



## 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 (comprising our membership of specialist services and members of the regional VAWDASV Specialist Services Providers Forums).<sup>1</sup> These services deliver life-saving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence, 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 provide advice, consultancy, support and training to deliver policy and service improvements across government, public, private and third sector services and in communities, for the benefit of survivors.

We also deliver direct services including, for example, the Welsh Government funded Live Fear Free Helpline and a National Training Service partnership. We are piloting the Survivors Empowering and Educating Services (SEEdS) project, which is empowering survivors of violence and abuse to collectively influence and inform improvements in public services and commissioning frameworks, and help change attitudes.

We also deliver the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as

<sup>1</sup> Our membership of 22 third sector violence against women, domestic abuse and sexual violence specialist services in Wales, with whom we have national partnership agreements to ensure our work is coordinated and integrated includes: Aberconwy DAS, Atal y Fro, Bangor and District Women's Aid, Clwyd Alyn Housing Association (CAHA) Women's Aid, Stepping Stones, Safer Merthyr Tydfil, Carmarthen Domestic Abuse Service, Calan DVS, Cardiff Women's Aid, Cyfannol Women's Aid, Domestic Abuse Safety Unit (DASU), Gorwel (Grwp Cynefin), Montgomeryshire Family Crisis Centre, Newport Women's Aid, North Denbighshire Domestic Abuse Service, Port Talbot & Afan Women's Aid, RCT Women's Aid, Safer Wales (including Dyn Project), Swansea Women's Aid, Threshold, West Wales Domestic Abuse Service and Rape and Sexual Abuse Support Centre (RASASC) North Wales.

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part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS: <http://www.welshwomensaid.org.uk/what-we-do/our-members/standards/>)

## Assessing risk of harm to children and parents in private law children cases

### Your experience of private law children proceedings

*This question is for parents who have been to the family court because of a dispute about arrangements for their children after they have separated (known as 'private law children proceedings').*

N/A

### Raising allegations of domestic abuse or other serious offences in private law children proceedings

1. Are there any difficulties in raising the issue of domestic abuse or other serious offences against a parent or child, in private law children proceedings?
  - a. Yes
  - b. No
  - c. Don't know

What helps victims of abuse or other offences to raise the issue or might discourage them from doing so?

Survivors and services have told us that the very processes of the family courts can act as a deterrent. Mediation is widely recognised as inappropriate in cases of domestic abuse, because of the imbalance of power within the relationship and the opportunity for the perpetrator to further intimidate. However, it is still sometimes seen as a way to prevent escalation to the courts. Therefore, women's first experiences of the family court process can be being forced to be in a room with their perpetrator to 'work out their differences' without any understanding from the professionals involved of the risk that poses and the power dynamics within that relationship. *'(they) put you back in the same room as the abuser, to try to get you to mediate with him when he holds all the power and has dominated you*

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for years, you haven't got a chance, it's not equal<sup>2</sup>'. This lack of understanding about the dynamics and risks of domestic abuse and coercive control by professionals such as solicitors and barristers is a common theme that has been raised by survivors.

Findings have shown that women have been discouraged, by professionals involved in the family courts, from bringing up domestic abuse<sup>3</sup>. Evidence from focus groups with survivors by Welsh Women's Aid<sup>4</sup> and reports by other agencies have highlighted that survivors routinely feel disbelieved and the abuse is minimised by professionals. As well as the courts believing the perpetrators version of events, as one survivor stated; *'I couldn't (bring up the abuse) because he was able to manipulate the courts into making me out to be crazy and he would tell them what I would accuse him of, by saying I'd threatened him rather than the abuse he had made me endure! And saying I would do anything to prevent him accessing to his children!'*

Survivors of abuse are likely to have already felt discouraged by other statutory services by the time they are going through the family court process. We know that women's first experiences of disclosing are not always positive, often feeling they have not been believed<sup>5</sup>. This is particularly reported within the family court system where women have told us that they have been told disclosures could harm their case, which can dissuade some women from 'bringing-up' the abuse in the context of the family courts. This can have severe implications for the risk to the survivor and children as well. Survivors have told us this extends to advice and comments around the use of protective measures or support workers attending, which are often discouraged by the court due to beliefs this would 'unfairly bias' a case.

It would help survivors to raise domestic abuse if they were made to feel, from the outset, that they were safe and supported to do so and that they will be believed and made safe. This can be achieved through clear policy, guidance and training for all staff involved in the family courts process as well as all survivors having access to specialist service support, advocacy and pre-trial counselling. One survivor suggested to us that at the top of all court forms they could be a tick box to show whether domestic abuse had been alleged, so that this was prominent and given proper regard by the court.

