

## **MUSLIM WOMEN'S NETWORK UK**

### **RESPONSE TO CONSULTATION: TRANSFORMING LEGAL AID.**

**June 2013**

#### **Introduction**

1. Muslim Women's Network was formally established in 2003 with the support of the Women's National Commission (WNC), to give independent advice to government on issues relating to Muslim women and public policy. In 2007, Muslim Women's Network decided to establish itself as an independent organisation to ensure its autonomy from Government. We renamed the group 'Muslim Women's Network UK' (MWNUK) and became a Community Interest Company in 2008.
2. Our aim is to gather and share information relevant to the lives of Muslim women and girls in order to influence policy and public attitudes, to raise the profile of issues of concern to Muslim women and to strengthen Muslim women's ability to bring about effective changes in their lives.
3. At the time of writing this Response, MWNUK has a membership of 500 that includes individuals and organisations with a collective reach of tens of thousands of women. Members are mainly Muslim women living and working in the UK while our non-Muslim members work with or on behalf of Muslim women. Our membership is diverse in terms of ethnicity, age, religious backgrounds, lifestyles, sexual orientation and geographic location and members are from a range of employment sectors including: higher and further education; voluntary sector and support including services workers; health and legal professionals; the voluntary sector and support services; health and legal professions; the police and criminal justice sectors; and local and central government.
4. As a women's organisation, our expertise with regards to chapters 4 – 8 of the consultation is limited and as a result we are unable to evaluate and provide responses to questions 2, 3, 7 – 36.
5. However, we would like it noted that the relatively short consultation period of 8 weeks reduced our capacity undertake wider research and seek the views of our members on each of the questions.
6. We would also like to mention that we have read the Responses from the following organisations and may refer to certain points raised by them:
  - (a) Criminal Bar Association
  - (b) Family Law Bar Association

(c) Discrimination Lawyers Association

### Responses to specific questions

#### Restricting the scope of legal aid for prison law

**Q1. Do you agree with the proposal that criminal legal aid for prison law matters should be restricted to the proposed criteria? Please give reasons.**

7. No, we disagree.
8. We have noted that the proposal will exclude in its entirety legal aid for cases listed in Annex B concerning the treatment of prisoners including:
  - a) Prison conditions (food, religious worship, access to work, access to services;
  - b) Treatment by staff including bullying and abuse;
  - c) Discrimination;
  - d) Communication and Visits;
  - e) Mother & Baby issues;
  - f) Compassionate Release;
  - g) Behavioural Courses.
9. We are not clear as to why discrimination cases have been removed from the scope of legal aid for prisoners when available for those outside the prison system and we are deeply concerned by this proposal. In 2012, 25% of prisoners were of an ethnic minority<sup>1</sup>. Approximately 36% of people in prison have a physical or mental disability whilst 20 – 30% of prisoners have learning difficulties. The need to consider the individualities of prisoners is therefore vital.
10. Moreover, as a women's organisation which represents Muslim/BME women in UK, we are very aware of the discrimination faced in wider society and to remove protection from such within a prison environment, where individuals are already isolated and may be particularly vulnerable, is concerning.
11. Muslim and/or BME women may be especially vulnerable in such situations given additional cultural factors; for example, a prison sentence may have led to being ostracized from family members or the community. Removing yet another form of assistance in such circumstances will be particularly detrimental.

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<sup>1</sup> Data published by the Prison Reform Trust in Bromley Briefing Prison Factfile, November 2012

