

**The Children Living with Domestic and Sexual
Violence Group**
**Submission to the Family Justice Oversight Group
Consultation**



Introduction

The Children Living with Domestic and Sexual Violence group is made up of specialist domestic and sexual violence services and organisations that work directly with children. Collectively we have huge experience and expertise working with children who have experienced child abuse and domestic violence. We welcome the opportunity to make a joint submission, in addition to the detailed submissions from individual member organizations of this group, to the Family Justice Oversight Group on key shared issues.

This joint submission from the CLWDSV group includes the collective insight and agreed priority recommendations of Women's Aid, SAFE Ireland, Rape Crisis Network Ireland (RCNI), the CARI Foundation, One Family, Barnardos, Daughters of Charity Child and Family Service, A.S.S.C Accompaniment Support Services for Children, Sonas, ISPC, the National Women's Council, Longford Women's Link.

Domestic and sexual violence is predominantly perpetrated by men and the victims are predominantly women and children. We also recognize female perpetration of domestic and sexual violence and support their victims. The challenges and dynamics we seek to describe and which inform our recommendations cannot easily or usefully be separated from both the gendered nature of domestic and sexual violence and the broader systemic gender discrimination against women. Therefore, we use both gender neutral and gendered language in the following recommendations.

1. The interaction between the Criminal Justice, Family Law and Child Protection systems

A family where there is domestic abuse can be simultaneously involved in proceedings in the Criminal court, in the Family Court and in the Child Protection system, or in any two of these systems. The 3 systems perform different functions and work with different aims and priorities. This can sometimes be experienced as unhelpfully siloed. As a result of a lack of common focus on the safety of the child, their interaction is often problematic. For example:

- Child protection system and Family Court may can work in opposite directions: Child Protection Practice requires that where there is conflict between protecting children and respecting the needs and rights of parents the child's welfare must come first. Child protection therefore may require a mother to protect her children by leaving an abusive partner. However in Family Law Proceedings the parental rights of the abusing partner may supersede the safety of the child resulting in the Family Court granting unsupervised access to the abusive partner and insisting on co-operation from the mother with that order.

Sometimes we feel it in our bodies too, we might get weak, our eyes might go black, we get a pain in our belly, our bones start to hurt and

*sometimes we don't feel like eating a lot
(Voice of a Child)**

- Child abuse allegations that are not **proven** in the Criminal Justice system may be characterized as malicious **false** allegations in Family Law proceedings: a mother may report child physical or sexual abuse by the father to Tusla and /or the Garda, however these allegations are notoriously difficult to prove and criminal proceedings may not be successful . The abuser then uses the lack of conviction to argue the mother is vindictive and her concerns should not be listened to in the Family Court.
- Proceedings, including **convictions**, of an abuser in the criminal justice system for violent offences against their partner may be deemed irrelevant in Family Law Custody and Access proceedings because the offence was not committed against the child. This fails to recognise the damaging emotional impact on the child, of experiencing the protective parent being abused.
- Studies show that adult partners who are abusive are also at increased risk of abusing their children. Yet the more a mother seeks protection for her children and herself through the criminal justice and child protection systems, the more she is made out to be revengeful, intractable and unreliable in Family Law proceedings: ironically, the more proceedings she is involved with the less credibility she has in the Family Law court.

The result of these problematic and contradictory interactions is that the risks posed by the perpetrator to the children and the non-abusive parent are minimized, and unsafe child custody and access arrangement are made that continue, and possibly escalate, the abuse of both. **Research in this area is urgently needed to understand these dynamics and patterns.**

The Family Justice Oversight Group should consider how to improve linkages and collaboration between the Family Law court, the Criminal Court and Child Protection, in order to center the safety and wellbeing of the child and support the non-abusive parent in all proceedings.

2. Mediation in domestic violence cases

The Children living with Domestic and Sexual Violence group agree that mediation is not appropriate in Family Law cases where there is domestic violence. Mediation is most effective when there is a transparent balance of power between the parties; it becomes ineffective where one party is intimidated and threatened by the other.

Inappropriate use of mediation in separating families with a history of domestic abuse can lead to the abused party agreeing to dangerous and/or disadvantageous outcomes out of fear of the perpetrator.

The mediation process itself can be and has been used as an opportunity to intimidate, harass and abuse women. A refusal to engage in mediation can be noted on a Child Protection file or presented to the Family Courts as evidence that the non-abusive parent is uncooperative.

It is vital that abused parties are not mandated or coerced into mediation with their abuser.

The Family Justice Review should establish criteria and thresholds to identify parties for whom mediation is not suitable. Should an abused party freely decide to avail of mediation regardless, there should be clear principles, and mediation methods (e.g. shuttle mediation) established outlining if and how it can safely be initiated and continued.

If mediation is deemed inappropriate because of domestic violence, it is noted that there are no other alternatives other than going to court in the Irish system. Courts should ensure that the dynamics of abuse and control are not perpetuated through court cases and processes.

The Family Justice Oversight Group should explore safe alternatives to remedy this gap.

3. The professionalization and regulation of Mediators

An increasing tendency to promote mediation in Family Law in Ireland has not been matched by a clear and consistent process of professionalization and regulation of mediators. In particular, many lack awareness of domestic violence and how a history of abuse negatively impact on mediation. As part of their professional development all Family Law mediators need to access compulsory training on domestic violence, child sexual violence and coercive control.

The Family Justice Oversight Group should establish a process for the professionalization, regulation and training of Family Law mediators. To support this process, the Mediation Act 2017 should be fully enacted so that the profession is regulated and subject to a Mediation Council.

4. Access hearings

Disclosing domestic abuse can be very problematic in Access hearings.