We very much welcome, in Wales, Cafcass Cymru introducing new Domestic Abuse Guidance, accompanied by training for Cafcass Cymru practitioners, however other crucial staff to be trained in

<sup>2</sup> Are you Listening, Am I being Heard? Welsh Women's Aid [https://www.welshwomensaid.org.uk/wp-content/uploads/2016/03/Are\\_you\\_listening\\_and\\_am\\_i\\_being\\_heard\\_FINAL\\_July\\_2016.pdf](https://www.welshwomensaid.org.uk/wp-content/uploads/2016/03/Are_you_listening_and_am_i_being_heard_FINAL_July_2016.pdf) page 39

<sup>3</sup> Domestic Abuse, Human Rights and the Family Courts, Jenny Birchall and Professor Shazia Choudhr, Women's Aid Federation England <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf> page 24

<sup>4</sup> Are you Listening, Am I being Heard? Op Cit page 40

<sup>5</sup> <https://www.welshwomensaid.org.uk/what-we-do/change-that-lasts/>

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the nuances of coercive control must include mediators, solicitors and judges. This training must consider how perpetrator's use the courts and other statutory agencies to continue to abuse. We are concerned that at present, training is, at best, ad hoc and inconsistent. In Wales, any training for the Family Division, must be aligned to the violence against women, domestic abuse and sexual violence context and developed and delivered by the specialist violence against women sector in Wales. We also back Women's Aid Federation England's calls for training to be provided by specialists on human rights.

This current inconsistency in training has resulted in an inconsistency in response from judges. One support worker told us about a survivor whose case was heard by two different judges, with very different attitudes. She felt believed and supported by one judge, but felt her concerns were dismissed by another. When a change of judges takes place this variation in outlook can lead to great anxiety and very different outcomes.

We are also concerned that the lack of legal aid acts as a deterrent for survivors. A review of legal aid regulations is needed to ensure the means testing reflects a survivor's actual financial position, rather than a property or other assets that cannot be accessed due to economic abuse. Adequate legal aid representation has also now become a problem in many rural areas of Wales where availability of solicitors and barristers are dwindling.

Finally, consistent access to special measures and a complete end to cross examination of litigants in person is needed across the courts to halt opportunities for continuing abuse by the perpetrator and any attempts to undermine or discredit the survivor. Further detail of this is included later in our feedback.

### Children's voices

#### 2. How are children's voices taken into account in private law children proceedings where there are allegations of domestic abuse or other serious offences? Do children feel heard in these cases? What helps or obstructs children being heard?

Evidence from survivor testimonies would imply that children's voices are not considered and neither are the voices of their mothers. In our report, 'Are you Listening, Am I being heard' the overriding feeling amongst focus group participants was that the abusive parents right to see his children seemed to override the safety and well-being of those children; *'children aren't listened to, these children who*

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are afraid of their fathers are going through hell<sup>6</sup>. ‘my child is dragged, kicking and screaming to contact visits but they do nothing’<sup>7</sup>.

Another survivor has told us; ‘By forcing my children to go to see their dad, the pain it caused us, will stay with me forever. Children should be considered central to this; my children were not experiencing indirect abuse’

Survivors have also been left to feel that they are being obstructive or lying to stop contact. ‘Nobody wanted to hear my children’s voice as they were convinced I had manipulated the children into not wanting their father!!!! Until the children disclosed to the school the damage their dad had been doing while I was under an order to send my children or risk imprisonment or losing them’.

Research shows that women generally want their children to have contact as long as it’s in the best interests of the child, so when they raise concerns about contact it is because they have well-founded fears around abduction or violence<sup>8</sup>.

Research has demonstrated that children are not always spoken to in the process of determining contact or insufficient time and resources are given to building a relationship with children in order to build trust. A case highlighted by Women’s Aid Federation England, *Child First* report 19 *Child Homicides* found despite the child disclosing that their father was emotionally abusive and that they were afraid of him, the court made an order for unsupervised contact.<sup>9</sup>

We are also concerned there is too much of an expectation on children to manage their own safety and wellbeing, when they are asked about contact with abusive parents. It fails to recognise the work mothers do to protect their children, as much as possible, from the abuse. As Emma Katz has found, while children are directly impacted by coercive control, they, with their mothers, find ways to resist this.<sup>10</sup> Therefore, children may not have experienced the full brunt of the abuse because of the protection of their mother, however if the abusive parent is given unsupervised access, that protection is not there. It appears children’s wishes are subject to a ‘selective approach’; when they want contact it is taken into account but when they do not, those wishes are disregarded. We are keen to emphasise here that when a child has experienced coercive control from an abusive parent, the voice initially

<sup>6</sup> Are you Listening, Am I being heard?, op cit, page 39

<sup>7</sup> Ibid, page 39

<sup>8</sup> <https://books.google.co.uk/books?hl=en&lr=&id=AvcPBQAAQBAJ&oi=fnd&pg=PP1&dq=mothering+through+domestic+violence&ots=XgNK5MUjiE&sig=eF5r5bP3Um5-UkTPNVZ2Qa7kfhk#v=onepage&q=mothering%20through%20domestic%20violence&f=false>

<sup>9</sup> Women’s Aid Federation England, 19 Child Homicides, <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>, page 24

<sup>10</sup> <https://avaproject.org.uk/wp-content/uploads/2016/03/Emma-Katz-2016.pdf>

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heard by professionals may have been significantly influenced by the perpetrator, rather than expressing the child's true wishes and feelings. A survivor noted; *'(they) told me that if a child had really witnessed or been subjected to abuse that they would recoil away from the abuser. Nothing at all to note my children's young age, how much I'd had to step in to protect them, what they knew as normal, how much they'd been coerced'*.

