

December 24, 2018

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Legal Aid Challenge

SOUTHALL BLACK SISTERS -V- SECRETARY OF STATE FOR JUSTICE

On 19 July, the government reversed its decision to deny access to legal aid to abused migrant women. This is a great victory for all of us who work with abused women who have insecure immigration status and for those who need to seek legal advice and representation to make applications to remain in the UK in order to secure protection. The hard lobbying that we and other organisations such as Rights of Women conducted has definitely paid off. We also believe that the legal challenge that SBS initiated against the Ministry of Justice (MOJ) was the final nail in its coffin! On 4 July, we began a legal challenge (by way of judicial review). We challenged the government's decision to remove non-detention immigration from the scope of legal aid especially for women who are subject to domestic or gender-related violence and who need to make applications under the Domestic Violence Rule. We sent a letter to the MOJ setting out our case and requested an immediate response.

In that letter, we argued that the decision to remove legal aid for abused with insecure immigration status was unlawful for various reasons:

1. Inconsistency with the other parts of the legal aid proposals. Which recognises that legal aid advice and representation needed where an individual life is at stake. Or where serious harm's threatened towards an individual.
2. The decision was inconsistent with other parts of the legal aid proposals. Which recognises that vulnerable adults cannot navigate their way around the law and legal processes.
3. Treated abused migrant women who are amongst some of the most vulnerable and marginalised groups in society. In an unfavourable and discriminatory manner.
4. The decision was in breach of race, gender and disability discrimination law.
5. The decision was in breach of principles enshrined in the Human Rights Act. Including Article 3 (the right not subjected to torture or to inhuman or degrading treatment or punishment), Article 8 (the right to respect for private and family life) and Article 14 (the right to no discrimination in the enjoyment of fundamental rights and freedoms set out in the Act).
6. A breach of the Public Sector Equality Duty. Which states that public bodies like the MOJ must have due regard to the need to discrimination and to advance equality of opportunity.
7. There was no proper Equality Impact Assessment carried out. The EIA conducted was shoddy and unsatisfactory. There was no regard to the importance of the issues at stake. Including the vulnerability and circumstances of the women and their ability to prepare and present their own cases.

See [letter](#) for further details

On 15 July, we received a reply from the MOJ asking for more time to respond which we refused to give. Instead to our surprise, on 19 July in Committee the government announced that it 'intended to bring forward an amendment to the Bill in relation to cases arising under the Domestic Violence Rule, so that it remains within the scope of civil legal aid'. **See below.**

Mr Djanogly My hon. Friend makes a good point. The matter raised of including cases brought under the immigration domestic violence rule in the scope of civil legal aid. A great deal during the consultation, and we considered the point . Although we accepted that the applicants in such cases were vulnerable, we did not think, on balance, that they required legal aid. Essentially because the applications, similar to other immigrant applications, were paper-based. We recognised that people might need assistance with obtaining the required documentary evidence, but we considered that such assistance need not be specialist legal help funded by legal aid.

After further consideration, however, we accept that such cases are unusual. There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardising their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a Government amendment to bring such cases into scope at a later stage.

Legal Aid, Sentencing and Punishment of Offenders Bill

We're now writing to the MOJ seeking further clarification on the concession. We need to know whether abused women who need to make applications outside of the Domestic Violence Rule will also qualify for legal aid. We are also asking for the inclusion of all women including trafficked women and migrant domestic workers. To also in the scope of legal aid as the protection and equality principles must also apply to these vulnerable groups of women.

We will keep you informed of the MOJ's response.

We need to keep the pressure and campaigning up!

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