Many victims of Domestic Violence, who are predominantly women, do not report domestic violence before separation as part of their strategy to manage their risk and protect their children, and are therefore unable to provide Garda reports or Domestic Violence orders as proof of abuse. Without such hard evidence it may be difficult for the woman to be believed and their disclosure within Access hearings can then be characterized as a tactical strategy to prevent Access, rather than a legitimate concern for their own and her children's safety.

*Sometimes we are told whose side
we are on but we don't like it'
(Voice of a Child)**

Moreover, women are disadvantaged at different stages for disclosing or not disclosing domestic violence. For example, solicitors may initially discourage women from disclosing domestic abuse to the court in Access proceedings, so as not to appear hostile, which can be to their disadvantage, given the pro contact culture that exist in Family Law. However; if later in the proceedings the woman refuses mediation or refuses particular outcomes because of safety concern, the lack of initial disclosure is used to undermine her credibility.

There can also be an unwarranted focus on mental health/poverty/addiction/behaviour of the non-abusive parent, without a recognition of the impact of domestic abuse on them as **a causal factor** of some or all of these issues, and the need to support the non-abusive parent as best form of child protection.

The Family Justice Oversight Group should ensure all Family Law professionals, including judiciary, are trained to understand the dynamics and impacts of domestic abuse, including coercive control, in order to center the safety and wellbeing of the child and support the non-abusive parent in all proceedings.

5. Court Welfare system

When information on the welfare of the child is needed in private family law proceedings, they are obtained through a S47 Report or a S32 Report.

However the **implementation** of any recommendations in S47 and S32 reports is not actively monitored by the Court except through a reinitiating of court proceedings by either party regarding the court order. Tusla often steps out of the picture when a decision in private Family Law has been made, so they do not continue monitoring the implementation of any S47 report recommendation either. The Child has no independent advocate or public provision of the supports that are court ordered.

There is, therefore, no system to ensure that recommendations are implemented, or that they are reviewed and updated as the child grows up or the situation changes.

Moreover, the quality and experience of the assessors providing the reports can vary. In our experience many lack the necessary understanding of domestic and sexual violence, its impact on children and how the abuser can manipulate or intimidate children into expressing views and choices that are to the advantage of the abuser and not in the best interest of the child.

The Children living with Domestic and Sexual Violence group believes that this is a huge gap that needs to be addressed as a matter of urgency.

The reform of the Family Court should review the efficacy of the system of use of S47 & S32 reports to meet the best interests of the child. Any such practices included in a Court Welfare system should be staffed by professional, regulated and trained assessors. There is an argument to be made that a

child-centered, wrap around service should provide an assessment in advance of a family law case rather than only upon the direction of the court in individual cases. The role of the assessors would be to identify the needs of the child and to provide an understanding of the child's choices and context, what is in their best interest and what they truly want. The Child's voice needs to continue to have a dedicated advocate regardless of the S47 or any other process, the GAL continues to have as vital role in ensuring the voice of the child is present and considered at all stages.

*Some adults think children are stupid and they don't know what they are talking about just because they are little but all children have a voice.
(Voice of a Child)**

The meeting of the child's needs should be ensured through an independent advocate (not the initial assessor) who is charged with the review and monitoring process and ensuring the child has publicly funded access to a range of services and supports to address said needs

6. Child Contact Centres

For approximately 10-30% of separated families, the process by which contact is agreed is an 'uphill battle'; that is emotionally charged, problematic and potentially dangerous.ⁱ When the Court determines that access for a child should be supervised, there are currently no professional, state resourced, supervised access services the court can refer the family to.

Even in cases where there is established abuse of the primary carer or the child or both, there continues to be a consideration of the importance of the child's relationships with both parents where the abusive parent's right to access appears to often outweigh consideration of the child's safety. While assessments are on a case by case basis in light of the individual circumstances of each child, a lack of domestic and sexual violence specialization and many of the concerns raised in these recommendations, may be resulting in a pro-contact culture regardless of abuse and risk. To compound matters, often the responsibility to provide for the child's safety in these circumstances is passed from the State to the non-abusive parent.

*We try to get away and go outside but this can be a very hard challenge. Our little brothers and sisters are relying on us and it's our job to protect them
(Voice of a Child)**

In many cases the obligation for facilitating and attending court-mandated supervised access is placed with the abused parent or for them to ask friends and family for help, which is neither appropriate nor safe.

This has been and continues to be a glaring gap in service provision for families separating where there is domestic and/or child abuse or other risk factors to the child.

Child Contact Centres, which would provide a safe venue but also supports for all parties in putting in place a child-centered and safe access and handover plan, need to be seriously considered as part of the ancillary services to users of family law courts along with counselling, mediation, post-separation family supports, DNA testing and section 47 reports. **A network of quality supervised child contact centers needs to be established as a matter of urgency. Such centres should be child centered and should be staffed by regulated and trained professionals. Training should include training on domestic and sexual violence and its impact on children. These should be resourced by the state. An evaluation of pilot Child Contact Centres can be found here: https://www.onefamily.ie/wp-content/uploads/One-Family_Child-Contact-Centre_Key-Learnings.pdf**

Organisations' detailed submissions are also available from most of the organizations signed up to this joint CLWDSV submission. There is also a range of relevant evidence and research available through each of the partners' websites.

26th February 2021

For any queries and further information please contact CLWDSV Chair, Dr Cliona Saidléar on [REDACTED]

* Children's quotes from *Children's voices - a multi agency national participation project for children who experience domestic abuse* – facilitated by Barnardos.

ⁱ Child Contact Centre Key Findings Report, One Family (2014). Child Contact Centre: Key Learnings One Family's response to the Evaluation with key learnings and recommendations for policy makers. [\[download\]One Family_Child Contact Centre_Key Learnings March 2014 – PDF\[/download\]](#)