Children continue to demonstrate learnt behaviour from the perpetrator if a contact order is in place. This is a continuation of abuse on the child / children, however it is not recognised nor is any support offered to negate this harm. Children themselves will not necessarily associate this behaviour with abuse, which is why there needs to be a higher value and validity placed on the voice of the mother alongside the voice of the child.

### **The procedure where domestic abuse is raised**

*When allegations of domestic abuse are raised by a parent in cases relating to child arrangements, the way the court should respond to the allegations is set out in a part of the Family Procedure Rules called Practice Direction 12J. This Practice Direction says that the judge should first decide whether the allegations would make a difference to any orders the Judge might make about the children. If so, and if the other parent does not agree with the allegations, the court should hold a 'fact-finding hearing' to decide whether the allegations are true. If domestic abuse is found to have occurred, the court should get information about the risk of future harm, and only make orders which will keep both the child and the parent they live with safe.*

#### **3. Are fact-finding hearings held when they should be?**

- a. Yes
- b. No**
- c. Don't know

If they are not held, what reasons are given?

As one Welsh Women's Aid member stated, *'the recurring theme is that the family courts do not want to hear about the domestic abuse and seem to view this as 'parenting differences'. Neither do they seem to be applying Practice Direction 12J'*

We understand that fact finding sessions are inconsistent and may not be held as it is felt that the allegations of domestic abuse (where they are believed) will be too difficult to prove or they may be considered too costly or time consuming without a satisfactory outcome. In addition, if the Police or

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local authority do not hold any supporting evidence, Cafcass Cymru are unable to approach other supporting agencies without consent.

Women's Aid Federation England and Cafcass in England reviewed a sample of 216 private law cases and discovered it was very rare for a finding of fact hearing to be ordered. Of the 133 cases that featured an allegation of domestic abuse, just five fact-finding hearings were ordered by the court.<sup>11</sup>

We are concerned about the length of time it can take for fact findings to take place, as one survivor explained to us; *'they don't see the benefits although if it wasn't for the facts and police reports being heard he would never have been found a danger to me and his children. But should be done far sooner, took me five years'*. This survivor explained that initially the feeling was there was no need for a fact finding as *'you're just manipulating to prevent access or they hadn't read the notes to see what evidence was there'*.

## **6. Where domestic abuse is found to have occurred, how is future risk assessed and by whom? Is risk assessed only in relation to children, or also in relation to the non-abusive parent?**

Fact finding hearings do not appear to recognise coercive control but are still looking at domestic abuse as incident based and occurring solely between the adult partners; this makes it harder to find evidence if there is not physical violence and coercive control is overlooked. This is despite findings from Emma Katz that children experience coercive control at the same level as the non-abusive parent<sup>12</sup>. Additionally, Professor Evan Stark notes, that when this pattern of abuse is looked at by an outside agency, the 'typical' pattern of child abuse is not seen. The physical/sexual violence may appear to be 'low level' therefore if the abuse of the child is looked at from an incidence-based model, the cumulative effects of the coercive control on the child are not picked up<sup>13</sup>.

In addition, fact findings do not consider the level of fear that survivors and their children are experiencing or the ongoing risk the perpetrator poses; (the fact finding) *'made my children's life hell as everything they shared or disclosed was fed back to the perp and the children were threatened leaving them too scared to disclose further allowing more damage to occur'*.

Evidence continually shows that the abuse experienced by the mother is seen as separate from the children and that the end of a relationship is presumed to mean that the abuse will stop. Serious Case

<sup>11</sup>Cafcass and Women's Aid, Allegations of domestic abuse in child contact cases, 2017

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<sup>12</sup> <https://avaproject.org.uk/wp-content/uploads/2016/03/Emma-Katz-2016.pdf>

<sup>13</sup> <https://www.youtube.com/watch?v=kvHbVzTzpX0>

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Reviews have highlighted there was a lack of consideration of how domestic abuse could pose a specific risk to children<sup>14</sup> and that the assumption that the end of the relationship was a protective factor, was a serious failing which in part led to the unsafe contact arrangements.

Many statutory agencies have failed to recognise the ongoing risk posed post separation, this has been apparent in various Domestic Homicide Reviews. In addition, pursuing child contact as a way to continue to control and abuse by the perpetrator (a very common occurrence reported to us by survivors) is also not recognised as a risk factor.

When risk is identified appropriately by other statutory agencies, this seems to be considered separately from risk assessment by the family courts, this has resulted in discrepancies between the family court findings and other agencies and reflects Marianne Hester's 'three planets model'<sup>15</sup>. The domestic violence planet, where domestic abuse is considered a crime and the focus is on taking action against the perpetrator; the child protection planet, which often holds the victim responsible for the consequences of abuse and often requires mothers to remove themselves and the children from the perpetrator; and the child contact planet, where the emphasis then moves to the child having contact with both parents. As one family worker noted '*social services are giving advice about safeguarding children without taking into account the court orders in place*'. At the centre of these three planets is the non-abusing parent and child who are being given contradicting messages and often being placed in unsafe situations.

A Welsh Women's Aid member highlighted a case where there was evidence from MARAC, the children's centre, school and a specialist children's worker but these were all dismissed. Despite a physical assault on the child being witnessed during contact. It took a report from a Psychologist to 'prove' the child was terrified and contact was stopped.