12. The diversity of prisoners is also a relevant consideration when assessing the impact for cases involving prison conditions. Religious minorities for example, should be able to practise their faith without having to face hurdles.
13. We have noted that the Consultation states “due regard” will be had to “the impact on individuals sharing protected characteristics, such as those with learning difficulties and or mental health issues”, and further that, “the National Offender Management Service is committed to the provision of comprehensive screening to ensure that all prisoners with learning difficulties are provided with reasonable adjustments thereby enabling them to utilize the prisoner's complaints system”<sup>2</sup>. However, we have not been given any further information which would allow assessing the practicalities and as such it does not give us much confidence that the specific individualities and vulnerabilities we refer to will be given the relevant consideration.
14. We are also particularly concerned by the proposal to restrict legal aid in cases concerning mother and baby issues, such as where a mother is refused a place in a mother and baby unit. This would not only impact the mother but also the baby given that this will result in the child being separated from the parent and taken into care. To echo the words of the Family Law Bar Association, “to exclude from scope pregnant women and children, the most vulnerable of prisoners at the most vulnerable point in their lives, would be a shocking retrograde step.”<sup>3</sup>
15. A prison sentence should not result in an individual being denied protection and it is concerning that the proposal is seeking to differentiate between individuals in such a way. We urge the Ministry of Justice to consider the individualities of prisoners. They may have their own vulnerabilities. They may have been victims themselves. A prison sentence does not make them any less human or any less worthy of being treated as one.

### **Introducing a residence test**

#### **Q4. Do you agree with the proposed approach for limiting legal aid to those with a strong connection with the UK? Please give reasons.**

16. No, we disagree.
17. We have noted that the proposed residence test requires:

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<sup>2</sup> 3.17.

<sup>3</sup> Response to Consultation, Family Law Bar Association. June 2013. Page 3, para. 11.

- (a) The individual would need to be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time an application for civil legal aid was made;
  - (b) Individual would need to have resided lawfully, in the territories mentioned above, for 12 months.
18. We have also noted that a separate test would apply to asylum seekers who remain eligible for civil legal aid so long as their asylum application is under consideration.
19. Whilst we understand the general idea behind “lawful residence”, “residing lawfully” and “lawfully present”, we ask that the positions are clarified so that the residence test can be adequately assessed. At present it is not clear whether for example, delays by the UKBA in processing an application would impact on whether an individual was considered as lawfully resident or lawfully present. Moreover, it is not clear how individuals on a spousal visa whose marriage subsequent fails, or more usually where they are fleeing domestic violence, would be classified under the proposed criteria.
20. We feel that the additional requirement of 12 months residency is unnecessary, counter-productive and only goes towards further differentiating between individuals as second-class citizens. The proposal would restrict legal aid from those who may have been granted refugee status less than 12 months ago, or migrants who have entered lawfully but have not been resident for 12 months and we are at a loss as to why their entitlement should be limited in such a way.
21. Concern has been widespread amongst the membership of Muslim Women’s Network UK over the impact of the proposals on cases such as domestic violence especially given the evidentiary burden that has been placed on women, and in particular Muslim/BME women, who may be suffering in silence for various personal and/or cultural reasons. The Legal Aid Sentencing and Punishment of Offenders Act 2012 has already restricted entitlement to participants who are considered vulnerable thus limiting its availability and to restrict it any further will do more harm than good.
22. We are especially concerned by the impact of the requirement in forced marriage cases. Our case studies show that a number of victims are taken abroad for a long period of time and in turn may not satisfy the proposed criteria. Similarly, some victims may have recently entered UK and not hold the requisite status. We believe the proposed test will inhibit the use of the Forced Marriage (Civil Protection) Act 2007 and place victims in an even more vulnerable position.
23. Moreover, our current work is focused on promoting the reporting of domestic violence. We are aware that victims of domestic violence can be especially reluctant to report a crime or even seek protection where their immigration status is unsettled and therefore hope this is given due consideration.

24. We are similarly concerned about the impact on cases involving child custody such as where a child has been taken, or abducted, to a different country or alternatively where a foreign national spouse/parent has been abandoned abroad.
25. We feel that the proposals will be excluding those most at need. These would include those who were trafficked into the country through force or trickery, who face deportation and their case is based on right to private and family life as well as migrants under the new Migrant Domestic Worker visa who do not have a right to change employer and therefore would be classed as unlawfully present in the UK if they run away from an abusive employer.
26. We have also noted that the proposal would restrict legal aid irrespective of the type of civil case at hand and would therefore exclude discrimination cases from its remit. Muslim Women's Network UK have come across a number of case studies of women, including Muslim and/or BME women, who have faced discrimination due to their gender, race, religion, sexual orientation etc. Given the very real existence of such cases, Muslim Women's Network UK are unable to endorse a proposal which would place individuals in a vulnerable position by which they are unable to seek recourse in the face of discrimination.

