30th September 2019

Dear Sir/Madam,

We write to inform the response to the Private Law Working Group Review from June 2019. This response specifically highlights where we support and where we call for more to be done in response to survivors of domestic abuse (both women and children) going through the family court process.

We welcome this review and the wider work by the Ministry of Justice (MOJ) looking at the impact of the current family court process and how it so often fails survivors of domestic abuse. Our full response to the MOJ consultation can be found here.

Our points in regard to the Private Law Working Group Review are as follows;

SSFA: We welcome plans in the review to ensure domestic abuse services are included in the alliance, but are clear these agencies must be those recognised to be delivering services within a gender-informed, trauma-informed practice. For SSFAs in Wales, quality marks, such as the National Quality Service Standards from Welsh Women's Aid, are an effective way of measuring this. As the review into PD12J has demonstrated, the courts in their current format are not working for survivors of domestic abuse, we therefore call for more clarity on the level of influence the SSFA will have, particularly if domestic abuse and coercive control is not identified at this early stage and a survivor is placed on the wrong 'track' or expected to go through MIAM. SSFAs should not be seen as a way to triage away families, who simply 'can't agree' but must recognise the vast majority of cases who come to the family courts require further interventions and safeguarding.

MIAM: We welcome the acknowledgement that mediation is not appropriate in cases of domestic abuse and welcome the recommendation that regular training on spotting the signs of domestic abuse should be undertaken by those running mediation sessions. We are concerned about recommendation 13, which states, mediation '*may not be appropriate where domestic abuse is a factor'*[1]' we feel this statement must be stronger; mediation is never appropriate in cases of domestic abuse, particularly due to the dynamics of coercive control. We note the extensive list of evidence a survivor can present, but also feel it is important to note that many survivors have no external 'evidence' of the abuse, other than their word and this should be given the same weight. We call for more clarity on the point made in the review of '*whether an alternative mediation model might be an option for example shuttle or online video conferencing'.* Of course, the survivor is best placed to decide if she wants to go ahead with mediation, but we are clear that even with video conferencing for example, the perpetrator can still use gestures and other signs to intimidate the survivor, mediators must therefore be aware of this and not be seen to push for mediation with a known

[1] https://www.judiciary.uk/wp-content/uploads/2019/07/Private-Law-Working-Group-Review-of-the-CAP-June-2019.pdf page 66

survivor. We call for more robust clarity where allegations are made and urge the working group to consider the impact of mediation from a survivor's perspective.

TRACKS: We welcome the commitment to have a specified 'track' for cases involving domestic abuse, however are concerned that this triaging will happen at the gatekeeping stage, which it is proposed will be 'slimmed down' to speed up cases. This presents a risk that cases of abuse will not be picked up and therefore triaged to a different 'track'. We appreciate cases can be moved between tracks, but this relies on the case being identified. We know survivors do not often name domestic abuse and it requires skilled professionals to pick up on the nuances, particularly in cases of coercive control. We recognise that this new system is likely to work better where domestic abuse is picked up in the early stages, but require clarity on the how the courts will ensure there is opportunity to pick up on abuse throughout the process.

RETURNERS: We are concerned that safeguarding checks will not automatically be applied for return cases. We understand that the majority of return cases are the result of contact breaking down and it is the non-resident parent (often the father) making this request. It is highly unlikely he will disclose the contact has broken down because of his behaviour (coercive control, threats etc). We understand that currently return cases are subject to automatic safeguarding after a particular timeframe, however, if under the new process, it is left to judicial discretion to request a check, domestic abuse could be missed. The report itself states; '*The most common type of case involved parents whose conflicts with each other prevented them from making a contact order work reliably in practice*[2]*'*. This highlights our concern, that 'conflict' is the reason for the return, (although we are cautious of using this term as it is more likely to be the perpetrators behaviour). The report also states; '*it is in fact relatively rare for cases to return because the parent with care is implacably hostile*[3]*'* this implies to us that she has taken steps to protect her children and herself and ceased contact which has lead to the perpetrator's feeling he has lost control and needs to bring the court back in to re-excerpt that control. Therefore, opportunities to protect the survivor and her children will be missed if automatic safeguards are not in place.

We welcome the opportunity to feed into this important review and are available to discuss the points raised here, if that would be helpful.

Yours sincerely,

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Policy and Research Officer

[2] ibid, page 53
[3] Ibid, page 53

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