Domestic Abuse, Human Rights and the Family Courts report, which followed *19 Child Homicides* found that survivors still felt that evidence of domestic abuse was not taken seriously which led to potentially unsafe contact arrangements.<sup>16</sup>

In Wales, the recommendation is that no unsupervised contact should occur until a fuller risk assessment has been undertaken by those with expertise in working with perpetrators<sup>17</sup>, however we are aware this is not currently happening in, unlike in England where the court can order, and fund, a place on a perpetrator programme. This is concerning for our members who have raised the issue of

<sup>14</sup> 19 Child Homicides, op cit, page 22

<sup>15</sup> <http://www.bristol.ac.uk/news/2009/6703.html>

<sup>16</sup> Domestic Abuse, Human Rights and the Family Courts, Op Cit, page 6

<sup>17</sup> Children in Wales, All Wales Practice Guide, page 22

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domestic abuse often being classed instead as ‘mutual violence’ by the court in cases where the survivor is a retaliatory victim seeking to defend themselves or their children.

## 7. How effective is Practice Direction 12J in protecting children and victims of domestic abuse from harm?

A number of specialist children’s workers have told us they have not seen Practice Direction 12J consistently applied since its review in 2017 and could not give any examples of how it has improved outcomes since the changes. Survivors tell us Practice Direction 12J is not being applied in all cases of domestic abuse. Too often survivors have stated that they have not been believed that there is any abuse and therefore it has not been applied. *‘It allowed the abuse to continue and step up over the 5 years I had to attend court and battle what was already proven by police. Whist he continued to beat up his current partner’*. This has been echoed by specialist domestic abuse workers who have found that links have not been made and evidence from the perpetrator’s new partner was not being used to support a woman’s claims of domestic abuse.

What is also concerning is that family courts have continued, following the introduction of Practice Direction 12J to endorse the message of ‘contact at all costs’ and that historical or non-physical violence is downgraded or not considered in contact arrangements. What is clear is that manipulative men are convincing the courts that they are good fathers who deserve to have contact with their children. Therefore despite the introduction of Practice Direction 12J, the ongoing feeling is that the fathers behaviour towards the mother can be separated from his behaviour towards the children and even if it is used, the conclusion is that he is not a risk to the children. What is clear here then, is that a significant shift in culture is needed, alongside this Practice Direction, which requires the immediate delivery of high quality training for all staff around domestic abuse, coercive control and collusion.

Research would indicate, that the introduction of Practice Direction 12J alone, was not enough and that the ‘systemic negative stereotype’ of survivors of domestic abuse and mothers who raise concerns about child contact is preventing those policies from being effective<sup>18</sup>. Survivors have also raised that family justice system professionals need training to address any unconscious bias perpetuated by their own negative assumptions of gender roles and how this may intersect with race, disability, age, sexuality and class. In addressing multiple disadvantage it is also important to address structural issues which impact on a survivor’s experience. Survivors who face multiple barriers to accessing support, like experiencing substance misuse, mental health concerns, homelessness, exploitation through the sex industry, insecure immigration status or involvement in the criminal justice system, may also have cumulative or multiple experiences of violence and abuse. Survivors’ experiences can be exacerbated because they are frequently labelled by court officials as an

<sup>18</sup> Domestic Abuse, Human Rights and Family Courts, Op Cit, page 5

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'offender', 'benefit claimant' or 'mental health client', which can lead to secondary abuse by the systems that should offer protection, support, safety and justice.<sup>19</sup> Mechanisms need to be in place to enable any form of sexism or other prejudice to be identified by the court process so assumptions do not negatively impact on survivors.

We also echo South Wales' Police concerns about the delays to criminal court proceedings where cases can be adjourned for long periods until the conclusion of the final hearing at family court, causing unnecessary anxiety for the survivor and children involved. This can also increase risk, as the perpetrator during this time is not being held accountable for their abusive behaviour.

**Questions 7, 8 and 9 are designed for people who have knowledge and experience of multiple proceedings in the family courts.**

**8. What are the challenges for courts in implementing PD12J? Is it implemented consistently? If not, how and why do judges vary in their implementation of the Practice Direction.**

The challenge for implementing PD12J is the lack of understanding of coercive control and how the courts are used by perpetrators to continue to harass and abuse women and children. As stated above, if the risk posed is not considered, it may not be used. In addition, effective use of PD12J seems to be overridden by the continued focus on 'contact at all costs'.

There continues to be a lack of understanding of the impact on children of domestic abuse where there is little or no physical violence. The impact of coercive control on children who live in the same "regime" of fear is often not understood by judges. One support worker told us that many forms of controlling behaviour can seem to be acts of concern or protection and are often interpreted as such by courts. For example, stalking behaviour that is believed to be a result of a father's desperation to see their child but is in fact frightening and threatening to the child and the non-abusive parent.

**9. What has been the impact of the presumption of parental involvement in cases where domestic abuse is alleged? How is the presumption applied or disapplied in these cases?**

Many survivors are aware of this presumption and it can increase their fear of leaving an abusive partner as they are terrified the perpetrator will be given unsupervised contact. As already stated, mothers can attempt to protect their children from the full impact of the abuse while still in the relationship, but not if there is unsupervised contact.

