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These are the views of:	*Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.*

About Welsh Women's Aid

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse, and sexual violence (VAWDASV) specialist services in Wales. Our membership comprises of 20 specialist support services. These services deliver lifesaving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence against children and young people, men and boys, trans and non-binary people, as part of a network of UK provision. As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence, and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales. We also award the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS can be found here).

Introduction

Welsh Women's Aid have decided to respond to the questions in the consultation through this written narrative, to ensure that we clearly demonstrate the negative impact the proposed measures will have on survivors of all forms abuse and/or violence. Whilst we welcome reform of private family law arrangements, we do not believe that the proposals provided will meet the Ministry of Justice's aim of there being a less adversarial approach to resolving family disputes[1]. A review of private law

[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144049/supporting-earlier-resolution-of-private-family-law-arrangements-consultation-web.pdf, page 4.

children's cases, the Harm panel report, published in 2020 highlighted grave concerns such as systematic minimisation of allegations of domestic abuse, a trauma inducing court process, threat of repeat litigation and an adversarial system[2]. Recommendations focused largely on ensuring a culture of safety and protection and procedures being designed with the needs of children and survivors from domestic abuse in mind[3]. Following this report, the MOJ highlighted their commitment to facilitating fundamental reform which addressed the long-standing systemic issues, whilst assuring a system that supports victims of domestic abuse[4]. We do not believe that the proposed measures which focus on compulsory mediation, cost orders and mandatory co-parenting programmes will achieve this aim, and we fundamentally believe that these suggestions go against any recommendation made in the Harm panel report and will catastrophically continue to impede on the life of survivors and cause them further harm.

Work by the Early Intervention Foundation has been used as the evidence base that prolonged conflict between separating parents is harmful to children[5]. The Early Intervention Foundation are not specialised in gender-based abuse and therefore we are concerned that introduction of compulsory measures is being based on research that does not hold this at its core. We are also concerned that there seems to be a lack of distinction between inter-parental conflict and domestic abuse, and the recognition that domestic abuse is rooted in power and control. Whilst the supporting earlier resolution of private family law arrangements heavily mentions domestic abuse, sexual abuse is only mentioned once. It is fundamental that domestic abuse is not just seen as physical abuse, but in all its forms such as coercive control, economic abuse, emotional abuse and sexual abuse[6], to ensure all survivors experiences are understood.

It is also unclear why learnings from Australia have been used as basis of implementing compulsory mediation, when it suggests the compulsory alternative dispute resolutions did not work with cases that involved domestic abuse[7]. Screening for domestic abuse was also deemed inadequate and families still needed to attend court as no resolution was made[8].

[2] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, pages 4 and 5.
[3] ibid, pages 9,10 and 11.
[4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895174/implementation-plan-assessing-risk-children.pdf, page 3.
[5] https://www.eif.org.uk/report/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children.
[6] Domestic Abuse Act 2021, Part 1, Section 1 (3).
[7]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144050/supporting-earlier-resolution-of-private-family-law-arrangements-consultation-print.pdf, page 24.
[8] ibid.

The consultation document also suggests that the implementation of compulsory mediation will help reduce the court backlog and to allow families to reach an agreement earlier and without court intervention. We strongly believe that measures cannot be introduced with the incentive of reducing court back logs, without the awareness and understanding of the imbalance of power between the survivor and their perpetrator, and how private family law arrangements whether this is in court or through mediation are often weaponised by the perpetrator to exercise further control, even when the relationship has ended. As highlighted in research conducted by Cafcass and Women's Aid, domestic abuse was alleged in 62% of family law court proceedings[9], however these proposals treat domestic abuse as an exception and not a norm.

Compulsory pre-court mediation

One of the recommendations from the Harm Panel report highlighted 4 basic design principles which should be implemented in private family law cases[10] and this includes a culture of safety and protection from harm. We strongly believe that proposing compulsory pre-court mediation does not create a culture of safety and nor does it protect women and children from harm, and instead fuels an environment of further power and control from the perpetrator and we fundamentally do not agree with this proposal. Compulsory pre-court mediation will put survivors in an untenable position, even with the exemption provided for those able to evidence domestic abuse. Whilst we agree with creating a less adversarial nature of the court, we do not believe compulsory mediation and co-parenting programmes are the way to achieve this. The delivery update on the Harm panel report published in May 2023, highlighted that the MOJ continue to work towards the recommendations and ensuring that ''no victim of domestic abuse should be re-traumatised or put at risk''[11]. In reality, as highlighted by Women's Aid, survivors have voiced a lack of progress which has left them disillusioned and disappointed on the change promised and a continued lack of understanding of elements of abuse, such as coercive control[12]. Instead of focusing on implementing compulsory pre-court mediation, we call on the MOJ to focus on implementing the recommendations from the Harm panel report to addresses the deep-rooted systemic concerns with how the court identify and

