages or have joint ownership of a property with an abusive partner, where financial abuse is a factor, are often not able to access their money so are also being turned away. In some cases, this barrier has resulted in women taking the decision to return to abusive households, or not to leave in the first place.

Cuts to legal aid have also led to women being cross examined by their abusive partners, and/or having to represent themselves against a partner with legal representation as litigants in person – which is being recorded as a harrowing and traumatic experience. Legal services and the process to access rights and justice then become complicit in the abuse the survivor has already faced

The geography and transport services in Wales are also significant barriers for some women in Wales, especially those who live in more rural areas, as physically being able to get to a solicitor can be a challenge. This can also be coupled with cuts to Legal Aid, which has resulted in many firms refusing to take on Legal Aid work in Wales. Those in rural communities may then have to travel long distances, with limited transport, just to get initial advice. For those still in abusive relationships, this can be particularly challenging due to controls on their day-to-day lives.

Black and minority ethnic (BME) women and women with no recourse to public funds have some specific barriers they can encounter when they have legal problems around domestic abuse and violence against women. A key barrier is a lack of knowledge of the legal process and of their legal rights. This can be a systematic aspect of the control they may face in an abusive relationship. For example those with insecure immigration status may have this used as a control mechanism to ensure that they do not leave their perpetrator. A more general problem is for those who do not speak English or Welsh, and as a result, rely on others to translate on their behalf. This can limit access to justice if the person who is interpreting for them is the perpetrator, a member of the family or someone from their community, as they maybe unable to disclose the true picture of what is happening to them. Those without recourse to public funds are often left in a situation where they cannot be supported by services such as refuge, let alone legal aid, when attempting to flee an abusive situation. This can lead to a dangerous isolating effect for the survivor, with nowhere to turn for help.

Another concern for Welsh Women's Aid is the arrest and prosecution of women who retaliate to the abuse they have experienced. Welsh Women's Aid, and indeed the violence against women sector as a whole, often hear of incidents where the abused partner is the one who is criminalised, rather than the true perpetrator. In these cases, it is key that the new offence of coercive and controlling behaviour is better understood, and that solicitors



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apply this understanding to cases so as to represent and defend the survivors of abuse adequately.

**What kind of experiences do women have when using solicitors to address issues connected to their rights and to help resolve relationship disputes?**

Lack of awareness of domestic abuse with legal representatives is an issue which has been brought to Welsh Women’s Aid’s attention multiple times over the years by several of our specialist member services and survivors. Solicitors need to be aware of the signs of domestic abuse as well as other forms of violence against women in order to fully understand the situation and risk to their client. This includes understanding the impact of power and control on a women’s ability to participate in the legal process. The impact of domestic abuse on children is another key area which solicitors, particularly those who practise Family Law, must be fully aware of. One survivor told us that her solicitor was “trained in domestic abuse, but does not understand”.

This can sometimes lead to unintentional collusion by the courts and solicitors with the perpetrator, who will often present as a trustworthy, likeable and credible person, whereas, due to years of systematic abuse a survivor may present as a nervous, quiet, paranoid and erratic and inconsistent person. Survivors have often told us that they felt this was the case.

Primarily, abuse experienced by survivors needs to be believed, addressed, and sensitively communicated to the courts. One of our specialist services has told us that a service user was told by their legal representative not to ‘rock the boat’ by bringing up her experiences of domestic abuse in a child contact proceeding. These facts are important to communicate to the family court so that appropriate and safe child contact orders are put into place. Practice Direction 12J also needs to be more widely understood and implemented so that children’s safety is put first. The importance of this can be evidenced in Women’s Aid Federation England’s 2016 report covering January 2005 to August 2015 ‘19 Child Homicides’ which shows a shocking 19 children killed, along with two women, two children seriously harmed through attempted murder, and seven men dead by suicide after committing child homicide. All of the perpetrators where domestic abusers who had been granted access to their children through formal and informal child contact arrangements.<sup>1</sup>

Survivors of abuse have told us that they felt unprepared by their solicitors for what may happen within legal proceedings. Many have found the process secretive, traumatising, lengthy and intimidating. This coupled with representatives who do not understand how abuse impacts survivors has negatively impacted their ability to participate in the legal process.

**What needs to change and how can access to solicitors be improved in future?**

Welsh Women’s Aid are particularly concerned about those women who are unable to access Legal Aid, despite the recent widening of the evidential gateway. There is an urgent need for mechanisms to be put in place for those who are unable to access this. It is vital that

<sup>1</sup> Women’s Aid Federation England, *19 Child Homicides: What must change so children are put first in child contact arrangements and the family courts* (2016), p.7. <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>



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women who have experienced abuse are not made to represent themselves against their abuser. Other avenues of support should also be explored in addition to this fundamental point, for example, help with paperwork. We have been told that specialist women's services (usually with no legal training) are having to help women with legal applications etc., as solicitors will not help them without Legal Aid or fee payments which cannot be accessed and/or afforded.

The legal processes can also be extremely daunting for survivors of abuse. Women who are experiencing or have experienced abuse need as much information about what the process is, timelines, and what to expect. It is also of vital importance that solicitors understand, believe and act on any disclosures of abuse. A key example is an understanding that just because a relationship has ended does not mean that the fear and control of the perpetrator has disappeared.

As highlighted above, solicitors also need to be aware of the potential for any unintended collusion with perpetrators within legal proceedings, including court proceedings. Those representing perpetrators should also pay attention to the dynamics of abusive relationships and ensure that the legal processes does not turn into a mechanism which is used to further control the victim of abuse.

Solicitors should make better use of letters from specialist services or MARAC if a woman has received help. Welsh Women's Aid has been told that this has helped women to demonstrate abuse in the past. For example, if the survivor has been housed in a refuge, she would be in daily contact with a specialist service. These specialists can help to contextualise and explain the impacts of abuse. Unfortunately however, this evidence can still not be applied to the Legal Aid evidential gateway, despite significant work in this area.

It is also vital that vetted, independent professional translators are used if a women who does not speak English or Welsh is seeking legal advice in relation to domestic abuse or violence against women. There may be some areas which she is unable to communicate in front of people she knows or those from her own community.

Welsh Women's Aid would like to thank WEN for the opportunity to comment on this consultation, and we look forward to working together to support this issue in the future.

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Any comments or questions regarding our response can be directed to:

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