This presumption is often applied without proper consideration of the parenting capacity of the abusive parent and without appropriate safety measures in place. Many survivors are keen for their

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<sup>19</sup> Against Violence & Abuse (AVA) & Agenda, 'Mapping the Maze: Services for women experiencing multiple disadvantages in England and Wales', AVA & Agenda, 2017.

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children to have contact with the abusive parent but are concerned about their safety and their children's safety. Safe contact arrangements are not put in place or supervised contact is only implemented for a short period of time. Risk is not assessed accurately, again focusing too much on physical assaults and on any direct abuse to the child rather than looking at the pattern of controlling and coercive behaviour. There is a failure to understand the risk of harm to children including emotional abuse, overly-authoritarian parenting, and coercive control. Survivors have also suggested the courts including a review period for any contact orders to ensure the child's wishes are appropriately reflected as they grow.

Survivors have also spoken about ex-partners who had no interest in seeing the children or in parenting until after the separation occurred and then the court process was used as a tool to frighten and intimidate them, added to this, is a gender bias in the much lower expectation placed on men than on women in terms of their parenting capacity<sup>20</sup>.

We are concerned that, despite the law being clear that the child's safety and wellbeing must be paramount, the presumption of contact overrides the child's best interests and wishes. This reiterates the points made in this response that domestic abuse of the non-abusing parent is seen as separate from the abusive parent's relationship with the child.

#### **10. Where domestic abuse is found to have occurred, to what extent do the child arrangement orders made by the court differ from orders made in cases not involving domestic abuse?**

As stated, there is a sense that the family courts still work towards 'contact at all costs'. Testimonies from survivors state that contact arrangements are still, almost universally made, where there is domestic abuse. One study found in 81% of cases an order for contact was made<sup>21</sup>. This same report found that in the final order, it was more likely for unsupervised contact (including overnight stays) to be granted than in the interim orders. It would appear from this sample that there is little difference in the court orders made where there is and is not domestic abuse.

#### **Safety and protection at court for victims of domestic abuse and other serious offences**

*Part 3A and Practice Direction 3AA of the Family Procedure Rules specify the procedure the family court should follow in relation to 'vulnerable' parties and witnesses.*

#### **11. What is the experience of victims of domestic abuse or other serious offences in requesting arrangements to protect their safety at court?**

<sup>20</sup> Human Rights, Domestic Abuse and the Family Courts, Op Cit, page 6

<sup>21</sup> Rights of Women, Domestic Violence and Child contact, [https://rightsofwomen.org.uk/wp-content/uploads/2014/10/Picking\\_Up\\_the\\_Pieces\\_Report-2012I.pdf](https://rightsofwomen.org.uk/wp-content/uploads/2014/10/Picking_Up_the_Pieces_Report-2012I.pdf), page 61

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In Welsh Women's Aid's response to the Domestic Abuse Bill we called for an automatic assumption of special measures across all court systems, especially the family courts<sup>22</sup>. We also called for an end to cross examining of survivors by their perpetrators. We know from survivors that they are concerned about safety during the court process. Rights of Women found that women reported a lack of facilities to separate them from their perpetrators.<sup>23</sup> And cuts to legal aid have resulted in more women having to represent themselves and therefore face the prospect of being cross-examined by the perpetrator. This means that women cannot speak freely about the abuse or their concerns for their child's safety. Further to this, an example highlighted to Welsh Women's Aid demonstrated a direct impact on the evidence presented, as without a solicitor the section seven report from children's social care could not be requested by the survivor and the judge would not ask for it.

There are particular concerns for survivors in rural areas, in terms of access to legal advice and representation as well as transport and travel times to court. One member highlighted to us that concerns about childcare have been dismissed by the courts for women travelling over three hours to reach the court building. This member also highlighted that poor public transport makes it difficult to reach the court but that requests to provide evidence by video have been ruled out at a late stage or not agreed to at all.

In addition, there is an issue with the very structure of the family court buildings not providing a safe environment impacting on where special measures can be implemented effectively or where a survivor's safety can be guaranteed. For example, one entry/exit point or too small rooms to accommodate screens. One example highlighted to us was the entry point for a particular court in Wales which is via a multi-storey car park, which of course the perpetrator is also likely to use. The support worker explained there were long waits to be allowed into the court, which heightened anxiety for the survivor and then a long wait at the end to ensure the perpetrator had left.

**Please tell us about experiences where safety measures have been provided and where they have not been provided and when this occurred.**

Many survivors have expressed to us the inadequacy and inconsistency in which family courts provide safety measures. One survivor told us that her request for special measures was partially agreed, she was given a separate waiting room, but other requests were ignored, including having her IDVA in court with her. This has been echoed by other survivors whose specialist workers were denied access to the court room or mediation. Other research has found that survivors are advised that some judges, did not like women having screens and separate entrances because 'it gave the wrong impression and

<sup>22</sup> <https://www.welshomensaid.org.uk/wp-content/uploads/2019/06/Domestic-Violence-Bill-Briefing-Long.pdf>

<sup>23</sup> Ibid, page 61

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wasn't fair because it hadn't been proved at that point<sup>24</sup>. A survivor has told us of a judge stating that she was 'hiding' behind a screen.