[9] https://www.cafcass.gov.uk/wp-content/uploads/2017/12/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf, page 4.
[10] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 9.
[11]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158906/harm-panel-delivery-update.pdf, page 4.
[12] https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf, page 7.

respond to domestic abuse[13]. It is paradoxical that in society more widely, there is beginning to be a greater understanding of coercive control and its impact, whilst alternatives to court proceedings are being pushed which will cause further significant harm to survivors who are not able to be exempt[14]

A survivor highlighted that during their experience of mediation they had a lack of information on the options available to them and the rights that they had. They voiced that they felt alone. Survivors are often unable to access safety and justice due to numerous barriers, and this is further exacerbated for migrant survivors who often lack information on the UK system. The concerns raised in the Harm Report such as pro-contact culture, working in silo and an adversarial system are all magnified for migrant women, due to further structural inequality and migrant survivors often feel the family court process is an extension of the abuse [15]. By and for organisations have highlighted their concerns on the disproportionate impact this will have on migrant survivors. Perpetrators often uses a migrant survivors lack of understanding of the system and their insecure immigration status to further isolate them and perpetrator further abuse. There is often a lack of understanding on the availability of translators meaning migrant survivors are unable to express themselves fully and must navigate family law arrangements under uneven conditions[16]. There are also often pressures from communities and other family members to participate in mediation. This is further exacerbated by fear of the police and fear of being deported or losing their children if they do not reconcile. Allowing the current mediation system to work in this way, or the implementation of compulsory pre-court mediation will continue to traumatise survivors significantly, whilst facilitating a further adversarial environment. Implementing compulsory mediation will present survivors with complex domestic abuse experiences, alongside different cultural and intersectional factors[17], and we do not believe that the family court staff or mediators have the level of training to navigate this correctly.

Survivors often experience post-separation abuse which is then exacerbated by family law proceedings and becomes a way of exerting control once the relationship is over[18]. We have grave concerns that the implementation of compulsory mediation will allow the perpetrator to further weaponize this process and continue to exercise power and control over the survivor, if they are unable to secure an extension or if the perpetrator puts them in a difficult position to comply with threats of further contact or harm.

We strongly believe that mediation must remain voluntary.

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[13] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 3.
[14] https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf, page 56.
[15] https://lawrs.org.uk/blog/2021/07/20/family-courts-and-migrant-women/.
[16] ibid.
[17] https://csrm.cass.anu.edu.au/sites/default/files/docs/CSRM_60ICERT_APPENDIX_A.pdf, page 16.
[18] https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf,page 29.

Mediation Information and Assessment Meetings (MIAM)

We do not believe the current MIAM arrangement ensures the safety of survivors and is able to identify signs of abuse.

In 2014, the UK Government introduced a requirement that individuals were to attend a Mediation Information and Assessment Meeting (MIAM) before making an application to the family court[19]. This is statutory unless domestic abuse has been alleged, and a survivor meets the evidence criteria. The criteria include evidence such as an arrest for a relevant domestic violence offence, a letter or report from a person who is a member of a multi-agency risk assessment conference or an IDVA[20]. Evidencing experiencing or having experienced domestic abuse relies on the assumption that the survivor is comfortable to disclose and that they are aware that they are a survivor of domestic abuse. There are many different reasons why survivors may not disclose domestic abuse and therefore would have to participate in mandatory mediation which will leave them in a situation where abuse continues or increases, and they may agree to conditions as they feel they have no other option. Due to the lack of understanding on domestic abuse and the impact it has on survivors, there is often a misconception by family court workers that abuse ends when the relationship ends.

MIAM's are held with a mediator who would then assess whether the issue/s to be resolved is suitable for mediation. As previously highlighted, there are many reasons why a survivor may not apply for an exemption and may not disclose domestic abuse to the mediator. There are concerns that mediators are not able to identify signs of abuse. One experience that was highlighted includes an instance of coercive control happening directly in front of a mediator. The mediator remained unaware of this occurring in their presence.