#### **Paying for permission work in judicial review cases**

**Q5. Do you agree with the proposal that providers should only be paid for work carried out on an application for judicial review, including a request for reconsideration of the application at a hearing, the renewal hearing, or an onward permission appeal to the Court of Appeal, if permission granted by the Court (but that reasonable disbursements should be payable in any event?) Please give reasons.**

27. No, we disagree.
28. We deem the availability of judicial review as a vital means by which to ensure that the rule of law is upheld, and justice received. We are concerned that access to this option is being limited to essentially those with the financial means to afford it, thus further differentiating between individuals and excluding perhaps the more vulnerable members of society.
29. We would like to cite the following paragraph from the Response of Family Law Bar Association to the Consultation so as to summarise our position:  
  
“37. Many JR cases in the public law family sphere are likely to involve disadvantaged and vulnerable claimants: children and families with a multiplicity of problems, including poor education, learning disability, mental health problems, a first language other than English and poverty. Legal representatives often will not

know whether a case is capable of settling until the defendant local authority has responded to a permission application by providing vital disclosure of information. Forcing solicitors to take the costs risk in such circumstances is particularly unfair, because, insofar as solicitors would understandably not be prepared to take this risk, the potential applicants who are disadvantaged and vulnerable are the least able to issue an application and deal with the process themselves. Nor are such potential applications likely to be able to afford to pay for legal representation”.

30. We are similarly aware of the detriment that will be caused in other areas of law. This is especially the case for ethnic and religious minorities who may not be able to pursue their rights when faced with discrimination.

### **Civil merits test – Removing legal aid for borderline cases**

**Q6. Do you agree with the proposal that legal aid should be removed for all cases assessed as having “borderline” prospects of success? Please give reasons.**

31. No we disagree and wish to endorse the Response of the Family Law Bar Association to this question.
32. We once again ask the Ministry of Justice to consider the impact of this proposal on vulnerable members of society, including victims of domestic violence.

### **Additional Comments**

33. As stated in paragraph 3, due to limits in our expertise we are unable to provide a response to questions 2, 3, 7 – 36 of the Consultation. However, we have had the opportunity to read the Responses of the Criminal Bar Association, Family Law Bar Association and Discrimination Lawyers Association and would like to express our concerns at what has been stated by the afore-mentioned organisations in relation to the impact of the proposals on the criminal justice system.
34. In particular, we would like to stress that we are especially concerned by the potential impact on victims. Whilst we understand that saving costs is necessary, it should not be done at the expense of quality of advocacy and representation. This is especially the case given that we are aware that the defendant in question may in fact be the real victim whose voice has been unheard thus far; we cannot have a criminal justice system that similarly silences them.
35. The work of Muslim Women’s Network UK has consistently focused on empowering women and eradicating violence against women. We hope that we will be able have a criminal justice system that is able to meet the needs of the victims when they manage to take that step towards it.

### **Final word**

36. We understand that in the current economic climate saving costs is necessary. However, we are concerned that in wishing to save costs in the short-term, the proposals will become a burden in the long term both financially and emotionally.
37. We are especially concerned by proposals which essentially take legal aid away from perhaps the most vulnerable of individuals who may need it the most. Women's organisations like Muslim Women's Network UK are committed to empowering women and helping them take that step towards acquiring justice. It is concerning that instead of assisting such victims, the proposals may hinder them further into silence. Silence can be more costly.
38. We urge the Ministry of Justice to give due consideration to the impact of proposals on wider society and taking all individualities into account.

Thank you for providing us with the opportunity to respond to the Consultation. We hope it is of assistance.

**Muslim Women's Network UK**

**4<sup>th</sup> June 2013**