The disparity between provision in criminal and family court has been highlighted in one case, whereby the survivor was provided with a video link in the criminal court, but not the family court, which shows a disparity between the two systems working in silo. Added to this, is the need for better information sharing between the courts, this should help mitigate the risks of court orders conflicting each other and potentially putting women and children at risk. Whilst use of special measures in the criminal justice process is prevalent, it is inconsistent and inadequately provided in the family courts, despite the fact the criminal matter may have instigated family proceedings.

We have heard further examples of the disparity between the criminal and family courts. In one case a survivor was granted a restraining order for life after a prolonged and violent assault where the perpetrator also threatened to kill the child. However, when the perpetrator applied to the family court for contact, she felt bullied and disbelieved by the Barrister and her concerns were not taken into account.

The survivor stated; *'At first I was ordered to mediate I declined it went against me. He got angry several times and I then had security escort me on and off premises for my safety. Then after so long the security was stepped down. He even got mad in court twice shouting abuse and left on his own accord. But even then the judge passed opinion and I quote "I see why he is mad as he's not seen his children for over a year." Now this was after the children had made several allegations to police about there father hurting or threatening to do so!!!'*

## 12. Do family courts make the right decisions about whether an alleged victim of domestic abuse or other serious offences is vulnerable?

Yes

No

Don't know

We are concerned that the vulnerability of survivors of domestic abuse is often misunderstood. Particularly the level of fear experienced and the impacts of coercive control. Gender stereotypes about the type of woman who will experience domestic abuse can also play into this.

<sup>24</sup> Human Rights, Domestic Abuse and Child Contact, Op Cit, page 28

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One survivor pointed out; *'Lack of evidence or not having enough time to read it all, consistency of the same judge'* which can result in a court not understanding vulnerability.

### **What helps or hinders the court in making these decisions?**

We are concerned it is hindered by a lack of understanding about the effects of the trauma of violence and abuse as well as a lack of understanding about the power dynamics between perpetrator and survivor. Perpetrators can also charm and manipulate court staff and there is lack of resources and specialist advice to help court staff navigate vulnerability.

### **13. What is the experience of victims of domestic abuse and other serious offences of being directly cross-examined by their alleged abuser/alleged perpetrator? What is their experience of having to ask questions of their alleged abuser/perpetrator?**

**Please tell us about experiences where direct cross-examination was allowed or required and when this occurred, as well as experiences where direct cross-examination was avoided in some way – please specify how and when this occurred.**

Welsh Women's Aid has called for an end to cross examining of survivors by their perpetrators. We know from survivors that they are concerned about safety during the court process. Rights of Women found that women reported a lack of facilities to separate them from their perpetrators. And cuts to legal aid have resulted in more women having to represent themselves and therefore face the prospect of being cross-examined by the perpetrator. This means that women cannot speak freely about the abuse or their concerns for their child's safety. Further to this, an example highlighted to Welsh Women's Aid demonstrated a direct impact on the evidence presented due to the lack of legal aid or representing solicitor, as the section seven report from children's social services could not be requested by the survivor and the judge in this case would not ask for it.

We are also concerned that the lack of legal aid acts as a deterrent for survivors. A review of legal aid regulations is needed to ensure the means testing reflects a survivor's actual financial position, rather than a property or other assets that cannot be accessed due to economic abuse. Adequate legal aid representation has also now become a problem in many rural areas of Wales where availability of solicitors and barristers are dwindling.

**Questions 13 and 14 are designed for people who have knowledge and experience of multiple proceedings in the family courts.**

### **14. What are the challenges for courts in implementing FPR Part 3A and PD3AA? Are they implemented consistently? If not, how and why are they inconsistent?**

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While we welcome the addition of both Part 3A and PD3AA, we are concerned the implementation of them is inconsistent due to both the structure of the family court buildings, as highlighted in this response and the continued lack of training.

As stated, members and survivors have reported to us that the physical buildings make implementing these processes a challenge, where rooms are too small or there is only one entry/exit point. In addition, the judiciaries understanding of vulnerability in relation to domestic abuse is misunderstood and special measures are either not granted or frowned upon.

### **15. How effective are these provisions in protecting victims of domestic abuse or other serious offences from harm in private law children proceedings?**

At present the inadequate identification of domestic abuse and its impact on the non-abusive parent's access to the family court procedures coupled with the very limited use of special measures and use of FPR Part 3A and PD3AA mean that these provisions are ineffective in protecting or supporting survivors of domestic abuse.

Welsh Women's Aid calls for the immediate implementation of high-quality training for all relevant family court professionals in the identification of domestic abuse and guidance on how to implement special measures and practice directives to support survivors. In addition, there is a need to ensure there are adequate specialist support services and robust referral pathways to them to ensure the ongoing support of survivors and their children identified through the family court system. This should also facilitate collaborative working with specialist support services to ensure they can provide support within the court process including accompanying survivors where required.

