women's aid
until women & children are safe

Women's Aid Submission to the Independent Review of Administrative Law Call for Evidence

October 2020

Women's Aid is the national charity working to end domestic abuse against women and children. We are a federation of nearly 180 organisations which provide just under 300 local lifesaving services to women and children across the country. Over the past 45 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs.

Women's Aid welcomes the opportunity to submit a response to the Independent Review of Administrative Law's Call for Evidence. We support the responses of the Public Law Project, Centre for Women's Justice and Rights of Women to this Call for Evidence and we restrict our comments to our areas of expertise.

1. **Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?**

Women's Aid Federation of England is concerned that the questions asked to government focus on assessing whether judicial review impedes the proper or effective discharge of central or local governmental functions, rather than to assess whether judicial review meets its purpose – to address matters of public interest.

Judicial review is an essential part of democracy. It supervises the duties and powers imposed by parliament and ensures people are treated fairly and in accordance with law, often in cases where individuals face significant barriers to challenging or redressing these matters themselves. As a national domestic abuse charity, Women's Aid strongly believes that Judicial Review is a critically important means for addressing matters of public interest that impact on women and children experiencing domestic abuse.

We agree with the Public Law Project that there is no robust evidence that judicial review is unduly hampering government decision-making. As they make clear, there are relatively few judicial reviews overall, unmeritorious cases are filtered out at an early stage, the threat of judicial review proceedings will often result in public bodies identifying and resolving unlawful decisions, and many of the cases that proceed ultimately uncover unlawful decision making.

We are a national federation of 170 local domestic abuse services, which provide a range of support services to women and children across England. We, and many of these services we represent, use judicial review to ensure that the women and children experiencing domestic abuse can access their basic rights and protections - including to safe accommodation and child protection. These are cases which will often never reach the courts, but where the threat of judicial review ensures that public bodies – such as local authorities – identify and meet their legal duties those escaping violence and abuse.

Whilst of course we would far rather that legal action is not required to ensure women can access their rights, the reality of women's experiences suggests otherwise. Women's Aid's No Woman Turned Away project in 2019-20 found that of the 104 women we supported who were escaping domestic abuse and contacted a housing team for assistance, nearly a third

(30.8%) were prevented from making a valid homelessness application.[1] In 29% of cases where women had children, and contacted social services whilst searching for a refuge space, the responsible teams failed to meet their obligation to safeguard women and children.

Our No Woman Turned Away project provides specialist casework support for women facing barriers to accessing a refuge space. The caseworkers regularly work with solicitors, who are often required to inform local authorities that are in breach of their legal obligations and use the threat of judicial review as an essential means of ensuring that survivors' rights to safe housing and protection for children are upheld. For example:

- In September 2020, the project supported a woman with seven children whose ex-partner posed an ongoing risk to her safety. Her teenager daughter accidentally disclosed their address to the father, who attended the property and assaulted the mother. She applied for rehousing in another local authority – but the housing team refused her application on the grounds that he 'only' put his hands round her throat, didn't injure her, and they felt that she didn't adequately supervise the teenager to prevent the details being passed on. The NWTA team engaged a solicitor and as a result of their intervention, the woman was offered a 3 bed temporary property.
- In July 2020 the project supported a woman, a Jamaican national with 5 British children, who had been in the UK for 20 years. Because of her immigration status, and agencies providing poor support and advice, the woman had continued to return to the perpetrator. Social services had even offered her money to take the children to Jamaica. As a result of the intervention from the lawyer, social services agreed to fund food and accommodation for them and her immigration status has been resolved.
- The NWTA project is currently supporting a survivor who was placed by her local authority in unsuitable temporary mixed-sex accommodation in a different local area from her home in London, where she was receiving ongoing mental health support. She was then informed that the temporary accommodation was for a month only and as she had continued to stay there after that time, and had not secured other accommodation, she was called at 6pm in the evening and told to leave immediately– leaving her effectively street homeless in a strange area. We engaged a solicitor, who is now challenging the local authority's original decision to not assist her in finding something more suitable for her mental health support needs in London.

Our member services also rely on judicial review and legal challenge as an essential means of challenging local authorities to uphold their duties to women and children escaping abuse. Examples are documented in recent reports by our member services, including:

- Solace Women's Aid, 'Safe as Houses' (2020), quotes a woman who experienced physical, sexual and financial abuse from her husband, who stated that due to legal challenges made by Solace Women's Aid on her behalf, the local authority "*were obliged to put us in temporary accommodation.*"
- Latin American Women's Aid and the London Black Women's Project, 'A Roof Not A Home' (2019), quotes a refuge worker who stated "*there are many cases of women told to go back to the borough where the refuge they live is based on, because they say this is their local connection. After a key worker intervenes the Council will often respond differently specially when threatened with court challenge.*"

[1] Women's Aid, Nowhere to Turn: Findings from the Fourth Year of the No Woman Turned Away Project, 2020

Judicial review is an essential means of ensuring that the experiences of those impacted by executive action are fully considered. Women's Aid has intervened in judicial review cases, and has provided witness statements to assist the senior courts and the state in understating the impact of the law and policy on the safety, protection and rights of women and children experiencing domestic abuse. This has recently included cases assessing the impact of the 'benefit cap' on lone parents with young children – where the Administrative Court and Court of Appeal specifically referenced our evidence in judgments. [2] We also provided evidence on a series of cases related to the impact of the under-occupation deduction on victims of domestic abuse who require additional rooms to accommodate' sanctuary scheme' measures, such as panic rooms, that keep them safe. In this case, the Court of Appeal referred to Women's Aid's witness statement as "powerful evidence."[3]

These cases, and our organisation's wider experience, demonstrate that the impact of policy and law on individuals experiencing domestic abuse is not always considered when it is being designed and developed. Judicial review is an essential and useful mechanism for ensuring that the negative or unintended consequences of law and policy can be assessed and considered, and rectified. Through our work we also know that women experiencing domestic abuse face significant and ongoing barriers to accessing their rights and challenging the lawfulness of executive action, at either local or national level. Judicial review is a vital mechanism in both ensuring those experiencing domestic abuse can access essential rights and protections, and assisting public bodies in understanding the impacts of the law and policy upon them.

Question 2: In light of the Review's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to Question 1?

We support the response of the Public Law Project to this question. Positive reforms to judicial review are required to ensure that the process is more effective and accessible – particularly, in our experience, in the areas of cost, legal aid and time limits.

[2] R (on the application of DA) v Secretary of State for Work and Pensions [2017] EWHC 1446 (Admin),
[3] Rutherford v Secretary of State for Work and Pensions [2016] EWCA Civ 29