During the MIAM process, we believe that instead of focusing on screening in cases of domestic abuse, the onus must be on screening out cases that do not involve any form of domestic abuse. There must be an understanding and recognition that over 60% of family court proceedings have some form of domestic abuse, and therefore there it is not the anomaly. We believe that the assessment for undisclosed domestic abuse should be the responsibility of a domestic abuse specialist, who have experience in supporting and advocating for survivors of all forms of abuse and violence. This is also the case for determining suitability for a co-parenting programme if this was to be implemented.

[19] Children and Families Act 2014 section 10.
[20] https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a#para20.

Whilst some survivors may still end up in mediation, it is essential that mediators have a substantial level of training on domestic abuse, what this looks like and how it impacts a survivor, to be able to keep the survivor safe during mediation. This must be reflected in the requirements to be an accredited mediator and in guidance and procedure. Whilst the MOJ are focusing on the proposal of compulsory pre-court mediation, we believe that they must focus on the current family law arrangements and how this is not fit for survivors.

A reasonable attempt to mediate

We do not believe that a ''reasonable attempt to mediate'' threshold should be created as we are significantly concerned that this will allow perpetrators to exercise further power and control over the survivors. Perpetrators are likely to state that the survivor has not wanted to negotiate or will use the ''difficulty'' of the survivor in their favour and to support their case. It has already been highlighted that survivors have experienced Judges who use the same demoralising and victim blaming language as the perpetrator and call them difficult, irrational, or angry[21], whilst also stating that the perpetrator is charming and on their 'best behaviour'[22]. This is further magnified by the sexist culture identified in courts where women are often expected to remain calm compared to the aggressive behaviour by the fathers being tolerated in court[23]. A survivor has highlighted that the perpetrator had run rings around support services, with many of them not understanding the impact the abuse had on her, whilst also experiencing the court system making her feel like 'mum has caused this'. The sexist and misogynistic attitudes present in family court, place survivors in an untenable position where they are likely to be re-traumatised when trying to seek justice.

We are strongly against implementing a power for the court to ask parties to explain themselves. This leaves room for the perpetrator to argue parent alienation and to continue to control the situation.

We believe that implementing this threshold will create a further environment for survivors to feel unbelieved and will allow perpetrators to continue to facilitate post-separation abuse. Whether there has been a reasonable attempt to mediate would likely be up to the discretion of the judge, and with the findings of the Harm Report, there continue to be significant concerns that domestic abuse will continue to be minimised or completely missed.

[21] ibid, page 30.
[22] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/domestic-abuse-private-law-children-cases-literature-review.pdf, page 68.
[23] ibid.

Exemptions

We do not believe that mediation should be compulsory, however we recognise that the exemption for domestic abuse needs to be effective if this was to be implemented or not. Urgent applications and child protection circumstances must also be exempt, alongside cases involving child sexual abuse.

We believe all forms of VAWDASV must be exempt, including forms of abuse such as so-called honour-based abuse, female genital mutilation (FGM) and forced marriage. This must be articulated in all guidance and procedure.

Practice Direction 3A paragraph 20 lists all the forms of evidence required to gain an exemption, and this contains evidence such as police caution, relevant conviction or reports from an IDVA. As previously mentioned, having an exemption for domestic abuse relies on the presumption that the survivor is aware that they are a victim of abuse, that they feel comfortable to disclose the abuse and that they have the evidence requested. Many survivors from marginalised groups have a lack of trust in services due to institutional racism and often face a multitude of barriers when accessing support services or the police.

Many mothers have expressed that they are often advised and/or felt required or directed to engage in mediation despite having provided information about domestic abuse[24]. In consultation with a support worker, they stated that a solicitor would often tell the survivor they are exempt. However, if the survivor was self-representing, they may not be aware of the exemption as it is not clear enough. A survivor who wanted to participate in mediation has also highlighted that they felt it would be the quickest way to solve child contact issues but otherwise had no awareness of what mediation was and what it entailed.

Many survivors continue to be pushed into mediation or are not able to apply for an exemption. To ensure that exemptions work in practise, there must be a commitment to tackle the different obstacles that survivors need to overcome, in order to not have to attend mediation. This cannot be in silo and sufficient training needs to be provided to ensure that all court staff (including but not limited to: lawyers, Cafcass Cymru, and Mediators) are able to understand the different forms of abuse, how they present and the impact of these. Exemptions must be assessed by those who have sufficient knowledge of abuse and in a way that is sensitive and mindful of the experience of survivors and the multitude of barriers they face.