### **Repeated applications to the family court in the context of domestic abuse**

*Repeated applications by a parent for the family court to make orders in relation to their children, or to vary or enforce orders that have been made, can have the effect of harassing the other parent while also having adverse effects on the children. Section 91(14) of the Children Act 1989 gives the court the power to prevent a parent from making any further applications without first obtaining the permission of the court. If that parent asks the court's permission to make another application, it is known as seeking 'leave to apply'.*

### **16. What evidence is there of repeated applications in relation to children being used as a form of abuse, harassment or control of the other parent?**

Many survivors have talked about the perpetrator using the court to continue to both intimidate and control but also to cause financial insecurity. Reports have found examples of perpetrators 'not bothering' with their children until they made an application to the court, implying that their only

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interest in contact is continuing the abuse. Various pieces of research have found that contact was used as a route to continue manipulation<sup>25</sup>. Rights of Women found that several women felt they were ‘dragged’ back to court repeatedly, this is also echoed in the voices of the survivors we spoke to; *‘I asked for an order after he had been deemed a danger that he can’t re apply to court and that once the children reach an age they can ask to see him if that be the case. It was denied and said that he has only applied twice and became apparent he could apply up to 5 times before they would look into this’*

Rights of Women found there was only one case where the perpetrator was classed as a ‘vexatious litigant’ for his repeat applications to the court. Again, this demonstrates that the courts appear to not recognise how abusive men use multiple applications to the courts to continue to exert control.

### **17. Under what circumstances do family courts make orders under s.91(14)?**

Welsh Women’s Aid is not aware of evidence of s.91 being used effectively. Therefore, it appears that the courts do not routinely make these orders in cases of domestic abuse. Family workers consulted have told us they have seen no examples of it being used to stop repeat requests. This highlights the lack of training and understanding of perpetrators utilising the system as a means of continued coercive control. It also suggests the continued inherent bias to support ‘contact at all costs’ by allowing repeated requests in cases that have already demonstrated domestic abuse.

### **18. How do courts deal with applications for leave to apply following a s.91(14) order?**

We have no evidence of this.

**Questions 18 and 19 are designed for people who have knowledge and experience of multiple proceedings in the family courts.**

### **19. What are the challenges for courts in applying s.91(14), including applications for leave to apply? Is there consistency in decision-making? If not, how and why do inconsistencies arise?**

We have no evidence of this

### **20. How effective are s.91(14) orders in protecting children and non-abusive parents from harm?**

It would appear s.19 (14) are not particularly effective due to the number of women who have identified repeat requests by the perpetrator as a means to control and the limited number of examples of it being used to stop them. In addition, an order would not protect children from perpetrators insisting on seeing their child by turning up at school, stalking on social media and

<sup>25</sup>Rights of Women, Op Cit, page 11





coercing the children into contact. It would need to be backed up by other civil orders to protect the non-abusive parent and safeguarding procedures to protect the child.

## Outcomes for children

### **21. What evidence is there of children and parents suffering harm as a result of orders made in private law children proceedings, where there has been domestic abuse or other serious offences against a parent or child? (This can include harm to a parent caused by a child arrangements order which requires them to interact with the other parent in order to facilitate contact).**

Please give details of the type(s) of harm that have occurred, when the harm occurred, the type(s) of orders made and whether they were made by agreement between the parties or their lawyers, or a decision of the court.

*'My children were physically abused, verbally threatened and now my daughter wants to kill herself with the thought of being made to go to her dads'*

The most compelling evidence of children and mothers suffering harm due to orders made by the courts is the women and children murdered following child contact arrangements. Women's Aid Federation England, 19 Child Homicides Report clearly demonstrates this. Of the 12 families involved in this study, 6 were court ordered contact. All 12 fathers had a known history of domestic abuse and yet access to the children was still granted.

Welsh Women's Aid SEEds Group (Survivors Empowering Educating Services) have also talked extensively about the family courts and how they and their children have been harmed as a result of the orders, with examples of children being traumatised by having to see their father; *'My child is bed wetting, not concentrating, terrified of seeing their father and in a total state before and after the visit.'*<sup>26</sup>

Another form of harm identified by survivors is financial hardship; including being recalled to court repeatedly, risk of losing their job, childcare costs and then ongoing costs following the order. For example survivors spoke of perpetrators failing to contribute financially, or keeping children's items so the mother would have to buy more and insisting she pays for the child's transport. Of course, this was often all compounded by the financial abuse they experienced during the relationship.<sup>27</sup> One example told to us during the evidence gathering was of a father forcing his child to take off the clothes he kept at his house before returning home as well as forcing her to take her trainers off at the school sports day, because he claimed the mother stole things he bought for the child.

<sup>26</sup> Are you Listening, Am I being Heard' Op Cit, page 39

<sup>27</sup> Rights of Women, Op Cit, page 71

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Support workers gave us examples of a mother who was told to continue to send her child to unsupervised contact with the father, despite the fact the child had made an allegation of sexual abuse. The judge determined that while social services were investigating contact should continue.

Another example included a child (aged 12) being instructed during unsupervised contact with father to sleep in his mother's bed to make sure she was not sleeping with anyone else and a child who witnessed his mother being strangled when the perpetrator dropped him off after contact.

Survivors have also told us that once access was granted, perpetrators would use this to both continue the intimidation but also to alter arrangements, therefore continuing to exert control through changing their daily plans and expectations, furthering the abuse.