[24] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 89.

Funding

We do not agree with compulsory pre-court mediation, however if the MOJ go forward with their proposal we believe that it should be fully funded.

FMC Accreditation scheme

We do not believe that the current FMC accreditation scheme provides the necessary safeguards as there does not seem to be any substantive commitment to ensure sufficient domestic abuse training is completed.

To become an accredited family mediator, the Family Mediation Council website[25] states that you need to complete an approved foundation training course. The Family Mediation Standards Board are in charge of approving foundation training courses and the professional competence standard provided within the course approval guidance states that they should be able to respond appropriately and effectively to any domestic abuse issues and be able to screen and identify unreported domestic abuse and notify appropriate agencies where relevant[26]. Most of the training providers have not made the content of the training available to the public, and even when provided this information is sparse. It is extremely difficult to determine to what level of training they have on domestic abuse. There is not enough clarity provided to ensure that there is a strong commitment to complete domestic abuse training for all accredited family mediators. Family mediators must continue professional development, however there is no mandatory commitment to complete regular domestic abuse training.

We hold significant concerns that family mediators are not having robust training on the different types of abuse, how these present and the impact of this on the survivor and their children. Therefore, abuse is being minimised or un-detected. Those who do not complete substantive domestic abuse training may wrongly assume that if a MIAM was conducted with the survivor on their own, they would be more likely to feel comfortable to disclose if there was abuse. Domestic abuse is very complex, and coercive and controlling strategies used by the perpetrator are so deeply embedded in the survivor's everyday life[27]. Even in spaces away from the perpetrator, survivors can struggle to make disclosures as a result of the abuse, and this is backed up by survivor experience. There must be assurances that the survivors voice is heard and that coercive control and the damage it leaves behind is fully understood.

[25] https://www.familymediationcouncil.org.uk/mediator-area/standards-codes-guidance/fmc-accreditation-faqs/.
[26] COURSE-APPROVAL-Guidance-Notes.pdf (familymediationcouncil.org.uk), B4 and C4.
[27] http://classic.austlii.edu.au/au/journals/SydLawRw/2006/31.html, 7.

Dynamics of domestic abuse and the different strategies that perpetrators use to exercise both power and control are difficult to recognise. We believe it is essential that domestic abuse training is compulsory, and that there is a requirement to complete this training on a regular basis. We believe alongside this training there must be training on cultural awareness and intersectionality.

Other forms of non-court dispute resolution

We are concerned that any other form of non-court dispute resolution is likely to traumatise survivors further and will allow the perpetrator to continue to exercise their power and control – therefore having the same risks of mediation. No form of non-court dispute resolution should be made mandatory.

Cost orders and powers of the court

We fundamentally oppose the introduction of cost orders and the power of the courts to order parties to make a reasonable attempt at mediation, due to the significant impact this will have on survivors.

The proposal to use cost orders to hold people accountable for not making a reasonable attempt to mediator or if they unreasonably pursue an issue would disproportionately disadvantage those who are from a low socio-economic background and those who are survivors of abuse. Any sort of cost order or court fee would serve as a barrier to survivors who need to access protection of the court.

There is a clear link between deprivation and private law applications, with almost half of mothers living in the two most deprived quintiles and over a quarter living in the most deprived quintile[28]. Survivors are already experiencing depleting financial resources due to having to return to court[29] or having to take time away from work without implementing cost orders. A survivor from an ethnically minoritised background, who was reliant on foodbanks due to financial abuse, experienced racism and classism which was embedded in the unsympathetic response she received from the court compared to the response received by the white professional perpetrator[30]. We have severe concerns that implementing cost orders for those who are not deemed to have made a reasonable

[28] https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_whos-coming-to-court_wales_report_FINAL_english.pdf, page 2.
[29] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/domestic-abuse-private-law-children-cases-literature-review.pdf, page 127.
[30] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 116.

attempt to mediate will facilitate further post-separation abuse, power, and control by the perpetrator. The perpetrator will likely state that the survivor has been unwilling to mediate.

Surviving Economic Abuse have highlighted that for many survivors of economic abuse this escalates after separation and that the perpetrator often depletes the survivor's economic resource through multiple court applications[31]. We are severely concerned that perpetrators will weaponize cost orders to continue to economically abuse the survivor and this will have devastating impacts on survivors and their children. The introduction of a cost order would be an additional barrier, which may prevent survivors from seeking the protection of the court.