## **22. What evidence is there about the risk of harm to children in continuing to have a relationship – or in not having a relationship – with a domestically abusive parent (including a parent who has exercised coercive control over the family)?**

Professor Evan Stark has found that domestic abuse is the leading context in which children are abused<sup>28</sup>. His decades of work have shown that children are coercively controlled as well as the mother and that the same tactics used by the perpetrator against the non-abusing parent are used against the children. This of course will continue post separation if the perpetrator is granted access to the child, without the mother there to attempt to mitigate the harm. These findings have been backed up by research by Dr Emma Katz who identified that the same pattern of isolation, intimidation and control of children is happening. Professor Evan Stark has found that perpetrators 'weaponise' children against the mother, as well as using them as pawns in the court process. Interventions which presume a separation of a mother's interests from the child's interests, Stark claims, such as continuing to see the abusive father, do a disservice to both mother and child and indeed replicate the aims of the abuser<sup>29</sup>.

This is backed up by survivors who have talked about the perpetrator using contact to turn the child against the mother, for example showing them what the mother said in the court room or undermining her parenting capacity to the children during contact sessions<sup>30</sup>. This type of behaviour is likely to have followed on from the perpetrators attempts to undermine the relationship between mother and child before separation, as Dr Emma Katz has found that perpetrators use of coercive control attempts undermines the relationship between mother and child and is deliberately exerted over the children as well.

<sup>28</sup> <https://www.youtube.com/watch?v=kvHbVzTzpX0>

<sup>29</sup> <https://www.youtube.com/watch?v=kvHbVzTzpX0>

<sup>30</sup> Rights of Women, Op Cit, page 66

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When the court orders contact, against the children's wishes, they learn that their voice is not important. Further to this, the relationship between the non-abusive parent and child is undermined when the child tells the parent they do not want to go but are still 'forced to'. This is an example of statutory services continuing the work of the perpetrator in undermining the relationship between mother and child.

Children can also experience rejection from perpetrators who use contact to punish their ex partners. For example, not turning up to contact arrangements, letting the children down at the last minute, or refusing to see them on a particular day. Children can internalise this into a sense of low self-worth.

A support worker also highlighted that when they are delivering support to children who are still having contact with perpetrators the recovery process is limited because they are still experiencing the abuse and coercive control. They remain in survival mode as they continue to live with fear and anxiety. A survivor told us; *'The children dropped grades. My son was poorly and made ill by being fed dairy from which he has a severe allergy. I believe a child should grow up with both parents, there are things I could never teach them, but I also believe they should be loved and cared for, never to feel unsafe (but) to thrive'*.

### **23. What evidence is there about the risk of harm to children in continuing to have a relationship – or in not having a relationship – with a parent who has committed other serious offences against the other parent or a child such as child abuse, rape, sexual assault or murder?**

Cases identified in Women's Aid Federation England, 19 Child Homicides report includes those where the perpetrator was in prison for offences against the mother, as well as attempted strangulation, sexual assault and threats to or actual abduction<sup>31</sup> and analysis of serious case reviews has found that domestic abuse featured in all cases of filicide<sup>32</sup>.

Despite these findings and the follow up report to 19 Child Homicides, 'What About My Right Not to be Abused?' found that when women tried to raise safety concerns, they were perceived as trying to block contact for no good reason, because the links between domestic abuse and child safety and wellbeing weren't being made. The feeling of participants in this report was that the court viewed the domestic abuse as historical and therefore she should 'move on' and allow the child(ren) and father to have a relationship<sup>33</sup>.

<sup>31</sup> 19 child homicides, Op Cit, page 18

<sup>32</sup> Sidebotham, P. et al (2016) Pathways to harm, pathways to protection: A triennial analysis of serious case reviews 2011 – 2014, p. 77. Department for Education.

<sup>33</sup> Domestic Abuse, Human Rights and the Family Courts, Op Cit, page 30

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#### Any other comments or suggestions

#### 24. Are there any examples of good practices in the family courts or which the family courts could adopt (perhaps from other areas of law) in relation to the matters being considered by the panel?

Clearly domestic abuse needs to be identified much earlier in the court process, which should allow for the case to be heard by a judge trained in domestic abuse. As well as this, we feel there needs to be a designated court to hear cases where domestic abuse has been identified, echoing the Specialist Domestic Violence Court (SDVC) model. The SDVC model within the criminal justice system has been shown to increase safety outcomes for survivors and reduce withdrawal and attrition rates<sup>34</sup>.

#### 25. Do you wish to make any other comments on the matters being considered by the panel?

Welsh Women's Aid is concerned that the lack of contact centres in Wales, particularly in rural areas further exacerbates the issues raised and hinders safe supervised contact arrangements. We understand Cafcass Cymru is only able to fund 6 sessions at a contact centre and then the onus is on the parent to continue to pay for these. We are concerned that this could provide another opportunity for economic abuse, whereby a perpetrator will insist the survivor pays for these sessions as she contested unsupervised contact, for example.

Finally, we are concerned that not enough weight is given to the expertise within the specialist violence against women sector and their role in supporting not just the mother and children but providing expertise to the court staff. More resources need to be given to co-located and specialist family court specialist domestic abuse workers, in addition, resources should be available where the case has not been deemed high risk and therefore an IDVA isn't allocated; support services should be better resourced to accompany women to the courts and to help explain the procedure as well as provide emotional support.

<sup>34</sup> [http://www.standingtogether.org.uk/sites/default/files/docs/SDVC\\_STADV.pdf](http://www.standingtogether.org.uk/sites/default/files/docs/SDVC_STADV.pdf)

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