We do not believe that the court should have the power to order parties to make a reasonable attempt at mediation, especially not where it is deemed circumstances have changed or are no longer relevant. We hold concerns that this may create a narrative that when the relationship has ended between the perpetrator and the survivor, that the abuse has ended and therefore they would be able to mediate. This is a dangerous narrative as perpetrators continue to implement power and control over the survivor post-separation as recognised in the amendment made to the Domestic Abuse Act 2021.

Co-parenting programmes

We categorically do not agree that there should be mandatory requirements for separating parents to attend a shared parenting programme. This will significantly impact survivors who are not able to get an exemption.

The same exemption that is provided for mediation currently and if compulsory mediation was implemented, would not prevent survivors from having to participate in this programme. As highlighted earlier on in this response, the exemption is on the premise that a survivor can disclose abuse and are able to evidence this abuse. There are multiple different barriers for why survivors will not disclose abuse, ranging from not realising they are a survivor, fear of disclosing due to the repercussions from the perpetrator, the lack of trust in institutional systems or not being able to evidence abuse. The Harm panel report highlighted that many survivors felt that regardless of circumstances such as domestic abuse, courts expected parents to work together to facilitate contact arrangements[32]. Survivors have often been advised to not raise allegations of domestic abuse in fear

[31] https://survivingeconomicabuse.org/wp-content/uploads/2021/10/SEA-response-MoJ-Family-Justice-Call-for-Evidence-August-2019.pdf, page 3.
[32] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 7.

there could be counter allegations of parental alienation, and domestic abuse being relabelled as ''high conflict'' relationships[33]. Within the consultation document there does not seem to be a clear distinction between conflict and domestic abuse when there is discussion about early resolution. Domestic abuse is a high risk, high harm crime and must not be minimised to inter-parental conflict. Survivors of domestic abuse must be taken seriously; one woman is killed by a man every 3 days in the UK and 52% of women killed by men in 2020 were killed by a current or former partner[34]. Introducing a compulsory requirement to attend a share parenting programme will cause the survivor further harm and will allow the perpetrator to continue to exercise power and control through the programme.

We are disappointed to see that the MOJ would want to introduce this compulsory measure, which would make the survivor attend a programme with the perpetrator, whilst evidence shows not all survivors are able to access this exemption. We also believe this puts the narrative on the survivor to be accommodative and collaborative when the focus should be keeping them safe from the perpetrator and their behaviour. This allows survivors to suffer from further abuse and traumatisation with one survivor describing it as distressing and insensitive[35].

Co-parenting programmes, where suitable and no domestic abuse is present, must be down to choice to ensure both parties want to work together and there is no power imbalance. It should never be mandatory as survivors of domestic abuse may be forced to comply if they are not able to get an exemption.

Information on the court process

Information on the court process should be provided to all parties of a private family law dispute. These must be available soon as possible if in written format, to ensure survivors are able to understand their rights and the exemptions that apply. All information shared irrespective of whether it is online or in a booklet, must be available in all languages including Welsh and BSL to ensure there are no language barriers. There must be information available for the children who will be impacted by the court process, as a survivor has raised that the impact it had on her daughter was profound. There must be signposting available so that children are able to access support if they require. We believe that the survivor needs to be listened to and feel heard as soon as possible and this would be through receiving early legal advice. Survivors will need to evidence domestic abuse and satisfy the

[33] ibid, 65.
[34] https://www.femicidecensus.org/wp-content/uploads/2022/02/010998-2020-Femicide-Report_V2.pdf, page 8.
[35] https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf, page 142.

means test for legal aid, and this can penalise survivors who cannot evidence abuse or who may have bought a house but have limited liquid funds to afford legal representation[36]. The lack of legal aid will have a direct impact on a survivor's awareness of their rights.

When it comes specifically to domestic abuse survivors going through the court process, a survivor highlighted that they would value an empowerment booklet which incapsulated their rights, what they were able to access and what support they could receive. They also stated that the court process can feel lonely, and it was often difficult to deal with the realisation that they were a survivor of abuse, which may happen at different stages of the court process. We believe that an online tool gives an opportunity to support survivors to recognise and identify the abuse that they are feeling, whilst also containing information to sign post them to different specialist services. Signposting to specialist services must include all 'by and for' service provision, to unsure that marginalised groups are able to reach the support they need. We would be happy to work with the UK Government to ensure all Welsh services are included.

[36] ibid, 146.